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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1381/7/7/21

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 29th January – Friday 22nd March 2024

Before:
The Honourable Mr Justice Waksman

Eamonn Doran

Derek Ridyard

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Justin Le Patourel

Class Representative

v

(1) BT Group PLC
(2) British Telecommunications plc

Respondent

A P P E A R A N C E S

Ronit Kreisberger KC, Derek Spitz, Michael Armitage, Jack Williams and Matthew Barry (On behalf of Justin Le Patourel)

Daniel Beard KC, Sarah Love, Daisy Mackersie, Natalie Nguyen and Ali Al-Karim
(On behalf of BT Group PLC)

Jennifer MacLeod (On behalf of the Competition & Markets Authority)

1 Thursday, 1 February 2024
 2 (11.00 am)
 3 (Proceedings delayed)
 4 (11.15 am)
 5 THE CHAIRMAN: Good morning. Some of you are joining us on
 6 the live stream on our website, so I must start
 7 therefore with the customary warning: an official
 8 recording is being made and an authorised transcript
 9 will be produced, but it is strictly prohibited for
 10 anyone else to make an unauthorised recording, whether
 11 audio or visual, of the proceedings, and breach of that
 12 provision is punishable as contempt of court.
 13 I apologise to the parties for the delay in
 14 starting. I am afraid my previous commitment overran.
 15 Mr Beard.
 16 MR BEARD: I will be very brief.
 17 THE CHAIRMAN: Yes.
 18 Further opening submissions by MR BEARD
 19 MR BEARD: I am just going to pick up two things. One is
 20 the question that was posed about Mr Bunt's statement.
 21 I think the issue is that it is easier for Mr Bunt to
 22 deal with it, but my understanding is it is absolutely
 23 correct that in fact there are investments in fibre that
 24 are relevant here. Openreach, it is absolutely right,
 25 runs the backbone fibre network and indeed the last mile

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1 network, but retail providers also invest in fibre, and
 2 that includes BT Retail for these purposes, and
 3 BT Retail of course includes Consumer.
 4 THE CHAIRMAN: Thank you very much.
 5 MR BEARD: Just to be clear, Openreach, it is not a mobile
 6 provider, so it is not a constructor of 5G masts and
 7 so on, but I think you probably knew that.
 8 THE CHAIRMAN: Yes, I realised that 5G was probably
 9 a mobile-related matter rather than ...
 10 MR BEARD: Yes. What Openreach tends to provide is what is
 11 called the mobile backhaul, which is the connectivity
 12 from masts into trunk networks, and so on.
 13 THE CHAIRMAN: Right, thank you.
 14 MR BEARD: But these are matters which can be ... I am just
 15 concerned about not providing evidence on the hoof; we
 16 have a witness to deal with these things.
 17 THE CHAIRMAN: Yes. That is very helpful, thank you.
 18 MR BEARD: So I just wanted to pick up the point on
 19 comparators very briefly.
 20 If we could just go to bundle {A/1/58}. Thank you
 21 very much.
 22 I am just picking up the pleading from the Class
 23 Representative about commitments. So it is 136B down at
 24 the bottom of the page:
 25 "Further or alternatively, BT's prices for SFV

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1 Services (or alternatively BT SFV access) ..."
 2 So SFV Services is obviously the package of rental
 3 and calls, access is line rental only. This is an issue
 4 that we are going to be coming back to.
 5 "... were and/or are unfair, under the second part
 6 of the second limb of United Brands ... compared to
 7 other prices such as (i) the prices which BT agreed to
 8 charge Voice Only Customers for BT SFV Services and/or
 9 BT SFV access under the BT Commitments; (ii) and
 10 the prices charged by the Post Office for SFV Services
 11 and/or SFV access in the period following the
 12 introduction of the BT commitments (albeit that neither
 13 (i) nor (ii) may constitute a proxy for the prices that
 14 BT would have charged for the SFV Services and/or SFV
 15 access in conditions of workable competition)."
 16 What you will see is the point I mentioned
 17 yesterday, that deleted is the alternative comparators:
 18 "... other providers ..."
 19 THE CHAIRMAN: We need to go over the page.
 20 MR BEARD: Yes, I am sorry.
 21 THE CHAIRMAN: That is all right. Just so they can put it
 22 up. {A/1/59}
 23 MR BEARD: "... of SFV Services and/or SFV access; and/or
 24 (iii) the prices charged ... for Home Phone Saver."
 25 So those have been dropped. They are dealt with in

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1 the evidence, but they have been dropped from the
 2 pleading now.
 3 THE CHAIRMAN: Yes.
 4 MR BEARD: But I think the easy way to deal with this point
 5 about comparators by reference to the commitments and
 6 the Post Office is actually to go back to almost where
 7 I finished off on substance before I moved into business
 8 customers and so on yesterday, because the position is
 9 sort of summarised rather neatly in Dr Jenkins' report.
 10 If we could go to {IR-E/17/283}. You will see there
 11 under 7B.3 -- so you will recall that graph at the top
 12 that I showed you, that was the comparator against
 13 Home Phone Saver. Then we go down, and she deals then
 14 with:
 15 "The price under the BT Commitments is not an
 16 appropriate or meaningful comparator."
 17 So she is explaining why what is put forward in
 18 paragraph 136B is not right.
 19 If we -- I am going to invite you to read this, but
 20 if we just read down to the bottom and then go over the
 21 page. {IR-E/17/284}. (Pause)
 22 THE CHAIRMAN: Yes.
 23 MR BEARD: If we could just go to that table, Figure 7.14.
 24 I actually took you to this yesterday, but you will see
 25 there that what it does is it maps the prices through

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1 2013, 2014 onwards. It is standalone line rental only
 2 that is being mapped here, not ARPU.
 3 You will see the various plots for Virgin, TalkTalk,
 4 Sky and Post Office, and you will also see that what has
 5 been inserted at the top are just reference dates. What
 6 is instructive, of course, is the Post Office enter in
 7 2015, they build some SFV base, and I know the number is
 8 confidential, but over a couple of years they build
 9 a material base, but then you see the dotted line kicks
 10 in, in 2018, and that is the commitments prices for
 11 voice only customers. What happens is the Post Office
 12 then drops its prices to try and compete with those
 13 commitments prices.
 14 But you will see that during the period when the
 15 Post Office has dropped its prices, you will see at the
 16 top that Sky ceased marketing of SFV, and the
 17 orangey-yellow line comes to an end because the Post
 18 Office sells its business and they actually sell it to
 19 Shell Energy. So far as we are aware, there was no
 20 marketing thereafter in relation to SFV companies — SFV
 21 customers.
 22 What I would invite you to read is down to 7.94 in
 23 this section. Some of it is confidential, but if we
 24 could just zoom out so that the Tribunal can read down
 25 to 7.91 and then over the page. (Pause) {IR-E/17/285}

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1 If we could have the next two pages up so the
 2 Tribunal can just read those. Thanks.
 3 {IR-E/17/286-287}.
 4 (Pause)
 5 Then if we could just have the — if everyone
 6 has ... I apologise, sir.
 7 THE CHAIRMAN: Yes.
 8 MR BEARD: Just down to the end of 7.94. {IR-E/17/288}
 9 THE CHAIRMAN: Yes.
 10 MR BEARD: Now, I am going to state the blindingly
 11 obvious: the Class Representative has called no evidence
 12 from any of these third parties at all, but you see the
 13 analysis that Dr Jenkins has carried out on the basis of
 14 the documents and the data she has in relation to
 15 pricing and what has gone on.
 16 I should stress, as I did yesterday, that if you are
 17 looking at comparators the prices of those rivals are
 18 relevant for those purposes, as is the Home Phone Saver
 19 price, and those sections of her report preceding the
 20 one I have just taken you to deal with those issues.
 21 Unless I can assist you further, I think that is the
 22 easiest way of dealing with the point about the
 23 commitments as a comparator. They are not a good
 24 comparator for these purposes, the commitments prices.
 25 THE CHAIRMAN: Thank you.

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1 Just one moment, please. (Pause)
 2 Yes, thank you.
 3 MR BEARD: I do not have anything else, I was just dealing
 4 with that sort of tidy-up from yesterday.
 5 So at that point, tempting though it is, in the
 6 absence of evidence from the claimants, to pull all our
 7 witnesses, we are not going to do that, so I am going to
 8 call my first witness who is Ms Cheek.
 9 THE CHAIRMAN: Yes, thank you.
 10 MS DEIRDRE CHEEK (affirmed)
 11 Examination—in—chief by MR BEARD
 12 MR BEARD: Ms Cheek, is there a bundle of documents anywhere
 13 near you?
 14 A. No. (Handed)
 15 MR BEARD: We asked, if there were any lengthy hard-copy
 16 documents that the Class Representative was intending to
 17 go to, that hard copies were provided, just because of
 18 the practicalities of flipping backward and forwards,
 19 and they have kindly been provided. We have not seen
 20 them obviously, but just for ease for Ms Cheek's
 21 reference, and I understand they have also provided
 22 a hard copy of the witness statement.
 23 THE CHAIRMAN: Yes.
 24 MR BEARD: But I am going to take you to the online version
 25 just to confirm your witness statement, so could we call

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1 up {D/5/1}, please. This appears to be the first page
 2 of your witness statement. If we could go down to page
 3 {D/5/12}, please, is that your signature at the bottom
 4 of the page?
 5 A. It is.
 6 Q. Is this your witness statement, so far as you are aware?
 7 A. It is.
 8 Q. Is it true to the best of your knowledge and belief?
 9 A. Yes.
 10 Q. I understand you have one small correction in relation
 11 to paragraph 7, so if we could go to page {D/5/2},
 12 please. In paragraph 7 you said:
 13 "Prior to 2015 I was a member of the regulatory team
 14 supporting both of BT's retail divisions: BT Consumer
 15 and BT Business (since renamed BT Enterprise)."
 16 There is a small correction in relation to that?
 17 A. Yes, just the fact that BT Enterprise has now in fact
 18 been re-named back to BT Business again, so ... since
 19 I made the statement.
 20 MR BEARD: Right, thank you. Ms Cheek, I do not have any
 21 questions for you. The Tribunal may in due course.
 22 Mr Armitage, I understand, for the Class Representative,
 23 is going to ask you some questions. Thank you.
 24 THE CHAIRMAN: Yes, Mr Armitage.
 25 Cross-examination by MR ARMITAGE

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1 MR ARMITAGE: Good morning, Ms Cheek.
 2 Ms Cheek, at the time of your witness statement
 3 in February 2023, you were I think the BT Group's
 4 principal of regulatory affairs, yes?
 5 A. That is right.
 6 Q. That role focused on supporting the customer-facing part
 7 of the BT Consumer business?
 8 A. That is right.
 9 Q. Including the voice division?
 10 A. Yes.
 11 Q. Is that still your role, Ms Cheek?
 12 A. Yes.
 13 Q. Then a little bit earlier, from 2015 to 2019, you were
 14 BT's Head of Consumer Regulation?
 15 A. That is correct.
 16 Q. In that role you reported to Stuart Murray who was then
 17 BT's Director of Consumer Regulation, yes?
 18 A. That is right.
 19 Q. He has now left the business, has he not?
 20 A. That is right.
 21 Q. You make clear very fairly in your statement that you
 22 were not involved with some of the factual matters that
 23 are relevant to these proceedings, yes?
 24 A. That is right.
 25 Q. In particular, you were not involved in the pricing of

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1 any of BT's voice products, were you?
 2 A. That is right.
 3 Q. Your roles at BT, as you said, are focused on regulatory
 4 issues, including liaising with Ofcom, and indeed
 5 lobbying Ofcom on relevant regulatory issues on BT's
 6 behalf, yes?
 7 A. That is right.
 8 Q. Given your role, you would presumably have been well
 9 aware of any public statements or publications by Ofcom
 10 that were relevant to BT Consumer's retail activities,
 11 yes?
 12 A. Yes.
 13 Q. Now, you say in your statement that you were only, and
 14 I am using your word here, "tangentially" involved in
 15 the 2017 review, yes?
 16 A. That is right.
 17 Q. Nevertheless, you say that during the period 2015–2021
 18 you had regular interactions with Ofcom?
 19 A. Yes.
 20 Q. I think you say you had one or two meetings or calls
 21 with Ofcom a week?
 22 A. Yes.
 23 Q. Those interactions included briefing Ofcom about BT's
 24 upcoming price changes, did they not?
 25 A. That is right.

