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IN THE COMPETITION

Case Nos. 1277/1/12/17

APPEAL TRIBUNAL

Victoria House,
Bloomsbury Place,
London WC1A 2EB

19 July 2017

Before:

THE HONOURABLE MRS JUSTICE ROSE
(Chairman)
DR CATHERINE BELL CB
MARGOT DALY

(Sitting as a Tribunal in England and Wales)

BETWEEN:

(1) BALMORAL TANKS LIMITED
(2) BALMORAL GROUP HOLDINGS LIMITED

Appellants

- and -

COMPETITION AND MARKETS AUTHORITY

Respondent

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HEARING

APPEARANCES

Robert O'Donoghue QC and Zac Sammour (instructed by K&L Gates) appeared on behalf of the Appellants (Balmoral).

Rob Williams and James Bourke (instructed by CMA Legal) appeared on behalf of the Respondent (Competition & Markets Authority).

1 MR. ALLAN PETER JOYCE (continued)

2 THE CHAIRMAN: Good morning. Good morning, Mr. Joyce.

3 Before we get started, could I just raise something that was prompted by a point that you
4 made in your opening, Mr. O'Donoghue, and what we think emerged from the spreadsheet
5 that Mr. Williams was asking Mr. Joyce questions about yesterday.

6 In opening you said that in the two year period Balmoral had only sold I think ten school
7 tanks and four 135s. From the green bands on the spreadsheet that we looked at yesterday it
8 looks like there were many more sold over that period. We were not sure how to marry up
9 those two things and also marry up that with Mr. Joyce's evidence that by the time of the
10 meeting you had only sold one tank.

11 A. That is right, yes.

12 THE CHAIRMAN: We were not sure whether it was a distinction between being chosen as the
13 supplier for that contractor, but that contractor does not in fact ultimately win the contract,
14 in which case we assume that no money actually trickles back to Balmoral.

15 I don't want you to deal with it now, but it would just be useful to --

16 MR. O'DONOGHUE: We will obviously check that. It was a figure that was put in our response
17 to the statement of objections. It is not something new. Obviously there is a potential
18 discrepancy, and we will check that.

19 THE CHAIRMAN: I think it would be useful, particular in light of your challenge to the
20 relevance of the 12-month period that was used in step 1. So it would be useful, if it was
21 possible, to have a short agreed note as to how many tanks were sold of the two
22 specifications that we are talking about by Balmoral before the 11 July meeting, and then
23 after over whatever period you consider relevant.

24 Yes, Mr. Williams. Cross examination by MR WILLIAMS (continued)

25 MR WILLIAMS: Good morning, Mr. Joyce.

26 A. Good morning.

27 Q. I am going to start by following up a few points of detail from yesterday.

28 A. Okay.

29 Q. You told us yesterday that there were different types of tank liner, PVC and EDPM, and you
30 said there was a 27% difference in cost for a 135 tank. I think you were saying that one
31 liner costs 27% more than the other liner.

32 A. The liner price, yes.

33 Q. Not that the whole tank was 27%.

34 A. Not the tank, the liner, yes.

1 Q. What proportion of the tank cost at that stage, approximately?
2 A. On a 135, I am guessing here, 10% maybe?
3 Q. So it is 27% of 10%.
4 A. Yes.
5 Q. Can you remember whether you were offering both types of liner at the time of the
6 meeting?
7 A. We did not have approval for PVC liners at that time.
8 Q. We also talked about transport, and you referred to a tank going to Scotland.
9 A. Yes.
10 Q. It is right to say, is it not, if a bid was for a tank going to a site in Scotland, everybody
11 bidding for the tank would know that the transport costs were higher?
12 A. Yes, and the installation cost would be higher.
13 Q. I am going to go back to the transcript now, if that is all right, and pick up one point from
14 yesterday. It is the bottom of page 125. It is tab 10 in that bundle.
15 A. Page?
16 Q. The bottom of page 25. We talked about Mr. Snee's bid of 16,800 to Hall and Kay, do you
17 remember that?
18 A. Yes.
19 Q. You said that you knew the price.
20 A. Yes.
21 Q. Could you pick it up at the bottom of page 25. Do you see it says "we've agreed a price", in
22 the bottom line.
23 A. Yes.
24 Q. "... we've agreed a price, and we were not the cheapest, we were not the cheapest, but they
25 decided to go with us on that, and we're going to stick with that come hell or high water."
26 A. Yes.
27 Q. Then if you skip to the line starting "Constantly going to Franklin Hodge", it says:
28 "You must now get three prices ..."
29 Are you with me?
30 A. Yes.
31 Q. "... but we have rigidly stuck to the price we agree and we won't move off that, mainly for
32 credibility reason ... I'm not going to move from that."
33 Even if you knew the price, you did not know that Franklin Hodge had no intention of
34 moving off that price, before the meeting.

1 A. No, I would not know that.

2 Q. Can we go back to page 41, where we were yesterday. On the left-hand side we were
3 talking about 9 and a half, 10 and a half for the schools tanks, 15 and 17 for the 135s. The
4 discussion was about those bands.

5 You can see at the bottom of page 40, actually, Mr. Dean says three lines up, the list price
6 for the school tank will be 10.1. Then again he says:

7 "For a school 10.1 with a ball valve."

8 At the top of page 41 Mr. Snee says:

9 "... that's kind of the target price we were going for schools in Scotland, was 10.1 but
10 Barry said it in order to beat Balmoral, we're going to have to drop to around 9.9,
11 that's what I've been told, I'm just getting you straight."

12 Again, you could not have known that was Franklin Hodge's target for that tank without
13 getting that information straight from Mr. Snee, could you?

14 A. As I said yesterday, it is not a static position here. I said yesterday that the bids are
15 negotiated. Yes? So you know, that price does not tell me that he is going to sell every
16 tank at 10.1 or 9.9. It does not give me anything other than the fact that he's telling me what
17 he had previously sold.

18 Q. That is not true, because it says it is their target price. It is not what they previously sold, it
19 is their target price?

20 A. Was their target price or is their target price?

21 Q. He says "That's the target price we're going for, but we've got to drop it to 9.9", so that is
22 the current position, that is their target.

23 A. I cannot -- for me, it does not tell me what it is telling you.

24 Q. A bit below that you say, do you see -- actually, to follow it through, you say:

25 "... I've seen some at 10.2. I've seen 8.6, which was a disaster."

26 We talked about that yesterday. Mr. Snee says:

27 "... we've not done 8.6."

28 You would not have known that, would you?

29 A. That he has not offered 8.6?

30 Q. Yes.

31 A. I would not know that, probably not.

32 Q. "I've seen below that 9.2 or 9.3, even that's low. 9 and a half, 10 and a half is a target. If I
33 hear anything from our guys that's anything above that will be exciting or below that would
34 be a concern, which I heard 14.6, we didn't win it, we didn't win at 14650 ..."

1 Breaking that down, 9 and a half, 10 and a half, that is a target. Do you agree it is now clear
2 that you were treating these bands as targets to try and keep these prices from dropping
3 low?

4 A. No, I do not agree with that. As I said before, the bands were market prices.

5 Q. Do you agree that a target is something that you aim for in the future?

6 A. We don't have a target price per tank. It does not work like that.

7 Q. Do you agree you said here that it was a target for you?

8 A. As I said yesterday, I may have said some words, and the reality, as I said before, is the
9 generic nature of what we were speaking about so far as I am concerned would be reflecting
10 what was going on.

11 Q. You also told Mr. Snee and Mr. Dean that 9.2 and 9.3 were too low for a schools tank. Do
12 you agree?

13 A. I say that there but again, as I said yesterday, they already knew these prices.

14 Q. Do you agree they could not have known that your view was that that price was too low,
15 before this discussion at this meeting?

16 A. I had said previously 8.6 was a disaster.

17 Q. Yes, and now you are even saying 9.2 and 9.3 is too low.

18 A. As I said in my previous statements, even 15,000 or 9 and a half, or 9.2, maybe it was a
19 good price at the time. It does not mean that you do not sell above or do not sell below, you
20 just go and do your thing. It reflected what was going on at the time.

21 Q. You were expressing your view about what the price should not drop below.

22 A. I am saying, yes, 9.2 seems low.

23 Q. Again, you refer in the bottom line there to 14650, and Mr. Snee says:
24 "... sorry I misunderstood I thought you'd said that's fine. That's cheap."
25 You said:
26 "That was that far out, even in my mind was far from what it should be ..."
27 You are clearly saying that prices should be higher.

28 A. Yes, and as I said yesterday it seemed a low price, based on what we knew at the time and
29 what was going on in the market.

30 Q. Do you remember what Galglass won the tender with?

31 A. Tyco?

32 Q. Yes, that one.

33 A. My understanding was 14.6, 14650.

34 Q. They actually won it with a price that was 14.3.

- 1 A. Was it?
- 2 Q. Could we turn to the middle of page 43 now. Do you see the passage saying:
- 3 "I would be saying to you 'There's what I buy, there's my volume, give me my price'."
- 4 Here you are talking about customers sharing price information with you.
- 5 A. Yes.
- 6 Q. You say it is blasé, it is a joke and so on.
- 7 A. Yes.
- 8 Q. Can you see about halfway through it starts "thing in the bin" and you say:
- 9 "... that's why I think you've got to have the bands to work would, to keep as the
- 10 market price ..."
- 11 Do you want to just read to the end there?
- 12 A. Yes, okay.
- 13 Q. At the end it says:
- 14 "... if you take everyone low it is a disaster."
- 15 So here you are saying that the bands allow you to keep track of where the prices are going
- 16 too low.
- 17 A. As I said yesterday, there is a market price for everything. Market price is where supply
- 18 and demand converge. Yes? The only thing that affects a market price, if there is a shock
- 19 to demand or supply. So when Balmoral came in this market there was a big shock to the
- 20 supply end, because we brought more capacity to the market. That affected, as I said
- 21 yesterday, the price. Previously to Balmoral, the price was 18 to 20,000 in the market, now
- 22 it is 15 to 17. That is all I am saying. It is a bit like I said yesterday, it is common sense,
- 23 nothing else.
- 24 Q. The reality is there are a range of prices in the market and you are identifying the prices in
- 25 the market which you are happy to choose using the bands.
- 26 A. I am saying 15 to 17 is a market price.
- 27 Q. You say at the end there, "if you take everyone low it's a disaster". The point you are
- 28 making is that if you price below the bands too often, that is taking the value out of the
- 29 market for everybody.
- 30 A. Below what? Below 15,000? If everything is below 15,000 it is a disaster?
- 31 Q. You say you have to have the bands to work with to keep as the market price ... but if you
- 32 take everyone low it's a disaster.
- 33 A. Common sense again, is it not? Why would you sell everything at a low price?
- 34 Q. This is a direct conversation between you and your competitors.

1 A. It is a direct conversation with me and people who already know what I am doing.

2 Q. Can we then just turn over the page to 44. Can you see four passages down "In the short-

3 term", yes?

4 A. Yes.

5 Q. "... it's a zero sum game, ok. So in summary then we've got some agreement on bands ..."

6 We saw yesterday that you identified these bands, and here Mr. Snee indicates that he

7 agrees with them.

8 A. He is saying in summary we have got some agreement on bands. That is what he says, yes.

9 Q. Yes, and you do not disagree with Mr. Snee at this point.

10 A. As I say, the word "bands" and "market price" are getting used quite a lot, so are we talking

11 about market price? For me that is what the bands reflected, market price.

12 Q. We have seen already that you were presenting the bands as targets.

13 A. Presenting?

14 Q. You have said 9 and a half, 10 and a half is a target.

15 A. Yes, I am reflecting what is going on in the market, I am not presenting.

16 Q. Can you see then just down underneath that, Mr. Dean says:

17 "Do you think as though we'll get the bands up again?"

18 Would you agree that shows Mr. Dean was also in favour of the bands, having the bands,

19 because he is starting to use them, talking about whether they might go up?

20 A. I think Mr. Dean is asking will the market price go up again, and the market price reflected

21 the bands.

22 Q. Do you agree he is happy to use the bands? He is indicating that.

23 A. No, I do not believe so, no.

24 Q. I am going to move to the top of page 45. Mr. Snee starts to talk about achieving a 25%

25 share of the market. I just want to be clear, I am not suggesting that you agreed to share the

26 market and I am not suggesting that you agreed to take a 25% share. I am talking about

27 what was said here.

28 A. Okay.

29 Q. You can see that Mr. Snee says -- you can read it to yourself, if you like. (Pause)

30 A. Okay.

31 Q. Mr. Snee is saying you would all like to be around a 25% share, but if you are making less

32 than that share you can reduce your prices. But he says it is a complicated game.

33 Straightaway, underneath that, do you see Mr. Dean says:

1 "That won't work, you can't do that, might be what you want to do, I don't think you
2 could ever manage that."
3 Yes?
4 A. Yes.
5 Q. You did not want to agree to market share and Mr. Dean also said that what Mr. Snee was
6 suggesting would not work.
7 A. That is what he says, yes.
8 Q. A bit below that Mr. Snee says -- well, just to finish that point off, there was no agreement
9 about that?
10 A. No.
11 Q. Just to move down, do you see Mr. Snee then starts to talk about the UK market being
12 worth 6 million, "doesn't give us much"?
13 A. Yes.
14 Q. Further down, CD says:
15 "About 6 million, could be 8 million if we went back to last year's prices."
16 So if prices went up again it might be 8 million, rather than 6 million. Do you agree?
17 A. Yes.
18 Q. This is talking about the whole GST sprinkler market as we discussed about yesterday, and
19 we have only been talking about two sizes of tank at this meeting.
20 A. Yes.
21 Q. Those two sizes alone, they are not worth 6 million or 8 million.
22 A. They are not, no.
23 Q. So this discussion of 6 million and 8 million, it has nothing to do with the two sizes of tank
24 that you have been talking about.
25 A. I think it is -- the 6 million is what the guys reckoned the market was worth.
26 Q. Total market?
27 A. Yes.
28 Q. Not the two sizes of tank.
29 A. The galvanised sprinkler tank market.
30 Q. Yes, so the 6 million has nothing to do with the two tanks.
31 A. No.
32 Q. Neither has the 8 million.
33 A. No, it is the overall market.

1 Q. Further down on that page the discussion comes back to the school tank. Do you see it
2 says:
3 "CD: So really your band for that school tank should be 10 and half to 11 and a half."
4 Do you see that?
5 A. Yes.
6 Q. You say:
7 "Did you say your list price was 10.1?"
8 A. Yes.
9 Q. That is a price we saw back on page 40, that is a price he had mentioned, and here you want
10 to just check that detail. Do you agree?
11 A. Yes.
12 Q. Over the page, Mr. Dean carries on and he says:
13 "... these are the price lists I worked on ... this one is 1 February, to give you some
14 idea, and these prices, like I've said, we've always kept low because of the schools, it's
15 difficult to keep moving them ..."
16 That is the point again that the cartel has found it hard to push the price on the school tanks
17 up.
18 A. Yes.
19 Q. He says:
20 "... which was 10.1, July last year was 10.7. No, we kept it the same. April was 10.7
21 ... we've always kept that one the same, and then the 135 is 18."
22 You are taking notes at this point, the transcript records. Then it says:
23 "Just now."
24 So you are saying "at the moment".
25 A. Mm-hmm.
26 Q. Mr. Dean says "Just now". So you are checking that that is a current price.
27 A. Yes, and you will remember that yesterday you showed me a conversation from 6 January
28 where Mr. Dean said the price was 10.8 or something, or 10, so I have got a good memory.
29 Q. It is a much lower price now.
30 A. It is much lower.
31 Q. So it is new information.
32 A. Driven by Balmoral.
33 Q. Yes, but it is new information about their current price.

1 A. He is telling us what we already know again, is he not? It is not a new price. What he is
2 telling me is they have a list price. It seems to have gone down from 10,800 in January
3 down to 10,100 in July.

4 Q. Can you be passed file D at the moment and we are going do look at that at tab 8.
5 Have you got tab 8?

6 A. Yes.

7 Q. These are extracts from your notebook. You probably recognise it.

8 A. I do, yes.

9 Q. If you turn over the page, what is effectively the third page, you can see there are two pages
10 noted 11th, 7th and 12th. Am I right in saying this is back to front, that you start on the
11 right and you go to the left? Can you remember that?

12 A. Yes, it is a bit strange. Yes.

13 Q. I think that is the way it works.

14 THE CHAIRMAN: The first thing you wrote was "Tyco"?

15 A. I think so.

16 MR WILLIAMS: If I can explain to you, Madam, if it helps.

17 MS. DALY: I must have the page wrong.

18 MR WILLIAMS: These are not paginated. It is tab 8. If you see on the right-hand side, Madam,
19 there are a few references which we have not really dealt with here.
20 Do you see under the word "Poland" -- it says "Poland". Do you see that, on the right-hand
21 side?

22 I beg your pardon, I am just explaining to the Tribunal.

23 THE CHAIRMAN: Yes, yes, we see Poland.

24 MR WILLIAMS: Underneath that you can see 9.5, 10.5 and 15, 17, and so on; some of the things
25 we have seen on the transcript already. Then you can see a bit further down, at the bottom
26 we have got 1/2/12 school 10.1. That is why it looks as though the chronology is right-hand
27 side, top to bottom, then over to the left-hand side.
28 If you just look at the bottom of the right-hand side, do you see it says "1/2/12 school 10.1"?

29 A. Yes.

30 Q. This is what Mr. Dean just told you, he that said on 1 February 2012 the schools tank price
31 went to 10.1. Then there are some previous prices. Then underneath, so the fourth one
32 down, 1/2/11 but I think this is a mistake, 13,518, that is the current price for the schools
33 tank that he has just given you.

