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IN THE COMPETITION

Case No: 1435/5/7/22 (T)

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Tuesday 1st October – Tuesday 29th October 2024

Before:

Justin Turner KC
Sir Iain McMillan CBE FRSE DL
Professor Anthony Neuberger

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Claimants

Stellantis Auto SAS & Others

V

Defendants

Autoliv AB & Others

A P P E A R A N C E S

Colin West KC & Sean Butler (Instructed by Hausfeld) On Behalf of the Claimants.

Sarah Ford KC & Prof. David Bailey (Instructed by Macfarlanes) On Behalf of the Sixth to Tenth Defendants.

David Scannell KC & Derek Spitz (Instructed by White & Case) On Behalf of the First to Fifth Defendants.

Monday, 7 October 2024

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(10.30 am)

THE CHAIRMAN: We have a remote -- Mr Carosso is remote, is he not?

MR WEST: Yes.

THE CHAIRMAN: Just before we get to that, what is the status of the *Bearings* proceedings witness statements which have found their way into the bundle? They have not been served in these proceedings.

MR WEST: It does not arise for this witness, but --

THE CHAIRMAN: It does not arise for this witness, I appreciate that, but --

MR WEST: But as I understand it, the witnesses who gave evidence in *Bearings* are adopting their evidence from *Bearings* as their evidence in this case as well.

THE CHAIRMAN: Well, how are they doing that? I mean, it is not sworn in these proceedings. I mean, they can -- I am just not sure how it complies. It is -- and I am not sure why they need to.

MR WEST: The basis of it is simply that they addressed the same factual issues in those statements which they had already given a number of years ago, and rather than require them to seek to remember again, a number of years later, the same matters, it was thought preferable to rely on their earlier evidence when their memories

1 were fresher.

2 THE CHAIRMAN: They can refresh their memory, but they
3 cannot -- if they cannot remember something now, how
4 does it work? If they say in the earlier one, "Well,
5 I remember X", and now they have forgotten it, they go
6 into the witness box and say, "Well, I do not remember
7 X" or they go in to say, "I do remember X", or do they
8 say, "Well, I did remember X a couple of years ago, but
9 I really cannot tell you if that memory is accurate"?

10 MR WEST: They address in their statements and they say
11 I have read my earlier statement that -- having
12 refreshed my memory of it, that is the evidence I wish
13 to give in these proceedings. In some cases, I think
14 there are one or two caveats, they have said, "Save for
15 the following paragraphs ..."

16 THE CHAIRMAN: Just show me. Let us take Mr Gautier's.

17 MR WEST: This arises for Mr Gautier in tab 17.

18 THE CHAIRMAN: So his -- we must go to his, yes.

19 MR WEST: So it is paragraph 5 of Gautier, tab 17,
20 bundle B 3 {B/17/2}.

21 THE CHAIRMAN: They are in different places, yes, okay. So
22 which tab?

23 MR WEST: Tab 17.

24 THE CHAIRMAN: Mm-hm.

25 MR WEST: So you see there, he says at paragraph 5:

1 "I previously provided a witness statement dated
2 15 September 2017 on PSA's vehicle pricing strategies
3 and processes for the purpose of proceedings relating to
4 a cartel [with] *Bearings* ... I understand from Hausfeld
5 the issues covered in the *Bearings* Witness Statement are
6 also relevant to the present proceedings. I have thus
7 reread the same to help me prepare this statement to
8 supplement the *Bearings* Witness Statement."

9 So there are certain issues in the present
10 proceedings that go beyond, I think, a temporal scope
11 point there, and he says:

12 "Save for the *Bearings* Witness Statement ... exhibit
13 bundle ... to that statement, I have not been referred
14 to any [other] documents ... for the purpose of
15 providing the evidence set out in this witness
16 statement. I am effectively giving the evidence in my
17 *Bearings* Witness Statement again as my evidence in this
18 case, together with the present statement as
19 a supplemental statement to address any additional
20 points ..."

21 So he is saying --

22 THE CHAIRMAN: Well, I am not sure that is really very
23 satisfactory. So he says he cannot remember what is in
24 the *Bearings* witness statement --

25 MR WEST: No, not at all, no.

1 THE CHAIRMAN: Okay. So why is -- I mean, why are we --
2 I have not come across anyone doing it. I understand
3 that a witness may say, "Look, I have refreshed my
4 memory or had regard to my earlier witness statement and
5 annex it to the court for convenience", but the witness
6 statement before the court is the witness statement in
7 these proceedings and we just seem to have -- if it is
8 anything different than that ...

9 MR WEST: No, it is simply a practical point that he had
10 already given the evidence in another statement and
11 rather than requiring him to give it again, he simply
12 says, "This is my earlier statement and it is also my
13 evidence in the present case".

14 THE CHAIRMAN: Right, but is it such an inconvenience to put
15 it in?

16 MR WEST: Well, part of the problem is that the rules have
17 changed in the meantime.

18 THE CHAIRMAN: Right.

19 MR WEST: So the evidence would have to have been taken in
20 a different way in compliance with the current practice
21 direction and so one would have ended up with something
22 slightly different to what had been given previously.

23 THE CHAIRMAN: Well, is that not all the more reason for not
24 having regard to it?

25 MR WEST: Well, that would require -- well, one can then

1 imagine a sort of compare and contrast of the different
2 statements to say that he had said something slightly
3 different then to now.

4 THE CHAIRMAN: Yes, but you are presenting the Tribunal with
5 two different statements which sort of overlap and
6 asking us to do the job of amalgamating and sorting them
7 out, when actually the parties should be doing that, not
8 this Tribunal.

9 MR WEST: They do not overlap, because what he says is that:
10 my *Bearings* witness statement is my evidence insofar as
11 it covers the facts of this case; insofar as --

12 THE CHAIRMAN: Insofar as --

13 MR WEST: -- there are additional, for example, time periods
14 in this case, or additional points, for example, about
15 options, because OSS are sold as options, *Bearings* are
16 not, then they are addressed separately in this
17 statement. But he does not go over again the contents
18 of the *Bearings* statement.

19 THE CHAIRMAN: Well, I would like to, before he goes into
20 the witness box -- and you may need some time to do this
21 -- I would like to know which sentences in the *Bearings*
22 witness statement you are relying on in these
23 proceedings and you will have to swear the witness to
24 those statements.

25 MR WEST: Well, I am happy to ask him to swear or affirm

1 the statement --

2 THE CHAIRMAN: No, I do not want the *Bearings* statement
3 affirmed.

4 MR WEST: But it is specific to *Bearings*; it relates, in
5 the case of Mr Gautier, to how the firm priced
6 the vehicles that it sold on.

7 THE CHAIRMAN: Right. Well --

8 MR WEST: It is not specific to *Bearings*.

9 THE CHAIRMAN: Right, but then --

10 MR WEST: So, for example --

11 THE CHAIRMAN: -- I do not understand why it has not been
12 put in a witness statement in these proceedings.

13 MR WEST: Well, as I say --

14 THE CHAIRMAN: It seems to have a sort of hybrid status,
15 which is not something that is recognised, as
16 I understand, by the rules and it causes problems for
17 the Tribunal. I mean, we have to go and pick and choose
18 the bits. You are not even saying which paragraphs you
19 are incorporating and which paragraphs you are
20 disregarding.

21 MR WEST: Well, as I say, my proposal was -- again, subject
22 the Tribunal -- to ask him simply to swear or affirm
23 the original statement as his evidence in this case.

24 THE CHAIRMAN: No, that is not the approach we wish you to
25 take. So you may need to take him -- I do not know how

1 we are going to do for timing today, but you may need to
2 go through and say which paragraphs of the *Bearings*
3 statement you are going to -- you need to rely on,
4 because you have not dealt with them in the current
5 proceedings, and then we will have to -- once we have
6 identified those paragraphs, we can decide the best
7 course.

8 MR WEST: Well, I anticipate that will be all of them. That
9 will be all of the paragraphs, because he explains in
10 his statement how they price by reference to other
11 benchmarks and that is applicable irrespective of
12 the particular part in question.

13 One can see an example in Ms Biancheri's statement
14 of where she confirms that she does not --

15 THE CHAIRMAN: Let us just focus on this one at the moment.
16 So if we go to the -- maybe I misheard you, I thought
17 you said the witness did not have a recollection of
18 everything that was in the *Bearings* statement?

19 MR WEST: No, no, what I said was that because this
20 statement was taken at an earlier point in time, it was
21 thought better to rely on the statement which was given
22 at an earlier point in time. I am not saying that he
23 does not now remember.

24 One can see an -- if I -- sorry to take you to
25 Ms Biancheri, but she gives -- that has an example of

1 where she says, there are certain paragraphs in my
2 original statement "I am no longer confident about
3 because of the passage of time ...". That is tab 18,
4 paragraph 9 {B/18/3}. So those would not be part of her
5 evidence now but she adopts the rest of the statement.

6 THE CHAIRMAN: So why is this not just served as a witness
7 statement -- and I have got Mr Gautier, why was this not
8 just served as a witness statement in these proceedings?

9 MR WEST: Precisely because it does not comply with the new
10 practice direction. So the new practice direction
11 applies to witness statements sworn after a certain
12 date, I think it is November 2021 --

13 THE CHAIRMAN: So this is just a ruse to sidestep
14 the practice direction?

15 MR WEST: It is not a ruse, but this -- the original
16 statement could not have been served as compliant with
17 the new practice direction because it was prepared under
18 the original rules.

19 THE CHAIRMAN: Yes.

20 MR WEST: But the original rules do not apply to it
21 precisely because it was signed before they came into
22 effect.

23 THE CHAIRMAN: Yes, but it is not a witness statement in
24 these proceedings; they have not been signed in these
25 proceedings before the practice direction comes into

1 effect.

2 MR WEST: I am sorry if this has not been -- if the Tribunal
3 does not regard this as convenient. We hoped this would
4 be a practical way through in relation to the cases.

5 THE CHAIRMAN: Why can it not just be served as the --
6 I still do not understand, apart from wishing to
7 sidestep the current rules, why it was not --

8 MR WEST: It is not side-stepping. So in the *Bearings*
9 statement, for example, he refers to various exhibits
10 and documents in a way that you are not supposed to do
11 under the new rules.

12 THE CHAIRMAN: Exactly, and you are choosing to sidestep it.

13 MR WEST: It is not sidestepping it, it is that he had
14 already given the relevant evidence under the old rules
15 and that evidence already exists in the form of
16 the *Bearings* statement. If it had been possibly simply
17 to re-serve it with a different title that might have
18 been a practical way forward, but, in fact, the evidence
19 would have had to have been taken again consistent with
20 the new practice and it was thought more convenient and
21 preferable for him simply to adopt his previous
22 *Bearings* statement as his evidence in the new case.

23 THE CHAIRMAN: Mr Scannell, Ms Ford, you are not taking any
24 objection to this approach, as I understand it?

25 MR SCANNELL: This is a point that we have been mindful of

1 for some considerable time and it has been the subject
2 of correspondence between the solicitors, where
3 objections were taken to this for broadly the same
4 reasons as you have just canvassed with my learned
5 friend.

6 It is, at the very least, very important to
7 understand precisely the respects in which the *Bearings*
8 evidence is now relied on by the witnesses. I will be
9 cross-examining two of them today, Mr Gautier and
10 Ms Biancheri, and I intend to canvass with them how
11 exactly we are meant to read these *Bearings* statements.

12 We will have to wait and see what those witnesses
13 say in relation to those matters, in particular when it
14 comes to their recollections, and we may very well find
15 ourselves having to make submissions in relation to
16 these matters at a later point in the trial.

17 THE CHAIRMAN: Ms Ford, given that Mr Scannell is doing
18 the cross-examining, I assume you are leaving this to
19 him; is that right or ...?

20 MS FORD: Sir, that is right, yes.

21 THE CHAIRMAN: Yes.

22 Well, Mr West, we will have to progress today's
23 witness at least *de bene esse* on these aspects and see
24 where we get to and then we will discuss what to do
25 about the witnesses that are coming. Are they tomorrow,

1 the other ones?

2 MR WEST: Yes.

3 THE CHAIRMAN: We will see where we get to. Perhaps we
4 should -- it is a matter we probably should have raised
5 at the PTR, but we had not got it in our sights at that
6 point.

7 Very good, shall we proceed with your next witness?

8 MR WEST: Yes, so I would like to call Mr Alberto Carosso,
9 who is already with us on video, and I understand he is
10 going to be affirmed.

11 THE CHAIRMAN: Yes, good morning, Mr Carosso, can you hear
12 me and can you hear Mr West?

13 A. Yes, I do confirm.

14 THE CHAIRMAN: Thank you. If you have any trouble hearing
15 or understanding what is going on, please let us know.

16 A. Okay, thank you.

17 THE CHAIRMAN: We are going to swear in the interpreter
18 first, so if you just hold on there, Mr Carosso.

19 (Interpreter sworn)

20 I am grateful, thank you. Please take a seat.

21 Mr Carosso, I would normally ask you to stand up for
22 the oath, but I expect we will only see your midriff if
23 you do that, because that is what normally happens, so
24 perhaps stay seated on this occasion.

25 A. Okay.

1 MR ALBERTO CAROSSO (affirmed)

2 (Via video-link)

3 MR WEST: Mr Carosso is giving his evidence from Italy in
4 accordance with the Hague Convention and
5 the Commissioner who has been appointed in connection
6 with that process has asked me to make the following
7 statement -- very brief statement to the effect that
8 the witness is located in Italy and his evidence is
9 being provided by video with the authorisation of
10 the Italian Government under the Hague Convention of
11 18 March 1970 on the taking of evidence abroad in civil
12 or commercial matters, and Mr Alexander Blumrosen has
13 been authorised to be the Hague Convention Commissioner
14 and is attending the cross-examination via video,
15 I understand he is joining via the public live link.

16 So I have been asked to make that brief statement by
17 the Commissioner, who, as I say, is attending by
18 video-link.

19 THE CHAIRMAN: Which reminds me, I have not read the warning
20 this morning, so let me just do that.

21 Some of you are joining us by live stream on our
22 website. An official recording is being made and an
23 authorised transcript will be produced, but it is
24 strictly prohibited for anyone else to make an
25 unauthorised recording, whether audio or visual, of

1 the proceedings and breach of that provision is
2 punishable as a contempt of court.

3 Apologies, I should have read that at the beginning.

4 MR WEST: Mr Carosso, could you be shown --

5 THE CHAIRMAN: Just hold on a minute.

6 (Pause).

7 Sorry, Mr West, please carry on.

8 Examination-in-chief by MR WEST

9 MR WEST: Could you be shown or are looking at tab 11 of
10 bundle B {B/11/1}.

11 A. Sorry, which one?

12 Q. Tab 11 of bundle B. It should also be appearing on
13 the electronic screen.

14 Sorry, it seems to have gone off?

15 A. I cannot see the screen for the moment.

16 Q. Has it now come back on?

17 THE EPE OPERATOR: He has not joined the Zoom, sorry.

18 MR WEST: What does he have to do?

19 THE EPE OPERATOR: There should be a link that has been sent
20 out to him which he just needs to click and join that
21 link.

22 MR WEST: Mr Carosso, have you been sent a link -- a ring
23 central link which you can click on?

24 A. Yeah, I just see. Just a second in opening.

25 Yes, now I see. I see the witness statement.

1 Q. Is that your first witness statement in these
2 proceedings?
3 A. Yes, it is.
4 Q. If you would turn to {B/11/9} of that document, is that
5 your signature?
6 A. Yes, it is.
7 Q. If you now turn to {B/14/1} of the same bundle, is that
8 your second witness statement in these proceedings?
9 A. Yes, it is.
10 Q. And at {B/14/7} of that document, is that your
11 signature?
12 A. Yes, it is.
13 Q. Are the contents of those statements true to the best of
14 your knowledge and belief?
15 A. Yes, I confirm.
16 Q. Do these statements represent the evidence you wish to
17 give to this Tribunal in these proceedings?
18 A. Yes.
19 MR WEST: Thank you.
20 There may be some questions for you.
21 Cross-examination by MS FORD
22 MS FORD: Good morning, Mr Carosso.
23 A. Good morning.
24 Q. You were senior buyer of Occupant Safety Systems at FCA
25 from July 2011 to July 2012; is that right?

1 A. Yes, it is right.

2 Q. You were not employed by FCA prior to 2011?

3 A. No, I was not.

4 Q. Can I ask you please to look at {J3/49/1}, please.

5 A. Of -- of which statement, sorry?

6 Q. It is a document -- I do not know whether -- it may come
7 up on your screen or you may have a hard copy.

8 A. Yeah, in hard.

9 Q. It is {J3/49/1}, so I am hoping it may come up on your
10 screen.

11 A. Ah, okay.

12 Q. You should have there an example of a Fiat RFQ; do you
13 have that?

14 (Pause).

15 A. (Feed frozen - inaudible) -- Fiat, so I don't -- I did
16 not recall this document.

17 Q. I am sorry, Mr Carosso, you froze part way through that,
18 would you mind repeating what you said?

19 A. Ah, okay. Okay, sorry. So the document that you are
20 showing is back to 2006, if I read correctly, and it was
21 prior to my job in Fiat, so I do not recall this
22 document.

23 Q. Yes. No, that is absolutely fair, it is prior to your
24 time, but --

25 A. Yeah.

1 Q. -- I am going to be asking you general questions about
2 the way in which RFQs were issued and so I am hoping
3 that --

4 A. Okay.

5 Q. -- this will serve as an illustration.

6 A. Okay.

7 Q. So this RFQ is for a project AR 955 and the products
8 which it relates to are seatbelts, a head bag and
9 a passenger bag, yes?

10 A. Yeah.

11 Q. We can see that the date of issue was 28 November 2006
12 and a response is requested by 11 December 2006, yes?

13 A. Yes.

14 Q. This is an example of an RFQ for multiple OSS parts, but
15 it is right, is it not, that sometimes we might see an
16 RFQ for a single OSS part as well?

17 A. Yes, it could happen.

18 Q. From a pricing perspective, if you have an RFQ for
19 a full package, including airbags, seatbelts, steering
20 wheels, there might be more flexibility in leveraging
21 the profitability of different parts off against each
22 other in comparison to an RFQ for a single part; would
23 you agree with that?

24 A. Yes, I would agree.

25 Q. Looking at this example, at the bottom of that page, you

1 should see a table headed "Lean Capacity Rate", and that
2 is showing the annual vehicle volumes that FCA intended
3 to produce each year; is that right?

4 A. Yes, it is.

5 Q. So it is also showing the total number of OSS parts that
6 FCA wanted per year as well, yes?

7 A. (Feed frozen - inaudible) -- I guess, because, again,
8 that is part of my job, but it is the capacity of
9 the vehicle, it's not related to the part.

10 Q. It is the number of vehicles, you are saying?

11 A. Yes.

12 Q. Then there is a spare parts row and that is 10% of
13 the total number, the total volume, yes?

14 A. Yes.

15 Q. The volumes that FCA requires would vary from RFQ to
16 RFQ, yes?

17 A. Yes, vehicle by vehicle as well.

18 Q. The way in which the volumes are spread out over
19 different years would also vary from RFQ to RFQ, yes?

20 A. Can you say again the questions, please?

21 Q. The allocation of volumes over different years, the way
22 in which they are spread out over different years, would
23 vary between RFQ to RFQ?

24 A. (Feed frozen).

25 Q. Has he frozen again?

1 A. Hello?

2 Q. I am sorry, you froze.

3 A. Hello, can you see me? Ah, okay. Okay, so my -- my
4 answer is: it depends. I mean, if the vehicle is
5 exactly the same, the volume must be the same. If you
6 are referring to RFQs of different projects, of course
7 the volumes are different.

8 Q. There is a column here that is headed "Location" and
9 that is identifying the customer production location, so
10 FCA's location; is that right?

11 A. Where is -- which location, sorry? I cannot --

12 Q. In the table --

13 A. Can you just --

14 Q. The second column along, there is a heading "Location"
15 and this one is "Mirafiori".

16 A. Yes, it is assembly plant, right, you are referring to,
17 at the bottom of the -- of the -- of the page, there is
18 assembly plant, Mirafiori?

