

Case No: 1262/5/7/16 (T)
IN THE COMPETITION APPEAL TRIBUNAL

Competition Appeal Tribunal
Victoria House
Bloomsbury Place
London
WC1A 2EB

Before:

MR JUSTICE MARCUS SMITH
MR PETER FREEMAN CBE, QC (Hon) and MR BRIAN LANDERS

Between:

AGENTS' MUTUAL LIMITED
Claimant

and

GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)
Defendant

MR ALAN MACLEAN QC and MR JOSH HOLMES appeared on behalf of
the Claimant

MR PAUL HARRIS QC and MR PHILIP WOOLFE appeared on behalf of
the Defendant

<p>1 Friday, 10 February 2017 2 (10.06 am) 3 MR HARRIS: Morning, sir, unless there are any preliminaries 4 I would like to invite Mr Springett back to the stand. 5 THE CHAIRMAN: We have a short ruling. 6 MR HARRIS: Of course, I beg your pardon. 7 Ruling 8 THE CHAIRMAN: For the reasons set out in greater detail in 9 our ruling, we are conscious that the course of 10 admitting the audio files and transcripts would leave 11 Agents' Mutual with no ability properly to investigate 12 the provenance or content of the audio files or the 13 transcripts and no real ability to counter them if so 14 advised with further evidence. 15 This application has been made in the middle of the 16 trial and the factual evidence has, to a substantial 17 extent, already been heard. To require Agents' Mutual 18 to do anything in response to the evidence would, in our 19 minds, be entirely unreasonable. 20 On a number of occasions when seeking to counter our 21 concerns regarding the provenance and content of the 22 audio files and transcripts Mr Woolfe very properly 23 sought to assuage those concerns by suggesting that 24 they, the concerns, could be resolved by asking the 25 Agents' Mutual representative present at some but not</p> <p style="text-align: center;">Page 2</p>	<p>1 MR HARRIS: Very much so, sir, and you will see in our 2 skeleton we have already addressed BAGS to some extent, 3 but we will take on board that point. 4 THE CHAIRMAN: Thank you. 5 MR HARRIS: Thank you very much. 6 Sir, may we have Mr Springett back. 7 MR IAN SPRINGETT (continued) 8 Cross-examination by MR HARRIS (continued) 9 MR HARRIS: Good morning, Mr Springett. 10 A. Morning, Mr Harris. 11 Q. So yesterday you had taken my train ticket and we had 12 travelled at the end of the day towards west Wales, so 13 we are back there. Could I draw your attention, please, 14 to bundle number 6 and this time an email that begins on 15 page 3449. 16 Do you see that this is a copy of an email from 17 Mr Jones, with whom you had had some correspondence; 18 yes? 19 A. Yes. 20 Q. To the group of west Wales agents. If you just cast 21 your eye over the names of the people to whom he sends 22 the email and copies in. Do you recognise them as being 23 the Agents' Mutual members in west Wales? 24 A. Yes, I do. 25 Q. And he says to these other agents:</p> <p style="text-align: center;">Page 4</p>
<p>1 all of the recorded meetings about them. 2 We wish to make explicitly clear that if this 3 evidence is admitted, then it is on the basis that 4 Gascoigne Halman have to live with the deficiencies in 5 the evidence that we describe in our ruling and cannot 6 at a later stage in the proceedings seek to bolster this 7 material by suggesting that if it were false, 8 Agents' Mutual could have produced evidence to say so. 9 We will not entertain any submission that silence on 10 the part of Agents' Mutual in response to this material 11 indicates any form of acceptance or evidence that the 12 recordings are accurate or unimpeachable. 13 On that basis, and on that basis only, we admit the 14 evidence. 15 MR HARRIS: Sir, thank you very much. I don't have any 16 other preliminaries or housekeeping. 17 THE CHAIRMAN: One point, as we all know, the person who 18 knows most about economics and competition law is 19 sitting to my right and he particularly suggests that on 20 horizontal matters the parties might in closing want to 21 address us on the European Commission's communication on 22 horizontal corporation agreements 2011/C11/01 and the 23 Court of Appeal's judgment in BAGS v AMRAC [2009] EWCA 24 750. Not a matter for this week but it might be 25 a matter for work at the end of next week.</p> <p style="text-align: center;">Page 3</p>	<p>1 "This is a summary of the agents meeting held 2 yesterday." 3 And he goes on to say certain things about it. And 4 over the page do you see the paragraph by the first hole 5 punch, the one beginning "The agents present"? 6 A. "There was some concern that agents had not understood 7 the terms of the offer by John Notley?" 8 Q. No, I am -- there are three -- at the top of 3450, third 9 paragraph: 10 "The agents present were all prepared to sign up to 11 the Zoopla deal ..." 12 A. Yes. 13 Q. "... subject to the points below being agreed by Zoopla 14 and, of course, subjects to those agents not present 15 agreeing to them as well." 16 A. Yes. 17 Q. So this is the west Wales group of agents all signing up 18 as a collective to the Zoopla deal, subject to ironing 19 out the final wrinkles; correct? 20 A. Yes, and I think you can see at the top line on that 21 page that there was a threshold that Zoopla had set for 22 the deal to trigger. 23 Q. But in the context of these agents all being members of 24 Agents' Mutual and therefore being bound by the OOP 25 rule, them collectively agreeing to sign up with Zoopla</p> <p style="text-align: center;">Page 5</p>

<p>1 means that they collectively also agree to drop</p> <p>2 Rightmove, don't they, insofar as they were using</p> <p>3 Rightmove? Insofar as they were using Rightmove.</p> <p>4 A. Insofar as they were using Rightmove.</p> <p>5 Q. That is right, isn't it?</p> <p>6 A. That is a logical conclusion.</p> <p>7 Q. I am glad you see it that way, Mr Springett, because</p> <p>8 that is the logical conclusion of the One Other Portal</p> <p>9 rule, isn't it?</p> <p>10 A. In this context.</p> <p>11 Q. Just so you know, you were joined into this chain, if</p> <p>12 you were to go earlier in the bundle to 3446, you aren't</p> <p>13 on this bit of the chain but you do get added to it at</p> <p>14 the email on 3446, which is a couple of days later.</p> <p>15 What you say, picking it up between the two hole punches</p> <p>16 is in response to Mr Jones -- well, to Mr Hope, copied</p> <p>17 to Mr Jones, in the middle paragraph:</p> <p>18 "As you know, agents joining silver sign a</p> <p>19 non-binding letter of intent ..."</p> <p>20 And then it carries on:</p> <p>21 "... and I wondered if you wanted to ask all the</p> <p>22 silver agents in the west Wales group to sign their</p> <p>23 contract before entering any deal with Zoopla."</p> <p>24 A. Yes.</p> <p>25 Q. So you were expressly wanting them to be signing up as</p> <p style="text-align: center;">Page 6</p>	<p>1 response to Mr Jones sending you the offer. It is 3422.</p> <p>2 So you say at the top of 3422:</p> <p>3 "Nigel, thanks for forwarding the Zoopla offer.</p> <p>4 Please find attached the notes and comments/thoughts."</p> <p>5 You see that?</p> <p>6 A. "For your personal use", yes.</p> <p>7 Q. Yes. We can find the note at 3429.</p> <p>8 A. We should just finish off this 3422 where it says:</p> <p>9 "I hasten to say that I would not presume to tell</p> <p>10 any member what they should do and still less a group as</p> <p>11 sophisticated in its approach as yours. But I hope you</p> <p>12 will find it helpful."</p> <p>13 Q. You go on to say, don't you, if you really want to</p> <p>14 finish off that email:</p> <p>15 "I think what you are achieving in west Wales is</p> <p>16 terrific. Good luck with the meeting."</p> <p>17 And that is a group meeting, isn't it?</p> <p>18 A. Yes.</p> <p>19 Q. And if you find the note itself, it is to be found at</p> <p>20 3429. So this is the note that you send back about the</p> <p>21 group offer that the west Wales group had received from</p> <p>22 ZPG, isn't it?</p> <p>23 A. Yes.</p> <p>24 Q. And what we see is that you comment about the strategy</p> <p>25 that you think Zoopla has and then you comment about the</p> <p style="text-align: center;">Page 8</p>
<p>1 a group, weren't you?</p> <p>2 A. No, not particularly. We would have made available --</p> <p>3 this was before the main conversion of silver letters of</p> <p>4 intent to a contract had begun, because at this point we</p> <p>5 hadn't reached, I think, the 4,000 office level of</p> <p>6 support, but in order to assist this group I was</p> <p>7 offering, I guess, to say: well, we could make those</p> <p>8 contracts available to agents to sign if they wanted to.</p> <p>9 Q. And it is right, isn't it, that this group of agents</p> <p>10 sent you the draft offer from Zoopla, didn't they --</p> <p>11 A. Sorry, Mr Harris, can I just refer you to the last line</p> <p>12 of my email?</p> <p>13 Q. Yes, please. Sorry, which page are we on?</p> <p>14 A. 3446:</p> <p>15 "Let me know and I can send a copy to you and also</p> <p>16 arrange for them to receive the contracts direct for</p> <p>17 signing."</p> <p>18 Q. Thank you.</p> <p>19 A. Thank you.</p> <p>20 Q. They sent you the draft offer, didn't they, that they</p> <p>21 had got from Zoopla for your input?</p> <p>22 A. I think Mr Jones asked for my views on it, I think in</p> <p>23 general, but also in particular to a request by Zoopla</p> <p>24 within the deal that the agents should promote Zoopla.</p> <p>25 Q. If we look earlier in the bundle you can see your</p> <p style="text-align: center;">Page 7</p>	<p>1 deal pricing. I don't need to read any of that out.</p> <p>2 I don't think any of it is confidential but I don't need</p> <p>3 to go there.</p> <p>4 In the next bullet point below the table you comment</p> <p>5 on Zoopla regarding the pricing as a loss leader and you</p> <p>6 go on to make some comments about specific terms, don't</p> <p>7 you, that the group could or should consider agreeing</p> <p>8 with Zoopla?</p> <p>9 A. Yes.</p> <p>10 Q. That is right. So one of the specific terms that you</p> <p>11 suggest that they should or could agree is, first</p> <p>12 bullet:</p> <p>13 "The AM group could agree not to buy additional</p> <p>14 Zoopla products."</p> <p>15 Yes?</p> <p>16 A. Yes.</p> <p>17 Q. So that is them as a group, isn't it, that you are</p> <p>18 making that suggestion to?</p> <p>19 A. Yes, that could form part of the arrangements with</p> <p>20 Zoopla.</p> <p>21 Q. And then you make another suggestion as to what the</p> <p>22 group should be doing at the bottom, final bullet point:</p> <p>23 "If the group believes that, in practice, there will</p> <p>24 be substantial further spend on Zoopla products, maybe</p> <p>25 there is scope to get the base Zoopla deal down</p> <p style="text-align: center;">Page 9</p>

<p>1 further." 2 Do you see that one? 3 A. Yes. 4 Q. And then over the page, under the heading "notice 5 period" you talk about the proposed notice period. It 6 is covered in yellow so I won't read out the number, 7 although I can't believe it is confidential. And in the 8 second bullet point, having identified the notice 9 period, you suggest again to this group of agents, they 10 might put pressure on Zoopla regarding that term, don't 11 you? 12 A. No, that's not what it says, does it? It says the 13 inability to leave Zoopla in the short term might put 14 pressure on the One Other Portal rule. 15 Q. You are making suggestions about how they can deal with 16 the proposal for Zoopla for a specific notice period, 17 aren't you? 18 A. I'm saying what the consequences might be for them. 19 Q. That's right. In order that they as a group can go back 20 to Zoopla regarding this specific term, the notice 21 period; that is right, isn't it? 22 A. Whereas the point above really crystallises exactly what 23 we are trying to achieve here: a more vigorous 24 negotiation environment where there's some switching. 25 Q. And then under the next heading, "Promotion of Zoopla</p> <p style="text-align: center;">Page 10</p>	<p>1 some pointers on how he might conduct that negotiation. 2 Q. Yes, on behalf of the group and as a group, right? 3 A. Well, that's what he's doing. 4 Q. Well, you say "The group should consider all of this"; 5 those are your words, aren't they? 6 A. Yes, because I'm aware there is a negotiating group, but 7 the advice I'm giving is to Mr Jones. 8 Q. Yes, who is leading the group, isn't he? 9 A. As far as I'm aware. 10 Q. Yes, thank you. So can I just take you then into your 11 witness statement, fifth Springett. You will find that 12 in bundle C and at tab number 4. If you turn it up in 13 internal page 66, you will see there is 14 a paragraph 15.17 in your fifth witness statement. And 15 do you see at the end, in that paragraph you are talking 16 about the west Wales grouping. In the final sentence 17 reads: 18 "I did not advise the group on its decision or on 19 any specific terms with the exception of reminding them 20 that they could not agree to promote Zoopla as they 21 already agreed to comply with the ..." 22 That is completely false, is it not, in the light of 23 the document we have just looked at? 24 A. No, it isn't. I didn't advise the group. I advised, 25 because he had asked for it, Mr Jones what I thought he</p> <p style="text-align: center;">Page 12</p>
<p>1 brands", Zoopla had been putting forward, hadn't they, 2 a suggestion about promoting Zoopla; correct? 3 A. That's what I was told, yes. 4 Q. And what you are suggesting back to this group of agents 5 is a potential or actual counterpoint on that specific 6 term, aren't you? 7 A. Member agents are required to promote AM but may only 8 advise customers that they also use the other portal. 9 Q. So you are suggesting to the group that as a group, they 10 can go back to Zoopla and say: well, hang on a minute, 11 Zoopla, you have asked for this but you should tell them 12 that? 13 A. I am pointing out that that's what's in each individual 14 member's contract. 15 Q. And then under the heading "summary" at the bottom, 16 second paragraph down, you talk about the deal and then 17 you say: 18 "The group should consider all of this in the light 19 of the overriding objective of getting into a position 20 where AM members have the option to wind down their use 21 of any other major portal". 22 So it is very much a series of suggestions or ideas 23 about what the group should do as a group, isn't it? 24 A. Well, on the basis that this is a group negotiation with 25 Zoopla, this note is intended for Mr Jones only to give</p> <p style="text-align: center;">Page 11</p>	<p>1 should do in the context of that negotiation. 2 Q. So that is your point of distinction, is it? 3 A. Yes. 4 Q. You are saying that because the email to the leader of 5 the group suggesting what the group should do isn't to 6 the group at large, that is not you advising the group. 7 That is nonsense, isn't it? 8 A. No, it isn't. 9 Q. In any event it is wrong because you say you don't give 10 any advice on additional products. 11 A. Not to the group. 12 Q. I see. Don't you think that's misleading, Mr Springett, 13 that sentence? 14 A. No, I don't. It is the same conversation we had 15 yesterday about the discussion I had with Mr Abrahamson. 16 Q. I suggest to you, Mr Springett, that that is thoroughly 17 misleading evidence that you have given and it is 18 downright wrong when it comes to the position that you 19 say you didn't give any advice about specific terms; 20 that is right, is it not? 21 A. That is not true, is it? Because when I reply to 22 Mr Jones I recall reading an email recently where I say: 23 do not pass this on to the group as my -- as having come 24 from me. So I'm specifically saying to him he should 25 not use my name or Agents' Mutual in connection with any</p> <p style="text-align: center;">Page 13</p>

<p>1 of that email that he chose to use.</p> <p>2 Q. What on earth has that got to do with the point,</p> <p>3 Mr Springett, it is still you passing on advice?</p> <p>4 A. You are pointing to this part of my witness statement</p> <p>5 and saying I did not advise the group, and I did not</p> <p>6 advise the group.</p> <p>7 Q. I see. Whilst we are still in your statement if you</p> <p>8 turn two paragraphs earlier on at 15.9, you start giving</p> <p>9 evidence in your written form about Gascoigne Halman's</p> <p>10 allegations regarding a collective boycott, and you say</p> <p>11 in the third line:</p> <p>12 "It was very clear to me and I have always been very</p> <p>13 clear to others".</p> <p>14 That is simply not right in light of the emails we</p> <p>15 saw yesterday, both to the west Wales group and North</p> <p>16 East group, is it?</p> <p>17 A. Again, I can only repeat what I have said before, that</p> <p>18 I have made it very clear to all of the agents to whom</p> <p>19 I've presented the proposition that they have to make an</p> <p>20 individual decision. Now, if they choose to do</p> <p>21 something different and I become aware of it, then</p> <p>22 I have, when appropriate, indicated to them that they</p> <p>23 need to take their own separate legal advice about what</p> <p>24 they're doing.</p> <p>25 Q. Your evidence here, Mr Springett, is, and I quote:</p> <p style="text-align: center;">Page 14</p>	<p>1 Q. I take that point, Mr Springett. I know what your</p> <p>2 evidence is on that.</p> <p>3 And what you say is:</p> <p>4 "Dear Clive, ahead of your upcoming meeting with</p> <p>5 Zoopla ..."</p> <p>6 That is a group meeting, isn't it?</p> <p>7 A. I understand it is a meeting at which Zoopla will be</p> <p>8 presenting a proposition to a group of agents.</p> <p>9 Q. That is right. And you say:</p> <p>10 "I prepared a note with a few thoughts on the</p> <p>11 prospective group deal for your personal use."</p> <p>12 A. Yes, that's right.</p> <p>13 Q. "I hope you will find it helpful, although you and</p> <p>14 others in the North East group probably considered all</p> <p>15 the points made."</p> <p>16 Yes?</p> <p>17 A. And more, yes.</p> <p>18 Q. And then to be fair to you, Mr Springett, you say the</p> <p>19 same sentence effectively as you did in the other email</p> <p>20 that we saw a moment ago:</p> <p>21 "Never presume to tell an AM member what to do."</p> <p>22 But it is not a question of telling them. It is</p> <p>23 a question of knowing in advance that they are going to</p> <p>24 have a group decision and trying to influence that group</p> <p>25 decision, isn't it?</p> <p style="text-align: center;">Page 16</p>
<p>1 "I have always been very clear to others."</p> <p>2 Remind me where in the email to Miss Pattinson where</p> <p>3 you suggest she should align herself with others in the</p> <p>4 North East you say to her very clearly you cannot do</p> <p>5 that?</p> <p>6 A. Well, Miss Pattinson wasn't meeting with me. I was just</p> <p>7 saying to her: I will happily come and see you if you</p> <p>8 want to talk about joining Agents' Mutual.</p> <p>9 Q. You don't do it, do you, in that email?</p> <p>10 A. I didn't need to do it.</p> <p>11 Q. You can put C away again now. Thank you. And we're</p> <p>12 back in volume 6 where we were a moment ago and I just</p> <p>13 invite you over the page to 3433. Do you see that</p> <p>14 21 minutes after you send your series of ideas and</p> <p>15 advice on the group decision for the west Wales group</p> <p>16 you effectively do the same thing to the North East</p> <p>17 group, don't you?</p> <p>18 A. Yes.</p> <p>19 Q. So at two minutes past 7 on 2 August, 21 minutes after</p> <p>20 the other one, you top and tail the same note that you</p> <p>21 send to the west Wales group and you send this off to</p> <p>22 a board member in the North East, don't you, Mr Rook?</p> <p>23 A. Let me correct you again. The note wasn't sent to the</p> <p>24 west Wales group, and this one is sent to Mr Rook, two</p> <p>25 individuals.</p> <p style="text-align: center;">Page 15</p>	<p>1 A. I'm not influencing the group decision. I'm just</p> <p>2 saying: here are some thoughts about the negotiation.</p> <p>3 Q. I see, but we don't need to look at it in detail, but if</p> <p>4 you see the notes of the North East over the page at</p> <p>5 3435, and I think you have just accepted from me, aside</p> <p>6 from effectively changing the references from the west</p> <p>7 Wales group to the North East group, and aside from the</p> <p>8 fact that you don't have so many details about what</p> <p>9 Zoopla is actually proposing in the North East compared</p> <p>10 to west Wales, it is the same note, isn't it?</p> <p>11 A. It is the same note, and it is actually very similar to</p> <p>12 advice I gave also to Mr Abrahamson when he asked for</p> <p>13 it.</p> <p>14 Q. Thank you. In fact, you facilitate other group</p> <p>15 meetings, knowing that they are to be about group</p> <p>16 decisions concerning the portals that the group wants to</p> <p>17 join or come off, don't you?</p> <p>18 A. I don't think so.</p> <p>19 Q. Really? You can't remember facilitating any such</p> <p>20 further meetings in any of the other agent groups around</p> <p>21 the country that you have admitted knowing were taking</p> <p>22 place?</p> <p>23 A. I don't think I facilitated, no.</p> <p>24 Q. In that case, still in this bundle then, bundle 6, if</p> <p>25 you could go earlier in time, earlier in the bundle to</p> <p style="text-align: center;">Page 17</p>

5 (Pages 14 to 17)

<p>1 page 2951, do you see that is an email of 4 July 2014 to 2 you from an agent in Regent Street, Cambridge? 3 A. Yes. 4 Q. And that's Mr Burt-Gray writing to you, saying: 5 "The time is coming where we as an agent will need 6 to decide which one of the two portals, Rightmove or 7 Zoopla, to jettison." 8 Correct? 9 A. Yes. 10 Q. And he says: 11 "It could be good to know who are fellow 12 Agents' Mutual members in Cambridge in order that we 13 could have a few discrete discussions with some of them 14 in order to gauge the general consensus on which portal 15 they are likely to retain." 16 That is what he is asking you, isn't it? 17 A. Yes. 18 Q. So you know perfectly well when you receive this email 19 that he is proposing to get together if he can with 20 other Agents' Mutual's members and have a discussion 21 about which portal they are likely to retain, don't you? 22 A. You are saying "get together". It doesn't say that, 23 does it? 24 Q. Mr Springett, be serious. 25 A. Does it say that?</p> <p style="text-align: center;">Page 18</p>	<p>1 I paraphrase: 2 "I have always been very clear with agents about 3 making their individual decisions." 4 A. Yes. 5 Q. So where in the email response: 6 "Hi Kevin, I am well thanks. I hope you are too. 7 I must be very clear with you that it is not at all 8 permissible for you to get together with other 9 Agents' Mutual members in order to reach a general 10 consensus on which portal they are likely to retain." 11 Where does it say that in the email? 12 A. It doesn't need to be there because I've already told 13 him that. 14 Q. I see. But instead, far from you being very clear 15 always, what do you do? You give him the very 16 information that he seeks, knowing that he wants it in 17 order to have discrete discussions about which portal 18 they are likely to retain and reach a general consensus, 19 don't you? 20 A. But this would be information -- he doesn't need me to 21 do that for him. He can get that information from the 22 members register if he really wants it. 23 Q. That is completely irrelevant, Mr Springett. You are 24 providing him with the information he wants. You are 25 facilitating and encouraging a group meeting, knowing</p> <p style="text-align: center;">Page 20</p>
<p>1 Q. He is asking you to know who the other Agents' Mutual 2 members are "in order that we could have a few discrete 3 discussions with some of them". 4 A. So -- 5 Q. Are you picking semantics about whether that means "have 6 a meeting"? 7 A. Does it say a group meeting? 8 Q. Let's be serious. You know perfectly well they are 9 going to have a collective decision about which portal 10 to join, don't you, when you receive this email? 11 A. It isn't what it says, is it. 12 Q. And -- 13 A. Also -- may I just finish the answer, please. It is 14 also right that he refers to Agents' Mutual members, and 15 there is a register of members, he could go to the 16 register of members and find out who else are the 17 members. 18 Q. But he doesn't need to do that, does he, Mr Springett, 19 because you facilitate the very group meeting, or 20 getting together, or discussions, whatever you like to 21 call it, yourself, don't you, personally? 22 A. I'm being helpful by giving him the information he would 23 otherwise have to go to the members register to get. 24 Q. That is exactly right. If you look two pages earlier in 25 response, in your witness evidence you say, and</p> <p style="text-align: center;">Page 19</p>	<p>1 perfectly well it is with the intention of reaching 2 impermissible collective decisions about which portal to 3 choose, don't you? 4 A. It is a bit of a stretch, isn't it, don't you think? 5 Q. Certainly not. 6 If we now move on. We are heading down into the 7 southwest of the country, to Devon. If you could pick 8 up bundle number 2 and this time turn to page 991. Do 9 you see this is an email from you to Mr Flint and 10 various other directors or members of the steering 11 committee probably at that point? 12 A. Yes. 13 Q. And beneath -- 14 A. No, they were directors by then. 15 Q. The company had been formed by then? 16 A. Yes, it had. 17 Q. Do you see beneath the second hole punch, about four 18 bullets down, you say -- that is part of your update on 19 progress -- that you are working on a southwest regional 20 meeting in Dorset and westwards? 21 A. Yes. 22 Q. So you had some personal involvement, didn't you, in 23 working to get together a southwest regional meeting in 24 Dorset and westwards? 25 A. Yes, to present the proposition.</p> <p style="text-align: center;">Page 21</p>

6 (Pages 18 to 21)

<p>1 Q. If you can put away bundle number 2 and go now, please, 2 to bundle number 7, this time to page 4031. This is an 3 email I think we have seen before, Mr Springett. It 4 begins at the bottom of 4029. I genuinely can't 5 remember now whether you and I have gone to this 6 together, but in any event do you see it begins at the 7 bottom of 4029? 8 A. Graham. 9 Q. Yes, and it is from you to Graham, Mr Prescott and 10 Mr Underwood. 11 A. Yes. 12 Q. They are agents in this Devon or southwest region, 13 aren't they? 14 A. Yes, they are. 15 Q. And to be fair to you, Mr Springett, I think we perhaps 16 went to this one before, because you say in number 1 17 over the page that you must avoid anything that would 18 evidence collusion between agents. What you don't say 19 is: you cannot get together to make collective decisions 20 by way of collusion, do you? 21 A. Webbers, being one of the first people I went to when we 22 were setting this thing up, were already perfectly well 23 aware from us that that's the case. 24 Q. I see, but you don't say it in this email, do you? What 25 you say is "We must avoid anything that would evidence</p> <p style="text-align: center;">Page 22</p>	<p>1 A. It is what I say. 2 Q. What you say is "We don't want anything that would 3 evidence AM is leading any kind of collective boycott". 4 A. That is what I say, yes, so it is plain -- 5 Q. It is not what you just said in evidence then. 6 A. It is plain what I say. You are trying to reorientate 7 what I say. 8 Q. I see. We can see what it says on the page. 9 A. Yes, you can. 10 Q. But in fact your wish went completely unheeded, didn't 11 it, about them avoiding collective boycott decisions in 12 the Devon area, right? 13 A. What are you going to refer me to? 14 Q. Well, you know that they collectively agreed to come off 15 Zoopla, don't you, as a group? 16 A. I don't know that. 17 Q. You don't know that. Let's have a look at bundle 18 8/4140. This is an email that I took Mr Wyatt to. 19 Mr Wyatt's an agent from Stags in this part of the 20 world, isn't he? 21 A. No, it's Mr Symons. 22 Q. I beg your pardon. 23 THE CHAIRMAN: Day 4. 24 MR HARRIS: And this clearly shows, doesn't it, the 25 southwest group, including Stags reaching a group</p> <p style="text-align: center;">Page 24</p>
<p>1 collusion", don't you? 2 A. Graham Harrison is the chairman of Webbers. He is a 3 senior guy. He knows the situation. 4 Q. But not from this email, does he? 5 A. Not from this email. 6 Q. No. So the reason you are saying this is because you 7 are concerned that this group of agents in the south 8 west might be engaging in a collective boycott, don't 9 you? That is why you say it? 10 A. Well, I'm responding actually to his email to me, which 11 talks about having dinner with the managing director of 12 Rightmove, and there is reference made there to 13 a meeting that the agents have clearly had, and I am 14 saying to him: in any conversation you have with 15 Rightmove, you need to be careful. 16 Q. Yes, absolutely. So you are concerned because 17 information has come into your possession suggesting 18 that this group of agents in Devon may be engaging in 19 a collective boycott. That is why you say "We must 20 avoid anything which would evidence of collusion between 21 agents or that AM is leading any kind of collective 22 boycott", don't you? 23 A. I'm saying: you are talking to the managing director of 24 our biggest competitor, be careful what you say. 25 Q. No, that is not what you say at all, Mr Springett.</p> <p style="text-align: center;">Page 23</p>	<p>1 decision to give notice to Zoopla, doesn't it? 2 A. Let me read it. 3 It says that is a consensus and Webbers has already 4 given notice. 5 Q. Yes. Do you accept that? Consensus is a meeting of 6 minds. That is what it means, doesn't it? 7 A. I think that's right. 8 Q. And it goes on to talk about a collective plan, the plan 9 discussed -- this is amongst the group -- is to defer. 10 It has been agreed to carry out some marketing, 11 et cetera, et cetera. 12 A. Mmm. 13 Q. It's a clear collective decision to drop Zoopla on 14 behalf of this group of north Devon agents, isn't it? 15 A. Yes, I think it may have been in the context of -- 16 I think Mr Notley said the other day that a group in 17 this part of the world had also been in discussion with 18 him about a deal similar to that in the North East and 19 west Wales, but I wasn't involved in any way with that 20 in the same way that I was aware of it in those places. 21 Q. Thank you. And now we are going to move a little bit 22 further north into the Bristol region. Can I draw your 23 attention to volume 3, page 1487A on the left-hand side 24 of the bundle. This is an email from a Mr Lease, 25 originally to the Agents' Mutual info email, and then by</p> <p style="text-align: center;">Page 25</p>

<p>1 the looks of it fairly promptly passed on to you 2 personally; correct? 3 A. Yes, I think it was only me at that stage. 4 Q. You were the very personification. 5 A. I was Agents' Mutual. 6 Q. I see. And what he says is: 7 "Hello, I am an agent in Bristol ... " 8 The second paragraph: 9 "The reason for dropping you a line is we have our 10 AGM and drinks party coming up. We feel it would be 11 useful perhaps to present a bit more info ..." 12 And he goes on to say: 13 "... to the members and other agents to see if we 14 can get a critical mass of support to join up on 15 launch." 16 So he's telling you that the proposal in the Bristol 17 area or the suggestion in the Bristol area is for 18 a group to join up on launch; yes? 19 A. I have a very clear recollection about what actually 20 happened, which I'll tell you about in a moment. 21 Q. Yes. 22 A. But what this is saying is critical mass of support to 23 join up on launch. 24 Q. Yes, so that means a group joining up on launch, doesn't 25 it?</p> <p style="text-align: center;">Page 26</p>	<p>1 MR HARRIS: Thank you. And then we are now moving east in 2 the country, Mr Springett. I imagine you were fairly 3 peripatetic at this point, weren't you? Bristol, 4 Devon ... 5 A. Yes, all over the place. 6 Q. You perhaps really did have a train ticket. 7 A. I really did have a train ticket. 8 Q. Now we are in bundle 8. You can put away bundle 3, 9 thank you. And we are at page 4126. And do you see 10 that the way this, as I understand it, works is that 11 there's an email is sent to a Mr Harwood, who worked 12 with Noel Flint, and I think that's at Kinleigh Folkard 13 & Hayward; is that right? 14 A. Noel Flint is Knight Frank. 15 Q. I beg your pardon. Knight Frank. I get those two mixed 16 up. 17 A. They wouldn't be happy about that. 18 Q. I am sorry? 19 A. Knight Frank wouldn't be happy about that. 20 Q. No, I am sure. Strike that bit from the transcript. 21 So Mr Harwood at Knight Frank is receiving an email 22 from an agent in the Maidstone area; yes? That is the 23 slightly lighter type on 4126. Is that how you 24 understand it? It goes over the page. You can see that 25 it's --</p> <p style="text-align: center;">Page 28</p>
<p>1 A. Yes. 2 Q. And then he goes on: 3 "This grouping wants to see if we can get ..." 4 I will just read it: 5 "... see if we can get a critical mass of support to 6 join up and drop the other portals except Rightmove?" 7 A. That is what he says. 8 Q. And where's the email back in which you say "Woah, hang 9 on a minute". According to your witness statement, you 10 are always very clear with these people that they can't 11 do this. Where's the email back saying "No, no, no, you 12 can't do that as a collective"? 13 A. I haven't presented to them at this point. I did 14 present to them. I did go to their drinks party and 15 I did get a slot in a room above a pub to make the 16 presentation. And the presentation contained the normal 17 warning which I gave everybody who was present, and 18 there were quite a lot of people there who were actually 19 not estate agents in the room, and then I left. I don't 20 think, actually, there were even questions and answers 21 because I think they were very keen to get on with their 22 cocktail party. 23 THE CHAIRMAN: So that, Mr Springett, is the recollection 24 you wanted to tell us about? 25 A. Yes, it was.</p> <p style="text-align: center;">Page 27</p>	<p>1 THE CHAIRMAN: I don't see any lighter type. 2 MR HARRIS: On my copy ... 3 So if you start on 4127 -- 4 A. Yes, I'm here. 5 Q. Do you see there is a regards from a -- 6 A. Martin White. 7 Q. Martin Davison-White in Maidstone. He is an agent, is 8 he not, in Page & Wells in Maidstone? 9 A. Page & Wells is an agent. 10 Q. He did, in fact, get this email chain, as we will see in 11 a minute. If you go earlier in the bundle you can see 12 where that email starts: 13 "Andrew, just keeping you in the loop." 14 Right? 15 A. Yes. 16 Q. And then you can see that Andrew, if you look at the 17 bottom of 4125, Andrew is Andrew Harwood, who then 18 passes on this email from Mr Davison-White to one of his 19 partners, Noel Flint, at Knight Frank? 20 A. Yes. 21 Q. He says: 22 "Noel, thank you for the reply. A group of local 23 agents asked me to attend the meeting. I thought you 24 might be interested in the email I received." 25 And the email is below; yes?</p> <p style="text-align: center;">Page 29</p>

