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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 29<sup>th</sup> January – Friday 22<sup>nd</sup> 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

**Respondent**

(2) British Telecommunications  
PLC

**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 and British Telecommunications PLC)

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

Monday, 4 March 2024

(10.30 am)

THE CHAIRMAN: Good morning. Some of you are joining us live stream on our website, so I must start with the customary warning: an official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as contempt of court.

Now, you will see that Mr Ridyard is not present in court. He is with us remotely. There have been transportation difficulties today. But nonetheless, Mr Ridyard is going to be leading the questions on quantum, so I will now hand over to him.

MR BEARD: I am really sorry, can we just get them both reaffirmed.

THE CHAIRMAN: It is becoming a very bad habit. I apologise for that. Yes.

DR HELEN JENKINS (reaffirmed)

MR DAVID PARKER (reaffirmed)

Questions by THE TRIBUNAL

THE CHAIRMAN: Right. I shall now hand over to Mr Ridyard.

MR RIDYARD: Good morning, everyone.

So our first questions today are about the agreement

1 on the Class size, and we have seen the letters that  
2 came in this morning or over the weekend, so it seems  
3 that we basically have agreement, as we understand it,  
4 on the Class size after the Commitments, but there is  
5 still some difference between you as to how to allocate  
6 people between VOCs and SPCs beforehand.

7 Dr Jenkins, is that a correct summary?

8 DR JENKINS: Yes, that is my understanding.

9 MR PARKER: I think the position has changed. I am happy to  
10 agree to Dr Jenkins' split pre-Commitments. I think the  
11 only remaining sort of issues are about gifted accounts  
12 and business customers. But subject to those, I think  
13 we are in the same place on the size of the Class.

14 MR RIDYARD: All right. Okay. Is there anything to say  
15 about the gifted business?

16 MR PARKER: You have some questions later on, but I do not  
17 think those should be excluded.

18 THE CHAIRMAN: Just to be clear, there has not been any  
19 dispute about the overall size of the Class before you  
20 do the sub-classes in any event, so the split is  
21 actually -- it is a numerical split now?

22 MR PARKER: Yes, so we are all in agreement after the  
23 Commitments. We had -- we were in agreement about the  
24 total pre-Commitments. There was some debate about how  
25 you split between Voice Only and Split Purchase

1 Customers, and there was a very minor issue about test  
2 accounts --

3 THE CHAIRMAN: So this is not just a percentage split; the  
4 figures are agreed, the underlying figures are agreed?

5 MR PARKER: The underlying figures are agreed, yes.

6 THE CHAIRMAN: Good, thank you.

7 MR RIDYARD: Let us move on to the question of actually  
8 quantifying the overcharge. First of all, do we have  
9 agreement on the actual prices charged by BT throughout  
10 the claim period?

11 Mr Parker.

12 MR PARKER: I believe we do. The latest version of the  
13 ARPU is I think in -- no need to turn it up, but it is  
14 in Parker 5. For your note, it is at {E/5/192}, Table  
15 19. Those are the latest versions which, as  
16 I understand it, are -- I am not aware of a dispute.

17 DR JENKINS: So I think there were two differences prior --  
18 at the joint expert stage. One was about the treatment  
19 of BT employees, and I agree with, I think it was  
20 Mr Duckworth, who set out that when we strip out  
21 employee lines, we should strip out revenue from ARPU,  
22 so I agree to that.

23 There was also the question of Line Rental Saver.  
24 I think there is some dispute about the value of that,  
25 but I think the final agreed figures include LRS, but

1           that is my only query about whether we are on the  
2           same -- whether we take the same position.

3           But it is a small difference and I think they are  
4           more or less agreed, so we can ...

5       MR RIDYARD: Fine. Thank you very much.

6           So then we get to obviously the more contentious  
7           area, which is what we should be comparing the actual  
8           prices against.

9           Maybe Mr Parker, you might want to go first on this.  
10          I mean, as I understand it, you are proposing that we  
11          compare the actual prices with the cost-plus benchmark.  
12          Is that your position?

13       MR PARKER: Yes, those are the two prices or measures that  
14       we have. We have a cost-plus benchmark, we have the  
15       actual prices. I have compared the two and taken the  
16       difference for the purposes of quantum.

17       MR RIDYARD: So your position then is that the cost-plus  
18       benchmark is, if you like, the non-infringing price, or,  
19       rather, the workable competition benchmark, I should  
20       say, and it is simply a matter of comparing the actual  
21       prices against that notion of workable competition in  
22       your -- under your analysis.

23       MR PARKER: That is the way I have looked at it. As you  
24       sort of trail there, there is potentially a difference  
25       between the non-infringing price and the price under

1 workable competition, and that is because of the  
2 significant and persistent test under limb 1, so there  
3 there is some gap there.

4 But for the purposes of quantum, having reached the  
5 conclusion that we are above the significant and  
6 persistent level, obviously all these points are matters  
7 for the Tribunal, I have taken the view then that  
8 the prices -- we do not have what the non-infringing  
9 price is, so I have taken the workable competition price  
10 and the ARPU and taken the difference.

11 MR RIDYARD: So then just to be clear on that possible  
12 distinction between non-infringing and workable  
13 competition, you are saying that the difference arises  
14 because of the significance and persistence elements of  
15 that test, but you are effectively not proposing to give  
16 BT any credit for that difference in the way in which  
17 you approach the damage calculation?

18 MR PARKER: I am not clear what appropriate difference one  
19 would give. Clearly it would be easy to adjust the  
20 calculations if necessary. But, no, I am not at the  
21 moment giving BT any credit for that -- for  
22 a non-infringing price that is above the level of  
23 workable competition. I am not actually sure what that  
24 is, if you like.

25 MR RIDYARD: Okay, that seems to imply that either you think

1           there is a difference between workable competition and  
2           non-infringing price, or you do not, so I am not sure  
3           what you are saying about that.

4       MR PARKER: Well, for the purposes of liability I am saying  
5           there is a difference between workable competition and  
6           non-infringing price, and that gap is the significant  
7           and persistent test. So you could price above the  
8           workably competitive level on a persistent basis, but  
9           not significantly above, and that would mean that you  
10          were above the workably competitive level but not so  
11          much as to infringe Chapter II. So from a liability  
12          perspective, there is that gap.

13                 From a quantum perspective, there is then a question  
14           of: do you say, well, we should calculate whatever the  
15           non-infringing price is and give BT that credit, if you  
16           like, and it can only have resulted in damage above  
17           whatever the non-infringing price is, and so on? The  
18           problem is, we do not know what the non-infringing price  
19           is, because that is ultimately going to be a legal  
20           question as to how large the significant metric is in  
21           significant and persistent. Therefore I have looked at  
22           the two numbers we do know, which is the workably  
23           competitive benchmark and the price.

24       MR RIDYARD: Okay.

25                 Dr Jenkins, what is your perspective on this?

1 DR JENKINS: Yes, so in a sense, I do not necessarily agree  
2 that there is -- that the way the question is worded,  
3 which is "the" cost-plus benchmark and "the" actual  
4 price. I think "the" actual price, we can agree there  
5 is one price, but the way in which the cost-plus  
6 benchmark itself may be defined differs. So we also  
7 know, even in the structure of the *United Brands* test,  
8 there can be a difference between the cost-plus  
9 benchmark and the fair price, right, so that is allowed,  
10 that there is -- the limb 2 characterisation can mean  
11 there is a difference with what is a fair price, and, in  
12 my view, the loss should be calculated from the price  
13 that would hypothetically have been charged under  
14 workable competition, which is the fair price, rather  
15 than the cost-plus benchmark.

16 So that fair price takes account of all the limb 1  
17 and the limb 2 factors, that that is what is being  
18 sought to be identified, what is the fair price under  
19 workable competition, and the *United Brands* test gives  
20 a guide of what are the conditions that you would take  
21 into account. In a sense, it starts with limb 1,  
22 because it says: okay, if you identify a price under  
23 limb 1, such that the observed price is below or equal  
24 to that benchmark, then it is fair, because it is  
25 reflecting the costs to the producer. So that is like



1 one test of fairness. Then you have the limb 2  
2 considerations, which then say there could be other  
3 reasons why prices are above any identified cost-plus  
4 benchmark.

5 So I think, as a matter of economics and logic, you  
6 would take that the right benchmark is the fair price,  
7 once you have determined what is fair.

8 Then if we think about what does that mean in this  
9 case? My opinion is that there are a range of fair  
10 prices that could be observed, and that is actually  
11 driven both from how one thinks about the cost-plus  
12 benchmark in this case, as well as other considerations  
13 relating to economic value and comparators, so that  
14 there is not -- one cannot identify the unique cost  
15 benchmark that would -- that one could certainly say  
16 would be observed under workable competition.

17 I think the cost-plus benchmark that Mr Duckworth  
18 has put forward he has described, himself, as a cost of  
19 production, and that in itself is unlikely therefore to  
20 be a good measure of what would actually be observed in  
21 workable competition in this case. It does not reflect  
22 the range of ways that common costs could be allocated,  
23 and in a situation even where common costs are not well  
24 understood, it does not reflect the different ways that  
25 indirect costs could be allocated under workable

1 competition.

2 Then in terms of the rate of return chosen, it does  
3 not reflect the dispersion that you might see in  
4 workably competitive conditions to reflect such aspects  
5 as brand, efficiency, aspects of horizontal  
6 differentiation, risk, reward, uncertainties. All of  
7 those sorts of things are things you would see in  
8 a workably competitive environment.

9 THE CHAIRMAN: Could I just follow up on that. The context  
10 for dealing with these quantum questions is  
11 hypothetically that it has been found that the price  
12 charged was unfair per *United Brands*, so that debate has  
13 been and gone. So this is purely about what should be  
14 the foundation for the quantum exercise and the damages  
15 and the difference between two figures which is then  
16 going to be multiplied.

17 Are you saying that this should be calculated -- is  
18 your counterfactual, therefore, you say, well, what  
19 would they have done had it not been unfair? Well, they  
20 would have charged a fair price, and the fair price  
21 could be above the competitive benchmark which the  
22 Tribunal has already found. Because obviously the  
23 Tribunal will have found a benchmark, and it will  
24 already have found, on this hypothesis, that it is  
25 excessive, that significant ...

1           So the thing that should be deducted from the price  
2           charged, or the ARPU, is the fair price which may be  
3           above the competitive benchmark?

4       DR JENKINS: That is right, depending how the competitive  
5           benchmark itself has been arrived at. If the benchmark  
6           itself already captures all the limb 1 and limb 2  
7           factors, then you may not have anything additional. But  
8           in the event that you have a cost-plus benchmark that  
9           does not take into account questions of economic value  
10          or significance and persistence, then the price that  
11          should be used is the fair price, which is the one that  
12          does take into account all the considerations.

13       THE CHAIRMAN: Right. I understand why you have not done  
14          this, but am I right in thinking it is not as if you  
15          have proffered some particular fair price?

16       DR JENKINS: I have. I have proffered a fair price.

17       THE CHAIRMAN: I am sorry, I have missed it in that case.

18       DR JENKINS: No, that is fine. In the sense that the price  
19          that I calculate under the SAC combinatorial approach,  
20          which is a cost-plus benchmark, but it is one which  
21          I think is the fair price, and therefore one can use  
22          that as the benchmark to use as quantum. That is  
23          implicitly -- or explicitly what I have done in my  
24          reports. The reason being that that approach allows for  
25          the flexibility for a firm in a workably competitive

1 environment to recover its costs in response to the  
2 market conditions, and it also used a rate of return  
3 which recognises both -- recognises the dispersion by  
4 taking the upper end of the distribution of returns. It  
5 is capturing some elements of economic value, brand,  
6 efficiency, all of those elements.

7 THE CHAIRMAN: I see. So if you were looking at your model,  
8 and for some reason it is still excessive, perhaps  
9 because some of your variables have changed or something  
10 like that, that is your conception of a fair price?

11 DR JENKINS: That is right.

12 THE CHAIRMAN: There would be nothing to add on to it, to  
13 take away from the actual value?

14 DR JENKINS: Yes.

15 THE CHAIRMAN: Ah.

16 DR JENKINS: Given there is uncertainty generally, the  
17 Tribunal might say, "oh, we are going to add some small  
18 buffer at that point", you know. But as a matter of  
19 economic principle, I think once you have taken the  
20 limb 1 and limb 2 considerations into account, and you  
21 have thought, okay, here is the range of reasonable  
22 prices that one might observe in workable competition,  
23 and here is sort of a fair price in that context, then  
24 you would not expect -- you would quantify the  
25 difference between that fair price and the actual price.

1 THE CHAIRMAN: Right. So the real work that your conception  
2 of fair price is doing on quantum would be, for example,  
3 if, hypothetically, we were to use a Duckworth-derived  
4 benchmark which yielded an excessive price and an  
5 unfair -- and then we looked at it and it was unfair,  
6 you would say: there could still be a fair price above  
7 his competitive benchmark which relates to factors, and  
8 the question is depending on whether we have taken all  
9 those factors into account already or not; is that  
10 a fair summary?

