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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.

Thursday, 10 October 2024

(10.30 am)

THE CHAIRMAN: I must start by explaining this, 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 SCANNELL: Good morning, Mr Chairman, members of the Tribunal.

THE CHAIRMAN: Good morning.

MR SCANNELL: Could we now call Mr Corbut to give evidence.

MR FABRICE CORBUT (affirmed)

(All answers in given in English unless otherwise indicated)

THE CHAIRMAN: Thank you, Mr Corbut. If you take a seat. Thank you.

Examination-in-chief by MR SCANNELL

MR SCANNELL: Good morning, Mr Corbut.

A. Good morning, Mr Scannell.

Q. Could you pick up bundle C and turn to tab 1 {C/1/1}.

A. Okay, yes.

Q. Can you see that on the screen in front of you?

A. Yes, I can see. I can see it in front of me, yes.

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

- 1 A. Yes, this is the first one. This is correct,
2 Mr Scannell.
- 3 Q. Could you now turn to page 21 of that document, please
4 {C/1/21}. Beside the date of 6 February 2024, is that
5 your signature?
- 6 A. Yes. Yes, it is.
- 7 Q. Could you now turn to page {C/1/3} of that document,
8 please. I believe you wish to clarify one matter
9 arising from paragraph 5.
- 10 A. Yes. Yes, this is correct, Mr Scannell. I took
11 the current position I have in the company as a Director
12 of Commercial Excellence in 2020. So in 2021, I was not
13 still any more the Business Unit Director of PSA.
- 14 Q. Thank you.
- 15 Could you now pick up {C/7/1}, or can you see that
16 page on the screen in front of you?
- 17 A. Nothing has changed. This is the same page, sorry.
- 18 Q. Okay, so we are going to wait for a moment for the Opus
19 operator to put it on the screen in front of you. On
20 the Opus system, we need {C/7/1}, please.
- 21 Is that your second witness statement in these
22 proceedings?
- 23 A. Yes, this is correct, Mr Scannell.
- 24 Q. Please could we turn to {C/7/9} of that document.
25 Beside the date of 5 March 2024, is that your signature?

1 A. Yes, this is my signature.

2 Q. Subject to the clarification you made to paragraph 5 of
3 your first witness statement, are the contents of both
4 of the witness statements you have identified as your
5 witness statements in these proceedings true to the best
6 of your knowledge and belief?

7 A. Yes, this is true.

8 Q. Is that the evidence you wish to give in these
9 proceedings?

10 A. Yes, it is.

11 MR SCANNELL: Thank you. You will now be asked some
12 questions by counsel for the Claimants.

13 A. Thank you very much, Mr Scannell.

14 Cross-examination by MR WEST

15 MR WEST: Good morning, Mr Corbut.

16 Could we start just by recapping your role within
17 Autoliv. It is right that between 1999 and 2003, you
18 were part of the Renault business unit at Autoliv?

19 A. Yes, this is correct. I was account manager for
20 the Renault business unit during this period of time.

21 Q. Between 2003 and 2006, you had an engineering role
22 concerning airbag development; is that right?

23 A. Yes, this is correct. So between 2003 and 2006, I was
24 responsible for the frontal airbag department in charge
25 of engineering in Autoliv.

1 Q. Then, from 2006 to 2013, you were a director of
2 the Technical Centre of Autoliv, so a technical role; is
3 that right?

4 A. Yes, this is -- this is right. I took the position of
5 Tech Centre Director of our Tech Centre in France from
6 2006 until 2013.

7 Q. You were then a director of the business unit concerning
8 supplies of OSS to PSA only from 2013 until 2020, as you
9 have told us today?

10 A. Yes, this is also correct. I took the position of
11 director of PSA business unit in 2013 until 2020.

12 Q. Mr Corbut, are you aware that these proceedings are
13 concerned with the period between 2002 and 2011?

14 A. Yes, I was -- I'm aware that the proceeding is
15 instituted with this period of time.

16 Q. Within that period, you were not part of Autoliv's PSA
17 business unit, were you?

18 A. No, this is correct. I was not part of PSA business
19 unit, I was in charge of, first, the frontal airbag
20 department, and then, after, the complete technical
21 centre, and our responsibility at that time was to
22 develop product associated with customer -- customer
23 requirements.

24 Q. Just to clarify, you may have had some input into PSA
25 RFQs in a technical capacity?

1 A. Yes, this is correct, because, as I explained in my
2 first witness statement, there is a close collaboration
3 between engineering team and sales team during the RFQ
4 process. The engineering team is mainly responsible to
5 define the product that can fulfil the expectation of
6 the customers and everything associated with the cost
7 for -- for this product, and the sales organisation is
8 responsible to manage everything related to commercial
9 discussion, negotiation agreement, and the definition of
10 the sales price.

11 Q. I think in particular you say in your evidence you have
12 some involvement in the RFQ process concerning
13 the A9 Project?

14 A. Yes, this is correct. The A9 Project has -- the RFQ of
15 A9 Project has been managed when I was the Technical
16 Centre Director of -- of Autoliv in France.

17 Q. But as you have explained, that was not a sales or
18 commercial role?

19 A. Sorry, can you -- can you ask to repeat the question?
20 I'm not sure I ...

21 Q. I am sorry. It was not a sales or a commercial role?

22 A. It was not --

23 Q. It was not?

24 A. No, it was not a commercial role.

25 Q. We have some diagrams setting out the structure of

1 Autoliv's accounts at this time. If you could be shown
2 tab 611 of bundle J1 {J1/611/1}. This is not a dated
3 document, but we think it is from about 2004. Does that
4 look about right to you, as far as you are aware?

5 A. Difficult for me to remember this document. In 2004
6 I was responsible for the frontal airbag department and
7 here it look like the org chart for the sales --
8 the sales organisation.

9 Q. Do not worry, it is not a memory test. The reason we
10 say that is if you look at the PSA account director --
11 do you see that -- Mr Emmanuel Kowal?

12 A. Yes, I can see that.

13 Q. We think he was the director there prior to 2006. Is
14 that something you were aware of?

15 A. Sorry, can you repeat the question?

16 Q. We think he was only in that role prior to 2006.

17 A. Only through speaking, I do not remember when
18 Mr Kowal left the company. So, yes, I remember that he
19 was in charge of the PSA business unit during a certain
20 period of time, but I don't remember when he left
21 the company, and when he left the company, he has been
22 replaced by Mr Rivière until 2013, and then I replaced
23 Mr Rivière in 2013.

24 Q. Yes, and that is the next document I was going to show
25 you {J1/612/1}. So we think this must be after 2006

1 because we see the PSA account director is now
2 Mr Rivière?

3 A. Yes, this is -- this is correct, Mr Rivière has been
4 the business unit director of PSA.

5 Q. You told us he was -- he held that role until 2013 when
6 you took over?

7 A. This is correct.

8 Q. So Mr Rivière was on the PSA account at Autoliv during
9 the period these proceedings are concerned with; is that
10 right?

11 A. Yes, I think so, mm-hm.

12 Q. But you were not?

13 A. At least -- again, I do not remember when Mr Kowal left
14 the company. I remember that Christophe Rivière took
15 the lead of the PSA business unit and I remember that
16 when I was Technical Centre Director I was in contact
17 with Christophe Rivière managing engineering on my side
18 and Mr Rivière managing commercial activity for PSA.

19 Q. Yes, we are going to come on to look at that.

20 But Mr Rivière is still employed by Autoliv, is he
21 not?

22 A. Mr Rivière is still in the Autoliv Group.

23 Q. In fact, he is vice president in charge of
24 the Stellantis global business unit?

25 A. He's currently vice president in charge of Stellantis.

1 Q. If you look further up on this chart, we see some other
2 names at the top: Ms Eriksson, were you familiar with
3 her?

4 A. So I remember that Veronica Eriksson was in charge of
5 supporting our CEO regarding finance and of course
6 including sales or business activities.

7 Q. Does she still work at Autoliv?

8 A. She's not any more in the -- in the company.

9 Q. What about Mr Carlson, we see there at the top? Were
10 you familiar with him?

11 A. So Mr Carlson is not any more the CEO of -- of Autoliv.

12 Q. Does he have any role within Autoliv?

13 A. He -- he's -- if I'm correct, he is the chairman of --
14 of the board of Autoliv.

15 Q. At paragraph 13 of your statement {C1/1/5}, Mr Corbut,
16 you say there was a general policy at Autoliv of
17 maintaining separation between the different business
18 units; do you remember that?

19 A. Yes, I think that it's on the -- on the page 6, at the
20 end of the paragraph 13 {C/1/6}. But, yes, there is --
21 there is a general policy in Autoliv to separate
22 activities of the different business units and -- and,
23 for example, what I mention in my -- in my witness
24 statement, when I was in charge of the PSA business
25 unit, I had access only on the perimeter associated with

1 PSA in term of -- in term of numbers, and -- and not for
2 the other OEMs. So we have a system where we manage
3 the forecast of the company with volumes, but also sales
4 price, and for example, when I was the PSA business unit
5 director, when I connected myself to the system, I had
6 access only to the data associated with PSA, I was not
7 able to see the data from another business unit and
8 vice versa.

