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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.

Tuesday, 8 October 2024

(10.00 am)

THE CHAIRMAN: Some of you are joining us live stream. An official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings and breach of that provision is punishable as contempt of court.

Mr West.

MR WEST: Well, I understand this is an application to admit the evidence which was served on Friday but I am happy to go first, although that seems illogical.

MS FORD: I have to say for my part I was unclear whether it was my application to admit or Mr West's application to exclude, but I suspect the same ground will be covered one way or the other.

THE CHAIRMAN: Strictly it is probably yours to admit, but I am not sure anything is going to turn on that.

MS FORD: Well, in that case, I am happy to start.

THE CHAIRMAN: We have read it and --

MS FORD: I am grateful.

THE CHAIRMAN: -- we understand you say it is relevant and it ought to come in. Is there anything else you want to say on the ...?

1 Application by MS FORD

2 MS FORD: Yes, so, just to very briefly recap how we have
3 got where we are. The Tribunal will appreciate there
4 has been this ongoing dialogue between the experts on
5 this one particular issue concerning by-platform
6 sensitivity testing, and in his expert report,
7 Dr Majumdar identified the issue of uncertainty as to
8 RFQ dates and so he proposed this by-platform testing to
9 address that. In his reply report, Mr Hughes then
10 disputed that that was an appropriate sensitivity, and
11 one of the points that he made was that he expected that
12 articles with unknown RFQ dates should have the same
13 delay between the RFQ date and the start of production
14 date as articles with known RFQ dates, and so he looked
15 at the two and he said, okay, well, the delay is longer
16 and that suggests to me that this is not an appropriate
17 sensitivity.

18 Dr Majumdar then produced a note on the analysis of
19 RFQ dates on 4 September 2024 and that was deliberately
20 provided prior to the joint expert statement to enable
21 the experts to factor in the points that he raised in
22 the context of the joint expert process and he
23 identified two, what he considered to be,
24 errors: a coding error and a conceptual error, what he
25 described as a "conceptual error". The conceptual error

1 was Mr Hughes' assumption that articles with unknown RFQ
2 dates ought to have the same delay as articles with
3 known RFQ dates, and the point Dr Majumdar pointed out
4 was that if these are follow-on articles where there is
5 not actually a new RFQ, then it is entirely to be
6 expected that the gap would be longer.

7 Mr Hughes then produced a note in response, and that
8 was on 23 September 2024, and so that response took just
9 under three weeks and it arrived a week before trial,
10 but we -- no permission was sought for putting in that
11 note, but we have not raised any objection to that note.
12 In his response note, Mr Hughes accepted that there was
13 a coding error, he disputed that there was this
14 conceptual error, and then he went further and he
15 proposed two new alternative means of carrying out
16 the by-platform sensitivity if the Tribunal were to
17 consider that, in principle, it was an appropriate thing
18 to do.

19 So what Dr Majumdar has done in his note on
20 4 October is to produce a reply to Mr Hughes' response.
21 It was produced within a shorter time frame than
22 Mr Hughes' response and it was produced as soon as
23 possible and we would say in good time to enable
24 the Claimants to take it up with the Defendants' factual
25 witnesses, should they wish to do so. In summary, what

1 Dr Majumdar did was to respond to the points about
2 the utility, in principle, of the by-platform
3 sensitivity and also to address Mr Hughes' two new
4 alternative ways of conducting that sensitivity if it
5 transpires to be a relevant exercise.

6 Now, we say that this is a difference of opinion
7 between the experts which already appears both on
8 the face of their respective reports and on the face of
9 the joint expert statement.

10 THE CHAIRMAN: It is not raising a new front, you say.

11 MS FORD: It is not raising a new front as such. It is
12 a matter that the Tribunal is going to have to resolve
13 in any event, and the position that has been set out in
14 this most recent note is Dr Majumdar's most up-to-date
15 position on the issue in the light of the way in which
16 this debate has evolved between the experts.

17 So, in our submission, there is no particular
18 utility to the Tribunal in excluding this material and
19 we do submit that it would be helpful to have a written
20 statement of Dr Majumdar's up-to-date position in good
21 time, rather than the alternative, which would have been
22 to wait until the hot tub was conducted and for
23 Dr Majumdar to be making these points essentially for
24 the first time orally in the hot tub.

25 Mr West's alternative suggestion, yesterday, was

1 that the timing of this should somehow go to weight, and
2 in our submission, that really is not appropriate,
3 because there is a concrete issue here as to whether
4 the finding of the overcharge is robust or whether the
5 uncertainty as to the RFQ date --

6 THE CHAIRMAN: That is a matter for submission in due
7 course, of course. If something is served late,
8 obviously there may be issues that there has not been
9 time to respond to, and that would go to weight and so
10 forth, but we will see where we get to on that.
11 We cannot make a ruling on that today.

12 MS FORD: I am grateful. I will address those in due course
13 then.

14 Just to address specifically the third statement of
15 Mr Arango, which is the other element of this.

16 THE CHAIRMAN: Yes.

17 MS FORD: The Tribunal will have seen that that is extremely
18 short and it goes to a narrow, discrete issue, namely
19 whether a modification to an OSS product during
20 the course of production results in its part number
21 being changed. Just to explain where that fits in, in
22 his first report, at paragraph 2.7.1, Mr Hughes said
23 {E1/2/50}:

24 "I cannot distinguish between contracts associated
25 with New Parts and Existing Parts in the Claimants'

1 data."

2 Dr Majumdar noted that statement in his column of
3 the joint expert statement, proposition 40 {E1/13/28},
4 and he pointed out that that suggested that Mr Hughes'
5 model was "liable to mistake existing parts for new
6 parts". He went on to point out that because Mr Hughes
7 also indicated that an RFQ would not be issued for
8 existing parts, that tended to suggest that articles
9 without an RFQ date in Mr Hughes' model are likely to be
10 on the same platform as another article and may well be
11 existing parts, and so that is the core of this
12 by-platform sensitivity, it goes to that point.

13 Mr Hughes responded to that in the joint expert
14 statement. He said:

15 "Dr Majumdar refers to the possibility of existing
16 parts being mistaken for new parts, but he appears to
17 have misread my footnote as I only include new contracts
18 for which there is a new part number and sufficient
19 volumes associated with this new part number."

20 Then he made that point again expressly in
21 the context of his most recent note, and perhaps I can
22 just show the Tribunal the paragraph. It is {E1/14/3}
23 and it is paragraph 2.5. He says:

24 "First, my econometric models only identify New
25 Contracts (and new RFQs) in relation to new part

1 numbers, not revisions to the prices of existing part
2 numbers. In short, contrary to Dr Majumdar's
3 assumption, even 'facelifts, mid-cycle updates or even
4 minor product changes' would be treated as price
5 amendments ... by my econometric models unless there is
6 a new part number."

7 So what has only very recently become clear is that
8 Mr Hughes is proceeding on the basis of an important
9 assumption about the data. So he is assuming that
10 mid-life changes to OSS products do not result in a new
11 part number, and on that basis he says, "My model only
12 includes new contracts and new RFQs in relation to new
13 part numbers, not revisions to the prices of existing
14 part numbers."

15 It is that assumption which we say has only
16 crystallised relatively recently which we consider to be
17 factually incorrect and that is the discrete point that
18 Mr Arango's third statement addresses. The key
19 paragraph is paragraph 7, where he says {D/8/2}:

20 "Where there is a modification to the product (such
21 as to the design, raw material, or manufacturing
22 process), it is likely that there will be a change to
23 these [part numbers], including a change in PSA's [part
24 number] for that part."

25 That would mean that Mr Hughes' model does include

1 scenarios where there have been mid-life changes to OSS
2 products and the by-platform sensitivity is relevant to
3 capture those. So that is where this point fits in, and
4 in our submission, we have put this in early enough that
5 if the Claimants do wish to explore this point with
6 the Defendants' witnesses, then they still have
7 the opportunity to do so.

8 THE CHAIRMAN: So where are we on whether in fact, if there
9 is a point you get a modification to a product, there is
10 likely to be an RFQ? We had some ...

11 MS FORD: Yes, so that was a matter that was partly explored
12 with Mr MacQueen, who of course is the PSA witness and
13 it relates to PSA data.

14 THE CHAIRMAN: Yes.

15 MS FORD: Mr Hughes himself has indicated that in relation
16 to mid-life changes, you might not necessarily see an
17 RFQ response. That is the --

18 THE CHAIRMAN: Have you put any evidence in on this?

19 MS FORD: As to whether you would -- yes, I think
20 the Defendants do put in evidence on whether you would
21 get RFQs for mid-life changes, but I am afraid I do not
22 have the particular references to hand.

23 THE CHAIRMAN: (Inaudible). No, okay. All right.

24 MS FORD: But it is very much already -- that element,
25 whether you would RFQ for an existing product, is

1 already on the face of the evidence, so the only new
2 element is very specifically --

3 THE CHAIRMAN: Is about part numbers.

4 MS FORD: -- in relation to part numbers.

5 THE CHAIRMAN: Yes, okay, understood.

6 Mr West.

7 Submissions by MR WEST

8 MR WEST: Gentlemen, you were sent the new 9-page report or
9 note from Dr Majumdar and the new Arango 3 just after
10 2 pm on Friday, so just as we were going into
11 the afternoon witness session. The Tribunal was not
12 told about it at the time and I was unaware of it until
13 after the hearing. It relates to PSA's procurement
14 processes because the data concerning overcharge is
15 based on PSA's data and so the relevant witness to
16 address it was Mr MacQueen, although I do not know
17 whether he would in fact be able to address this sort of
18 technical detail. But a question was put to Mr MacQueen
19 which seems to be based on Arango 3. That is in
20 the transcript for {Day3/194}, where my friend said --

21 THE CHAIRMAN: Just bring that up.

22 MR WEST: I believe there is an Opus -- it is the "Realtime"
23 tab in Opus. So {Day3/194}, if that can be brought up.

24 PROFESSOR NEUBERGER: It is coming up.

25 THE CHAIRMAN: That is great. Thank you very much.

1 MR WEST: So from about line 15:

2 "... I think it is fair to say, you are saying that
3 you would not be looking to change a supplier partway
4 through the project because of the costs that are being
5 incurred. So it is fair to say that your point broadly
6 is that if you were to make a small modification to an
7 OSS product you would not normally bother to issue an
8 RFQ in respect of them?"

9 That seems to be the point that Mr Arango makes in
10 his third --

11 THE CHAIRMAN: Just go down. Just scroll down a little bit
12 to see what the answer is. Can we just scroll down
13 a little?

14 (Pause).

15 All right.

16 MR WEST: It is not actually clear that Mr MacQueen
17 understood the point being made to him because --

18 THE CHAIRMAN: Sorry, just give me the page number again in
19 the transcript.

20 MR WEST: 194.

21 THE CHAIRMAN: So the transcripts are not numbered
22 sequentially. You start back at -- that makes it
23 a little bit confusing. Right. It would be helpful if
24 they are numbered from 1 through to 3,000, or whatever
25 we get to, rather than each day starting back at 1

1 again.

2 Anyway, yes, so what number was it, sorry?

3 MR WEST: 194.

4 (Pause).

5 THE CHAIRMAN: Right. That does not quite get resolved
6 that, does it?

7 MR WEST: No, as I say, it is not clear that he understands
8 the point being put to him because his evidence
9 addresses this question of a mid-life refresh where
10 there is a cosmetic refresh to the car halfway through
11 its serial production life, and the evidence on that is
12 that there would be -- well, the evidence on that was
13 twofold: one, it did not tend to apply to OSS components
14 because they are not cosmetic components -- I did
15 address this in opening -- and, two, if it did happen --
16 and the only example in the evidence relates to steering
17 wheels which have a cosmetic element -- there would be
18 an RFQ. That is the point about mid-life refreshes.

19 But what Mr Arango addresses is something slightly
20 different: follow-on parts, which, as far as I am
21 concerned, is completely new terminology, which we got
22 for the first time on Friday. What Mr Arango says in
23 his new witness statement at paragraphs 6 to 7 {D/8/2}
24 is sometimes there is a change to an OSS part during --

25 THE CHAIRMAN: Hang on, sorry, I just need to pick it up.

1 Sorry. (Pause).

2 MR WEST: I do not know if this will be able to be produced
3 on Opus, as yet. I am sure --

4 THE CHAIRMAN: It is all right, I have got it. Keep going.

5 MR WEST: So:

6 "It is common for changes to be made to OSS parts
7 during their serial life. For instance, a customer
8 might change the length of the webbing for a seat belt
9 or modify the length of a buckle ... [or] might add
10 cosmetic parts or switches. Other examples include
11 changing the colours of the webbing ... connector type
12 or ... plastic cover ... there [might] be ... change[s]
13 in the raw material ..."

14 So he is referring now to very, very minor changes.

15 Then he says, in paragraph 7, the parties:

16 "... have their own part numbers ... for ...
17 components ..."

18 ZF and PSA have different part numbers, and:

19 "Where there is a modification [he says] it is
20 likely there will be a change to these [part numbers],
21 including a change in PSA's [part number] ... This
22 enables ZF and the customer to track the product [but]
23 ... For minor modifications, like a sticker change, only
24 the 'index' of the [part number] might be updated ..."

25 Then he says --

1 THE CHAIRMAN: So what is a sticker change?

2 MR WEST: It might be where the information required to be
3 displayed on a sticker on the product is changed and
4 they have to change the sticker.

5 THE CHAIRMAN: Right, literally just that. Yes, okay,
6 I understand.

7 MR WEST: Then:

8 "[Part number] changes are related to modifications
9 made to the OSS part rather than signifying a new RFQ."

10 THE CHAIRMAN: Right.

11 MR WEST: So this seems to be a new point, it is not just
12 tied to mid-life facelifts. He is saying, in other
13 cases, you would have minor modifications and in some of
14 those cases you might not have a change -- you might
15 have a change to the part number.

16 THE CHAIRMAN: I mean, it is not an astonishing proposition
17 that if you -- that you have got to change part number
18 otherwise you would be putting the wrong seatbelts in
19 the cars. You know, presumably the entire manufacturing
20 process requires identification with some precision that
21 the right part is going to the right car, so it would be
22 a surprising proposition if they all had the same part
23 number irrespective of the length of seatbelt,
24 the colour, that would be a surprising proposition, so
25 none of this can be coming as a surprise.

1 But is your position that the part numbers do not
2 change?

3 MR WEST: Well, Mr Arango's position is that the part
4 numbers sometimes change. It is likely that there will
5 be a change to the part numbers. So he does not say it
6 always happens irrespective of the nature of
7 the modification.

8 THE CHAIRMAN: Right, and Mr Arango is giving evidence?

9 MR WEST: Mr Arango is giving evidence tomorrow.

10 THE CHAIRMAN: Tomorrow, fine. Well, we can explore that
11 with him.

12 MR WEST: He gives one example which relates to a seatbelt
13 and that is at paragraph 10 {D/8/3}.

14 THE CHAIRMAN: Yes.

15 MR WEST: Of some paragraph numbers changing -- sorry, part
16 numbers changing.

17 THE CHAIRMAN: But you are not running a positive case that
18 part numbers do not change? You have not put that in
19 your evidence or ...?

20 MR WEST: My case is that this is a new point that is being
21 raised for the first time concerning what is known
22 as "follow-on parts", and that is a situation where you
23 have a minor modification, not tied necessarily to
24 a facelift, the mid-season facelift, and in those cases
25 you have a new part number without an RFQ. Now, that is

1 -- I am saying that is a new point.

2 THE CHAIRMAN: I understand the RFQ business, maybe, but we
3 are talking about part numbers.

4 MR WEST: Yes.

5 THE CHAIRMAN: You are not suggesting that when a part
6 changes, whether it is major or minor, it does not have
7 a new part number; that is not part of your case and not
8 part of Mr Hughes analysis.

9 MR WEST: Can I say this again. This is a new point, I do
10 not have a case on this because it has only just been
11 raised.

12 THE CHAIRMAN: Right.

13 MR WEST: We will have to investigate on our side whether we
14 accept, if we are able to investigate it, that whenever
15 you have even a very minor technical change, there is
16 either sometimes or always a different part number.

17 THE CHAIRMAN: Yes, but if you do not have a position on it,
18 then the result is you and then presumably Mr Hughes do
19 not know, do not have a position at all?

20 MR WEST: This is a new point raised on Friday --

21 THE CHAIRMAN: I understand --

22 MR WEST: -- which we have not had the chance to look into
23 yet.

24 THE CHAIRMAN: Okay, all right.

25 MR WEST: We may be able to get to a position. Whether we

1 can do that before Mr Arango gives his evidence tomorrow
2 seems highly doubtful, but it may be possible to make
3 some enquiries --

4 THE CHAIRMAN: Right.

5 MR WEST: -- on this question of whether it always happened,
6 or sometimes, or there was a variety of different
7 possibilities.

8 THE CHAIRMAN: Okay, well, there we are. That is on part
9 numbers.

10 Where are we on the --

11 MR WEST: Well, this whole point is really about part
12 numbers --

13 THE CHAIRMAN: Yes.

14 MR WEST: -- and whether ... so as my friend explained, this
15 all goes to the by-platform sensitivity.

16 THE CHAIRMAN: Yes.

17 MR WEST: So, previously, as I opened the case, the point
18 being made is that that was a sensible sensitivity,
19 because when there was no RFQ date for a particular part
20 number, the explanation might be that it was a mid-cycle
21 facelift. But as I have explained, the evidence was you
22 do not have mid-cycle facelifts for OSS products, except
23 possibly on steering wheels and even then you would have
24 an RFQ. So this is a different point, this is not tied
25 to a mid-cycle face lift saying: nevertheless, you might

1 have small minor changes to the product over its life,
2 and in those cases you might have a new part number, but
3 not an RFQ, so the RFQ for that part number is at
4 the start of the platform and that is another reason why
5 this is a sensible sensitivity.

6 So that is what this all goes to, and in my
7 submission, effectively it is a new factual case for why
8 the by-platform sensitivity is a reasonable sensitivity,
9 not because of the mid-life facelift but because you
10 might have other small technical changes to the part
11 resulting in a different part number.

12 Now, as I say, Mr MacQueen was not shown this new
13 evidence -- although he appears to have been asked
14 about it, or asked a question based on it -- either
15 within the three-day notification period this Tribunal
16 set down or otherwise, and we say this is effectively an
17 attempt to introduce a new factual theory at a very late
18 stage of the case.

19 Now, when I first saw the terminology of "follow-on"
20 on Friday, I assumed what was being referred to is
21 something that is addressed in the evidence, which is
22 carry-over parts, but that does not seem to be the same
23 thing. So carry-over parts is where the same part is
24 used for a different vehicle and there is evidence about
25 that already, but the evidence is that there would be an

1 RFQ in that case, so it is not relevant to this
2 sensitivity. But as I now understand it, it is
3 a different thing, it is something called a "follow-on
4 part", which has not previously been addressed, as far
5 as I am aware, in any of the evidence, not related to
6 a facelift but just a minor technical change leading to
7 there being a new part number.

8 THE CHAIRMAN: Sorry, I am just trying to follow this -- it
9 is not your fault, Mr West, it is mine. You say
10 the major point behind this is whether a change on
11 a product will result in a new RFQ, and your submission
12 was that in these sorts of products you do not usually
13 get changes during the period of the model's life:
14 seatbelts -- you put a seatbelt in at the beginning and
15 no one says, realistically, most of the time, "Let's go
16 for a green seatbelt this autumn", they just carry on
17 producing the same seatbelts. So the main issue, unless
18 I am misunderstanding, is whether actually these
19 products change during the lifetime of the vehicle.
20 There may be exceptions when they do, but mostly you say
21 they do not. Is that the position?

22 MR WEST: My position is that this is a new -- sorry to
23 raise it again. This is a new factual theory --

24 THE CHAIRMAN: I know this is. I am just trying to pull
25 back and just look at the case, where we are on

1 the case. We have got an issue as to RFQ dates, that
2 has --

3 MR WEST: Yes.

4 THE CHAIRMAN: -- been well described. We are now focusing
5 in on -- we are not interested in part numbers per se,
6 we do not care about that because we do not have to make
7 a decision on part numbers. What we are actually
8 concerned about is whether there are missing RFQs,
9 I think; is that not the point we are going to?

10 MR WEST: If I can take a step back. This is all to do with
11 the fact that for some of the contracts, we do not have
12 an RFQ date.

13 THE CHAIRMAN: Yes.

14 MR WEST: So Mr Hughes, as you know, says, "Well, what I do
15 is I take ..." --

16 THE CHAIRMAN: When you say we do not have an RFQ date, we
17 do not have an RFQ; we do not know if there is an RFQ,
18 we are having to assume there is an RFQ.

19 MR WEST: We do not know if -- well, there must have been an
20 RFQ at some point but we do not know the date of it. So
21 Mr Hughes says, "I assume 30 months prior to the start
22 of production".

23 THE CHAIRMAN: Sorry, just so that I am following. We know
24 for a new part, a new platform, completely new seatbelt,
25 new model, there will be an RFQ.

1 MR WEST: Yes.

2 THE CHAIRMAN: Then the question comes as to whether or not
3 there are RFQs during the life of the product because of
4 changes.

5 MR WEST: Whether there is a separate RFQ.

6 THE CHAIRMAN: A separate RFQ, yes.

7 MR WEST: Because if there is a separate RFQ, then that is
8 the relevant RFQ date, but if the only RFQ is at
9 the start because there is no separate RFQ relating to
10 the change, then Dr Majumdar says, "Well, that is
11 a reason to adopt my by-platform sensitivity", because
12 his by-platform sensitivity assumes that the RFQ is at
13 the start.

14 THE CHAIRMAN: Yes.

15 MR WEST: So he says: when you can have this change of
16 a part with a new part number but no RFQ, and if we have
17 some examples of that, that is a reason to adopt my
18 by-platform sensitivity because in those cases the only
19 RFQ is at the start. That is what I say is this new
20 point being raised in the evidence. So it is not
21 something that we have investigated to date, to what
22 extent did this happen, you would have new part numbers
23 due to minor technical changes.

24 THE CHAIRMAN: Yes, but it is not a new point coming out of
25 left field, it is something that is potentially relevant

1 to Mr Hughes' analysis.

2 MR WEST: Yes.

3 THE CHAIRMAN: As we drill down and the issues have become

4 -- I mean, it is not a completely new point, it is

5 something that has emerged following the --

6 MR WEST: What I say has always been clear in Mr Hughes'

7 evidence is that he has defined new contracts and

8 therefore RFQs by reference to part numbers. So his

9 approach is: where I do not know the RFQ date, I take

10 the start of production date, which is defined by

11 the part --

12 THE CHAIRMAN: Yes, yes, exactly --

13 MR WEST: -- and I subtract 30 months.

14 THE CHAIRMAN: -- so it is an issue which is --

15 MR WEST: So the fact that he assumes that wherever there is

16 a different part there is an RFQ date has always been in

17 his evidence.

18 THE CHAIRMAN: Yes.

19 MR WEST: Indeed I think my friend said that in his first

20 statement, he accepts, "I cannot distinguish whether

21 this is a new contract".

22 THE CHAIRMAN: Mr West, it is an issue, but that is

23 the point I am putting to you. This has always been

24 part of the analysis, and if that information is not

25 correct, plainly that impacts the way we approach

1 Mr Hughes' evidence, and to shut the Defendants out from
2 exploring that point, or putting evidence in on that
3 point would seem to be unsatisfactory.

4 MR WEST: Well, I think that that seems to suggest a sort of
5 roving permission to continue adducing new evidence
6 without reference to the dates that the Tribunal
7 actually required this evidence to be produced.
8 The main difficulty which I am now in is that it may be
9 said, next week or perhaps by Mr Arango tomorrow, this
10 was a common thing, it happened a lot and it was
11 frequent for there not to be an RFQ, and how are -- we
12 just have very little time to investigate that now,
13 because of how late in the day this has been produced.

14 So, as I say, Mr --

15 THE CHAIRMAN: How much time do you need to investigate it?

16 MR WEST: Well, I do not know. It is obviously a technical
17 point.

18 THE CHAIRMAN: Well, you had it on Friday, we are now on
19 Tuesday.

20 MR WEST: Well --

21 THE CHAIRMAN: I am not expecting you to have arrived at an
22 answer, but finding out who you need to speak to and --

23 MR WEST: Well, on the assumption that the Tribunal allows
24 it in, we will obviously do our best, so far as we can,
25 both on the facts and with Mr Hughes, if he is able to

1 cast light on this, and I will have to do my best with
2 Mr Arango tomorrow. But I will be asking the court --
3 the Tribunal to bear in mind that this was presented
4 to us very late and also to bear in mind when looking at
5 that evidence that Mr MacQueen gave, it is not quite
6 clear that he understood what this point was, and that
7 is, in my submission, understandable.

8 Reply submissions by MS FORD

9 MS FORD: Sir, I would like the opportunity to address
10 the submission that has been made a number of times now
11 that Mr MacQueen may not have understood the point.
12 Mr MacQueen's evidence, at paragraph 17 of his second
13 statement, has been debated as between the experts and
14 we can see that, the joint expert statement,
15 proposition 40 {E1/13/28}.