34 A. Mmm. It is a supermarket tank, 135.

1 Q. Exactly. So he has just given you the prices for the schools tank and the 135, the current
2 prices.

3 A. Yes.

4 Q. You write them down. Do you agree?

5 A. I wrote them down in January as well, yes.

6 Q. As I was just pointing out to the Tribunal, above that, underneath the word "Poland" we can
7 see you have written down the other bits you've discussed. So you have written down "9.5
8 to 10.5 schools", "15 to 17 135", and you written "with [ball valve]", "with bv", then you've
9 written "50-millimetre ball valve" which was the question you asked.

10 A. Yes.

11 Q. "10.1 with ball valve, schools".
12 Underneath that, we did not look at this but you can see that you have written down "9K NR
13 school, Ash Vale Fire, Kondea 1 at 9.5", so that is something else you were told by Mr.
14 Dean at the meeting.

15 A. I think somewhere in the transcript Mr. Dean tells me he has Norman's email about some
16 project; that is probably the project he is talking about.

17 Q. These are all notes of things you were told at the meeting, and you made the notes because
18 the information was of interest to you.

19 A. I just take notes. That is what I do. I take lots of notes. If you check, there is numerous
20 diaries with my scribbles all over it, not just about galvanised cylindrical tanks.

21 Q. Can we turn back to the transcript now. You can put that file away.

22 THE CHAIRMAN: Wait one second. (Pause)

23 MR WILLIAMS: We are now on page 49 of the transcript. Do you have that? The first new
24 entry on that page:
25 "CD: What would you quote a 135 now? Not Arriva, but if it just came out now."
26 I think that should be Arriva, that is a reference to Tyco's bidding system.

27 A. Yes, an online bidding system, yes.

28 Q. You say:
29 "Say somewhere between 15 and 17, I wouldn't say it's always 16, as it has been ...
30 Some of that will be a reaction that you think what you've been told ... people are at
31 now ... that's why I'm saying we have taken some at a decent price. We have taken
32 some at 15 grand, but they haven't all been at 15 grand."
33 You start off saying somewhere between 15 and 17, you would not say it is always 16. But
34 then you talk a bit about what it has been previously.

1 A. Yes, we have mentioned 15 to 17 numerous times.

2 Q. Yes. Underneath that, Mr. Dean asked his question again, because he wants to be clear that
3 it is a new tender. He says:
4 "What if it was just a tender at the moment, I'm just enquiring with an order to place?"
5 He is talking about a new tender, do you agree?

6 A. Yes, he is asking me a question, yes.

7 Q. You say:
8 "A one-off tank, I would be surprised if it is less than 16."
9 I think we can stop there. Do you agree you told him that you would be surprised if a one-
10 off 135 was less than 16?

11 A. We said in the market 15 to 17 was the current prices, so he pushes me a bit more on the
12 price and I picked the middle ground. Not exactly rocket science, is it?
13 Also, just to add, you stop there, but the rest of that sentence is quite important, because I
14 then go on to try and almost make it sound quite vague. Someone may buy a package. I
15 actually give them a price for the whole thing, rather than individual tanks. I try to sort of
16 make that comment less of interest, if it was of interest to him at the time.

17 Q. Actually what you are doing is explaining what it is, rather than making it of less interest.
18 You are giving him more information about what it relates to.

19 A. In my view that is not what I am doing.

20 Q. Can we have a look at your second witness statement, please, the last page of that: it is at
21 tab 3 of that bundle.

22 A. The last page?

23 Q. Can you just read to yourself paragraph 37?

24 A. Yes.

25 Q. Do you accept that that paragraph is incorrect, because you did say you would be surprised
26 if it was below 16, and Mr. Snee did rely on that information.

27 A. For Comco? I thought we were talking about Tyco a minute ago.

28 Q. You were asked what you would be likely to bid for a 135 at the moment, and you said "I
29 would be surprised if it was less than 16".

30 A. Yes.

31 Q. The point you are picking up here is that after the meeting Mr. Snee picks up that figure of
32 16 and he says "Balmoral are likely to bid at 16, and I want to sneak in under that", and you
33 say "That is not right, I never said the figure of 16", but in fact we have just seen you did
34 say the figure of 16.

1 A. I thought you were asking me about Tyco. Okay. I picked the middle.
2 Q. I will be very specific. You say:
3 "Nigel says that the figure of 16 that he used as the basis for Franklin Hodge's quote to
4 Compco had been provided by me. That is untrue. It was mentioned by Clive. At no
5 point did I volunteer that figure."
6 We have just seen you volunteer that figure.
7 A. I did not ask Nigel to quote Compco 16K.
8 Q. No, but you did say you would be surprised if you bid less than 16 for a 135, which is what
9 we are talking about.
10 A. You just showed me the transcript. I said 15 to 17. He asked me what would you bid
11 today, and I picked a middle figure. Then I qualify it, I think, by some vague comments.
12 Q. Can we now go back to where we were on page 49. You have given your answer about
13 what you would do for a new order. Then just next to the second hole-punch it says:
14 "CD: I just mean an everyday spring comes along, for a 135 ... at the moment I'd be
15 quoting similar to ..."
16 You finish his sentence, "17 and a half". He says:
17 "Maybe we'll start high. Because if you start at 15 ..."
18 So he is telling you now about how he would approach a new tender.
19 A. Is it me that says 17 and a half or is it him?
20 Q. It looks like that, yes.
21 A. Two minutes ago I said 16.
22 Q. No, but he is now talking about himself.
23 A. He is saying 17 and a half?
24 Q. He is saying what he would do, and you finish his sentence, because you have now already
25 had a discussion about pricing and you have a good sense of where his prices are?
26 A. I do not understand what you are asking me here. You tell me a minute ago I said 16 and
27 then you are saying I am saying 17 and a half.
28 Q. You are saying 16 would be your price, then Mr. Dean is talking about his price, and
29 because you have already discussed prices, when he starts to say what he would quote you
30 finish his sentence because you know what he is going to quote.
31 A. So I am telling him he will quote 17 and a half now?
32 Q. No, you are saying you have a good sense for what he will price.
33 A. I do not even understand the point that you are making, so I cannot answer it.

1 MR WILLIAMS: Madam, if the Tribunal is satisfied that my question is not unclear I think I will
2 move on.

3 THE CHAIRMAN: Yes, I think you should move on.

4 MR WILLIAMS: At the top of page 50, you say:
5 "Those two, they're not big bands, 15 to 17, couple of grand. I expect a big margin
6 on that one."
7 You are saying 15 to 17 is not a big band, it is workable to give you all a guideline.

8 A. Yes, and I say I expect a big margin on 15 to 17, yes.

9 Q. Yes, but can we just deal with the point that I was making first? What you are saying it is
10 not a big band, so it is workable to give you a guideline?

11 A. Sure. I say 15 to 17 again. It is back to what I said before, it is a market price.

12 Q. You also say you expect to make a big margin with that. You have now identified a price
13 that is good for you.

14 A. We have spoken about it so many times. I am not identifying anything I have not discussed,
15 other than the market price at the time.

16 Q. You are saying you would make a big margin so it is a good price for Balmoral.

17 A. Yes, but maybe lower than 15 we would still have a good margin.

18 Q. In the rest of that quote you say:
19 "What I'm trying to get to is in the market place we shouldn't be that far out, on the
20 same product."
21 Is that you saying that what you want to get to is that your prices are about the same as your
22 competitors?

23 A. Under a normal competitive situation, on a 135 cubic metre tank there should not be that
24 much of a difference. That is what I am saying. If I understand the market correctly as
25 Balmoral, there should not be that big a difference in price.

26 Q. Yes, but this is what you are trying to get to at the meeting.

27 A. I was not trying to get to anything at the meeting, other than get myself out of the meeting.

28 Q. Moving down that page, do you see "NS: But like now"?

29 A. Yes.

30 Q. "But like now I'd like to go and win some work and to show Compeco I'm ... back in the
31 game again, I'm going to have to go closer to the 9 and a half than 10 and a half, on schools,
32 that's not because I'm trying to drag the price down, it's because I've got to try and open the
33 door."

1 So Nigel Snee is now telling you where he is going to bid next time he gets a schools tank
2 for Compco, closer to the 9.5 than the 10.5.

3 A. So he says, yes.

4 Q. He is telling you about his approach to a future tender.

5 A. No, I do not believe so. I think he is telling me he is going to come after Compco -- you
6 know, with Compco deemed as Nigel's customer before Balmoral came into the market.
7 Yes? Balmoral had made great inroads with Compco, and he was stuck.

8 Q. Right, but do you agree he is clearly talking about future tender?

9 A. I said before, you know, if he puts in 9 and a half to 10 and a half, or 9 and a half into
10 Compco, that does not win you the work. You have to go and negotiate. So him telling me
11 9 and a half tells me nothing I do not already know.

12 Q. A bit further down you say:
13 "If it's falling out of the bands, that's the concern."
14 So you are emphasising that you will be concerned to see pricing below the bands in these
15 future tenders that Mr. Snee is talking about.

16 A. I am saying that the market price will have shifted again. That is what I am thinking.

17 Q. Mr. Snee is talking about his approach to a future tender, and you are saying that if it is
18 falling outside the bands, that is the concern.

19 A. Yes, and I am saying that is exactly what I am saying. Because the bands represent market
20 price at the time, and if we want to go and compete on Compco, those bands, that market
21 price, may shift.

22 Q. Do you see after that, you say "Goalposts have shifted again". Then it says:
23 "... if we; get an opportunity to quote Tyco on 135 tanks ...[?]"

24 A. Yes.

25 Q. This is you raising the question of how you would approach a future tender to Tyco, on the
26 135.

27 A. I do not think I finished the sentence, so I cannot actually remember what I was going to
28 say.

29 Q. It is a question. It is effectively raising a new topic, "What if we get the chance to bid to
30 Tyco again on the 135?", which is the problem tank that you have been talking about at this
31 meeting.

32 A. It is not a problem for me. It is the market price, we are talking about two tanks. It is not a
33 problem tank; it is just another tank in a range of over 100, maybe 150.

1 Q. You are initiating a conversation here about how to handle a future bid to Tyco, who have
2 been a difficult client.

3 A. I am not initiating a conversation on a Tyco bid. There is nothing mentioned here on Tyco
4 bid. We have had the Tyco bid story, 14650. This does not represent Tyco future.

5 Q. We can move on to page 53 now. Do you see there are some short sentences, and then you
6 say:
7 "Better near the top of the band than the bottom of the band, for sure. Somehow that's
8 the area, the target price."
9 Here you are signalling to your competitors where you want to price, pushing up towards
10 the 10.5, pushing up towards the 17.

11 A. Wishful thinking on the 15 to 17 grand. I said yesterday, a salesman's job is to sell at as
12 high a price as he can get. I cannot see why somebody would pay me 16950 and somebody
13 else quoting 15, why would that happen? It is generic conversation.

14 Q. It is not generic conversation.

15 A. It is.

16 Q. You are talking about a target price for a specific size of tank.

17 A. I discussed 15 to 17 as a market price, which was actually in play at the time.

18 Q. A bit further down that page, do you see it says Mr. Snee checks his phone, and he says:
19 "Nick sent me a text ... let's see if there's anything ... He was hoping for a positive
20 reaction from your side."
21 You laugh and say "Very positive". Obviously you do say "Very positive", that is recorded,
22 but do you agree you do not say, "No, it is not positive, I do not want to have this kind of
23 meeting"?

24 A. Of course. I say what I say. "Positive", maybe I am saying "positive" because it is coming
25 to an end and I am walking out the door.

26 Q. Yes, but that was a clear opportunity for you to say whether this meeting had been a good
27 thing or a bad thing so far as you were concerned, and you said it was a good thing.

28 A. I know it is a bad thing. It was a horrible meeting, like the previous meetings I mentioned
29 yesterday.

30 Q. Just below that:
31 "No mark 7 price at this stage, but you do want to try and squeeze the price and get up
32 as quickly as we can?"
33 You said yesterday that mark 7 was not --

34 A. What page are we on?

1 Q. Sorry, we are still on page 53. The bottom of the page. Mr. Snee's summary, he says:
2 "So, no mark 7 price at this stage, but you do want to try and squeeze the price and get
3 up as quickly as we can?"
4 You said yesterday that mark 7 has not been implemented.
5 A. That is right, it had not.
6 Q. So this is future prices.
7 A. Mark 7 is not a price list.
8 Q. No, it is a revision to your internal system.
9 A. Internal costs. Which means that the salesmen would then be working from costs plus
10 margin again. Not a 15 to 17 working your way back down; it is a cost plus.
11 Q. It is a system you would be using to generate your prices in the future.
12 A. But it is not a price list.
13 Q. I did not say it was a price list Mr. Joyce.
14 A. Okay.
15 Q. It is the system you will be using to generate your prices --
16 A. Absolutely, it is an estimating system based on cost.
17 Q. But here mark 7 is in the future, it has not happened yet.
18 A. Of course it is in the future.
19 Q. You are saying that your mark 7 price, that future price, is going to be pushing up towards
20 the top of the bands you have discussed.
21 A. Yes, which again, if you understand the system, that is just a crazy comment, because it
22 does not work like that, you know.
23 Q. It could work like that, depending on what margin you added to the costs, could it not?
24 A. No, because where would I be pitching the margin then for the guys? 15 to 17, that is a
25 variance. 13% is a variance. I do not understand, it is too complicated.
26 Q. It may or may not be complicated under the bonnet, Mr. Joyce, but what you are saying to
27 Mr. Snee and Mr. Dean is that your future price is going to be pushing the band up the top
28 end rather than the bottom.
29 A. Yes, and as I said earlier on, that is our job, to go and sell at as high a price as we can get.
30 Q. You leave a couple of pages on. Can I just ask you to look at your first statement,
31 paragraph 42, please.
32 I did say 41, did I?
33 A. Paragraph 41, yes.
34 Q. I am sorry, 42. The last sentence of 42 I am interested in:

1 "I did not want to be in contact with them any more than was absolutely necessary."

2 A. Sure.

3 Q. Do you accept that that clearly is not right? You could have left much sooner than you did.

4 A. No, I do not. As I said yesterday, I had had numbers of meetings with these guys, I have
5 said this already. Yes? I tried to recruit Clive Dean. I am actually quite a professional guy,
6 I do have some manners. If I turn up to that, having been chased for 8 months and having
7 been to a number of meetings, I cannot just walk in there and almost put up my finger and
8 walk out the door, because I am going to meet these guys in the market place, at trade
9 association meetings or exhibitions. I am quite a confident person but I am not an arrogant
10 person, and there is quite a big difference, so that is why I did not walk out.

11 Q. Would you agree you were not uncomfortable at the meeting? You stayed because it was a
12 useful discussion for you.

13 A. I felt very uncomfortable.

14 Q. Can I just finish? You were not uncomfortable at the meeting? You stayed because it was a
15 useful discussion for you.

16 A. It was not useful to me, and actually it was of no use to them. I think when you look at all
17 the statements in this case, you almost kind of cherry picked your way through a scenario
18 here and there is nothing to support what you are even putting to me. Nothing.

19 Q. Do you accept that while you were at the meeting, before you left you exchanged
20 information about current and future pricing which was confidential?

21 A. No, I do not accept that.

22 Q. Do you accept that that discussion gave you all an insight into each others' pricing that you
23 could never have got without talking directly to one another?

24 A. Absolutely not. Nothing in there was anything relatively new or new at all. It did not create
25 any uncertainty before, during or after that.

26 I said yesterday, we were in competition against three people in a cartel on 11 July, up to 11
27 July. We were still in that position on 12 July. So if I had any, brackets, agreement,
28 anything, why did nobody phone me the next day, when we got into bidding for a Compco
29 project and the bid went below 15,000? Why do I not get a phone call to say, "Mr. Joyce, I
30 thought we had some sort of agreement here"? Why does that not happen? Because the
31 information was generic, it served no purpose to anybody. I told them very little that they
32 did not already know.

1 Q. We have already seen it did serve a purpose for Mr. Snee, because he went straight on the
2 phone and rang back to the office and said "Mr. Joyce is probably going to probably bid
3 about 16 so let us sneak in under him".

4 A. Can I tell you why that does not make sense?

5 MR. O'DONOGHUE: That is really a matter for Mr. Snee.

6 THE CHAIRMAN: I think that is a matter of comment rather than evidence that you can give,
7 Mr. Joyce.

8 MR WILLIAMS: We can move on, Madam, I think.

9 THE CHAIRMAN: Yes.

10 MR WILLIAMS: Do you agree that when you went back to Balmoral you probably told Norman
11 Ross what had happened at this meeting?

12 A. I was -- I do not know what I told Norman Ross or Jim or anybody. It is going back five
13 years, I cannot remember everything from that. I was probably more shocked by the fact
14 that these guys were working in that cartel format. Because my understanding of the market
15 and the customers -- bear in mind what I said before, we were already supplying people like
16 Hall and Kay, Tyco, Compco with GRP tanks, and I was amazed that they would let these
17 guys pull the wool over their eyes the way they did. That was my major take from the
18 meeting. I was a bit shocked.

19 Q. You did tell Norman Ross about your January meeting with Mr. Dean. You told him that
20 information. You may or may not remember this, but you previously told the OFT that you
21 probably told Norman what you learned at the May meeting. Do you remember that?

22 A. No, but I probably did.

23 Q. You told us yesterday it was part of your job to gather information about the market and
24 share it within Balmoral. Do you agree?

25 A. Yes.

26 Q. So there is no reason why you would have told Mr. Ross what you had learned at all these
27 earlier meetings and not this one; it is all the same type of information.

28 A. Yes, because, as I said before, if there was anything new to discuss, I probably told
29 Norman these guys were working very, very close, that's for sure.