9 Q. Now, you have a long exhibit to your witness statement,
10 Mr Corbut, of I think about 800 pages, or thereabouts.
11 You have not exhibited any written policy to the effect
12 that you have just described, have you?

13 A. No, I don't think so, but this is -- this is a practice
14 that we have to manage access rights of our different
15 systems, especially regarding sales price information,
16 to -- to do this -- this separation.

17 Q. Can we talk a little bit about responses to RFQs. When
18 a car manufacturer issued an RFQ, if Autoliv intended to
19 participate in the bidding, it would have to decide
20 the level of the price it was going to bid at, would it
21 not?

22 A. So the -- so the first we -- we participated during this
23 period of time, this is still the case, we participate
24 to all RFQs we receive from -- from any of our customers
25 and especially from -- from PSA at that time.

1 Q. In order to participate in the bid, you need to decide
2 what price to bid at?

3 A. The -- if I can explain a little bit the -- the process
4 of -- of the RFQ and the way we manage RFQ in Autoliv.
5 So, we -- we receive the RFQ information and document
6 from our customer, in this case it's PSA. In the RFQ
7 package, you have a big number of document, some of them
8 related to technical specification, some of them related
9 to quality requirements, some of them related to
10 logistic requirements, some of them regarding operation,
11 meaning that where the vehicle will be produced,
12 the number of vehicles associated to this RFQ,
13 the starting date of the production, the end date of
14 the production. So when we receive the package of this
15 RFQ, based on the different function in
16 the organisation, everywhere -- everyone is taking what
17 is related to -- to his part. For example, when we
18 manage A9, we received the RFQ package, I was in charge
19 of engineering, so we took all the document associated
20 with engineering and we started to, of course,
21 read/understand what is the contents of the technical
22 specification, and then we started to define the product
23 that can fulfil the requirement of -- of PSA at that
24 time.

25 When the product is defined, then we started to

1 collect all the cost associated with this type of
2 product. So the different component, but also the --
3 the development cost, so the engineering cost that we
4 need to -- to put to develop the product, the investment
5 for the production line, etc, etc. So there was
6 a certain quantity of cost that we collected and that we
7 put together in one IT system we have called ICAN, and
8 then this created the cost structure for -- for
9 the product, with the manufacturing associated with
10 that, with -- with the tooling, and when those
11 information were available, the cost information were
12 available for the sales organisation, and then the sales
13 organisation, they started to build their strategy in
14 terms of sales price they would like to propose, of
15 course in connection with the costs that have been
16 provided by the engineering organisation.

17 Q. Yes, Mr Corbut. I referred to your long exhibit and you
18 talked at the beginning of that answer about the package
19 you would receive for the RFQ, and that accounts for
20 some of the length of this exhibit.

21 If you look at page 41 of your exhibit, so that is
22 {C/2/41}, is that an example of what you are talking
23 about, an RFQ package of documentation? It may actually
24 be page 41.

25 A. So here what -- what I have in front of me on

1 the screen, this is typically the technical
2 specification for the driver airbag of -- of A9.

3 Q. Yes. It is more difficult to see on the screen, but it
4 runs for very many pages, as you described.

5 A. Sorry?

6 Q. As you described, it is a lengthy package of documents.

7 A. So, typically, when I talk about a big amount of
8 documents, and we can use the generic name of "package",
9 package, this is all the documents we received during
10 the RFQ. So technical specification are part of
11 the package or the content of the RFQ.

12 Q. All I was asking you was that Autoliv had to decide what
13 price it wished to bid at in order to respond to an RFQ
14 like this?

15 A. As -- as I describe in my witness statement, we have an
16 internal process in Autoliv, and this is still the case,
17 to -- to manage the RFQ. The process is
18 called "PSA" -- "PSC", excuse me, PSC for project
19 steering committee. This is divided in different steps.
20 We have what we call the PSC1, and the PSC1 is when
21 the business unit will explain to the Autoliv
22 organisation that a new RFQ will arrive, and then we
23 will have to work on this RFQ. So the PSC1 is more to
24 inform about a new RFQ and also to get the approval to
25 start to put resources to work on the subject.

1 After we manage what I explained before, we receive
2 the RFQ package, we manage the definition of
3 the product, we define the costs, and when the cost are
4 defined, then the sales team start to define the pricing
5 strategy.

6 The pricing strategy is presented during what we
7 call the PSC2, so this is the second milestone of our
8 process, and this is at this milestone that there will
9 be a discussion between the business unit and
10 the management of Autoliv to review the technical
11 content of the quote, to review the risk associated to
12 the quote, but also this is where we manage
13 the discussion about what is the level of sales price
14 that -- that we would like to propose and during
15 the PSC2, the management of Autoliv give an approval for
16 a certain level of sales price, and this is based on
17 this approval that the business unit will propose
18 a first offer to the customer.

19 Q. Could I ask you to look at your statement, paragraph 31
20 {C/1/11}, bullet point 4. These are not numbered so you
21 will have to count them. It says:

22 "Constructing the sales price (once the ICAN process
23 is complete, for the reasons explained above), which is
24 the responsibility of the Sales team."

25 So the point I was putting to you is, to respond to

- 1 an RFQ, Autoliv needs to come up with a price, yes?
- 2 A. At -- at a certain point of time, we need to define
3 which level of price we would like to propose for this
4 RFQ, and this discussion is managed in the PSC2 forum.
5 So ICAN is the tool where we collect all the cost, and
6 this is from this tool where we have the collection of
7 the cost that the business unit will say, "Okay, we have
8 this amount of cost, we would like to achieve this level
9 of profitability", then the sales price can be at this
10 level.
- 11 Q. You say here that:
- 12 "Constructing the sales price ... is
13 the responsibility of the Sales team."
- 14 You of course were not on the PSA sales team at this
15 point, as you have told us. That is right, isn't it?
- 16 A. Yes, that is right.
- 17 Q. So for RFQs over the period which this case is concerned
18 with, you would not have been the person who did this?
- 19 A. Yes, this is correct. I was not in charge of anything
20 related to sales price at that time.
- 21 Q. Then, next, the next bullet point in your statement, as
22 you have been explaining to us, involves submitting
23 the relevant PSC2 documentation, and as you have been
24 telling us, that is the meeting or process by which
25 the level of the bid is approved; is that right?

1 A. The first level of the bid is approved.

2 Q. PSC stands for "project steering committee"; is that
3 correct?

4 A. This is correct.

5 Q. Which is perhaps a slightly unusual name. What they are
6 really doing is authorising bids at a particular level?

7 A. So if -- if I try to -- to explain and then I will refer
8 to my period when I was BU Director. We are not on
9 the same period, but as I had this role in
10 the organisation, and as the process is still the same,
11 I can clarify some points.

12 So, when you are a BU director and you have to
13 provide a quote to your customer, you go in front of
14 the management in the PSC2 meeting and you explain,
15 "Okay, I have this amount of cost for this product,
16 I want -- or I would like to have X per cent of
17 profitability, then I propose a sales price of X", and
18 of course so there is a sales price, there is
19 a profitability associated with the sales price and
20 there is the costs which are associated to that, and
21 the discussion during the PSC meeting is to understand
22 at which level of profitability we would like to be and
23 to decide at which level we would like to start
24 the negotiation with the customer, and we know, of
25 course, that the first offer that we will provide to

1 the customer will be the starting point of -- of the --
2 of the negotiation.

3 Q. Mr Corbut, I don't want to interrupt your evidence, but
4 could you try and focus on the question I am asking you.

5 A. Yeah, sorry.

6 Q. So the PSC/project steering committee was a body which
7 authorised bids to be issued at a certain level; that is
8 right, is it not?

9 A. Yes, that's right.

10 Q. For the RFQ responses that we are concerned with in this
11 case, the authorisation body consisted of the European
12 executive leadership team; is that right?

13 A. This is right.

14 Q. That is what you say at the third last bullet point of
15 your paragraph 31 {C/1/11}.

16 Unlike the organogram organisation drawing we looked
17 at earlier where we have separate teams for each car
18 maker, there was only one project steering committee
19 body for all RFQs for all car makers; that is right, is
20 it not?

21 A. This is right. The PSC2 meeting is organised with
22 a time schedule, and every business unit, they have
23 a time slot to show up in this meeting and to present
24 their business -- their business case.

25 Q. Yes. So the representatives from the sales teams

1 attending the meeting only deal with one car maker, but
2 the body which is deciding whether to grant
3 authorisation, the members of that body, they deal with
4 bids for all car makers; that is right, is it not?

5 A. So, yes, the people who make the approval are
6 the divisional or, in this case, the European leadership
7 team.

8 Q. They would therefore see proposed responses to RFQs
9 relating to all of the different car makers?

10 A. Yes, this is correct.

11 Q. That would include proposed pricing for those bids?

12 A. Yes, this is correct.

13 Q. And any elements that went to make up the price, such as
14 costs, margins, discounts and so on?

15 A. I'm not sure I understand the question. Can you repeat
16 the question, or ...?

17 Q. When the sales team was asking for approval of a bid, it
18 would provide information on how that bid had been
19 assembled, including the costs, the margin which it was
20 proposed Autoliv should earn, any discounts which were
21 built into the price and so on?