11 DR JENKINS: That is a fair summary with -- so if one goes  
12 for a cost of production-type measure of the cost-plus  
13 benchmark, then there is a range of considerations that  
14 one would take into account, and whether the Tribunal  
15 takes them into account at the significant and  
16 persistent, or the limb 2 economic value comparator  
17 test, you have these other indicators of the general  
18 market context, what rivals were doing, the variation  
19 that you observe in pricing, both in this market and  
20 others, which reflect that taking -- if you take  
21 a benchmark that is the cost-plus benchmark and it is  
22 below the fair price, or below a likely fair price, then  
23 it seems to me that is problematic for the quantum. It  
24 does not reflect loss under article --

25 THE CHAIRMAN: I am sorry to persist with this but I just

1           want to be absolutely ... So what you are not saying,  
2           for example, is -- let us take something purely  
3           hypothetical -- the competitive benchmark is 50 and  
4           the price charged is 100, and therefore prima facie the  
5           overcharge would be 50. I take your point about other  
6           factors that you say might still have to be built in,  
7           but what you are not saying, for example, is, well, even  
8           if 50 is significantly, etc, above the benchmark,  
9           suppose somebody charged 60, that would not be  
10          excessive. So therefore you would take 100 from 60 --  
11          60 from 100. You are not doing it that way round, it is  
12          all about these additional factors?

13         DR JENKINS: Yes, so. If you had a cost benchmark that was  
14          at 50, and you observed reasonable workably competitive  
15          comparators were charging 60, then at limb 2 you might  
16          factor that in as part of your comparator analysis and  
17          say, well, 60 looks like a fair price, and so I am going  
18          to take 60 as my fair benchmark despite the fact that my  
19          cost benchmark is 50.

20         THE CHAIRMAN: Yes, and that is all in the limb 2 analysis.

21         DR JENKINS: But if what was said is at 50 you have  
22          incorporated all the factors, including all the limb 2,  
23          then, yes.

24         THE CHAIRMAN: Thank you.

25         MR RIDYARD: So is any of this adding anything that we have

1 not already fully discussed in the limb 1 and limb 2  
2 discussions, Dr Jenkins? Is there anything additional  
3 here that has not already been discussed two weeks ago?

4 DR JENKINS: We may not have -- we may not have thought or  
5 talked very much about the calls element of the quantum,  
6 which currently is quantified as every penny above  
7 Mr Duckworth's cost of production of calls, and I do not  
8 think much attention has been paid to -- I mean,  
9 a little bit, we talked a little bit about the limb 2  
10 considerations, if that is the right way to put it, for  
11 the calls element, but that -- there is a lot of  
12 evidence that the market context is one where you  
13 observe higher margins on calls quite -- and that BT's  
14 pricing is around the same level if not below its  
15 rivals' prices, that when Ofcom introduced the  
16 Commitments, it did not make any adjustment to the calls  
17 prices itself, and that the Class Members had not made  
18 use of, and in increasing frequency, alternative means  
19 of making calls through this period.

20 So I think that is more about how one determines  
21 what the fair price would be for that calls element,  
22 but --

23 MR RIDYARD: I am not clear why that would be an additional  
24 consideration here, because we looked at total revenues  
25 of the business and compared it to the costs, so

1 anything -- that surely is already included, the  
2 assessment of calls, is it not?

3 DR JENKINS: It does. All I am saying is when we are  
4 thinking about how you move from a cost-plus benchmark  
5 which is determined under conditions which are a cost of  
6 production approach, and then you move to thinking about  
7 what would be the fair price, which is what we are  
8 talking about here, your question was: is there anything  
9 more that we have not covered? So I think one would  
10 want to think about both access and calls as well as SFV  
11 services together since the claim, as it stands, has  
12 a significant element on the access element and on the  
13 calls element.

14 MR RIDYARD: Mr Parker, any comments on that?

15 MR PARKER: I think only a couple. One is a lot of that  
16 I think is already included in the limb 1 analysis in  
17 particular. I think the point about an adjustment for  
18 fairness as opposed to the cost-plus benchmark, I can  
19 see that.

20 Now, my view, as we discussed last week, is I do not  
21 think there is anything that would lead to an adjustment  
22 for fairness. But I can see that potentially, if you  
23 like, if you thought there was economic value, that it  
24 did not -- it was not sufficient to overcome the  
25 significant and persistent test, and if you were able to



1 put a number on that then ... so then you might still  
2 find overall the price was unfair, but maybe at that  
3 point you would want to adjust your cost-plus benchmark  
4 for the appropriate amount of economic value. But as  
5 I said, I do not think that there is any reason here to  
6 adjust for economic value, and so I would not make such  
7 a distinction in practice, but I can see that in  
8 principle it is potentially relevant.

9 MR RIDYARD: So you think the value element should be there,  
10 but you just happen to think the value is zero?

11 MR PARKER: I do not think there is any additional value  
12 over and above that contained in the cost-plus  
13 benchmark, so that is my view. I can see that in  
14 principle that could be adjusted.

15 MR RIDYARD: In the joint statement, I noticed there was  
16 discussion about a possible "buffer", which I think was  
17 a phrase that, Dr Jenkins, you seem to have introduced  
18 first of all, but Mr Parker, you also sort of addressed  
19 that question too.

20 Is that something -- has that already been accounted  
21 for in discussions you have already had, or was that  
22 something additional, Dr Jenkins?

23 DR JENKINS: I think perhaps, as one of the questions was  
24 worded about the difference between the non-infringing  
25 price and the price that would emerge from workable

1 competition, and I think, as Mr Parker said, it is quite  
2 difficult to know exactly what price would emerge from  
3 workable competition, but one can think about what  
4 prices could emerge from workable competition and so  
5 there is this range.

6 Now, the approach that I have brought forward with  
7 the SAC combinatorial, my position, and the fact that  
8 I have taken an upper bound range, is implicitly saying  
9 when you have a range of prices that could arise you  
10 take the upper end of that range and at that point you  
11 do not need much of a buffer, for want of a better word,  
12 and that is what I have introduced.

13 However, to the extent you have a range of prices  
14 that could arise and you choose a price that is towards  
15 the lower end of the prices that could arise, then there  
16 might be more need for consideration of a buffer so as  
17 not to choose a price and quantify loss on a price that  
18 would reflect a price below a fair price, if that makes  
19 sense. Sorry, if you have a range and all of those  
20 prices could be considered fair, and you take a lower  
21 end of the range, then you might want to include  
22 a buffer even having decided to select the lower end as  
23 your cost-plus benchmark.

24 MR RIDYARD: Is that not just another way of saying that you  
25 do not think we should have taken the lower price?

1 DR JENKINS: I think there are different ways of determining  
2 what is a fair price and, as I say, there is uncertainty  
3 about how to judge costs in the presence of common  
4 costs, and firms will allocate those in different ways,  
5 so --

6 MR RIDYARD: I think we understand all of the difficulties  
7 and the arguments on both sides, but I do not think --  
8 I do not see anything -- I cannot see anything  
9 additional here that we have not already been through.

10 DR JENKINS: No, I was just explaining that where the word  
11 "buffer" came from in my report was to say if you have a  
12 range and you choose the lower end, you may wish to  
13 include a buffer, which could be the same as the  
14 significant and persistent element.

15 MR RIDYARD: Yes.

16 DR JENKINS: I guess, in that, I would say that having  
17 a view of the upper end of that range could help you  
18 determine what the size of that buffer is.

19 MR RIDYARD: Mr Parker, anything further to add on this  
20 before we move on?

21 MR PARKER: No, I do not think so.

22 MR RIDYARD: Thanks.

23 Then we have a couple of questions about this gifted  
24 broadband, which I think is pretty small in the scheme  
25 of things, but there is just a question about what we do

1 about the situation -- this is where non-BT employees  
2 have been gifted broadband by a BT employee and whether  
3 we treat those customers as being in the Class and, if  
4 so, how we deal with any losses they may have suffered.

5 Mr Parker, do you have a quick summary on that?

6 MR PARKER: Yes. I do not think they should be excluded,  
7 that is because if you think about a counterfactual  
8 where SFV services were at a fair price, they would  
9 still be getting gifted broadband. I do not see that  
10 there is any connection between being given this gift  
11 and any excessive pricing on SFV services, and I do not  
12 think there has been any suggestion that people would  
13 not be given these gifts absent an excessive price.

14 So I think these are just two separate things. They  
15 happened -- these people happened to get gifted  
16 broadband, and that is a policy that BT, you know, that  
17 BT offers to its staff, to make these gifts. But I do  
18 not think there is any reason to exclude them, because  
19 people are still paying excessive prices on their  
20 residential SFV services.

21 MR RIDYARD: Dr Jenkins.

22 DR JENKINS: I did not opine on the nature of the decision  
23 about gifted customers. I think the BT position is  
24 these customers can be thought of like a bundle  
25 customer, because they are receiving overall broadband

1           and voice for the price of the voice line, and other  
2           bundle customers pay the voice price plus the  
3           incremental price for broadband. I think one would  
4           actually need some evidence on what those gifted  
5           customers are using it for. Would they have taken  
6           broadband in a bundle alternatively?

7           They are a very small number of the claim, so  
8           I did not do any investigation of the nature of those  
9           customers.

10          MR RIDYARD: Do we know how many there were of these  
11           customers?

12          DR JENKINS: Yes, I think it is 0.3 to 0.6 of the lines  
13           before April 2018, and 0.6 to 1.8 after, and that might  
14           be in the JES. I did take a note of the numbers.

15          MR RIDYARD: Okay. That is okay, I do not think we need to  
16           ...

17          DR JENKINS: I can get you the reference.

18          MR RIDYARD: I do not think there is much more to say on  
19           that just now, so we can move on to the business  
20           customers. Here we want to know, just in terms of the  
21           economic expertise, whether you as experts have got  
22           anything to add to this topic.

23           As a matter of economics, Mr Parker, I mean, should  
24           the business customers be excluded from the Class?

25          MR PARKER: I do not think so. I think they paid the, by

1           this stage, excessive prices on their SFV services and  
2           I think that tells you that they are in, at least from  
3           an economic perspective. They paid too much for the  
4           services they were using.

5           MR RIDYARD: Because in the counterfactual they would have  
6           paid a competitive price and just a gap, like any other  
7           customer.

8           MR PARKER: That is my view.

9           MR RIDYARD: Dr Jenkins, do you have a view on this?

10          DR JENKINS: No, I think they are clearly Class Members.  
11          There is a legal argument about the contractual position  
12          I think that BT has put forward. So I think the  
13          evidence I have put forward is more about the number of  
14          them in the Class, and also the comparator products  
15          perhaps being different for this group, so under limb 2.  
16          If they are in the Class you could consider that what is  
17          considered a fair price for them would also -- you would  
18          take into account the price that business customers  
19          would have paid, and I have presented that in my second  
20          report.

21          MR RIDYARD: Okay, so that latter element, though, that is  
22          introducing a sort of economic element. Is it in  
23          a way -- it is really -- I guess that is close to the  
24          legal arguments in a way, is it not, that second point?

25          DR JENKINS: I think from the legal perspective there is

1 a sort of bright line question about are they in or out?  
2 If they are in, then they are different from residential  
3 consumers, so once they are in you may wish to consider  
4 what is a fair price for those small business customers.

5 THE CHAIRMAN: Which you would do at the limb 2 stage.

6 DR JENKINS: Which I do at the limb 2 stage, and that might  
7 be different from the considerations you bring to bear  
8 with respect to residential consumers.

9 MR RIDYARD: Mr Parker, do you have any reaction to that  
10 particular issue?

11 MR PARKER: I think I agree that if you are going to think  
12 about business customers or some business customers  
13 being excluded, you do that in limb 2(ii), rather than  
14 at this stage. At this stage we are talking about  
15 quantum and the business customers are in.

16 MR RIDYARD: But the idea there might be a different  
17 benchmark for -- a different competitive benchmark for  
18 the business customers than for the non-business  
19 customers?

20 MR PARKER: I think once you have got to quantum, I am not  
21 sure we know -- I do not think we have a different  
22 competitive benchmark for business customers. I think  
23 it is the same benchmark at that point.

24 THE CHAIRMAN: Could I just follow on, just on this limb 2  
25 point with these business customers.

1           If economics do not have anything to offer on that  
2           and it is purely a point of law, say so. Can I just  
3           start with Mr Parker. If the notion is: yes, but the  
4           fact is that the product they should have been on would  
5           have cost them more in any event, is that limited to  
6           a limb 2(ii) or could this be a limb 2(i) question?  
7           I say that, of course, because the Class  
8           Representative's primary case is based on limb 2(i),  
9           unfair in itself, but could that still be a question of  
10          fairness that could be brought in at that point?

11       MR PARKER: I think it might be a legal question.

12       THE CHAIRMAN: I just want to give you the opportunity for  
13          something to say. If there is not, then that is where  
14          it will be debated.