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1 Q. I think you say you generally briefed Ofcom about price
 2 changes before they were launched?
 3 A. That is right.
 4 Q. You say this is because you wanted to ensure that Ofcom
 5 was prepared for an increase in calls, including calls
 6 from the press, following any BT price increase?
 7 A. Yes, that is right.
 8 Q. So in other words, you wanted to ensure that Ofcom knew
 9 about the price increase and the rationale for the price
 10 increase from BT rather than hearing it from the press
 11 first?
 12 A. Yes, that is right.
 13 Q. That is presumably because you wanted Ofcom to have
 14 accurate information rather than secondhand information?
 15 A. That is right.
 16 Q. You would accept, would you not, that it was important
 17 for BT to be transparent with Ofcom when communicating
 18 about BT's price plans, yes?
 19 A. Yes.
 20 Q. Could we turn to paragraph 12 of your statement, please.
 21 For the EPE, that should be {D/5/3}.
 22 I hope you have your statement separately, I should
 23 say, Ms Cheek?
 24 A. Yes.
 25 Q. If I could just read that out, you say there:

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1 "BT Consumer's business covers all elements of
 2 services provided to consumers, including the provision
 3 of line rental provided to all consumers, whether they
 4 are what is now referred to as SFV or bundle customers."
 5 Pausing there, SFV is standalone fixed voice
 6 customer, yes?
 7 A. Yes.
 8 Q. Then you say this:
 9 "Prior to the 2017 review, the pricing of SFV
 10 services was not something I recall Ofcom raising as
 11 a concern in any of our interactions."
 12 That is what you say, yes?
 13 A. Yes.
 14 Q. Now, by "our interactions", I take it you mean BT's
 15 interactions with Ofcom, at least as far as you were
 16 aware of them, yes?
 17 A. That is right.
 18 Q. The 2017 review was announced in December 2016. That is
 19 right, is it not?
 20 A. Yes.
 21 Q. On launching the review, Ofcom specifically indicated
 22 that it had a concern about the impact of line rental
 23 price increases on standalone fixed voice customers, did
 24 it not?
 25 A. Yes.

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1 Q. Could we briefly just look at what Ofcom said at that
 2 stage. You should have this in hard copy. For the EPE,
 3 it is at {C/356/1}. I am hoping you have these clearly
 4 labelled in case you want to refer to the hard copy.
 5 You also have the EPE display so you are welcome to look
 6 at that as well.
 7 You can see there this is an Ofcom publication,
 8 "Narrowband Market Review. Consultation on the proposed
 9 markets, market power determinations ..." and so on.
 10 We see at the bottom, "Publication date:
 11 1 December 2016", yes?
 12 A. Yes.
 13 Q. You may remember this document?
 14 A. Yes.
 15 Q. Now, if we could look at the second page, please,
 16 {C/356/2}, you can just see there from the first
 17 paragraph, under "About this document":
 18 "The Narrowband Market Review 2017 covers five
 19 wholesale markets that underpin the delivery of retail
 20 fixed voice telephone services in the UK."
 21 So this document is actually focusing on wholesale
 22 markets, is it not?
 23 A. Yes.
 24 Q. If we could turn on to page 3, perhaps you could just
 25 read to yourself, and if the Tribunal might do the same,

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1 from paragraph 1.5 — I am so sorry, for the EPE it is
 2 internal page 3 {C/356/5}.
 3 Perhaps if you could just read to yourself
 4 paragraphs 1.5 down to the end of the page, if you would
 5 not mind. (Pause)
 6 I am grateful.
 7 So you see there, in particular at paragraph 1.8,
 8 against the background of consideration of wholesale
 9 matters, Ofcom is specifically making the point that
 10 there have been significant increases in retail line
 11 rental prices, yes?
 12 A. Yes.
 13 Q. Also that these have a particular impact on consumers
 14 who take voice only services and who do not benefit from
 15 competition on bundles, yes?
 16 A. Yes.
 17 Q. Then if we could just look at Figure 1.2 over the page,
 18 {C/356/6}. It may be a rather familiar graph. We see
 19 here that Ofcom is graphically presenting a series of
 20 line rental price increases by BT, which is the line at
 21 the top, and other providers, and the lines that are
 22 marked "MPF (wholesale)" and "WLR (wholesale)", that
 23 reflects the wholesale costs associated with the
 24 provision of these services, does it not?
 25 A. Yes.

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1 Q. Ms Cheek, I am sure this matches your recollection: this
 2 is what Ofcom was saying when it launched the 2017
 3 review —
 4 A. Yes.
 5 Q. — about concerns about standalone landline prices, yes?
 6 A. Yes.
 7 Your evidence, as you confirmed earlier, is that prior
 8 to this publication in December 2016, you do not recall
 9 Ofcom raising any concerns with BT about the pricing of
 10 SFV services, yes?
 11 A. In the meetings I attended, that is right, yes.
 12 Q. In the meetings you attended with Ofcom?
 13 A. Yes.
 14 Q. So you do recall Ofcom raising the matter with BT more
 15 generally, yes?
 16 A. I think there had been some general statements from
 17 Ofcom about their concerns. I think in some speeches
 18 that Sharon White made she had noted that they had
 19 concerns in this area, yes.
 20 Q. So there had certainly been some public statements. We
 21 might look briefly at one or two of those.
 22 Ofcom had also raised concerns directly with BT, had
 23 it not?
 24 A. Yes, they raised some concerns with BT through sort
 25 of — they raised with us that there were going to be

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1 some — that they were looking in particular at — they
 2 had some concerns generally about the pricing for
 3 telephony customers and that they were going to be
 4 looking closely at those prices, both for BT and I think
 5 across the market in general.
 6 Q. Yes. So you said there, just to check I have that. You
 7 agree with me that BT — that Ofcom had raised concerns
 8 directly with BT about prices. I think you said for
 9 telephony customers generally, yes?
 10 A. Yes.
 11 Q. But Ofcom had also raised concerns directly with BT
 12 about the pricing of standalone landline customers as
 13 well, had it not?
 14 A. Yes, yes.
 15 Q. Let us perhaps look at one or two of the documents on
 16 that.
 17 Can I ask you to turn to {C/344.2/1}. I think this
 18 is in fact the speech to which you just referred,
 19 Ms Cheek, so it is the text of a speech by Sharon White,
 20 who was I think at that time Ofcom's Chief Executive.
 21 I think she started earlier that year?
 22 A. That is right.
 23 Q. We see here this is dated October 7, 2015.
 24 A. Yes.
 25 Q. So it is a speech she gave at the London School of

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1 Economics, as I say, on 7 October 2015, so that is over
 2 a year before the December 2016 statement, is it not?
 3 A. Yes.
 4 Q. If we could turn to page {C/344.2/5}, you see in the
 5 third paragraph down Ms White says:
 6 "Over those last twenty years, there is no doubt
 7 that the communications market has delivered significant
 8 gains for consumers. But there have been areas of
 9 search concern."
 10 As she puts it.
 11 Then looking at the second concern that she
 12 identifies :
 13 "She says:
 14 "... there are signs in recent months of rising
 15 prices for landline and broadband customers, without the
 16 apparent justification of higher costs or improved
 17 service."
 18 Then she remarks that BT and certain other providers
 19 have "all raised line rental prices this year".
 20 She says:
 21 "This might be a temporary blip in the market, and
 22 there are still good offers out there for people who
 23 shop around.
 24 "But customers who worry about the hassle of leaving
 25 their current provider, especially older people, can

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1 face higher bills . We are concerned about this, and we
 2 are watching these developments in the market closely."
 3 Yes?
 4 A. Yes.
 5 Q. It is fair to say this speech caused something of a stir
 6 within BT, is it not?
 7 A. We certainly noted what she was saying, yes.
 8 Q. Yes. Because Ofcom's relatively new Chief Executive has
 9 got BT's line rental pricing in her sights, yes?
 10 A. Yes.
 11 Q. You personally were aware of this speech at the time it
 12 was given, or shortly afterwards, were you not?
 13 A. Yes.
 14 Q. Can we just look briefly at that. I hope you have an
 15 email {F/377/1}.
 16 I should say, I hope your bundle is labelled with
 17 the references that I am giving for the EPE. I am not
 18 trying to make things difficult .
 19 A. It does not appear to be, I have not worked it out, but
 20 I can see it on here, that is fine .
 21 Q. I think I have a version of the index. I think it
 22 should be ... If you look at the index, I am so sorry
 23 about this, can you see it is split into bundle C, Ofcom
 24 materials, bundle F, BT disclosure?
 25 A. Yes.

18

1 Q. So the document I am asking you to turn up is the fifth
 2 document in the bundle F section, and can you see that
 3 is marked {F/377/1}?
 4 A. (Pause). Yes.
 5 Q. I should say, Ms Cheek, if it helps, everything I call
 6 up will appear on the screen. It may be that it is
 7 easier to read the screen, and if you wish to refer to
 8 the hard copy, of course you can say that --
 9 A. Sure.
 10 Q. -- and you will be given time.
 11 We have, as I say, an email chain here from
 12 December 2015.
 13 A. Right.
 14 Q. So that is a year before the 2017 review was launched,
 15 correct?
 16 A. Yes.
 17 Q. Could we go down to the bottom of the email chain, over
 18 on page {F/377/2} of the EPE.
 19 You see there an email from Anil Patel of Ofcom to
 20 a Jeremy Benson of BT, yes?
 21 A. Yes.
 22 Q. Mr Benson was another member of your regulatory team,
 23 was he not?
 24 A. That is right .
 25 Q. You can see that the email from Mr Patel has the subject

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1 "Meeting on pricing", and Mr Patel says:
 2 "Hi Jeremy, hope all is well. You may be aware that
 3 one of the highlighted areas of work in our proposed
 4 annual plan for 2016/17 was further work on pricing.
 5 Specifically , we said that we intended to do more on
 6 'monitoring price increases, providing advice and
 7 information on pricing, and making sure all consumers
 8 receive value from their communications providers,
 9 including protecting consumers who are not engaged with
 10 the market'. As part of this work we said that 'we will
 11 assess changes in communications tariff prices and
 12 structures and how they affect different consumer
 13 segments, taking action if necessary'."
 14 Then reading on to the bottom of the email before
 15 the pleasantries , he says:
 16 "I'd be grateful therefore if you could propose some
 17 times when we could meet (here at Ofcom) relevant
 18 colleagues in the week commencing 11th and
 19 18th January."
 20 So he is proposing a meeting between BT and Ofcom to
 21 discuss these matters in the New Year, is he not?
 22 A. Yes.
 23 Q. Then over the page -- sorry, back on the first page,
 24 {F/377/1}, you can see that Mr Benson forwards the email
 25 from Mr Patel to you, copying it into some other people,

20

1 including Mr Bunt, do you see that?
 2 A. Yes.
 3 Q. He says:
 4 "Hi Dee."
 5 Dee is you.
 6 A. Yes.
 7 Q. "As discussed. I spoke to Ofcom about this request.
 8 Building on the information we provided earlier this
 9 year ... Ofcom now want to look at pricing more widely."
 10 Then you see he says:
 11 "The scope is still line rental/fixed telephony, but
 12 now includes broadband (as well as solus customers)."
 13 If you could just perhaps read to the end of the
 14 paragraph, just to yourself. (Pause)
 15 You see the reference there to customers who were
 16 engaged in the market, the possibility that they:
 17 "... may be 'subsidised' (my words) [Mr Benson says]
 18 by those not as engaged in the market who will stay with
 19 the same provider."
 20 Then the next paragraph, a reference to:
 21 "Ofcom is also concerned that BT (& other providers)
 22 are (too) focused on dual play, and most
 23 marketing/discounts is for customers taking bundles."
 24 Then a reference to the purpose of the meeting to
 25 sound out BT's views which they are keen to hear.

