

1 Friday, 5th February 2016
 2 (10.00 am)
 3 (In camera)
 4 (End of in camera session)
 5 (Beginning of non confidential session)
 6 MR HOSKINS: I call Mr Abrahams.
 7 MR SCOTT JOHN ABRAHAMS (affirmed)
 8 Examination-in-chief by MR HOSKINS
 9 MR JUSTICE BARLING: Thank you, Mr Abrahams.
 10 A. Thank you.
 11 MR JUSTICE BARLING: Take a seat, make yourself comfortable
 12 before we start and there should be a clean glass there
 13 for you, I hope.
 14 A. I have a bottle anyway. Thank you.
 15 MR HOSKINS: Do you have bundle C2 in front of you?
 16 A. Yes, I do.
 17 Q. Can you turn to tab 4, please. There should be
 18 a document entitled "Witness Statement of
 19 Scott John Abrahams"?
 20 A. That is right.
 21 Q. Can you look through to the end and confirm that that is
 22 your witness statement?
 23 A. Yes it is.
 24 Q. On final page, page 75, can you confirm that that's your
 25 signature?

1

1 A. Yes it is.
 2 Q. Can you confirm that the contents of the statement are
 3 true to the best of your information, knowledge and
 4 belief?
 5 A. Yes.
 6 MR HOSKINS: Mr Brealey will have some questions for you.
 7 A. Thank you.
 8 Cross-examination by MR BREALEY
 9 MR BREALEY: Good morning.
 10 A. Good morning.
 11 Q. You ceased employment with Sainsbury's in 2004; that is
 12 correct, isn't it?
 13 A. That is correct.
 14 Q. Can you remember whether that was the beginning, middle
 15 or end of the year? It is a long way back, I know.
 16 A. Yes, indeed. It was around about the middle of the
 17 year.
 18 Q. 2004 was the year that Justin King arrived at
 19 Sainsbury's, can you remember that?
 20 A. Not particularly, no. I know of Justin King obviously
 21 but I can't remember when he joined.
 22 Q. Were you aware of the initiative called "Making
 23 Sainsbury's Great Again"?
 24 A. Yes, I think I was.
 25 Q. Okay, if you were, could you then go to bundle E5 .5.

2

1 Tab 71. This is a pack of slides I think "Making
 2 Sainsbury's Great Again", dated 19th October 2004. But
 3 clearly there would have been some talk about it at
 4 Sainsbury's throughout 2004, I would have thought?
 5 A. Yes.
 6 Q. At page 1981, so the numbers are at the bottom
 7 right-hand corner we see here the key points about
 8 making Sainsbury's great again and then the slides
 9 essentially follow these key themes, "What we have
 10 found", "New and experienced management team",
 11 "Restoring universal appeal", "Fixing the basics",
 12 "Sales-led profit recovery".
 13 Now, this was again announced to the market, so --
 14 A. Yes.
 15 Q. If you can go to page 1989, this is a -- kind of the
 16 intro to one of the themes and we see this is dealing
 17 with the second main theme, new and experienced
 18 management team. Because if we go over to 1990, this is
 19 the new management team that came on board in 2004?
 20 A. Okay.
 21 Q. Do you remember any of these people on the operating
 22 board? Do you remember Mike Coupe coming along?
 23 A. I recognised the name. I mean, I have had dealings with
 24 Sainsbury's throughout my career past 2004, both at
 25 Barclaycard and at Amex, so I knew the names but that's

3

1 it.
 2 Q. You see there "Finance succession underway"?
 3 A. I do.
 4 Q. You refer to Mr Elvidge in your witness statement?
 5 A. Yes, that is right.
 6 Q. Do you know that he resigned as finance director in
 7 June 2006, were you aware of that?
 8 A. I was aware that he had left the business at some point,
 9 I was not aware of the exact date.
 10 Q. Are you aware that Mr John Rogers joined Sainsbury's as
 11 director of corporate finance in November 2005, are you
 12 aware of that?
 13 A. No.
 14 Q. But you are aware that Mr Elvidge, who you refer to at
 15 paragraph 7, essentially left in 2006?
 16 A. I was aware that he had left, I was not aware of the
 17 exact date.
 18 Q. If you go to page 1992, this is under the "Restoring
 19 universal appeal: the customer offer", this is another
 20 theme:
 21 "Great food at fair prices supported by strong
 22 promotions programme, Nectar."
 23 Then it goes on:
 24 "By the end of 2007/2008, grow sales by 2.5 billion,
 25 invest at least 200 million in improving customer

4

1 offer."
 2 Were you aware of that, that initiative?
 3 A. As I say, I was aware of the general initiative, I was
 4 not aware of these numbers.
 5 Q. Would you, reading that, accept that improving customer
 6 offer would essentially include quality, service and
 7 price, the customer offer?
 8 A. Well, it doesn't say quality, service and price.
 9 Q. What would you understand -- you have been at
 10 Sainsbury's, what would you understand by that?
 11 A. Quality, service, price, availability, all of those
 12 different things.
 13 Q. Yes. This was the initiative but you I think have just
 14 accepted that you don't have any real knowledge of how
 15 it was implemented because you left?
 16 A. That is correct, I had left the business by then.
 17 Q. So let's, as it were, start at the very beginning, which
 18 is a very good place to start.
 19 A. As good a place as any.
 20 Q. At paragraph 3.1 of your statement.
 21 A. Yes.
 22 Q. I will just go through this briefly but it is important
 23 I think the Tribunal knows this precisely. At
 24 paragraph 3.1 you state that you started at Sainsbury's
 25 in the position of deputy store manager and this was in

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1 1995 and lasted until 1998; is that about right?
 2 A. I didn't start as a deputy store manager, I was
 3 a department store manager of a very small store which
 4 meant that I was in charge of the store at many
 5 different times of the day because the management team
 6 there was relatively light.
 7 Q. I see. So that is one of the questions I was going to
 8 ask you which is, when you say "I was partly responsible
 9 for the leadership of 300 colleagues and a business".
 10 That's not relating to every single store you were
 11 employed at?
 12 A. No, absolutely not.
 13 Q. Some were a lot smaller?
 14 A. Some were smaller, some were bigger.
 15 Q. When you say partly responsible, you were?
 16 A. I was responsible for a large chunk of the store
 17 directly in terms of the departments that under my
 18 control, which was mostly fresh foods, and I felt and
 19 acted as if I was responsible for the rest of the stores
 20 as part of the leadership team and of course the area
 21 that I ran was an important part of the performance of
 22 the store.
 23 Q. Then is it in 1998 you were appointed a project manager?
 24 A. Yes, I believe so. It was around then.
 25 Q. Doing what? What was a project manager --

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1 A. The first thing I did -- it was working in procurement
 2 at Sainsbury's head office which at the time was in
 3 Stamford Street and I was working on projects related to
 4 systems that we either used to buy things or the stores
 5 used to order services, so facilities management
 6 basically, refrigeration, cleaning, anything like that.
 7 Q. So what was the difference between a project manager and
 8 a procurement buyer?
 9 A. Not that much. As I moved within that role I took a lot
 10 more responsibility for in particular the facilities
 11 management side. Again refrigeration, cleaning, all
 12 those types of things and I worked with the outsourced
 13 third parties that Sainsbury's used to service its
 14 stores.
 15 Q. So if I then get the feeling of what you were doing
 16 here, this was what -- it is not a goods for resale
 17 role, it is a -- not concerned with retail.
 18 A. It is a Goods Not For Resale role.
 19 Q. That's what it is called?
 20 A. Yes.
 21 Q. Goods Not For Resale role.
 22 A. GNFR as the acronym goes.
 23 Q. Okay. So it was furniture, uniforms, not milk, eggs and
 24 cheese?
 25 A. That is correct.

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1 Q. So when you were at -- what was the acronym, I beg your
 2 pardon?
 3 A. It was in the procurement department, Goods Not For
 4 Resale.
 5 Q. So when you were in procurement, Goods Not For Resale,
 6 it is at this time, and I get this from paragraph 4 of
 7 your statement, that you say you had some visibility of
 8 the pricing strategy?
 9 A. Yes, that is right.
 10 Q. Could you just give a flavour of what you were
 11 observing? I think you say that you had weekly update
 12 meetings so you are in Goods Not For Resale. So what
 13 was the visibility of the pricing strategy that you had
 14 during this time in 2002, say?
 15 A. One of the great things about working in retail is it is
 16 a trading business that you get updates on a daily, even
 17 hourly basis. As a manager in the head office function,
 18 Sainsbury's felt that it was important that every
 19 manager had an understanding of how the business was
 20 performing. Given that there were numerous management
 21 meetings in certain parts of my time there, there was
 22 a regular Monday morning meeting where we would go
 23 through the trading of the business of the previous
 24 week. Within that there were obviously updates on
 25 sales, like for like sales, losses and also how