<p>1 A. Yes.</p> <p>2 Q. And then just finishing off how the emails fit together,</p> <p>3 on 4125 Noel then passes that on to you, doesn't he?</p> <p>4 A. Yes.</p> <p>5 Q. And then you respond to Noel, the first part of which is</p> <p>6 privileged.</p> <p>7 A. Yes.</p> <p>8 Q. So that is how it all fits together. But what's</p> <p>9 interesting, I suggest to you, Mr Springett, is in the</p> <p>10 email to Andrew that then gets passed to Noel and then</p> <p>11 passed to you, the agent in the Maidstone area is saying</p> <p>12 in the paragraph that is two down from where it says</p> <p>13 "Andrew" -- do you see the one beginning "The</p> <p>14 Maidstone-based agents"?</p> <p>15 A. Yes.</p> <p>16 Q. And he says in the second sentence:</p> <p>17 "At the meeting I very much expect us to</p> <p>18 determine ..."</p> <p>19 The "us" is the Maidstone-based agents, isn't it?</p> <p>20 A. Yes.</p> <p>21 Q. "... and I very much expect us to determine which portal</p> <p>22 to retain."</p> <p>23 Right?</p> <p>24 A. Yes.</p> <p>25 Q. So there you are obtaining knowledge when this is passed</p> <p style="text-align: center;">Page 30</p>	<p>1 collective decisions about which portal to retain, no</p> <p>2 email or other communication back saying "Woah, don't do</p> <p>3 that, you're not allowed to do that", is there?</p> <p>4 A. It doesn't look as if I replied direct to Mr Harwood but</p> <p>5 it is certainly possible Mr Flint did.</p> <p>6 Q. So that's it, is it? You are suggesting that although</p> <p>7 we don't have any disclosure of it, there might have</p> <p>8 been a reply from Mr Flint?</p> <p>9 A. I think there is very likely to have been because he's</p> <p>10 been -- as he says, "I've left a message for Andrew to</p> <p>11 call me."</p> <p>12 Q. I see. Moving on now, Mr Springett, you knew very well,</p> <p>13 didn't you, before launch that the regional groupings</p> <p>14 would preponderantly choose Rightmove as their one other</p> <p>15 portal rather than Zoopla, didn't you?</p> <p>16 A. It didn't actually turn out that way.</p> <p>17 Q. I beg your pardon?</p> <p>18 A. It didn't turn out that way.</p> <p>19 Q. It did. 90/10. 90 per cent chose Rightmove. 10 per</p> <p>20 cent --</p> <p>21 A. But they are not regional groupings. We have been</p> <p>22 talking about regional groupings, and one specifically</p> <p>23 we have been talking about have been the North East,</p> <p>24 north London --</p> <p>25 Q. Yes, and they dropped Zoopla, didn't they.</p> <p style="text-align: center;">Page 32</p>
<p>1 on to you, aren't you, as indeed is your fellow director</p> <p>2 Mr Flint, of another proposal by a group of agents, this</p> <p>3 time in a different part of the country, to make</p> <p>4 a collective decision about which portal to retain;</p> <p>5 correct?</p> <p>6 A. Yes, it says that.</p> <p>7 Q. But then when Mr Flint passes that on to you he says,</p> <p>8 doesn't he -- this is now towards the bottom of 4125, in</p> <p>9 the middle:</p> <p>10 "What is interesting is that local agents are</p> <p>11 getting together to make group decisions. Is this an</p> <p>12 issue which we need to deal with?"</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. That is right. And what neither you nor your fellow</p> <p>16 director do is email back the group, either directly or</p> <p>17 via Mr Harwood, to say "Woah hang on, you can't do this,</p> <p>18 you can't have collective group decisions 'about which</p> <p>19 portal to retain'", do you?</p> <p>20 A. Well, I don't know what Mr Flint may have said to</p> <p>21 Mr Harwood.</p> <p>22 Q. I appreciate that. My question to you is: on what has</p> <p>23 been disclosed to us there is no email back or other</p> <p>24 communication back to this group of agents that both you</p> <p>25 and your fellow director know are going to be making</p> <p style="text-align: center;">Page 31</p>	<p>1 A. -- and west Wales.</p> <p>2 THE CHAIRMAN: Don't interrupt, Mr Harris.</p> <p>3 A. And two of those three dropped Rightmove.</p> <p>4 MR HARRIS: That is right. And around the country</p> <p>5 90 per cent dropped Zoopla, didn't they?</p> <p>6 A. No, it's not true.</p> <p>7 Q. I beg your pardon?</p> <p>8 A. No, 90 per cent -- by the time we got to launch</p> <p>9 90 per cent had chosen Rightmove.</p> <p>10 Q. So 90 per cent therefore had dropped Zoopla, hadn't</p> <p>11 they?</p> <p>12 A. You are presuming that everybody was on both.</p> <p>13 Q. I see.</p> <p>14 A. Well, you say "I see, I see", but there were plenty of</p> <p>15 people who weren't necessarily on Zoopla.</p> <p>16 THE CHAIRMAN: We have a slight mis-transcription I think.</p> <p>17 Just to be clear, Mr Springett, your evidence on</p> <p>18 this is of those three, which two --</p> <p>19 A. Of the three --</p> <p>20 THE CHAIRMAN: Or the outcomes.</p> <p>21 A. The outcome in west Wales was that the agents did in</p> <p>22 fact take the Zoopla deal and they continued to list</p> <p>23 with OnTheMarket and Zoopla. Not all of them, not all</p> <p>24 the members in that area have done that; some have</p> <p>25 chosen Rightmove. And in north west London, which was</p> <p style="text-align: center;">Page 33</p>

<p>1 Primelocation territory historically, where that 2 business was strong, the agents there also took up 3 a group offer from Zoopla. In the North East I am less 4 clear what happened, but I know that there wasn't 5 completion of a group deal with Zoopla. 6 MR HARRIS: It certainly wasn't a surprise to you that 7 Rightmove would not be the main loser, was it? 8 A. I have to say that became clear in the latter part of 9 2013. I think when we started out we imagined that 10 there would be a much more even balance between the two 11 portals. The merger had taken place. There was a lot 12 of chest beating going on by ZPG, presumably in the 13 run-up to its IPO. There's already been reference to 14 Mr Chesterman's presentation to investors. I think also 15 the fact that we started this in and around London and 16 the southeast meant that the perception of agents was 17 more balanced in that area, but as I went further 18 afield, so I began, for example, to go to the North East 19 and territories beyond London and the southeast, it 20 became clear to me that Zoopla was not particularly 21 a constraint on Rightmove; and that combines with 22 analysts' reports that we were beginning to see in late 23 2013 where there were surveys done. So our perspective 24 of the potential outcome changed during that year, 25 especially the latter part of that year.</p> <p style="text-align: center;">Page 34</p>	<p>1 reference that comes out of the OFT report on the merger 2 where the parties specifically put forward that the 3 strength of Primelocation in London, for example, and 4 the relative weakness of Rightmove showed that 5 increasing the stock in an area available to an 6 individual portal would increase rivalry. 7 Q. I am right, am I not, Mr Springett in saying that at all 8 material times, that is from 2011, 2012, 2013, at all 9 these times Rightmove has been by far the strongest of 10 the portals out there on the market, hasn't it? 11 A. No, I don't think that is true. A very good example in 12 the document bundles is the Zoopla IPO prospective, 13 which actually purports to show Zoopla neck-and-neck in 14 terms of coverage by agents, very close on brand 15 awareness and I think ahead on lead generation. 16 Q. So on those bases then a meaningful competitor to 17 Rightmove? 18 A. You would have thought so. 19 Q. Yes, because -- 20 A. Based on those numbers. 21 Q. That is right, because the closer it is to Rightmove on 22 those numbers, the stronger a competitive constraint it 23 is on Rightmove, yes? 24 A. Well, that's for the experts to determine. 25 Q. No, Mr Springett, this is a question to you. You are</p> <p style="text-align: center;">Page 36</p>
<p>1 Q. That is simply not right, is it, Mr Springett? You knew 2 from 2011 that it was inconceivable that the majority of 3 agents would drop Rightmove, didn't you? 4 A. Yes, I noticed you took one of our other witnesses to 5 a passage yesterday in the November 2011 document, the 6 discussion document. 7 Q. Yes. 8 A. But at that point -- this didn't really come out I don't 9 think -- that was pre-merger, so at that point you had 10 Rightmove as the gorilla in the room. You had, 11 I believe by that time, DPG, which was a combination of 12 Primelocation and FindaProperty, and you had Zoopla. 13 I think by that time Zoopla had hoovered up any other 14 worthwhile portal. So it was the four of them, and it 15 is the case at that point that it was inconceivable 16 people would leave Rightmove where they had been using 17 it for several years, because the competition was rather 18 weaker. 19 That situation didn't pertain necessarily post 20 merger. 21 Q. I suggest to you, Mr Springett, that it was never 22 a surprise to you that over 90 per cent of the people 23 who became bound by the OOP rule would choose the 24 dominant market leader; that is right, isn't it? 25 A. That is not at all right. And there is a further bit of</p> <p style="text-align: center;">Page 35</p>	<p>1 the one who just said you thought, on the basis of those 2 metrics, that Zoopla was not a distant second behind 3 Rightmove. That is your evidence; that is correct, 4 isn't it? 5 THE CHAIRMAN: He is recounting what was said in the Zoopla 6 IPO prospectus. 7 MR HARRIS: And in response, though, to a question where 8 I said he knew all along Zoopla was the stronger portal. 9 He was denying that by reference to these materials. 10 That is what happened, is it not, Mr Springett? 11 A. And that's, if you ask me "Did I just say that?" that is 12 what I just said. The other metric or the other element 13 of the Zoopla proposition was that it had 14 a substantially unique audience. In other words, people 15 went to Zoopla that did not go to Rightmove and vice 16 versa. 17 Q. I suggest to you, Mr Springett, that you are 18 embellishing here. You have known all along that 19 Rightmove is the stronger of the portals on the market, 20 haven't you, from 2011 onwards? 21 A. I think the evidence going back into 2011 even, which 22 I don't consider is the final formulation of what we 23 were going to do, but if you look at what the steering 24 committee members were concerned about, this is 25 pre-merger, what they were concerned about was the power</p> <p style="text-align: center;">Page 37</p>

<p>1 that the Digital Property Group had accumulated by 2 acquiring and managing as one Primelocation and 3 FindaProperty. 4 Q. And you know, don't you, Mr Springett -- I am glad you 5 mentioned the merger because you know perfectly well 6 that the OFT's assessment in its phase 1 assessment 7 after examination was that Zoopla and DPG were 8 significantly less strong than Rightmove at that stage 9 in 2012, don't you? 10 THE CHAIRMAN: Don't you answer that question for the 11 moment, Mr Springett. 12 Mr Harris, I think we have got an issue here. We 13 have got to the question of what as a matter of fact is 14 the relative strength of Rightmove on the market, and 15 obviously we are going to hear from the experts and from 16 you in submission in due course, but I have to say 17 I think in terms of what objectively is the position 18 I am not sure this witness can assist. 19 MR HARRIS: No, that is why I am asking him his perception. 20 THE CHAIRMAN: If you want to ask him about his perception 21 and his understanding then that's fine, but you will 22 have to establish first, for instance, if you are going 23 to what the OFT said in a particular document, that he 24 looked at it at the time and that it bore on his 25 thinking.</p> <p style="text-align: center;">Page 38</p>	<p>1 steering group members and the agents who gave birth to 2 this as a concept are what I might call reluctant portal 3 owners. In other words, the agents have never 4 particularly wanted to own and manage a portal 5 organisation. It's been done in response to the 6 evolving circumstances in the market, and in early 2011 7 a number of alternative options were considered, so 8 purchasing a smaller portal was one of them, collective 9 negotiation was another one. And it wasn't until around 10 the time of November 2011 that I think the decision was 11 crystallised that the only route forward was to create 12 one from scratch. 13 And so what I am saying to Mr Harris is that those 14 concerns were borne of two stages really. The first 15 stage was the actions of DPG whereby they had previously 16 run Primelocation and FindaProperty as individual 17 businesses, they had bought both of them, but I was the 18 chief executive of one of them. The chap called 19 David Garrett was running FindaProperty. And they were 20 set up to be competitors but within the Daily Mail 21 framework. 22 And they were quite different actually. They 23 covered different market segments and actually different 24 geographies for much of that time. 25 The point that I left was also the point where it</p> <p style="text-align: center;">Page 40</p>
<p>1 MR HARRIS: Yes, Mr Springett, we do know that you looked at 2 the OFT document in 2012, don't we, because you refer to 3 it in your business plan? 4 A. That's correct. 5 Q. So you do know that the OFT's perception at the time was 6 that PG and Zoopla, they were both individually 7 significantly weaker and smaller than Rightmove, weren't 8 they? 9 A. I agree that's what it says. 10 Q. Thank you. I am suggesting to you that you have known 11 all along that Rightmove was the stronger of the 12 portals, and you have denied that, but -- 13 THE CHAIRMAN: Just a second, Mr Springett, you have agreed 14 that what the OFT said is what it says. 15 A. Yes, sir. 16 THE CHAIRMAN: But there is a stage next to that, which is 17 what is your own understanding or appreciation in the 18 light of what you have read. 19 A. Yes, sir. 20 THE CHAIRMAN: Now, it may be the same or may be different, 21 you may not have thought about it at all, but I think we 22 do need to know what subjectively you were thinking at 23 the time. 24 A. Yes, sir. I mean, I think there is a bit of background. 25 It is probably worth saying that the agents, the</p> <p style="text-align: center;">Page 39</p>	<p>1 was decided to bring them under common management and 2 one of the first things that happened was that a new 3 pricing structure was put forward to agents saying: you 4 now have to have both of these portals and the pricing 5 was adjusted upwards accordingly. 6 There are a number of other things that were done. 7 There was a change, for example, in the terms and 8 conditions whereby the agents' data -- ownership of the 9 data that had been put on to the portal system was 10 specifically now transferring to the portal. So that 11 was a concern for the agents as well. 12 So I think during the course of 2011 that was really 13 the primary focus as well as Rightmove. No one is 14 contesting that. It was the gorilla in the room. 15 So first of all, they had experienced those things 16 being done and they had found themselves, even quite 17 large businesses, unable to do much about it. But we 18 still hadn't got to the point during 2011 where a firm 19 decision had been taken to move forward with the 20 development of our own portal. But at some point, and 21 I don't remember when it was, an announcement was made 22 of the intent for the merger to take place. I think it 23 was eventually approved in April 2012 and that's what 24 galvanised them. 25 So that is the development. And I think people</p> <p style="text-align: center;">Page 41</p>

<p>1 could see that it was going to lead to a market 2 situation where there were two very strong portals and 3 15,000 very small agents. 4 MR FREEMAN: Mr Springett, may I ask you, I think a little 5 while back you said that in 2013 your perception changed 6 and it became clear to you that Zoopla was not 7 particularly a constraint on Rightmove and that combined 8 with analysts' reports you were beginning to see. So 9 what you are telling us is that pre the merger you 10 thought that the merging companies were not much of 11 a constraint on Rightmove. 12 A. Yes. 13 MR FREEMAN: With the merger you presumably read the OFT's 14 decision, and it looked encouraging, and you are saying 15 that that was disappointing in practice? 16 A. Yes, I think the key phrase for me in the whole report 17 is that if agents found themselves, as a result of the 18 merger -- and obviously it would take some time -- in 19 a position where they could switch between the two, and 20 they didn't need to be on both, and therefore they could 21 play them off against each other and put some kind of 22 constraint on pricing, then that would have been a good 23 outcome. And it is the case that some of the people who 24 are now on my board made submissions to the OFT, and 25 positive submissions, in the hope that that would be</p> <p style="text-align: center;">Page 42</p>	<p>1 included launching with 1,000 but we launched with 2 4,600." 3 THE CHAIRMAN: Yes, I think you have a pagination problem, 4 Mr Harris. Our document is 5639. 5 MR HARRIS: The bit I am going to go to in a minute is 5640 6 but the beginning of the email is 5639. I am sorry. 7 For later on can you just note what it says here, the 8 figures or perhaps pagination or whatever. 9 The basis case was launch with 1,000, but in fact it 10 launched with 4,600 at which the marketing spend would 11 have been, and then there is a figure which I don't need 12 to read out. Then in fact it says that the marketing 13 spend instead of being that lower figure was 14 significantly higher. That is the second figure. And 15 then also that "the optimistic case had us launching 16 with 1,500 offices and that would have spent" a figure 17 which is neither of those other two figures. 18 If you could just note that the figures of offices 19 are all open and there is this movement in marketing 20 spend depending on where you launch with et cetera. 21 Mr Springett, having just identified that set of 22 data, if we look over the page, your final substantive 23 paragraph which appears on 5640, you say in the second 24 sentence under "One other portal": 25 "The idea is that members retain the stronger of the</p> <p style="text-align: center;">Page 44</p>
<p>1 what happened. But it very quickly became obvious -- 2 and frankly, personally I never thought that that would 3 be how it would play out. But it fairly quickly became 4 apparent that that's not what happened, and I think it's 5 also fairly clear that it was never the intention of the 6 merged group to operate as an alternative. 7 MR FREEMAN: That is a fairly central economic issue on 8 which we'll hear more no doubt. 9 MR HARRIS: I am afraid we are running behind schedule in 10 light of the long answers. That is not a criticism, of 11 your answers, Mr Springett, but that is just the way it 12 is. 13 Can I take you to a document, please, in volume 10 14 at page 5640. This is a message that starts the 15 previous page from you to Ed. I think that is Ed Mead, 16 is it not, who was a director of a company from D&G? 17 A. Yes. I am looking at 4 June, 08.44. 18 Q. That's right. And you say: 19 "Hi Ed, thank you for sending this through ..." 20 Mr Springett and members of the Tribunal, I am not 21 going to need this now, but on this email do you see the 22 figures that are set out obscured in yellow about 23 increases in marketing spend and the numbers of 24 offices -- 25 "There is a base case [this is not yellow] which</p> <p style="text-align: center;">Page 43</p>	<p>1 duopoly portals to cover themselves while OTM builds up 2 into the true alternative they need. No surprise that 3 over 90 per cent chose the dominant market leader." 4 That is what your view of the idea and the aim and 5 objective of the One Other Portal rule, isn't it? 6 A. I'm making this remark on 4 June 2015. So if you are 7 trying to equate that with what I thought in 2011 it is 8 wrong to do so. 9 Q. No, Mr Springett, I am saying to you quite clearly -- 10 I didn't make a chronological point. I am saying that 11 is your view of the ideal or the aim or the objective of 12 One Other Portal rule, isn't it? 13 A. No. 14 Q. Why do you say that then, the idea is that? 15 A. The idea is that members retain the stronger of the 16 duopoly portals to cover themselves while OTM builds up. 17 And this is in response to an email to me reporting 18 quite a bit of negativity in the discussions that were 19 reported to Mr Mead. And again, I think I am trying to 20 express that people were never led to expect an instant 21 substitute for whichever of the portals they dropped. 22 Q. Be serious. You are saying he very clearly -- this 23 totally gives the game away, that you think that the 24 idea of the One Other Portal rule, that is what is 25 intending to achieve, is for the members to retain the</p> <p style="text-align: center;">Page 45</p>

<p>1 stronger of the duopoly portals. Which is the stronger 2 of the duopoly portals? 3 A. I am looking in hindsight here, aren't I? 4 Q. Which is the stronger of the duopoly portals? 5 A. The duopoly portals? That is now Rightmove. 6 Q. So you are saying the idea of the rule is to retain 7 Rightmove, isn't it? 8 A. No. 9 Q. That is the stronger of the duopoly portals, isn't it? 10 A. It doesn't say that is the idea of the rule here, does 11 it? 12 Q. It does. Under One Other Portal the idea is that; that 13 is what it says, isn't it? 14 A. That is a decision for the individual agents to 15 determine what works best for them. 16 Q. And the idea of the rule is to retain the stronger, and 17 you have just said the stronger is Rightmove? 18 A. But the point here is that I am responding to something 19 that's complaining that we are not doing well enough 20 amongst a group of agents, and I am saying -- what are 21 we, four or five months post launch, and I am saying 22 they need to be slightly more realistic about, first of 23 all, what's been achieved, but also the gap that we 24 still have to fill. 25 Q. It go on to say to cover themselves. That means to</p> <p style="text-align: center;">Page 46</p>	<p>1 Q. That's right. The aim and strategy -- 2 A. -- because we are number 3 in the market. To get to 3 number 2 you have to overhaul the existing number 2. 4 Q. That is right. The aim and strategy, as we shall see 5 later, Mr Springett, was to the overtake Zoopla well 6 within the five-year period, wasn't it? 7 A. As soon as possible. 8 Q. And well within five years, yes? 9 Mr Springett, we shall see those documents later so 10 I'll come back to that. 11 Then the next sentence reads: 12 "No surprise that over 90 per cent chose the 13 dominant market leader." 14 The dominant market leader is Rightmove, isn't it? 15 A. At this point, yes. 16 Q. So I am suggesting to you that you had known that all 17 along, that it was the stronger, and it was never 18 a surprise to you that a very large proportion of the 19 agents around the country would choose Rightmove; that 20 is right, isn't it? 21 A. I am sorry, I have already explained our perception on 22 this moved considerably during the course of 2013 23 because I moved into -- personally, as you know, on the 24 train, into territories that we hadn't considered 25 earlier in the planning stage and it became clear that</p> <p style="text-align: center;">Page 48</p>
<p>1 protect themselves, doesn't it? 2 A. Of course, because they needed to be in a position where 3 they could continue to operate their businesses 4 successfully, which I'm pleased to say they've done, 5 whilst switching in most cases to a new portal entering 6 the market. 7 Q. That is right. And then it goes on to say "while OTM 8 builds up into the true alternative". It doesn't say 9 "while OTM implements its new site and launches on to 10 the market", does it? 11 A. Look, there is no secret that our ambition was to create 12 a proper alternative, a proper alternative to Rightmove, 13 which Zoopla never became. 14 Q. Yes, and as we shall see later on, by proper alternative 15 you mean to have overtaken Zoopla and to be encroaching 16 upon the Rightmove territory, don't you? 17 A. Overtake Zoopla and develop into -- we wouldn't be able 18 to do that straight away, but build up to being in 19 a situation where people could genuinely feel that they 20 could, if they wanted to, leave Rightmove. 21 Q. And overtake Zoopla, as we shall see by reference to 22 documents later on, well within the five-year period; 23 correct? 24 A. Well, I am not sure we knew when it would be, but that's 25 the objective we are clearly working towards --</p> <p style="text-align: center;">Page 47</p>	<p>1 Zoopla was not a factor or not nearly as great a factor 2 in those areas. It is not to say it wasn't present and, 3 as their reports to the market say, they had managed to 4 get very strong coverage, but it became apparent that 5 Rightmove was still the must-have portal, and that's 6 what Mr Symons explained yesterday -- yesterday; the day 7 before yesterday. 8 Q. And I'm right, I think, you know about other group 9 regional meetings, don't you, in which hand showing is 10 taking place by the agents' present at the meeting about 11 which portal to ditch? 12 A. You would have to remind me. 13 Q. Well, there was one such meeting in Bath, wasn't there, 14 in November 2014? 15 A. Where, sorry? 16 Q. In Bath. 17 A. I really don't recall. 18 Q. A meeting that was hosted by Ms Whiteley and Miss Donna 19 Beaufoy. Does this ring any bells with you? 20 A. No. 21 Q. Who is Miss Beaufoy? 22 A. She is the business development consultant. Our sales 23 representative for the southwest area. 24 Q. And November 2014, that is before launch, isn't it? 25 A. Yes.</p> <p style="text-align: center;">Page 49</p>

1 Q. And are you saying you don't have any knowledge of
 2 a meeting at the Bailbrook House Hotel in November 2014
 3 by this --
 4 **A. I am just saying I don't recall it.**
 5 Q. I see, so you don't recall there being a presentation
 6 delivered by Ms Whiteley at that meeting and Donna
 7 saying in the meeting --
 8 **A. Mr Harris, are you saying I was present?**
 9 Q. No, I am asking you, do you know about this --
 10 **A. I don't recall.**
 11 Q. You don't recall this?
 12 **A. No.**
 13 Q. So you don't know whether it happened or not?
 14 **A. No.**
 15 Q. Because I am going to put to you that there was
 16 a meeting -- if you don't recall, by all means say.
 17 There was a meeting at which Donna Beaufoy together with
 18 Helen Whiteley encouraged the attendees and asked them
 19 to give a show of hands as to which other portal they
 20 were going to choose.
 21 **A. Well, I would be very surprised if that was what**
 22 **happened.**
 23 Q. So you don't know whether or not she, and I suggest to
 24 you she did, put it for Donna Beaufoy as a supposedly
 25 hypothetical question as to who you would choose as

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1 a group of agents?
 2 **A. I have no idea.**
 3 Q. But you have been to lots of meetings in advance of
 4 launch though where there were showing of hands about
 5 decisions that the group of members proposed to take,
 6 haven't you?
 7 **A. I don't recall that.**
 8 Q. Perhaps I could remind you then. Take up bundle
 9 number 8 and page 4579. This is an email from you,
 10 dated 12 December 2014. That is pre-launch, isn't it?
 11 **A. Yes, the month before, yes.**
 12 Q. And what you say:
 13 "Dear all ... "
 14 And I am going to be coming back to this email at
 15 a later point, but for present purposes I am just
 16 inviting your attention to the second paragraph:
 17 "This reaction was not universal either across all
 18 30 of my meetings or even amongst those attending."
 19 Do you see that?
 20 **A. Yes.**
 21 Q. I think that is reference to -- did you attend most or
 22 all of those 39 meetings?
 23 **A. No, I didn't and let me explain. These meetings were**
 24 **for members and they were pre-launch meetings and they**
 25 **were there to demonstrate to members what their new**

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1 **portal would look like. I don't think we had a live**
 2 **demo but we certainly had screenshots of what the portal**
 3 **would look like and we introduced, as you will see from**
 4 **this email, the concept of how the additional product**
 5 **offering would be presented on the portal. And there**
 6 **were various other elements to the presentation. It was**
 7 **the marketing programme on launch, things that the**
 8 **members could then do to support it, so making sure that**
 9 **their co-branding activity was underway and so forth.**
 10 **So these were 39 meetings held across the country.**
 11 **I wasn't the main presenter actually. These were**
 12 **handled in the main by the local business development**
 13 **consultants.**
 14 Q. But there were -- because these are your words; correct
 15 me if I've misunderstood this -- at these pre-launch
 16 meetings, public calls for shows of hands about what the
 17 agents wanted, weren't there?
 18 **A. Oh yes, and in fact I attended some of the meetings.**
 19 **I was in London, I was in Yorkshire. But what we are**
 20 **talking about there is we ran into a storm of opposition**
 21 **to the introduction of these products, and in some**
 22 **meetings members themselves wanted to know what other**
 23 **people in the room thought about it, and the strength of**
 24 **feeling was such that in the end we walked back from**
 25 **introducing those products.**

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1 Q. That is right. So in fact I might as well deal with
 2 this point while we are in the email. There was
 3 a proposal, wasn't there, about introducing what you
 4 call in the first line in capitals "additional
 5 products"?
 6 **A. Yes.**
 7 Q. Those are additional products above and beyond just bare
 8 listing of the house or property in question; correct?
 9 **A. That would be right. So a range of things.**
 10 Q. And --
 11 THE CHAIRMAN: Such as? Just so we can get some flesh on
 12 the bones.
 13 **A. Well, as you heard from other witnesses, these are extra**
 14 **advertising opportunities, they can be, on the portals,**
 15 **so that one of the most common ones is where extra can**
 16 **be paid in order to enhance an individual property**
 17 **listing within the search results; so it gives it some**
 18 **standout characteristics, extra photographs, some kind**
 19 **of emboldening or other. Perhaps a more valuable**
 20 **opportunity than that is to be the featured agent in**
 21 **a particular postcode or area so that when someone**
 22 **searches for, say, SW1 there will be a banner at the top**
 23 **or some kind of display advertisement for the agent who**
 24 **wishes to promote themselves as representing that area.**
 25 MR HARRIS: Mr Springett -- do we need any more examples,

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<p>1 sir, or can I move on?</p> <p>2 THE CHAIRMAN: Just so I understand, what you are doing is</p> <p>3 you are well underway but pre-launch --</p> <p>4 A. Months before launch.</p> <p>5 THE CHAIRMAN: -- of the Agents' Mutual concept. And are</p> <p>6 you road-testing further features of the system to see</p> <p>7 what should and shouldn't be included in the final</p> <p>8 offering?</p> <p>9 A. That is not how we went into these meetings. We were</p> <p>10 presenting what the portal was going to look like only</p> <p>11 a month later and, amongst many other aspects of the</p> <p>12 meetings, explaining to people how these additional</p> <p>13 products would be implemented. And we found that</p> <p>14 members were, or at least a significant proportion of</p> <p>15 them, were very resistant to having them at all. And so</p> <p>16 the matter was then discussed once we had collated all</p> <p>17 the feedback at board level and the decision was taken</p> <p>18 to cease the implementation of those in response to what</p> <p>19 the members had indicated they wanted.</p> <p>20 THE CHAIRMAN: Right, so it wasn't an intentional</p> <p>21 fine-tuning.</p> <p>22 A. No, sir, no, not on my part.</p> <p>23 THE CHAIRMAN: That was the end result.</p> <p>24 A. It was.</p> <p>25 MR HARRIS: It is very interesting, is it not, Mr Springett</p> <p style="text-align: center;">Page 54</p>	<p>1 the sorts of things that you said they could pay for,</p> <p>2 that is going to enable that agent to have a competitive</p> <p>3 advantage over agent 2 next door on the same street,</p> <p>4 isn't it?</p> <p>5 A. Well, I wasn't able to finish my explanation to the</p> <p>6 Tribunal, but that particular product that you have</p> <p>7 mentioned there is what I call an unlimited stock item.</p> <p>8 So Rightmove, for example, has far more page views than</p> <p>9 it can sell the advertising for. There is almost</p> <p>10 unlimited space available and opportunity for agents to</p> <p>11 have those upgraded property listings, and very often --</p> <p>12 this is what was being referred to -- an agent would be</p> <p>13 invited, shall we say, to elect for an upgraded package</p> <p>14 as their forthcoming year's arrangement with Rightmove,</p> <p>15 which would include a certain number of those sorts of</p> <p>16 products. And I am told by agents that the alternative</p> <p>17 they were given was not to have that package, but</p> <p>18 instead to accept a hike in their listing lead.</p> <p>19 So I am just making the point that it would be in</p> <p>20 the eye of the beholder a little bit as to whether this</p> <p>21 is actually fuelling competition in relation to those</p> <p>22 products between agents or if it's just a means for</p> <p>23 Rightmove to move its prices up.</p> <p>24 Q. This is nothing to do with Rightmove, is it? This is</p> <p>25 OTM additional products.</p> <p style="text-align: center;">Page 56</p>
<p>1 because the reason they didn't want these additional</p> <p>2 products is because they didn't want as a group to</p> <p>3 compete with each other, did they?</p> <p>4 A. They wanted the product they wanted.</p> <p>5 Q. No, no, Mr Springett. That is not what this note says</p> <p>6 at all. What it says, if you carry on, is:</p> <p>7 "However, the phrase which kept coming up ..."</p> <p>8 That is amongst the agents, isn't it?</p> <p>9 "... was the wish for a level playing field where no</p> <p>10 agent can pay to achieve an edge over the others."</p> <p>11 So this grouping of agents around -- all of these</p> <p>12 meetings around the others, the phrase which kept coming</p> <p>13 up was they didn't want to compete with each other</p> <p>14 regards additional products, did they?</p> <p>15 A. Well, it is an interesting point as to whether that</p> <p>16 sale of additional products is a method of introducing</p> <p>17 additional competition between agents or --</p> <p>18 Q. It plainly is, isn't it?</p> <p>19 A. -- simply a vehicle for price rises, and you will have</p> <p>20 heard Mr Symons talking about these additional</p> <p>21 products --</p> <p>22 Q. It plainly is, isn't it? If you have agent 1 on high</p> <p>23 street A and you have agent 2 on high street A, and</p> <p>24 agent 1 pays additional money to have his property</p> <p>25 highlighted in lights with flashing and banners and all</p> <p style="text-align: center;">Page 55</p>	<p>1 A. You put to me that it was us or the members, in fact,</p> <p>2 saying to us: we don't want to compete with each other.</p> <p>3 Q. That is right. That is exactly, because they say --</p> <p>4 A. What they said to us: we don't want --</p> <p>5 Q. I am sorry, sir, but we are now very badly behind</p> <p>6 schedule. There is no prospect of me getting through if</p> <p>7 the answers continue to be as long.</p> <p>8 THE CHAIRMAN: Well, speaking entirely for myself I am</p> <p>9 finding the insights rather helpful.</p> <p>10 MR HARRIS: I will carry on then, sir.</p> <p>11 THE CHAIRMAN: We'll obviously try and keep up, but I am not</p> <p>12 at the moment inclined to cut the witness's answers</p> <p>13 back.</p> <p>14 MR HARRIS: Mr Springett, it is the agents own perception</p> <p>15 about competing with each other, because what they say</p> <p>16 is they want a level playing field where no agent can</p> <p>17 pay to achieve an edge over others as regards additional</p> <p>18 products on OTM, isn't it?</p> <p>19 A. Yes.</p> <p>20 Q. So that means competitive edge. What they are saying</p> <p>21 is: I don't want to be paying more to achieve an edge,</p> <p>22 ie competitive edge. What I want is a level playing</p> <p>23 field. That is what they are all saying to you, aren't</p> <p>24 they?</p> <p>25 A. Well, again, forgive me, Mr Harris, but something else</p> <p style="text-align: center;">Page 57</p>

1 the Tribunal might find useful to understand, is that in
 2 addition to the unlimited stock items, as I call them,
 3 there are limited stock items. So, for example, on
 4 Rightmove in each postcode if someone elects to seek
 5 a valuation for their own property, they will put in
 6 some rudimentary details about the location of their own
 7 house and that will then generate a shortlist of agents
 8 who are proposed by Rightmove as the agent that they
 9 might refer to for such a valuation. And that is
 10 a limited stock item. So Rightmove will only allow --
 11 and off the top of my head I can't remember what the
 12 right number is -- but possibly four, and those are very
 13 sought after for pretty obvious reasons, but they are
 14 not readily available to all agents; in other words,
 15 there is competition for them, and if you are the
 16 sitting tenant then you have first refusal.
 17 And that's the kind of thing that the agents are
 18 very much against.
 19 THE CHAIRMAN: It is like with Google searches, as
 20 I understand it, you can pay to have your response come
 21 up in response to a certain search query, you pay for
 22 that and you have perhaps three slots before you get
 23 what the Google search engine returns objectively.
 24 A. Yes, I am at risk here of expanding the answer beyond
 25 where it needs to go. There is an element of -- there's

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1 another dynamic in that arrangement which doesn't exist
 2 in the Rightmove context, in the sense that Google,
 3 being a very clever beast, will not only factor in how
 4 much someone is prepared to bid for the various
 5 advertising slots, but also how they get paid is how
 6 many times that advert is clicked on. And so it is
 7 a combination of how much it is paid, but also, do the
 8 public see that as an attractive offering, therefore
 9 generate revenue.
 10 THE CHAIRMAN: Whereas the Rightmove one is much more
 11 binary; you pay for being number 1 in response to
 12 a search in a particular postcode?
 13 A. Well, that is the sort of interim. So there is the
 14 unlimited stock, there is a more limited stock and there
 15 is a very limited stock, which is the most prized
 16 products amongst the agents. The focus of competition
 17 is who can get those, for argument's sake, four slots
 18 and people can be locked out for years from accessing
 19 those. And the view of the members, not all of them,
 20 a high proportion, was this is actually not contributing
 21 to competition, and it's not the basis on which they
 22 wanted their portal run.
 23 THE CHAIRMAN: Thank you.
 24 MR HARRIS: Thank you. Well, Mr Springett, I suggested to
 25 you what I say that sentence means and you have given

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1 your various answers. And in fact you weren't happy,
 2 were you, with the decision by the groups of agents who
 3 are members to not have additional products as a feature
 4 at the start, were you?
 5 A. I was disappointed, that's true.
 6 Q. And the reason you were disappointed, you can see lower
 7 down in the email, you say in the penultimate paragraph:
 8 "The fact remains it will be impossible for us to
 9 move forward satisfactorily with the current proposed
 10 product proposal still in place."
 11 And you go on in the final paragraph to say:
 12 "There are firms who actively want and expect to be
 13 able to pay and differentiate themselves with products."
 14 So that would them differentiating as a competitive
 15 feature between themselves, wouldn't it?
 16 A. Yes.
 17 Q. And then you say one of the reasons you are
 18 disappointed, understandably, because you are the chief
 19 executive, is, you say very clearly:
 20 "Whatever we do it is unlikely to be early enough to
 21 generate material income at the time we most need it in
 22 mid-year 2015".
 23 So what you are saying is actually from your
 24 perspective as chief executive, these additional
 25 products for which people pay are very important because

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1 they'll bring you in more material income at exactly the
 2 time that you need it, right?
 3 A. Yes, and I think -- the most disappointing thing for me
 4 about it was that, again, it was another example of what
 5 I call agents trying to eat the cake before it's baked.
 6 In other words, if eventually they wanted to have an
 7 environment that didn't have these extra revenue streams
 8 running for OnTheMarket, then great, but we really
 9 needed the revenue in the early days and an awful lot of
 10 money -- Rightmove, for example, generates around
 11 40 per cent of its agent revenue from these products on
 12 top of the basic listing fees. So it had potentially
 13 been a significant source of revenue for us.
 14 However, this is a portal that belongs to the
 15 members, they own it. They have directed us to operate
 16 in a particular way.
 17 Q. I am very pleased with that, Mr Springett. I think your
 18 evidence a moment ago was that it was a potentially
 19 significant source of further revenue.
 20 A. Indeed.
 21 Q. That is right?
 22 A. Yes.
 23 Q. And the fact is that if you had had this potentially
 24 significant source of further revenue, you would have
 25 grown faster than without it, wouldn't you?