19 Q. Well, I was asking you whether or not this is
20 the location of the --

21 A. Yes, yes --

22 Q. -- of Fiat or of the supplier?

23 A. Yes, manufacturing plant of Fiat.

24 Q. Presumably the location could vary as between RFQ to RFQ
25 as well?

- 1 A. The location change only if the project is different.
2 If the project is the same, location is the same.
- 3 Q. Can we look, please, at page 3 within this document
4 {J3/49/3}. This is a headline list of all the documents
5 that the supplier has to return when they are responding
6 to the RFQ; is that right?
- 7 A. I cannot confirm because this is prior to my job.
- 8 Q. Was it very different during your time?
- 9 A. No, it is similar to what I recall.
- 10 Q. So would you agree that these are -- this is a list of
11 documents and the supplier has to return all these
12 documents when they respond to the RFQ?
- 13 A. I cannot, probably, because, I mean, it's prior to my
14 job, but I can say that is similar to what I ask to my
15 suppliers for the RFQ from 2011.
- 16 Q. Understood, thank you.
- 17 Then over the page {J3/49/4}, these items numbered 1
18 to 12, these are the various terms and conditions and
19 specifications for the product that the supplier has to
20 comply with; is that right, insofar as you are able to
21 confirm?
- 22 A. I -- I cannot confirm because it's prior to my -- to my
23 job, so I cannot --
- 24 Q. Insofar as --
- 25 A. -- but I --

1 Q. -- you were issuing an RFQ, would you have a list of
2 terms and conditions that were similar to this?

3 A. Yes, similar.

4 Q. In terms of the specifications of the relevant product,
5 it is fair, is it not, that different customers would
6 have different product performance requirements? Is
7 that right? (Pause).

8 I am sorry, you may have frozen when you answered.
9 Would you mind ...?

10 A. Ah, okay. Can you say again the question, please?

11 Q. I am suggesting that in terms of specifications for
12 the products that are being sourced, different customers
13 might have different product performance requirements;
14 is that right?

15 A. It is right, as soon as the performances of supplier
16 could meet the request from Fiat specification.

17 Q. Just to clarify your response, Mr Carosso, are you
18 saying that provided the supplier can meet the Fiat
19 specification, you were agreeing that different
20 customers might have different specifications?

21 A. Yes, I agree, because the know-how of supplier depends
22 on their know-how.

23 Q. Well, I am actually asking the question from
24 the perspective of the customer. Fiat is one possible
25 customer and --

1 A. Mm-hm.

2 Q. -- would you agree that other customers might have
3 different specifications and different performance
4 requirements?

5 A. I cannot answer to other customers, because I was not
6 there and I was not in the other customers' purchasing
7 department.

8 Q. Well, for example, one customer might have a relatively
9 basic specification and another customer might have
10 a higher specification requiring additional features.
11 Does that sound likely to you?

12 (Pause).

13 I think we have frozen again.

14 A. Hello? Hello? Can you hear me?

15 Q. I am sorry, we froze again and we lost your answer.
16 Would you mind repeating?

17 A. Can you hear me now, yes?

18 Q. Yes.

19 A. Okay.

20 Yes, I -- it could happen that customers might have
21 a different specification.

22 Q. Differences in specification would lead to differences
23 in price, yes?

24 A. That for sure.

25 Q. In terms of installation of the OSS product, there would

1 be differences between different customers in terms of
2 how the product is installed; would you agree?

3 A. I cannot answer to this, for one, because I'm not
4 technical, second, because again, I was not in the other
5 car makers.

6 Q. Could you go to page 5 in this document {J3/49/5}. So
7 it is right, is it not, that the supplier has to comply
8 with this list of supplier feasibility requirements?

9 A. I do not recognise this document.

10 Q. Are you saying that these feasibility questions were not
11 part of an RFQ during your time?

12 A. No.

13 Q. Well, if we look at the second requirement:

14 "Are you able to meet exactly Engineering Perform
15 Specifications?"

16 Presumably, during your time, you also required
17 suppliers to meet engineering performance
18 specifications, did you not?

19 A. Of course, and the evaluation was done by Fiat, not by
20 supplier.

21 Q. Then, the sixth requirement, you would have asked
22 the suppliers to confirm that their production capacity
23 met Fiat's requirements, would you not?

24 A. It -- it was part of the evaluation of supplier during
25 the bid.

1 Q. The eighth requirement, suppliers were asked to confirm
2 that they are able to manufacturer the product without
3 incurring any unusual capital equipment costs or unusual
4 tooling costs or alternative manufacturing methods, yes?

5 A. Sorry, say again? Which is the point pertaining to
6 I have to look for?

7 Q. I am looking at the eighth requirement in this document,
8 although I appreciate it may be slightly different at
9 your time, and Fiat --

10 A. Okay.

11 Q. -- is asking the supplier to confirm that they are able
12 to manufacturer the product without incurring any
13 unusual capital requirements, tooling costs or
14 alternative manufacturing methods, yes?

15 A. I do not -- do not recognise this question during my
16 period.

17 Q. Understood.

18 If we go over to {J3/49/6}, please. What we can see
19 from this page, headed "Required quality information",
20 is that suppliers have to supply a long and detailed
21 list of quality information on things like engineering,
22 manufacturing, quality control and such like; would you
23 agree?

24 A. Yes, I do agree.

25 Q. Looking under the heading "Manufacturing", the supplier

- 1 is asked to identify where the supplier's facility is
2 located, yes?
- 3 A. Yes, for sure.
- 4 Q. A location which is closer to Fiat's location would have
5 the effect of minimising logistics costs when it comes
6 to shipping parts, yes?
- 7 A. Yes.
- 8 Q. But equally, labour and overheads costs might be higher
9 in some other manufacturing locations or some
10 manufacturing locations rather than others; would you
11 agree with that?
- 12 A. Yes, I do agree.
- 13 Q. So it is fair to say that the choice of location on
14 the part of the supplier is going to affect the pricing?
- 15 A. Can you repeat the question, please?
- 16 Q. I am asking whether you agree that the supplier's choice
17 of location, their manufacturing location, is going to
18 affect the pricing of the OSS products?
- 19 A. Yes, I confirm.
- 20 Q. Going on, please, to page {J3/49/10} within this
21 document, you should see there a heading,
22 "6. Development". Now, the development phase is when
23 a part of a product is being designed; is that right?
- 24 A. Yes, it is.
- 25 Q. Would you agree that the length of the development phase

1 will vary from product to product?

2 A. (Feed frozen - inaudible).

3 Q. I fear you may have frozen again.

4 A. Can you -- can you hear me?

5 Q. We can hear you now.

6 A. Yeah. Yeah, I confirm.

7 Q. Thank you.

8 So if the supplier had previously supplied a similar

9 product, then we might expect to see a relatively

10 limited development phase and limited development costs;

11 would you agree?

12 A. What do you mean with "similar"?

13 Q. I am exploring the factors that might influence

14 the length of the development phase and I am suggesting

15 that if the supplier had previously supplied a similar

16 product, then that might mean you would have

17 a relatively limited development phase and limited

18 development costs.

19 A. (Feed frozen - inaudible).

20 Q. I am afraid --

21 A. Can you hear me?

22 Q. I am afraid you froze again, Mr Carosso. I do

23 apologise --

24 A. Can you hear me?

25 Q. -- the technology is a bit frustrating. Yes, I can hear

1 you now.

2 A. Okay, yes, I confirm what you stated.

3 Q. Then, if the product represents a step forward, in
4 technological terms, then that might mean a longer
5 development phase and greater development costs; would
6 you agree?

7 A. Yeah, I do agree.

8 Q. Different customers' requirements at this stage might
9 vary. So they might want a lot of validation or testing
10 work done, or they might be relatively familiar with
11 the technology and require limited validation and
12 testing; would you agree?

13 A. (Feed frozen - inaudible).

14 (Pause).

15 Can you hear me? Hello?

16 Q. Yes, we can hear you now, thank you. Please do go
17 ahead.

18 A. Okay. Yeah, I cannot confirm this because it is too
19 technical point that I am not so familiar with.

20 Q. Well, presumably, as a buyer, you would have taken
21 a view about how much validation and testing you needed
22 for any particular product you were buying, yes?

23 A. It was -- it was done with the support of engineering.
24 So engineering gave their feedback and we negotiated
25 the -- the cost.

1 Q. So within FCA as a whole, a view would have been taken
2 about how much validation and how much testing you
3 needed for any particular product?

4 A. At Fiat, yes.

5 Q. Presumably that could vary from product to product, even
6 within FCA?

7 A. Yes, for sure.

8 Q. In terms of recovering the costs of this development
9 work, one possibility might be that the customer -- so
10 in this case FCA -- is prepared to make an upfront
11 contribution to it, yes?

12 A. Yes.

13 Q. Then the alternative is that it would have to be
14 amortised over the lifetime of the contract and then it
15 is recovered in the piece price, yes?

16 A. Yes.

17 Q. If that second option is adopted and it is reflected in
18 the piece price, then that will also depend on what
19 volumes are projected over the lifetime of the product,
20 because higher volumes would mean costs could be spread
21 over a higher number of units; is that right?

22 A. Yes, in -- in theory, yes, but when I was in as a buyer,
23 on OSS we always paid upfront.

24 Q. Okay.

25 Page 13, please {J3/49/13}.

1 Here we have the page that is headed "Piece price
2 and tooling investment breakdown". Now --
3 A. Mm-hm.
4 Q. -- the piece price is the price per unit, yes?
5 A. Yes, correct.
6 Q. It is expected that there will be annual reductions in
7 the piece price over the course of the contract, yes?
8 A. Yes.
9 Q. The amount of the annual reductions will be negotiated
10 between the supplier and the customer, yes?
11 A. Yes.
12 Q. There is a reference here to tooling costs. Now, they
13 are the cost of the machines and the factories used to
14 manufacture the parts; is that right?
15 A. Yes, it is right.
16 Q. So when a new tender is won by a supplier, there has to
17 be an initial investment in the costs of making
18 the part, yes?
19 A. Yes, for sure.
20 Q. The amount of that investment will vary between
21 different products and different RFQs?
22 A. Yes.
23 Q. When one is trying to recover the costs of that
24 investment, that can either be recovered as an upfront
25 payment from the customer, or it can be amortised over

1 the lifetime of the project, yes?

2 A. Yes, during the period that we were -- we are talking
3 about, FCA or Fiat paid upfront the tooling as well.

4 Q. So turning on to {J3/49/15} of this document, please,
5 there is a heading here "Engineering cost ...", and that
6 is the costs of the engineering experts who design and
7 develop the products; is that right?

8 A. Different format what I remember, but, yes, it is
9 the details of engineering cost.

10 Q. Again, engineering costs can, in principle, be recovered
11 either as an upfront cost or they can be amortised over
12 the volumes of the contract?

13 A. In principle, yes.

14 Q. It is fair to say, is it not, that Fiat is
15 a sophisticated purchaser and it has detailed and
16 specific requirements that it expects of its suppliers;
17 would you agree with that?

18 A. Yeah, I do agree.

19 Q. Can we look, please, at {J3/50/1}, please.

20 So this is an example of a nomination letter.

21 I think it is fair to say that this is also slightly
22 before your time, although it is more up to date, but,
23 again, I am asking you to comment insofar as you are
24 able on the general principles.

25 A. Yeah, I confirm, this is very similar to what I used in

- 1 that period.
- 2 Q. So a nomination letter is sent by Fiat to the supplier
- 3 to confirm to the supplier that they have been selected
- 4 to supply a product and the key terms; is that right?
- 5 A. Yes, it is.
- 6 Q. So this example is for a knee airbag, yes?
- 7 A. Yes.
- 8 Q. What we can see is that there is now an agreed piece
- 9 price, which is €20.22, yes?
- 10 A. Yeah.
- 11 Q. At this stage there is agreement on the commercial
- 12 terms, so payment terms, delivery terms and such like,
- 13 yes?
- 14 A. Yes.
- 15 Q. We can see that the supplier's manufacturing plant is
- 16 now specified, in this case it is Poland, yes?
- 17 A. Yeah -- yes.
- 18 Q. The annual price reductions that have been agreed are
- 19 now specified at this stage and so we can see in this
- 20 example there is product price reductions over two years
- 21 and in each year it is a reduction of 2%, yes?
- 22 A. Yes, it is correct.
- 23 Q. This is a case where Fiat has agreed to make an upfront
- 24 contribution to the costs of production tooling and
- 25 research and development, yes?

- 1 A. Yes, it is.
- 2 Q. If we go over to {J3/51/1}, please.
- 3 So this is an example of a nomination response
- 4 letter for the same knee bag as well as some of
- 5 the other OSS products; do you agree?
- 6 A. What I remember, yes.
- 7 Q. Again, we see the various prices and terms set out for
- 8 each of the products, yes?
- 9 A. Yes.
- 10 Q. If we go to {J3/51/2} in this document, please, there is
- 11 a point 1 at the bottom of the letter and the point
- 12 being made, in this case by TRW, is:
- 13 "The prices detailed in the Nomination Letter under
- 14 Section 2 are based on the quotation assumptions
- 15 detailed above, including the annual volume assumptions
- 16 as requested by FGP."
- 17 Now, the reason for that is that various of
- 18 the costs, the development, the tooling, the engineering
- 19 and such like, might well have been amortised over
- 20 the volumes of the product and so if the volumes were
- 21 materially different, it would affect their cost
- 22 recovery; is that right?
- 23 A. Can you repeat the question, please?
- 24 Q. Do you see point 1 at the bottom of the letter, where --
- 25 A. Yeah.

- 1 Q. -- they are making clear that the assumptions are based
2 on annual volume assumptions? I am suggesting to you
3 that the reason for that is that some of the costs that
4 are being incurred would have been amortised over
5 the volumes of the product and so if it turns out that
6 the volumes are materially different than anticipated,
7 that would affect costs recovery.
- 8 A. I do not agree, because this -- this sentence is
9 referred to the fact that the volumes were -- were not
10 indexed at that time, so it means the risk was at
11 the supplier end not in -- from Fiat side.
- 12 Q. I see. So you are saying that it is the supplier that
13 bears the risk that if the --
- 14 A. Yeah.
- 15 Q. -- volumes were not as anticipated then they have
16 difficulty recovering their costs?
- 17 A. Yeah. Yes, indeed, this confirmed that we were not
18 paying in -- in the cost of the development and tooling
19 cost as amortised, but we decided to pay upfront at that
20 time.
- 21 Q. Can we look at {J3/52/1}, please.
- 22 This is an internal TRW presentation which relates
23 to the same knee bag and so --
- 24 A. Mm-hm.
- 25 Q. -- I appreciate that this is not something that you will

1 have seen before, but --

2 A. Mm-hm.

3 Q. -- I would just like to ask you about what we can see
4 about some of the quotes.

5 If we look, please, within this document at
6 {J3/52/6}.

7 Now, if we look, please, first of all, at
8 the left-hand side of this slide, what you see there is
9 the first quote that was made by TRW to Fiat, and there
10 you can see there was a piece price of €21 and that
11 assumed that all tooling and R&D was fully amortised
12 over the lifetime of the contract; do you see that?

13 A. Mm-hm. Yes, I see it.

14 Q. Then there was a second quote, which is on
15 the right-hand side, and that is now for a piece price
16 of €18.7 but with tooling and R&D partially recovered by
17 the customer; do you see that one?

18 A. Yes.

19 Q. So what we can see is that even as between quotes for
20 the same product to the same customer, pricing can
21 differ depending on the assumptions you make about
22 upfront recovery of costs versus amortisation of costs
23 over volumes; would you agree?

24 A. Yes.

25 Q. So can I ask you to assume that you have two RFQs for

1 steering wheels and assume that, at a high level,
2 the steering wheels have the same technical
3 characteristics, so assume they are both the same size,
4 they are both finished in leather, they both have
5 electronic switches on them and they are not heated.

6 Now, it is right, is it not, that the pricing of
7 those two steering wheels could be very different
8 depending on all the different factors we have just
9 discussed, so depending on volumes, locations, technical
10 specifications, manufacturing locations, development,
11 tooling, engineering and how those costs might be
12 recovered; would you agree?

13 A. Yes, I do agree.

14 Q. One cannot assume that because two steering wheels have
15 the same high level technical characteristics, they will
16 be priced the same, yes?

17 A. Yes.

18 Q. Can we go, please, within your witness statement to
19 {B/11/7}, please. I would just like to work through
20 a few things that you have addressed in your evidence.

21 I am starting at paragraph 24, and here you are
22 explaining that FCA negotiated long-term agreements and
23 you have identified two types of discounts that were
24 included in long-term agreements. The first were annual
25 discounts and you say of around 3% for three years.

1 Now, we saw the box for that in the RFQ that we just
2 looked at, did we not? I fear we have frozen again.

3 A. (Frozen feed - inaudible). Can you hear me?

4 Q. I can hear you, yes. I am sorry, it may be that I need
5 to repeat my question.

6 A. Yes, yeah, because I lost you for a second, sorry.

7 Q. I was looking at the evidence you give in paragraph 24.

8 A. Yeah.

9 Q. I was saying that you have identified two types of
10 discounts that were included in long-term agreements and
11 the first were the annual discounts of around 3% --

12 A. Mm-hm.

13 Q. -- and I was saying that we saw an example of that in
14 one of the boxes in the RFQ that we just looked at.

15 A. You refer to the one that we saw before, 2% for
16 two years? Yes, exactly the same.

17 Q. You say that, in addition, there will be a discount of
18 10% of turnover in the contract's peak year, yes?

19 A. Yes.

20 Q. Then you have explained that in 90% of cases you were
21 successful in negotiating those terms with your
22 suppliers, yes?

23 A. Yes.

24 Q. That would tend to suggest that FCA has a considerable
25 amount of negotiating strength with suppliers if you

1 virtually always got the discounts that you were looking
2 for; would you agree?

3 A. I cannot agree. I would say that it's a negotiation and
4 if supplier accept that, it's because they made their
5 profit, it was good enough to supply FCA, so it was
6 a "win-win" approach.

7 Q. Well, if 90% of the time you got what you wanted, that
8 does suggest that you had a strong negotiating position,
9 does it not?

10 A. I wouldn't say strong negotiation. I would say that
11 probably the cost that FCA paid the supplier was good
12 enough to also get this additional discount in our
13 turnover.

14 Q. Can we look over the page, please, at paragraph 30 of
15 your statement {B/11/8}, and here you are dealing with
16 requests from suppliers for price amendments due to
17 increase in the price of raw materials.

18 A. Mm-hm.

19 Q. Your evidence here is that you never agreed to those
20 requests and you always refused them, yes?

21 A. Yes.

22 Q. Again, I would suggest to you that that indicates a high
23 degree of negotiating strength on the part of FCA,
24 because you can simply say no when suppliers seek raw
25 material price increases, yes?

1 A. I do not agree, because a buyer from FCA for OSS never
2 request a price decrease when something to the contrary
3 happened. So it was a risk that the two companies took
4 and never discussed the reduction or increase in
5 the price.

6 Q. I am sorry, is your evidence that buyers -- sorry, that
7 suppliers never requested a price increase?

8 A. No, not "never requested", but I say that they will
9 never recognise anything to the supplier because
10 sometimes the price can -- could go up or could go down,
11 but we never agreed any reduction or any price increase.

12 Q. The fact that you were able to take the position that
13 you never agreed those requests indicates that you were
14 in a strong bargaining position, does it not?

15 A. No, it is not because I was in a strong position, it's
16 because we discussed in a commercial way and we say at
17 least that they good -- they took -- I mean
18 the suppliers had a good maybe opportunity some years,
19 they can have some loss on other years, just a balance,
20 and this was always an agreement between supplier and
21 FCA at the time, also doing RFQs, because it was clear
22 enough that the raw material was not indexed.

23 Q. Can we move on to look at paragraphs 31 and 32 of your
24 statement. It is on the same page.

25 A. Yeah.

1 Q. Here, you are discussing FCA's commercial relationship
2 with Autoliv and with TRW.

3 A. Mm-hm.

4 Q. Starting with paragraph 31, you have recorded your
5 recollection that -- this is the last line:

6 "... we gave more business to TRW than Autoliv
7 because they were more aggressive on price."

8 So one way in which you recall TRW competed with
9 Autoliv was on price, yes?

10 A. Yes.

11 Q. Then, in paragraph 32, you say that:

12 "... it was easier to get ... explanations from TRW
13 than [from] Autoliv. For instance, TRW's cost
14 breakdowns were more detailed than Autoliv's."

15 So a second way in which you recall TRW competed
16 with Autoliv was in the transparency of its costings;
17 would you agree?

18 A. Yes, I agree in terms of transparency, but it is not
19 the reason why they got more business.

20 Q. But it is one way in which TRW distinguished themselves
21 from Autoliv, and so competed for your business, was
22 that they were more transparent on their costs, yes?

23 A. Yes.

24 Q. That would have been important from FCA's perspective
25 because it would have given you an insight into the cost

1 justification for a proposed price and it would have
2 enabled you to push back on a price if you thought that
3 it was not justified, yes?

4 A. Yes.

5 Q. You go on in this paragraph to say:

6 "Also, TRW's technical alignment with our Cost
7 Engineering team was much easier than with Autoliv
8 because TRW gave more information."

9 So a third way in which you recall that TRW competed
10 with Autoliv was in the way in which they worked with
11 FCA's costs engineering team, yes?

12 A. Sorry, can you repeat the question, please?

13 Q. I am suggesting that a third way that you have
14 identified that TRW competed with Autoliv for FCA's
15 business was that they worked better with FCA's cost
16 engineering team.