16 THE CHAIRMAN: Just bring that up.

17 MS FORD: In Mr Hughes' column, in proposition 40, Mr Hughes
18 makes the observation:

19 "Second, disregarding my first point, Dr Majumdar
20 wishes to use Mr MacQueen's comments to justify his view
21 that where contract dates are not known that there was
22 no RFQ. However, Mr MacQueen instead makes the point in
23 his second witness statement that facelifts and
24 mid-cycle updates for OSS components are 'rare',
25 regardless of how they are procured (whether by open RFQ

1 or not), such that it is unlikely that this would
2 explain why RFQ dates are missing."

3 So the experts have engaged on a particular
4 paragraph --

5 THE CHAIRMAN: I understand the point.

6 MS FORD: -- of Mr MacQueen's evidence --

7 THE CHAIRMAN: I understand the point.

8 MS FORD: -- and I asked him about it.

9 MR WEST: But that is to do with the mid-cycle facelift
10 issue.

11 THE CHAIRMAN: Well, anyway, there we are. I do not want to
12 debate this now. Clearly we need to get this right.

13 Your concern is dealing with the narrow point of
14 when you get new part numbers, as I understand it?

15 MR WEST: That is right. So forget about facelifts, where
16 one has a new part number during the life of
17 a particular part due to a minor technical change, might
18 that justify the new contract -- sorry, the by-platform
19 sensitivity? Because it has been said that in those
20 cases there was only an RFQ at the start and therefore
21 it was appropriate to take the start of the platform as
22 the RFQ date for those parts even though the part number
23 itself is dated later.

24 Mr Arango gives one example. It may be said, well,
25 this explains all of the -- or, no, it may be said this

1 explains more than just one example of the missing RFQ
2 dates, although in Mr -- sorry, Dr Majumdar, in his
3 report actually says it only explains a small proportion
4 of them. That is in his report, if you look at
5 paragraph 22.

6 THE CHAIRMAN: Anyway, the part issue, as I understand, your
7 objection to this evidence is about the part number,
8 the part number point; is that right? That is what you
9 say you need to -- you will have trouble dealing with.

10 MR WEST: The point that you could have a new part number
11 for an existing part, but that would not have an RFQ, it
12 would simply be caused by a minor technical change, and
13 that is a justification for the by-platform sensitivity.
14 That is what I say is the point that, as far as I am
15 concerned certainly, was raised for the first time on
16 Friday.

17 THE CHAIRMAN: In terms of evidence, what have you produced
18 on missing RFQs, why there are missing RFQs?

19 MR WEST: I am not sure we have any evidence on that
20 specifically. Where there is a proposed explanation,
21 which was the mid-life refresh, we have engaged with
22 that and said, well, that is not the explanation because
23 in those cases there would be an RFQ. In any case, it
24 did not apply to OSS. So I am not sure there is any
25 specific evidence, it is just to do with the nature of

1 the data.

2 THE CHAIRMAN: But as I understand, for 60% of
3 the contracts, or 60% of something, we do not have RFQs,
4 so we are having to be making assumptions --

5 MR WEST: Yes.

6 THE CHAIRMAN: -- about when those -- and the important
7 thing about it is when those RFQs started, as
8 I understand.

9 MR WEST: Yes.

10 THE CHAIRMAN: What evidence is there on why there are so
11 many RFQs missing? Is this a document destruction
12 policy, is it a --

13 MR WEST: No, it is just the nature of the data. So I ask
14 the Tribunal to bear in mind that this is the PSA data,
15 which is the best data and the only useable data.

16 THE CHAIRMAN: Yes.

17 MR WEST: All the other data from the Claimants and from
18 the Defendants did not enable analysis of this kind to
19 be done at all, so this is the best data which has been
20 led, this is, if you like, the gold standard for
21 the data.

22 THE CHAIRMAN: But as I understand, there is an issue as to
23 whether the 60% missing RFQs are indeed RFQs, that is an
24 issue in these proceedings.

25 MR WEST: There is an issue -- well, there will have been an

1 RFQ but the question is whether one should assume it was
2 at the start of the platform or it was 30 months before
3 the start of production date for the part. Now,
4 Dr Majumdar, to be fair, he says the 30-month assumption
5 is a reasonable assumption but he wishes to apply
6 sensitivity and the sensitivity is: do you get the same
7 results if you apply the by platform date and assume
8 the RFQ was then?

9 Now, another important aspect of the most recent
10 note we got on Friday is that in Mr Hughes' further note
11 on 23 September, he pointed out that Dr Majumdar in his
12 report had said, "If you apply my by-platform
13 sensitivity" -- I did explain this in opening
14 -- "the overcharges vanish". Mr Hughes went back and
15 looked again at what Dr Majumdar had done and found that
16 Dr Majumdar had in fact not just replaced unknown RFQ
17 dates but known RFQ dates, and he found that if you
18 rerun the model putting the known RFQ dates back in, you
19 still find overcharges. Importantly -- and I do accept
20 Dr Majumdar is justified in having said something more
21 about this -- in his most recent note on Friday,
22 Dr Majumdar holds his hands up and he says, "I got it
23 wrong; Mr Hughes is right, I did put in -- I did take
24 out the known RFQ dates as well as the unknown ones".
25 So that, we accept, is a legitimate point for him to

1 accept. What I was concerned about is what he then goes
2 on to say with this new factual point about --

3 THE CHAIRMAN: So which paragraphs are you objecting to
4 specifically?

5 MR WEST: Well, paragraph 5 {E1/15/2}, as I say, is the one
6 where he accepts that Mr Hughes -- his criticism of --

7 THE CHAIRMAN: So paragraph 5 of Majumdar?

8 MR WEST: Of the new note. The balance of this can really
9 be divided into two. I have not done an analysis by
10 paragraph numbers, but he really does two things. One
11 is, he addresses this point about the product number,
12 there being a new product number. So that is one of
13 the things he does.

14 Then the other thing he does is he just goes back
15 and produces a new analysis of RFQ dates which has
16 nothing to do with the product number. If you see, for
17 example, at figure 1 of the new note --

18 THE CHAIRMAN: Sorry, new analysis RFQ dates. Yes, so
19 figure 1 {E1/15/5}.

20 MR WEST: If you look at the bottom.

21 "Source: RBB Economics analysis based on
22 the Hughes 1 dataset."

23 So he has just gone back and had another go at
24 justifying the by-platform sensitivity. This particular
25 point is not related to the point about the product

1 numbers.

2 THE CHAIRMAN: So you are not objecting to this?

3 MR WEST: No, I am saying that insofar as the Tribunal
4 thinks it is reasonable for Dr Majumdar to put in new
5 responsive material, this is not actually responsive to
6 anything, this is just another bite at the cherry.

7 THE CHAIRMAN: Right, I mean, the position at the moment is
8 we have a lot of notes and reports which are strictly
9 out of time. The witnesses are going into the hot tub
10 and they are going to say a lot of things that are in
11 these later reports, and so excluding them seems,
12 insofar as they are expressions of opinion, seems
13 inappropriate and they are matters that the experts will
14 have to deal with, with the experts. The question is,
15 what is there in here that you cannot deal -- your
16 submission is you cannot reasonably deal with in time
17 for this trial, and so far I have got one point, which
18 is the part numbers point.

19 MR WEST: That is really the only additional factual point.

20 THE CHAIRMAN: Right.

21 MR WEST: We will obviously -- I hear what the Tribunal is
22 saying and I entirely understand the Tribunal's
23 preconception that it has to try to get to the bottom of
24 this matter rather than excluding points on technical
25 grounds, but I would ask the court -- the Tribunal in

1 due course to bear in mind, depending where we get to on
2 the facts of this, to bear in mind that we have had
3 limited time to look into the point. We will obviously
4 do our best. I would also seek permission, if we are
5 able to get hold of any documentation in advance of
6 Mr Arango tomorrow, to put that to him, even though he
7 has not been given the three days' notice that
8 the Tribunal previously required for any documents being
9 put to witnesses. If it is only something we can get
10 hold of -- well, it would have to be today.

11 THE CHAIRMAN: Yes, well, we will address that when we get
12 to it, but obviously that would be a submission you can
13 make and we can certainly look at it, but you have not
14 got the document yet, so we cannot really.

15 MR WEST: No.

16 Ruling

17 THE CHAIRMAN: Obviously this question of part numbers, we
18 do not want it to be -- the Tribunal to make incorrect
19 findings in relation to this, so insofar as it needs to
20 be explored further, you can address us on that.
21 Whether that involves recalling a witness or introducing
22 another witness, or further documents, we, at this
23 stage, will keep an open mind, but it is plainly
24 potentially a relevant matter, it is a matter which has
25 been relevant, albeit not fully explored, for some time

1 during these proceedings and in our view it would be
2 wrong to keep it out.

3 MR WEST: Yes.

4 THE CHAIRMAN: So we will allow it in, but obviously we will
5 have to see how you get on with your enquiries in
6 relation to this matter.

7 MR WEST: I am very grateful.

8 (Pause).

9 PROFESSOR NEUBERGER: Mr West, I understand obviously that
10 there is a dispute between the parties about
11 the relevance and suitability of the platform-based
12 analysis, but do I detect a tone of agreement between
13 the experts about how the regression should be run on
14 the by-platform sensitivity? Is that now agreed
15 between --

16 MR WEST: Yes, that is paragraph 5 {E1/15/2} of
17 Dr Majumdar's most recent note, where he now, as
18 I understand it, accepts that he was wrong in his first
19 report to say that there are no overcharges and he now
20 accepts that there are.

21 There is a dispute between them, which, Professor,
22 you will see -- actually, we see it later on, about
23 the extent to which the results support the original --

24 PROFESSOR NEUBERGER: I understand that.

25 MR WEST: -- specification.

1 PROFESSOR NEUBERGER: My concern really was that there was
2 no point -- it would be a complete waste of time in
3 the hot tub to go through versions of the regression
4 which one or the other party had conceded are no longer
5 suitable, and therefore I am simply asking whether there
6 is agreement that if we look at the by-platform
7 sensitivity, it is clear what regression results we are
8 looking at. Was that not established between
9 the parties?

10 MR WEST: My understanding is that is what paragraph 5 says,
11 but my friend may be able to help.

12 MS FORD: Sir, I am just rising to agree with that and
13 actually the relevant paragraph is also paragraph 30,
14 where Dr Majumdar says {E1/15/9}:

15 "To address his concerns with the implementation of
16 the by-platform sensitivity, Mr Hughes 'propose[s] two
17 alternative approaches'. I agree with Mr Hughes that
18 these are better ways to address this sensitivity test."

19 So he has essentially, by virtue of this note, tried
20 to narrow the scope of their dispute.

21 PROFESSOR NEUBERGER: That is very helpful.

22 MR WEST: As I say, that is then summarised at 31 and 32,
23 where Dr Majumdar accepts, because there are two ways of
24 implementing this by-platform sensitivity, which depend
25 on whether one uses the earliest known or the earliest

1 estimated date for the platform, and Dr Majumdar here
2 accepts Mr Hughes' results. So, in a sense, this is
3 progress, because --

4 PROFESSOR NEUBERGER: Yes.

5 MR WEST: -- the debate has narrowed, but there is now
6 a further point in issue, which is: were some of these
7 new product numbers actually the same product, just
8 subject to a minor variation and possibly to what extent
9 might that have been the case? As I say, even on
10 Dr Majumdar's case -- this is paragraph 22, which
11 I mentioned but I do not think we went to, there is
12 a table there where he sets out "Articles with unknown
13 RFQ dates" {E1/15/7} and the ones which he says are
14 candidates for being a follow-on, and it is only
15 actually about 15% that he says are even candidates for
16 being a follow-on. So this is not an explanation of
17 the balance of the missing RFQ dates, it is only a small
18 proportion of them. All of this really goes to what
19 Donald Rumsfeld would have called a "known unknown", we
20 do not know the RFQ date and we are doing our best to
21 identify a reasonable assumption for what it might be.
22 As the Professor pointed out, in fact the parties are
23 agreed that even if you use this assumption, you do get
24 some of the overcharges, in fact all of them I think in
25 the early period and some of them for each of

1 the different types of OSS product on at least one of
2 the versions of the sensitivity.

3 THE CHAIRMAN: So I think it would be helpful, in particular
4 in relation to Dr Majumdar's sensitivity testing, given
5 there have now been several rounds of evidence, if we
6 could have the experts produce a document saying what
7 remains in issue between them.

8 MR WEST: Would it be sensible for that to be part of
9 the revised joint expert statement that they have been
10 asked to produce?

11 THE CHAIRMAN: Yes, it may be just slightly more helpful,
12 rather than to have boxes, to have it in a slightly more
13 narrative form, which is some -- not go down the route
14 I suggested yesterday, but perhaps instead just to have
15 two or three pages saying, "Look, this is what remains
16 between us", and I think we only need to do that in
17 relation to the sensitivity testing.

18 PROFESSOR NEUBERGER: Yes.

19 THE CHAIRMAN: So probably other matters do not need to be
20 revisited, I think we understand the scope, and from
21 what you are saying, that document could probably be
22 quite short -- I mean, it is going to be quite short,
23 but it could be drafted easily as quite short because
24 things have narrowed considerably, but just so that we
25 know -- make sure we address the correct points.

1 MR WEST: So just to make sure I have understood, there is
2 not a need for a new joint experts statement?

3 THE CHAIRMAN: No, I think we will do this as this will be
4 a supplement to the joint experts statement and we will
5 need that obviously because we have got to consider
6 matters in the hot tub, so we will need that as soon as
7 possible. I do not know when that can reasonably be
8 done, obviously you will need to involve the experts.
9 Where are we? We are on Tuesday. If it could be done
10 by close of business on Thursday, that would be helpful.

11 MR WEST: We will certainly do our best.

12 THE CHAIRMAN: So just identifying the issues and,
13 insofar as you are able to draw our attention to key
14 paragraphs, if they are not -- and then at the later
15 state of affairs, that would be helpful as well.

16 MR WEST: I think the next item of business is to call
17 Mr Couturier unless ...? Yes, we can probably proceed
18 to do that now?

19 THE CHAIRMAN: Yes, thank you very much.

20 MR BENOIT COUTURIER (affirmed)

21 (All answers given in English unless otherwise indicated)

22 THE CHAIRMAN: Please take a seat.

23 MR WEST: (Off microphone - inaudible).

24 THE CHAIRMAN: You are still bound by your previous
25 affirmation.

1 THE INTERPRETER: Of course.

2 Examination-in-chief by MR WEST

3 MR WEST: Good morning, Mr Couturier. Could you look at
4 tab 16, please, of bundle B {B/16/1}.

5 A. 16?

6 Q. Tab 16.

7 A. Yeah.

8 Q. Is that your witness statement in these proceedings?

9 A. Yes, it is.

10 Q. If you go forward in that tab to page {B/16/13} --

11 A. Yes.

12 Q. -- is that your electronic signature?

13 A. It is.

14 Q. Are the contents of this statement true to the best of
15 your knowledge and belief?

16 A. Sorry, can you repeat that?

17 Q. Are the contents of the statement true to the best of
18 your knowledge and belief?

19 A. That's correct.

20 Q. Does this statement provide the evidence you wish to
21 give in these proceedings?

22 A. Yes.

23 Q. Just before we proceed to cross-examination, the list --
24 I mentioned this in opening. The list of documents
25 provided to Mr Couturier included one confidential

1 document. I am not sure if my friend is going to go
2 there, but if it is proposed to ask about that, we may
3 need to go into closed session.

4 THE CHAIRMAN: Fine, well, we will see how --

5 PROFESSOR BAILEY: If it assists, we are going to go to that
6 document, probably only for about two minutes, and
7 I would be very grateful, at that moment, I will flag
8 that we are going to go to the outer ring confidential
9 material, if we could sit in private. We did ask
10 the Claimants to de-designate this.

11 THE CHAIRMAN: Do we need to sit in private? Do you need to
12 read out?

13 PROFESSOR BAILEY: It is going to be quite difficult,
14 because at least two or three sentences on the slide
15 I do need to sort of -- I could ask the witness to read
16 it --

17 THE CHAIRMAN: You could ask the witness to read, then we
18 can all read them. Let us see how we get on and we will
19 go into private obviously if we have to, but if you can
20 do it without going into private, that is much more
21 satisfactory. People with the document can read
22 the document, you can identify the sentence. Obviously
23 if the answer requires disclosing confidential
24 information, we will have to go into ...

25 PROFESSOR BAILEY: I am grateful. I will do that.

1 THE CHAIRMAN: Is it worth pressing ahead on that basis and
2 seeing where we get to?

3 PROFESSOR BAILEY: I will do my very best to make sure that
4 we do not trespass on any confidential information.

5 THE CHAIRMAN: Thank you, Professor Bailey.

6 Cross-examination by PROFESSOR BAILEY

7 Good morning, Mr Couturier.

8 I am going to ask you some questions about your time
9 when Opel/Vauxhall were owned by General Motors between
10 2006 and 2011.

11 Can we go, please, to paragraph 11 of your
12 statement, that is in {B/16/4}, and you explain -- can
13 we go back one page, please {B/16/3}. Yes, thank you.
14 You explain here that you are comfortable discussing
15 what you refer to as "current pricing" of OV vehicles
16 between 2001 and 2005 and future pricing for new OV
17 vehicles from 2017 to 2020.

18 Now, apart from the Delta platform that you mention,
19 you were not involved in current or future pricing of OV
20 vehicles between 2006 and 2016; that is right, is it
21 not?

22 A. This is correct.

23 Q. I am grateful.

24 A. I was not involved between 2006 and 2017.

25 Q. Thank you.

1 If we go, please, to paragraph 36 of your statement,
2 that is on page {B/16/10}. Here, you explain that, at
3 the time of GM, OV distributed vehicles solely through
4 national sales companies. Then, in the next paragraph,
5 you explain that national sales companies sold either
6 directly to rental car companies, like Hertz, or to
7 independent dealers. But it is right, is it not, that
8 GM primarily sold new OV vehicles to independent
9 dealers? (Pause). So that the main sales channel is
10 what you refer to as "the private channel", sales to
11 dealers?

12 A. So, as I mention in my statement, most of our sales were
13 to the national sales company, but there was as well
14 some direct sales to the major rentals, Avis, Hertz, but
15 as well as big account, like I think I name Coca-Cola in
16 this statement, so there were some direct sales as well.

17 Q. Yes. Perhaps it might help to just pin this down. If
18 we go over the page {B/16/11}, please, to paragraph 39,
19 the point I was getting at is in the second sentence
20 there, where you say:

21 "The main one ..."

22 So the main sales channel:

23 "... is B2C ..."

24 Business to customer, in other words OEM GM to
25 dealer. So what I was putting to you is that GM

1 primarily, the main sales channel, was sales by GM of OV
2 vehicles to dealers; that is right, is it not?

3 A. It's -- B2C is the main channel for some segments, so
4 like the B segments, in the case of Opel it was
5 the Corsa, but it can be on the upper segment, like
6 the segment C, more on the B2B, like the big vehicles
7 becomes very often company cars and they are more B2B
8 related.

9 Q. I see.

10 In terms of the price that the dealers paid to GM,
11 would it be right that you have essentially
12 the following calculation, you have the list price set
13 by GM and you deduct from that the dealer margin and you
14 deduct from that any commercial support that GM may have
15 paid to the dealers and that calculates the price that
16 the dealer pays; is that correct?

17 A. It's not correct. Why? Because you forgot the tax. So
18 you've got the list price, you exclude the VAT, you
19 exclude in certain country other taxes, there's some
20 consumption tax in some countries, like Spain, for
21 example, and then you take out the dealer margin and
22 that become the dealer price which we invoice to
23 the dealer.

24 Q. So subject to your point about tax, you would agree with
25 me, that that is the price the dealer pays: list price

1 minus dealer margin, minus any commercial support, and
2 as you say, removing any taxes that might be payable,
3 that is the price of dealer pays?

4 A. Commercial support gets, let's say, after the dealer
5 price. So, again, list price, you take out VAT, other
6 sales tax in some countries, the dealer margin, that
7 becomes the dealer price that we invoice to the dealer.

8 Q. Thank you.

9 I would like to turn to GM's approach to what you
10 call "future pricing" and I would like us to look,
11 please, at a GM document. It is at {J3/31/1} and it is
12 rather wonderfully titled the "Pricing Cookbook", dated
13 in summer of 2007. Have you seen this document before?

14 A. I've read a portion of it in the last days, not before.

15 Q. If there is any portion of it that we go to that you
16 have not read, please tell me and I will give you an
17 opportunity to read it.

18 A. I will.

19 Q. So we can pick it up, please, at {J3/31/3} and
20 the opening sentence:

21 "The Pricing Cookbook is designed to assist Pricing
22 Specialists entering the field of Vehicle Pricing."

23 So that is its purpose.

24 If we can go down the page, under
25 the heading "Vehicle Pricing Function", the second

1 bullet:

2 "Why is it important, what do we try to achieve."

3 We can see in the second sentence:

4 "Selecting the right price is crucial in achieving
5 our profitability goals (recovering costs of production
6 and distribution ...)" --

7 THE CHAIRMAN: Can you just --

8 PROFESSOR BAILEY: I apologise.

9 THE CHAIRMAN: We are -- this is outer ring confidential.

10 PROFESSOR BAILEY: But my understanding, sir, is this has
11 been de-designated.

12 THE CHAIRMAN: Oh, this has been de-designated. Fine.

13 PROFESSOR BAILEY: No, I am grateful, sir.

14 So just to go back to it, so it is saying:

15 "Selecting the right price is crucial in achieving
16 our [so GM's] profitability goals (recovering
17 [the] costs of production and distribution and making
18 a profit). From the marketing perspective, the price of
19 a product is important in positioning our products
20 relative to competitors."

21 So just pausing there, it may be a statement of
22 the obvious, the vehicle price is crucial to achieve
23 GM's profitability goals, is it not?

24 A. That's correct. It's the revenue.

25 Q. Yes.

1 As part of achieving those profitability goals, we
2 can see that GM sought to recover cost of production,
3 cost of distribution; that is right, is it not?

4 A. Not completely, because you have -- so you've got
5 the revenue, the cost of the vehicle, but you've got
6 a bunch of other costs: the development costs,
7 the manufacturing costs, the consumer influence to
8 communicate. So this is a portion of it and --

9 Q. I am grateful. I apologise, sir.

10 A. Just to be complete. So revenue, we fix it, then we
11 have the -- all those costs that I just mentioned in
12 order to get to the profit. So, yes, it is crucial to
13 have the right price in order to have the right revenue.

14 Q. Yes. When you said it is at "the right price", and we
15 are covering the cost of production referred to here,
16 the cost of distribution, and then, as you rightly point
17 out, there are other costs, development costs, you have
18 to cover all of those costs, do you not, to achieve your
19 profitability goals?

20 A. That's correct.

21 Q. Of course one of those costs would have been
22 the variable cost of manufacturing
23 Occupant Safety System components?

24 A. That's correct.

25 Q. If we can move on, please, in this document to the next

1 page {J3/31/4} and at the bottom, we can see it has
2 a heading "Roles & responsibilities of a Pricing
3 Specialist". If we just turn over the page -- that is
4 just to show you the heading -- {J3/31/5}, we can see
5 that, about five lines down from the top:

6 "The Pricing Specialist's main responsibility are
7 Vehicle/Vehicle Option Prices, which are set during
8 the Pricing process."

9 Then, halfway down this page -- I am just trying to
10 show you the purpose of the document -- we can see that
11 it refers to the content of this cookbook. (Pause).

12 I apologise, can we go to {J3/31/10}, please. So,
13 halfway down, we can see it says:

14 "Pricing at GM CEE has different
15 characteristics ..."

16 Then the third sentence:

17 "The content of this Cookbook is oriented towards
18 OPEL pricing, even though many of its main principles
19 apply to Saab and Chevrolet as well."

20 That is just to show you that we are dealing with
21 Opel vehicle pricing in particular.

22 Then, at the bottom of this page, we come back to
23 the question of goals. The last paragraph:

24 "Most important goal for the GM CEE pricing is to
25 improve the company's ACM ..."

1 That is the aggregate contribution margin, is it
2 not?

3 A. That's correct.

4 Q. The aggregate contribution margin, very broadly, is
5 the total profit earned by GM?

6 A. That's not correct. The total profit you need to deduct
7 from the aggregate contribution margin all the other
8 costs which are the manufacturing cost, the engineering
9 development, the consumer influence, the administration
10 things and that you -- you arrive at the bottom, which
11 is the profit or the loss.

12 Q. So can we just go to page 90, please {J3/31/90}. So
13 this is a definitions section in this document and
14 I just put to you that aggregate contribution margin is
15 the total profit earned. That appears to be what this
16 document is saying. I just wonder if you want to
17 reconsider your answer.

18 A. So I would like just to be very concrete on this one.

19 Q. Thank you.

20 A. This document, I've seen it only in the last days,
21 because you asked me to -- to read it, so I read it, but
22 this is not true, to say that it's the profit.

23 The aggregate contribution margin is not the profit of
24 the company, it's a subtotal. Sorry, I'm finance, for
25 25 years I was in finance, so I need to make clearly

1 the statement that aggregate contribution margin is not
2 the profit of the company.

3 Q. Okay. Well, let us just see -- put aside your
4 disagreement with what the document says, just go back
5 to {J3/31/10}, I want to actually explore essentially
6 how prices affect contribution margin. What we see
7 explained here is that:

8 "... prices are viewed as tools ..."