22 A. Yes, this is -- this is correct. It's part of
23 the discussion.

24 Q. Now, in your lengthy exhibit, you attach a copy of a PSC
25 presentation. That is page 787 to 822 of the exhibit

1 {C/2/787}. So this is, is this right, this is
2 the presentation the sales team would make to this PSC2
3 meeting?

4 A. Yes, this is correct.

5 Q. Just to clarify, I think you did tell us, but PSC2 is
6 the grant of authorisation?

7 A. This is the approval to send the first offer to
8 the customer.

9 Q. Whereas the PSC1 would be at an earlier stage of giving
10 authority to assemble a team and put together a bid?

11 A. This is correct.

12 Q. We see that this is on the A9, which we mentioned
13 earlier, which you were involved in to a certain extent
14 from a technical perspective?

15 A. This is correct.

16 Q. We see the presentation is dated 17 December 2008, which
17 should be on the page?

18 A. Yes, yes, this is what I can see on the screen.

19 Q. The author is Mr Rivière?

20 A. Yes.

21 Q. So as we discussed, this is the proposal by which
22 Mr Rivière is seeking approval for his intended price in
23 response to the A9 RFQ; is that right?

24 A. Yes, this is correct.

25 Q. Now, I could not find in this document -- could you show

1 us where the price is set out? Do you have the physical
2 document?

3 A. No, I don't have the physical document.

4 (Handed).

5 Thank you very much.

6 (Pause).

7 Q. So it starts at page {C/2/787} and goes on to page
8 {C/2/822}.

9 A. Will you give me some minutes to find the documents?

10 (Pause).

11 Q. Well, let us not take too much time. Perhaps if someone
12 can find it on the other side, they can show you it
13 later.

14 Are you actually familiar with this document,
15 Mr Corbut?

16 A. Partially familiar, yes.

17 Q. You did not author it, as we saw, but you did exhibit
18 it.

19 A. I'm sorry, can you -- can you repeat the -- your
20 question?

21 Q. I was saying, to be fair to you, you did not actually
22 write this, as we have seen, but you have exhibited it
23 to your statement?

24 A. Yes, yes, so I know this document. This document had
25 evolution, so it was the version used in 2008, which is

1 not exactly the version that I used when I was in charge
2 of the business unit, but the content and the format is
3 -- is the same, and then, normally, you have -- you have
4 the ICAN -- ICAN document, and this is where you have
5 some economical information.

6 Q. But in order to decide whether to approve a bid, the PSC
7 committee would need information on things like prices,
8 costs, margins, discounts and so on?

9 A. Yes, this is correct.

10 Q. If they are not in this document, they must have been
11 provided for this meeting in a separate document?

12 A. I don't know for this -- for this specific meeting how
13 it has been -- it has been provided. I was not in
14 charge of -- of the sales at that time, I was not part
15 of the PSC2 meeting, so I don't know how it has been
16 provided.

17 Q. Yes, we have established that, Mr Corbut.

18 Can I show you one which is in the bundle which does
19 -- when I say "one", a PSC presentation which does
20 contain the kind of details one would anticipate. That
21 is at tab 465.

22 THE CHAIRMAN: Sorry, are we in the exhibit?

23 MR WEST: I am sorry?

24 THE CHAIRMAN: Are we in the exhibit or
25 the cross-examination bundle?

1 MR WEST: I am sorry, this is {J1/465/1}.

2 THE CHAIRMAN: Thank you.

3 MR WEST: So we see this is a PSC presentation relating to
4 the Toyota 730L and 930L, and as we will see a little
5 bit later on, those are two vehicles, it seems, one for
6 China and one for Japan. Again, I do not imagine you
7 are familiar with this, but we are just going to look at
8 the format of the document.

9 We see from over the page {J1/465/3}, page 3 of
10 the document, that this is a seatbelt RFQ; do you see
11 that? "Products", and then one of them is filled in,
12 "Front Seat Belts"?

13 A. Yes, this is what I can see.

14 Q. As we mentioned before, under "Vehicle" it is the "730L
15 (Japan)", and the "930L (China)"; do you see that?

16 A. Yes, yes, yes, I see that.

17 Q. These are Toyota vehicles, as the front page said?

18 A. Yes, yes.

19 Q. Just before we move on from this document, you will see
20 at the bottom of page 3 it says -- sorry, yes:

21 "Front seat belts only."

22 Then there is some technical language. Then another
23 bullet point:

24 "Rear seat belt will be awarded to Tokai-Rika.

25 "DAB/PAB/SAB/IC will be awarded to [Toyoda Gosei]."

- 1 So the PSC committee seems to be being told here
2 that whoever authored this document seems to know in
3 advance who is going to win the tenders for the other
4 OSS components in this vehicle; do you see that?
- 5 A. I see the bullet point, and now I don't know the context
6 and I don't know how -- how this comment -- or where
7 the information for this comment came from.
- 8 Q. No, indeed.
- 9 If one goes on to {J1/465/7}, there is a detailed
10 description of the product, "Product description-Outer",
11 then over the page {J1/465/8}, "Product
12 Description-Inner". So that is the product.
- 13 If one goes over the page again, this is now page 9
14 {J1/465/9}, this is the ICAN that you have been
15 mentioning. I do not think anyone has been able to work
16 out what "ICAN" stands for so we will just call it
17 "ICAN". This one is for China.
- 18 A. You have the explanation of ICAN. It is, "Autoliv
19 Internal Calculation Network".
- 20 Q. Well, the words seem to be in a different order?
- 21 A. It's an acronym that we are using.
- 22 Q. Then over the page at {J1/465/10} is the equivalent for
23 the Japan sales; do you see that?
- 24 A. Yes, I see that.
- 25 Q. So just staying with Japan, one has here the sales price

1 at the top left-hand side row, and one sees that
2 the sales price declines over time between 2009 and
3 2014; do you see that?

4 A. I see that, yes.

5 Q. So that would reflect the annual discounts that are
6 proposed, would it?

7 A. Probably.

8 Q. Probably.

9 There are then some costs given, "Direct material,
10 total direct costs, contribution", and then there is
11 a section on fixed costs or overheads and so on.

12 Then at the bottom, "Key ratios", we have
13 a contribution ratio and an EBIT; do you see that on
14 the left-hand side at the bottom?

15 A. Yeah, I see -- I see this.

16 Q. Right at the -- yes, so the right-hand side at the
17 bottom has the total percentage, contribution and
18 percentage EBIT; do you see that?

19 A. Yes, I see that.

20 Q. Interestingly, one sees that although the price is going
21 down over time, the EBIT is actually going up over time;
22 do you see that?

23 A. Yes, I can see that.

24 Q. So presumably, although there are discounts being
25 granted, the savings per year, the productivity savings,

- 1 are actually greater, they outweigh the discounts?
- 2 A. No, this is not my -- in my understanding. The --
- 3 the ICAN 2 is using a certain number of master -- master
- 4 data. One of the example is the amortisation of
- 5 the engineering cost, or the amortisation of
- 6 the production line, and this is normally calculated
- 7 over the first three or first four years. So that
- 8 means, after a certain point of time, the amortisation
- 9 is not considered any more and this is why you can see
- 10 an increase of -- of the EBIT. It's because the --
- 11 the cost associated to the product at a certain period
- 12 of time are lower.
- 13 Q. You are quite right, Mr Corbut. If one looks
- 14 under "Contribution", there is a line:
- 15 "Depreciation development costs".
- 16 So they use the word "depreciation" rather than
- 17 amortisation. If you look across, is that what you are
- 18 referring to?
- 19 A. Yes.
- 20 Q. So one has figures for the first three years?
- 21 A. Yes, if you look -- if you look at this document and if
- 22 you look at the year 2013, for example, and if you look
- 23 at depreciation cost development, then you have zero.
- 24 Q. But in any case, this is the sort of information that
- 25 you would expect the PSC committee to see for an RFQ,

1 yes? Thank you.

2 A. This is -- this is correct, and this is based on -- on
3 that, that we receive or not the -- the approval. Now,
4 as I mention in my statement, the -- the PSC is more to
5 understand the profitability of the business than to --
6 to manage the -- the growth of -- of the business. So
7 -- so the PSC process and approval is -- is here also to
8 make sure that the sales organisation will not offer low
9 price with low profitability for short-term benefit in
10 terms of growth, but impacting the long-term
11 profitability.

12 Q. The next stage following preparation of the presentation
13 would be the PSC meeting itself, yes?

14 A. Yes, this is the -- so we prepare the presentation, so
15 the business unit -- sorry -- so the business unit
16 prepare the presentation and go officially in the PSC2
17 meeting, the PSC forum, where they present.

18 Q. Could we look at one example of that, which is at
19 {J1/303/1}. So these are some PSC meeting minutes, and
20 if one -- again, we are just looking to see the format
21 of these. If one looks over the page {J1/303/2} to page
22 2 of this, one sees under the first entry something
23 called the, "Chery A23". The fourth bullet point:

24 "Walk-away EBIT 12% ..."