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<p>1 A. That's true, although I am not necessarily suggesting 2 that there would have been a stampede to buy these 3 products in the early stages either. 4 Q. But it is your evidence though that it was a potentially 5 significant source of further revenue, wasn't it? 6 A. But I also say we didn't include any revenue from that 7 source in our projections. 8 Q. And your evidence in this -- or at any rate your email 9 says it would have generated material income at 10 a critical time when you most need it in mid-2015. So, 11 for example, you could have spent that material income 12 or potentially significant income on marketing in 2015, 13 couldn't you? 14 A. If we'd made it. But as I said, we didn't have a basis 15 for forecasting with any reliability what the level of 16 sales would be, bearing in mind that we were focused on 17 simply -- and I wouldn't want to underestimate what 18 a big job this was -- getting to market with a live 19 portal, which on one day had nobody and on the next day 20 had 4,600 branches. 21 Q. Can I move on now, Mr Springett. You can put away that 22 bundle and turn to bundle 1, page 376. Do you see that 23 this is an email, November 2012, from a group of agents 24 who earlier on we referred to in this trial as the IEAG, 25 Independent Estate Agents Group. Do you recognise them?</p> <p style="text-align: center;">Page 62</p>	<p>1 you see that this is certain members of the group, the 2 same group of IEAG people, including Mr Halman, and 3 there is an email amongst part of this group coming from 4 somebody we referred to earlier in the trial, and you 5 can see a Mr Ozwell. He was, as you understood it, 6 effectively chairman of this IEAG group, wasn't he? 7 A. Yes, he was, yes. 8 Q. Do you see he is reporting back on a meeting that he had 9 with you yesterday? 10 A. Yes. 11 Q. And you can see that they have obtained the impression, 12 seemingly based on the meeting that he had with 13 Ian Springett yesterday -- I am now picking it up below 14 the second hole punch -- that their plan is based upon 15 most agents initially dropping Zoopla to go with them 16 "and then eventually dropping Rightmove as the new 17 portal becomes the major portal." 18 That seems to be the impression that he has obtained 19 from meeting you, doesn't it? 20 A. Yes, I did see this and I really -- I really do not 21 think he could have not have obtained that impression, 22 because I went through with Mr Ozwell the standard 23 presentation I had given to all groups up until that 24 point, and indeed continued to. And the next sentence 25 also doesn't quite stack up with it:</p> <p style="text-align: center;">Page 64</p>
<p>1 A. Mmm. 2 Q. And it includes two representatives from my own client, 3 doesn't it. Mr Jolleys is the first recipient. Do you 4 see him? 5 A. Yes. 6 Q. And then about six lines down on the right-hand side 7 there is Mr Halman? 8 A. Yes. 9 Q. And do you see that it is about a group training event, 10 regional training event. And there's a suggestion, in 11 the final paragraph above the PS, they should all stand 12 together as regards what's rather uncharitably described 13 as a particular Rightmove product being -- well, 14 I perhaps won't read it out. 15 MR MACLEAN: Nauseous I think. 16 MR HARRIS: A synonym for nauseous, thank you, Mr Maclean. 17 A. It is an indication of how these things were sometimes 18 regarded. 19 Q. So here is this IEAG group putting forward the 20 suggestion of standing together as regards a particular 21 product from a particular portal; correct? 22 A. Including your client, yes. 23 Q. Yes, absolutely, including my client. 24 Then if you can put that one away and go now, 25 please, into bundle number 2, this time to page 979. Do</p> <p style="text-align: center;">Page 63</p>	<p>1 "I reminded Ian that in the midlands and the north 2 Zoopla are nowhere near as popular as in the south east 3 and London." 4 So there is a certain lack of clarity. But what 5 I can say is he would not have got that from me. 6 Q. It is extraordinary, isn't it, Mr Springett, because 7 Mr Livesey's evidence was he very much obtained the same 8 impression about your plan being based upon most agents 9 initially dropping Zoopla to go with them and then 10 eventually dropping Rightmove. That was Mr Livesey's 11 evidence, wasn't it? 12 A. I forget what Mr Livesey's evidence was based on, but if 13 it was concerning the first meeting I had with him then 14 that was considerable time after we had launched. 15 Q. That has absolutely no relevance, does it? I am talking 16 about him obtaining the plan, him obtaining an 17 impression about your -- 18 A. Our approach -- 19 Q. Mr Springett, I haven't finished, thank you. What I am 20 suggesting to you is that here is the chairman of one 21 regional grouping obtaining an impression from you that 22 your plan is for most agents initially to drop Zoopla to 23 go with OTM and that that is the impression and 24 understanding that Mr Livesey got when you met with him 25 at Leighton Buzzard on 28 December 2015, isn't it?</p> <p style="text-align: center;">Page 65</p>

<p>1 A. Well, let's take the first part of that. I don't accept 2 that anything that I said to Mr Ozwell would have caused 3 him to form that impression. In fact, you can see in 4 the first paragraph that he talks about the overall 5 critical mass, in other words, the scale, which is 6 really what I was interested in. And even the paragraph 7 that you refer to is slightly ambiguous, isn't it? 8 Because the second sentence implies that actually I had 9 presented something which set it out on an even handed 10 basis.</p> <p>11 Q. I see. Moving on, the next paragraph. Do you see he is 12 expressly talking to you -- I will rephrase that. He is 13 reporting to his group back about what he had suggested 14 to you in the meeting, and what he had suggested to you 15 was very much making a collective decision to join as 16 a group, wasn't he?</p> <p>17 A. He was.</p> <p>18 Q. And he goes on to point out that indeed IEAG is an 19 established network, possibly the oldest current 20 network, and over the page he express -- according to 21 his version of events: 22 "He expressly pointed out to Ian ..." 23 That is you, isn't it?</p> <p>24 A. Mmm.</p> <p>25 Q. "... that if the whole network came over, then it would</p> <p style="text-align: center;">Page 66</p>	<p>1 the whole network came over, that means as a group, 2 doesn't it?</p> <p>3 A. Absolutely. It means that, and he absolutely was 4 looking for some form of discount relative to our 5 published pricing structure.</p> <p>6 Q. And then he ends the email, doesn't he, by saying: 7 "It would be useful if you all kept in touch by 8 copying each other with our thoughts. I will of course 9 come back to you on the group situation." 10 So you knew, is this right, that he had said to you 11 in the meeting with you that he was acting on behalf of 12 the group and that he had said to you that -- did he say 13 to you that he would come back with a group thought and 14 plans?</p> <p>15 A. Did he say he would?</p> <p>16 Q. Did he say he would?</p> <p>17 A. No, he left it in my court to come back to him to say 18 whether or not we could offer anything on that basis.</p> <p>19 Q. Thank you.</p> <p>20 MR LANDERS: Could I just follow that up. Do you offer 21 group discounts?</p> <p>22 A. Certainly at the time that wasn't our practice. We, 23 I would need help on that actually. I don't want to 24 give you the wrong answer, but certainly the case 25 pre-launch was that we did our utmost to avoid that,</p> <p style="text-align: center;">Page 68</p>
<p>1 be quite a coup for him to get us all in." 2 So again, he is expressly talking to you about 3 a group decision on behalf of this old and established 4 network to join AM as a group, isn't he?</p> <p>5 A. He's trying to get a discount.</p> <p>6 Q. That is right. I think the answer to the question is 7 "yes", is it?</p> <p>8 A. Remind me --</p> <p>9 Q. That is the problem, Mr Springett, because quite often 10 you are not listening to the question and then you are 11 giving a different answer. The question was: he is 12 expressly putting forward to you --</p> <p>13 THE CHAIRMAN: No, he's not putting forward to Mr Springett, 14 is he?</p> <p>15 MR HARRIS: Yes, he is reporting back on what he has 16 suggested to Mr Springett.</p> <p>17 THE CHAIRMAN: There are two questions. First of all, what 18 does Mr Ozwell say to the group? And we can see that on 19 the page. The question perhaps you ought to be putting 20 is whether this is what Mr Springett said to Mr Ozwell.</p> <p>21 MR HARRIS: I am happy the do that, sir, and I am sorry if 22 that was a confusion in my question, Mr Springett. 23 I suggest to you, based upon this email, that he had 24 suggested to you when he met with you, as he says he 25 pointed out to you, that the whole network could -- if</p> <p style="text-align: center;">Page 67</p>	<p>1 because the nature of the proposition was such that 2 there were already volume discounts built into 3 the pricing structure and so we wanted agents to regard 4 this as not so much a commercial negotiation with 5 a portal, but an invitation to become part of a new 6 venture. So if we and they agreed together to 7 effectively reduce the revenue that we were getting, it 8 would make it less likely the thing would succeed. 9 So I can't say to you that downstream we haven't 10 made any group arrangements, but I would need to confirm 11 that.</p> <p>12 MR HARRIS: I think perhaps I can help you, Mr Springett, 13 because my understanding is that you did respond to 14 Mr Ozwell offering a discount to the group that he was 15 representing. Would you turn in bundle 2 to page 1058. 16 This is an email from you back to Mr Ozwell, seven or 17 eight days later on 14 June, headed "Agents' Mutual and 18 IEAG". My understanding of it is if you look at the 19 third line of the second paragraph --</p> <p>20 A. Sorry, Mr Harris, which page are we on?</p> <p>21 Q. 1058, Mr Springett.</p> <p>22 A. Thank you.</p> <p>23 Q. So you say: 24 "Group discounts of the type you mention could have 25 the effect of undermining ..."</p> <p style="text-align: center;">Page 69</p>

<p>1 But you go on to say:</p> <p>2 "That said, we recognise the value that the firms in</p> <p>3 your group could bring to Agents' Mutual."</p> <p>4 And you say you've discussed the position with the</p> <p>5 directors and, in fact, you then put forward --</p> <p>6 A. One of our directors.</p> <p>7 Q. Yes, with one of our directors, and you put forward, as</p> <p>8 understand it, that is a group discount proposal, isn't</p> <p>9 it, to the IEAG group?</p> <p>10 A. Yes, it is.</p> <p>11 Q. So what they are doing is they are saying to you that</p> <p>12 they have a proposal to act as a group in taking their</p> <p>13 whole network over to you, and far from responding to</p> <p>14 say you can't make group decisions to join of that kind,</p> <p>15 instead you go back and say "Well, group discounts, oh</p> <p>16 all right, here's one", don't you?</p> <p>17 A. You are conflating two things there I think, aren't you?</p> <p>18 Nothing about this suggests that each member wouldn't</p> <p>19 make their own individual decision. It is the same sort</p> <p>20 of arrangement actually in reverse that Mr Notley was</p> <p>21 putting to our members. In fact, it didn't go anywhere</p> <p>22 and you will know from earlier evidence that on the</p> <p>23 20 June I was up in Wilmslow seeing Mr Halman, who</p> <p>24 signed up on the full terms on the 21 June.</p> <p>25 Q. Mr Springett, I am confused by that because towards the</p> <p style="text-align: center;">Page 70</p>	<p>1 various members of the IEAG group, including Mr Halman</p> <p>2 from my client. And he says:</p> <p>3 "It seems Agents' Mutual is gaining ground quickly.</p> <p>4 We signed up last night and a number of IEAG members</p> <p>5 have already signed up. I have negotiated better rates</p> <p>6 for IEAG members but it is based on all IEAG members</p> <p>7 signing up."</p> <p>8 So he plainly understood that you were putting</p> <p>9 forward a group offer to them to sign up as a group,</p> <p>10 didn't he?</p> <p>11 A. He did.</p> <p>12 Q. And then over the page at the top he says:</p> <p>13 "I personally hope that IEAG members do sign up so</p> <p>14 we can all enjoy the lower subs. I am therefore copying</p> <p>15 this email to all IEAG members by way of a reminder to</p> <p>16 let us know where we all are."</p> <p>17 A. Forgive me, it is relevant to look at the top of 1442</p> <p>18 where John Shellcross of Farrell Heyworth reports that</p> <p>19 they have already made their decision independently of</p> <p>20 the rest of the group to send their letter of intent to</p> <p>21 us.</p> <p>22 Q. These people are not members are they, at this stage?</p> <p>23 A. No, that's true.</p> <p>24 Q. No, that is right. So they are people considering</p> <p>25 becoming members and they are making group collective</p> <p style="text-align: center;">Page 72</p>
<p>1 bottom of 1058 you say in terms, three lines up from the</p> <p>2 bottom:</p> <p>3 "This offer will be triggered only if all members of</p> <p>4 the [and I think that should say 'IEAG'] fulfil these</p> <p>5 obligations."</p> <p>6 So it is very much an offer to the group as a group,</p> <p>7 isn't it?</p> <p>8 A. It would be triggered only if they all come in. But</p> <p>9 what that doesn't mean is that each member is not taking</p> <p>10 an individual decision. And it is clear that Gascoigne</p> <p>11 Halman did do that, and they did it without being part</p> <p>12 of any discount arrangement.</p> <p>13 Q. I see.</p> <p>14 THE CHAIRMAN: Would that be a convenient moment, Mr Harris?</p> <p>15 MR HARRIS: Yes.</p> <p>16 THE CHAIRMAN: Five minutes.</p> <p>17 (11.40 am)</p> <p>18 (A short break)</p> <p>19 (11.45 am)</p> <p>20 MR HARRIS: Mr Springett, so we had seen the offer, the</p> <p>21 group discount offer that you had put to the IEAG group,</p> <p>22 and can I now take you on to the next document in the</p> <p>23 story, which is in volume 3/1442. Do you see at the</p> <p>24 bottom of 1442, this time it is Mr Ozwell -- this is</p> <p>25 after the group discount had been put forward by you to</p> <p style="text-align: center;">Page 71</p>	<p>1 decisions about whether to become members, aren't they?</p> <p>2 A. No, they are not.</p> <p>3 Q. Yes, they are. And you are putting forward a group</p> <p>4 discount based upon them joining as a group, aren't you?</p> <p>5 A. I completely disagree with the first part of what you</p> <p>6 have said.</p> <p>7 Q. Then the next part of the chronology for present</p> <p>8 purposes is bundle 5. You can put away number 3 now and</p> <p>9 go now please to bundle 5. This is an email at the</p> <p>10 top -- 2646, I beg your pardon. We have moved on</p> <p>11 into April of the following year, and this is about</p> <p>12 a proposal for a meeting with Zoopla. I appreciate that</p> <p>13 you haven't seen -- you are not a recipient of this</p> <p>14 email, Mr Springett, and I understand that. But do you</p> <p>15 see that in the second paragraph Mr Halman is telling</p> <p>16 members of the IEAG group that:</p> <p>17 "Agents' Mutual will require us to drop one portal.</p> <p>18 For us it is a no-brainer."</p> <p>19 Do you see that?</p> <p>20 A. Yes, I think Mr Forrest explained that the other day,</p> <p>21 didn't he?</p> <p>22 Q. That's right. Do you know that it is a no-brainer for</p> <p>23 them because the one to drop was obviously Zoopla?</p> <p>24 A. That was their individual decision.</p> <p>25 Q. I think I am right in saying that you went on to give</p> <p style="text-align: center;">Page 73</p>

<p>1 after this date some further, if you like, talks or pep 2 talks to at least parts of the IEAG group, didn't you? 3 A. I don't recall that, but it is certainly the case that 4 I have met and presented to Mr Ozwell, Mr Harrison, 5 Mr Frost, Mr Shellcross. Mr Johnson is one of the North 6 East agents. I have never met Mr Arthan. 7 I've certainly met Mr Price individually. Mr McHugh 8 from Webbers I don't know, but Webbers I have already 9 touched upon. 10 Q. But I think you had a meeting -- 11 A. Robert Chapman I don't know. Russell Manning was one of 12 our original gold members. 13 Q. I think you had a meeting with Mr Harrison, who you did 14 just mention, together with some other agents in or 15 about October 2014, so a few months after this, didn't 16 you? 17 A. I'm sure if you tell me I did, I did. 18 Q. Perhaps now we can go into bundle X and if you could 19 turn up, please, tab 3A. The internal page numbering is 20 125A. 21 A. Yes. 22 Q. And there is an email that is passed on to Mr Harrison 23 from Mr Halman, starting at the bottom of the page. 24 That is not relevant that one. Mr Harrison then 25 responds to Mr Halman saying:</p> <p style="text-align: center;">Page 74</p>	<p>1 I think I had only become recently aware, that Zoopla 2 was also addressing a group of southwest agents and I am 3 pretty sure that the people who attended this meeting, 4 or some of them, were part of that negotiation. And 5 I think there was confirmation that that was happening, 6 and I think I was also told that some of the agents were 7 considering dropping both portals. And I also remember 8 saying -- giving them the same "Don't try and eat the 9 cake before it's cooked" message that I had given 10 elsewhere. But then I left them to it. I remember 11 settling the hotel bill on my way out. 12 Q. And you are aware, are you not, that the vast bulk of 13 this IEAG group did agree collectively to drop Zoopla, 14 didn't they? 15 A. We are back on IEAG now? 16 Q. Yes. Mr Webber is a member of IEAG, isn't he? 17 A. I'm sorry. Well, actually I don't think that's true 18 because I think quite a number of them weren't on 19 Zoopla. 20 Q. I will give you the reference so you don't need to turn 21 it up, Mr Springett, but in our pleading, sir, members 22 of the Tribunal, at paragraph 40II on page 52 of the 23 bundle where we give the numbers, and they are not 24 denied in the defence, 73 out of 98. 25 A. Are you saying that they joined Agents' Mutual?</p> <p style="text-align: center;">Page 76</p>
<p>1 "Thanks, John, I'll pass that on." 2 He goes on in the second paragraph to say: 3 "We had a good AM in our patch and Ian Springett did 4 us proud in coming down from London." 5 Yes? 6 A. I can see that. 7 Q. Can you now recall going to give a presentation to 8 a grouping of agents, including Mr Harrison, in or about 9 early 2014? 10 A. Barnstaple, yes. 11 Q. Yes? 12 A. Yes. 13 Q. And is it right, he characterises it as you coming along 14 and really motivating some of the fence-sitters and the 15 main talk being of dropping both won't happen or 16 dropping Rightmove? 17 A. I see that's there. 18 Q. So that happened at the meeting at which you attended 19 with this group, didn't it? 20 A. Not while I was there it didn't. I can -- I did -- 21 I went down from London on the train. I remember it 22 quite well. I was picked up by Donna Beaufoy, who has 23 been mentioned before. I was there for the meeting. 24 I did the presentation in the standard format. I took 25 questions and answers. I was aware by then, although</p> <p style="text-align: center;">Page 75</p>	<p>1 Q. No, that they collectively chose to -- I will read it 2 out. 3 THE CHAIRMAN: Mr Harris, I think we will have that debate 4 in closing unless you want to put it to the witness. 5 MR HARRIS: No. 6 And you are aware that other representatives on 7 behalf of Agents' Mutual have gone about seeking to get 8 groups of agents to join collectively OnTheMarket, 9 aren't you? 10 A. I'm certainly aware that we've held group presentations, 11 particularly during 2013, and Ms Whiteley was doing some 12 of those. 13 Q. Group presentations with a view to getting the group to 14 join up to Agents' Mutual, right? 15 A. Group presentations, yes. 16 Q. With a view to getting them to join up as a group to 17 Agents' Mutual? 18 A. No, not -- 19 Q. I suggest to you that both Miss Lorna Kerr has done that 20 in Scotland, hasn't she? 21 A. She has done presentations to groups of agents. 22 Q. And I suggest she has also done the same in Northern 23 Ireland, hasn't she? 24 A. Presentations to groups of agents. 25 Q. And you attempted to get another big grouping to join</p> <p style="text-align: center;">Page 77</p>

<p>1 collectively, didn't you, the so-called big three, LSL, 2 Countrywide and Connells; you attempted to get them to 3 join you as a group and leave Zoopla as a group, didn't 4 you? 5 A. No. 6 Q. And I am going to take you now to this four-party 7 meeting, but just to be clear, Mr Springett, insofar as 8 what I put to you is not consistent with what you say 9 about the four-party meeting in your fifth witness 10 statement at paragraph 16 and your sixth witness 11 statement at paragraph 9, then I challenge what you say 12 in those two parts of your written evidence. 13 I am going to take the first part quickly in light 14 of time. 15 A. Should I be looking at something? 16 Q. Not just yet, no. I am suggesting to you that it was in 17 fact you who wanted to convene the four-party meeting as 18 a multi-party meeting; that is right, isn't it? 19 A. No. 20 Q. Sir, the relevant document reference, I am not going to 21 go to them with the witness, but I have put my point 22 fairly and squarely: they are in bundle 12, 6489; bundle 23 13, 7370; bundle 13, 7369 and 7368. 24 You did though, Mr Springett, didn't you, say to 25 Mr Livesey and his colleagues in September 2015 in</p> <p style="text-align: center;">Page 78</p>	<p>1 agent doesn't matter". That is you effectively knocking 2 Zoopla in the meeting with Connells, isn't it? 3 A. Well, I need to spend a little time perhaps talking 4 through what the purpose and intent of this whole 5 presentation was in order to answer that question. It 6 is going to take a little time, I'm sorry. 7 The context is that we had discussions at our board 8 meeting in August 2015 and looked at various ways, now 9 that the portal was established and in place, of moving 10 it on. And whilst we hadn't approached the large 11 corporates previously, believing that their interests 12 were not necessarily aligned with those of the majority 13 of small and medium-sized agents in the country, we 14 thought it was worth an approach. 15 So we did that and we were surprised and very 16 pleased that Connells responded and invited us to come 17 and see them. And this presentation, if I take you to 18 6227, was really, first of all, an introduction as to 19 who we were and what we were about, what the agent 20 proposition and the consumer proposition would be, what 21 progress we had made so far, what our strategy now was, 22 which was indeed to overtake Zoopla to become number 2, 23 what the financials in outline of the business were, and 24 what the opportunity we saw was for working together, 25 our members aligned with Connells in this case.</p> <p style="text-align: center;">Page 80</p>
<p>1 Leighton Buzzard that the only conceivable basis upon 2 which you, Agents' Mutual, could consider dropping the 3 One Other Portal rule would be if all three of the big 4 three estate agencies came to OTM; that is right, is it 5 not? 6 A. That is true. 7 Q. And then my suggestion to you is then that you wanted 8 a group meeting and that you put forward at the group 9 meeting that they should drop Zoopla as a group; that is 10 right, isn't it? 11 A. What is actually the case is that following one-to-one 12 meetings with Connells and then with LSL and 13 Countrywide, there was no positive reaction other than 14 from Mr Livesey, and I didn't seek a further meeting 15 with Mr Livesey at all until I was prompted to do so by 16 a conversation he had with one of our directors 17 in December. 18 Q. Thank you. I would like to take you as a sort of lead 19 up to the four-party meeting to the Leighton Buzzard 20 slides with Mr Livesey and his team. They are to be 21 found in bundle 11 at page 6. They start on 6226. That 22 is the front page. So if you could turn within that 23 document, please, to 6244. These are extracts from you 24 from the Zoopla websites, aren't they, in which you have 25 emblazoned over the front, in an elliptical object, "The</p> <p style="text-align: center;">Page 79</p>	<p>1 So much of this early presentation is, certainly as 2 far as 6232 is concerned, very similar to the general 3 presentation we were making either individually or to 4 groups of agents. 5 But I suppose I was exploring whether there was 6 a basis -- whether there was any kind of common purpose 7 and whether we could align what the corporate agent 8 wanted with what the purpose of Agents' Mutual was in 9 relation to its members. So, for example, on 6233 I was 10 presenting that the facilitation by the duopoly portals 11 of the internet-only business model was actually causing 12 considerable pressure on all traditional agents, 13 including even the largest, and perhaps even especially 14 the largest ones. 15 If I take you to the next page the focus is on 16 Rightmove. 17 THE CHAIRMAN: Which page are you look at there? 18 A. I am sorry, 6234 now. Where I am seeking to illustrate 19 that of the quoted estate agency businesses, including 20 LSL and Countrywide, but I think there may be another 21 one in there as well, I was just illustrating their 22 share price performance over the preceding period, 23 I think five years, relative to Rightmove's share price 24 performance and pointing -- trying to point out that the 25 monster was actually creating more and more difficulties</p> <p style="text-align: center;">Page 81</p>

<p>1 for the traditional agency model that actually Connells operates.</p> <p>2</p> <p>3 THE CHAIRMAN: That was helpful background but just to go</p> <p>4 back to counsel's question --</p> <p>5 A. Yes.</p> <p>6 THE CHAIRMAN: -- you were specifically referred to 6244.</p> <p>7 A. Yes.</p> <p>8 THE CHAIRMAN: And I think the question was: on this slide</p> <p>9 at least, you are knocking Zoopla in the meeting with</p> <p>10 Connells?</p> <p>11 MR HARRIS: That is right, is it not, Mr Springett?</p> <p>12 A. I'm not resiling from that. What I --</p> <p>13 Q. And over the next page as well, 6245?</p> <p>14 A. What I'm pointing out on 6244 is that portals have forgotten who their customers are.</p> <p>15</p> <p>16 Q. That's right. And in particular you are focussing on</p> <p>17 Zoopla. That is a Zoopla extract from their website in</p> <p>18 the background, isn't it?</p> <p>19 A. Because Zoopla has gone further down that line than Rightmove has so far.</p> <p>20</p> <p>21 Q. Over the next page, Mr Springett, there is another one,</p> <p>22 where you are saying that Zoopla is an example of --</p> <p>23 well, you describe yourself, "The agent doesn't matter",</p> <p>24 and it is in the background of knocking Zoopla, isn't</p> <p>25 it?</p> <p style="text-align: center;">Page 82</p>	<p>1 A. Thank you, sir. Only to say that that doesn't mean that they were not providing them but simply that -- well, in relation to the presentation of the agents' full details pages, Rightmove has begun down this track but Zoopla has gone already further down it.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 MR HARRIS: This was the point at which Mr Livesey said that he interjected and said something along the lines of:</p> <p>7 stop knocking your opposition when I'm playing --</p> <p>8 I think it was a round of golf. I'm not worried about</p> <p>9 what the opposition --</p> <p>10</p> <p>11 A. He did do that but it was a bit later in the presentation.</p> <p>12</p> <p>13 Q. Let's carry on, because in fact the theme continues as your target, in my suggestion, being Zoopla. If you</p> <p>14 look at 6253 and 6254, what you do there is you give</p> <p>15 some details about seemingly Zoopla's share price, don't</p> <p>16 you, on both of those.</p> <p>17</p> <p>18 A. Yes, and it is about here I think that Mr Livesey took me to task about knocking Zoopla.</p> <p>19</p> <p>20 Q. That is right and in these two slides, in particular</p> <p>21 6254 you can see that you are giving some information</p> <p>22 about possible ZPG share price, if you like, movements</p> <p>23 or what it might be worth to Connells?</p> <p>24 A. Mmm.</p> <p>25 Q. That is right?</p> <p style="text-align: center;">Page 84</p>
<p>1 A. Yes, I'm illustrating they are presenting an advertisement for easyproperty.com, finding tenants for £9.95, against a list of agents who have paid for the privilege of being displayed there.</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Q. God forbid a portal should allow advertisements from a competitor of one of your members, Mr Springett.</p> <p>6</p> <p>7 Over the next page, 6426. Again, that is knocking</p> <p>8 Zoopla, isn't it, because uSwitch, which is on the</p> <p>9 slide, that is a Zoopla product or service, isn't it?</p> <p>10 A. Yes.</p> <p>11 Q. And what you are saying is: the agent doesn't matter, Zoopla is advertising these other products, aren't you?</p> <p>12</p> <p>13 A. Yes, I'm recognising that for Connells a very large part of their existing business model and their revenue derives from selling particularly mortgages conveyancing and surveys to their customers.</p> <p>14</p> <p>15</p> <p>16 Q. None of these slides identify Rightmove as providing these things which don't matter to agents, do they?</p> <p>17</p> <p>18</p> <p>19 A. They don't, but --</p> <p>20 Q. No, and in fact --</p> <p>21 A. -- if you look --</p> <p>22 Q. If you --</p> <p>23 THE CHAIRMAN: I think we need to hear a little further on that.</p> <p>24</p> <p>25 MR HARRIS: Sorry.</p> <p style="text-align: center;">Page 83</p>	<p>1 A. That is right.</p> <p>2</p> <p>3 Q. Then what happened was you made a suggestion to Connells -- firstly just with the meeting with them -- that they should leave Zoopla and they should</p> <p>4</p> <p>5 crystallise the ZPG share gains now, didn't you? That is 6256.</p> <p>6</p> <p>7 A. Yes, in fact we never got to that slide. We stopped the slide presentation at the point of Mr Livesey's golf analogy and the remainder of the meeting was a discussion about -- there was quite a lot actually about his criticisms of our business model, the illegalities of it and so forth. We did touch on, as I mentioned at some point earlier in my evidence, what the situation would be if Connells purchased one of our larger member firms.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 So a number of topics were covered. It is true that, as he said, he was very clear that Connells would not entertain joining Agents' Mutual with the one other rule in place.</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Q. There is no wonder that Mr Livesey, as he said in his evidence, should have got the very clear impression that he wanted his organisation to leave Zoopla when, for example, on slide 6256 you say "switch from Zoopla", don't you?</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 A. Yes, as I say, we never presented that slide to</p> <p style="text-align: center;">Page 85</p>