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1 Sainsbury's were performing in the way that it had
 2 decided to price vis-a-vis its competitors.
 3 Q. Just pause there. So you were in Goods Not For Resale.
 4 What were you communicating to the other -- how many
 5 were at these weekly meetings?
 6 A. It would vary. There weren't that many people there and
 7 it wasn't me communicating to them, it was me being
 8 communicated to from the leader of that part of the
 9 department.
 10 Q. And who would that have been?
 11 A. At the time that I first went there it was a gentleman
 12 by the name of John Paget.
 13 Q. Not the name, the name of the role?
 14 A. Apologies. I think at the time the department was split
 15 in two, there was a head buyer for all of the goods that
 16 we bought that we didn't sell and there was a head buyer
 17 for all of the services that were needed to run a store.
 18 It was the head of -- because I worked in that area, it
 19 was the head of services.
 20 Q. So just what was your -- why were you there as a part of
 21 Goods Not For Resale?
 22 A. Because he was one of the senior managers within Goods
 23 Not For Resale and as I said a little earlier, as
 24 a manager within the head office function, all of us had
 25 an accountability to understand how the stores and how

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1 our business was performing, a key part of that was
 2 competitor activity, a part of that was sales, a key
 3 part of that was losses. So on a regular basis, we
 4 would be communicated to on that topic.
 5 Q. It is at this point, so as part of that kind of
 6 observing, of being communicated to, you saw how
 7 Sainsbury's, for example, marketed, I think you refer in
 8 paragraph 10 to the marketing. So in what shape did you
 9 see marketing being put forward in these weekly
 10 meetings?
 11 A. We would -- if there were large campaigns running at
 12 that time, which -- similar to the one that we have
 13 already referenced a little earlier, we would obviously
 14 get updates as to how that itself was performing. So
 15 I would understand that. I was also a Sainsbury's
 16 shopper, so I experienced their marketing on a daily, if
 17 not weekly, basis anyway as a customer of theirs. And
 18 again, you know, when you work in a supermarket
 19 function, especially at head office, your only job is to
 20 attempt to serve the stores as well as you can.
 21 Q. So what would --
 22 A. So understanding what was happening in the stores, good
 23 and bad, helped me do my job better.
 24 Q. What would marketing involve? Can you assist the
 25 Tribunal, what is involved in -- what type of marketing

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1 would you be observing?
 2 A. Well, it could be anything from new ranges being
 3 launched in the stores. It could be new ways of
 4 rewarding customers, it could be advertising on the
 5 television, radio, papers. It could be any of those
 6 things.
 7 Q. You refer also to promotions that you observed, you had
 8 some visibility of promotions you say in paragraph 10,
 9 but what would be the difference between promotions and
 10 marketing?
 11 A. Not much. One tends to come with the other I suppose
 12 would be the best way that I could put it, although,
 13 they are not mutually inclusive or exclusive as well.
 14 When I talk about promotions it could either be
 15 Sainsbury's refocusing on quality or it could be
 16 something regarding extra points on certain -- extra
 17 loyalty points on certain offers, it could be -- and we
 18 still see this to this day -- promotions related to
 19 using petrol as a lead item to get people into the
 20 shops, it could be any of those things.
 21 Q. So it is all about increasing sales on items, generating
 22 goodwill, that sort of thing?
 23 A. Yes. I don't think it is always about increasing sales
 24 at any cost, but certainly, you know, as I think is
 25 generally understood how a supermarket is performing on

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1 a sales perspective is extremely important to it.
 2 Q. But you fairly say in the last sentence of paragraph 4,
 3 you were not involved in price setting?
 4 A. No, I wasn't.
 5 Q. Then, after you -- you left procurement, as I understand
 6 it, and I'm looking at paragraph 3.1.4, where you say
 7 that you went from 2002 to the time you left in 2004,
 8 I think you moved into financial services aspect of
 9 Sainsbury's supermarket?
 10 A. That is correct, yes.
 11 Q. We have tried to dig out your blast from the past, but
 12 if you go -- I don't know if you have still got
 13 bundle E5.5?
 14 A. No, I don't.
 15 Q. If you could keep that bundle open because I will go to
 16 some more documents. E5.5. It is the only bundle
 17 I will go to, along with the witness statements.
 18 Now, at tab 70 --
 19 A. Oh, wow.
 20 Q. I know, I told you it would be a blast from the past.
 21 A. I'm surprised it isn't handwritten.
 22 Q. There we go. Now, this is the finance division current
 23 structure. If we can just --
 24 A. What date was this?
 25 Q. Well, I don't know.

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1 A. It is certainly not 1977.
 2 Q. I don't know why that's on there, it is probably because
 3 it is the page.
 4 A. Oh, yes. Apologies.
 5 Q. When I looked at it I thought ... (Pause) I mean, if you
 6 just -- you can see yourself there, Scott Abrahams in
 7 financial services?
 8 A. Yes.
 9 Q. Then to the left "Finance Systems", what was that
 10 concerned with?
 11 A. I believe that was concerned with the running and
 12 operating of all of the computer systems that -- systems
 13 and processes probably, although I'm not certain of
 14 that, but systems and processes that any large business
 15 needs to effectively run its finance operation.
 16 Q. Then, what is the BAS?
 17 A. I think that's business accounts services, I believe.
 18 That was quite a large operation that was based in
 19 Streatham at that time.
 20 Q. Then to the left "OR".
 21 A. I don't know what "OR" is.
 22 Q. If you take that little group, that is reporting up to
 23 a director of finance operations?
 24 A. Yes.
 25 Q. What was the purpose of this little group? Why is that

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1 group together?
 2 A. I believe that that group was together purely because
 3 those managers were focused very much on the day-to-day
 4 mechanics of finance and running the finance division,
 5 so you have got people running the systems, the business
 6 accounting services function was all about payments to
 7 suppliers, invoice matching, fixed assets, all of those
 8 types of things, the very core of a finance function, if
 9 you like.
 10 Q. It is pretty obvious, but I put it to you, during this
 11 time, you are in kind of this mechanics of finance, you
 12 are not having very much visibility about price
 13 strategy, that's gone?
 14 A. I don't have -- apart from obviously ongoing meetings
 15 etc which I have already referred to which would have
 16 continued in this job, and perhaps a little bit more
 17 insight into the performance of the business as I was
 18 working in finance, and also because my job, unlike my
 19 colleagues', was very much an externally facing job. My
 20 job was dealing with cash in transit, was dealing with
 21 banks, both as ATM providers, acquirers, cheque
 22 processing, cash processing. So no, I wasn't, but
 23 I wasn't any further away from the pricing decisions as
 24 I have already referred to them.
 25 Q. If I could just summarise where we get to by 2004, and

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1 summarise your experience because it is important that
 2 the Tribunal has an accurate account --
 3 A. Yes.
 4 Q. During your time at Sainsbury's, you were not involved
 5 in setting any promotion or strategy of goods for
 6 resale; that is correct?
 7 A. That is correct, no, I wasn't.
 8 Q. During your time at Sainsbury's you were not involved in
 9 setting any prices of goods for resale, that is correct
 10 I think as well?
 11 A. That is correct.
 12 Q. Your knowledge of Sainsbury's Bank essentially stems
 13 from your ATM role?
 14 A. Essentially, yes.
 15 Q. After 2004, you ceased to have any visibility within
 16 Sainsbury's of Sainsbury's pricing strategy?
 17 A. Within Sainsbury's, yes, because that was when I left to
 18 go and work for Barclays.
 19 Q. Absolutely. The next obvious question is, after 2004
 20 you ceased to have any visibility within the Sainsbury's
 21 group of the operational relationship between
 22 Sainsbury's Supermarkets and the Bank?
 23 A. Yes.
 24 Q. I'm going to go on to certain pricing aspects. So you
 25 will see here at paragraphs 4, 5, 6, 7, 8, 9, 10, 11 are

15

1 in yellow?
 2 A. Yes.
 3 Q. I believe I can get away without ...
 4 MR JUSTICE BARLING: Right.
 5 A. Do I have to be careful as well though?
 6 MR JUSTICE BARLING: If you could just be careful, yes. If
 7 you feel it is impossible to give a proper answer
 8 without being not careful, then we will have to consider
 9 whether to --
 10 A. For my clarity, everything in yellow is?
 11 MR BREALEY: Is confidential to Sainsbury's.
 12 A. Okay.
 13 MR BREALEY: So we have members of the public here.
 14 A. Indeed, okay.
 15 Q. Now, just to start off. These are -- although -- I do
 16 apologise.
 17 MR JUSTICE BARLING: Is it going to be possible, Mr Brealey?
 18 MR BREALEY: Let's just take it in stages.
 19 MR HOSKINS: If it is difficult for Mr Brealey, how is the
 20 witness going to manage, because he is trying to say:
 21 I need to give an answer, but I'm not sure what I can
 22 say. It is not ideal.
 23 MR JUSTICE BARLING: Are the answers going to propose
 24 a problem even if your questions don't?
 25 MR BREALEY: No, I will give it a go.

