think individually when an acquirer does this negotiation in that setting will be so enlightened because the acquirer will think, I can either get zero, which means very low interchange, which means I can give a good deal to my merchant, or it can think, no, if I pay a bit more then the scheme will survive and therefore me and all my rivals are better off.

I haven't thought it through in detail, but I think --

MR JUSTICE BARLING: There are only half a dozen of them, aren't there?

A. Sorry?

MR JUSTICE BARLING: There are only half a dozen rivals. It's not as though we're dealing with a huge mass of people.

A. They are fierce rivals, so what is collectively good for them is not necessarily what they would be driven by when they negotiate individually.

I think somehow I feel that the key is there. It is a bit actually the flip side of the bilaterals situation, the situation where the issuers do have some bilateral market power without the multilateral interchange fee. Again, the logic of the models is, individually, those issuers would actually price very high, but collectively they might think but if we all

price too high then, like patent holders, for example, if we all price too high then we collapse our own scheme.

So there is that -- it is a bit of a mirror image of that.

MR SMITH: Let's assume one of the big acquirers -- as the Chairman has said, the market seems to be quite concentrated, there are about six large acquiring banks if MasterCard's table is to be followed -- and we have a negotiation between an issuing bank and an acquirer, and the issuing bank is saying you have got to pay me something, I would like a positive interchange fee with money going my way. Of course you are right, the acquirer could say no, it is in my interests to offer my merchant's the lowest price and so I want to cut the interchange to zero.

Wouldn't an acquiring bank have two thoughts at this stage? One would be the Chairman's point, that issuing banks can simply drift away to Visa from MasterCard and MasterCard effectively collapses as a scheme and the period of zero MIFs is a short and perhaps happy one, but very short. So in a sense one is destroying competition in the market for a very short-term benefit. There's that consequence, which acquirers would have in mind.

Secondly, wouldn't there also be an impetus on MasterCard to cut back some of the benefits that merchants receive through the operation of the card system? I'm thinking in particular of the guarantee of payment in the case of fraud or where the account holder doesn't have enough money in his or her account, these benefits. I'm leaving on one side things like the 30-day credit, but that too could be regarded as benefit. You would get a scaling back of the scheme. Again, isn't that something that an acquiring sophisticated bank would bear in mind?

A. Yes. So we are talking here actually about a scheme that is potentially quite -- so quite different from the existing one. So we have made a few changes. So there is this zero default. The default interchange fee is zero so you can't charge. I'm still struggling a little bit with that one, what the benefits of that would be. But let's say if that were the rule, I do still think that the individual acquirer would -- in individual negotiation -- because the zero is there for grabs. That is the default. No effort required. I do not think any acquirer individually would be so generous as to think to the greater good of everyone for the survival of the scheme.

Partly -- there is a bigger question of okay, what's

the acquirer's incentives here in the first place, but the acquirer is usually acquiring a multiple scheme. They offer payments for multiple schemes. So this choice -- the competition between payment schemes, the competition between, say, MasterCard, Visa and Amex is much starker at the issuing level where issuers have to make a choice: do I issue this or do I issue the other?

So in terms of incentives, the incentives are --

MR JUSTICE BARLING: Some issue both, don't they, or several?

A. They do, but then they can switch. This bit of customers gets Amex and these get -- they do have both. But on the issuing side, the question "Which scheme do I prefer" is much more a live question than for acquirers. I think in general terms that is sort of the first bit of the question.

The second bit goes into the -- what other changes can the schemes make? Or shall we stick to the first one?

MR SMITH: I was simply articulating that as a possible consequence of an acquirer insisting on a zero MIF. I wasn't suggesting as a counterfactual a dramatically scaled back scheme.

The only assumption I was asking you to make was only a bilateral interchange fee could be agreed and there would be no default, or a default of zero, if you like. That's all I was putting to you.

But can I ask you one last question. Again, it is accepted by everyone that actually the acquirers are, in terms of their monetary gain or loss, indifferent as to the level of the interchange fee because they pass it on to the merchant. Doesn't that suggest that they might have in mind a more nuanced longer term view of what the interchange fee should be? Because after all it doesn't affect their bottom line; all they are seeking to do in negotiating the best interchange fee is something that is in the best interests of themselves, vis-a-vis the merchants who are their customers.

A. Yes. I think generally the position of acquirers -- and this goes back to Professor Beath's question a few weeks ago: where are acquirers in this? Why are they so apparently passive? I think collectively acquirers, yes, they pass it on, the MIF to the MSC. But I have to bring in analogy.

Let me bring in the analogy of petrol stations as acquirers, if you like. So petrol stations, there is certain competition between petrol stations and that's the same whether, say, the government duties on petrol are 30p or 100p, the competition stays the same. And you would be rightly saying, well, it doesn't really

matter to the competition between these petrol stations or acquirers whether the MIF is 30 or 100.

But on the whole though, if anything, petrol stations would prefer it if the government duties were 30p rather than 100p because then the price would be lower and more fuel would be sold.

So in general, acquirers are probably on balance keener on the lower interchange fee than on the higher one, and that's why in these committee discussions, as we have heard, usually it is the acquirers who say, well, keep the interchange fee -- don't put it too high.

But individual acquirers are a bit I think genuinely more indifferent when it comes to choosing between schemes because it is not directly their bottom line, it is much more on the issuing side of the bank, say a bank is an acquirer and an issuer, that the bank has to choose between the two schemes.

MR SMITH: Thank you very much, Dr Niels.

MR JUSTICE BARLING: Sorry, Mr Brealey.

MR BREALEY: No. Very interesting.

I'm not sure I have got any questions out of that. Thank you very much.

We were talking about the MIF. So we went from MIF to bilateral. If we can come back to MIF, and I took you to the ECJ and you had a look at the MIF

specifically, correct? And we were looking at whether the scheme creates benefits, and I think you said something like, well, the MIF is necessary for the scheme to produce the benefits. Does that ring a bell? That you have to wrap up the MIF and the scheme in order to --

A. Yes, to get those benefits from the four-party schemes. Yes.

Q. Again, it may be a legal analysis, but it is still quite important for where your report is coming from. Can I ask you to go to bundle E3.10, which is the Deloitte's survey, tab 202, page 4307, which gives a fairly neat summary of at least the Commission's analysis of what you should be looking at.

A. Yes.

Q. I'm particularly interested in paragraphs 50 to 54.

Again, this is in the context of we know from the ECJ that the wrong question is whether the scheme produces the benefit. We are now looking at what you regard as a relevant question, which is that the MIF and the scheme are all wrapped into one to create the benefit.