15       MR PARKER: Yes, I think -- I can see how it comes into  
16          limb 2(ii) as a kind of comparator and you have my views  
17          on that, but I am not sure it comes in separately to  
18          limb 2(i) in the way that I have been thinking about it,  
19          but there may be a legal issue there.

20       DR JENKINS: Yes, I think it could be under both parts of  
21          limb 2, that consideration about the treatment of  
22          business customers.

23       MR RIDYARD: Right. So maybe we should move on to the point  
24          where there has been quite some discussion, and that is  
25          estimating the size of the business customers and how



1 important they are in terms of the Class overall. We  
2 have a number of issues here, but including the  
3 difference between the Ofcom survey estimates and the  
4 internal BT estimates.

5 Mr Parker, would you like to kick off on this one,  
6 please.

7 MR PARKER: Yes. So, as you say, there are basically two  
8 sources of data, there are some Ofcom surveys and there  
9 are some BT internal documents. The Ofcom surveys -- so  
10 it seems that there might be two types of business  
11 customer. There are business customers who are  
12 essentially residential customers and who look like --  
13 who use their home phones occasionally to make  
14 a business call, and then there are business customers  
15 who might -- who are using residential home services but  
16 seem to be doing it in some kind of separate way and  
17 using a sort of dedicated line for the purpose.

18 The BT documents are trying to estimate the number  
19 on that second category, so the people who have multiple  
20 lines. Now, there might be other reasons why they have  
21 multiple lines, but I think BT's view is they are the  
22 most likely to be business customers, kind of separating  
23 out their business usage.

24 I think the Ofcom -- the Jigsaw surveys that are  
25 carried out for Ofcom do not exclude the idea that there

1           may be a number of customers that are -- there may be  
2           quite a lot of customers that are just residential  
3           customers that are occasionally using a home phone  
4           landline to make business calls.  If you like, they are  
5           doing that as something -- you work from home  
6           occasionally and you make a business call or something  
7           on your landline.  I mean, I think it may be helpful to  
8           turn up some of the documents here because there is --  
9           I think it is worth just seeing them, if you forgive me.

10           So if we can go to {C/398.1/106}.  This is a 2022  
11           survey.  If we could zoom in a little bit.  Really here  
12           I am interested in the questions.  The question is about  
13           how much control do you have for making purchasing  
14           decisions in relation to communications services.

15           Then if you go to page -- so what you see is almost  
16           everyone, 97%, say they have their own budget.  So we  
17           can zoom in actually a bit on that point.  Thank you.  
18           So that is 2,055, the 97% figure.  Then jump out and go  
19           to page {C/398.1/108}, and then if we can zoom in on the  
20           line "Solely ... responsible", you will see the vast  
21           majority of those people have 85% and then 13%.  So  
22           people are either solely responsible or jointly  
23           responsible, and I think that is 85% and 24%, and there  
24           is a very -- 75% -- there is a small group of people who  
25           are -- someone else has primary responsibility.

1           What is essentially going on here is this is  
2 primarily micro businesses, so people with 1-5, 1-9  
3 employees, many of whom will be likely sole traders,  
4 I think.

5           Then if we could go to -- so that is just to say  
6 many of these people will likely be -- if you were  
7 a sole trader and you were asked the question: am  
8 I responsible for telecoms services in my company? You  
9 would say, yes, you are that person, I expect.

10          Then if we go to {C/398.2/153} and we zoom in there.  
11 So this is, if you have a landline service, do you have  
12 a specific business tariff or do you have a personal  
13 residential service? What we see there is about 50%,  
14 I think it is just over 50%, have a residential contract  
15 only. About -- I cannot really read those terribly  
16 well -- I think it is about 11% have a business contract  
17 only, and then another group have business, about 11%,  
18 have business and personal contracts.

19          If we go to the next page, {C/398.2/154}, and we  
20 zoom in on the "Home/office working" bit, then you can  
21 see that there is a set of people who -- some of whom  
22 work from the office, some of whom are hybrid working,  
23 and some of whom are mainly homeworking, and then  
24 a slightly larger percentage -- I think you will need to  
25 look at the underlying PDFs to really properly get

1 a handle on this to see the exact numbers, but there is  
2 quite a large proportion of the working from home people  
3 who are personal contracts only.

4 Then if we can go on to page {C/398.2/159}, this is:

5 "Why have you chosen not to have a business service  
6 for your landline service?"

7 Then most people say: a personal contract is fine  
8 for my business. Some people say: a business contract  
9 is more expensive. Some people say: I have never  
10 thought about it, and so on.

11 So what this is -- you cannot tell precisely, but  
12 what this is suggesting to me is there is quite a few  
13 people in this survey who are likely to be people who  
14 are using their home phone as a residential customer and  
15 they are using it as a business.

16 I do not think we need to turn it up. The 2016  
17 survey, which is {C/346.1/14}, has a quote saying:

18 "... micro businesses and sole traders often use  
19 residential packages. This is particularly the case  
20 among people who work from home and whose residential  
21 and business [packages] are one and the same."

22 So that is again suggesting the 2016 survey was  
23 reaching a similar sort of conclusion, and I think the  
24 levels of sort of working from home and hybrid working  
25 are somewhat less in the 2016 survey as you might

1 expect.

2 So those are the survey data. I think it is just  
3 worth going into them.

4 The BT data, there are a few different documents  
5 here. So if we can go to {F/433/1}. I think this is  
6 something I think that BT was -- this is slides for  
7 Ofcom, so it is BT when it was engaging with Ofcom  
8 throughout the review process.

9 If you go to slide {F/433/7}, if you have that  
10 second bullet there, number 2:

11 "[About] 100k of solus lines are either business  
12 lines or second lines."

13 So that is the 100k figure. I think that relates  
14 to -- we can see what has been -- basically the way this  
15 starts is, and there is a number of these charts which  
16 we will come to where you start with the total base of  
17 BT customers. In this case, we are taking out those  
18 with broadband with another provider, so we are taking  
19 out the split supplier customers, so that 100k is  
20 a combination of Voice Only and split service customers.

21 If we go to {F/434/3}, if you zoom in on the bit in  
22 the middle with the bullets saying:

23 "A mixture of data sources ..."

24 So you can see there the last bullet is the most  
25 important:

1           "The figure of 0.1m ... was sourced from our ...  
2 customer database ... [people] with multiple voice  
3 assets on the same billing account ... multiple bills at  
4 the same address ..."

5           And so on and so forth. So this was BT's approach  
6 to getting to that 100k figure. So those two relate to  
7 that single figure of 100k.

8           At {F/821/28} we have a similar figure. This is  
9 a document of 28 January 2018, so this is about when BT  
10 was thinking about who is eligible for the Commitments.  
11 So you start with the total landline base, so we have  
12 another one of these sort of waterfalls. They take out  
13 standalone broadband customers, they take out Basic and  
14 Home Phone Saver, and they take out BB Elsewhere, which  
15 is split supplier, so BT solus BB I think is split  
16 service customers. They take out those three groups.

17           Then there is a couple of groups -- you can see at  
18 the top it says: who may receive the discount because  
19 people need to opt in. Then there is e-billers who they  
20 think are own broadband and therefore are not Voice Only  
21 customers, and multiple lines which is -- the most  
22 likely reason BT says is that they run home businesses.

23           That "2k" I think that is in that slide on "Multiple  
24 lines" is a typo. I think that should read "20k".

25           So that is document number 2.

1 Document number 3, we will see this is a bit later  
2 on. This is -- 629, I am so sorry. My fault.  
3 {F/629/13}. We have another version of this chart. You  
4 can see a similar -- basically similar numbers, slightly  
5 updated because this is now January 2019. Then again  
6 you have "20k" which suggests -- confirms, I think, the  
7 view taken on the previous chart that that was a typo.

8 Then if we do {F/723/13}. So this is a document  
9 that I think relates to some kind of IT migration  
10 programme and they are talking here about -- the  
11 "Multiple PSTN lines" is multiple land lines, and there  
12 we have 15,000 nationally.

13 This looks like it might be all customers with  
14 multiple landlines rather than just Voice Only, because  
15 you can see at the top of that slide we have got two  
16 references to solus, and there is not a reference to  
17 solus in this, so -- but maybe it is also Voice Only.

18 The date on this I think is mid-2021. But it is not  
19 completely clear, someone might need to check the  
20 metadata on that one, but there are references in it to  
21 sort of various stages of when things need to be  
22 delivered.

23 So all of those -- so those I think are the data  
24 points that we have or the data sources that we have.  
25 I had originally, in my first report or third report,

1 found two of those and I had taken the average, and the  
2 numbers were I think 17% from the original Jigsaw survey  
3 and 4% from the 100k figure.

4 Following Dr Jenkins' first reports, which were  
5 based on the 2022 survey, I had a look at that. I also  
6 found some other BT internal documents saying 20k, 20k  
7 and 15k, and it seemed to me that we were getting  
8 numbers -- I did not feel I had a reason to move away  
9 from the intermediate position that I had taken between  
10 these data points.

11 So the data points were -- the BT internal data  
12 points are sub-10%, perhaps down to more like 2%, 3%, 4%  
13 for the 2020 15k type numbers, and then the surveys  
14 I think go from 17%, although I think that has been  
15 revised to 14%, and up to 28%, I believe.

16 So there are a lot of different data points out  
17 there. I think the surveys are probably an overestimate  
18 because they will include quite a few personal  
19 customers, residential customers who occasionally use  
20 lines to make business calls. I think it is possible  
21 that the BT estimates are a lower bound, because they do  
22 not need to be given such customers, and they are only  
23 multiple line customers, and maybe there are some people  
24 out there who are running a business on a single phone  
25 line, so I have taken a middle view on those data



1 points.

2 Sorry, it was a very long-winded answer, but I think  
3 probably helpful to get the data points out so they can  
4 be discussed.

5 MR RIDYARD: No, that is very useful. Thank you, Mr Parker.

6 Dr Jenkins, can you comment on that, please.

7 DR JENKINS: Yes. So I think maybe starting with the nature  
8 of the surveys that were conducted on behalf of Ofcom,  
9 they were conducted from a list of small and medium  
10 sized enterprises, so that is what the survey company  
11 used, and they did use quite a lot of pre-questioning to  
12 ensure, I think Mr Parker showed a few of the detailed  
13 tables, to ensure they were getting the person who made  
14 the decisions about their telephony purchases.

15 So it was not like they randomly called numbers and  
16 therefore you would likely get residential people at  
17 home, working at home, who use their phone for  
18 work-related things when they are at home. The survey  
19 design is targeted at SMEs in the UK and starts from  
20 a list of SMEs. I do not actually have the page  
21 reference, but we could -- I can get that, you know, or  
22 we can go to one of the documents and go to that  
23 appendix to it to just see how the surveys were set up,  
24 if that would be useful.

25 We can do that. So it is {C/357/1} is the 2016

1 document. Maybe if you go over to the contents page,  
2 because I do not have the specific page reference with  
3 me. So even maybe keep going to the "Methodology and  
4 sample", I think that actually does give an overview in  
5 the exec summary. {C/357/5}

6 So the sample was sourced from Dun & Bradstreet,  
7 which is a company which keeps a record of small and  
8 medium sized enterprises. Then there is a table  
9 explaining that they oversampled the 0-4 category, but  
10 they still only surveyed, I think, 250 in that group,  
11 and then I think it is about 250 in the next group up to  
12 10, and then the rest are the larger SMEs.

13 So it is very much the case that these surveys are  
14 useful, in that they are targeted at small to medium  
15 sized enterprises and asking them about how they get  
16 their supplies.

17 If we then go to {E/25/152}, which is the annexes to  
18 my first report where I set out how I used this  
19 information. So if you zoom in on the figure. I think  
20 one of the things that is really important here and  
21 explains the difference between the numbers that come  
22 out of the survey, and the numbers that come out of BT  
23 documents that Mr Parker has relied on, is the fact that  
24 you need to understand that there are many more split  
25 purchase business customers taking SFV than there are

1 Voice Only business customers, and in the -- because of  
2 the detailed questions that we can rely on from the  
3 surveys, I was able to identify from the surveys of  
4 those SMEs whether or not they are buying -- whether or  
5 not they are VOs or SPs and buying the residential SFV  
6 contract.

7 So you look at those who are purchasing a landline  
8 product, then there are questions which enable you to  
9 know whether they are purchasing any other voice or  
10 internet service, and then if they say they are  
11 purchasing a broadband product, you can -- there are  
12 questions which ask whether or not that is a bundled  
13 purchase or an unbundled purchase. So you can  
14 determine: are they a Voice Only or an SP, and then you  
15 can cross-tab that with whether or not they are on  
16 a residential contract or a business contract.

17 So in terms of the information we actually need to  
18 answer this question, given BT itself does not know  
19 this, I think this is the best quality information that  
20 is available to answer the question of BT's SFV  
21 customers, what proportion are businesses.

22 Now, I have to assume that the market results that  
23 I am getting from these surveys are similar to those  
24 that would be observed for BT, because I do not have  
25 BT's specific information here.