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1 You say at paragraph 6 of your witness statement
 2 that the transaction costs were at a certain figure and
 3 I would ask you not to read that figure out. But that
 4 figure was the amount of transaction costs, say, in
 5 2004?
 6 A. I believe so, yes.
 7 Q. And at paragraph 3.1.4, which is not in yellow, which
 8 I think is a public figure anyway, is that you say that
 9 Sainsbury's turnover was circa 20 billion?
 10 A. Yes.
 11 Q. Then, at paragraph 10, the first two lines, you say,
 12 given the transaction costs in the context of the total
 13 budget, there is a percentage figure there. And this is
 14 not trying to trick you, I'm just asking you whether you
 15 are certain about that 0. point whatever percent of
 16 turnover, because in my maths it should be a different
 17 figure?
 18 A. The point I was referring to there -- sorry,
 19 apologies -- was my understanding of the credit fees --
 20 the credit card fees.
 21 I was just trying to aggregate the whole role that
 22 I had that included moving a lot of money,
 23 electronically and cash, moving a lot of money into the
 24 stores for ATMs, that was a substantial figure.
 25 Q. Sure, whatever.

17

1 A. And from the best of my memory trying to come up with
 2 a number -- because as I have stated here, we and
 3 colleagues of mine managed those lines and those cost
 4 lines very, very, very closely on behalf of all of the
 5 stores.
 6 Q. If you just do the maths on 20 billion and the figure at
 7 paragraph 6, it is not 0.8.
 8 You can't say because that's just not correct as
 9 a matter of maths. So what you are saying -- are you
 10 saying that the transactional costs were just the
 11 interchange fees or what are you saying?
 12 A. I was referring in 10 to the rough costs of credit
 13 cards.
 14 Q. So transaction costs are not the -- anything else --
 15 cash or --
 16 A. Yes, I think part of the -- is the number which isn't in
 17 yellow, so the 20 billion, includes -- that was the
 18 amount of cash, when I say "cash" I mean value, if you
 19 like, that people who work within my team and I were
 20 accountable roughly, very roughly, for moving every year
 21 and that included a lot of ATM turnover cash as well.
 22 MR JUSTICE BARLING: But the transaction cost in
 23 paragraph 10, that doesn't include the ATM and all those
 24 things?
 25 A. No and that's the things. It was my best rough

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1 understanding of the credit card fees piece of that.
 2 PROFESSOR JOHN BEATH: Sorry, the term "transaction costs"
 3 is to be used in two senses?
 4 A. Yes.
 5 MR BREALEY: Then also at paragraph 6, the last sentence,
 6 you state that:
 7 "Transaction costs were one of the major operational
 8 costs of the business, for example the costs of goods
 9 purchased, salaries, rents and utilities."
 10 So you say:
 11 "Transaction costs were one of the major operational
 12 costs of the business, after, for example, costs of
 13 goods purchased."
 14 I just want to double-check, are you sure that the
 15 costs of goods purchased, ie are regarded as
 16 an operational cost? Because COGs are not generally
 17 treated as an operational cost?
 18 A. That's a fair point, I would say. It is just the
 19 language that's been used there. What I mean is that
 20 the costs of transacting and accepting different types
 21 of payment were a significant operational cost to the
 22 operation of Sainsbury's and its supermarkets.
 23 Q. But you don't have any access to the amount of COGs that
 24 Sainsbury's incurs, for example? You don't know the
 25 level of COGs within Sainsbury's?

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1 A. No.
 2 Q. And you don't know, for example, the level of the
 3 operational cost of rental or occupancy?
 4 A. I certainly don't have that now. I'm sure at the time
 5 that I was working there I would have seen some of those
 6 costs, but it is fair to say that I wouldn't have had
 7 a deep understanding of them.
 8 Q. With that in mind, you go in paragraph 10, so if you go
 9 to paragraph 10 and I don't think -- this is just your
 10 evidence -- if you go to the bottom of page 17,
 11 paragraph 10, so not at the end of the paragraph but at
 12 the bottom of the page, where you say:
 13 "... if transactions charges were lower than
 14 budgeted."
 15 A. Yes.
 16 Q. So in what sense are you using "transaction charges"
 17 there?
 18 A. I'm talking about transaction charges there as to the
 19 piece of the cost pie that I was accountable for at my
 20 time there which would have been all types of
 21 transaction charges, whether they be card, cash, cheque
 22 processing or anything.
 23 PROFESSOR JOHN BEATH: Sorry, is that the same use of
 24 transaction costs as in paragraph 6 then? Just so I'm
 25 clear.

20

1 A. I don't know what I said in paragraph --
 2 PROFESSOR JOHN BEATH: My understanding of your answers is
 3 that you are using a rather global sense of transaction
 4 costs in paragraph 6 and it seems the beginning of
 5 paragraph 10 you are talking of a rather smaller --
 6 A. A subset.
 7 PROFESSOR JOHN BEATH: A subset of that. I'm just -- at the
 8 end of the paragraph have you changed to a bigger
 9 definition?
 10 A. Was that a question to me?
 11 PROFESSOR JOHN BEATH: Yes.
 12 A. I apologise. I was waiting for somebody else to answer
 13 that, to be honest with you. Sorry, I think I might use
 14 one of my lifelines, if that's all right!
 15 I'm talking in paragraph 10 about the transaction
 16 charges that I was accountable for within the role that
 17 I was in as financial services manager at Sainsbury's.
 18 MR JUSTICE BARLING: That's everything then? Cards, cash,
 19 cheques, processing?
 20 A. Everything to do -- I had a relatively large budget and
 21 the way I used to talk about my job there was I was
 22 accountable for the movement and banking of all
 23 Sainsbury's turnover, somebody else counted it but
 24 I needed to make sure it got to where it should be.
 25 With the transaction charges I'm talking about there are

21

1 the charges that I had to pay to ensure that that
 2 happened effectively and efficiently.
 3 MR BREALEY: Thank you.
 4 You say:
 5 "If transaction charges were lower than budgeted,
 6 this would have provided scope for a reduction in prices
 7 or increases in marketing and promotions."
 8 A. Yes.
 9 Q. So, again, we touched on this earlier, what type of
 10 marketing could have been increased if transaction
 11 charges had been lower than budgeted?
 12 A. As I made clear in my statement, I was -- I prepared
 13 a budget, a very detailed budget that was monitored on
 14 at least a monthly, if not weekly, basis. That was
 15 relatively significant and therefore within my statement
 16 I firmly believed that a shift in that one way or the
 17 other would have been an impact of Sainsbury's overall
 18 business plan for that financial year, if they are -- if
 19 I'm spending too much, action may needed to have been
 20 taken somewhere else and if I'm coming in under budget,
 21 that could -- Sainsbury's have choices then. They
 22 either take that to the bottom line or they look to
 23 invest it in other ways.
 24 Simply what I'm referring to there is that choice
 25 that any business has, any trading business has around

22

1 that and that's what I meant by that.
 2 Q. So I think you mentioned quality earlier on. It could
 3 similarly have been invested into quality, which, as you
 4 know from being a store manager, Sainsbury's prides
 5 itself on the quality of its goods?
 6 A. Yes, it could have been in anything, it was
 7 a competitive market and continues to be. And one
 8 aspect of that is quality along with price, service and
 9 all the things that we spoke about at the beginning.
 10 Q. You refer in paragraph 11 and again two-thirds of the
 11 way down essentially you are referring to how
 12 supermarkets --
 13 A. Is that confidential? This is still confidential, this
 14 paragraph?
 15 Q. It is.
 16 A. Okay.
 17 Q. If you take the last sentence where it is not specific
 18 to anybody:
 19 "Certainly no supermarket would have wanted to run
 20 the risk of losing sales by keeping prices high."
 21 That is correct, isn't it?
 22 A. Yes.
 23 Q. I'm trying to work out if your evidence is that, let's
 24 assume -- you say in your evidence that pricing would at
 25 least have been considered. You refer to marketing,

23

1 promotion as you have said it, quality, everything else,
 2 but you say pricing would have been considered. So
 3 lower prices would at least have been considered
 4 an option, that's your --
 5 A. If my budget was running better than planned, yes.
 6 Q. If you for example go -- we will have a bit of -- since
 7 we are in supermarkets, if you go to tab 74 --
 8 A. E5.5 again?
 9 Q. E5.5. You will see there that I printed off from the
 10 website Tesco's offer of potatoes. We will call this
 11 the potatoes example. Try and put this into context.
 12 So as we know, in this case, and I'm sure you are aware,
 13 we are talking about an overcharge. You are aware of
 14 what this case is about, I take it?
 15 A. Yes.
 16 Q. You discussed it with them. You are aware that there is
 17 an allegation that there is an overcharge on interchange
 18 fees?
 19 A. Yes.
 20 Q. What I'm trying to do here is to work out if that
 21 overcharge was to be reflected in prices across the
 22 board of any major supermarket, what would the
 23 implications be? So that is why I'm going to show you
 24 this.
 25 A. Okay.

24

1 Q. We know from your evidence that Sainsbury's turnover is
2 20 billion, correct? Assume -- this should not be taken
3 as a fact, assume that the overcharge is 20 million. So
4 you have a 20 billion turnover and an overcharge of
5 20 million per year. Now that figure of 20 million
6 compared to 20 billion is 0.1%; correct?

7 A. Yes.

8 Q. Now, if you look at the Tesco baby potatoes of £1, if
9 Tesco's was to increase the price of baby potatoes
10 because of the 20 million overcharge, Tesco's would
11 increase it by 1/10 of a penny?

