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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1381/7/7/21

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 29th January – Friday 22nd March 2024

Before:
The Honourable Mr Justice Waksman

Eamonn Doran

Derek Ridyard

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Justin Le Patourel

Class Representative

v

(1) BT Group PLC

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)

Tuesday, 5 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, do we need Mr Parker reaffirmed?

MR DAVID PARKER (reaffirmed)

Cross-examination by MR BEARD

THE CHAIRMAN: Yes, Mr Beard.

MR BEARD: Thank you.

Mr Parker, good morning. I do not actually have that many questions for you, and they are going to be focused on issues to do with business customers and some of the survey information.

A. I understand.

Q. But they are fairly basic questions, they are not getting into too much detail.

Now, yesterday {Day22/23:1}, if we just call up the transcript -- if we go over the page, {Day22/24:1}.

Sorry, it is at the bottom, it is line 24, my

1 apologies -- you were talking about Ofcom surveys and
2 you, at the bottom, refer to:

3 "... the Jigsaw surveys that are carried out for
4 Ofcom do not exclude the idea that there may be a number
5 of customers ... there may be quite a lot of customers
6 that are just residential customers that are
7 occasionally using a home phone landline to make
8 business calls."

9 That is what you said about the Jigsaw surveys. You
10 are talking there about the 2016 survey and the 2022
11 survey, correct?

12 A. Yes.

13 Q. We will come back to the fact that actually the second
14 one was not done by Jigsaw, it was done by a different
15 organisation, but that is a minor issue for these
16 purposes. I just wanted to make sure we were talking
17 about the same things.

18 Then you took the Tribunal to a document at
19 {C/346.1/14}. You referred to this as a Jigsaw survey,
20 and you referred here to the fact that micro businesses
21 and sole traders often use residential packages. Do you
22 remember going to that?

23 A. Yes.

24 Q. If we just go back --

25 A. I think it is a further page, is it not?

- 1 Q. Yes, I am sorry, you are probably right. I was not
2 actually ... I am just checking. But, yes, if we scroll
3 down, that is quite right.
- 4 A. The first paragraph under 3.2, I believe.
- 5 Q. Yes. But that is what you went to.
- 6 A. Yes.
- 7 Q. If we go back to the start of this document {C/346.1/1},
8 so this is entitled "Quality of service in telecoms".
9 So although it is done by Jigsaw Research, this is not
10 one of the two surveys that you are concerned about here
11 that does a data analysis, correct?
- 12 A. Yes, that is right.
- 13 Q. The one I think that has been referred to previously
14 from 2016/2017 is actually at {C/357/1}.
- 15 Sorry, I should have asked you, did you know how
16 that other survey was compiled?
- 17 A. There was one that was on a sort of qualitative focus
18 group.
- 19 Q. I think that was that one?
- 20 A. That was that one. Right, okay. I misremembered
21 exactly which survey we were talking about.
- 22 Q. So let us go to the right one, because I think you agree
23 this is -- it is referred to as the 2016 survey, even
24 though it is dated on the face January 2017, correct?
- 25 A. I am sure that is right.

- 1 Q. So this is "The SME experience of communications
2 services: research report"?
- 3 A. Yes.
- 4 Q. This is the one that does a qualitative and quantitative
5 analysis, yes?
- 6 A. Yes.
- 7 Q. So if we just go through to page {C/357/5}, so if we
8 look here at the top, this is just the executive
9 summary. So "Methodology and sample". You are aware
10 that this was a survey of quite a lot of SMEs, 1,500
11 SMEs, correct?
- 12 A. Yes, that is right.
- 13 Q. The sample was sourced from Dun & Bradstreet, who you
14 know are a business data and analytics company?
- 15 A. Yes, that is right.
- 16 Q. So what was being done here, they were taking the data
17 of people that were SMEs and then surveying that 1,500
18 of them, correct?
- 19 A. Correct.
- 20 Q. So this was what Dr Jenkins talked about, just not
21 ringing random numbers.
- 22 Let us go down to page {C/357/9}. Here -- have you
23 seen this paper before? Yes?
- 24 A. Yes.
- 25 Q. So you are familiar with this. If we just go to the top

1 figure, so this is breaking out the number of SMEs that
2 were interviewed by size, you understand that?

3 A. Yes.

4 Q. So "Interviews achieved", on the right-hand side, is
5 showing that for sole trader, single self-employed
6 people, there were 250 for micro, so 2-4 employees, 341
7 and so on?

8 A. Yes.

9 Q. So we know that what was being identified as a cohort
10 for the questions were businesses, and then there was
11 a spread of interviews conducted across the scale of
12 businesses by size category, correct?

13 A. Yes, that is right, and there was overweighting in the
14 smaller groups in the population as Dr Jenkins described
15 yesterday.

16 Q. Yes, and that is taken into account when you then
17 calculate numbers from it?

18 A. Yes.

19 Q. I am not going to take you through all of this, but if
20 we go to page {C/357/132}. So here we see "SME Consumer
21 Experience", "Briefing note to interviewers on desired
22 respondent".

23 Have you looked at this material?

24 A. Yes.

25 Q. I will not run through it all but feel free to review

1 it, but essentially this is the briefing note to
2 interviewers on identifying: who it is they are speaking
3 to within the business, are they responsible for the IT
4 and telecoms --

5 A. The telecom tracers. Yes, that is right, yes.

6 Q. Obviously with a sole trader that may be relatively
7 easy, but with other larger enterprises that we were
8 looking at in that scale they are making sure they are
9 talking to the right person throughout?

10 A. Yes.

11 Q. If we go on to two pages, {C/357/134}, you will see this
12 is the introductory screening script, it appears, that
13 you get in these surveys. Obviously this is not
14 presented to the -- the numerical codes are not
15 presented to the interviewees because these are
16 essentially decision tree structures that are used
17 within the questioning, you understand that?

18 A. Yes.

19 Q. But if you look at the top it says, and this does appear
20 to be an introductory statement:

21 "This study requires us to interview a broad range
22 of UK businesses so the first few questions about your
23 organisation are purely to ensure that we include a true
24 cross-section of industry."

25 Then the first question is:

1 "First of all, which of the following best describes
2 the sector in which you operate?"

3 So these are just the starter questions, but it is
4 making sure that within that business -- within the
5 cohort of people they are asking questions of, they
6 understand the nature of the business they are dealing
7 with, correct?

8 A. Correct.

9 Q. I am not going to take you through them. There are lots
10 and lots of questions that do that. But I think you
11 understand that that was how this survey was being
12 conducted?

13 A. Yes.

14 Q. Then if we go on to {C/357/140}, you will see that one
15 of the stages in it, so this is in the QA section under
16 "Section A". So if we just blow up the top of it, we do
17 not need to see ... That is great.

18 So this is in "Section A". It asks specifically:

19 "Which of the following does your organisation use
20 for business purposes?"

21 Then it works through a series of numbers, talking
22 about standard phone lines, ISDN, ISDN30, VOIP, and
23 so on. So it is asking what you use for business
24 purposes to the relevant respondent?

25 A. Yes.

- 1 Q. What we are seeing in this survey is a survey
2 specifically targeted at businesses, not occasional
3 users of phone lines for business, correct?
- 4 A. Well, it is targeted at businesses, but that does not
5 rule out that particularly at the sole trader end of the
6 spectrum, or the smaller end of the spectrum, people
7 might answer these questions saying: yes, I use
8 a landline for business purposes, because, for example,
9 I am working from home and I occasionally take a call
10 and I use that for business purposes, for a business
11 call, and I am the person who is in control of my
12 telecoms choices.
- 13 Q. Let us just take that in stages, Mr Parker. We know
14 that all of these entities are selected because they are
15 self-declared SMEs or identified as such in the
16 Dun & Bradstreet cohort, correct?
- 17 A. That is right.
- 18 Q. The introductory questions are identifying what you use
19 for business purposes. I am not going to go through all
20 the questions, but it does ask location of where your
21 business is, does it not?
- 22 A. It does. It asks whether you work from home or not, and
23 I think -- I am trying to remember -- I think it might
24 be on page 18 or 19 of this document. Could we try page
25 {C/357/18} and see if my memory is correct? Yes, there

1 we are.

2 So this tells you whether you have a large
3 self-contained office or commercial premises or a home
4 office, so you have 37% of people who have a home
5 office, which may or may not be the same as working from
6 home, depending on how people chose to answer that
7 question.

8 Q. What this is doing, and indeed this is illustrating it,
9 is trying to find the primary location from which the
10 SME operates, is it not?

11 A. Yes.

12 Q. So when it asks the question about business purposes,
13 and it does it in relation to the particular location,
14 it is saying where do you do your primary business,
15 correct?

16 A. Yes.

17 Q. Then it is asking what communications systems you use
18 for business purposes, correct?

19 A. Yes.

20 Q. That will be linked to the place you are operating from,
21 correct?

22 A. I suspect it is. I do not think we can get that from
23 the data here, but that seems plausible.

24 Q. Yes. These are the figures which Dr Jenkins used in
25 relation to her approach to the calculation of the

1 number of SFV lines that were being used by businesses
2 even though they were residential lines.

3 If we just go to page {C/357/89}, please. The
4 overall summary here is, you see -- I think you are
5 probably familiar with this?

6 A. Yes.

7 Q. So what this is showing is in relation to those with
8 PSTN landlines, the percentage that use
9 business-specific contracts amongst this 1500 cohort of
10 SMEs that are being asked about their business purpose
11 communications, you understand that?

12 A. Yes.

13 Q. So what you are seeing there is that across all landline
14 users, it is around 70% use business-specific contracts,
15 so that means that there is around 30% who are using
16 residential contracts, correct?

17 A. Yes.

18 Q. We see that those levels are higher in relation to 1-4
19 employee SMEs and 1-9 employees, than it is in relation
20 to larger SMEs, yes?

21 A. The proportion of residential contracts, yes.

22 Q. I am so sorry, that was an unclear question, but, yes.

23 This is the data that was used by Ofcom, upon which
24 they have relied on numerous occasions, in their
25 Provisional Conclusions. So this is {C/1/19}.

1 If we just look at 3.11:

2 "We note that a significant proportion of SMEs,
3 particularly smaller businesses, purchase residential
4 lines. Around 30% of all SMEs do not have
5 a business-specific contract ..."

6 Then it is the 31% for those with 1-9 employees, and
7 so on that we have just seen, correct?

8 A. Yes.

9 Q. So it is drawing on those figures.

10 Then it says:

11 "In total, 9% of SMEs purchase a (residential) SFV
12 service. With 5.4 million SMEs in the UK, this would
13 suggest around 490,000 out of 2.9 million SFV customers
14 are SMEs - around 17%."

15 So what they have done is they have taken those
16 numbers, because it is business-specific, and then they
17 have effectively used a ratio from these numbers and
18 then applied that ratio to the total population of SMEs
19 in Britain, understood?

20 A. Yes, that is right, and that is one of the numbers that
21 I use in Parker 3.

22 Q. That is fine. I understand. Dr Jenkins has replicated
23 that methodology but has also, and she may well be
24 cross-examined on this, carried out a methodology that
25 actually comes out with a slightly lower figure for SMEs

1 using residential lines on an SFV basis, correct?

2 A. Yes, I believe she comes up with 14% or something like
3 that.

4 Q. 14.1%, but near enough, yes, absolutely. But what she
5 was doing was having a concern about the effectively SFV
6 percentage potentially being a little different from the
7 overall landline percentage. You understand that?

8 A. I cannot remember the basis for the difference but
9 I accept that.

10 Q. I am sure Mr Spitz will be cross-examining her in due
11 course if any of that is challenged.

12 You do not -- you take the 17% and you do not
13 actually, I do not think, take issue with -- you
14 understand the way in which Dr Jenkins has carried out
15 her analysis?

16 A. Yes.

17 Q. So let us just go to the 2022 survey. So as I said,
18 this was not Jigsaw, this was BVA BDRC that carried it
19 out. We can see the methodology if we go to
20 {E/45.234/1}. So this is actually the "Questionnaire
21 Online Final", and it is in rather a similar form to the
22 latter part of the 2016 survey that we saw, but if we
23 just blow up the beginning of it. So:

24 "BVA BDRC are conducting a survey amongst businesses
25 on behalf of Ofcom, the regulator for the UK

1 communications industries, about their views on
2 communications ...

3 "[It] has asked us to conduct a research project to
4 better understand how businesses are using
5 communications services ... landlines, mobile phones ...
6 internet [and so on]. The research will help Ofcom
7 identify areas where there is a need for further advice,
8 information or support. We would appreciate ... your
9 time ..."

10 Then you will see further down at the bottom on this
11 screen:

12 "We are interested in speaking to people responsible
13 for IT and telecoms across a wide range of businesses."

14 So it is taking a similar sort of approach to the
15 2016 one of identifying a cohort of SME businesses and
16 then engaging with them with a set of questions about
17 how they use communications technology. You understand
18 that?

19 A. Yes.

20 Q. There are some slight methodological differences, but
21 nonetheless, if we go to page {E/45.234/7}, just as an
22 example. So I have skipped through some of the earlier
23 questions, but you just see here, you will see at the
24 top of the screen a question under section A, or
25 "Section All: Services Used", and it is question QAla,

1 and it is saying:

2 "The next few questions will be about the
3 communications services your organisation uses."