Essentially what you were saying is that without the MIF, the scheme won't exist. I mean, it could not compete. And that's where you were coming from, yes?

A. Yes.

Q. So this is how at least the Commission analyses it.

At paragraph 50 we get the normal prohibition on agreements which distort competition. Then at paragraph 51:

"In the MasterCard, the Commission concluded that the cross-border MIF infringed by creating the de facto floor and restricting the competitive interaction between acquiring banks."

That relates what I described in opening to the three anti-competitive vices. So you have the collusion, you have the anti-competitive vices in 51.

Then at 52:

"A restriction of competition may ...(Reading to the words)... for the existence of an agreement of that type."

That's essentially what you are talking to.

"In MasterCard, however, the Commission concluded that a collective mechanism that shifts costs between acquiring and issuing banks is not indispensable for the operation of a four-party scheme because issuing banks and acquiring banks can recover their costs directly via their respective customer group. Indeed, the MasterCard decision identified five comparable payment card schemes that successfully operate in different member states

without a MIF."
Just pausing there. Do you disagree with the Commission's analysis there?
A. I disagree with the Commission's analysis there.
Q. Then going on to paragraph 53:
"Although a MIF is not necessary for the operation of a four-party payment scheme, in principle some MIFs may enhance the efficiency of a scheme and benefit its users. According to 101(3), restrictive agreements [that is the MIF here] that are caught by 101 are nevertheless valid if they contribute to improving ..."
And it sets out the conditions for 101(3).
Then 54:
"The MIF is an instrument that shifts the costs."
Then it talks about balancing, but then it also talks about:
"If you are going to claim these efficiencies, it must be based on robust and compelling analysis that relies...(Reading to the words)... the relevant consumers to consider for analysis of efficiencies on merchants and their subsequent purchasers."
Assuming that you are wrong on paragraph 52 and that you can have a four-party scheme without a MIF -- I think that then deals with your point about how you have to wrap up the MIF and the scheme -- do you then

accept that you have got to look at the MIF specifically to determine whether there are efficiency gains under article 101(3)? In other words, forget the fact that the MIF and the scheme are wrapped up into one, do you accept that you have to look specifically at whether the MIF produces the efficiency gain?
A. Yes, I agree.
Q. That was the first condition.
Can we go on to the second condition now of article 101(3). To do that -- you probably want to put those bundles away -- we will need bundle E1. I don't know if you have E1 there.
Just coming back to the evidence you gave a moment ago about why you disagreed with the Commission on the necessity for the MIF, if the EU regulators had reduced the MIF to zero, banned it completely, both Visa and MasterCard, would you say that the two schemes would collapse?
A. I think they would struggle in the competition with Amex and other three-party schemes that may arise. So in the hypothetical situation, you are saying if the -- well, the EU regulator, but also any MIF was zero, so also the UK MIF. Is that what you are --
Q. Yes, I'm saying that let's assume the UK regulator or the UK Government said Visa and MasterCard can't have

a MIF. Amex can, but they can't.
A. Yes, my position is they would both -- both schemes would certainly lose a lot of market share to three-party schemes. I don't know where it would end up ultimately.
But also the competitive situation would be a lot worse, I think. So competition in the interscheme market would be a lot worse. Competition in the issuing market would be a lot worse. Looking at it in the round, I wouldn't say it is a more desirable competitive outcome, that situation.
Q. But would they collapse? The competitive outcome is a completely different matter. Would they collapse? Are they absolutely necessary for the operation of a four-party scheme, that is the test?
A. They may collapse. You don't know where it ends up. Certainly if they exist in their current form they may avoid collapse by actually making changes to the nature of the scheme. In essence they could, from credit cards, try to become debit cards. In my mind that's not a very informative counterfactual, but those kinds of things are possible in the world where both of them had to set a zero MIF.
Q. If we go to E1, tab 2A, these are the guidelines from the European Commission. Again, MasterCard has referred

to these in the skeleton, so I take it that they are not in dispute. But I need to take you to them to see how you have approached your economic evidence.
You are familiar with these guidelines, I take it?
A. Yes.
Q. And we will come to them a bit later on on other matters, but if we go to paragraph 38, for example, 38A.7, so page 38A.7, this is at the start of the principles of the application of article 101(3). Some of them you have already accepted because they are in the Commission's decision.
If we go over the page at 38A.8, we have the first condition, and we will see there at paragraph 50 and 51 those same efficiency claims.
So at 51:
"All efficiency claims must be substantiated."
And we get again the nature of the claimed efficiencies, the link between the agreement -- here the MIF -- and the efficiencies, the likelihood of magnitude, how and when. So this is where the Commission is talking about the efficiencies.
If we then jump to paragraph 83, this is what I want to ask you about, which is page 38A.13:
"According to the second condition of article 101(3), consumers must receive a fair share of

the efficiencies generated by the restrictive agreement."
You accept that, of course?
A. Yes.
Q. Then it gives at 84 what is meant by "consumers", but I want to ask you about 85:
"The concept of fair share implies that the pass-on of benefits must at least compensate consumers for any actual or likely negative impact caused to them by the restriction of competition found under article 101(1). In line with the overall objectives to article 101 to prevent anti-competitive agreements, the net effect of the agreement must at least be neutral from the point of view of those consumers directly or likely affected by the agreement."
And it sets out the authority for it.
"If such consumers are worse off following the agreement, the second condition of article 101(3) is not fulfilled."
Now, that is based on the court's jurisprudence. Do you accept that that is how you have approached your report?
A. I accept that this is the criterion, how one looks at fair share. As I said earlier, there are inherent limitations as to how precise one can get in this -- the

restriction and does it fully compensate.
I think my analysis overall -- so to start with, I don't actually think there is a restriction of competition, for reasons I won't go into now, but that sort of is a starting point. But there are clearly efficiencies, as we have also established. And I think merchants benefit as well as pay this higher cost from the cost shifting and interchange, but merchants benefit. And I think both methods to come up with an exemptable level of MIF. So the cost-based method and the MIT-based method tried to capture the notion of merchant benefits.
I know it is a bit of a round about way of getting there, but I think once you accept that the number that comes out of the method, you call that the exemptable MIF, and inherent in that is the fact that merchants in their benefit as well, because merchant benefits do come in explicitly under both methods.
Q. Then at paragraph 87, again I do not think it is controversial because it is supported by authority, but I just want to ask you whether you have adopted this in your report.
At paragraph 87, the first sentence:
"The decisive factor is the overall impact on consumers of the products within the relevant market and

not the impact on individual members of this group of consumers."
You adopted that approach in your report?
A. Well, "adopted" may be a big word, but I think I'm aware of this criterion.
Q. Have you attempted to follow it?
A. Yes, I have looked at the overall impact on merchants.
Now, there is of course a discussion in there about individual merchants and -- so the individual benefit to merchants and the aggregate benefit to merchants. I don't think that translates one-to-one with this distinction between overall and individual because even -- the business stealing argument. I don't think that translates exactly, maps onto here exactly, because I think there is a situation where even if -- I think merchants also benefit overall because they each benefit individually despite business stealing. So this aggregate merchants where you cancel out business stealing effect. I have a whole discussion on that, but I don't think it is the same as these two criteria here, overall versus individual.
I have, to answer the question more shortly, looked at what is the effect on merchants basically.
Q. As a group?
A. Overall, yes.