17 A. Can you hear me?

18 Q. Yes. Yes, I can hear you, yes.

19 A. Ah, yes. Yes, I confirm.

20 Q. Can we look, please, at {J3/12/1}. This is an internal
21 TRW document headed:

22 "Fiat Customer Strategy Reviews: Pre-Pack."

23 It is dated August 2008. Although I obviously
24 appreciate that this predates your time again, but you
25 can see that the planning period it relates to is 2008

1 to 2013 and so there is a degree of overlap with your
2 time period.

3 Now, can we start, please, at {J3/12/3}. At the top
4 there, there is a table showing market shares for 2008;
5 do you see that?

6 A. Yes, I see it.

7 Q. There is a line within that table for "... Restraints",
8 and "restraints" is referring to
9 Occupant Safety Systems, yes?

10 A. Sorry, can you repeat, please?

11 Q. I am suggesting to you that "restraints" is referring to
12 Occupant Safety Systems. Does that sound familiar to
13 you?

14 A. Yes. Yeah.

15 Q. What we can see in that table is that TRW has
16 the highest market share of Fiat business, but in second
17 place is KSS, yes?

18 A. Yes.

19 Q. So we can see, at least in this period, that KSS is an
20 effective competitor in addition to Autoliv and Takata,
21 yes?

22 A. Yes. Can you hear me?

23 Q. Yes, I think we can, yes.

24 If you look, please, at the box on the bottom right,
25 "GAD/AD Comments", and the final bullet point in

1 there "Price", you should see:

2 "... strong pressure in the last 2-3 years to
3 decrease prices, while TRW looking for increases
4 ([material] inflation); low cost products are a MUST to
5 win ..."

6 So we can see that TRW is experiencing strong
7 pricing competition in this period, would you agree?

8 A. Yeah.

9 Q. And --

10 A. Reading this sentence, yes.

11 Q. What it is doing here is identifying the need to compete
12 strongly on price by producing low cost products, yes?

13 A. Yes.

14 Q. Can we go, please, to {J3/12/6}. I am hoping it comes
15 -- there we go.

16 So you should have there a slide headed "Market and
17 Competitive Position Restraints", and can I ask you to
18 look, please, at the subheading "Regional Comments".
19 Starting with, "EU IRS", that is concerned with airbags,
20 and you will see there:

21 "... KSS is getting very aggressive on [passenger
22 airbag] targets (27.50 €o for a low risk deployment
23 passenger airbag dual stage), Autoliv is heavily
24 stepping on SIP and HB protection ..."

25 So that is side impact protection and head

1 protection:

2 "... with aggressive prices ... Competitors are
3 offering smaller packages (vs TRW offer) for large
4 SIP ... to fulfill FIAT seat constraints applied on
5 B segment vehicles. Takata is pressing to take a slice
6 of market share at FIAT, with aggressive pricing and
7 technology offer."

8 So just breaking down what we are seeing in this
9 section. First of all, we can see that TRW is
10 experiencing pricing competition from KSS for Fiat
11 business, in particular passenger airbags; would you
12 agree?

13 A. Yes, I do agree.

14 Q. It is also experiencing pricing competition from Autoliv
15 for Fiat business, in particular side impact protection
16 and head protection, yes?

17 A. (Feed frozen - inaudible).

18 Can you hear me? Hello?

19 Okay, yes, I confirm.

20 Q. It is experiencing competition from Takata on both
21 pricing and on technology, yes?

22 A. (Feed frozen - inaudible).

23 Hello? Can you hear me now?

24 Q. Yes.

25 A. Okay, yes. So I confirm, yes.

1 Q. Then, moving on to seatbelts, which is the next heading
2 here, you can see there:

3 "EU SBS ..."

4 Seatbelts:

5 "... competitiveness on prices/performances overall
6 OK; RP2IS performance needs some adjustments for new
7 platforms. Strong focus on noise reduction. Takata
8 knocking at the door."

9 So what is going on here is that TRW has identified
10 certain areas where it needs to improve its performance
11 in order to compete with its competitors on seatbelts,
12 yes?

13 A. Yes.

14 Q. It is also experiencing competition coming from Takata;
15 you would agree?

16 A. What I -- what I remember, there was also Autoliv on
17 the seatbelts competition.

18 Q. Absolutely, yes.

19 So steering wheels, which is the next head, "EU
20 SWS ...", the document says:

21 "... actions in place to gain market share against
22 KSS on Alfa Romeo brand; Engineering team is focused on
23 following FIAT desiderata and support specs tuning
24 before RFQ process (Alfa Romeo 944). Technology offer
25 is OK, price competitiveness is critical."

1 So in relation to steering wheels, TRW has put in
2 place its strategy to compete against KSS; would you
3 agree?

4 A. Can you hear me?

5 Yes, I agree.

6 Q. TRW's engineering team are trying to respond to Fiat's
7 indications as to what they would like for
8 the Alfa Romeo 944, yes?

9 A. Yes.

10 Q. The reference to price competitiveness being critical
11 tells us that, again, TRW is facing strong pricing
12 competition in competing for Fiat's business, yes?

13 A. Yes.

14 Q. If we look at the global account director comments in
15 the bottom right box, if we look, please, at
16 the heading "Service", which is part way down, one of
17 the comments there is:

18 "TRW Customer team locally based in Italy is clearly
19 assessed as a plus vs competitors via FIAT
20 Eng[ineering]."

21 So this is another way that TRW is identifying that
22 it can compete against other suppliers because it offers
23 a customer team based in Italy, yes?

24 A. I cannot say yes or no, but of course I can say that is
25 an advantage that TRW had at the time.

- 1 Q. Then on "Price" in that box, steering wheels, we see:
2 "... big pressure caused by KSS on Punto 199
3 LW SWS price (-1,75 euro) localized in China and
4 imported into Fiat Italian plants."
5 Here we can see TRW facing price competition on
6 steering wheels from KSS; would you agree?
7 A. I was not in the -- in -- in the company at the time,
8 but reading this sentence, for sure, this is true what
9 you are saying.
10 Q. Then there should be a heading "IRS", yes?:
11 "IRS: HB on new platforms sourcing have been awarded
12 at 3,5/4 € ... less than our current price on
13 New 500 ... commercial strategy definition in progress
14 to be competitive on new platform sourcing without
15 jeopardizing current business in production."
16 So again, on airbags here, TRW is identifying that
17 it is facing pricing competition; do you agree?
18 A. Yes, I do agree.
19 Q. Then, on seatbelts:
20 "SBS: TRW is competitive, but profitability is
21 critical; some price issues on Cinquecento 312 only."
22 So on seatbelts, TRW's assessment is that it is
23 competing on price but that is having an impact on
24 profitability; do you agree?
25 A. I agree it is not only TRW but all suppliers say

1 the same at that time, that there is less profitability,
2 say, component, the seatbelts.

3 Q. If we go, please, to {J3/12/11}.

4 Can you see you have a heading there "Top Line
5 Growth Restraints". Can I ask you, please, to look at
6 the "Win/Loss" table, which is in the bottom left of
7 this slide, and you can see that the bottom three rows
8 are showing TRW's total win rate and then the proportion
9 of Fiat business that is won by the incumbent and
10 the proportion of Fiat business that is won by
11 a non-incumbent; can you see that?

12 A. Yes, I can see it.

13 Q. What you can see is that in 2005, 2006 and 2007, no
14 business, no Fiat business was won by the incumbent
15 supplier, yes?

16 A. Yes.

17 Q. In 2007, 100% of Fiat business was won by TRW, which is
18 not the incumbent supplier; do you agree?

19 A. Yes. Within this table, yes.

20 Q. What these figures suggest is that there is a healthy
21 amount of competition as between the incumbent supplier
22 and competing suppliers, yes?

23 A. Yes.

24 Q. If we look at the comments in the bottom right-hand
25 corner, the global account director/account director

1 comments, under "Price", we can see:

2 "TRW still the first OSS partner in Fiat, but KSS
3 and Autoliv are getting very aggressive price-wise.
4 TAKATA is pressing to enter and gather a slice of market
5 share in FIAT."

6 Again, what is being recorded here is that TRW are
7 experiencing vigorous price competition from KSS and
8 Autoliv in competing for Fiat business; would you agree?

9 A. Yes, I do agree.

10 Q. They were also experiencing competition from Takata?

11 A. I do not, here, remember at the time Takata, because
12 Takata joined Europe, if I remember, FCA in 2012 or 13.
13 Before, I was not there, so I cannot -- I cannot confirm
14 Takata.

15 Q. Can we look, please, at {J3/4/1}.

16 So this is a similar sort of document, but in this
17 case the planning period is 2009 to 2014; do you see
18 that?

19 A. Yeah, I see.

20 Q. Then page {J3/4/2} of this document, please, there is
21 a heading there, part way down the page, "Technology
22 leader for passive and active safety"; do you see that?

23 A. Yes, I see it.

24 Q. Under that heading, we can see the second bullet:

25 "Price competitiveness is key enabler to be

1 perceived as leaders."

2 So this is still, at this stage, a market which is
3 characterised by strong price competition; would you
4 agree?

5 A. I do agree.

6 Q. Then {J3/4/3} within this document. There is
7 a heading "Top Five Account Strategic Actions", and can
8 I ask you to look, please, at point 5 under this, which
9 is concerned with Occupant Safety Systems and we can
10 see:

11 "Ensure cost competitiveness on [seatbelts] to
12 attack new B segment (against Autoliv)."

13 So what TRW is doing here is identifying a future
14 strategic action to win Fiat business by competing with
15 Autoliv on costs; do you agree?

16 A. Yes, I agree.

17 Q. That is consistent with your perception of TRW competing
18 against Autoliv; would you agree?

19 A. Yes, I agree.

20 Q. Page {J3/4/48}, please, in this document, you have
21 a heading there "Competitor Actions: Restraints", and
22 can I ask you to look at the second line for KSS. There
23 are two entries for KSS but I am looking at the second
24 one, and the issue that there is a heading "Main
25 Action/Issues of Competitors", the issue that has been

1 identified is:

2 "[Steering wheels] produced in China (Grande Punto)
3 and in Romania (Bravo), with negative results in quality
4 and services. Defined as 2nd worst supplier in all FIAT
5 Italian plants in April 2009."

6 Do you see that?

7 A. Yes.

8 Q. If we look across to the other side of the table,
9 the strategic implication that TRW has identified is --
10 and this is the bottom bullet:

11 "Chance to attack Alfa Romeo brand, traditional KSS
12 kingdom for [steering wheels] and [airbag], starting
13 from potential new FIAT/Chrysler Alfa platforms
14 launching in the US?"

15 So, first of all, TRW is identifying this as an area
16 where KSS is the incumbent supplier; would you agree?

17 A. Yes, I agree.

18 Q. It is identifying as an opportunity, the opportunity
19 could be hard for Fiat business against KSS?

20 A. Yes, I confirm.

21 Q. If we look to the right-hand side, the very far right of
22 this table, we can see that that includes EU volumes,
23 this plan to attack the incumbent supplier includes in
24 relation to the EU, yes?

25 A. Yes, I see.

1 Q. If we go to {J3/4/53}, please.

2 We have a slide here, "Opportunities: Restraints

3 Global", and the second heading down, "New Grande

4 Punto 199/New Idea/Musa 350"; do you see that one?

5 A. Yes, I see it.

6 Q. It is identified as:

7 "Main strategic business ..."

8 It says:

9 "Expected aggressive competitiveness from Autoliv,

10 KSS and probably also Takata."

11 So TRW is expecting strong competition for this Fiat

12 business from three possible suppliers; do you agree?

13 A. Can you hear me?

14 Q. I am sorry, you broke up, yes. Try again.

15 A. Yes, I agree. Yes, I agree.

16 Q. And then there is also then a heading "Why TRW will win

17 the business?", and what it says is:

18 "Product performance in line/better than competitor,

19 modularity.

20 "Limited R&D and tooling spending by using massive

21 carry-over & BoM re-use.

22 "Piece price matching Customer target at vehicle

23 level."

24 So what we are seeing here is a competitive strategy

25 to try and win Fiat's business which includes competing

1 on both pricing and product performance; is that right?

2 A. It's right.

3 Q. This pattern of competitive behaviour is what Fiat has
4 seen from TRW throughout the relevant period; would you
5 agree?

6 A. Sorry, I didn't catch your -- your question. Can you
7 say again, please?

8 Q. I am suggesting that the pattern of competitive
9 behaviour that we have seen in this document is what
10 Fiat has seen from TRW throughout the relevant period.

11 A. (Feed frozen - inaudible).

12 Hello? Can you hear me?

13 Q. Yes, we can hear you now.

14 A. Yes. Yeah, I confirm what you said.

15 MS FORD: Sir, I have a very few documents left but I am
16 mindful of the time. I can either carry on or have
17 a break now and continue after.

18 THE CHAIRMAN: How much more time do you need?

19 MS FORD: I have three more documents, relatively short.

20 THE CHAIRMAN: Less than 15 minutes?

21 MS FORD: I would have thought so, yes.

22 THE CHAIRMAN: Okay to carry on, yes. Thank you.

23 MS FORD: I am grateful.

24 {J1/941/1}, please.

25 So this is another internal TRW document, this time

1 dated 16 April 2010, and it is concerned with steering
2 wheels and driver airbags. If we look within this at
3 {J1/941/27}, please. You can see here the position in
4 Europe is on the top left and the third bullet is
5 recording:

6 "High market share with Ford, VW and Fiat difficult
7 to keep or even increase (price competition)".

8 So what TRW is identifying here is that it is
9 finding it difficult to maintain its market share of
10 Fiat business because it is experiencing pricing
11 competition; would you agree?

12 A. Yes, I agree.

13 Q. Then {J3/11/1}, please.

14 We have got another internal TRW document, "Fiat
15 Global Customer Strategy Reviews Strategy Presentation".
16 This one is dated August 2010. Can we go within this,
17 please, to {J3/11/74}. This is just to show you another
18 internal heading slide, which is, "Fiat Global Customer
19 Strategy Reviews Restraints", and you can see this is
20 the planning period 2009 to 2015; do you see that?

21 A. Yes, I see it.

22 Q. Within that, please can we go to {J3/11/78}. We have
23 got -- the heading is, "Regional
24 Strategies: Restraints ...", and the position in Europe
25 is at the bottom of the page, and do you see there,

1 there is a heading "Risks and Opportunities"?

2 A. Yes.

3 Q. Under that we can see:

4 "... SBS competition ..."

5 So seatbelts competition:

6 "... on new Grande Punto 316 will be very tough

7 (Autoliv incumbent) -- Risk to lose portion of

8 T business."

9 So TRW is here anticipating strong competition from

10 Autoliv in competing to supply seatbelts for the new

11 Grande Punto; would you agree?

12 A. Yes, I agree.

13 Q. It is here targeting this business notwithstanding that

14 Autoliv is identified as the incumbent on the business,

15 is it not?

16 A. Yes, it is.

17 Q. If we can look, please, at {J1/727/1}.

18 You should have an email here dated

19 22 December 2010, and the heading is "Sales -- Top 4

20 Acquisitions 2011"; do you see that?

21 A. Can you --

22 Q. This is as an internal --

23 A. -- can you make it bigger, please, if it's possible?

24 Q. I wonder if the operator might make it bigger.

25 So the relevant part to focus on, if that helps, is

- 1 the heading "Grande Punto 316 B".
- 2 A. Yes.
- 3 Q. We can see here it is identifying, "RFQ expected to be
4 issued in April 2011" --
- 5 A. Mm-hm.
- 6 Q. -- and the location of the Fiat production plant.
7 Under "TRW awarding strategy", you can see it is noting
8 -- this is the second bullet:
9 "... Autoliv incumbent on current platform
10 Grande Punto 199."
11 Do you see that?
- 12 A. Yes, I see it.
- 13 Q. TRW is describing this as an "ambitious 'T'", so
14 an ambitious target:
15 "... to regain historical presence on SBS on Fiat
16 B segment."
17 So this is TRW making what it considers to be an
18 ambitious bid to challenge the incumbent, Autoliv, to
19 win this business; would you agree?
- 20 A. Yes, I do agree.
- 21 Q. We do not see any indication here that ZF is respecting
22 an incumbency principle and avoiding competing with
23 incumbents, do we?
- 24 A. Sorry, can you repeat, please?
- 25 Q. I am saying we do not see any suggestion in this

1 document that ZF is avoiding competing with incumbent
2 suppliers?

3 A. Yeah, sure.

4 MS FORD: Sir, those are my questions.

5 THE CHAIRMAN: Thank you.

6 MR WEST: No re-examination.

7 THE CHAIRMAN: Thank you very much for giving evidence and
8 for coping with the technology so well with good humour.
9 I very much appreciate it.

10 A. Thank you very much.

11 THE CHAIRMAN: Thank you very much. You are now released.

12 I think he can be switched ...

13 (The witness withdrew)

14 Just before we rise for five minutes, these TRW
15 documents that are being put are obviously being put to
16 a witness who is not at TRW. What is the status of
17 the documents? They are not subject to any evidence
18 from your clients and there is no Civil Evidence Act
19 notice or anything like that?

20 MS FORD: Sir, they are disclosed within the proceedings,
21 and in my submission, when I am putting them to
22 a claimant witness who is giving evidence as to
23 the conditions of procurement in relation to their
24 client at the time, they are in a position to comment on
25 whether or not what is within the document is consistent

1 with their experience and so I am asking them questions
2 on that basis.

3 THE CHAIRMAN: Yes. I am not saying it is improper at all,
4 it is just no doubt you will be referring to these
5 documents in closing and I may need some assistance as
6 to what their status is when we get there.

7 Thank you.

8 (11.51 am)

9 (A short break)

10 (12.05 pm)

11 MR WEST: So, gentlemen, Mr Gautier is here and is prepared
12 to proceed with his evidence.

13 Just before we do that, I have been asked to mention
14 one point to you so it is on your radar and that is
15 that, on Friday afternoon, the Defendants sent through
16 a further 19-page expert report from Dr Majumdar and
17 a third witness statement from Mr Arango. Presumably,
18 at some point, we are going to be hearing an application
19 to admit that material out of time and so I just mention
20 it because the Tribunal may not appreciate yet that that
21 development has occurred.

22 So, with that, can I proceed to call
23 Mr Jérôme Gautier.

24 THE CHAIRMAN: We need to swear the interpreter first.

25 (Interpreter affirmed)

1 MR JÉRÔME GAUTIER (affirmed)

2 THE CHAIRMAN: Please, both, sit down.

3 A. Thanks.

4 MR WEST: Before we proceed with Mr Gautier's evidence,
5 again, the Commissioner has asked me to make
6 the following statement -- sorry, I do not need to do
7 that for this witness. I apologise. I will move on.

8 Examination-in-chief by MR WEST

9 Could I ask you to look at tab 1 of bundle B, please
10 {B/1/1}. Is that your statement in the Peugeot v NSK
11 proceedings, sometimes called "*the Bearings*
12 proceedings"?

13 A. Yes.

14 Q. If you go to the end of that statement at {B/1/38}, is
15 that your signature?

16 A. Yes, it is.

17 Q. Could I ask next that you look at tab 17 of the same
18 bundle, B, {B/17/1}. Is that your first witness
19 statement in these proceedings?

20 A. Yes, it is.

21 Q. Could I ask you just to look at paragraph 5 of that
22 statement {B/17/2}, where, about two-thirds of the way
23 down, you say you are effectively giving the evidence in
24 your *Bearings* statement again as your evidence in this
25 case --

1 A. Wait, I don't have it on the screen. Yeah, sorry, it's
2 -- it's back.

3 Q. Could I ask you then to turn on to {B/17/15} of this
4 tab. Is that your signature?

5 A. This is my electronic signature --

6 Q. Electronic signature.

7 A. -- to be fair.

8 Q. Can you confirm that the contents of both the *Bearings*
9 statement and the statement we just looked at, tab 17,
10 are true to the best of your knowledge and belief?

11 A. That's it, absolutely.

12 Q. They represent the evidence you wish to give in these
13 proceedings?

14 A. Yes, I do.

15 MR WEST: There may be some questions for you. Thank you.

16 A. Thanks.

17 Cross-examination by MR SCANNELL

18 MR SCANNELL: Good afternoon, Mr Gautier.

19 A. Good afternoon.

20 Q. The first of the two witness statements that you have
21 just identified, that is a witness statement you gave
22 seven years ago and that was a witness statement
23 I believe you gave in the *Bearings* proceedings, you
24 said?

25 A. Yes.

1 Q. Now, in that case, PSA accused its *Bearings* suppliers of
2 overcharging it for the *Bearings* PSA used in
3 the manufacture of its cars; is that right?

4 A. That's right.

5 Q. In the witness statement you gave in January this year,
6 you say that you have not been referred to any documents
7 in this case by Hausfeld or by anyone else; is that
8 right?