21

1 Then do you see at the bottom of the document he
 2 provides some context. One of the things he refers to
 3 is the Sharon White speech that we have just looked at,
 4 yes?
 5 A. Yes.
 6 Q. Then he also refers to an extract from the Ofcom annual
 7 plan for 16/17 which refers to monitoring price
 8 increases, yes?
 9 A. Yes.
 10 Q. Just over the page again {F/377/2}, can you see just in
 11 square brackets at the end of the italicised text, this
 12 is Mr Benson's text, he says:
 13 "When developing our pricing we need to have a full,
 14 robust story as to why any increase in price is
 15 justified."
 16 Can you see that?
 17 A. Yes.
 18 Q. Now, back on the first page, sorry, it is just the way
 19 the emails are laid out, {F/377/1}, do you see that
 20 about ten minutes after Mr Benson emails you, you
 21 forward his email to Mr Murray?
 22 A. Yes.
 23 Q. That is BT's Director of Consumer Regulation to whom you
 24 reported.
 25 A. Mm—hm.

22

1 Q. You say:
 2 "FYI. A bit of a worrying development, although not
 3 unexpected ..."
 4 Yes?
 5 A. Yes.
 6 Q. So Ms Cheek, you were not surprised by this development
 7 in terms of the direct communication from Ofcom, were
 8 you?
 9 A. No, I was not surprised, because of the fact that
 10 Sharon White had already spoken about these concerns,
 11 yes.
 12 Q. But you were already aware, were you not, that Ofcom was
 13 concerned about BT's pricing for SFV customers, not just
 14 telephony customers generally, yes?
 15 A. I think at this stage we were just understanding that
 16 Ofcom was concerned about pricing across the market for
 17 voice customers.
 18 Q. Right. But the email from Mr Benson, as I read out, he
 19 says:
 20 "The scope is ... line rental/fixed telephony, but
 21 now includes broadband (as well as solus customers)."
 22 Then there was that reference to customers
 23 potentially being subsidised:
 24 "... by those not as engaged in the market who will
 25 stay with the same provider."

23

1 So that is a reference to solus customers, is it
 2 not?
 3 A. Well, there could be other customers who are not engaged
 4 in the market, not just solus customers.
 5 Q. Okay. We will look at some more documents perhaps to
 6 see what you were aware of.
 7 Can you then see at the top of the email chain
 8 Mr Murray replies:
 9 "Indeed! Have asked Jeremy, by end of second week
 10 in January, to produce for us a clear note of our
 11 position, something which we can use as a foundation for
 12 our exchanges with Ofcom. At my 1:1 John specifically
 13 called our price increases as a worry for him. This is
 14 one where we need a good, clear, robust commercial and
 15 policy position, with a senior ... partner ... fully
 16 bought in to our approach!
 17 Now, "John" I think is a reference to John Petter?
 18 A. That is right.
 19 Q. Who was BT Consumer's Chief Executive at the time, yes?
 20 A. Yes.
 21 Q. So it was not just Ofcom, it was also BT Consumer's
 22 Chief Executive who had identified a concern in BT's
 23 prices at this stage, yes?
 24 A. I think my understanding is that John was concerned
 25 about how our price increases would be seen by Ofcom.

24

1 Q. Yes, okay. So there is a reference to Mr Murray asking
2 "Jeremy", that is Jeremy Benson, to produce a "note of
3 our position", yes?
4 A. Yes.
5 Q. Can we look at the note. That is at {F/384/1}, so it
6 will appear on the screen, I hope.
7 The note is not dated, but as far as we can tell it
8 was sent to you on 12 January 2016. I do not know if
9 the note rings a bell looking at it, but that appears to
10 be the position.
11 A. I do not particularly remember it, but that is -- yes,
12 that is possible.
13 Q. I just want to show you a few extracts, if I may.
14 Starting on the first page, there is a reference in
15 the first paragraph again to Sharon White making it
16 clear that one of her key areas of focus is the consumer
17 agenda. There is a reference again to the annual plan
18 that we saw referred to in the emails with Mr Patel and
19 Mr Benson.
20 Then do you see a little lower the paragraph:
21 "The scope of Ofcom's focus is still line
22 rental/fixed telephony ..."
23 In fact, if you were to read that paragraph, that is
24 the same text that we saw in the email from Mr Benson to
25 you a few moments ago. It is exactly the same text.

25

1 A. Mm—hm.
2 Q. Then under the heading "What could Ofcom do/what is the
3 regulatory risk?", we see:
4 "Although there is no SMP—type price regulation on
5 BT Consumer or other providers, Ofcom do have options to
6 control 'inappropriate' pricing behaviour. They could
7 control the way in which prices are advertised ... it
8 could consider whether the market for line rental is
9 failing and refer the matter to the CMA ... and it could
10 publicise its concern ..."
11 So it is identifying a range of matters.
12 Then in square brackets:
13 "It could also carry out a fuller review of the
14 retail lines market as part of its continuing market
15 reviews."
16 Yes?
17 A. Yes.
18 Q. Then under "Objective":
19 "If we are to avoid scrutiny and potential criticism
20 we need to ensure that we have a convincing,
21 evidence—based story, to justify our proposed price
22 rises. We need a clear note of our position with
23 a good, clear, robust commercial and policy position."
24 So that reflects the email we saw from Mr Murray.
25 He used those words as well, did he not?

26

1 A. Yes.
2 Q. Then we see:
3 "Ofcom's starting point is likely to look at the
4 costs of providing the service versus the charge for the
5 service, balanced against the value that customers are
6 likely to attribute to the service. If Ofcom perceives
7 that the value placed on the product by the consumer is
8 decreasing relative to the increase in charge and or
9 reduced costs of provision, then Ofcom may take action,
10 particularly if it feels a vulnerable subset of
11 consumers is not benefiting from competition."
12 So there is a clear recognition in this note, is
13 there not, that you needed a story in order to justify
14 your price increases in light of Ofcom's concerns, yes?
15 A. We needed to understand the commercial position, yes.
16 Q. Yes, and that Ofcom might take action in relation to
17 increasing prices, yes?
18 A. We were pointing out that risk, yes.
19 Q. Indeed in relation to SFV customers specifically, yes?
20 A. I do not think it was specifically about SFV customers
21 at this stage.
22 Q. We may have to go to a few more documents on that point,
23 but okay.
24 Sorry, just before we leave this document, we see
25 the slightly strange sentence at the end:

27

1 "However, there is no legal reason to stop us
2 increasing margins where we want to."
3 I am not going to ask you about that.
4 Then on page {F/384/3}, do you see under the heading
5 "Next steps"?
6 A. Yes.
7 Q. So the author of the note is Mr Benson, he refers to
8 a meeting at Ofcom on Wednesday, 20 January, and you are
9 listed as one of the attendees, do you see that?
10 A. I do.
11 Q. Can you see -- sorry, the attendees also include
12 Mr Bunt, I should say.
13 Then the author says:
14 "We will not share any details of any proposed price
15 increases, but will cover the various service
16 improvement initiatives that are being developed."
17 So we saw in your statement, and you confirmed
18 earlier, you generally would tell Ofcom about proposed
19 price increases, would you not?
20 A. That is right, it would generally be closer to the
21 actual price increase being announced.
22 Q. Yes. In fairness, that is what you go on to say. You
23 say:
24 "We would speak to Ofcom re our price increases for
25 16/17 one week before they are publicly announced/become

28

1 effective ."

2 But nevertheless, at this meeting you were not going

3 to tell Ofcom about any proposed price increases, yes?

4 A. That is right .

5 Q. Instead, you were only going to tell Ofcom about certain

6 service agreements that were being developed, yes?

7 A. Yes, my understanding is it was a general — a

8 discussion about our pricing policies in general, rather

9 than about the specific price increase that was about to

10 ...

11 Q. But the plan was certainly not to be totally transparent

12 with Ofcom about your proposed price increases, yes?

13 A. It is possible that at this stage we had not actually

14 got the full details .

15 Q. Yes.

16 Then if we could turn, please, to {F/390/2}, please.

17 You see there is an email from Mr Benson to you and

18 various others, including Ms Blight, on 20 January, yes?

19 A. Yes.

20 Q. You see that the subject is "Pricing — feedback and

21 questions from Ofcom meeting". So he is providing notes

22 from the meeting which he says has taken place "this

23 morning", the meeting we have seen discussed in the

24 previous exchanges, yes?

25 A. Yes.

29

1 Q. It looks as though from this email which lists the

2 attendees that actually only Mr Benson attended, yes?

3 A. Yes.

4 Q. You appear not to have attended the meeting despite

5 a suggestion in the previous document, yes?

6 A. That is right .

7 Q. Now, you see in the underlying text Mr Benson says:

8 "Ofcom did not ask any questions about BT's Pricing

9 Plans for 2016/17."

10 We know that the plan was not to tell Ofcom about

11 the pricing plans, so that was not discussed.

12 A. Yes.

13 Q. Then we see:

14 "Ofcom's work on monitoring of prices and price

15 trends is focused on ..."

16 First bullet point:

17 "Solus customers."

18 Second bullet point:

19 "Those customers engaged and unengaged with the

20 market, achieving significantly different outcomes."

21 So "Solus customers" is a synonym for "SFV

22 customers", is it not?

23 A. Yes.

24 Q. Then over the page {F/390/3}, can you see under the

25 heading "Other points" there are a series of bullet

30

1 points, and you see that Mr Benson — he refers to some

2 slides, I am going to show you those in a second. He

3 says:

4 "The slides are fairly self-explanatory, and we

5 walked through these. Ofcom was keen to highlight

6 (Chart 2) the growing convergence of line rental prices

7 (price following) by the main providers and that the

8 Post Office had almost caught up — all with MPF and WLR

9 costs falling ."

10 Now, could we look briefly at the slides which were

11 attached to this email. They are at {F/856/1}. You see

12 "Ofcom. Pricing data. January 2016"?

13 A. Yes.

14 Q. If we go on to page {F/856/2}, you see the heading:

15 "Pricing data we have collated in recent months

16 indicates three potential issues we intend to

17 investigate further ."

18 Then references again to monitoring price increases .

19 Then in this third bullet point:

20 "Data we have obtained indicates possible concerns

21 in three areas ..."

22 Then the first one is:

23 "Rising prices for solus voice customers."

24 Yes?

25 A. Yes.

31

1 Q. Then if we could look over the page {F/856/3}, we see

2 again a rather familiar looking graph with the heading:

3 "Line rental prices have steadily increased and

4 converged in recent years despite falling wholesale

5 prices ."

6 These are the slides Mr Benson was describing as

7 "self-explanatory", yes?

8 A. Yes.

9 Q. So it is very similar, is it not, to the chart that we

10 saw in the December 2016 document launching the 2017

11 review, yes?

12 A. Yes.

13 Q. It is precisely the same concern Ofcom is identifying

14 but nearly a year earlier, yes?

15 A. Yes.

16 Q. The concern that is being identified here is

17 specifically about solus voice customers, the price

18 effect on them, is it not?