30 Q. You probably fed back the information about the pricing and the price bands.

31 A. Only in generic terms. For me there was nothing exciting for me to run out and tell Norman
32 Ross about.

33 Q. A bid went into Compco a couple of days after the meeting, and you say --

34 THE CHAIRMAN: A bid from Balmoral?

1 MR WILLIAMS: A bid from all the suppliers, I think.

2 A. I do not know. I know Franklin Hodge were bidding but I do not know who else was
3 bidding.

4 Sorry, I do know, Galglass were bidding as well.

5 Q. You say in your statement that you bid underneath the 15 to 17 band for the 135 tank.

6 A. Our sales team bid below that, yes.

7 Q. You do not use a figure but your legal team have said the figure was 14,900.

8 A. I think that is what the order said.

9 Q. What the ...?

10 A. The email from Norman and a guy called Clive Milton, who works for Balmoral, emailed
11 together.

12 Q. Shall we look at that? It is in the reply bundle. It is towards the back of the reply bundle.
13 There is an email, there is a chain of emails dated 13 July. Yes?

14 A. Yes.

15 Q. If you go to the first of those emails, at the bottom of the email string, it says:
16 "Clive.
17 "Can you please arrange urgently to revise and tidy up all the quotes and issue to Matt
18 Baker, who is in Worcester today ..."
19 That is Matt Baker of Compco?

20 A. Yes.

21 Q. "... so that he can get Ella to send over the orders. Waitrose Ipswich is needed in four
22 weeks, so fast track."
23 Underneath, it says:
24 "I have walked away from Finsbury Square, which will go to Franklin Hodge ..." and
25 so on.

26 A. Yes.

27 Q. It looks like these orders are at different stages. Some of them, you already know the answer
28 to the Finsbury Square bid, so that is not in it, and there is talk here about them sending over
29 the order, so it looks as though you think you know the result of some of these already.
30 Does that sound right?

31 A. Yes, I think Norman or Clive, or somebody, has had a conversation, possibly Matt Baker,
32 and agreed the prices, yes.

33 Q. Although we have the figures here, this is pulling together a number of jobs that have been
34 discussed between your team and Compco.

1 A. Yes, Compco would put out a range of jobs, maybe to get a better price on a package.

2 Q. Yes. You can see the third one is the 14.9 that you are saying is the price that was set after
3 the meeting.

4 A. Yes.

5 Q. We can see that you are copied into this email, is that right? Norman Ross sends it to Clive
6 Milton, and you are copied. Sorry, the bottom email now. If you look at the left-hand side
7 of that page, you can see at the bottom it says it is from Norman Ross.

8 A. Yes.

9 Q. To Clive Milton, cc Allan Joyce:
10 "Compco deal done at 18.9K."

11 A. Yes.

12 Q. If you then go to the bottom of the email, it says:
13 "Clive: note that I have not given Matt the breakdown, so if any stick out like a sore
14 thumb please give me a call."
15 So there is still room at that stage to change how you present the breakdown to Compco.

16 A. This is more Norman sending a note to Clive, yes.

17 Q. At this stage, Matt Baker has not seen the 14.9 and there is still scope to change that 14.9?

18 A. I do not know if Matt Baker has seen 14.9 or mentioned it or spoke about it.

19 Q. This email says, "I have not given Matt the breakdown".

20 A. Yes, but I do not know what that means. Breakdown of what? Does it mean a breakdown
21 of all the prices or ...?

22 Q. I think it means the total of 18.9, so "if any stick out like a sore thumb give me a call".

23 A. Okay.

24 Q. You see this breakdown before the client does, is the point I'm making. You see that figure
25 of 14.9 before the client sees it.

26 A. I have no idea. I do not know.

27 THE CHAIRMAN: Could you come to the point that you are making now?

28 MR WILLIAMS: Yes, I am coming to the point.
29 That 14,900 is under the band that you discussed at the meeting, the 15 to 17, by the
30 smallest possible margin, isn't it?

31 A. 14,950, 14,999 would be the smallest possible margin.

32 Q. It is just under the band.

33 A. Okay, we will go with what you are saying.

1 Q. Whether or not you actively tried to use the information that you had discussed at the
2 meeting, the discussions about the band would have reassured you that Mr. Snee and Mr.
3 Dean were not likely to push the price below your price for this tank.

4 A. No, I do not believe that. As I said yesterday and today, this is a negotiated price. I did not
5 just walk in there at 18.9. Yes? It probably started a lot higher than 18.9. I was going to
6 give my view, and I do not want to go down that route on Compco and Franklin Hodge
7 pricing, because it is quite complicated when you look at this, and I have a very strong view
8 on where we ended up.

9 THE CHAIRMAN: Is that the end of your questions?

10 MR WILLIAMS: That was my last question.

11 THE CHAIRMAN: All right, thank you very much.

12 Any re-examination?

13 MR. O'DONOGHUE: I have a handful of questions, if I may. Re-examination by MR.
14 O'DONOGHUE

15 MR. O'DONOGHUE: Mr. Joyce, we are almost done. Just a few things.
16 To pick up on a question from Madam Chairman, she asked whether this was a market
17 susceptible to increases in volume and size; is that something that you can assist the
18 Tribunal on?

19 A. Sorry?

20 Q. Is the CGST market something that is susceptible to growth in volume or is it something
21 fixed? It was a question from Madam Chairman.

22 A. Sure. Again, it is looking back five years, but effectively the sprinkler, the fire suppression
23 side has grown in demand over the last few years. I could not go back to 2012 and tell you
24 the state of the market, but generally it has grown over the last few years.

25 Q. Thank you. There was a bit of confusion about how exactly prices were set within
26 Balmoral, and I just want to pick up on a couple of things on that one, if I may.
27 Can you turn to Norman Ross' statement. It is in defence bundle tab 13.

28 A. Okay.

29 Q. Can I ask you to turn on to paragraph 39, please. If you can read that to yourself.

30 A. Yes.

31 Q. Perhaps you can read it out.
32 Is that consistent with your understanding?

33 A. Absolutely.

34 Q. A similar point at paragraph 45. Again, is that consistent with your understanding?

1 A. Yes.

2 Q. Thank you. Just to clarify, on the question of authorisation, and your involvement, how and
3 when would you become involved?

4 A. Effectively, on any product or any quotation that has got a margin of 10% or below, I have
5 to approve.

6 Q. Thank you. You were taken in cross-examination to an example of this stealth cost.

7 A. Yes.

8 Q. Was that an example of an authorisation that you had to give?

9 A. Yes. As I say, I am also responsible for putting, through our manufacturing team, the costs
10 together for these products. The stealth, as it became known, was essentially an additional
11 cost we put in there to allow us to establish the product directly through a manufacturing
12 plant, so if it was to be removed it would have to be on my authority.

13 THE CHAIRMAN: An additional cost for establishing the product in the plant?

14 A. As I was saying yesterday, we set up a new factory from scratch, so we had a lot of
15 unknowns, rather than just say, well, on an Excel spreadsheet we calculate a cost of, say, a
16 CGST -- and that is why we ended up making several revisions, because we were getting
17 things quite wrong. As I say, we were starting from scratch.

18 THE CHAIRMAN: The stealth was a bit of a buffer to make sure that you would really get 10%
19 margin on the actual costs.

20 A. Yes, and then allow us to establish for processing better.

21 MR. O'DONOGHUE: A couple of final questions.

22 At page 41 of the transcript it was put to you that the price of 10.8 and/or 10.2 was
23 something new. Can I ask you to turn up one of your previous statements, in defence
24 bundle, tab 7, please.

25 10.8 and 10.2. 10.1, I think was the specific reference.

26 Mr. Joyce, it is paragraph 56 of tab 7, which is a statement that you gave to the OFT as it
27 then was. It refers to the January 2012 meeting with Clive Dean.

28 Under the fourth bullet there is a list of information. Does that assist you in any way with --

29 THE CHAIRMAN: Which paragraph?

30 MR. O'DONOGHUE: It is paragraph 56. Internal page 12. This is Mr. Joyce's note of the
31 meeting with Mr. Dean in January 2012.

32 If I can ask you to look at the fourth bullet point, which is your note, and there is a list of
33 informations, does that assist you in any way with the 10.8, 10.2, 10.1 pricing?

34 A. Did it assist me as in --

1 Q. Was this something new?

2 A. No. As I said, from our perspective this would not have reflected what people were paying
3 in the market.

4 Q. Did the prices as disclosed in January 2012 by Mr. Dean affect Balmoral's pricing in the
5 period after that?

6 A. No.

7 Q. One final question, Mr. Joyce.
8 We have been through the transcript of the meeting in some detail. Can you tell the court
9 what was your objective or objectives in attending that meeting?

10 A. Yes. Essentially, as I say, I went to the meeting to try and put an end to the constant phone
11 calls every time bids were won and lost. When I went in there, I probably took the
12 opportunity then to say a few things and push back a little bit, when I had seen various
13 prices the day before that I had got from Norman Ross.
14 Although when I read the transcript, as I said yesterday, there are some things which in
15 hindsight it does not sound very well, but the reality was that I went there, as I say, with that
16 objective, and that is exactly what happened after the meeting; I did not get the phone calls
17 any more, and we continued to compete against three companies that were working
18 together.
19 So I suppose I got there but not in an ideal way.

20 Q. From your discussions at the meeting with Mr. Dean and Mr. Snee, insofar as you are able
21 to assist the court, what did you understand from those discussions were their objectives in
22 the meeting?

23 A. There was no question that it was to get Balmoral involved in their cartel.

24 MR. O'DONOGHUE: Thank you. Questions by THE TRIBUNAL

25 MS. DALY: I have two simple questions so I get the correct impression.
26 Your sales guys had some parameters when the margin differed, went below 10%, then they
27 would need to clear that with you, somebody would need to clear it with you.

28 A. Yes.

29 MS. DALY: I thought I read somewhere in some of the documents that also, if it was a large
30 volume, or a large deal -- what would constitute a large deal?

31 A. Maybe 250 or 300,000 maybe.

32 MS. DALY: By value, monetary value or by number of tanks?

33 A. Not so much -- I do not recall number of tanks, it tended to be monetary value.

1 MS. DALY: I have one other question about the costing and the pricing. If I have understood
2 you correctly, the way prices were determined in the market was cost plus?
3 A. From Balmoral, yes.
4 MS. DALY: Then you had to deal with what the market presented in the negotiating process.
5 A. Yes.
6 MS. DALY: You were embarking on this version 7, right, but you had version 6, obviously.
7 A. Yes.
8 MS. DALY: I thought I understood you to say that "We thought the costs were wrong", but how
9 did you know they were wrong? What was the signal?
10 A. Probably because some of the margins we were booking, and then when we would get to
11 the end, we would do a completion on each project, so we would maybe think we were
12 booking 20% margin but we end up with 18 or 17. From that process you would see
13 whether it was transport, installation or raw materials, so you would have cost categories to
14 track for the cost margin.
15 MS. DALY: Some kind of post deal cost accounting.
16 A. Yes. We have to have like a month end reconciliation of the margins.
17 MS. DALY: Thank you very much.
18 DR. BELL: One further question, Mr. Joyce.
19 Your notes of the meeting which we looked at, what did you then do with those notes?
20 What was the purpose of the notes?
21 A. Almost every meeting I go to I take notes, and those notebooks were essentially in a file in
22 my office, and they are always dated. So every time I had finished one, I would just start a
23 new one. They are always there, all of my notebooks are always there just for reference, for
24 any purpose, for anything that I had written down. They were on stored in my office.
25 DR. BELL: For your use or for the use of team?
26 A. Sorry. For my use, like a diary essentially.
27 DR. BELL: Okay, thank you.
28 THE CHAIRMAN: Thank you very much, Mr. Joyce, I can release you from the witness-box
29 now.
30 A. Thank you. (The witness withdrew)
31 THE CHAIRMAN: Should we take our short break now and then call Mr. Snee?
32 (11.30 am) (A short break)
33 (11.35 am)
34 THE CHAIRMAN: Yes Mr. Williams.

1 MR WILLIAMS: Madam, we are going to call Mr. Snee now. MR. PETER NIGEL SNEE
2 (sworn)
3 Examination in-chief by MR WILLIAMS
4 THE CHAIRMAN: Sit down, Mr. Snee.
5 MR WILLIAMS: Could you pass Mr. Snee the core bundle, please.
6 Mr. Snee, could you turn to tab 5 of that bundle, please?
7 A. Yes, I have tab 5.
8 Q. Is this the witness statement that you have provided in relation to this appeal?
9 A. Yes, I can confirm this is the witness statement that I provided.
10 Q. Could you turn to the back of that document. Is that your signature?
11 A. I can confirm that that is my signature.
12 Q. Are the contents of the witness statement true to the best of your knowledge and belief?
13 A. The contents of the witness statement are true to the best of my knowledge and belief.
14 MR WILLIAMS: Thank you, Mr. Snee. If you stay there, there will be some questions for you.
15 Cross-examination by MR. O'DONOGHUE
16 MR. O'DONOGHUE: Good morning. Thank you for coming along to assist the Tribunal.
17 I know you have been through a lot in these proceedings on the criminal and civil fronts. I
18 will be as quick as I can but there is a certain amount I have to cover for my clients, and I
19 hope you understand that.
20 A. I understand.
21 Q. Thank you. Can we start with the sort of lead up to the cartel. Franklin Hodge was part of a
22 seven year cartel during which excessive margins were made by the cartel. That is correct?
23 A. Franklin Hodge was certainly part of a cartel for seven years, that is correct. I leave it to the
24 court to judge whether it was excessive, or the word "excessive".
25 Q. Can we look at what Mr. Greaves says about this. It is in the supplemental bundle, It is tab
26 9.
27 A. Tab 9.
28 Q. It is at paragraph 45. Just for the Tribunal's benefit, Mr. Greaves was one of the salespeople
29 at Franklin Hodge; that is correct, is it not?
30 A. Sorry, I apologise.
31 Q. Mr Greaves was one of the salespeople at Franklin Hodge?
32 A. That is correct. Mike Greaves remains a salesman in Franklin Hodge.
33 Q. He says at paragraph 45:

1 "The introduction of the price list, which was part of the cartel, allowed for a steady
2 increase of the percentage margins to the high 30s. I believe these margins were
3 excessive, they were unsustainable. It was encouraging a new entrant into the market
4 to undercut the original three manufacturers and still make reasonable margins ..." and
5 so on.

6 Certainly his view was that, first of all, the margins were in the high 30s, and that that was
7 excessive. That is what he says.

8 A. I accept that is what he says, yes, correct.

9 Q. We see the point in paragraph 45, so he thinks that these excessive margins are bound to
10 lead to a new entry, and of course that is exactly what occurred in late 2011, early 2012,
11 with Balmoral.

12 A. That is correct.

13 Q. Again, we get a sense of this from Mr. Greaves, but it was understood by Franklin Hodge
14 and the other cartelists that if Balmoral came in, it would upset the apple cart in terms of the
15 cartel. It was potentially a lethal threat to the cartel.

16 A. That is correct.

17 Q. I think a phrase you used in a number of previous statements is that it would actually be
18 pointless to continue the cartel if they or somebody else had come in.

19 A. That is correct.

20 Q. So it was clear to you and to the others that if the cartel was to continue, you needed to get
21 close to Balmoral.

22 A. That is correct, yes. That is correct.

23 Q. That exercise of building trust and establishing trust, that obviously does not happen
24 overnight, it takes time.

25 A. That is also correct, yes.

26 Q. Thank you.

27 What I want to do now is there were a series of meetings before the 11 July meeting. You
28 attended most of them but not all of them. I just want to run through those to set the stage
29 before the July meeting, if I may.

30 A. Yes, I understand.

31 Q. We can actually pick this up in the decision, which is in the core bundle. It is in tab 8.

32 A. Tab 8?

33 Q. Yes. I am looking, Mr. Snee, at internal page 42. It starts at paragraph 3.13.

34 A. I have that.

1 Q. Thank you. The first meeting was 6 January. You were not at that meeting with Mr. Dean,
2 but you see in the middle of 3.14 there was a suggestion, or rather a complaint that
3 Balmoral was too cheap, and Mr. Dean invited Mr. Joyce to the next meeting, but he
4 declined for the time being.

5 If we then move on across the page, or rather over the page, there was a further meeting on
6 7 and 8 February separately with different members of the cartel.

7 A. I have that, yes.

8 Q. Mr. Joyce made a note of that meeting, which we see at 3.20, a contemporaneous note. He
9 says about a third of the way down:

10 "... obviously we are not interested in discussions of this type ..."

11 Two-thirds of the way down:

12 "... we will continue to appear we are interested in further discussions until we launch
13 our own vortex inhibitor."

14 He concludes:

15 "I appreciate we have no interest in any form of collusion with the other players in this
16 market and will ensure we never compromise our business ..." and so on.

17 So it is fair to say at this stage that Mr. Joyce was giving a clear enough indication that he
18 was not willing to come on board.

19 A. That is correct.

20 Q. Thank you. As we go on, there is a further meeting at 3.22. Here this is based on your
21 recollection of that meeting. It says:

22 "Then we moved on to pricing, and more specifically Balmoral's approach to the
23 market and the price of CGSTs. We indicated again to the Allan that the prices being
24 bid by Balmoral were significantly below the established market price for such tanks."

25 Pausing there. Actually what that means is "below the established cartel price".

26 A. That is correct.

27 Q. You recall that Balmoral Tanks remained very much non-committal on the issue of pricing?

28 A. I recognise that, yes, that is correct.

29 Q. A couple of things. Again, at this stage the same complaints, "You are too low, you are
30 below the market/cartel price", and him being non-committal, to use your phrase.

31 Moving on, the next meeting is 2 May, at 3.24.

32 Over the page at page 46, this time it is Mr. Stringer complaining. Mr. Stringer complained
33 about the prices that Balmoral Tanks was quoting and the amount of work it was winning.

34 Mr. Joyce's note of the call says "NS", which I think is you.

1 A. That is correct.

2 Q. "20% lower want to meet, not happy BTC, [I am not sure what that means], winning all
3 work, where do we stand."

4 Then his recollection, and I am not asking you to comment on this:

5 "The meeting also continued along a similar line to the previous meeting in March,
6 where I was told that Balmoral was too cheap. I maintained the same position as
7 previously, that we were you in to the market and were finding our feet and our
8 pricing was all over the place."