4 So it is focusing on the business, and again it is
5 asking the same list as we saw previously, so it is
6 following the same approach; you understand that?

7 A. Yes.

8 Q. If we now go to {C/399/1}. This is the sort of summary
9 presentation in relation to the 2022 survey and I think
10 you are familiar with this?

11 A. Yes.

12 Q. If we go to page {C/399/9}, this is the executive
13 summary, and it says:

14 "Ofcom commissioned independent research agency
15 BVA BDRC to conduct quantitative research into the SME
16 consumer experience ... A mixed methodology was used to
17 capture the views of 2,109 SME telecom decision makers."

18 Then there is discussion about segmentation which
19 I think is not relevant.

20 But again, what we are seeing here is that this
21 whole survey is entirely business focused. The cohort
22 of people, the 2,109, are all businesses that are being
23 asked these questions?

24 A. Yes, that is right. It is the same issue as in the
25 2016/17 survey, which is the smaller the size of the

1 business, the more it potentially becomes the individual
2 themselves, and they may, if they are sometimes working
3 from home or taking a business call from home, that
4 could potentially be captured.

5 Q. But as we identified in relation to the 2016 survey, the
6 whole thrust of the questions and the identification of
7 the location of the business and the focus on business
8 purposes is not dealing here, is it, with extraneous or
9 occasional calls, it is dealing with what communication
10 systems you use for your business, is it not, Mr Parker?

11 A. It is, but it is not saying whether that is -- it is not
12 ruling out that there may be occasional or extraneous
13 calls.

14 Q. Of course it is not ruling those out.

15 A. This does not tell you one way or the other.

16 Q. Well, let us just take this in stages. You are saying
17 that these surveys that were conducted by Ofcom, and
18 relied on by Ofcom as indicative of whether SMEs were
19 taking residential lines for business purposes, you are
20 saying that because some of those businesses might
21 occasionally make calls from home, actually what you are
22 seeing here is some kind of misrepresentation of whether
23 or not there is a substantial number of SMEs, including
24 small SMEs, taking business lines -- taking residential
25 lines for business purposes. Is that what you are

1 saying?

2 A. So I think it is possible that both of these surveys
3 overestimate the number of businesses who are using
4 a residential line, if you like, on a solus basis, only
5 for business purposes, as opposed to using a personal
6 line for some residential calls and the same line for
7 some business calls.

8 Q. Let us just -- sorry, that was a very interestingly
9 qualified answer.

10 So you said there:

11 "So I think it is possible that both these surveys
12 overestimate the number of businesses who are using
13 a residential line, if you like, on a solus basis, only
14 for business purposes ..."

15 That is not what these surveys are doing, is it? It
16 is asking what it is that you use for business purposes,
17 and, as we agreed, the structure of the questions is
18 focusing primarily on the business purposes of these
19 SMEs, is it not?

20 A. It is. But if I use my personal landline to make
21 business calls I am using it for business purposes, and
22 if I am the owner of that business, if I am a sole
23 trader and I am a marketing consultant who works from
24 home, or I am anyone else who occasionally works from
25 home, and I am asked the question what do I use for

1 business purposes, and I occasionally make a phone call
2 from a residential phone line, then I will say, well,
3 I use that.

4 Q. But if you work from home and you use a residential
5 phone line, you are using that phone line for business
6 purposes, are you not?

7 A. You are. You may also be using it for residential
8 purposes.

9 Q. You may also be. But if the surveys are trying to
10 identify what communication system an SME uses for its
11 business purposes if you work from home, and you only
12 have a residential landline, then you will be using that
13 residential landline for business purposes, will you
14 not, Mr Parker?

15 A. Yes, I am not disputing that.

16 Q. But that is not occasional calls. That is where your
17 business is operating from, is it not, Mr Parker?

18 A. Well, it depends how many calls you need to make for
19 your business, and it also depends on: are we interested
20 in this case in identifying people who are using
21 a residential tariff for both personal and business use,
22 and they are making personal residential calls from it
23 and also making business calls from it, or do they have
24 a sort of dedicated phone line that is dedicated to them
25 as a business?

1 I understand what the survey is doing, and the
2 survey is not distinguishing between those two
3 alternative situations, which is not a criticism of the
4 survey in the sense of the survey was trying to do
5 something else, it is just an observation about how you
6 can interpret the result of that survey for these
7 purposes.

8 Q. Let us just take it in stages, Mr Parker. What these
9 surveys are trying to do is identify what communications
10 businesses use for business purposes. I think we agreed
11 that?

12 A. Yes.

13 Q. So if an SME says: "I use a landline for business
14 purposes" in this survey, what is being identified is
15 that there is business use of that landline and that is
16 what the SME is using for that particular type of
17 communication, correct?

18 A. Correct.

19 Q. If the SME needs to make calls and it has a landline,
20 and it has identified that the landline is its means of
21 voice communication, that is a landline being used for
22 business purposes. You agree with that too, I think?

23 A. I do.

24 Q. What you are then suggesting is that that business, if
25 it is small and particularly a sole trader, I think,

1 might also be using it for non-business calls, correct?

2 A. Yes, or, in principle, the other way round. They might
3 have a personal landline that they occasionally use for
4 business calls, but they would equally be recaptured by
5 all those questions that you have just described.

6 Q. But what we are talking about here is whether you take
7 a particular communication as a business for business
8 purposes. That is what we are interested in here,
9 because we know that residential lines are not to be
10 used for commercial purposes, do we not, Mr Parker?

11 A. I understand that that is BT's case, yes, and so
12 presumably all the people here who have answered "I use
13 a residential service to make business calls" are in
14 breach of their conditions; is that what you are saying?

15 Q. In relation to those people that are taking landlines
16 for use on business purposes, that is not consistent
17 with the terms and conditions of the residential line
18 contract. That is BT's case in relation to this.

19 What I am asking is how can we identify what the
20 likely numbers are of people who are taking lines for
21 business purposes? I do not just mean an occasional
22 business call if you work somewhere else and you make
23 a call from home, but you are choosing your
24 communication system for your business and you are
25 taking a landline, this survey is trying to identify --

1 both of these surveys are trying to identify whether you
2 take the landline for your business purposes, are they
3 not?

4 A. Yes, they are saying what communication service do
5 I use, what landline service do I use for business
6 purposes? But all I am saying, and I think the point
7 still stands, is if I have a residential contract and
8 I make residential calls on it, and I also make business
9 calls on that, that would not be excluded from these
10 figures.

11 Q. If you have a residential line and you use it for
12 business purposes, but you make other calls on it, those
13 would not be excluded from these figures, but that would
14 be identified as a landline being used by an SME for
15 business purposes, correct?

16 A. Yes, that is my point, yes. So we have potentially --
17 there is then a question of should those people be in
18 the relevant figures or not for the purposes of this
19 case, but I think there are essentially these sort of
20 conceptually two different groups of people in this
21 data.

22 Maybe it is worth turning to some of the pages --

23 Q. No, I am not going to those at the moment. I am going
24 to come back to this in a second.

25 Just to be clear, when, in the

- 1 Provisional Conclusions, Ofcom say 17% of SMEs use
2 a residential landline for business purposes, you are
3 not disagreeing with that?
- 4 A. No.
- 5 Q. No. So --
- 6 A. (inaudible), no.
- 7 Q. -- even if it is attenuated to 14%, using Dr Jenkins'
8 figures, you do not disagree with that either?
- 9 A. No. My only concern is that these surveys of that 14%,
10 they do not allow you to distinguish between people who
11 essentially have a dedicated line that they use for
12 business that happens to be a personal contract, that is
13 a dedicated line they use for business, and
14 a residential phone line which they use for residential
15 purposes and occasionally make a business call on, and
16 I just do not think that the survey allows you to
17 distinguish between those two groups of people.
- 18 Q. Just focusing on that, you are there hypothesising
19 a sole trader. When you have an answer by an SME that
20 actually has employees, are you still making the same
21 point?
- 22 A. Well, it does depend a little bit on how many employees,
23 who you are talking to, and how you are asking that
24 organisation to operate --
- 25 Q. Let us say you have four employees. Are you saying at

1 that point, this is really not a business line, this is
2 actually a residential line?

3 A. It depends if they are all in the same place, does it
4 not? If they are all at home, some kind of small
5 network of people that you have put together, and
6 generally working from home, and they might all be
7 working from their personal landlines, we just do not
8 know.

9 Q. It is interesting you put it in the plural then, because
10 of course it is a landline for a business, not multiple
11 landlines we are talking about here, is it not?

12 A. Well, if I am the person in charge of a business with
13 a small number of employees and my other employees work
14 from home, and I am in charge of the telecoms for my
15 business, but that might be because that is what I use
16 in my own personal house. We are all working from home,
17 suppose we are a small network of electricians or
18 plumbers or something.

19 Q. Right, I see.

20 A. I think we genuinely do not know. That is the thing.
21 I mean, if we can go perhaps to -- I do not know if the
22 Tribunal has them -- a set of tables to hand up. These
23 are tables I took you to yesterday but that were very
24 blurry, and therefore not easy to read. (Handed).
25 These are some of the underlying tables from this data.

1 Q. Yes, and these are the tables that indicate whether or
2 not you have got personal residential contracts,
3 business contracts or both?

4 A. So there are sort of two sets of tables. So the first
5 one, which has Page 5 in the top right-hand corner,
6 I know it is very small text, or, alternatively, it is
7 S2B on the left-hand side. I know this is still quite
8 small but hopefully in focus.

9 So what we have is S2B, who has responsibility for
10 making purchase decisions, and we have got 85% saying
11 that this person is solely responsible.

12 You all have copies.

13 Then if you turn over a couple of pages.

14 {C/398.2/153}

15 Thank you for the Opus references. I am not sure
16 they are going to assist because of the blurriness, but
17 at least you will be able to ... This is -- is it
18 {C/398.2}, is that ...?

19 THE CHAIRMAN: Just give me one moment.

20 MR BEARD: Mr Parker, do you just want to make the point
21 that you want to make in relation to these, because
22 these set out homeworking, shared homeworking or office,
23 and there are various statistics in relation to them,
24 and we have the statistics in relation to the cohorts of
25 people that are involved in the survey which I have

1 already taken you to, so could you just make the point
2 that you want to. I am not trying to stop you making
3 your point, Mr Parker.

4 A. No, well, that is fine. So S5A/B tells you the vast
5 majority of people are micro businesses 1-4.

6 THE CHAIRMAN: Sorry ...

7 A. S5A/B.

8 THE CHAIRMAN: Is that the one which is on page 5?

9 A. That is page 13. I have moved on a couple of pages.

10 MR BEARD: Sorry, Mr Parker, when you say this shows you the
11 vast majority of people are micro businesses, that is
12 not true for the purposes of the cohort of questions
13 asked, is it, in relation to 2022? Because if we go
14 back and we look at the cohort, we know the numbers. If
15 we go to {C/399/6}, can you see for the fieldwork sample
16 on the left-hand side, Mr Parker?

17 A. Yes.

18 Q. So there you have got the totals running through to the
19 2,109, and you have the numbers of employees that we are
20 talking about on the left-hand side. So what we have
21 got here is for the purpose of the interviews achieved,
22 you will see the number of interviews achieved in
23 relation to sole traders, 564. Those with 2-4
24 employees, 456. You see it going all the way down.

25 So although you have come to these tables and start

1 talking about the numbers of micro businesses, in the
2 survey they have actually controlled for that in the way
3 they have carried out the interviews, have they not?

4 A. I think I understand that what they have done is they
5 have overweighted the number of interviews that they
6 make of the large businesses and then they weight the
7 results back to the population.

8 Q. That is correct.

9 A. So that is the 78% and 12%.

10 Q. That is correct.

11 A. Which is the 92% that I just mentioned.

12 Q. It is entirely right that they weight them back, but
13 they ensure that when they are carrying out the
14 interviews that they have carried out interviews across
15 the piece in order to get a representative sample. That
16 is correct, is it not, Mr Parker?

17 A. Yes, but I do not think that is -- that is not the point
18 I am making. I am just making the point that there are
19 a lot of micro businesses.

20 Q. We do not disagree there are a lot of micro businesses,
21 Mr Parker. Indeed, when Ofcom was reviewing the 2016
22 survey and relying on it, that also involved an
23 identification of a very large number of micro
24 businesses as we saw at paragraph 3.11 in the
25 Provisional Conclusions, correct?

1 A. Yes.

2 Q. The point I want to put to you, Mr Parker, is that in
3 your reports you have looked at the 2016 material, you
4 have relied upon the 17%, and you have completely
5 ignored the 2022 material even though it proceeds on the
6 same basis of identifying businesses. You take the
7 somewhat tendentious view that it might be collecting
8 all sorts of people that barely use the phone for their
9 business purposes, even though the survey is clearly
10 focused on business purposes. But leaving that aside,
11 the two surveys are carried out on a similar basis. The
12 latter survey actually has a larger cohort, and yet you
13 entirely ignore that in your assessment of the relevant
14 nature and scale of the use of residential contracts by
15 SMEs, do you not, Mr Parker?