Q. That is the second condition. What do you understand is meant by the third condition?
A. The indispensability?
Q. Correct.
A. Well, my understanding is that you have to show that the -- that bit in the agreement itself, or the agreement is --
Q. The restriction --
A. -- is indispensable.
Q. The restriction is indispensable?
A. Is indispensable to obtain the efficiencies.
Q. In other words, if the efficiency would occur anyway, the transaction would occur anyway, the restriction is not necessary?
A. Correct, not indispensable.
Q. So in your report you have calculated the exemptable MIF in two ways, as you have said. Basically I can call it the issuer's cost methodology and the adjusted MIT approach. Yes?
A. Yes.
Q. Can I go first of all to the issuer's cost methodology. I think you can put all the bundles away, but you will need your first report, bundle 3, tab 3.
A. Yes.
Q. The exemption section, as you said earlier on, I think

starts at section 4, but this is the adjusted benefit cost balancing approach, which I will call the issuer's cost methodology. It is in section 5 at page 287.
A. Yes.
Q. This takes up the whole of section 5.
A. Yes.
Q. At 5.1 you say that the two-sided markets often exhibit skewed pricing, which I think everybody in the room would agree with.
But then there is an issue between the parties as to whether this skewed pricing that results from the collective pricing arrangements is inherently pro-competitive.
You then go at 5.3, where you take our famous friends, the three heads of issuer's cost. So for credit card, MasterCard, takes three heads of issuer's costs, processing costs, payment guarantee costs and the interest-free period also called funding costs, as a proxy for the cost revenue in balance.
"I note that the European Commission in its Visa exemption decision of 2002 accepted these three heads of costs as benefiting merchants and forming a basis for setting the exemptable intra-EEA MIF for credit cards."
Just pausing there. Why did you mention the European Commission's exemption decision?

A. Because it was a noteworthy decision at the time, in the overall context also of the OFT investigation. And what I also found noteworthy is that the solution that the European Commission came up with at the time was exactly the methodology that MasterCard had followed with EDC since the NaBANCO case in 1987.
So I just mention it there. Actually, also perhaps a bit for the avoidance of confusion because there is sometimes a bit of confusion including, in some documents in this case but also in the European Commission stage, that somehow MasterCard introduced this after Visa. But the MasterCard method, or at least the cost study method, has existed since the 1980s. And what I find noteworthy, and therefore I quote it here, is it is the same three heads of cost and the Commission explicitly said that the Commission can see that these heads of cost also benefit merchants.
Q. But again, with the greatest respect, Doctor, it doesn't really give a balanced impression because, as I am sure you are aware, footnote 44 of that exemption decision specifically gives a caveat on domestic MIFs. But you don't mention that?
A. No, I don't. It mentions it, I believe indeed for the, if I'm not mistaken, interest-free period.
Q. You don't mention the fact that there are documents in

the case where clearly the Commission, quote:
"... regarded that the issuer's cost methodology as unsound and was not going to renew the Visa exemption."
But you don't mention that?
A. I think I mention that this was in place until 2007. I'm very well aware of it, and at that stage the Commission did not continue this method and instead favoured the other method.
Q. Don't you think, just on reflection, you could have put in brackets "but I appreciate in 2004/2005 the Commission no longer regarded it as benefiting merchants and that was confirmed by the Commission in its 2007 infringement decision"? It is just a matter of impression, I put to you. No?
A. I don't see a particular need on that one, to be honest.
Q. All right, okay. So.
At paragraph 5.4, you say:
"I consider the cost studies carried out by MasterCard, or rather independently from MasterCard, by Edgar Dunn & Company (EDC) to be a useful ...(Reading to the words)... for the current case. I have no reason to doubt that these cost studies have been carried out in a robust and objective manner. Indeed, I understand that they were subject to an independent audit by Ernst & Young."

There you footnote reference to the witness statement of Peter Sidenius, correct?
A. Yes.
Q. Then throughout this section, you refer almost exclusively on the data compiled by Edgar Dunn. I will just take you through it.
So paragraph 8.15 on page 290, it starts at 5.15 at 290, where you set out Edgar Dunn's credit card cost studies. This is at page 290, 5.15, and then at 5.16 what they have done.
And 5.18:
"I understand from the witness statement of Peter Sidenius there are two studies."
And you refer to the 2005.
That's the first bullet. Then you refer to the MasterCard worldwide 2008 study, correct?
A. Yes.
Q. Then we can go on, paragraph 5.20 -- I take it this is not blue or anything?
MR HOSKINS: The detailed figures are in that table.
MR BREALEY: 5.20 summarises the credit card interchange cost findings, a breakdown of the main cost categories and then you set out the results.
We can cut this short, but you go at 5.82, towards the end of your report, conclusions on the exemptable UK

MIF based on the Edgar Dunn cost study, a UK MIF etc:

"Based on the Edgar Dunn studies for credit cards, a cost revenue balancing for credit cards would be around ..."

Then you give a percentage. I don't know whether it is confidential or not.

If you go over the page 5.84, 5.85 you set out a table, table 5.2. Again, the results, and the source: based on Edgar Dunn studies.

Then at paragraph 5.89, again the exemptable level of UK MIF based on the 2008 study would then be between whatever it is.

So it is fair to say that this whole section is squarely based on the 2005, but more particularly, the 2008 Edgar Dunn cost study?

A. I used the Edgar Dunn cost study as the data source for my cost-based approach. That is correct. So I rely heavily on the 2008 in particular Edgar Dunn study.