1           Then if you go over to {E/25/157} and zoom in on  
2 table A11.8 at the bottom of the page. (Pause) I  
3 have -- it says "OR" but I can see them, so maybe there  
4 is an IR version? Or maybe it is OR, actually  
5 {OR-E/25/157}. Yes, there we go.

6           So you see that from this survey evidence it  
7 suggests that around 4% of residential SFV lines are  
8 SMEs purchasing Voice Only, which is the sort of number  
9 that Mr Parker has relied on, but the number of SMEs  
10 purchasing SP -- yes, SPs, is much higher at between 10  
11 and up to 22-25% at the end of the period.

12           I think the reason that information -- those  
13 documents on which Mr Parker has relied relate to  
14 identifying customers with respect to the Carmen  
15 discount, quite a few of the ones which he has referred  
16 to, and obviously that is Voice Only customers, and  
17 wanting to ensure that they do not offer the Carmen  
18 discount to businesses, and they are going to send out  
19 coupons to Voice Only customers who they have doubt  
20 about whether they are a residential consumer.

21           I think, similarly, that last table that  
22 Mr Parker -- last slide was about digital switch-off,  
23 actually, or the move over to digital from copper voice.  
24 So again it is a focus on Voice Only customers.

25           So I think that is how those two bits of information

1 fit together. But actually what we are interested in  
2 for the claim, to the extent that it becomes important,  
3 how many SME customers are in our SFV customer base, the  
4 bulk of the SMEs are purchasing split purchase  
5 contracts, because almost all small and medium sized  
6 enterprises in Britain have internet access, so they are  
7 all Split Purchase Customers predominantly.

8 So I have maintained that these are the best numbers  
9 to rely on. It is independent survey evidence. It is  
10 done on behalf of Ofcom based on good reasonable  
11 marketing approaches. It is -- what I am relying on  
12 here is simply what the survey customers say about  
13 themselves, we do not even rely on anything else they  
14 say, but just on what are the products they are taking.

15 So in my view, this is the most reliable evidence,  
16 and taking some average, which is I think implicitly an  
17 average between Voice Only and all SFV, does not -- it  
18 does not lead to an accurate estimate.

19 MR RIDYARD: Sorry, I did not understand that last -- the  
20 last comment there.

21 DR JENKINS: Because what Mr Parker has done is take 4% from  
22 the BT numbers and 14 or 17% from the first Jigsaw and  
23 taken an average of those, but they are not similar --  
24 they are not actually similar numbers such that you  
25 could average them.

1 MR RIDYARD: I see what you mean, yes. Okay.

2 Is this analysis that we are looking at here, is  
3 this going to help us to deal with the legal issues that  
4 we have got to deal with on this too? Because I do not  
5 know how that legal argument will pan out and where we  
6 will come out on it, of course, but is it possible that  
7 the legal question might differentiate between different  
8 kinds of business users? So, for example, the people  
9 working from home versus the businesses, the two kinds  
10 of businesses that we talked about earlier, the  
11 businesses where there really is a business account but  
12 the business has chosen to avoid the business charges by  
13 pretending it is a personal account.

14 DR JENKINS: I would need to go back and look at the  
15 cross-tab, how much cross-tabbing you could do. Because  
16 I think what you are saying is: could one identify, of  
17 SMEs that are mostly working at home and mostly small,  
18 what proportion of them are on business versus  
19 residential contracts?

20 MR RIDYARD: Yes.

21 DR JENKINS: So I would just need to go back, because  
22 sometimes you cannot do every cross-tab that you would  
23 like to do in the information that is shared from these  
24 surveys.

25 MR RIDYARD: Mr Parker, more generally, any responses to

1 Dr Jenkins' assessment there?

2 MR PARKER: I mean, I think that the main issue of the  
3 surveys is that we cannot do that distinction that we  
4 just described so we do not know whether there are --  
5 which customers in the year are, if you like, true  
6 business customers and which customers are using  
7 a personal tab and occasionally making some calls that--  
8 are business calls from home, particularly in a world  
9 where more people have moved to hybrid working, you can  
10 see that might have made quite a bit of difference to  
11 the percentages.

12 I think that is my nervousness about just relying on  
13 the survey evidence, is that you may well be caught by  
14 the survey because you are a business and they ring you  
15 up and they say: do you use -- "what sort of tariff do  
16 you use?", and if you happen to work from home or work  
17 occasionally from home and make a call from there, then  
18 you may well say: yes, I am in charge of my telecom  
19 services and this is what I do and this is the contract  
20 that I use and there is a significant proportion of  
21 people there on residential tariffs, as one of the  
22 tables you will be able to look at when it is slightly  
23 less blurry in one of the references that I gave but it  
24 is the table QD3 and QD5B of the cross-tabs I think.  
25 I could not find one that genuinely answered the

1 question. That was the issue, so there is only --  
2 they have published an awful lot of cross-tabs but  
3 inevitably there is never the cross-tab that you really  
4 want when you get the data in that form and I am not  
5 aware of a way to get to the kind of the numbers that  
6 you would ideally like.

7 DR JENKINS: I think here what this survey will not capture  
8 is people who are working from home on a given day but  
9 whose place of business is not -- main place of business  
10 is not their home. They are not going to be calling up  
11 just any residential number and say: are you  
12 occasionally working from home? So that is not  
13 a concern. It would be where the SME is registered to  
14 a home address, an address that is a shared address  
15 because that is how it would be in the Dun & Bradstreet  
16 database.

17 So I think there may be other people who are taking  
18 business calls at home but that is not who is being  
19 captured here and that is why I think this survey does  
20 not fall foul of that challenge and therefore is  
21 a reasonable basis for genuine businesses that are using  
22 residential products because they say that meets their  
23 business needs and they do not need anything more.

24 MR RIDYARD: Would you accept that, Mr Parker?

25 MR PARKER: I think there is definitely something to that



1 but I think there is quite a few people working hybrid  
2 or there might be people who have an office but also  
3 work from home on occasion and take the occasional call  
4 so I think there is something to it but I think it does  
5 not completely rule out you will have too many customers  
6 in this data who are --

7 MR RIDYARD: If we turn it round and look at the BT internal  
8 estimates, I mean, simply focusing on consumers who have  
9 two lines, that does sound like a big, essentially a big  
10 understatement of business users; would you accept that?

11 MR PARKER: Yes, which is why I have used a number which is  
12 in the middle of these different data sources and ended  
13 up at just over 10%.

14 DR JENKINS: But if we go back to {F/629/1} I think it was,  
15 was one of the documents Mr Parker referred to.

16 MR PARKER: It is page {F/629/13}.

17 DR JENKINS: So you see here the 20k multiple lines point is  
18 taken from the Voice Only but above you have got  
19 broadband elsewhere, a big grey box. Now, there is no  
20 investigation about whether any of those have multiple  
21 lines or whatever, so that is the split purchase  
22 category in that box. But because BT were not  
23 interested in that group because this is about the  
24 Carmen discount, so they are only interested in  
25 identifying businesses who are Voice Only, that is why

1           that 20k is an underestimate, (a) because it is looking  
2           at multiple lines but it is not actually looking at all  
3           the Split Purchase Customers either.

4       MR RIDYARD:   Okay.  Thanks.  I just have a couple of small  
5           questions on this topic.  Maybe we could cover those  
6           before we break.  One is about VAT and that seems like  
7           quite a small point but really about information about  
8           whether we know what proportion of business customers  
9           were VAT registered.  Is that something that we know  
10          about, Dr Jenkins?

11       DR JENKINS:  I think that is agreed and it is 9.3.3 of the  
12          joint statement.  It is coming from the Ofcom survey  
13          data but I believe Mr Parker has agreed with the  
14          estimate that comes out of the survey evidence; is that  
15          right?

16       MR PARKER:  Yes, that is right.

17       MR RIDYARD:  Okay, good.

18                 Then the final question was about pass on.  Assuming  
19                 that we have some of these business customers in the  
20                 claim, I mean, is there a pass on story here that we  
21                 should be worried about?

22       MR PARKER:  So my view was I do not think there is in this  
23          case because these businesses will be very small  
24          businesses.  They are likely to be operating in  
25          competitive markets.  They will be facing other

1 businesses who have differently optimised their cost  
2 structure and, my presumption, not facing excessive  
3 pricing on their telecom services and therefore it is  
4 not a market wide cost increase. They are in these  
5 competitive markets. They will not be able to pass it  
6 on. That is my view from theory.

7 Then we do not actually know who any of these  
8 customers are and so we have no way of telling in  
9 practice, demonstrating in practice that any pass on did  
10 occur so there is a practical issue but I think there is  
11 a conceptual reason not to expect there to be any pass  
12 on.

13 MR RIDYARD: Dr Jenkins, any views on that?

14 DR JENKINS: Yes. So I agree that unfortunately we do not  
15 know really very much at all about these businesses, so  
16 it makes it very hard to answer the pass on question  
17 because I think it is -- we are talking about the whole  
18 economy so these SMEs could be operating in a wide range  
19 of different product markets.

20 Where I disagree with Mr Parker is that likely they  
21 are competing with rival businesses that may well be  
22 paying business telephony tariffs rather than the  
23 residential ones and those are likely to be higher, so  
24 it is possible they would be able to pass it on because  
25 the prevailing market price will be set on for a higher

1 cost telephony product.

2 However, there are likely to be lots of differences  
3 in cost structures in those markets so it is very hard  
4 to actually quantify that pass on effect. It may well  
5 not be zero but I was not able to provide a reliable  
6 estimate of that pass on.

7 MR RIDYARD: I did not think that was the point Mr Parker  
8 was making about pass on. I thought he was simply  
9 saying that whatever level of charges they are paying  
10 their competitors would not be affected by the excess  
11 pricing, and so -- if they were currently managing to  
12 pay much less than their competitors because they had  
13 managed to get their telecoms account on a cheaper basis  
14 than the business tariff, that they are still setting  
15 their prices in the marketplace against competitors who  
16 are paying the business tariff, and it is that  
17 difference that Mr Parker was referring to I think.

18 DR JENKINS: Yes, so I guess the normal argument about you  
19 cannot pass it on if it is a price shock just to you is  
20 where you would not be able to because you would become  
21 uncompetitive. Now, obviously we are in imperfectly  
22 competitive markets and if your rivals actually are  
23 paying higher costs it may be that you do have some  
24 trade off here. If we could actually do the pass on  
25 analysis you may find that in this situation.

1 MR RIDYARD: All right. Thanks. I think it is probably  
2 a good point for the transcriber break.

3 THE CHAIRMAN: Yes. Thank you very much.

4 MR RIDYARD: Let us reconvene in about 10 minutes.

5 (11.44 am)

6 (A short break)

7 (11.59 am)

8 MR RIDYARD: Right, so we will now turn to the topic of  
9 adjusting the overcharge estimate to account for the  
10 consumer's time preference for money now rather than in  
11 the future.

12 Mr Parker, I think maybe it is best to address this  
13 first question to you. We are talking first of all then  
14 about this inflation adjustment. So can you explain to  
15 us what role any inflation-based elements to the damages  
16 plays relative to interest charges in accounting for  
17 this time value of money?

18 MR PARKER: Yes. My view is, absent the overcharge,  
19 residential customers would have had more money at  
20 certain historic periods. They could have done two  
21 things basically with that money. They could have spent  
22 it or they could have saved it. I am using "saved" as  
23 a shorthand here for increased savings or paid down  
24 debts, but I will just say "saved" to speed things up.

25 If they had spent it, let us say this was damage in

1 the month of October 2015, then they would have been  
2 able to purchase goods -- if they had spent £100, they  
3 would have been able to purchase goods worth £100 at  
4 2015 prices. If they are going to be ultimately  
5 compensated, let us say, in 2025, so ten years later,  
6 then that £100 is no longer worth what it was in 2015.  
7 So there is, I think, a need in terms of compensation,  
8 or adequate compensation, to uprate the proportion that  
9 they will have spent for inflation and then the  
10 proportion they would have saved for interest.

11 But conceptually I think it is two different things,  
12 and, focusing on the interest bit, I think that applies  
13 to the amount that they would have spent at the time  
14 they had the money.

15 MR RIDYARD: Sorry, say that last bit again, please.

16 MR PARKER: So if they had been overcharged by £200 in 2015,  
17 and they would have spent £100 of that at the time, then  
18 they would have been able to purchase goods at 2015  
19 prices, and for that £100 they are only going to get  
20 that £100 back in 2025, and to the extent that they want  
21 to continue to spend it, they can, assuming their choice  
22 between spending and saving is the same, they will only  
23 be able to get goods at 2025 prices, which are quite  
24 a lot more expensive than 2015 prices.

25 MR RIDYARD: That consumption element, then, which you

1 suggested using the inflation figure for, that would  
2 compensate them for the fact that the product they will  
3 have bought then may have gone up in price today, but it  
4 would not compensate them for the fact that they had to  
5 wait, whatever, five or more years to get hold of the  
6 product?