16 A. No, I think that is a misunderstanding of what I have
17 done. So in Parker 3, I take the 2016 survey and I take
18 an internal BT document and I take the average of the
19 two. Then I looked at the 2022 survey and other BT
20 documents in Parker 4, and the Ofcom survey, not the two
21 small surveys, but the 2022 survey, whatever it is, and
22 it was a relatively higher number. The BT internal
23 documents had considerably lower numbers. Given that,
24 I did not see a reason to move from my estimate, but it
25 was not that I did not take it into account.

1 Q. It is not evident anywhere in your reports that you took
2 into account the figures which are generated by the 2022
3 survey in terms of what they indicate in relation to the
4 dynamics of change in relation to SFV customers, because
5 you have come out with an entirely flat average between
6 BT numbers and the 2016 figure, correct?

7 A. Yes.

8 Q. If we look at {C/399/28}, since we are in here, now here
9 we are dealing with a whole universe of customers, and
10 you see on the left-hand side, "Incidence of types of
11 contract by SME ..." and a scale. You see on the
12 left-hand side in the middle column, "Landline", and you
13 will see there that the green at the top is both
14 business and personal residential contracts, yes?

15 A. Yes.

16 Q. The code is on the right-hand side.

17 A. Yes.

18 Q. Then you have business contracts only?

19 A. Yes.

20 Q. Then you have got personal and residential contracts
21 only?

22 A. Yes.

23 Q. That is 58%, is it not, Mr Parker?

24 A. Yes, that is right.

25 Q. So let us go back to 357, {C/357/89}, having in mind

1 that 58% figure.

2 THE CHAIRMAN: Sorry, the 58% was?

3 MR BEARD: I am so sorry, let us go back to that one. This
4 is all customers, so this is all voice, so it is not
5 just SFV, just to be clear. I am just doing a direct
6 comparison.

7 THE CHAIRMAN: Yes, thank you.

8 MR BEARD: If we go back to {C/357/89}, we saw the average
9 figures here, did we not? 30%.

10 A. Yes.

11 Q. The percentage, therefore, of voice customers who are
12 SMEs who are taking a residential line has almost
13 doubled on this basis. Now, I recognise there are
14 methodological differences, but that suggests a very
15 significant increase in the overall percentage of voice
16 customers who are SMEs taking residential lines,
17 correct?

18 A. It does, or at least of people acting as businesses
19 using their home phone line for business purposes.

20 Q. But Mr Parker, whatever you say about those cohorts,
21 this is the same issue in relation to two of them, and
22 what I am pointing out to you is that you have taken
23 a completely flat average across the period in
24 circumstances where these two reports suggest that there
25 is a vast increase in percentage terms of the number of

1 SMEs using residential lines, however you mess with the
2 cohort as you want to, correct?

3 A. So I think this -- these two surveys do suggest that.

4 If we --

5 Q. They suggest it very strongly, do they not, Mr Parker?

6 A. If we go to --

7 Q. Could you answer the question, please, Mr Parker. They
8 suggest very strongly that there is a significant
9 increase in the percentage of SMEs that are using
10 residential lines for business purposes, correct?

11 A. They do. The BT internal documents suggest --

12 Q. I am coming to the BT internal documents in a moment,
13 Mr Parker. You like them very much, and yet they were
14 put to no BT witnesses, were they, Mr Parker?

15 A. I do not remember.

16 THE CHAIRMAN: Let us come to it in the order in which we
17 are going to deal with it.

18 MR BEARD: Yes.

19 A. But those documents suggest smaller proportions over
20 time.

21 Can we just maybe turn to the second of these
22 hand-ups.

23 Q. Mr Parker, I have some more questions on these issues.

24 THE CHAIRMAN: Let us go with Mr Beard's questions at the
25 moment.

- 1 A. Very well.
- 2 THE CHAIRMAN: I am sure you will be invited go to them in
3 re-examination, if appropriate.
- 4 MR BEARD: So you have a situation here where you have
5 a significant increase in the percentages across two
6 independent surveys carried out for Ofcom.
- 7 A. Yes.
- 8 Q. You have not taken any account of that in your analysis.
9 You do not set out these changes, do you, Mr Parker?
- 10 A. No, for the reasons that I have just described as to how
11 I do this.
- 12 Q. You have relied entirely on BT internal documents acting
13 as some sort of counterweight to this change in your
14 analysis to keep a flat percentage, correct?
- 15 A. I have relied on the BT documents and these two surveys
16 taken together, yes.
- 17 Q. So Dr Jenkins has carried out her analysis that she
18 carried out in relation to the 2016 survey, she has done
19 it in relation to the 2022 survey, and you know the
20 outturn of that is around 28.6% --
- 21 A. I do.
- 22 Q. -- of SFV customers who are SMEs taking residential
23 lines. You understand that?
- 24 A. Yes, and I think one of the drivers of that is likely to
25 be that the proportion of customers in the survey or

1 businesses in the survey that are operating, either
2 working from home or on a hybrid basis, has increased
3 since 2016, and actually there seems to have been an
4 increase from 2016 to 2022 based on the figures in the
5 2016 data.

6 Q. So you are essentially saying, well, look, Covid
7 occurred, people are working from home more. Is that
8 broadly what you are saying? I am just asking what
9 the --

10 A. It may -- Covid clearly accelerated any effect that was
11 going on and probably came back down --

12 Q. So more businesses are operating from home addresses
13 over time?

14 A. People may have started, you know, gradually, as well,
15 moving to working from home, and if so, people may be
16 more likely to be taking business calls from home.

17 Q. Or running their business from home?

18 A. Or running their business from home and using existing
19 residential contracts with landline for business
20 purposes.

21 Q. There is nothing implausible about the likelihood of
22 there being a significant increase in the number of
23 businesses using residential -- small and medium sized
24 enterprises using residential landlines across the
25 period 2016-2022, correct?

1 A. I think that is possible.

2 Q. It is not just possible, it is plausible, is it not?

3 A. I certainly think it is possible.

4 Q. Just in relation to that, one of the reasons why people
5 might stay using residential lines is if they thought
6 that the business line was more expensive as well?

7 A. Yes, I think that is one of the questions that is asked.

8 Q. Mr Bunt has given unchallenged evidence in relation to
9 those issues and we will deal with that in submissions.

10 So you just said now that you have taken the two
11 surveys together with the BT material. Could you just
12 take me in your report to where it is you take into
13 account the figures from 2022 in your calculation.

14 A. So this will be -- if we go to {IR-E/5/153}.

15 Q. Yes.

16 A. So you see I mention -- sorry, it is the following page,
17 sorry, {IR-E/5/154}. I do apologise. 7.25, I mention
18 there the 28.6%.

19 Q. Yes, you mention it.

20 A. I do mention it.

21 Then in 7.31 {IR-E/5/156}, I say that Dr Jenkins'
22 estimates are out of line with BT's internal views,
23 a range of different views, and therefore -- and in 7.33
24 {IR-E/5/157}, I therefore continue to rely on the
25 proportion of 10.4% because there are these

1 additional -- there is the survey, the 2022 survey,
2 there is the additional BT documents. I considered all
3 of those and I have not changed my view. It is not that
4 I did not consider it.

5 Q. So just to be clear, the figures from 2022, which
6 suggest that there is a very much larger share of
7 businesses that are using residential lines than in
8 2016, that makes no difference to your average, correct?

9 A. Well, because of the way I have done it, yes.

10 Q. Because it is outweighed by the BT documents?

11 A. I have taken them together, and given that there seemed
12 to be some differential --

13 Q. Mr Parker, you are -- I am going to come to the BT
14 documents, but you are an economist, Mr Parker. You
15 have an independent survey that is carried out on behalf
16 of Ofcom. You rely on the first of them, another one of
17 them is carried out in 2022, and it has no arithmetical,
18 numerical impact either on the absolute average that you
19 use or on whether it should be a flat average, does it?

20 A. No, I have not taken it into account in that way.

21 Q. Mr Parker, I am going to suggest to you that was not
22 proper usage of the 2022 survey?

23 A. That was the view that I took, and I understand your
24 point, yes.

25 Q. You say you went to various BT documents. Actually,

1 a number of them were just different versions of the
2 same slide. But just to be clear, you are aware of the
3 evidence that Mr Bunt gave on these various issues
4 because you referred to it in your third report. Do you
5 recall that?

6 A. Can you remind me with the reference?

7 Q. In your third report at {IR-E/3/234}, paragraph 7.52,
8 you refer to Mr Bunt's evidence?

9 A. Yes, that is right.

10 Q. I am not sure it has popped up on the screen.

11 EPE OPERATOR: Can I take that reference again, please.

12 MR BEARD: Yes, I am so sorry, {IR-E/3/234}.

13 So that was where you referred to Mr Bunt -- what
14 Mr Bunt said was the real limitations that BT had in
15 identifying business customers, and he was not
16 challenged on any of that, because that was in his first
17 witness statement and I do not think he was taken to
18 that at all.

19 A. Yes.

20 Q. I am not asking you that question, I am not testing you
21 on what the cross-examination was.

22 Are you aware of Mr Bunt's second report as well?

23 {D/2/35}

24 A. I have read it. But can I bring the paragraph to mind?

25 No.

1 Q. That was my fault. That was the only reason, I was not
2 testing whether you could remember the number, it was
3 just going to pop up.

4 This is in the context of identifying vulnerable
5 customers and the concerns that BT had about identifying
6 vulnerable customers, and he reiterates the point that
7 actually some of the issues that were in debate were
8 identifying vulnerable customers, and one of the
9 problems was:

10 "These businesses were not 'vulnerable' by any
11 definition but we were unable to accurately identify
12 them with the data we had."

13 A. Yes, that is right. Then there is an email from
14 Deirdre Cheek which I think sets out the approach they
15 took in calculating this 100,000 figure, which I refer
16 to at 7.29 of my fifth report.

17 Q. Just let us be clear. Mr Bunt was not challenged on any
18 of the issues to do with the difficulties of
19 identification, but you, as you rightly say, identified
20 an email {F/434/1}?

21 A. Yes.

22 Q. Let us just blow up the top of that email. This was an
23 email chain, and we will come back to it, but the first
24 two people on that chain were Ms Cheek and Ms Blight?

25 A. Yes.

1 Q. You know that this was not put to either of them,
2 Mr Parker?

3 A. I do not recall.

4 Q. No, it was not.

5 So this is an email from Ms Cheek that you refer to
6 further down the page. So if we could just go down,
7 I think it is two pages, to page {F/434/3}. Just to be
8 clear, so this was not put to Ms Cheek, but you
9 understand this is a draft email that has been pulled
10 together as a potential response to Ofcom, yes?

11 A. Yes.

12 Q. That is what we understand it to be. You are just
13 reading it. You do not have any particular insight into
14 this, do you, Mr Parker?

15 A. No, I am just looking at the fourth bullet there which
16 explains how they have calculated the 0.1 million.

17 Q. Yes, that is the one we are going to, because that is
18 the one you have placed great reliance on, Mr Parker:

19 "The figure of 0.1m for second lines/businesses ..."

20 So this is a number which appeared in some of the
21 documents, the slides you referred to, correct?

22 A. Yes.

23 Q. So here is what you say is the explanation of those
24 other materials:

25 "The figure of 0.1m for second lines/businesses was

1 sourced from our BT Consumer customer database. This
2 was an aggregated count of customers with multiple voice
3 assets on the same billing account ..."

4 So this instance is if you have got a single billing
5 account but you have got multiple PSTN lines on that
6 single billing account, is what you understand this to
7 be referring to?

8 A. Yes.

9 Q. Then:

10 "... those receiving multiple bills at the same
11 address ..."

12 So if you have a single address but you are actually
13 getting lots of BT bills, then you might be pulled out
14 on this basis?

15 A. Yes.

16 Q. Then:

17 "... those receiving 'J' type bills relating to
18 a VAT receipt request ..."

19 So that is people who specifically wanted VAT
20 receipts in relation to their telecoms?

21 A. Yes.

22 Q. Then:

23 "... and those with a name and address match to
24 customers with business descriptions on their billing
25 address ..."

1 So if someone who had actually got a name and
2 address that was identical or very similar to people
3 that had company type titles, they were being picked
4 out, yes?

5 A. Yes.

6 Q. That is it, is it not, Mr Parker? Those are the only
7 people who are being pulled out here.

8 So, for instance, your cohort of sole traders that
9 you keep referring to, if you have a single landline and
10 you are running a business through it at a residential
11 address because you are working at home, you will not be
12 picked up in this at all, will you?

13 A. No, that is right. So I think the BT estimates are
14 probably an underestimate of people using residential
15 lines for businesses, and I think the Ofcom surveys are
16 probably an overestimate for the reasons we discussed
17 earlier.

18 Q. The difficulty we have here, Mr Parker, is we do not
19 know how effective BT were in doing this, we do not have
20 the details of the way in which the BT databases worked,
21 no one asked Ms Cheek or Ms Blight about how these
22 things worked, and you do not have any sense of the
23 scale that even BT understood it was having difficulty
24 with, apart from Mr Bunt's witness statements where he
25 specifically said they could not properly identify

1 businesses on which he was not challenged. You
2 understand that, Mr Parker?