<p>1 Mr Livesey. 2 Q. By that stage it was perfectly obvious what you were 3 saying to him about leaving Zoopla, wasn't it? 4 A. It wasn't but hopefully I'm going to help you, Mr Harris 5 because I'm certainly happy to say that had I presented 6 that slide to him, that's what I was saying. So if 7 I take the two slides together, and these are the final 8 two slides in the presentation, on the one hand, I was 9 saying the strategic opportunity is to do what is laid 10 out in that slide there which is to differentiate full 11 service community based agents from the fixed fee 12 internet only competitors which is fundamental to our 13 strategy, retain cross-selling opportunities for agents 14 on the basis that our policy was not to develop 15 competing services, reduce costs for everybody, which 16 would mean more profit for the best and that the portal 17 became more of a utility where competition was around 18 the real and genuine value that they can deliver in 19 competition with each other. 20 The final slide simply recognises the reality of the 21 market and it was an attempt by me to have some 22 understanding of the position I knew that Connells were 23 in. 24 So bearing in mind that this was September 2015 25 I didn't think contractually or commercially there was</p> <p style="text-align: center;">Page 86</p>	<p>1 Q. I beg your pardon, Alison Platt is Countrywide? 2 A. Yes. 3 THE CHAIRMAN: So divest yourself of Zoopla and invest in 4 Agents' Mutual. 5 A. Yes. And it is important to remember that we are 6 a mutual so the -- and I didn't have a developed, 7 a specific proposal as to how that would be done but we 8 had begun to consider internally the use of loan notes 9 to fulfil that purpose, so that we would, if I take the 10 Connells example, negotiate around a loan note incentive 11 which would provide somewhere between £10 million and 12 £22 million worth of value over a five-year period. 13 Now that is a much smaller opportunity than the one 14 that was talked about later in the four-way meeting but 15 it was based on the understanding -- it was based on an 16 exploration as to whether actually having made a lot of 17 money from Rightmove and made a lot of money from 18 Zoopla, actually the time had now come where embracing 19 a portal that had a sort of different set of objectives 20 might be of interest to them. It turned out not to be 21 I have to say. 22 THE CHAIRMAN: Just one question going back to 6244 which is 23 the Zoopla screenshots with your comments superimposed. 24 A. Yes. 25 THE CHAIRMAN: At this time, had you been minded to do so,</p> <p style="text-align: center;">Page 88</p>
<p>1 any possibility that they would choose to leave 2 Rightmove. So I was suggesting that the financial 3 opportunity for them was to switch from Zoopla to us and 4 to crystallise whatever gains, and they were very 5 considerable gains, they had made on their Zoopla 6 shares. 7 Now, if I take you back to the slide on 6254, that 8 slide is a calculation based on what we understood 9 Connells shareholding in Zoopla to be of a couple of 10 scenarios of what the additional value of those shares 11 would be over the ensuing five years. 12 And taken together, what I was suggesting was if 13 they came to us we would clearly expect them to exit 14 a holding in a rival portal and in doing that I was 15 indicating that we would find a method of, if you like, 16 compensating for that loss of future upside, if you 17 like. 18 Q. Thank you. And I think you also made a suggestion about 19 compensating Alison Platt's organisation, LSL, at the 20 meeting you had had one-to-one with her organisation, 21 hadn't you? 22 A. Sir, the presentation was almost identical in format 23 other than on page 6254 the numbers in there were 24 tailored to Countrywide's position in terms of their 25 Zoopla holding.</p> <p style="text-align: center;">Page 87</p>	<p>1 could you have made a similar critique using a Rightmove 2 slide -- screenshot? 3 A. Absolutely I could have done and in fact that was often 4 a feature of presentations I was doing at that time and 5 the presentation would highlight that Rightmove had 6 begun to go down this route, and the specific thing that 7 I'm referring to is: show the date on which your 8 property was first advertised. 9 MR HARRIS: But I think -- 10 A. My general feeling about this page is that we are 11 looking here at what we consider to be the agents' page 12 of advertising for their property and that a number of 13 things have been inserted around it which detract from 14 its power as an advertising -- an advertisement for that 15 property and I made in presentations to many smaller 16 agents the connection between them taking a page of 17 magazine advertising and I used to ask them, would you 18 expect to see all this added to your page by the 19 publisher of that magazine? And the answer is obviously 20 no. And also whether anyone had consulted them before 21 those things were added to their page of advertising. 22 So in terms of Rightmove, the illustration I gave 23 was that Rightmove has already begun to offer direct 24 advertising to owners of properties if those properties 25 are outside the UK.</p> <p style="text-align: center;">Page 89</p>

<p>1 MR HARRIS: Do I take it from your evidence a moment ago, 2 Mr Springett, that with the exception of changing the 3 numbers on the share slides it was the identical 4 presentation that you gave not just to Alison Platt at 5 Countrywide, and in fact one or two of her colleagues, 6 but also to Mr Crabb and Mr Embley at LSL? 7 A. Well, it was different in the sense that we managed to 8 get to the end of the slides in those two cases. 9 Q. But save for that, identical? 10 A. In terms of the slides, yes. 11 Q. So in fact in each case the slides that you presented 12 not to Zoopla to all three of those organisations in 13 fact, didn't they? 14 A. Yes, they did. 15 Q. You accepted from me approximately ten minutes ago that 16 you had suggested to Mr Livesey that there was and 17 indeed the only conceivable basis upon which we would 18 consider dropping the plus one portal rule would be if 19 all three came? 20 A. That's correct. 21 Q. Then we have indeed this meeting, the notes of which are 22 to be found, the four-party meeting, in bundle 14 and 23 they begin at 7734 and they go for four pages. You may 24 find, Mr Springett, that in your bundle there are now 25 two versions, one beginning 7737A. I don't mind which</p> <p style="text-align: center;">Page 90</p>	<p>1 a group but without the One Other Portal rule but 2 instead taking an equity stake; that is correct, is it 3 not? 4 A. That is not correct. 5 Q. Interestingly, that wasn't challenged in Mr Livesey's 6 evidence. The reference is second Livesey paragraph 24. 7 THE CHAIRMAN: Mr Harris, you take your course. You put it 8 to the witness or you don't. 9 MR HARRIS: I accept that. 10 I am suggesting to you that you did put forward this 11 seven part road map and indeed I think we can see that 12 on the front page of the slide, the fifth bullet point 13 down and then there are seven subbullet points, aren't 14 there? 15 A. Yes. 16 Q. So that's the seven part road map and part of it, if you 17 pick it up at the fifth bullet point, is that if and 18 insofar as the OOP -- that is the One Other Portal rule, 19 isn't it, OTM plus 1? 20 A. Yes. 21 Q. Your intention, I suggest to you, was that was designed 22 to get you past tipping point number 1, correct? 23 A. So you are now saying this was a proposal that retained 24 one other portal? 25 Q. This one is, yes, that is right. And part of that</p> <p style="text-align: center;">Page 92</p>
<p>1 one you use. The A, B, C ones just add the missing 2 Close Brothers words added, so it doesn't matter to me 3 which one you use. 4 I am suggesting to you, Mr Springett, by reference 5 to this meeting that you explain to them that joining as 6 a group all three of them could have significant 7 financial benefits and you could have put forward 8 a proposal to compensate them for the reduction in the 9 value of their Zoopla shares if they joined your 10 organisation. That is right, isn't it? 11 A. Well, I guess I was broadly repeating what I'd said to 12 them individually. 13 Q. That is right. We are going to look at various parts of 14 this note but I am on the front page of the note. I am 15 using 7734. Down at the bottom you did put forward 16 a suggestion, and I am quoting from the note, 17 "a business projection based upon the three joining with 18 OTM"? 19 A. Yes. 20 Q. So as a group, correct? 21 A. Yes. 22 Q. I think what Mr Livesey described in his witness 23 statement at paragraph 24, which wasn't challenged in 24 cross-examination, that you had put forward a detailed 25 seven point plan for the big three all joining as</p> <p style="text-align: center;">Page 91</p>	<p>1 proposal was to get you past tipping point 1, correct? 2 A. It would have, I think, just about had that effect. 3 Q. Tipping point 1, I am right, aren't I, Mr Springett, 4 when I say that tipping point 1 was tipping Zoopla out 5 of the market, wasn't it? 6 A. No, that's not right. It is getting to a point where we 7 had more property listings than them. 8 Q. Tipping it means, doesn't it, Mr Springett that somebody 9 else is edged out, the market is tipped in your favour 10 and tipped against them, isn't it? 11 A. It doesn't mean that in this context and we could go 12 back to the slide of 28 September presentation and it's 13 perfectly clear what it means. 14 Q. I am very happy to do that, Mr Springett. We can see 15 exactly what it means in those slides. It is 16 bundle 1/6249. In fact this use of the word "tipping 17 point" begins on 6247. 18 A. So the tipping point is -- 19 Q. I am sorry, Mr Springett, I haven't asked you a question 20 yet. 21 A. I thought you had. 22 Q. It is correct, is it not, that 6247 is the strategy of 23 the company? 24 A. It is more than that, more than one part but that is the 25 first I guess.</p> <p style="text-align: center;">Page 93</p>

<p>1 Q. Let us take it in stages then. So you accept though 2 that it is the strategy of the company at this date? 3 A. To become the number 2 portal. 4 Q. How do you get there? You can see it on the slide. You 5 are going to tip the market in your favour, correct? 6 That is your strategy? 7 A. That isn't what it means. What it means is that we get 8 to a point where we have more property listings than 9 Zoopla have. 10 Q. What you can see two pages over is exactly what you mean 11 by "tipping the market" on 6249. You can see it very 12 graphically illustrated on the bar chart, can't you? 13 You tip the market so that you are by far the biggest 14 second player and Zoopla is far, far smaller than you 15 and in fact Rightmove is still ahead of everybody at the 16 first tipping point. That is right, isn't it? 17 A. Well, it reflects the fact that we don't think that 18 there is too much of an appetite amongst agents for 19 paying for three portals. 20 Q. No, Mr Springett, it doesn't reflect that. What it 21 reflects is the company strategy to reach a tipping 22 point whereby Zoopla is tipped out of the market, isn't 23 it? There it is diminishing very significantly compared 24 to the previous slide? 25 A. I think one of the things you are missing is that first</p> <p style="text-align: center;">Page 94</p>	<p>1 Q. So tipping point number 1 in fact you then grow fast 2 after it? 3 A. Yes. 4 Q. What I suggest to you, you know perfectly well what that 5 means is Zoopla will wither away and you will grow 6 faster precisely because the market has tipped in your 7 favour and against them. That is correct, isn't it? 8 A. It's competition. 9 Q. No, no, Mr Springett, because this tipping takes place 10 because you are using the OOP rule, doesn't it? 11 A. It is because agents are choosing to adopt and embrace 12 the OnTheMarket proposition. 13 Q. Put it like this, Mr Springett -- 14 A. The rule itself doesn't do anything. It is the 15 agents -- 16 Q. I see the smile on your face, Mr Springett and I can 17 understand why you have that smile. The fact is that 18 this page, 6249, quite clearly shows that as part of the 19 company strategy Zoopla very substantially diminishing 20 in size, doesn't it? 21 A. It shows it on that chart, yes. 22 Q. That is right. Thank you. 23 A. It is a five-year strategy. That's what it also says. 24 Q. I am delighted that you should pick that up, because 25 that was going to be my last point. Here is Zoopla on</p> <p style="text-align: center;">Page 96</p>
<p>1 of all there is a very considerable challenge to get to 2 the tipping point and there is an extremely difficult 3 challenge once you have reached it to get the rest of 4 the way to maintain your number 2 position and indeed 5 develop into being an alternative to Rightmove. 6 Q. I am not commenting on the level of difficulty or 7 otherwise, Mr Springett. 8 A. Well, you are implying that it automatically -- 9 Q. Mr Springett, I haven't asked you a question yet. What 10 I am saying to you Mr Springett is it is quite clear 11 that the company strategy is to tip the market in its 12 favour and in so tipping it you tip Zoopla out of the 13 market so that you, to use the heading on 6249, you then 14 become the alternative to Rightmove, don't you? 15 A. Well, I think you are reading the word "tipping", you 16 are putting more meaning on it than we put on it. 17 Q. Well, the bar chart speaks for itself, Mr Springett. 18 Indeed, what it says in the text is that after the 19 tipping point, this is tipping point number 1 you are 20 referring to in this slide aren't you, that you are 21 going to grow fast after tipping point, yes? 22 A. Yes. 23 Q. And that is tipping point number 1 you are referring to 24 on this slide? 25 A. Once we become the number 2 player.</p> <p style="text-align: center;">Page 95</p>	<p>1 this slide, Zoopla vastly diminishing in size within the 2 five years of the strategy, isn't it? 3 A. That would be the result of us achieving our strategy. 4 Q. Yes, over a course of -- within the five years -- you 5 have reached tipping point early on, don't you, tipping 6 point number 1? 7 A. Well, we are talking here I think about late 2015. 8 Q. Yes, so this is September 2015, which is nine months 9 after launch, isn't it? 10 A. A five-year strategy from now. 11 Q. And this is a presentation given nine months after 12 launch, isn't it? 13 A. Yes. 14 Q. And then indeed, just to finish off while we are here, 15 if you turn over the page to 6252, picking up in 6251 16 you can see that part of the five-year strategy is to 17 generate cash surpluses -- I won't read out the numbers 18 in case they are particularly sensitive -- isn't it? 19 A. Yes. 20 Q. Part of the strategy within this five years is to have 21 become the alternative to Rightmove. I am reading -- 22 A. Absolutely. 23 Q. And over the page at 6252, within the five years, 24 looking at the right-hand side of the slide, you are 25 aiming to generate a cash surplus -- and I won't read</p> <p style="text-align: center;">Page 97</p>

<p>1 out the figure -- of a very significant sum, aren't you?</p> <p>2 A. That is quite right.</p> <p>3 Q. Thank you.</p> <p>4 A. If you look on the previous slide, the allocation of</p> <p>5 that of money is also noted, repay loan notes.</p> <p>6 Potentially you make a distribution and reduce listing</p> <p>7 fees.</p> <p>8 Q. Thank you. I think you would accept from me, wouldn't</p> <p>9 you, that both Mr Livesey and Miss Platt, at least</p> <p>10 during the four-party meeting, both suggested that they</p> <p>11 wanted to see competition on the merits in the portals</p> <p>12 market, didn't they?</p> <p>13 A. That's what they said. They said they wanted to see</p> <p>14 three portals and us release the One Other Portal rule</p> <p>15 at that point.</p> <p>16 Q. In fact, it has always been the position so far as you</p> <p>17 are aware that the big three have been concerned about</p> <p>18 the emergence of Rightmove as a powerful monopoly</p> <p>19 supplier, isn't it?</p> <p>20 A. That isn't -- certainly isn't what Miss Platt said to</p> <p>21 me. She said it was a symbiotic relationship and they</p> <p>22 enjoyed being the largest customer for both those</p> <p>23 portals.</p> <p>24 Q. I am a bit confused by that, Mr Springett. If you take</p> <p>25 up bundle X now and turn to tab 28. There is a 28 and</p> <p style="text-align: center;">Page 98</p>	<p>1 competing on the merits, is it?</p> <p>2 A. Well, as I have said, I was exploring in September with</p> <p>3 Connells whether, on the position I understood to be the</p> <p>4 case, which was that the status quo was very much in</p> <p>5 their favour, might have been changing.</p> <p>6 Q. Miss Platt said at the meeting that she thought the OOP</p> <p>7 rule, describing in this as OTM plus one, constrained</p> <p>8 choice for estate agents, didn't she?</p> <p>9 A. She did say that. I didn't agree with her.</p> <p>10 Q. And in fact -- no, what you say is that you think --</p> <p>11 I am trying to find the relevant part. It is over on</p> <p>12 the next page, 7735, so page 2 of the note, third bullet</p> <p>13 point down. What you say is:</p> <p>14 "When she is challenging the OTM plus one" -- sorry,</p> <p>15 it is such small type.</p> <p>16 A. "An essential strategy to enter a market".</p> <p>17 Q. I am reading -- yes, the next line down. You respond to</p> <p>18 her and you say that:</p> <p>19 "It [that is the OOP rule] would be sustainable</p> <p>20 until we gained market power under the CMA definition."</p> <p>21 Right?</p> <p>22 A. Yes.</p> <p>23 Q. So it is not being calibrated, your use of the OOP rule,</p> <p>24 by reference to implementing your venture on to the</p> <p>25 market successfully, is it?</p> <p style="text-align: center;">Page 100</p>
<p>1 28A and I want 28 please, if I may.</p> <p>2 I am afraid mine doesn't have a page number on it,</p> <p>3 Mr Springett but perhaps somebody can provide -- is</p> <p>4 there an internal page number for this document?</p> <p>5 An email from you to Paul at Kinleigh Folkard &</p> <p>6 Hayward on 17 May 2013.</p> <p>7 A. Yes.</p> <p>8 Q. You can see your name at the end. Do you see that on</p> <p>9 the first page of that, I think the internal page number</p> <p>10 is 186 if anyone wants that, between the two hole</p> <p>11 punches -- so this is at a far earlier stage than the</p> <p>12 four-party meeting, 17 May 2013.</p> <p>13 A. Yes.</p> <p>14 Q. And you say to Paul -- is that Paul Masters at Kinleigh</p> <p>15 Folkard & Hayward?</p> <p>16 A. Yes, it is.</p> <p>17 Q. "We have learnt, albeit indirectly, that one of the</p> <p>18 primary motives of the big three for its alliance with</p> <p>19 Zoopla was concern about the emergence of Rightmove as a</p> <p>20 powerful monopoly supplier, which might ultimately</p> <p>21 dictate terms even to them."</p> <p>22 A. I agree.</p> <p>23 Q. So my suggestion to you is it is no surprise that these</p> <p>24 people should say to you at the four-party meeting that</p> <p>25 they are in favour of a further portal entering and</p> <p style="text-align: center;">Page 99</p>	<p>1 A. Well, I think what we are looking at here is trying to</p> <p>2 become established in a market that is characterised by</p> <p>3 duopoly, with two big media owners as the players.</p> <p>4 Q. No, with respect, it is very clear what you are saying.</p> <p>5 Your view is that you can keep the OOP rule in place</p> <p>6 until you get market power under the CMA definition;</p> <p>7 that is right, isn't it?</p> <p>8 A. And that's what we had been advised by the CMA.</p> <p>9 Q. Where is that advice, Mr Springett?</p> <p>10 A. It is in a letter I referred to earlier in my evidence</p> <p>11 yesterday I think, March 2015.</p> <p>12 Q. I am happy to liaise with Mr Maclean about that over the</p> <p>13 short adjournment. But --</p> <p>14 MR MACLEAN: Do you want the reference?</p> <p>15 MR HARRIS: No, I will happily liaise with you about it over</p> <p>16 the short adjournment.</p> <p>17 What you don't say here is that you regard it as</p> <p>18 sustainable until you have successfully entered the</p> <p>19 market, do you?</p> <p>20 A. Well, it is clear what I've said.</p> <p>21 Q. Right, so you were regarding it as acceptable to carry</p> <p>22 on with the OOP rule until you obtained market power</p> <p>23 under the CMA's definition as opposed to until you had</p> <p>24 successfully entered the market, right?</p> <p>25 A. Our understanding from that CMA letter is exactly as</p> <p style="text-align: center;">Page 101</p>

26 (Pages 98 to 101)

<p>1 I have described it here.</p> <p>2 Q. So can you answer the question?</p> <p>3 THE CHAIRMAN: I think it may be that the letter needs to be</p> <p>4 referred to. It is intrinsic to his answer, isn't it,</p> <p>5 Mr Harris.</p> <p>6 MR MACLEAN: It is bundle H10/5393.</p> <p>7 MR HARRIS: Did you get that, Mr Springett? Bundle</p> <p>8 H10/5393.</p> <p>9 A. Yes, and 5395 is the reference and it is the bottom</p> <p>10 section -- I am sorry, one moment. I am sorry, it is</p> <p>11 the middle section. It is underneath the heading "The</p> <p>12 suspected agreements or concerted practices". No, I am</p> <p>13 sorry, please give me a moment to find the correct ...</p> <p>14 (Pause).</p> <p>15 Yes, sorry, I was right the first time. It is the</p> <p>16 second paragraph up from the bottom of that page, 5395.</p> <p>17 THE CHAIRMAN: Beginning "In a similar way"?</p> <p>18 A. Correct.</p> <p>19 MR HARRIS: Is this the basis upon which you made that</p> <p>20 remark?</p> <p>21 A. Yes.</p> <p>22 Q. You are saying that you rely upon this as being a view</p> <p>23 of the law, is that right, that it is acceptable to have</p> <p>24 the OOP rule in place until you achieve a position of</p> <p>25 market power under the CMA's definition?</p> <p style="text-align: center;">Page 102</p>	<p>1 the future."</p> <p>2 THE CHAIRMAN: So those are the passages that you were</p> <p>3 thinking of in your answer to Mr Harris's earlier</p> <p>4 question?</p> <p>5 A. When he said, why did I come to write in my notes and</p> <p>6 say what I said at the meeting? It is that very first</p> <p>7 paragraph of the letter and the penultimate paragraph on</p> <p>8 page 3 of the letter.</p> <p>9 THE CHAIRMAN: Thank you.</p> <p>10 MR HARRIS: So am I right in thinking that you were</p> <p>11 proceeding on the basis of some potential concerns that</p> <p>12 the CMA had raised in a letter dated March 2015, several</p> <p>13 years after you had conceived the OOP and at least two</p> <p>14 months after you had implemented it? Is that your</p> <p>15 evidence?</p> <p>16 A. We were proceeding on the basis --</p> <p>17 Q. That it was -- sorry, let me --</p> <p>18 A. Sorry, we received that letter and we took, as you might</p> <p>19 imagine, legal advice on what it meant.</p> <p>20 Q. That is right. A minute ago you said what you did was</p> <p>21 based upon this letter --</p> <p>22 A. Well --</p> <p>23 Q. -- and I am now exploring that with you.</p> <p>24 A. No, I have explained what you asked me to explain, which</p> <p>25 is what's in the note of the meeting.</p> <p style="text-align: center;">Page 104</p>
<p>1 A. That's what the CMA have told us.</p> <p>2 Q. That is not what it says at all, is it?</p> <p>3 MR MACLEAN: I think in all fairness if Mr Harris takes the</p> <p>4 witness to the start of the letter and gives the witness</p> <p>5 an opportunity to look at the letter, the questions</p> <p>6 might proceed on a more sound footing.</p> <p>7 MR HARRIS: I am happy for you to look at any other part of</p> <p>8 this letter, Mr Springett.</p> <p>9 THE CHAIRMAN: Cast your eye over it, Mr Springett, and let</p> <p>10 us know when you are happy to answer Mr Harris's</p> <p>11 question.</p> <p>12 A. Yes, thank you. (Pause). Well, I suppose the other</p> <p>13 relevant paragraph in the letter is the third -- are the</p> <p>14 paragraphs at the top of page 2 where they say:</p> <p>15 "While we haven't conducted a formal investigation</p> <p>16 and we at present do not intend to do so, it doesn't</p> <p>17 preclude the CMA from doing so again."</p> <p>18 THE CHAIRMAN: I just want you to read the letter and then</p> <p>19 Mr Harris will ask you his questions.</p> <p>20 A. Okay. (Pause). Yes. Well, I think the two most</p> <p>21 pertinent paragraphs are the first one and, in</p> <p>22 particular, the second sentence:</p> <p>23 "We also write to highlight some potential concerns</p> <p>24 around the current rules of Agents' Mutual should</p> <p>25 onthemarket.com establish a position of market power in</p> <p style="text-align: center;">Page 103</p>	<p>1 Q. Yes, and I asked you about --</p> <p>2 A. Our position is that it would be sustainable until we</p> <p>3 gained market power under the CMA definition. That was</p> <p>4 our understanding.</p> <p>5 Q. That's right. And I was asking about that and why and</p> <p>6 you said in reliance upon --</p> <p>7 A. Let's have a look at the CMA letter, and in combination</p> <p>8 with that we took legal advice on it at the time.</p> <p>9 Q. I don't want to ask you about your legal advice unless</p> <p>10 you want to tell me. You are entitled not to tell me or</p> <p>11 mention it, no problem.</p> <p>12 A. Yes.</p> <p>13 Q. But insofar as it was based upon this letter, it is</p> <p>14 quite extraordinary, isn't it? This letter says on its</p> <p>15 face, and I am reading now on page 2, a third of the way</p> <p>16 down that they had not conducted a formal investigation;</p> <p>17 correct?</p> <p>18 A. Mmm.</p> <p>19 Q. And that in fact they are making reference to a decision</p> <p>20 "possibly being to revisit, depending upon whether our</p> <p>21 prioritisation assessment changes"; right?</p> <p>22 A. Yes.</p> <p>23 Q. And over the page what they say in the passages to which</p> <p>24 you have drawn attention under the second emboldened</p> <p>25 heading is only that they "May have some concerns ..."</p> <p style="text-align: center;">Page 105</p>

<p>1 A. Yes.</p> <p>2 Q. "... should this OTM establish a position of market</p> <p>3 power."</p> <p>4 That is not a definitive view or advice, is it?</p> <p>5 A. They say they may have some concerns if we achieve</p> <p>6 a position of market power.</p> <p>7 Q. Then it goes on again to say, in the second passage to</p> <p>8 which you draw attention to, that their view, which of</p> <p>9 course you know is not after a formal investigation, may</p> <p>10 change if OnTheMarket establishes a position of market</p> <p>11 power. That is again not a definitive position or</p> <p>12 advice, is it?</p> <p>13 A. They've always been -- or I've always understood that</p> <p>14 until they have done an investigation, there isn't</p> <p>15 a definitive position reached.</p> <p>16 Q. Absolutely. So you are accepting that this is not</p> <p>17 a statement by them of even their own definitive</p> <p>18 position, is it?</p> <p>19 A. No.</p> <p>20 Q. Let alone a statement of the law?</p> <p>21 A. This letter, no.</p> <p>22 Q. And indeed, that is abundantly --</p> <p>23 A. They are the regulator, aren't they?</p> <p>24 Q. Yes, but it is abundantly clear that they are doing</p> <p>25 neither thing, isn't it? If you look at the final page</p> <p style="text-align: center;">Page 106</p>	<p>1 There are two different things. Our board has</p> <p>2 always understood that we need to keep the One Other</p> <p>3 Portal rule and other elements of our policies under</p> <p>4 review, and we meet regularly and have discussions with</p> <p>5 our lawyers on this point. And all I am observing is</p> <p>6 that as of today we are a long way from a position where</p> <p>7 we believe there's anything wrong.</p> <p>8 Q. One last thing, Mr Springett, on the letter. I am going</p> <p>9 to come back to you, by the way, on what you just said</p> <p>10 about keeping it under review. That is a topic for</p> <p>11 later on. But just in the letter, what the CMA is in</p> <p>12 fact saying to you is that: you may wish to seek</p> <p>13 independent legal advice to ensure that Agents' Mutual</p> <p>14 and its members comply with competition law, don't they?</p> <p>15 A. That's what it says, yes.</p> <p>16 Q. Just on this question then of your expressed approach at</p> <p>17 the four-party meeting about the OTM plus one rule being</p> <p>18 sustainable until we gained market power under the CMA</p> <p>19 definition, you have currently got well over 6,000 agent</p> <p>20 members, haven't you, Mr Springett, of the company?</p> <p>21 A. No, that's the number of branches.</p> <p>22 Q. I beg your pardon.</p> <p>23 A. That's --</p> <p>24 Q. You are quite right. You would be smiling even more</p> <p>25 broadly if it was 6,000 members.</p> <p style="text-align: center;">Page 108</p>
<p>1 of the letter on 5396, under the heading</p> <p>2 "Self-assessment to assure compliance with competition</p> <p>3 law" --</p> <p>4 A. Yes.</p> <p>5 Q. -- they say, in terms, don't they, "This letter does not</p> <p>6 constitute legal advice"?</p> <p>7 A. And it also says:</p> <p>8 "It is a matter for Agents' Mutual and we may wish</p> <p>9 to seek independent legal advice."</p> <p>10 Which we did.</p> <p>11 Q. Absolutely. So insofar as your answer was that: my view</p> <p>12 at the four-party meeting was based upon this letter,</p> <p>13 that's a thoroughly unsound basis for putting forward</p> <p>14 that view, isn't it? Because it is not giving the</p> <p>15 definitive position even of the CMA and it certainly</p> <p>16 doesn't constitute legal advice, does it?</p> <p>17 A. In any event, we were and are an extremely long way from</p> <p>18 being anywhere close to market power.</p> <p>19 Q. That's interesting, Mr Springett, so I just want to</p> <p>20 clarify that with you. You have been proceeding</p> <p>21 throughout, haven't you, on the basis that the OOP rule</p> <p>22 is acceptable unless and until you reach a position of</p> <p>23 market power; that is right, isn't it?</p> <p>24 A. No, that's not right. That's been our strategy to make</p> <p>25 sure that we can have a successful entry to the market.</p> <p style="text-align: center;">Page 107</p>	<p>1 A. I would.</p> <p>2 Q. You are quite right to correct me. You have 6,000</p> <p>3 member branches. And I think I am right in saying that</p> <p>4 you have, since the launch of the company, been able to</p> <p>5 sign up even more than that, haven't you, from time to</p> <p>6 time?</p> <p>7 A. Well, not -- over 6,000. We have been at around 6,300,</p> <p>8 yes.</p> <p>9 Q. This one is said to be confidential, but can I just take</p> <p>10 you to a number which is in bundle X at tab 25. I can</p> <p>11 understand why you might say this one is confidential.</p> <p>12 It is a bit of an unwieldy bundle, isn't it, that one.</p> <p>13 A. It is.</p> <p>14 Q. Tab 25. Do you recognise this as a letter dated</p> <p>15 21 December from your solicitors to my instructing</p> <p>16 solicitors?</p> <p>17 A. Yes.</p> <p>18 Q. And there is a table where the details are redacted.</p> <p>19 I hope you can see them. Is it highlighted in yellow in</p> <p>20 your --</p> <p>21 A. It is, yes.</p> <p>22 Q. These have come from you and it is details of membership</p> <p>23 opening dates, closing dates and contracted branches.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 109</p>

<p>1 Q. And am I right in saying that a moment ago you just said 2 in open court that it hovers around 6,300? 3 A. That's correct. 4 Q. So that is the number that you find at the bottom of the 5 right-hand most column, isn't it, on 172? 6 A. 172, yes. 7 Q. So that one is not confidential. The one next to it, is 8 that confidential? 9 A. Yes. 10 Q. So that is a confidential number but it represents the 11 number of agents that you have had at various times 12 signed up to your company, doesn't it? 13 A. It's the total number that have ever been signed up, so 14 clearly some of them have left. 15 Q. Yes. That's fine. As I say, I don't need to read that 16 number. Thank you. 17 Am I right in saying that there are approximately 18 18,000-odd estate agent branches in the country? 19 A. It's a difficult number to get precise, but I would 20 accept that number as an estimate. 21 Q. About that. That is the number that everyone has been 22 using and it's in the pleadings and the evidence and 23 what have you. 24 A. Yes, I don't dispute it. 25 Q. So on that view, even the 6,300 is more than a third and</p> <p style="text-align: center;">Page 110</p>	<p>1 A. Yes. 2 Q. And you have been trading away for two years, haven't 3 you? 4 A. Yes. 5 Q. Over two years as of today? 6 A. Yes, although we are still in loss. 7 Q. Thank you. I suggest to you, Mr Springett, that when 8 you set out creating this new venture you intended 9 materially to change the structure of competition on the 10 market, didn't you? 11 A. We intended to add some. 12 Q. You intended materially to change it and disrupt it in 13 your favour, didn't you? 14 A. We intended to disrupt what was there. 15 Q. I think in your sixth witness statement at 16 paragraph 5.14 you say, and I quote: 17 "The purpose of the strategy has been to disrupt the 18 position". 19 Is that still your evidence? 20 A. The existing duopoly, indeed. 21 Q. So the structure you describe as duopoly, I know you 22 know that we describe it in various different ways, but 23 the point here is, Mr Springett, that you wanted to 24 change that structure of competition, or duopoly 25 structure in your view, in your favour, didn't you?</p> <p style="text-align: center;">Page 112</p>
<p>1 the other number is even higher than that; correct? 2 A. The other number isn't relevant in that assessment 3 because that isn't a number that has ever been in 4 membership with us, if you see what I mean. 5 Q. I accept -- 6 A. Simultaneously, shall we say. 7 Q. That is a fair point, Mr Springett. But you accept that 8 even the 6,300 number is over a third of that 18,000, 9 isn't it? 10 A. I do. 11 Q. I think you would accept from me, wouldn't you, that 12 Agents' Mutual has launched successfully on to the 13 market in your view? 14 A. I think we have got a long way to go. I think we are -- 15 we implemented what we set out to as the early stages of 16 a new entry to the market, but we -- we are well behind 17 on traffic and we are -- we have 17 million of turnover 18 against Rightmove, which turns over 200 million. 19 Q. So I think taking that in stages, you have implemented 20 your site successfully on to the market? 21 A. Yes. 22 Q. Yes? 23 A. Yes. 24 Q. You have got a multi-million-pound turnover business; 25 that is what you just said?</p> <p style="text-align: center;">Page 111</p>	<p>1 A. We wanted to add some competition where there was a very 2 limited amount of competition. 3 Q. You wanted, in fact, didn't you, to take listings away 4 from Zoopla so that the market would tip against Zoopla 5 and there would be no need any longer to use Zoopla, 6 didn't you? 7 A. We actually set out with the plan of taking listings 8 from both of the other two major portals. 9 Q. I hope you haven't put it away, apologies if you have, 10 the note of the four-party meeting at 7734. What you 11 say in the four-party meeting -- this is put forward as 12 your accurate note -- 13 THE CHAIRMAN: Which bundle is that now, Mr Harris? 14 MR HARRIS: Bundle 14. This is, I suggest to you, 15 a continuation of the strategy that the company has 16 always had, namely -- I am reading now from, again, the 17 fifth bullet point of the sub bullets, towards the top 18 of that page: 19 "To get you past tipping point number 1 and towards 20 tipping point number 2, where we are seen as strong 21 enough for agents to begin withdrawing from Rightmove." 22 So tipping point number 1 is withdrawal from Zoopla, 23 isn't it? 24 A. Well, tipping point number 1, in our view of the world, 25 is getting to a position where we have more listings</p> <p style="text-align: center;">Page 113</p>