9 A. Sorry, I don't understand your question.

10 Q. In the witness statement that you gave in January --

11 A. Yes, this year.

12 Q. -- this year, in these proceedings, you say that you
13 have not been referred to any documents in this case by
14 Hausfeld or by anyone else; do you remember saying that?

15 A. Now I understood. Sorry for that. Yes, I do.

16 Q. Does that mean that you have not read any other witness
17 statement in this case?

18 A. Yes.

19 Q. You told the Tribunal in the statement you made in
20 January this year that you have re-read the statement
21 you gave seven years ago; do you recall saying that?

22 A. Yes, absolutely.

23 Q. That you are, as you told Mr West, effectively giving
24 that evidence again as your evidence in the present
25 case; is that --

1 A. That's true.

2 Q. -- fair?

3 Now, in the statement you gave in 2017, you
4 addressed the PSA Group's pricing strategy between 2004
5 and 2016; do you recall that?

6 A. I do.

7 Q. Now, 2004 was 20 years ago, you will appreciate that,
8 Mr Gautier. Now, I appreciate that you have not read
9 any other witness statement in this case, but you can
10 take it from me that at least one of the Claimants'
11 witnesses in this case, who gave evidence only
12 three years ago, says that they are no longer confident
13 about sections of their earlier evidence because of
14 the passage of time.

15 Now, are you quite certain, Mr Gautier, that you
16 recall all of the facts underlying the witness statement
17 that you gave seven years ago concerning matters going
18 back to 2004?

19 A. Yes, maybe -- maybe, to explain a little bit, I could
20 refer to my personal career path, and in fact I've been
21 in charge of pricing at Peugeot, and then for
22 the PSA Group, and the position that I was taking in
23 2004 was marketing director in Netherlands, so let's say
24 there has been consistency across those different
25 positions, so there was nothing really new and different

1 from a function to another in terms of defining
2 the prices of cars and executing that on a local market.

3 Q. Yes, I do understand that that is what you are now
4 saying. I want to ask you specifically about your
5 recollection, what you are remembering and what you are
6 not remembering, okay?

7 Now, what I want to know is, are you quite sure that
8 you are remembering the facts underlying the statement
9 that you made seven years ago, going back to 2004, or
10 is it the position that you are relying on having
11 re-read that statement and you are assuming that it is
12 true because that is what you said seven years ago?

13 A. I would say the key facts that were appearing in my
14 statement of 2007 were relating to facts that when I was
15 head of the pricing at the beginning of 2010/2011/2012.
16 Regarding those, I am absolutely confident that I recall
17 them perfectly. Regarding 2004, I don't think there is
18 any specific, maybe I might have forgotten something
19 from this time, but I don't think there is any detail in
20 my statement that would appear and that I would not
21 remember.

22 Q. Are you saying that when you made your statement
23 seven years ago you remembered those things, or are you
24 saying that you still remember all of those things
25 today?

- 1 A. I still remember those things today.
- 2 Q. All of the facts underlying your statement?
- 3 A. All the facts. Obviously I would not remember each and
4 every thing, but regarding the facts, regarding the way
5 to proceed, I'm absolutely certain that I'm remembering.
- 6 Q. Very well.
- 7 Who is Freddy Audebeau, Mr Gautier?
- 8 A. Freddy Audebeau used to work for the purchase department
9 and he was referred in one of -- in 2017 statement as
10 being contributor through a witness statement in that
11 case.
- 12 Q. Does Mr Audebeau still work for PSA?
- 13 A. I have no idea about that.
- 14 Q. Have you read any witness statement from Mr Audebeau in
15 preparation for your evidence today?
- 16 A. No.
- 17 Q. Can I take you to some passages in your 2017 witness
18 statement where you refer to Mr Audebeau, please.
- 19 A. Sure. Will it appear on the screen?
- 20 Q. It should appear on your screen. I am going to give
21 the Opus operator some references and he has the ability
22 to put it on the screen. Also you have been provided,
23 I understand it, by the Claimants' solicitors with
24 a hard copy bundle of the statement you made in 2017.
- 25 So if you want to pick it up in hard copy and look

1 at it on the screen in case we run into technical
2 difficulties, that might be the safest course of action.

3 A. Sure.

4 Q. I am going to begin at page 7 of your 2017 statement,
5 please {B/1/7}. So that is {B/1/7} for the Opus
6 operator, and I want to look at paragraph 27 at
7 the bottom of the page; do you see that?

8 A. Yeah.

9 Q. Okay.

10 So in this paragraph you are addressing dealer
11 margins and the gross dealer price; you see that?

12 A. Sure.

13 Q. You say that:

14 "The size of the dealer margin is set by PSA."
15 You see that?

16 A. Yeah.

17 Q. That is important, is it not, because, for the most --

18 THE CHAIRMAN: I am very sorry, Mr Scannell, my fault, but
19 I have just lost where you are.

20 MR SCANNELL: Second and third lines of paragraph 27 on
21 page 7 of the *Bearings* witness statement.

22 THE CHAIRMAN: Thank you very much.

23 MR SCANNELL: That is important, is it not, Mr Gautier,
24 because, for the most part, PSA sold its cars to
25 independent car dealers, did it not?

1 A. Yes.

2 Q. It is also important for the Tribunal to understand
3 because the gross dealer price minus the additional
4 deductions PSA applied to the list price resulted in
5 the net dealer price, did it not?

6 A. Sure.

7 Q. That is the price that the experts are interested in for
8 the purposes of their pass-on analysis; do you
9 understand that?

10 A. I do.

11 Q. Just so that the Tribunal can see what you said in
12 relation to that, and I will come back to 27 in
13 a moment, if you could turn over the page {B/1/8},
14 Mr Gautier, to paragraph 29, you say, in the first line,
15 that:

16 "The additional commercial support provided by PSA
17 is called 'MCV' ..."

18 That, I believe, is "moyens commerciale variable"?

19 A. Congratulations for your French.

20 Q. So variable commercial means?

21 A. Absolutely.

22 Q. Then, in the last three lines, you say:

23 "I understand that other witness statements prepared
24 on behalf of PSA in these proceedings use the term 'Net
25 Dealer Price' to refer to the Gross Dealer Price less

1 any relevant MCV."

2 You see that?

3 A. Yes, I do.

4 Q. Now, you refer there to "other witness statements
5 prepared on behalf of PSA in these proceedings". Now,
6 you are referring there to the *Bearings* proceedings, are
7 you not?

8 A. Yes.

9 Q. Can you recall whose witness statements you are
10 referring to there?

11 A. Not at all, and I -- I've not been said at this time.

12 Q. Excuse me?

13 A. I have been requested to explain net dealer price but
14 without being said by the lawyers which statement it was
15 referring to.

16 Q. Okay.

17 But just to repeat, you do not recall who
18 the witnesses are in the *Bearings* proceedings --

19 A. No.

20 Q. -- whose evidence you are referring to in paragraph 29?

21 A. No, it's not that I don't recall. I recall that I was
22 not mentioned the name in that statement. I was
23 questioned by our lawyers, "What does mean 'net dealer
24 price'", and when I explained, that was put as my
25 statement, but it was not referred as being X, Y,

1 Z statement.

2 Q. Okay, so I want to be absolutely fair to you,
3 Mr Gautier. Are you saying that you were never told who
4 the other witnesses were, even in the *Bearings*
5 proceedings?

6 A. I was said that some of the witness were -- I would say,
7 were used, if I can say so -- sorry for my English --
8 were used in the -- in the *Bearings* procedure,
9 especially Mr Audebeau that you were mentioning a bit
10 earlier --

11 Q. I will be returning to Mr Audebeau.

12 A. Yes, but there was no connection between this statement
13 -- not this statement, this sentence and any name.

14 Q. Okay. So you were not given the names of the other
15 witnesses in the *Bearings* proceedings; is that correct?

16 A. Except Mr Audebeau.

17 Q. Except Mr Audebeau, okay.

18 I take it that you have not re-read any of those
19 witness statements in preparation for the evidence you
20 are giving today?

21 A. No.

22 Q. Now, we were in paragraph 27, Mr Gautier, so let us
23 return to that. So at the bottom of {B/1/7}, the last
24 three lines, you say:

25 "The level of discount (or dealer margin) varies

1 according to the model in question, and sometimes also
2 according to the version (for example, the Citroën C4 is
3 available in various specifications which, in 2016, we
4 categorised into 165 versions -- I understand that this
5 is explained in more detail in my colleague
6 Freddy Audebeau's witness statement)."

7 Do you see that?

8 A. Yes.

9 Q. Okay.

10 Could we now go forward to page 21 of this witness
11 statement, so that is {B/1/21}, and look at paragraph 80
12 at the top of the page. Now, there you are referring to
13 a slide which is exhibited -- was exhibited to your
14 *Bearings* witness statement dealing with how PSA
15 benchmarked prices; do you recollect that?

16 I am afraid you are going to have to say "yes".

17 A. Oh, I'm sorry. Yes.

18 Q. I am grateful. Unfortunately, we do not yet have
19 the technology to pick up on nods, so that will apply
20 throughout the evidence you give.

21 THE CHAIRMAN: It will not be long, I am sure.

22 MR SCANNELL: So this slide that you exhibited, it concerns:

23 "... profitability measured in RBCV (which is
24 a measure of commercial margin, net of MCV ..."

25 You say that that is:

1 "... explained in my colleague Freddy Audebeau's
2 statement)."

3 Do you see that?

4 A. Yes.

5 Q. Then forward again to {B/1/30}, please, at
6 paragraph 131. So you are dealing in this paragraph
7 with the question of how costs factored into PSA's
8 profitability forecasts, are you not?

9 A. Which paragraph, sorry?

10 Q. Paragraph 131.

11 A. Yes.

12 Q. You are dealing in that paragraph with the question of
13 how costs factored into PSA's profitability forecasts,
14 were you not?

15 Again, that was a nod, Mr Gautier. Is that a "yes"?

16 A. Yes.

17 Q. I am grateful.

18 Now, that is important for the Tribunal to
19 understand as well, is it not? It is important for
20 the Tribunal to understand how PSA treated its costs;
21 would you agree?

22 A. Yes.

23 Q. You say in the first four lines:

24 "It is important to keep in mind that the cost
25 measure used in the RBCV calculation is a 'standard

1 PPI', which I understand to be mainly based on the costs
2 incurred the previous year. I understand that this is
3 explained in more detail in my colleague
4 Freddy Audebeau's witness statement."

5 Do you see that?

6 A. Yes.

7 Q. So it looks as though, back in 2017, you were relying on
8 the detail of Mr Audebeau's statement to put together
9 paragraph 131; is that fair?

10 A. I am not sure exactly what you mean. Let me explain
11 what was done during that -- that state -- witness
12 statement. At some point, I was explaining some notions
13 to our lawyers and they were referring to some parts
14 that were given by one of my colleagues and they say it
15 is explained in my colleague's statement, and that was
16 the way that it was written in that statement. But I --

17 Q. Okay, so I want to be clear about that, if I could
18 interrupt you at that point.

19 A. Yes, please.

20 Q. Are you saying that when you drafted your 2017 statement
21 you referred to witness statements but you did not read
22 what those witness statements actually said?

23 A. Yes.

24 Q. Did you read Freddy Audebeau's witness statement, can
25 you remember, back in 2017?

- 1 A. No. I do remember that I didn't read it to be ...
- 2 Q. Okay, so you took your lawyers at their word when they
- 3 said, "This is addressed in another witness statement,
- 4 say so"?
- 5 A. Yes, I do.
- 6 Q. Were you told to say so?
- 7 A. No.
- 8 Q. Why did you write it then?
- 9 A. I don't under -- I don't understand, maybe it's my -- my
- 10 command of English language. When you say "were you
- 11 told to say so", I'm not exactly understanding what you
- 12 are meaning. I was -- so the story was I was given
- 13 explanation, my lawyers were saying that it was
- 14 described by another witness and I said, "Yes", that
- 15 they were described in the way that it was presented and
- 16 I said, "Yes, that's the right way to present it, no
- 17 need to redevelop it in my statement". Just as simple
- 18 as that.
- 19 Q. I see.
- 20 So I have shown you some references then to your
- 21 evidence in 2017 and we have seen that you are
- 22 cross-referring to Mr Audebeau's witness statement; you
- 23 would agree?
- 24 A. I do.
- 25 Q. You would agree that you are cross-referring also to

1 other witness statements in the *Bearings* case; do you
2 agree?

3 A. Yes.

4 Q. Now, having seen those references then in your 2017
5 statement, which you say the Tribunal should now take to
6 be your evidence in this case, has anyone explained to
7 you why Mr Audebeau is not giving evidence in these
8 proceedings?

9 A. Very -- clearly I don't know.

10 Q. Okay.

11 You have not re-read any of that evidence from
12 Mr Audebeau or anybody else in the *Bearings* case?

13 A. No.

14 Q. Given the reliance you placed on all of that evidence in
15 the *Bearings* proceedings, so both on Mr Audebeau's
16 statement and on other witness statements by
17 unidentified witnesses, none of which you have re-read
18 for the purposes of this case, do you stand by your
19 statement that you remember all of the facts underlying
20 your 2017 witness statement?

21 A. I do.

22 Q. Okay, Mr Gautier, I want to talk to you about
23 the distinction between price implementation and --

24 A. Price?

25 Q. Implementation.

1 A. Okay.

2 Q. And price setting. I just want to understand that
3 distinction.

4 A. Sure.

5 Q. I am not trying to catch you out now in relation to
6 this, I just want to understand in general these two
7 concepts. We can speak about the detail later, right?

8 A. Sure.

9 Q. So I am going to take you to some paragraphs of your
10 2017 *Bearings* witness statement relating to price
11 setting and I am going to take you to some others
12 relating to price implementation and then I am going to
13 say how I understand the distinction and I will ask you
14 if you think that that is fair, all right?

15 A. Okay.

16 Q. Okay.

17 So can we first look at page 13 of your *Bearings*
18 witness statement {B/1/13}. Beginning at paragraph 49,
19 you were addressing "Prices in the principal markets"?

20 A. Yes.

21 Q. At paragraph 51, at the bottom of the page, you say
22 that:

23 "Around two years before launch, the Product Pricing
24 Team, based in the head office in Paris, will become
25 involved and will predict launch prices in a more

1 sophisticated manner."

2 Then, over the page {B/1/14}, you address
3 benchmarking at paragraph 55, for example, and I will be
4 asking you some questions about that later, we do not
5 need to consider those now.

6 Then at {B/1/15}, at paragraph 56, you say that:

7 "As the launch date approaches, the Product Pricing
8 Team ... [finalises] its ... recommendations for
9 the principal markets. These will include list prices
10 for the model at each level (or specification).
11 The recommendations will also include forecasts of
12 the appropriate MCV required to achieve the desired
13 benchmarking of PPPs."

14 Do you see that?

15 A. I do.

16 Q. Then at paragraph 57, you say, in the first sentence:

17 "The pricing recommendations, once finalised, are
18 put before a Pricing Committee for approval."

19 So, broadly, price setting entails defining the list
20 prices of new models of car, which includes
21 consideration of the level of commercial support given
22 to dealers; do you agree?

23 A. I did not hear the last part of your sentence. I'm
24 sorry for that.

25 Q. Yes. So, broadly --

1 A. Yeah.

2 Q. -- price setting entails defining the list prices of new
3 models of car --

4 A. Yeah.

5 Q. -- which includes considering the level of commercial
6 support to give to dealers; do you agree?

7 A. I do agree, and I will put a small nuance, because you
8 can see that later on in the statement --

9 Q. Yes, I will be going to other paragraphs as well.
10 I just want to summarise the paragraphs we have seen so
11 far.

12 A. Just if I may --

13 Q. Of course.

14 A. -- I want to be broad. Not every rebate is going to
15 the dealer, some are direct sales, and therefore
16 the money is not always going automatically to
17 the dealer.

18 Q. Yes.

19 A. This is covered in one of the paragraphs, so I don't
20 want that -- so it's not 100% true that it's going
21 through the dealers in that respect.

22 Q. Yes, I understand that, Mr Gautier. I did remind you
23 that we are in a part of your witness statement now
24 which is dealing with the principal markets.

25 A. Okay.

1 Q. Yes.

2 So two final references on price setting. First on
3 page {B/1/23}, please, at paragraph 97, you say that:

4 "The MCV forecasts feed through into
5 the profitability forecasts that are also contained in
6 the initial pricing decisions."

7 Next, on page {B/1/28}, if you could turn to that,
8 please, this is in section I of your 2017 statement
9 where you addressed "The role of profitability in
10 setting prices", at paragraph 126 at the bottom of
11 the page, you say:

12 "Dealing specifically with the link between
13 profitability and prices, I have explained above
14 the process of setting launch prices for a new model.
15 That process involves making detailed forecasts of
16 the costs of producing the car, the anticipated volumes
17 of sales, the sales price, and (taking these ... factors
18 together) profitability. As I have explained above,
19 the PSA Group will make such forecasts, including
20 profitability forecasts, relatively early on in
21 the process. The project will not be approved at
22 the JEP stage unless the Group is satisfied with
23 the anticipated profitability."

24 So I want to summarise what we have seen so far from
25 those paragraphs. Price setting also included

1 profitability forecasts including costs forecasting; do
2 you agree?

3 A. The price setting process does give a profitability
4 forecast, yes.

5 Q. Now, as to price implementation, could we turn back to
6 {B/1/23} of your 2017 statement. So at section G, do
7 you see that, you are addressing "Implementation and
8 ongoing monitoring of process"; do you see that?
9 The heading above 95?

10 Is that a "yes", Mr Gautier?

11 A. Oh, sorry. Yes.

12 Q. Thank you.

13 Over the page at {B/1/24}, paragraph 99, you say, in
14 the first sentence:

15 "The teams responsible for each country are required
16 to implement the pricing strategy and to achieve
17 the relevant profitability target."

18 Then in the final sentence you say:

19 "If the original forecasts were perfect, and if
20 there are no changes to the market conditions, then each
21 country would implement the pricing strategy, including
22 by applying the forecast MCV, and achieve the target
23 RBCV."

24 So, summarising that, the implementation of prices
25 is about achieving the relevant profitability targets in

1 the relevant countries, including by applying
2 the forecast commercial support, the MCV, to achieve
3 the target margin; is that fair?

4 A. That's fair.

5 Q. Thank you.

6 In the evidence you gave in 2017 you said that your
7 knowledge was particularly relevant to the period after
8 September 2009; do you recall that?

9 A. I do.

10 Q. That was because from September 2009 you had overall
11 global responsibility for Peugeot's price setting; is
12 that not right?

13 A. That's right.

14 Q. Before September 2009 you did not have that
15 responsibility, did you, you were involved in
16 country-level implementation of sales prices?

17 A. Yes, I was.

18 Q. So that means that you were informed of and required to
19 implement the price-setting strategy set by PSA
20 headquarters in Paris?

21 A. Can you repeat the beginning of the sentence?

22 Q. So that means that you were informed of and required to
23 implement the price-setting strategy set by PSA?

24 A. Yes.

25 Q. I am grateful.

1 It presumably remains the case that the evidence you
2 give in these proceedings in relation to price setting
3 mainly relates to the period after 2009?

4 A. Yes.

5 Q. Thank you.

6 Would you agree with me, Mr Gautier, that one of
7 the main purposes of benchmarking was to ensure that PSA
8 was positioning its new models in the right segment of
9 the market?

10 A. It's a bit more than that.

11 Q. It is more than that. I simply ask you if the statement
12 I have just made is one you agree with.

13 A. Okay, I do agree.

14 Q. PSA wanted to ensure that it was competing against
15 similar cars produced by its rivals, did it not?

16 A. Yes.

17 Q. When PSA was benchmarking, once it had decided what car
18 or cars to focus on, it looked at all of the price
19 measures of that car, did it not?

20 A. Can you repeat the sentence, please?

21 Q. Yes. Once PSA had decided what rival car to focus on --

22 A. Yes.

23 Q. -- it looked at all of the price measures of that car,
24 did it not?

25 A. It's a bit more complicated, because we had, generally,

1 two targets, one was the primary target, the main
2 target, and the secondary target, and it was, I would
3 say, the direction, and we were defining it country by
4 country, because you may face a very different situation
5 from one country to another. But as a principle, once
6 the target is defined, you follow the gap between your
7 benchmark on the PSA car.

8 Q. It is really the prices that you are looking at that
9 I want to ask you about so that the Tribunal is clear in
10 its mind about what prices you were looking at.

11 PSA looked at all of the price measures of the rival
12 car, did it not?

13 A. If by "all prices" you mean price and price adjusted by
14 promotion and the product specification, yes, this is
15 what we were looking at.

16 Q. Yes.

17 Now, perhaps to remove any uncertainty in your mind
18 about what I am talking about, could you turn to
19 {B/1/14} of your *Bearings* witness statement and look at
20 the bottom of that page, Mr Gautier, paragraph 55. You
21 say:

22 "In benchmarking our prices against competitor
23 prices, we consider price comparisons across the full
24 range of price measures ..."