12 A. Not necessarily, no.

13 Q. What would it do, then?

14 A. Well, I think there is a couple of things. If we are
15 talking specifically here about paragraph 11, much of
16 what I have said there is around a general change in
17 those transaction costs driven by interchange. So this
18 is an example of Sainsbury's reacting potentially to
19 competition, either up or down, from a price
20 perspective. I am not talking there about necessarily
21 in paragraph 11 an upside that only Sainsbury's are
22 enjoying.

23 In terms of your example of baby potatoes, what
24 I believe could happen, if you were looking to use that
25 from a price perspective is you would try and make one

25

1 big hit that gave you a headline in some way. So you
2 would knock 2p off the price of petrol. My job was to
3 accurately target and budget all of those figures, I was
4 aware that that went into a financial plan. I was not
5 aware of what decisions were made because of it and
6 I have used the word, I believe in my statement, rather
7 than I know. But you wouldn't just pass all of that
8 price across the 20,000 items that you sell in a store
9 and I'm making that number up but let's say it is nearer
10 30 -- you had the option and I believe often it did
11 happen, that you would invest in certain headline
12 prices, promotions, as I mentioned earlier, so you
13 would -- and we have seen it a lot, you know, the
14 European Championship is on, so 24 cans of lager are £10
15 or as I have said already, petrol is a lead thing. So
16 you -- the supermarket -- any supermarket has the
17 opportunity and option to invest in price but it needs
18 to make a splash with that investment. It doesn't want
19 to do it as 10 basis points across every product it
20 sells.

21 Q. So it is not realistic to suppose that this 20 million
22 is just going to, at the start, be fed in and it is
23 going to -- prices are going to increase by a fraction
24 of a penny. What you are talking about is what you call
25 a big hit, a big splash?

26

1 A. Potentially. It depends how much --

2 Q. A promotion?

3 A. It depends how much it is, obviously. I just think that
4 that would be -- you know, in my experience, both at
5 Sainsbury's and afterwards, where you have that
6 opportunity to make some decisions on what you do with
7 an unexpected upside, that would be one of your options.
8 And I believe the supermarkets took that option
9 regularly.

10 Q. Going back to paragraph 10, you say that you believe
11 that investors would not have allowed Sainsbury's to
12 take a hit on profit, is that essentially what you are
13 saying there? Investors would not have allowed
14 Sainsbury's to take a hit on profit?

15 A. What I'm saying there is that it is my belief, although
16 it might be confidential, that a supermarket is
17 normally, in my experience, judged on two things. It is
18 judged on many things but from a City perspective, it is
19 judged on like for like sales. Actually there is three:
20 like for like sales, market share and profitability and
21 when I make that statement -- which you have said,
22 haven't you? So that is not confidential now, is it?

23 Q. Go on.

24 A. That what I meant by that is that obviously Sainsbury's
25 have made certain commitments to the City and their

27

1 investors, normally both in terms of like for like sales
2 and profits. I'm not so sure whether they make
3 commitments around market share but of course if you
4 look like you may not achieve those commitments, like
5 any business, I think it is a fair belief to say that
6 you would take action.

7 Q. Are you aware that the City analysts are always
8 reviewing their profit forecasts for big companies like
9 this?

10 A. I see and read in the press all the time, views of City
11 analysts on all businesses and what I see and I still
12 work with a lot of retailers, the two lead indicators,
13 which are like for like sales and profitability are
14 something that are always the sort of lead headlines
15 when -- you only have to see it very recently after
16 Christmas, all the news reports, the first thing they
17 talk about is the sales performance of those businesses
18 over Christmas. Profitability less often because they
19 only report profitability twice a year in their
20 accounts, rather you can do like for like sales more
21 often.

22 So I think it is fair belief to say that if there
23 was downside or upside in a large budget, action would
24 have to be taken to try and get that business back on
25 track with its commitments to the City.

28

1 Q. It is a belief you hold reading the FT and your
2 knowledge --
3 A. No, it is a belief I hold from working at Sainsbury's
4 for a number of years, for working at a large bank and
5 working at another large American business in
6 increasingly senior roles.
7 Q. Have you ever spoken to investors about Sainsbury's
8 performance?
9 A. No.
10 Q. In paragraph 12 onwards you refer to Sainsbury's Bank.
11 You state that Sainsbury's Bank and Sainsbury's
12 Supermarkets are operationally separate. What do you
13 mean by that?
14 A. I meant that what I'm talking about there is that the
15 reporting line, if you like, of myself and colleagues
16 within Sainsbury's Bank, that there was no crossover,
17 certainly not at my level and even higher up into the
18 organisation.
19 Q. Can you expand on that? It is part of your evidence.
20 When you say there is no crossover, what does that mean?
21 A. I mean that there is no -- at my level and certainly
22 further up into the business -- these were two group
23 reported functions, I believe at that time, the
24 supermarket and the Bank, which at the time was a joint
25 venture, and that those two entities reported into the

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1 Sainsbury's group function as it stood at that time.
2 Q. You are aware that obviously that Sainsbury's
3 Supermarkets is based in London?
4 A. Yes.
5 Q. And that the Bank is based in Edinburgh?
6 A. Yes, I flew there a lot.
7 Q. Can you assist the Tribunal as to the nature of
8 Sainsbury's Bank's fiduciary duties, the directors of
9 Sainsbury's Bank fiduciary duties: are you aware of
10 their duties to be independent?
11 A. I'm not aware of those duties.
12 Q. The Bank in Edinburgh employs about 1,000 people. Are
13 you aware of that?
14 A. No, I wasn't aware of the numbers.
15 Q. Are you aware that the major central business roles are
16 carried out in Edinburgh?
17 A. Are you talking about when I was working there?
18 Q. Let's take from your experience when you were at the
19 ATM.
20 A. I was -- certainly the senior people that I dealt with
21 within the Bank were all in Edinburgh.
22 Q. Are you aware that the training division, the risk
23 division, the audit division, the customer care
24 division, the operations division are all out of
25 Scotland rather than London?

30

1 A. I was not aware of those specifics but it doesn't
2 surprise me that those departments were all in
3 Edinburgh, no.
4 Q. If you go to paragraph 17.4, in the light of what you
5 have just accepted, can you at least qualify that
6 statement which is "to all intents and purposes,
7 the Bank was run out of the supermarkets" because that
8 is not a fair and accurate description?
9 A. I believe it is fair in the sense that I meant it.
10 Q. How did you mean it?
11 A. I meant it in terms of the supermarkets were by far the
12 largest and most effective channel for Sainsbury's Bank
13 to be successful. They had -- I don't know how many
14 supermarkets they had then, probably 500 or 600 and the
15 internet was only really kicking off, even then.
16 So what I mean by run out of the supermarket was
17 that -- and this was a key part of my role -- that to
18 access customers and for the Bank to be successful and
19 therefore for the supermarket to be successful because
20 of the success of the Bank, they had to have access to
21 customers through the supermarkets and that is the sense
22 that I meant that statement.
23 Q. But you do accept that the major trading operations of
24 the bank are carried out in Scotland independently from
25 Sainsbury's Supermarkets?

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1 A. In terms of where all those people were based, yes.
2 I don't accept that it was independent. I spent days,
3 weeks, with the Bank and I didn't work for the Bank,
4 I worked for the supermarket.
5 Q. What did you actually do in your role as ATM?
6 A. Well, it is marked "confidential" here.
7 Q. That is a fair point.
8 A. Sorry.
9 Q. I'm sorry about that.
10 A. I used to use them to take money out, if that's any
11 help!
12 Q. Yes. That's fine. So we can --
13 A. I'm more than happy to answer that question.
14 Q. Yes.
15 A. In my general role, if I talk about that first and then
16 Sainsbury's Bank.
17 Q. Yes.
18 A. In the time that I was there as financial services
19 manager, ATMs were a relatively profitable thing to site
20 at any locations, but at supermarket locations, you have
21 got a lot of space and there were -- I inherited this,
22 I did not do this but there were many, many ATMs, as
23 there are to this day, at supermarket locations. I even
24 had stores where there were five ATMs within the store.
25 Now, some of that was because before the advent of Link,

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1 certain banks had alliances where you had to use this
 2 one or they charged you and all those different things,
 3 but there was an interchange fee payable from the banks
 4 whose customer was being served payable to the bank that
 5 had serviced that customer.
 6 Therefore, there is two reasons really to get into
 7 ATMs as a supermarket. Either you are a very large
 8 current account provider, such as Lloyds and Barclays,
 9 where it is opportune to try and service as many of your
 10 customers yourself to avoid those charges or you are not
 11 and you have the opportunity to collect charges from
 12 your competitors.
 13 So, you know, there was a significant amount of
 14 ATMs -- I forget the number, but it was a lot. So that
 15 was why -- and therefore that was an income line that
 16 somebody had to manage, I would negotiate with banks on
 17 new deals when it came to rental agreements, when it
 18 came to income, when it came to transaction income.
 19 MR JUSTICE BARLING: Would these be Sainsbury's Bank ATMs?
 20 A. No, I will come to that now. It was a good thing to
 21 have in a store. On top of the fact, of course, it is
 22 another service to your customers.
 23 MR JUSTICE BARLING: It could be a Barclays ATM or a Natwest
 24 ATM?
 25 A. We had many many, different ATMs for many different