25 Do you see that?

- 1 A. Yes, I see that.
- 2 Q. So here the sales team have been given authority to
3 submit prices at such a level as the EBIT achieved is at
4 least 12%, but once the customer asks for prices going
5 below that, they are told to walk away. That is what
6 this is saying.
- 7 A. So the way to -- to understand that, when you are in
8 the PSC2 meeting, you have a discussion about what we
9 call the walking and the walk away. The walking is
10 where you would like to provide the first quote, and
11 with the -- with the walking price you have a certain
12 profitability, and during the PSC2, you have also
13 the discussion about the walk away, so this is the lower
14 limit accepted by our organisation in terms of
15 profitability. So, for example, you can have
16 the approval to submit the first quote at walking level
17 of 15%, and you have, if I continue with this example,
18 a walk away at 12%, meaning that during the negotiation
19 with the customer, you can play in the window of 15 to
20 12%.
- 21 Q. Thank you.
- 22 Now, these specific products appear to be ECU, as we
23 see:
- 24 "Walk-away EBIT 12% (to bid against Bosch new low
25 cost ECU)."

- 1 That is electronic control units; is that right?
- 2 A. Yes, that's correct, but I was not at all involved in
3 the electronic business, so, yes, the meaning of "ECU"
4 is correct. Then, after, I cannot really comment on the
5 electronic business.
- 6 Q. As I say, we are just really looking at the format of
7 this, but I can show you one relating to OSS at tab 144
8 {J1/144/1}. Do you see that?
- 9 "Autoliv. Meeting Minutes PSC 17th December 2008"?
- 10 A. Yeah, I see the -- I see the page.
- 11 Q. If you go down to line 28 to 34, these are all PSA
12 products?
- 13 A. Yeah.
- 14 Q. In fact, this is the A9 that you refer to in your
15 statement; do you see that?
- 16 A. Yeah, I see that. This is correct, yes.
- 17 Q. If you look at the date at the top, in fact,
18 17 December 08, that is the same date as --
- 19 A. Sorry, can you repeat your ...
- 20 Q. I am sorry. If you look at the date at the top.
- 21 A. Yes. 17 December.
- 22 Q. That was the same date as Mr Rivière's presentation; do
23 you remember that?
- 24 A. Yes, I remember that.
- 25 Q. So this is the meeting at which that presentation would

1 have been made?

2 A. This is the meeting minute of -- of the PSC2 meeting
3 that took place at that date.

4 Q. Yes.

5 One can see the outcome in the right-hand column
6 which says:

7 "Only the 6% EBIT scenario is approved."

8 Do you see that?

9 A. Yeah, I can see that, yes.

10 Q. So, again, we cannot tell this from the presentation you
11 have exhibited, but it looks like alternative scenarios
12 have been put to the committee and they have approved
13 one of them; do you see that?

14 A. Yes, I see that.

15 Q. I do have a document I am going to show you a bit later
16 which casts more light on this when we get there.

17 But in any case, this is an example of the PSC
18 committee deciding to approve this bid response at
19 the 6% level, yes?

20 A. Yeah, so -- so here, and coming back to your previous
21 question, the steering committee gave walk-away
22 information to the business unit at the level of 6%. So
23 that means the business unit was not able, or was not
24 allowed to give price below 6% of profitability. And
25 I'm coming back to my comment that the PSC2 meeting is

1 also mainly the forum to make sure that we -- we manage
2 properly the long-term profitability of the company.

3 Q. As we see from this meeting, and as you told us earlier,
4 meetings of this kind would consider bids in relation to
5 a variety of OEMs and this meeting, we can see, includes
6 Toyota, PSA, BMW, AU/VW, I assume is Audi Volkswagen; do
7 you see that?

8 A. Yeah, I see that.

9 Q. "DAI", would that be -- I do not know who that is. Can
10 you cast any light on that?

11 A. Sorry, can you repeat your question?

12 Q. There is an entry "DAI". I am not sure which car maker
13 that is?

14 A. At that time it was -- it was Daimler.

15 Q. Daimler?

16 A. Yes.

17 Q. Ford and then Volvo at the bottom and Nissan. So we can
18 see that from the document.

19 Could I ask you now to look at {J1/234/1}. Some of
20 this document is in French, but we have a translation --
21 oh, sorry, that is a wrong reference. Sorry, 234. Yes,
22 so this is in English.

23 This is an email from Mr Rivière, do you see that,
24 to Mr Carlson?

25 A. Yes.

1 Q. And Ms Eriksson and someone called Gunther Brenner; do
2 you know who he was.

3 A. So Gunther Brenner was the president of Autoliv Europe
4 during a certain period of time.

5 Q. We can see here, "Subject: A9 update", so this is
6 the same RFQ?

7 A. This is correct.

8 Q. Mr Rivière says:

9 "Dear Jan and Veronica,
10 "You'll find below an updated status regarding A9
11 RFQ."

12 I should perhaps have shown you
13 the date: 25 March 2009, so this is a few months after
14 the PSC meeting we saw:

15 "We have to send a 3rd round answer next Friday and
16 I would like to discuss it with you before."

17 So this is the answer they are sending to PSA; is
18 that how you would understand this?

19 A. My understanding is that we managed the PSC2 in
20 December, we submitted our first quote after the PSC2,
21 and then we started the -- the negotiation with PSA, and
22 based on the content of the negotiation, PSA ask us on
23 a regular basis to find ways to improve our quote. So
24 on a regular basis we have to submit a new proposal,
25 a new quote with a price reduction expected by -- by PSA

1 until they are able to manage the nomination of
2 the supplier.

3 Q. We know that the PSC committee granted authority for 6%
4 EBIT, we saw that?

5 A. Yes.

6 Q. Just going through this, so there are three specific
7 products considered together. The first is driver
8 airbags and passenger airbags; do you see that?

9 Point 1, "DAB + PAB" and point 2, "SW", steering
10 wheels, point 3 "FSAB+ IC"; is that front side airbag
11 and inflator cushion?

12 A. Inflatable curtain.

13 Q. Inflatable curtain.

14 Just going back to number 1 so we see what is going
15 on here:

16 "Last offer: 43.62 €/car: 22,60€ for DAB + 21.02 for
17 PAB...

18 "They ask for 37€.

19 "Proposal for round 3: 40€ (5,7% Ebit).

20 "If we go down to 37 ..."

21 So that is what PSA was asking for:

22 "... Ebit = - 1%."

23 Then we see similar things under steering wheel
24 where the proposal is equivalent to 4.4% Ebit and front
25 side airbag and inflatable cushion is 8% Ebit under the

1 proposal for round 3.

2 Then there is at point 4, "For all A9 Products".

3 Then "Others", this is other elements of the deal:

4 "We know they will include in the final deal some
5 tricky subjects such as:

6 "- raw material decrease.

7 "- additional productivity on existing business."

8 "Please find below a synthesis chart with some
9 figures explained above. All ICAN consolidations not
10 provided yet because many potential scenariii --."

11 Mr Rivière uses that Latin plural:

12 "... I can send them to you as well as ICAN
13 AHO approval sheet after our discussion.

14 "Thanks to let me know if and when we have a chance
15 to discuss it tomorrow ...

16 "[Best regards/Christophe Rivière]."

17 So what we see here are detailed discussions about
18 what Autoliv's next round offer should be. Is that what
19 we see here?

20 A. Yes, my understanding is that PSC2 approved a walk-away
21 level at 6%. You ask me the question about Mr Brenner.
22 Mr Brenner was the president of Autoliv Europe at that
23 time, so most probably Mr Brenner was part of the PSC2
24 meeting, and then he was part of the decision of the 6%.
25 Now, based on the -- the evolution of the RFQ, at that

1 time PSA ask for sales price that would not allow
2 Autoliv to deliver the 6% EBIT defined in the PSC2, then
3 Mr Rivière had to discuss with Mr Carlson, who was
4 the CEO of the company, putting Mr Brenner in copy,
5 about the request of PSA and asking the approval from
6 our CEO to make an offer at a lower EBIT profitability
7 than the one decided during the PSC2.

8 Q. But what we see here is the top management of
9 the company -- Mr Carlson is the CEO, as you said, and
10 Mr Brenner, the president of Autoliv Europe -- getting
11 involved in the detailed negotiations of this RFQ?

12 A. I would not say that they were in the detail of the RFQ.
13 They were asked to provide a new approval to
14 the business unit for lower profitability. So
15 Mr Brenner, as president of Europe, was responsible for
16 the -- the -- the profitability of Autoliv Europe, and
17 of course Jan Carlson was responsible for
18 the profitability of the whole company.

19 Q. So as you say, these individuals would have an overview
20 across the whole of the business, not just any one car
21 maker?

22 A. At the level of the top management, yes.

23 Q. Yes, logically, that must be the case.

24 So what we see here, Mr Corbut, I suggest to you is
25 that the pricing decisions were not separated out into

1 different teams dealing with different car makers; in
2 fact they were made by the PSC with the involvement of
3 the top management and they saw pricing information
4 relating to bids for all car makers.

5 A. I would -- I would not say that. The proposal of
6 the sales price were always -- and this is still
7 the case -- are still managed by the business unit.
8 This is the -- this is the business unit that build
9 the strategy to define their sales price and they got
10 the approval from -- from the management for that. Now
11 -- and this is what I explain in my witness statement --
12 there is -- there is a logic and there is a consistency
13 in the -- in the sales price, so you have history about
14 sales price with your customer, and this is specific to
15 each customer, so when you have a new RFQ, the customer,
16 in this case PSA, always refer to the previous price we
17 had with them. So the consistency and the logic of --
18 of the sales price is always defined by the business
19 unit, because this is the only organisation that can do
20 that.