9 Again, pretty much more of same; complaints, a wish that he would come up to the market
10 price level, but him at least at this stage not giving the impression that he was playing ball.

11 A. That is correct, yes.

12 Q. We then move on to the build-up to the July meeting. By this stage you and/or the other
13 members of the cartel had had a number of meetings with Mr. Joyce which followed a
14 familiar pattern and, as I said, you were complaining about the prices, you wanted them
15 stabilised to the cartel level, and he seemed noncommittal at that stage.

16 In the meantime, of course, he was bidding, winning, and affecting your company's bottom
17 line in the real world. There was a sort of parallel story to all of this.

18 I think it is fair to say that Mr. Dean, because it is essentially a family company and he was
19 a distributor in effect, he was not a manufacturer of the tanks --

20 A. That is correct.

21 Q. -- he was probably more exposed to this dynamic than you were.

22 A. Yes, indeed, that is a correct assumption.

23 Q. We actually see that in pretty vivid terms on page 47. About halfway down it starts:

24 "Mr. Stringer sends the same text message ..."

25 What we have here is:

26 "Hi Nick, from my point of view the answer is no! Yesterday they [Balmoral] quoted
27 ... and were at least £5,000 below me after I had discounted by 7% ..." and so on.

28 It is suggested:

29 "I am thinking an emergency meeting?"

30 The response is:

31 "Yes, an emergency meeting is needed."

32 So it is clear by this stage, which is May, and I think it is actually a phrase, Mr. Snee, that
33 you use yourself at one point. If we go forward to --

34 THE CHAIRMAN: What is the phrase that he uses?

1 MR. O'DONOGHUE: The phrase used here is "emergency meeting", and the phrase used by you,
2 Mr. Snee, this is at paragraph 3.28 -- sorry, forgive me, at 3.34, which is on page 50. There
3 you are describing Clive, and you say:

4 "Although 'desperate' would be too strong a word, he was very keen that the meeting
5 with Allan went ahead."

6 You certainly understood that he at least was pretty much in dire straits.

7 A. Yes. He was, let us say, very keen to have the meeting.

8 Q. It is also fair to say, is it not, that you, as Franklin Hodge, were also keen to have this
9 meeting?

10 A. That is correct. We were keen to have a meeting with Balmoral over this issue, yes.

11 Q. In particular for you, as Franklin Hodge, there were two critical points, two critical
12 customers. Compco was your gold customer under the cartel and Hall and Kay was the
13 second big customer of Franklin Hodge.

14 A. That is correct. Compco were a gold customer, but there were certain offices of Hall and
15 Kay that were also -- the documentation shows that there were certain offices of Hall and
16 Kay that were our gold customers, because they had regional offices.

17 Q. Thank you. Just to put this in context for the Tribunal, can I ask you to turn up Mr. Baker
18 of Compco, his statement. In the second supplemental bundle at tab 18.
19 It is paragraph 9, Mr. Snee, that I would like you to look at. Do you have it?

20 A. I have it. I have paragraph 9, yes.

21 Q. He is giving a synopsis of the full year 2012 and he mentions Balmoral:

22 "They were very competitive on price. In 2012 they took approximately two-thirds of
23 the market, all of it from Franklin Hodge."

24 He gives the previous figures. In previous years Franklin Hodge had almost a million
25 pounds, 100% of that. In 2012 you had £253,800, with 660 from Balmoral.

26 So effectively you had lost, during this period, about two-thirds of your business with
27 Compco, and that came at a direct gain by Balmoral with Compco.

28 A. That is correct.

29 Q. I mean, this was pretty serious stuff, is the point I am putting to you.

30 A. That is correct. It is serious. Indeed, in my -- in the conversation I had with Allan at the
31 July meeting I made that clear.

32 Q. Thank you. I want to move on to the meeting itself, which is obviously important. I want
33 to start with what I would call the agenda for the meeting. Can we turn to a previous

1 statement you gave, on 29 May, to the OFT. It is at your exhibit bundle, so it is exhibit
2 PNS/1. It is tab 4 of that bundle.

3 A. Tab 4?

4 Q. Yes. It is a bit of the way in. It is actually at page 81, if you can find that.

5 A. I have page 81.

6 Q. About half the way down, Mr. Cope of the OFT says to you:

7 "What was the purpose of the meeting of 11 July?"

8 You say:

9 "To try and get Allan Joyce and Balmoral on board with the arrangement."

10 Exhibit bundle, so it is exhibit PNS/1. It is tab 4.

11 He says:

12 "So to encourage -- am I right in saying, to encourage them to join the market share?

13 Yes. And to join the price alliance price fixing, whatever you want to call it?

14 Correct."

15 So the agenda or the purpose was to join the cartel.

16 A. That is correct. That was the purpose of the meeting.

17 Q. We can pick this up in a bit more detail in the decision itself. It is at paragraph 3.34.

18 Again, this is core bundle, tab 8.

19 This is the agenda or strategy, so it says the managing directors --

20 A. Excuse me, I have tab 8. Which page, forgive me?

21 Q. My fault, 3.34. It is on internal page 49.

22 A. Thank you.

23 Q. If I am going too fast, just stop me.

24 A. I will do so.

25 Q. Again we have the agreed agenda and strategy. The strategy was trying to bring Balmoral
26 into the longstanding customer allocation price fixing cartel arrangements. Then you
27 explain:

28 "Having discussed Balmoral's entry between us ... we agreed on a particular approach.

29 In essence ... the approach centred on seeking to explain to Allan that protecting the
30 prices of GSTs [which should be CGSTs], having a sensible price, would mean that
31 each manufacturer could operate within the market with healthy profit margins, rather
32 than fighting to obtain a high volume of sales but with a low profit margin. We saw
33 this as an appeal to his business sense."

34 Then over the page:

1 "En route on the meeting, I spoke to Clive ... and we discussed our joint expectation of
2 the meeting and confirmed our agenda", and so on.
3 Again, the agenda was to get him on board with the cartel?
4 A. That is absolutely correct, yes.
5 Q. One of the points which comes up in the transcript is the idea of a positive outcome, which
6 was I think the text from Nick Stringer to you. I just want to put that in context. Can I ask
7 you to turn up again one of your earlier statements; this time it is 3 December, it is in the
8 exhibit bundle at tab 5.
9 A. Yes, I have it.
10 Q. This time it is page 21, if you can find that.
11 A. I have page 21.
12 Q. Thank you. We see halfway down that page, this is the text. This is you, Mr. Snee:
13 "I think it was me texted saying 'How's it going, hope for a positive outcome!'"
14 Then:
15 "During the meeting, okay."
16 Then at the bottom of the page:
17 "Yes, the positive outcome would be that Balmoral would come to the arrangement
18 and basically accept a smaller market, you know, and a smaller market share for a
19 better price okay, and ... that was what everybody wanted as an outcome."
20 Again, the positive news was coming on board with the arrangement with the cartel.
21 A. That is correct.
22 Q. The next point I want to move to is a sort of composite point. Just to indicate to you where
23 I am going, in one of your earlier statements, and I will show you this, there were a number
24 of what I would call failed attempts in the 1990s to start a bit of a cartel, and there were
25 different phases of the cartel itself. Can I just take you very briefly through those.
26 The first one is in the same bundle, if you still have that to hand.
27 A. I do.
28 Q. This time it is in tab 2. There is another statement, this time dated 6 June 2014. Can I ask
29 you to turn to paragraph 37, which is internal page 7.
30 A. This is tab 2.
31 Q. Yes, paragraph 37.
32 A. Paragraph 37. I have it.
33 Q. It actually starts at 33 but I am not going to read that. There was essentially a bit of a cartel
34 or an attempt to try and engineer one.

1 Then at 37 you make the point:

2 "Anyway, the agreement did not last very long because we subsequently received a
3 large enquiry from Tyco in Birmingham and I deliberately submitted a bid to win and
4 consequently broke the agreement."

5 A. That is correct.

6 Q. That was a failure.

7 I am not going to ask you to look at this, but there was a further attempt which we see at
8 paragraph 46 -- it is more for the Tribunal's note -- which is a different attempt in 1999. I
9 am not going to go through that, to try and speed things up.

10 I want to focus on the cartel itself, because it had different phases, if you like. I want to
11 start with one of the earlier phases. We can pick this up actually in the same bundle, in the
12 same tab, 2, at paragraph 97.

13 A. I have it.

14 Q. Actually, while we are here, at 96 you say:

15 "The initial meetings of the cartel at The Belfry were more about building trust and a
16 rapport between us."

17 In a sense that mirrors the point that we have already seen with Mr. Joyce, that it takes time
18 and meetings, and human relations are organic, they are not something which necessarily
19 happen overnight. So it is the same thing with the cartel, it takes time. Anyway, I digress.
20 What I want you to look at -- there were two components to the cartel; there was customer
21 allocation and price fixing.

22 On the price fixing side, phase 1 of the cartel was an agreement on predetermined discounts.
23 You pick this up in 97:

24 "Initially our discussions led to an agreement on how we approached discounting
25 based on common tank sizes. We agreed we would only discount our prices to a
26 maximum predetermined level. However, this initial agreement was doomed to
27 failure as we did not know what each other's productions costs were. Therefore,
28 although to my knowledge we kept to the agreed discount percentage, the end sales
29 figures being quoted were different and we concluded that we had to come up with a
30 specific price agreement, something that harmonised prices between all of us."

31 THE CHAIRMAN: What time period are we talking about for this, roughly?

32 MR. O'DONOGHUE: I think it is around 2005. It is the early phase of the price fixing second
33 component of the cartel.

1 The basic point I think you are acknowledging here, but tell me if you disagree, is that even
2 with customer allocation a mere understanding or agreement on predetermined discounts
3 was not going to be effective in this market, there needed to be something more focused and
4 maybe more rigid. That is what I understand from 97.

5 A. That is correct. To make the arrangement work, you needed to have a price list, in effect,
6 with agreed discount levels and price bands.

7 Q. In the cartel itself, when it moved to the subsequent phase of price lists, what we see from
8 that is that first of all there were separate price lists for the accessories and the tanks. So
9 there were two separate lists. Is that correct?

10 A. Forgive me. From memory, there was a price list and I think accessories were shown
11 separately on the same price list, yes. Forgive me, my memory is -- I have tried hard to
12 erase raise that part of my --

13 Q. Again, from memory were these pretty thick documents?

14 A. No. We were working on cylindrical tanks, of which there is a limited range of heights and
15 diameters, giving set capacities, and with the accessories there are only a limited number of
16 accessories. So it was not a -- how do you define "a large document"? But it was not an
17 overly large document, to my memory.

18 Q. Are you able to assist the Tribunal? If it was listed by cylindrical tank height, diameter,
19 plus accessories, roughly speaking, in terms of line items, how detailed would this be?

20 A. We are talking from memory, where it would be three pages of A4 for the height and
21 capacity chart. Remember that each of those tanks -- again I am going from memory now --
22 would have had a set number of standard components in it. For instance, a 200-millimetre
23 suction would have been allowed in that price; an immersion heater would have been
24 allowed in that price.

25 To make it easier, we agreed a standard set of accessories so we did not have to have, as
26 counsel is saying, almost a separate set of -- but there was, counsel is quite correct, there
27 was a separate set of accessories. So if you wanted a 250-millimetre or a 300-millimetre
28 suction outlet, you could apply that price extra to upgrade that standard package, if you like.

29 Q. This is a sort of meandering set of questions. The point I am trying to make is that you had
30 understood very clearly from the previous failed attempts to form a cartel, from the failure
31 of the predetermined discounts, that for stabilisation of prices to be effective in this market
32 what you needed was customer allocation and a more rigid system of price list fixing.

33 A. That is correct, yes. I have stated that, yes.

1 Q. This would have been clear in your mind when you came to the meeting, in terms of the
2 agenda and what would work and what would probably not work.

3 A. That is correct. Which is why we discussed specific standard sized tanks, and the prices of
4 those standard sized tanks, which I believe are in the documentation, to try and provide a
5 platform to work from on price.

6 Q. Thank you.
7 I am going to move on now, Mr. Snee, to the nitty-gritty.

8 A. Excuse me.

9 Q. I understand. This is not fun.
10 I am going to move on to the meeting itself. Can I ask you to start, please, by looking at
11 your most recent statement for these proceedings. It is in tab 5 of the core bundle, if you
12 have that.
13 The third sentence, you say:
14 "Allan [Mr. Joyce] ..."

15 A. Forgive me, I did not hear. Is it tab 5?

16 Q. Yes, tab 5, paragraph 18.

17 A. My apologies.

18 Q. Do you have that?

19 A. I have it, thank you.

20 Q. You say:
21 "... Allan [Mr. Joyce] told us quite early on in the meeting that Balmoral was not
22 interested in joining the cartel and that he would not allocate customers."
23 What you set out here is that at a fairly early point in the meeting he made clear to you that
24 he was not interested in the customer allocation aspect of the cartel, and that then the
25 discussion continued.

26 A. That is correct. He made that clear.

27 Q. Can we look at the parts of the transcript, just to put this in context, Mr. Snee, for you and
28 the Tribunal. As I understand your evidence at paragraph 18, if you can be shown a copy of
29 the meeting transcript -- it is in the core bundle.

30 THE CHAIRMAN: It is in tab 10 in the bundle in front of you, I think.

31 A. I have it.

32 MR. O'DONOGHUE: I think it is page 21.

33 A. I have page 21.

1 Q. It is about two-thirds of the way down and you talk about divvying up customers, gold and
2 silver, which is the customer allocation part of the cartel, and you say:

3 "Obviously it's going to be difficult to arrange that with you guys now, given you're
4 saying you don't want to go down that road, so it's going to be a complicated picture
5 and it's going to continue to be a complicated picture."

6 Allan says:

7 "... the culture in Balmoral is to put the pressure on [something] all tanks that way and
8 go that way."

9 As I understand your evidence from paragraph 18, you are saying this is the point at which
10 he rejected the cartel, and then there was subsequent discussions.

11 A. That is correct, yes.

12 Q. What I want to do is to look at the transcript in quite a number of points after this what you
13 say is a sort of cut-off point, and to put a number of points about that to you.

14 Can I actually start with the decision itself, because this sort of sets the stage in a way that is
15 useful. Again, this is the core bundle, tab 8. This time it is at paragraph 3.12.

16 A. I have 3.12.

17 Q. Actually, it is 3.10. Again, this is an extract from one of your earlier statements:

18 "... [we] decided we should attempt to get Allan Joyce along to one of our meetings
19 and persuade him that it would be beneficial for Balmoral to join us. The idea was to
20 try and convince Allan that Balmoral should raise its prices to meet ours in exchange
21 for an equal share of the steel tank market. This way, each would have to accept a
22 limit on the proportion of the market, but in the knowledge that they would operate
23 with a far greater profit margin. In other words ... they would make greater profits,
24 but on a smaller output."

25 This was an idea that the way in which you can raise or fix prices is by cutting the cake four
26 ways, 25 times four, and that people would have less volume but more margin or more
27 profits, because there would be an understanding that people would effectively be allocated
28 their share of the cake.

29 A. That is correct.

30 Q. We see this picked up in a number of places in the transcript. Just to be clear for the record,
31 all of these places are subsequent to page 21 of the transcript which I have just showed you,
32 which you say is a sort of cut-off point.

33 A. I understand.

1 Q. I am going to take this in the order in which they come in the transcript, and I am going to
2 take it quickly because there are quite a number of references.
3 The first one is at page 24 of the transcript.
4 Do you have that?
5 A. Yes, I have page 24.
6 Q. It is at the top of the page, where you say:
7 "But the price is always a function of market share, isn't it, and it's about how you
8 perceive your market share ..."
9 A. Sorry ... this is page 24, yes?
10 Q. Page 24 of the transcript, yes.
11 A. My apologies, I have it.
12 Q. At the top of that page it should say "NS"?
13 A. Yes.
14 Q. You say:
15 "But the price is always a function of market share, isn't it ..."
16 I am going to put a series of these things to you, rather than -- well, if you wish to comment
17 each time feel free, but it may be quicker if I put the various quotations to you and then I
18 will ask you a question, but as you wish.
19 A. I understand.
20 Q. The next one is on page 25 at the top of the page. You say:
21 "... then we can say look at the bigger picture and say we're kind of getting 25% of
22 that, so that's where we need to be, we need to be."
23 Clive says, about a third of the way down:
24 "Well, the market shrinking is really something we can't control, it's the world isn't it.
25 It is how we get to our 25% but at a lot higher price, but last year, they were 20% odd
26 higher than they are now, but how do we get 25% but where we're at now."
27 Then you say:
28 "Without divvying up the customers ..."
29 I assume that is a reference to customer allocation.
30 A. That is correct.
31 Q. "... the only way that we could do it is getting to a situation where people are comfortable to
32 walk away from jobs without coming back ..."

1 We can then move on a few pages to page 37. I actually want to show you this in a different
2 document. This is in the context of one of your previous statements. Again, it is the exhibit
3 bundle. It is tab 5.

4 This is an OFT interview in the context of the criminal case, and it is at pages 32 and 33.

5 A. I have it.

6 Q. You will see, Mr. Snee, on line 18 on the left of page 32 the OFT is putting to you page 37
7 of the meeting transcript. They set out your quote:

8 "To come back to where we were then it's going to be a complicated picture, isn't it,
9 on the pricing front?"

10 You say:

11 "Yeah."

12 The OFT says:

13 "This is like market sharing, we're going to have to manage it the best we can, I
14 suppose, is the conclusion we're coming to."

15 You say "Yes". They say:

16 "So you have dragged it back into ..."

17 You say:

18 "Yeah, yeah.

19 "... cartel talk."

20 You say:

21 "Yeah, absolutely. I won't deny that."