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1 providers. In my time there, I think we started to
 2 proactively replace those ATMs with Sainsbury's Bank
 3 ATMs, hence my close working relationship with the Bank.
 4 There were good reasons for that on all sides. One is
 5 that at the time Sainsbury's Bank were tiny, so
 6 virtually every single transaction they stored at their
 7 ATMs would have attracted this fee from another bank.
 8 So that was good business sense to do that.
 9 We actively -- I actively served notice on many
 10 banks at that stage to remove their ATMs from our
 11 property and to then proactively put Sainsbury's Bank
 12 ATMs.
 13 Q. It made sense?
 14 A. It made a lot of sense and that's why I query slightly
 15 that sense of independence because I relied entirely or
 16 almost entirely on the Bank, I had to negotiate with the
 17 Bank in terms of how many ATMs we had. My primary
 18 function driven to me and made very clear to me by
 19 Mr Elvidge was that I had to protect the supermarket and
 20 to grow the supermarket and, you know, that was one of
 21 the reasons we had a bank in the first place. So that
 22 was what I was doing when it came to ATMs.
 23 Q. Essentially I think what you are saying is you certainly
 24 implemented the Bank's strategy but you weren't part of
 25 the Bank strategy. The Bank decided what to do. You

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1 played no part in that?
 2 A. It depends what level you mean by strategy. I think in
 3 terms of --
 4 Q. A decision to replace ATMs, a decision to issue credit
 5 cards?
 6 A. I didn't play a part in that.
 7 Q. No. So again you didn't play a part in it so you
 8 wouldn't really know how much it is going to cost, you
 9 wouldn't be familiar --
 10 A. No, I knew exactly how much it was costing because that
 11 was a key input. We built a financial model that
 12 allowed us to understand what the supermarket could
 13 expect to gain from this deal.
 14 Q. On the ATM?
 15 A. On the ATMs, absolutely. We put a financial model in
 16 place that allowed us to understand the costings for
 17 every single site, because obviously it is building
 18 works and they have to be done in a relatively secure
 19 environment. So I understood every cost on every line.
 20 It is a big decision for the supermarket to make. You
 21 know, you may not be able to trade as effectively while
 22 you are having that work done.
 23 Did I make the decision to actively swap out ATMs?
 24 No. Was I very clear on the direction of that strategy
 25 and how I had to enact it in a way that made sense for

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1 the supermarket and the Bank? Then yes, I did.
 2 Q. You wouldn't generally have access to -- or at all, and
 3 maybe the ATM -- the costings that the directors of
 4 Sainsbury's Bank would have in order to make decisions
 5 or not?
 6 A. Outside of the ATMs piece you mean, no, I wouldn't.
 7 Q. For example you gave evidence a moment ago about making
 8 a splash 2p off the price of petrol. Do you have any
 9 idea how much that would cost?
 10 A. No.
 11 Q. If I were to say to you 70 million, would you have any
 12 idea?
 13 A. I don't know. I was simply then answering your question
 14 regarding you would need to invest that money in a way
 15 that got you some cut-through, knock 10 basis point off
 16 every single product you had.
 17 Q. After you left MasterCard, you went to Barclaycard?
 18 A. Yes.
 19 Q. And then onto Amex?
 20 A. Yes.
 21 Q. At Amex, you worked for seven years?
 22 A. Yes.
 23 Q. I think you signed the Amex deal with Sainsbury's in
 24 December 2011, is that correct? Can you remember that?
 25 A. No I don't. Did I?

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1 Q. I have seen your signature --
 2 A. Does it match the one on this? I would have signed
 3 a lot of deals.
 4 Q. I haven't compared it.
 5 A. Apologies, I would have signed a lot of deals. My first
 6 role at Amex was head of client management in the UK
 7 which meant every customer that accepted American
 8 Express was my customer, so Sainsbury's were obviously
 9 an important customer.
 10 Q. Obviously Amex are premium cards. Could you just give
 11 the Tribunal a flavour of the sort of cards that Amex
 12 has, issues?
 13 A. Yes, well, they go all the way up from a Centurion card,
 14 I believe it is still invite only, maybe it isn't,
 15 through platinum, gold, most of these cards are charge
 16 cards. They are not a massively large credit issuer and
 17 then down to more -- for want of a better expression --
 18 everyday cards such as the dual products they have with
 19 Lloyds, joints card issuance with people like MBNA and
 20 their own blue credit cards and charge cards as well.
 21 Q. They have higher fees generally?
 22 A. Generally, to accept?
 23 Q. Yes.
 24 A. Yes.
 25 Q. I think it is well evidenced that Amex still has

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1 a problem with acceptability --
 2 A. Yes, that was -- you sound like my boss there. Yes,
 3 indeed.
 4 Q. It is also fair to say I think that MasterCard, with its
 5 premium card, doesn't have the same problem with
 6 acceptability because it rides on the back of the
 7 "honour all cards" rule?
 8 A. That's true to say to some extent. In terms of American
 9 Express' position in the marketplace, my job was to
 10 maintain and grow the acceptance footprint that we as
 11 a company had. Our acceptability challenges at Amex
 12 were mostly focused around much smaller retailers: you
 13 know, restaurants and corner shops and those types of
 14 things. The vast, vast majority of large retailers,
 15 such as Sainsbury's, accepted American Express and still
 16 do to this day and that was clearly my main area of
 17 focus and I'm very pleased to say that I was actively
 18 successful in maintaining that coverage in the time that
 19 I was in that job.
 20 Q. What, in broad terms, would be the difference between
 21 an Amex rate, and I appreciate there are lots of
 22 different cards, but can you give in broad terms what
 23 the difference between the Amex rate would be and the
 24 MasterCard rate be? MasterCard Standard card, for
 25 example.

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1 A. I'm not sure whether that's confidential. In terms
 2 of -- I can give you in very broad senses, those cards,
 3 American Express cards are not charged at different
 4 rates, in my experience. I do not think they have
 5 changed that, they may have done --
 6 MR JUSTICE BARLING: The ones you have referred to?
 7 A. They are all charged in my time there at the same rate.
 8 So whether a Lloyds Duo product was accepted by
 9 Sainsbury's or a Centurion card that is £2,000 a year to
 10 have, that the price of that card was the same to
 11 accept. In my time there, the average gap would be --
 12 and I want to be very -- I want to be relatively clear
 13 about this, I hope you understand that, 80 basis points,
 14 1%, something like that.
 15 MR JUSTICE BARLING: Difference?
 16 A. Yes. American Express, they charge a lot more within
 17 things like airlines and other bits and pieces like that
 18 and much less within supermarkets and other retailers.
 19 MR BREALEY: Obviously you left Amex to go to MasterCard, do
 20 you know why MasterCard entered into what you could call
 21 the premium card market?
 22 A. Well, it is difficult for me to say, as I wasn't
 23 there -- I wasn't at MasterCard at that time.
 24 Q. But you have taken over quite a substantial operation?
 25 A. Yes and the cards' market is highly competitive and

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1 American Express, during my time they were a very
 2 aggressive competitor to the other card schemes not just
 3 MasterCard and many -- at Amex, we were very happy with
 4 the amount of progress we had started to make with
 5 traditional card issuers of Visa and MasterCard such as
 6 Lloyds and MBNA. I did a lot of work with MBNA, I did
 7 a lot of work with Lloyds at American Express. I spoke
 8 to them a lot and from that perspective we were
 9 aggressively going after the premium business that
 10 currently sat on other card schemes and so I would
 11 imagine that to some extent that was a reaction to that,
 12 although I was not at MasterCard, so I don't know.
 13 Q. It is fair to say I think that MasterCard entered the
 14 premium market to take Amex on?
 15 A. I would imagine so, but I don't know. I wasn't there.
 16 Q. Okay. Your current position, as I say, is at MasterCard
 17 and your group head of acceptance UK and Ireland. Could
 18 you just inform the Tribunal what actually does that
 19 involve, group head of acceptance UK and Ireland?
 20 A. Yes, of course. My job is in some ways -- I suppose the
 21 easiest way of looking at my job is that I'm accountable
 22 for everything that isn't card issuing. So my
 23 relationships on the whole aren't with large issuing
 24 banks. My role covers everything from what I would call
 25 pure basic acceptance where I run and am accountable for

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1 a lot of relationships with large acquirers that are
 2 based in the UK and in Ireland. I have -- I'm
 3 accountable for our merchant relationships. I'm
 4 accountable for all of our commercial public sector
 5 relationships, of which we have a lot, both in central
 6 government and the wider public sector and I'm also
 7 accountable for emerging and digital payments, so all of
 8 the new things. My team helped the contactless cards
 9 into Tfl, for instance. We helped Apple Pay launch here
 10 last year. It is quite a wide-ranging role, if you
 11 like.
 12 MR JUSTICE BARLING: The public sector, that's the
 13 relationship with government, lobbying and so on?
 14 A. No, no, nothing to do with lobbying. It is all about --
 15 that's why I always call it the commercial relationships
 16 we have with government. Government use thousands of
 17 our corporate cards for their employees, they use our
 18 virtual cards to transact with suppliers, we have
 19 2,000ish, I think. No, maybe a bit less than that
 20 actually. But we have a lot of relationships on the
 21 prepaid side. So government is beginning to use prepaid
 22 cards for disbursement purposes. We think that will
 23 grow as universal credit comes into the marketplace. So
 24 we have a very wide-ranging relationship with many areas
 25 of the public sector. It isn't a lobbying role. That's