19 A. I think it is about, yes, voice only customers across

20 the market, rather than specifically BT's, but, yes.

21 Q. Now, in fact, I am going to show you another document,

22 just on this theme. The Tribunal have seen it already,

23 I think. It is at {C/340.1/1}.

24 We are now nearly two years before the slides we

25 have just been looking at, nearly three years before the

32

1 launch of the 2017 review, so it is 28 January 2014, a
 2 Ofcom document entitled "Cost and value of
 3 communications services in the UK".
 4 Can you turn to page {C/340.1/3}, please. So under
 5 the heading "Introduction", just in the first paragraph:
 6 "It is now ten years since Ofcom began regulating
 7 communications services in the UK. Over that period
 8 the prices of core telecoms services — broadband,
 9 landlines and mobile — have fallen to levels which
 10 compare well with anywhere in world.
 11 "This document is a review of the development of
 12 services and their cost over that period."
 13 Etc etc.
 14 Then if we could turn on to page {C/340.1/11},
 15 please. Internal page 9.
 16 You see the heading at 2.1.6:
 17 "Some standalone line rental charges have risen over
 18 recent years but cheaper alternatives are available."
 19 The first paragraph underneath refers to:
 20 "... an active market in the UK for standalone
 21 (ie not bundled) fixed line rental services. Retail
 22 competition is enabled by regulated access to wholesale
 23 line rental, the price of which has fallen and will
 24 continue to fall. That has enabled the provision of
 25 competitive services by other providers."

33

1 The example is given of the Post Office, yes?
 2 A. Yes.
 3 Q. We might come back to the Post Office a little later.
 4 Then missing the next paragraph — I will read it
 5 out as it is there:
 6 "Social tariffs are also available as a low cost
 7 option for low income users."
 8 Then there is a reference to BT Basic. That was
 9 a product that was available only to customers in
 10 receipt of certain government benefits, yes?
 11 A. That is right.
 12 Q. Then we see the final paragraph:
 13 "Despite this range of choice and the overall
 14 positive trend in fixed voice costs, some retail prices
 15 for line rental have increased in recent years. This is
 16 related to the fact that landlines generally tend to be
 17 sold as a bundle with other products — historically with
 18 voice calls, more recently with broadband. Market
 19 competition has tended to focus on the headline price of
 20 the bundle, which has generally fallen. Consequently
 21 consumers buying a landline service without broadband
 22 may not benefit fully from the effects of competition.
 23 Furthermore, some providers (TalkTalk and Virgin Media)
 24 have recently ceased their standalone landline service.
 25 Ofcom will continue to monitor this situation

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1 carefully."
 2 Then over the page {C/340.1/12}, a now very familiar
 3 looking graph, Figure 8. We see again a clear
 4 presentation of line rental prices increasing. The blue
 5 line is "BT line rental (non pre-pay)", yes?
 6 A. Yes.
 7 Q. Again presenting the figures for wholesale line rental,
 8 so that is the cost figures, input cost figures falling,
 9 yes?
 10 A. Yes.
 11 Q. Again, having looked at the wording of the paragraph at
 12 the end of the previous page, the concern is clearly
 13 focused on solus customers specifically, is it not? It
 14 is not general telephony services, it is solus
 15 customers, standalone fixed voice services customers,
 16 yes?
 17 A. (Pause)
 18 Q. If it helps, we can go back to page 11, {C/340.1/11}.
 19 You see the third from final sentence of that last
 20 paragraph:
 21 "... consumers buying a landline service without
 22 broadband may not benefit fully from the effects of
 23 competition."
 24 Yes?
 25 A. Yes.

35

1 Q. So it certainly cannot be said, Ms Cheek, can it, that
 2 Ofcom was giving BT a clean bill of health in terms of
 3 SFV pricing in January 2014, can it?
 4 A. No, that is true.
 5 Q. In 2014, you were a member of the regulatory team
 6 supporting BT's retail divisions, including BT Consumer,
 7 yes?
 8 A. Yes.
 9 Q. You would have been aware of this publication, would you
 10 not, Ms Cheek?
 11 A. Yes. I do not recall it specifically, but, yes.
 12 Q. It is likely that you would have been aware, yes?
 13 A. Yes.
 14 Q. Just to finish on this theme before moving on to
 15 a different topic, if we could come back to paragraph 12
 16 of your statement, please which is {D/5/3}. The
 17 evidence you gave there:
 18 "Prior to the 2017 Review, the pricing of SFV
 19 services was not something I recall Ofcom raising as
 20 a concern in any of our interactions."
 21 I think you have clarified that you are referring to
 22 your personal interactions with Ofcom, yes?
 23 A. That is right.
 24 Q. But you accept that BT was aware of Ofcom's concerns
 25 about solus voice customers specifically at least as

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1 early as January 2014, yes?
 2 A. Yes.
 3 Q. Also that you personally were aware of those concerns at
 4 around that time?
 5 A. Yes, that is right.
 6 Q. So what you say in paragraph 12 is slightly
 7 unfortunately worded but it is a helpful clarification,
 8 yes?
 9 A. In paragraph 12 I think I was referring to the regular
 10 meetings that I was talking about in the previous
 11 paragraph, but it is not something that I was personally
 12 discussing with Ofcom.
 13 Q. Okay. I am glad we have been able to clarify.
 14 Could we turn to a different topic, so away from the
 15 question of when Ofcom first raised concerns about SFV
 16 customers with BT.
 17 THE CHAIRMAN: If we are going to do that, I need to give
 18 the transcriber a break.
 19 Ms Cheek, you will know, do not discuss your case or
 20 the evidence over any breaks, that is now and possibly
 21 over lunch as well.
 22 We will just take five minutes. Thank you.
 23 (12.07 pm)
 24 (A short break)
 25 (12.16 pm)

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1 MR ARMITAGE: Thank you, sir.
 2 I think I had said I was going to turn away from the
 3 question of when Ofcom first raised concerns with BT
 4 about SFV pricing, and I am going to do that.
 5 Just one final point while on the topic. On any
 6 view, Ms Cheek, following the launch of the 2017 review
 7 in December 2016, BT was well aware from that point of
 8 the possibility that its pricing decisions for SFV
 9 customers may be scrutinised by the regulator. You
 10 would agree with that, yes?
 11 A. Yes.
 12 Q. In that context BT wanted, did it not, to avoid putting
 13 material in writing that might prejudice its position
 14 with the regulator, is that correct?
 15 A. Yes, that is probably true.
 16 Q. Or indeed prejudice BT in court proceedings, yes?
 17 A. Yes.
 18 Q. So moving then to the next topic, Home Phone Saver. Can
 19 I ask you to turn up paragraph 13 of your statement,
 20 please, which is at {D/5/3}. You see the heading
 21 "Home Phone Saver"?
 22 A. Yes.
 23 Q. So you say here:
 24 "An example of the sorts of topics we would discuss
 25 with Ofcom prior to 2017 about our provisions for SFV

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1 customers was the introduction of Home Phone Saver
 2 (HPS), which was a service aimed at (and available to)
 3 SFV customers."
 4 So as you explain here, HPS is a product which gives
 5 you a landline and calls package at a discounted price
 6 which was fixed I think for a three-year period, yes?
 7 A. Yes.
 8 Q. It is for solus voice customers only, is it not?
 9 A. Yes, that is right.
 10 Q. You cannot get it alongside broadband, can you?
 11 A. That is right.
 12 Q. It is a retention tool essentially, is it not, Ms Cheek?
 13 You do not actively market it. Is that correct?
 14 A. We do not actively market it sort of on TV, that kind of
 15 thing, no, but we would tell customers about it in their
 16 annual price change notifications, for example.
 17 Q. Yes. Particularly if they called up wanting to cancel
 18 their existing contract, you might mention it as
 19 a retention tool?
 20 A. Or if they called up generally to discuss what would be
 21 the best deal for them, yes.
 22 Q. You say in your statement here at paragraph 13 that you
 23 were not involved in the commercial decision to
 24 introduce HPS, yes?
 25 A. That is right.

39

1 Q. But because of your role in terms of liaising with
 2 Ofcom, you were briefed about HPS and the reasons for
 3 its introduction, yes?
 4 A. Yes.
 5 Q. You say at paragraph 13 that:
 6 "... [you] understand from discussions with
 7 colleagues in the context of [your] interactions with
 8 Ofcom that one of the reasons for it was to try and
 9 prevent so much churn (meaning customers leaving BT) of
 10 SFV customers to competitors."
 11 That was only a secondary reason for its
 12 introduction, was it not, Ms Cheek?
 13 A. I think it was introduced as a way for line only
 14 customers to get good value.
 15 Q. The main reason it was introduced, Ms Cheek, was as a PR
 16 defence to justify a price increase, was it not?
 17 A. I do not think it was just for PR reasons, I think it
 18 was genuinely because we wanted to make sure that —
 19 Q. I did not say "just" for PR reasons. I said the main
 20 reason it was introduced was as a PR defence to justify
 21 a price increase; that is right, yes?
 22 A. I would not have thought it was the main reason,
 23 although I do not know because I was not involved in the
 24 decision to introduce it.
 25 Q. I take that. So you refer here to "one of the reasons"

40

1 for its introduction. I think that implies, does it
 2 not, that there were other reasons that you are not
 3 mentioning here, yes?
 4 A. Yes, yes.
 5 Q. So can we look at a couple of documents just on this
 6 point.
 7 I think we can start at {F/229/1}. Can you see
 8 a document "Project Window 2014/15 Pricing Update.
 9 5 March 2014". Then if we look at slide 2, just to put
 10 this in a bit of context {F/229/2}. You see under the
 11 heading "Agreed on Feb 24", first bullet point:
 12 "Line rental £1 increase, 6.49% on back book."
 13 Yes?
 14 A. Yes.
 15 Q. Then if we go over to page {F/229/4}, can you see the
 16 heading there "Cost of Living – Fixed Phone Saver"?
 17 A. Yes.
 18 Q. Fixed Phone Saver was an early name for what became
 19 Home Phone Saver, was it not?
 20 A. It appears to be, yes.
 21 Q. There is a document I can show you in a moment that
 22 confirms that, but you can take it from me on this one.
 23 You see the bold text under the heading:
 24 "Fixed Phone Saver provides a save tool for
 25 telephone only customers and PR defence during Project

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1 Window ..."
 2 Yes?
 3 A. Yes.
 4 Q. Then you see in the sort of left –hand column is the
 5 heading "Rationale", and can you see the first bullet:
 6 "PR Defence: Strong defence against criticism that
 7 our loyal voice customers get punished by rising costs
 8 of the service."
 9 A. Yes.
 10 Q. Then:
 11 "Regulatory: Strong defence against Ofcom argument
 12 that solus voice non-switchers are being penalised."
 13 Yes?
 14 A. Yes.
 15 Q. Then we do see there the third bullet point:
 16 "Churn reduction: [a reference to] 1.1m true solus
 17 customers, 15% annual churn, 90k competitive losses per
 18 year; FPS will help reduce churn."
 19 The third one is the fact that you mention in your
 20 statement, is it not?
 21 A. Yes.
 22 Q. But the document makes clear, does it not, that HPS was
 23 being introduced essentially to deflect press criticism
 24 of the proposed price increase, yes?
 25 A. Yes, it looks like that is one of the three reasons,