<p>1 than them, which can equally be taking listings from</p> <p>2 Rightmove.</p> <p>3 Q. We have seen what the slides say and who is named in the</p> <p>4 slide, so I won't go back over that territory, but</p> <p>5 certainly by the stage of this meeting you are</p> <p>6 suggesting that tipping point 2 will be at that point</p> <p>7 you are strong enough for agents to begin withdrawing</p> <p>8 from Rightmove, aren't you? So tipping point number 2</p> <p>9 is about leaving Rightmove?</p> <p>10 A. Switching.</p> <p>11 Q. Well, it says "withdrawing".</p> <p>12 A. Well, it means agents would be able to not have to use</p> <p>13 Rightmove.</p> <p>14 Q. So certainly as at the point of these slides, I beg your</p> <p>15 pardon, the notes of this meeting, you are talking about</p> <p>16 a tipping point number 1 against Zoopla and a tipping</p> <p>17 point number 2 against Rightmove, aren't you?</p> <p>18 A. Well, I don't know where you get tipping point number 2.</p> <p>19 Q. Well, they are your words I think. These are your</p> <p>20 notes, aren't they?</p> <p>21 A. They are.</p> <p>22 Q. I am reading from the fifth bullet point:</p> <p>23 "All members retain OTM plus one and this gets us</p> <p>24 past tipping point number 1 and towards tipping point</p> <p>25 number 2."</p> <p style="text-align: center;">Page 114</p>	<p>1 competition to reach that sort of a place. But if that</p> <p>2 sort after of a place was reached, it would be</p> <p>3 a satisfactory outcome, given that in the slides that we</p> <p>4 displayed in the September meeting, in five years time</p> <p>5 our average revenue per advertiser would be £350, and so</p> <p>6 what that would allow is if agents began to see us as an</p> <p>7 alternative to Rightmove, they would be saving a lot of</p> <p>8 money and potentially transferring some of that revenue</p> <p>9 to things they wanted from us.</p> <p>10 Q. For some months, at least some months prior to this</p> <p>11 meeting, you had been of the view that:</p> <p>12 "The idea of the OOP rule is that members retain the</p> <p>13 stronger of the duopoly portals to cover themselves</p> <p>14 while OTM builds up into the true alternative they need.</p> <p>15 No surprise that over 90 per cent chose dominant market</p> <p>16 leader."</p> <p>17 That is right, isn't it?</p> <p>18 A. That is a retrospective view after the launch.</p> <p>19 Q. No, actually that is the view you expressed -- we saw</p> <p>20 this document. I will give you the reference again.</p> <p>21 I don't want to turn it up. It was at bundle 10, 5640.</p> <p>22 A. Bundle 10 is post-launch I believe.</p> <p>23 Q. I said some months prior to this meeting. The email</p> <p>24 that I just quoted back to you is 4 June 2015. And you</p> <p>25 knew perfectly well who the stronger of the duopoly</p> <p style="text-align: center;">Page 116</p>
<p>1 A. I am sorry, you are right, tipping point 2, "where we</p> <p>2 are seen as strong enough for agents to begin</p> <p>3 withdrawing from Rightmove". Yes.</p> <p>4 Q. So I am right: tipping point number 1 is against Zoopla</p> <p>5 and tipping point number 2 is against Rightmove, isn't</p> <p>6 it?</p> <p>7 A. Well, tipping point 2 and tipping point 1 are the same.</p> <p>8 We have more properties than Zoopla at tipping point 1,</p> <p>9 and tipping point 2 is where we see agents not</p> <p>10 necessarily needing to be on Rightmove.</p> <p>11 Q. No, Mr Springett, come on. Tipping point 1 and tipping</p> <p>12 point 2 can't possibly be the same. Why are they</p> <p>13 differentiated in this note?</p> <p>14 A. Because tipping point 2 is where we start to have more</p> <p>15 properties than Rightmove does.</p> <p>16 Q. I see. And then the next bullet point, what you even</p> <p>17 described to the participants in the four-party meeting</p> <p>18 as what your endgame is: having 15,000 branches at an</p> <p>19 average monthly fee of 1,000, with no real need to list</p> <p>20 anywhere else.</p> <p>21 That is your end game you are striving for within</p> <p>22 the five years of your five-year strategy, isn't it?</p> <p>23 A. That absolutely would be a good place for us to end up.</p> <p>24 Q. And that is the company strategy, isn't it?</p> <p>25 A. Well, I mean it is the outcome of pretty vigorous</p> <p style="text-align: center;">Page 115</p>	<p>1 portals was, didn't you?</p> <p>2 A. It was evident by then.</p> <p>3 MR MACLEAN: I am sorry, Mr Harris got it wrong. The</p> <p>4 witness said:</p> <p>5 "That is a retrospective view after the launch."</p> <p>6 "No", said Mr Harris. Line 15.</p> <p>7 MR HARRIS: Thank you. I suggest to you that what that --</p> <p>8 well, actually, I am going to move on because I dealt</p> <p>9 with that email before.</p> <p>10 Do you accept from me, Mr Springett, that other</p> <p>11 representatives of Agents' Mutual have seen and</p> <p>12 expressed to groups of agents that damaging other</p> <p>13 portals is the purpose of the OOP rule?</p> <p>14 A. I'm not aware of that.</p> <p>15 Q. Can I just take you then to one extract from the</p> <p>16 transcript of one of the meetings in the Northern</p> <p>17 Ireland.</p> <p>18 Sir, actually it may be a sensible moment to pause</p> <p>19 because I am not entirely sure where everybody has these</p> <p>20 and I want to make sure that the witness has actually</p> <p>21 got a bundle with page numbers that I can use for the</p> <p>22 transcripts.</p> <p>23 THE CHAIRMAN: That is fair enough.</p> <p>24 MR HARRIS: So it might be sensible to stop there.</p> <p>25 THE CHAIRMAN: Now, would it be assist you, Mr Harris, if we</p> <p style="text-align: center;">Page 117</p>

<p>1 tried to sit at 1.45?</p> <p>2 MR HARRIS: Yes, sir. In fact, I was going to raise, as</p> <p>3 I have said a moment -- no criticism of anybody, it is</p> <p>4 just the way it is, but this is taking a lot, lot longer</p> <p>5 than I had any reasonable grounds to understand. And</p> <p>6 fair enough. Mr Springett has plenty to say. But I am</p> <p>7 badly behind my schedule. What I have already done is</p> <p>8 trimmed out last night approximately 15 per cent of what</p> <p>9 I otherwise would have done. Obviously I am happy to do</p> <p>10 further trimming, and there will be yet further trimming</p> <p>11 at the weekend because it is not an endless piece of</p> <p>12 string.</p> <p>13 THE CHAIRMAN: No.</p> <p>14 MR HARRIS: But nevertheless can I just identify to the</p> <p>15 Tribunal that there is still plenty to get through.</p> <p>16 THE CHAIRMAN: I am conscious of that, but I am equally</p> <p>17 minded to stick to the 12.30 on Monday indication that</p> <p>18 we discussed a day or two ago.</p> <p>19 MR HARRIS: Yes, sir.</p> <p>20 THE CHAIRMAN: I mean, I appreciate that there are long</p> <p>21 answers that are being given, but my sense of the</p> <p>22 witness is that when he can agree with you he does and</p> <p>23 does so very quickly, and it is when he feels that he</p> <p>24 needs to give a longer answer that he does so. Were it</p> <p>25 not the case, I, frankly, would have intervened.</p> <p style="text-align: center;">Page 118</p>	<p>1 doesn't sit on Wednesday morning. I complete my</p> <p>2 cross-examination of Mr Parker on Tuesday afternoon when</p> <p>3 Mr Bishop will be here. He can't be here in the morning</p> <p>4 but he can be here in the afternoon of Wednesday, so my</p> <p>5 learned friend cross-examines him on Wednesday</p> <p>6 afternoon, and the Tribunal makes its own arrangements,</p> <p>7 as it has, on Wednesday morning. If that is convenient</p> <p>8 to the Tribunal, we can firm up those arrangements.</p> <p>9 THE CHAIRMAN: That seems --</p> <p>10 MR HARRIS: Sir, may I take instructions on that? It seems</p> <p>11 anodyne to me.</p> <p>12 THE CHAIRMAN: Yes, it also seems -- I mean, we are</p> <p>13 obviously drifting, we are not drifting too far, but</p> <p>14 that seems to me --</p> <p>15 MR HARRIS: Can I respond to that at 1.45?</p> <p>16 THE CHAIRMAN: Why don't you raise it at 1.45. We'll rise</p> <p>17 until 1.45.</p> <p>18 (1.00 pm)</p> <p>19 (Luncheon Adjournment)</p> <p>20 (1.45 pm)</p> <p>21 MR HARRIS: Sir, just on the housekeeping matter. It is our</p> <p>22 understanding that the proposal currently is we finish</p> <p>23 with Mr Springett -- in the nicest possible way,</p> <p>24 Mr Springett -- by Monday lunchtime, the hot tubbing</p> <p>25 begins on Monday afternoon, and then both experts will</p> <p style="text-align: center;">Page 120</p>
<p>1 MR HARRIS: Yes, sir, and again --</p> <p>2 THE CHAIRMAN: You very fairly said there was no criticism.</p> <p>3 MR HARRIS: Shall we proceed on that basis. Can I perhaps</p> <p>4 just put down one suggestion at this stage; that it</p> <p>5 might be an earlier start than is traditional on the</p> <p>6 Monday but that we definitely finish by 12.30?</p> <p>7 THE CHAIRMAN: Yes, I think I had already offered 10 o'clock</p> <p>8 on Monday.</p> <p>9 MR HARRIS: I see, thank you.</p> <p>10 MR MACLEAN: I am sorry, can I just raise one matter of</p> <p>11 housekeeping, which is this.</p> <p>12 THE CHAIRMAN: Yes.</p> <p>13 MR MACLEAN: We had a discussion yesterday about the hot tub</p> <p>14 starting on Monday afternoon. The indication was it</p> <p>15 might run into Tuesday but it would be over by</p> <p>16 lunchtime.</p> <p>17 THE CHAIRMAN: Yes.</p> <p>18 MR MACLEAN: The position is Mr Bishop cannot be here on</p> <p>19 Wednesday morning but he can be here on Wednesday</p> <p>20 afternoon. The obvious solution to this, which my</p> <p>21 learned friend may well be only too happy to accede to</p> <p>22 for his part, obviously originally we weren't supposed</p> <p>23 to be sitting on Wednesday.</p> <p>24 THE CHAIRMAN: No.</p> <p>25 MR MACLEAN: So the obvious solution is that the Tribunal</p> <p style="text-align: center;">Page 119</p>	<p>1 be in purdah overnight and they'll finish the hot</p> <p>2 tubbing part of it by no later than Tuesday lunchtime,</p> <p>3 and then they'll continue to be in purdah until such</p> <p>4 time as their cross-examination has finished, and that</p> <p>5 Mr Parker will be finished by no later than the end of</p> <p>6 Tuesday, and then there will just be an interregnum</p> <p>7 because Mr Bishop has some other commitment and I'll</p> <p>8 start with him at 2 o'clock on Wednesday.</p> <p>9 THE CHAIRMAN: Yes.</p> <p>10 MR HARRIS: And until he has finished his cross-examination</p> <p>11 he's in purdah, just like Mr Parker is until the end of</p> <p>12 his cross-examination.</p> <p>13 THE CHAIRMAN: Exactly. And the plan will be to finish on</p> <p>14 Wednesday.</p> <p>15 MR HARRIS: Yes.</p> <p>16 MR MACLEAN: That accords with my understanding of the</p> <p>17 timetabling. I am not sure it accords with my</p> <p>18 understanding of the purdah rules. Of course once the</p> <p>19 hot tub starts, until that experience finishes, so if it</p> <p>20 runs over Monday night, both experts will be in purdah.</p> <p>21 My understanding was -- I'll be corrected if I'm</p> <p>22 wrong -- that once the hot tub is finished, that the</p> <p>23 experts were then no longer in purdah. There may not be</p> <p>24 a very long gap between the end of the hot tub and</p> <p>25 Mr Parker being cross-examined, but I didn't understand</p> <p style="text-align: center;">Page 121</p>

<p>1 that to be the position. 2 THE CHAIRMAN: It is an interesting question as to whether 3 the evidence of both witnesses begins with the beginning 4 of the hot tub and ceases at the end of the hot tub or 5 carries on. That is the question. May I perhaps think 6 about that and I will give you a view on Monday morning. 7 It would affect your position. 8 MR MACLEAN: Yes, it is certainly my understanding that when 9 one got to the cross-examination of the experts, of 10 course the cross-examination will be informed by 11 whatever has happened in the hot tub, obviously, in 12 terms of the questioning, but so far as purdah rules 13 were concerned, it was as if the hot tub experience 14 hadn't existed, and one normally has one's own expert 15 sitting behind one when you are cross-examining the 16 expert on the other side. 17 THE CHAIRMAN: Yes, I can see the force of that. Let me 18 think about that. 19 MR MACLEAN: I am grateful. 20 MR HARRIS: We don't see it like that because the rules, as 21 we understand it, of purdah are to prevent the -- just 22 the word that is sometimes used, the "contamination" of 23 the witnesses of evidence during the course of them 24 giving their evidence. 25 THE CHAIRMAN: I see there are arguments both ways. The</p> <p style="text-align: center;">Page 122</p>	<p>1 Mr Springett, but are you able to confirm, now that you 2 have had a chance to look at that transcript, whether 3 this was indeed a meeting which was attended by 4 Lorna Kerr on behalf of Agents' Mutual? 5 A. No. 6 Q. You are not able to. Have you had the opportunity to 7 consult Miss Kerr since you received the audio files and 8 the transcript? 9 A. No. 10 Q. Why is that? 11 THE CHAIRMAN: No, we are not going there. 12 MR HARRIS: Well, can you see that on the transcript there 13 is a reference to somebody who is described as 14 Miss Lorna Kerr, LK, beginning on page 97? Do you see 15 that entry, LK? 16 A. Yes. 17 Q. And right at the bottom of the page she is recorded on 18 this transcript as having said -- or this person who is 19 described as Miss Lorna Kerr is recorded on the 20 transcript as having said: 21 "So whereas Zoopla would have been competing with 22 other portals, because we are actually taking offices 23 off the other portals, it will grow our traffic very, 24 very quickly." 25 Do you see that?</p> <p style="text-align: center;">Page 124</p>
<p>1 difficulty is that one doesn't actually have many cases 2 of hot tubbing where these points are debated. So as 3 I say, I will take it under advisement. I can see 4 exactly where both of you are coming from and that is 5 why I don't want to make an immediate ruling. 6 MR HARRIS: Thank you. 7 Mr Springett, I have now picked up a new bundle, 8 which I hope has been put in loose form on your table. 9 This is the -- Mr Bronfentrinker's exhibit, gentlemen, 10 the exhibit to the Northern Ireland transcripts. And 11 I think, Mr Springett, you have a copy of various 12 transcripts beginning on page 1 at the bottom. Do you 13 see that? 14 A. Yes. 15 Q. And I put to you just before lunch that did you accept 16 it or not that other representatives of Agents' Mutual 17 saw the OOP rule as having the purpose of damaging the 18 other portals. I think you said something like "No", or 19 "No, I'm not sure of that"; whatever it says in the 20 transcript in any event. So that orientates us. 21 What I just want to ask you, Mr Springett, is by 22 reference to an extract from the third of these 23 transcripts, which begins on page 84, and it is put 24 forward as the transcript of a meeting in Derry on 25 7 June 2016. I appreciate that you weren't there,</p> <p style="text-align: center;">Page 123</p>	<p>1 A. Could you help me where that line is? How many lines 2 from the bottom? 3 Q. The very bottom line of 97, "So whereas Zoopla ..." 4 A. Sorry, we are over the page now. 5 Q. Yes, sorry. 6 A. Yes. 7 Q. Do you accept that that is a fair characterisation of 8 the OOP rule, that it actually takes offices off other 9 portals and therefore allows OTM to grow its traffic 10 very, very quickly? 11 A. Not particularly. 12 Q. Going on to the previous page -- I am sorry I took this 13 ever so slightly out of order, but it doesn't really 14 matter -- on 96, and again this is in an extract that 15 begins on 95 from the person who is being put forward as 16 being Lorna Kerr, and at the top of 96, within that same 17 passage, do you see about five lines down, this person 18 who is described as Lorna Kerr is said to have said: 19 "So our strategy is absolutely intrinsic to our 20 success, which is you have to choose one other portal to 21 advertise on alongside OnTheMarket. What that will do 22 is it will break the duopoly, will expedite our success, 23 but what it will also do is impact on the success of the 24 other portal so it is going to hit them significantly." 25 Do you see that?</p> <p style="text-align: center;">Page 125</p>

<p>1 A. Yes. 2 Q. And that's a fair characterisation, isn't it, of the 3 strategy of using the one other portal; correct? 4 A. I would agree that it characterises the movement of 5 property stock and agents from other portals. 6 Q. Yes, and the point being that it will impact upon their 7 success and hit them significantly, won't it? That is 8 the purpose of the OOP rule; correct? 9 A. To the extent that they have less property stock. 10 Q. So yes, to that extent you agree with me? 11 A. Yes. 12 Q. Thank you. Then lower down in that extract do you 13 accept -- I am reading now about eight lines up from the 14 bottom of that passage, the sentence beginning "So you 15 could have". Do you see that one? 16 A. Eight lines up from the bottom of this section, so above 17 where it says J, did you say? 18 Q. Correct. If you go up eight lines, nine lines, there is 19 a sentence -- 20 A. "So you could have half your stock ..." 21 Q. "... and half your stock in another. It wouldn't be my 22 ideal scenario because I would really want to impact one 23 portal quite hard." 24 And it is fair to say that it wouldn't be your ideal 25 scenario either, would it, because you also wanted the</p> <p style="text-align: center;">Page 126</p>	<p>1 A. I don't necessarily agree. 2 Q. Do you see -- 3 A. I think it was dominant and it's still dominant. 4 Q. It is more dominant now, isn't it, on any proper 5 metric -- 6 A. No, I don't agree with that. 7 Q. Can I just show you a document now in bundle 10, please. 8 It is to be found at 5641. And there is an email in the 9 middle of the page, Wednesday, 3 June 2015. Do you see 10 that this is to you from one of your fellow directors at 11 Douglas & Gordon, Mr Mead? 12 A. Yes. 13 Q. And then at the bottom -- so this is a few months after 14 launch, isn't it, June 3, 2015. And at the bottom he 15 says: 16 "PS, FYI Rightmove have circled like vultures and 17 told some agents who have remained with them that OTM 18 not working, Zoopla dying so they are going to double 19 their fees." 20 That is Rightmove to whom he is referring as 21 doubling their fees, isn't it? 22 A. It seems to be. 23 Q. So would you accept from me that in this email Mr Mead 24 is characterising Zoopla as dying a few months after 25 launch; yes?</p> <p style="text-align: center;">Page 128</p>
<p>1 OOP rule to impact one portal quite hard; that is right, 2 isn't it? 3 A. I didn't care. 4 Q. I suggest to you that that is exactly what you wanted: 5 you wanted the OOP rule to impact one portal quite hard 6 and you wanted that portal to be Zoopla who was impacted 7 quite hard, didn't you? 8 A. Well, in this context, this being the Belfast market, 9 Zoopla wouldn't have been really relevant to that. 10 Q. Generally around the UK you wanted one portal to be 11 impacted quite hard, didn't you? 12 A. No. 13 Q. And you wanted the portal to be impacted quite hard to 14 be Zoopla, didn't you? 15 A. No, I didn't. 16 Q. But you do accept -- you can put the transcript away 17 now, thank you, Mr Springett. You do accept, don't you, 18 that the OOP rule has in fact made Rightmove stronger on 19 all metrics by which portals are measured, don't you? 20 A. Relative to where it was before, it's hard to say. 21 Q. No, relative to where it was before is not at all hard 22 to say, is it, Mr Springett? It has definitely 23 increased in strength relative to where it was before 24 the OOP rule came on to the market; that is right, isn't 25 it?</p> <p style="text-align: center;">Page 127</p>	<p>1 A. It is not clear to me whether that's his opinion or 2 whether he's reporting the opinion of other agents. 3 Q. Would you accept from me as well that he's describing 4 a situation in which Rightmove plainly has a great deal 5 of market power such that they both circle like vultures 6 and they think they're going to double their fees? 7 A. I can't comment on that. 8 Q. So do you have no idea what he meant by that then, the 9 PS? 10 A. I see what it says. I don't know if it's his opinion or 11 whether he's relaying something that other agents have 12 expressed, but that doesn't seem to me to prove it one 13 way or the other. 14 Q. Thank you. I think you would accept from me, wouldn't 15 you, Mr Springett, that agents acting as a group can 16 deliver a very significant advantage to any given 17 portal? 18 A. Yes. 19 Q. And in fact, that they as a group, they have a very 20 strong influence over which portals succeed, don't they? 21 A. Yes. 22 Q. So imagine a group of agents coming together and 23 creating their own members portal. They can deliver 24 these significant advantages to their own members and 25 deny them to non-members, can't they?</p> <p style="text-align: center;">Page 129</p>

<p>1 A. The whole basis of this is that portals rely, both for 2 their valuable content and their revenue, on primarily 3 agents, and the agents have a free choice as to where to 4 put those revenues and property stock. 5 Q. I am not sure that really grapples with the question, 6 Mr Springett. You said that agents in a grouping can 7 deliver a significant advantage to a portal and have 8 a strong influence over which portal succeeds. You have 9 accepted both of those propositions. 10 A. Yes. 11 Q. And I suggested to you that when they come to -- imagine 12 a situation in which member agents come together to 13 create a members own portal. They can deny those 14 significant advantages to people who are non-members, 15 can't they? 16 A. Well, as I have just said, they are in charge of where 17 they put their revenue and their listings. 18 Q. How does that answer the question, Mr Springett? 19 A. Well, you are asking me to give you an example of an 20 advantage. So clearly if they choose in the market to 21 use one portal over another, then that makes 22 a difference. 23 Q. Who is the "they" in your answer? 24 A. Agents. 25 Q. I suggest to you, Mr Springett, you know perfectly well</p> <p style="text-align: center;">Page 130</p>	<p>1 and the hard line that existed has become a little bit 2 blurred. 3 Now, we have taken the view that we will restore 4 that hard line, but, for example, in the case of Zoopla, 5 they had, and certainly reiterated and reintroduced at 6 the end of December 2013, a restriction whereby 7 providers of aggregated listings, and I can give some 8 specific examples at any point if you wish to have them, 9 were not allowed to list on its portal. 10 So it is a commercial choice, I think, for each 11 portal to make as to which market it wants to address. 12 Q. I know that is your case and, indeed, you say, I think 13 in a pleading it is characterised by your legal team as 14 a so-called legitimate choice. But the truth is you 15 regard these non-traditional, non-full service agents as 16 parasites, don't you? 17 A. That is a personal view, yes. 18 Q. Perhaps we can see that. I don't know, members of the 19 Tribunal, if you still have open bundle 14/7734, the 20 meeting notes of the four-way meeting. One of my 21 learned friend's very helpful instructing solicitors 22 over the short break has produced an enlarged version of 23 this if it assists you. It makes no difference to me 24 because mine is so heavily marked up, but I just draw 25 that to your attention.</p> <p style="text-align: center;">Page 132</p>
<p>1 that the agents' owned member portal that was created by 2 your company could deny the benefits of membership of 3 that country to non-members, including all 4 non-traditional, full service agents, couldn't they? 5 A. I think I would characterise the restriction which you 6 are referring to as simply our proposition to a market 7 segment that we wanted to serve. 8 Q. Yes. You accept presumably, don't you, that you think 9 that your portal provides advantageous advertising 10 services in the market; yes? 11 A. I do. It addresses specifically full service 12 locally-based agents. 13 Q. And because non-full service, non-traditional estate 14 agents are not allowed to be members, then the 15 advertising advantages from your portal are denied to 16 them, aren't they? 17 A. I guess that's true, but -- 18 Q. That's right. 19 A. Let me say this: it may be helpful. All the portals 20 have target audiences and, indeed, categories of 21 advertisers that they don't permit. And the one that we 22 all have, at least for the time being, is individual 23 private vendors and private landlords. Rightmove, 24 Zoopla, nor OTM accept that form of advertising. And 25 that has been changing over the last two to three years</p> <p style="text-align: center;">Page 131</p>	<p>1 Mr Springett, do you still have it, 14/7734? 2 A. I do, thank you. 3 Q. Can you please pick it up at the first page of the note, 4 the penultimate bullet point, the one beginning "AP 5 queried". Do you see that? 6 A. "AP queried the desire of the DPG partners to join"? 7 Q. No, mine says "AP queried the strategy". 8 A. I beg your pardon, yes. 9 Q. And running past the emboldened type it says: 10 "IS says pure internet plays are simply parasites 11 only viable because the portals allow them to operate 12 alongside the main customer base of high street firms." 13 A. Yes. 14 Q. So that is one place where you describe these -- you are 15 describing them as "pure internet plays". By that you 16 mean non-full service, non-traditional estate agents 17 don't you? 18 A. I do. 19 Q. And in fact, those non-full service, non-traditional 20 agents, or, if you like, online agents, to use another 21 epithet, they do compete with full service traditional 22 estate agents, don't they? 23 A. They do. 24 Q. And another thing that was going on in putting together 25 your venture was that you and the Agents' Mutual members</p> <p style="text-align: center;">Page 133</p>

<p>1 didn't like the notion that the property portals were 2 taking profits away that otherwise might be capable of 3 being earned by the Agents' Mutual members; that is 4 right, isn't it?</p> <p>5 A. Yes, it had become a nil-sum game really where the 6 portals' profitability soared through the price into 7 agents, which was unconnected with the cost of providing 8 the service.</p> <p>9 Q. And what you wanted was for all of those benefits to 10 flow back directly to the members of the members club, 11 didn't you?</p> <p>12 A. Well, we were really primarily interested in having 13 a portal which addressed the needs of agents and their 14 customers.</p> <p>15 Q. Yes, but you also -- my point, Mr Springett, is that you 16 also wanted these benefits that would otherwise leave to 17 go to, in your view, the shareholders of Zoopla and 18 Rightmove predominantly, you wanted them to all flow 19 back, by means of your model, back to your members, 20 didn't you? That was one of the purposes of the member 21 mutual company?</p> <p>22 A. By way of lower pricing.</p> <p>23 Q. Perhaps if you can just take volume 2 now and turn to 24 page 659. I think I have finished altogether with 25 bundle 14, the four-party meeting notes, so even though</p> <p style="text-align: center;">Page 134</p>	<p>1 and better brand awareness and lead generation delivered 2 by the portal and progressively lower listing fees."</p> <p>3 So that was your view, wasn't it, of one of the 4 purposes of Agents' Mutual, the new venture?</p> <p>5 A. Well, it's self-evident that they were the owners of the 6 business.</p> <p>7 Q. That is right. The idea was to make sure that benefits 8 that were otherwise leaving to Zoopla and Rightmove and 9 their shareholders, or for that matter the shareholders 10 of any other portal, would instead, under the new 11 proposal, flow directly back to them; that is right, 12 isn't it?</p> <p>13 A. That's a complicated way of saying they would get lower 14 prices.</p> <p>15 Q. Well, it says here, these are your words, that all the 16 benefits of them doing so will flow directly back to 17 them. That is the members, isn't it?</p> <p>18 A. Yes.</p> <p>19 Q. This is all the benefits, isn't it, as opposed to 20 leaving to somebody else?</p> <p>21 A. Okay.</p> <p>22 Q. Yes?</p> <p>23 A. Yes.</p> <p>24 Q. Thank you. The same theme is picked up by one of your 25 fellow directors -- I beg your pardon, you are not</p> <p style="text-align: center;">Page 136</p>
<p>1 they have now been blown up I think we're done. 2 THE CHAIRMAN: Can we have them blown up at the beginning 3 next time?</p> <p>4 MR HARRIS: I think we asked repeatedly, sir, but there we 5 go.</p> <p>6 THE CHAIRMAN: It's not a serious question.</p> <p>7 MR HARRIS: If you look, please, in bundle number 2 at 659. 8 I just need to find the passage in there. Can you just 9 leave 2/659 open for the minute while Mr Woolfe locates 10 the wording.</p> <p>11 Thank you, Mr Woolfe. If you see above the second 12 hole punch -- feel free to orientate yourself in this 13 document. Can you just tell the Tribunal -- it is an 14 executive summary, I think, that you prepared about the 15 state of the Agents' Mutual business. Is that right?</p> <p>16 A. It looks like a section of our business plan.</p> <p>17 Q. This bit was prepared by you I think, wasn't it?</p> <p>18 A. Yes. The entire plan was drafted and obviously amended 19 as they saw fit by the directors.</p> <p>20 Q. Thank you very much. I am looking on internal page 16, 21 just above the second hole punch. You say: 22 "... since the nature of Agents' Mutual Limited 23 means that members have every reason to support it 24 wholeheartedly in the knowledge that all the benefits of 25 them doing so will flow directly back to them in better</p> <p style="text-align: center;">Page 135</p>	<p>1 a director. So one of the directors of the company, 2 this time to be found in bundle 3/1265.</p> <p>3 A. Are we done with this one?</p> <p>4 Q. We are. I am afraid this is a section of the 5 cross-examination where we are going to be almost 6 playing juggle with bundles. I am now in bundle 3 at 7 1265. Do you see that this is a copy of an email, the 8 chain of which was subsequently passed to you the next 9 day, in which one of the board directors of the new 10 venture in July 2013 writes back to Alex -- that is 11 Alex Chesterman, chief executive of Zoopla -- doesn't 12 he?</p> <p>13 A. Yes.</p> <p>14 Q. Do you see in the third paragraph down in his email, so 15 I am now nearly towards the bottom of page 1265, and the 16 penultimate paragraph there begins "although". Do you 17 have that one?</p> <p>18 A. Yes.</p> <p>19 Q. "Although we do believe in the commercial disciplines of 20 profit and loss, it is not our intention to expose a 21 profit other than a desire to redistribute this to our 22 members." 23 So that seems to be his view of one of the purposes 24 of Agents' Mutual, doesn't it?</p> <p>25 A. I think he's making a narrower point there, which is</p> <p style="text-align: center;">Page 137</p>

<p>1 that the business is not designed to generate surpluses</p> <p>2 for distribution. He's really saying that it will be</p> <p>3 run on the basis of prices reflecting fairly closely</p> <p>4 what the costs of running the business would be.</p> <p>5 Q. I think to be fair, Mr Springett, he is making two</p> <p>6 points, isn't he? Not our intention to expose a profit</p> <p>7 other than a desire to redistribute this to our members.</p> <p>8 So if and insofar as there is a profit, then it is going</p> <p>9 to go back to the members, isn't it?</p> <p>10 A. Yes, and I am just clarifying that the method by which</p> <p>11 that would happen is through lower prices.</p> <p>12 Q. The idea, I suggest to you, of Agents' Mutual, as</p> <p>13 understood by you and the directors at the time, back</p> <p>14 then in sort of mid-2013, was to reduce the costs for</p> <p>15 the agent members so that some of them could obtain more</p> <p>16 profits; that is right, isn't it?</p> <p>17 A. Well, what they did with any monies they saved would be</p> <p>18 individually up to them.</p> <p>19 Q. Well, the idea was to have a collective grouping that</p> <p>20 collectively reduced their costs so that some of them</p> <p>21 could make more profit. That was the idea, wasn't it?</p> <p>22 A. No, the Agents' Mutual company was set up to run</p> <p>23 a portal which would over time be a market leader,</p> <p>24 deliver many, many benefits to agents and consumers, as</p> <p>25 indeed some of the existing portals do, but to deliver</p> <p style="text-align: center;">Page 138</p>	<p>1 you are saying there:</p> <p>2 "It has reduced costs for all agents."</p> <p>3 That means all agents who are members of the group,</p> <p>4 doesn't it?</p> <p>5 A. Yes.</p> <p>6 Q. And then it goes on:</p> <p>7 "- more profit for the rest."</p> <p>8 So you were conceiving as part of the opportunity</p> <p>9 that some of the member agents, at least some of them,</p> <p>10 the best ones, would obtain more profit; that is right,</p> <p>11 isn't it?</p> <p>12 A. I think that is really linked to the bottom dot point,</p> <p>13 which is that the portal becomes a service to the</p> <p>14 industry and competition between agents is based on the</p> <p>15 things that the agents themselves do.</p> <p>16 Q. What I suggest to you is that you didn't want these</p> <p>17 profits exiting to the shareholders of Zoopla and</p> <p>18 Rightmove, but what you did want to see was more profit</p> <p>19 for some of the agent members of Agents' Mutual; that is</p> <p>20 right, isn't it?</p> <p>21 A. I have told you what my position is relating to these</p> <p>22 slides.</p> <p>23 Q. The next document in this theme, if you could put away</p> <p>24 number 11 and this time be handed document bundle X and</p> <p>25 open it to tab 28. Several pages in, I think beginning</p> <p style="text-align: center;">Page 140</p>
<p>1 all that at a price level much more closely related to</p> <p>2 what it cost to run the operation.</p> <p>3 Q. No, I am going to try again, Mr Springett. It was very</p> <p>4 expressly in the minds of both you and some of the</p> <p>5 directors at the time that they would collectively</p> <p>6 reduce the cost of agents so they could obtain more</p> <p>7 profit, wasn't it?</p> <p>8 A. No.</p> <p>9 Q. Perhaps I could just then take you to --</p> <p>10 THE CHAIRMAN: Mr Harris, are you referring to more profit</p> <p>11 or to a cost saving that might, depending on how that</p> <p>12 cost saving is deployed, result in more profit?</p> <p>13 MR HARRIS: I am going to show you two documents that -- one</p> <p>14 of them in Mr Springett's own words, where he talks</p> <p>15 about it being more profit, and the other one in which</p> <p>16 it is described as a particular addition to the bottom</p> <p>17 line, which to me means more profit.</p> <p>18 So the first one, Mr Springett, if I may, is in your</p> <p>19 own words, bundle 11, and apologies, we have seen this</p> <p>20 document many times now. It is 6255.</p> <p>21 You wrote these slides, didn't you, Mr Springett?</p> <p>22 A. Let me just check which --</p> <p>23 Q. This is the Leighton Buzzard slides.</p> <p>24 A. Oh yes, I did.</p> <p>25 Q. In fact, if you look on 6255, the third bullet point,</p> <p style="text-align: center;">Page 139</p>	<p>1 on internal page 186, we have seen this is an email that</p> <p>2 you wrote to Paul Masters to Kinleigh Folkard & Hayward</p> <p>3 on 17 May 2013.</p> <p>4 A. Yes.</p> <p>5 Q. And we see over on the third page of that email, right</p> <p>6 at the bottom of the page --</p> <p>7 A. So we are now on page?</p> <p>8 Q. It must be 188.</p> <p>9 A. 188, yes.</p> <p>10 Q. Yes. What you refer to in that final paragraph is</p> <p>11 Agents' Mutual making a powerful disruptive entry to the</p> <p>12 market. You hope to get enough gold members. And then</p> <p>13 you go on to say:</p> <p>14 "We hope that large numbers of agents will recognise</p> <p>15 that this is ultimately about business value. In less</p> <p>16 than 10 years Agents' Mutual could represent the</p> <p>17 difference between paying out 2,000 for office per month</p> <p>18 on portal fees and paying out 200 per office per month</p> <p>19 for a single universal agent-owned portal. For Kinleigh</p> <p>20 Folkard & Hayward this could add over £1 million per</p> <p>21 annum to its bottom line. Agents' Mutual also defends</p> <p>22 the agents industry itself from creeping</p> <p>23 disintermediation."</p> <p>24 So what you are suggesting there to I think at this</p> <p>25 stage -- is Paul Masters a prospective member or had he</p> <p style="text-align: center;">Page 141</p>