25 A. Yes.

1 Q. So that is what I was asking you about. I am not trying
2 to catch you out.

3 A. Okay.

4 Q. Okay?

5 So that remains your evidence in these proceedings?

6 A. I was not thinking that you were trying to catch me,
7 I was trying to give more evidence to each and
8 everybody, especially the court.

9 Q. I understand.

10 That remains your evidence in these proceedings?

11 A. Absolutely.

12 Q. Okay.

13 So PSA looked at the list price of the rival car?

14 A. Yes.

15 Q. It looked at the product price. Now, as I understand
16 it, that was the price adjusted to match the level of
17 specification of the model PSA wanted to launch?

18 A. That's correct.

19 Q. It looked at the promotional price?

20 A. Yes.

21 Q. As I understand it, that is a reference to
22 the promotional prices your rivals charged from time to
23 time; correct?

24 A. The promotional price that we were using in our
25 benchmark is what we can capture, let's say, in

1 a visible way, not something which is given by -- I
2 would say by the salesman in the showroom, but something
3 which is published, or which is surveyed through
4 the tools that we do have.

5 Q. That is very helpful. Thank you.

6 When PSA was benchmarking, it also looked at
7 the promotional product price of its rivals --

8 A. Yeah.

9 Q. -- or "PPP", as you called it in 2017?

10 A. Yes.

11 Q. That was the price reflecting both the differences in
12 specification and the promotions that the rivals were
13 offering; correct?

14 A. Absolutely.

15 Q. I think you said that -- back in 2017 that, as you
16 understood it, PSA was most interested in the PPP; is
17 that right?

18 A. That's right.

19 Q. Okay.

20 Now, Peugeot only had access to its competitors'
21 prices if those prices were published in some way; that
22 is true, isn't it?

23 A. Yes. That's clear.

24 Q. Peugeot's competitors' list prices were published,
25 were they not?

1 A. Yes, they were.

2 Q. Its promotions were published in various countries where
3 the promotions were offered, were they not?

4 A. A part of the promotion was published, a part might not
5 be.

6 Q. Yes, that is fine.

7 Peugeot could buy aggregated information relating to
8 promotions, could it not?

9 A. Yes.

10 Q. And did so?

11 A. Yes.

12 Q. But the dealer margins that Peugeot's competitors made
13 available to their dealers, that was commercially
14 confidential information so that was not published,
15 was it?

16 A. It was not published.

17 Q. That information could not be bought by PSA, could it?

18 A. No, it could not.

19 Q. It was not taken into account by PSA when it was
20 benchmarking its cars, was it?

21 A. It was -- let's say, maybe to give some light about
22 that, it was not a part of the day-to-day activity, but
23 especially at the time that we were setting the --
24 the launch price of a new car, we're trying to get
25 the information in order to ensure that it was not

1 a strong deviation towards what we were doing in terms
2 of pricing. To -- maybe, to be explicit, if we were
3 relying on a dealer margin of 8%, we were trying to get
4 the information, because we have some common dealers,
5 that our direct competitors were not giving 12 or 4 and
6 therefore that will, let's say, harm the comparison that
7 we were looking at.

8 Q. So am I to take it then that PSA made attempts to
9 ascertain the dealer margins that its competitors were
10 giving to their dealers?

11 A. Can you state it again? Sorry.

12 Q. Is it your evidence then that PSA made attempts to
13 obtain the dealer margins which its competitors were
14 giving to their dealers?

15 A. At the time that we were launching a car, yes. Not on
16 a day-to-day basis.

17 Q. That information was not an input in the benchmarking
18 process, was it?

19 A. No, it was not.

20 Q. The volume discounts and the marketing support that
21 Peugeot's competitors made available to their dealers
22 was also commercially confidential information and was
23 not published; is that not right?

24 A. Yes, that's correct.

25 Q. That information could not be bought by PSA?

1 A. No.

2 Q. It was not taken into account by PSA when it was
3 benchmarking?

4 A. No.

5 Q. The discount that individual dealers in different
6 countries gave to individual end customers when they
7 were selling PSA rival brands were not published either,
8 were they?

9 A. They were not published.

10 Q. That information could not be bought?

11 A. It cannot be bought.

12 Q. It was not taken into account by PSA when it was
13 benchmarking its cars?

14 A. Except what I was referring to just before, means trying
15 to get appropriate information to avoid too wide a,
16 I would say, discrimination, no, we were not.

17 Q. So when PSA benchmarked to a rival's car and to a rival
18 car's promotional product price, it was essentially
19 benchmarking to the list price of that car subject to
20 published variations from that list price in the form of
21 promotions; that is fair, is it not?

22 A. Yeah.

23 Q. Thank you.

24 Now I would like to ask you some questions about
25 other considerations that were taken into account when

1 PSA were setting list prices, or RRPs all right? If
2 I say "RRPs", will you understand what I mean?

3 A. The usual, I would say, letters are "MSRP", manufacturer
4 sales recommended price.

5 Q. Okay.

6 A. That's what we use in our industry. I'm sorry.

7 Q. That's absolutely fine. I'll refer then to list
8 prices --

9 A. Okay.

10 Q. -- so that there is no uncertainty about what we are
11 talking about.

12 So I would like to begin by trying to get an
13 understanding about the timeline --

14 A. Sure.

15 Q. -- of setting the price of a Peugeot car. So could we
16 turn to the exhibit behind your 2017 witness statement,
17 please. That should be in the electronic bundles at
18 {B/2/1}.

19 A. Yes.

20 Q. Now, that exhibit is over a thousand pages long and it
21 is in French. Most of it has not been translated by
22 Hausfeld, but I hope we will be able to go through
23 the very few references I would like to make and you can
24 perhaps assist me with some translation as we go?

25 A. Or there is our translator that can probably support you

1 as well.

2 Q. Yes, the translator should probably earn her money.

3 A. If it is automotive jargon, I will be the best
4 reference; if it is normal language, she will be
5 probably the best reference.

6 Q. I understand.

7 Can we turn, please, to {B/2/9}. So this is
8 a timeline, as I understand it, of the A9 project. That
9 was the Peugeot 208, launched in 2012; is that not
10 right?

11 A. Peugeot 208, first generation.

12 Q. First gen, okay.

13 Now, there are lots of acronyms on this page and you
14 very helpfully explained those back in 2017. Do you
15 remember doing that?

16 A. Yes.

17 Q. So let's pick out a few of them. So "JAP", on the left,
18 that is "Jalon Avant Project"; is that --

19 A. Yes --

20 Q. -- correct?

21 A. -- that's correct.

22 Q. That is the "pre-project milestone", and we can see that
23 that was on 8 February 2008?

24 A. Yes.

25 Q. Okay.

1 Then we have the "JEP". That is the "Jalon
2 Engagement Projet"?

3 A. Yes.

4 Q. The "project engagement milestone"; is that a fair
5 translation?

6 A. I do consider it as a fair translation.

7 Q. That happened on 30 July 2008, as we can see from
8 the timeline?

9 A. To be fair, I don't remember the exact date, but -- and
10 I cannot see it on the screen. It's not on this page.

11 THE CHAIRMAN: Yes, sorry, I was getting a little bit
12 confused with where we were.

13 A. The page is still on the summary, so you might be on
14 another page.

15 MR SCANNELL: I beg your pardon. We need to turn to page 9
16 of the exhibit and that is {B/2/11}.

17 THE CHAIRMAN: So, sorry, there are two page numbers.
18 I think that is the confusion.

19 MR SCANNELL: Yes.

20 THE CHAIRMAN: So you are using the internal page numbers.

21 MR SCANNELL: Yes.

22 So, yes, the first number is 9 at the bottom of
23 the page.

24 A. Okay, we have it on the screen.

25 THE CHAIRMAN: Can we just run over those again? Sorry.

1 MR SCANNELL: Yes.

2 Let's begin afresh, Mr Gautier. I was explaining
3 some of the acronyms. So the first one, at the top
4 left, is "JAP" and that is "Jalon Avant Project", or
5 the "pre-project milestone"?

6 A. Yes.

7 Q. We can see that that happened on 8 February 2008?

8 A. Correct.

9 Q. Then we have the "JEP". That is the "Jalon Engagement
10 Projet", or the "project engagement milestone"?

11 A. Yes.

12 Q. According to this, that happened on 30 July 2008?

13 A. Yes.

14 Q. Then we have the "JCT", the "Jalon Choix Theme"; is that
15 right?

16 A. Yes, that's right.

17 Q. I would translate at that "project design milestone" --

18 A. Yes.

19 Q. -- is that fair?

20 A. That's correct.

21 Q. Then we have the "JRO", and that was the "Jalon
22 Realisation Outils"?

23 A. Outillages.

24 Q. Outillages, okay.

25 Is that translatable as the "tool completion

1 milestone"?

2 A. Yes.

3 Q. Looking at the dates, 12 April 2010 was the JRO date; do
4 you see that?

5 A. Yes.

6 Q. Okay.

7 Now, I would like to focus at this point on the big
8 black arrow at the bottom on the right-hand side; do you
9 see that?

10 A. Yes.

11 Q. The "Comite prix de vente". That was the date when it
12 was expected that PSA's pricing committee would approve
13 the price of the Peugeot 208; correct?

14 A. Yes.

15 Q. There is no date for that, but we can see that it falls
16 between the "JMP", that is the "Jalon Maturite Projet";
17 is that right?

18 A. That's correct.

19 Q. That was due to happen on 28 February 2011; correct?

20 A. Correct, and just for the court, it means that
21 the project is mature enough to continue and respect
22 the -- the planning which was expected.

23 Q. Could you provide a little bit more detail about that,
24 Mr Gautier, just so that I understand it. When
25 the project comes to maturity, that is the project

1 maturity date?

2 A. Yes.

3 Q. At that stage, has a car been built?

4 A. Could I just check that?

5 Q. Has a car been manufactured?

6 A. Some cars have been manufactured, but they are

7 prototypes.

8 Q. Yes?

9 A. It is not, I would say, online production, this is

10 offline production.

11 Q. I see.

12 A. And you generally don't have 100% of the parts on

13 the car. Some of the parts might be still fake or,

14 I would say, taken from another car just for the purpose

15 of it, because the validation at this stage is not 1% of

16 the car. You don't pay attention, as an example, I

17 would say, to the appearance of the dashboard, of

18 the side panels. What you've -- you have to be

19 confident regarding the engines, the structure, I would

20 say the key elements that would drive the launch of

21 the car.

22 Q. I understand.

23 We were looking at the date on which

24 the price committee would select a price for the car,

25 and we said that although there is no date for that, it

1 happens some time between 28 February 2011 and
2 18 July 2011, which is the "JEL" --

3 A. Yes.

4 Q. -- stage.

5 Now, the JEL, as I understand it, is the "Jalon En
6 Ligne"; is that correct?

7 A. That's correct.

8 Q. Could that be translated as the point at which Peugeot
9 expected a pre-series to be produced for testing?

10 A. Yes, and, more specifically, when we are starting
11 the pre-series online. We have two generation of
12 pre-series. A part is done offline on what we are
13 calling a prototype production line, and at this stage
14 we are starting to produce online, so it means with
15 the -- what would be the real line of production of
16 the factory. So it means that at this stage we are
17 validating not only the product but also a huge part of
18 the process of production.

19 Q. I see. So I am curious to know then, Mr Gautier,
20 whether at the JRO stage PSA either knew or did not know
21 the price it would pay for OSS components. Do you know
22 the answer to that question?

23 A. I can give a qualitative answer, not a quantitative
24 answer, to your question. It's generally said that we
25 are clear about 90% of, I would say, what would be

1 provided on a car when we have, let's say, a clear price
2 established, where basically it has been designed with
3 the supplier and all the processes that will be
4 necessary to put into production, but a part remains
5 still, I would say, ongoing at this stage.

6 Q. Okay, so that is the JRO stage --

7 A. Yes.

8 Q. -- and that was at 12 April 2010?

9 A. Yes.

10 Q. But if we move the timeline forward past the JMP --

11 A. Yes.

12 Q. -- is it likely -- it may be different in each case, but
13 is it likely that when the price of the car was chosen,
14 at that point, Peugeot would know the price of its OSS
15 components?

16 A. So, still, sorry, a qualitative answer. This is better
17 known, but it's still not 100%, and as the head of
18 pricing for the group, I did receive confirmation of
19 cost sometimes just a week before the launch or slightly
20 after the launch, which, I would say, have generated an
21 adjustment in the provisional cost.

22 Q. Now, were the costs of OSS components ever known, as far
23 as you know, before the price of the car was selected?

24 A. That I cannot answer at all.

25 Q. I understand.

1 Could I take you to one other document to see if
2 that can assist us in working out whether, in the case
3 of the Peugeot 208, the price of OSS components was
4 known.

5 So you referred in your *Bearings* statement to
6 a slide show that was produced at the JRO stage; do you
7 remember that?

8 A. Yes.

9 Q. That begins at page 26 of your exhibit, that is
10 {B/2/28}. Is that familiar?

11 A. Yes.

12 Q. If we turn forward to page 30 of your exhibit, which is
13 {B/2/32}, we can see a summary of the slide show, and
14 within that I would like to go to the "Planning" tab,
15 all right?

16 A. Okay.

17 Q. That begins at page 42 of your exhibit, {B/2/44} --
18 {B/2/45}, I beg your pardon. So here we have what looks
19 like another timeline; would you agree?

20 A. I do.

21 Q. In the bottom left-hand corner we can see "B7". That is
22 the Citroën C4; is that right?

23 A. That's right.

24 Q. So this timeline seems to be comparing the timeline of
25 the A9 with that of the B7; would you agree?

1 A. Yes.

2 Q. So on the right-hand side, under the box that
3 says "IOD montage VRS", do you see a date?

4 A. Yes.

5 Q. Go ahead.

6 A. Would you like me to say? 29 October 2010.

7 Q. Okay.

8 At the top of the timeline we can see what look like
9 speech bubbles; do you see those?

10 A. Sorry?

11 Q. At the top of the box, still inside the box, there are
12 what appear to be speech bubbles, boxes with arrows
13 coming out of them?

14 A. Yeah.

15 Q. Perhaps you can assist the Tribunal with the translation
16 of some of these.

17 So if we look at the third speech bubble:

18 "Lancement Usinage des outillages". Could you
19 translate that, please?

20 THE INTERPRETER: You want me to translate?

21 A. Yes.

22 THE INTERPRETER: I mean:

23 "The launch of the manufacturing of the tools."

24 A. Yes.

25 MR SCANNELL: So that is the date when the tools begin to be

1 manufactured; is that fair?

2 A. To be manufactured, exactly.

3 Q. Yes.

4 Then the next speech bubble is, "Pieces issues
5 des outillages serie".

6 A. Yes.

7 Q. Could we translate that, please?

8 THE INTERPRETER: "Parts coming out of the series of
9 tooling."

10 MR SCANNELL: Okay.

11 Does that assist us in ascertaining whether or not
12 the OSS components would have been produced before
13 29 October 2010?

14 A. Theoretically, yes, as long as, I would say, those parts
15 were not one of the minor parts that were not finalised
16 at this time, and, very frankly, I don't know if they
17 were or not.

18 Q. Yes. Thank you, that is very helpful.

19 So I want to be fair to you when I summarise
20 the evidence you have just given in relation to
21 the Peugeot 208. It is not actually possible to say
22 whether the price of the OSS components was known when
23 the car was priced, but that price might have been
24 known; is that fair?

25 A. That's fair.

1 Q. The same goes for any other car that PSA produced, as
2 far as you know?

3 A. Yes.

4 MR SCANNELL: I see.

5 I wonder if that might be a convenient moment to
6 take a break, Mr Chairman.

7 THE CHAIRMAN: Yes, of course. How are we doing on timing
8 generally?

9 MR SCANNELL: We are making very good progress. In fact,
10 I will not be very much longer.

11 THE CHAIRMAN: We have another witness this afternoon?

12 MR SCANNELL: We do, we have --

13 THE CHAIRMAN: What is the estimate?

14 MR SCANNELL: -- Ms Biancheri. Shorter than Mr Gautier.

15 THE CHAIRMAN: So we could indulge with an extra
16 five minutes and come back at 2?

17 MR SCANNELL: Certainly.

18 THE CHAIRMAN: Yes.

19 Please do not speak to anyone about the case over
20 the lunch break.

21 A. Okay.

22 THE CHAIRMAN: I am very grateful. Thanks.

23 (12.58 pm)

24 (The short adjournment)

25 (2.01 pm)

1 MR SCANNELL: Once PSA had decided on the list price of
2 their new model, it decided what the dealer margin would
3 be; is that not right?

4 A. That's right.

5 Q. The list price minus the dealer margin was the gross
6 dealer price, I think you -- we have seen that already?

7 A. Yes.

8 Q. PSA also gave additional commercial support, that is
9 the MCV?

10 A. That's a part of the MCV, yes.

11 Q. Yes.

12 That was also given to dealers, was it not?

13 A. Potentially.

14 Q. Excuse me?

15 A. Potentially, because --

16 Q. Potentially, yes.

17 A. -- I would say a part might be given to the dealer,
18 a part might be directly to the customer in some
19 circumstances.

20 Q. Yes.

21 A. So we can go into details if need be.

22 Q. Now, the additional commercial support that was given to
23 dealers that mainly took the form of rebates, did it
24 not?

25 A. That's what I said at this stage.

1 Q. Yes. That is what you said in 2017?

2 A. In 2017.

3 Q. Is that still your understanding?

4 A. It moved a little bit because more and more sales are
5 done through leasing, and therefore it's less rebate and
6 more, let's say, advantages towards leasing rates.

7 Q. Well, PSA was not leasing to its dealers, was it?

8 A. No.

9 Q. No.

10 A. It was not leasing to its dealers. Nevertheless, we had
11 a financial claim with the bank, Peugeot or Citroën
12 financial services, that was providing leasing offers to
13 final customers, so it was a third party --

14 Q. Yes.

15 A. -- within the deal between customer and dealer.

16 Q. Okay. Well, I am going to be focusing in my questions
17 to you on the commercial support that was given by
18 Peugeot to its dealers --

19 A. Sure.

20 Q. -- when it sold the car, so you have already explained
21 to the Tribunal that mainly Peugeot sold its cars to its
22 -- to independent dealers; that is right, is it not?

23 A. Sure.

24 Q. Thank you.

25 At the time of your 2017 statement, which we saw at

1 the beginning of my questions to you, your understanding
2 from other witnesses in the *Bearings* case was that
3 the gross dealer price minus the MCV was the net dealer
4 price?

5 A. Yes.

6 Q. Looking at page 8 of the witness statement you gave in
7 2017, Mr Gautier --

8 A. Page 8, you said?

9 Q. Page 8, please. That should be {B/1/8}. At
10 paragraph 30, you say there:

11 "As a large global company, PSA has a variety of
12 rebate arrangements at its disposal, and it can be
13 imaginative in how rebates are structured."

14 That remains your evidence?

15 A. Yes.

16 Q. Thank you.

17 Also at paragraph 30 of that statement, you referred
18 to some of the forms that those rebates could take. So
19 you mentioned performance bonuses?

20 A. Yes.

21 Q. Customer promotion bonuses?

22 A. Yes.

23 Q. Rebates relating to sales to businesses rather than to
24 private customers?

25 A. Correct.

1 Q. Would you agree then that the variable commercial means
2 -- my translation of "MCV" -- were highly variable, as
3 the name suggests?

4 A. I would say -- I don't know exactly what you mean
5 by "highly variable", so ...

6 Q. Would you accept that they were variable?

7 A. Yes, absolutely.

8 Q. And that there were many different ways in which they
9 could be varied?

10 A. Yes.

11 Q. Now, in conducting its business generally, PSA was
12 concerned to maximise its profits --

13 A. Sure.

14 Q. -- would you agree?

15 In the context of setting the prices of its cars,
16 profitability was considered by PSA at various stages,
17 was it not?

18 A. Yes.

19 Q. It was considered at the JRO stage?

20 A. Yes.

21 Q. Considerations of profitability and margins played an
22 important role in benchmarking and price setting
23 generally, did it not?

24 A. Is that the question? Yes.

25 Q. Yes, sorry, I am asking you to confirm that, Mr Gautier.

1 A. So benchmarking -- so we are taking into consideration
2 pricing in terms of benchmarking; profitability,
3 obviously not, because we don't know the profitability
4 of other contenders.

5 Q. Well, I want to be clear that when PSA was pricing its
6 motor vehicles, considerations of profitability were
7 taken into account and were important considerations?