21 Q. I am going to come back to that question of
22 the benchmarking you raised there.

23 But could we now look at what happened with
24 reporting within Autoliv. There were monthly sales
25 reports within Autoliv at the time; are you familiar

- 1 with those?
- 2 A. I'm -- I'm familiar with the sales reporting when I was
3 PSA business unit.
- 4 Q. These reports were limited to one particular car maker,
5 or in some cases to car makers in one country; do you
6 recall that? Let me show you an example, tab
7 {J1/571/1}. So this is from December 2005 and this is
8 a Ford document, so this is a report about Ford. We see
9 that the circulation list is Mr Westerberg. So he was
10 the CEO before Mr Carlson; is that right?
- 11 A. You are right.
- 12 Q. From Mr Kroenung and on the organisation chart, he was
13 in charge of the Ford business unit; is that right?
- 14 A. Yes, this is what I remember.
- 15 Q. The details do not really matter, again, it is just for
16 the format. It goes through various brands which were
17 Ford brands at the time, which included brands like
18 Volvo and Mazda at that time, so this is a report which
19 is limited to Ford, we see.
- 20 A. Okay.
- 21 Q. Another example is {J1/557/1}. This is a GM example
22 from September 2008, so General Motors to Jan Carlson
23 again and the GM team from Art~Blanchford, so he was in
24 charge of the General Motors business unit in Autoliv;
25 do you remember that?

1 A. I remember that Mr Blanchford was the -- the head of GM
2 business unit in Autoliv.

3 Q. Again, so this is limited to the GM brands, and the type
4 of information it contains, for example, "Raw Material
5 Price Increase" we see on the first page,
6 "BP Discussions", is that business productivity or
7 something like that, do you think?

8 A. Honestly speaking, I don't know what is the -- what is
9 the abbreviation of "BP" used by Mr Blanchford.

10 Q. "Current Negotiations", so various contracts which are
11 currently under negotiation.

12 "Advanced sales and technology". "Market situation"
13 on {J1/557/3}.

14 On {J1/557/4} we see some discussion of financials.
15 "GCV", could you cast any light on what that might be?

16 A. So I see "GCV", but I do not know what is the meaning of
17 GCV.

18 Q. Well, we can see from its contents what it is talking
19 about:

20 "[Start of production] OCT 2008 in Korea - We have
21 PPAP on all parts and passed global TG3..."

22 Sorry about all these acronyms, that is the nature
23 of these documents:

24 "Financials are great at 35% CM and 12% EBIT while
25 sales have increase by \$80M annually ..."

1 So, again, we see the sort of discussions that take
2 place in these documents.

3 There is then a discussion of "VA/VE", that is value
4 analysis/value engineering, is it?

5 A. This is correct.

6 Q. "Have exceeded our goal ..."

7 Then profit plan and so on.

8 Just so show you what these reports contained.

9 The next example is {J1/97/1}. I am not going to
10 take too long on this. So this is a Toyota one from
11 Mr Matsunaga to Mr Carlson, Ms Eriksson and various
12 others.

13 If one looks on {J1/97/2} of this one, we see,
14 again, about halfway down they are discussing the
15 "130A New Corolla/Auris":

16 "Target prices and calculated Ebit @ target prices
17 are as follows..."

18 He sets out EBIT at target costs, 9% or 5%, then
19 carries on:

20 "As of now, we report 5% Ebit on [driver airbags]
21 and 9% on Ebit on [steering wheels]."

22 And so on. So one sees the EBIT being discussed on
23 these Toyota projects.

24 Then, finally, tab {J1/75/1}. This is another
25 Toyota one. At the top of {J1/75/2} on this document,

1 again, the sort of thing we have been talking about:

2 "PSC2 approved on Jan 25th and our quotation has
3 been submitted TME ..."

4 Toyota Motors Europe possibly:

5 "Target is to win the business at 8% ebit."

6 So you see them discussing EBIT again on this Toyota
7 business?

8 A. Yeah, I can see that.

9 Q. So, it is clear that the top management of the company
10 is being regularly provided with detailed business
11 information relating to the business units, including
12 profitability and sales, as one would expect?

13 A. The -- you started your question regarding the monthly
14 report. So, yes, every month, the business unit, they
15 have to report the status for their business unit to --
16 to the management. So this is the purpose of -- of
17 the report.

18 Q. These would have been circulated by email, is that your
19 understanding, at this time?

20 A. Honestly, I do not remember. I was not part of
21 the business unit at that time and I don't know if it
22 was shared by email or if it was stored in -- in
23 a database. I don't know.

24 Q. Could we look at {J1/664/1}. So this is the covering
25 email under which the monthly report for September 09 is

1 circulated by Mr Kroenung and we saw earlier he was in
2 charge of the Ford business unit; do you see that?

3 A. Yes, I remember that.

4 Q. If we look at who this is sent to, Mr Carlson and
5 Ms Eriksson. Not all of these names are familiar, but
6 if you carry on, you will see it is also sent to
7 Christophe Rivière; do you see that?

8 A. Yes, yes, I see that.

9 Q. Who was on the PSA account?

10 A. Yes, correct.

11 Q. Mr Jean-Marc Kohl, was he at Renault; do you remember?

12 A. Yes, I remember.

13 Q. Mr Rauch. Do you remember which business unit he was
14 in?

15 A. It was one of our German business units. I don't
16 remember this -- which one.

17 Q. Mr Franz Xaver Weiss. Again, he would be one of
18 the German OEMs?

19 A. Yes.

20 Q. Mr Pelle Malmhagen, do you remember his role?

21 A. He was in charge of, if I remember well, the Volkswagen
22 business unit.

23 Q. Volkswagen.

24 But it looks from this distribution list as if these
25 monthly reports are simply being sent to all of

1 the directors of all of the OEM accounts; do you see
2 that?

3 A. Sorry, could you repeat?

4 Q. It looks from this distribution list as if this monthly
5 report is being sent to the directors of all of
6 the business units?

7 A. Yes, you are right.

8 Q. Another -- could you look at {J1/654/1}. This is
9 another one of these covering emails, this time April 09
10 report from global Toyota team, from Mr Taka Matsunaga,
11 so he was in charge of the Toyota business unit; is that
12 right?

13 A. That's right.

14 Q. Again, I am not going to go through all of these names,
15 but we see, for example, towards the bottom Mr Rivière,
16 but, again, it looks like this is just being sent to all
17 of the various business units.

18 A. Looking at this email, yes. Now I would like to -- to
19 comment that even if this is sent to -- to all business
20 units, except to get a kind of general understanding of
21 -- of the business, when you are responsible for one
22 specific business unit, it does not really help you in
23 your -- in your daily business with your -- your
24 customer.

25 Q. Could you look at {J1/320/1}, the second page of this

1 document, please {J1/320/2}. This is an email from
2 a Christa Becker. We see the familiar names at the top,
3 the president of the various business units?

4 A. Yeah, I see the name of Christina Becker. Honestly
5 speaking, I don't remember who was Christina Becker and
6 the role she had. It was in the sales organisation and
7 at that time, I was not part of the sales organisation.

8 Q. It may have been an administrative role, based on this
9 document, because what she says is:

10 "Dear all,

11 "I have created a database access for the storage of
12 our monthly AEU sales reports."

13 Would that be Autoliv Europe, do you know, AEU?

14 A. AEU, it's for Autoliv Europe, yes.

15 Q. Autoliv Europe:

16 "All AEU members, and some of the assistants, have
17 got reader rights and will be able to store their
18 reports there. Please let me know, if further
19 assistants need access as well.

20 "Due date is latest Friday every first week of
21 the month."

22 So, what this shows is that Ms Becker was creating
23 a repository of monthly Autoliv Europe sales reports to
24 which all of the business unit directors and some
25 assistants had access. That is what is happening here,

1 is it not?

2 A. I -- I understand that this is related to creation of
3 a repository to store monthly report specifically
4 associated to Europe. Now I don't know what was
5 the access right of the repository. I don't know if
6 everyone would have access to everything, or if each
7 single person would have access to only their area,
8 I don't know.

9 Q. Just one other brief topic. Could we look at
10 {J1/240/1}.

11 THE CHAIRMAN: Mr West, we will need a break at this stage.
12 Is it worth finishing this witness? Are you getting
13 near the end?

14 MR WEST: Can I just show him two more documents and then
15 I will be moving on to a different topic.

16 THE CHAIRMAN: Yes.

17 MR WEST: So this is the document, at 240, that has some
18 parts in French and those are translated at {J1/241/1}.
19 This is now about meetings rather than reports, but if
20 you go over the page on 240, this part is in English
21 anyway {J1/240/2}, so this is from Mr Malmhagen who you
22 mentioned a second ago as being in the Volkswagen Group;
23 do you remember telling us that?

24 A. I have in mind that he was in charge of
25 the Volkswagen Group, but after -- and I don't remember

1 exactly the date -- he was also -- he was not any more
2 in charge of Volkswagen, but he was in charge of sales
3 in Europe, but I don't remember when he took this
4 position.