<p>1 become a letter of intent person at this stage?</p> <p>2 A. I think neither. I think this was in the period where</p> <p>3 they were contemplating signing a letter of intent.</p> <p>4 Q. What you are suggesting to him is one of the principal</p> <p>5 sale points -- I will rephrase that. One of the sale</p> <p>6 points to get him on board is it could add over</p> <p>7 a million pounds per annum to the bottom line of</p> <p>8 Kinleigh Folkard & Hayward, weren't you?</p> <p>9 A. That would be one of the things it could do from the</p> <p>10 pure cost saving, but it could also spend more on the</p> <p>11 service it was delivering.</p> <p>12 Q. Thank you. Then the next line, what you mean there by</p> <p>13 "creeping disintermediation" -- disintermediation means</p> <p>14 cutting somebody out of the chain, doesn't it?</p> <p>15 A. Yes.</p> <p>16 Q. So what you are referring to there is the worry that the</p> <p>17 existing portals, in particular Rightmove and Zoopla,</p> <p>18 could cut a traditional estate agent out of effectively</p> <p>19 the sale of housing market altogether, aren't you?</p> <p>20 A. Yes, I --</p> <p>21 Q. So, for example, either by for sale by owner, FSBO?</p> <p>22 A. Yes.</p> <p>23 Q. Or otherwise by making them less relevant because what</p> <p>24 house-hunters and vendors want can be provided simply by</p> <p>25 the portal without going to a traditional full service</p> <p style="text-align: center;">Page 142</p>	<p>1 traditional estate agent.</p> <p>2 Q. You regarded FSBO as a method of competing with, at this</p> <p>3 stage, proposed members of Agents' Mutual, didn't you?</p> <p>4 A. Sorry, I didn't follow that.</p> <p>5 Q. Sorry. You regarded direct listings as a potential way</p> <p>6 of competing with the businesses of the proposed members</p> <p>7 of Agents' Mutual, didn't you?</p> <p>8 A. What we foresaw, and it was, as I touched upon earlier,</p> <p>9 a possible future direction that the portals might take,</p> <p>10 particularly given that there was no other choice</p> <p>11 available for the traditional agent. So what we saw was</p> <p>12 the portals potentially beginning to compete with their</p> <p>13 customers. And I would say Agents' Mutual is</p> <p>14 a perfectly normal commercial response to that, which is</p> <p>15 that if they want to compete with us, we'll compete with</p> <p>16 them.</p> <p>17 Q. I am going to suggest to you again, Mr Springett, direct</p> <p>18 listing is a form of competition, isn't it, with the</p> <p>19 traditional estate agency business of your members; yes?</p> <p>20 A. Yes, and it has been so for a long, long time of course.</p> <p>21 Anyone can sell their own home.</p> <p>22 Q. Thank you, so the answer to that is yes. And what you</p> <p>23 are not allowing on your members' portal is that form of</p> <p>24 competition, are you?</p> <p>25 A. No, in line with the existing policy of the other two.</p> <p style="text-align: center;">Page 144</p>
<p>1 agent; correct?</p> <p>2 A. That would be right, yes.</p> <p>3 Q. And the truth is that you were always opposed, you</p> <p>4 together with the steering committee members of</p> <p>5 project Z, to anything like for sale by owner, weren't</p> <p>6 you?</p> <p>7 A. Yes.</p> <p>8 Q. So you regarded that as a potential source of</p> <p>9 competition, didn't you, direct listings?</p> <p>10 A. Yes, that would be the portal competing with its</p> <p>11 customer.</p> <p>12 Q. Right, so a form of competition to the would-be members</p> <p>13 of Agents' Mutual would be direct listing; right?</p> <p>14 A. It would be to all agents.</p> <p>15 Q. Including the members of Agents' Mutual; correct?</p> <p>16 A. Correct.</p> <p>17 Q. And what you wanted to do by creating the members only</p> <p>18 portal that disallowed that type of direct listing was</p> <p>19 to preclude that type of competition, at least via your</p> <p>20 portal; that is right, isn't it?</p> <p>21 A. Well, that restriction, as I explained earlier, exists</p> <p>22 already for Zoopla and Rightmove. It is a common</p> <p>23 clause, I suppose, in the contracts or the policies of</p> <p>24 all three portals precisely because the primary body of</p> <p>25 customers for those three portals currently is the</p> <p style="text-align: center;">Page 143</p>	<p>1 Q. Thank you. And indeed, as I think we saw in opening,</p> <p>2 you in one of the early documents said that private</p> <p>3 listings is something that the other portals could do</p> <p>4 and it would be a bit like what was happening on Auto</p> <p>5 Trader, direct listing of cars; yes?</p> <p>6 A. Yes, that's quite a good --</p> <p>7 Q. That's right. But I am right in saying, aren't I, that</p> <p>8 at least one of the founder board members regarded this</p> <p>9 exclusion of one method of competing with the members as</p> <p>10 potentially anti-competitive, didn't he?</p> <p>11 A. Goodness, if there was, that's a bit of surprise to me.</p> <p>12 Q. Perhaps I can remind you then. It is at bundle</p> <p>13 number 1, page 429. There is an email beginning at</p> <p>14 page 428. The only one on 428 really, halfway down,</p> <p>15 comes from what looks maybe the PA to Mr Noel Flint. He</p> <p>16 was a founding member and member of the steering</p> <p>17 committee, wasn't he, from Knight Frank; yes?</p> <p>18 A. He was, yes.</p> <p>19 Q. And he writes to you in January 2013, copied to the</p> <p>20 other principal founding steering committee members;</p> <p>21 yes?</p> <p>22 A. Yes.</p> <p>23 Q. And he is commenting on your draft business plan; yes?</p> <p>24 A. Yes.</p> <p>25 Q. And then over the page at the first hole punch he says:</p> <p style="text-align: center;">Page 145</p>

<p>1 "General comment under the section 'threats to 2 agents'." 3 And that included, didn't it, the point about not 4 accepting direct listings or FSBOs? 5 A. Yes. 6 Q. And he says: whilst we all realise one of the incentives 7 is to deal with a possible threat to our business 8 through portals taking private listings, I am not sure 9 this should form part of our document in case it adds 10 weight to an anti-competition claim. What do you 11 respond? 12 A. Okay, we'll amend. 13 Q. That's right. Because what you didn't want was 14 documents to be around that added weight to an 15 anti-competition claim, did you? 16 A. The fact of how we've conducted our business from the 17 outset is hardly a secret. 18 Q. It is part of the same theme we saw when we were talking 19 about some of the collective negotiations with the 20 group, wasn't it? 21 A. No. 22 Q. Don't write things down, don't create evidence trails, 23 we don't want incriminating materials in circulation. 24 That is right, isn't it? 25 A. No.</p> <p style="text-align: center;">Page 146</p>	<p>1 full service traditional estate agents, from forms of 2 competitive threat; that is right, isn't it? 3 A. No. 4 Q. It seems to have been the view that one of your board 5 members took. If you take up please bundle number 5 and 6 turn to 2896D. 7 A. Have we finished with bundle X for the moment? 8 Q. Yes, thank you, Mr Springett. Do you see that by the 9 second hole punch on 2896D there is an email from 10 Mr Rook; yes? 11 A. Yes. 12 Q. 1 April. So he is a director on the board at this 13 point, isn't he? 14 A. Yes, he is. 15 Q. And what he writes to Mr Jones -- I think we have seen 16 him before; he is one of the west Wales agents, isn't 17 he? 18 A. Yes, that's right. 19 Q. And what he responds amongst other things is about 20 some -- he is being asked how many times will he have to 21 go down to the smoke to be on the board. And he says: 22 "Monthly on average. It is well paid. It is well 23 worth it if we can develop AM for our mutual 24 protection." 25 So protection for them as a group seems to have been</p> <p style="text-align: center;">Page 148</p>
<p>1 Q. You also thought that at this stage -- we are talking 2 about these early stages of project Z thinking -- you 3 thought that the property portals had powerful brands of 4 their own and you were worried, you thought 5 a competitive threat to the traditional estate agency 6 market would be that portals could launch an estate 7 agent of their own, didn't you? You saw that as 8 a competitive threat? 9 A. Yes. 10 Q. And thought otherwise that they could brand an existing 11 agent in the name of, say, Rightmove Estate Agents, 12 something like that? 13 A. Yes. 14 Q. And you didn't want those competitive threats to be 15 given any life blood, did you? 16 A. We didn't have any means of affecting whether they came 17 to life or not. What we were looking at was 18 a competitive response from agents to say if that's 19 what, in your example, Rightmove chooses to do, then 20 we're going to enter the portals market and provide 21 ourselves with an alternative. 22 Q. The fact is that for all of these reasons that I have 23 just been through, the Agents' Mutual was 24 a fundamentally protectionist venture, wasn't it, 25 designed to insulate a category of the market, namely</p> <p style="text-align: center;">Page 147</p>	<p>1 the view of at least one of your board members as of 2 that date? 3 A. I think what he's talking about there is protection 4 against unlimited and unconstrained price increases. 5 Q. Thank you. Can we now, please, go to another theme that 6 in my suggestion you and the steering committee members 7 and then the members were trying to protect themselves 8 against. It is found in bundle 1/213. 9 Do you recognise this as being one of the pages in 10 an early discussion draft of what was then known as 11 project Z? 12 A. Yes, it is November 2011. 13 Q. Yes. One of the things that you were concerned about in 14 the range of threats that -- do you see the words "range 15 of threats" in line 2 on page 213? 16 A. Yes. 17 Q. I think you confirmed earlier you were largely 18 responsible for the production of this document, weren't 19 you? 20 A. I was. 21 Q. And you identify a range of threats. If you go down the 22 page you refer to, beneath the table, the amount of 23 money leaving to the main portals, the non-property 24 advertising and then there is another two threats. The 25 three bullet points are three threats, and you say just</p> <p style="text-align: center;">Page 149</p>

<p>1 above the bullet points: 2 "The last two threats are adding a percentage 3 referral commission on top of monthly listing fees." 4 So what you are worried about on behalf of you and 5 the steering committee, and on behalf of prospective 6 future members, was that portals may be changing their 7 pricing structure to you and asking for a percentage 8 referral commission on top of the monthly listing fees, 9 weren't you? 10 A. Yes. 11 Q. And then another thing that you were concerned about at 12 the time that you wanted, in my suggestion, to protect 13 yourself against is to be found in this bundle at 14 page 178. Do you see by the second hole punch there is 15 a series of bullet points under the rubric "The main 16 concerns of the agents are for the future". 17 A. Yes. 18 Q. And it is right to say, isn't it, that the traditional 19 full service agents, including the steering committee 20 members, had a profound concern about what they 21 described as the third bullet point, "the loss of 22 control of our data"? 23 A. That's absolutely right. They -- the usage of that data 24 and the manner in which -- I gave you the example in the 25 28 September presentation in Leighton Buzzard. They</p> <p style="text-align: center;">Page 150</p>	<p>1 these portal markets; correct? 2 A. The person who pays the agent is the vendor via the 3 commission. 4 Q. There are two sides to these portal markets; correct? 5 A. Yes. 6 Q. And on one side, extremely important because it is one 7 whole side, are house-hunters; is that not right? 8 A. It is right. 9 Q. And it is extremely helpful to the house-hunters, isn't 10 it, to know, for example, how long a house has been on 11 the market when they are looking to buy that house; 12 correct? 13 A. Yes, and it -- 14 THE CHAIRMAN: I think we need to hear about the other side, 15 Mr Harris. I am sorry, but we do. 16 A. Sorry, what was the point I was on, sir? 17 THE CHAIRMAN: We have talked about one side of the market. 18 A. The helpful to consumers, yes. 19 THE CHAIRMAN: Yes, but which consumers? 20 A. As far as I understood it, somebody who is a consumer 21 pays something for whatever they are consuming. But to 22 get away from that possibly confusing term, I have 23 talked about customers in this context as being the 24 agent is the customer of the portal, and the vendor or 25 the landlord is the customer of the agent. They are the</p> <p style="text-align: center;">Page 152</p>
<p>1 were very concerned about that as a format of 2 presentation of properties that they had been instructed 3 on to market. 4 Q. I think you -- and when I say "you" I mean effectively 5 you and the steering committee members who were dealing 6 with this document. 7 A. Yes, agents really. 8 Q. And on behalf of prospective members, yes. What you 9 were worried was that -- when you say loss of control of 10 data, is that you were worried that there would be 11 a weakening of the agents' central role in property 12 transactions via the provision of increased information 13 to consumers; correct? 14 A. That's certainly one of the concerns; that the agents' 15 data, which they had created, was then being 16 appropriated really by the portals and being used in 17 a manner that wasn't helpful. 18 Q. Not that -- sorry, not helpful to the agents; correct? 19 A. And their customers. 20 Q. No, on the contrary, Mr Springett, extremely helpful to 21 their customers. So, for example, the extra data being 22 provided by people like Zoopla and Rightmove were things 23 like how long a house had been on the market, wasn't it? 24 A. Tell me how that's helpful to the vendor. 25 Q. Mr Springett, there are two sides, aren't there, to</p> <p style="text-align: center;">Page 151</p>	<p>1 people paying for this and ultimately providing the 2 revenue to the portals. And I am saying that the 3 balance between providing a useful service on that side 4 of the market is attracting a consumer audience on the 5 other side, who are not paying, but who are benefiting 6 from the service being provided on that side of the 7 market. 8 MR FREEMAN: But, Mr Springett, if there were no buyers, 9 there would be no sellers, there would be no agents, 10 there would be no portals. 11 A. I agree. 12 MR FREEMAN: So they do play some role in this great scheme 13 of things. 14 A. I am not denying that, sir. 15 MR HARRIS: Thank you. I am back on the house-hunting side 16 of the market then. You were talking about the vendor 17 side. But I think you accepted from me a moment ago 18 that from that side of the market, the house-hunter, in 19 further information, ie increased information to 20 consumers, quoting from your page 179, about how long 21 a house has been on the market, that would be of benefit 22 to those people, wouldn't it? 23 A. On the consumer side, yes. 24 Q. And likewise increased information to consumers in the 25 form of a price history of the price, that would be of</p> <p style="text-align: center;">Page 153</p>

<p>1 benefit to that side of the market, wouldn't it?</p> <p>2 A. Increased information about?</p> <p>3 Q. The price history of a particular property.</p> <p>4 A. Yes, but it could be very disadvantageous to the person</p> <p>5 paying for the advert.</p> <p>6 Q. And additional information that the house-hunter side of</p> <p>7 the two-sided market might find beneficial would include</p> <p>8 independent valuation tools, wouldn't it?</p> <p>9 A. Well, it would depend whether they were in any way</p> <p>10 accurate I suppose.</p> <p>11 Q. A tool is going to be of use to them as opposed to</p> <p>12 having no tool, isn't it?</p> <p>13 A. As I say, it does depend on whether it is a good tool or</p> <p>14 not.</p> <p>15 Q. But the point is that the proposition on behalf of your</p> <p>16 constituent members, at this stage in the form of the</p> <p>17 steering committee and later on when it generated actual</p> <p>18 members, was to deny this increased information to</p> <p>19 consumers in the form of, for example, how long a house</p> <p>20 has been on the market, for example, what it's price</p> <p>21 history, or for example, by providing independent</p> <p>22 valuation tools; that is right, isn't it?</p> <p>23 A. No, not particularly, because you're implying that</p> <p>24 that's done by everybody. Rightmove doesn't provide all</p> <p>25 of that. They're the market leader.</p> <p style="text-align: center;">Page 154</p>	<p>1 to bid what I might otherwise have bid because I can see</p> <p>2 the price is going down. That is not in the interest of</p> <p>3 your members, is it?</p> <p>4 A. I can't see how that's of benefit to the advertiser, the</p> <p>5 person paying for the advert.</p> <p>6 Q. No, but it is of great benefit to the person who is</p> <p>7 trying to buy the house, isn't it?</p> <p>8 A. I am sure it has some benefit.</p> <p>9 Q. And likewise, an independent valuation tool, instead of</p> <p>10 just seeing the valuation that might have been put upon</p> <p>11 it by the estate agent, there is an independent tool and</p> <p>12 that might give rise to a lower valuation. That is of</p> <p>13 great benefit to the house-hunter side of the market,</p> <p>14 isn't it?</p> <p>15 A. Well, it might give rise to a higher valuation.</p> <p>16 Q. It might do. So it is a benefit whichever way it turns</p> <p>17 out?</p> <p>18 THE CHAIRMAN: Mr Harris, we may be getting into an area</p> <p>19 which we will almost certainly be covering with the</p> <p>20 experts. But speaking for myself, I am a little</p> <p>21 uncomfortable with your use of the single designation of</p> <p>22 consumer in this context.</p> <p>23 MR HARRIS: I think I have been using house-hunter.</p> <p>24 THE CHAIRMAN: Well, you have got consumer, in the last</p> <p>25 question, sees a price history, and of course if the</p> <p style="text-align: center;">Page 156</p>
<p>1 Q. There was a concern on the part of the steering</p> <p>2 committee and then the actual members when they joined</p> <p>3 that providing this increased information to consumers</p> <p>4 might impact upon their bottom line, wasn't there?</p> <p>5 A. Not particularly. I think they were concerned, first of</p> <p>6 all, that the data was owned by them, and as I mentioned</p> <p>7 earlier today, there was -- as soon as the portals were</p> <p>8 in a position to do so, in other words, a position where</p> <p>9 individually agents couldn't resist, they simply</p> <p>10 unilaterally changed the terms and conditions on which</p> <p>11 that data was transferred.</p> <p>12 Q. The concern about the bottom line arises in this way,</p> <p>13 Mr Springett, doesn't it: that if you say to</p> <p>14 a house-hunter, by providing this additional information</p> <p>15 to consumers, that a house has been on the market for,</p> <p>16 say, six months or two years, as opposed to just on the</p> <p>17 market, you can't tell, that might lead to a lesser</p> <p>18 offer for that house, because the person looking at it</p> <p>19 thinks: well, it's obviously not highly in demand. That</p> <p>20 is right, isn't it?</p> <p>21 A. Yes, if you are the advertiser it is really not very</p> <p>22 helpful at all, is it?</p> <p>23 Q. And likewise, if the consumer sees a price history and</p> <p>24 it can see that that is coming down again, that consumer</p> <p>25 might think: I will just wait a minute. I am not going</p> <p style="text-align: center;">Page 155</p>	<p>1 consumer is a house-hunter then it may be helpful, but</p> <p>2 if the consumer is the house-seller, for whom of course</p> <p>3 the estate agent is acting, then different</p> <p>4 considerations may come into play.</p> <p>5 MR HARRIS: That is a very fair point, sir. I will be more</p> <p>6 careful when I --</p> <p>7 THE CHAIRMAN: And in a sense, this is one of the</p> <p>8 complications of the market. Now, I am not sure how far</p> <p>9 we want to be drawn into a debate with a witness of fact</p> <p>10 in this area. I don't want to stop you, but I do think</p> <p>11 if you are making these points, you need to be very</p> <p>12 careful about -- we are not talking about a two-sided</p> <p>13 market here. We are talking about two groups of</p> <p>14 consumers, where both of them are consumers.</p> <p>15 MR HARRIS: That is a very fair point, sir, and apologies,</p> <p>16 Mr Springett, if I haven't been sufficiently clear to</p> <p>17 you.</p> <p>18 What I am suggesting to you by way of the increased</p> <p>19 provision of these types of tools or further information</p> <p>20 is that they are all of potentially significant benefit</p> <p>21 to the house-hunter consumer side of the two-sided</p> <p>22 market; that is right, isn't it?</p> <p>23 A. That may be. I suppose just thinking back, and it is</p> <p>24 a while back, but what this table is really trying to</p> <p>25 show is a continuum down which the portals begin to</p> <p style="text-align: center;">Page 157</p>

<p>1 compete with their customers. So you will see as the 2 end point there inclusion of direct private listings 3 alongside agent listings and this is where the vendor is 4 able to approach, let's say, Rightmove, as they do in 5 the overseas market, directly and disintermediate the 6 agents. And we are flagging up that by the creation of 7 the agents' own portal, we will in turn be able to 8 compete with the portals. 9 Q. Thank you. I suggest to you again, Mr Springett, that 10 one of the central reasons why the steering group and 11 then the members were opposed to the provision of this 12 further information to the consumer house-hunter side of 13 the market was because it might result in lower prices 14 being paid for the houses or properties and, therefore, 15 lower commissions to the traditional full service agent; 16 correct? 17 A. I think you're overstating the importance of that in 18 both cases, and it didn't really form a big part of any 19 of the presentations that we did to people. The main 20 issues were -- the main driver for this is the ever 21 increasing price rises. That was the current issue. 22 Q. Thank you. A moment ago, line 1, you said that it 23 didn't form a big part. But protecting the bottom line 24 by not allowing the house-hunter consumer side of the 25 market to have access via your portal to this increased</p> <p style="text-align: center;">Page 158</p>	<p>1 some points that had been raised by Kinleigh Folkard & 2 Hayward. One can see that from page 1154. And 3 Ms Whiteley writes to you on 21 June 2013 in an 4 attachment entitled "KFH.4doc". She says: 5 "Here you go, some thoughts on question 4. Helen." 6 And the document itself was on page 1160. And then 7 you can see that her bullet point 3 or numbered point 3 8 is: 9 "In terms of the portal not working and the concern 10 that you are prevented from listing with other effective 11 portals, the very strategy of Agents' Mutual will reduce 12 the power of the other portals as none will have 13 complete property coverage. The Agents' Mutual strategy 14 will also make it more difficult, if not impossible, for 15 new portals to enter the market." 16 So she at least did have that view of part of 17 Agents' Mutual's strategy being to create new barriers 18 to entry, didn't she? 19 A. I don't know whether she's talking about the purpose of 20 it. It might have had that effect. 21 Q. She says the strategy, Mr Springett. 22 A. Well, the objective of the strategy might not have been 23 that and was not that. 24 Q. So is your evidence that she has that wrong when she 25 says part of the strategy is to make it more difficult,</p> <p style="text-align: center;">Page 160</p>
<p>1 information was at least part of the aims and objectives 2 of Agents' Mutual, wasn't it? 3 A. Well, it's in line with current market policy of all the 4 portals. 5 Q. So the answer is yes, then. What you are saying is yes, 6 but other people did it as well? 7 A. I'm saying it was the market standard at the time. 8 Q. Yes, so the answer is yes then? 9 A. Okay. 10 Q. Is that right the answer is yes? 11 A. Remind me of the question again, please? 12 Q. (Pause). "Not allowing the house-hunter consumer side 13 of the market to have access via your portal to this 14 increased information was at least part of the aims and 15 objectives of Agents' Mutual, wasn't it?" 16 A. Yes. 17 Q. Thank you. Another one of the objectives of 18 Agents' Mutual was to create additional barriers to 19 entry to new portals, wasn't it? 20 A. No. 21 Q. I think certainly your number 2, Ms Whiteley, took that 22 view, didn't she? 23 A. I doubt it. 24 Q. Can we open up bundle 2, this time, please, and go to 25 page 1160. This is a draft response by Ms Whiteley to</p> <p style="text-align: center;">Page 159</p>	<p>1 if not impossible, for new portals to enter the market? 2 A. Which point am I reading from now? 3 Q. Number 3. 4 A. Reduce the power of the other portals; yes. 5 "The strategy will also make it more difficult, if 6 not impossible, for new portals to enter the market." 7 I do disagree with her on that, but in any event, as 8 we know, it was extremely difficult for new portals to 9 enter the market as it was. 10 Q. But I think a minute ago -- you tell me if I have not 11 understood -- I think you said a minute ago that "that 12 may have been the effect". I think those were your 13 words. That was the effect, wasn't it, to make it more 14 difficult, if not impossible, for new portals to enter 15 the market, right? 16 A. Well, there hadn't been a new entry of any significance 17 to the market for probably six or seven years by the 18 time that we entered in January 2015, so whether or not 19 we made it more difficult I think is a marginal point. 20 It was already very, very difficult to enter, given the 21 market circumstance that existed before. 22 Q. This may be one of the few points, Mr Springett, where 23 we are just agreeing. 24 A. Ah, excellent. 25 Q. What a relief. I think you said a minute ago it may</p> <p style="text-align: center;">Page 161</p>

<p>1 have made it more difficult, Agents' Mutual, for other 2 portals to enter the market.</p> <p>3 A. Yes.</p> <p>4 Q. And what you are saying is: well, yes, it was already 5 difficult, but your view is that it has made it more 6 difficult even though it was already difficult?</p> <p>7 A. I don't know whether it has or not, but any difference 8 would be marginal.</p> <p>9 Q. Thank you. We are going back now to an issue that has 10 been raised before. Do you remember that we had an 11 interchange about the number and identity of portals 12 either being a parameter of competition between estate 13 agents or at least ways of competing as between estate 14 agents?</p> <p>15 A. Yes, I remember that.</p> <p>16 Q. And I suggested to you that one of the aims and 17 objectives of Agents' Mutual was for the estate agent 18 members of Agents' Mutual to reduce their output and 19 therefore their expense in competing with each other; is 20 that right?</p> <p>21 A. I remember you said that, yes.</p> <p>22 Q. But that is right, isn't it? One of the aims was that 23 instead of having to spend away on two or three or four 24 portals, they would reduce the services that they 25 provided to a maximum of two portals and therefore save</p> <p style="text-align: center;">Page 162</p>	<p>1 A. I agree.</p> <p>2 Q. And likewise, that reduces their expenses, doesn't it, 3 because instead of having to spend on three or four or 4 five portals, they are in fact spending on only two 5 portals under the OOP rule; correct?</p> <p>6 A. That they don't spend on any more than two.</p> <p>7 Q. And it therefore reduces their expenses; correct?</p> <p>8 A. No, I'm saying prior to our entry to the market, you 9 heard Mr Symons say that he wasn't paying for any of 10 these other portals. The same with Mr Wyatt. So in 11 that sense reducing doesn't reduce their expenses.</p> <p>12 Q. But it certainly was an objective of Agents' Mutual, 13 wasn't it, to reduce the number of portals that the 14 member agents were spending on, and in most cases, 15 therefore, for them to reduce their overall expenditure?</p> <p>16 A. No, it didn't -- that's exactly what it didn't do 17 because the majority I think were listing on Rightmove 18 and Zoopla and not paying for anything else.</p> <p>19 Q. Mr Springett, I am now very confused by that answer 20 because it seems to be directly contrary to what you 21 yourself wrote in bundle 1 at page 181. Back in one of 22 the project Z documents which you wrote, and I am 23 reading towards the bottom of the page of 181, the first 24 bullet point: 25 "The effect of this will be ..."</p> <p style="text-align: center;">Page 164</p>
<p>1 money; that is right, isn't it?</p> <p>2 A. Well, I think you heard Mr Symons say that there were 3 only two that mattered.</p> <p>4 Q. Yes. Insofar as agents compete with two or three or 5 four, and we heard Mr Symons and Mr Wyatt and Mr Livesey 6 and Miss Frew, and in an unchallenged part of 7 Mr Forrest's evidence, all say that they have at times 8 and would be prepared to list on more than two portals. 9 Insofar as that happens or has happened or would 10 otherwise happen, it is restricted by the OOP rule, 11 isn't it?</p> <p>12 A. It is restricted by the OOP rule, but I think you also 13 heard Mr Symons say that the additional portals beyond 14 the duopoly were not a relevant factor in competition 15 between agents.</p> <p>16 Q. In so far as it comes down to 2 from a number above 2, 17 that is less output, isn't it, from estate agents?</p> <p>18 A. I think output, is that a technical ...?</p> <p>19 Q. They are doing less advertising. If they were or could 20 be advertising on three or four or five portals and they 21 are restricted to producing advertising output on only 22 two portals, that is obviously right, isn't it, 23 Mr Springett?</p> <p>24 A. All right.</p> <p>25 Q. You agree?</p> <p style="text-align: center;">Page 163</p>	<p>1 So that paragraph deals with the OOP rule. We are 2 going to come back to that in a minute because of some 3 extremely interesting differences in the rule as it then 4 was. But the last sentence reads: 5 "The effect of this will be to reduce the number of 6 portals in most cases each member lists with and their 7 overall portal expenditure". 8 So I suggest to you again that that was something 9 you were aiming to achieve by the Agents' Mutual mutual 10 company, weren't you?</p> <p>11 A. Could I take you, Mr Harris, to the paragraph above the 12 dot points?</p> <p>13 Q. Yes.</p> <p>14 A. Where it says: 15 "To allow it to achieve a sustainable entry to an 16 already highly concentrated market with two entrenched 17 major players. The venture needs to harness the value 18 of the aggregated property listings. The listings will 19 be committed to the preferred portal on an exclusive 20 basis for at least three years." 21 So that isn't the One Other Portal rule. This is 22 a much earlier stage of the evolution of the 23 proposition.</p> <p>24 Q. I am sorry, this is the earlier gestation of the One 25 Other Portal rule, isn't it?</p> <p style="text-align: center;">Page 165</p>

<p>1 A. But the dot points refer to the paragraph above, so this 2 isn't One Other Portal in action. This was an early 3 draft where a part of the discussion was full 4 exclusivity, which was not in the end adopted. 5 Q. It was supposed to be full exclusivity for at least 6 three years, not five years; correct? 7 A. Well, that's what it says, but this is 2011. It is well 8 before the actual business plan was crystallised. 9 Q. And it goes on -- I am going to be coming back to this 10 paragraph, but since you wanted to go to it, do you see 11 at that stage of the thinking of you and the steering 12 committee not only was it only a three-year restriction, 13 but in fact the thinking was that: 14 "The exemption should be made such that agents could 15 list their properties priced at less than 1 million or 16 renting for less than 500 per week also on Rightmove 17 over this period." 18 Correct? 19 A. This entire paragraph and this, really, the great 20 majority of the document, was superseded by things which 21 evolved to become the actual business plan of 2013. 22 Q. That is right. I am going to be coming back to this 23 because in my suggestion to you in due course it is 24 a highly revealing at this stage that you were 25 identifying Rightmove as the one other portal.</p> <p style="text-align: center;">Page 166</p>	<p>1 concerns of agents was that they were being forced 2 effectively, by the policy of the portal owners, to list 3 on more than they wanted to. 4 Q. And I suggest to you that by restricting the number of 5 portals that each member lists with, that that amounts 6 to a restriction in this parameter of competition 7 between estate agents, doesn't it? 8 A. It might have done had we done it, but we didn't do it. 9 Q. No, you obviously restrict -- you had an OOP rule when 10 you launched, didn't you? 11 A. Yes, but what you are referring to in this document is 12 a time where consideration was being given pre-merger in 13 the context where there were four portals, two of which 14 were under the same ownership and being marketed as 15 a package and at a point where we were considering the 16 fully exclusive option, which was subsequently deemed 17 unviable. 18 Q. The OOP rule -- 19 A. So that's a completely hypothetical set of ... 20 MR MACLEAN: Mr Harris, without interrupting your flow, 21 could I just ask whose scribbles are there? I have one 22 other portal -- 23 A. That is me. 24 MR MACLEAN: That is you? 25 A. Yes. And this is probably in response to feedback from</p> <p style="text-align: center;">Page 168</p>
<p>1 A. Well, because -- 2 Q. I am sorry, Mr Springett, I haven't quite finished. And 3 also very revealing that at that stage you thought you 4 could enter with a three-year restriction. But for the 5 moment I am still on the point in the first bullet, so 6 I suggest it to you again, and I will put it a different 7 way. 8 Irrespective of the precise content of the OOP rule 9 you had in mind at that stage, what you intended to 10 achieve by the Agents' Mutual company was to reduce the 11 number of portals in most cases that each member lists 12 with and their overall portal expenditure. 13 That is right, isn't it? 14 A. Well, it is a different circumstance because this is 15 pre-merger here. This is 2011. 16 Q. I don't deny the date, but let me try again, 17 Mr Springett. 18 A. Well -- 19 Q. At that stage what you saw as one of the aims and 20 objectives of Agents' Mutual was to reduce the number of 21 portals each member lists with and therefore their 22 overall expenditure. That is simply right on the face 23 of the document, isn't it? 24 A. It was certainly one of the concerns because the market 25 at that stage had four portals in it, and one of the</p> <p style="text-align: center;">Page 167</p>	<p>1 the steering committee. 2 MR HARRIS: Thank you. So I am going to suggest to you 3 again, Mr Springett, that the OOP rule as adopted by the 4 company has reduced this parameter of competition 5 between estate agents because it reduces the number and 6 identity of portals that they can list on, doesn't it? 7 A. I don't agree with that and let me explain why. We were 8 in a situation where only two portals counted. We've 9 entered the market and there are now three portals and 10 the intense focus of competition between estate agents 11 has been around those people who have remained with 12 Rightmove and Zoopla and our members who have chosen one 13 of two combinations, three combinations possibly, 14 Rightmove and OnTheMarket, Zoopla and OnTheMarket, or 15 OnTheMarket alone. 16 And within the bundle there are lots of examples 17 where agents who have not joined Agents' Mutual on the 18 market are using that as a competitive weapon in the 19 fight for vendors against our members. So I think I've 20 maintained this all along, that competition around 21 portals has increased relative to the situation that 22 existed before. 23 Q. There are two points there, Mr Springett. Just on 24 a point of detail, you suggested I think in your answer 25 that there are some of your members who have chosen only</p> <p style="text-align: center;">Page 169</p>