9 Sorry, I am reading from the penultimate line:

10 "... prices are viewed as tools to achieve higher
11 profit whether by charging higher price to
12 generate ..." --

13 A. Sorry to interrupt. Where are you in this page?

14 Q. I apologise, sir. I am in the bottom paragraph --

15 A. Okay.

16 Q. -- second to last line, beginning "Therefore ...".

17 A. Okay.

18 Q. I am reading:

19 "... prices are viewed as tools to achieve higher
20 profit whether by charging higher price to generate
21 higher per unit [contribution margin] ..."

22 Over the page {J3/31/11}:

23 "... or reducing the price and selling more units,
24 which generates additional revenue and delivers higher
25 overall company profit (assuming costs remain

1 the same)."

2 So this is saying, first of all, go back a page
3 {J3/31/10}, that the most important goal for GM
4 CEE pricing is to improve its aggregate contribution
5 margin; that is right, is it not, the most important
6 goal is profitability?

7 A. This is not completely correct. A pricing goal is to be
8 in line with the pricing strategy that we have defined,
9 meaning that the benchmark that you have defined, that
10 we are competitive versus this benchmark. So this is
11 important. And of course, if you have offer and demand,
12 if the demand of a product is more important than
13 the offer, and to take a concrete example I will name
14 the Zafira, which was a kind of success, we could take
15 more price. But I would like to remind everyone that
16 Opel, between -- I joined Opel in 1997, and until 2017
17 Opel lost 16 billion in 20 years. So, yes, there's
18 opportunity to take price when there is more demand than
19 offer, but you have also sometimes the -- you need to
20 readjust price, because you're competitive -- you need
21 to be competitive.

22 Q. Yes.

23 A. Just to put in the -- in the context.

24 Q. So if we just take the two scenarios that are being
25 described here. So the first is that you charge

1 a higher price, earn a higher per unit contribution
2 margin. The second is you charge a lower price and of
3 course you will sell more units.

4 Now, in either of those scenarios, GM's working
5 assumption is that the price is going to cover its
6 costs, is it not, otherwise you would have negative
7 margin?

8 A. The price is linked to the competition --

9 Q. Well, before -- yes, you have made that point about how
10 it is benchmarked?

11 A. I just repeat. I said the benchmark, the way we were
12 doing pricing under GM, was that we have a benchmark,
13 and of course they are looking at cost, but the viable
14 cost is only one piece of it, and as I said, Opel was in
15 the loss for many years.

16 Q. Would you accept that costs are clearly an important
17 piece because, as I have put to you, if GM is changing
18 its prices, it wants to make sure at all times it is
19 covering its costs, otherwise it has negative margins?
20 So it may not be the only piece, but it clearly is an
21 important piece; would you accept that?

22 A. I think it's fair to say that the pricing is really
23 linked to the competitiveness on the market.

24 Q. But, Mr Couturier, this document, which is advising
25 pricing specialists in terms of how they set prices, is

1 not talking about competitiveness vis-à-vis competitors,
2 it's talking about the goal of profitability, and
3 the point I'm putting to you is that when you set
4 prices, one of the important drivers of that price is
5 the need for GM to maximise profits and cover its costs.
6 That is the point I am putting to you.

7 A. I will repeat myself. Pricing is done in order to
8 ensure that we are competitive versus the benchmark that
9 we have defined at the beginning of the program. We are
10 looking at cost in order to optimise the profit when we
11 can do it. I took the example of the Opel Zafira, when
12 there was more demand than offer, so, yes, the market --
13 the market was telling us that there is more demand than
14 offer, so we might have taken the price. But the
15 decision is not linked to cost.

16 Q. Can I ask one further question on this.

17 You would not, when setting the price for OV
18 vehicles, set out to make a loss, would you?

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

20 Q. When you set the price of OV vehicles, you would not set
21 out to make a loss, would you?

22 A. No.

23 Q. No.

24 Now, can we go to page 11, please {J3/31/11}, and
25 what we can see here is, under the heading at the top,

1 the bullet point:

2 "Pricing events or situations ...

3 "Prices are usually determined in the context of one
4 or more pricing events that can occur several times
5 during the year."

6 Then if I can ask you to cast an eye, there are --
7 eight events and I am interested in the eighth, the one
8 that is referred to as:

9 "Other factors affecting price change."

10 We can see that is then explained in more detail on
11 {J3/31/16}, please. You see the heading "Other factors
12 that can cause price changes". It goes on to say -- it
13 explains it is going to discuss the costs of production.
14 So let us have a look at what it says:

15 "Cost of production relates to material and
16 production costs that GM incurs in producing vehicles.
17 Cost of raw materials, such as steel or polyurethane are
18 directly related to the company's [contribution margin]
19 because cost of purchasing these materials is directly
20 related to vehicle material costs. Therefore, as costs
21 of such raw materials increase, GM's [contribution
22 margin] decreases."

23 Pausing there. That is saying, all else being
24 equal, if raw material costs go up, that directly leads
25 to GM's contribution margin going down; that is right,

1 is it not?

2 A. That's right, if your costs goes up, your contribution
3 margin goes down, that's correct.

4 Q. So the next thing is, well, how might GM react to that
5 type of change in costs? If we pick up under the next
6 heading, "CEE price impact", we can see here, it says:

7 "When costs of production change and GME ..."

8 Is that GM Europe, in your experience?

9 A. That's correct.

10 Q. I am grateful:

11 "... [GM Europe contribution margin] reduces,
12 [GM Europe] may decide to increase prices in CEE markets
13 to off-set the profitability deterioration."

14 So this is saying that GM may increase vehicle
15 prices in CEE markets in response to an increase in
16 production costs, is it not?

17 A. So, here, "CEE" means --

18 Q. Central and Eastern Europe?

19 A. Exactly. Eastern Europe, it's only -- it was only
20 a small portion, so as you can see, it has been done on
21 this very central -- not central level, on a very small
22 portion of Europe, and this document I think has been
23 done by someone from the Central Eastern Europe country,
24 not from the headquarters. I just wanted to highlight
25 this to your attention.

- 1 Q. Then back to my question --
- 2 A. Yes.
- 3 Q. -- because my question was: GM may increase vehicle
4 prices in CEE markets in response to an increase in
5 production costs; that is right, is it not?
- 6 A. I do not recall that we took some decision to increase
7 price because of cost. What I can recall is we were
8 maximising the profit by taking opportunity when there
9 was more demand than offer, but no direct link to
10 the cost.
- 11 Q. But, Mr Couturier --
- 12 A. That's my recollection.
- 13 Q. Yes, but I was not asking about your recollection.
14 I was saying that this is suggesting that GM may
15 increase vehicle prices in CEE markets if production
16 costs went up, and I put to you that that is correct, is
17 it not?
- 18 A. I need to refer to my experience and I need to say I do
19 not recall that we took price increase because of cost
20 increase. Why? It's because in this case you are not
21 competitive on the marketplace and there is -- there is
22 a risk of volume drop, and that's a major risk,
23 especially at the time of GM, GM was very oriented on
24 the volume side.
- 25 Q. So this document does anticipate the situation you have

1 just mentioned, which is you have identified the risk as
2 to competitors' pricing.

3 If we go over the page, please {J3/31/18}, we can
4 see -- no, you have gone too far. Can you go to
5 {J3/31/17}. Thank you. If we go to the fifth bullet
6 point:

7 "In the event, Country has a legitimate case why
8 prices should not be changed at that time (competitive
9 pressure ..."

10 That is the point that you make, or:

11 "... low product appeal) then Country case will be
12 presented to GM [Europe]. GM [Europe] will consider and
13 may permit some Markets to keep prices the same.
14 Business cases for positive [aggregate contribution
15 margin] must always be made to obtain such approval."

16 So what this is saying is that if, as your
17 experience suggests, GM is not going to put prices up
18 after costs have gone up, you had to make a special
19 business case to get GM Europe's approval; that is
20 right, is it not?

21 A. Let me re-read it, please.

22 Q. Of course.

23 A. Just a second.

24 (Pause).

25 So in this case, if there was a business case

1 presented, as it is written, which shows ... (Pause).

2 What I read is that there's a business case which

3 needs to be presented --

4 Q. Indeed.

5 A. -- to the central team --

6 Q. Yes.

7 A. -- and be approved. That's what I can read.

8 Q. Yes, and you have no basis to challenge that, that

9 obviously is the process that was adopted?

10 A. Mm-hm, that's true, yeah.

11 Q. It is right, is it not, that if you could not make

12 a business case for a positive ACM, the default

13 assumption appears to be the prices paid by dealers and

14 customers will go up if costs go up?

15 A. I think you need to put the volume in perspective as

16 well. As I said, under GM, the volume was very

17 important and therefore the decision not to take price

18 increase was very often taken.

19 Q. So on this volume point, when you are preparing this

20 business case, would you agree with me that it is

21 relevant for GM to consider, did it incur the cost

22 increase on its own, or whether this might be a cost

23 increase faced by its benchmark competitors, the market

24 at large? Would you think that is a relevant

25 consideration?

1 A. I am not sure if I get your question. May I ask you to
2 repeat, please.

3 Q. Yes, okay. So my question is, if the cost of driver
4 airbags goes up, do you agree that it is relevant as to
5 what GM might do whether that cost goes up for GM only
6 as opposed to that cost goes up for GM and, say, VW or
7 Peugeot or other benchmark competitors? I am saying, is
8 the cost increase specific to GM, or whether it is
9 across the whole market. Do you think that is
10 a relevant consideration to what GM might do?

11 A. I cannot answer to this question. I'm not educated to
12 answer this one, sorry.

13 Q. Well, I am going to put to you that if everyone faced
14 the same increase in the cost of driver airbags, no one
15 gets any advantage by keeping prices down, everyone
16 loses out, because their margins are lower, and so it is
17 more likely that everyone will put prices up, is it not?

18 A. Again, price is linked to the competitiveness on
19 the market. If you have -- and those elements, by
20 the way, that you are referring to, the OSS, are, in
21 the 2,000 euros, not a priceable item, they were part of
22 the vehicles, so every car had a safety equipment
23 system. It's not -- you know, we were using JATO as an
24 external company to get some customer-perceived value
25 and those value were used to price some incremental

1 content, but not for standard content like OSS.

2 Q. Well, Mr Couturier, I am going to ask you about
3 the standard features of cars and optional features of
4 cars --

5 A. Okay.

6 Q. -- because you do deal with that in your statement.

7 Could we just go to paragraph 27 of your statement,
8 please. It is at {B/16/7}. It is under
9 the heading "Profitability targets", and you say in
10 paragraph 27:

11 "... there was no direct relation between component
12 cost increases and what the customer actually paid for
13 the vehicle ..."

14 I am going to put to you that this cookbook we have
15 been looking at suggests to the contrary, does it not?
16 It says that there can be a direct relation between an
17 increase in the cost of production and the price of
18 the vehicle; that is right, is it not?

19 A. No, I read something different. I read:

20 "... there is no direct relation between component
21 increase and what the customer actually paid for
22 the vehicle ..."

23 So I don't see where there is a direct relation in
24 this document.

25 Q. I will not belabour the point, but I do think it is an

1 important point.

2 So if we can go back to {J3/31/16}, please, looking
3 at -- under "CEE price impact", it says there:

4 "When [the] costs of production change and
5 GM [Europe] [contribution margin] reduces, GM [Europe]
6 may decide to increase prices in CEE markets to off-set
7 the profitability deterioration."

8 So I put to you that one of the levers that GM could
9 have pulled to offset the cost rises is, as it says
10 there, it could increase the price. That must be at
11 least one option, would you accept that?

12 A. What I'm reading in this document is some contradiction,
13 right, in the sense that, in one paragraph, we see that
14 there's a -- it says that there might be, and on another
15 one, they say it's no -- there's no relation. So I'm
16 a bit confused with this document that I've not produced
17 from my side, that I discovered a few days ago.

18 Q. Well, I think we will have to agree to disagree.

19 I think the document is clear.

20 If we can go to paragraph 28 of your statement,
21 please. It is at {B/16/8}, and this is where you are
22 describing about three to six months before launch, when
23 GM would be setting various pricing targets and you list
24 eight factors that may be relevant to setting that
25 pricing target. We can see that the last one is how

1 the profitability target relates to the vehicle's target
2 price.

3 A. Mm-hm.

4 Q. Then you say it is decided on all these parameters, and
5 then you say:

6 "... always having regard to the price positioning
7 versus the defined benchmark competitor."

8 But I put to you, in light of what we have just
9 looked at, it is always having regard to the defined
10 benchmark competitor and always having regard to
11 achieving profitability goals; that is right, is it not?

12 A. That's absolutely correct, and here we are now in
13 the state -- status of future pricing. Future pricing
14 is before the launch of the vehicle. I just want to put
15 that into the context. So you are three to six months
16 before the launch of the vehicle, so there is still some
17 opportunities to make some little change in order to
18 reach your profitability target. So of course it's
19 something that we are looking at as a team in order to,
20 what we call, balance the program, say, okay, we've got
21 a target, you've got a revenue, you've got a bunch of
22 costs, where can we adjust? That's what it meant in
23 this document.

24 Q. As always, Mr Couturier, you are a little bit ahead of
25 me. I will come on to --

1 A. Okay.

2 Q. -- those tweaks that you rightly identify.

3 I am going to move on to a different topic,
4 a different lever, if I can put it like that, that GM
5 could use to offset an increase in prices. If we can go
6 to paragraph 41 of your statement. It is at {B/16/11}.

7 A. I don't see -- ah, yes.

8 Q. Paragraph 41. You can see, here, you are explaining
9 that GM would provide dealers with commercial support.

10 A. Mm-hm.

11 Q. That is -- essentially, that is to help them sell
12 the vehicle, is it not?

13 A. That's correct, yeah.

14 Q. Just to show the Tribunal and you that this was also
15 something that GM had in mind at the time, I will just
16 go back to our cookbook for a moment, a different part,
17 {J3/31/78}, please, talking about other responsibilities
18 of a pricing specialist, and we can see under
19 the heading, "Sales campaigns and Sales Allowances",
20 under the heading "Definition":

21 "Sales Allowances are resources given to customers
22 (dealers) to improve their sales performance. From
23 the price perspective, Sales Allowance is a temporary
24 price adjustment (reduction) that makes the vehicle
25 price more attractive to consumers and influences them

1 to make the purchasing decision."

2 Would you agree that sales allowances appear to be
3 a sort of form of commercial support given to dealers?

4 A. That's correct, it helps the dealer to -- to sell
5 the car.

6 Q. Yes. If we could go to {J3/31/81}, please, we can see
7 under the heading "Who decides on Sales Allowance
8 amounts?", we can see that:

9 "Sales Allowance Targets (Available Funds) for each
10 Country are set by Forecasting Division in
11 GM [Europe]/Cluster. Sales Allowance Target is set for
12 an amount that can be spent by the Country during
13 [the] specified time period."

14 So would that reflect your experience, that
15 GM Europe was centrally deciding the amount of
16 commercial support?

17 A. That's correct.

18 Q. Yes.

19 So if GM experienced an increase in, say, the costs
20 of steering wheels, one thing it could have done to
21 offset that increase in costs is to reduce the amount of
22 commercial support that it paid to dealers; that is
23 right, is it not?

24 A. Not -- not correctly, no, sorry, because it's tactical.
25 The sales allowances are done in order to do some

1 tactical campaigns. So, again, here, there's no sales
2 allowances reduction in order to offset costs, because
3 we are looking at the market, at the competitiveness of
4 the vehicle. So if competitors put more means on
5 the table because they've got higher demand -- sorry,
6 a lot of production, then we need to also adapt our
7 tactical campaign. But we are not having this approach
8 of looking at cost during the current pricing period.
9 The most important thing is are we attractive, are we in
10 line with our position that we want to have versus our
11 competitors.

12 Q. If we just break it down, would you agree that
13 the amount of commercial support that GM gives to
14 dealers is a discretionary amount, it is a discretionary
15 decision? It is not obliged to give that support, it
16 can decide to give zero, it can decide to give a large
17 amount of support, it is discretionary.

18 A. Sorry, I ask for clarification. To who, you said?

19 Q. Yes. GM Europe --

20 A. Yes.

21 Q. -- can decide to give no or a large amount of commercial
22 support to dealers?

23 A. That's correct, yes, according to the tactics.

24 Q. It is right, is it not, that each GM vehicle program had
25 a cost budget or, in the case of new vehicles, cost

1 target, and you wanted to remain within that budget or
2 target?

3 A. On the cost side, there's a budget. That's correct,
4 there is a budget --

5 Q. Yes, there's a budget -- (overspeaking) --

6 A. -- (inaudible).

7 Q. -- and you have to remain within the budget. That is
8 what you explain in paragraph 21 {B/16/6} of your
9 statement?

10 A. There's a KPI -- what we call a KPI for different, let's
11 say, portion of the business so you have a revenue KPI,
12 you have got a cost KPI, you have got a consumer
13 influence KPI, so, yes, it is an indicator, absolutely.

14 Q. Yes, and to keep within your cost budget, if the cost of
15 a component goes up, GM could reduce the commercial
16 support to dealers to offset that cost increase,
17 could it not?

18 A. We are looking at the competitiveness on the market on
19 the pricing side. So we are not looking at this -- at
20 this cost increase in order to offset it, we are --

21 Q. But, Mr Couturier, I am asking you a much more basic
22 question, before we get onto the market dynamics and how
23 you position with other competitors. I am just simply
24 saying you have got a budget and the safety component
25 costs are going up; you want to stay within your budget,

1 one thing that GM could do is reduce the commercial
2 support given to dealers, could it not, and that keeps
3 you within budget? That is the point I am putting to
4 you.

5 A. As I've -- I've been on the -- on both sides, as you
6 have seen in my statement, because I was the financial
7 manager of a program, every section has a budget. So
8 the costs section within the budget, we need to find an
9 offset within that budget, meaning the cost budget.

10 So if you have -- and that's what I was referring to
11 -- before the launch, if you have an increase of your
12 cost, you might want to look at, within the cost, what
13 you could offset. So this is the exercise which is made
14 on the cost side, but on the pricing side as well, you
15 do the same exercise. You want to be competitive to --
16 you want to be in line with your benchmark or, you know,
17 the position, so you might have opportunities or risk.
18 So you are looking at the pricing side whilst also
19 looking at the cost side.

20 Q. When you are looking at the cost side, do you agree with
21 me that one of the things you can do, if one set of
22 costs go up for, say, airbags, then one thing you can do
23 is reduce the commercial support to dealers so that you
24 keep within budget?

25 A. I will disagree with this statement.

1 Q. Okay.

2 Sir, I see the time, it is 11.30, we did start at
3 10 o'clock. If that is a convenient moment, that will
4 be --

5 THE CHAIRMAN: How are we getting on?

6 PROFESSOR BAILEY: We are doing very well, sir, and I have
7 probably about sort of 10 to 15 minutes-worth of
8 questions to go.

9 (11.31 am)

10 (A short break)

11 (11.42 am)

12 PROFESSOR BAILEY: Go, please, to paragraph 37 of your
13 statement. This is {B/16/10}. Here, you explain how
14 a dealer would add a fixed margin on every vehicle that
15 it bought. That margin was agreed between the national
16 sales company and the dealer, was it not?

17 A. That's correct.

18 Q. I would like to go to a document which is outer ring
19 confidential material, so I am just going to ask you to
20 read things on the screen and do my best not to sort of
21 refer to the contents of the document.

22 So it is at {J3-OR/12/1}.

23 A. Is it going to appear?

24 Q. It should do, yes, sir. Yes, it is there.

25 A. Mm-hm.

- 1 Q. This is a presentation given by you, is it not?
- 2 A. Yes.
- 3 Q. You were head of pricing for Opel/Vauxhall at the time?
- 4 A. Yes.
- 5 Q. "PRG", does that stand for "Pricing Review Gate"?
- 6 A. That's correct.
- 7 Q. Go to {J3-OR/12/2}, please.
- 8 Could I ask you to, first of all, read to yourself
- 9 the bullet under the heading "Background".
- 10 (Pause).
- 11 Then perhaps, if you may, just cast an eye at
- 12 the next two headings, please, in bold underlined.
- 13 A. Do you expect me to read them loudly?
- 14 Q. No, no, just to yourself, just so you understand what
- 15 this slide is talking about, refreshing your memory
- 16 about what you presented in 2020.
- 17 A. Okay. So the first bit, I read it. The other bullets,
- 18 which one I should read?
- 19 Q. Well, it is literally the second heading, which -- can
- 20 you see that, under "Background"? Just simply read
- 21 the first two bullets on that, just to get an idea of
- 22 what this document is talking about.
- 23 (Pause).
- 24 A. Yes, I read it.
- 25 Q. Now, of course, it is a Stellantis document from 2020,

1 but would you agree with me that it resembles the sort
2 of Pricing Review Gate that you describe at the time of
3 GM in your statement? Would PRGs at GM broadly consider
4 the same sorts of things?

5 A. Yes, looking at similar stuff, that's correct.

6 Q. Thank you.

7 Then, one further thing to read, please. You see
8 that the fourth heading -- I believe that it is -- that
9 is headed "Dealer Margin", could you just read that
10 line, please.

11 A. Yes, I have read it.

12 Q. If we go to slide 9 {J3-OR/13/9}, we can see a list of
13 -- can we slightly enlarge that, please -- we can see
14 a list of countries and then you can see the figures
15 both before and after?

16 A. Mm-hm.

17 Q. Really, the simple point I want to put to you is that
18 this is considering, and GM would have considered, that
19 had component costs gone up, one of the things GM could
20 have done is to reduce the margin that GM paid to its
21 dealers; that is right, is it not?

22 A. So I need to put this -- the context of this chart.

23 Within Stellantis, not under GM, not under GM --

24 Q. Yes.

25 A. -- there's a policy to reduce -- or the tendency to

1 reduce the dealer margin; however, we reduce as well at
2 the same time their contribution to the campaign. So,
3 in other words, yes, you reduce your gross margin, but
4 we don't ask you to contribute any more. I've explained
5 that in one of my statements, I think -- I don't know if
6 I should refer to it.

7 Q. Yes, you can refer to your statement?

8 THE CHAIRMAN: You should have it in front of you.

9 A. I think it's -- so that's the context of this chart, to
10 put the context.

11 I think it was --

12 PROFESSOR BAILEY: Just --

13 A. -- when I have mentioned -- I was talking about
14 the sales in one sense. There's some support to --
15 I give to the dealer and the dealer was contributing
16 from his own dealer margin -- I need to say, it's a bit
17 difficult to find like this, but I will --

18 Q. I think the point you are referring to, sir, is at
19 paragraph 41(a) {B/16/11} and you describe there where
20 you may have the national sales company giving support
21 but the dealer --

22 A. Exactly:

23 "On the commercial support side, the NSC may want to
24 give end-customers this quarter a €1,000 discount in
25 order to increase sales, and decide that in order for

1 the dealer to be able to offer this discount ... they
2 will need to contribute ..."

3 So they will contribute from their own margin.

4 Q. Yes.

5 A. So that was the context of this chart, to ensure that
6 the brand CEO understand that, yes, we were doing this
7 kind of move about reducing dealer margin and reducing
8 sales allowances at the same time.

9 Q. So we can see that. I take your point, it is about what
10 Stellantis was doing and we can see that it was reducing
11 dealer margin --

12 A. Dealer margin and their contribution. I think it's
13 important to mention that both go down at the same time,
14 so the intention is not to -- to reduce the profit of
15 the -- of the dealer in this case.

16 Q. Then the point I am putting to you, having seen that as
17 a real life example, is that at the time of GM, it was
18 perfectly open to GM to reduce dealer margin to offset
19 an increase in costs, was it not?

20 A. We never reduced the dealer margin on the -- from my
21 recollection, and I've been -- I have three time
22 experience in pricing under GM, in Opel France --

23 Q. So if we just --

24 A. -- and Zurich --

25 Q. Go to paragraph 27 of your statement, please. That is

1 at {B/16/7}. What you are doing in that paragraph is
2 you are describing various levers on the cost and
3 the revenue side to offset increases in costs, and you
4 do say that one of the levers that could have been used
5 is to "reduce the discount support within each sales
6 channel". So it is right, is it not, that GM could --
7 I am not saying it is the only thing it could have done,
8 but one of the things it could have done is that it
9 could have reduced the margin paid to dealers to offset
10 higher costs that it may have faced.

11 A. I think in the same paragraph I say there was no direct
12 relation between component cost increase and what
13 the customer actually paid, so I think it's --

14 Q. But I am not -- (overspeaking) --

15 A. -- (inaudible).

16 Q. So I am not asking you about that.

17 A. Okay.

18 Q. I am asking you about, when GM faced higher component
19 costs, you describe levers on the cost and revenue side,
20 and one of the levers GM could have used is to reduce
21 the margin it paid to dealers. It is a very simple
22 point.

23 A. My point in this paragraph is to say that we have
24 revenue, and as I said, every department has a KPI, and
25 you need, in this case, when you need to increase your

1 revenue, you play with your tactical campaign depending
2 of your competitiveness at that time on the market, if
3 you can have or not this opportunity to maximise your
4 revenue. But there's no link, again, to this cost that
5 you are trying to -- to make here, because we are trying
6 to be competitive, sometimes we've got more -- more
7 demand, sometimes we've got less demand, and we do
8 tactical campaigns, and that's the way we adjust it.
9 That's -- the sales allowances is a tool in order to run
10 this tactical campaign.