42

1 yes.
 2 Q. Also to provide a defence against an argument from Ofcom
 3 specifically about solus voice customers being penalised
 4 by price increases, yes?
 5 A. Yes.
 6 Q. Pausing there. This is a March 2014 document. So that
 7 is another demonstration, is it not, that BT was well
 8 aware that Ofcom was concerned about SFV pricing at this
 9 stage, yes?
 10 A. Yes.
 11 Q. Now, I suggest it is clear from this document, is it
 12 not, that churn reduction was only a secondary, perhaps
 13 even a tertiary, objective for the introduction of HPS,
 14 yes?
 15 A. Well, arguably those three are not necessarily in
 16 priority order, but yes, I can see why you are
 17 suggesting that.
 18 Q. Not necessarily in priority order.
 19 Let us look at one more document, {F/285/1}. This
 20 is 23 January 2015, "Post Investment Review –
 21 Home Phone Saver". Authors are Kelly Liu and
 22 Dominic Wall. I think they were members of the Voice
 23 Pricing team. Is that right?
 24 A. Yes.
 25 Q. If we look at page {F/285/2}, can you see there is a box

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1 entitled "Description":
 2 "Home Phone Saver is a pricing change PR defence
 3 telephone package targeted at our legacy solus base,
 4 providing peace of mind at the time of the price
 5 increase."
 6 Then some details about the price and so on.
 7 Then just to pick up a small point on page
 8 {F/285/3}, you may have to squint, but you can see the
 9 small text towards the bottom of the page:
 10 "Name change: 'Fixed Phone Saver' to
 11 'Home Phone Saver'.
 12 Just to pick up that point. Can you see that?
 13 Then if you could turn on to page {F/285/6}, please.
 14 You see the heading or subheading "Objectives and Key
 15 Deliverables commentary", yes?
 16 A. Yes.
 17 Q. "Objective: PR defence for the Windows pricing change
 18 with a secondary objective to increase solus line
 19 retention."
 20 Yes?
 21 A. Yes.
 22 Q. Then we see:
 23 "Key Deliverables: Home Phone Saver designed and
 24 implemented in time for notification period of Window
 25 pricing change. Provide a good news story mitigating

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1 negative PR around pricing change."
 2 Yes?
 3 A. Yes.
 4 Q. So it was a secondary objective, yes?
 5 A. Yes.
 6 Q. Now, can we look, before moving away from Home Phone
 7 Saver, to how this was then presented to Ofcom. We have
 8 that at {F/524/1}. We are coming forwards quite a long
 9 way in time to 8 February 2017, that is I think a few
 10 weeks before the provisional conclusions which were
 11 28 February 2017, I think, yes?
 12 A. Yes.
 13 Q. I am so sorry, the footer to the document, can you see
 14 it says "Confidential – BT & Ofcom Only", yes?
 15 A. Yes.
 16 Q. So Ofcom was the audience for this document.
 17 A. Okay.
 18 Q. Then if we look at page {F/524/3}, just to put this in
 19 context. Can you see the heading:
 20 "BT Consumer sees effective competition for and high
 21 levels of account activity by our Line-only customers,
 22 just as we do elsewhere in our business."
 23 Yes?
 24 A. Yes.
 25 Q. Then can you see the heading -- second subheading --

45

1 I am so sorry, in the first subheading they are talking
 2 about:
 3 "Volumes of Line-Only customers are falling faster
 4 than our base average."
 5 Then the second subheading:
 6 "Those losses are largely driven by competitive and
 7 price sensitive activity".
 8 Then the second bullet underneath refers to the
 9 Post Office we mentioned earlier, it refers to them as:
 10 "... a key competitor, their Voice-only base is
 11 growing ..."
 12 Etc.
 13 A. Yes.
 14 Q. So this is Ofcom -- sorry, this is BT seeking to
 15 reassure Ofcom, is it not, that SFV services are
 16 a competitive market, yes?
 17 A. Yes.
 18 Q. Just before the provisional conclusions document?
 19 A. Yes.
 20 Q. Put bluntly, it is trying to warn Ofcom off from
 21 intervening on SFV prices, yes?
 22 A. Well, yes, it is trying to put BT's view of the market,
 23 yes.
 24 THE CHAIRMAN: Sorry, it is trying to put?
 25 A. BT's view of the market.

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1 MR ARMITAGE: In the context of potential intervention on
 2 SFV pricing.
 3 A. Yes.
 4 Q. Then page {F/524/5}. Can you see the heading:
 5 "In response to this competition we've developed
 6 specific products and offers which have transformed our
 7 base and provided important support to customers."
 8 Yes? The heading in the purple text.
 9 A. Yes.
 10 Q. So the reference to "this competition" is a reference
 11 back to the slide we were just looking at, competition
 12 in SFV services, the Post Office in particular, yes?
 13 A. Yes.
 14 Q. Can you see the heading -- subheading below referring
 15 to:
 16 "Home Phone Saver increasingly provides great value
 17 to our customers who call regularly."
 18 Yes?
 19 A. Yes.
 20 Q. You see the first bullet point:
 21 "In 2014, in response to competitive pressure from
 22 the Post Office and other providers we introduced Home
 23 Phone Saver."
 24 Yes?
 25 A. Yes.

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1 Q. Then it goes on to describe some of the features.
 2 Now, that description is consistent with the
 3 evidence you give in paragraph 13 of your statement,
 4 yes?
 5 A. Yes.
 6 Q. But BT is only telling one part of the story, is it not,
 7 Ms Cheek?
 8 A. That would be one way to put it, yes, yes.
 9 Q. It is not mentioning the other rationales for the
 10 introduction of the statement?
 11 A. No, that is true.
 12 Q. Now, could we look at paragraph 36 of your statement
 13 next. {D/5/9}. Do you want to just remind yourself of
 14 that paragraph by reading it to yourself, Ms Cheek.
 15 (Pause)
 16 THE CHAIRMAN: I was going to ask about this, because there
 17 was not any particular document reference to it. No
 18 doubt that is what you are going to take --
 19 MR ARMITAGE: Yes, I hope we have identified the relevant
 20 communications.
 21 THE CHAIRMAN: Yes, thank you.
 22 MR ARMITAGE: So we are moving to a different topic. Home
 23 Phone Saver, we have finished with that.
 24 So what you are discussing in this paragraph is an
 25 email which somebody called Jyoti Kumar sent to Ofcom on

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1 6 August 2020 and your response to that email to
 2 Ms Kumar. It is Ms Kumar, is it not?
 3 A. Yes.
 4 Q. So Ms Kumar was a Regulatory Manager who reported to
 5 you, correct?
 6 A. Yes.
 7 Q. As you say here, you sent an internal email, and what
 8 you say here is that you corrected certain points that
 9 Ms Kumar had made to Ofcom?
 10 A. Yes.
 11 Q. So I just want to look at the emails, and then we are
 12 going to come back to what you say about them here.
 13 Can we start, please, at {F/683/4}. We have there
 14 an email from somebody called Cat Kelly, at Ofcom?
 15 A. Yes.
 16 Q. Who looks like she is involved in consumer policy from
 17 her sign-off.
 18 A. Yes.
 19 Q. The date of the email is 4 August 2020. Just to situate
 20 us in the chronology, this is just before Ofcom launched
 21 its further consultation in 2020 in respect of the
 22 further commitments that BT was proposing in relation to
 23 the prices charged to voice only customers, yes?
 24 A. Yes.
 25 Q. That consultation was published in December 2020 and

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1 there was then a statement in March 2021 in which the
 2 undertakings --
 3 A. That is right.
 4 Q. -- to enter into the new commitments were recorded, yes.
 5 So the email from Ms Kelly, it is addressed to
 6 Ms Kumar, copied to you, yes?
 7 A. Yes.
 8 Q. You see Ms Kelly sets out some questions for Ms Kumar.
 9 So the first question -- and I should say the sender is
 10 referring to some BT information responses that have
 11 been provided. She describes these as follow-up
 12 questions on the data.
 13 So the first follow-up question:
 14 "We notice the 'discounted' (carmen) voice only
 15 service is not shown on your website. Do you market the
 16 discounted voice only line rental or home phone saver
 17 products? How are these products made available to
 18 customers? How do you determine which customers are
 19 eligible for the discounted line rental product?"
 20 So that is the first question.
 21 A. Yes.
 22 Q. We do not need to worry about the second and the third.
 23 The fourth question:
 24 "In your compliance spreadsheets, you do not
 25 separately split out compliance with the CPI plus 2.5%

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1 on line rental products."
 2 That was a part of the 2018 commitments, was it not?
 3 A. Yes.
 4 Q. Now, if we could go to page {F/683/2}, we can see
 5 Ms Kumar's response to those four questions. You are
 6 copied in again. Can you see that, Ms Cheek?
 7 A. Yes.
 8 Q. So the darker shaded text, Ms Kumar helpfully replicates
 9 the Ofcom questions, and then she gives her answers in
 10 red text. Do you see that?
 11 A. Yes.
 12 Q. If we look at the response to question 1, that was about
 13 the discounted voice only service not being shown on
 14 your website.
 15 She says:
 16 "Line rental discount and Home Phone Saver are both
 17 included on our Inclusion website 'Including You'.
 18 These products are only available to customers who call
 19 in and speak to our agents which is the main method of
 20 contact for landline only customers who do not have
 21 internet access."
 22 You recall I asked you some questions about the
 23 marketing of Home Phone Saver, did I not?
 24 She says:
 25 "The discount is also visible in our Tariff Guide

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1 ... We generally don't do marketing campaigns of this
 2 discount as there isn't really an acquisition market for
 3 Line Only customers given that we have SMP [that seems
 4 to be highlighted in yellow] and already have the
 5 majority of eligible customers in our base."
 6 So Ms Kumar is confirming to Ofcom here that BT does
 7 not actively market the line rental discount. That is
 8 the commitments price for VOCs, yes?
 9 A. Yes.
 10 Q. She says that is because BT has SMP, significant market
 11 power?
 12 A. Yes, which is the comment that I then corrected.
 13 Q. Yes. So these are the emails you were discussing in
 14 that paragraph.
 15 A. Yes.
 16 Q. Yes, I should have clarified.
 17 What she says is BT does have SMP, because it
 18 already has the majority of customers who are eligible
 19 for the discount, yes?
 20 A. Yes.
 21 Q. I am just asking about what she says at the moment, to
 22 be clear.
 23 A. Sure.
 24 Q. She says meaning that there is no market for acquiring
 25 new fixed voice customers, yes?

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1 A. A very limited market, yes, yes.
 2 Q. So there is no point in marketing the discount, is the
 3 point she is making?
 4 A. Yes, and those people who are eligible for it would
 5 automatically be given it, so there is no need to market
 6 it in that sense. We have a process each month for
 7 making sure that anybody who is eligible for the
 8 discount has the discount applied.
 9 Q. Then just on page {F/683/3}, we see the response to
 10 question 4. This was about compliance with the CPI plus
 11 2.5% increase on line rental products, that element of
 12 the 2018 commitments.
 13 Then if you look at Ms Kumar's response to that
 14 question in the red text:
 15 "We are unaware of a CPI plus 2.5% commitment on
 16 line rental products, are you able to elaborate? We
 17 understood there was an agreement for the weighted
 18 average basket of goods not individual products and that
 19 the compliance was to November CPI rates."
 20 Then she gives details of the March 2020 price
 21 change.
 22 Then she says:
 23 "The latest two compliance spreadsheets on the
 24 previous years' version supplied to Ofcom last year, was
 25 this incorrect?"