<p>1 OnTheMarket. That is simply not right, is it?</p> <p>2 A. They could do though.</p> <p>3 Q. But they haven't in fact, have they?</p> <p>4 A. I think very few.</p> <p>5 Q. That is right. And then my question was about what you</p> <p>6 sought to achieve with the OOP rule, and largely you</p> <p>7 answered by reference to what you say has happened. So</p> <p>8 I am going to try again.</p> <p>9 The aim of the OOP rule was to reduce competition as</p> <p>10 regards the number and identity of portals that estate</p> <p>11 agents would otherwise choose, which is an important</p> <p>12 parameter of competition, isn't it?</p> <p>13 A. Well, if you want to have a discussion about what</p> <p>14 the aim of the one other portal is we shouldn't be</p> <p>15 looking at a document that was drafted in November 2011.</p> <p>16 We should --</p> <p>17 Q. I am not, Mr Springett --</p> <p>18 A. We should go to --</p> <p>19 Q. I carefully expressed the question as being the form of</p> <p>20 the OOP rule at the time of launch.</p> <p>21 A. The idea of that was to make sure that agents were not</p> <p>22 spending any more than they currently were on their</p> <p>23 portal roster.</p> <p>24 Q. That is right, and not choosing more than two portals</p> <p>25 where the number and identity of portals is an important</p> <p style="text-align: center;">Page 170</p>	<p>1 Q. I think just quoting back some of your answer there, you</p> <p>2 prefaced it with unfair, but then you went on to say it</p> <p>3 was a method of competition. The additional products</p> <p>4 would be a method of competition as between estate</p> <p>5 agents who are listing on Agents' Mutual, wouldn't they?</p> <p>6 A. This is a dominant market leader restricting key</p> <p>7 advertising -- creating and then restricting key</p> <p>8 advertising positions and bidding the price up.</p> <p>9 Q. No, no, Mr Springett. I am talking about additional</p> <p>10 products on OTM's portal. You said a moment ago in</p> <p>11 answer to the question that you described that as being</p> <p>12 for some reason an unfair method of competition.</p> <p>13 A. No, no, I didn't. I said that's how those products were</p> <p>14 viewed in the context of the two existing portals, and</p> <p>15 Rightmove in particular.</p> <p>16 Q. But as regards additional products on your own portal,</p> <p>17 that would be a method of people, even on your own</p> <p>18 portal, competing with each other, wouldn't it?</p> <p>19 A. Had they been introduced, yes, it would.</p> <p>20 Q. That is right. And the point is, Mr Springett, that the</p> <p>21 agent members didn't want even that method of competing</p> <p>22 between themselves, did they, and that's why they</p> <p>23 rejected it at these 39 presentation meetings; correct?</p> <p>24 A. I don't know why individually they all rejected it. Not</p> <p>25 everybody did. But it was clear to us that they weren't</p> <p style="text-align: center;">Page 172</p>
<p>1 parameter of competition; correct?</p> <p>2 A. Well, I can't -- I can repeat it again, but I don't</p> <p>3 think that it was an important parameter in operation</p> <p>4 before. It became more so after our entry, even though</p> <p>5 the net effect of the One Other Portal rule was that our</p> <p>6 members would continue to list on two portals.</p> <p>7 Q. I don't propose to take you back to the document unless</p> <p>8 you particularly want to see it, but earlier on we</p> <p>9 looked at the report back at the meeting where the 39</p> <p>10 meetings at which, many of them, additional products on</p> <p>11 the OTM portal itself had been put forward or presented</p> <p>12 to agents. Do you remember that?</p> <p>13 A. Yes.</p> <p>14 Q. And my suggestion to you is that when the agents came</p> <p>15 back, mostly to say they wanted a level playing field,</p> <p>16 it is because they also didn't want to see a competition</p> <p>17 even on the OTM portal itself as between themselves, did</p> <p>18 they?</p> <p>19 A. I think they, as you probably picked up from some of the</p> <p>20 things we looked at, saw the additional products as an</p> <p>21 unfair method of creating competition and primarily</p> <p>22 simply creating price increases. That is how those</p> <p>23 additional products were viewed, and the feedback from</p> <p>24 the members was: we do not want to recreate Rightmove</p> <p>25 here.</p> <p style="text-align: center;">Page 171</p>	<p>1 wanted.</p> <p>2 Q. We do know why they rejected it, Mr Springett, because</p> <p>3 you reported it in the note of that meeting -- I will</p> <p>4 happily turn it up again if you like -- where it says</p> <p>5 they wanted to create a level playing field.</p> <p>6 A. Yes.</p> <p>7 Q. And they didn't want to compete with each other, did</p> <p>8 they?</p> <p>9 A. That's not true. That is the best place to compete, on</p> <p>10 a level playing field.</p> <p>11 Q. Gentlemen, the reference is 8/4579. I am not going to</p> <p>12 turn it back up. I am in your hands. I know there</p> <p>13 ought to be a break and we started a bit early.</p> <p>14 THE CHAIRMAN: Let's rise for five minutes, but before we</p> <p>15 do, it may not matter but I just want to understand</p> <p>16 a little bit more about the witness's terminology.</p> <p>17 Please just use your terminology, not the lawyers'. You</p> <p>18 will recall the exchange Mr Harris and I had about</p> <p>19 consumers.</p> <p>20 A. Yes.</p> <p>21 THE CHAIRMAN: And please don't think like a lawyer. Think</p> <p>22 like the businessman you are. You threw into the</p> <p>23 exchange with Mr Harris the term "advertiser".</p> <p>24 A. Yes.</p> <p>25 THE CHAIRMAN: And what I am really interested in is your</p> <p style="text-align: center;">Page 173</p>

1 impression or your take in terms of the services being
 2 provided by these portals and the relationship that you
 3 perceive they have with estate agents. Are you seeing
 4 the portals as essentially providing advertising
 5 services?
 6 **A. Yes, they -- I see them as media, and one of the crucial**
 7 **differences which I alluded to before is unlike**
 8 **a newspaper or a magazine, which attracts an audience by**
 9 **virtue of the quality of the editorial content and then**
 10 **it sells the audience it has attracted to advertisers,**
 11 **in the case of a portal the content that consumers come**
 12 **to see are the property listings themselves. So in**
 13 **addition to providing that valuable content to the**
 14 **portals, the agents are also providing the advertising**
 15 **revenue to the portals.**
 16 THE CHAIRMAN: Yes, I see. But in a sense, you are seeing
 17 the portals as one option for the estate agent of having
 18 their own paper property magazine or advertising in
 19 newspapers or, dare I say, television advertising.
 20 **A. Yes.**
 21 THE CHAIRMAN: So one of a range of things.
 22 **A. Indeed.**
 23 THE CHAIRMAN: And you see them as -- obviously, it is
 24 a commercial decision as to which one you go for --
 25 **A. Yes, and it is in the context of an overall marketing**

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1 **mix that they might deploy ...**
 2 THE CHAIRMAN: In that context, Mr Harris banded about the
 3 word "consumer". Would you regard the estate agent as
 4 the consumer? Or do you think that is not a helpful
 5 designation?
 6 **A. As Mr Freeman quite rightly observed, buyers are also**
 7 **sellers. But the person paying --**
 8 MR FREEMAN: That is not quite what I said. I said without
 9 buyers there wouldn't be sellers. Whether sellers
 10 become buyers and vice versa, which I am sure they do,
 11 is a different question.
 12 **A. I understand that. What I am focused on is that this is**
 13 **fundamentally an advertising service which is being**
 14 **provided by the portals, and the agent selects whether**
 15 **to list on that portal and pays a fee for the**
 16 **advertising. That content is then what attracts**
 17 **property seekers, which is the essential audience of**
 18 **hopefully motivated buyers and tenants that satisfy the**
 19 **advertiser.**
 20 THE CHAIRMAN: I don't know if that helps very much but it
 21 was something I wanted to bottom out.
 22 MR HARRIS: Can I raise two very brief housekeeping matters.
 23 I think we are finishing today at 4.15. Is that
 24 correct?
 25 THE CHAIRMAN: Between 4.15 and 4.30. But if we had

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1 a preference, yes, closer to 4.15 than 4.30.
 2 MR HARRIS: I understand. Also I don't know about anyone
 3 else but I am certainly increasing in temperature.
 4 THE CHAIRMAN: I noticed that and was going to raise it, but
 5 thank you for raising it. We will raise it with a view
 6 to lowering it.
 7 MR HARRIS: Thank you.
 8 MR MACLEAN: Sir, just before the Tribunal rises, as well as
 9 listening to the fascinating debate about consumers, my
 10 subconscious part of my brain has been thinking about
 11 the point Mr Harris raised with you at 2 o'clock, which
 12 took me somewhat by surprise; the purdah point. If
 13 I can be permitted to make my submissions on a drip feed
 14 basis.
 15 The reason why Mr Harris's suggestion -- which, as
 16 I say, I was surprised by, because it is not my
 17 understanding of the normal position -- can't be right
 18 is this: as I understand his position, at the start of
 19 the hot tubbing the experts go into purdah and they
 20 emerge from purdah when they finish giving their
 21 evidence. Conveniently for Mr Harris, Mr Parker will be
 22 cross-examined first, and he would come out of purdah,
 23 on Mr Harris's view of the world, on Tuesday afternoon
 24 and would not be in purdah on Wednesday afternoon when
 25 Mr Harris was cross-examining Mr Bishop. But the

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1 contrary position would not attain and so there would be
 2 inequality of arms, and that patently wouldn't be fair.
 3 There are only two ways out of that --
 4 THE CHAIRMAN: Stretch the purdah or abrogate it.
 5 MR MACLEAN: The obvious answer to that, in order to better
 6 assist the Tribunal by having more focused questions
 7 asked of the experts, I would respectfully have thought
 8 would be to release the purdah, which in my
 9 understanding is the normal position anyway, at the end
 10 of the hot tub in the usual way.
 11 But Mr Harris' suggestion, if I have understood it
 12 correctly, cannot be right.
 13 THE CHAIRMAN: The order of the witnesses hadn't escaped me.
 14 MR MACLEAN: No.
 15 THE CHAIRMAN: I do want to think about the question of how
 16 far the purdah stretches, so ...
 17 MR MACLEAN: If one asks oneself, why is the purdah rule
 18 there? It is to stop the witness being, as it were,
 19 interfered with, suggestions made and so on, in the
 20 middle of that evidence. But the two are, in my
 21 submission, entirely separate exercises, and if one
 22 says, what's the damage to the interests of justice of
 23 the purdah stopping at the end of the hot tub? It is
 24 very difficult to see what it is.
 25 THE CHAIRMAN: I completely understand where both of you

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1 come from, but Mr Harris, don't let me shut you out.
 2 MR HARRIS: I would like to consider it further. It doesn't
 3 arise right now.
 4 THE CHAIRMAN: It doesn't.
 5 MR HARRIS: Perhaps we can review the matter on Monday
 6 morning. We don't agree with Mr Maclean's submissions,
 7 but of course he's had the opportunity whilst I have
 8 been cross-examining --
 9 THE CHAIRMAN: Whilst you have been slaving away in a hot
 10 court room, he has been thinking about purdah.
 11 MR MACLEAN: At some stage I was wishing I was in purdah.
 12 MR FREEMAN: Can't you think about two things at once,
 13 Mr Harris?
 14 MR HARRIS: Believe me, Mr Freeman, I have been trying.
 15 THE CHAIRMAN: We will rise for no more than five minutes.
 16 (3.10 pm)
 17 (A short break)
 18 (3.15 pm)
 19 THE CHAIRMAN: We have briefly hot tubbed ourselves about
 20 the process on purdah and provisionally our thinking is
 21 this: that we are minded to have the hot tub process,
 22 where the Tribunal, and only the Tribunal, is asking
 23 questions of both experts, carried on in its separate
 24 purdah. When the hot tubbing ceases, the experts of
 25 course depart and one goes into the witness box and the

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1 other, we think -- well, both are then released from
 2 purdah and then we would be inclined to have a new
 3 process start where the experts are themselves
 4 individually in purdah, if that makes any sense.
 5 Now, I appreciate that that does give rise to one
 6 issue, which is the converse of the problem Mr Maclean
 7 raised, which is that you, Mr Harris, might want to take
 8 instructions or consult with your expert in light of
 9 some of the answers that were given in the hot tub for
 10 the purpose of your cross-examination. I can see that
 11 might be relevant. In other words, you might want,
 12 between the hot tubbing ending and the witness evidence
 13 beginning, to have a conversation with your expert, and
 14 that I think is something which we would be inclined to
 15 allow both parties.
 16 MR MACLEAN: That is my problem, sir. It is my problem
 17 because it is Mr Parker who is cross-examined first. So
 18 I am the one who has the (inaudible) after the hot tub.
 19 THE CHAIRMAN: Sorry, I may have got my parties sorted
 20 out --
 21 MR MACLEAN: But when Mr Parker is finished on the Tuesday
 22 evening, he is out of purdah. Mr Harris is
 23 cross-examining on Wednesday afternoon, so he has no
 24 problem.
 25 THE CHAIRMAN: There is that point. There is a slightly

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1 different point, which is the fact that both of you may
 2 well want to speak to your experts between the ending of
 3 the hot tub and the beginning of cross-examination, and
 4 it seems to me that we would be inclined, if you wanted
 5 that, hopefully not for very long, to afford it to you.
 6 But it seems to me that the logic of that is that we are
 7 speaking about two separate processes. We are talking
 8 about the hot tub process, during which one purdah
 9 applies, that ends, and then one goes into
 10 a cross-examination where an individual purdah applies
 11 to the witness giving evidence.
 12 MR HARRIS: That is one of the issues. The other issue
 13 which is further at the forefront of our mind is that
 14 the normal rule for purdah, as we understand it, is
 15 there is a risk that during the course of giving
 16 evidence, by consulting, talking to a witness, the
 17 witness's evidence is then -- and I mean this in
 18 a neutral sense, the word which is often used is
 19 "contaminated". The concern that therefore arises as
 20 a matter of principle, I am not suggesting any untoward
 21 behaviour or anything like that, is that Mr Bishop will
 22 be consulting with, whilst on one view still giving
 23 evidence, his team about matters of substance, including
 24 those which he has partly given his evidence in response
 25 to the hot tubing, and yet partly to give his evidence

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1 in relation to my cross-examination.
 2 Whereas there is an opportunity on the current
 3 timetable for that to occur -- and as I say, I mean this
 4 in the in principle sense of contamination -- for
 5 Mr Bishop between Tuesday lunchtime through to Wednesday
 6 lunchtime, in sharp contrast, on the current timetable
 7 there is nil opportunity for any of Mr Parker's evidence
 8 to be "contaminated", although that might be subject to
 9 a short window that you have just identified, but in any
 10 event that is a completely different window.
 11 So may we consider it further because --
 12 THE CHAIRMAN: Someone has to go first and someone has to go
 13 second.
 14 MR HARRIS: I accept that.
 15 THE CHAIRMAN: And that is why I think it was actually your
 16 problem and not Mr Maclean's problem that I was
 17 addressing, because rather than having a situation where
 18 it is an inability on the part of you to speak to an
 19 expert immediately upon embarking upon cross-examination
 20 of the other, which I can see you might well want to
 21 say, I need to explore this with you, I am trying to
 22 afford both counsel that opportunity to consult with the
 23 experts they have.
 24 By all means think further, but we'll have to have
 25 a view I think first thing Monday morning.

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<p>1 MR HARRIS: Yes, sir. You see one thing that occurs to 2 me -- just on my feet; I am doing my best to think of 3 two things at once -- is that if Mr Parker is available 4 on Wednesday morning, and I don't know, I have to take 5 instructions, it may be that the sensible course would 6 be to have the hot tubbing finished by no later than 7 Tuesday afternoon. It is not as though we and the 8 Tribunal don't have plenty of things to do on Tuesday 9 afternoon in any event. And then Mr Parker give his 10 evidence on Wednesday morning and Mr Bishop give his 11 evidence on Wednesday afternoon.</p> <p>12 MR MACLEAN: That doesn't work though.</p> <p>13 THE CHAIRMAN: Because he is away.</p> <p>14 MR MACLEAN: It is a non-starter.</p> <p>15 THE CHAIRMAN: Wednesday morning is a problem in terms of --</p> <p>16 MR HARRIS: In any event, in my respectful submission the 17 matter does require further thought because each side 18 has a legitimate concern and it needs to be fairly dealt 19 with. I am not able to deal with that fully and fairly 20 right now on my feet, but I promise, if I can put it 21 like that, sir, to come back with our final submission 22 on the topic on Monday morning and then the Tribunal 23 will make its view very clear, whether the provisional 24 view or --</p> <p>25 MR FREEMAN: And you will have in mind that the experts as</p> <p style="text-align: center;">Page 182</p>	<p>1 something which has arisen, we will make our final 2 position clear on Monday morning, and if that is not 3 exactly as the Tribunal has indicated it is 4 provisionally minded to do, we will say that and the 5 Tribunal will decide.</p> <p>6 THE CHAIRMAN: Very good. One more minute on this. We were 7 minded to hand or circulate to the parties a short 8 protocol on the hearing of concurrent expert evidence, 9 and I believe we will call it the hot tubbing process, 10 which will contain a few guidelines and a brief and 11 fairly broad brush agenda for the experts.</p> <p>12 MR HARRIS: Thank you.</p> <p>13 THE CHAIRMAN: One thing that they can expect is an 14 evolution of the data that both experts helpfully 15 provided the Tribunal in response to our question. We 16 tried to pull that together into a single document for 17 them to consider. So it might be helpful if both 18 experts were to mark out Monday morning as time just to 19 digest both the protocol and the data.</p> <p>20 MR HARRIS: Thank you. And I am hoping Mr Freeman won't 21 invite me personally to digest it whilst I am finishing 22 off the cross-examination.</p> <p>23 MR FREEMAN: I have enormous confidence in your ability to 24 do so, Mr Harris.</p> <p>25 MR HARRIS: Thank you very much.</p> <p style="text-align: center;">Page 184</p>
<p>1 experts have a particular duty to the Tribunal --</p> <p>2 MR HARRIS: Absolutely, sir.</p> <p>3 MR FREEMAN: -- not to allow themselves to be contaminated.</p> <p>4 MR HARRIS: I entirely accept that, sir. You can see the 5 issues.</p> <p>6 THE CHAIRMAN: I see the issues, but I think Mr Freeman's 7 point is well made in the sense that in 8 contradistinction to the factual witnesses, who 9 obviously would never hot tub, the experts are obliged 10 to push back if they are being, as it were, pushed down 11 a route that they know in their duty to the court they 12 don't feel it appropriate to go down.</p> <p>13 So in a sense, the purdah rule is of less 14 importance -- I'm not diminishing it, but it is of less 15 importance in the case of experts than it is in the case 16 of factual witnesses.</p> <p>17 MR HARRIS: Yes.</p> <p>18 THE CHAIRMAN: Whereas for both parties to have the ability 19 to speak to their experts and be guided by them when 20 they are dealing with other experts in the witness box, 21 that is also quite an important aspect for the function 22 of an expert. I think you see where I am going on this, 23 Mr Harris.</p> <p>24 MR HARRIS: I can see there are competing interests. All 25 I am really saying, as I know you know, is that this is</p> <p style="text-align: center;">Page 183</p>	<p>1 MR FREEMAN: And something else as well no doubt.</p> <p>2 MR HARRIS: Mr Springett, if we could go back to some of 3 these bundles, please. I have one open in front of me, 4 bundle 2/992. If you could please turn that up. You 5 will recognise this is the second page of an email that 6 we already looked at and you wrote on 7 June, a report 7 on progress, and we looked at it, the previous page, 8 where you said you were working on a southwest regional 9 meeting. Do you remember that?</p> <p>10 A. Yes.</p> <p>11 Q. If you turn over the page, at the top of the second page 12 you will see that:</p> <p>13 "Michael F has kindly agreed to help form 14 a reasonable group in East Anglia, presenting to 15 Cheffins and Bidwells ..."</p> <p>16 Michael F. Is that like Fiddes, a steering 17 committee and then founder board member?</p> <p>18 A. Yes.</p> <p>19 Q. And he is from Strutt&Parker; is that right?</p> <p>20 A. He is.</p> <p>21 Q. And can we then put away number 2. I just wanted to 22 locate another grouping, this time on the eastern side 23 of the country. Move into bundle number 10 now, please, 24 and open it at 5749. I think I am right in saying that 25 this is an email amongst a group of East Anglian estate</p> <p style="text-align: center;">Page 185</p>

<p>1 agents. Do you recognise any of those people? There 2 are various people. It becomes clear -- 3 A. I think this is a group of members or -- representing 4 member firms. 5 Q. They are based in the East Anglia region. If you turn 6 to the last page of the email you can see it is from 7 a Mr Hammond, managing director of Hammond Lee, which is 8 a Norfolk estate agent. Do you see that? 9 A. Yes. 10 Q. And what he talks about is a collective marketing 11 campaign. And then if it is not unfair to paraphrase 12 Mr Hammond in this way -- I appreciate that you 13 personally didn't receive this email but I can see that 14 your number 2 did, right, Miss Whiteley; that he has 15 effectively -- as I say, I hope this is not unfair -- 16 a sort of a bit of a moan or a go at online agents in 17 Norfolk. Do you see the top of page 5750? So what he 18 says is: 19 "The properties for sale by online agents in 20 Norfolk ..." 21 And then he names some very prominent 22 non-traditional non-full service agents, doesn't he? 23 A. He does. 24 Q. So amongst the more famous, or perhaps you prefer 25 infamous, Mr Springett, such people are Purplebricks and</p> <p style="text-align: center;">Page 186</p>	<p>1 group of Norfolk and East Anglian estate agents, as 2 identifying a threat to his grouping of traditional 3 agents from the online agents? 4 A. I would. I mean, I think his primary purpose is at the 5 bottom of page 5750, which is to encourage everybody to 6 stump up 30 quid for an advert. 7 Q. That is right. But he is regarding them, in my 8 suggestion to you, Mr Springett, as a threat, and he is 9 even quantifying the threat and saying effectively -- do 10 you think this is a fair characterisation? -- "Look, 11 they are taking away from us potential fees of just over 12 half a million to nearly three quarters of a million 13 pounds?" 14 A. He is identifying competitor activity. 15 Q. Exactly. So they are competitors, and indeed they are 16 head-on competition, these online agents, aren't they, 17 in many ways geared to undercutting the fees charged by 18 the traditional online agents; is that right? 19 A. That's exactly right; that they -- and one of their 20 approaches to this is to present themselves as full 21 service agents but at a fraction of the price. And one 22 of the objectives of the traditional agents, and again, 23 Mr Symons made reference to it, is to highlight the 24 differences, differentiate themselves. 25 Q. In a moment I shall take you to a document that suggests</p> <p style="text-align: center;">Page 188</p>
<p>1 then eMoov; yes? 2 A. Yes. 3 Q. And indeed Hatched. Who now owns Hatched? 4 A. I believe Connells acquired it. 5 Q. So we will come back to that, Mr Springett. But in any 6 event, what he is saying is: here are some properties 7 being sold in my neck of the woods by some of these 8 well-known online estate agents. And he is basically 9 a bit upset, isn't he, because what he then says is, 10 having identified a total of 197 properties on his 11 online estate agents in his region, he goes on to set 12 out a little arithmetic exercise at the bottom and he 13 says beneath it: 14 "I consider the 197 instructions at an average 15 asking price, according to Rightmove, in Norfolk of 16 207,000 equates to 40-odd million of property values. 17 Let's assume we use this figure and multiply our average 18 fees [that is a commission fee, isn't it, of 19 1.25 per cent and 1.75 per cent]. We are basically 20 allowing the online presence to remove a potential 21 income from ourselves of between ..." 22 Well you can see the figures, 510,000 to 23 714,000-odd." 24 So would it be fair to characterise this email in 25 your view, Mr Springett, as Mr Hammond, amongst this</p> <p style="text-align: center;">Page 187</p>	<p>1 that there is really no substantive difference. I will 2 do that in a moment. But I am right in saying, 3 aren't I, that some of the member agents of 4 Agents' Mutual regard online agents as simply stealing 5 their business, don't they? 6 A. Well, if they do, it's in their minds. 7 Q. I am sorry, I don't quite understand that. "If they do, 8 it's in their minds." What does that mean? 9 A. In other words, I'm not aware of what they all think 10 and ... 11 Q. That is not right, is it, Mr Springett, because in fact 12 in volume 14/7910 you are expressly aware of a group of 13 agents where they say exactly that they think these 14 online agents are stealing their business. 7910 in 15 bundle 14. Do you see that this is another -- I don't 16 believe we looked at this one before, but this is 17 another example of an email amongst the west Wales 18 grouping, isn't it, this time February 2016? 19 A. Right, yes. 20 Q. And it is copied to you, isn't it? 21 A. Yes. 22 Q. It attaches some notes of a meeting that they held, this 23 west Wales group, at a meeting in Carmarthen. 24 A. Yes. 25 Q. You see over the page the notes start. And then the bit</p> <p style="text-align: center;">Page 189</p>

<p>1 I would like to take you to is -- actually, there are 2 two bits. The bit on page 7911 by the second hole 3 punch, just above it. As I understand it, this is 4 recording the notes of the group meeting, and it says in 5 the second sentence: 6 "The two large portals are supporting what could be 7 the biggest threat to the independent estate agency 8 industry and the growth of the online-only estate 9 agents, including Purplebricks." 10 Do you see that? 11 A. Yes. 12 Q. And then the bit that you said you didn't know that they 13 thought is over on 7913, just below the first hole 14 punch: 15 "Do we want a situation with Tesco, Purplebricks ... 16 stealing the business through the likes of Rightmove and 17 Zoopla?" 18 So you did have some reports at least of 19 Agents' Mutual members regarding online competitors as 20 stealing their business, right? 21 A. Okay. 22 Q. And indeed, I think it is right that one of the aims of 23 Agents' Mutual was to set up a situation in which those 24 onlines would not be able to compete with you, isn't 25 that right?</p> <p style="text-align: center;">Page 190</p>	<p>1 Agents' Mutual, setting up a situation in which they 2 wouldn't be able to compete with the other members of 3 Agents' Mutual? 4 A. Well, I'm not aware of that, and it's obviously wrong 5 because they are pretty vigorous competitors. 6 Q. Can I take you back then to the -- I think you have it 7 in loose form -- the transcripts of the Northern Ireland 8 meetings. Can we pick it up at page 92 in the bottom 9 numbering. Do you see this is being put forward as 10 being a transcript of the words of Lorna Kerr, the 11 Agents' Mutual representative in Northern Ireland. Do 12 you see that? 13 A. Yes, I see that. 14 Q. And do you see over the page at the top of 93 it is 15 being put forward as her words where she says, picking 16 it up at the third line down: 17 "It is estimated over the next five years that the 18 online estate agency business will grow by 50 per cent, 19 so there is a huge amount of investment going into 20 online estate agency just now, which is a threat to your 21 business." 22 And it is being put forward, isn't it, as her 23 speaking to a group of estate agents; yes? 24 A. Yes. 25 Q. "... and if that's something that you don't see coming</p> <p style="text-align: center;">Page 192</p>
<p>1 A. Sorry, you have lost me slightly. 2 Q. One of the aims of the Agents' Mutual business was to 3 set up a situation in which the onlines would not be 4 able to compete with the full service agents that were 5 members? 6 A. No, that's complete nonsense. They have use, continuing 7 use of the two existing very powerful portals. It is 8 not like they're short of places to advertise, and that 9 only covers portals, and there are lots and lots of 10 other places where they can advertise. What you will 11 see at the bottom of 7913 is: 12 "We must all shout and get our staff to shout about 13 the service we offer compared to online-only agents." 14 Q. I am sorry, Mr Springett. Thank you for bearing with me 15 for a moment. (Pause). 16 I suggest to you that there was at least one 17 Agents' Mutual's representative who saw the strategy of 18 Agents' Mutual as including setting up a situation in 19 which the likes of Purplebricks wouldn't be able to 20 compete with Agents' Mutual. Do you accept that that is 21 a view that was taken by -- 22 A. I don't think -- I didn't particularly regard 23 Purplebricks at this point -- it might become one -- as 24 a competitor for Agents' Mutual. 25 Q. No, as excluding competition against the members of</p> <p style="text-align: center;">Page 191</p>	<p>1 in Northern Ireland, again, what I would say to you is 2 just because you can see the brand of Purplebricks, you 3 are maybe not recognising all the other smaller guys who 4 are operating from home just now. They wouldn't be able 5 to do it if it wasn't for the portals allowing them to 6 do it and they wouldn't be able to compete with you. So 7 that's why people decided to back Agents' Mutual." 8 Do you see that? 9 A. I do, and there is a point I'd like to make about this, 10 which I did touch on earlier, that it is a blurring of 11 the line between private listings by vendors and 12 landlords and property professionals, estate agents, 13 because some of the propositions that are now put out as 14 agents are no more than a conduit for private vendors 15 and landlords to be able to list their properties 16 directly on the two major portals. And so our 17 perspective on that has been it is, as we have suspected 18 for quite some time, just part of a journey towards the 19 portals themselves becoming the competitor of the 20 agents. And so a difference was established I think in 21 Mr Livesey's witness statement between the likes of 22 Purplebricks, who have what they call local property 23 experts, so they are far more than just an internet 24 listing service. And an example is tepilo, which offers 25 precisely what I have just described: pay £50, have your</p> <p style="text-align: center;">Page 193</p>

<p>1 property listed on Rightmove or Zoopla. 2 So at the same time that Rightmove is saying: we 3 don't accept private listings, and maintaining the faith 4 with the majority of its customer base, it is also 5 actually facilitating that very thing but via this kind 6 of aggregated listing service. 7 THE CHAIRMAN: And the aggregated listing service simply 8 facilitates the listing, so if one, for instance, has to 9 show the potential purchaser round the houses on the 10 market, that would be the homeowner who would do it. 11 A. Correct. So they are very low service operations. And 12 it is that kind of -- it is the development of that kind 13 of thing which has become a concern to the traditional 14 agents. 15 My personal view is it won't last very long because 16 either that model will fail or the portals themselves 17 will adopt it. 18 MR HARRIS: I am sorry, either that model will fail or what? 19 A. Or the portals themselves will adopt it by taking 20 private listings themselves. 21 Q. I see, but the point that I am suggesting to you is 22 being made by this evidence here in the transcript for 23 what weight the evidence is worth is an Agents' Mutual 24 representative putting forward to a group of agents in 25 Northern Ireland that it is going to be, as a minimum</p> <p style="text-align: center;">Page 194</p>	<p>1 full service, community based locally visible agents and 2 so it is no different from Rightmove saying, we only 3 want to work with property professionals and not with 4 members of the public. 5 Q. That is right, but Mr Springett, we are dancing around 6 again here, aren't we, because you have excluded online 7 agents from your online property portal, haven't you? 8 A. In the same way that -- 9 Q. The answer Mr Springett, is yes, isn't it? 10 A. They are excluded, but you are trying to take me away 11 from what the true purpose of it is which is 12 differentiation of the traditional model. We want to 13 make -- whereas the interest -- it is very interesting 14 to read the Purplebricks IPO prospectus on this topic. 15 Their approach to marketing is to try to present an 16 impression that they deliver exactly the same service 17 but cheaper and it is in the interests, and Mr Symons 18 mentioned it in his evidence, that fair enough, compete 19 with us but we want to find a way to get clear to the 20 public that our offering to you is actually different 21 and one of our propositions is OnTheMarket and it is in 22 all of our marketing material, it is in our TV 23 advertising to say: if you are using our portal and you 24 find a property and you make an enquiry you can be 25 comforted by the knowledge that you will be dealing with</p> <p style="text-align: center;">Page 196</p>
<p>1 more difficult for online agents to compete with the 2 agents of Agents' Mutual if they aren't on the portal or 3 on portals. That is right, isn't it? 4 A. Well, it would be impossible for them to operate if they 5 weren't on any portal. It is their entire business 6 model. 7 Q. You contribute in my suggestion to the undermining of 8 this competitive business model to that of your members 9 by denying those very people access to your portal, 10 don't you? 11 A. I don't agree at this stage that's the case. If we were 12 to be in a position of market power that would be 13 different. They have plenty of other options. 14 Q. Your purpose of denying them access to your venture is 15 precisely in order to deny them what you regard as the 16 necessary, if you like, publicity or advertising for 17 their competing business model. That is right, isn't 18 it? 19 A. No, because -- I have tried to explain already, but the 20 purpose of that term of our contract or that term of our 21 policy is to define who it is that we want to serve not 22 who it is not who we want to serve. 23 Q. But you have excluded them from your online business 24 model, your portal, haven't you? 25 A. Our membership rules specify that we want to work with</p> <p style="text-align: center;">Page 195</p>	<p>1 one of those traditional agents. 2 Q. Thank you, Mr Springett. Online agents are not allowed 3 to list on OnTheMarket, are they? 4 A. No. 5 Q. Thank you. But in fact online agents are allowed to 6 list on Rightmove, aren't they? 7 A. Yes. 8 Q. And online agents are allowed to list on Zoopla, aren't 9 they? 10 A. They are now. 11 Q. Thank you. I would like to take you, please, to the 12 email I said I would come back to where -- bundle 13 7/4011. Do you see that this is a copy of an email from 14 a Mr Quirk who is the chief executive of one of the big 15 online agents, is he not, of eMoov? 16 A. Of an online agent, yes. 17 Q. And it is to Mark at the National Association of Estate 18 Agents, yes, Mark Hayward? 19 A. Yes. 20 Q. If you look over the page, that gets passed over to you 21 and indeed over the page you say: 22 "Please find attached a draft reply." 23 A. Yes. 24 Q. I will come back to your reply in just a moment. 25 A. Yes.</p> <p style="text-align: center;">Page 197</p>