11 Q. So is it your evidence that it is impossible for GM, it
12 just would never, ever happen that it could reduce
13 margin to dealers in the wake of having higher costs?
14 Just that specific question, because I understand
15 the points you make in your statement, but I am asking
16 you a very specific point.

17 A. On this specific point I will mention I do not recall
18 that we have received instruction from the top
19 leadership to say, "You need to increase price because
20 the cost is going up". I have not -- I do not recall
21 this, because what we were looking at is
22 the competitiveness on the market. That was very
23 important, and probably every department was running its
24 own KPI. So if you have a cost issue, you should fix it
25 within the cost department. If you have a price issue,

1 you should fix it in your pricing department. That's
2 the way we were operating it.

3 Q. Let us try another lever and see if you agree with this.
4 If you go to paragraph 21 of your statement {B/16/6}, we
5 have already covered that GM had a cost budget or
6 a target for future vehicles, and if the cost of
7 a steering wheel for, say, the Opel Corsa were to be
8 higher than expected, it is right, is it not, GM would
9 have to find a way to stay in its cost budget; that is
10 right, is it not?

11 A. That's what I have described so far, that within
12 the cost, if you've got a cost increase, you need to
13 find within the cost some area to find the offset,
14 that's true.

15 Q. Exactly. Exactly, yes. There is like a U-bend. If one
16 cost goes up, you have got to try and find --

17 A. Mm-hm.

18 Q. You are nodding, sir, but could you confirm if you agree
19 or disagree with what I am saying.

20 A. I confirm.

21 Q. Now, so one thing that GM could do to stay within its
22 cost budget is it could remove a standard feature from
23 the baseline vehicle; that is right, is it not?

24 A. Can you repeat that? Sorry, I was ...

25 Q. Yes. One thing GM could do, faced with higher costs, to

1 stay within budget is to remove a standard feature from
2 the baseline vehicle?

3 A. That's an opportunity to maintain the total cost in line
4 with the target.

5 Q. Yes, and indeed, halfway down in paragraph 21, you say
6 specifically:

7 "... we need to remove them from the baseline
8 vehicle, or find [another] way to offset ... cost ..."

9 You say one thing you could do is remove a feature
10 from one of the trim levels, so perhaps a leather
11 steering wheel formerly was within the trim and it then
12 becomes a paid for option, that is another thing GM
13 could do?

14 A. Not this specific example, because here you are touching
15 an equipment which has a CPV, a customer perceived
16 value, meaning that the customer is willing to pay for
17 this, and the equipment which is standard, a basic
18 steering wheel, you need a steering wheel to drive
19 the car, is part of the concept.

20 Q. Yes, perhaps we are talking at cross-purposes. I, of
21 course, accept that for a vehicle you have to have
22 a steering wheel. Really what I was saying was -- is
23 that if the cost of a leather steering wheel went up,
24 for GM to stay within its costs budget one thing it
25 could do is put a more basic steering wheel in the car

1 as standard and then offer to the customer a leather
2 steering wheel as an optional feature; that is right, is
3 it not?

4 A. I agree with your first statement to say it looks to
5 find an offset in terms of cost. So, yes, the steering
6 wheel could have a lower material in order to stay
7 within the cost band, but if you start to remove some
8 items which have a customer perceived value, then you
9 change the positioning of the car. That's important to
10 have that in mind.

11 Q. When you were describing here how one deals with
12 offsetting higher costs in paragraph 21, is it right
13 that it applies just as much to future pricing as to
14 current pricing, it applies to both? Because you talk
15 about cost budgets and you talk about, for future
16 vehicles, cost targets. Does it apply to both?

17 A. I would say it applies to both.

18 Q. Yes, I am grateful.

19 Now, if we could go to paragraph 31 of your
20 statement, which is at {B/16/9}, you here explain that
21 when you were OV's current pricing manager for certain
22 countries in 2004 and 2005, you:

23 "... do not recall that we needed to increase
24 the price of a vehicle during its lifecycle because of
25 cost increases."

1 Now, for which European countries were you OV's
2 pricing manager?

3 A. So I was current pricing manager for two years and
4 I did, I would say, most of the countries in Europe,
5 because when I joined GME, so in Zurich, in 2001, it was
6 as a pricing analyst, so I was in charge of some
7 countries, and then you move to countries in order to
8 increase your knowledge of the country's specificity.
9 So I would say most of the countries --

10 Q. So when you say -- (overspeaking) --

11 A. -- (inaudible).

12 Q. -- "most of the countries in Europe", do you mean
13 the countries in Western Europe and Central and Eastern
14 Europe? It is a big continent.

15 A. I've done a few eastern countries, if that's your
16 question.

17 Q. Yes, okay, so ... yes.

18 A. I have done.

19 Q. You explain in the second sentence of paragraph 31:

20 "It is true that we were looking at the profit."

21 That we can agree. Then you say:

22 "However, sometimes you can have a cost increase but
23 you are not going to change anything on the list price
24 of your vehicle ..."

25 You go on to give some reasons for that. But just

1 pausing there, because of what you said there, would you
2 agree sometimes you can have a cost increase and you
3 would change the list price of your vehicle? I am just
4 effectively doing the mirror image of what you have said
5 here. You have said "sometimes" you have a cost
6 increase and you are not going to change anything on
7 the list price. Would you accept that the converse
8 applies, sometimes you have a cost increase and you
9 would increase the list price?

10 A. It's not in the approach that I've described in my
11 previous answers is we need to look at within pricing to
12 find some offset, within pricing. So I confirm my
13 statement here that I've made, that if there's a cost
14 increase, I would not increase the list price.

15 Q. "Sometimes" is what your statement says.

16 Now, you give various reasons and I want to focus on
17 (ii) and (iii) together. You say: well, increasing
18 the price would change your positions relative to
19 benchmark competitor, and then, relatedly, you would
20 have a disadvantage if you were to increase price
21 because you would be less competitive versus your
22 benchmark. You are assuming, are you not, in this
23 example that the benchmark competitor does not incur
24 the same increase in costs?

25 A. I look at that from a -- again, from a pricing

1 perspective, from a competitiveness perspective on
2 the market. I'm not looking at if the cost of
3 the competitors increase or not; I want to be
4 competitive on the marketplace. Am I competitive, yes
5 or no? That's the question that I need to answer, but
6 not on the cost.

7 Q. With that question, whether you are competitive or not,
8 if your VW Polo is your benchmark competitor for your
9 Opel Corsa and you both have higher-costing airbags,
10 then neither VW, nor Opel gets an advantage by keeping
11 prices down, but both VW and Opel are going to lose
12 margin because of their higher costs. So in that
13 situation it is more likely, is it not, that VW and Opel
14 would put prices up to cover their costs and make
15 profit?

16 A. You do a link in your question between the cost and
17 the price. I need to answer just looking at the price
18 side, because I'm responsible of the -- of the pricing.
19 I look at my benchmark and I see if I can improve or not
20 my revenue, but I do not do this link with cost.

21 Q. If your benchmark put its price up, would, in that
22 sense, it be rational for Opel to do the same?

23 A. We will look at the opportunity either to increase price
24 or to reduce sales allowances depending, at the time of
25 when we are looking at this, if we are short or we are

1 over capacity, so this is the adjustment that we might
2 do depending of our production capacity. So this is
3 what -- the way I will look at it.

4 Q. Just to briefly look at the cookbook one more time. It
5 is at {J3/31/34} and it is under
6 the heading "Economics/Repositioning". It is really
7 just to show you this example that is given. At
8 the bottom of the page, last paragraph:

9 "For example, if [the] cost of importing vehicles
10 into Country has increased because import duties were
11 raised by Government ..."

12 So describing an increase in costs, this time in
13 the form of import duties:

14 "... then our action may include raising prices as
15 well, assuming our competitors do the same. On one hand
16 this may be a rational response, given the changing
17 Market conditions ..."

18 Now, I promise I will come on fairly to deal with
19 what it goes on to say, but just pausing there, that is
20 the scenario I was putting to you, sir, that you can see
21 here a specific type of cost increase, import duties go
22 up; it affects everyone, both GM and its competitors;
23 and this is saying, as I put to you, it is a rational
24 response for GM and its competitors to put its prices up
25 following that cost increase; that is right, is it not?

1 That is one thing that could happen; would you accept
2 that?

3 A. Sorry, I was reading the document.

4 Q. Oh, could you please put the --

5 A. The page has changed.

6 Q. Please could you put the previous page.

7 A. So you are referring to the last paragraph?

8 Q. I am referring to the example, and I promise to come on
9 to the point it also makes, because it makes two points,
10 but really it was just to drive home that GM itself, at
11 the time, was telling price specialists that where
12 a cost --

13 THE CHAIRMAN: It is the third line of the last paragraph.

14 PROFESSOR BAILEY: I am grateful, sir -- (overspeaking) --
15 If you want to read it by all means do
16 -- (overspeaking) --

17 THE CHAIRMAN: Take your time.

18 A. I was trying to look for the information. Thank you,
19 Judge.

20 (Pause).

21 PROFESSOR BAILEY: First of all, is there anything you
22 disagree with in that example? If I could ask you for
23 a "yes/no" answer to that and then please elaborate in
24 whatever way you wish.

25 A. Other duties are external factors which require -- may

1 require, or may impact the price of the vehicle. So it
2 could be -- and we have seen that in some countries
3 which put duties on their vehicle, it's an addition to
4 the price of the vehicle. So in this context, yes,
5 the list price will go up, because you put that on
6 the top of the price sold to the dealer; it's a decision
7 from the country to do some tax duties, and this affects
8 the entire competitors on the -- on this specific
9 marketplace.

10 Q. Yes, I mean, what this example does is it says, when
11 a particular type of cost goes up, there are actually
12 two things that could happen. It says it may be
13 a rational response for GM to raise prices, assuming its
14 competitors do the same. That is one thing that could
15 happen. Do you agree with that?

16 A. It's what it says. It says:

17 "For example, if cost of importing vehicles ..."

18 So you import vehicles into the country and if
19 the legislation of the country decide to implement some
20 duties for the import vehicles, then the entire market
21 is subject to those duties.

22 Q. Yes. Then the second thing it says is that of course GM
23 might see it as an opportunity to gain a market
24 advantage, "decide to absorb the cost", that is how GM
25 describes it:

1 "... decide to absorb the cost and keep our prices
2 the same, while competition becomes more expensive."

3 So there is a choice, that is the simple point.
4 There is a choice: either GM and its competitors put
5 prices up so that they can retain their margin in light
6 of the higher cost, or they might say, "I want to steal
7 a march on my competitor, hold prices down". All I am
8 putting to you is that that is the correct explanation
9 of the decision that GM would have to make and it is not
10 the case that they would slavishly always hold prices
11 down.

12 A. So what's your question?

13 Q. My question is, do you accept that when GM is faced with
14 higher costs, one thing it could do is put prices up, if
15 its competitors did the same? That is my question.

16 A. So let me try to answer in the best way. So in this
17 example that you are taking, duties are impacting
18 the entire industry of a -- an entire market, and
19 therefore everybody is affected by this. So there's
20 a decision to say at this point of time, from a pricing
21 perspective, to say, "Well, other duties are
22 implemented, so all my list price goes up and everybody
23 is doing the same", or you said, "Well, given my
24 production capacity, I am on shortage", or, "I do have
25 overcapacity, can I reduce my sales allowances, yes or

1 no", this is the question you might ask yourself in
2 order to follow -- or to implement some -- some -- or
3 not apply this increase in this case. This is
4 the question that I will ask myself before I implemented
5 this.

6 I need to say, I not was -- I was not -- I do not
7 recall that I have been confronted to this other duties
8 example in my career in pricing.

9 Q. I would like to change topic and briefly discuss pricing
10 of Occupant Safety Systems and you deal with this at
11 paragraph 32 of your statement, which is at {B/16/9},
12 and you explain there that seatbelts, front driver
13 airbags, passenger airbags have long been a standard
14 feature of Opel/Vauxhall vehicles.

15 You also say that side airbags "became increasingly
16 standard in the 2000s". Would it be fair to say that
17 side airbags were not standard on Opel/Vauxhall models
18 in, say, 2002?

19 A. Were not. I think I have mentioned in the 2000s, if
20 I recall that correctly --

21 Q. Yes, the point I am getting at is that, at the beginning
22 of the 2000s, side airbags were not standard; at the
23 end, say in 2010, they had become standard. Would you
24 agree with that? So during that decade, as you say,
25 they became increasingly standard?

1 A. I cannot mention at the beginning or at the end. It's
2 just from my recollection that the safety components
3 became more and more standard in the last 30 years.
4 There was no -- the side airbags, for me, were an
5 example to illustrate my statement. If I recall that
6 correctly, it was probably beginning of 2000 --

7 Q. Yes, so would you --

8 A. -- because I was doing the Astra -- sorry -- I was doing
9 the Astra at the time in 2003 and I recall at that time
10 that it was already standard.

11 Q. Yes, you do say in your statement that in the Opel Astra
12 it was standard in 2003, and really all I am getting at
13 is, do you agree with me that, certainly by 2010, side
14 airbags had become a standard feature of OV vehicles?
15 That is the only thing I am asking.

16 A. It was standard, from my perspective, in 2010, yes.

17 Q. Yes.

18 So would it be right to say that side airbags were
19 a new idea in the early 2000s that would have cost
20 a certain amount to develop and procure, but then over
21 the next decade they had become standard and so there
22 would have been a downward cost pressure, would there
23 not, in terms of that particular product being included
24 in the vehicle?

25 A. So what's your question, because I don't get your

1 question? It's a statement that I need to confirm,
2 or ...

3 Q. Yes, do you agree or disagree with what I just said? If
4 you disagree, if you could explain to the Tribunal.

5 A. So some equipment became standard in the last decades.
6 The safety equipment is a very good example. I think in
7 the '70s, we didn't have any seatbelt, so it became
8 standard. Afterwards, there was the driver airbag,
9 the co-driver airbag, the side airbag, the curtain
10 airbags, everything became -- you know, it's part of
11 the industry, and it's what the customer is expecting.
12 It's a qualifier to be on the market. It's at least to
13 have the equipment which are standard on the market in
14 your vehicles.

15 Q. You mentioned there curtain airbags.

16 A. Mm-hm.

17 Q. Did they also become increasingly standard in the 2000s?

18 A. I think so, yeah. In the 2000s, it became standard.

19 Q. But you do not mention steering wheels in your statement
20 at paragraph 32. It is right, is it not, that at least
21 some, what you might call, high end steering wheels,
22 the ones with a heating function --

23 A. Mm-hm.

24 Q. -- or made from leather, they were typically options,
25 were they not?

1 A. On the steering wheel, the -- you have some options,
2 which are typically the leather steering wheel, which
3 provide a better quality and therefore the customer is
4 willing to pay for it, or you have the kind of
5 functionality which I think I've mentioned in my
6 statement, like having the heated steering wheel, so
7 give a function of warmth, and this also has what
8 I call a customer perceived value, a CPV, for which
9 the customer is willing to pay, and at that time, it was
10 probably most of the time an option and some competitors
11 -- or, today, those kind of features became standard on
12 some upper trim level.

13 Q. If we could just then focus on the pricing of these --
14 I think what you call them "free flow options"?

15 A. Yeah.

16 Q. So it is right, is it not, that an optional safety
17 component would be individually priced, would it not?

18 A. That's true.

19 Q. Yes.

20 A. Absolutely true.

21 Q. GM would never have sold an option below cost, would it?

22 A. No, that's true as well. So when I say "no",
23 I say: yes, it is true what you are saying. Sorry.

24 Q. I am grateful, thank you.

25 A. And there was a certain profit margin for the options.

1 Now, I need to say --

2 Q. Mr Couturier, I am going to ask you about profit
3 margins, so if you just bear with me.

4 A. Okay.

5 Q. Thank you.

6 So in paragraph 34 of your statement, for
7 the Tribunal's benefit, which is at {B/16/10}, this is
8 where indeed you do explain that at the time of GM -- it
9 is about halfway down -- you say that you had to meet
10 a minimum profit margin rate on the free flow options
11 sold about 50% on average.

12 Presumably GM achieved that minimum margin rate, did
13 it not?

14 A. That was something that we were looking at launch, that,
15 on average, the contribution margin of the free flow
16 option needed to deliver 50%, and in order to be
17 complete on this subject, if you had one free flow
18 option below 35% margin, then you needed to increase
19 the price. So, yes, on this specific case, there is
20 a link between the cost and the price. However, if your
21 price of the free flow option is delivering already
22 something above 35%, it will not change the price
23 because of the cost increase. Just to be complete on
24 the -- on the subject.

25 Q. So I mean, I think, happily, we are going to, I hope,

1 end on an agreeable note, because you were ahead of me
2 again. My last question was going to be -- I think you
3 are going to say "yes" -- if the cost of an optional
4 safety component goes up such that the price is not
5 achieving the minimum margin rate, GM would have
6 increased the price of the option, would it not?

7 A. So I need to, in my answer, say, "Yes, but ...".
8 I think it's fair to say that all the standard -- all
9 the safety things were, most of the time, standard on
10 the vehicle.

11 Q. Yes, but my question was specifically focused on
12 optional components.

13 A. If -- so, to answer to your question. If the option was
14 not delivering 35%, then there was a price increase in
15 order to reach the 35%. If it was already, let's say,
16 at 45%, there was no need to increase price, but then,
17 if there was a cost increase, the margin will be lower
18 than the 45/40% in the -- in this example, for example.

19 PROFESSOR BAILEY: Sir, I have no further questions.

20 Re-examination by MR WEST

21 MR WEST: Very briefly, Mr Couturier. You were shown
22 a document at {J3/31/1} and you were asked some
23 questions about that document. You told us, I think,
24 until a few days ago you had never seen that document
25 before. As far as you are aware, did this document have

1 any official status within GM?

2 A. Sorry, can you ...? I didn't get your question there.

3 Q. Did this document, as far as you are aware, have any
4 sort of official status within GM?

5 A. No. As I say, I never saw this document before two days
6 ago.

7 Q. In your view, does this document contain an accurate
8 statement of GM's pricing policies?

9 A. There are some good things in what I've seen and some
10 things that I do not recall at all.

11 Q. Thank you.

12 Then just a question for Madam Translator.

13 Mr Couturier used an English phrase "offer and demand".

14 If he was translating the French phrase "offre et
15 demande", what, in your view, is the correct translation
16 of that?

17 THE INTERPRETER: Absolutely.

18 MR WEST: "Offer and demand".

19 THE INTERPRETER: "Offre et demande"?

20 A. Offer and demand.

21 THE INTERPRETER: Yes, absolutely.

22 A. Yeah.

23 Q. Okay, thank you.

24 THE CHAIRMAN: Thank you very much.

25 A. Thank you.

1 THE CHAIRMAN: You are released from your oath and so is
2 the translator. Thank you. You can leave. Yes, all
3 done.

4 A. Thank you.

5 (The witness withdrew)

6 THE CHAIRMAN: Before we get to the next witness ...

7 PROFESSOR NEUBERGER: Just really a question for
8 Mr Scannell. We discussed a couple of days ago about
9 whether the claimant -- the Defendants' case on pass-on
10 was based on the assumptions if there was an overcharge,
11 it was claimant-specific or industry-wide, and I think
12 you said that there would be a note from Dr Majumdar in
13 relation to this.

14 MR SCANNELL: Yes.

15 PROFESSOR NEUBERGER: I was wondering whether when we could
16 expect it.

17 MR SCANNELL: Yes, I did say that. The question then became
18 internalised within the defendant teams. We looked
19 carefully at the transcript to work out the precise
20 contours of your question, Professor, and we think that
21 it admits of an answer which does not actually require
22 the expert, as indeed you said initially, and so
23 I propose to make a brief few remarks to you at an
24 opportune moment.

25 With the best will in the world, I would suggest

1 that now is not that moment, because we need to get
2 through the witnesses, but perhaps at the end of
3 the day, or certainly before the Defendants' witnesses
4 are called, if that is agreeable with you, Professor.

5 PROFESSOR NEUBERGER: That is fine. Thank you very much.

6 MR SCANNELL: Thank you.

7 PROFESSOR NEUBERGER: I had a different question, which was
8 really related, not specific -- in fact, I think it does
9 not relate particularly to you directly, Mr Scannell --
10 which was, in the discussion about part numbers that we
11 had earlier, I got a bit confused, because I could not
12 work out whether we were talking about part numbers of
13 components of seatbelts, or whether we were talking
14 about part numbers of seatbelts. I am completely
15 confused, because I was hoping that the empirical work
16 would be on the prices. I had assumed the empirical
17 work was all on the prices of seatbelts, not of
18 components of seatbelts, but I would love some
19 clarification.

20 MR WEST: I think it is on the seatbelts themselves rather
21 than the components, but I will take confirmation of
22 that. I do not know whether my friend agrees.

23 MS FORD: Well, slightly awkwardly, I was about to give
24 the opposite answer.

25 PROFESSOR NEUBERGER: Well, then I am glad that I asked

1 the question.

2 MS FORD: The basis of my answer was going to be the wording
3 used in Mr Arango's statement, in particular paragraph 7
4 {D/8/2}, where he is saying:

5 "ZF and PSA each have their own part numbers ... for
6 OSS components ..."

7 THE CHAIRMAN: (Off microphone - inaudible).

8 MS FORD: It may be that there is an ambiguity that can be
9 explored with the witness.

10 THE CHAIRMAN: (Off microphone). Just if you can take
11 instructions. Not now -- (inaudible).

12 MS FORD: Yes.

13 THE CHAIRMAN: Also, I mean, just as a practical matter are
14 these things provided sort of complete to whatever
15 manufacturers have to assemble the -- sorry, is that
16 better -- or do the manufacturers have to assemble
17 the components themselves? I have got no idea at
18 the moment, so some assistance at some stage on that.

19 MS FORD: I can take instructions on that. The witnesses
20 may well be the best people to give the Tribunal
21 assistance on that sort of question.

22 MR WEST: There may be confusion because we have been
23 referring to each of seatbelts, steering wheels and
24 airbags as "components".

25 THE CHAIRMAN: Quite, yes, hence the ambiguity.

1 MR WEST: If one looks, for example, at Mr Arango's drawing,
2 it seems to be a whole seatbelt.

3 THE CHAIRMAN: Well, if we can just clear that up, and if
4 there is anything between the parties on it, we can
5 grapple with that at some point, no doubt.

6 MS FORD: As it happens, the confusion may have been at my
7 end, because I have just been able to take instructions
8 and it is -- the reference to a component is to, for
9 example, a seatbelt, rather than to --

10 THE CHAIRMAN: Right.

11 MS FORD: -- a sub-part or sub-component of a seatbelt, so I
12 am afraid that may have been me causing confusion.

13 THE CHAIRMAN: No, that is no problem, but if you need to
14 take further instructions, obviously please do and let
15 us know.

16 MS FORD: I am grateful.

17 THE CHAIRMAN: Next witness?

18 MR WEST: The next witness is Ms Teusen-Krapp, who is here.

19 MS CHRISTINE TEUSEN-KRAPP (sworn)

20 (All answers given in English unless otherwise indicated)

21 THE CHAIRMAN: Thank you. Please take a seat.

22 A. Thank you.

23 Examination-in-chief by MR WEST

24 MR WEST: Could you please be shown bundle {B-OR/2/1}.

25 A. Sorry? I couldn't hear you.

1 Q. I am just asking that you be shown a document which
2 should be on your screen, I hope.

3 A. Okay.

4 THE CHAIRMAN: Sorry, could you give me the tab number
5 again?

6 MR WEST: It is tab 2 of bundle B-OR. That, I should
7 explain, is the confidential version of this statement.

8 THE CHAIRMAN: Yes, thank you.

9 MR WEST: There is also a non-confidential version, but
10 I better ask her to confirm all of the contents.
11 Is this your first witness statement in these
12 proceedings?

13 A. Yes, it is.

14 Q. In fact, your only witness statement in these
15 proceedings?

16 A. Yes.

17 Q. If you turn on to {B-OR/2/17}, it is rather faint, but
18 is that your signature?

19 A. Yes, it is.

20 Q. Are the contents of this statement true to the best of
21 your knowledge and belief?

22 A. Yes, they are.

23 Q. Is this the evidence you wish to give the Tribunal?

24 A. Yes.

25 MR WEST: Just before cross-examination, the reason this is

1 confidential is just that there are one or two figures
2 which are confidential, they are marked in yellow, and
3 so I do not assume it will be necessary to refer to
4 them, but I just ask my friend not to read out anything
5 marked in yellow.

6 THE CHAIRMAN: "Figures", you mean numerical figures, yes, I
7 see.

8 MR WEST: The numbers, yes. For example, paragraph 40.

9 Cross-examination by MR SPITZ

10 MR SPITZ: Good afternoon, Ms Teusen-Krapp.

11 I am going to ask you some questions and refer to
12 your non-confidential version of your statement; I do
13 not need to go to the confidential one. That is at
14 {B/21/1}, from page 1, and you should have that, when
15 necessary, either in front of you or on the screen.

16 A. Okay.

17 Q. Now, in your statement dated 5 February 2024, you
18 provide evidence about VO's financing structure and
19 financing strategy, do you not?