3 A. Yes, which is why I agree that I think these are
4 probably an underestimate. We do not know how much and
5 I --

6 Q. But it could be a fundamental and totally gross
7 underestimate, could it not, Mr Parker?

8 A. Exactly the same I think is true in terms of
9 over-estimate in Ofcom's surveys. I just think we have
10 some numbers which are probably too low, some numbers
11 which are probably too high, and I have taken a middle
12 view.

13 Q. Mr Parker, the numbers from Ofcom are numbers that have
14 been generated for a particular purpose, which I have
15 been through with you, that have been relied on by Ofcom
16 themselves when carrying out these calculations, and
17 some of which were effectively ignored by you even
18 though they doubled the percentage of landlines that
19 were being taken by SMEs on a residential basis?

20 A. Well, I do not agree with that characterisation for the
21 reasons I gave earlier. But also, I think all the BT
22 internal documents were written in a context where they
23 would be wishing to try and be as expansive as possible.

24 Q. Well, now, that is interesting, Mr Parker. Again, you
25 are speculating as an expert about the context and the

1 factual issues here, are you not, because none of these
2 witnesses were asked about that, were they?

3 A. Well, you say they were not and I accept that. But all
4 I am saying is the 100,000 figure was in the context of
5 BT seeking to demonstrate to Ofcom that there were not
6 many vulnerable customers, and therefore it would have
7 been in BT's --

8 Q. Do you know whether or not this was Voice Only or SPC,
9 SFV or voice?

10 A. I think these -- the 100,000 figure seems to relate to
11 Voice Only and split, so there was a split ... Let me --
12 I will have to -- I think that was clarified in the
13 Joint Experts' Statement somewhere. It is one of the
14 groups. Sorry, I will have to dig that out to remind
15 myself.

16 I think it excludes split supplier, but it looks
17 like it includes split service.

18 Q. So it is only that little bit of SPCs who are BT-BT?

19 A. The 20% --

20 Q. That is what you think is covered?

21 A. That is what I think is covered.

22 Q. So we have looked at how significant the SPC group is
23 and how significant the split service group is?

24 A. Yes.

25 Q. That is completely ignored here, on your reading of it?

- 1 A. That is on my reading of it, yes.
- 2 Q. Just to be clear, as Dr Jenkins explained, you might
3 expect that actually businesses who are landline holders
4 might actually fall within the SPC split service
5 category because they may well want to be online. You
6 understand that, do you not?
- 7 A. They might do, but I do not think we know.
- 8 Q. You do not know?
- 9 A. But it is definitely possible that many of them will.
10 It is also possible that some of them will not.
- 11 Q. Both of those things are true, Mr Parker, but both of
12 those things mean that these figures are not reliable.
13 What you have done is taken a putative middle view where
14 you have completely thrown out, effectively, the high
15 percentage from a rigorous survey, stuck with the lower
16 survey from six years previously, and then clung on to
17 documents that you provide a factual interpretation of
18 in relation to BT in circumstances where BT witnesses
19 said they could not identify businesses properly. You
20 understand that?
- 21 A. So I agree that the BT numbers are probably an
22 underestimate, and I think that the Ofcom survey numbers
23 are likely to be a bit of an overestimate. I have taken
24 a middle view. I have maintained a constant proportion
25 throughout. I understand that you disagree with that,

1 but that is what I have done.

2 Q. You have maintained a constant proportion in the face of
3 significant material that suggests it both increased and
4 changed -- it increased significantly, and you have
5 nonetheless maintained a flat average?

6 A. Yes, that is what I have done.

7 Q. Just to go to -- so you rely heavily on Ms Cheek's email
8 that Ms Blight was involved in, and that underpins
9 I think most of the tables that -- the slides you refer
10 to where there was an extraction of lines.

11 There was a different document you referred to at
12 the end, which was {F/723/1}.

13 A. Yes.

14 Q. Now, again, not put to any witnesses, so we do not
15 actually know what is going on with this document. We
16 think it is to do with digital voice migration. You
17 understand that?

18 A. Yes.

19 Q. I think you went to page 13. {F/723/13}

20 A. Yes.

21 Q. Here there are some migration exercises being undertaken
22 and you relied on "Multiple PSTN lines" at the bottom?

23 A. Yes.

24 Q. You do not know whether or not this is concerned with
25 Voice Only Customers, SPCs, some group of SPCs and

1 Voice Only, or what this is concerned with, do you?

2 A. So you can see here it talks about Solus.

3 Q. Yes.

4 A. If you zoom out on this, because we can look at the ...

5 Q. It says "Solus" at the top?

6 A. It says "Solus" at the top. So whilst that says

7 "Voice Only", it says "National base: 1.4m", and this is

8 a data point from somewhere around the middle of 2021,

9 I am not entirely sure. But if you look through other

10 parts of the document it has some forward-looking plans

11 for deliverables which start I think in December 2021 or

12 thereabouts, so this is presumably a document that was

13 produced prior to December 2021, and then the data it is

14 relying on will be some kind of data within 2021. That

15 1.4 million is approximately the size of the total SFV

16 base in 2021, so Voice Only and SPC customers as

17 a whole.

18 So to the extent that they are using the word

19 "Solus" in the same way on the same page, I think that

20 the 15k must therefore relate to as a proportion of the

21 1.4 million, which is the circa 1% figure.

22 Q. Right. So you do not know?

23 A. Well, beyond what I have just described, no.

24 Q. So on the face of it, it says "Solus ... (Voice Only)",

25 but you are saying actually it should not be read in

1 that way?

2 A. Well, the national base of Voice Only was not
3 1.4 million in 2021, but the national base of SFV as
4 a whole was about 1.4 million from the Class size
5 numbers that we discussed yesterday.

6 Q. I see. Just to be clear, you are saying that there is
7 a situation where there are multiple PSTN lines that are
8 around 15,000 that have been identified; is that what
9 you are getting from this document?

10 A. That is what I am getting from the term "National base",
11 yes.

12 Q. But you do not know?

13 A. No, and again that may be an underestimate because there
14 may be other business customers who are not using
15 multiple lines, but this is BT's, you know, a BT
16 internal estimate.

17 THE CHAIRMAN: Shall we take a break there?

18 MR BEARD: I only have one more question.

19 THE CHAIRMAN: Right.

20 MR BEARD: Or maybe two. I have got to finish off on this
21 and then turn over, but I think it would be more
22 sensible if you can bear with me for five minutes.

23 THE CHAIRMAN: Yes.

24 MR BEARD: So just on -- you take something quite strong
25 from this, though, do you not, in your fourth report at

1 7.30, which is {IR-E/5/156}.

2 At (c):

3 "In documents discussing BT's Voice Migration
4 strategy ... [you say] BT estimates that approximately
5 15,000 of its 1.4 million SFV Customers were business
6 customers, on the basis that these customers had
7 multiple lines."

8 So we did not actually see anything about business
9 customers there, but leave that.

10 "This again suggests that around 1% of BT SFV
11 Customers were accounted for by business customers as
12 of August 2021."

13 So we do not know what the document was doing,
14 no one was asked about it in the course of us putting
15 forward all of these witnesses. You are saying you can
16 read this as indicating that around 1% of BT SFV
17 customers were business customers. Really, Mr Parker?

18 A. I think what you actually need to do is look at the
19 previous documents referred to in 7.30(a). These are
20 waterfall chart documents that BT is looking at, trying
21 to identify the proportion of its SFV customer base that
22 are eligible for the Carmen discount, and in those
23 documents there is a statement by BT which says,
24 basically: these are the number with multiple lines, and
25 we have agreed with Ofcom that the most likely

1 interpretation of people having multiple lines is that
2 they are a business.

3 Q. Yes, and in relation to that, that is just in relation
4 to the Carmen discount, is it not, those waterfall
5 charts? So it is Voice Only?

6 A. That is in relation to -- yes, they have taken out the
7 Split Purchase Customers.

8 Q. Completely, have they not?

9 A. Yes.

10 Q. They are taking one basis on which they might exclude
11 people if they have got multiple lines, but they are not
12 remotely suggesting that is the only way that someone
13 would be a business, is it?

14 A. No, which is why I do not take 1% as my number. But
15 I am saying this is --

16 Q. But it does not suggest that it is 1%, Mr Parker. What
17 you are doing is you are picking a number that does not
18 suggest anything about the overall number of business
19 customers and you are trying to use this as
20 a counterweight to exclude a survey, the impact of
21 a survey from 2022, which is clearly focused on business
22 purpose usage of communications technologies by SMEs.

23 It is not a rational and balanced way to approach
24 the calculation of the business customers in this Class,
25 is it, Mr Parker?

- 1 A. I think it is balanced, because it is looking both at
2 the evidence from the surveys and from BT's internal
3 documents.
- 4 Q. One last question. You said on Day 17 that in order to
5 be a business customer, you thought you needed to submit
6 a company registration number. I have to say, on our
7 side we did not understand where that came from at all,
8 Mr Parker. There is a reference in an Ofcom document,
9 but it is no part of any part of BT's terms and
10 conditions we have ever identified. Is there a basis
11 for it, Mr Parker?
- 12 A. It was something that I had mentioned in Parker 1.
13 I cannot remember precisely ... I can have a look for
14 a reference.
- 15 Q. You did mention it in Parker 1, you are quite right.
- 16 A. But this was a while ago now, I cannot remember where
17 that comes from.
- 18 Q. But you do not have any --
- 19 A. If it is not referenced in Parker 1 -- if there is a
20 reference in Parker 1, it will be -- in that part, it
21 will be in relation to -- that will tell you where I got
22 that information from.
- 23 Q. I think there was a reference in an Ofcom document to
24 this, but there is no basis for it. You have not
25 checked it in any way, have you?

1 A. Well, I may have referenced the Ofcom document, but if
2 Ofcom was not correct then I would be relying on their
3 incorrect assumption.

4 Q. Right, and in none of the terms and conditions you have
5 seen in relation to any of this have you seen any
6 requirement of company registration, have you,
7 Mr Parker?

8 A. I have not checked them for that, no.

9 THE CHAIRMAN: Is it worth just looking at this?

10 MR BEARD: Yes, certainly.

11 THE CHAIRMAN: Because I am not quite sure what he is
12 referring to.

13 MR BEARD: It is {E/1/40}. It is actually a reference back
14 to the provisional conclusions. So this is the 2017
15 Provisional Conclusions.

16 A. Yes, it is at the bottom of that page, is it not?

17 Q. Yes, it is paragraph 3.55.

18 A. Footnote 99.

19 Q. Yes. If we go to {IR-C/1/30}, 3.55, this was a point in
20 the provisional conclusions which does not find its way
21 into the final statement, and that is your only source
22 for this?

23 A. Yes. If that is not correct, then clearly I --

24 Q. It is not.

25 A. -- that point.

1 MR BEARD: I am grateful.

2 I do not have any further questions for the witness.

3 THE CHAIRMAN: Thank you.

4 Any re-examination, Mr Spitz?

5 Re-examination by MR SPITZ

6 MR SPITZ: Just one question, please, sir, and that is, on
7 at least two occasions you sought to point to the
8 documents that you had handed up. You were not given
9 the opportunity to complete the point you wanted to make
10 and I would like to give you the opportunity to do so.

11 A. Thank you very much. So if we could turn to the second
12 of the hand-outs, so not the one we were looking at
13 before but the other one. {C/398.2/153} So you will see
14 it has got in the top left corner it has "QD3 Landline
15 service" and this is talking about -- this is the
16 underlying data for the charts that I think that
17 Mr Beard took me to.

18 So you can see personal residential contracts only,
19 52%. Business contract, 33%. Both business, it will be
20 the left-hand side is the -- it is the left most column.

21 But if we go on one page, {C/398.2/154} which is
22 still entitled "QD3 Landline service" this is
23 a different cut of the data and I think it is helpful
24 because it starts breaking things down by home and
25 office working. So you can see that first left-hand

1 side, so this is on the second page, this is page
2 marking, 154, you can see that the personal /
3 residential contracts, a significantly higher proportion
4 of those in people working entirely or mainly working
5 from home, as I think one would expect, so 68% rather
6 than 52%.

7 Then if you go to the third page --

8 THE CHAIRMAN: Sorry, I am just being a bit slow. Where is
9 the 68%? I see, yes, what is shaded in blue.

10 A. It is the one shaded in blue, yes, exactly, which
11 I think is just saying that that subgroup is different
12 to the other subgroups. I am not relying on the
13 blueness of it, just the number. So there is a large
14 number of --

15 THE CHAIRMAN: From 50 --

16 A. 52% was for the sample as a whole but for those people
17 who are working from home it is 68% and I think there is
18 a higher proportion of people working from home in the
19 2022 survey than in the 2016 survey.

20 If you go on to the following page, {C/398.2/155},
21 and I think this was also mentioned a bit.

22 "Why have you chosen not to have a business contract
23 for your landline service?"

24 Down the left-hand side, this is page {C/398.2/159},
25 it is the third of those pages, then you see 71% saying

1 personal contract is fine for my business. 26% say
2 never thought about it/considered it. 7% say it was not
3 aware business contracts were beneficial. 26% say
4 business contracts are more expensive / personal
5 contracts are cheaper.