8 A. Maybe I will use my own words, it will help everybody to
9 understand.

10 The approach was to set prices, first, to try to
11 achieve the competitiveness that we were looking for,
12 having in mind that we were industry volumes, so it
13 means there is a strong relation between price and
14 volumes. So, first, we were setting the prices, then we
15 were looking at our profitability, and sometimes, when
16 the gap was too big compared to our objectives, we were
17 revisiting prices to try to find other ways to adjust
18 it, but it -- the primary target was to set
19 the appropriate prices in order to realise the volumes
20 that were let's say the backbone of our profitability.

21 Q. Yes, and thank you for that clarification. I am going
22 to try to break out one of the things that you just
23 said.

24 A. Yes.

25 Q. I am going to ask you again, when PSA was pricing its

1 motor vehicles, profitability was one of
2 the considerations and it was an important one?

3 A. Yes.

4 Q. Thank you.

5 So you have explained in the 2017 witness statements
6 that profitability forecasts were used to set
7 profitability targets for each car?

8 A. Yes.

9 Q. PSA's national teams were then required to achieve those
10 profitability targets when they were implementing
11 the price strategy set in Paris; is that fair?

12 A. That's correct.

13 Q. One of the tools that was available to them to achieve
14 PSA's profitability targets was to offer more or less
15 MCV?

16 A. Yes.

17 Q. In other words, they could change the net dealer price;
18 correct?

19 A. Yes.

20 Q. Now, another way of increasing profitability would be to
21 incentivise dealers to sell cars with more optional
22 extras; would you agree?

23 A. Yes, I would agree, but it's more theoretical rather
24 than practical. Incentivising the dealers towards
25 the sale of option is a minor part of the usage of

1 commercial means. It's not, I would say, belonging
2 exactly to one of the three categories we were referring
3 before; first, rebate, second -- the three that you have
4 explained just before. So advantage on options,
5 marginally, yes, but not more.

6 Q. Yes, I understand. So it was one of the ways to adjust
7 the net dealer price but not the most important?

8 A. Exactly.

9 Q. Thank you.

10 Now, would you accept that if PSA knew the price of
11 the OSS components when they were pricing their motor
12 vehicles, they could address those costs via changes to
13 the net dealer price?

14 A. No, I would not agree.

15 Q. Why is that?

16 A. Because, basically, we are setting prices according to
17 the price competitiveness of our cars on the market, not
18 based on profitability. So it means that if we would
19 have, let's say, further insight regarding, let's say,
20 the OSS cost, it might not have any influence on the way
21 that we were setting prices. It will impact
22 profitability without changing our pricing strategy.

23 Q. So are you -- is it your evidence to the Tribunal that
24 if PSA knew what it was being charged for OSS
25 components, it would not take those costs into account

- 1 when it was setting its profitability targets?
- 2 A. It depends on the magnitude of the impact that it would
3 have. We have profitability targets within a project.
4 So it means when there is an overcharge and if it's,
5 I would say, not harming the overall objective, we will
6 not adjust. If it is marginally, I would say, impacting
7 our objective, we'll not adjust. If it is -- if it
8 would have a major impact, say, under the few rules, we
9 will probably revisit the way that we are trying to
10 price our cost.
- 11 Q. So in some circumstances you would take account of
12 the additional costs?
- 13 A. In some, yes.
- 14 Q. One of the ways that you could take account of it would
15 be by adjusting your profitability targets?
- 16 A. Rarely. I don't recall, I would say, any major example
17 when we did revise our profitability targets by far.
- 18 Q. Okay.
- 19 A. We -- I would say --
- 20 Q. I am dealing with the situation now, Mr Gautier,
21 where --
- 22 THE CHAIRMAN: I think the witness had not finished.
- 23 MR SCANNELL: I am sorry. Go ahead, Mr Gautier.
- 24 A. Taking an example to try to, I would say, to put
25 figures, I would say, or flesh on the bone, let's

1 imagine that the profitability target is 100 -- €1,800.
2 When we achieve, let's say, €1,750, we are certainly not
3 going to revisit the target, we are going to work to try
4 to maximise the volumes, but not change dramatically our
5 approach.

6 If it will impact until, let's say, the level of
7 being €1,500 instead of €1,800, that means a discrepancy
8 over 15%, so in that case we will probably revisit and
9 try to find another way.

10 Q. The profitability target is set at the same time as
11 the price of the car is fixed, is it not?

12 A. The profitability target is set at the beginning of
13 the project -- I am speaking globally at the level of
14 the project -- and then, when I was the head of pricing,
15 I was setting profitability targets country by country
16 trying to break down the overall profitability target
17 into, let's say, local targets that would build
18 the overall profitability.

19 Q. If PSA knew at the time that it was implementing prices
20 what the OSS component cost was, for example, it could
21 deal with those costs through the rebates that we have
22 looked at, could it not?

23 A. It could.

24 Q. Thank you.

25 So I have been dealing with a situation where PSA

1 knows the price of the OSS components when it fixes
2 the price. But in your evidence before lunch you
3 mentioned that when the price is fixed PSA might not
4 always know the price of the OSS components.

5 A. That's correct.

6 Q. Do you recall?

7 So could I now focus on that. Could you turn in
8 this regard to page 30 of your *Bearings* witness
9 statement, please, that is {B/1/30}, and I want to make
10 sure that I am understanding what you are saying, or
11 what you said in paragraph 131. You say there that:

12 "It is important to keep in mind that the cost
13 measure used in the RBCV calculation ..."

14 That is your margin calculation, is it not?

15 A. Absolutely.

16 Q. "... is a 'standard PPI'."

17 What is PPI, can you recall?

18 A. PPI, this is the standard transfer price from industry
19 to sales. So this is an internal indicator. This is
20 supposed to be, let's say, the cost of the car plus
21 the -- let's say the profitability which is done by
22 the industry in transferring the -- let's say the price
23 to the -- to the sales organisation. It means that we
24 are trying to separate in our organisation on one side
25 the industry, trying to maximise, let's say, the benefit

1 of cost, and the sales trying to maximise the revenue.

2 Q. What does "PPI" stand for; can you remember?

3 A. That's a very good question. I use that so much that
4 I can't remember exactly. I don't remember. I don't
5 recall, to be fair.

6 Q. Would you say that you remembered when you made your
7 *Bearings* statement?

8 A. Sorry?

9 Q. Would you say that you remembered what those letters
10 stood for when you made your *Bearings* statement?

11 A. I think that I was in the same situation. One day
12 I have known what was PPI, and then, let's say,
13 the concept was more important than the meaning of
14 the letters.

15 Q. I see.

16 So I was reading out what you said in
17 paragraph 131 --

18 A. Say that it's transfer price between industry and sales
19 within the organisation and you would be right.

20 Q. Okay, well, we can see what you said about it in
21 paragraph 131. So you mention standard PPI as the cost
22 measure used in the margin calculation. Then, as we saw
23 before, you say:

24 "... which I understand to be mainly based on
25 the costs incurred in the previous year. I understand

1 that this is explained in more detail in my colleague
2 Freddy Audebeau's witness statement."

3 Now, you do not know what Freddy Audebeau actually
4 said in his witness statement and neither do we.

5 A. No.

6 Q. Well, we do not have Freddy Audebeau before
7 the Tribunal, so I am going to have to ask you about
8 what all of this means, okay?

9 A. Yes.

10 Q. You say that standard PPI was "mainly based on the costs
11 incurred [in] the previous year". How are we to
12 understand the word "mainly" there?

13 A. "Mainly" means that, I would say, the main impacts year
14 on year which were linked to the adjustment in terms of
15 cost. After, if it was top management decision, as an
16 example, to increase the pressure on productivity, say
17 that year on year you asked, let's say, the factories to
18 increase the productivity by 10% instead of 8% the year
19 before, it will also have an impact on the PPI.

20 Q. In the sentence that I am looking at, you say that
21 the cost measure used in the margin calculation
22 was "mainly based on the costs incurred [in]
23 the previous year".

24 A. Yes.

25 Q. I just want to know when it would not be based on

1 the costs of the previous year.

2 A. When -- when there are additional efforts required from
3 the factory to increase productivity. That's
4 the example I was referring to just before.

5 That's the reason of "mainly". But "mainly" means
6 that probably something which is above 80%, above 90%
7 would be the cost variation one year to the next year.

8 Q. Can you assist the Tribunal further in that regard,
9 Mr Gautier. Can you explain in precisely what
10 circumstances the cost measure used in the margin
11 calculation would or would not be based on the costs
12 incurred the previous year?

13 A. It's a little bit tough, because you are asking
14 something which is outside of my expertise, as you know.

15 Q. Yes.

16 A. So this is --

17 Q. I appreciate that, Mr Gautier. We do not have
18 Freddy Audebeau --

19 A. Yeah.

20 Q. -- before us, so I cannot ask him.

21 A. I have to be frank and to say that it's hearsay from my
22 colleagues and it's not something that I had any control
23 of.

24 Q. Yes.

25 A. So my understanding of it was most of the change year on

1 year was based on the evolution of cost, cost of, let's
2 say, goods, cost of raw materials, and sometimes there
3 were other adjustments which were mainly done based on
4 the expected productivity year on year.

5 Q. Okay.

6 A. But this part was minor compared to the impact of cost
7 of goods or raw materials.

8 Q. Okay.

9 If costs were known, so there is no forecasting
10 required, the costs are actually known --

11 A. Yes.

12 Q. -- would it be your expectation that they would have
13 been included in the RBCV calculation?

14 A. Just to -- to be clear about what means "cost known".
15 We know, by the end of year Y, what has been the cost
16 about the year Y, but it's -- we don't know upfront what
17 would be the cost of year plus one. So, consequently,
18 we -- we include what we know at this time in terms of
19 PPI, but we don't include, let's say, forthcoming cost,
20 especially at the time that we are launching a car.

21 This is --

22 Q. Yes, I do understand that.

23 I am asking you about costs that you do know about.

24 A. Yes.

25 Q. So these are not future costs.

- 1 A. Okay, so --
- 2 Q. They are not forecast and they are not anticipated. Do
3 you understand?
- 4 A. Yeah, so in that case, this is included in profitability
5 calculation.
- 6 Q. I am grateful. Thank you.
- 7 Now, if I understand the subparagraphs that follow
8 correctly, when you rely on the previous year's costs
9 because you do not know what the actual costs are, then
10 the three subparagraphs that follow apply; is that
11 right?
- 12 A. Yes.
- 13 Q. I see.
- 14 Is it fair to say that what you are saying here is
15 that if it turned out that the costs were higher than
16 they had been in the previous year, PSA would not
17 generally decide to charge higher prices?
- 18 A. Yes, that's correct.
- 19 Q. Okay. That is, I believe, what you are saying in
20 subparagraph (a); is that right?
- 21 A. Let me read the paragraph.
- 22 Q. Yes, refresh your memory of that.
- 23 A. Just to see.
- 24 (Pause).
- 25 Yes, that's correct.

1 Q. Okay, now, you use the word "generally" there:
2 "... this would not generally lead to a decision to
3 charge higher prices ..."
4 Now, what does that word "generally" mean there?
5 Does it mean that sometimes you would charge higher
6 prices?
7 A. During the period I was in charge of pricing, I have
8 seen one, I would say, example of where we took
9 a decision based on profitability purely on cost. In
10 2010 -- I have to check the exact date -- we were facing
11 the impact of raw material increase, quite a dramatic
12 one, and we were expecting, let's say, a strong
13 deviation across all the product line in terms of
14 hundreds of euros per car. So at this -- this stage, we
15 decided to implement price increase to anticipate, let's
16 say, the cost that we were to suffer in the coming
17 months. It depends on the way that we will be --
18 the time we will be charged. The bet that we were doing
19 at this time, because it was a bet, it's that all
20 manufacturers will apply such, let's say, price
21 increase. Unfortunately, it was a tough period for
22 the car industry, it was a few years after the sub-prime
23 crisis, and most of the manufacturers didn't follow,
24 let's say, the price increase that we initiated, and
25 therefore we gave back, let's say, a huge part of

1 the price increase we did on price list through MCV and
2 therefore, I would say, our profitability was harmed at
3 this stage.

4 Q. Okay.

5 A. This is the only major example where I do remember
6 a direct impact of cost on our pricing approach.

7 Q. Okay. So it was not a universal rule then, that you
8 would not try to recover your costs when those costs
9 later became known; is that right?

10 A. Yes.

11 Q. Thank you.

12 You then go on in the subsequent subparagraphs --
13 and, again, I am simply going to summarise them and you
14 can tell me if the summary is fair. You say that PSA
15 would not, in general terms, take account of
16 the increase in costs that later becomes known in
17 the following year either; is that right?

18 A. That's right.

19 Q. That is despite the fact that there had been an
20 unexpected increase in costs compared to what it was
21 the year before?

22 A. Yes.

23 Q. That is what you are saying in subparagraph (c), is it
24 {B/1/31}?

25 A. Yes.

- 1 Q. You caveat that by saying "in general terms". So,
2 again, that was not a universal rule?
- 3 A. It was not universal and see the example I just
4 mentioned before --
- 5 Q. Yes.
- 6 A. -- which was adverse.
- 7 Q. Would you accept, Mr Gautier, that if PSA wanted to do
8 something about increased costs, so higher costs than
9 they were expecting, they could deal with that through
10 discounts, by increasing the net dealer price, in other
11 words?
- 12 A. Can you explain me what you -- what you are ...
- 13 Q. If it transpired that PSA's costs were higher than they
14 had forecast, would you accept that PSA could address
15 that by reducing the commercial support given to dealers
16 and thereby increasing the net dealer price?
- 17 A. So if the question is, is it possible theoretically,
18 the answer is yes. If the question is, is it what we
19 have done in practice, the answer is no.
- 20 Q. Well, I believe that you have said that on at least one
21 occasion that you can recall that was done?
- 22 A. Yeah, it was, let's say, during the inflation of raw
23 materials, the big increase that we faced in 2010, and
24 finally it didn't -- I would say it didn't prove being
25 successful. At the end of the day, we were always

1 piloting our prices based on the PPP, so it means that
2 doing it on, let's say, the price or on the MCV are two
3 ways, I would say two faces of the same coin, if I can
4 say so.

5 Q. Would you accept that it is rather strange that when you
6 did know the cost of OSS components before you set
7 the price of your car, you could do something and would
8 do something about that by increasing the net dealer
9 price -- you have accepted that already -- but when you
10 did not know those costs at the time that the car was
11 priced and it later became clear what those costs were,
12 you would do nothing about it? Would you accept that
13 that is an incongruous commercial position for PSA to
14 have taken?

15 A. I do not agree.

16 Q. Why do you not agree with that?

17 A. Because what I said previously is we might have
18 increased prices if the gap, in terms of costs, had been
19 really high, which is out of my knowledge regarding OSS,
20 and therefore there is consistency between what we have
21 done and what we -- let's say before and after.

22 Q. Could you wait for one moment?

23 A. Yes, please.

24 MR SCANNELL: Thank you, Mr Gautier.

25 A. Yes.

1 SIR IAIN MCMILLAN: I would like to ask the witness
2 a question, if I may.

3 I just want to be clear about this. What you appear
4 to be telling the Tribunal is that if there is an
5 unexpected increase in cost of sales during
6 the financial year, PSA will absorb that cost. You will
7 not attempt to judge the competitive position in
8 the marketplace and increase prices to the dealer in
9 some shape or form, you will not do that?

10 A. Let me try and put it the other way round.

11 SIR IAIN MCMILLAN: All right.

12 A. As we are monitoring, let's say, the competition all
13 across the year, each and every month, if there is,
14 I would say, an increase of cost affecting the whole
15 industry, would it be raw material, would it be supplier
16 cost in an area or whatever, therefore we'll follow this
17 price move. And when we have, I would say, the impact
18 of cost change year on year, we are not -- we were not
19 moving based on this single information, because we have
20 already moved one way or another before.

21 SIR IAIN MCMILLAN: So you were factoring in what your
22 competitors were doing and the overall competitive
23 environment in the industry?

24 A. Absolutely. Absolutely.

25 SIR IAIN MCMILLAN: Yes.

1 A. This is the key driver.

2 SIR IAIN MCMILLAN: Right, thank you.

3 THE CHAIRMAN: Anything arising out of that?

4 Thank you very much.

5 A. Thank you. I hope I have been clear enough on
6 the technical.

7 THE CHAIRMAN: Thank you very much. You are released from
8 your oath.

9 (The witness withdrew)

10 THE CHAIRMAN: Just while we are waiting for the witness to
11 arrive, where are we on this additional witness
12 statement?

13 MR WEST: It is a matter for my friends.

14 THE CHAIRMAN: Expert report, I beg your pardon,
15 Mr Scannell. Have we -- is that something you are
16 considering, or ...?

17 MS FORD: It has been put in, sir. Just to be clear on
18 the terminology, it is not really correct to call it
19 a further expert report. It relates to the RFQ timing
20 point on which, as the Tribunal might recall, there has
21 been an exchange of notes between the experts and it is
22 a developing situation. So Dr Majumdar put in a note,
23 Mr Hughes put in a reply note. This is then a reply to
24 the reply. I think I am right in saying there was not
25 permission, technically, for any of those three notes,

1 but the experts are trying to essentially deal with
2 a point which is to some extent evolving. So
3 Dr Majumdar has put in a reply note to the reply note
4 and that is what we have produced.

5 Within that, there is a very short third witness
6 statement of Mr Arango and that goes to a very narrow
7 and discrete point about the extent to which one gets
8 new part numbers when changes are made to OSS products
9 and that feeds into this debate that has been going on
10 between Mr Hughes and Dr Majumdar.

11 THE CHAIRMAN: Right, yes. Thank you. Where do I find
12 that?

13 MS FORD: That is a good question. I think we can provide
14 hard copies. I do not know whether it has gone yet into
15 the bundle. It has not.

16 THE CHAIRMAN: Okay, if you could let me know tomorrow
17 morning.

18 MS FORD: Certainly.

19 THE CHAIRMAN: So, yes, is Dr Majumdar -- sorry, I should be
20 asking you, Mr West. Are you taking objection to
21 Dr Majumdar's additional report?

22 MR WEST: We are concerned about the timing of both of those
23 developments. It is true that there have been an
24 exchange of further notes relating to this, but this is
25 now continuing into the trial itself, and so we are

1 concerned about the timing of this. I do not know if
2 you wish me to make some brief submissions about it.

3 THE CHAIRMAN: No, I am just getting the lay of the land at
4 the moment. So have you formed a settled view that you
5 will be objecting or are you still -- it is still under
6 consideration?

7 MR WEST: I think our position is that we object to it and
8 we wish the Tribunal to determine either not to accept
9 it or at the very least to indicate that due to
10 the timing of it, that will be taken into account in
11 the weight which will be accorded to it, or maybe, if we
12 are not in a position to respond, particularly on
13 the facts.

14 THE CHAIRMAN: Certainly the timing is something that we
15 have taken into account. I think that must be right.

16 I think what we will require, if it is going to
17 remain in the bundles, is an update to the joint expert
18 report. So there have been a flurry of notes and
19 counter-notes, and in order to navigate through and see
20 what the further issues are, we would like that, unless
21 you consider it inappropriate for a particular reason
22 you are going to explain, we would like that joint
23 expert report updated with some further -- obviously you
24 can just add the numbers on the end.

25 MR WEST: Should I explain my objection, if the Tribunal

1 wishes me to do so, or are we going to come back to
2 this?

3 THE CHAIRMAN: I do not think that is -- I think we will
4 come back to this, because we have got a witness
5 waiting.

6 MR WEST: Yes.

7 THE CHAIRMAN: But I think that is something we would want
8 doing, just to warn you, and that really ought to be
9 done -- where are we, Monday -- so by close of business
10 on Thursday. That is not to say that it is coming in.
11 Mr West, maybe that will be a -- we can -- what time are
12 we -- how is the timetable looking tomorrow? Is it ...

13 MR WEST: I think similar to today.

14 THE CHAIRMAN: Are we under particular time pressure
15 tomorrow?

16 MR WEST: No, I think it is similar to today.

17 THE CHAIRMAN: Similar to today. So maybe we will start at
18 10 o'clock tomorrow and deal with this as the first
19 matter before we go back to this, but rather than
20 interrupt things today.

21 I assume there is no objection to us having a look
22 at it de bene esse?

23 MR WEST: No, I am not sure it is correct to say it is in
24 the bundles as yet. It was emailed --

25 THE CHAIRMAN: We have a copy of it -- of Dr Majumdar's.

1 I am not sure about the other one, but ...

2 MR WEST: There should also be a second witness statement of

3 Mr Arango, which you should also have a look at.

4 THE CHAIRMAN: Yes, that ...

5 MS FORD: We can hand up hard copies now if it assists, but

6 I think they should have arrived together --

7 THE CHAIRMAN: Are they hole punched?

8 MS FORD: Yes.

9 MR WEST: Clearly the Tribunal will have to look at it to

10 form a view on what to do about it.

11 THE CHAIRMAN: Yes.

12 (Handed).