You referred to the whole section. There is also a long bit in the middle of section 5 which discusses the evidence on merchant benefits which then informs me in my assessment of, okay, I take the EDC cost data as given and as a starting point, and then I form my own view on how to allocate that to -- into a MIF with an eye on what's the evidence on merchant benefits.

Q. Staying on 5.89 then, we have, with greatest respect, a very long passage about the cost studies. And then the punchline, as it were, is at paragraph 5.89 where it says:

"Given the important benefits that merchants derive from these costs, it would be reasonable but conservative to attribute at least 25% or 50% of these costs to merchants."

So before we get to the costs themselves the punchline is that one paragraph, and on what basis does any reader get from this as to why you consider it would be reasonable to attribute a quarter or a half of these issuer's costs to merchants? What is the basis for it?

A. Yes. So as I have set out in the paragraph above that, we have these costs and we have evidence on merchant benefits. One has to take a view. It is clear one can't -- there are no hard and fast lines here, but I'm giving my view on this evidence.

I think it would not be right to attribute all of those costs of credit write-offs to merchants because clearly also cardholder benefits. So there is an element of judgment here on the fair share. But nor, importantly, do I consider it correct to say none of these costs should be included because none of them benefit merchants.

In my analysis, clearly these costs do benefit merchants. And then it is a matter of judgment, but actually in my table 5.2 I showed the whole range. So at the end of the day it is perhaps not for me to come up with the right judgment, but I'm showing in my table 5.2 what the resulting exemptable level of MIF would be under different weights you give to the extent to which merchants benefit.

So, in my view, indeed I cannot do more than say zero would be too extreme, 100 might not be right because cardholders benefit, so let's be conservative and say it is between 25% and 50%. That to me is a reasonable number.

Q. I think the Tribunal would understand that, that that is your estimate of what is reasonable. But what is it based on?

A. It is based on the logic I have just set out. There is strong, convincing evidence in my mind that merchants also benefit from the credit extension, the extension of credit and the interest-free period to cardholders. And therefore, the logic of this cost base method is to look at three heads of issuer cost that also benefit merchants, and then it just comes down to a question, well, to what extent do they benefit merchants?

And one has to come up with a value judgment there.

That's as far as I can go, is to give my judgment at 25% to 50% is conservative. There is at that stage no hard and fast rules to draw the line somewhere, but I am clear that it shouldn't be zero.

MR JUSTICE BARLING: Is that a convenient moment for a short break?

MR BREALEY: It is.

(3.17 pm)

(A short break)

(3.27 pm)

MR BREALEY: If we could go back, what have you got there? D3?

A. Yes.

Q. If you go back to paragraph 5.4, which we saw a minute ago, it is the last sentence of 5.4:

"I have no reason to doubt these cost studies have been carried out in a robust and objective manner. I understand they were subject to an independent audit by Ernst & Young."

Now, that may be true but do you accept that these cost studies are not robust for you to undertake a calculation for these proceedings?

A. No, I don't accept that. I think this is -- to me this is robust and relevant evidence. This is after all the method that has been in place for more than 30 years, and the people carrying it out have a lot of experience carrying it out.

As I said, I have no reason to doubt that these numbers are robust and objective, and therefore I feel I can rely on the outcome of the studies.

Q. But you consider that they would be sufficiently robust, for example, to calculate a MIF for 2010?

A. Yes, 2010 still. If you are referring to the time period -- is that the question? It is 2010 as opposed to 2008, is that the question?

Q. As you probably know -- have you read the transcript of the evidence of Mr Sidenius?

A. Yes, I was here that day.

Q. So let's just remind ourselves of what he said. Let's have a look at the 2008 cost study and what he said.

So the cost study is at bundle E3.6, tab 126. Let's familiarise ourselves with the document. You will also need the transcript bundle, J2, tab 11 at page 1390. That's page 19 of the transcript, tab 11.

A. Yes.

Q. First of all, to identify the document, this is the document that you relied on as evidence to give your opinion on the level of MIF that should have been payable from late 2006 to today.

A. Yes.

Q. Did you look at any underlying documents or did you just accept what Edgar Dunn had done?

A. I did not look at underlying documents of Edgar Dunn. So I relied mainly on this document itself and then my understanding of the method which had come across before.

Q. Let's see what Mr Sidenius said about the robustness of this data for use over such a period of time. How many years are we talking about?

A. So we are talking here about a damages period of nine years, end of 2006 to -- or end of last year.

Q. So at page 1390, page 19 of the transcript, so I asked the question it is dated 2008, probably relates to 2007 data.

It is line 7:

"Answer: That is correct."

That is at paragraph 35.1 of his statement. There was -- it was a January 2006/2005 study:

"Question: ... Would that have related to 2004 data or 2005 data?"

He says:

"Answer: The 2005 report would have been 2004 data ..."

So I asked the question in line 15:

"Question: So why are you updating the data? One is 2004, one is 2007. Why are you updating it?

"Answer: Because -- you are asking a question that goes back nearly 40 years in time ..."

Then he goes on, and I let him go on, if you remember, about the NaBANCO case, which is fair enough.

But then we get to page 1392, so page 21 of the transcript.

At line 7:

"So every time you wanted to revisit on a periodical basis the interchange in the market to ensure it was correct, there would be a requirement to undertake a cost study."

This is his evidence:

"Answer: So from Edgar Dunn's perspective that is where our methodology originated from. We looked at if there is an imbalance in the card payment system, it must because there is probably something on the issuing side that is of value to the acquiring side. We tried to quantify those; we came up with the methodology we currently apply.

"Whenever this methodology was applied in the given market we believe, and we strongly advised our clients, that it would be wise to apply this periodically to update the numbers to ensure you were in line with the market. Because there would be things that are changed,

such as interest rates in the market, so the cost of funds, the bad debt, the fraud, these things need to be updated periodically to ensure you are in line with what happens."

So I said.

"Question: The last point you just made, which seems to be a very valid point, why is it that the last Edgar Dunn cost study is 2008? Why hasn't there been an update?

"Answer: That was because of the European Commission case and the OFT at that stage basically stating that they did not believe the application of the methodology was correct anymore, and therefore MasterCard deemed that it would be -- there was no value in undertaking a cost study that would be rejected immediately.

"Question: And that's the reason you did not do a further one?"

I asked.

"Answer: Yes.

"Question: But had they not intervened, you would have advised your clients strongly to update the cost studies?

"Answer: Yes. That would have been very nice for us as well.