6 Then if you again go on to the following slide, the
7 following page, {C/398.2/160} then you see that breaking
8 down by the groups of different types of office workers.
9 You have people were doing -- actually people working
10 entirely from an office, more of them say personal
11 contracts is fine for my business. But these are the
12 underlying tables.

13 THE CHAIRMAN: For the 2022 survey.

14 A. For the 2022 survey which I think tell you something
15 about the differences that you see when you are looking
16 at people with different types of homeworking, home or
17 office working.

18 THE CHAIRMAN: What are you drawing from this in particular,
19 you are drawing an increased percentage --

20 A. There are quite a few people working from home. Many of
21 them have personal contracts and that you cannot tell
22 whether those people are using those personal contracts
23 for business only or they are using them because they
24 have started working from home and they happen to make
25 some calls for business purposes. Therefore, that is

1 why I think there might be, to the extent that we are
2 not trying to exclude from the -- apply adjustments for
3 business customers who are actually essentially personal
4 residential customers using it for making an occasional
5 business call from home because they happen to on their
6 landline, there are quite a lot of them, and you can see
7 how it sort of starts breaking down according to their
8 different work patterns and I think those work patterns
9 will have changed over time. I certainly accept that
10 but it might be that that is an important part of the
11 explanation for why the numbers in 2022 are higher than
12 otherwise.

13 THE CHAIRMAN: Thank you.

14 MR SPITZ: Thank you. I have no further questions.

15 THE CHAIRMAN: We do not have anything arising out of that.

16 Thank you very much indeed, Mr Parker. That completes
17 your evidence.

18 A. Thank you.

19 (The witness withdrew)

20 THE CHAIRMAN: We will take our break now.

21 (11.51 am)

22 (A short break)

23 (12.05 pm)

24 THE CHAIRMAN: Right, we need to have Dr Jenkins re-sworn or
25 reaffirmed.

1 DR HELEN JENKINS (reaffirmed)

2 MR BEARD: Thank you, Dr Jenkins. I do not have any
3 questions for you. I think there are files in front of
4 you which probably have the expert reports in. I will
5 leave you to Mr Spitz.

6 Cross-examination by MR SPITZ

7 MR SPITZ: Thank you very much.

8 Good afternoon, Dr Jenkins. I will start with some
9 questions about calculating the overcharging, and then
10 there are certain other topics that I would like to
11 cover with you.

12 In relation to your approach to the overcharge, you
13 do not cite any evidence from BT in the Joint Experts'
14 Statement or in your reports about what prices BT would
15 have set in a lawful counterfactual, absent any abusive
16 behaviour, do you?

17 A. I do not, but there is no evidence that I have seen of
18 BT talking about a counterfactual, given I think it is
19 disputing the fact that its pricing was unlawful.

20 Q. Yes, exactly so. In their witness statements, BT's
21 witness statements, they do not address what they would
22 have set as a lawful -- a price in a lawful
23 counterfactual either, do they?

24 THE CHAIRMAN: That is probably a matter for submission, is
25 it not? We can all see what the statements say and what

1 they do not.

2 MR SPITZ: At the abuse stage of the analysis, to get to
3 quantum the Tribunal would have found that BT's actual
4 prices were unfair, would it not?

5 A. Sorry, could you repeat the question.

6 Q. Yes. When one gets to the abuse stage of the
7 analysis -- sorry, from the abuse stage to quantum, the
8 Tribunal would have had to find that BT's actual prices
9 were unfair, would it not?

10 A. It would.

11 Q. Because otherwise one need not get to quantum at all?

12 A. That is right. If you have -- whatever -- I think
13 whatever price is determined to be fair, that is then
14 compared with the actual price to determine what the
15 quantum is.

16 Q. It would also implicitly have found that whatever the
17 cost-plus benchmark that it used, that benchmark was
18 fair, yes?

19 A. So I think there is -- at limb 1 there is a cost-plus
20 benchmark identified which determines whether or not
21 the price is excessive against reasonably attributable
22 costs. To the extent that that price is at or similar
23 to actual prices charged, then I think one concluded
24 that price is fair, because it is fair for producers to
25 be able to charge cost-reflective prices. If -- there

1 may be other considerations as well in the event that it
2 is excessive, determined to be excessive, that will
3 allow for the price that is charged to be fair.

4 So it is possible that one determines the price is
5 fair despite the fact of having found at limb 1 that
6 the price is excessive.

7 Q. Yesterday what you suggested was that even if BT were to
8 lose at the abuse stage, at the quantification stage the
9 Tribunal would be looking to compare the actual unfair
10 and unlawful price against a hypothetical fair and
11 lawful price to quantify damages?

12 A. Could you take me to that point?

13 Q. Yes, let us go to yesterday's transcript briefly. It is
14 {Day22/10:13}.

15 The chairman there asks:

16 "Right. I understand why you have not done this,
17 but am I right in thinking it is not as if you have
18 proffered some particular fair price?"

19 You say:

20 "I have. I have proffered a fair price."

21 The chairman says:

22 "I am sorry, I have missed it in that case."

23 You say:

24 "No, that is fine. In the sense that the price that
25 I calculate under the SAC combinatorial approach, which

1 is a cost-plus benchmark, but it is one which I think is
2 the fair price, and therefore one can use that as the
3 benchmark to use as quantum."

4 A. Yes.

5 Q. So if I understand what you said there, you suggested
6 that your SAC combi approach would be the fair price by
7 which to do the quantification exercise; is that right?

8 A. That is right.

9 Q. Let us turn to your first report, which is at
10 {IR-E/17/233}. Let us have a look at Figure 6.10. What
11 we can see there is a comparison between the actual
12 price, which is the red line, and the actual ARPU -- the
13 red line is the actual ARPU, and we can see a comparison
14 between that and your cost-plus benchmark as a result of
15 the combi approach, and that is represented by the black
16 diamonds at the top of this figure?

17 A. Yes, that is right.

18 Q. What you contend are the fair prices are higher than the
19 actual prices?

20 A. That is right.

21 Q. But by the quantification stage, your benchmark must
22 logically have been rejected, yes?

23 A. Because you are saying that my quantification is above
24 the ARPU.

25 Q. By the time we get to the quantification stage, the

1 Tribunal would have found that limbs 1 and 2 have been
2 established?

3 A. Yes, if the Tribunal has made that determination, then
4 it will be at a point where the SAC combi is not
5 accepted.

6 Q. Absolutely. At that stage, it makes no sense at
7 quantification to use those benchmark prices in
8 quantifying damages, does it?

9 A. But the question that was put to me yesterday was
10 whether I had put forward a fair benchmark, which -- and
11 my answer was, yes, you can think of the SAC combi as
12 a fair benchmark, and that then determines that there
13 was not an infringement.

14 Q. But it is not an alternative for use at the quantum
15 stage, given the scenario that I have just sketched out
16 to you, is it?

17 A. It is still an approach that could be used, given the
18 inputs that I have used, which is in terms of assessing
19 what the common costs are of BT, as best I was able,
20 based on the information available on BT's actual costs.
21 Also considering a rate of return distribution based on
22 similar companies to capture the appropriate return for
23 businesses with a varying approach to brand efficiency.

24 Now, one could use the same approach and take
25 different views on those matters, and perhaps you could

1 use the SAC combi approach and determine that the price
2 was not fair. So I do not think the approach is not
3 relevant. In this event, with the facts that I have
4 used and presented, it does turn out to suggest that
5 BT's pricing was fair. I do not think it is the
6 approach, it is the combination of the approach and the
7 facts.

8 Q. I think we may be ships passing in the night slightly on
9 this, and I am sure it is my fault, but the question is
10 really this: you do not have a separate point -- if the
11 Tribunal uses the Class Representative's benchmark at
12 the abuse stage, you do not have a separate point that
13 at the quantum stage there would still be room to use
14 some other benchmark?

15 A. If the Tribunal were to use the CR's cost-plus
16 benchmark, based, as it is, on one particular approach
17 to indirect cost allocation, based on data from 2009,
18 I think -- I have not proposed an alternative, but what
19 I have proposed is an alternative to the rate of return
20 that should be applied to that, that the 8.9% is too
21 low, and I have proposed some alternatives to cost
22 allocation based on actual indirect costs, and I have
23 given some scenarios for fully allocated cost
24 allocations on the basis of EPMU, revenue and customers.

25 THE CHAIRMAN: That is the one where, on your analysis,

1 there is a difference between the EPMU-derived
2 allocation of indirect costs, and the revenue and
3 customer ones?

4 A. Yes, so --

5 THE CHAIRMAN: Not on your model, because you say on yours
6 it is all about the same, but if you used
7 Mr Duckworth's.

8 A. So I think there are two places where I have looked at
9 this. One is, I think as you are recalling, chairman,
10 where the question is having made an identification of
11 incremental costs and common costs, how one allocates
12 the incremental costs. What I have also done, which is
13 as a comparator to the approach taken by the CR, is to
14 take all indirect costs, so in the event that it is too
15 difficult to split them between incremental and common.

16 What Mr Duckworth has done is rely on the 2009 RFS
17 for all indirect costs, to get an allocation to Voice.
18 What I have also provided as a sensitivity is take all
19 those indirect costs and say if one were to use
20 different allocators, different allocators for all
21 indirect costs on the basis of EPMU, revenue and
22 customers, what would be the benchmark? That shows that
23 the benchmark under that, taking fully allocated costs
24 customer, and the 20% or 25% rate of return, gets you
25 a price that is quite similar to actual prices.

- 1 THE CHAIRMAN: Yes, I follow that.
- 2 A. So there are two ways I have used that scenario.
- 3 THE CHAIRMAN: Yes.
- 4 A. That second one I think answers Mr Spitz's question of
5 me providing a sensitivity that is based on an approach
6 which is relatively consistent with the CR's approach
7 but using different assumptions on allocation and rates
8 of return.
- 9 MR SPITZ: All right, let me ask you a few questions about
10 adjusting on a compound basis. In your two reports you
11 say that you have been instructed to calculate what the
12 impact on any damages calculation would be if simple
13 interest were applied, rather than compound interest.
14 We can turn them up, but I suspect we do not need
15 to, but that is correct, is it not?
- 16 A. That is correct.
- 17 Q. Those were your instructions, yes?
- 18 A. They were my instructions.
- 19 Q. You were not asked to express a view on whether compound
20 interest is the economically appropriate way of
21 providing complete compensation?
- 22 A. I was not asked that.
- 23 Q. Were you surprised not to have been asked to consider
24 compound interest?
- 25 A. No, because I think -- I have been involved in a number

1 of cases where the question of interest has come up.
2 There is obviously a lot of legal precedent around how
3 compound interest can be claimed in follow-on damages
4 and other damages cases, with, as I understand it, the
5 legal precedent being that you have to derive a claim of
6 damages on damages for compound claims. So in a sense,
7 the way that economists might think about the world is
8 not necessarily the relevant question for the legal
9 framework that exists.

10 Q. But you were not asked, in the event that the Class
11 Representative established that it had a specific head
12 of damages for compound interest, you were not asked to
13 look at that and express an opinion, were you?

14 A. I think I was asked to comment on the CR's approach but
15 not to develop an alternative.

16 Q. Not to develop an alternative. Because you make the
17 following point in the book that you co-authored,
18 "Economics for Competition Lawyers", that is the Third
19 Edition, and it is {E/16.45/78}, at section 10.179. If
20 we can just enlarge that.

21 Picking it up four lines from the top, there you and
22 your co-authors say:

23 "From an economic perspective, compounding is the
24 usual, and conceptually correct, approach to
25 discounting."

1 Then the passage continues. At the bottom of the
2 passage you say:

3 "In many jurisdictions simple interest is the norm,
4 particularly where statutory interest rates are
5 prescribed. As economists, we are somewhat puzzled by
6 this."

7 The puzzlement is because, is it not, from an
8 economic point of view, the proper way of ensuring
9 complete compensation is to award compound interest, is
10 it not?

11 A. I think from an economic perspective, when you are
12 thinking about the time value of money and how to
13 compensate someone for a loss at a given point in time,
14 you would generally discount using -- in a compound way,
15 yes. Whether that is the appropriate compensatory
16 principle within a legal framework I think is
17 a different question.

18 Q. Absolutely, I understand that. But from an economic
19 perspective, as you say, compounding is the usual
20 approach?

21 A. It is.

22 Q. But you were not asked to consider compounding in this
23 case?

24 A. No.

25 Q. Now let us look at Mr Parker's calculation of the

1 portion of the overcharge that would have been saved and
2 that which would have been spent. On his analysis, the
3 portion that would have been saved would attract an
4 adjustment for interest, and that which would have been
5 spent would attract an adjustment for inflation. The
6 first step then is to work out the split between the two
7 portions?

8 A. Yes.

9 Q. So when it comes to assessing whether Mr Parker is right
10 to use a split of 62% saved and 38% spent, we have seen
11 that what he does is he uses the marginal propensity to
12 consume, the MPC, to work this out?