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1 Yes?
 2 A. Yes.
 3 Q. Now, the next day you email Ms Kumar, so within the same
 4 chain of emails. That is on page 1, sorry, of the Opus
 5 document. {F/683/1}. You take Ofcom out of copy, yes?
 6 A. Yes.
 7 Q. You reply to Ms Kumar and somebody called Ms Maycock.
 8 Was she another regulatory ...
 9 A. She was in the pricing team.
 10 Q. Pricing team, yes.
 11 Now, this is what you say. So you deal with -- I am
 12 so sorry, yes:
 13 "Hi both.
 14 "Sorry, just playing catch-up."
 15 You say:
 16 "On the answers below, just for future reference
 17 it's best not to state that we have SMP -- whilst Ofcom
 18 found we did back in 2017, and probably nothing has
 19 changed, there are various considerations around
 20 a finding of SMP and it's probably better just to say
 21 something factual along the lines of "we already have
 22 the majority of eligible customers in our base", as per
 23 the rest of your sentence."
 24 Now, pausing there before we look at what you say
 25 about question 4, you do not say here that Ms Kumar was

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1 wrong to say that BT had significant market power, do
 2 you?
 3 A. No.
 4 Q. You do not say she was wrong about BT having the
 5 majority of eligible customers, no?
 6 A. No.
 7 Q. Or that she was wrong about there being no acquisition
 8 market for such customers, correct?
 9 A. That is right. I should probably have pointed out that
 10 actually the SMP finding was only provisional by Ofcom
 11 in 2017.
 12 Q. Yes, but that is not what you say here, is it, Ms Cheek?
 13 A. No.
 14 Q. To the contrary, you note that Ofcom found that BT had
 15 SMP back in 2017, and indeed you say "probably nothing
 16 has changed", yes?
 17 A. That is right, yes.
 18 Q. What you say in this email is that it is best not to say
 19 to Ofcom that you have SMP, yes?
 20 A. It is best not to say generally, I probably should have
 21 said, yes.
 22 Q. You say this because, as you put it here, "there are
 23 various considerations around a finding of SMP".
 24 With respect, that is being a bit mealy mouthed, is
 25 it not, Ms Cheek?

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1 A. My point was really to Jyoti that just because we
 2 have -- Jyoti was using the term "SMP" as shorthand for
 3 the fact that we have the vast majority of line only
 4 customers on our base, and I was trying to point out to
 5 her, I admit not particularly clearly here, but trying
 6 to point out to her that that is not the same thing as
 7 having SMP, necessarily.
 8 Q. Well, the way I read this email, when you say "there are
 9 various considerations around the finding of SMP", what
 10 you are referring to there is the fact that a formal
 11 finding of SMP carries regulatory obligations for a firm
 12 like BT, yes?
 13 A. That is true. But what I was meaning was the fact that
 14 we have a large share of market customers -- of
 15 customers in the market -- does not necessarily equate to
 16 SMP, which is the way that she was using the term.
 17 Q. Yes. Well, you say:
 18 "... whilst Ofcom found we did back in 2017, and
 19 probably nothing has changed, there are various
 20 considerations around a finding of SMP and it's probably
 21 better just to say something factual ..."
 22 So the way I read this email, as I say, is that it
 23 is best not to tell Ofcom that you have SMP, because it
 24 may result in regulatory obligations that a firm like BT
 25 would want to avoid, yes?

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1 A. That is not the way that I meant it when I wrote it.
 2 Q. Okay. Let us look at what you say about question 4.
 3 You say:
 4 " ... [you have] had a look at Ofcom's statement on
 5 its Review of the Market for Standalone Landline
 6 Services ... Our commitments are in the Annexes ..."
 7 You say at a particular paragraph.
 8 " ... it says BT will 'not increase the price of its
 9 line rental products for Fixed Voice—Only Customers
 10 before 1 April 2019 and limit increases for the
 11 remaining two years of the commitment period to CPI plus
 12 2.5%'."
 13 You say:
 14 "I guess since the whole basket of services cannot
 15 go up by more than CPI ..."
 16 I think that is another aspect of the commitments,
 17 yes?
 18 A. Yes.
 19 Q. "... and I believe we have had to adjust line rental
 20 DOWN in order to accommodate bigger rises on certain
 21 other products in the basket, it's impossible that we
 22 could have breached this commitment, even though we
 23 didn't know about it [smiley face]. But I think we had
 24 better go back to them early next week and correct
 25 ourselves."

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1 A. Yes.
 2 Q. So you are saying there that you did not know about this
 3 commitment either, yes?
 4 A. I did not without going to look it up, no, because I was
 5 not familiar with the detail of the 2017 commitments at
 6 that stage.
 7 Q. Yes, which is consistent with what Ms Kumar said in her
 8 email to Ofcom, she was not aware of that commitment,
 9 yes?
 10 A. That is right.
 11 Q. You say you had better go back to Ofcom to correct the
 12 position.
 13 Let us look at the correction that you provided.
 14 That is at {F/135/1}. Can we start actually at page
 15 {F/135/7}. It is quite a long chain.
 16 Just to show you, you can see there again Ms Kumar's
 17 email to Ms Kelly, the one containing the answers to the
 18 questions, yes, the one that you responded to
 19 internally?
 20 Sorry, Ms Cheek, page 7.
 21 A. Page 7.
 22 Q. Are you in {F/135} ?
 23 A. Yes.
 24 Q. So page 7. Can you see it is the same email we were
 25 looking at earlier, it is Ms Kumar's email to Ms Kelly

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1 with the red text, the one to which you responded
 2 internally .
 3 A. Yes.
 4 Q. Then we see above it, starting at page 6 {F/135/6}. You
 5 send an email, yes, at the bottom of page 6, you send an
 6 email on 9 August 2020 at 8 o'clock in the evening to
 7 Ms Kumar, but I think — and indeed to Ms Kelly, but it
 8 is addressed, if you like, to Ms Kelly. You say:
 9 "With apologies, I'd like to make a correction to
 10 our answer to your question 4. Jyoti was not familiar
 11 with this aspect of the RVON commitments, as she is new
 12 to the team and was not involved in the original
 13 discussions."
 14 Yes?
 15 A. Yes.
 16 Q. Now, just two points arising from that. What you say
 17 there is not totally accurate, is it Ms Cheek?
 18 A. Which aspect do you think is not accurate?
 19 Q. You say that Ms Kumar was unaware of ...
 20 Let me put the question again. You have not given
 21 a complete explanation of what happened there, have you,
 22 Ms Cheek. You say Ms Kumar was unaware of the 2.5%
 23 commitment because she was new to the team, yes?
 24 A. Yes, and —
 25 Q. Yes.

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1 A. — not involved.
 2 Q. That is why she got it wrong, yes?
 3 A. Yes.
 4 Q. But we saw in your email that you also were not aware of
 5 the commitments, yes?
 6 A. I was, but I went to go back and check —
 7 Q. It is not a huge point. It is just a clarification .
 8 A. I should perhaps make clear that the CPI plus 2.5% is
 9 a sort of safeguard cap, not the main substance of the
 10 commitment.
 11 Q. Yes. But by mentioning the fact that Ms Kumar was new
 12 to the team, you were keen to avoid giving Ofcom the
 13 impression that BT generally was unaware of the details
 14 of its own commitments, that is fair, is it not?
 15 A. Clearly we were not, because we had been complying with
 16 all of the full set of commitments.
 17 Q. Clearly you were or clearly you were not?
 18 A. We, as in BT as a whole, and the people that are
 19 responsible for making sure in our Finance teams that we
 20 have the full detail of all of the different
 21 commitments, clearly they were aware, and they were
 22 making sure that we were complying with each element of
 23 it .
 24 Q. Yes. But not aware of the specific 2.5% element of the
 25 commitment. I take your point about the overall basket,

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1 but just the CPI plus 2.5% —
 2 A. Our finance team would have been, because they were far
 3 more familiar with the detail of the commitments.
 4 Q. I see.
 5 The second point that arises, you do not say
 6 anything here, when you go back to Ofcom about
 7 Ms Kumar's response to question 1, do you, about SMP?
 8 A. No.
 9 Q. You do not say: by the way, Ms Kumar was also wrong to
 10 say that BT had SMP because of X, Y and Z. You do not
 11 say that here, do you?
 12 A. No.
 13 Q. Can we go back to paragraph 36 of your statement now
 14 that we have looked at these emails. {D/5/9}. It is
 15 really just to clarify here.
 16 So you refer to Ms Kumar's email to Ofcom on
 17 6 August 2020, which we have seen, containing the red
 18 text.
 19 You say:
 20 "After seeing the emails, I sent an internal email
 21 dated 7 August 2020 correcting two points made in
 22 Jyoti's responses. The first [correction] was to
 23 correct the statement that BT had significant market
 24 power ('SMP') for VO customers. As my email reflects,
 25 it was not factually correct to state that BT had SMP

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1 for VO customers. My understanding at that time (and
 2 now) was that Jyoti had used the term as shorthand for
 3 stating that BT had a majority share of the line only
 4 market, without understanding the significance of the
 5 particular term used."
 6 But we saw your email, Ms Cheek. You did not say to
 7 Ms Kumar anything about it being factually incorrect to
 8 say that BT had significant market power, did you?
 9 A. No.
 10 Q. In fact, you said Ofcom had found that you had
 11 significant market power, and that, in your words,
 12 "probably nothing had changed"?
 13 A. That is right.
 14 Q. Then your subsequent communication with Ofcom did not
 15 mention this aspect of Ms Kumar's response at all, did
 16 it?
 17 A. No. No, I decided it was not something we particularly
 18 wanted to discuss with Ofcom at that point.
 19 Q. Yes.
 20 Then you say:
 21 "I also corrected the suggestion contained in
 22 Jyoti's response dated 6 August 2020 that BT was
 23 'unaware' of the [CPI] ... plus 2.5% commitment [point]
 24 ... "
 25 As I say, not the biggest point, but actually your

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1 email did not correct her on that point either, did you?
 2 You confirmed that you were also unaware of the relevant
 3 aspect of the commitment and that you needed to correct
 4 it with Ofcom, yes?
 5 A. Yes, that is right.
 6 Q. It was only when you emailed Ofcom that you attributed
 7 it to Ms Kumar being new to the team, correct?
 8 A. Yes. But as I say, the people that managed the detail
 9 of the commitments would have been well aware of all of
 10 the different bits we had to be compliant with.
 11 Q. Yes, I understand that.
 12 Focusing on the SMP aspect of these communications,
 13 I think it is possible, Ms Cheek, that you are
 14 mis-remembering the chronology when you talk about
 15 correcting the statement that BT had SMP, because can we
 16 look at {F/709/1}, some more emails between you and
 17 Ms Kumar.
 18 This chain of emails is from 28 January 2021, so
 19 that is around six months after the exchanges with
 20 Ms Kumar and Cat Kelly that we have just been looking
 21 at, yes?
 22 A. Yes.
 23 Q. I do not think you list these emails in the annex to
 24 your statement, just as it happens, Ms Cheek, so you did
 25 not refer to them in preparing your statement, is that

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1 right?
 2 A. No, that is right.
 3 Q. Now, 28 January, just on that day, 2021, you know that
 4 by that date the Class Representative's claim had been
 5 issued, yes?
 6 A. Yes.
 7 Q. That happened on 15 January, and by that date you would
 8 have been aware, would you not, that the Class
 9 Representative's claim had been issued, yes?
 10 A. Yes.
 11 Q. Can I actually just sidestep to another document, just
 12 on that point, just to pick up one issue. That is at
 13 {F/708/1}, so the previous document as it happens on
 14 Opus. Actually can we start at page {F/708/6}. Sorry,
 15 page {F/708/5}.
 16 You see there a sample letter to a customer with the
 17 heading "Your prices are changing soon". I think it is
 18 addressed to a Mr AB Sample?
 19 A. Yes.
 20 Q. A fictional character, I assume.
 21 You say:
 22 "Dear Mr Sample.
 23 "We want to let you know that from 31 March 2021,
 24 the price of some of your BT products and services will
 25 increase in line with the Consumer Price Index (CPI)