13 We have got this one, it is the other one.

14 MR WEST: So I will now call Ms Francesca Biancheri.

15 MS FRANCESCA BIANCHERI (affirmed)

16 THE CHAIRMAN: Thank you. Please have a seat.

17 Examination-in-chief by MR WEST

18 MR WEST: I should just mention that Ms Biancheri told those

19 behind me she was feeling a little under the weather

20 earlier today, so we are going to proceed with her but

21 I hope that she will be able to perform in the witness

22 box.

23 THE CHAIRMAN: Yes. If you need a break, just let us know.

24 A. Thank you.

25 MR WEST: Could you turn, please, to tab 6 of bundle B,

1 please {B/6/1}.

2 A. Yes.

3 Q. Is this your witness statement in the *Bearings*
4 proceedings?

5 A. Yes, it is.

6 Q. Could you go further on in that tab to {B/6/19}. Is
7 that your signature?

8 A. Yes, it is.

9 Q. Could you turn next to tab 18 of the bundle B {B/18/1}.
10 Is that your statement in these proceedings?

11 A. Yes, it is.

12 Q. If you go on then to page {B/18/7} of that tab, is that
13 your signature?

14 A. Yes, it is.

15 Q. Within this witness statement, if you look at
16 paragraph 5 {B/18/2}, you will see you say there in
17 the second sentence -- or starting at the beginning:

18 "I previously provided a witness statement dated
19 17 May 2021 on FCA's vehicle pricing strategies and
20 processes for the purposes of proceedings relating to
21 a cartel in the market from automotive *Bearings*
22 (the '*Bearings* Witness Statement'). I understand from
23 Hausfeld that the issues covered in the *Bearings* Witness
24 Statement are also relevant to the present proceedings."

25 Do you see you say that? (Pause). Paragraph 5?

1 A. Yes.

2 Q. Then, at paragraph 9, on the next page {B/18/3}, you
3 say:

4 "Apart from my earlier [witness] statements about
5 the pricing of spare parts at paragraphs 36-41 of my
6 *Bearings* Witness statement, which I am no longer
7 confident about because of the passage of time and
8 the fact it was managed as a separate business within
9 FCA in which I was not involved (as explained in
10 paragraph 37 of my *Bearings* Witness Statement), there is
11 no other fact in my *Bearings* Witness Statement that
12 I think would not apply equally in the context of this
13 claim relating to safety components."

14 Do you see you say that?

15 A. Yes.

16 Q. So subject to this clarification about those paragraphs
17 in your first statement in *Bearings*, are the contents of
18 both of these statements true to the best of your
19 knowledge and belief?

20 A. Yes, they are.

21 Q. Do they represent the evidence you wish to give
22 the Tribunal in these proceedings?

23 A. Yes, they do.

24 MR WEST: Thank you.

25 My friend may have some questions.

1 Cross-examination by MR SCANNELL

2 MR SCANNELL: Good afternoon.

3 A. Good afternoon.

4 Q. Ms Biancheri, if, at any time, you want to take a break,
5 you can turn to the Chairman and let him know and we can
6 take a break for you.

7 A. Okay, thank you.

8 Q. Ms Biancheri, the witness statement that you identified
9 as being your witness statement in 2021, that was
10 a witness statement you gave in the *Bearings* case, as
11 Mr West said?

12 A. Yes, it is.

13 Q. In that case, your employer accused its *Bearings*
14 suppliers of imposing an overcharge on the price of
15 automotive *Bearings*; do you remember that?

16 A. Yes, I do remember.

17 Q. That arose from a Commission decision saying that there
18 was a market-wide price fixing and market sharing cartel
19 affecting *Bearings*; is that not right?

20 A. This is what I understood at that time, yeah.

21 Q. Are you aware that in this case the Commission has never
22 said that there was a cartel affecting supplies of
23 the Defendants' components to Fiat?

24 A. No, I'm not aware.

25 Q. You were not aware of that?

- 1 A. I'm not aware.
- 2 Q. Ms Biancheri, are you quite certain that, subject to
3 the paragraph Mr West showed you concerning
4 paragraphs 36 to 41 of the *Bearings* statement, that you
5 recall all of the facts underlying the witness statement
6 you gave in the *Bearings* case?
- 7 A. Yes, I do, I'm sure.
- 8 Q. You are quite certain that you are remembering those
9 facts and not simply relying on re-reading the *Bearings*
10 statement and assuming that everything in it is true
11 because you said so in 2021?
- 12 A. Yes, I do remember exactly what has been written and
13 what was my job at that time, therefore I did confirm
14 everything I could remember, except for the spare parts,
15 which was not my business at that time and I did decide
16 not to talk about it.
- 17 Q. Okay.
- 18 So in respect of paragraphs 36 to 41 of the *Bearings*
19 statement, I understand your evidence now to be that you
20 are no longer confident in any of those paragraphs
21 because of the passage of time; is that right?
- 22 A. I am not confident, especially from 38 onwards, it is
23 true.
- 24 Q. But otherwise, you say that the Tribunal can rely on
25 everything you said in your *Bearings* statement in these

1 proceedings also; is that right?

2 A. Yes.

3 Q. Thank you.

4 So could you take a look, please, at page 13 of your
5 *Bearings* witness statement {B/6/13} and look at
6 paragraphs 36 to 41, please.

7 A. Okay.

8 Q. What is it about those paragraphs that you are no longer
9 certain about?

10 A. Okay, so at that time, when I signed this witnesses, it
11 was explained to me in detail what is written here and
12 I could remember that the business was running, for what
13 I knew, in this way. Taking into account the fact that
14 the *Bearings* were not sold like objects, like the airbag
15 or the seatbelt, with the price related to competition,
16 I was confident to -- for what was explained to me from
17 my colleague to, to manage this part. As per today,
18 since the objects that we trade are quite different,
19 more complex, and they evidently have a price stated in
20 the market, I'm not able to -- to go in details and
21 confirm what was written at that time.

22 Q. When you wrote these paragraphs of your *Bearings* witness
23 statement, you did not explain that this was not your
24 direct testimony, did you?

25 A. No, I didn't explain that.

1 Q. You did not say that you took that information from
2 colleagues of yours, did you?

3 A. If I'm not wrong, it's written somewhere the name of
4 the colleagues. That is on page 13, please {B/6/13}
5 where I wrote request:

6 "I have seen in draft the witness statement of my
7 colleague Federico Alfredo Aceto ... which
8 describes ..."

9 So I could confirm that what I was remembering was
10 sticking to what he was describing at that time.

11 Q. I see.

12 So I believe you mentioned that you were
13 particularly uncertain about everything from
14 paragraph 38 {B/6/14}; is that right, Ms Biancheri?

15 A. Yes.

16 Q. So let's look at paragraph 39 then:

17 "I have already explained that *Bearings* are used to
18 support other components and that the cost of *Bearings*
19 is unlikely to register within FCA in a way that would
20 cause those costs to be considered in price-setting."

21 You are no longer confident about that statement?

22 A. Well, about this statement, I'm still confident, yes.

23 Q. Have you actually been through this part of your
24 evidence line by line to decide what you are still
25 confident about and what you are not?

1 A. Yes, except for this chapter of spare parts, where
2 I said immediately that I was not confident to -- to
3 explain in details how they did work.

4 Q. Okay.

5 One more question about this, Ms Biancheri. Are you
6 able to explain to the Tribunal what the difference is
7 between your recollection of the matters in
8 paragraphs 36 to 41 in the statement we are looking at
9 and your recollection of the other matters you address
10 in that statement?

11 A. The differences are related to the fact that in the last
12 24 years I did manage in different position or... either
13 as a pricing manager or as an internal customer most of
14 the -- or, yes, most of the facts described in my
15 witness, not for a spare part, though.

16 Q. Could you turn, please, to page 3 of your *Bearings*
17 witness statement {B/6/3}. At paragraph 9, four lines
18 down, at the end of the line, you say:

19 "In particular, my statement describes how FCA sets
20 the price of new vehicles to explain why the assertion
21 by NTN that FCA recovered the costs of the cartelised
22 *Bearings* from our customers in the form of higher
23 vehicle prices is incorrect."

24 Do you see that?

25 A. Yes, I do.

1 Q. Okay.

2 Now, when you say "our customers" there, you are
3 referring, I presume, to persons to whom FCA sold its
4 cars?

5 A. I do refer both to persons or to companies or to
6 dealers, as it's described in my witness.

7 Q. Yes. So the persons or entities to whom FCA sold its
8 cars?

9 A. Correct.

10 Q. Thank you.

11 In the overwhelming majority of cases, those persons
12 were independent dealers, were they not?

13 A. Well, this I cannot say for sure, because over
14 the years, FCA had a number of own dealers, so I cannot
15 say they were an independent dealer, and the share of
16 sales did vary, but I do not know how much it was during
17 the years.

18 Q. Okay.

19 Can I take a step back then and ask you this. In
20 the overwhelming majority of cases, the persons to whom
21 FCA sold its cars were dealers; would you accept that?

22 A. Yes, I do accept, dealers and not independent dealers.

23 Q. They were not end customers, were they?

24 A. Well, in some cases, they were a big customer buying
25 thousands of vehicles. So in this case, the price was

1 done to final customer.

2 Q. In those cases, correct. However, when FCA sold its
3 cars to dealers, it was not selling its cars to end
4 customers, was it?

5 A. This is correct.

6 Q. Thank you.

7 It follows, does it not, that when the Tribunal is
8 considering whether FCA could recover its costs of an
9 allegedly cartelised component, the relevant price to
10 look at is therefore the price charged by FCA for its
11 cars when it sold them to dealers; do you agree?

12 A. Can I read it over?

13 Q. No, this is not something that you have said in your
14 statement, Ms Biancheri.

15 A. No, sorry --

16 Q. I am suggesting this to you and I am asking if you
17 agree, okay? I will say it again.

18 A. Can you please repeat?

19 Q. Okay. It follows from the fact that the overwhelming
20 majority of Fiat's sales were to dealers --

21 A. Okay.

22 Q. -- that when the Tribunal is considering whether FCA
23 could recover its costs of an allegedly cartelised
24 component, the relevant price to look at is the price
25 charged by FCA for its cars when it sold them to

1 dealers; do you agree?

2 A. I do not agree, because the price at which FCA used to
3 sell the vehicles to the dealer was a starting price
4 with a basic discount and there were discounts on top,
5 paid when the car was sold to final customer. So
6 I would say that it's not correct.

7 Q. Okay.

8 A. Sold and delivered to the final customer.

9 Q. Okay.

10 The price that FCA received when it sold its cars to
11 dealers, I am going to get to that and I will ask you
12 questions about the starting price and the dealer
13 discount and the further discounts that you have spoken
14 about, okay?

15 A. Okay.

16 Q. All right.

17 What I want to know now is whether you agree that
18 when the Tribunal is considering whether Fiat recovered
19 some of its costs, the relevant price to look at is
20 the price that it received in the end when it sold its
21 cars to dealers.

22 A. Well, it is possible to look also at that due to
23 the fact that the discount in the invoice when FCA was
24 selling to the dealer was a fixed discount related to
25 the model. So it's, let's say, non-relevant reasoning

1 versus the analysis of the prices, because all the car
2 makers were applying base discount in the invoice to
3 the dealer at that time.

4 Q. Okay. So are you disagreeing with me because you are
5 not sure what I mean when I talk about the price that
6 FCA received when it sold its cars?

7 A. No, I am aware of the price that FCA -- or the way that
8 FCA was making the dealer pay the vehicles.

9 Q. I am not trying to catch you out here, Ms Biancheri.

10 A. No, no.

11 Q. I am simply trying to identify a point in time when Fiat
12 sold its cars; do you understand?

13 A. Yes.

14 Q. Okay.

15 In the majority of cases it sold its cars to
16 dealers, did it not?

17 A. Yes, it is true.

18 Q. Okay.

19 So in the majority of cases, the money it received
20 when it sold its cars was the money it received from
21 dealers; do you agree?

22 A. I do agree, yeah.

23 Q. Okay.

24 Do you therefore agree that the relevant price to
25 look at when deciding whether or not Fiat passed on

- 1 costs was the price that it received when it sold its
2 cars to dealers?
- 3 A. On this, I do not agree, and as I did write in my
4 witness, Fiat, or Fiat Chrysler, always took into
5 account the balance among the cars to be sold to final
6 customer, the stock that were already relying in
7 the dealership, the production cost and the price. That
8 is, it was clear that if price would have increased too
9 much, the dealer would have not been able to sell
10 the vehicles at their own expense to the final customer,
11 therefore the business would have not worked any more.
- 12 Q. Ms Biancheri, I am not asking you about whether this was
13 an effective means of passing on costs, I simply want to
14 ask you whether the money that Fiat received when it
15 sold its cars was money it received from dealers.
- 16 A. Well, this is not always true, because --
- 17 Q. In the majority of cases.
- 18 A. In majority of cases, there were also financing
19 companies in between which were supporting the dealers
20 to pay back to Fiat the vehicles, so it's --
- 21 Q. Where do you say that in your evidence?
- 22 A. This I think -- I don't remember that I said it in
23 the ...
- 24 Q. Okay.
- 25 A. Yeah.

1 Q. Could you turn to page 2 of your *Bearings* witness
2 statement, please {B/6/2}. So at paragraph 4 there, you
3 say that you became Fiat's pricing manager for the Fiat
4 brand in 2007, did you not?

5 A. Yes, I was.

6 Q. You remained in that position until 2011, as
7 I understand it?

8 A. Correct.

9 Q. Is the Tribunal to take it then that apart from that
10 four-year period, you were not involved in the pricing
11 of Fiat's cars?

12 A. I was not involved in defining the pricing point, but
13 I was involved as internal customer since, after 2011,
14 I moved to sales roles, so I was often discussing about
15 pricing.

16 Q. Would it be fair to say that after 2011 you were
17 implementing Fiat's prices, but before 2011 you were
18 involved in setting them? Would that be a fair summary?

19 A. Yes.

20 Q. When you gave your evidence in the *Bearings* case, you
21 said that you could not comment on the pricing process
22 used by FCA before 2007 because you were not a pricing
23 manager between -- sorry, because you were only
24 a pricing manager between 2007 and 2011. Do you
25 remember that?

1 A. I remember that I said that I could not comment ahead of
2 2007, because I didn't have the chance to have a proper
3 handover of the job when I started. But this was not
4 written in the statement.

5 Q. This was not written in the statement --

6 A. No.

7 Q. -- either, okay.

8 What you said in the *Bearings* statement was that you
9 could not comment on the prices that Fiat used before
10 2007 because you were only a pricing manager between
11 2007 and 2011 and no one in FCA had been able to provide
12 you with any information regarding the period before
13 2007. Do you recollect saying that?

14 A. I do confirm all the people were already out of
15 the company when I did the statement, so I could not
16 make a cross-checking.

17 Q. Yes.

18 So the statement you gave in the *Bearings* case
19 covered the period from 2007 to 2011; that is right, is
20 it not?

21 A. I guess it's covering as pricing manager that period,
22 but also the period up until the merge with
23 the PSA Group.

24 Q. You are saying that the *Bearings* witness statement is
25 covering all of that time, is it?

1 A. I -- I don't remember if the *Bearings* statement is
2 covering all the time up until 2021, to be honest.
3 I was not in details in this.

4 Q. Okay.

5 Ms Biancheri, I feel I have to remind you that
6 I asked you earlier if you were confident that you
7 remembered all of the facts underpinning your *Bearings*
8 witness statement. If I understand you correctly now,
9 you are saying that you are not clear about the time
10 period that you covered in the *Bearings* statement; is
11 that right?

12 A. No, this is not true. I'm clear that I wrote that I am
13 confident from 2007 up to the merger with PSA Group in
14 2021. This is what I wrote.

15 Q. Has anybody explained to you why Stellantis has not put
16 forward any witness to explain FCA's pricing policies
17 before 2007?

18 A. Nobody has explained that to me.

19 Q. Now, I understand that when you made your *Bearings*
20 witness statement in 2021, you spoke to colleagues in
21 FCA's pricing team about whether FCA's pricing processes
22 had changed after 2011; is that right?

23 A. This is correct, yeah.

24 Q. Those colleagues told you that FCA's pricing processes
25 had not changed substantively; is that right?

1 A. I do confirm, yes.

2 Q. Okay.

3 Could you look at page 3 of your *Bearings* witness
4 statement, please {B/6/3}, and look at paragraph 8. You
5 say there that where you:

6 "... refer to information supplied by others,
7 the source of the information is identified."

8 Do you see that?

9 A. Yes, I do.

10 Q. You have not actually identified whom you spoke to to
11 confirm FCA's pricing policies after 2011, have you?

12 A. I do not have detailed information because the processes
13 have changed with the merge, so ... And after 2021, I --
14 I recovered a role as car floor manager, which is far
15 from pricing.

16 Q. Perhaps I could just ask you then, whom did you speak to
17 about Fiat's pricing policies after 2011?

18 A. There are currently still working in Stellantis pricing
19 directors which work in pricing in the years after.

20 I don't know exactly the period, because there were, in
21 between 2011 and the period they became responsible for
22 pricing, there was for sure a colleague who resigned
23 and -- a couple of colleagues who resigned, so -- but
24 I did comment with them when I was writing the first
25 statement about the methodology.

1 Q. Okay, so I am only interested in who the colleagues were
2 that you spoke to when you made your *Bearings* statement
3 to determine what Fiat's pricing policies were after
4 2011. Do you understand?

5 A. Yes. So I did speak with Marco Melani, who is not in
6 the company any more. He was my substitute after 2011,
7 and at that time he had lost all the back-up of his
8 computer, so he did not write any witnesses on it. And
9 then I did speak with Mr Cesini, who is currently head
10 of pricing of one -- more than one of the brands of
11 Stellantis, who was responsible of pricing of Fiat,
12 I don't remember from which year or not. That I do not
13 remember.

14 Q. I see.

15 Okay, you have said that the overwhelming majority
16 of the cars that FCA sold were sold to dealers; correct?

17 A. This depends from year to year and from model to model,
18 but it can be stated.

19 Q. Okay.

20 Well, can we turn to page 15 of your witness
21 statement, please {B/6/15}, and look at paragraph 42, at
22 the last three lines:

23 "... during the period relevant to this claim,
24 the overwhelming majority of vehicles were, and indeed
25 still are, sold by FCA not to end customers but to

1 dealers ..."

2 That is what I am asking you about. Is that
3 correct?

4 A. Yes, it is.

5 Q. By far the greatest number of those sales to dealers
6 were to independent dealers, not to dealers owned by
7 FCA; that is correct, is it not?

8 A. This I cannot say.

9 Q. Okay. Well, can you look at the next paragraph.

10 A. Yeah.

11 Q. Second line:

12 "Dealers were either independent of FCA or
13 wholly-owned by FCA, although only a very small number
14 of dealerships were owned by FCA, and most of those were
15 in Italy."

16 Is it fair to take from that that the majority of
17 the sales to dealers were to independent dealers?

18 A. The number of own dealer was small; the number of sales
19 managed by these dealer was very big. This is what
20 I can say. And Italy, at that time, was the main market
21 and volume absorber from the Fiat Chrysler Automobile
22 group.

23 Q. Are you able to put numbers on any of the -- of what you
24 have just said, the number of sales to dealers owned by
25 FCA, the number of sales made to independent dealers?

1 A. No, I guess I'm not nowadays.

2 Q. Okay.

3 A. Not for a period.

4 Q. Yes.

5 The independent dealers who sold Fiat's cars, they
6 entered into dealership agreements, did they not, with
7 national sales companies owned by FCA under which they
8 were authorised to sell those cars? That is correct, is
9 it not?

10 A. Yes, this is correct.

11 Q. Then, once that dealership agreement was in place,
12 the independent dealer purchased the relevant vehicle
13 from FCA; that is correct, is it not?

14 A. This is correct, yes.

15 Q. Now, the price the dealers paid, I know you are anxious
16 to explain that, that was not the full list price,
17 was it?

18 A. It was a full list price reduced by a base discount on
19 the full list price.

20 Q. Thank you.

21 A. Plus some other technical --

22 Q. Yes, I will get to those as well.

23 A. -- prices, but ... yeah.

24 Q. Okay.

25 Are you familiar with the term the "gross dealer

- 1 price"?
- 2 A. Yes.
- 3 Q. Would you agree that the recommended retail price or
4 list price minus the base discount equals the gross
5 dealer price?
- 6 A. No.
- 7 Q. You would not agree with that?
- 8 A. Gross dealer price, in my witness, is the retail price
9 minus the local taxation. That is the gross.
- 10 Q. Minus local taxation?
- 11 A. Yeah. So it is the price to final customer minus local
12 taxation is gross price.
- 13 Q. Okay.
- 14 A. Okay?
- 15 Q. I will not refer to the gross dealer price, in that
16 case.
- 17 At paragraph 45 of your *Bearings* witness statement
18 {B/6/16}, five lines down, you say that:
- 19 "... the level of the base discount is generally
20 fixed for the life of the model, different models may
21 have different base discounts and the level of base
22 discounts given may also differ between different
23 national markets."
- 24 That remains your evidence?
- 25 A. This is correct, I confirm.