<p>1 Q. But would you mind just reading that to yourself so that 2 you can see what Mr Quirk has to say. Members of the 3 Tribunal as well, please. (Pause) 4 Have you had a chance, Mr Springett, to just refresh 5 your memory? 6 A. I have. 7 Q. Thank you very much. I suggest to you on the basis of 8 this email that in fact the online model is essentially 9 just a cheaper competing business model but that in many 10 respects is substantially the same as the service 11 provided by the traditional full service agents, isn't 12 it? 13 A. Well, based on Mr Quirk's email you would think so. 14 Q. Yes, and I am suggesting to you that that is right, 15 isn't it? 16 A. And I'm disagreeing. 17 Q. I see. But it is interesting that he also refers to you 18 on a different occasion at the bottom of page 4011 as 19 referring to these online agents including his company 20 as "parasitical". Is that accurate what he says there, 21 that you labelled his company as parasitical? 22 A. No. 23 Q. But it is your view about online agents, isn't it? 24 A. Yes. 25 Q. Then what you do, Mr Springett, if I may say with quite</p> <p style="text-align: center;">Page 198</p>	<p>1 have to compete harder? It puts pressure on margins and 2 this is a sector that's already very competitive in that 3 regard and it's compounded by the influence that the 4 portals had on their costs. 5 Q. I am delighted that you should say that, Mr Springett, 6 because your reaction is that a competing business 7 model, what do you say that one is competition, you 8 compete harder? 9 A. Yes. 10 Q. But in fact you haven't done that, have you? What you 11 have done is taken a restrictive rule to exclude them 12 from your portal so they can't compete against you using 13 your portal. That is right, isn't it? 14 A. I think again, I would say that we don't see the likes 15 of eMoov as a competitor to Agents' Mutual. 16 Q. What you have done as a mutual company, the members have 17 excluded from one means of competition these online 18 agents by excluding them from the members own portal, 19 haven't they? 20 A. I will go through the explanation again. What we are 21 seeking to provide here is a rule which allows us to 22 address a part of the market which is our target market. 23 Q. Thank you, but you do regard these online agents as 24 being head on competition geared to undercutting your 25 member agents, don't you?</p> <p style="text-align: center;">Page 200</p>
<p>1 some skill, is that you do draft a response, don't you? 2 We don't need to go through it. I will just tell you 3 where it is. It is a draft response at 4016 but what's 4 telling about the draft response, Mr Springett, is what 5 you say in the cover email to the draft response to be 6 found at page 4010? 7 A. Just before we leave that, as you referred to it, 8 I think the key line on 4016, which is my draft reply, 9 is: 10 "It is certainly not possible to argue that any 11 National Association member has less choice as a result 12 of Agents' Mutual's entry to the market." 13 Q. Thank you. What you are very careful to do in drafting 14 your response, as you say in 4010, is in the second line 15 thereof: 16 "In drafting it, we have avoided any reference to 17 a pricing differential between the internet only and the 18 local office agents as this does not form any part of 19 our eligibility criteria." 20 Do you see that? 21 A. That's correct. 22 Q. But in fact a profound concern of the Agents' Mutual's 23 was the undercutting price model from these head to head 24 estate agents, wasn't it? 25 A. Additional competition, how do you respond to that? You</p> <p style="text-align: center;">Page 199</p>	<p>1 A. I think they are part of the competitive environment 2 which is already very competitive. 3 Q. You do regard them as being head on competition as 4 geared to undermining the full service agents, don't 5 you? 6 A. Well that would be anti-competitive, wouldn't it? 7 Q. Well, let's have a look then at bundle number 5, 8 page 2585. I completely agree, Mr Springett, if you did 9 hold that view it would be anti-competitive, wouldn't 10 it? 11 A. No, what I was meaning was if their objective was to 12 undermine the traditional agent. 13 Q. Let's see what you say in your own words on page 2585, 14 Mr Springett. 15 MR FREEMAN: Head on competition means coming straight 16 towards you, does it? 17 MR HARRIS: I am not sure in the context of a two-sided 18 internet model I would like to respond to that, 19 Mr Freeman. 20 MR FREEMAN: Not even while doing something else. 21 MR HARRIS: Not even while doing something else. 22 Do you see this is an email that you wrote, 23 Mr Springett, on 30 March to 2014 to at least two 24 agents, one of whom is at least a founder board member, 25 correct?</p> <p style="text-align: center;">Page 201</p>

<p>1 A. Yes. 2 Q. And it is headed "Easyproperty", yes? 3 A. Yes. 4 Q. Easyproperty is an online estate agent, isn't it? 5 A. It is. 6 Q. And you say: 7 "Hi Mark, thanks for your message. I think this 8 ought to be of concern to all full service agents since 9 it is head-on competition geared to undercutting them." 10 So I was right in that proposition I put to you 11 wasn't I? 12 A. What, that would it be a concern that a new competitor 13 has entered the market? 14 Q. You denied those exact words that I very carefully put 15 to you and you said no, because that would be 16 anti-competitive, and yet here you are using those exact 17 words, aren't you? 18 A. Let me clarify because I did think you cut me off. What 19 I was saying was if it was the objective of the internet 20 only players to undermine traditional agency, it would 21 be anti-competitive of them to be doing that. That is 22 what I said. 23 Q. I see. But they are in fact competing business models 24 and they compete head on with the business of your 25 member agents, these online agents?</p> <p style="text-align: center;">Page 202</p>	<p>1 Q. Let me put the question if I may. So these new business 2 models may seek to move themselves forward in a certain 3 way and you regard that as something that you have to 4 defend the full service agent members against, don't 5 you? 6 A. This comes back to a subsidiary objective of 7 Agents' Mutual which is to provide an alternative place 8 for traditional agents to move to if they find that 9 Rightmove, for example, starts to compete with them. So 10 they would move -- I think I have understood this 11 correctly -- to the same horizontal level of 12 competition. 13 Q. Thank you. We will both have learnt more about that by 14 the end of this trial? 15 A. More than we wanted. 16 Q. Yes. But in fact what you do go on to say in the next 17 paragraph is that you will not accept listings from such 18 businesses. That is from the online agents, isn't it? 19 It is not from Rightmove and Zoopla. They are not going 20 to list on OnTheMarket, are they? 21 A. That is quite right. 22 Q. It is a fundamentally protectionist rule you excluding 23 these online business competitive models? 24 A. No. 25 Q. Because -- it is your words, Mr Springett, "as it is</p> <p style="text-align: center;">Page 204</p>
<p>1 A. They do. 2 Q. And one of the means in which they do compete with them 3 is by undercutting the full service agents on price, 4 don't they? 5 A. Price I think is the biggest part of their offering to 6 the consumer, yes. 7 Q. That's the biggest and most important way in which they 8 compete from the eyes of the consumer with the 9 traditional full service agents, isn't it? 10 A. I would say so. 11 Q. That is right, and yet you very carefully avoid 12 mentioning anything to do with the price differential 13 when you write back to the chief executive in the draft 14 email to Mr Quirk, don't you? 15 A. I'm not sure what relevance that has. We don't talk 16 about price because it's not one of the membership 17 criteria that we used to determine eligibility. 18 Q. I think we can all see what's going on there, 19 Mr Springett? 20 A. No, I certainly can't. 21 Q. What you say further down by the first hole punch is: 22 "The big fear is that if these new business models 23 take hold, it will be attractive to Rightmove and Zoopla 24 to adopt them themselves"? 25 A. Yes, exactly.</p> <p style="text-align: center;">Page 203</p>	<p>1 there to defend full service agency"?) 2 A. Yes. 3 Q. And that is because you and the member agents regarded 4 these online agents as contributing towards an 5 existential crisis, didn't you? 6 A. I did. 7 Q. Thank you. But there is a bit of a tension, isn't 8 there, in excluding the online agents from your own 9 portal, isn't there, because the truth is that the more 10 agents you get on to your online portal the stronger the 11 venture would be, right? 12 A. It is not just a question of volume but, yes, that's one 13 of the objectives. 14 Q. But in fact, right at the outset of this venture, as 15 I understand it, your own view with the steering 16 committee was the idea was to be as inclusive as 17 possible and to include any and all independent agents 18 because that would contribute to a stronger venture. 19 That is right, isn't it? 20 A. That's certainly true. We wanted it to be fully 21 national and we wanted it to be relevant at all price 22 levels in the market. 23 Q. And to include any and all independent agents, right? 24 A. Well that's -- it is just linguistic but, yes, I think 25 it is reasonable to say that we were thinking of the</p> <p style="text-align: center;">Page 205</p>

<p>1 kind of estate agent that is defined by our membership 2 rules. 3 Q. I see, so you are saying that you never ever had 4 a thought of including non-traditional non-full service 5 agents in the venture? 6 A. I think as far as I can remember that's always been one 7 of the elements and it's partly because we thought it 8 would be attractive to the traditional estate agent. 9 Q. But I am right in saying that if you got listings from 10 the online estate agents you would certainly generate 11 more income for the new venture, wouldn't you? 12 A. Well, we might lose some from agents choosing no longer 13 to be with us. 14 Q. If you got greater income from the online agents -- 15 A. And everything else was equal, then I agree with what 16 you said. 17 Q. Yes. In those circumstances, and I accept your "if", 18 that is a fair point, Mr Springett, but in those 19 circumstances the company would have more members 20 quicker, wouldn't it? 21 A. Well, subject to the "if". 22 Q. Subject to the if, yes? 23 A. Okay. 24 Q. And it would therefore have a bigger budget sooner 25 wouldn't it?</p> <p style="text-align: center;">Page 206</p>	<p>1 put it in a different way by reference to a different 2 document. 3 THE CHAIRMAN: Fair enough. 4 MR HARRIS: I am afraid, Mr Springett, we are going to go 5 back to a document that I well and truly thought we had 6 seen the last of, the note of the four-party meeting, so 7 our old friend, bundle 14/7735. Do you see on 7735 in 8 the third bullet point, we have dealt with essentially 9 the second and third lines, do you remember we were here 10 before when I was -- and you said: no, you must look at 11 the CMA letter and we did? 12 A. Yes. 13 Q. And then it carries on. It says: 14 "Even with the three we would be a long way from 15 that, one eighth of our rightful revenue. However, we 16 would accelerate quickly and might need to drop it 17 later." 18 At that point you are talking about the OOP rule and 19 a possible need to drop it later, correct? 20 A. That is quite right. 21 Q. Then what you go on to say is: 22 "Similarly, any restriction on internet only might 23 not be sustainable for ever." 24 A. Yes, and that is also referenced to that CMA letter. 25 Q. But in fact, the restriction on internet only has</p> <p style="text-align: center;">Page 208</p>
<p>1 A. Subject to the if. 2 Q. Yes. Could spend more marketing at an earlier stage, 3 yes? 4 A. Yes. 5 Q. Establish itself more quickly, couldn't it? 6 A. Yes. 7 Q. That is right. In those circumstances you wouldn't need 8 the OOP rule to endure for such a long period, would 9 you, even on your case? 10 A. If we got to a position where we could stand on our own 11 two feet without it, you mean? The faster we got to 12 such a position the earlier we could release that rule. 13 If that's what you're saying, then I agree with it. 14 Q. To be fair to you, I know it has been a very long week 15 and I apologise because I misstated in part that last 16 question. I said you wouldn't need the OOP rule for as 17 long. What I should have said you wouldn't have needed 18 to have the restriction against online agents in place 19 for as long as if you were generating more income from 20 them, would you? 21 THE CHAIRMAN: I am not sure that question works. Isn't the 22 premise that you are having online agents on and 23 therefore no rule excluding them? 24 MR HARRIS: Sir, I am going to move on because I haven't 25 done that quite in the way I intended so I am going to</p> <p style="text-align: center;">Page 207</p>	<p>1 absolutely no time limit to it at all, does it? 2 A. Well, we did cover this the other day, but at the point 3 where it's appropriate for it to be dropped and under 4 advice from our legal team we can do that. 5 Q. It was never sold to members, was it, this internet only 6 restriction or the Bricks and Mortar restriction to 7 members as being time limited, was it? 8 A. I think originally the time period that most members 9 would have had in their heads would have been if they 10 were signing for a five year contract, the five years, 11 I don't think it would have featured very highly in 12 their consciousness. And it is really a matter for our 13 board in consultation with our legal team to assess and 14 determine when the right time comes. And I think it 15 would be very unlikely if we were to communicate to the 16 members that that time had come and that there would be 17 a furore insisting that we keep those restrictions in 18 place, bearing in mind the board's view would be that 19 they, in part at least, would be needed to be released 20 to make sure we didn't fall foul of the law. 21 Q. Thank you. I am not sure that you have quite answered 22 the question, Mr Springett. It wasn't ever sold to 23 members when they were signing up to this arrangement 24 that the restriction on internet only members would be 25 time limited, was it?</p> <p style="text-align: center;">Page 209</p>

<p>1 A. You are right, and I have said I think that the focus of 2 people's minds in terms of time would have been more to 3 do with the time of the contract, the length of the 4 contract that they were entering into. 5 Q. That is right. In fact, I am glad you mentioned the 6 membership contracts because the internet only 7 restriction or otherwise referred to as the Bricks and 8 Mortar restriction is not limited in time in the 9 membership contracts either, is it? 10 A. Well the contract itself though is time limited. It is 11 five years. 12 Q. No, actually, Mr Springett that is not right, is it? 13 The listing period is limited in time. 14 MR MACLEAN: I think my learned friend is now debating the 15 legal effect of the contract. I am not sure Mr 16 Springett can help with that. I am sure he has a view 17 but I am not sure it will assist the Tribunal. 18 THE CHAIRMAN: We'll proceed. I take the point, Mr Maclean, 19 but you can carry on, Mr Harris. 20 MR HARRIS: Thank you. I suggest to you in fact the 21 membership contracts limit the duration of the listing 22 period but not of membership. That is right, isn't it? 23 A. That's true. 24 Q. That is right, isn't it? In fact it is by definition of 25 being a member within the meaning of the membership</p> <p style="text-align: center;">Page 210</p>	<p>1 board's perspective as well, is almost irrelevant 2 because we've always understood that at whatever time 3 those kind of restrictions run into anywhere near 4 competition law issues we would release them. 5 Q. Thank you. But I am afraid, Mr Springett, I am going to 6 have to put that exact question again. Is it right that 7 what you thought you were doing with the various 8 membership contracts was only having a Bricks and Mortar 9 restriction for up to five years; yes? 10 A. I honestly don't recall exactly what the contract, how 11 the contract was constructed, but I think it is fair to 12 say that when the original gold members signed up at the 13 end of 2013, theirs was a six-year commitment. The 14 first year was pre-launch. It was five years afterwards 15 and I think everyone's mind who was involved was 16 thinking, well, that is a realistic contractual 17 framework to help this business enter the market and 18 prosper. 19 Q. What you thought, Mr Springett, was that you were going 20 to only have a Bricks and Mortar restriction in place 21 for five years post-launch for anybody; that's right, 22 isn't it? 23 A. I think that's akin to what I have just said, I don't 24 know. 25 Q. And if I'm right and in fact it is not limited to five</p> <p style="text-align: center;">Page 212</p>
<p>1 rules that you have to be an estate agent or letting 2 agent which definition excludes the online estate 3 agencies and the non-traditional agencies, isn't that 4 right? 5 A. I'm sure you are technically right but it would be 6 a slightly bizarre situation to have one without the 7 other. 8 Q. I completely agree. So if I am indeed right that the 9 membership definition carries on beyond the five years 10 which therefore excludes beyond the five years people 11 from becoming members who are online agents et cetera 12 you would regard that as completely bizarre; is that 13 right? 14 A. I suppose I am saying that, as is set out in the 15 business plan, the legal advice we received led us to, 16 alongside the commercial necessity, put in place 17 a contract with a five-year term for as many agents as 18 we could encourage to enter into it and support the 19 business in that way. 20 Q. I see, so is it fair Mr Springett, and another way of 21 putting that, is that you thought what you were doing 22 with the various membership contracts was only having 23 a Bricks and Mortar restriction for five years? 24 A. I think the time that is set in any of the documents 25 from my perspective, and I believe it would be the</p> <p style="text-align: center;">Page 211</p>	<p>1 years, then it goes further than you ever thought would 2 be the case, a restriction on online agents; yes? 3 A. Yes, but let me repeat. However long that time period 4 is, and even if it is unlimited, we completely 5 understand that these things have to be looked at on 6 a continuous basis, and there may well be at some point 7 a commercial good reason to release them and there may 8 be a legal necessity to release them. 9 Q. I understand that, Mr Springett, but I am not dealing 10 with that point. What I am dealing with is the point 11 that you never thought that you had in place or would 12 need in place a restriction on online agents for more 13 than five years, did you? 14 A. It hasn't been something that has -- it is an issue that 15 hasn't been to the fore, let me put it that way. 16 Q. So are you saying that you had no view one way or the 17 other as to whether or not you thought the restriction 18 on online agents would last for more than five years? 19 A. I think the honest answer is no, because we've always 20 regarded the five-year horizon as -- 21 MR MACLEAN: Sorry -- 22 THE CHAIRMAN: Carry on, Mr Springett. 23 A. A period of time within which this business will at 24 least get to a stage where it looks like it can achieve 25 what it set out to or it won't. And if it looks like it</p> <p style="text-align: center;">Page 213</p>

<p>1 is and we're driving forwards, then we will begin to 2 knock up against some of the competition law aspects 3 that we have discussed, but also there may be commercial 4 reasons why we might want to change it. 5 MR MACLEAN: Sir, this is with respect, a slightly 6 unsatisfactory way of proceeding. You will recall from 7 the listing agreement that there are two restrictions: 8 there is the OOP restriction, which is in clause 6 of 9 the listing agreement, and there is the marketing 10 restriction in clause 7. The Bricks and Mortar position 11 is not a restriction in the listing agreement at all. 12 It is plugged into the membership rules that one can 13 only become a member if you are an estate or letting 14 agency, rule 2.1.3. This series of questions, which 15 further to the last time I got to my feet was to suggest 16 this was all slightly wrong-headed cross-examination, 17 because what the contract means is a matter of law. 18 What Mr Springett thought the contract means isn't 19 relevant to that question. I see it might be relevant 20 to how long he thought a restriction was going to be in 21 place for. 22 But the Bricks and Mortar point is not a restriction 23 in the listing agreement in the same way as the European 24 market. It is plugged into the very membership rules. 25 And therefore it is not a question of Bricks and Mortar</p> <p style="text-align: center;">Page 214</p>	<p>1 depending on the development of Agents' Mutual, and 2 there I understand the evidence to be that you would 3 wait and see what happened and it might be that 4 commercial imperatives or it might be that legal 5 imperatives, or a combination of the two, might cause 6 a change. 7 A. In a nutshell, yes. 8 THE CHAIRMAN: Does that help? 9 MR HARRIS: Yes, I am happy. Thank you, Mr Maclean, for 10 your intervention. I have asked the questions that 11 I need to ask, including about what Mr Springett thought 12 the duration and nature of the restriction was, and now 13 I am going to move on. 14 I can deal with the next topic in relatively short 15 order and I am venturing to suggest that that might be 16 the last one for today. 17 THE CHAIRMAN: Right. 18 MR HARRIS: I am very grateful. 19 Can I take you, please, to bundle 10/5802, 20 Mr Springett. I hope that this is a list of all the 21 other brands that are included under the Connells 22 heading. If you like, under the umbrella of Connells 23 parent ownership. Is that how you understood it? 24 I think this is a slide from Agents' Mutual, right? 25 A. 5802?</p> <p style="text-align: center;">Page 216</p>
<p>1 being in place for one year, five years, ten minutes or 2 until the end of time. 3 It is simply that under the rule you cannot be 4 a member of Agents' Mutual unless you are what we are 5 calling the Bricks and Mortar agent. And so to that 6 extent my learned friend's questions, which are premised 7 on the Bricks and Mortar rule being a restriction in the 8 same way as it will appear on the market restrictions in 9 the letting agreement, it isn't actually the correct 10 factual or legal basis for the question. 11 THE CHAIRMAN: I think we have a number of hares running at 12 the moment. We have, first of all, what the various 13 elements that comprise the agreements of which 14 Agents' Mutual is a part mean, which, with great respect 15 to you, Mr Springett, isn't a matter for you. 16 A. Yes. 17 THE CHAIRMAN: We have Mr Maclean's point, which is whether 18 there is a difference in terms of restriction. Whether 19 if it arises in the contract, it will arise in the 20 rules, which also is not a matter for you, Mr Springett. 21 We then have what you thought was being imposed by these 22 matters, which may be a matter on which only you can 23 speak. I am not quite sure of its relevance, but we 24 will hear what you have to say. And we equally have the 25 final point, which is what you would do in the future</p> <p style="text-align: center;">Page 215</p>	<p>1 Q. It may be that it wasn't you that produced it. It 2 begins on 5790. 3 A. Let me see what it is. Membership update. It seems to 4 be a set of slides that would have been presented to our 5 board. 6 Q. Yes. So I am not suggesting that you produced them but 7 they do appear to be an Agents' Mutual production; 8 correct? 9 A. Yes, I agree. 10 Q. And if you look at 5801 there is a whole series of 11 brands that some of us may recognise from the high 12 street but underneath the Countrywide umbrella; yes? 13 A. Yes. 14 Q. Separate brands; yes? 15 A. Yes. 16 Q. So, for instance, one I recognise is Bridgfords and 17 Bairstow Eves; yes? 18 A. Yes. 19 Q. And then similarly on 5802, but this time for Connells? 20 A. Yes. 21 Q. Right. So they have got William Brown, et cetera 22 et cetera, and one of those brands is, of course, 23 post-dating this set of slides; it is Gascoigne Halman, 24 isn't it, now? 25 A. Yes, following their acquisition, yes.</p> <p style="text-align: center;">Page 217</p>

<p>1 Q. And that acquisition, I think went through 2 on November 2015 according to Mr Forrest's witness 3 statement at paragraph 10. 4 A. Okay. 5 Q. So it post-dates this slide. But what we could do if we 6 wanted this to be a bit more up-to-date, we could update 7 that slide for Connells and we could add in, say, 8 Gascoigne Halman and probably a few others, because 9 Mr Livesey's evidence was that they had about 590 10 branches now whereas this says 501. 11 A. Yes. 12 Q. Is that fair? 13 A. Yes, I mean, I don't know what the precise numbers are 14 but I am happy to go with the 590 because it is what 15 Mr Livesey said. 16 Q. Thank you. It would also have to be updated now, 17 wouldn't it, because a few moments ago you accepted from 18 me that Connells also owns one of the online estate 19 agencies called Hatched; that's right? 20 A. Yes. 21 Q. Do you accept that on all the evidence we had a moment 22 ago Hatched simply couldn't ever be permitted to list on 23 OnTheMarket, could it, because it is an online agency 24 and they are all excluded, right? 25 A. With that model that would be correct.</p> <p style="text-align: center;">Page 218</p>	<p>1 of that firm to join, didn't you? 2 A. Yes. 3 Q. And the qualification was that simply each individual 4 brand must adhere to the company's terms of membership 5 as a standalone firm; yes? 6 A. Yes. 7 Q. And the second condition was that the individual brands 8 must be established and separately managed agencies; 9 yes? 10 A. That's correct. 11 Q. So you expressly foresaw circumstances in which there 12 might be a separate brand but within a larger group, and 13 provided it paid its own fees and was separately 14 managed, it could join by itself, right, without having 15 any implication for the other brands within the same 16 corporate group; correct? 17 A. I think it actually hasn't arisen. We haven't had to do 18 that or we haven't been given the opportunity to do it. 19 Q. In fact, this is perhaps where we'll end today, 20 Mr Springett, it has expressly arisen and you have 21 expressly allowed somebody within a corporate group to 22 list, without any attempt to implicate or cover the 23 remainder of the group. 24 Can I take you to that example as my closing 25 document today. Bundle number 13 and can you please</p> <p style="text-align: center;">Page 220</p>
<p>1 Q. And I think you would also accept from me, wouldn't you, 2 that if Gascoigne Halman had been a member of the 3 Connells group already at the time of Gascoigne Halman's 4 listing with you OnTheMarket, then Gascoigne Halman 5 would not have been bound to procure that its parent and 6 sister companies also list on OTM, right? 7 A. You are saying to me if Connells had already been 8 a member of ours? 9 Q. If Gascoigne Halman had already been owned by Connells. 10 A. Had already been owned by Connells. And what? And had 11 attempted to join us? 12 Q. Yes, if Gascoigne Halman had already been a member of 13 Connells by the time it joined OTM -- 14 A. Well, I mean that would have been an unusual set of 15 circumstances and not one that we would routinely 16 accept. We did think about that when we drafted the 17 information memorandum and I think we made provision for 18 subsidiaries of groups that wanted to make an 19 application to join us to be considered, but it wouldn't 20 ordinarily have been a routine piece of agent 21 recruitment for us and a new contract established. 22 Q. I am not making a suggestion about how frequent it is, 23 Mr Springett, but you expressly set out in putting 24 together the Agents' Mutual company that there could be 25 separate brands joining without requiring all the brands</p> <p style="text-align: center;">Page 219</p>	<p>1 turn to page 7250. Just refresh your memory. 2 Mr Springett, is any of this in fact confidential? 3 Because it is all marked yellow in my bundle. 4 A. Well, to the extent that it is about a contract between 5 us and other parties, I guess -- 6 Q. Would it be fair -- you tell me if it is not -- provided 7 I don't mention any names of other parties, then the 8 rest of it can be just used openly? 9 A. I completely agree with that, yes. 10 Q. Thank you very much. So do you see that picking it up 11 at the bottom of the chain at 7250, there is an email to 12 Jess from Chloe about a particular company? 13 A. Yes. 14 Q. And then up the chain that company name is mentioned. 15 That is the name of a firm of estate agents, isn't it? 16 A. Yes. 17 Q. So it has an odd name but it is a firm of estate agents? 18 A. Yes, we can use -- if it helps we could use initials. 19 Q. Well, shall we just call it L? 20 A. Yes, indeed. 21 Q. So L. Thank you. That is very helpful. Then it goes 22 up the chain. In the first query by the first hole 23 punch Jess is saying, "My understanding was that if 24 a corporate that wasn't with us purchased an agent, then 25 we let the agent go. Same process as some other</p> <p style="text-align: center;">Page 221</p>

<p>1 branches." But she wants confirmation about whether or 2 not that's effectively the right approach with L, yes? 3 A. Yes. 4 Q. And then she passes -- that's partly written to Helen. 5 That's Helen Whiteley, yes? 6 A. Yes. 7 Q. And Helen Whiteley writes back, "I don't think the 8 purchase by Countrywide" -- 9 THE CHAIRMAN: By L I think you mean. 10 MR HARRIS: That is not a sensitive name, is it? 11 A. I don't think so. 12 Q. So that's not L, sir. 13 THE CHAIRMAN: No, okay. 14 MR HARRIS: "And I think in any cases like this please refer 15 to me or Ian." 16 And then up the chain again all the correspondence 17 is on a certain file name. 18 "Nothing about Countrywide from our end was 19 confirmed in writing. Only that we will review when 20 they could disclose who the business was being sold to. 21 I then confirmed that we would process the cancellation 22 effective on a certain date." 23 Then up the chain Ms Whiteley writing back: 24 "Unfortunately this cancellation was agreed a little 25 while ago" and then she mentions -- it was L. "And</p> <p style="text-align: center;">Page 222</p>	<p>1 A. Sorry, I didn't answer your question. So the meeting 2 was with, I believe, the regional director of 3 Countrywide who covers that part of the world and 4 therefore John Francis fell under his remit. 5 Q. But the reason that you are mentioning flexibility here, 6 Mr Springett, now that we have been through the chain 7 from bottom to top, is because what you are saying is 8 that even though Countrywide have brought L it doesn't 9 have the effect of binding the entire rest of the 10 Countrywide stable into listing on Agents' Mutual, does 11 it? 12 A. Well -- 13 MR MACLEAN: I am sorry, that is the legal question. That 14 is what the contract means. It is not a legitimate 15 question for Mr Springett. 16 MR HARRIS: Not at all. 17 MR MACLEAN: What the contract means is a matter of law. 18 MR HARRIS: I will rephrase the question. 19 THE CHAIRMAN: You can ask what he did and you can ask what 20 he thought. I confess I am not sure how far that has 21 a bearing on the legal meaning of the procure rule but 22 I suppose it is conceivable that it bears on the factual 23 matrix. 24 MR HARRIS: We can see, the fact is, Mr Springett, that what 25 happened was that instead of any binding effect around</p> <p style="text-align: center;">Page 224</p>
<p>1 I don't think we can go back and undo it but any new 2 purchases by the corporates will not be allowed to 3 cancel." 4 Then at the top you are directly involved and you 5 say: 6 "No problem. I think I did say at the Countrywide 7 meeting that we could be flexible." 8 Is that right? 9 A. Yes. 10 Q. So that's right, isn't it, in the Countrywide meeting 11 that you had had one-to-one with Alison Platt of 12 Countrywide and perhaps some of her colleagues, you had 13 said to her that you could be flexible about what would 14 happen when one of the big corporates bought another 15 agency that was listing with OnTheMarket, yes? 16 A. I don't think that was covered at that meeting, no. 17 Q. So when you say, "I did say at the Countrywide meeting 18 that we could be flexible" what do you mean by that? 19 A. We met with -- not with Alison Platt. This was 20 a separate meeting. 21 Q. Sorry. 22 A. And it related to, I believe, the Countrywide 23 acquisition of a business called John Francis which is 24 familiar territory in west Wales. 25 Q. Thank you, but your reference to --</p> <p style="text-align: center;">Page 223</p>	<p>1 the rest of the Countrywide stable -- 2 MR MACLEAN: I am sorry, but the email talks about being 3 flexible. Mr Harris is trying to equate being flexible 4 with what the contract might or might not mean. That is 5 not a legitimate exercise. 6 MR HARRIS: No, I am asking a question about what happened. 7 THE CHAIRMAN: He is asking about what happened but we will 8 get into this. When one discusses factual matrix in an 9 agreement that covers many. As I understand it. You 10 need an understanding that crosses the line on all 11 fronts. I know you are not trying to deal with the 12 meaning of the contract, Mr Harris, because that would 13 be pointless -- 14 MR HARRIS: Absolutely. 15 THE CHAIRMAN: -- but I think you need to keep this quite 16 short. 17 MR HARRIS: This is I hope the very last question. 18 THE CHAIRMAN: Because I confess even on the factual basis 19 I am not really sure that this is going to help us very 20 much. 21 MR HARRIS: We'll leave it like this, Mr Springett: so what 22 happened was that in these circumstances the agreement 23 with L was cancelled, wasn't it? 24 A. Yes, this one was, it appears to have slipped through. 25 MR HARRIS: Thank you. That's my final question for today.</p> <p style="text-align: center;">Page 225</p>

1 Thank you very much, Mr Springett. Thank you,
 2 Mr Springett for bearing with me and the Tribunal.
 3 Sir, I think Mr Woolfe would like to raise
 4 a housekeeping point on instructions.
 5 MR WOOLFE: Sir, just a short point. There have been
 6 a couple of instances where Mr Springett mentioned in
 7 the course of his evidence not just today but I think
 8 going back to Day 4 of the hearing, Day 4 and Day 5
 9 where in the course of giving evidence he mentioned
 10 certain documents, certain emails from Savills that he
 11 received on Day 4 and a list of emails he received from
 12 Mr Rook.
 13 My instructing solicitors wrote to Eversheds asking
 14 for disclosure of those documents. Their response as of
 15 yesterday was simply to say that they couldn't look for
 16 them because Mr Springett is in purdah and they weren't
 17 able to take his instructions whilst he is in purdah.
 18 We simply observe that they don't need to take his
 19 instructions to make some effort to find the documents.
 20 If they can't find them they can't find them but we
 21 would like the Tribunal possibly to direct that they do
 22 make some effort to try and locate the documents.
 23 THE CHAIRMAN: The trouble is, Mr Woolfe, it rather depends
 24 on how easy it is to find the documents without
 25 Mr Springett's assistance. It is all a question of

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1 proportionality.
 2 MR WOOLFE: Yes. They haven't said it is not possible to
 3 locate them without his assistance. What they have said
 4 in correspondence, sir, if I can read it out:
 5 "We are unable to liaise with Mr Springett with
 6 regard to his evidence nor are we able to take his
 7 instruction concerning documents to which he referred."
 8 Obviously that is the case. But what we are asking
 9 is if they could make an effort to try and locate them
 10 and if they can to disclose them.
 11 THE CHAIRMAN: I am not going to make a direction because,
 12 as both parties know from what I said before, I know
 13 that they take their ongoing disclosure obligations very
 14 seriously and I am quite sure that Eversheds will comply
 15 with that. And so if they need Mr Springett then you
 16 won't get them. If they don't then you will.
 17 MR WOOLFE: Thank you, sir, that is acceptable. Thank you.
 18 THE CHAIRMAN: We will be inserting the identities of --
 19 I can't remember what we called them, Y and Z I think
 20 they are into the confidentiality ring with regard to
 21 the transcripts of the Northern Ireland conversation,
 22 won't we?
 23 MR WOOLFE: Sir, yesterday you said that we could find out
 24 and provide them and so you are indicating that we
 25 should now find them. We don't know but we will find

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1 out and provide them.
 2 THE CHAIRMAN: Indeed, just between ourselves make sure they
 3 are in the ring.
 4 MR WOOLFE: Just for the avoidance of doubt I think what
 5 I said on the transcript was that they were content for
 6 their names to be provided both in the confidentiality
 7 ring and indeed for Agents' Mutual, actually Mr
 8 Springett to --
 9 THE CHAIRMAN: I think that is what the record says, so I am
 10 grateful for that, thank you.
 11 Anything else?
 12 MR HARRIS: No, sir. Thank you ever so everybody, in
 13 particular for putting up with me in the second half of
 14 this week.
 15 THE CHAIRMAN: None of us will say anything about that,
 16 Mr Harris.
 17 Mr Springett, you remain in purdah until Monday
 18 morning. We will resume at 10 o'clock.
 19 (4.30 pm)
 20 (The court adjourned until Monday, 13 February at 10.00 am)
 21
 22 Ruling2
 23
 24 MR IAN SPRINGETT (continued)4
 25
 26 Cross-examination by MR HARRIS (continued)4

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