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1 done in other parts of the business.
 2 Is that okay?
 3 MR BREALEY: Yes. Why is it UK and Ireland? Why is it
 4 grouped together? Just because it is English speaking?
 5 A. I don't know. I would tell you if I knew. I don't
 6 know, the European region is split into, I think, five
 7 areas or four areas. I have no idea why the business
 8 has ended up being run in this way.
 9 Q. But you have responsibility for Ireland as well?
 10 A. Yes.
 11 Q. As you know the interchange fee regulation has come in,
 12 the EU interchange fee regulation which caps credit and
 13 debit card rates and you are also aware that Ireland has
 14 exercised its discretion I believe to have debit at 1%
 15 and not the 2%; is that correct?
 16 A. Do you mean 10 rather than 20 basis points?
 17 Q. Yes.
 18 A. So yes. The cap for debits is 0.2 and they have done it
 19 at 0.1.
 20 Q. Do you know why they have done that?
 21 A. I don't know --
 22 Q. You are responsible to a certain extent for --
 23 A. I'm not responsible for government decision-making and
 24 so I think --I wish I was sometimes.
 25 Q. They must have informed you why they have done it. The

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1 UK has stayed at 2?
 2 A. The main reason they have done it, in my belief -- and
 3 I have met the head of the commercial area of the Irish
 4 Government -- the main reason they have done that is
 5 that Ireland is still a very large cash economy,
 6 particularly outside of Cork and Dublin. Ireland have
 7 had some challenging times, haven't they, over the last
 8 few years and part of the agreements that they have had
 9 to make within the EU put them under certain pressure to
 10 do certain things, I believe that many studies will show
 11 that there is a correlation between the amount of cash
 12 in the economy and the amount of things that perhaps
 13 wouldn't be as good for the economy as if it was all
 14 electronic.
 15 So it is my opinion that they have set those rates
 16 at that level to drive and to encourage more businesses
 17 to act and transact electronically, rather than just
 18 with cash.
 19 Q. Coming back to the UK, and going back to 2014,
 20 MasterCard decided to lower its interchange fees, do you
 21 remember that, 2014? MasterCard decided to lower the
 22 rate of the interchange fees? I'm not trying to trick
 23 you or anything. If you go to tab 73 of E5.5-bundle --
 24 MR JUSTICE BARLING: Mr Brealey we have had a plea from the
 25 shorthand writers.

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1 MR BREALEY: I'm sorry.
 2 MR JUSTICE BARLING: Don't worry. While you are finding the
 3 place there and Mr Abrahams is thinking about it, we
 4 will just take a short break.
 5 (12.00 pm)
 6 (A short break)
 7 (12.08 pm)
 8 MR BREALEY: I think I said go to tab 73 --
 9 A. I'm there, yes.
 10 Q. -- which is not confidential.
 11 A. No.
 12 Q. This is in the context of what I was saying, that in
 13 2014, MasterCard decided to reduce its interchange rates
 14 for standard and premium UK credit cards before the
 15 adoption of the interchange fee regulation?
 16 A. Yes.
 17 Q. It wasn't certain that it was going to be -- I think you
 18 probably foresaw that it was going to be adopted but it
 19 wasn't certain it was, let alone the date by which --
 20 correct?
 21 A. I have not been involved in many of those discussions
 22 but I would imagine that that's a fair assumption.
 23 Q. You see here that this is an email from a Holly Hewitt
 24 at Sainsbury's, she works for David Brooks?
 25 A. Okay.

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1 Q. You see here the planned reduction. So April 15th, 0.8.
 2 Are you able to say when it -- what it came down from?
 3 We don't need to go through that at the moment.
 4 July 15th, 0.7, October 15th, 0.57 and then it tapers to
 5 0.3 by April 16th?
 6 A. Yes.
 7 Q. Actually, that 0.3 came in earlier because the
 8 regulation was adopted on 29th April 2005 and therefore
 9 the --
 10 A. 2015?
 11 Q. 2015, sorry?
 12 A. Absolutely. I can take a punt at what it came down from
 13 but it is a blend, right, because there is premium
 14 interchange I believe in there and consumer interchange.
 15 Q. If we go back a tab, and I won't read this out because
 16 this is in blue, but this is an email exchange that
 17 I think ultimately at page 2013, I don't think that's
 18 confidential because you go "hmm", I can read that one
 19 out.
 20 If you just look at the kind of email exchange.
 21 There is an updated UK bulletin. I will let the
 22 Tribunal read it. But I'm just saying that the purpose
 23 I'm drawing your attention to this blue document is that
 24 clearly you were aware --
 25 A. Yes, and the reason I stumbled when you first raised it

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1 was that I couldn't remember the date of when we
 2 announced it versus implemented it.
 3 Q. Yes.
 4 A. I knew we implemented it in 15, as it has been shown in
 5 Holly's email, but I was racking my brains in terms of
 6 when we actually made an announcement out to our
 7 customers and to the market.
 8 Q. But clearly MasterCard were doing something, reducing
 9 its rates even before it was obliged to. I mean, that's
 10 an obvious fact?
 11 A. Yes.
 12 Q. As a result of its dropping its premium rates, clearly,
 13 the gap between MasterCard premium and Amex would grow?
 14 A. Yes.
 15 Q. You are dropping the rates then clearly --
 16 A. Yes.
 17 Q. Are you aware of how retailers responded to this
 18 widening gap? You must have certain other market
 19 intelligence, you have been involved with Amex. You are
 20 quite high up in MasterCard now. Are you aware of how
 21 the retailers reacted to this widening gap?
 22 A. I would imagine that one thing they did was probably
 23 call American Express.
 24 Q. With a view to?
 25 A. With a view to discussing that that gap was growing.

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1 Q. With a view to Amex reducing its rate?
 2 A. Potentially. You know, I think -- I don't work in
 3 American Express any more and, you know, I would imagine
 4 that some of them, some businesses, as we have seen here
 5 I think are quite aware of -- that the mix of their
 6 transactions and the charges that they incur and
 7 therefore it is not a huge leap of faith to say that
 8 they rang them up.
 9 Q. Is it a huge leap of faith to -- it is not even a leap
 10 of faith -- are you aware of any market intelligence
 11 which would suggest that Amex has responded to those
 12 queries by reducing the rates and bringing the gap more
 13 in line to what it was before?
 14 A. Well, those rates are confidential between the parties
 15 and I don't think you would expect somebody from
 16 MasterCard to know what that is.
 17 Q. We do quite often see documents with all sorts of rates,
 18 including Amex rates, on --
 19 A. Okay. I would imagine of course that there were
 20 conversations going on but I think it would be unfair of
 21 me and not right of me to ascertain what those were,
 22 given the fact that I would be under the assumption that
 23 they were confidential discussions between two parties
 24 that aren't here.
 25 Q. But on the MasterCard side, you can well see that it

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1 was -- let's put it this way -- realistic that the
 2 retailers would be phoning Amex and it is realistic that
 3 Amex would be taking that call from the retailers with
 4 the potential of Amex's rates coming down.
 5 A. Yes, I do think that's realistic.
 6 Q. Again you were obviously involved in the reduction of
 7 the MasterCard rates. You will be aware that a few
 8 months later Visa followed MasterCard's lead. If you
 9 take some of the press statements, they say "hot on the
 10 heels of". Are you aware that Visa followed
 11 MasterCard's lead in dropping its rates?
 12 A. Well, Visa had already made a number of announcements in
 13 the market as -- you may know, one of the things --
 14 I apologise if I get this slightly wrong -- that Visa
 15 had done, and I'm not aware of the specific timing, but
 16 they had allowed acquirers to export interchange rates
 17 from one market to another. I believe that's actually
 18 referred to in email from Holly in tab 73 regarding the
 19 fact that supermarkets -- sorry, anybody could
 20 potentially receive that reduced interchange if they
 21 were acquired offshore, for want of a better expression.
 22 Q. This is the Worldpay application to the CMA --
 23 A. Yes. So I was aware of that. Yes.
 24 Q. If we take -- but you accept then that MasterCard
 25 dropped its rates, Visa dropped its rates, you are not

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1 quite sure in which order, whether you followed Visa or
 2 Visa followed you?
 3 A. Well, I think -- and this is -- you know, I have been at
 4 the business, what, four or five months, when these
 5 announcements and discussions were going. I hadn't been
 6 there very long. I know that there were a number of
 7 discussions within MasterCard and with external bodies,
 8 regulators of course. We knew that -- we had
 9 an understanding that the regulation was probably going
 10 to come in at some stage and to me it looks like each of
 11 the schemes were working out the best way to respond to
 12 that.
 13 Q. On that subject, if we just take debit cards for
 14 a moment, we have seen that Ireland has capped I think
 15 both MasterCard and Visa at 0.1% for debit cards?
 16 A. I believe so. I believe it is a debit card decision
 17 rather than a scheme decision.
 18 Q. But it applies both to MasterCard and Visa.
 19 A. Yes, I believe so.
 20 Q. We know that the UK has capped both MasterCard and Visa
 21 debit card rates at 0.2%?
 22 A. Yes.
 23 Q. You just mentioned kind of the EU regulations but we
 24 know, for example, that the EU Commission has capped the
 25 EEA MIF for Visa and MasterCard also at 0.2%