7 MR PARKER: Yes, I am not making a further adjustment for  
8 some kind of time preference for spending today versus  
9 spending in the future, that is correct.

10 MR RIDYARD: But why not?

11 MR PARKER: That is a fair point. I had not -- I had  
12 thought that inflation adjustment was a good way of  
13 thinking about this question. I think if you wanted to  
14 do a time preference adjustment, then you would want  
15 to -- you would need to have an estimate of the sort of  
16 underlying rate of time preference over consumption,  
17 which I have not investigated, but I can see  
18 conceptually that that could potentially be relevant.

19 MR RIDYARD: Okay.

20 Dr Jenkins, where do you stand on what Mr Parker has  
21 just described?

22 DR JENKINS: I think there is a lot of legal precedent  
23 around how this question is treated, and almost to  
24 answer that question about how has time value of money  
25 been treated in cases like this, I think that is the

1 simple interest approach that has been used, which is to  
2 reflect the time value of money aspect of awards.

3 If we then say, okay, from the economics perspective  
4 how do we think about this? I think one needs to start  
5 from even the framing of what the harm is, and I think  
6 the harm that is alleged here is that prices were too  
7 high for the SFV services, so the amount that is being  
8 quantified is how much extra has been paid for those SFV  
9 services.

10 Now, then even the next step, which is to say: oh,  
11 and we can say that the way a consumer would have  
12 experienced that is to have extra income, as opposed to  
13 actually at the time it would have been a change in  
14 relative prices, okay, so you know, the cost of SFV  
15 services would have been lower against other products,  
16 so maybe they would have adjusted their consumption  
17 pattern in response to that, versus the predicate for  
18 Mr Parker which is, well, you can think of that as  
19 income and then we use a marginal propensity to consume,  
20 because that is the first thing you have to do in order  
21 to be able to then say, well, there was an element that  
22 would have been used to consume other products at the  
23 time.

24 Then you have the question, which is the inflation  
25 adjustment that Mr Parker is suggesting, I think it is



1           like a spending power parity condition through time.  
2           Because it is not actually necessarily compensating for  
3           what would have been consumed at the time, because the  
4           consumer may well not want to make the same consumption  
5           decision. The product may have fallen -- the price of  
6           the product may have fallen as much as gone up.

7           So there are many, many questions around that. But  
8           in a sense, there are a set of assumptions that have to  
9           be made about what is going on in the counterfactual in  
10          order to get a reasonable estimate of what I understand  
11          Mr Parker's approach to be, which is sort of a damage on  
12          damage approach, which is the standard way for any  
13          compounding claim to have been developed in the law, and  
14          absent that damage on damage, then you are in a simple  
15          interest world.

16       MR RIDYARD: Obviously we cannot know how the consumers  
17          affected would have -- well, we can see that they would  
18          have been -- they would have paid out less to BT during  
19          the claim period, so they would have had more money in  
20          their pockets. We cannot really determine what they  
21          would have done with that money, and we do not really  
22          even want to get involved in that, I do not think, do  
23          we? Because we have got 3 million-odd consumers here,  
24          so it is reasonable to make a broad generalisation, is  
25          it not, as to, on average, what consumers do with their

1 money, rather than trying to evaluate the decision of  
2 each one of the 3 million?

3 DR JENKINS: I do not think you necessarily need to know  
4 something about each individual consumer, but I think  
5 you do want to take into account characteristics of the  
6 Class in making these decisions. Mr Parker has done  
7 that to some extent, he has made some age adjustments.  
8 But there may be aspects that would be knowable about  
9 the Class that would make quite a big difference to how  
10 they -- whether they would consume or say -- you know,  
11 whether they would restrict consumption or continue  
12 consuming and fund it through borrowings or less  
13 savings. That might be something that was knowable. It  
14 is not currently knowable with the information that we  
15 have available to us.

16 MR RIDYARD: But in terms of the economics, though, as an  
17 economist looking at this question, why would you not  
18 just want to look at the whole thing as a question about  
19 the time value of money, and just try and get the  
20 interest rate right, and then just apply the appropriate  
21 interest rate across this period to reflect the fact  
22 that these consumers would rather have had the money in  
23 2016 than to have it now?

24 DR JENKINS: I think, yes, you can do that, but that you  
25 then have to say what is the appropriate interest rate,

1 in a sense, and I think that is the question. There are  
2 a lot of aspects that need to be determined in order to  
3 decide what that appropriate interest rate is for  
4 a formal compound interest claim, which requires you to  
5 show the damage on damage aspect for these customers.  
6 Otherwise you do have a more shortcut approach, which is  
7 the simple interest approach, which does say, okay, this  
8 is going -- it is hard to know these things, we know  
9 there is a time value of money. That is my  
10 understanding of why that framework is there in the  
11 legal structure.

12 MR RIDYARD: Sorry, but as an economist you would not be --  
13 would you have a dilemma between choosing compound  
14 interest versus simple interest?

15 DR JENKINS: No, not as an economist. The world is  
16 generally a compound place and, you know, economists  
17 will compound things. There are a few -- I think as  
18 I put in the joint statement, there are few financial  
19 instruments that do operate on a simple interest  
20 approach, but in general the world is a compound world.

21 MR RIDYARD: Yes.

22 Maybe, Mr Parker, I put it to you. Would you, if  
23 you were looking at this just in terms of the economics,  
24 would you still want to be making this distinction  
25 between consumption and saving?

1 MR PARKER: I think so, which is why I have done it.

2 I think because, particularly in this end consumer  
3 world, I can see for businesses that typically interest  
4 has been -- everything has been tied up in relation to  
5 interest. I think for the consumers, if you think about  
6 what they can do, what they could have done, they could  
7 either have spent the money that they would have had or  
8 they could have saved it, and those are I think related  
9 but conceptually slightly different things, and if they  
10 had spent the money, they would have spent it at 2015  
11 prices, and when they get the money back it will be at  
12 2025 prices.

13 That is one type of -- one type of uprating that you  
14 would want to do, which is an inflation-based uprating,  
15 and I take your point about kind of the preference for  
16 consumption earlier than later, but that is something  
17 I have included.

18 Then on the money they would have saved, then I  
19 think it is a matter of thinking about an appropriate  
20 interest rate. In either case, for me economically the  
21 right thing to do is compound. I think it is very hard  
22 to see how -- you cannot achieve simple inflation, I do  
23 not really know how that would work. I think in  
24 practice, notwithstanding Dr Jenkins' examples, I do not  
25 see how Members of the Class could have achieved simple

1 interest on any financial instrument. I am not actually  
2 sure that Dr Jenkins' examples are in fact examples of  
3 simple interest so much as examples of interest being  
4 paid annually in one lump sum, and I think if you look  
5 at the underlying economics of those instruments, they  
6 probably based themselves on compounding principles.  
7 But I am not sure we need to get into that, because I do  
8 not see really how they are relevant to the Class.

9 So I would focus on compounding, and I think you  
10 could make two different adjustments relating to the two  
11 different types of behaviour that customers could carry  
12 out.

13 MR RIDYARD: Even though there is a concern that the  
14 consumption, one would just be reflecting inflation, but  
15 not the preference for flagging something now rather  
16 than in the future?

17 MR PARKER: Well, so that would be -- you would want to  
18 make -- you could make a further adjustment for that,  
19 which I have not done, so the inflation update would be  
20 an underestimate, I think, to that extent.

21 MR RIDYARD: Okay. I was just puzzled as to why you would  
22 not simply roll everything up in the appropriate  
23 interest rate.

24 MR PARKER: Real interest rates can go up or down, can they  
25 not? They can be above or below the inflation rates.

1           So I am not sure -- maybe the simple approach is to do  
2           everything in terms of interest, but I have chosen to --  
3           I thought one would do it via inflation for the bit that  
4           was spent, because that seems to match what customers  
5           actually might have done with the extra money, but I do  
6           not have a strong view.

7           MR RIDYARD: Okay. Let me just check the notes. (Pause)

8                     Dr Jenkins, would you like to come back on  
9           Mr Parker's comments about simple interest rates versus  
10          compound interest rates?

11          DR JENKINS: Yes. I mean, I think one of the examples  
12          I gave was interest only mortgages, so I think that is  
13          the nature of a simple interest idea, is something where  
14          you pay an element each year so that the principal does  
15          not change. It is right there are not that many  
16          examples of simple interest in the real world, but  
17          I think that and some of the coupons you can get on  
18          fixed interest bonds do have the nature of simple  
19          interest.

20                     But taken on an annual level, that is correct. So  
21          it is compounding within the year, and then simple at  
22          the end of the year.

23          MR RIDYARD: Okay. Obviously whatever decision we come to  
24          on this, we will have to take due account of the legal  
25          precedent and so forth, but here I am just trying to

1 focus in on what you, as economists, can add to inform  
2 us on the substantive choice, if you like, and, yes,  
3 I mean, it did seem that -- I was expecting you to say  
4 that the compounding would be the natural way of doing  
5 things.

6 DR JENKINS: Yes, I mean, I think it is one of those areas  
7 where economists generally compound, but the legal  
8 framework for damages awards do not necessarily follow  
9 the economics logic, and hence economists have assisted  
10 courts in assessing interest awards which are framed as  
11 damages on damages. So as you say, one could say, well,  
12 the world is a compound world and we should compound  
13 damages awards, but my understanding is the precedent  
14 does not necessarily support that, and hence you have to  
15 meet the legal test as it stands.

16 So that is -- I think both Mr Parker and myself are  
17 seeking to assist the Tribunal in that framework, but  
18 I definitely agree that in general most aspects of life  
19 have a compound element.

20 MR RIDYARD: Yes, okay. Good.

21 I do not know that we can take the inflation aspect  
22 much further than we have done here already, unless  
23 there is anything else you think we should be taking  
24 into account? We will talk a bit about interest rates  
25 in a moment, but just talk about the inflation

1 adjustment. Is there anything more that should be said  
2 here to help us to come to a view on it?

3 Mr Parker.

4 THE CHAIRMAN: Perhaps I can just add to the question there.

5 No, you go ahead and answer that question, and then

6 I have a supplemental for Dr Jenkins. Sorry.

7 MR PARKER: Only that I would agree with the proposition  
8 that one should take sort of a broad measure of  
9 inflation, which I have used CPI. That seems to me to  
10 be a sensible measure which will reflect the CPI's  
11 construction from an average basket of goods and  
12 services. It seems to me that is the right way to  
13 measure an inflation adjustment across a broad Class,  
14 such as this, in the absence of a specific CPI for  
15 Members of the Class which I do not believe exists.

16 THE CHAIRMAN: Could I ask a supplemental?

17 Dr Jenkins, you do not agree with the inflation  
18 approach; and am I right in thinking, I just want to  
19 check, if there was something in the inflation approach,  
20 you have not put in some different figures for what the  
21 split between consumption and savings should be or  
22 anything like that.

23 DR JENKINS: I have made a comment on that, but, yes, I have  
24 not put forward a full alternative.

25 If we turn to {IR-E/18/228}, which is my second



1 report. So I agree with Mr Parker that there is likely  
2 to be no other better measure of inflation, if one gets  
3 to that, than CPI. But the real question is to what  
4 does one apply the CPI measure? I think Mr Parker has  
5 used an average from a Bank of England -- no, that was  
6 right, the chart, thank you -- study on marginal  
7 propensities to consume and an average across negative  
8 or positive income shocks. I think my view would be you  
9 would use the negative income shocks, because there is  
10 quite a big difference in how people respond depending  
11 on whether money is taken from them and whether money  
12 is -- extra money is received by them.

13 The actual harm is that at the time BT charged  
14 higher prices than it should, so the experience that the  
15 Class had, if it is cast as an income effect, would have  
16 been a reduction in their income at that time, and then  
17 the question is how did they respond to having less  
18 income because they paid higher prices?

19 So I think one should look at the negative income  
20 results, and I thought -- this is what I was saying  
21 earlier about how it affects Class Members might  
22 actually be quite different across the Class, and this  
23 is from that Bank of England study, and it is showing  
24 the distribution of marginal propensities to consume of  
25 negative income shocks.

1           What you see is it is almost bimodal, between 0 and  
2           1, and what that means is there is a reasonably high  
3           proportion of the population, 24%, for whom when they  
4           had a negative income shock it had no effect on their  
5           consumption. That means they just went ahead with the  
6           same consumption and it will have been their savings,  
7           borrowings, that adjusted to enable them to continue  
8           that consumption.

9           At the other end you have 37, or 37 plus 8, where  
10          people, their consumption was heavily affected by the  
11          negative income shock, including the fact that they even  
12          saved -- consumed even less than the impact of the  
13          negative income shock, perhaps, to get a buffer. So you  
14          have got like between 37 and 45% of the survey who  
15          actually restricted their consumption almost entirely in  
16          response to this.

17          What the survey, the Bank of England survey says is  
18          what is determining that is people's financial assets,  
19          like do you have savings or not, basically. So that is  
20          something that is knowable, and that has a big impact on  
21          how you respond to a negative income shock, and that  
22          makes perfect sense, if we all imagine, you know, like  
23          ...