5 Q. It is not a memory test. If you look over the page
6 {J1/240/3}, you have Mr Malmhagen's email signature
7 there and we see he is simultaneously vice president
8 global business unit VW Group and vice president Europe
9 sales; do you see that?

10 A. Yeah.

11 Q. Going back to the previous page {J1/240/2}, about
12 halfway down:

13 "Dear colleagues.

14 "Please find the attached Agenda for Sales
15 Meeting ...

16 "As you can see, we have a workshop on Frontal
17 Airbag Marketshare. We discussed already in the last
18 meeting that our marketshare is far to low. In addition
19 we are also in the wrong vehicles (low volumes).

20 "The purpose of this workshop is to work out a plan
21 on how to reach target 50% Marketshare. I have asked
22 a small group, lead by Joachim Aigner to prepare data
23 which will be used for the workshop. To be more
24 effective, I want to ask you to bring data and info from
25 your own [business unit] as input to the workshop. I am

1 thinking of needed prices, technology, competitors,
2 needed support to take upcoming business etc.

3 "In the workshop we will establish a comprehensive
4 plan on how to take the business needed."

5 So this seems to be a meeting to discuss business
6 matters for which all of the BUs have to provide
7 information, including pricing information; do you see
8 that?

9 A. Yeah -- yes, I see that.

10 Q. Mr Aigner, are you able to assist with what his role was
11 at this time?

12 A. No, I don't remember. Honestly speaking, I don't
13 remember.

14 Q. Were you aware meetings of this kind where
15 representatives of the different business units would
16 come together to discuss matters like the kind we see
17 here?

18 A. Sorry, can you repeat your question.

19 Q. Were you aware of meetings of this kind where
20 the representatives of the different business units
21 would meet together to discuss these kinds of matters?

22 A. At that time, no, because I was not in the sales
23 organisation. When I was in charge of -- of PSA -- PSA
24 business unit, we could -- we could have a meeting like
25 that. Now, the goal of the meeting was not to exchange

1 the data, it was more to understand, coming back to
2 the -- this email about the need to increase our market
3 share and then to understand which business unit can
4 support that, and -- and there is no real connection
5 between the business unit, because if I go back to this
6 example, if with your customer you have already a huge
7 market share on frontal airbag, you are not probably
8 the business unit that can contribute to an increase of
9 market share globally at the level of the group. So
10 most -- some business unit can contribute more compared
11 to others, and -- and this is the picture they try to
12 understand.

13 Q. Then the final document before we have our short break,
14 tab 113 {J1/113/1}. So we see here meeting minutes from
15 Mr Blanchford:

16 "Subject: [Autoliv] Sales Meeting Minutes."

17 So this seems to be a sales meeting; do you see
18 that?

19 A. Yeah, I see that.

20 Q. If we just run through who appears to have been present
21 here, there is no list of attendees as such, but we see
22 Mr Carlson is there?

23 A. Yes.

24 Q. Then over the page {J1/113/2}, Ms Veronica Eriksson is
25 there. Someone called "Svante M", I do not know who

1 that is, or "Steve F", who seems to be dealing with
2 engineering. Would you know who that is, as an
3 engineering person?

4 A. So "Svante M" was the executive quality VP, and
5 Steve Fredin was the executive engineering VP.

6 Q. Then at the bottom of the next page {J1/113/3} there
7 appears to have been a revision to the PSC process; do
8 you see that:

9 "New PSC Process Review.

10 "Planned roll out of new PSC format ...

11 "Standard [bill of materials]/Cost assumptions ..."

12 So there appears to be a new format for that.

13 Then over the page we see "Mr Stefan K". That would
14 be Mr Stefan Kroening from the Ford business unit?

15 A. Yes, probably.

16 Q. "Christophe". Mr Rivière?

17 A. Yes, again, probably, yes.

18 Q. "Honda business unit", "John J", whoever that is, that
19 is obviously the representative from Honda.

20 Then for the Toyota business unit, "Taka M", that is
21 Mr Matsunaga, is it not?

22 A. Yes, that's correct, "Taka M" was Taka Matsunaga.

23 Q. So what we see here is an example of a sales meeting
24 taking place with the top management and the individuals
25 in charge of at least some of the individual business

1 units within Autoliv; do you see that?

2 A. Yes, I see that.

3 Q. If we look at the type of matters discussed, we can see
4 under "Christophe", page 4:

5 "Christophe to distribute volume effect sheet and
6 All to educate BU's complete and start 'every' customer
7 meeting with this chart ..."

8 So if we see from the date of this document, this is
9 March 5, 2009, so this was after the financial crash,
10 and so what seems to have happened is the volumes have
11 been affected by the economic situation?

12 A. Yes, it's true.

13 Q. So the business is developing a strategy across
14 the business units to educate them about how to address
15 volume reductions in client meetings; do you see that?

16 A. Yeah, I -- I see that, yes.

17 Q. Just before we leave this, we saw earlier on the Toyota
18 presentation to the PSC committee for the Japanese and
19 Chinese steering -- sorry, seatbelts I think it was. If
20 one looks under what Mr Taka Matsunaga has to say,
21 the sixth bullet point:

22 "Need to consider Takata and
23 [Toyota Gosei/Tokai Rika] as main competitors."

24 Then the next bullet:

25 "Find a way to work with [Toyota Gosei/Tokai Rika]

1 since we can't beat them completely."

2 So this meeting is being told by Mr Matsunaga: we
3 need to work with our competitors in Japan since we
4 cannot beat them; do you see that?

5 A. I see that now. I don't know the context, and it's far
6 from where I have been involved, and then I cannot
7 completely connect that with what we manage with -- with
8 PSA, no.

9 Q. I entirely accept that. Mr Rivière could have assisted
10 with that, could he?

11 A. Sorry, excuse me?

12 Q. Mr Rivière was at this meeting, we see?

13 A. Yes.

14 MR WEST: Would that be a convenient moment?

15 THE CHAIRMAN: Yes.

16 If you could not discuss the case during the break
17 with anyone. Thank you.

18 A. It's totally clear for me. I will stay here.

19 THE CHAIRMAN: Five minutes.

20 (11.57 am)

21 (A short break)

22 (12.06 pm)

23 MR WEST: Mr Corbut, at paragraph 18 {C/1/7} of your first
24 statement you say:

25 "Business Unit Directors sometimes discuss market

1 factors which have a universal impact, such as the cost
2 of raw materials, or a market-wide decrease in volumes
3 (e.g., in 2008/2009 during the global financial
4 crisis)."

5 The minutes we just saw a minute ago are an example
6 of that, are they not?

7 A. Yes, it can happen when you have big changes in
8 the automotive industry, for example, when you have
9 the financial crisis and you have a huge drop of
10 volumes, which is when known subject on the market or
11 when you have a huge increase or a huge decrease of raw
12 material, which is also public information, that -- that
13 we have discussion between -- between business units to
14 -- to understand the impact and -- for the different --
15 for the different customers.

16 Q. RMPIS or raw material price increases are an aspect of
17 the price the customer pays, are they not?

18 A. Yes, raw material evolution is part of a negotiation
19 that -- that we can manage with the customer. If
20 I refer to -- to my witness statement, when I took
21 the position of BU director, the process was already in
22 place with PSA to have at the end of each year a review
23 of the evolution of the raw material and to manage price
24 adjustment. It could be up or down based on -- on
25 the variation. But during my period as BU Director, so

1 between 2013 and 2016, we were in the trend where raw
2 material decreased and then we had every year
3 a negotiation with PSA, and then, suddenly, when raw
4 materials started to increase and as there was no
5 official protocol in place between Autoliv and PSA, then
6 PSA stopped to manage the negotiation on the -- on
7 the raw material.

8 So, yes, it was a way to manage price evolution, but
9 it was 100% under the lead of PSA to decide if such type
10 of negotiation would take place or not.

11 Q. Still on the subject of RMPIs, at paragraph 59 of your
12 statement {C/1/19}, there you say:

13 "I understand --"

14 Sorry, this is page 19, paragraph 59 {C/1/19}:

15 "I understand that the Claimants allege that
16 exchanges between Autoliv and its competitors in
17 relation to the arguments that could be deployed to
18 resist APRs and agree RMPIs would have assisted Autoliv
19 in its negotiations with PSA. I am not aware of any
20 exchanges taking place, but it would not help Autoliv in
21 discussions with PSA."

22 So you say discussions like that would not assist?

23 A. No, it -- it would not help me to manage the negotiation
24 with PSA regarding raw material. The process for raw
25 material evolution was very mathematical. We had a list

1 of our part number. For each part number, we had
2 the type of raw material used in the product and we had,
3 for each raw material, the weight of each one. First,
4 PSA decided to manage only part of the raw material on
5 the list, so they decided that some raw material would
6 be part of the discussion, some other not. And then,
7 after all the discussion was based on indices of the raw
8 material and the negotiation from one year to another
9 year was managed on the valuation of the index. So if
10 you have aluminium in your part, and if you have an
11 evolution of the index for aluminium of plus or minus
12 10%, this is what was considered in the discussion and
13 in the negotiation, and then the price was adjusted
14 based on the increase or the decrease of the aluminium
15 based on the number of grammes of aluminium you have in
16 your product.