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1 A. Yes, I believe that to be the case.
 2 Q. So, it always seems to be the case that MasterCard and
 3 Visa are capped at the same level. Can you assist the
 4 Tribunal why that should be so? Why Visa and MasterCard
 5 always seem to be capped at the same level?
 6 A. I don't know why that is. I think that's more
 7 a question for the regulators both in the UK and in
 8 Europe.
 9 Q. What would your reaction be if you were capped by the UK
 10 regulator at 2 and Visa was capped at 0.4? What would
 11 you say to that?
 12 A. We would say that that is a -- that puts us in
 13 a relatively challenging competitive situation and
 14 I think we would say that that would be treating us
 15 unfairly, or depending on which way it was, treating
 16 Visa unfairly in a market that's highly competitive when
 17 it comes for the cards business.
 18 Q. So in order to cure that inequality or that unfairness,
 19 as you put it, again, it is realistic to suppose that
 20 the regulators or the EU Commission would treat Visa and
 21 MasterCard in the same way because they are the closest
 22 competitors?
 23 A. I believe that's realistic but I'm not a regulator, so
 24 I don't know. But that would be -- that would seem to
 25 be realistic, yes.

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1 MR BREALEY: My Lord, thank you very much. I have no
 2 further questions.
 3 Re-examination by MR COOK
 4 MR COOK: I do but it will be very brief, sir, you will be
 5 pleased to hear.
 6 MR JUSTICE BARLING: Right.
 7 MR COOK: Mr Abrahams, you were asked questions in relation
 8 to putting Sainsbury's Bank ATMs in Sainsbury's stores.
 9 A. Yes.
 10 Q. From your knowledge of that, who took that decision?
 11 Was that a Sainsbury's Bank decision or a group
 12 decision?
 13 A. I don't know but I would imagine it is a group decision.
 14 Q. You were asked about the premium card credit card
 15 market --
 16 A. Yes.
 17 Q. -- in the UK. Has that changed over the period of time
 18 that you have been involved in that industry? Sorry, in
 19 terms of size and scale?
 20 A. I really don't know. I couldn't answer that question.
 21 I would imagine so if you -- if we see the general
 22 growth in prosperity of the UK, then perhaps, but I'm
 23 not aware of the market sizes.
 24 Q. Sorry, it may well be obvious but you were talking about
 25 Ireland and the advantages of transactions being done

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1 electronically?
 2 A. Yes.
 3 Q. What were the advantages particularly you were referring
 4 to?
 5 A. There is advantages across the board. There would be
 6 advantages for the business itself in terms of
 7 guarantees of payments and all of the things that come
 8 with it. My main contention there was more around, as
 9 Ireland making that decision, as a country, for reasons
 10 of more economic well-being for the country as a whole
 11 in terms of traceability of payments, in terms of all of
 12 the things that come with that, it is my belief that
 13 that's the main reason, if not the only reason, why
 14 Ireland has made the decision it has made on debit
 15 cards.
 16 Q. Again it is probably obvious, but traceability on
 17 payments, what's the advantage for a country of that?
 18 A. They could be taxed.
 19 Q. Thank you.
 20 MR SMITH: You said earlier that you were group head of
 21 acceptance and that meant you were responsible for
 22 everything except the issuing of credit cards within --
 23 A. Yes, I don't have direct accountability of that
 24 obviously, it is an area of interest for me, but my main
 25 day to day role is everything else, if you like.

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1 MR SMITH: Including in particular what we would call card
2 acquisition and acquiring banks.
3 A. Yes, sorry, for me card acquisition is getting a new
4 customer, so I apologise. Card acquiring.
5 MR SMITH: I was unclear.
6 A. Worldpay. Barclaycard, the likes of those businesses.
7 MR SMITH: How many acquirers are there in the UK?
8 A. I'm going to have to take a guess.
9 MR SMITH: Rough figure, yes.
10 A. There's I think about 20 have a licence to acquire
11 transactions with MasterCard in the UK, something of
12 that ilk.
13 MR SMITH: That is a present figure?
14 A. That is a present figure.
15 MR SMITH: How is that looking back to -- over the years,
16 has that figure been decreasing over time or increasing
17 over time?
18 A. It has been a very interesting marketplace in that some
19 players have got in and some players have got out. What
20 we have seen over the years, particularly in the UK,
21 less so in other parts of Europe, but particularly in
22 the UK we have seen the advent of sort of monoline
23 acquirers and processors, businesses set up just to do
24 that, the best example of that being Worldpay, but
25 Worldpay was created, as we know, from the challenges

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1 that RBS had in 2008. So my feeling in the marketplace
2 is that more acquirers are entering that marketplace and
3 not leaving it, particularly in this country and of
4 course you know acquiring is quite a complicated
5 business. You can be based here and acquire
6 a transaction in Indonesia almost as well as you can
7 acquire a transaction in -- I can't think of anywhere in
8 this country beginning with I now, but somewhere like
9 that.
10 Those businesses on the whole have been growing and
11 have been relatively successful. In fact, we are seeing
12 some banks now moving back into the acquiring world
13 after years of not having much interest in it.
14 MR SMITH: Focusing on the UK, and looking at the
15 interchange relationship between issuers and acquirers,
16 obviously, there is a default, the MIF, that is set by
17 MasterCard. Do you have any sense of how many bilateral
18 interchange fee agreements exist between issuers and
19 acquirers in the UK?
20 A. I have a sense that there aren't any.
21 MR SMITH: None at all?
22 A. That's my sense. I'm not telling you there aren't
23 clearly, because that may be of confidential nature
24 between those parties. I can't think of any, no.
25 MR SMITH: Do you have any explanation as to say why that

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1 might be?
2 A. No. As I mentioned earlier, we have a situation where
3 most acquirers aren't owned and run by the bank. They
4 are a separate business entity which may or may not
5 explain -- where such arrangements may occur would
6 actually be between potentially retailers and acquirers
7 and banks. And you would have to -- you would be in
8 a position where -- and that could be the case, I don't
9 know whether it is, but it could be the case between
10 retailers who have their own banking function, for
11 instance, or retailers who have a close relationship
12 with a banking function, but between acquirers and
13 issuers, I'm not saying they don't exist, but I'm not
14 aware of any.
15 MR SMITH: Lastly, let me ask you a hypothetical question,
16 let's suppose that for whatever reason MasterCard was
17 not permitted to set a default that there was therefore
18 no MIF, how do you or would you envisage the market, in
19 particular MasterCard, reacting to that because clearly
20 you would have to have bilaterals there?
21 A. It is a very hard thing to say. I think it would be
22 chaotic to start off with. I think it is important to
23 remember that if you are a retailer and let's -- or
24 an acquirer and you have to have a bilateral agreement
25 that would mean having a bilateral agreement with every

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1 single bank in the world who issued MasterCard or Visa.
2 You know, you could nail most of your volume with
3 Barclays, with Lloyds, with RBS but you would have to
4 have a deal with ITEL in Brazil, you would have to have
5 a deal with Westpac in New Zealand, you would have to
6 have a deal with Commonwealth Bank of Australia.
7 I envisage that to be chaotic.
8 MR SMITH: Thank you very much.
9 A. Thank you.
10 MR JUSTICE BARLING: Just on that, you are talking now about
11 MasterCard licensees, so they would all be licensees of
12 MasterCard, these banks?
13 A. Yes.
14 MR JUSTICE BARLING: I don't know whether it is
15 a confidential figure, there are presumably several
16 thousands of them, aren't there?
17 A. I really don't know the number but several thousand is
18 a good ballpark, I think, to talk about. It would be
19 a lot.
20 MR JUSTICE BARLING: Can I just ask you one thing too? You
21 talked about premium cards and I think you mentioned
22 a figure of £2,000 a year or something at one point.
23 A. Yes.
24 MR JUSTICE BARLING: Can you just sort of give me a rough
25 idea of what the attractions -- why would anyone want

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1 a premium card, why would I want --
 2 A. What, at £2,000 a year?
 3 MR JUSTICE BARLING: Indeed or even at £200 a year. Why
 4 would I want to? Is it a status symbol or --
 5 A. Well, it is partly that. I mean, certainly that card
 6 that I'm referring to --
 7 MR JUSTICE BARLING: The Centurion or something?
 8 A. Yes, I roughly know how many of those cards there are
 9 but I think that is confidential to Amex, so I won't say
 10 that. Part of it was the status. They were made of
 11 titanium as well which meant they set off the x-ray
 12 machines at airports.
 13 MR JUSTICE BARLING: A bit of a nuisance.
 14 A. Not a nuisance, no, then you get searched: oh, it is
 15 that, sorry.
 16 MR JUSTICE BARLING: It is desirable.
 17 A. I thought it was my bad hip but it is actually my two
 18 grand a year card in my pocket. So there is that and
 19 then on top of that, there are a huge amount of benefits
 20 with those types of cards that businesses, such as the
 21 one I work for now, where Amex provides -- they get you
 22 into any restaurant you want, any play you want, any
 23 show you want, they are -- some of them are advertised
 24 to personal concierge service, you get fantastic
 25 insurance etc. I would say it is partly the cachet of