20 A. Yes.

21 Q. You say you are able to give that evidence given your
22 various roles within VO's financing department?

23 A. Yes, that is true.

24 Q. So you joined VO in May 2007; correct?

25 A. Yes.

- 1 Q. I take it, therefore, that you are unable to give any
2 evidence about VO's financing structure and strategy
3 prior to May 2007; is that correct?
- 4 A. Not from my own experience, but obviously we have a lot
5 of financial statements summarising also the financial
6 structure and this is what has been available to me as
7 well.
- 8 Q. Not from your own experience?
- 9 A. Correct.
- 10 Q. Did you look at any further documents for the purposes
11 of this witness statement?
- 12 A. As I just said, the local financial statements,
13 including the notes, we have on a yearly basis, this is
14 information I've looked at, yes.
- 15 Q. When you joined VO in 2007, you were employed in
16 the accounting department, I believe?
- 17 A. This is correct, yes.
- 18 Q. You were responsible for producing VO's financial
19 statements?
- 20 A. Yes.
- 21 Q. Then, in 2008, you become the accounting manager of VO,
22 yes?
- 23 A. Of Adam Opel GmbH back then, yes, which is --
- 24 Q. Indeed -- (overspeaking) --
- 25 A. -- Opel Automobile now.

1 Q. Indeed. Thank you.

2 You remained in that role until the end of 2011,
3 I believe?

4 A. Yes, it's correct.

5 Q. So it is the case, is it not, that when you were
6 employed in the accounting department, you had no direct
7 involvement in the financing strategy of VO?

8 A. This is not fully correct. First of all, for just
9 preparing local, get financial statements, including
10 the notes, we need to describe the financial situation
11 of the company, so in order to do that I must have had
12 the background to describe that.

13 On top of that, there was also the very special
14 situation in 2009 with GM going bankrupt, where we had
15 a, yeah, local project team of just a couple of finance
16 people involved trying to support on the survival of
17 Opel back then, and clearly there I was really in
18 the project group to secure the funding of the company.

19 Q. All right. I think we may be slightly at
20 cross-purposes, so let me phrase the question a little
21 bit differently.

22 During that period, until the end of 2011, you had
23 no direct involvement in producing the financing
24 strategy of V and O? You were not involved in
25 formulating or producing the strategy?

- 1 A. Except for the period in 2009, I was not, but in this
2 period in 2009, I was directly involved.
- 3 Q. Let us go to your witness statement, paragraph 4 -- I am
4 sorry, paragraph 12 on page 4 {B/21/4}. There you say
5 you were "responsible for producing the financial
6 statements of Adam Opel", and you "became the accounting
7 manager". But as far as the formulation of the pricing
8 strategy is concerned, are you saying that you were
9 involved in formulating that strategy?
- 10 A. You just mentioned pricing. I've had nothing to do with
11 pricing.
- 12 Q. Okay.
- 13 At the beginning of 2012, you switched to a sales
14 and marketing finance role?
- 15 A. Yes, correct.
- 16 Q. You remained in that role until early 2013?
- 17 A. Yes.
- 18 Q. In that role, I would suggest to you, you had no direct
19 involvement in formulating the financing strategy of
20 V and O?
- 21 A. This is correct, yes.
- 22 Q. Then you were on maternity leave from February 2013 to
23 February 2014, yes?
- 24 A. Yes.
- 25 Q. On your return to work, you joined the Treasury

1 department, yes?

2 A. Correct.

3 Q. Working in wholesale auto financing?

4 A. Correct.

5 Q. You remained in that role until June 2017?

6 A. Correct.

7 Q. In that role, you also had no direct involvement in
8 the financing strategy of V and O?

9 A. This is not fully correct as, in Treasury, within
10 the team, clearly we have been responsible for the OV
11 funding, even though not under my direct ownership, but
12 within the Treasury function, yes.

13 Q. But you were involved, in this period, in working in
14 wholesale auto financing?

15 A. This is correct, yes.

16 Q. So what involvement did you have in the financing
17 strategy of VO?

18 A. Yeah, as I -- I have described, I think, overall in
19 the witness statement, during basically all periods,
20 Opel has always been a subsidiary of either parent
21 company GM, then PSA, then Stellantis, so basically
22 we've never had our own funding, except for this very
23 specific period in 2009. But for all other periods, we
24 were always shareholder funded, and, yeah, this has
25 always been the case. Also in this period, I just

1 mentioned here, when I was in Treasury already,
2 the funding we have received was always done by
3 the shareholder.

4 Q. Yes, indeed, and we will come to the role of
5 the shareholders a little bit later.

6 From June 2017 to October 2018, you were, again, on
7 maternity leave; is that correct?

8 A. Correct.

9 Q. Then, when you returned to work, you returned to
10 the Treasury department as a manager?

11 A. Yes, I was a manager before and I returned as manager
12 corporate finance, yes.

13 Q. Yes, and you were involved in corporate finance and
14 business development on your return?

15 A. Correct.

16 Q. Yes.

17 Then, in November, just to round this up,
18 November 2020, you took over the VO Treasury
19 responsibility?

20 A. It's correct.

21 Q. So what I would suggest to you, Ms Teusen-Krapp, is,
22 prior to November 2020 you did not have any direct
23 involvement in VO's financing strategy.

24 A. It was not under my responsibility, but I have been part
25 of the team, yes.

1 Q. Turning now to the structure of VO, it has always been
2 a wholly-owned subsidiary, has it not?

3 A. Yes, it has been.

4 Q. Prior to 2009 it was a wholly-owned subsidiary of GM --
5 of GM Europe; correct?

6 A. Well, GM Europe is not a legal entity. It has been
7 the managerial organisation of Europe, so it has been
8 a wholly-owned subsidiary of GM.

9 Q. A wholly-owned subsidiary of GM?

10 A. Correct.

11 Q. In 2017, VO was sold to PSA; correct?

12 A. Correct.

13 Q. It became a wholly-owned subsidiary of PSA?

14 A. This is true, yeah.

15 Q. In 2021, PSA then merged with Stellantis, and VO
16 therefore became a wholly-owned subsidiary of
17 Stellantis?

18 A. Correct.

19 Q. Your evidence in your witness statement is that VO, when
20 it has needed funds, has always obtained funding from
21 its shareholders; correct?

22 A. That is true, yes.

23 Q. By that you mean, I think, GM, PSA and Stellantis, at
24 each of the relevant times?

25 A. Correct.

- 1 Q. Apart from a short period in 2009 which you mentioned
2 a moment ago when GM was subject to a Chapter 11
3 bankruptcy process in the US, VO has never been
4 externally funded; is that correct?
- 5 A. That is true, yes.
- 6 Q. The funding has always been from the shareholders?
- 7 A. Yes.
- 8 Q. It is the case, I believe, that the financing strategy
9 of VO is determined by the shareholders rather than by
10 VO itself?
- 11 A. Yes, it is. Or it has been, yes.
- 12 Q. Let us turn to your witness statement, to paragraph 46,
13 which is {B/21/15}. There you say in terms:
14 "In terms of ... financing strategy, we have as you
15 been shareholder driven; the decisions have been taken
16 by the shareholders and there was nothing separately
17 done locally."
18 That is correct?
- 19 A. Yes.
- 20 Q. I think it is also the case that if VO had excess cash
21 that cash would have been placed into a cash pool?
- 22 A. This is correct, yes.
- 23 Q. We will come to the cash pool shortly, but it is
24 the case, is it not, that what would be done with
25 the excess cash in the pool was also a question for

- 1 the shareholders?
- 2 A. Fully correct, yes.
- 3 Q. Not for VO?
- 4 A. Yes.
- 5 Q. You do not have, and you have not ever had,
6 the authority or the responsibility to make decisions as
7 to how VO's excess cash would be used; is that correct?
- 8 A. Yes, this is correct. Just to maybe be a bit clearer,
9 I don't think, in this period, we've actually had excess
10 cash, so we're -- we're talking about being funded by
11 --by the shareholder, so any additional cash would have
12 reduced the shareholder funding. But obviously
13 the decisions have been taken by the shareholder.
- 14 Q. Indeed, if there had been excess cash, that, too -- what
15 to do with in a cash would have been a question for
16 the shareholder?
- 17 A. That's correct, yes.
- 18 Q. I want to ask you now some questions about how VO was
19 financed during the period relevant to these
20 proceedings. There are two ways that VO could obtain
21 funding from its shareholders. The first would be to
22 borrow money from the shareholders' global cash pool; is
23 that correct?
- 24 A. Yes, it's correct.
- 25 Q. The second was to enter into separate financing

- 1 agreements with the shareholder unrelated to
2 the shareholder's global cash pool?
- 3 A. Yeah, if you refer to more long-term funding, yes, this
4 is correct. So cash pool is usually used for rather
5 the short-term funding. If there's a long-term funding
6 need, there have been separate agreements for long-term
7 funding in addition to the cash pool.
- 8 Q. Yes, and I think it is your evidence that you do not
9 recall any of the details about whether VO ever entered
10 into specific financing agreements with its
11 shareholders?
- 12 A. I am not aware of any before 2009. I have been involved
13 in the set-up of shareholder funding after 2009. So
14 there has been a long-term agreement starting end of
15 2009, this is where I have been involved, yes.
- 16 Q. All right. Well, let us just have a look at
17 paragraph 44 of your witness statement, that is
18 {B/21/14}.
- 19 A. Yes.
- 20 Q. I am looking particularly at the last sentence:
21 "For longer term cash needs, there could be separate
22 agreements, (ie, not linked to the cash pool) with
23 the shareholder, with possibly a different rate, either
24 variable or fixed, but I do not know or recall any
25 details."

- 1 That is correct, is it not?
- 2 A. Yes, it is.
- 3 Q. Okay.
- 4 During the period 2009 to 2021, VO had its own cash
- 5 pool?
- 6 A. Yes, this is correct.
- 7 Q. Entities within the VO group who had excess cash would
- 8 place their cash in the cash pool?
- 9 A. Yes.
- 10 Q. Entities within the group who had a cash deficit would
- 11 take what they needed from the cash pool?
- 12 A. In agreement with Adam Opel, yes.
- 13 Q. Yes.
- 14 VO's cash pool was connected with what you call
- 15 a "global cash pool"?
- 16 A. Yes.
- 17 Q. The global cash pool was the cash pool of VO's
- 18 shareholders at the relevant time?
- 19 A. Correct, yeah.
- 20 Q. Okay.
- 21 So from 2009 to 2017 when GM was the shareholder,
- 22 VO's local cash pool was connected to GM's global cash
- 23 pool?
- 24 A. Correct.
- 25 Q. From 2017 to 2021 when PSA was the shareholder, VO's

- 1 cash pool was connected to PSA's global cash pool?
- 2 A. Correct.
- 3 Q. When there was not enough cash in VO's local cash pool
4 to meet the financing needs of the VO group, then VO
5 would take cash from the global cash pool; is that
6 correct?
- 7 A. Correct.
- 8 Q. That cash would then be put into VO's local cash pool?
9 It would be taken from the global cash pool and --
- 10 A. It would be used by Opel Automobile, or Adam Opel back
11 then, for their own cash needs. The cash needs usually
12 came out of the OEMs, so -- so out of Opel GmbH, at this
13 time, and no other cash -- local cash pool participants.
- 14 Q. The entities within the VO group who needed cash would
15 withdraw what they needed from VO's local cash pool?
- 16 A. In agreement with Adam Opel, yes, but very limited, as
17 the main cash need has always been with Adam Opel.
- 18 Q. Before 2009, it is right, is it not, that VO did not
19 have a local cash pool?
- 20 A. Correct. Opel was just a cash pool participant like any
21 other GM entity.
- 22 Q. In GM's global cash pool?
- 23 A. Yes.
- 24 Q. So if an entity within the VO Group had excess cash, it
25 would deposit money in GM's global cash pool; is that

- 1 right?
- 2 A. Yes.
- 3 Q. Similarly, if an entity within the group needed cash, it
4 would withdraw money from GM's global cash pool?
- 5 A. In agreement with the shareholder, yes.
- 6 Q. Then, for from the period from 2022, VO's local cash
7 pool was dissolved; is that right?
- 8 A. Correct.
- 9 Q. All entities within the VO Group directly participate in
10 Stellantis' global cash pool?
- 11 A. Correct.
- 12 Q. All right.
- 13 It is the case, is it not, that in both these local
14 and global cash pools that you describe, participants in
15 the pool have either a positive or a negative balance?
- 16 A. Correct.
- 17 Q. A participant who deposits more than they borrow has
18 a positive balance?
- 19 A. (No audible response)
- 20 Q. A participant -- sorry, you said "yes", did you?
- 21 A. Yes.
- 22 Q. The reverse, a participant who borrows more than they
23 deposit has a negative balance?
- 24 A. Correct.
- 25 Q. Participants with a positive balance earn interest on

- 1 that positive balance, yes?
- 2 A. Correct.
- 3 Q. Those with a negative balance are charged interest on
- 4 that negative balance?
- 5 A. Correct.
- 6 Q. Throughout the relevant period for these proceedings,
- 7 the VO Group would have either a positive or a negative
- 8 balance in the global cash pool of its shareholder?
- 9 A. Correct.
- 10 Q. Again, I am sure you will agree with me and it is pretty
- 11 obvious, if VO had a positive balance, VO would earn
- 12 interest, and if it had a negative balance, it would be
- 13 charged interest; that is correct?
- 14 A. That's correct, yes.
- 15 Q. The interest rates earned on positive balances were
- 16 lower than the interest rates charged on negative
- 17 balances?
- 18 A. Yes, based on market rates.
- 19 Q. Now, it is right, is it not, that you have not explained
- 20 anywhere in your witness statement whether VO had
- 21 a positive or negative balance in the global cash pool
- 22 of its shareholders from one year to another?
- 23 A. This is correct. I mean, a balance could change every
- 24 day and this is not information I have any more or
- 25 I have seen.

- 1 Q. Yes.
- 2 You have also not explained in your evidence
3 the amount of any positive or negative balance that VO
4 may have had in the global cash pool from year to year.
- 5 A. This is correct. As just mentioned, it could -- it has
6 changed every day.
- 7 Q. You do not give any evidence of what VO's global cash
8 pool balances would have been if VO had had additional
9 cash during the relevant period.
- 10 A. This is true.
- 11 Q. Now, you do say that VO would have placed any additional
12 cash into the cash pool.
- 13 A. Correct.
- 14 Q. But you are not in a position to assist the Tribunal
15 with explaining what impact that would have had on VO's
16 global cash pool balances; is that right?
- 17 A. Well, it would have increased the cash pool balance or
18 reduced the negative balance by the respective amount,
19 yes.
- 20 Q. You are not in a position to say what those amounts
21 would have been?
- 22 A. Correct, because the information is not available any
23 more.
- 24 Q. Right.
- 25 It is also the case, is it not, that you have not

1 explained in your witness statement whether VO ever
2 entered into separate funding arrangements with its
3 shareholder to meet its financing needs during
4 the period relevant to these proceedings?

5 A. This is correct, as information has not been available
6 to me.

7 Q. You neither recall, nor have any knowledge of these
8 arrangements?

9 A. Correct.

10 MR SPITZ: Thank you very much. I do not have anything
11 further.

12 A. Thank you.

13 THE CHAIRMAN: Thank you very much, you are released from
14 your oath. Thank you for coming.

15 A. Thank you.

16 (The witness withdrew)

17 MR WEST: So our next witness is Mr Alberto Bertino who is
18 a video witness. I think he was expecting to start at
19 2 o'clock.

20 THE CHAIRMAN: Okay, well, we can rise early. Is there
21 anything else we need to deal with at the moment?

22 Mr Scannell, you were going to give us an
23 explanation. It may be you are not prepared. This was
24 in response to Professor Neuberger. Maybe you need to
25 gather your thoughts.

1 MR SCANNELL: There is one further element to
2 the instructions I need in relation to that, so if it
3 could wait until --

4 THE CHAIRMAN: Yes, of course. So we will have an extra
5 long lunch. Well, let us get back for 1.55 so we are
6 ready to kick off precisely at 2 o'clock.

7 (12.48 pm)

8 (The short adjournment)

9 (1.58 pm)

10 MR WEST: So I now call Mr Alberto Bertino.

11 THE CHAIRMAN: Hello, Mr Bertino, can you hear us?

12 A. Yes, I can hear you.

13 THE CHAIRMAN: Thank you very much.

14 You will be sworn in now. If you stay seated while
15 you are sworn in, that is fine.

16 MR ALBERTO BERTINO (sworn)

17 (All answers given in English unless otherwise indicated)

18 Examination-in-chief by MR WEST

19 MR WEST: The Commissioner has asked me to read

20 the following brief statement.

21 Mr Bertino is located in Italy and his evidence is
22 being provided by video with the authorisation of
23 the Italian Government under the Hague Convention of
24 18 March 1970 on the taking of evidence abroad in civil
25 or commercial matters. Mr Alexander Blumrosen has been

1 authorised to be the Hague Convention commissioner and
2 is attending this cross-examination via video.

3 Mr Bertino, could you look, please, at tab 8 of
4 bundle B2 {B/8/1}.

5 A. Yes.

6 Q. Is that your witness statement in the *Stellantis*
7 *v NTN* case, sometimes called "the *Bearings* case"?

8 A. Yes, it is.

9 Q. If you go forward in that statement to {B/8/15}, is that
10 your signature?

11 A. Yes, it is.

12 Q. Could I ask that you be shown {B-OR/1/1}.

13 Is that your witness statement in these proceedings?

14 A. Yes, it is.

15 Q. Again, if you could turn to {B-OR/1/14} of that
16 document, is that your signature?

17 A. Yes, it is.

18 Q. At paragraph 8 {B-OR/1/3}, you say:

19 "I previously provided a witness statement dated
20 17 May 2021 describing how the financial strategy of FCA
21 evolved from 2004 to 2020 for the purposes of
22 proceedings relating to a cartel affecting the prices
23 for automotive *Bearings* and components containing
24 automotive *Bearings* ('*Bearings* Witness Statement').

25 I understand from Hausfeld that the history of FCA's

1 financial strategy covered in the *Bearings* Witness
2 Statement is relevant to matters set out in paragraph 7
3 above. Therefore, the *Bearings* Witness Statement is my
4 evidence of FCA's financial strategy for the period of
5 2004 to 2020 in this case, together with this statement
6 as a supplemental statement given the passage of time
7 since the *Bearings* Witness Statement ..."

8 Do you see that, Mr Bertino?

9 A. Yeah, I see it.

10 Q. Then just going forward to paragraph 18 {B-OR/1/5}, you
11 say:

12 "From reading the *Bearings* Witness Statement,
13 I would like to clarify the wording of the last sentence
14 of paragraph 9 '[i]ts net industrial debt was its debt
15 minus debt related to financial-services and the ratio
16 of net industrial debt to equity stood at 1.92 at the
17 end of 2004'. I would change it to say the Group's 'net
18 industrial debt was its debt less cash minus debt
19 related to financial-services ... at the end of 2004'."

20 So subject to that clarification, Mr Bertino, are
21 the contents of both of those statements true to
22 the best of your knowledge and belief?

23 A. Yes, they are.

24 Q. Are they the evidence you wish to give to this Tribunal
25 today?

- 1 A. Sorry, can you repeat the question?
- 2 Q. Are those two statements your evidence for these
3 proceedings today?
- 4 A. Yes, they are.
- 5 MR WEST: Thank you.
- 6 You may be asked some questions.
- 7 Cross-examination by MR SPITZ
- 8 MR SPITZ: Good afternoon, Mr Bertino.
- 9 A. Good afternoon.
- 10 Q. The statement dated 17 May 2021 that you have just
11 described as part of your evidence arose from
12 the *Bearings* case, did it not?
- 13 A. Yes, it -- it is.
- 14 Q. In those proceedings, FCA sued its *Bearings* suppliers,
15 did it not?
- 16 A. Yes, this is my understanding.
- 17 Q. It was alleging a cartel relating to the prices of
18 automotive *Bearings*; correct?
- 19 A. Yes, this is my understanding.
- 20 Q. In your *Bearings* statement, you gave evidence about what
21 FCA would have done had the cost of *Bearings* been lower,
22 did you not?
- 23 A. Yeah.
- 24 Q. The evidence you gave there about the FCA's financial
25 operations and strategy covered the period from 2004 to

1 2020; is that right?

2 A. Yes, that's right.

3 Q. Now, in the statement you have given in these
4 proceedings, that is the statement you made on
5 5 February this year, you say that the *Bearings*
6 statement is your evidence of FCA's financial operations
7 and strategy in relation to the period 2004 to 2020,
8 yes?

9 A. Yes.

10 Q. But you also give evidence in this February statement --
11 and I am going to refer to the February statement as
12 your "OSS statement" -- you also give evidence in your
13 OSS statement about FCA's financial strategy over
14 the same period, 2004 to 2020, do you not?

15 A. Can you repeat the question, please?

16 Q. Yes, of course.

17 In your OSS statement about FCA's financial strategy
18 over the same period -- that is 2004 to 2020 -- you give
19 evidence about that period in your OSS statement as
20 well?

21 A. Yes.

22 Q. You say that this evidence is intended to supplement
23 the evidence in your *Bearings* statement, quoting you
24 {B-OR/1/3}:

25 "... given the passage of time."

- 1 That is correct, is it not?
- 2 A. Yes, it is.
- 3 Q. I find that slightly difficult to understand,
4 Mr Bertino, because your OSS statement was given more
5 than two and a half years after your *Bearings* statement,
6 your *Bearings* statement, on 17 May 2021, your OSS
7 statement, 5 February 2024. So your recollection of
8 FCA's financial strategy during the period 2004 to 2020
9 would surely have been better when you made your
10 *Bearings* statement?
- 11 A. Probably, yes, the -- the argument that we had, that was
12 complementing that.
- 13 Q. So even though your recollection would have been better
14 in the *Bearings* statement, nevertheless, you found it
15 necessary to supplement that statement two and a half
16 years later?
- 17 A. Sorry, I do not understand the question. If you can
18 repeat.
- 19 Q. You have agreed with me, I think, that your recollection
20 would have been better in your *Bearings* statement
21 because it was closer in time to the events you describe
22 than in your 2024 OSS statement, and so I have asked you
23 why you found it necessary to supplement your *Bearings*
24 statement two and a half years later?
- 25 A. We find because with -- let me say, with our lawyers, we

1 found that something was not that clear therefore we
2 tried to clarify it better, some point in the statement.

3 Q. Do you recall what it was that you sought to clarify
4 better?

5 A. We clarified better what we had done by -- by net debt,
6 was this the normal -- let me say, the normal management
7 of our cash in that position during the period. It's
8 more or less factual, but more on term of how things
9 normally work at the time of financial planning.

10 Q. So was it an oversight not to have dealt with that in
11 your 2021 *Bearings* witness statement?

12 A. No. I think that the 20 -- the previous witness
13 statement was correct, was a fact. Probably something
14 could have been explained better before, this is why we
15 -- we stated better some -- some position.

16 Q. You stand by all the evidence you gave in 2021; is that
17 correct?

18 A. Yes.

19 Q. You are giving evidence in that statement about FCA's
20 financial strategy going back to 2004, that is 20 years
21 ago; is that correct?

22 A. Yes.

23 Q. Did you re-read your witness statement of 2017 before
24 signing your witness statement of February 2024?

25 A. Yes, I re-read the witness statement, not 2017, it was

1 2021.

2 Q. You are quite right, I apologise, it is 2021. That is
3 my mistake.

4 Now, did you watch the testimony given yesterday by
5 Mr Gautier?

6 A. No, I didn't.

7 Q. Or by Ms Biancheri?

8 A. No, I didn't.

9 Q. Are you aware that at least one of the witnesses in this
10 case claims to be no longer confident about the factual
11 accuracy of the evidence she gave only three years ago
12 because of the passage of time? Is that something you
13 are aware of?

14 A. No, I'm not aware of that, but ...

15 Q. Are you yourself quite certain that you recall all of
16 the facts underlying the witness statement that you gave
17 in May 2021 concerning matters going back to 2004?

18 A. In general terms, yes. The matters are anyhow matters
19 that are public that are supported by documents.

20 Q. Are there any particular areas that you feel less
21 confident about, because you say "in general terms" you
22 are confident that you recall it?

23 A. Not in particular. Maybe if you ask me some specific
24 fact, but the one that I reported is something that
25 I know.

1 Q. Are you quite sure that you are actually remembering
2 those facts and not simply relying on what you re-read
3 in February this year and simply assuming that that is
4 true because you said it in May 2021?

5 A. I can answer in this way. The main facts for the story
6 of the FCA financing in that period is pretty clear to
7 me because I was involved in this -- in these
8 activities, in particular in controlling activities.
9 Maybe some specific facts, some numbers, some items,
10 I could not remember yet, but they are stated in our
11 documents.

12 Q. The statement you made in February 2024, that statement
13 also covers the period 2002 to 2003?

14 A. Yes, even if what I said in the statement, I was not in
15 the same position in the period before. I didn't have
16 the same, let me say, information and the same access to
17 the -- these kind of activities.

18 Q. It covers the period from 2021 to date, does it not?

19 A. Yes.

20 Q. Now, Mr Bertino, it is the case, is it not, that if FCA
21 receives additional cash in the ordinary course of
22 business, it may use that cash in a number of different
23 ways?