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1 rate of inflation . And some will increase by CPI, plus
 2 3.9%. Take a look over the page to see how this will
 3 affect your monthly bills."
 4 Yes?
 5 A. Yes.
 6 Q. I think that must be a draft letter to a voice only
 7 customer who would be benefiting from the 2021
 8 commitments. Does that sound right to you, Ms Cheek?
 9 A. No, it is a standard letter for price changes in
 10 general.
 11 Q. Right. Let us have a further look up the chain.
 12 Somebody called Ms Platt, I think she is your senior
 13 person in the voice team as well?
 14 A. That is right , yes.
 15 Q. She talks about maybe needing to "tweak it".
 16 If you just look at the top of that page -- sorry,
 17 I think if you look at the previous page you can see
 18 that you were the sender. Can you see right at the
 19 bottom, "From: [Dee] Cheek ..."? {F/708/3}
 20 A. Yes.
 21 Q. Then back on to page 4 {F/708/4} we can see your email:
 22 "Just had a chat with Jonny about this ..."
 23 Jonny is Jonathan Bunt, I think?
 24 A. Yes.
 25 Q. "... and had a look at our statement in response to the

1 Class Action, which includes this ... "
 2 Then this is the statement in response to the Class
 3 Action, apparently:
 4 "The claim seeks to hold against BT the fact that it
 5 implemented a voluntary commitment to reduce prices for
 6 customers that have a BT landline only and not to
 7 increase those prices beyond inflation (CPI)."
 8 So this was a public statement that BT had issued,
 9 was it?
 10 A. Yes, I think so.
 11 Q. Drafted by you or people in your team?
 12 A. I imagine it was probably by the press office that
 13 drafts public statements.
 14 Q. So somewhat oddly, it seems to suggest that the claim is
 15 a challenge to the commitments prices, but that is not
 16 right, is it , Ms Cheek?
 17 A. No, I mean, I think, just to try and explain the context
 18 here, what we are doing here is trying to work out how
 19 to explain to landline only customers what is actually
 20 a very complicated position. So the position, as you
 21 know, in the commitments is that we will not put up
 22 their prices in the basket of services that they take by
 23 more than CPI.
 24 Now, the way that BT systems work, calls prices are
 25 the same for all customers, and so calls prices for

1 customers in general, including line only customers,
 2 would go up by CPI plus 3.9%, but we would make sure, in
 3 line with our commitments, that line rental prices for
 4 line only customers would be reduced accordingly, so
 5 that overall the basket would only go up by CPI.
 6 That is a very complicated thing to explain to
 7 customers in a pricing notification , and so we were
 8 trying to work out how to word it, the price
 9 notification , given all of our obligations in relation
 10 to prominence and transparency and clarity in those
 11 notifications , how to actually word the notification to
 12 line only customers.
 13 The standard letters that go to customers are very
 14 clear that prices will be going up by CPI plus 3.9%, and
 15 we wanted to make sure, not least because we had
 16 recently been making public statements about our line
 17 only customers, but just generally anyway, we wanted to
 18 try and make sure that we could make those notification
 19 letters clearer for line only customers. So this email
 20 chain is really discussing that, how best to explain it
 21 to customers clearly.
 22 Q. Okay, let us take that in stages.
 23 So the letter says -- so we think -- we have located
 24 this as customers benefiting from the first set of
 25 commitments from 2018, yes?

1 A. The letter is our general price change notification
 2 letter .
 3 Q. It is talking about prices increasing in line with the
 4 rate of inflation , "some will increase by CPI, plus
 5 3.9%", so that is calls . So this must be VOCs, must it
 6 not, Ms Cheek?
 7 A. No, I ...
 8 THE CHAIRMAN: I think what she is saying is that they were,
 9 in general terms, increasing prices by CPI plus 3.9%.
 10 That was to everybody. It would not have that effect
 11 across the board for the customers that were affected by
 12 the commitments.
 13 A. That is right , exactly.
 14 THE CHAIRMAN: But you were talking about yes, but how do
 15 you explain the offsetting and all the rest of it . Is
 16 that --
 17 A. Yes, exactly, yes.
 18 MR ARMITAGE: Just to be clear, what is said in the letter
 19 some will increase by CPI 3.9% was true; that was true,
 20 yes?
 21 A. Yes.
 22 Q. I take your point about the basket of services . Can we
 23 just then look at your email . So you have the quotation
 24 from the press statement in response to the Class
 25 Action. You say:

1 "So in the letters we should avoid saying anything
2 about CPI plus 3.9% in the opening para for Carmen
3 customers."
4 That is customers who are entitled to the commitment
5 to discount, yes?
6 A. Yes.
7 Q. You say:
8 "Even though it's true in relation to their call
9 prices, it would be impossible to include simple wording
10 to explain how this is offset within the basket, and the
11 danger is that a journalist would get hold of the letter
12 and use it to undermine our statement. I suggest we
13 just tweak the opening para to say:
14 "'We want to let you know that from 31 March 2021,
15 the price of some of your BT products and services will
16 increase. Take a look over the page to see how this
17 will affect your monthly bills'."
18 So you are suggesting tweaking the letter to remove
19 the reference to calls prices increasing by CPI plus
20 3.9%, yes?
21 A. Yes, that is right.
22 Q. Even though that is what is going to be happening, yes?
23 A. Well, it is, but for a line only customer that would be
24 quite a confusing statement because it has been stated
25 publicly in this context but also it is generally the

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1 case that they will only see an overall increase of CPI.
2 Q. But the reason you want to make that tweak is that you
3 are worried about your statement in response to the
4 Class Action looking inaccurate, yes?
5 A. Yes, partly that, and also clarity for line only
6 customers.
7 Q. Should I say more inaccurate than it already is,
8 Ms Cheek, bearing in mind that it talks about holding
9 against BT a voluntary commitment to reduce prices, yes?
10 THE CHAIRMAN: Sorry, I do not quite understand this point
11 about holding against that you were referring to here.
12 MR ARMITAGE: Neither do I.
13 THE CHAIRMAN: No. I am not quite sure why you say it was
14 inaccurate. I thought that — and I will just ask you,
15 Ms Cheek and you may not be able to answer this so if
16 you cannot you cannot.
17 The claim seeks to hold against BT i.e. as a point
18 against BT in the context of the claim, but in fact it
19 has reduced the prices.
20 A. Yes, that is right.
21 THE CHAIRMAN: The claim says your prices are too high and
22 an abusive thing and it seems to be saying here the
23 claim seeks to hold against BT the fact that it has
24 implemented a voluntary commitment. In other words,
25 well you did reduce the prices and that is what you

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1 should have been doing all the time effectively .
2 A. Yes.
3 THE CHAIRMAN: Now, that is a reading I have got but I do
4 not know whether that is correct or whether you are in
5 a position to comment on it.
6 A. I think my understanding of the fact that we chose to implement
7 were suggesting that the fact that we chose to implement
8 a voluntary commitment back in 2017 does not mean that
9 we necessarily were accepting that our pricing for SFV
10 customers was unfair and that was, we understood at the
11 time anyway, when we drafted this statement that that
12 was the argument that was being made by the Class
13 Representative.
14 THE CHAIRMAN: Yes, thank you.
15 MR ARMITAGE: Yes. I am not overly labouring the point.
16 The only point I am making is that the statement refers
17 to the discount and does not refer to the fact that the
18 claim is about excessive pricing, but I am not overly
19 labouring the point.
20 THE CHAIRMAN: Right, well, I think we have explored this
21 point.
22 MR ARMITAGE: I am grateful.
23 Could we come back then to the emails at {F/709/1}.
24 I should say, sir, I am conscious of the time. I think
25 I am pretty nearly done. I may need another

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1 ten minutes. I do not know ...
2 THE CHAIRMAN: Well, we may have a couple of questions as
3 well, so I think what we will do is if you are about to
4 move on to something else —
5 MR ARMITAGE: I am finishing.
6 THE CHAIRMAN: Finish 709.
7 MR ARMITAGE: I really do then have only one more document
8 to show, so perhaps I can crack on.
9 THE CHAIRMAN: All right.
10 MR ARMITAGE: So we pick this up at {F/709/4}. Can you see
11 an email from Ms Kumar to you on 27 January 2021, yes?
12 A. Yes.
13 Q. So it is established by this point in time you knew
14 about the existence of the Class Action, yes?
15 A. Yes.
16 Q. You see Ms Kumar says:
17 "Hi Dee.
18 "I've just found this, where we have stated that we
19 have SMP ... I think this was my fault."
20 Yes?
21 A. Yes.
22 Q. Then you can see below that she forwards your internal
23 email to her, the one in which you had said it is best
24 not to tell Ofcom that BT has SMP. You say:
25 "Don't worry about it. Thanks for checking."

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1 Then over on page {F/709/3}. Again, you have to
 2 look at page {F/709/2} to see it but that is your email
 3 at the top of the page.
 4 A. Yes.
 5 Q. What you say is:
 6 "None of these emails or other input to Ofcom below
 7 (including the first you sent me) is suggesting that we
 8 are entering into these new five year commitments as a
 9 result of a belief that we have SMP or a belief that we
 10 would otherwise be harming these customers. Have you
 11 also reviewed any emails, presentations etc sent to
 12 Ofcom early in 2020 (around the time of that first
 13 meeting you attended)? I still need to do the same."
 14 Then you say:
 15 "Note that my email to you on 16.33 on
 16 7th August 2020 was incorrect because in fact Ofcom did
 17 not find that we had SMP back in 2017."
 18 So that is the self correction there, is it not,
 19 Ms Cheek?
 20 A. Yes.
 21 Q. You do not correct the statement to Ms Kumar about Ofcom
 22 found — sorry, let me start again. You do not correct
 23 your statement to Ms Kumar that probably nothing had
 24 changed. The correction you make in relation to what
 25 you had said about Ofcom finding that you had had SMP

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1 back in 2017, yes?
 2 A. Yes.
 3 Q. Now, I think we touched on this earlier. I apprehend
 4 that the basis for that self correction is that you were
 5 of the view that Ofcom's conclusions in 2017 were only
 6 provisional on this point, yes?
 7 A. Yes.
 8 Q. So that is the position. If that is the only point you
 9 are making, we can leave that, I think, to be picked up
 10 in submissions.
 11 But in terms of the timings of these emails,
 12 Ms Cheek, it looks like Ms Kumar had been asked to
 13 review documents to identify materials that might be
 14 prejudicial to BT's position in the present proceedings,
 15 yes?
 16 A. Yes.
 17 Q. Also that you were going to do the same?
 18 A. Yes, yes.
 19 Q. So just one more email, sir. It is a very short one.
 20 THE CHAIRMAN: Yes, sure.
 21 MR ARMITAGE: So {F/726/1}. It is a slightly odd layout.
 22 It looks as though a couple of emails have been copied
 23 and pasted on to the same page. But you can see that it
 24 begins with an email from you to Mr Bunt on
 25 20 October 2021.