17 So, having an information about competitor having an
18 increase of X or a decrease of Y% does not help in
19 the way the process to negotiate the sales price with
20 raw material was -- was defined. So this is why I make
21 this statement, because it was pure index number driven
22 negotiation.

23 Q. But you are talking about the time when you were on
24 the PSA account when you give that evidence?

25 A. Yes, but when I took the position in 2013, the way to

1 manage price evolution associated with raw material was
2 already in place, because I started to reuse the Excel
3 file that already exist before I took the role with
4 the structure I explained before.

5 Q. Can I ask you to look at tab 66 of J1, please {J1/66/1}.

6 A. Yeah.

7 Q. This tab has several emails and some minutes. One sees
8 on the first page, at the top, "Subject: Minutes Sales
9 Meeting- -Paris - 13th Sept 04". Then we see the name
10 Mr Westerberg, so he was at this sales meeting, we see.

11 Then the minutes of the meeting itself are over
12 the page {J1/66/2}. One sees about two-thirds of
13 the way down reference to, "Raw material price
14 increase"; do you see that?

15 A. I see that, yes.

16 Q. "Talk to OEMs and bring this argumentation during price
17 negotiations."

18 Then:

19 "Communicate/cooperate with TRW and Takata. More
20 information will follow soon."

21 So we see here that somebody at this meeting, I do
22 not know if it was Mr Westerberg specifically, is
23 suggesting that Autoliv should communicate and cooperate
24 with TRW and Takata in relation to raw material price
25 increases; do you see that?

1 A. Yes, but if you go up to this page, then it's not --
2 it's a mail sent by Franz Xaver Weiss to the BM--
3 I think that it was BMW business unit. So it's not
4 related at all with PSA, and as I just explained before,
5 the process to manage sales price valuation due to raw
6 material with PSA was well structured based on
7 the indexes of the raw material. So, again, talking
8 with competitor, and this is not something I did, but
9 even if I would do that, it would not give me any
10 benefit, because the way to do the exercise was not
11 based on general assumption, general market information,
12 it was just based on fact and data.

13 Q. If we then go to the next page of this tab {J1/66/3}, we
14 see there is an email at the bottom from
15 Mr Franz Xaver Weiss, who you mentioned, to
16 Veronica Eriksson:

17 "As already mentioned during the Sales Meeting in
18 Paris we will try our best to use your and Halvar's
19 argumentation to find more money for Autoliv.

20 "Some things to remember:

21 "we never had raw material clauses in the safety
22 business up to now."

23 Do you see that?

24 A. I see that.

25 Q. "The aggressive market prices will not be the nicest

1 environment to discuss price increases.

2 "At least this facts and documents could help to
3 slow down the market price erosion."

4 Then:

5 "We have to team up with our competitors or at least
6 to use the same argument (who is speaking to whom?)."

7 So we see the reference there again to teaming up
8 with competitors and using the same argumentation in
9 relation to RMPiS; do you see that?

10 A. I see that, but, again, this mail is coming from
11 Mr Weiss -- from Franz Xaver Weiss, associated with his
12 business unit, and honestly, I don't know what was
13 the practice with this business unit, but in relation of
14 PSA, I was in charge of PSA, knowing completely
15 the process of PSA, this would not make sense in the way
16 it was managed with PSA.

17 Q. If you then look at the email at the top from
18 Ms Eriksson:

19 "Further to the mail sent earlier regarding
20 the reality of increasing raw material praises,
21 Halvar Jonzon has attached his comments to the numbers
22 on the OH [overhead]-slides shown by Lars ..."

23 That is Mr Westerberg:

24 "... at the sales-meeting in Paris. Please review
25 and give us your feedback."

1 If you look at who it is sent to, that is all
2 the directors of the OEMs, including, as we see there,
3 Mr Rivière and Mr Bailleul. I think this actually may
4 have been before Mr Rivière joined the PSA account. Do
5 you know who Mr Bailleul was?

6 A. Sorry, Mr?

7 Q. B-A-I-L-L-E-U-L, you see about halfway down the list?

8 A. Yes, Mr Bailleul.

9 Q. Do you know who he was?

10 A. So Mr Bailleul was -- at a certain point of time he was
11 in charge of PSA business unit.

12 Q. So it looks like Ms Eriksson did think this was relevant
13 to PSA's business?

14 A. I don't think so. When you have a raw material
15 increase, like two years ago, it's a general topic, it's
16 a well-known topic, and then, of course, all industries
17 are impacted by that, and then you need to understand
18 how you can get compensation for that, or how you can
19 manage negotiation with your customer. But the way
20 customer manage the negotiation is different from one
21 customer to another one. So you have customer with
22 clear, strict protocol defined, and then when you are in
23 such type of protocol, then you just need to apply
24 the protocol, and it was a little bit the situation with
25 PSA, having a structure of -- of negotiation that --

1 that was defined. So this is why maybe something that
2 could be relevant for one business unit cannot be 100%
3 relevant for another one, and it was my situation with
4 PSA.

5 Q. If you look at paragraph 61 of your statement,
6 Mr Corbut, your first statement {C/1/20}. It says:

7 "As to RMPIS, as note above, if PSA did not want to
8 engage with Autoliv, Autoliv had no means of compelling
9 it to do so."

10 A. Sorry. Sorry, can you repeat the question?

11 Q. First sentence of 61 --

12 A. Yes.

13 Q. "As to RMPIS ... if PSA did not want to engage with
14 Autoliv, Autoliv had no means of compelling it to do
15 so."

16 Do you see that?

17 A. Yes, I see that, and in my witness statement I refer to
18 that, because when I took the business unit of PSA,
19 again, 2013, raw material were on a decrease phase, and
20 during two or three years PSA managed the negotiation
21 asking for price reduction, and suddenly the raw
22 material situation changed and then PSA found different
23 argument to stop the negotiation. So the first one was
24 that the new purchasing manager came from Opel and then
25 he was not familiar with the process. Then, after,

1 the second argument was that there was not enough people
2 in PSA to be able to manage the -- the files, then after
3 the document of the files was not of the right format,
4 then it was not possible to manage this, and finally, it
5 was always a reason and an excuse to not manage this,
6 because we have increase of raw material at that time.

7 Q. I suggest to you that one way of trying to persuade PSA
8 to engage with this would be for the OSS suppliers to
9 present a united front to the car manufacturers.

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

11 Q. One way of persuading PSA to engage with Autoliv on raw
12 material price increases would be if the car
13 manufacturers presented a united front -- sorry, if
14 the OSS suppliers presented a united front to the car
15 manufacturers.

16 A. It was not -- it was not possible for raw material
17 because, as I explained, you restart the negotiation
18 based on the agreement you had the year before. So if,
19 the year before, you had an agreement that the price for
20 the aluminium is €100 per tonne, following an index, one
21 year after, you just have to follow the index and to see
22 if the tonne of aluminium is at 110 or at 90, and then
23 the price is adjusted according to that.

24 Q. Paragraph 18 of your first statement, Mr Corbut, at the
25 end of that paragraph, so that is {C/1/7}, you say:

1 "Put simply, it does not make sense to compare
2 pricing between OEMs, even for similar products, when
3 those factors (among others) vary from OEM to OEM."

4 Do you see that?

5 A. Yes, I see that.

6 Q. So price is not comparable between OEMs, in your view?

7 A. Yeah, yeah. Yeah, it does not make sense to -- to
8 compare the sales price for the same product between
9 different OEMs.

10 Q. Could I ask you to turn up {J1/573/1}, "AEU", you told
11 us that was Autoliv Europe:

12 "... Market Price Mapping Report."

13 It looks like it says fourth quarter of 2005.

14 I have some doubts about whether that can be right,
15 because it has later information in it, so I just raise
16 that, that is the date it seems to have.

17 But in any case, if you start on {J1/573/12} of this
18 document:

19 "AEU Market Price Mapping Benchmarking - [driver
20 airbags]."

21 Do you see that?

22 A. I see that, yes.

23 Q. You will see that on the right-hand -- sorry, on
24 the bottom axis, we have number of years. That is why
25 that appears to cast some doubt on the date. Then on

1 the left-hand axis "market price" in euros, and we see
2 this is comparing the market price of driver airbags
3 supplied to Honda, Volvo, Toyota, Ford and GME across
4 those years; do you see that?

5 A. I see that. I saw this document, and if you go on
6 the description of this document, my understanding is
7 that this is the lowest price and this is why you are
8 talking about benchmarking, the lowest price from
9 different category.

10 Q. The point is, in this document, Autoliv is comparing
11 the prices of different categories of OSS products sold
12 to different OEMs. That is what it is doing. This
13 particular one is driver airbags.

14 A. This is not my understanding. My understanding is that
15 this chart show the evolution of the sales price year
16 over year to see the price erosion and to see which
17 customer has the lowest price for a certain category.

18 Q. My point is that they are being compared. You would
19 accept that, would you?

20 A. I wouldn't say compared.

21 Q. On the next page {J1/573/13}, one sees a different type
22 of diagram, a sort of scatter diagram, but, again,
23 setting out what seems to be the same thing.

24 Unfortunately, we do not have the colours, but at
25 the bottom left one can see that the different shades

1 refer to the different OEMs; do you see that?