24          So for me, that is the challenge here, is if you  
25          follow this approach it is very hard to actually know

1 for any Class Member. You can use an average. If you  
2 were to use an average I would use the average of the  
3 negative income shocks, which is a 0.61 marginal  
4 propensity to consume rather than the 0.38 that  
5 Mr Parker has used. I have, in an annex to my second  
6 report, showed the results of making that alternative  
7 assumption on marginal propensities to consume with  
8 a focus on the impact on the interest award.

9 MR RIDYARD: Looking at these numbers, Dr Jenkins, would not  
10 a simpler interpretation be to simply say that half of  
11 them would have consumed less, and therefore would be  
12 due some kind of compensation for the fact they wanted  
13 to consume and they were not -- they did not, and the  
14 other half would have drawn down their savings, and  
15 therefore it would have cost them whatever they were  
16 getting from their savings accounts?

17 DR JENKINS: Yes, you could use that to use that as the half  
18 and half. I guess that is -- probably the 0.61 is the  
19 average that you get across that. So if you are going  
20 to use an average, then you would use the average of the  
21 negative shock, and that is what I have quantified. But  
22 if what you need to know is are Class Members actually  
23 different, as opposed to are they all well characterised  
24 by an average, then I think this would say they are not  
25 well characterised by an average, but an average might

1           be what you need to use.

2       MR RIDYARD: Mr Parker, any thoughts on that?

3       MR PARKER: So I would agree that I think you need to use an  
4           average. I am not sure we can do better given the  
5           information that we have.

6           On the question of whether you should use -- whether  
7           you think of this as a positive shock or a negative  
8           shock, I must admit I was not sure, because what we are  
9           trying to do is look at the situation between the  
10          factual and the counterfactual. What we know is that in  
11          the factual there was a higher price, and in the  
12          counterfactual there would be a lower price. But do you  
13          treat that as being in the counterfactual it is  
14          a negative shock because you have lost the higher price,  
15          or do you say, well, in the counterfactual you never had  
16          the positive shock of the higher price?

17          I do not conceptually I think have an answer to that  
18          question, because these are -- if you like, they are two  
19          parallel states of the world that are happening at the  
20          same time. Whereas the evidence that the Bank of  
21          England was looking at is when you have an actual  
22          change, whether that is a positive or negative change,  
23          you are looking at the change over time.

24          So that is the reason that I had taken the average  
25          between the positive and the negative shock, because

1 I did not have a sort of clear conceptual reason to  
2 favour one over the other.

3 MR RIDYARD: Yes, that is clear, thank you, yes.

4 Just before we leave the consumption question, we  
5 had a question about whether for business customers it  
6 might be different from domestic customers, assuming we  
7 had business customers in our damage calculation at all  
8 of course. Is there any reason to think that would be  
9 different as between the business and consumers?

10 MR PARKER: The way I suggested dealing with this issue,  
11 which I had not originally thought about, but I can see  
12 it is relevant, is I would say true businesses you  
13 should think of as having an inflation-only  
14 adjustment -- sorry, an interest-only adjustment as in  
15 a sort of standard damages case, and residential  
16 customers who occasionally make a business call, I would  
17 suggest that the approach of treating them as  
18 a residential customer, so a combination of an inflation  
19 and an interest based approach.

20 In the joint statement at 9.4.8, which is page 221,  
21 we do not need to turn it up, it is just for your notes,  
22 I have suggested using data from the Bank of England on  
23 the weighted average interest rates on new advances to  
24 small and medium sized enterprises, so basically the  
25 rate at which SMEs could borrow as being the appropriate

1 interest rate for business customers who were facing  
2 this overcharge.

3 MR RIDYARD: Dr Jenkins?

4 DR JENKINS: Yes, I think I had pointed out that for both  
5 businesses and deceased customers Mr Parker had sort of  
6 done a uniform spread across the whole Class, and that  
7 would not be appropriate. So I agree that you would  
8 need to do a business-specific -- you would need to  
9 consider businesses separately, and I have not looked  
10 into detail on the actual rate that Mr Parker has  
11 suggested.

12 MR RIDYARD: Then for deceased claimants -- or is there any  
13 reason to think that, assuming that money would then go  
14 to their executors or their estate, is there any reason  
15 to think that whoever ended up with that money would be  
16 different from the original consumers -- with their  
17 consumers?

18 MR PARKER: Yes, this is -- I found this a very -- it is  
19 a very nuanced question which I had not previously  
20 thought about before this case, I have to admit.

21 So these people, the people before they died, would  
22 have spent the money and so on, and then they did die.  
23 I think the way that -- I agree this is where the  
24 inflation and interest things come together. There  
25 probably is a break point once you have -- once the sort

1 of probate process has been finalised and it no longer  
2 is -- if you like, there is no Class Member at that  
3 point, because the Class Member has died and the  
4 executors have taken forward the will, and they have  
5 distributed it to a further group of people, and those  
6 are outside the Class.

7 So I think the way I have thought about it is you do  
8 the inflation and interest adjustments up to the point  
9 of death, as for any customer. Then you do a year's  
10 worth of interest on the assets that currently stand for  
11 that customer, so in this case whatever the overcharges  
12 are at that point. Obviously they are not facing an  
13 overcharge after the point of death, but on the original  
14 overcharge, so there is a year of interest and then that  
15 is it.

16 I think that is the way I have thought about it.  
17 I can see that you might think, well, if they had died,  
18 maybe you just do interest all the way up to the year  
19 after death. But then you are distinguishing between  
20 people who died during the period and people who did not  
21 in terms of what their behaviour is. That feels to me  
22 more complicated than doing it the way I suggested, but  
23 I must admit I do not have a strong view either way as  
24 to which of those is appropriate.

25 MR RIDYARD: Dr Jenkins, do you have anything on the

1           deceased?

2           DR JENKINS: I think similarly to the business customers  
3           I sort of flagged that I did not think that the approach  
4           as suggested made sense with respect to the deceased.  
5           Mr Parker said he would make further adjustments in any  
6           subsequent quantification which I think one would need  
7           to have a look at to see whether or not they do indeed  
8           make sense.

9           I think, yes, it is sort of a nuance once one  
10          decides -- the Tribunal decides the framework for this.  
11          It may or may not be important to have quite granular  
12          approaches to the different types of Class Members  
13          depending on how the overall question gets answered.

14          MR RIDYARD: Thanks. Then let us move on then to the award  
15          of interest. I suppose we have talked already about  
16          compound v simple interest. I am not sure there is  
17          anything more to say on that unless you feel that  
18          something has not been covered on that particular  
19          aspect.

20          Really I suppose the most interesting question  
21          is: what would be the appropriate rate of interest? How  
22          would we go about setting the appropriate rate of  
23          interest to the extent the interest rates were  
24          applicable? Mr Parker, would you like to go first on  
25          that.



1 MR PARKER: Yes, in the way that I have thought about it is  
2 there is a range of financial assets both debt and  
3 savings that consumers could have either reduced their  
4 debts or increased their savings. The way I have taken  
5 it is to say, well, what is the outstanding balance of  
6 each of these debt and savings instruments and assume  
7 that consumers put any overcharge that is saved into  
8 those assets in proportion to the outstanding balance of  
9 the assets and then calculate the interest rate on each  
10 of those, in each of those savings or debt products and  
11 take a weighted damage across the whole.

12 I pointed out in my first report and subsequently  
13 that ideally one would not do this looking at the  
14 average of the asset. You would want to look at not  
15 about the stock of assets that people hold but about the  
16 incremental inputs into different asset classes as  
17 a result of the overcharge but I do not think any data  
18 is available on that and therefore I have used the stock  
19 of the different savings and debt products as a proxy  
20 for how people might on average have saved any excess  
21 money that they would not have spent.

22 MR RIDYARD: Can you remind us of what that comes to? Have  
23 you done specific calculations on that?

24 MR PARKER: I have and they are in Parker 3 at table 34.

25 The annual rates change up and down because the interest

1 rates change and also there are various assets whose  
2 performance varies from year to year and I have just  
3 used the actual performance of different asset classes  
4 over time. So that is {IR-E/3/259}. I do not think we  
5 need to turn it up.

6 MR RIDYARD: Thanks. Dr Jenkins.

7 DR JENKINS: So I disagree that the right interest rate to  
8 use is this weighted average across the stock of wealth  
9 assets. I think that is not a good proxy for what will  
10 be a marginal decision.

11 Perhaps if we turn up {IR-E/18/230}, Figure 7.4. So  
12 that shows the weights that underpin Mr Parker's  
13 interest measure. So you can see that private pension  
14 assets, and I think this is showing the weight given to  
15 the age profile of the Class, so pension assets are  
16 a very large part of this. Then mortgage. Then net  
17 financial assets. So it is likely savings products and  
18 then financial debt, so that is going to be probably  
19 short-term loans.

20 I think I have explained that I think that it seems  
21 to me very unlikely that the Class Members will be  
22 adjusting their pension assets or their mortgage  
23 payments and there are many, many aspects of pensions  
24 and mortgages which are actually quite inflexible and so  
25 it is much more likely that for the level of costs that

1 we are seeing which I think that overcharge, even on the  
2 overcharge with Mr Duckworth's benchmark, the access  
3 element is I think in the early years like £50 a year  
4 and the total is £100 a year with the calls as well. To  
5 then say, someone would be changing -- making an  
6 overpayment on their mortgage if they did not have that  
7 or putting more money into their pension, those  
8 decisions are unlikely to be affected by that type of  
9 marginal change.

10 So that you would use an interest rate that is based  
11 on the shorter term assets and debt. I think even there  
12 you have to be a bit careful because if you use, say,  
13 a credit card rate, it would not seem to me normal to  
14 think that someone would take out -- would pay for it  
15 with a credit card and keep that credit card debt  
16 throughout the period. They would find a different way  
17 of financing it because that is expensive debt but  
18 I think these are -- what I have done is strip out  
19 pension assets and mortgage debt and reported what the  
20 interest rate would look like for the weights of only  
21 the more shorter term instruments in annex 6 of my  
22 second report.

23 MR RIDYARD: But to Mr Parker's earlier point, Dr Jenkins,  
24 is a change in the sort of scheme to the consumers the  
25 right way of looking at things because we are looking at

1 two parallel universes, are we not, the factual and the  
2 counterfactual? So there is not a situation where you  
3 get a nice or a nasty shock here. You are just going  
4 through life. It just so happens that in one of the  
5 scenarios the BT bill is a bit lower than in the other  
6 one.

7 DR JENKINS: Yes, possibly in that scenario you say you  
8 could use these averages. I think the challenge with  
9 that is, I mean, the pension asset weight is quite a lot  
10 going to be affected by the employer contributions and  
11 defined benefit pensions, so there are a lot of factors  
12 that are going on there. You are still using a stock  
13 measure rather than a flow of where people are putting  
14 their income and I mean, Mr Parker said that he was  
15 unable to find any other useful measure but there may be  
16 other ways to find out what the flow is of people's  
17 actual income choice at a given point in time. I am not  
18 sure that the stock of wealth is likely to be the best  
19 measure of that.

20 MR RIDYARD: Okay. Can you give us some idea then, if you  
21 discount the stocks and try and just focus on the  
22 marginal sort of either source of the funds or  
23 destinations of savings, how does that affect your view  
24 about what the appropriate interest rate is likely to  
25 be?

1 DR JENKINS: I think -- thank you -- those are the tables  
2 that are on the screen now in annex 6 of my second  
3 report where I show if you strip out mortgages and  
4 pensions. So that is the adjustment I have made.  
5 {IR-E/18/251-252}. Obviously if there were other  
6 versions that could be done but that is the adjustment  
7 I have made and it does make a reasonably important  
8 difference to the amount of the alleged overcharge if  
9 you adjust the interest rates in that way.

10 MR RIDYARD: Right.

11 MR PARKER: I suppose I would only say these are not  
12 marginal. This is not based on evidence on what people  
13 would have done with their marginal saving. It is  
14 Dr Jenkins' view as to that people would not have  
15 invested in their pensions or paid down their mortgage  
16 but it is just the interest rate for those two -- for  
17 the remaining two categories of their financial assets  
18 and financial debt.

19 So the question of -- I am not sure it would be  
20 right to think of it being based on evidence on how  
21 people would have invested their money in the market in  
22 response to a marginal change in their financial  
23 position. Not that marginal actually.

24 MR RIDYARD: Mr Parker, do you think that your approach is  
25 better in capturing the marginal choices?

1 MR PARKER: I think it is difficult to know but I have done  
2 it based on the average of the outstanding stock because  
3 I do not think that is necessarily capturing the  
4 marginal changes but nor do I think taking out parts of  
5 those options is necessarily capturing the marginal  
6 changes either. I think it is -- I am not sure we have  
7 anything better.