- 1 Q. Now, you use the word "generally" there, "generally
2 fixed", because the base discount could be adjusted,
3 could it not?
- 4 A. Not as far as I know.
- 5 Q. Okay, so why did you use the word "generally" in this
6 paragraph of your witness statement?
- 7 A. Probably I wanted to write "normally", translating from
8 Italian to English.
- 9 Q. Okay, well, let's replace it with the word "normally".
- 10 A. Yeah.
- 11 Q. Why would you like to use the word "normally"?
- 12 A. I -- I use this "normally" to explain that it was normal
13 behaviour to fix a base discount at the beginning of
14 the life of the vehicle and not change it. I've never
15 seen a change in the base discount, as far as
16 I remember, in all these years.
- 17 Q. Okay. So do you mean then that although the level of
18 the base discount is always fixed? Is that actually
19 what you mean to say?
- 20 A. Yeah, I can agree that the base discount is always
21 fixed, yes.
- 22 Q. But it changes from model to model, does it not?
- 23 A. Yes, and for the period I am witnessing for, this is
24 true.
- 25 Q. Okay.

1 It changes from country to country, does it not?

2 A. Yes. It can change.

3 Q. Okay.

4 You say that in the period from 2007 to 2018,
5 the base discount could be anywhere from 5% to 12%?

6 A. This is what I was remembering.

7 Q. Okay.

8 That is not because it was possible to adjust
9 the base discount, you say?

10 A. No.

11 Q. No, okay.

12 So that the Tribunal is not left guessing as to
13 the source of the information, which of your colleagues
14 told you about the level of FCA's base discounts between
15 2011 and 2018?

16 A. When we were writing the other businesses, there was
17 a colleague of the finance department, which name I do
18 not remember, and I know that plenty of database have
19 been submitted and within this database there should be
20 the base discount detail by model.

21 Q. In your *Bearings* witness statement you mentioned other
22 discounts too, did you not, Ms Biancheri?

23 A. Yes, I did.

24 Q. Okay. So campaign discounts; you referred to them, did
25 you not? Campaign discounts?

- 1 A. Yes, I did.
- 2 Q. They were additional discounts, were they not, on top of
3 the base discount?
- 4 A. This is correct, yes.
- 5 Q. They were paid, as I understand it, by FCA to the dealer
6 within a month of the dealer selling the car?
- 7 A. This can be, let's say, an average assumption, but, yes,
8 it is, it depends from country to country, the time of
9 the payment, among the selling time up to the final
10 customer and the payment back of the discount to
11 the dealer.
- 12 Q. Okay.
- 13 The campaign discounts were applied by brand?
- 14 A. Were applied by model, I would say. Model and brand.
- 15 Q. The purpose of those campaign discounts was to stimulate
16 sales of that brand in particular territories from time
17 to time; is that fair?
- 18 A. It was to stimulate the sales of particular model more
19 than brand, yes --
- 20 Q. Can I just draw your attention to paragraph 46 of your
21 *Bearings* witness statement, Ms Biancheri. I am looking
22 at the second line:
- 23 "Campaign discounts were discounts, usually applied
24 to all the FCA vehicles by brand ..."
- 25 Is that another word you would like to change?

- 1 A. By "usually", I mean "often", because I was seeing it
2 happening very often. This is why I said and I wrote
3 "usually".
- 4 Q. Sorry, I am not asking about the word "usually", I am
5 asking about the word "brand".
- 6 A. Ah, "by", I mean, "from". Sorry for my English again.
7 From the --
- 8 Q. That is okay.
- 9 A. It was from the brand colleagues, "from brand". We were
10 used to identify with the word "brand" the --
11 the colleagues working on different brands. We were all
12 divided by brand.
- 13 Q. Okay, but you say now, do you, that campaign discounts
14 were discounts applied by model?
- 15 A. Yes.
- 16 Q. Not by brand?
- 17 A. Yes, but within the single brand, there are different
18 models. On some models, you can discount; on other
19 model you can decide not to do discount for good reason.
- 20 Q. Okay.
21 Then FCA also applied volume-based discretionary
22 discounts, did they not?
- 23 A. Yes.
- 24 Q. FCA decided whether or not to offer campaign discounts,
25 did it not?

- 1 A. Correct.
- 2 Q. And when to offer them?
- 3 A. Yes.
- 4 Q. And what the amount of the discount should be?
- 5 A. The -- the amount could be either absolute or in
6 percentage of the price of the vehicle, or could be also
7 hidden under different offers, like financing
8 the vehicle, which had a cost, or three years of
9 warranty. There were different technicalities.
- 10 Q. FCA decided what the amount of the campaign discount
11 would be, did it not?
- 12 A. Normally, yes, it was discussed, then approved.
- 13 Q. Then discretionary discounts, FCA decided whether or not
14 to award those discounts?
- 15 A. Can you repeat the question?
- 16 Q. Discretionary discounts now.
- 17 A. Yeah.
- 18 Q. FCA decided whether or not to award them?
- 19 A. It was a joint decision of the employees of FCA sitting
20 in Turin and the employee sitting on the national sales
21 company which were selling to the dealer locally.
- 22 Q. Yes, so let us call those people "FCA".
- 23 A. FCA, correct.
- 24 Q. Okay, so FCA decided --
- 25 A. Then it is correct, yes.

- 1 Q. Yes, thank you.
- 2 FCA decided when to offer discretionary discounts;
- 3 that is fair, would you say?
- 4 A. Yes.
- 5 Q. And what the amount would be?
- 6 A. Correct.
- 7 Q. Okay.
- 8 Now, taking all of those discounts that we have seen
- 9 together, the price that FCA was ultimately paid for
- 10 the vehicle that it made was the list price minus
- 11 the base discount and minus any campaign discounts and
- 12 discretionary discounts that were rebated to the dealer;
- 13 you would presumably agree with that?
- 14 A. I think we are missing the condition at the discount,
- 15 maybe, in your phrase? There were three family of
- 16 discounts: the base on the invoice ...
- 17 Q. You refer to the base discount, the campaign discount
- 18 and discretionary discount?
- 19 A. And discretionary, okay, yeah.
- 20 Q. Okay?
- 21 A. Okay, yeah.
- 22 Q. All right. So do I take it then that you agree --
- 23 A. Yeah.
- 24 Q. -- with that?
- 25 A. Yes.

1 Q. I am going to refer to that price as the "net dealer
2 price", okay?

3 A. Okay.

4 MR SCANNELL: All right, thank you.

5 Mr Chairman, is now a convenient time to take
6 a break?

7 THE CHAIRMAN: Yes. You have still got a little way to go,
8 I take it?

9 MR SCANNELL: I have got a little way to go, yes.

10 (3.21 pm)

11 (A short break)

12 (3.31 pm)

13 MR SCANNELL: So, Ms Biancheri, I am going to refer to
14 the price we were just talking about as the "net dealer
15 price".

16 A. Okay.

17 Q. You would presumably agree with me that from FCA's
18 perspective, the net dealer price was highly adjustable?

19 A. Yes, I confirm.

20 Q. So it could be adjusted by adjusting the campaign
21 discounts, for example?

22 A. This is correct.

23 Q. It could be adjusted using the discretionary discounts,
24 for example?

25 A. This is correct.

1 Q. FCA did continuously or continually adjust the level of
2 discounts it gave to dealers, did it not?

3 A. Let's say that it was -- the discounts were communicated
4 on a regular basis to the dealer, so if
5 this "continually" means that on a regular basis that
6 there were communications, like once per quarter, this
7 is correct.

8 Q. Okay.

9 Just so that you know that I am simply asking you to
10 confirm and I am not trying to catch you out, could you
11 have a look at page 18 of your *Bearings* witness
12 statement, please.

13 A. Yeah.

14 Q. Paragraph 54 {B/6/18}:

15 "The reason why FCA has continually adjusted
16 the level of discounts that it gives to dealers is ..."

17 So I am just picking up on your language there.

18 A. Yeah.

19 Q. One of the considerations that FCA took into account in
20 deciding how much to adjust the level of the discounts
21 it gave to dealers was that it wanted to maintain its
22 margins; is that not right?

23 A. Not -- it can be said if you take in consideration
24 the total margin, meaning the volumes of sales that
25 might come out from this operation multiplied by

1 the unitary margin of the single car sold.

2 Q. Okay.

3 As a general proposition, would you agree that one
4 of the reasons FCA might want to adjust net dealer
5 prices is that it was concerned to maintain margins in
6 the business?

7 A. I would not say that. It was more concerning
8 maintaining the volume of sales in the business together
9 with the margin, but --

10 Q. Together with the margin --

11 A. Together with the --

12 Q. -- so margin was one of the considerations?

13 A. Yes, it was one of the considerations, margin, yes.

14 Q. Thank you.

15 Maintaining a margin, in that context, that means
16 setting net dealer prices at a certain level above
17 costs; right?

18 A. Correct.

19 Q. Because FCA ultimately did want to make a profit, did it
20 not, in its business?

21 A. This is correct.

22 Q. If FCA's costs were to increase, then if it did not
23 increase net dealer prices, for example, its margins
24 would decrease; would you agree with that?

25 (Pause).

1 This is not in your evidence, Ms Biancheri, I am
2 just asking you as a general question whether you would
3 agree with me that if Fiat's costs were to increase --

4 A. This is -- this is correct, yes.

5 Q. Thank you.

6 So to maintain a margin in those circumstances, FCA
7 would need to increase net dealer prices; would you
8 agree?

9 A. It is not fully true, because if the increase of dealer
10 margin -- not -- sorry, if the increase of prices to
11 the final customer would have meant reducing the volumes
12 of production, then it would have not worked out
13 properly to maintain the business case for FCA.

14 Q. Yes, I see that.

15 Let us for a moment leave the end customers out and
16 let us just consider dealers and the net dealer price,
17 so the price that dealers ultimately paid. Would you
18 agree with the proposition then?

19 A. Let me re-read the proposition. Just a second.

20 Q. I can repeat it for you.

21 A. Yes, please.

22 Q. So to maintain a margin, FCA would need to increase
23 the net dealer price; would you agree with that as
24 a general proposition?

25 A. Yes.

- 1 Q. One way that it could do that is by reducing
2 the discount that it gave to dealers?
- 3 A. It was not a common use because, in this case,
4 the dealer would have not bought any more vehicles from
5 FCA, so the business would have been reduced, in this
6 case, if there was not a final customer ready to buy
7 the vehicles of the FCA brands --
- 8 Q. Okay, so --
- 9 A. -- at this price, yeah.
- 10 Q. FCA was continually adjusting its net dealer prices,
11 was it not?
- 12 A. This is correct.
- 13 Q. Yes, and it was doing that in part by adjusting margins,
14 was it not, and discounts?
- 15 A. Discounts, yes.
- 16 Q. Okay, so one way to increase the net dealer price was to
17 reduce the discounts given to dealers, was it not?
- 18 A. This was one of the ways, I agree.
- 19 Q. Thank you.
- 20 I would like to ask you some questions about
21 the role of costs in FCA's pricing.
- 22 A. Okay.
- 23 Q. In paragraph 13 {B/6/5} of the witness statement you
24 gave in the *Bearings* case you explained that FCA used
25 standard costs in its pricing activities, comprising

1 base costs and options costs; do you recall saying that?

2 A. Yes, I do.

3 Q. Okay.

4 Base costs included the cost of components that are
5 included as standard in a particular model of vehicle;
6 that is correct, is it not?

7 A. This is correct, yes.

8 Q. Options costs were the costs of the different options
9 that could be purchased for a particular vehicle model?

10 A. Yes, it is.

11 Q. You have said in the same statement that standard costs
12 were generally set once a year. Do you remember saying
13 that?

14 A. Yes.

15 Q. And that the figure that was set was a mixture of known
16 costs over the past six months and unknown costs
17 forecast for the next six months; do you remember that?

18 A. Correct.

19 Q. In part, therefore, standard costs were a reflection of
20 actual costs, were they not?

21 A. Correct.

22 Q. Now, standard costs were used by FCA when it priced new
23 vehicle models, was it not?

24 A. Yes.

25 Q. They were also used by Fiat to monitor costs and to

1 manage price over the life of a vehicle model, were they
2 not?

3 A. Yes.

4 Q. Now, you mentioned in your *Bearings* witness statement
5 that FCA's standard costs were recorded in a database.
6 Do you remember saying that?

7 A. Yes, I do.

8 Q. That was the V99 database?

9 A. Yes. Still existing.

10 Q. Okay.

11 So the V99 database was presumably used as
12 a reference point when FCA made pricing decisions?

13 A. Yes.

14 Q. As I understand it from your evidence, the V99 database
15 did not include the cost of individual components
16 included as standard in a vehicle, but it did include
17 the total cost of producing the base vehicle.

18 A. Correct.

19 Q. It also included the costs of components that could be
20 included in a vehicle as an optional extra; is that
21 correct?

22 A. It included, yes, the single option cost offered on top
23 of the standard vehicle.

24 Q. Thank you.

25 So airbag costs that were not separately included --

1 sorry, I will start that question again.

2 Airbag costs, for example, they were not separately
3 included when they came as standard with the vehicle; is
4 that right?

5 A. Correct.

6 Q. But they were included if they could be included in
7 the vehicle as an optional extra?

8 A. Correct.

9 Q. Okay.

10 The same goes for steering wheels?

11 A. Steering wheels are not for the base one that is
12 included always in a vehicle.

13 Q. Sorry, I meant to say that the same principles as we
14 discussed for airbags also applied for steering wheels?

15 A. This is correct, yes.

16 Q. Okay.

17 Seatbelts?

18 A. Seatbelts, as I wrote, as far as I remember, were mainly
19 standard, so I do not remember seeing the cost of
20 the seatbelt when I was doing prices.

21 Q. Okay.

22 So could you now turn to paragraph 12 of the witness
23 statement you signed in February this year, please,
24 {B/18/4}. At subparagraph (b), do you see that --

25 A. Yeah.

1 Q. -- you refer to the fact that some steering wheels were
2 priced as options, such as leather steering wheels and
3 steering wheels with radio commands, and you say at (c)
4 that:

5 "... passenger [airbags], side airbags and head
6 airbags were optional on smaller vehicles and on
7 the budget vehicles ..."

8 So the prices of those components, which were sold
9 as options, they would have been recorded separately in
10 the V99 database, would they not?

11 A. In the time where they were not compulsory for European
12 law, yes.

13 Q. Sorry, for the time when they were not standard?

14 A. Where they're not standard, and their standardisation
15 was driven mainly from European laws, the evolution of
16 the European laws, which were asking to the OEM to put
17 these safety contents as standard in the vehicles.

18 Q. Fiat did not include components as standard in its
19 vehicles unless it was mandated to do so by law?

20 A. This depends from model to model. It is not true for
21 all the models of Fiat.

22 Q. So FCA would have been aware, would it not, of an
23 increase in the cost of those specific OSS components
24 when it came to pricing those options; do you agree?

25 A. I do agree, yes.

1 Q. Do you accept that even though they may not have
2 separately been identified in the V99 database, if
3 the costs of, say, *Bearings* was to increase, then all
4 else being equal the overall cost of manufacturing
5 the vehicle would increase?

6 A. Give me one minute.

7 Q. Again, this is not in your evidence, Ms Biancheri. I am
8 now asking you to take a step beyond that and consider
9 the question. Would you like me to repeat it?

10 A. Just let me read.

11 Q. Sorry, Ms Biancheri, you are reading the transcript, of
12 course, not your evidence.

13 A. Yes.

14 (Pause)

15 This can be, yes.

16 Q. Yes.

17 The same would be true of OSS components, would it
18 not?

19 A. Yes.

20 Q. Okay. So increases in the standard cost of the MVS,
21 the Model Version Series, would be recorded in the V99
22 database?

23 A. Once per year, yes.

24 Q. Yes, okay.

25 When Fiat priced its vehicles, Ms Biancheri, an

1 important aspect of that process was to maximise its
2 margins, was it not?

3 A. It -- it is true and not true in the sense that
4 the important aspect was to -- to be able to maintain
5 the right equation among volume sold and the margin
6 maximisation. This is what I remember from that time.

7 Q. Yes. So, again, margin maximisation was an important
8 factor of setting the prices of the vehicle?

9 A. It was one of the factors, not the most important.

10 Q. Okay. But it was important, was it not?

11 A. It was important, of course, yes.

12 Q. Now, to maximise its margins, FCA had to keep an eye on
13 its costs, did it not?

14 A. Always.

15 Q. The V99 document was presumably helpful in keeping an
16 eye on costs, was it not?

17 A. Yes, it was used.

18 Q. Could we now go to paragraph 32 of your *Bearings*
19 statement, please {B/6/11}. In the first sentence you
20 say that:

21 "Not every change in standard costs will lead FCA to
22 conclude that prices must be increased."

23 Do you remember saying that?

24 A. Yes, I do.

25 Q. You would, presumably, accept that increases in standard

1 costs would often lead FCA to increase its prices?

2 A. Not really. Not always. In some cases, yes, but not
3 always.

4 Q. Okay, so not always, but in some cases. Not always, but
5 in many cases?

6 A. In some cases, and depending from the amount that has
7 been increased, if it was relevant versus the overall
8 cost of the vehicle.

9 Q. I see.

10 A. Yeah.

11 Q. Would you accept that insofar as cost increases were
12 reflected in the V99 document as actual costs of
13 the business FCA would generally aim to recover those
14 costs over the lifetime of the vehicle to which
15 the costs relate? Is that fair?

16 A. It is fair to say that once per year there was
17 a re-thinking of the pricing strategy of the model to
18 adjust in case the costs were increasing too much and
19 the profitability was going too down, depending on
20 the cost --

21 Q. Yes, thank you.

22 A. -- (inaudible).

23 Q. Just to remind you, I did say "over the lifetime of
24 the vehicle".

25 A. Yeah.

1 Q. So would you agree with me then that insofar as the cost
2 increases were reflected in the V99 document as actual
3 costs of the business, then FCA would generally --

4 A. Sorry, the costs --

5 Q. -- aim to recover it over the lifetime of --

6 A. -- over the lifetime were -- were reflected in the V99.
7 That was the database of cost that we were using. This
8 is --

9 Q. Yes.

10 A. Yes, this is it, yes.

11 Q. Thank you.

12 One of the ways that FCA could have responded to an
13 increase in standard costs was to decrease the discounts
14 that it made available to independent dealers when it
15 sold its vehicles to them; would you agree?

16 A. It could be done if the net pricing offer by
17 the competitor was allowing us to keep the right balance
18 of price offer. So we could decrease the discount,
19 increasing the price to final customer, if
20 the competitive scenario would have allowed us to do it.

21 Q. Yes, and that is something that the business would aim
22 to do in order to preserve and maximise its margins?

23 A. Yes.

24 Q. Thank you.

25 Finally, I have some questions for you on

1 benchmarking --

2 A. Okay.

3 Q. -- Ms Biancheri. So could you turn, please, to
4 paragraph 10 of your witness statement {B/6/4}, that is
5 to say your *Bearings* witness statement. In the final
6 sentence of that paragraph you said that cars are priced
7 by reference to what a target customer group within
8 a particular market segment is prepared to pay. You
9 remember that?

10 Sorry, you will have to say "yes", I'm afraid.

11 A. Yes.

12 Q. Thank you, Ms Biancheri.

13 A. Yes.

14 Q. Then in the next paragraph, paragraph 11, you said:

15 "To work out what a customer ... target group will
16 be willing to pay for a vehicle ... FCA looks at what is
17 already on offer in the market and at what price."

18 A. Correct.

19 Q. You said that:

20 "This necessarily means that the prices of new
21 vehicle models are set by reference to the prices of FCA
22 and competitor vehicles that are already on
23 the market ..."

24 Do you remember saying that?

25 A. Correct, yes.

1 Q. So that the Tribunal can be clear about this, the prices
2 of FCA and competitor vehicles that were compared were
3 the recommended retail prices, were they not, they were
4 the list prices?

5 A. Yes, yes, the starting point was the recommended retail
6 price on the market. That was the starting point.

7 Q. Thank you, Ms Biancheri.

8 A. Yes.

9 MR SCANNELL: Thank you, Ms Biancheri.

10 THE CHAIRMAN: Mr West?

11 MR WEST: Nothing.

12 THE CHAIRMAN: Thank you very much for giving your evidence.

13 You are released from your oath.

14 (The witness withdrew)

15 That is all we have for today?

16 MR WEST: That is all for today, yes.

17 THE CHAIRMAN: So we will start at 10 tomorrow.

18 Thank you.

19 (3.55 pm)

20 (The Court adjourned until 10.00 am on Tuesday,

21 8 October 2024)

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