22 So certainly at this stage you seem to be agreeing with the suggestion that when you are
23 talking about market sharing, and I put it to you the 25% equal market shares and so on, in
24 your mind that is the cartel.

25 A. That was the same principle that we were operating the cartel under, that is correct.

26 Q. Just to pick up a few final references. There are a number of these.

27 At page 45 of the transcript, at the top of that page -- do you have that, Mr. Snee?

28 A. I have page 45.

29 Q. Again, you say:

30 "Yeah ... well that's where it boils down to market share, if we make an assessment of
31 where we think the total market is and we say we'd like to be around the 25% of that,
32 and then you can, I guess then you can adjust where you are in that band at any one
33 time and say look, we're not getting anywhere near our 25% so we're going to drop
34 down [something] band so we can drive a bit more ..."

1 A. Excuse me, my mistake, I think I am on the wrong page 45.
2 THE CHAIRMAN: Back in the transcript.
3 A. I am sorry. I should try and pay more attention. I have page 45, tab 10.
4 MR. O'DONOGHUE: Again, please stop me if there is a difficulty.
5 A. I will do.
6 Q. You say:
7 "it boils down to market share, if we make an assessment of where we think the total
8 market is and we say we'd like to be around the 25% of that, and then you can, I guess
9 then you can adjust where you are in that band at any one time and say look, we're not
10 getting anywhere near our 25% so we're going to drop down [something] band we can
11 drive a bit more volume, but that's a complicated game."
12 Clive says:
13 "That won't work ..."
14 Again, this is the same idea, the equal market sharing, 100 divided by 4.
15 A. That is correct.
16 Q. There are a few more references just to complete the picture, so we pick this up again at 58.
17 About two-thirds of the way down you say:
18 "... it all boils down to market share ..."
19 Do you have that?
20 A. It is a fairly dense bit.
21 Q. It is. I had trouble finding it. It's about two-thirds of the way down.
22 THE CHAIRMAN: Just below the second hole-punch.
23 A. Okay, thank you.
24 MR. O'DONOGHUE: .
25 A. Could you repeat your question?
26 Q. You say:
27 ".. it all boils down to market share, price will follow once we agree what the market
28 share is because Allan will not, Allan is not interested, in fact Allan said that he and
29 Jim Milne had spoken and he was on the point of saying don't go to the meeting any
30 more because it's pointless."
31 Over the page at 59, on the top you say:
32 "Now in reality we're all going to have to look at around 25% of that ..." and so on.
33 Then about five lines down:

1 "We'll accept 25% of the market but I said unless we divvy up the customers, we all
2 have gold customers and silver customers, like we used to ... it's never going to work
3 ..."

4 A. That is correct. It is repeating the same principle.

5 Q. So the question I am putting to you -- let me put it.

6 Certainly from Balmoral's perspective at each of these points I have showed you in terms of
7 25% equal market shares as a way to bump up prices, they would clearly have understood
8 that as an invitation to join the cartel?

9 A. That is correct.

10 Q. The reason you come back to this 25% on a pretty large number of occasions is that, it is
11 the point we discussed earlier, you had understood from the failed cartel efforts from the
12 earlier phases of the cartel with predetermined discounts that you needed something like
13 this for prices to be stabilised. That was the only effective way in which this would work?

14 A. As I said before, you do need to have -- we recognised that you needed to have some
15 framework to make the system work otherwise it would not work.

16 Q. Just to move on to a related point but it is slightly separate. Could I ask you to pick up
17 again the exhibit bundle. This time it is tab 4.

18 A. Tab 4.

19 Q. It is page 82 and page 83.

20 A. I have them.

21 Q. Thank you. I want to start around the middle of page 82.

22 Does the Tribunal have that?

23 THE CHAIRMAN: Yes.

24 MR. O'DONOGHUE: The OFT is saying to you:

25 "So you would have shared that information with Allan as like, in terms of, well, this
26 is what you could be making because this is what we are charging."

27 You say:

28 "That is correct. That was certainly discussed at the meeting by -- I remember Clive
29 giving some information which is probably based on that, and I'll not walk away from
30 my involvement."

31 Over the page at 83 towards the bottom you say, and I think it is a similar point:

32 "I guess it was a way of trying to entice him a little bit, sort of, this is the kind of
33 margins you can make in the marketplace."

34 A. That is correct. That was emphasising the --

1 Q. My question is you have confirmed to me that when you spoke on a number of occasions
2 about the equal market sharing 25%, that that was the cartel, and I think what you are
3 confirming here in the interview is that certainly the disclosures you made and that Clive
4 made were an enticement to show Balmoral, "Look how wonderful life could be in the
5 cartel". That was the context in which the disclosures were made. They were an enticement
6 which I think is a good word?

7 A. Yes, that is correct. I stand by that, yes.

8 Q. One final point which is something quite different. Obviously you are aware that Franklin
9 Hodge as a company made what is called a leniency application?

10 A. I am aware of that, yes, correct.

11 Q. In return for that they received a discount of 30%.

12 A. That is correct, my understanding yes.

13 Q. That is a confidential document which is in the bundles and I am very happy to turn it up if
14 it is useful, but one thing that is striking in that application is that the application only
15 speaks about the cartel and it does not make any separate application or even mention the
16 idea of a separate or distinct information sharing infringement.
17 Would you like me to show you that or is that something that you are prepared to comment
18 on?

19 A. I am not aware of -- I was never part of the process of the leniency application. My
20 company did not share that information. That was separately -- I was aware that it was
21 happening but I was not part of that process. Forgive me, but I do not know, and you have
22 told me something today that I was unaware of. So ...

23 Q. It is tempting to say it was useful to come for that alone but I am afraid that is not the case.
24 But let me put this in a different way, and again this may not be entirely fair to you, so let
25 me put the question.

26 THE CHAIRMAN: What was the date of the leniency application?

27 MR. O'DONOGHUE: We have it in the bundle. It was in 2013. So it was sometime after the
28 meeting, July 2013.

29 THE CHAIRMAN: All right.

30 MR. O'DONOGHUE: Mr. Snee, let me put the question a slightly different way and again if it is
31 unfair on you please say so.
32 When the company organised this leniency application it was obviously an important step
33 for the company?

34 A. Yes. Very much so, yes.

1 Q. The way the system works is that you fess up, you spill your guts and you get a discount for
2 doing that?

3 A. That is my understanding, yes.

4 Q. So in a sense the more you say the better?

5 A. Yes, I believe that is the process, yes.

6 Q. If it is the case that that statement does not mention information sharing at all, never mind
7 separately, that would be a striking omission?

8 A. I am sorry, counsel has me on an area that I cannot -- I am struggling to comment on really.
9 Forgive me, I am --

10 Q. We will move on. It may be a point more for submission.
11 For the Tribunal's reference the statement is in --

12 THE CHAIRMAN: It would help me understand the point if you did pursue it maybe just one
13 more question so that I can understand what it is you are putting to Mr. Snee.

14 MR. O'DONOGHUE: Mr. Snee, you understand by this stage that there are two separate
15 decisions: one dealing with the cartel and one dealing with information sharing?

16 A. I understand that is correct, yes.

17 Q. The point I am putting to you is that in circumstances where the company's lawyers carrying
18 out a sensitive task of disclosing the full extent of wrongdoing, it is an extraordinary
19 omission that this second separate infringement is not even mentioned in that application?

20 A. Again I go back to the point, I am not sure I am qualified to make any comment on that. I
21 am obviously wishing to help in any way I can but I am not sure I can comment on that.

22 MR. O'DONOGHUE: Madam, I do not think I can take it any further; it may be a point for
23 submissions.

24 THE CHAIRMAN: Yes.

25 MR. O'DONOGHUE: Mr. Snee, I am moving on to something a bit different.
26 Can I start again with your most recent statement in these proceedings, which is in tab 5 of
27 the core bundle. It is at paragraph 21.
28 Do you have that, Mr. Snee, at page 5?

29 A. I have it.

30 Q. Four or five lines down:
31 "So he [Allan Joyce] gave us a clear message during the meeting that he wanted prices
32 to be stabilised and increased and I took from this that he was in favour of raising
33 market prices above the low levels recently seen on the market, which we discussed
34 during the meeting."

1 That is what you say there. I have a couple of questions on that. This is essentially the
2 question of stabilisation of prices upwards.

3 The first question is, is your evidence that that understanding of moving prices upwards was
4 a clear understanding formed during the meeting?

5 A. Sorry, forgive me, could you repeat the question? Sorry.

6 Q. You mentioned that Mr. Joyce wanted to stabilise prices and get them up, and so on?

7 A. That is correct.

8 Q. Is your evidence that that was a clear understanding reached between you and Balmoral
9 during the meeting?

10 A. That is my understanding, yes.

11 Q. It was a collective understanding?

12 A. I can only speak for myself but feedback from the others was that, yes, that was a collective
13 understanding.

14 Q. Is it also your evidence that that stabilisation, if I can call it that, upwards, was something
15 which would focus around this idea of bands?

16 A. That is correct, which is why we mentioned them, yes.

17 Q. I am going to take you to a number of previous statements where you address essentially the
18 same point, but before I do that I want to put a couple more general questions to you.
19 We have seen in the previous meetings there was complaints about his pricing; Allan
20 saying, "I would love to put them up", but complaints that he was below the cartel level, and
21 so on, and we saw this on four or five occasions before the meeting.
22 What was said at the meeting in July was essentially more of the same?

23 A. Yes, that is correct, yes, more of the same.

24 Q. It was nothing new?

25 A. I would add at that point, if I may, that there was perhaps more specific price information
26 discussed at that July meeting.

27 Q. That is fair enough. We will come to that.

28 Another general question: in any market in which sellers are active, all else equal they
29 would love prices to go up, they would love them to move upwards; in a sense this was a
30 truism. Everybody would love, I would like bigger brief fees; everybody would love higher
31 prices. Saying "We would like to stabilise things", it was a statement of the bleeding
32 obvious, was it not?

33 A. Yes, that is a statement -- a correct statement, yes.

1 Q. We saw earlier there was a meeting on 6 January 2012 involving Mr. Dean. You did not
2 attend that meeting although I gather you would have been made aware of it.

3 A. I was made aware of it.

4 Q. At that meeting a number of things were discussed. One of the things which was discussed
5 was Mr. Dean gave Mr. Joyce very detailed pricing information on a number of tank sizes
6 including school tanks and supermarkets?

7 A. My understanding is that was correct, yes.

8 Q. Would you like me to show you those numbers?

9 A. Yes. It is --

10 THE CHAIRMAN: It is not for the witness to ask what he would like to see; it is for you to put
11 things to him that you want him to answer.

12 MR. O'DONOGHUE: I want to make sure he has the full picture.

13 THE CHAIRMAN: You are saying in the January 2012 meeting --

14 MR. O'DONOGHUE: Yes, we have seen this a number of times already.

15 THE CHAIRMAN: Yes. You were not there, I think, but you understand from what you have
16 heard that Mr. Dean showed Mr. Joyce what Mr. Dean's prices were for a number of
17 products?

18 A. Yes, that was my recollection and my understanding, correct.

19 MR. O'DONOGHUE: Thank you.

20 After that meeting you had absolutely no sense, did you, that the disclosures of those details
21 of pricing reduced competition from Balmoral in any way?

22 A. My memory fades with time but Balmoral continued to be a competitive player, that is
23 correct, yes.

24 Q. So they were still bidding, still winning, still causing you problems?

25 A. That is correct, yes.

26 Q. Can we turn to a couple of previous statements where you address the meeting and its
27 outcome and its content in more detail.

28 I want to start actually with something that is not a statement. Actually, it is your
29 examination-in-chief in the criminal case.

30 That is in the second supplemental bundle at tab 23. You will see Mr. Snee there are four
31 pages on each page.

32 A. Yes.

33 Q. It is a transcript of the criminal case.

34 A. Okay.

1 Q. I am on page 119 which is on internal page 30.

2 A. Forgive me, this is page ...

3 Q. Tab 23.

4 A. Yes, which I have.

5 Q. At the bottom right you will see a page number.

6 A. Yes. It says "Pages 1 of 4", yes. Okay. We are looking at, sorry, which page?

7 Q. It is about a third of the way in. There is actually two transcripts or two different sessions.

8 So you are quite right, there are actually two sets of documents. I am looking at the second

9 batch. It is about a third of the way in, if you can find that.

10 THE CHAIRMAN: Which page, which of the quarter pages is it?

11 MR. O'DONOGHUE: It is 119 of the quarter pages, and it is internal page 30.

12 THE CHAIRMAN: Does it start:

13 "Mr. Dean, just now July last year ..."

14 MR. O'DONOGHUE: Madam, yes. Thank you.

15 Do you have that, Mr. Snee?

16 A. I do not have that.

17 THE CHAIRMAN: It should be on Day 2 in the top left-hand corner.

18 MR. O'DONOGHUE: Day 2, 3 June, 2015.

19 A. I have it now. Thank you, I have it now.

20 Q. It is actually in the second column under 119. You are being examined in-chief about the

21 meeting. You see that at lines 5 and 6. Your post-meeting briefing:

22 "What briefing did you give him?

23 You said:

24 "That it was inconclusive. My feeling was that although I felt Allan and Balmoral

25 kind of wanted to have better prices, and why wouldn't they?"

26 That is the truism point we discussed:

27 "That it was pretty inconclusive."

28 THE CHAIRMAN: Are you talking about a briefing now after the July meeting or after the

29 January meeting?

30 MR. O'DONOGHUE: The July meeting.

31 THE CHAIRMAN: Right.

32 MR. O'DONOGHUE: This was one of your calls to either people at Franklin Hodge or ...

33 A. Excuse me a second. This is page 119, and it is clause 8. "That it was inconclusive. My

34 feeling was that ..."

1 Q. Yes. Yes, I think it is actually Mr. Stringer --
2 A. Okay.
3 Q. -- you were speaking to, and you say:
4 "I spoke to him on the phone afterwards to give him a briefing on the meeting.
5 "Question: What briefing did you give him?
6 "Answer: That it was inconclusive. My feeling was that although I felt Allan and
7 Balmoral kind of wanted to have better prices, and why wouldn't they, that it was
8 pretty inconclusive, that -- maybe that reflected my own personal opinion at the time."
9 At this stage you were not saying, contrary to what you said to me in relation to paragraph
10 21 of your most recent statement, that there was a clear collective understanding about
11 stabilisation of prices upwards; you are saying here in fact it was inconclusive.
12 A. The results of the discussions that we had were that I came away, my own personal feeling
13 was that Balmoral probably did, in general terms, wish to see prices going up, but the
14 results, the actual substantive results of the meeting were inconclusive.
15 Q. Thank you. Can we move on to a couple more statements on essentially the same point, if I
16 may. The next one is in the same bundle in tab 1. This was a prepared statement by you on
17 23 May 2013.
18 MS. DALY: Tab 1 is in the first tab or 16?
19 MR. O'DONOGHUE: Sorry, it is the exhibit bundle, tab 1 of that.
20 Do you have that, Mr. Snee?
21 A. I do. I have tab 1, yes.
22 Q. Can I start with paragraph 53. It is a point that I mentioned early on, but just for the record.
23 A. I have 53.
24 Q. You say the discussions, which are cartel discussions, appeared to be coming to an end and
25 largely because Balmoral had come on to the marketplace, and it seemed pointless to
26 continue the agreement if they were not part of it.
27 That is a point that I mentioned to you earlier.
28 I actually want to focus on a different part of this. It is towards the back end, paragraph
29 178.
30 A. I have it.
31 Q. You say:
32 "Allan told us he had tried to increase Balmoral's prices but he had problems with his
33 costing. I got the impression it was all over, since it was all dependent on Balmoral

1 stopping their aggressive discounting and making their minds up whether to work
2 with us on the arrangement."

3 Then the next paragraph:

4 "Allan Joyce had been very evasive, that is how the meeting ended."

5 180:

6 "Allan said he wanted to make money in this game, that he would look at his prices
7 and come back to us. He never did. He gave very mixed signals during the meeting."

8 Over the page at 182:

9 "In early 2012 we actually agreed to reduce our prices, as we were facing Balmoral
10 and their lower prices. In the end we decided not to have any more meetings, as
11 Balmoral was just killing the prices and they would not join and there was no point, so
12 we gave up."

13 The next paragraph:

14 "After the meeting we effectively went back to the way things were before the
15 agreement. It was not a formal decision or agreement, but the agreement just fizzled
16 out. I did not want any more contact with the others."

17 There we see actually in a much more detailed way essentially the same point made in the
18 criminal case, which was the meeting was inconclusive or unsatisfactory. In fact, you go
19 much further. Is that a fair summary of this statement?

20 A. Yes. As I say, the substantive outcome of the meeting in July was that it was inconclusive,
21 as I said earlier.

22 Q. Just to wrap this up, there is a further statement in tab 4 of the same bundle.

23 THE CHAIRMAN: You introduced the words "substantive outcome" there.

24 A. Yes.

25 THE CHAIRMAN: Could you explain what you mean by "substantive"?

26 A. There was no formal agreement, is why I am using the word "substantive". I would like to
27 refer back to the point that I made earlier, that there was still a hope, a feeling that perhaps
28 communication would continue and that there might be a move to stabilise prices. But there
29 was no formal framework agreed at the meetings.

30 MR. O'DONOGHUE: Can I just pick you up on that, because this is important.

31 I have put to you already the point that you knew and understood, from the previous two
32 failed cartel attempts and from the failure of the initial pre-determined discounting phase of
33 the cartel, that this informal mechanism of stabilising prices simply would not work in this
34 market.