"Question: If I was doing a calculation for an interchange fee today, I would not be relying on this cost study because, as you say, interest rates change and all that sort of stuff?
"Answer: I would agree.
"Question: In fact, it would be rather foolish to calculate an interchange fee based on this cost study?
"Answer: Yes, I think it is outdated."
What is your reaction to that?
A. My reaction is that it is indeed somewhat unsatisfactory. We have a nine-year damages period and for the cost based method we have data for one year. As it happens, it is the first full year in the period.
Ideally, one would have liked more data and this is then for the exemptable level of MIF and for the damages calculation.
A similar thing to be said for the other methods, the MIT, where the only proper or decent data source that they are using is the 2015 EC merchant cost study which has data for 2013. Again, not entirely satisfactory that you don't have data going all the way back from 2007.
Q. Sorry, Dr Niels, I just want to interrupt. As you know Mr von Hinten-Reed has tried to analyse the data going back some years, correct?

A. But only Sainsbury's specific data, that's why I said the only proper source is the EC merchant study, which is the survey of many merchants.
Q. I am concentrating on the robustness of what you have relied on. The reason for that is it is MasterCard's burden of proof to prove an exemption. It is not for Sainsbury's to prove any exemption. So I need to know from you whether you accept that the data you have relied on is robust and convincing for the purposes for which you have used it?
A. Yes, and I think it is. So what I'm saying is this is again both for exemptable level and for the damages calculation. I accept it is somewhat unsatisfactory that for both methods you have only one year of data. Ideally one would have liked more. But nonetheless I think -- well, I certainly still rely on -- sticking with the cost study, I still rely on that cost data. It gives a good indication of what it costs -- what costs would have been in those years.
I was not in a position to redo or update the cost studies, so this was the best available data. I did look a little bit into, well, if these costs move, as Mr Sidenius has signalled, what direction would they have moved? As I flagged up in section 3 of my report, if you look at the biggest cost item in there, which is

the credit default cost, I don't think that's confidential, I flagged it in section 3 of my report. I referred to data from the FCA, that between 2007 and 2010 those default costs went through the roof, I mean, record levels.
So that tells me that if anything, in the subsequent years the total costs that Mr Sidenius would have produced would have gone up. But that is as far as I can go. I accept that I have not updated, or I was not in a position to update the 2008 cost study.
Q. Let's take this in stages. Keep the bundles open, but can you go to bundle E2, please, tab 6. This is a MasterCard document. We have seen it before. It has attached to it a report, an economic analysis by Professor Weizäcker, and that starts at 362. This is the MasterCard notice of appeal 2005.
It has an economic analysis of the MIF at 362, which is a similar sort of thing that you are calculating. If I go to 380, paragraph 92 he says -- this is the Professor. This is the basis upon which he is relying on robust data from Edgar Dunn:
"The starting point for setting the default MIF is to take into account those costs which reflect a conservative estimate ...(Reading to the words)... providing a payment guarantee."

The very same costs that you are dealing with.
93:
"These costs are determined by a cost study performed every second year by a specialist independent firm of consultants."
Edgar Dunn & Company, the EDC cost study.
So it is MasterCard's own view that these cost estimates have to be, or should be updated every second year for the very reasons that Mr Sidenius gives in his evidence, both in answer to a question that I posed and both in answer to a question that Mr Justice Barling posed, that things change. You accept that.
I think you have accepted that it is unsatisfactory that you are relying on 2007 data to calculate a MIF for a nine/ten-year period. You have accepted it is unsatisfactory?
A. Yes, it is unsatisfactory, but I still rely on the results. What I don't know from here is one implication of the question is MasterCard did this every second year. I can't recall. What I have seen is the cost studies in 2005 and 2008. So that is three years.
I don't know factually whether Professor Weizäcker is correct here, but clearly, yes, there was a need to do this periodically. I can see the commercial rationale for that.

Q. If it is unsatisfactory, how on earth can it be robust and compelling?
A. It is robust for that period and also for the years immediately after that. So it is robust data to start with, the cost study.
Then the only reason why one may doubt it is that these costs can move over time, and I accept that and that is the bit that is unsatisfactory. Nonetheless, is my answer on what's the reasonable and exemptable level of MIF wrong?
I think, in any event, I do not think I'm overestimating the MIT for this reason because for the reason that I outlined earlier, if anything, we saw the cost of default, which is by far the biggest cost item here, would have gone up certainly in the next four years. It may have gone down a bit. But -- so on that basis, that for me is sufficient to conclude that I'm not -- I'm certainly not overestimating the MIF on this basis.
So unsatisfactory, but I think I can still rely on this as a reasonable conservative measure of what comes out of a cost study.
Q. This is a piece of evidence that you refer to which is not in section 5 at all, is it? This is just something that you have highlighted in your report about default.

There's no analysis in section 5 about this at all?
A. Correct. I have not carried out an analysis trying to assess what the cost would have been like.
Q. No.
A. So I'm deriving this based on what I said in section 3 of my report. That's correct.
Q. For example, I could put to you that the LIBOR rates have gone from whatever it was, 6% to 0.6%, and so the cost of the banks' borrowing for the 28 free credit was gone down, for example. I could put that to you?
A. For example, the free funding costs would have gone down and they are a much smaller component, but that is one component that could have gone the other way.
Q. I can also put to you, although me putting it to you is that the average APR on credit cards has actually gone up over the claim period?
A. That may well be the case, I don't know. But that's not an item that goes into the cost study.
Q. We are going to come on to that in a moment.
Were you in court when Mr Cook was cross-examining Mr Reynolds yesterday?
A. No.
Q. Well, it was put to Sainsbury's that the period of the claim was probably one of the most turbulent periods in the financial history for the best part of 60/70 years.