8 DR JENKINS: Yes, I think particularly as I said,  
9 particularly for pensions which is the majority in  
10 Mr Parker's approach for any Class Member who is  
11 post-retirement age and has an annuity, even in that  
12 counterfactual world their annuity is unlikely to be  
13 materially different so there is very little change that  
14 there is going to be to the drawdown on their mortgage.  
15 So I think it makes more sense to use the shorter term  
16 measures rather than these longer term measures for the  
17 sorts of differences that we are looking at in this  
18 case.

19 MR PARKER: Just a quick point on annuities. I was not  
20 really sure I understood the reference to annuities  
21 because once you bought an annuity then it would turn  
22 into income rather than wealth. You can actually see  
23 that in the figures on private pension assets that  
24 I report in tables 39 to 41 of my third report which  
25 show that the pension assets actually fall for the

1           age 65 plus group which is suggesting that for many of  
2           those customers they are turning those assets into  
3           either drawing it down or turning it into an annuity as  
4           they see fit. So that is already taken into account.

5           MR RIDYARD: So a consumer with an annuity then would not --  
6           obviously they are not able to renegotiate the annuity  
7           so that would simply be a question of them changing  
8           their rate of savings or ...

9           MR PARKER: It would change for that group. If you look at  
10          table 39, {IR-E/3/279}, for that group of the 65 plus  
11          there is a considerable reduction in the assets. You  
12          can see there are a lot more assets being put into  
13          pension wealth in 55 to 64 compared to 45 to 54,  
14          understandably, but then it falls down, and so that  
15          effect is on average taken into account.

16          MR RIDYARD: Thank you. I do not think there is anything  
17          else there on the list of questions on interest that we  
18          have not adequately covered unless you think I have  
19          missed something out in this discussion that is  
20          important.

21          MR PARKER: I think that has all been covered.

22          THE CHAIRMAN: Because we picked up the interest bit in  
23          question 24 when we were looking at those who died in  
24          the earlier context.

25          MR RIDYARD: Yes, I do not know, was there anything --

1 I think what was said about the deceased Class  
2 Members -- effectively the answer before I think was  
3 about interest rates rather than anything else, was it  
4 not?

5 THE CHAIRMAN: Yes.

6 MR PARKER: Yes.

7 THE CHAIRMAN: Thank you. Then that concludes the hot tub  
8 session.

9 MR BEARD: I do not know if Mr Spitz has any clarification.

10 THE CHAIRMAN: Sorry, I did not ask about that.

11 MR SPITZ: No, I do not.

12 THE CHAIRMAN: Do you, Mr Beard.

13 MR BEARD: I had a quick couple.

14 THE CHAIRMAN: Yes.

15 Questions by MR BEARD

16 MR BEARD: One is just a transcript point. Could we just go  
17 back to page 67, line I think it is 18. It will pop up  
18 on the screen. It was just line 18. It said "very  
19 little change" -- this is Dr Jenkins -- "there was going  
20 to be drawdown on their mortgage", but you were  
21 referring to annuities. Did you mean mortgage or  
22 pension?

23 DR JENKINS: Pension, yes.

24 MR BEARD: I was just double checking.

25 Earlier on you referred to a table about 0 to 4s,



1           4-9s and so on. This was to do with the categorisation  
2           of the SMEs. It may be worth just going to because you  
3           did not have the reference in front of you but I think  
4           it is {C/357/9}. Was this the one you were thinking of?

5       DR JENKINS: Yes, if you -- Figure 1, the SME size. You can  
6           see that it was not the case that this survey  
7           particularly or predominantly was on the micro, the  
8           micro group and they did ensure that they had a good  
9           representation of single self-employed businesses which  
10          they would normally just do on a 1-4 basis but you can  
11          see that that distribution across the different sizes of  
12          small to medium sized enterprises which is below 259  
13          employees.

14                 Then all the results in the tables are then  
15                 weighted. So where they have over sampled a particular  
16                 category then they will re-weight the answers that are  
17                 given such that you get an answer that is actually  
18                 representative of SMEs in the economy but they  
19                 overweight when they are sampling to ensure they have  
20                 enough respondents to be able to draw meaningful  
21                 conclusions from the answers that they give.

22       MR BEARD: Sorry, I offered it ... Okay, Mr Parker, for the  
23           purpose of the transcript, has just held his hands up on  
24           this one. Not in a concession kind of way.

25       MR PARKER: Nothing to add.

1 MR BEARD: Nothing to add, thank you.

2 I do not have anything else. The only issue is that  
3 obviously there is a question about perspectives on  
4 compound and simple. I do not know whether the  
5 Tribunal, although it has not specifically dealt with  
6 methodologies for ascertaining simple interest rates,  
7 wants to explore that in any way, but I assume not,  
8 given the questions that have been asked?

9 MR RIDYARD: I do not have anything on that, certainly.

10 THE CHAIRMAN: No, I do not think so.

11 MR BEARD: That is fine.

12 THE CHAIRMAN: Thank you.

13 Right, let us break for lunch now. Is

14 Mr Duckworth -- will he be here by 10 to?

15 MR SPITZ: Yes, I think so.

16 MR BEARD: Can I just raise one housekeeping point.

17 Obviously we have cross-examination of these witnesses.

18 I do not think I am going to necessarily be very long  
19 with Mr Parker, but I would be grateful if we could  
20 still keep it in tomorrow morning, rather than following  
21 on straight after Mr Duckworth, if that is not of  
22 inconvenience to the Tribunal?

23 THE CHAIRMAN: Not especially, provided -- well, speaking  
24 for myself, provided that we are not likely to need more  
25 than the day that we have got for cross-examination.

1 MR BEARD: No, no, no. I am looking at the half an hour to  
2 an hour territory.

3 THE CHAIRMAN: Mr Spitz?

4 MR SPITZ: That is fine for me too. In fact I think it is  
5 preferable.

6 THE CHAIRMAN: That sounds all right, but we will discuss it  
7 over lunch.

8 MR BEARD: I am grateful. Thanks very much.

9 THE CHAIRMAN: 1.50, please.

10 (12.59 pm)

11 (Luncheon Adjournment)

12 (1.50 pm)

13 THE CHAIRMAN: Before Mr Duckworth is re-sworn or reaffirmed  
14 and then asked the questions, we wanted to address  
15 briefly the letter from Simmons & Simmons which was sent  
16 yesterday in relation to the short further questions  
17 which the Tribunal wished Mr Duckworth to address. The  
18 content of that letter can be read into the transcript  
19 in due course.

20 We are of course aware that the Class Representative  
21 has the burden of proof in this case. However,  
22 especially in a case involving expert evidence as  
23 substantial, complex and lengthy as that in this case,  
24 we consider that there can be nothing inappropriate in  
25 the Tribunal either wishing to follow up a matter

1           canvassed originally in an earlier hot tub session, or  
2           in putting to an expert a point which the Tribunal now  
3           considers needs to be addressed which was not dealt with  
4           previously. This is in circumstances where the further  
5           questions are of very limited ambit and can be dealt  
6           with shortly and, of course, in circumstances where BT  
7           will be given the full opportunity to make its own  
8           contribution to the discussion if it wishes.

9           The alternative would be for these points to be left  
10          hanging in the air, which would cause difficulties for  
11          the Tribunal when it comes to its deliberations. None  
12          of this affects the burden of proof in any way.

13         MR BEARD: Very grateful, thank you.

14         THE CHAIRMAN: Right, let us have Mr Duckworth re-sworn or  
15          reaffirmed.

16                         MR MARTIN DUCKWORTH (reaffirmed)

17         THE CHAIRMAN: Thank you. Mr Ridyard will deal with the  
18          questions.

19                         Questions by THE TRIBUNAL

20         MR RIDYARD: Mr Duckworth, good afternoon. So you will have  
21          seen our questions which we can deal with quite swiftly.  
22          The first two really relate to the 2009 RFS exercise,  
23          and we just wanted to be sure that we had understood  
24          properly what information the RFS contains about the  
25          split between common costs and incremental costs.

1           So are we right in thinking that the RFS documents  
2           do not tell us about the relative sizes of incremental  
3           costs versus common costs?

4           A. Yes, that is right.

5           MR RIDYARD: Is there nothing within this sort of supporting  
6           documents that could help us to unravel that or get some  
7           better clues on that question?

8           A. On the relative magnitude of those two elements?

9           MR RIDYARD: Yes, yes.

10          A. There is nothing in the documentation that provides sort  
11          of quantities of incremental and common costs. There  
12          is, within the detailed attribution methods, sort of  
13          qualitative information on how incremental and common  
14          costs have been separated and the approach to the  
15          attribution of incremental costs and the fixed and  
16          common costs, but nothing that says the relative sizes  
17          of those costs which is in the public domain.

18          MR RIDYARD: Okay, and I mean that sort of seems a little  
19          bit surprising, given that they must -- I am sorry, I am  
20          not doubting your word, obviously, but it just seems  
21          surprising given that they must have had -- they have  
22          taken a cost causality approach to the incremental  
23          costs, and then they have had to make some other  
24          assumption or use some other convention for the common  
25          costs, but it is still -- even from that you cannot

1 tell, from the fact that they have done something  
2 different to the two types of costs, what the magnitudes  
3 are?

4 A. So the BT RFS were produced under obligations, and then  
5 some of those obligations refer to publication of the  
6 high level separated accounts, and also a transparency  
7 obligation which set out how those accounts were  
8 constructed. But the detail of the underlying numbers,  
9 which were the input or -- the inputs to construction of  
10 the RFS, were considered I think confidential by BT and  
11 so were not put in the public domain.

12 MR RIDYARD: Okay. Thank you.

13 THE CHAIRMAN: Could I -- sorry, could I just come in, there  
14 was a specific question about the document on  
15 question 2, which perhaps I can take, because it was  
16 something that occurred to us when we were looking.

17 If you look at question 2 -- we do not need to turn  
18 it up, but we looked at the underlying documents that  
19 you used when setting out all of the costs lines for the  
20 purpose of your exercise. You took two out, I think,  
21 because you had already dealt with them in direct costs.

22 Is that it in terms of the underlying documents?

23 A. In terms of the ...

24 THE CHAIRMAN: That you used for the purpose of --

25 A. Yes. So the reference to Annex 5(b), and I can cover

1           that off quite quickly, that was the Ofcom labelling of  
2           tables. So when -- Ofcom set out the obligations for  
3           regulatory financial statements. They said you need to  
4           produce these annexes. When BT published them, they  
5           published them in a different order, and so section 9.1  
6           is equivalent to Annex 5(b) in Ofcom's kind of pro forma  
7           for the RFS.

8           THE CHAIRMAN: It is not as if there is some other document  
9           called Annex 5(b)?

10          A. No.

11          THE CHAIRMAN: That was the clarification I wanted. Thank  
12          you.

13          MR RIDYARD: So the next question is our question 3, and  
14          that was when we were thinking about the notion of  
15          incremental costs. Now, when you are looking at the  
16          2009 RFS, you rightly say that in 2009 all of the voice  
17          customers were SFV customers in the sense that BT was  
18          not allowed to bundle at that period.

19                 But then it seemed to us that what you were saying  
20                 from that was that therefore we can use voice as the  
21                 increment that we are considering when we are  
22                 considering SFV. But it occurred to us that the  
23                 increment we are interested in with regard to SFV was  
24                 potentially different from the voice increment, because  
25                 obviously the SFV increment does not encompass all voice

1 customers during the claim period and, therefore, what  
2 is incremental to SFV might exclude things which are to  
3 do with voice, you know, for example, if there were  
4 fixed costs of setting up the voice service, BT would  
5 have to incur those whether or not it is the SFV  
6 customers, because it would still be providing a voice  
7 service to all of the bundle customers.

8 We wanted to get your comments on whether this  
9 difference in the way of thinking about the increments  
10 between 2009 and the claim period was material to the  
11 analysis that we needed to undertake?

- 12 A. So you are correct that there are potentially some costs  
13 which are fixed costs necessary to deliver voice  
14 services and those fixed costs should have been  
15 attributed to the retail voice services in the RFS, but  
16 because they are fixed costs they are not causally  
17 related to any single line, and so would have been  
18 attributed across voice services in a way such as based  
19 on the number of lines, which kind of spreads the cost  
20 across all -- for its customers there.

21 When you move to a world where SFV is a subset of  
22 voice customers, that does not really change. You still  
23 have a fixed, cost which is now fixed in common if you  
24 look at SFV as an increment and dual play as another  
25 increment, but you still need to recover those costs,



1 those fixed costs, which are now common across  
2 effectively two increments, across those two increments,  
3 and the appropriate way to do that is probably still to  
4 use the same cost driver, so number of lines to spread  
5 that across the SFV increment and within the SFV  
6 increment, and also to the dual play customers who are  
7 also taking voice.

8 So from a LRIC+ perspective, it should not change  
9 the sort of the unit cost just because you are  
10 separating out SFV customers from dual play customers.

11 MR RIDYARD: Right. From a LRIC+ perspective I can see  
12 that, because you still have to allocate the costs and  
13 so you do it as best you can. But from a LRIC  
14 perspective, in other words, if you are just looking at  
15 the incremental costs, then it would make a difference,  
16 would it not?