1 A. That is correct.

2 Q. So by "inconclusive" what you actually mean is that it would not work.

3 A. Yes, that was the feeling that we came out with.

4 Q. Just to wrap this up, Mr. Snee, there is a couple more things.

5 The first one is in tab 4 of the same bundle. This is yet another interview with the OFT. I

6 am sure you are sick of the sight of them at this stage. This time it is 29 May, so a few days

7 after your statement. Essentially, as I understand it, you made a prepared statement on 23

8 May and then they called you in a few days later to talk about that.

9 A. That is correct. There was more a sort of deeper exploration of my statement earlier, yes.

10 Q. Where I want to start, it is on page 103 of tab 4.

11 A. I have it.

12 Q. At the bottom of that page. You were asked by Mr. Cope of the OFT:

13 "Was there any anticipation with Balmoral there he would put up his prices to meet in

14 the middle?"

15 You say:

16 "That was the inference we got, yes."

17 Then you go on to say:

18 "At each meeting we went to, Allan promised that he was going to be putting his

19 prices up but it ...

20 "Ah yeah.

21 "I didn't believe him in the end. In the end no, he didn't, no, he didn't put his prices

22 up."

23 Over the page, the OFT says:

24 "He never actually committed to the cartel."

25 You say:

26 "Correct. He never lowered or raised his prices or agreed or actually physically went

27 along with any of what was proposed."

28 A. That is correct. I have no -- I have no evidence that that occurred after the meetings, no.

29 Q. That again is pretty consistent with the idea that it was pretty inconclusive, to put it kindly.

30 A. Yes, I would agree with that assessment.

31 Q. One last one, which I hope we can finish before lunch. This time it is 6 June 2014 and this

32 time it is tab 2 of the same bundle.

1 While you are finding that, Mr. Snee, just to refresh your memory, and again for the
2 Tribunal's assistance, as I understand that on 2 December 2013 you received a copy of the
3 transcript of the meeting.

4 A. Yes.

5 Q. Around that period.

6 A. Around that period, yes.

7 Q. I am not trying to trick you.

8 A. Yes.

9 Q. Some time in late 2013 you got a copy of the transcript.

10 A. Yes, that is correct. That is correct.

11 Q. So by the time of this interview you had been able to read the transcript, refresh your
12 memory and understand what was going on then.

13 A. That is correct.

14 THE CHAIRMAN: Right, so it follows that at the time of the previously prepared statement of
15 23 May 2013 and the previous interview of 29 May you had not seen the transcript.

16 A. That is correct.

17 THE CHAIRMAN: Were you aware by those dates that the meeting had been recorded.

18 A. Forgive me, Madam, my memory -- from memory, I remember that I did not know that it
19 had been recorded. I had a strange suspicion that it had been but -- forgive me, my
20 memory fails me a little bit -- but I was not aware, if I can use that word "substantively",
21 conclusively, that it had been recorded.

22 MR. O'DONOGHUE: Thank you, Mr. Snee.

23 In the statement when you had seen the transcript, can we start at paragraph 13, which is on
24 internal page 3. You say:

25 "The arrangement had been in existence since 2005 and it effectively ended in 2012
26 after the July meeting, in the autumn of that year, before November, when Balmoral
27 would not join in, after which it became increasingly apparent that there was no point
28 in continuing without their participation, and therefore we began quoting prices that
29 breached the arrangement."

30 Which is a similar point to what you have made before.

31 Moving on in this statement to 146, if I may.

32 A. Is that paragraph 146?

33 Q. Yes.

34 A. I have it.

1 Q. This touches on a point we already picked up on. You understand that Balmoral was active
2 in non-CGSTs previously, and you say:
3 "If they approached cylindrical fire suppression in the same way, it was apparent to
4 me that continuing any cartel agreement would be pointless if Balmoral were not part
5 of it."
6 That is a slightly different point. Then a couple of pages on, at 153 --
7 A. I have it.
8 Q. -- you pick up on the point which we have seen in a number of meetings:
9 "The feedback Allan got from me during our meetings was that his pricing policy was
10 too low, that he needed to increase his prices. Allan would simply respond by saying
11 Balmoral was new to the market ..." and so on.
12 At the end:
13 "As far as I was aware, he never did increase Balmoral's range of prices."
14 A. That is correct.
15 Q. At 154, the last sentence:
16 "Allan had a knack of never really answering a question."
17 He was a canny operator?
18 A. I would agree with that.
19 Q. Then at 157 over the page, the final sentence:
20 "From recollection, Allan remained very much non-committal on the issue of pricing,
21 maintaining that Balmoral was not able to increase their prices as they were still
22 establishing their true costs of manufacture."
23 Then at 165, again a point we touched on before, the positive outcome:
24 "The positive outcome was a reference to our agreed agenda for the meeting. A
25 positive outcome would have if Balmoral joined the arrangement and basically
26 accepted a smaller share in return for higher or better prices. This is what everybody
27 wanted and viewed as a positive outcome."
28 Very quickly, I am going to put this to you quickly. At 168, he never committed himself to
29 any price agreement other than to say he would look at Balmoral's pricing. 175, which is on
30 page 40, you say in the last sentence -- do you have that?
31 A. This is paragraph 175 and I have got page 39 of 49.
32 Q. Page 40. The last sentence.
33 A. Okay, the last sentence. I have it.

1 Q. "I am not sure I entirely believed him at the time, because it seemed that they were
2 attempting to win work regardless of profitability."

3 An important point a couple of pages on, at 181, 182 and 183. Just to stop there, I mean I
4 will suggest to you that in these paragraphs, having read the transcript, you are not saying
5 anything different to the previous two or three statements I have taken you to.

6 A. That is correct. What I am saying in those statements is just continuing to repeat the fact
7 that Balmoral were not coming on board.

8 Q. At 181, 182 and 183, it is a slightly different point but one which is important. Page 181,
9 do you have that, Mr. Snee?

10 A. I have 181, it is page 42 of 49, yes.

11 Q. Yes. Thank you.

12 You spoke to Stringer, and Stringer's reaction was a bit more positive. Of course, he wasn't
13 at the meeting, so in a sense his reaction was a funny one, but this is what you say:

14 "He [Stringer] gave me the impression that he thought Allan and Balmoral would be
15 persuaded to come into the agreement, and as I recall Nick had already discussed how
16 the meeting had gone with Clive Dean and during the call he pressed me on my views
17 on whether Balmoral had been persuaded."

18 Then 182:

19 "This caused Nick to rant and he says 'Well, you know, this guy must be mad, why
20 can't he come on board?' Nick's attitude towards Balmoral was if they did not join us,
21 then we would have to fight them and we would just have to go down and fight them
22 on price."

23 At 183 Stringer says "We should give one more try to get Allan on board."

24 This is entirely consistent with your previous statements, because if the outcome was
25 inconclusive in terms of achieving the stabilisation you wanted, then that is why you had to
26 have one more go, because you had not achieved what you wanted to achieve.

27 All of this is put in essentially conditional or hypothetical or slightly wishful thinking terms.

28 A. That is correct, and I think, to go back to the point made, it was an emergency meeting. I
29 think we used that word as an attempt to try and bring Balmoral on board with the
30 agreement.

31 Q. One final question before the lunch break. This is in tab 5 of the same bundle. This is yet
32 another interview. By this stage you had I think received the transcript, because there are
33 references to it. I just want to pick up on two points very quickly before lunch.

34 The first one is at pages 35 and 36. Do you have that?

1 A. Just a moment. I have page 35.

2 Q. At the bottom of that page the CMA says:

3 "The flow of information seems to be a little one-sided, would you agree? In that

4 Allan doesn't appear to be reciprocating with the same sort of detail?

5 "Answer: No, he didn't. That's correct. Yes, yeah."

6 Then the OFT says:

7 "Didn't that ring alarm bells with either you or Clive?

8 "Answer: Yeah, it did with me. It did with me. I thought afterwards, I thought this is

9 just not going to -- I think after my conversation with Clive afterwards, my feeling

10 was it wasn't going to work."

11 Again, this is all entirely consistent with an inconclusive or failed attempt to achieve the

12 stabilisation that you wanted.

13 A. That is correct, and I stand by the statements that I made at the time.

14 MR. O'DONOGHUE: Madam, would that be a convenient moment?

15 THE CHAIRMAN: Just going back to tab 2 of that bundle, paragraph 153 on page 35.

16 A. I have it.

17 THE CHAIRMAN: You refer there to "the feedback Allan got from me during our meetings and

18 the rare telephone conversation".

19 A. Forgive me, this is paragraph 153, page 35 of 49?

20 THE CHAIRMAN: Yes.

21 A. Right from the start ...

22 THE CHAIRMAN: The line just below that:

23 "The feedback Allan got from me ..."

24 A. "... got from me during our meetings and the rare telephone conversation."

25 THE CHAIRMAN: Mr. Joyce's evidence was that he was, I think the word "harassed" was what

26 he used. The impression he gave was that he was being rung up the whole time about his

27 pricing, in the period before the July 2012 meeting.

28 I mean, it may be other people than you, but you have used the word "rare" to describe the

29 telephone conversations that you had with him. Do you recollect that you spoke to him

30 frequently about pricing or only rarely, or what is your recollection of that?

31 A. Thank you, Madam. My recollection is that it was rare, from my side. That is my clear

32 recollection of the -- what others were doing I cannot speak for, but from my side.

33 THE CHAIRMAN: Thank you, right.

1 We are going to take a lunch break now. I am sure you have heard this many times, Mr.
2 Snee, but I will say it anyway. You are now giving evidence and that means that you must
3 not have any discussions with anybody on your team or anybody else about the case, so that
4 we know when we come back after lunch that your evidence is not influenced by anything
5 that anybody has said to you.

6 A. Yes, Madam, I understand.

7 THE CHAIRMAN: All right, we will come back at 2.00 pm.

8 (1.00 pm) (The short adjournment)

9 (2.00 pm)

10 MR. O'DONOGHUE: Good afternoon.

11 A. Good afternoon.

12 Q. Before the lunch break we saw, on the basis of your previous statements, your conclusions
13 on the questions of stabilisation and their effectiveness. Can we now look at the transcript
14 of the meeting on the same point. It is page 58 of the transcript.

15 A. I have it, page 58.

16 Q. Let me just find my reference. It is in the middle of this page. About two-thirds of the way
17 down next to the hole-punch. We may have looked at this in a slightly different context a
18 bit earlier. Do you have the bit that says:

19 "... but it all boils down to market share ..."

20 A. Sorry, I do not see that.

21 THE CHAIRMAN: It is just below the second hole-punch.

22 A. Okay.

23 THE CHAIRMAN: Page 58. Are you on page 58?

24 A. I have page 58.

25 THE CHAIRMAN: The second hole-punch at the start of the line:

26 "... but it all boils down to market share ..."

27 We were looking at it earlier.

28 A. Yes, I have it now. Thank you.

29 MR. O'DONOGHUE: You say:

30 "... it all boils down to market share, price will follow once we agree what the market
31 share is because Allan will not, Allan is not interested, in fact Allan said that he and
32 Jim Milne had spoken and he was on the point of saying don't go to the meeting any
33 more because it's pointless."

1 From the transcript there we understand very clearly that in respect of the stabilisation
2 prices upwards Allan was not on board.

3 A. That is correct.

4 Q. A bit further up on the same page, a somewhat similar point. It starts about a third of the
5 way down. It says "you know Clive". Do you have that?

6 A. I do not have that at the moment.

7 Q. It says:

8 "... you know Clive, is that he's going to come to the meeting ..."

9 A. This is after the paragraph we have just been reading?

10 Q. No, it is just before it. About ten lines up.

11 THE CHAIRMAN: Just opposite the first hole-punch.

12 A. I have it, yes.

13 MR. O'DONOGHUE: I will read it out.

14 "Clive and I spoke before the meeting, I was driving up to the meeting, Clive stopped
15 for a cup of coffee ... and he rang me to have a pre-meeting meeting ... he said which
16 way do you think this is going to go, I said my assessment of it, you know Clive, is
17 that he's going to come to the meeting and say how can I put the prices up, they are
18 what they are, I'll do my best, we're going to have to creep them up over a period of
19 time, we can't just go back to the marketplace and suddenly put everything up £1,000,
20 £2,000, everyone's going to ask questions ... and I said to be fair Clive, it's too late
21 isn't it? In a way if Allan says that he is right, isn't he? He's kind of set out his market
22 stall now, it's very difficult for him to now suddenly just jump the prices up, it's going
23 to have to be over a period of time. I said also he's under pressure from his own team
24 to go out and get more work so it'd mean them coming out of the market for 6 months
25 if they put their prices up and he's not going to do that ..." and so on.

26 He says "he may want to put prices up but he can't."

27 Then you say:

28 "... Nick said, Clive said yeah I guess you're right, he said that's kind of what I think,
29 I'm not sure where we're going to go, anyway in summary that's exactly what
30 happened."

31 So in a sense it is the same old story. I would like to put prices up, I cannot, I have got
32 Norman, got to cover my costs, et cetera, et cetera. You say that is exactly how it turned
33 out.

34 A. That is correct, yes.

1 Q. On a slightly related point I want to come to the reason for why none of this was ever
2 capable of working, or ever capable of reducing uncertainty. Are you familiar with the
3 phrase "the last bite of the cherry"?

4 A. I am familiar with that phrase, yes.

5 Q. Actually, I think it is your phrase.

6 A. Okay, well ...

7 Q. We can pick this up in one of your statements. It is in the exhibits bundle, PNS/1, tab 2,
8 paragraph 67.

9 A. I have it.

10 Q. You say:

11 "The way in which contractors would ensure their favourite manufacturer had the
12 opportunity to do the work was to give their favoured supplier the opportunity of the
13 last bite of the cherry, ie the opportunity to make the final undercut of the other
14 manufacturers' prices, even if only for a nominal amount."

15 Further on:

16 "This is best illustrated by Armstrong Priestley, who in my experience repeatedly state
17 that they were looking for the best price but still used their favourite manufacturer,
18 Galglass."

19 Then you say:

20 "Franklin Hodge even tested it on two or three occasions between 2010 and 2012 by
21 deliberately putting in a very low price to them, yet they still chose Galglass."

22 Then at the bottom of the page, the last sentence:

23 "About 70 to 80% of contractors would similarly afford their preferred supplier the
24 last bite of the cherry in this way."

25 We get from that, I would suggest, a number of things. First of all, that the first bid or the
26 opening gambit in the context of a bid situation was not where the price would end up; there
27 would be a process of negotiation by which price would be chipped down.

28 A. That is correct.

29 Q. The way these customers operated was that they used the competing second or third or even
30 fourth bidder as a stick to beat you with. That was the way in which the last bite of the
31 cherry proceeded.

32 A. That is correct. In fact, that is what drove the original cartelists to get together, because
33 there was heavy discounting amongst favoured suppliers.

34 Q. The cartel was essentially the antidote to the last bite of the cherry.

1 A. "Antidote" would not --
2 Q. That's may be the wrong word.
3 It also meant, at least for some customers, that if they had a preferred supplier the price was
4 not necessarily the only consideration.
5 A. That is correct, yes. There were longstanding relationships between certain suppliers and
6 certain customers, yes.
7 Q. So they would stick with you, for example, while using the other bidders as a way to beat
8 you down, while still preferring you. That is how it operated.
9 A. Yes, that is correct.
10 THE CHAIRMAN: I do not understand then what this last bite of the cherry, how it works. You
11 put in a bid. They get competing bids. They say to you "Look, these other people have
12 undercut you, we are giving you a last chance to give us a better price". Right?
13 A. Yes.
14 THE CHAIRMAN: If you did give them a better price, then they would come to you. Is that
15 what you are saying?
16 A. That is correct, yes.
17 THE CHAIRMAN: If you did not, if you said "No, we are not going to match that price", what
18 would happen then?
19 A. If you were a preferred supplier to that customer you stood a very good chance of getting it,
20 but it was not guaranteed. There was a chance that you might lose the project on the price,
21 for price reasons.
22 MR. O'DONOGHUE: Did not this feature of the market also mean that even if suppliers among
23 themselves had an understanding about pricing aspirations or pricing bands or a collective
24 willingness to stabilise prices, the way in which the last bite of the cherry functioned was
25 that ultimately price and the decision to award the bid would be driven by the customer, not
26 by the suppliers?
27 A. Yes, that is correct. But within controlled bands within the price list that we had agreed
28 amongst ourselves.
29 Q. You pick up a similar point in the criminal proceedings. This is supplemental bundle 2, tab
30 23. If I can ask you, Mr. Snee, at the same time to open the transcript. It is at page 41.
31 A. I am looking at tab 23, and the transcript is in ...?
32 Q. It is tab 23 of supplemental bundle 2.
33 A. I have got that, yes.
34 Q. It is page 108 of that four-page page, which I hope you can find this time.

1 A. Yes, 108 I have got. Yes.

2 Q. If you can open that and at the same time open page 39 of the transcript.

3 A. I have the transcript. Which page would you like me to go to?

4 Q. It is page 39. You will see, Mr. Snee, at the bottom of 108 at line 17 -- do you have that?

5 A. I have line 17, page 108, yes.

6 Q. What the barrister is doing there is reading out to you page 39 of the transcript, this bit:

7 "So it's going to be ... the conclusion we came to ..." and so on:

8 "... it's going ... to be a complicated picture."

9 I think it is not page 39. Page 21.

10 A. I have page 21.

11 Q. Yes, there you have it. They put that bit of the transcript to you. Then:

12 "What did you mean by last time?"

13 You say:

14 "I think what we were doing there is referring back to the early days when, as I

15 mentioned just before in the first session that the conversation was almost with ...

16 Balmoral was almost going back to our early conversation which was well, we don't

17 want to have an agreed list, we don't want -- can we just agree to be reasonable about

18 this and not go slashing prices in the marketplace. We all agreed that wasn't going to

19 work. There would be pressure on people to win this work and the prices would

20 cascade down, and I think that's what I'm referring to."

21 The pressure to win work comes from two sources. One is obviously internal pressure from

22 the companies itself.

23 A. Correct.

24 Q. The cascading of prices downwards, that comes from a second source, which is the last bite

25 of the cherry feature of this market, which we have just seen.