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1 A. Yes.
 2 Q. I do not think this is one of the documents you referred
 3 to in your statement, Ms Cheek?
 4 A. No, this is actually just an instant message rather than
 5 an email. I do not think it matters that ...
 6 Q. I see. Let us see what you say. This is WhatsApp or
 7 something is it?
 8 A. We have a teams messaging facility, yes.
 9 Q. So your team's message to Mr Bunt. You say:
 10 "I'm just on the Price Change steerco ... you might
 11 know this already, but Laura ..."
 12 Is that Laura Platt again?
 13 A. That is right.
 14 Q. "... Laura is saying that the final decision on whether
 15 we cap is going to an Exec session on 3rd November.
 16 Laura is having an offline session with Sharon and
 17 Christian on 27th Oct."
 18 Sharon and Christian are?
 19 A. Senior people in BT Consumer, in the commercial team —
 20 Q. "... On 27th Oct to confirm recommendation. She [that
 21 is Laura] is recommending no cap, but Home Essentials
 22 and BT Basic to be frozen so we have a PR defence for
 23 financially vulnerable etc. (Also HPS frozen by
 24 definition, and Carmen overall only sees CPI increase).
 25 She thinks this recommendation is v likely to be

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1 agreed... but won't be until 3/11 that we have final
 2 confirmation."
 3 Just to pick up a few of those points. Home
 4 Essentials and BT Basic. Those are, I think you
 5 confirmed earlier, products that are only available to
 6 customers on certain government benefits, yes?
 7 A. Yes, that is right, yes.
 8 Q. So the prices of those products are going to be frozen
 9 as a PR defence, yes?
 10 A. Yes, to protect those people who are clearly financially
 11 vulnerable.
 12 Q. As a PR defence are financially vulnerable, yes?
 13 A. Yes.
 14 Q. Then you say "HPS frozen by definition". That is Home
 15 Phone Saver again, is it not?
 16 A. That is right.
 17 Q. "Frozen by definition" meaning because it is by
 18 definition a fixed price product, yes?
 19 A. Yes, that is right.
 20 Q. Then you refer to the Carmen position. That is the VOCs
 21 who are entitled to the discounted price under the
 22 commitments, yes?
 23 A. That is right.
 24 Q. So they are only going to see a CPI increase, yes?
 25 A. Correct, yes.

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1 Q. So obviously no question of their prices going up by
2 anything more than that?
3 A. Correct.
4 Q. Then we see, as I say, Laura, Laura Platt, "thinks this
5 recommendation is v likely to be agreed". That is
6 a recommendation not to cap, yes?
7 A. That is right.
8 Q. So that must be a recommendation not to cap price
9 increases including for line rental products other than
10 the specific ones mentioned here, yes?
11 A. Yes, that is right.
12 Q. So it would cover the price paid by split purchase
13 customers?
14 A. Yes, and indeed all our entire portfolio within
15 Consumer.
16 THE CHAIRMAN: Bundles?
17 A. Bundles as well.
18 THE CHAIRMAN: Yes, just one moment.
19 A. Yes, all of our prices, basically now we have a CPI
20 plus 3.9% mechanism in our terms and conditions so
21 customers understand each year what is going to happen,
22 so there was a discussion about whether that CPI
23 plus 3.9% should be applied in the high inflation
24 context.
25 MR ARMITAGE: Then we look at Mr Bunt's response. He first

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1 says:
2 "Very helpful -- thanks."
3 Then just under a minute later he says:
4 "She should pay VERY close attention to how we write
5 those slides -- imagine them in an investigation or
6 class action in the future."
7 So the express concern is that slides in relation to
8 a price increase decision might be scrutinised in an
9 investigation by the regulator or a Class Action in the
10 future, yes?
11 A. Yes.
12 Q. Just as you told Ms Kumar not to tell Ofcom that BT had
13 significant market power, yes?
14 A. Yes.
15 Q. By Class Action, Mr Bunt must be referring to the
16 present proceedings, yes?
17 A. Yes, or any other.
18 Q. Or any other future Class actions?
19 A. -- proceedings, yes.
20 Q. I do not have any more questions. Mr Beard may have
21 some for you and the Tribunal of course.
22 MR BEARD: I am very happy to pick up but unless the
23 Tribunal's questions you want to proceed with first,
24 but --
25 THE CHAIRMAN: No, have you got much on by way of

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1 re-examination?
2 MR BEARD: No, I just literally wanted to clarify one or two
3 issues on whether Ms Cheek had seen documents because
4 Mr Armitage was putting documents and asking for her
5 interpretation and he did not ask at the outset whether
6 she had actually seen them.
7 THE CHAIRMAN: You deal with this now.
8 Re-examination by MR BEARD
9 MR BEARD: If we could go to the [draft] transcript page 39,
10 Mr Armitage went to document {F/229/1}. He asked you
11 various questions about it and your interpretation of
12 it. He did not ask, do you recall seeing this document
13 at the time in March 2014?
14 A. I do not, no.
15 Q. Could we go to {F/285/1}. This was a post investment
16 review that he took you to on Home Phone Saver. He did
17 not ask you whether you had seen that at the time. Do
18 you recall having seen that document at the time?
19 A. No, I do not, no.
20 Q. In your statement in paragraph 14 at footnote 1 you
21 refer to a document which is at {F/242/1}. I do not
22 know if it is in the bundle.
23 A. Yes.
24 Q. It is.
25 THE CHAIRMAN: We have got it here.

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1 MR BEARD: Do you want to just look through that because
2 that is the document you referred to. (Pause). You
3 refer to it in your witness statement. Was that the
4 source of your evidence in paragraph 14 in relation to
5 Home Phone Saver?
6 A. Yes, that is correct.
7 Q. So was this the sort of information you saw at the time
8 about Home Phone Saver?
9 A. Yes.
10 Q. On [draft] transcript page 37, line 15 through to
11 page 38, line 9 you refer to price change notifications.
12 Did you ever see any of the price change notifications?
13 A. Yes.
14 Q. I am going to put a document in front of you and ask you
15 what it is. It is {F/722/1}, please. It may not be in
16 the bundle.
17 A. No.
18 Q. You may not -- if you want to ask the electronic bundle
19 to scroll down so you can see the second page.
20 THE CHAIRMAN: Is it the second page you want to look at?
21 MR BEARD: No, it is not particularly.
22 THE CHAIRMAN: Oh.
23 MR BEARD: I just want to give Ms Cheek the opportunity to
24 see the document, to see whether or not --
25 THE CHAIRMAN: Before we scroll down, can we have it

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1 enlarged so that it is easier for her to see it. That
 2 is it.
 3 A. Thank you. Yes, these are the sorts of price change
 4 notifications that I or someone in my team would see
 5 just to make sure that we were being clear enough in our
 6 notification to comply with Ofcom's guidance on price
 7 change notifications.
 8 MR BEARD: To whom would these be sent?
 9 A. Generally to all customers. They are sort of -- the
 10 information that is given is generic about how you are
 11 changing your prices and then they are tailored for the
 12 services and products that the customer has got, so
 13 there would be -- and the box about how we are making
 14 your BT experience even better would be tailored to the
 15 specific group of customers to which those improvements
 16 are relevant. So in this case this letter looks as
 17 though it must be one for a standalone fixed voice
 18 customer because it is talking about Home Phone Saver
 19 and caller display and nuisance calls.
 20 MR BEARD: I am grateful. I just wanted to identify what
 21 had been referred to in response to the questions that
 22 have been posed.
 23 THE CHAIRMAN: Thank you.
 24 MR BEARD: I do not have any further questions for the
 25 witness.

1 THE CHAIRMAN: I just have a couple and the Members of the
 2 Tribunal may have more.
 3 Questions by THE TRIBUNAL
 4 THE CHAIRMAN: Different points, Ms Cheek. Could you go to
 5 paragraph 38 of your witness statement. {D/5/9}. This
 6 is a meeting with Ofcom and it follows from what you
 7 were just asked about in the paragraph 36 and then there
 8 is paragraph 37 which is another meeting. Then you say,
 9 at paragraph 37, the meeting was to agree a set of
 10 principles for future BT Commitments. Then in 38 you
 11 say this:
 12 "During the meeting we communicated that BT had no
 13 concerns about the principles of the proposed
 14 commitments but that we would like to simplify the
 15 methodology for measuring the basket of charges subject
 16 to the price cap. I was not familiar with and cannot
 17 recall the full details ... however, I recall that the
 18 proposed methodology was a simplified methodology based
 19 on the average revenue per user rather than the more
 20 complex methodology."
 21 Are you here talking about the methodologies that BT
 22 would be using internally to make sure you were not
 23 going above the CPI plus 2.5 or was it something else?
 24 A. Yes. Well, all of the commitments and calculating
 25 the price that line rental for SFV, for voice only

1 customers would need to be in order to make sure that
 2 overall the basket of services did not exceed the CPI
 3 cap, and that is actually quite a complex methodology
 4 because it involves something like 180 different
 5 products and services that potentially a voice only
 6 customer could have, and they are each weighted
 7 according to the revenue that BT's received from
 8 voice only customers for each product, and then there is
 9 a very complicated --
 10 THE CHAIRMAN: Sorry, that is the bit I wanted to get. You
 11 have to look at the average revenue per customer?
 12 A. So what we wanted to do was, and this was more of
 13 a debate between our Finance team and Ofcom's Finance
 14 team, so excuse me if I am not getting exactly the
 15 details right but basically, as I say, the methodology
 16 from the 2017 commitments was a very complicated one
 17 which involved the whole list of potential products that
 18 a voice only customer could have to be weighted
 19 according to the revenue for each product in order to
 20 measure the extent to which the basket overall had gone
 21 up by CPI or less.
 22 THE CHAIRMAN: For that particular customer, for those
 23 customers with those particular --
 24 A. The customers as a whole.
 25 THE CHAIRMAN: Customers as a whole?

1 A. Yes.
 2 THE CHAIRMAN: I see.
 3 A. So in order to work out what the standard -- what the
 4 line rental price should be the following year to make
 5 sure that we were complying with the commitment on the
 6 basket, there was a complicated methodology for doing
 7 that that involved looking at revenues for each
 8 individual 180 different products.
 9 THE CHAIRMAN: I see.
 10 A. So what we wanted to do, going forward, was to try and
 11 simplify that by just saying can we look at the ARPU for
 12 voice only customers as a whole and then making sure
 13 that the following year that ARPU would not go up by
 14 more than --
 15 THE CHAIRMAN: Right and that was a methodology that you
 16 then discussed with Ofcom?
 17 A. Yes.
 18 THE CHAIRMAN: Because Ofcom had to be happy with the way
 19 you were doing it; is that right?
 20 A. Yes, that is right.
 21 THE CHAIRMAN: They were presumably.
 22 A. We actually ended up with something which looked more
 23 like the original complex --
 24 THE CHAIRMAN: But this was all in discussion with Ofcom and
 25 that was all I really wanted to check.

1 A. Yes.
 2 THE CHAIRMAN: Yes, thank you. Just give me one moment,
 3 please.
 4 I think your paragraph 42 is a continuation of this
 5 theme. If you have a look at that. {D/5/10}. Just
 6 have a read of it.
 7 A. Yes, yes.
 8 THE CHAIRMAN: Just so I am just understanding it, you are
 9 saying because of the way you did your calculations
 10 there was no need for a cap on line rental because under
 11 no circumstances could it go up as a result of the way
 12 you were doing things.
 13 A. Exactly, yes, yes.
 14 THE CHAIRMAN: Thank you. Just give me one moment, please.
 15 (Pause).
 16 So all of these points, look at paragraph 45, the
 17 calculation methodology, that is simply the calculation
 18 to ensure that what you were doing was not going to go
 19 above the CPI 2.5?
 20 A. Or the general CPI cap on the basket, yes.
 21 THE CHAIRMAN: Yes. Thank you. That is all I have. No,
 22 thank you very much, Ms Cheek. That completes your
 23 evidence. Do feel free to leave the witness box.
 24 A. Thank you.
 25 (The witness withdrew)

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1 MR BEARD: That concludes for today.
 2 THE CHAIRMAN: That concludes for today. So we will resume
 3 on Monday with Mr Bunt.
 4 MR BEARD: Yes.
 5 THE CHAIRMAN: Thank you to both sides for the new document
 6 on agenda items and questions on hot tubs which we will
 7 now look at carefully.
 8 MR BEARD: Hopefully it will assist the claim.
 9 THE CHAIRMAN: Thank you so much for your endeavours in
 10 getting to where you have got on that and then we will
 11 revert at the beginning of next week on that.
 12 Thank you very much. We will rise now.
 13 (1.17 pm)
 14 (The hearing concluded until Monday, 5 February at 10.30 am)
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