17 A. Yes.

18 MR RIDYARD: So what this could be doing, it could be --  
19 even if we had an answer to the first questions, ie we  
20 knew what the split was between incremental costs and  
21 common costs in the 2009 RFS, we would then need to  
22 revisit that information, which we do not have of  
23 course, but we would need to revisit that in the light  
24 of the SFV increment as opposed to the voice increment,  
25 because there could well be things which were

1 incremental to voice but not incremental to SFV?

2 A. Yes, that is right.

3 MR RIDYARD: So your position on that, I guess, given that  
4 you are not -- so this only matters if we care about the  
5 split between incremental costs and common costs, but  
6 under LRIC+ you are saying that because you have to  
7 allocate them all, it sort of -- it still matters, but  
8 it all gets swept up sooner or later?

9 A. Yes.

10 MR RIDYARD: But it does create a material, or potentially  
11 material difference. Again, is there any way of us to  
12 get a handle on what the materiality of that difference  
13 is between the incremental costs and the common costs  
14 when we are looking at these two different questions?

15 A. Again, there is no source which I consider robust to  
16 attribute costs at that level where you can, for  
17 example, identify some fixed and common costs to the  
18 provision of voice services.

19 MR RIDYARD: Okay. Yes, all right, okay, I think that is  
20 perhaps as far as we can take that. Thanks.

21 Then the last set of questions that we had was about  
22 costs that would be in, I suppose, indirect costs in  
23 your sort of scheme of thinking about the costs, in  
24 other words, the payments that are made to Openreach.  
25 We did have a few exchanges with you about this right at

1 the beginning of the first hot tub and when we came back  
2 to it I think a day or two later as well, but we just  
3 wanted to explore that a little bit further with you.

4 The point which was of interest to us was whether,  
5 even though these payments that are made by the retail  
6 operators to Openreach are direct costs, in the sense  
7 that they are per customer costs, there could still be  
8 some element of commonality there as between voice and  
9 broadband, depending on how the retail operator chose to  
10 buy the services from Openreach, and the way we  
11 understood it from your evidence in the hot tub was  
12 that -- your evidence and Dr Jenkins' evidence was that  
13 BT chose to buy two separate services from Openreach,  
14 one for voice, one for broadband, but some of the other  
15 operators chose to buy a single Openreach product which  
16 covered voice and broadband, albeit that that meant that  
17 they might then have to incur other costs to put the  
18 service together.

19 What we were wondering was whether, for situations  
20 where the retail operator chose to buy both the voice  
21 and broadband from Openreach in a single contract, could  
22 there be an element of commonality there that might be  
23 relevant to the analysis of thinking about which are  
24 common costs and which are incremental costs?

25 A. The NPS service, which rivals to BT bought from

1           Openreach, allows provision of both voice and broadband  
2           services over that line.

3       MR RIDYARD:   Yes.

4       A.   If an operator wanted to provide an SFV service they  
5           have a choice of buying that NPS service or a WLR  
6           service, and in Ofcom's 2017 statement, and the evidence  
7           of that which I can turn up if helpful, Ofcom says that  
8           generally rivals purchase or do not use LLU, i.e. MPF,  
9           for provision of SFV services.

10      MR RIDYARD:   Okay.

11      A.   But some also do, so it is quite confusing.   But the  
12           issue is when we are thinking about common costs they  
13           are not fixed, and common costs, it is a question of if  
14           you want to serve a customer with a dual play service,  
15           you purchase MPF.   There is effectively an economy of  
16           scope in delivering both voice and broadband over that  
17           MPF service from Openreach, but there is not a common  
18           cost then to providing an SFV service to another  
19           customer because --

20      MR RIDYARD:   No, but for some aspects of the case we are  
21           interested in the situation at the customer level.   For  
22           example, when we are looking at this question about the  
23           incentive to bundle, we are -- after all, in the extreme  
24           scenario, if there is a retailer that costs me the same  
25           to provide the voice service as the bundle service, then

1           it costs me nothing more to upgrade your service from  
2           voice to bundle. Therefore, even if I got a penny more  
3           out of you as a customer, I would be happy and  
4           unambiguously better off.

5           So we are interested in the economies of scope for  
6           the customer level for these questions, are we not?

7           A. Yes, and I think that is a good characterisation of the  
8           position where, for rivals using MPF, the incremental  
9           cost of providing broadband on top of a voice service  
10          was relatively low, and to the degree that they could  
11          set the incremental price for broadband above the  
12          incremental costs then they had a very strong incentive  
13          to deliver bundles if they could.

14          I think it is helpful to look at the evidence that  
15          Ofcom looked at here.

16         MR RIDYARD: Yes.

17           A. If we turn up, I think it is {OR-C/4/24}. This is  
18           showing -- the figure shows BT's wholesale line rental  
19           and MPF prices, and in the latter part of the period  
20           actually MTP is more expensive than WLR, and in order to  
21           provide a voice service on MPF then you need to add some  
22           active equipment on top of the MPF service, whereas the  
23           WLR service includes the active equipment which is  
24           provided by Openreach. So just to provide a voice  
25           service, it is likely that WLR would be the cheaper way

1 to provide that.

2 If we go down to the bottom of the page, and there  
3 is a footnote. It says:

4 "We are also aware that generally CPs that have  
5 their own network may still rely on BT's copper network  
6 to provide voice [services] - not many CPs use their own  
7 LLU network to provide voice-only services."

8 So that is ...

9 MR RIDYARD: So the reference to "CPs that have their own  
10 network", does that mean Virgin, or are they talking  
11 about some other aspect?

12 A. So that would include Virgin, but I think they are also  
13 referring to the CPs, competitive providers, or rivals  
14 to BT, not many of them use their own LLU, local loop  
15 unbundling network, so they need to put in place some  
16 equipment and create their own network on top of the  
17 copper lines that they buy from Openreach.

18 So when providing SFV services, not all rivals use  
19 MPF, but when providing voice and broadband then they  
20 will use MPF, so there will be presumably an incremental  
21 cost to using MPF, you know, even the direct costs, the  
22 MPF costs, it is slightly higher than the wholesale line  
23 rental cost, and you need to include the equipment on  
24 top of that.

25 So it is not, as you sort of characterised it,

1 a zero cost to provide broadband on top of the voice  
2 service. There is some incremental cost in providing  
3 voice plus broadband over MPF compared to providing  
4 Voice Only over wholesale line rental.

5 MR RIDYARD: Yes, I was setting that up as an extreme case,  
6 just to see the final question. But there is -- I think  
7 you said you think there is still an economy of scope in  
8 providing both services in a bundled fashion?

9 A. Yes, compared to -- particularly compared to the  
10 alternative of buying wholesale line rental from  
11 Openreach, and then providing a separate broadband  
12 service to wholesale line rental in the way that  
13 BT Consumer does.

14 MR RIDYARD: So with respect to the BT's bundle customers,  
15 is that saying that BT did not supply bundle customers  
16 in the most efficient manner, or am I missing something  
17 there?

18 A. So the rivals chose to generally use MPF, so TalkTalk  
19 and Sky generally used MPF to deliver bundles of  
20 service. BT Consumer did not. I cannot really  
21 speculate on why rivals took one choice and BT Consumer  
22 took another choice of services.

23 MR RIDYARD: Yes. It would be quite interesting to  
24 understand that, I think, because I am not sure --  
25 obviously I cannot press you for evidence on something

1           that you have not necessarily considered. Okay.

2           Then when we move -- just to complete or to continue  
3           the sort of technological story, but when we move on to  
4           the superfast broadband, then we are talking about VULA,  
5           I think, are we not?

6           A. Yes.

7           MR RIDYARD: Does that create fewer economies of scope  
8           between voice and broadband?

9           A. Yes, because at a network level then the rivals needed  
10          to provide -- or the rivals needed to buy two services  
11          to provide voice and broadband. They needed to buy  
12          typically wholesale line rental to provide the voice  
13          service, and then the VULA product, GEA, to provide the  
14          broadband service.

15          MR RIDYARD: So that pushed the rivals towards the way BT  
16          was doing things. I know the technology had moved on,  
17          but in terms of the structure of how it was done,  
18          towards the BT sort of model, as it were?

19          A. Yes.

20          MR RIDYARD: Then when they move on to the next sort of, as  
21          I understand it, sort of generation of the technology,  
22          the VOIP technology which is currently being used,  
23          I mean, that puts everything down the broadband route,  
24          as I understand it; is that correct?

25          A. Yes, that is correct, and the main driver behind that is



1           wholesale line rental relies on legacy equipment in  
2           local exchanges, which BT wants to retire by 2025, and  
3           so, yes, which is to remove all this 20th Century  
4           equipment which has been running for the last quarter of  
5           a century. It is increasingly obsolete and difficult to  
6           maintain. Just move to a single IP-based network.

7           MR RIDYARD: Yes. But instead of that actually -- or where  
8           that happens, does that mean that we do have a single  
9           wholesale price to cover both, effectively both voice  
10          and broadband?

11          A. Yes.

12          MR RIDYARD: So we are close to -- we are then increasing  
13          the economies of scope between the two services?

14          A. Yes. I am not sure of the detail, but I think Openreach  
15          may provide a Voice Only service at a lower cost than  
16          the service which provides broadband and voice.

17          MR RIDYARD: Okay. But nevertheless, if -- yes, so that  
18          does suggest the scope of economies could be that much  
19          greater in this model.

20                 Maybe this is not something that you looked into,  
21                 but do we have the figures anywhere for the importance  
22                 of VOIP as distinct from the older technologies in terms  
23                 of customers reached?

24          A. I am not aware of that being in the evidence.

25          MR RIDYARD: No, okay.

1 THE CHAIRMAN: Could I, if we have finished with those  
2 questions, could I just go back, I just want to make  
3 sure I have clear your answer to question 3 which  
4 Mr Ridyard asked you about.

5 I think the result of your answer is: it is not as  
6 if there were any indirect costs which were loaded too  
7 much on SFV services, or not enough on SFV services, as  
8 a result of your analysis, in the context of question 3  
9 that you were discussing earlier on?

10 A. Yes, if we are looking at costs which are fixed to  
11 provide voice services, then the change to some voice  
12 customers being SFV, whereas others being dual play, in  
13 my opinion does not change the LRIC+ estimate of costs.

14 THE CHAIRMAN: Because you just divide it up by the number  
15 of lines.

16 A. Exactly, or some similar attribution methodology.

17 THE CHAIRMAN: Or some similar thing. That is true for what  
18 would be regarded as the incremental costs as well,  
19 presumably?

20 A. Yes.

21 THE CHAIRMAN: I do not know if Mr Ridyard had anything  
22 more?

23 MR RIDYARD: No, I think that has covered all of our  
24 queries. Thank you very much, Mr Duckworth.

25 THE CHAIRMAN: Thank you.

1                   Now, first of all, Ms Kreisberger, do you have any  
2                   clarificatory questions?

3                   MS KREISBERGER: I do not, no, sir.

4                   THE CHAIRMAN: Mr Beard, do you have any clarificatory  
5                   questions or cross-examination questions?

6                   MR BEARD: No, I do not have cross-examination or  
7                   clarificatory questions, thank you.

8                   THE CHAIRMAN: Thank you very much.

9                   Mr Duckworth, we are very grateful for you coming  
10                  back in. That is your evidence on this completed.  
11                  Thank you.

12   (The witness withdrew)

13                  THE CHAIRMAN: Right, so that is it for today.

14                  MR BEARD: If that is okay with the Tribunal, yes, and as  
15                  I say, I do not think I am going to be long, and it  
16                  turns out Mr Spitz is not going to be long, so I think  
17                  we will be done by lunchtime tomorrow.

18                  THE CHAIRMAN: Right.

19                  Anything you want to add, Ms Kreisberger?

20                  MS KREISBERGER: No.

21                  THE CHAIRMAN: We are in the course of preparing a list of  
22                  points which we would like the closing submissions to  
23                  deal with. They are probably points which will be on  
24                  the issues agenda in any event but just things which  
25                  have occurred to us we would like to have covered off or

1           provided to us, and we will probably get that to you on  
2           Wednesday.

3       MR BEARD:   Great.

4       MS KREISBERGER:  We would be very grateful for that.  Sir,  
5           will you be giving any further directions on written  
6           closings?

7       THE CHAIRMAN:  Not unless we are asked to.

8       MS KREISBERGER:  We are not going to be asking for any  
9           specific directions on closings.

10      THE CHAIRMAN:  We have the dates when they are to be in and  
11           we know what the issues are.

12      MS KREISBERGER:  We are very grateful.

13      THE CHAIRMAN:  That is where we will rest, subject to these  
14           further questions.

15      MS KREISBERGER:  No, that is understood.

16      THE CHAIRMAN:  All right, 10.30 tomorrow then, please.

17      (2.23 pm)

18      (The hearing adjourned until Tuesday, 5 March at 10.30 am)

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