26 A. That is correct.

27 Q. Again, because pricing absent a cartel is customer driven and negotiation driven, and has

28 the last bite of the cherry feature, then even if you wanted to stabilise prices upwards or

29 stabilise them around particular bands, that would not have been achievable in this market,

30 would it, without the arrangements that you had put in place with the cartel?

31 A. Without the co-operation of the manufacturers, no, it would not be possible to make it work.

32 We accepted that from day 1 when we set up the cartel.

33 Q. I want to move on to something slightly different, which is more specific prices.

1 My first question is, it is right to say, is it not, that in no previous interview have you
2 suggested that Balmoral's information allowed you to reduce uncertainty as to prices in the
3 market? The first time you have said that is in your most recent statement.

4 A. From memory, I believe that I said in one of my earlier witness statements that I used
5 information that was provided to me at the July meeting in the telephone conversation with
6 one of our salesmen, Mike Greaves, relating to a bid for a Compco project.

7 Q. We will come to Compco in more detail.

8 Again, on the features of this market, in one of your previous statements I think you said
9 that in 75% of cases customers would disclose quotation prices of rivals to you.

10 A. That is correct. Mostly verbally, but occasionally we get a copy of the other competitor's
11 quote; but it was mostly done verbally and over the telephone.

12 Q. We can pick this up again in the transcript, because it comes up on a number of occasions.
13 If we can start, for example, at page 72.

14 A. Is this of the transcript?

15 Q. Of the transcript, yes.

16 A. I have it.

17 Q. It is the first full paragraph. This is you relaying the meeting with Allan to either Mike
18 Greaves or Nick Stringer, I am not sure. You say:

19 "I mean, Allan said today, I can't believe this market where people lie down quotes in
20 front of you and pass on competitive quotes. I said I've got most of my top customers
21 have got most of your quotes. He said, yeah of course he said, it's been going on for
22 years."

23 So it was not simply, or was not only price indications, it was quotations, which would on
24 occasion be presented.

25 A. Yes. As I have already said, you would occasionally get physical copies of quotes.

26 Q. Then back a few pages at 65, towards the bottom of that page, again this is still you on the
27 telephone, do you see a sentence or a line starting "played ball"?

28 A. Yes, I see it.

29 Q. About three-quarters of the way.

30 A. "... I said we've played ball ..."

31 Q. Exactly:

32 "I said as you know as well I do that, our price is at least £1000 more than that, and he
33 said yeah, I know cos we've seen your quotes ..."

34 So again, quotation prices, not merely gossip.

1 A. Sorry, can you repeat the question? I did not ...

2 Q. What we get from that quote, which is you relaying back your discussion during the
3 meeting --

4 A. Yes.

5 Q. -- is that it was not just gossip from customers, it was quotes.

6 A. Yes. As I have said, we did get information mostly over the telephone but occasionally as
7 copies of quotes.

8 Q. Again on the same point, Mr. Snee, can we go back to your first statement of 23 May, in tab
9 1 of the exhibits bundle. This time it is paragraph 75.

10 A. Yes, I have it at the bottom of page 16.

11 Q. Correct, thank you. Russell Dixon, he is of Hall and Kay?

12 A. That is correct.

13 Q. He wanted you to quote for various sizes of 135s, and you say:
14 "I was sent a spreadsheet by one of his staff which showed the prices quoted by
15 Galglass, Vulcan and Balmoral for this capacity of tank."
16 Then 76:
17 "We were requested to update the spreadsheet with their prices ..."
18 Then at 78:
19 "To clarify, therefore, this spreadsheet was emailed to me by one of our top
20 customers."
21 I mean, this really is much more than a chat on the phone. This is someone sending you a
22 composite spreadsheet of prices and quotations.

23 A. It was a spreadsheet prepared by Hall and Kay with prices on, under a heading of the
24 individual manufacturers' names. But a Hall and Kay document, correct.

25 Q. One of the companies you mentioned was Compco. I need to ask you some questions about
26 that.
27 Can I ask you to this time turn up the defence bundle. It should be tab 5 of that bundle. Just
28 to make you aware, this is an interview by the OFT of Mr. Joyce. If I can ask you to turn to
29 internal page 33, in the middle, and it is stamped 62 at the bottom.

30 A. Page 33.

31 Q. Yes, 33 in the middle and 62 in the bottom. It is at line 17. He says:
32 "Compco are obviously very experienced in the cylindrical market. I went to see
33 Compco with Norman, I think it was about February 2012, and they gave me an idea
34 of what the prices were. They said £18,000 for 135 ..."

1 A. Can I stop you there? Forgive me again, I am trying to track exactly where we are.

2 THE CHAIRMAN: The second hole-punch down, it says 33 in the middle and 62 in the bottom
3 right-hand corner.

4 A. I have it now. Thank you.

5 MR. O'DONOGHUE: Thank you. What we see there is Mr. Joyce, in February 2012, was given
6 information by Compco that the steel tanks price was about £10,000 and the 135 price was
7 about £18,000.

8 A. Yes.

9 Q. So certainly by this stage you seem to be receiving quite specific indications from Compco
10 as to the prices on the market.

11 A. Yes, I can see that.

12 Q. Based on what Hall and Kay did with you, with their spreadsheet, this is not very surprising.

13 A. No. I go back to what I say, you can get information from customers, yes. Correct.

14 Q. Again, something we touched on earlier, but let me show it to you this time. It is in tab 7 of
15 the same bundle. It is at paragraph 56. Again, we are still on schools tanks.

16 A. I have it, 56, yes.

17 Q. This was the meeting with Clive Dean. I mentioned some information was disclosed by Mr.
18 Dean to Mr. Joyce. You see for both schools and for 135 very, very specific pricing
19 information has been given.

20 A. Yes, I can see that, provided by Clive Dean, I presume is CD. Yes.

21 Q. Because of these various sources, whether it is Compco, Mr. Dean, Hall and Kay, telephone
22 conversations, other market intelligence, it was completely unremarkable to you and to Mr.
23 Joyce to observe during the meeting, for example that the price brackets for schools tanks
24 were something between 9 and a half and 10 and a half. That was again a statement of the
25 bleeding obvious. Everybody knew that.

26 A. That is correct.

27 Q. Equally on the 135s, given that the sources of the information were the same essentially,
28 again banding the prices between 15 and 17, everybody knew that. Those were the prices
29 on the market.

30 A. Certainly those were the prices that the cartelists were operating to, that is correct.

31 Q. One of the prices that we have heard a lot about in the last couple of days, which you may
32 or may not remember, is the infamous 14650 at Tyco.

33 A. Yes. Sorry, I understand now, yes.

34 Q. In the transcript you describe the 14650 price as a cock-up by Nick Stringer.

1 A. I would need to refresh my memory on the exact phrasing I used, but I do remember there
2 was a lot of discussion about that particular bid at that price, yes.

3 Q. Shall we have a look at that?

4 A. Yes.

5 Q. It is on page 58 of the transcript.

6 A. Yes.

7 Q. It is about a quarter of the way down. It is about line 7 or 8. Actually, I was wrong, this is
8 Clive's language. Do you have that, Mr. Snee?

9 A. I do have it, yes.

10 Q. "... Clive said it was a bit of a cock-up on Nick's part anyway so we talked around that ..."
11 and so on.

12 At the time, this was a pretty well-known incident in the market where Nick, for whatever
13 reason, had got it badly wrong and everybody knew that; it was a cock-up, it was something
14 which was circulating in the market at the time.

15 A. I cannot comment --

16 THE CHAIRMAN: That is an ambivalent question.

17 Was it known at the time that Mr. Stringer had put in this 14650 quote to Tyco, is one
18 question. Another question is: did everybody know that it was a mistake by Mr. Stringer,
19 rather than then some signal from him that they were now going to be pricing very low?

20 A. To answer both of those questions, it would have been, from my recollection, because it was
21 on the eBid system with Tyco, from memory, that it would have been open knowledge to
22 the other bidders, of which the tank companies would have been. Yes, that is correct.

23 In terms of a mistake, to use a politer phrase, then my recollection at the time was that it
24 was more Nick trying to undercut Balmoral to try and send a signal that he was going to, as
25 I think he said later, fight on price. That is from my recollection of what happened at the
26 time.

27 MR. O'DONOGHUE: We also know from your statement at tab 2 of the exhibit bundle -- can
28 you turn that up?

29 THE CHAIRMAN: That is a different explanation from it being a cock-up.

30 A. That was Clive Dean's comment on it. I cannot comment on why he made that -- I cannot
31 remember exactly --

32 THE CHAIRMAN: You did not think it was a mistake by Mr. Stringer, you thought it was a
33 signal he was sending to Balmoral "We will play you at your own game".

1 A. Madam, that is my recollection and understanding and memory of the situation. Which is
2 why I was slightly surprised at that phrase at that point, but obviously it is here.

3 MR. O'DONOGHUE: It is Clive's word, to be fair.

4 A. Yes.

5 Q. Certainly from your perspective two things must be clear. First of all, because of the cartel,
6 you certainly were aware of this price before the meeting.

7 A. That is correct, yes.

8 Q. Or at least you could have been aware of it.

9 The second thing we get from paragraph 177 of tab 2 of the exhibit bundle --

10 A. Which paragraph are you looking at now?

11 Q. Paragraph 177.

12 A. I have it.

13 Q. We see a few things. Over the page you said that:

14 "Galglass had placed a bid that was somewhat lower than our ordinary benchmark
15 figure. In fact, the discount in error added to the reductions already available under
16 the agreement and resulted in Galglass submitting a bid of 14650, which was simply
17 too low a price for such a tank and not a sustainable figure."

18 Then you say at the end:

19 "This created difficulty because it created a precedent. I did not discuss it with Nick
20 in advance of him quoting, and in fact I learnt of the price from Tyco."

21 You may wish to correct the statement that it was not a mistake, because you do say here
22 that it was done in error.

23 A. It does appear that I am using the word "error", that, is correct, in this particular statement.
24 As I said to my first response, I was using my memory, if you like, that it was a signal,
25 because I do remember elsewhere in the documentation that -- and my memory of
26 discussing it with my contact at Tyco was that there was a feeling that Galglass were trying
27 to undercut Balmoral in the marketplace.

28 Q. What do you mean when you say 14650 was not a sustainable figure? Does that mean that
29 it was at the point at which it was effectively loss-making?

30 A. From memory, from our point of view it would have been considerably below the price. I
31 cannot speak whether it was loss-making for Galglass, but certainly for Franklin Hodge at
32 the time it would have been almost an unsustainable price.

33 Q. So no one looking at this would have seriously suggested that this was a real market price.
34 It was a mistake.

1 A. It could -- if the price had been put in, as did happen and as has happened in the past, in
2 order to send a signal or to take a market position, even at a loss, that is a perfectly
3 understandable position to take. Maybe that could be seen also as an error from the point of
4 view of where we were in the cartel price list, but it might have been a marketing ploy, yes,
5 or policy.

6 Q. Can I put it another way: it is not a price that you would wish to have repeated.

7 A. At the time, no.

8 Q. I am going to move on to something slightly different, Mr. Snee, if I may.
9 This is the question of control over pricing. Can we go back to the transcript. This time it
10 is page 60.

11 A. I have page 60.

12 Q. It is the third full paragraph, which is about two-thirds of the way down. It starts:
13 "OK, yes."

14 A. I have it.

15 Q. In the middle of that, this is a reference to Balmoral, and Norman is Norman Ross, you say:
16 "As salesman they're given budgets, they're told these are the minimum margins going
17 forward, they're given bands to operate in, and they're obviously on bonus schemes
18 where the more money they can sell it for, the more bonus they get, so it's in their
19 interests. But he said I can't go round telling them, oh by the way, this week don't do a
20 deal with Compco or don't do a deal with Bessages."

21 What you are relaying here, again this is on a call, is something that Allan told you during
22 the meeting, which was that within the company Norman was the effective person who
23 made the sales pricing decisions. Is that a fair summary of what you are saying here?

24 A. Yes, I would say that is correct.

25 Q. We see the same point again, very quickly, back a couple of pages at page 58. I think we
26 looked at some of this before. It is about half of the way down on page 58. You say:
27 "I said he's ..."
28 He being Allan. Do you have that, in between the two hole-punches ...

29 A. I can see the line that says:
30 "I said also he's under pressure from his own team ..."

31 Q. Exactly:
32 "I said also he's under pressure from his own team to go out and get more work so it'd
33 mean them coming out of the market for 6 months if they put their prices up and he's
34 not going to do that ..."

1 We have seen that already, but the next bit:

2 "So I said all this business about mark 7 prices, it's a load of old rubbish, he may want
3 the prices to go up but he can't, he's not going to be able to do it straightaway, and
4 Nick said Clive, yeah I guess you're right, he said, that's kind of what I think, I'm not
5 sure where we're going to go, anyway in summary that's exactly what happened."

6 This is basically the same point, that Allan ultimately was not the effective person in terms
7 of Balmoral's day-to-day pricing. It was Norman Ross.

8 A. As far as -- I cannot comment in detail on what Balmoral's internal system or procedures
9 were, but Norman, as sales director, I believe would have obviously some control over
10 pricing in the UK. But I believed at the time, and from my memory, that as managing
11 director Allan had the final say. That is how I perceived it. That was my perception at the
12 time.

13 THE CHAIRMAN: Why weren't you trying to get a meeting with Norman Ross, rather than with
14 Allan Joyce?

15 MR. O'DONOGHUE: Madam, he did. He was rebuffed by Mr. Joyce.

16 A. I was just going to say exactly the same thing.

17 THE CHAIRMAN: By Mr. Ross?

18 MR. O'DONOGHUE: By Mr. Joyce.

19 THE CHAIRMAN: Oh yes.

20 MR. O'DONOGHUE: Let me put the question.

21 A. Yes.

22 Q. I think early in 2012 or perhaps even late 2011 you attempted to make contact with Norman
23 Ross. Mr. Joyce got wind of that and he told you directly that you shouldn't speak to
24 Norman, that you should speak to him.

25 A. That is correct.

26 Q. I would suggest that the reason you sought out Norman Ross was that you understood that
27 he was the man to talk to if you wanted to discuss the details of pricing, because he was the
28 sales director.

29 A. I would -- yes, my recollection of it was that Norman, as sales director, would be key to it.
30 But again, my recollection was that it was Norman and Allan that would be involved in the
31 overall pricing policy, as indeed as was the policy... -- I could only assume it was the same
32 policy that we had at Franklin Hodge.

33 Q. Thank you. One further difficulty with price stabilisation for gravitation of prices in or
34 around bands was that from your perspective the four of you were in a cartel.

1 A. That is correct.

2 Q. One of the consequences of that is that for many years of the cartel prices were
3 uncompetitive and were at a higher level.

4 A. That is correct.

5 Q. One of the great difficulties, therefore, in having to try to focus prices around lower bands
6 or stabilise them at something between the cartel level and the Balmoral level is that it
7 would have involved you going to your major customers and saying "Well, the excessive
8 margins or prices we have been charging you for the last six or seven years, all of a sudden
9 we are substantially cheaper". That would have entailed a complete loss of face and entirely
10 undermined the relationship with these critical customers, would it not?

11 A. If we had gone down that route, that is correct. But the policy that we adopted at the time
12 was to try and encourage Balmoral to increase their prices and to fall in line with the bands
13 that we had put in place, shall we say. That was our policy at the time.

14 Q. To be clear, I am asking a slightly different question.

15 A. Okay.

16 Q. Given that your cartel prices were at an elevated level, if the bands were to become a
17 pricing floor, that would have required you to drop from a slightly higher level to a lower
18 level, and given the loss of face with these customers that presented a difficulty for you,
19 didn't it?

20 A. Counsel is correct that it would have presented a problem for us. I can -- being open and
21 honest, as you would expect, at the time my recollection was that that was a bridge we
22 would have to cross, and we had not really formulated a policy of how we were going to
23 cross it. It was more, can we get Balmoral to increase their prices.

24 Counsel is correct that would have -- absolutely correct, it would have been -- but we had
25 not thought that through at that stage.

26 Q. Let us see what you say about this in the transcript of the meeting. We can pick this up in
27 one or two places. The first place is page 27.

28 A. I have page 27, yes.

29 Q. It is the first full line after that partial paragraph. You say at the top of the page:
30 "... they [the customers] just send me a copy of your quotes ..."

31 Sorry, Clive says:
32 "... send me a copy of your quotes, now that's the danger of that, cos they generally
33 still want to use us and give us the last bite of the cherry."

34 You say:

1 "But it takes balls to say you can't move this time round."
2 That is exactly the point. If you create an expectation in the market of a lower benchmark
3 price, you are stuck with it. That is the danger.
4 A. Yes, correct.
5 Q. That was a particular problem for you because you had been in a cartel for many years.
6 A. Yes, the prices coming down would have been an issue, correct.
7 Q. I want to turn in a bit more detail to Compco. The first point, which I think is
8 uncontroversial, is that they were one of Franklin Hodge's gold customers since I think May
9 2005 or 2006.
10 A. Yes, they were one of our so-called gold customers, that is correct.
11 Q. We saw when I started off today with my questioning that in 2012 you were in a difficult
12 situation with Compco, because there was about a million pounds of business, you had
13 100% of that market share, and in the space of a few months Balmoral had essentially
14 captured two-thirds, leaving you with one-third.
15 A. Yes.
16 Q. In a colloquial sense, they were killing you at Compco.
17 A. Yes, that is correct. I made that point at the meeting with our --
18 Q. Just to run through the discussion in the meeting on Compco. Everybody knows going into
19 the meeting -- well, everyone apart from Mr. Joyce -- that Compco is your customer, that
20 you are being killed by Balmoral at Compco, they know they are winning and are
21 presumably very happy. You say on a number of occasion during the transcript, "Well, I
22 am going to fight back" or "I need to get in there", "I need to be seen to be credible". Do
23 you want me to show you those bits?
24 A. No. I remember that statement, yes.
25 Q. Allan in response, after you have explained to him gold, silver and customer allocation, he
26 says "I do not see Compco as your customer". Do you remember that?
27 A. I do not.
28 Q. Why don't we have a look at it. Page 17.
29 A. The same tab, page 17, yes.
30 Q. It is the transcript, yes.
31 At the bottom of that page Allan says:
32 "What I'm trying to ..."
33 Do you have that?
34 A. I have page 17, I am looking at the bottom of that page. Allan Joyce says:

1 "What I'm trying to get ..."