Would you accept that? We have had the eurozone crisis, we have had the banking crisis, would you accept it has been a bit turbulent?
A. Yes, I accept that.
Q. Yet you still don't think that you would need to revisit data that relates to 2007?
A. Ideally one would like to revisit the data. I was not in the position to do so. And again, I don't think my analysis -- my resulting -- my resulting number from the cost study overestimates the MIF because on balance I would posit, but I haven't analysed it in detail, I accept, that costs would have gone up because of these turbulent times. In particular, the --
MR JUSTICE BARLING: The defaults.
A. The defaults, yes.
MR JUSTICE BARLING: You say what you did was conservative, on balance?
A. Yes.
MR BREALEY: Can we go to bundle E1, please. Just out of interest, where in D3 do you refer to this, so the Tribunal have it in mind?
A. I will find it. It takes me a while.
Q. If you find it, we can revisit it maybe tomorrow.
PROFESSOR JOHN BEATH: The use of the term "conservative"?
A. No. The --

MR BREALEY: I think it is 378, is it? 379?
A. In 379 I refer to the cost of defaults. So the FCA study or data showing the defaults have risen. That's what I referred to earlier. This is in the overall discussion as to -- about issuer costs, why they are higher in the EU than other ...
MR JUSTICE BARLING: Forward losses. That's fraud. 3.6 is fraud, isn't it?
A. Correct.
MR JUSTICE BARLING: So that was very high --
A. So fraud has gone down.
MR JUSTICE BARLING: That's gone down.
MR BREALEY: Sorry, which paragraph are you referring to?
A. In 380, and in the chart you can see that fraud cost would have gone down somewhat.
MR JUSTICE BARLING: Do you have a similar table for default costs?
A. No, I don't. I just mention it qualitatively in 379.
MR BREALEY: The only evidence that we have got before the Tribunal is 379:
"The result of an increase in the number of bad debts."
At E1, tab 15, again it is the General Court. Page 345, just after the page we were looking at before, starting at 209 to 211. I would imagine you have been

taken to these three paragraphs because I have referred certain witnesses to them. It relates to interest.

The second assumption is that issuing banks bear the majority of the costs of the system. Do you see that? Yes?

A. Yes.

Q. You must have read this before?

A. I have, yes.

Q. So the second assumption is the issuing banks bear the majority of the costs of the system. As you know, the Commission said that issuers' revenues had to be taken into account. That was apparently appealed, and the General Court said:

"With regard to the second assumption, as the Commission has pointed out, in essence recital 686, it is sufficient to note that it is based on a partial presentation of the issuing and acquiring business, taking into account only the costs borne by the issuing banks and omitting the revenues or other economic advantages they obtain from credit card issuing business notwithstanding the latter's importance."

See paragraphs 106 to 108.

106 to 108 is at page 332, which relates exclusively to the UK market, as you have probably seen.

So we established this morning that you looked at

the judgments of the courts to guide your economic analysis. The question that I'm sure you know I'm going to ask is why have you not taken into account the substantial interest that banks earn, and other economic advantages from credit cards?

A. I think, well, there is various angles to this. I think this particular point here in 211 is a criticism of the cost method that I think misses the point because there is a justification for the cost method despite it not explicitly accounting for issuer revenue.

I can go through the justification of the cost method and I can go through the question of revenues as to why or -- in what context they are or are not taken into account. Because I think it is a bit too -- it is a bit cutting corners to say the cost method doesn't directly incorporate revenues because that is correct. But that misses the point of why a cost method is justified.

I think it goes back to the principles. If we are in 101(3), exemptable level of MIF or the damages calculation, so what would be a reasonable exemptable level of MIF? In general, when you want to sort of regulate a product or determine a fair price, there are two main ways of doing it. One is to look at the product's costs and the other is to look at the price of

benchmark or comparable products.

So my cost-based method is looking at cost, and that's not uncommon in regulation. Most utility regulation is cost based. The MIT method which I also applied is more looking at the benchmark price. So that criticism, looking at cost doesn't take into account revenues, I do not think it is a valid one at that level.

On the issuer revenue question, clearly issuers also make revenues, but the whole principle of interchange, so going back to Baxter and also then the EDC cost methodology, is even taking into account those issuer revenues, so you look at all the revenues on the merchant side, the costs on the acquiring side, you look at all the revenues from the cardholders and the costs to the issuers, even then you have an imbalance in this four-party system. So despite the issuer revenues. And the MIF is a mechanism to allocate that.

So from that perspective, from the origins of the cost, even the cost method being a proxy for the imbalance does take into account issuer revenue from that perspective.

Q. But --

A. Let me then continue on the issuing revenue because it is a big theme.

You can look at this in three stages. Conceptually, empirically, what is actually the evidence on issuer revenue, and normatively, should issuer revenues be the be all and end all.

Conceptually, in a two-sided market a scheme may decide, look, there is a pot of money to be had from merchants, on the merchant side and from cardholders, and let's suppose the optimal, like any two-sided market you get the skewed pricing structure, so let's suppose it is right that we charge this to merchants, this amount, this MSC of 1%, say. Amex does that, the four-party scheme wants to do it as well.

So there is a pot of revenue on the merchant's side, and clearly there are revenues on the cardholder's side. But there is no -- that is the balance of the scheme, and then you look at cost and revenues and you find, okay, with this level of revenues on the merchant's side, acquirers actually getting a good deal out of this and that's not the right balance within the system. So let's reallocate through the MIF.

Because you shouldn't forget that, yes, issuers get roughly -- I don't know if this is now confidential -- between 70% and 80% of the scheme's revenues are on the issuing side. So that is the issuer revenue. The rest is on the merchant's side. But -- maybe this is confidential -- we saw the percentage of costs, and more than 95% of the costs are incurred on the issuing side. So the issuers have 95% of the cost and 70%, 80% of the revenue, so there is an imbalance.

Conceptually that's where a MIF comes into play. Then I think the argument from the other side is: but those issuer revenues in their own right, might they be big enough, even if you have an imbalance, forget about that, might they actually be big enough to fund all those issuer costs? So are the issuers making a lot of -- getting all of that revenue and actually the scheme can function just by the issuers paying for their own costs?

I think, first of all, there is no evidence, as was also established with Mr Sidenius. So no one has ever really fully analysed, well, how profitable is issuing? But from the FCA document, and we may come to it in more detail, but that was published in November last year, so after the expert reports, but one does get a clear impression that there is a lot of competition on the issuing side, including competition on the interest rate. You get lots of these zero balance transfers, low rate offers etc.

That to me suggests that, yes, it is profitable on the issuing side but not so profitable that you can fund

the entire, basically the entire scheme cost. And the FCA also concluded that there is no indication that currently there is a cross subsidy from -- so interest revenues from revolvers to transactors in the scheme.

My third point, apologies for the length, but normatively one would also raise big question marks. Is it even desirable to have a scheme where everything is funded out of issuer revenues? For the scheme it probably wouldn't be desirable. It is not the business proposition that 40% of all cardholders who are revolvers fund the entire thing. It is also not clear whether a scheme like that would survive in competition with other schemes.

Secondly, again, from reading the FCA, the FCA as a regulator would be quite worried about a scheme that subsidises the whole scheme out of 40% of cardholders who are revolvers.

So that is my take, if you like, on interest revenues.