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1 having to be searched at an airport and partly the sheer
 2 usability of the products.
 3 MR JUSTICE BARLING: Yes. That's the hallmark of a premium
 4 card, is it? That the cardholder pays a premium?
 5 A. Not necessarily.
 6 MR JUSTICE BARLING: Or is the premium a reference to the
 7 fact that you may have a higher spending limit?
 8 A. I suppose the premium is more to do with the person
 9 holding it and how much they use it rather than
 10 necessarily how much they are paying for it. Of course
 11 a key piece with many premium cards is the rewards that
 12 users of those cards get for using those cards and in
 13 American Express' world and in MasterCard's world, what
 14 a good thing that is for retailers, for airlines etc
 15 that people are encouraged to use because they have
 16 a large credit line open to them and they are also
 17 rewarded for spending and spending more, whether that be
 18 Avios points for BA flights and all those things.
 19 MR JUSTICE BARLING: Thank you very much. I don't know if
 20 there is anything arising out of our questions that any
 21 of you want to ask?
 22 Further cross-examination by MR BREALEY
 23 MR BREALEY: Just to pick up what Mr Smith said about if you
 24 get rid of the MIF and you now have a system of
 25 bilaterals. You said it was chaotic, but can I just

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1 kind of drill down in that question, which is that
 2 assume in the hypothetical world that you can have a MIF
 3 for cross-border transactions, so that you will still
 4 have a common MIF for Indonesia speaking to the UK or
 5 wherever, but we are only talking about the UK MIF, so
 6 domestic transactions. As I understand it, there are
 7 fewer issuers. So you are not talking to the whole
 8 world and there are fewer acquirers. So I would suggest
 9 that you wouldn't have that chaotic nature because you
 10 are only having bilaterals with a much smaller group of
 11 banks, would you accept that?
 12 A. No, I wouldn't.
 13 Q. Why not?
 14 A. Because I think if I can see forward to that, you would
 15 have to -- so what could happen is that you would have
 16 to have some aggregation somewhere, right? You would
 17 have to. Because I run a barber's shop -- I don't run
 18 a barber's shop, by the way, but if I was to run
 19 a barber's shop I'm supposed to go and get a deal for
 20 every bank to get cards?
 21 Q. No. We are talking about the common interchange fee has
 22 gone and it is now for issuing banks and acquiring
 23 acquirers in the UK. It is not concerned with
 24 retailers. It is just -- how many acquirers -- I think
 25 you said 20 -- but how many of the big ones are there,

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1 four or five?
 2 A. Yes, four or five but you have also got to remember
 3 there is acquirers who are acquiring domestic
 4 transactions not within the soil of the UK. So you must
 5 remember that too. I do take your point now, I still
 6 think it would be chaos. I don't know how many
 7 licensees there are of MasterCard in the UK but there
 8 would be -- there is quite a lot. I also think --
 9 Q. When you say "licensees", sorry, "issuers", you mean?
 10 A. Apologies, issuers. There is quite a lot. I also think
 11 you would have to consider how new entrants would enter
 12 into the market, so, you know, one of the big things the
 13 government is trying to grow are new entrants into the
 14 banking community. If I am the likes of Atom Bank and
 15 I have to go and do bilateral agreements with every
 16 acquirer before my products are even used, that would
 17 stop me getting my business off the ground as quickly as
 18 I would want.
 19 Q. Is that really the case if Atom Bank only has to
 20 negotiate bilaterals with four or five acquirers in the
 21 UK?
 22 A. The point I'm trying to make is that you may have to go
 23 and do 20 if you want your card to be able to be
 24 accepted everywhere. That's what I'm saying. It isn't
 25 five or six. You then get to the situation that you

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1 have with Amex where you can use your card four times
 2 out of five but the fifth time you can't because Atom
 3 Bank has not done a deal yet with the acquirer of that
 4 corner shop, so unless I have got 20 done I would still
 5 be -- if I have a card that I'm competing against the
 6 likes of Barclays, you have all of those bilaterals in
 7 place because I'm Barclays. It would be difficult to
 8 get that in place in a quick period of time.
 9 Q. Could I just -- one last question -- go to I think
 10 bundle A. If you go to tab 2. We see here, this is the
 11 skeleton argument of MasterCard. So this is what
 12 MasterCard has been submitting in the trial.
 13 If you go to page 293, at paragraph 436, you see
 14 there MasterCard is saying to the Tribunal:
 15 "The MIF is a default fee, it is always open to
 16 a bank to negotiate a bilateral interchange fee instead.
 17 So that is the same with acquirer and issuer. There is
 18 no suggestion that it was not possible for Sainsbury's
 19 Bank to enter into bilateral agreements or ever try to
 20 do so."
 21 So what is being said there: it is possible for
 22 Sainsbury's Bank to enter into a bilateral agreement
 23 with Worldpay for an interchange fee?
 24 A. Yes.
 25 Q. If you look at the footnote 360, this is what MasterCard

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1 are saying:
 2 "It is obvious that an acquirer, and particularly
 3 an acquirer under pressure from SSL, one of the largest
 4 merchants in the UK would have been willing to agree
 5 a reduction of interchange fees since this would have
 6 reduced the payments which the acquirer had to make and
 7 in turn what they were charging merchants putting them
 8 in a commercially advantageous position."
 9 Do you agree from your experience with what
 10 MasterCard is saying there?
 11 A. I agree that Sainsbury's have a huge amount of power in
 12 the marketplace and that if they were able to do
 13 a bilateral agreement with an issuer, there would be no
 14 reason why an acquirer wouldn't facilitate that.
 15 Yes, I do agree with that.
 16 Q. Then, if other issuers entered into bilaterals,
 17 Sainsbury's would also have a leverage?
 18 A. Yes, I don't know whether they did that with their own
 19 issuer, which they could have done.
 20 MR BREALEY: I have no further questions.
 21 PROFESSOR JOHN BEATH: I have one question which is, I was
 22 wondering whether you might be able to tell us something
 23 about how the interchange fee regulation that has come
 24 into place is likely to affect the nature of competition
 25 between card schemes? How will it change the

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1 competitive environment?
 2 A. The competitive environment is very competitive already
 3 and was very competitive before regulation.
 4 PROFESSOR JOHN BEATH: Yes.
 5 A. In terms of the fact that as we have been discussing
 6 that the interchange fees caps have been kept consistent
 7 between ourselves and Visa and to some extent with
 8 American Express as well, I don't see -- the regulation
 9 will not impact adversely the competitive market as it
 10 currently stands.
 11 PROFESSOR JOHN BEATH: Yes, but every firm is trying to
 12 increase its market share. So what is the basis, or on
 13 what basis do you then compete if you can't compete with
 14 price?
 15 A. Well, you can compete on many other things and you know
 16 to be fair the one thing I would say is that the
 17 regulation is still pretty new so there is a lot of
 18 interpretation to be made both by ourselves, by Visa, by
 19 retailers, by acquirers etc, but there are -- and we
 20 have just been discussing them now, the types of
 21 benefits you get from using cards, the types of benefits
 22 you get from accepting cards, rewards that retailers
 23 give on their own, on their own products such as
 24 Sainsbury's Bank product, John Lewis product, Marks &
 25 Spencer products so I still think that with the

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1 regulation the way it is, it is hard to say where
 2 competition will go but it certainly maintained the
 3 amount of competition that was there already which is
 4 significant.
 5 PROFESSOR JOHN BEATH: Thank you.
 6 MR JUSTICE BARLING: Anything arising out of that?
 7 MR BREALEY: No, thank you.
 8 MR JUSTICE BARLING: Thank you very much, Mr Abrahams.
 9 A. Thank you.
 10 MR JUSTICE BARLING: Mr Brealey, is anyone else coming today
 11 or not?
 12 MR BREALEY: I'm certainly -- haven't got any of mine --
 13 MR HOSKINS: As I said, we have lined up other people to
 14 come on particular days.
 15 MR JUSTICE BARLING: So the answer is no.
 16 MR HOSKINS: We have nothing else to offer you today, I'm
 17 afraid.
 18 MR BREALEY: 5.15 pm is doable.
 19 MR JUSTICE BARLING: Do you see any reason why we need to
 20 start early on Monday or are you comfortable with
 21 starting at 10.30 am?
 22 MR BREALEY: I'm comfortable with starting at 10.30 am. Can
 23 we see how we go and then maybe on the Tuesday we will
 24 start -- I'm certainly happy.
 25 MR JUSTICE BARLING: Good. Thank you very much.

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1 (12.45 pm)
 2 (End of non-confidential session)
 3 (The court adjourned until 10.30 am
 4 on Monday, 8th February 2016)
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 3 (In camera)1
 4 (End of in camera session)1
 5 (Beginning of non confidential1
 session)
 6 MR SCOTT JOHN ABRAHAMS (affirmed)1
 7 Examination-in-chief by MR HOSKINS1
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