2 Q. Exactly:

3 "... if Nick's saying well Tyco's my customer, well that's not what I would be saying
4 you know. I don't see Compco as your customer, what I'm trying to say is we'll all
5 take something, cos Compco and Tyco ... they're expecting Balmoral to be
6 competitive."

7 He is saying to you, "Well, fine, you see Compco as your customer and Nick sees Tyco as
8 his customer, but I do not see it that way". That is what he is saying to you.

9 A. Yes, that is correct, and I think that, from memory, the flavour of the meeting was that we
10 were going to have to compromise on the customer sharing arrangement.

11 Q. What we essentially see in the meeting is a sort of tit for tat. You say "It is my customer"
12 and he says "I do not see it as your customer", you say "I am going to fight back" and he
13 says "Well, we have got to be in there too".

14 So the dialogue on the meeting with Compco is that because this is one of your two main
15 customers, and is a critical customer for you given the losses you have suffered, this is
16 going to be very hard fought. That is what he is saying to you.

17 A. Yes, I got that impression from Allan. Yes.

18 Q. The suggestion you have made earlier I think, and it is in your most recent statement, is the
19 discussion at the meetings on prices told you something useful for Compco that you then
20 relayed to maybe Mike Greaves and maybe someone else. I just want to test that from a
21 number of perspectives.

22 The first thing is to follow-up on the questions I have been asking, which is: in this tit for tat
23 context, where you say it is your customer and he says it is his, and you are fighting each
24 other --

25 A. Can I just clarify that point? My recollection of the meeting was that it was more from my
26 side saying I will fight. Perhaps it is just a pedantic point, but it was more from our side
27 saying to Balmoral, me to Allan, saying "We are going to fight you on Compco". I did get
28 the impression that Balmoral were going to hang in there with Compco, but it was more
29 sort of, I use the word with a small A, "aggression" from my side about wanting to stay with
30 Compco, if I can make that point, rather than a sort of -- sorry, it is a pedantic point, but the
31 tit for tat was not -- it was more from my point of view.

32 Q. Perhaps I put it too high. What I am essentially saying is there was a competitive dynamic
33 before the meeting on Compco, and at least from Balmoral's perspective during the meeting

1 they said or did nothing that gave you to understand that they would be competing any less
2 with Compco.

3 A. That is correct. That is the feeling that came out of the meeting. In fact, I think that was the
4 flavour of the conversation I had with Mike Greaves on the phone afterwards.

5 Q. Can we now turn to some of the text of the phone calls after the meeting.

6 THE CHAIRMAN: Can I just follow that up.
7 If you decided within Franklin Hodge that you are going to go back in and try and get the
8 Compco business --

9 A. Yes.

10 THE CHAIRMAN: -- why do you tell Mr. Joyce that? Would it not be better for him not to
11 know that, and to think that you are still going to be charging cartel prices to Compco so
12 that he might bid higher than he otherwise would, and that then means that you are likely to
13 get the business, if you really are going to compete? So why would you say that to him?

14 A. In retrospect, Madam, you are correct. I question myself on that. But at the time, the
15 feeling was to send a message that -- if you remember, the flavour or the pitch that we were
16 giving Balmoral was that we could all do well in this marketplace and make better profits
17 for a smaller market share, but if we do not, then we are going to end up cutting each other's
18 throats on price, which is kind of why the whole cartel thing started in the first place.
19 So I could have handled it better, but at the time it was a message sending back saying
20 "Fine, then we would just descend into this throat-cutting exercise then".

21 MR. O'DONOGHUE: Is that not exactly what happened?

22 A. In the fullness of time that is correct, yes.

23 Q. Just to pick up on the feedback on the calls after the meeting, because you have emphasised
24 that. Can we turn to page 62 of the transcript. Do you have that?

25 A. I have page 62 of the transcript, yes.

26 Q. The third paragraph:
27 "Yeah, ok".

28 A. I have it.

29 Q. You say:
30 "Yeah, ok, I'll send you that warranty document and I'll have a word with Mike.
31 What's your feel, your gut feel on pricing with Compco? By the sounds of it, I don't
32 know how far out we are on these prices, it's a difficult one to call."
33 The fact that you are using language like "gut feel", "I don't know", "difficult to call", does
34 that not clearly suggest that the discussion of stabilisation or bands or not cutting each

1 other's throats in the meeting, did not tell you anything of any significance in pricing this
2 bid?

3 A. Ultimately we felt, as I have said before, that the outcome of the meeting was inconclusive
4 and the feeling was that things would fall apart. However, there was still a hope that we
5 could continue the conversation.

6 The point about the Compco bid and the specific job and the specific price was, I think
7 elsewhere, from memory, we had a better understanding of where Balmoral were on a price
8 for this particular project and we used that. It was -- we used that as a way in which to re-
9 bid, to undercut what we thought was their pricing.

10 Q. It sounds like it was pro-competitive. You cut your price.

11 A. We certainly cut our price, yes.

12 Q. Can I just push you on that, because as I understand it your price was about 16,000.

13 A. Yes.

14 Q. Balmoral's price I think was about 14,850 or 14,900, something like that?

15 A. The conversation that I remember from that meeting was that Allan said he would be
16 surprised if the price was -- because I probed him on where we were, and he said he would
17 be surprised if the price was below 16 -- I might have the exact wording wrong there,
18 without checking it -- and I used that as the basis on which to -- we used it as the basis to re-
19 bid.

20 Q. In the end everybody was wrong, because Galglass stepped in and took the business from
21 under your nose.

22 A. Did Galglass? I am sorry, I am not sure that that is correct. I thought Balmoral --

23 THE CHAIRMAN: I thought Balmoral won that.

24 MR. O'DONOGHUE: That may have been the one.

25 Sorry, I think I misspoke. Were Galglass bidding in the Compco situation?

26 A. I do not remember Galglass being part of the conversation/discussion on that particular
27 project, no. I might have that wrong but that is my belief.

28 Q. Fair enough, fair enough.

29 If you suggested there was some utility in the discussions at the meeting, in the sense that
30 you had understood a gravitation around certain bands or certain prices for Compco, why, in
31 circumstances where at least Balmoral had outbid you by a pretty substantial margin, more
32 than £1,000, were you not on the phone the very next day saying to Allan Joyce, "What the
33 hell is going on? We had an understanding on these bands".

1 A. My recollection is hazy on that. But at the time, I think I go back to the point that I made,
2 which is we felt the outcome of the meeting was inconclusive and that it may take time to
3 see how things developed in the future. I cannot give a concrete answer to that one after
4 this period of time.

5 Q. Is not the more obvious explanation that there was no understanding at all?

6 A. I think I have already said that we came out of the meeting and it was inconclusive, and it
7 was going to be -- I think as I have said in the transcript, we are just going to have to feel
8 our way along in this market on pricing.

9 Q. One final point on Compc. The day after the meeting there was a sales meeting within
10 Franklin Hodge. We have a note of the meeting in the supplemental bundle at tab 22.
11 Do you have that?

12 A. I have that.

13 Q. You may want to take a minute just to flick through the content. Just let me know when
14 you are ready to respond. (Pause)

15 A. Yes, I am ready.

16 THE CHAIRMAN: The fact that this is blue, is that going to cause us any problems?

17 MR. O'DONOGHUE: It probably is confidential, yes. I am not going to read out any bit of it.

18 THE CHAIRMAN: No, I am just going to alert you, Mr. Snee, the fact that this is on blue paper
19 means it is not to be read out in open court.

20 A. I understand. Thank you.

21 MR. O'DONOGHUE: It is really a point about omission.
22 The day after the meeting, you have an internal sales meeting, and there is nothing in this
23 note of any description which relays any of the information you received at the meeting.

24 A. No, but that was not unusual. We did keep a fairly secretive approach, and obviously we
25 would not publish in-house documentation to --

26 Q. I am not suggesting you would have a cartel section. What I am suggesting is that in an
27 indirect way this pricing intelligence could have found its way into the sales meeting.

28 A. I mean --

29 Q. People in your team knew about the cartel.

30 A. They did, yes, that is correct. That is absolutely correct. But as I go back to what I said, we
31 did avoid trying to put specific information. I note under Mike Greaves -- under area B,
32 Mike Greaves -- I will not read out exactly what he says, but it does make note of the effect
33 of Balmoral in the marketplace. But it is not specific.

34 Q. In a negative way.

1 A. That is correct.

2 Q. What we do not see, for example, is: we have an expectation that prices will stabilise around
3 15 to 17,000, or 9 and a half to 10 and a half. We do not see any anything of that kind?

4 A. That is correct. That kind of detailed information is not in our sales meeting notes.

5 Q. Is not the reason for that obvious; that nothing you learned at the meeting was (a) new, and
6 (b) of any significance. These were all market prices which you knew already.

7 A. After the meeting in July, the -- after the meeting in July, the feeling was, as I think I
8 mentioned, that we were waiting to see in which way the market would develop, and
9 whether or not to change the prices or indicate how we could change the cartel set prices.

10 THE CHAIRMAN: Can I just understand. The front page of this tab is Thursday 12 July agenda.
11 Then over the page it seems to be minutes of a different, much earlier meeting.

12 A. Yes, I have noticed that. Yes, I have just noticed that. It is the first time I have seen it, so ...

13 THE CHAIRMAN: Which was substantially before the meeting. At the end, under "AOB", it
14 says "Dates for the next sales meeting" agreed for Thursday, 5 July 2012. So I am not sure
15 whether these area reports are actually post-dating the meeting.

16 A. Thank you, Madam.

17 MR. O'DONOGHUE: Madam, my understanding is that it is a mixed bag, there is some historic
18 stuff and there is also some recent stuff.

19 THE CHAIRMAN: It is usual for -- it says "Action points" on the agenda, and I am not reading
20 out anything confidential, it says "Action points from the previous meeting" and that then
21 seems to be the notes of the previous meeting giving rise to the action points.
22 It does not appear to be the minutes of the 12 July meeting. I do not know where those are.

23 MR. O'DONOGHUE: Indeed. But it is a sales report with a retrospective element, as you would
24 expect in any sales report. For example, about four or five pages in we have got Mike
25 Greaves' sales report 5 July 2012.

26 A. Madam, I think -- may I?

27 THE CHAIRMAN: Yes.

28 A. I think you may be right, the meeting minutes here are actually, if you look at it, historic for
29 2011. It is the actual -- the January sales meeting, we normally have a meeting in January
30 to review the year before. So I think this is historic information, it is not from the July.

31 MR. O'DONOGHUE: Mr. Snee, if we look at Mike Greaves' sales report, that first of all is
32 clearly dated 12 July, it refers to information from 2012.

1 I mean, there is obviously a backward looking element to this but, for example, under
2 "Objectives or additional issues" there is no mention of any of his discussions with you or
3 any even indicative content of the meeting the previous day. That is the point I am making.

4 A. I would also point out that I always insist on information from a sales meeting being
5 presented well before the sales meeting itself, so it would not necessarily be updated the day
6 before. It would be unusual, in fact. It is difficult enough to get salespeople to report
7 information.

8 Q. Fair enough. I do not want to be unfair to you.

9 I think we can agree, you agreed with me, that there was no call from you or other
10 communication to Allan or anyone at Balmoral the day after the meeting in relation to
11 complaints about what was happening on Compco.

12 A. No, that is correct. I did not call Allan and complain, no.

13 Q. Just to finish up -- hopefully in another five or ten minutes I am finished -- you mentioned,
14 in my last but one question, the aftermath. I just want to pick up on a couple of other points
15 from that perspective.

16 First of all, could I ask you again to go to the exhibit bundle, this time tab 2.

17 A. I have it.

18 Q. This is one of your statements. If you can turn to paragraph 149, please.

19 A. Page 34 of 49, 149, I have it.

20 Q. It is the last sentence I am interested in:

21 "So I believe the market percentage figures for Balmoral began as 10% of the early
22 days, rising to 40% by the end of 2012."

23 On any view after the meeting, Balmoral continued with an even more aggressive
24 competitive strategy, or at least as aggressive as it had in the period before the meeting.

25 That is manifest from the figures that you set out.

26 A. Yes. The statement of fact is that Balmoral were continuing to be aggressive in the
27 marketplace.

28 Q. Indeed, it would be extraordinary for a new entrant within a year or less to capture 40% of a
29 new market, would it not?

30 A. I cannot speak for -- I am not expert enough in that field to be able to answer that question, I
31 am sorry.

32 Q. Would you agree that it is striking?

33 THE CHAIRMAN: I think that is the same question, Mr. O'Donoghue.

34 MR. O'DONOGHUE: I will move on.

1 A couple of final questions, Mr. Snee. Can we go back to the decision, which is in tab 8 in
2 the core bundle.

3 A. I have it, yes.

4 Q. This time it is paragraph 3.102. Sorry, the cartel decision, which is the next tab.

5 A. 3.1 ...

6 Q. Tab 9.

7 A. Tab 9, right. 3.1?

8 Q. 3.102, on page 76.

9 A. I have it. 3.102, yes.

10 Q. This is a quotation from you. This is after the meeting, because you see from section H
11 "Contact between the parties between July and November 2012", so after the meeting.

12 A. Yes.

13 Q. You say:

14 "The gold and silver contractors list and a reduced price list remained. I am aware
15 through Nigel that Galglass and Kondea would prepare quotations still using the same
16 agreed method and fixed price however, if the contractor was on their gold list and if
17 competing against Balmoral, would drop their prices to whatever level they thought
18 realistic to win the contract ..." and so on.

19 "This arrangement meant that only one of our number competed against Balmoral for
20 any one contract. If more than one of our number were approached, then the other
21 would effectively provide a high quote and remain on the sidelines."

22 What we get from that, I would suggest, very, very clearly, is that after the meeting it was
23 understood that there was a fundamental distinction between aggressive competition
24 between Balmoral and the cartel, and a continued lack of competition within the cartel,
25 because you say that whenever you faced Balmoral you had to compete as normal. That is
26 what we get from this, is it not?

27 A. Yes, that is correct. Yes.

28 Q. Is that not completely at odds with any suggestion that the discussions in the meeting led to
29 a reduction in price competition from Balmoral?

30 A. As far as the price information that was presented at the meeting I go back to the point that I
31 made, which was that it was inconclusive and we came to the conclusion that Balmoral,
32 whilst expressing their interest in getting a better price in the marketplace, in reality in the
33 marketplace they were lower, putting lower prices in, that is correct.

1 Q. One final question. You accepted, I think, that on the day after the meeting with Compeco
2 you did not call Mr. Joyce to berate him. In fact, for the entirety of the period after the
3 meeting until the cartel unravelled you had no further competitive discussion with Mr.
4 Joyce. That is correct, is it not?

5 A. From memory that is correct, yes. Yes.

6 MR. O'DONOGHUE: Thank you.

7 THE CHAIRMAN: Do you know whether you have got any re-examination, Mr. Williams?

8 MR WILLIAMS: I do not have much, if I have any. I do not know whether I could just take
9 instructions for a moment?

10 THE CHAIRMAN: All right, if you are not sure then we will take a five minute break. If you
11 were sure then I would release Mr. Snee, but we will come back in five minutes.

12 (3.12 pm) (A short break)

13 (3.17 pm)

14 MR WILLIAMS: We are sorry to have kept the Tribunal and Mr. Snee, but we do not have any
15 re-examination for him.

16 THE CHAIRMAN: Yes.
17 Do you have any questions?

18 MS. DALY: No, I do not have any.

19 DR. BELL: No.

20 THE CHAIRMAN: All right. Thank you very much, Mr. Snee for coming to give evidence. I
21 can release you from the witness-box.

22 A. Thank you, Madam. (The witness withdrew)

23 THE CHAIRMAN: That is the end of business for today, is it?

24 MR WILLIAMS: With one tiny footnote, but yes.
25 We have an agreed correction to the transcript for yesterday, and we wondered if the best
26 way was to communicate it in open court or if the Tribunal would prefer us to speak directly
27 --

28 THE CHAIRMAN: Yes, say it out loud.

29 MR WILLIAMS: At the bottom of page 69 of the transcript -- and you do not necessarily need to
30 look at this, Madam, I think it will be re-issued -- there was a passage where I was cross-
31 examining Mr. Joyce and there was a bit of discussion about GRP, and then I said "Now we
32 are back to GSTs" but the transcript says:
33 "Now we are back on to GRPs ..."

1 It should say "Now we are back on to GSTs ..." having looked at GRP for a bit, and
2 Balmoral have helpfully confirmed they agree that this should be corrected.

3 MS. DALY: Would you say what page it is again?

4 MR WILLIAMS: Page 69, almost at the very bottom, the penultimate line.

5 THE CHAIRMAN: All right. What is the allocation of time tomorrow then for people's closing
6 submissions? You are going to go first, are you, or you are going to go first? You are
7 going to go first. By the time you start tomorrow I want you to have divided up the day
8 between you as to who is --

9 MR. O'DONOGHUE: I would have thought the sensible running order would be that I obviously
10 have the possibility of replying, so I would have thought a couple of hours each and maybe
11 half an hour for a reply, or something like that.

12 THE CHAIRMAN: Right. If you could have a quick discussion about it so we all know where
13 we stand.

14 MR. O'DONOGHUE: We will.

15 THE CHAIRMAN: All right, thank you very much. We will resume then at 10.30 tomorrow.
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