24 A. Yes, it may.

25 Q. It may use the cash, for example, to reduce debt?

- 1 A. It can reduce debt.
- 2 Q. But it can also use the cash to make investments in its
3 business?
- 4 A. Yes, it can.
- 5 Q. Or to pay dividends to shareholders?
- 6 A. Yes.
- 7 Q. Or it can simply hold on to the cash to build up
8 its cash reserves, can it not?
- 9 A. Somehow, yes, but let me say, we do not tend to have
10 excess cash, therefore, at a certain point on time, you
11 need to do something with the cash. Therefore, if it's
12 cash needed, it's cash needed, therefore I use this cash
13 and I do not have to get cash from the market. If it's
14 an excess cash, I distribute to the shareholder, I --
15 I make investment and so on.
- 16 Q. Are you saying -- and we will come to the cash position
17 in a little while, but are you saying you would not hold
18 on to the cash and build up FCA's cash reserves?
- 19 A. We hold on the cash reserve for the amount that is
20 considered to be needed, no more.
- 21 Q. All right.
- 22 Mr Bertino, you would accept that to reduce debt FCA
23 could do one of two things, it could either repay
24 the debt, yes?
- 25 A. (No audible response).

1 Q. Or it could issue less debt?

2 A. Yes, correct.

3 Q. I am not sure that the transcript picked up your answer
4 to the first part of that question. I asked it could
5 use that -- it could reduce that by repaying the debt
6 and I think you nodded, but perhaps just answer in
7 the affirmative so that the transcript can pick that up?

8 A. Again, please, sorry --

9 Q. Yes, of course.

10 A. -- I didn't understand that point.

11 Q. You would accept that to reduce debt FCA could do one of
12 two things, it could either repay debt?

13 A. Yes.

14 Q. Or it could issue less debt?

15 A. Yes.

16 Q. Let's consider, first, the repayment of debt. It is
17 the case, is it not, that repaying debt --

18 A. Sorry, sorry, can I -- can I be more precise?

19 Q. Yes, of course.

20 A. When you are saying -- because I understand, when you
21 are saying "issue less debt", means that during the year
22 we have debt maturing, therefore we can replace this
23 debt before issuing new debt, or not issue new debt.
24 Not issue new debt means that I reduce the debt, just to
25 be more precise.

1 Q. Thank you.

2 So if we consider, first, the repayment of debt, it
3 is the case, is it not, that repaying the debt before
4 maturity was something that FCA rarely did? It seldom
5 did that?

6 A. Yes, in particular for long-term debt.

7 Q. What I suggest to you is, that is because in many of
8 the relevant agreements and bonds, FCA did not have
9 the option to repay the debt before maturity.

10 A. It does not have, or it has the option, but it cost too
11 much.

12 Q. Well, let us take it in stages. For the first part, it
13 did not have the option to repay the debt before
14 maturity in many of the relevant agreements?

15 A. In -- in the bond issuance, I think that we can repay
16 the bond in many, many bond issuance, but as I said, we
17 have to pay something to the bondholders.

18 Q. Okay, let us just have a look, for clarity's sake, to
19 your witness statement in the OSS proceedings. That is
20 at {B/19/11} and it is paragraph 41. That should appear
21 on your screen.

22 A. Yeah.

23 Q. You see there the first part of your evidence:

24 "We do not always have the opportunity to do this,
25 because in certain cases we do not have the option to

1 prepay a debt."

2 So that is correct, is it not?

3 A. Yeah, this is correct.

4 Q. Even if FCA did have the option to repay its debts
5 early, there would often be an additional cost attached
6 to early repayment, would there not?

7 A. Yes.

8 Q. That is what you say in paragraph 37 {B/19/10} of your
9 witness statement:

10 "Early repayment of [the] debt (ie, before
11 the stated maturity) is not something that we were
12 frequently doing because it could be a little bit
13 complex."

14 You have in mind there the additional cost attached
15 to early repayment, as you say further down in that
16 paragraph of your witness statement?

17 A. Yes.

18 Q. So I think you would agree that if FCA received
19 additional cash, it would often not be commercially
20 sensible for FCA to use the cash to repay its debt?

21 A. It depends on the moment, because in certain cases, we
22 do not have the option to repay; in certain cases, we
23 had, in the past, and sometimes we used this option
24 before. It depends really on the -- on specific period.
25 It's not something that you can say in general. Then we

1 are talking about the long-term debt, because
2 the short-term debt is something that you can normally
3 repay it, or just not to draw without -- without
4 particular expense.

5 Q. Yes, indeed.

6 It is also the case that FCA can reduce its debt by
7 deciding to issue less debt, as we discussed a moment
8 ago, and in principle, if FCA receives additional cash,
9 it may decide to issue less debt; would you agree with
10 that?

11 A. Yes, yes. Yeah, I agree.

12 Q. But that will obviously depend on the magnitude of
13 additional cash that FCA receives, would it not?

14 A. It could depend on the magnitude, it could depend on
15 the timing.

16 Q. Thank you.

17 You say in your evidence that if FCA were to receive
18 additional cash of more than 100 million, then there
19 would be some possibility that FCA would decide to issue
20 less debt. Now, if you want to have a look at that, it
21 is paragraph 44 of your OSS witness statement {B/19/11}.
22 Do you see that?

23 A. Yeah, I see it.

24 Q. So you say there is "some possibility", but you do not
25 put it any higher than that, do you?

1 A. I do not put any higher than that because, let me say,
2 we are talking about something that, it didn't happen,
3 but, let me say, the possibility for this kind of debt
4 is -- is possible. If we look -- let me say, when we
5 are looking at this kind of reasoning, we are looking at
6 -- when I said that this part, it was level before. If
7 I have more cash available, I need less debt from
8 the market, all other things being equal.

9 Q. So is it fair to say that it is possible, and whether or
10 not it actually happens depends on a whole range of
11 circumstances? Is that fair?

12 A. Is that fair? And it probably is fair to say that this
13 is in particular true on the long run.

14 Q. If we could turn to paragraph 45 of your OSS statement
15 {B/19/12}, you refer there to the preliminary damages
16 estimates for PSA and OV in these proceedings. That is
17 in the first sentence.

18 A. Yeah.

19 Q. The estimates are of between €250 million and
20 €370 million?

21 A. Yeah.

22 Q. Then you go on to say:

23 "Assuming that FCA's damages will be at a similar
24 level, in my view, there is no difference between
25 the cost of financing the overcharge resulting from

1 Bearings compared with the cost of financing
2 the overcharge resulting from OSS. Apart from
3 the magnitude, basically, the principles are the same.
4 Of course, I'm more confident saying that with higher
5 amounts we probably would have reduced our bond
6 issuances; for example, €500 million can be the size of
7 a bond issuance."

8 So the higher the amount of additional cash the more
9 confident you are that FCA could avoid issuing new debt;
10 is that correct?

11 A. Yes, it is.

12 Q. For example, if FCA receives additional cash of
13 €500 million, FCA might decide that it does not need to
14 issue a €500 million bond?

15 A. Yes, it might.

16 Q. But if it receives a lower amount of additional cash,
17 then FCA would probably still issue the bond, would it
18 not?

19 A. Maybe with a lower size.

20 Q. Mr Bertino, are you aware of how much FCA is claiming it
21 overspent on OSS components?

22 A. No, I -- I do not have the final figure. This is ...

23 Q. All right. Well, if we can call up, Mr Hughes', FCA's
24 expert, report to get an indication of the estimated
25 overspend, that is at {E1/2/98} and it is

1 paragraph 6.2.8.

2 You will see there -- let me also -- having seen
3 that, let me also refer you to Mr Hughes' second witness
4 statement, that is MH 2 {E1/4/84}, and that is at
5 A1.1.5. The figure there you will see at A1.1.5:

6 "The total Overspend on New Contracts for FCA is
7 €171.82 million."

8 That is the estimate. That equates to an average
9 annual overspend of approximately €10 million per year
10 more or less. It is the total amount divided by 17.
11 You can take it from me, I think, that it is
12 approximately €10 million per year.

13 So FCA's case, if I understand it correctly, in
14 these proceedings is that it would have had on average
15 €10 million of additional cash per year. On that
16 assumption, would you agree that in the context of FCA's
17 business, €10 million is a relatively small amount of
18 additional cash?

19 A. I do not agree. I do not agree for two reasons. One,
20 10 million are 10 million, and in the fourth period we
21 made an action in order to dismiss or to get cash for
22 even more less.

23 And the second point is that the €10 million should
24 be accumulated. Therefore you need to understand, at
25 the end, the 10 million give 170, 200 million, therefore

1 the impact that they have is the accumulated effect of
2 all this.

3 Q. If you have a look at your witness statement in
4 *Bearings*, paragraph 6, that is {B/8/3}, you see that
5 revenues for FCA averaged around €50 billion per annum
6 between 2005 and 2011 and approximately €85 billion in
7 2012 and 2013, and €100 billion per annum since
8 the merger with Chrysler in 2014; do you see that?

9 A. Yeah.

10 Q. Relative to those amounts, I would suggest to you that
11 €10 million a year as an average annual overspend is
12 a relatively small amount of additional cash; would you
13 agree?

14 A. No, I do not agree because they are comparing two
15 different things. One is the revenues, the turnover.
16 The other is the cash that we -- we get at the end of,
17 let me say, the economic cycle in our -- in our hand.
18 Therefore, we are comparing two different things, it's
19 not directly comparable.

20 Q. You cannot be confident, Mr Bertino, that if FCA had had
21 10 million of additional cash from year to year, it
22 would have decided to issue less debt from year to year,
23 can you?

24 A. At the end -- let me say, at the end, yes. As I said,
25 this is something that has to be considered on average

1 in the long run. If you take any particular point in
2 time, I can agree with you, maybe in that moment this
3 increase my cash, the case is volatile, it changes and
4 so on. But at the end, ceteris paribus, we draw
5 the money for the market that is needed, and therefore,
6 if we have given 10 million more, we can have less money
7 from the market for 10 million.

8 Q. Let us look at what you say about how FCA would have
9 used any additional cash from year to year. If we start
10 with the year 2002, in that case, you are not able to
11 say how FCA would have used additional cash in the year
12 2002; correct?

13 A. Sorry, can you repeat the question?

14 Q. In the year 2002, you are unable to say how FCA would
15 have used additional cash, are you not?

16 A. I was not involved in the -- in the process therefore
17 I cannot say by -- let me say, I was not involved in
18 the planning, in the Treasury planning, therefore
19 I cannot say directly.

20 Q. So you are not in --

21 A. I can argue, but I am not directly involved.

22 Q. So you are not in a position to comment on the financial
23 strategy in 2002 because you were not involved in that
24 period?

25 A. I cannot comment here directly.

1 Q. If we turn to 2003 to 2007, now, there, as I understand
2 it, your position is that FCA would probably have used
3 the additional cash during this period primarily to
4 reduce debt, and that is at paragraph 34 of your OSS
5 witness statement, which is {B/19/9}.

6 (Pause).

7 You say there, in the second sentence, it is your
8 recollection:

9 "... of the financial strategy at the time that, had
10 there been any additional cash from 2003 to 2007, it
11 would probably have been used primarily to reduce debt."

12 Now, you say --

13 A. Yes, it was, yes.

14 Q. I am sorry?

15 A. No, no, please go on.

16 Q. You say "primarily". You accept that at least some of
17 the additional cash would have been used for other
18 purposes?

19 A. Yes, it could be used for other purposes. It could be
20 used for investment, for instance.

21 Q. Yes, thank you.

22 It is the case, is it not, that in the years 2003 to
23 2004, FCA's strategy was to raise as much cash as
24 possible? That is right, is it not?

25 A. Yes, we -- we made lot of the -- this mission(?) of

- 1 the businesses.
- 2 Q. Yes, it was seeking to raise cash through a strategy of
3 divestment, yes?
- 4 A. Yes.
- 5 Q. That is selling assets to get cash?
- 6 A. Correct.
- 7 Q. You would accept, I think, that if FCA had any
8 additional cash during the period 2003 to 2004, it would
9 have held on to it to build its cash reserves?
- 10 A. Can you repeat, please, just to ...
- 11 Q. Yes. You would accept that if FCA had any additional
12 cash during the period 2003 to 2004, it would have held
13 on to that cash to build its cash reserves?
- 14 A. Yes, probably reducing the disposal of asset, because,
15 again, if I have more cash, I can keep the cash and I do
16 not need to do -- to dispose other assets in order to
17 have the same cash.
- 18 Q. You say at paragraph 17 of your OSS statement {B/19/5}
19 that the strategy after 2003/2004 was -- and I am
20 quoting you:
- 21 "... focused on investments, operational
22 improvements and optimisation of funding activities (for
23 instance debt reduction, improvement of rating)."
- 24 That is --
- 25 A. Yeah.

1 Q. -- at {B/19/5}.

2 A. Which is the paragraph, sorry?

3 Q. It is paragraph 17.

4 A. Ah, okay.

5 Q. It is about --

6 A. Yeah.

7 Q. You see it, thank you.

8 A. Yeah, I see it.

9 Q. So the period after 2003/2004, that would include

10 the year 2005?

11 A. Yes, it would include 2005, but more 2006/2007 when we

12 start generating cash.

13 Q. So it would also include 2006 and 2007?

14 A. Yeah.

15 Q. You would accept that during those years, FCA's strategy

16 was at least in part to make investments and operational

17 improvements?

18 A. Yes.

19 Q. Had FCA had additional cash during this period, it would

20 have used some or all of the additional cash to make

21 investments and operational improvements, would it not?

22 A. Possibly, or to reduce debt.

23 Q. Well, but it stands to reason, having a look at your

24 paragraph 17 and the strategy after 2003/2004, that FCA

25 would have used some or all of that additional cash to

1 make investments and operational improvements. That is
2 your evidence, is it not?

3 A. Yes.

4 Q. If we turn to paragraph 16 of your *Bearings* witness
5 statement, this is the part of your witness statement
6 where you are discussing FCA's financial strategy in
7 the period from 2004 to 2007. The reference is {B/8/7}.
8 Mr Bertino, you can see that the period here is 2004 to
9 2007 by looking at the heading above paragraph 9 {B/8/4}
10 of your *Bearings* witness statement, at B/8 --

11 A. Yeah.

12 Q. -- page 4.

13 So you say this halfway down the paragraph {B/8/7}:

14 "In addition to the general working capital and
15 operational needs, FCA used significant amounts of cash
16 for capital expenditures to support the existing and
17 planned future vehicles and for principal and interest
18 payments owing under various financial obligations. FCA
19 also made capital investments in the regions in which it
20 operated, primarily related to initiatives to introduce
21 new vehicles, enhanced manufacturing efficiency,
22 improved capacity as well as for maintenance, and for
23 regulatory and environmental compliance."

24 So you would accept, Mr Bertino, that if FCA had
25 received additional cash during the period 2004 to 2007,

1 some or all of it would have been used for the purposes
2 of capital expenditure and investment?

3 A. Yes, but let me clarify this point. We did not receive
4 just the cash from the operating activities. In
5 the same period, we issue bond, we received financing,
6 therefore we activated all cash sources that are needed
7 for our company in order to proceed. Therefore, if
8 I receive more cash from one side, I can activate less
9 funding from the other side. Again, *ceteris paribus*.

10 Q. Yes. It is also the case, is it not, that FCA paid
11 a €276 million dividend to shareholders in 2007? Is
12 that correct?

13 A. Yes, this is what -- what I remember.

14 Q. You recall paying this dividend to shareholders, do you?

15 A. I did not pay because I was not the cash manager, but
16 basically --

17 Q. Quite so. I do not mean personally.

18 A. Unfortunately, I cannot afford it.

19 Q. Sadly.

20 But you would accept that FCA was using its cash to
21 pay substantial dividends to shareholders in 2007?

22 A. It was a starting of payment to shareholder. In 2007,
23 was not that -- that high, but it was a starting point
24 for the payment of the shareholder because the company
25 were producing cash, therefore the shareholder stayed

1 for long term -- long time, without dividend they
2 contributed to the company, they made capital injection,
3 therefore when the cash generation was sufficient, we
4 started paying to shareholders. Then some payment to
5 shareholders were compulsory, because we had something
6 like preference shares in which, if you have a profit,
7 you have to pay a certain amount of these profits to
8 certain shareholder, a minimal amount, but anyhow, was
9 paid.

10 Q. Yes, it was paid.

11 It is reasonable to suppose, Mr Bertino, that if FCA
12 had received additional cash in 2007, some or all of it
13 would have been used to pay dividends to shareholders,
14 yes?

15 A. Again, it could have been. I do -- I believe less on
16 that, because normally the dividend to shareholder
17 anyhow plan they have made based on dividend per share
18 and so on, therefore I'm not sure that exactly this
19 amount did change the dividend to shareholder in 2017.
20 Maybe in the former years, yes, but ...

21 Q. But not in 2017 -- sorry, in 2007?

22 A. 2007, sorry.

23 Q. So just for clarity, it is reasonable to suppose that if
24 the additional cash was received in 2017, some of it
25 would have been used to pay dividends to shareholders.

- 1 That is reasonable to suppose, is it not? 2007.
- 2 A. I would say it this way. It's possible. In my opinion,
3 unlikely, but it will be possible -- it had been
4 possible.
- 5 Q. Now, at the end of 2007, FCA had extinguished its net
6 industrial debt, had it not?
- 7 A. It has zeroed the net industrial debt.
- 8 Q. That means it had more cash than debt, does it not?
- 9 A. Yes, this is what we clarify, because probably it was
10 not that clear in the statement.
- 11 Q. So what it did in light of this debt free status is that
12 it implemented a growth and margin expansion plan during
13 the years 2007 to 2010, did it not?
- 14 A. Can you repeat exactly the question?
- 15 Q. Yes, of course. In light of its debt free status, FCA
16 implemented a growth and margin expansion plan during
17 the years 2007 to 2010, did it not?
- 18 A. Yes, it did.
- 19 Q. That was focused on transforming FCA into a global
20 industrial enterprise?
- 21 A. It already was, but basically it's to -- to improve and
22 to extend the mandate of the enterprise and
23 the activities, yes, to expand.
- 24 Q. All right.
- 25 Paragraph 22 of your *Bearings* witness statement,

1 that is at {B/8/8} -- in fact, I am sorry, it is
2 paragraph 22 at {B/8/9}. You say there:

3 "Moreover, with the Group debt having been
4 extinguished and holding nearly 7 billion euros of
5 liquidity, FCA was able to implement a strong programme
6 of investment, completing a 426 million euros share
7 buyback plan and making dividend payments of 522 million
8 euros across all share classes, the first dividend it
9 had paid in 5 years, constituting a pay-out ratio of
10 approximately 25%."

11 You see that?

12 A. Yeah.

13 Q. So as at the end of 2007, FCA was using its excess cash
14 to make significant investments, was it not?

15 A. Yeah.

16 Q. It also proposed to pay a €522 million dividend payment
17 to its shareholders?

18 A. Yes.

19 Q. Now, you say in this paragraph that that was the first
20 dividend that FCA had paid in five years, but that is
21 not quite correct, is it?

22 A. It was the first dividend for ordinary shares. As
23 I explained, we have some preference shares that -- or
24 reached, let me say, the payment of the dividend was
25 compulsory as long as the company had profit.

- 1 Q. So that is different, is it, to the €276 million
2 dividend to shareholders in January 2007 that we
3 discussed a moment ago?
- 4 A. Yeah.
- 5 Q. But both dividends were paid in 2007, yes?
- 6 A. Yes.
- 7 Q. So is it reasonable to suppose that if FCA has received
8 additional cash in 2007, some or all of it would have
9 been used to make investments?
- 10 A. It's an option.
- 11 Q. Some or all of it would have been used to pay dividends
12 to shareholders?
- 13 A. Could be an option.
- 14 Q. It is not at all obvious, is it, Mr Bertino, that that
15 funding would have been used to reduce debt? It is not
16 obvious, is it?
- 17 A. If I had to look at how things were going and how
18 the planning is done, investment is something that is
19 related to the business that normally you planned
20 investment and normally you have to fund investment with
21 debt or with equity. The distribution to shareholders
22 is another thing that is normally planned. Therefore,
23 again, all other things being equal, with the additional
24 cash, either I repay debt or I ask less debt to
25 the market.

- 1 Q. Or you pay a dividend, yes, to shareholders?
- 2 A. But the dividend is something that is decided based on
3 the income and the income based on the performance of
4 the company. Therefore, it's something that is decided,
5 let me say, before having directly the cash. Of course
6 you have to look at the fact that you have sufficient
7 cash to pay the dividend, but, again, you are using this
8 cash for paying the dividend, making investment and
9 the cash comes from the operation or from external
10 funding. If you have more cash from the operation, you
11 need less cash from the external funding.
- 12 Q. So let us look at the year 2008. You say in
13 paragraph 24 of your *Bearings* witness statement, that is
14 {B/8/10}, you say there:
- 15 "... the Group did not make any dividend payments in
16 2008 so as to preserve liquidity, with the exception of
17 dividends on savings shares (being 25 million euros)."
- 18 A. Yeah.
- 19 Q. Could we turn up your exhibit, which is at {B/9/191}.
- 20 You will see that that is the "Annual Report
21 Consolidated and Statutory Financial Statements" at
22 31 December 2008.
- 23 A. Yeah.
- 24 Q. If you go to internal page 190, which is the electronic
25 bundle reference {B/9/193}, and if you look at

1 the second paragraph underneath the table.

2 A. Yeah.

3 Q. "Dividend payments and share repurchases during the year
4 (net of shares sold in relation to the exercise of stock
5 options) resulted in cash outflows of €546 million and
6 €238 million, respectively."

7 A. Yeah.

8 Q. So the statement in paragraph 24 of your *Bearings*
9 statement {B/8/10} that FCA did not make dividend
10 payments to shareholders in 2008 appears to be
11 incorrect, does it not?

12 A. Yes, I agree. Unfortunately, there was a typo in that.

13 The meaning is the same. Basically, the meaning is
14 that, after the result of 2020, out of the result of
15 2008, we did not pay dividend in the following years.
16 But you are right, the way in which it is written is not
17 correct.

18 Q. Understood.

19 In 2008, FCA was using its excess cash to pay
20 significant dividends to shareholders?

21 A. Sorry, what are you referring to?

22 Q. Having looked at this material, what I am --

23 A. Yeah.

24 Q. -- suggesting to you is that, in 2008, FCA was using its
25 excess cash to pay significant dividends to

1 shareholders.

2 A. I would actually change in, did not make any payment

3 dividend in 20 -- in 2009.

4 Q. Rather than 2008?

5 A. Yeah.

6 Q. Well, let us turn to 2009 and now let us have a look at

7 paragraph 26 of your *Bearings* witness statement, which

8 is {B/8/10}. Your evidence is that FCA had

9 a €1.1 billion trading profit at the end of 2009; that

10 is correct, is it not?

11 A. Yes.

12 Q. It had liquidity of €12.4 billion in 2009?

13 A. Yeah.

14 Q. You say that FCA had resources to cover its maturing

15 debts well beyond 2011?

16 A. Yes.

17 Q. And that this gave FCA significant financial

18 flexibility?

19 A. That was stated.

20 Q. Sorry, I did not hear that?

21 A. No, no, this is correct --

22 Q. It is correct.

23 A. -- this is what is stated.

24 Q. So standing back, Mr Bertino, it is fair to say,

25 I think, that FCA was in a strong financial position in

1 2009, yes?

2 A. Here, again, a strong financial position after
3 the crisis, therefore, saying that was in a strong
4 financial position, I don't know how much exact this is.

5 It was a good financial position, a sound financial
6 position, I would say more this way.

7 Q. It was --

8 A. Keeping in mind that we were -- we were exiting from
9 a deep crisis that was impacting significantly, in
10 particular the cash and particularly the liquidity of --
11 of the group, not only FCA now, the group.

12 Q. I think we can agree that it was a good financial
13 position and a sound financial position?

14 A. Yes.

15 Q. So it is unlikely, is it not, that if FCA had additional
16 cash in 2009, it would have used that cash to reduce
17 indebtedness?

18 A. No. I explain why. Because if you look, in particular
19 our bond issuance, but also other sources of debt, in
20 that period, we realised a lot of debt from the market.
21 Therefore, as soon as the market opened, we started
22 issuing a price that was not -- let me say was quite
23 high, therefore the first issuance that we made in that
24 period was approximately 9%, but we issue debt in order
25 to get a sufficient liquidity that was safe for planning

1 the company, and in that period that was still, let me
2 say, a difficult period.

3 Q. But you would agree, I think, that it is more likely
4 that additional cash would have been invested in
5 the business or used to build up cash reserves, yes?

6 A. Probably the additional cash would have allowed us to --
7 to get less debt and to -- to pay less.

8 Q. It also would have allowed you, would it not, to invest
9 that cash in the business or to build up cash reserves?

10 A. The cash reserves, basically, the one that we had at the
11 end of 2009, as stated, were cash reserves that we
12 considered at that time sufficient and sound.

13 Therefore, if we had more cash, yes, you can do more
14 investment, but we already planned investment, we
15 purchased Chrysler in those time, therefore the strategy
16 for the investment was already decided. And, on
17 the other side, we would have the opportunity not to
18 issue additional debt. To reduce the debt issuance.

19 Q. If we turn to 2010, now, there you say that FCA doubled
20 its trading profit to €2.2 billion and strengthened
21 liquidity to nearly €16 billion. That is at
22 paragraph 27 of your witness statement {B/8/10}. Do you
23 see that?