13 A. Yes.

14 Q. Let us have a look at what you say about that in your
15 first report, {IR-E/17/314} at paragraph 8.77, under the
16 heading "Consumer spending and saving decisions". Here
17 you are talking about what the split should be between
18 the two portions, yes?

19 A. Yes. I would say that in my first report, at that point
20 I had not had the benefit of actually reading
21 Mr Parker's views on how this had actually been done.
22 All we had were the tables that were annexed to the
23 re-re-re-amended claim form, so it is probably my second
24 report which goes into more detail about the actual
25 approach that Mr Parker took.

1 Q. That is a fair point and understood, and I will give you
2 the opportunity to say anything more you would like to
3 say about this, but what I wanted to highlight is you
4 say:

5 "... consumer decision making is imperfect and there
6 are real world limitations on consumer cognitive
7 processing, such that consumers make choices that are
8 not necessarily in their long-term interest."

9 The paragraph ends by saying:

10 "Such behaviours will affect different individuals
11 to different degrees, and it is possible that Class
12 Members will (on average) display different consumption
13 behaviours to a greater or lesser extent than the UK
14 population ..."

15 Then turn over to paragraph 8.83 {IR-E/17/316}. The
16 last sentence:

17 "As mentioned above, consumers' savings and spending
18 decisions are individualised, and cannot be easily
19 reduced to generalisations based on observable traits
20 such as age or income, notwithstanding that such factors
21 will be important."

22 Then if we go ahead to paragraph 8.93 on page
23 {IR-E/17/319}, this is where we see your punchline.
24 Under the heading "The CR's estimate of the MPC", you
25 concluded at 8.93:

1 "If it [and that is a reference to MPC] is assumed
2 to apply across the Class, this appears to be
3 side-stepping the methodological requirement to
4 understand the likely actual consumption and financing
5 choices of individual Class Members."

6 Do you see that?

7 A. Yes.

8 Q. So it seems that your criticism is that MPC is
9 a generalised measure that is not based on evidence from
10 individual Class Members on exactly how much extra they
11 would have saved or spent if they had had the overcharge
12 back. Is that a fair encapsulation of your position?

13 A. Yes, that the basis on which the MPC had been selected
14 was not clear to me at that time.

15 Q. But in the specific context of collective proceedings
16 for several million end consumers, it would be
17 unworkable, would it not, to require evidence from
18 individual Class Members on exactly how they would have
19 dealt with the overcharge, would it not?

20 A. Yes, but the aggregate that you use could be informed by
21 the likely behaviour of the Class Members, so that --
22 I think it is a question of the ultimate requirements
23 that the Tribunal will require for an interest,
24 a compound interest claim, but that precedent has
25 suggested it is not sufficient just to use aggregates

1 without some understanding of the characteristics of the
2 specific Class Members, and this Class does have some
3 specific attributes that would need to be taken into
4 account, rather than applying overall averages.

5 Q. But to be clear, it would not require -- I do not think
6 you are saying that it would require specific
7 information or disclosure for each customer about how
8 much they would spend or save, are you?

9 A. No, I am not saying you would need to go all the way to
10 having information on individuals, but that you need to
11 know something about the individuals in order to decide
12 whether the aggregate makes sense.

13 Q. That is because aggregate damages assessments have been
14 made available by the legislature to avoid the need for
15 the sort of exercise I just mentioned?

16 A. Yes.

17 Q. You would accept that?

18 A. I would accept that.

19 Q. So the requirement for individual assessments of loss is
20 removed under the statute itself?

21 MR BEARD: Is that a legal submission?

22 THE CHAIRMAN: I think, in any event, Dr Jenkins has said
23 that she accepts it would not go down to the individual
24 choice or preferences of individual Class Members, that
25 is not how the thing works, but that your aggregate

1 figure can be informed by a view as to what the Class
2 characteristics may be.

3 MR SPITZ: Mr Parker has sought to take age adjustments into
4 account in his application of the MPC, has he not?

5 A. He has sought to take age aspects into account. But
6 I think once -- in my second report, once it was clear
7 to me the material on which Mr Parker was relying,
8 I think age is not the characteristic on which MPC
9 actually differs very much from the survey that he did,
10 and it was more about access to funds which I discussed
11 yesterday in the hot tub.

12 Now, while you may not be able to know for all
13 individuals in the Class what this particular position
14 was, it would be amenable to survey to know something
15 about, on average, the general position in terms of
16 savings availability, closeness to financial
17 constraints, or possibly you could use income as a proxy
18 if you had that from a survey of the Class Members.

19 Q. So are you saying that without such a survey, you would
20 not be able to make good a claim for compound interest
21 on an aggregate basis? Is that your position?

22 A. I think this is a question that I think law will be
23 being made with each of the cases that are done, is what
24 is the burden and standard of proof that is required?
25 It is my understanding that just using national averages

1 may not be sufficient evidence on which to base such
2 a claim and I think the boundary of what is reasonable
3 to expect as an evidential requirement to be sure that
4 the Class is being appropriately compensated. I think
5 doing one survey of potential Class Members is not such
6 an overweening burden that it could not be considered in
7 this, given the actual magnitude of the compound
8 interest claim.

9 Q. But you have not offered a real alternative to the MPC
10 approach, have you?

11 A. I was aware of the approach that Mr Parker had taken
12 only properly in September. So had that been clearer at
13 an earlier stage, it is possible one might have been
14 able to engage and look for evidence, but with the time
15 available at the reply and JES stage, then what I have
16 done is look at the evidence on which Mr Parker relied
17 and highlight the areas where I think Class
18 characteristics have not been fully taken account of.

19 Q. As I think you have agreed, you have not offered an
20 alternative to the MPC approach, have you?

21 A. I have not offered an alternative, no.

22 Q. While you say the Class Members' marginal rather than
23 average spending or savings decisions are what matters,
24 there is no available source of data or information of
25 how individuals' marginal saving and spending decisions

1 would respond to a small change in income, is there?

2 A. I have not found one, no.

3 Q. Of course you have not provided any evidence on
4 households' incomes or balance sheets or any of that
5 material either, have you?

6 A. No, I have not. I have commented on Mr Parker's.

7 Q. I do not think you have given consideration to the
8 practicality or feasibility of how one might get this
9 additional evidence on households' balance sheet
10 positions, have you?

11 A. You would use some survey method to do that. I think
12 that would not be impossible to do, far from it, and
13 such a survey could also ask some questions about
14 marginal income use and balance sheets. In fact, that
15 was my previous answer with respect to the MPC
16 distribution, was really about balance sheets and what
17 financial assets and security a household might have.

18 I think such a survey would also be able to inform
19 on the question of marginal spending decisions with --
20 it would not be perfect, but you could get some useful
21 information by asking questions about other sorts of
22 changes, tax rebates, that sort of thing.

23 Q. Let us look then at the calculation of inflation-related
24 losses for the portion of the overcharge that would have
25 been spent. I think you accept that the general fall in

1 purchasing power of currency over time is a common
2 feature of developed economies?

3 A. Yes.

4 Q. Also that consumers also prefer earlier consumption to
5 later consumption?

6 A. Yes.

7 Q. As you know, Mr Parker uses CPI as the rate to calculate
8 the uplift for the portion of the overcharge damages
9 that would have been spent?

10 A. Yes.

11 Q. Now, if we look at the Joint Experts' Statement,
12 {OR-E/49/215}, paragraph 9.4.1, there you are addressing
13 adjustments for inflation. You say:

14 "Over time the price of some goods will rise and
15 the price of other goods will fall ... Therefore, for
16 a given purchase, a consumer or business may pay more or
17 less for a given good or service if that purchase is
18 deferred."

19 Then the second bullet point, you continue:

20 "... there is no evidence that Class Members would
21 spend any award on the same goods or services as those
22 that may have been foregone ..."

23 If we turn over the page to the next proposition,
24 {OR-E/49/216}, there you say, this is 9.4.2, the first
25 bullet point:

1 "If the Class Member would have otherwise bought
2 (more of) a particular good ..."

3 Then you continue.

4 So you focus there on the particular good in
5 question that a Class Member might have bought?

6 A. Yes.

7 Q. If we look at your first report again, that is
8 {IR-E/17/312}, paragraph 8.72. Apologies, I think it
9 may be back in the Joint Experts' Statement, so let us
10 go back to that. IR-E/49 at 8.72. No, it is a wrong
11 reference.

12 I will read out what you say and you can tell me if
13 you recall it. You say:

14 "The way the passing of time will affect any
15 individual or group of customers will depend on their
16 individual behaviours and preferences. Even with the
17 benefit of such specific knowledge as to what such
18 a consumer would have spent their money on, the overall
19 impact is a subjective one and depends on how the
20 consumer values each set of goods at each point in
21 time."

22 Do you recall that?

23 A. Yes.

24 Q. At paragraph 8.87 {IR-E/17/317}. It is the same issue,
25 so I am going to just read it again. That reference

1 unfortunately is wrong and I apologise. But you say:

2 "... it is not a given that the goods that would
3 have been purchased at the time would be more expensive
4 now. Rather than reflecting the specific mix relevant
5 for the Class, the CR has used economy-wide CPI
6 inflation to uplift ..."

7 Do you recall that expression of your view?

8 A. Yes.

9 Q. So if I understand it, your criticism again boils down
10 to saying that we do not have specific individualised
11 information on exactly what products the Class Members
12 would have spent their money on over the past six years?

13 A. Yes. Well, I think the point here is again, especially
14 in my first report where it is not exactly clear what
15 the consumption element of the claim is exactly based
16 on, because, as I say, we can talk about time value of
17 money and how one compensates for that as a particular
18 approach, and I think courts have generally awarded
19 simple interest to adjust for time value for money, and
20 then if you want to go for a compound framework then you
21 do damages on damages, and you establish something about
22 the nature of what would have actually happened, what
23 the funds would actually have been spent on.

24 So this seems a sort of hybrid between those two,
25 which, as an economist, one might say, yes, that is

1 fine, it has moved the framework such that time value of
2 money is about discounting at a risk-free rate. That
3 might be fine. But if one is in a damages on damages
4 framework, and then you introduce consumption ideas into
5 that, in my first report I was just highlighting what
6 you might need to think about, because I was more
7 familiar with thinking about that in the context of
8 interest claims, and in there you do ask questions about
9 what businesses would have -- where the actual funds
10 would have come from, you know, would they have issued
11 debt, would they have issued equity, did they have
12 a cash pile such that they could use that?

13 So the analogue, if you are thinking about
14 consumption, might well be, well -- and one might be
15 able to imagine in another case that the question is,
16 oh, well, they would have bought specific items, because
17 that is the nature of the claim, and therefore your
18 inflation would be related to the actual price evolution
19 of that particular class of goods, for example,
20 computers or something like that, which probably bucked
21 the trend of a CPI element.

22 So in my first report I was just seeking to bring
23 out some of the considerations that would be necessary
24 to decide whether or not a spending power parity
25 approach would be appropriate as a damages on damages

1 case from an economics perspective.

2 Q. Where one is looking at consumption and considering the
3 question of inflation in a collective claim when one is
4 considering aggregate awards, are you saying that we
5 need to look at the specific products that were
6 purchased by Members of the Class?

7 A. Again, I think it would be the same as the answer on the
8 Class characteristics with respect to MPC. I am not
9 saying you would have to have the information at that
10 level of granularity, but if it were the case that the
11 Class had certain characteristics, which meant that
12 their consumption patterns were quite different from
13 that of the average population, then maybe CPI would not
14 be the right approach to use.

15 Now, I recognise it is a very generally used measure
16 for spending power parity, precisely because it can be
17 very hard to know what someone would do in the future in
18 terms of consumption decisions, because the nature of
19 consumption opportunities change a lot over a six to
20 ten-year period.

21 Q. Yes, you agree that CPI is commonly used, and I think
22 you are not aware of any other index beyond CPI that
23 would better reflect sub-class differences in purchasing
24 patterns, are you?

25 A. What you could do is use sub-indices of the CPI. So,

1 for example, if there were a particular focus on the
2 Voice Only Customers, who I think are recognised to be
3 older, and therefore the consumption patterns of older
4 people may well be different from that of the average
5 because they may already own their homes and not have
6 any rental or housing costs, what one could do is do
7 a bespoke pricing index which reflects the sort of
8 basket of goods that particular age group of the
9 population consume.

10 Q. Of course, it is not something that you have sought to
11 do?

12 A. No, I did not seek to do that.

13 Q. You have not presented any specific evidence that the
14 particular consumption mix of this Class is any
15 different from the CPI consumption mix, have you?

16 A. I have not.

17 Q. Let us then go to the question of business customers
18 now, which is the final area that we need to cover. If
19 I can ask you to begin by turning up the collective
20 proceedings order which is at {B/9/1}. The CPO order is
21 at {B/9/1}, and the Class definition starts at page
22 {B/9/3}.

23 You see at subparagraph (d) the claim period is
24 defined, and you will see residential Voice Only
25 Customers in subparagraph (i), and there the claim

1 period ends in April, 1 April 2018. That is the date of
2 the commitments?

3 A. Yes.

4 Q. If you look at subparagraph (ii), the claims for
5 business VOCs is ongoing to date?

6 A. Yes.

7 Q. Subparagraph (iii), for SPCs there is no divide between
8 residential and business customers there. It
9 encompasses all customers?