Q. Let's just try and draw this to a close, then. Do you accept or do you disagree with what the General Court has said, that when you are looking at the issue of whether issuing banks bear the majority of the costs of the system, which is the thrust of almost the whole of your report, that the issuing banks bear the majority of

the costs of the system? Do you disagree with what the General Court said, or do you accept that when looking at that you should include, or not exclude or not admit from your consideration the interest payments and the other revenue? In other words, do you agree with what the General Court has said, or disagree?

A. I think it is not out of -- it is out of -- in a way I disagree therefore, is the answer, because the cost method is what it is. It is a cost method. It doesn't directly take into account issuer revenues.

If the court is saying you should also look at issuer revenues, well, the answer to that is then there is another method, maybe we are then back into the overall, the fallbacks studies that EDC has also done where it did try to look at all revenues, all costs and at that imbalance. And that's where we got those percentages from, the 70%, 80% of costs on the issuing side -- sorry, 70%, 80% of the revenues, but 95% of the costs, and hence there is an imbalance taking into account issuer revenues.

Q. Just, again, you have said I think in evidence that you disagree with what the General Court has said. I'm looking at section 5 of your report. Is it correct to say that you have omitted from your analysis in section 5 any analysis of revenues and other economic

advantages issuers obtained from their card issuing business? Have you omitted revenues and other economic advantages that card issuing businesses obtain in your analysis? Have you omitted it?

A. Yes, in the sense that section 5, I apply a cost method as a way of getting to an exemptable level of MIF. And interest revenues do not feature in the cost method.

I think I do give the rationale for the cost method, which is the rationale I explained earlier, that it is in a way -- it tries to be a proxy for also this cost revenue imbalance.

But I did not look at issuer revenue explicitly in section 5, correct.

Q. Would you accept with me it is rather unsatisfactory that you are giving your rationale for that halfway through this trial in cross-examination rather than in section 5 of your report?

A. No, I disagree. I think there is a good rationale which I explain for the cost for doing a cost study and for doing a MIT, which -- the MIT approach which the Commission has been emphasising, which incidentally also does not explicitly look at issuer revenues because it has a completely different basis. It is a price -- cost benchmarking exercise. It also doesn't look at interest revenues.

Q. Are you still in bundle 3, tab 3? Your first report.
A. Yes.
Q. You can clear your decks and just retain your first report.
If we go to page 293, this is a section of this issuer's cost methodology where you refer to merchant benefits, correct?
A. Yes. 5C.
Q. Then over the page, at 5C.2 you refer to the conceptual framework, yes?
A. Yes.
Q. I'm interested in paragraph 5.36, where you say:
"Merchants may benefit from accepting payment cards in two main ways."
Then the first bullet point is a reduction in transaction costs and risks which, certainly insofar as transaction costs, Mr von Hinten-Reed accepts.
Then the big difference between the two of you is the increase in sales. You would accept that that is a big difference not only between you and Mr von Hinten-Reed, but you and the European Commission?
A. Correct.
Q. Again, if you read 5.36:
"Merchants may benefit from accepting payment cards in an increase in sales."

Just pausing there.
That is the exam question that you are postulating:
"Merchants may benefit from accepting payment cards in an increase in sales."
The first point I want to ask you is: is that not the wrong question? The correct question is whether the MIF leads to an increase in sales.
A. Yes. But then I refer back to my earlier logic that it is the MIF that enables these four-party schemes to be competitive in the first place, and therefore the benefits from cards can also be attributed to MIF.
Without -- another way of putting it, and I think this is accepted logic, with a lower MIF a scheme is of less size, and therefore the bigger a scheme is, the bigger these -- you get -- the bigger these benefits also in terms of increasing sales.
Q. So you take my now famous little restaurant in Tottenham.
A. There is a game there tonight, I believe.
Q. I'm sadly not going. If you take my little restaurant in Tottenham, are you really seriously suggesting that that restaurant in Tottenham is going to lose sales because the MasterCard credit MIF has been reduced from 0.8% to 0.3% as a result of the regulation?
A. I'm not sure my analysis applies that linearly. I would certainly say the restaurant in Tottenham benefits from the fact that it accepts MasterCard. It would benefit from accepting Amex or Visa. It benefits by offering a better service.

The MIF, to bring the MIF in, means the MIF has meant -- a higher MIF has meant more people have a MasterCard so more usage, and therefore this benefit that the restaurant in Tottenham gets in accepting the MasterCard is bigger than if the MIF was lower and the MasterCard scheme was correspondingly smaller.
Q. I will ask the question again. Nearly everybody in the UK, adult -- there is information on it -- most people have two, maybe three cards, debit cards, credit cards, whatever. Again, where does the small restaurant get an increase in sales as a result of the difference in level between 0.3% and 0.8%?
A. Well, in general terms, first of all, let's say if the restaurant didn't accept any MasterCard then it would miss the custom of people who have a MasterCard card and want to pay with their MasterCard --
Q. Forget the card.
A. With a higher MIF the MasterCard scheme would be bigger because it would be more competitive, more attractive to be issuing, and therefore there is a -- it is not linear, I would say, but there is then also

a relationship with the benefits.
So a scheme with a higher MIF, more card penetration, more usage, therefore is of more benefit to the merchant or to this restaurant than the scheme that has fewer cardholders because it has a lower MIF.
Q. Let's assume that is true, which I suggest to you that it is not. But the MIF does lead to increased sales. Have you in your report satisfied those four conditions for the first condition of article 101(3)? That is to say have you categorised the nature of the claimed efficiency, the link between the MIF and the efficiency, but more importantly the likelihood and magnitude of the efficiency? Where in your report have you calculated the magnitude of this efficiency? That is to say the level of increased sales that merchants obtained by reference to the MIF.
A. Yes, I think this is one of those things that probably economics, or no one can actually quantify or -- so it is a question one can't answer precisely.
What I have done in detail in section 5 is review the evidence for the question: do merchants benefit? Through individual sales I think that is reasonably obvious, but also in the aggregate. So I looked at all the evidence and discussed it systematically and I concluded they do. But can you quantify it? No. It

is a yes/no answer.
I think the answer is yes, they do benefit, and therefore I conclude that merchant -- so the credit facility, some of the costs should be included in the MIF, but I cannot quantify and therefore, no, I have not done that in my report. I have identified the nature of the benefit, but not the magnitude.
MR JUSTICE BARLING: You can't quantify the benefit of merchants as a whole from increased sales due to the MIF?
A. Yes, correct. I think it is very difficult for anyone to quantify the effect of, say, credit card credit as a whole on aggregate spend.
MR BREALEY: I'm moving on to a different topic. I don't know whether that would be a convenient moment to pause?
MR JUSTICE BARLING: Yes.
MR BREALEY: I'm making very good progress.
MR JUSTICE BARLING: Good. Are we on target to --
MR BREALEY: Mr Harman on Monday.
MR JUSTICE BARLING: -- finish this witness some time tomorrow?
MR BREALEY: Yes.
MR JUSTICE BARLING: Mr Brealey, I appreciate the difficulties in doing this, but are you able to give any prediction for those who might otherwise be excluded?