24 A. Yeah.

25 Q. You also record -- you say that that was while recording

1 a profit of €600 million, yes?

2 A. Yeah.

3 Q. So this suggests that FCA was in an even sounder
4 financial position than in 2009, was it not?

5 A. Yes.

6 Q. There was also a demerger of various businesses within
7 the FCA group in 2010, was there not?

8 A. Yeah, I suppose.

9 Q. Sorry?

10 A. Yes --

11 Q. Yes.

12 A. -- with demerger, the part of Fiat Industrial that was
13 basically the construction equipment and the mechanical
14 and machinery part of the business.

15 Q. Following the demerger, FCA laid out a detailed
16 development plan for the demerged entities, did it not?

17 A. Can you repeat, please? Sorry.

18 Q. Yes, of course.

19 Following the demerger, FCA laid out a detailed
20 development plan for the demerged entities, did it not?

21 A. Yes.

22 Q. Part of that plan involved FCA pledging to invest
23 approximately €30 billion during the years 2010 to 2014,
24 including €2 billion a year in research and development;
25 that is correct, is it not?

1 A. Yes.

2 Q. So you would, presumably, accept then, Mr Bertino, that
3 over the period from 2010 to 2014, if FCA received any
4 additional cash, some or all of it would have been used
5 to make investments?

6 A. Not that sure, because at the end, the investment plan
7 was defined.

8 Okay, let's look at the things in another way.
9 The investment plan is defined in order to reach
10 a certain target in terms of -- in terms of business and
11 for to develop with the business. Then you have to fund
12 the investment plan, and in order to fund the investment
13 plan -- or you get, internal sources, for generation
14 from the business itself, or you get funding from
15 the shareholders, or you get external funding from bank,
16 bondholders and so on, keeping a liquidity level that is
17 the liquidity level that you deem appropriate,
18 appropriate in order to manage the day by day and in
19 order to -- and in order to preserve, or to be safe, in
20 terms of -- in case of downturn of the market. We
21 recently experienced the downturn in 20 -- in 2008, and
22 we experienced this in 2020 during the COVID.

23 Q. Now, you have said on several occasions, going through
24 these years and FCA's financial position during these
25 years, that reducing debt was an option; do you recall

- 1 that?
- 2 A. Yes.
- 3 Q. Even in good times, you say it was an option?
- 4 A. Yes.
- 5 Q. I want to press you a little on the relative likelihood
6 of reducing debt and suggest to you that it is less
7 likely, quite simply because that is not what you were
8 doing over this period, is it?
- 9 A. No, I do not agree. In certain period, when possible,
10 when we get cash, when we get debt that was repayable
11 in -- let me say, in -- at economic conditions, we did
12 this. We did this in -- in -- in 20 -- in 2007, we did
13 this when we repaid the debt that was very costly of --
14 of Chrysler, we did this after the COVID crisis when we
15 repaid the debt with the Italian Government. Therefore,
16 it's something that, from time to time, when we had
17 the inflation, we can -- we did it.
- 18 Q. But you are not doing it during the period 2008, 2009,
19 or 2010. You are doing something quite different, are
20 you not?
- 21 A. Yes, this is the opposite story. Therefore, when we are
22 in tough period, we raise. We need funding, therefore
23 we raise funding from the market. In this case,
24 reducing debt means having less need, therefore, not to
25 increase too much the debt, is the opposite -- is

1 the opposite.

2 I don't know if I'm clear, Judge, but ...

3 Q. If we look at your exhibit again, this is {B/9/200},
4 I want to show you what you were planning for the period
5 2010 to 2014. You will see that that is the five-year
6 plan for 2010 to 2014, and that is the development plan
7 we were just discussing, is it not?

8 A. Yes.

9 Q. If we look at page 2, electronic bundle reference number
10 page 207 {B/9/207}, there we see the heading, "2010-14
11 Plan - Group dividend policy", yes?

12 A. Yeah.

13 Q. There is a chart setting out the dividends proposed to
14 pay to shareholders in each year during the period 2010
15 to 2014, yes?

16 A. Yes, it is.

17 Q. Under the chart, it says:

18 "€1.9bn cumulative.

19 "2010-14 dividends."

20 Yes?

21 A. Yes.

22 Q. So not only did FCA plan on making significant
23 investments during the period 2010 to 2014, it also
24 planned to make payments totalling €1.9 billion to
25 shareholders during that period?

- 1 A. Correct.
- 2 Q. As far as you are aware, FCA paid the dividends to
3 shareholders during that period?
- 4 A. As far as I remember, we didn't.
- 5 Q. Is that something that you have dealt with in your
6 witness statement?
- 7 A. No, I do not. I did not.
- 8 Q. It is not in your witness statement, is it?
- 9 A. No. From what I remember, no.
- 10 Q. Let's look at the year 2018. There it is the case, is
11 it not, that FCA paid its shareholders a dividend of
12 €2 billion, an extraordinary dividend, in 2018, yes?
- 13 A. Correct.
- 14 Q. You would accept, Mr Bertino, that a company that is
15 looking to reduce its debt would not pay a €2 billion
16 extraordinary dividend to its shareholders, would it?
- 17 A. Not necessarily. Not necessarily.
- 18 Q. The CFO of FCA also presented a business plan to
19 investors in 2018 which was called, "The 2018-2022
20 business plan"; you are aware of that?
- 21 A. Yes.
- 22 Q. That business plan set out the capital allocation
23 priorities for the FCA Group, yes?
- 24 A. Yes.
- 25 Q. The capital allocation priorities included investment in

1 products, technology and infrastructure?

2 A. Correct.

3 Q. Re-establishing a consistent shareholder remuneration
4 practice?

5 A. Yes.

6 Q. So you would agree then that during the period 2018 to
7 2022 FCA intended to use its excess cash to make
8 investments and to remunerate shareholders?

9 A. I do not agree calling this "excess cash". I agree on
10 the fact that the intention, and what we planned and we
11 executed, is to make investment and remunerate
12 shareholders, because shareholders expect their
13 remuneration, right? But this does not come from, let
14 me say, what is called "excess cash", because in
15 the same period we continued to issue debt, therefore we
16 continued to issue bonds, we continued to get
17 the financing from the bank and so on. Therefore, we
18 are not in the position in which we do not have debt at
19 all; we continue to have debt. Of course, the debt will
20 tend to be reduced, and the period will reduce also
21 the debt, therefore we were able to pay the dividend,
22 make the investment, and partially reduce the debt and
23 keep a good level of liquidity.

24 Q. If we look at exhibit AB1 again at {B/9/271}, this is
25 the exhibit to your *Bearings* statement, and if you look

1 at the bottom right-hand side, the paragraph in
2 the bottom right of this slide, it says:

3 "PAID €2.9B EXTRAORDINARY DIVIDEND to shareholders
4 in connection with PSA merger in Jan 2021."

5 You see that?

6 A. Yeah, I see it.

7 Q. So it is correct that FCA paid a further extraordinary
8 dividend to its shareholders in 2021 of €2.9 billion
9 following the PSA merger, yes?

10 A. Yes.

11 Q. You do not mention this in your *Bearings* witness
12 statement, do you?

13 A. No, I didn't.

14 Q. It is also the case that in 2021 the CEO of Stellantis
15 presented a plan called, "Dare Forward 2030"; do you
16 recall that?

17 A. Yes, I recall.

18 Q. Under the "Dare forward 2030" plan, FCA intended to use
19 its cash primarily for investment in the business; is
20 that correct?

21 A. Yes, this was one of the main -- the main -- the main
22 allocation of what -- what was the cash, yes.

23 Q. Okay, let us turn to paragraph 33, paragraph 33 of your
24 OSS statement {B/19/9}. There you will see the third
25 sentence. You say there:

1 "Broadly, to summarise the period relevant to this
2 claim (2003 to date), had there been additional cash
3 available to the business, it would have been used to
4 reduce the net industrial debt or, in some years, fund
5 investment and make payments to shareholders."

6 You see that?

7 A. Yeah.

8 Q. So your evidence is that had FCA additional cash during
9 the relevant period, then at least for some years
10 the cash would have been invested or used to make
11 payments to shareholders; correct?

12 A. Yes, correct.

13 Q. You do not actually identify the years in which cash
14 would have been used to make investments or remunerate
15 shareholders, do you?

16 A. No, I do -- I don't, specific period. The period of
17 the company, therefore the trend in the company cash,
18 the cash generation, the period in which we had to raise
19 money, the period that we felt able to make more
20 investment and to refund money and so on, are
21 represented in the -- in the history that we presented.

22 Q. You have not estimated the proportion of any additional
23 cash that would have been invested or used to make
24 payments to shareholders as opposed to reducing debt,
25 have you?

1 A. Can you please repeat?

2 Q. You have not estimated the proportion of any additional
3 cash that would have been invested or used to make
4 payments to shareholders as opposed to reducing debt,
5 have you?

6 A. I -- I wouldn't -- let me say, I do not agree, giving an
7 idea of the proportion; it's not a proportion.
8 The point is that if I earn more cash, I can do
9 the investment, I can pay the dividend and I can have
10 less debt. Again, ceteris paribus, in the long run.

11 MR SPITZ: All right. There is only one area I still have
12 a couple of questions to ask you and it ought not to
13 take very long to do so.

14 Shall I proceed to --

15 THE CHAIRMAN: Please, with those, as quickly as possible.

16 MR SPITZ: Yes.

17 THE CHAIRMAN: Thank you.

18 MR SPITZ: It is the case, is it not, that the majority of
19 FCA's industrial debt was in the form of bonds, yes?

20 A. Yes, recently, yes.

21 Q. You have provided an estimate of the bonds,
22 the proportion of industrial debt that was in the form
23 of bonds, and that is -- I am not going to read out
24 the figure, but just so that the Tribunal can see it, it
25 is at {B-OR/1/13}, paragraph 49. So it is

- 1 a confidential figure. You will see it there,
2 Mr Bertino, at paragraph 49, in the second line.
- 3 A. Yeah.
- 4 Q. It is the case, is it not, that bonds do not generally
5 require interest to be paid on a compound basis, do
6 they?
- 7 A. Yes, generally, they are not required to be paid on
8 a compound basis.
- 9 Q. What they require is coupon payments to be made at
10 regular intervals, do they not?
- 11 A. Correct.
- 12 Q. The coupon payments represent an interest rate paid on
13 the bond expressed as a percentage of the face value of
14 the bond, yes?
- 15 A. Normally, yes.
- 16 Q. In other words, the interest is only charged on
17 the principal amount of the bond?
- 18 A. Correct, for the bond.
- 19 Q. So if FCA issued a €500 million bond at an interest rate
20 of 5%, FCA would be required to make regular fixed
21 coupon payments of 25 million; correct?
- 22 A. Correct.
- 23 Q. You would accept, I think, that so far as bonds are
24 concerned, compound interest is not an appropriate way
25 to consider the cost of FCA's debt?

1 A. No, I do not agree on that. I agree, if you look just
2 at the bond. Now, since you have to pay the 25 million
3 of interest on the bond, after you pay it, you have to
4 finance that, therefore you have a cost in order to
5 finance the coupon, or the less cash that you have,
6 because you pay the coupon. Therefore, at the end, if
7 I look at the company in its entirety, the compounding
8 is a matter of fact.

9 Q. So --

10 A. I don't know, Judge, if it's clear, this.

11 Q. Sorry, Mr Bertino, I interrupted.

12 A. No, sorry. Please go ahead.

13 Q. So as far as the bonds are concerned, you would still
14 persist in saying that compound interest is appropriate
15 because it is directed at the funding that is organised
16 to pay the payments, the coupon payments on the bond?

17 A. Exactly.

18 Q. But you would accept that those coupon payments do not
19 attract compound interest?

20 A. Yes, correct. If we look the bond in itself, it
21 doesn't. It doesn't have compound interest, normally.

22 MR SPITZ: Thanks very much, Mr Bertino. I have nothing
23 further.

24 Re-examination by MR WEST

25 MR WEST: Mr Bertino, you were shown paragraph 33 of your

1 OSS statement {B/19/9} and in particular where you say
2 there that, if there had been additional cash available
3 to the business, it would have been used to reduce
4 the net industrial debt or, in some years, fund
5 investments and make payments to shareholders, and
6 I think it was put to you that you had not identified
7 which years you would have done either of those things.

8 Could I just ask you to look from paragraph 34
9 through to 39 of this statement {B/19/9}.

10 (Pause).

11 A. Okay.

12 Q. Does that help you with whether you have identified in
13 this statement the particular years in which you would
14 have taken one form of action or the other?

15 A. No. Let me say, probably -- if I may, probably
16 the paragraph 33 is expressed not -- it's difficult to
17 say because it is expressed in a way that is quite
18 trivial: therefore I have more cash, I can repay debt,
19 I can make investment, I can ...

20 What is my point is that -- and probably this is
21 misleading a little bit -- my point is that if I have
22 more cash, then, anyhow, I have to make investment,
23 I have to pay dividend and so on, I can use this cash in
24 order not to get additional debt, or I can repay
25 the additional debt. Therefore, the point is always

1 this one. We have investment from one side, we have
2 the dividend to the shareholder, to the other side, and
3 we need to fund this -- this element. Therefore, we can
4 fund with the operational cash or the debt. If I have
5 more operational cash, I need less debt.

6 I don't know if this clarified the point. This is
7 my view. Maybe the paragraph 33 is expressed in a way
8 that is a little bit misleading.

9 MR WEST: Thank you.

10 THE CHAIRMAN: Thank you very much. That is everything.

11 You are released from your oath.

12 A. Thank you.

13 (The witness withdrew)

14 THE CHAIRMAN: Where are we going next? I appreciate we
15 will have five minutes, but ...

16 MR WEST: Well, next is our final witness, Mr Laxenaire,
17 who, again, will be by video.

18 THE CHAIRMAN: What is the time estimate for Mr Laxenaire?

19 MR SPITZ: I think he should be done by 4 o'clock,
20 45 minutes. I will do my very best.

21 THE CHAIRMAN: Very good, if you could.

22 Well, we will take five minutes then.

23 (3.17 pm)

24 (A short break)

25 (3.27 pm)

1 MR WEST: So I now call Mr Vincent Laxenaire.

2 A. Can you hear me?

3 MR WEST: Yes.

4 THE CHAIRMAN: Yes, we can hear you. Can you hear us?

5 A. Thank you.

6 Yes, I can.

7 THE CHAIRMAN: Good.

8 MR WEST: Do you have the wording of the affirmation in
9 front of you, Mr Laxenaire?

10 A. Yes, I do.

11 MR WEST: Would you mind reading it out, please.

12 MR VINCENT LAXENAIRE (affirmed)

13 (All answers given in English unless otherwise indicated)

14 Examination-in-chief by MR WEST

15 MR WEST: Thank you.

16 I have been asked by the Commissioner to read
17 the usual short statement.

18 Mr Laxenaire is located in France and his evidence
19 is being provided by video with the authorisation of
20 the French Government under the Hague Convention of
21 18 March 1970 on the taking of evidence abroad in civil
22 or commercial matters, Mr Alexander Blumrosen has been
23 authorised to be Hague Convention Commissioner and is
24 attending the cross-examination by video.

25 Mr Laxenaire, could you be shown tab 4 of bundle B,

1 please (B/4/1).

2 A. Sorry, I'm not sure I got the reference you were asking
3 me to look at.

4 Q. {B/4/1}. It should also be on the screen electronically
5 if you have clicked on the link for the electronic
6 documents.

7 A. Yeah. So this is my witness statement done in 2017;
8 correct?

9 Q. Correct.

10 If you turn in that document to the final page,
11 page 14 of that document {B/4/14}, is that your
12 signature we see there?

13 A. Yes, it is.

14 Q. Could you also please look at tab 22 of bundle B
15 {B/22/1}.

16 A. Yes.

17 Q. Is that your statement in the present proceedings?

18 A. Correct. It is.

19 Q. Going on to page {B/22/8} of that document, again, can
20 you confirm that is your signature?

21 A. Yes, it is.

22 Q. Could I just ask you about your current job title. At
23 paragraph 1 of this statement, you say:

24 "I am currently the Head of Financial Markets and
25 Rating at Stellantis NV ..."

1 At paragraph 12 {B/22/4}, the second -- the third
2 sentence, I am sorry, you say:

3 "I became the Head of Financial Markets and Rating
4 following PSA's merger with Fiat Chrysler and
5 the creation of Stellantis in January 2021. I remain in
6 this role."

7 Does that remain your job title to this day?

8 A. No, from October the 1st, '24, I've been Main Treasurer,
9 EMEA, for Stellantis.

10 Q. Thank you.

11 Subject to that clarification, are the contents of
12 both of those statements true to the best of your
13 knowledge and belief?

14 A. Yes, they are.

15 Q. Do they contain the evidence you wish to give to this
16 Tribunal?

17 A. Yes.

18 MR WEST: Thank you.

19 Cross-examination by MR SPITZ

20 MR SPITZ: Good afternoon, Mr Laxenaire.

21 A. Good afternoon, sir.

22 Q. The first of the two witness statements that you have
23 just identified is a witness statement you gave
24 seven years ago, dated 15 September 2017. That was
25 a witness statement you gave in the *Bearings*

- 1 proceedings, was it not?
- 2 A. Correct.
- 3 Q. In that case, PSA accused its *Bearings* suppliers of
4 overcharging it for *Bearings* that PSA used in
5 the manufacture of its cars, did it not?
- 6 A. Yes.
- 7 Q. In the witness statement you gave in February this year,
8 you say that the *Bearings* witness statement is your
9 evidence of PSA Group's financial operations and
10 financial strategy for the period 2004 to 2017; do you
11 recall that?
- 12 A. Yes.
- 13 Q. The *Bearings* witness statement was certainly your
14 evidence in the *Bearings* case of PSA Group's financial
15 operations and financial strategy for the period of 2004
16 to 2017. Do you intend it to be your evidence in this
17 case, too?
- 18 A. Correct.
- 19 Q. In the statement you made in February this year, you say
20 that you have re-read the statement you signed
21 seven years ago, but you were not referred to any
22 documents, by your solicitors or otherwise, for
23 the purpose of providing the evidence you gave in
24 February this year; that is correct, is it not?
- 25 A. Correct.

- 1 Q. Does that mean you have not read any of the other
2 witness statements in this case?
- 3 A. You mean other witness statement than my personal
4 witness statement?
- 5 Q. Yes, that is what I mean.
- 6 A. Yeah, correct. The only statement I read is mine.
- 7 Q. Did you by any chance watch the testimony that was given
8 yesterday?
- 9 A. No, I did not.
- 10 Q. Are you aware that at least one of the witnesses in this
11 case claims to no longer be confident about the factual
12 accuracy of evidence she gave just three years ago
13 because of the passage of time? Are you aware of that?
- 14 A. No, I'm not.
- 15 Q. All right. Assuming the evidence you gave in *Bearings*
16 is to be treated as your evidence in this case, it
17 relates to matters going back to 2004 and you gave that
18 evidence seven years ago, yes?
- 19 A. Correct.
- 20 Q. Are you quite certain that you recall all of the facts
21 underlying the witness statement you gave seven years
22 ago concerning matters going back to 2004?
- 23 A. Yes, subject to the limitation that human memory can
24 have. You understand what I mean, I guess.
- 25 Q. Yes, I understand what you mean, because what I wanted

1 to ask you is whether you are quite sure that you are
2 remembering the facts that you set out in your *Bearings*
3 statement relating to events 20 years ago and are not
4 simply relying on having re-read your *Bearings* statement
5 and assuming that the facts in it are true because you
6 said as much seven years ago.

7 A. I read the statement. I did not feel that anything was
8 wrong or I would have said materially different this
9 time.

10 Q. In the witness statement you signed in February this
11 year, you say that you cannot recall any information
12 about PSA Group's financial operations and financing
13 strategy in 2002 or 2003; do you remember that?

14 A. Yes.

15 Q. So is the Tribunal to understand that you have no
16 recollection of anything in 2002 or 2003, but that you
17 do remember everything from 2004 onwards?

18 A. You may agree that it's not "all". You said, did I try
19 to -- your question: you remember all? I don't remember
20 all. I think there is a limit of information that
21 I gave about 2004 to 2017. When I've been asked in 2017
22 to 2024 some information about 2002 and 2003, I did not
23 feel that I could remember this, maybe because, at that
24 time, I'd just been employed by Peugeot. If I may
25 remember that I joined Peugeot in September 2001,

1 meaning that, on a specific job related to international
2 controlling over China, Far East. It was a very
3 specific field, and I didn't have the -- how to say --
4 the experience, the knowledge of network, people inside
5 Peugeot, that I had three -- three years after. So
6 that's why I felt that it was fair, in 2024, to -- not
7 to put anything on 2002 and 2003.

8 Q. But what is it, Mr Laxenaire, that leaves you confident
9 that you remember the relevant material from 2004
10 compared to not remembering in 2002 or 2003?

11 A. Going quickly through my *Bearings* statement, I hardly
12 find specific information of 2004, that I could say
13 I have no -- I don't remember. I -- maybe you can help
14 me, stating some specific information that I give about
15 2004 that you think could be questionable?

16 Q. Well, I think that I have put the question to you and
17 you have answered it, so I think we can leave it at that
18 and move on.

19 A. Thank you.

20 Q. At least in 2017, the managing board of Peugeot
21 South Africa -- sorry, Peugeot SA defined the financing
22 strategy for the PSA Group, did it not? The managing --

23 A. I guess --

24 Q. -- board?

25 A. -- it did. I guess it did, yes, correct.

- 1 Q. That Peugeot SA is the holding company of the PSA Group?
- 2 A. Correct.
- 3 Q. Does defining the financing strategy for the PSA Group
4 include deciding what the group will do with additional
5 cash?
- 6 A. I don't think it is. I would say that defining
7 the strategy is a bit wider than having an opinion on
8 specific question like this. To me, it's more about
9 driving the -- how to say -- the key financial topics
10 about how we get the -- how to say -- the funding in
11 order to develop the products, invest in manufacturing,
12 manage the operations, things like that. So to make it
13 shorter, I don't think they have in their agenda, when
14 they defined the financial strategy, a specific question
15 like this one.
- 16 Q. Would questions of what the group does with additional
17 funding fall within defining the financial strategy for
18 the PSA Group? Would it be one of the matters that
19 the PSA Group deals with?
- 20 A. I'm sorry, I struggle how to -- to link your question to
21 the overall questions that are discussed in
22 the management board when they define the financial
23 strategy of the company. I would expect that
24 the managing board will look at the financial situation
25 of the company, what is the financial security level,

1 what is the leverage ratio, what is the dealing ratio,
2 what the plans are in terms of capex investments or
3 whatever, and define in the following years how they
4 will recoup(?) the potential available capital, the cost
5 of this capital, and the operation and the investment.

6 Q. Yes, thank you.

7 Once the financing strategy for the group has been
8 defined, it is then implemented by the corporate finance
9 and treasury department under the direction of the chief
10 financial officer, the CFO; is that correct?

11 A. Correct.

12 Q. That was the position from 2004 to 2017 also?

13 A. I guess that was -- you may have read in my resumé that
14 I was not working at the treasury department between
15 2004 and 2006 -- 15. I started in this department on
16 January 2016.

17 Q. So for that period, you say 2006 to 2015? (Pause)

18 You say you were not working at the treasury
19 department between 2004 and 2015; is that correct?

20 A. Yes, correct. Correct.

21 Q. So you are not really in a position to say, during that
22 period and over those years, what PSA would have done
23 with its financing strategy and the implementation of
24 that financing strategy, are you?

25 A. My point is to tell you that to the best of my knowledge

1 I gave this testimony to inform about what I know and
2 what I could see in this group based on how the group is
3 managed, the norms, the -- the governance,
4 the organisation, and -- and that's it. I don't know,
5 for instance, if, during this period, the governance has
6 significantly changed and it was decided at some point
7 in time that the CEO would validate something and not
8 the CFO, or should it be the group treasurer. But I can
9 tell you, based on the information that has been
10 provided to me, as it is explained and written in my
11 testimony, the -- this is the information I can give
12 you, just to be sure that I'm understood and you
13 understand what I did over this period in the Group PSA
14 and what my testimony tried to -- to explain.

15 Q. All right. Well, you say at paragraph 26 of your
16 *Bearings* witness statement, that is {B/4/7}, you say
17 that the:

18 "PSA Group's cash forecasts, financing needs and
19 interest income and expenses ... [were] reviewed at
20 monthly meetings of the Treasury and Foreign Exchange
21 Committee ... chaired by the [CFO]."

22 A. Yes.

23 Q. You sat on that committee?

24 A. Yes, I was, between 2016 and '20 -- just before
25 the merger, December 2020, I was secretary of this

1 committee, the Trésorerie de Change --

2 Q. From 2016 to 2020?

3 A. Yes --

4 Q. When you say --

5 A. -- and so I can tell you -- oops, sorry.

6 Q. Go ahead, I interrupted.

7 A. No, I just wanted to explain that because I was at that

8 position between 2016 to 2020, I know that this

9 committee used to -- to happen there for more than

10 a decade, and so this is the basis of my testimony.

11 Q. When you say that this committee reviewed PSA Group's

12 "cash forecasts, financing needs and interest income and

13 expenses", do you mean that it decided what would be

14 done with additional cash, for example?