10 A. Yes.

11 Q. The claim for those SPCs is ongoing beyond the date of
12 the commitments, yes?

13 A. Yes.

14 Q. So both business VOCs and SPCs have a claim for the
15 whole claim period. It is only the residential VOCs
16 whose claim stops at the date of the commitments?

17 A. Yes, I see that.

18 Q. In terms of the numbers, you will recall yesterday we
19 saw the three internal documents from BT from 2019-2021,
20 and you will recall those showed estimates of there
21 being 15,000 or 20,000 business customers who were VOCs?

22 A. Those were estimates of VOCs who had multiple lines, so
23 it is a subset. That was a proxy for businesses, but
24 there may be other businesses who are VOCs as well.

25 Q. These three documents did not feature in your analysis

1 in your reports at all?

2 A. No, they did not.

3 Q. You do not rely on any BT internal documents?

4 A. No, I rely on the Ofcom evidence.

5 Q. Those are the two surveys from 2016 and 2022?

6 A. Yes, that is right.

7 Q. If we turn up your second report, {IR-E/18/200},

8 paragraph 7.29. There you make some criticisms of

9 Mr Parker's 10.4% Class-wide estimate?

10 A. Yes.

11 Q. Do you see that?

12 A. Yes.

13 Q. Your first point is that the reliability of the BT

14 estimate from April 2016 cannot be confirmed, and that

15 April 2016 estimate is from the fourth document we saw

16 yesterday that showed an internal estimate of 100,000

17 business customers?

18 A. The 2016 one.

19 Q. Indeed.

20 A. That was linked to the Carmen discount, is that right?

21 It is the colourful one.

22 Q. Not the 2016 one. The waterfall charts were linked to

23 the Carmen discount.

24 A. I think one of the other slides was also linked to the

25 Carmen discounts, the one that had colour.

1 Q. Okay, let us go to the April 2016 slide quickly. It is
2 {OR-F/433/7}.

3 A. Yes, that is the one I was thinking of.

4 Q. It is point 2 there.

5 A. You see, I think this is slides for Ofcom 27 April 2016.
6 I think this is also in the context of determining which
7 lines would be eligible for the Carmen discount from the
8 Voice Only.

9 So I think it is the same sort of approach as the
10 waterfall chart where first of all it is excluding all
11 the Split Purchase Customers, that is line 1, and then
12 seeking to identify of the remaining Voice Only
13 Customers which of those might not be eligible. Or the
14 impact of the Carmen discount perhaps is a better way of
15 thinking about this. But it is the same activity that
16 BT was engaged in, in trying to understand how the
17 Carmen discount should be implemented.

18 Q. I think your point is that it is not possible to confirm
19 the reliability of the BT estimate from April 2016?

20 A. Yes, my point here is that it is not telling you
21 anything about the number of businesses that take
22 Standalone Fixed Voice overall. If anything, it is
23 telling you something about the Voice Only Customers.

24 Q. You also say that the April 2016 document was made in
25 the context of BT pricing decisions. That is in your

1 second report {IR-E/18/200} at paragraph 7.30.

2 So that is the criticism directed at the 2016
3 estimate?

4 A. I see that, yes.

5 Q. The three documents we looked at yesterday, those are
6 not made in the context of estimating BT's pricing
7 decisions?

8 A. Yes, possibly. I was not right there. It is in the
9 context of the Carmen discount at least.

10 Q. The three documents that we looked at yesterday,
11 certainly in the context of the Carmen discount?

12 A. Which is a pressing decision, but, yes, one very
13 particular regulated one.

14 Q. We can clearly see in those waterfall documents what BT
15 did. Its method is clear on the face of those
16 documents, is it not?

17 Let us go to {OR-F/821/28}. That is the waterfall
18 chart we looked at yesterday.

19 A. Yes, that is one we looked at yesterday.

20 Q. You can see the method that is applied there, beginning
21 with BT's total residential landline-only base, and then
22 moving through the various subtractions in box 3 the
23 customers who will not receive the discount are
24 separately identified. Then in box 2, if we can reduce
25 it again, please, in box 2, the customers who may

1 receive the discount including the multiple lines
2 category, yes?

3 A. Yes, I see that.

4 Q. I think yesterday we discussed that that "2k" should
5 probably be 20k, not 2k. I think you probably accept
6 that?

7 A. Yes.

8 Q. Those in box 2 may receive the discount, and then in
9 box 1 the customers who will not receive the discount.

10 The method, as appears from the document, is to
11 subtract those various groupings from the starting point
12 of BT's total residential landline-only base, yes?

13 A. Yes. So you are starting from SFV and, as I think we
14 discussed yesterday, there are 20,000 multiple lines
15 which -- BT can obviously identify where there are
16 multiple lines to a property, BT multiple lines. So in
17 a sense, that is a very minimum view of the number of
18 business customers taking SFV services.

19 I think, as I pointed out yesterday, the Broadband
20 Elsewhere category, we know a lot of the businesses were
21 split purchase, so they could be in there. There is no
22 reason to think that businesses might not be in the Home
23 Phone Saver category which is also in group 3. I think
24 BT solus broadband is not relevant because we are
25 talking about SFV here.

1 Then category 1, which is the customers that BT were
2 going to automatically apply the Carmen discount to. It
3 is possible those could be businesses with single lines,
4 like the single Voice Only, and we see from the survey
5 evidence that there were businesses that had single
6 lines and were Voice Only.

7 So I think this does not actually help you in
8 determining what is a likely value for the proportion of
9 businesses, SMEs, that are -- the proportion of SFV
10 services that are supplied to SME customers.

11 Q. It is certainly in BT's interests to get this
12 information right in this waterfall chart, is it not,
13 because it impacts on who qualifies for the Carmen
14 discount?

15 A. But for category 3, there is no need to go into detail
16 on that, because those are not going to be eligible for
17 the discount because they can see from Openreach that
18 they are split purchase. So there is nothing to be
19 taken from the fact that BT did not investigate whether
20 or not they were businesses.

21 Group 1 is the group that Mr Bunt has said, I think,
22 in his witness evidence, that BT just did not know, and
23 maybe it would have been helpful for them had they done
24 more investigation, but they did not. They applied the
25 discount, as far as I know. But you know, to be honest,

1 that is just me looking at this slide.

2 Q. Let us turn to your use of the surveys. Can you turn to
3 {IR-E/18/201}, that is paragraph 7.32 of your second
4 report.

5 In footnote 522 you set out the figures that are
6 based on your analysis. Do you see those? I will not
7 read them out because some of them I think are probably
8 confidential, but ...

9 A. Yes, that is right, the last two. But, yes, I see that.

10 Q. You have to derive market-wide percentage figures from
11 these surveys because that is not actually set out in
12 the 2022 survey or the 2016 survey?

13 A. Sorry, could you ask that question again?

14 Q. Yes. You have to derive market-wide percentage figures
15 for the 2016 and 2022 surveys because that is not
16 actually set out in either of them?

17 A. I think these ... if we actually just go to that table
18 in my annex. Yes, these are the market-wide estimates,
19 and I have got that from the 2016 survey and the 2022
20 survey, and I have interpolated between the two.

21 Q. Yes, that was my next question, to confirm that you have
22 interpolated between the two?

23 A. Yes.

24 Q. If we go to Mr Parker's fourth report, that is
25 {IR-E/5/157} at paragraph 7.32. If you read that to

1 yourself.

2 A. Sorry, 7.32?

3 Q. Yes. (Pause)

4 A. Yes, I have read that.

5 Q. Then if you look at footnote 517 at the bottom of that
6 page, you will see Mr Parker sets out a number of the
7 assumptions that he says apply. If you could read those
8 to yourself, and then I am going to ask you whether you
9 agree that those are the assumptions you have to make in
10 your methodology to translate the surveys into results
11 for these proceedings. (Pause)

12 A. Yes, I might word those, some of those, slightly
13 differently and I set out all the steps I take in HJ1,
14 annex 11, and I think that is reasonably accurate as
15 setting out of the different assumptions I need to make
16 to go from the survey evidence which tells us about UK
17 SMEs that have purchased Voice Only or split purchase
18 Standalone Fixed Voice customers from any supplier and
19 translate that into an estimate of the proportion of BT
20 SFVs that are SMEs.

21 But I disagree with Mr Parker's view that those
22 assumptions are problematic or increase uncertainty.
23 I think all of the steps are reasonable. I am just
24 using things like -- the main assumption I have to make
25 is that BT is similar to the whole market. That is the

1 main assumption. That may be somewhat incorrect.
2 However, I think it is the CR's case that there are very
3 few other split purchase suppliers other than BT.

4 So, you know, overall I do not think this is an
5 overly aggressive set of assumptions or likely to be
6 unrealistic or make these estimates unreliable in any
7 way.

8 Q. It is an accurate summary though of the assumptions that
9 you have to make, as I think you have said?

10 A. Yes.

11 Q. We have heard from Mr Beard that it is only pure
12 business customers that BT is looking to exclude, not
13 those who occasionally use their residential tariff at
14 the margin yes?

15 MR BEARD: That is not --

16 THE CHAIRMAN: I do not think that is what he said.

17 A. I think the survey data I have drawn on is for -- this
18 is where the survey companies have identified SMEs and
19 asked them questions about how they meet their telephony
20 needs, so I think the evidence that I have drawn on does
21 tell you about SMEs that are using residential SFV
22 products to meet their telephony needs and they, some of
23 them are actually quite large the survey evidence
24 suggests in the larger categories. Many of them are
25 operating from an office, separate from their home.

1 I think some of those tables that Mr Parker took us to
2 just before the break show that a reasonable proportion
3 of these customers who were surveyed are actually using
4 residential products from office locations as well as
5 many of them doing it from their home.

6 MR SPITZ: Just for the sake of accuracy, because I saw
7 Mr Beard unhappy with the way that I put that. If we
8 can go to the transcript, {Day3/134:19}.

9 Mr Williams points out that the transcript has been
10 updated in finalising. So I wonder, so I do not have --
11 I have probably 10 or perhaps 15 minutes to go --
12 I wonder if we could take the break now.

13 THE CHAIRMAN: Let us take the break now and you can find
14 the document you want to put to Dr Jenkins, yes.

15 (1.01 pm)

16 (Luncheon Adjournment)

17 (2.00 pm)

18 THE CHAIRMAN: Yes, Mr Spitz.

19 MR SPITZ: Thank you.

20 Dr Jenkins, I would just like to go to the
21 references to the transcript that I ended with at the
22 lunch break and the first of them is {Day3/135:3-5}.

23 Here Mr Beard says:

24 "Now, the barrister making the single call, no one
25 is taking any issue with the occasional call. It is

1 whether or not you are taking a line for business use."

2 Then on the same page, lines 14-20, Mr Beard says:

3 "So they are not trying to say: are you
4 a residential customer who occasionally uses this? They
5 are actually just trying to identify businesses, and
6 then identify whether in fact they take residential
7 lines or business lines. So they are not worried about
8 the people that use them at the margin, they are
9 actually looking at people who are SMEs."

10 Then the last one is at {Day3/136:4-9}. Mr Beard
11 says:

12 "Yes, it is the purpose for which you are using it.
13 At the margins obviously you might be -- barristers are
14 sole traders, they can make work calls from home, that
15 is not the issue. It is if you were a barrister trading
16 from home, effectively, and taking a residential line
17 for those purposes. That is what is being identified."

18 Those are the relevant references to the transcript.

19 Now, I would like to ask you one or two questions in
20 relation to the 2022 survey. So if we go to {C/399/1},
21 please. You will see this is the "SME consumer
22 experience in the communications market. October 2022".
23 If we look at page {C/399/6}, you see the sample of the
24 survey undertaken between January and April 2022, yes?

25 A. Yes.

- 1 Q. You see that the number of participants who were sole
2 traders, that is with one employee, is 78.8% of the
3 sample, yes?
- 4 A. Yes, that is the relevant weightings.
- 5 Q. Then if we go to page {C/399/19}, it says:
6 "The pandemic has accelerated a shift towards hybrid
7 working for small and medium SMEs, increasing the
8 importance of in-home as well as corporate
9 connectivity."
10 If we look at the left-hand side, the charts for
11 micro businesses, that is with 1-9 employees, you can
12 see currently 22% entirely work away from office -- from
13 an office, yes?
- 14 A. Yes.
- 15 Q. 10% mainly working away from an office, yes?
- 16 A. Yes.
- 17 Q. 24% are a mix of in and out of an office?
- 18 A. Yes.
- 19 Q. 13% are mainly office based, yes?
- 20 A. Yes.
- 21 Q. So if we put this together, quite a sizeable proportion
22 of those sampled would be using their residential line
23 for both residential and work purposes. Would you
24 agree?
- 25 A. So you are saying that the top three -- I think it is

1 very hard to tell from that, because "Entirely work away
2 from an office", you might be very reliant on mobile
3 communication there, because it does not say that you
4 are actually working at your home, so I think it is
5 quite hard to say from that whether or not they are
6 using their residential -- because I think the overall
7 focus of this survey is landline, mobiles and internet.