MR BREALEY: I think if the students are coming tomorrow morning, they will be okay. But then I'm going into, really, stuff that is confidential to MasterCard. I have got to sort Maestro out, for example. So that is pretty historic, but --
MR JUSTICE BARLING: The morning looks as though --
MR BREALEY: I will do my best so they get their hour's session.
MR JUSTICE BARLING: And also for the benefit of anyone who is here now who needs to know. All right.
I think there are some questions for the witness.
MR BREALEY: Okay.
MR JUSTICE BARLING: Is it convenient to take them at this stage? I hope so.
MR BREALEY: Absolutely, yes.
MR SMITH: Mine is not a question for the witness, but a request for the parties.

Questions by THE TRIBUNAL

PROFESSOR JOHN BEATH: I have a question. It goes back to this thing about if, in the cost-based method, you should take account of revenues which you generate from interest.
I was thinking to myself what would William Baxter have made of all of this, because if you think back to the original model, what he is doing is building up

a demand curve for a transactional service and a supply curve of transactional services. And there are two people in that supply process: the acquirers and the issuers.
When you think about what they are trying to do, at what price am I willing to supply this much of a service, now, that generates their cost curve or supply curve. Why would an issuer, in thinking about their bit of the aggregate supply curve, why wouldn't they want to take account of potential revenues as a way of -- because, you know, it is a willingness to supply, and revenues seem to be a part of that?
A. Yes, no, absolutely. So -- and also to be clear, back to basics, the original Baxter model which you referred to, that was the first one to really set this out systematically. That does take into account issuer revenue.
So the Baxter method is clear. The Baxter method looks at what are the total -- what is the merchant demand curve? So everything you can get out of merchant's willingness to pay. And what's the total issuer -- cardholder demand curve, which includes issuer revenue.
Then Baxter shows, if you also look at supplies, so the acquirer cost and the issuer cost, Baxter shows, if

you are just adding all the curves together, that in equilibrium Baxter shows that it is only by coincidence that at that point the merchant willingness to pay exactly covers the acquirer cost and the issuer revenue exactly covers -- the cardholder revenue exactly covers the issuer cost. It is only by coincidence. It is more likely than not that you get an imbalance in the system, and that's the MIF. That is the optimal MIF. It reflects that imbalance, so that does take into account issuer revenue, to be clear.
The whole story on the cost methodology, it is for practical reasons that that is a proxy, because you only then have to measure costs. And there are certain advantages to it, but those three costs are in a way an approximation of that original imbalance in the Baxter method.
PROFESSOR JOHN BEATH: Thank you.
MR JUSTICE BARLING: Just on that -- sorry, I'm sure you have already answered this and forgive me if you have, and it is probably in your report. But once on the Baxter method you have worked out what the imbalance is, the costs and revenues on both sides of the two-sided market, the MIF is the attempt to balance it. But it seems that the way MIFs are arrived at don't use a mathematical, if you like, or economic approach, but

they could, could they? They could just look at the, I don't know, the cost side is -- you have got the, whatever it was you said, 70% to 80% of the revenue and 90% of the cost. Presumably there is some economic model or some algorithm you could use to adjust it?

But that's not a method that appeals to anybody?

A. No, I think that is mainly for practical reasons. So I think the EDC three heads of cost is an approximation. But I think also EDC, Mr Sidenius tried to explain that in 2002, I believe they tried to do that whole exercise as a cross-check. And what they found I think is, yes, if you look at everything in the round and mathematically, what's the difference? What's the imbalance? Then that was actually reasonably in line with the three heads of costs.

MR JUSTICE BARLING: So they did it as a cross-check?

A. They did it as a cross-check at the time.

I think another factor here that is relevant, Baxter also describes how historically these things came about before any economist had any model, right? So it was sort of naturally -- maybe this is my market knows best argument, but these old systems, cheques and credit cards, the participants in the scheme they kind of knew what was the imbalance. Baxter merely provided a justification: look, it shouldn't be --

MR JUSTICE BARLING: It is the clearing of cheques in the early American system?

A. Yes, the market created interchange, if you like.

MR JUSTICE BARLING: Yes.

MR BREALEY: As Professor Beath knows, the Commission analysed Baxter in the Commission's decision at paragraph 702 and onwards quite substantially. The OFT did as well.

MR JUSTICE BARLING: Yes.

MR BREALEY: Remember that Mr Sidenius, on his two cross-checks, neither study he accepted were article 101(3) compliant.

MR SMITH: Mine was more a point of information, very sensible of the considerable help we have had from both parties to date. But we were wondering whether it would be possible for MasterCard to provide us with a schedule of the UK MIFs that it set over time over the claim period, but to do so not on a blended or average basis, but to provide us with the MIFs that were applicable on a card-by-card or card type-by-card type basis for both debit and credit cards.

MR JUSTICE BARLING: And premium and --

MR SMITH: Indeed. So we would like to be able to see what, for instance, the MIF was for a premium card as well as for a standard credit card, as well as for a debit card, and there may be other varieties in between.

I don't know whether MasterCard will have the equivalent Visa MIF rates. If those are available, we would obviously be interested in seeing those also.

Then, finally, and this is more for Sainsbury's, having heard about the pound-for-pound monitoring of Sainsbury's costs, we wonder whether it would be possible to have a breakdown of, again, over the claim period, what Sainsbury's paid to its acquiring banks both in terms of the rate, in other words, the merchant service charge rate that was paid as a percentage, or whatever rate it was, and the total amount in absolute terms that was paid, ideally differentiating between card schemes.

MR BREALEY: Okay.

MR JUSTICE BARLING: Good. Thank you.

We will see you tomorrow. Make sure you don't talk --

MR COOK: Sorry, Mr Smith, one question on that query. You asked for a rate schedule. Do you want us to break it down into volume of business? I think that would be difficult to do. If you wanted a rate table that would be considerable easier.

MR SMITH: No, I think just a rates table is all we would like. Thank you.

(4.30 pm)

(End of open session)

(The court adjourned until 10.30 am on Friday, 26th February 2016)

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