15 A. Yes.

16 Q. You say in your OSS statement, which is paragraph 23

17 {B/22/5}, you say in that statement that:

18 "What would have been done with ... additional cash

19 is up to the CFO."

20 Do you see that?

21 A. Yes, I do.

22 Q. Was that the position throughout the period with which

23 we are concerned in these proceedings?

24 A. To the best of my knowledge, yes, the CFO chaired

25 the treasury committee and Forex, so ...

1 Q. So in the PSA Group, the question of how it would use
2 its additional cash was ultimately a matter for the CFO?

3 A. I would say yes.

4 Q. Of course you are not the CFO of PSA, are you,
5 Mr Laxenaire?

6 A. Ah, I'm not.

7 Q. You have never been the CFO?

8 A. As far as I know.

9 Q. Insofar as I can see, you were not in charge of
10 activities relating to the financing of the automotive
11 division at any time between 2004 and 2007. I think
12 that is what we established a few minutes ago; is that
13 correct?

14 A. Between 2004 and 2007 -- did you say?

15 Q. Oh, '17.

16 A. And '17? No. If you're interested in this, I was first
17 in the financial -- international financial division of
18 PSA, then I moved to the internal audit of PSA, then
19 from January 2008, I was international development
20 manager in Banque PSA Finance, then I took over
21 the subsidiary of Banque PSA Finance in Hungary then
22 took over the eastern European region of Banque PSA
23 Finance and then joined, in January 2016, the head of --
24 head of financing of -- of PSA.

25 Q. Now, you mentioned some people in PSA that you spoke to

1 when you prepared the witness statement you gave
2 seven years ago. That is the *Bearings* witness
3 statement. Do you remember?

4 A. Yes.

5 Q. You say you spoke to Mr Bertrand Champion, yes?

6 A. Yes.

7 Q. Has he ever been the CFO of PSA?

8 A. Mr Champion has been the CEO of Stellantis International
9 I would say from 2004 up to today.

10 Q. What about Mr Stéphane Colin, you spoke to him too, yes?

11 A. Correct.

12 Q. He is not the CFO of PSA?

13 A. He's just -- Stéphane Colin, as far as I remember, at
14 that period in 2017, was still the head of group
15 accounting for PSA, but he was not the CFO.

16 Q. What about Benoit Andrieux, who you refer to in your
17 *Bearings* witness statement, what role did he have?

18 A. He was in the controlling department managing the cash
19 topic.

20 Q. Did you speak to anyone else for the purposes of
21 drafting your *Bearings* statement?

22 A. I don't remember anyone else. I don't think so.

23 Q. You did not speak to the CFO?

24 A. I didn't speak to the various CFO of PSA between 2004
25 and 2016, no.

- 1 Q. Did you speak to any of the CFOs at any time?
- 2 A. I speak to CFOs, yes, for sure, just because they were
3 in the Treasury committee --
- 4 Q. I mean for the purposes of your *Bearings* witness
5 statement.
- 6 A. As far as I remember, I did not speak to the CFO of PSA
7 on this specific topic.
- 8 Q. Who did you speak to at PSA when you prepared
9 the witness statement you signed in February this year?
- 10 A. First of all, of course, you know that this is
11 Stellantis now. I don't remember that I speak to
12 specific people. I guess I made a reference to this to
13 the group treasurer of Stellantis. Otherwise, I don't
14 think I did.
- 15 Q. You say you made a reference to the group treasurer of
16 Stellantis. I am not quite sure what you mean.
- 17 A. The group treasurer of Stellantis, Mr Ferrante Zileri.
- 18 Q. You spoke to him, did you, for the purposes of your
19 February 2024 witness statement?
- 20 A. Yes, I guess I informed him about the fact that I had to
21 make this statement.
- 22 Q. Did he provide you with any information for the purposes
23 of making the February statement?
- 24 A. I don't think so.
- 25 Q. Yes, because you do not say anything about that in your

1 witness statement, do you?

2 A. I don't.

3 Q. In your *Bearings* statement {B/4/7}, you said that:

4 "... any excess cash beyond that required to finance
5 PSA Group's operations could be used [in three ways]."

6 First, to reduce debt; you recall that?

7 A. Yes, this is paragraph 28.

8 Q. Yes, exactly.

9 Or to make additional investments, either internally
10 or through acquisitions, yes?

11 A. Yes.

12 Q. Thirdly, to pay shareholder dividends, yes?

13 A. Right.

14 Q. That is the evidence you rely on also in this case in
15 respect of the period from 2004 to 2017, is it not?

16 A. Yes.

17 Q. If you could turn up paragraph 23 of your OSS statement,
18 that is {B/22/5}. In the last three lines of this
19 paragraph, you appear to be suggesting that
20 the PSA Group would not use additional cash to make
21 investments. Is that what you are suggesting?

22 A. What I'm trying to say through this paragraph is that
23 there is not a direct link/correlation between
24 the product plan or the decision to -- to make capital
25 expenditure and some potential additional money in

1 the company. Of course, the level of liquidity you may
2 have will allow you to do this or that type of product
3 plan, I mean decide to produce this car, work on this
4 profit pool or whatever, but I think it's difficult to
5 link directly any specific additional cash and a capex
6 decision.

7 Q. You see, what was not clear to me was that what you are
8 saying in that paragraph seems to be inconsistent with
9 what you said in your *Bearings* statement, where you said
10 that PSA might make investments with additional cash, so
11 I just want to clarify that. If your *Bearings* witness
12 statement is correct, then I do not need to ask you any
13 more questions about that, the point simply being that
14 PSA might make investments with additional cash; is that
15 correct?

16 A. Can you repeat your question, please, so that I'm sure
17 I get it, because we are answering into here specific --

18 Q. Yes, of course.

19 A. -- details where the principle is that you can -- how to
20 put it -- depending on how much you have, depending on
21 the liquidity level, you can do a lot of things with
22 your cash: you can invest, you can pay back debt, you
23 can pay dividends, shareholder remuneration, you can
24 buy back debt, you can invest for your pensions, you can
25 invest on short-term cash. You can do all the same

1 together; one is not -- if you do one, doesn't mean that
2 you will not do other. So trying to say, okay, I have
3 additional cash, what am I going to do? I struggle to
4 be able to tell you exactly what am I going to do with
5 the additional cash whenever, right now, I don't know
6 how much you even talk about.

7 Q. All right, well, let us look at what you say about how
8 the PSA Group would have used additional cash from year
9 to year. If we begin with the period 2002 to 2003.
10 Now, as we have already canvassed, that is the period
11 that you cannot recall any specific information about
12 PSA Group's financial strategy during that period, yes?

13 A. Correct.

14 Q. So you would accept, I think, that you cannot say how
15 PSA Group would have used any additional cash during
16 that period?

17 A. Correct.

18 Q. In your *Bearings* statement, you set out some profit and
19 loss information in tables at paragraphs 30, 31 and 32
20 of your statement, that is {B/4/8-9}. You see
21 the tables and you say that that was based on financial
22 information Mr Colin gave you {B/4/9}, yes?

23 A. Correct, yes.

24 Q. You then address the period of time you were looking at
25 for the purposes of the *Bearings* case in three

1 phases: 2004 to 2007; 2008 to 2013; 2014 to 2017, yes?

2 A. Correct.

3 Q. Then, at paragraph 33, you say {B/4/9}:

4 "During those three phases I was not in charge of
5 activities related to financing of the Automotive
6 Division, therefore the following information is based
7 in part on internal information or public disclosed
8 information (such as press releases) by Peugeot SA."

9 Yes?

10 A. Correct, yes.

11 Q. So my question is this. Why, Mr Laxenaire, do you offer
12 any opinion on these periods when you offer none in
13 respect of the period 2002 to 2003?

14 A. I guess you understand that there are seven years
15 difference, and obviously I was more inclined to explain
16 my thoughts, my view, based on this information that has
17 been provided to me by Mr Colin.

18 Q. So when you say -- when you refer to internal
19 information in paragraph 33, is that financial
20 information provided to you by Mr Colin?

21 A. I think it's specified that this is information in part
22 of internal information, which is the one of Mr Colin,
23 public disclosed information, press release that
24 I attached to my testimony, and what I could remember,
25 because I was, at that time over the period, an employee

1 of the group, I was participating to the life of
2 the group following full year disclosure, things like
3 that, so this is what -- what I can remember, that
4 I tried to explain.

5 Q. So at paragraph 34 and 35 {B/4/10} of your *Bearings*
6 statement, you deal specifically with the period 2004 to
7 2007 and you say that:

8 "... the PSA Group and ... Automotive Division ...
9 were performing relatively well."

10 At that time. That is in the second line; do you
11 see that?

12 A. Correct.

13 Q. Could you remind yourself of the evidence you gave at
14 paragraph 35. You say:

15 "It is not possible to say with precision exactly
16 how additional monies would have been used. Doing
17 the best I can in the circumstances, on balance
18 I consider that during the years 2004 through 2007, any
19 additional cash would most likely have been invested."

20 A. Correct, yes.

21 Q. So that was your opinion?

22 A. You understand, maybe you may believe that I make it too
23 simple, but I tried to make the difference between those
24 difficult time where in fact we were missing
25 dramatically cash, those time period where we had cash.

1 When I say -- when I say "we had cash", it means an auto
2 maker needs to have a level of liquidity, financial
3 security which allows to operate, to work normally.
4 When you have this level of liquidity, then you can
5 operate normally. When you don't have this level of
6 liquidity, you cannot operate normally. And this is
7 the difference I do between 2004-2007 and the next time
8 period, 2008-2013/14. Yeah, that's it.

9 Q. So the paragraph 35 that we were looking at which
10 concludes with your view that, "any additional cash
11 would most likely have been invested", that is based on
12 the sources that you have identified already earlier in
13 your witness statement at paragraph 33 {B/4/9}; is that
14 right?

15 A. Yes.

16 Q. Next in your *Bearings* statement you dealt with 2008 to
17 2013 {B/4/10} and there you said that the PSA Group and
18 automotive division suffered losses for most of those
19 years. Do you remember that?

20 A. Yes, for sure.

21 Q. But the PSA Group and the automotive division were in
22 fact profitable in the years 2010 and 2011, were they
23 not?

24 A. Yes, they were.

25 Q. You can see that from your *Bearings* witness statement,

1 paragraphs 30 and 31 {B/4/8}, because in the 2010
2 column, we can see that PSA's consolidated profit was
3 €1.256 billion; correct?

4 A. Give me a second, please.

5 Q. Yes, of course. It is paragraph 30 {B/4/8}.

6 A. No, but I'm trying maybe to get into more details,
7 because it's interesting to have the picture at the end
8 of the year; it's also interesting to have the view on
9 the monthly situation. And you know there is
10 seasonality in auto business and maybe the picture you
11 have at the end of December was not that nice during
12 the year. But let's see, please. Sorry to interrupt
13 you.

14 Q. No, not at all. I mean, the simple point is you would
15 agree that, on the basis of the information recorded in
16 paragraph 30, in 2010, that reflects PSA's consolidated
17 profit of €1.256 billion, yes?

18 A. Yeah, this is the figure. This is absolutely
19 the figure. It's -- because I don't remember the exact
20 word you used, but I felt that you were -- the implicit
21 of your question was that 2010, the PSA Group was doing
22 very well. I don't think it was. At least this is not
23 what I recall. And having in mind that 2008/2009, after
24 the Lehman Brothers crisis, let's say that if you look
25 over the period 2008-2011, you will consider that,

1 roughly speaking, we are at zero.

2 Q. I think what I put to you and what you agreed with was
3 that the PSA Group and automotive division were in fact
4 profitable in the years 2010 and 2011 and I think you
5 agreed with me about that.

6 A. The PSA Group's consolidated profit was positive in 2010
7 and 2011. This is what's written in the paragraph 30,
8 I agree. But we may have a different interpretation of
9 the -- the situation of the PSA Group at that time.

10 Q. If we turn up your exhibit at {B/5/4}, please, this
11 relates to a €3 billion loan that was given to Peugeot
12 by France in February 2009 and you referred to it in
13 your *Bearings* witness statement; can you remember that?

14 A. Yes.

15 Q. It is a press release, and we can see that from the top
16 right-hand corner, yes?

17 A. Correct.

18 Q. It is dated 9 February 2009?

19 A. Correct.

20 Q. If we look at the penultimate paragraph, it says:

21 "The Group will give priority to reinvesting its
22 earnings in order to strengthen its capital base and
23 maintain its pace of growth through increased capital
24 expenditure."

25 Yes?

- 1 A. Correct.
- 2 Q. That suggests, does it not, that the PSA Group's
3 priority in 2009 was to reinvest its earnings?
- 4 A. I don't know. To me, this press release stands for
5 a group that need to go to the French State to get
6 €3 billion. The implicit of this message is that maybe
7 commercial banks will not bring €3 billion loan to this
8 company. So sometimes when we come to a moment in
9 the group -- and this is what happened between 2008 and
10 2014 -- you may recall that we had to let the French
11 State enter as shareholder of PSA in 2014, again through
12 a €3 billion capital increase, when the group is in such
13 a difficult situation that they need to get the support
14 from the French State.
- 15 Q. It also --
- 16 A. Maybe I was too long. Sorry for that.
- 17 Q. No, no. The point is that this press release records
18 that not only will the group "give priority to
19 reinvesting its earnings", but it will also "strengthen
20 its capital base and maintain its pace of growth through
21 increased capital expenditure". You see that?
- 22 A. Yes. I guess you understand, reading the entire press
23 release, that the €3 billion loan from the French State
24 is not just that the French State becomes a lender for
25 €3 billion.

1 Q. No, but my point, Mr Laxenaire, is this. It is
2 reasonable to suppose that if the PSA Group received
3 additional cash in 2009, some or all of it would have
4 been invested. That is what the press release says,
5 yes?

6 A. I'm not sure I read this press release the same way as
7 you do. I think what whatever euro PSA would have had
8 in 2009, they would try to -- how to say -- make it
9 work, maybe having less support from the French State.
10 But, for sure, having this loan means -- and it's
11 written at the top:

12 "Aware of its responsibilities and in the context of
13 its commitment toward the Government, the Group will not
14 close any of its French plants."

15 And therefore there is definitely some necessity to
16 -- to invest in the operations.

17 MR SPITZ: All right. Well, that is your interpretation of
18 this, and I think we should agree to differ on that and
19 I can move on.

20 But just to ask the Tribunal, despite the best will
21 in the world, I am not sure that I will be able to
22 finish this in next 15 or 20 minutes, sir. So I wonder
23 -- I know, of course, it is far from ideal to have
24 the witness to finish off tomorrow morning, but I wonder
25 whether it is possible to do that, or whether

1 the Tribunal would prefer to sit to finish this?

2 THE CHAIRMAN: Is the witness available tomorrow morning?

3 MR WEST: I do not know, off the top of my head, and

4 the Commissioner would also have to be available if this

5 was to carry on tomorrow. He is, of course, here --

6 THE CHAIRMAN: I think it is not ideal. I am not quite sure

7 why this is taking so long. It is going extremely

8 slowly, so perhaps we can speed up a little bit and

9 I will give you until 4.25.

10 MR SPITZ: All right, I will certainly try and do that, sir,

11 thank you.

12 Turning to 2010, Mr Laxenaire, PSA issued

13 a €500 million bond in June 2010, did it not?

14 A. Correct.

15 Q. It did that because of favourable and attractive

16 interest rates available at the time, yes?

17 A. Yes, I guess you are quoting there the press release.

18 Q. Indeed, I am quoting --

19 A. Yes --

20 Q. -- the press release.

21 A. Yes, yes. This is a standard press release. I would

22 say that I would not take too many conclusion out of

23 this. But, yeah, it gives you an idea of what could

24 have been done throughout the period in terms of new

25 bonds, which is very interesting, because it gives you

1 an interest rate and it gives you an amount, so it could
2 be a reference, but ...

3 Q. Well, it issued another two €500 million bonds in
4 October 2010, did it not?

5 A. Correct.

6 Q. In the press release, that is for the same reason,
7 attractive interest rates, yes?

8 A. Correct.

9 Q. In January 2011, it raised another €500 million on
10 the bond market, yes?

11 A. Correct.

12 Q. Now can you go to paragraph 36 of your *Bearings* witness
13 statement {B/4/10}. You said there that in the period
14 2008 to 2013, PSA required significant additional
15 borrowing at high rates.

16 A. Correct.

17 Q. But it is not correct that PSA required the additional
18 borrowing, did it, it just wanted to access the money at
19 attractive interest rates; correct?

20 A. I -- I would not say that. I think, at that moment, it
21 was necessary to -- how to say -- to secure liquidity,
22 and if you look at what happened after, it was smart to
23 do that. I would not call it an opportunistic bond
24 issuance.

25 Q. Well, the rates were not described in the press releases

1 as high, were they, they were described as favourable
2 and attractive?

3 A. Correct. You -- you rarely say that in your press
4 release that you did some very expensive rate, if I may
5 comment.

6 Q. So what is in the press release is not correct, is it?
7 Is that your evidence?

8 A. No, this is not what I said.

9 Q. Why are they described as favourable and attractive
10 rates, Mr Laxenaire?

11 A. This is a press release. I cannot comment on the press
12 release.

13 Q. Issuing a €500 million bond is a big decision for
14 a company even of PSA's size, is it not?

15 A. Correct.

16 Q. Thinking about things fairly, Mr Laxenaire, if PSA had
17 just a modest amount of additional money in its accounts
18 representing a modest saving on component costs, would
19 that have made any difference to the decision whether or
20 not to issue a €500 million bond?

21 A. I think whatever amount would have been welcomed. Here,
22 we are talking about bonds. In bonds market, there are
23 benchmark size limit, minimum size in order to have
24 liquidity of the bond in the financial market. We
25 should check that through bank financing loan you can

1 get some less important amount and maybe at that moment
2 the Treasury of PSA decided not only to issue a bond,
3 but also to get some bilateral or other loan from banks
4 with a smaller amount.

5 Q. Now, in the period 2014 to 2017, you say that
6 the PSA Group and the automotive division performed
7 strongly during the period. That is at paragraph 43
8 {B/4/12} of your witness statement.

9 A. Correct. This is when Carlos Tavares became CEO of
10 the company.

11 Q. At paragraph 45 at {B/4/12}, you say the PSA Group
12 became net debt free by February 2015; correct?

13 A. Correct.

14 Q. That means that the PSA Group had more cash than debt?

15 A. Correct.

16 Q. In paragraph 44 of your statement in *Bearings* -- that is
17 {B/4/12} -- you say PSA used some of the additional
18 money it had in 2014 to buy back some of the bonds that
19 we discussed a little while ago; correct?

20 A. Correct.

21 Q. It did not use all of the additional proceeds it had
22 access to in 2014 to buy back bonds, did it?

23 A. I don't think so.

24 Q. If you look at paragraph 46 of your statement {B/4/13},
25 you say there:

1 "Given its financial strength, the PSA Group has
2 also been able to make significant investments in recent
3 years."

4 Yes?

5 A. Correct.

6 THE CHAIRMAN: Mr Spitz, I do not think we need to keep
7 reading out the witness statement which has already been
8 sworn to and getting the witness to agree that is what
9 it says. I mean, I think that --

10 MR SPITZ: Yes, indeed.

11 THE CHAIRMAN: -- can be taken as his evidence already.

12 MR SPITZ: At paragraph 48 of your statement, if you have
13 a look at that, that is {B/4/13}, you say there that any
14 additional cash in the years 2014 to 2016 "would most
15 likely have been used to pay down debt", but that,
16 I suggest to you, cannot be correct, can it,
17 Mr Laxenaire?

18 A. I'm sorry, I don't understand why.

19 Q. Because, on your own evidence, PSA was net debt free
20 after 2014.

21 A. I guess you understand that you can be net debt negative
22 and you can have billions of euros of gross debt, which
23 was the case of PSA, and we did liability management to
24 reduce the cost of the debt, because we had to issue
25 very high rates bond in the past and we had opportunity

1 to issue new bonds with lower coupon, but you need to
2 buy back the debt if you want not to increase
3 the leverage of the company. So the whole thing was to
4 make liability management to optimise the financial cost
5 of the company. But when you get to net debt negative,
6 you are not out of the issue. At that time, I don't
7 remember the exact rating, but we may still be junk
8 bonds at that moment in S&P or with this rating. You
9 still have a huge gross debt to manage and to pay back.

10 Q. But if you are net debt free, that means you have more
11 cash available than debt to pay, does it not?

12 A. Yes, yes, but the end of the game is not to be net debt
13 negative. You need to have the relevant financial
14 security for your company to operate without the risk of
15 having to call the French State or do anything else.
16 So -- sorry, maybe I'm too long.

17 Q. On your own evidence, the PSA Group was making
18 significant investments in the years leading up to 2017,
19 was it not?

20 A. Yes, because the period was getting better, we had to
21 make some new products. You may recall the 3008, the C5
22 Aircross, blah blah blah, and, yes, it was important to
23 make the whole group work again, and this -- this is why
24 it went so well after.

25 Q. Is it not true that at least some additional cash would

1 have been used by the PSA Group during this period to
2 make investments?

3 A. Again, as I said, very difficult to tell you, having
4 €100 million, what would have been done. You can
5 consider that at that time we paid back debt, we
6 invested, we developed, so the cash could be somewhere
7 in those possibilities, in the range of possibilities,
8 so ...

9 Q. What I want to suggest to you, Mr Laxenaire, is that
10 the fair conclusion to reach in relation to what PSA
11 would have done with additional cash between 2014 and
12 2016, given that we know it was making investments and
13 building up cash reserves at that time and that it was
14 not paying off its underlying debt with its extra cash,
15 is that it is more likely that savings on the cost of
16 OSS components would simply have been added to the PSA
17 bank balance along with the rest of its cash surplus.
18 Is that a fair conclusion?

19 A. That's not my conclusion. That's not my view.

20 Q. All right. You say -- and I am now coming to the end of
21 my questions -- and it is not necessary to turn it up --
22 in paragraph 27 of your OSS statement {B/22/7} that you
23 consider Peugeot SA and GIE's mid and long-term external
24 financing to be the most appropriate interest rates to
25 use for the purposes of these proceedings. In the final

1 sentence of that paragraph you say:

2 "... I consider that these are also the most
3 appropriate interest rates to use in the OSS proceedings
4 so long as we consider that ... monies PSA was deprived
5 of led PSA to borrow additional liquidity."

6 Do you see that?

7 A. Correct.

8 Q. You accept, do you not, that if additional monies would
9 have been invested, it would not then be appropriate to
10 use Peugeot SA and GIE's mid and long-term interest
11 rates for the purposes of the claim for compound
12 interest in these proceedings?

13 A. I'm sorry, I'm not sure I get your question, but my
14 reasoning is pretty simple, in fact. When you have --
15 in a company, you have assets and liabilities, you are
16 investing, you're making operation and you have capital,
17 whether it's equity or debt, which is financing; you
18 have one possibility, weighted average cost of capital,
19 which would be definitely higher than the interest rate,
20 I propose to you. So I'm trying to approach just
21 the minimum cost, which is mid/long-term, because here
22 we're not talking about short terms, so mid/long-term
23 debt, which is a minimum cost, and you may know that
24 this is -- how to say -- market practice in any unpaid
25 -- in the financial markets, lenders or whatever --

1 the unpaid interest is cost of borrowing plus a range of
2 100 to 200 basis points to be negotiated between
3 the banks and ... so back to the relevant rate, which is
4 the interest rate of the borrowing. And that's it, this
5 is the reasoning. Whether you look at the finance
6 theory or look at the market practice in the -- in
7 the unpaid operations, you're back to a borrowing cost.

8 Q. But you are assuming that all of the additional cash
9 would be used to reduce debt in this scenario, are you
10 not?

11 A. I'm not able to tell you if we had €100 million more,
12 which part of the €100 million would have gone to reduce
13 debt, would have gone to investment, would have gone to
14 something else. I tried to explain you, throughout
15 the 20 years, the probability that we do one or
16 the other is different when the company is going very,
17 very bad, when the company is getting much better. But
18 I think, over the period 2004 to 2017, I'm not sure that
19 PSA reached the standard level of financial security,
20 which is for the OEM somewhere at 25% of the turnover.
21 So, a long story short, I still believe that the rate
22 I propose is balanced and makes sense.

23 MR SPITZ: Thank you very much, Mr Laxenaire. I am
24 grateful.

25 A. Thank you, sir.

1 MR WEST: Nothing.

2 THE CHAIRMAN: Okay, thank you very much. You are released
3 from your oath and thank you for giving evidence to
4 the court.

5 A. Thank you, Judge.

6 (The witness withdrew)

7 THE CHAIRMAN: So how are we looking for tomorrow? We have
8 quite a few witnesses tomorrow.

9 MS FORD: Sir, yes, it is all the ZF witnesses tomorrow.

10 THE CHAIRMAN: Yes.

11 Mr West, you are cross-examining. How are we on
12 the time we start?

13 MR WEST: I think we should be fine if we start at
14 the normal time. I say that because mainly
15 the cross-examination relates to this question of
16 siloing and it is actually broadly the same across
17 the business, as I say, so I am certainly not intending
18 to put all of the same points to all of the witnesses.

19 THE CHAIRMAN: No, very good.

20 So 10.30 tomorrow.

21 (4.32 pm)

22 (The Court adjourned until 10.30 am on Wednesday, 9 October
23 2024)

24

25