8 Q. It appears, though, that they are not using their line
9 exclusively for business use, does it not?

10 A. I think this survey is asking people about what they use
11 for business purposes, depending on where they are
12 located.

13 Q. If we look at slide {C/399/28} for a moment. There you
14 see the landline -- for the micro businesses, that is
15 between 1 and 9 employees, you see the landline figure
16 at 58%?

17 A. Yes.

18 Q. What I am suggesting to you is that they are not all --
19 they are not all necessarily pure business customers,
20 are they?

21 A. Well, I think they are all pure business customers, but
22 they may well be using the connection that they have,
23 the residential connection for business purposes and
24 also for other calls they may make, but the survey has
25 targeted businesses and asked them how they operate

1 their communications needs for their business.

2 Q. Okay, there are two small points that I would just like

3 to sweep up, please, for the sake of completeness.

4 I put this point to you in the context of inflation, and

5 I should do so also in the context of interest too.

6 So moving on, then, if we look at your first report,

7 {IR-E/17/310}. Paragraph 8.68. There, the second

8 sentence, you say:

9 "With information on the bank account terms the

10 Class member was able to secure, the resulting cost of

11 the foregone interest could be estimated and, if the

12 Class member is entitled to it, included in the

13 assessment of damages."

14 So you are suggesting there that for the purposes of

15 the interest enquiry, individual bank account terms

16 would be required; is that correct?

17 A. No, I think in this paragraph I am just exemplifying the

18 difference between interest and consumption, so I have

19 taken -- I am just talking about an individual Class

20 Member by way of explanation which I think is the intro

21 to 8.68.

22 Q. So for the purposes of a compound interest award, you

23 are not suggesting then that what is required is greater

24 granular individualised information, are you?

25 A. No, no.

1 Q. You are not?

2 A. It is the same point as we discussed earlier, which is
3 you do not need to go down to the individual Class
4 Member level to get the information, but you do need to
5 think about, at the aggregate level, what makes sense in
6 terms of what the Class would do, and be informed by the
7 specifics of the aggregate statistics of the Class that
8 are relevant.

9 Q. All right. A penultimate question then is: in relation
10 to the internal BT documents that we looked at yesterday
11 and today, did you see those documents in the course of
12 preparing your expert reports? These are the documents
13 dealing with business customers.

14 A. Yes, I addressed them in my second report in response to
15 Mr Parker's.

16 Q. All three of them?

17 A. I believe so, yes.

18 Q. Finally, there were two erroneous references that arose
19 in the course of the questioning and you very helpfully
20 confirmed that you recognised the passages that I was
21 reading to you. Just for the sake of completeness on
22 the record, the first one, this was where you say:

23 "The way the passing of time will affect any
24 individual or group of customers ..."

25 That is in the Joint Experts' Statement in relation

1 to proposition 9.4.3 and the reference is {E/49/216}.

2 THE CHAIRMAN: Just one moment, please. (Pause). Yes.

3 MR SPITZ: The second one, this is where you say:

4 "... it is not a given that the goods that would
5 have been purchased at the time would be more expensive
6 now. Rather than reflecting the specific mix relevant
7 for the Class ..."

8 That is the JES. Again, in relation to proposition
9 9.4.3, that is {OR-E/49/217}.

10 THE CHAIRMAN: Sorry, those are Dr Jenkins' comments in the
11 JES?

12 MR SPITZ: Exactly. She very correctly identified those
13 comments and accepted that she had made them, but the
14 referencing I had was incorrect, and I wanted to correct
15 those so we have that for the record.

16 THE CHAIRMAN: Thank you.

17 MR SPITZ: Thank you. I do not have further questions for
18 you. Thank you very much.

19 THE CHAIRMAN: Mr Beard.

20 Re-examination by MR BEARD

21 MR BEARD: I think I have three, possibly. I may go
22 backwards, if that is okay, so let us deal with business
23 because that was being talked about just now.

24 Mr Spitz was putting to you various propositions
25 about the 2022 survey and you said that it was to do

1 with business purposes. Have you looked at the
2 questions in the main questionnaire? I think it is
3 {E/45.234/7}.

4 So this was the questionnaire I took Mr Parker to.

5 A. Yes.

6 Q. If we go to page 7, so this is the main questionnaire,
7 "... All: Services Used", and I took Mr Parker to that
8 first section. Have you looked at this, Dr Jenkins?

9 A. I have, yes.

10 Q. If we go down to page {E/45.234/8}, you see at the
11 bottom ... What do you understand from the text at the
12 bottom there, after the ...

13 A. Yes, so I think this is the point that -- I think what
14 you know from this survey is where people are taking
15 residential contracts for business purposes. The aim of
16 this survey was to understand the experience of those
17 for business purposes only, and both in the set-up, and
18 in terms of who they were seeking to speak with, they
19 made sure that they were talking to the business lead
20 with respect to telephony service and other
21 communication services, and here you can see that they
22 are ensuring that people have in their mind, when they
23 are answering these questions, their experience of using
24 it for business purposes.

25 So I think it is quite possible that people may have

1 occasionally made personal calls on these, but what this
2 survey was getting at is small businesses that did run
3 meaningful businesses from their home that made good use
4 of those telephony services. That is who they are
5 seeking to address in this survey.

6 THE CHAIRMAN: Just a moment. (Pause). Yes.

7 MR BEARD: There was one specific theme that I wanted to go
8 to, because Mr Spitz was asking about homeworking,
9 office working and so on. I am not going to take you
10 through all of the questions, but I think it is at 47.
11 {E/45.234/47}.

12 This is part of one of those sort of decision trees
13 where you are asked questions, depending on previous
14 coding. The first one is:

15 "Ask if multiple sites ..."

16 The second one is:

17 "Ask if single site ..."

18 Do you have any comments on what is being focused on
19 here in P8?

20 A. I think it is the same point, that what the survey is
21 seeking to identify for the category of customers
22 which -- or survey respondents that are entirely mainly
23 homeworking, is whether the business is based there. So
24 it is not that you happen to be at home and make some
25 calls with respect to your business, but the survey is

1 identifying businesses that are based at individuals'
2 home addresses, as well as obviously businesses that are
3 based at commercial premises. This question is also
4 getting at rural versus urban situations.

5 Q. Thank you.

6 Sorry, there are actually two more questions. One
7 quick one is you were taken to {IR-E/17/319}, I think
8 you were taken to. So this is in the context of MPC,
9 but this was in the context of being asked about Class
10 characteristics. You were taken to 8.93 and you made
11 some comments on characteristics. Do you want to just
12 read through the next page of this, if you have got any
13 further comments on characteristics. (Pause)

14 A. So this is from my first report, so it was before I knew
15 exactly which source the marginal propensity to consume
16 had come from.

17 At 8.96 I do flag some evidence from the Family
18 Expenditure Survey, which does give you some information
19 on how households' flow of income is spent. So that was
20 indicating -- because these categories, mortgage
21 interest payments, contribution to pensions, savings and
22 investment, or pay off loan, are the categories that
23 Mr Parker has used for his interest measure, but it
24 showed that only -- up to 11% of households' average
25 weekly expenditure were driven by those types of

1 payments. So that would be suggestive of much higher
2 consumption than 38%, it would be one minus that number,
3 so 89% could be consumption on that basis.

4 THE CHAIRMAN: Just one moment, please. (Pause) Yes.

5 MR BEARD: The last one. If we could go to [draft] page 57
6 of today's transcript. This was a discussion about
7 incremental costs and you referred to what
8 Mr Duckworth -- sorry, this is your answer. Shall we
9 just scroll up slightly so you can see.

10 A. Yes.

11 Q. It is in response to a question from the chairman.

12 Then:

13 "What Mr Duckworth has done is rely on the 2009 RFS
14 for all indirect costs, get an allocation to voice.
15 What I have also provided ..."

16 So this was after you had been talking about the
17 SAC combinatorial measures.

18 "What I have also provided as a sensitivity is take
19 all those indirect costs and say if one were to use
20 different allocators ... for all indirect costs on the
21 basis of EPMU, revenue and customers, what would be the
22 benchmark? That shows that the benchmark under that,
23 taking fully allocated costs customer, and the 20% or
24 25% rate of return, gets you a price that is quite
25 similar to actual prices."

1 Do you recall where in your report you have
2 illustrated that?

3 A. I remember that it is at Table 9 of the Joint Experts'
4 Statement, which is {OR-E/49/261}. There may also be a
5 ...

6 THE CHAIRMAN: This is, I think, and you correct me if I am
7 wrong, this is Table 6-9 of Annex B.

8 A. Yes, that is right. So this Table 9 was where using --
9 of allocating indirect costs, the actual costs of BT
10 through the period using number of customers, which is
11 the same as using lines, number of lines, and showing
12 the difference between the actual ARPU for SFV services,
13 which is the top line, and a benchmark so constructed,
14 you can see the difference in -- the percentage
15 difference in the bottom line.

16 There may also be a chart in my second report.

17 THE CHAIRMAN: Can I just ask you this: in relation to those
18 tables, the indirect costs which you are allocating,
19 they are the indirect costs that are taken from the
20 actual data?

21 A. That is right.

22 THE CHAIRMAN: All of them? In other words, incremental and
23 common?

24 A. Incremental and common.

25 THE CHAIRMAN: This is not a function of your division of --

1 for your combinatorial tests of the incremental and the
2 common which you do as part of your report; so this is
3 the actual for each year.

4 A. For each year, that is right. So for my
5 SAC combinatorial, it is important to have some estimate
6 of incrementality and commonality, and I do that. But
7 as a cross-check and sensitivity, I then say in the
8 event that is hard to do, then you can take all the
9 indirect costs and use different allocators to follow
10 a fully allocated cost methodology.

11 THE CHAIRMAN: Those are all the indirect costs as reported
12 year-on-year by BT Consumer?

13 A. That is right.

14 THE CHAIRMAN: Then what you have to do is to allocate them
15 according to the numerous different services that
16 comprise BT Consumer?

17 A. So this is done at a high level so I have not done
18 a granular activity on that, I have just said: here are
19 the overall indirect costs. But then, yes, I have
20 allocated them to SFV services and to bundles and to
21 standalone mobiles and standalone broadband on the basis
22 of --

23 THE CHAIRMAN: Revenue and customers.

24 A. That is right, and equi-proportionate mark-up. So that
25 you say, okay, what is the proportion of revenue

1 recovered off those, and the indirect costs follow that.

2 Or what is the number of customers --

3 THE CHAIRMAN: Yes. But the starting point, the starting
4 dataset is the BT Consumer-reported indirect costs,
5 which of course are not subdivided into incremental and
6 common costs.

7 A. That is correct. That is in the F28, which is the
8 agreed source for that financial data.

9 THE CHAIRMAN: Thank you, yes.

10 MR BEARD: Thank you, I do not have any further questions.

11 THE CHAIRMAN: No, thank you very much indeed, Dr Jenkins.
12 That completes your evidence.

13 (The witness withdrew)

14 THE CHAIRMAN: Are there any housekeeping matters which you
15 wish to raise?

16 Mr Beard?

17 MR BEARD: No, not at the moment we do not. We will have
18 a review, but I think at the moment we do not have
19 anything.

20 THE CHAIRMAN: Right.

21 Mr Spitz?

22 MR SPITZ: Nothing.

23 THE CHAIRMAN: The only thing that did occur to us today was
24 we cannot recall whether the existing directions for the
25 written closing submissions have a page limit.

1 MR BEARD: They do not.

2 THE CHAIRMAN: I think that might be important, because we
3 would like to have, as it were, parity if we can.
4 I think that must have been done to begin with, because
5 you each had about 70.

6 MR BEARD: Yes, it was done to begin with, but I think it
7 has been left open, and I think the issue is to some
8 extent trying to do closings in anything like that page
9 limit. I know this is not something the Tribunal would
10 look forward to, but if we are putting a page limit on
11 it, it would have to be substantially higher.

12 THE CHAIRMAN: I think we all agreed with that, but we just
13 thought that nonetheless -- and as I say, you will
14 receive tomorrow our list of particular points we would
15 like covered, although we do not think they are going to
16 be a surprise to you, but nonetheless, I think it is
17 probably still useful to have some sort of page limit.

18 Do you have any ...

19 MR SPITZ: Sir, I would suggest that we confer between us,
20 see whether we can agree to a limit, rather than give --
21 suggest a particular page limit now. If we cannot, then
22 perhaps we can raise that with the Tribunal.

23 THE CHAIRMAN: How about -- I will just confer with my
24 colleagues in a minute, but how about doing that once
25 you have received our questions, although I do not think

1 it is going to materially --

2 MR BEARD: I am perfectly happy to go with the way Mr Spitz
3 is suggesting. It is not a problem.

4 THE CHAIRMAN: Yes, and if there is a disagreement we will
5 resolve it.

6 MR BEARD: That is fine, and happy to revert once we have
7 had the Tribunal's questions.

8 THE CHAIRMAN: I think that would be helpful, so we will get
9 that finalised this week anyway.

10 MR SPITZ: Exactly, sir.

11 THE CHAIRMAN: Thank you both very much indeed.

12 (2.24 pm)

13 (The hearing adjourned until Monday, 18 March 2024 at
14 10.30 am)

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