2 A. Yeah, I see that.

3 Q. Again, this is driver airbags, again, but presenting
4 the same information, comparing the prices of driver
5 airbags supplied to the different OEMs; do you see that?

6 A. I see that.

7 Q. Over on the next page {J1/573/14}, we have the same
8 thing, but this time "PAB", that is passenger airbags?

9 A. Yeah. If you allow me a comment, and I can refer to my
10 witness statement. When I said that it does not really
11 make sense, or it does not really help to have such type
12 of information, it's because behind those numbers there
13 are a huge number of parameters that can define where
14 the sales price is. So if you take a passenger airbag
15 with -- and this is what I explain in my witness
16 statement -- the generic name of the product is
17 a passenger airbag, but if one passenger airbag use
18 a 130-litre cushion, where another passenger airbag use
19 a 90-litre cushion, of course the size of the cushion is
20 not the same, the cost of the cushion is not the same,
21 the type of inflator that you are using to inflate
22 the cushion are not the same so the cost structure of
23 the product, even if they are named "passenger airbag",
24 are not the same and then you have sales price that are
25 not the same.

1 So if you don't go in a huge level of detail to
2 understand the complete structure about what is behind,
3 it does not make any sense to have a number and you
4 cannot compare those numbers.

5 Take another example of the volumes. If you have
6 a car with 50,000 vehicle per year, or another car with
7 500,000 vehicle per year, the price of the product will
8 be not the same. But if you have 25 versus 20, what
9 does it mean if you don't know what it is behind?

10 So this is why I made this statement, and I continue
11 to believe in it.

12 Q. If you go to the next tab, that is {J1/574/1}, so this
13 is a spreadsheet with a number of tabs. If we start
14 with "DAB", the first one, again, another document
15 Autoliv EU "Market Price Mapping", and again that date,
16 which seems doubtful given the other dates on
17 the document, but I cannot explain that. Again, we see
18 down the left-hand side the various OEMs and along
19 the top various type of OSS product "belted". I am not
20 entirely sure what all of those refer to.

21 If we go to the next tab, this seems to be passenger
22 airbags. The same.

23 The next tab "SAB", side airbags.

24 THE CHAIRMAN: When you say next tab, you mean the next
25 page?

1 MR WEST: It is the next tab electronically. Sorry, it is
2 the tabs on the Excel spreadsheet rather than tabs in
3 the bundle.

4 THE CHAIRMAN: Yes, I see, sorry.

5 MR WEST: Page 3 "SAB" tab of the Excel spreadsheet. So
6 that is side airbags.

7 The next one, inflator cushion.

8 I am not quite sure what "DMIC" is. Do you know
9 what that is?

10 A. This is the abbreviation for door-mounted inflated
11 cushion. So this is the side airbag we had on some
12 convertible.

13 Q. The next one "KAB", knee airbag?

14 A. KAB, mean knee airbag.

15 Q. Then steering wheel, front seatbelt, front buckle and so
16 on.

17 Your evidence is that although Autoliv carried out
18 this analysis, there was no point doing so?

19 A. Interest of such type of information is to see the price
20 erosion year over year for the different OEM. So it's
21 interesting, when you are in charge of a business, to
22 see how your sales price will move year over year, and
23 based on the size of the business, how your turnover
24 will really change. But it does not help you to manage
25 a comparison, it's just to understand the trend, and,

1 again, if PSA at a certain point of time decided to buy
2 a driver airbag from Autoliv at €25, it's not because
3 I would be aware that BMW is able to buy a driver airbag
4 at €32, that the day after PSA will buy €32 the driver
5 airbag, because the reference was 25, and once again,
6 the content of the product could be probably completely
7 different.

8 Q. On the question of different content of products, at
9 paragraph 35 of your first witness statement, in
10 the second line {C/1/13} you say:

11 "For example, an RFQ proposal with lower profit
12 margins for Autoliv may be approved where the Business
13 Unit expects that the same or a similar product can be
14 used for another project in the future (with
15 the expectation of higher margins or better volumes)."

16 You accept that at least sometimes the same product
17 can be used for different projects?

18 A. Yes, as a business unit director, you can define
19 a business case that will be not only associated with
20 one vehicle, but potentially that it can be used on
21 another one, and then in this case you can estimate, you
22 can predict that having this business, it will open
23 the door for another one, and then you consider this in
24 your complete business case. So you can accept or you
25 can ask your organisation to accept a lower margin to

1 secure the fact that you will have this business to get
2 a better chance to have the next one, but it's not of
3 use, it's not systematic and you can win or you can --
4 you can lose.

5 Q. Can we look at a document which may be an example of
6 this. This is {J1/293/1}.

7 A. Yes.

8 Q. This is a little bit garbled, but it is fairly clear
9 what seems to be happening. So this is from Mr Duteil
10 to Mr Rivière, amongst others:

11 "Hello Frank."

12 So that is Mr Kiiskila, it appears, and this is
13 about the M3/M4 in Mercosur, that was the Peugeot 301;
14 do you recall that?

15 A. I recall that. Yes. it was the Peugeot 301 for
16 South America.

17 Q. South America.

18 He says:

19 "Concerning M3/M4, as they are now no plan to
20 localise R200.2 and K12E in Bresil, and as it's possible
21 for PSA to use local contain for this car, we will
22 prepare the PSC by using local products.

23 "In order to keep the same buckle brackets as
24 the ones for K12E in Europe, we need your support to
25 check what type of K12A can be used. Could you please

1 ask your team to have a quick look at this and let us
2 know about a proposal?

3 "The file above will be completed over the week with
4 the additional R200.2 and K12E volumes for VW
5 (R200.2) and BMW (both). With this complete picture we
6 need to work on a business case to localise those
7 product in US, and then avoid the situation we have with
8 PSA now."

9 So it looks like what is being proposed is using
10 these parts or components from VW and BMW cars for a PSA
11 vehicle, the -- you said it a minute ago -- 301 in
12 South America. Is that your understanding of this?

13 A. No, this is not my understanding of -- of this
14 discussion, and maybe I try to -- I can try to explain
15 a little bit.

16 The R200.2 and the K12E are specific seatbelt
17 retractor and specific buckle. Those two products were
18 available in terms of manufacturing in Europe, but those
19 two products were not available in South America in
20 terms of manufacturing, meaning that we did not have a
21 production line in Brazil to produce those parts. This
22 is why we mention that we would like to replace
23 the K12E buckle by the K12A, because the K12A was
24 available in Brazil, and when there is a reference of
25 BMW and Volkswagen, the purpose of this is to put

1 together the potential volumes of PSA M3/M4, plus
2 the potential volume of Volkswagen vehicle that could
3 use those -- those products, plus the BMW volumes, to
4 create a business case with a bigger number of cars that
5 will justify the investment of a production line in
6 Brazil. So the production line for the seatbelt product
7 are shared by -- with multiple OEMs, in terms of
8 manufacturing, but of course you don't build
9 the production line to be able to produce 1 million
10 parts if you have only to deliver 100,000. So you need
11 to create a business case that, when you put the volume
12 of PSA plus Volkswagen plus BMW together, then you have
13 enough product to build a production line, then to be
14 able to offer this product from Brazil, supporting
15 the localisation requested by the customer.

16 Q. But the point is the same, that that part is then being
17 supplied to both the PSA and to Volkswagen and BMW,
18 assuming that the plan proceeds?

19 A. The generic product would be delivered to the different
20 OEMs, but, again, the sales price of those product would
21 be completely different, because, for example,
22 the attachment, the way you fix the seatbelt on the car
23 of the body, if you compare PSA and Volkswagen, it's not
24 at all the same solution. So that mean the cost of
25 the product for PSA in this case would be cheaper than

1 -- than the one for Volkswagen, so the sales price for
2 PSA would be lower.

3 Q. Just one other document on this point, which is
4 {J1/348/2}:

5 "Dear Lin Tong.

6 "I am surprised about your remark about buckle.

7 "I recommend to propose to PSA the K12E to be
8 consistent with our Europe strategy.

9 "The K12E is fulfilling completely the PSA
10 expectations."

11 So it looks like this plan did proceed?

12 A. Yes, it's exactly the same subject. The K12E--
13 the K12E has been developed first in Europe, production
14 was -- production possibility was available in Europe,
15 and this is the product that we offer to PSA. But as
16 soon as we started to talk about other project outside
17 of Europe, on one side, we would like to propose
18 the same product, the K12E, but for a manufacturing
19 point of view, it was not possible. So the exchange of
20 email is just about the availability of production in
21 China compared to Europe for the same product.

22 Q. Going back to paragraph 20 of your first witness
23 statement, still on the subject of technical
24 characteristics, you say {C/1/7}:

25 "Pricing is also dependent on the technical

1 specification of a specific OSS product, which varies
2 from OEM to OEM."

3 But Autoliv had a very detailed understanding, did
4 it not, of the differences between the products it
5 supplied and the products its competitors supplied?

6 A. I'm sorry, I'm not sure that I catch the -- the point.

7 Q. Okay, well, let me look at paragraph 46 of your
8 statement {C/1/16}. You say:

9 "Once a vehicle goes into serial production, it is
10 possible to confirm which supplier was selected for its
11 OSS components by purchasing spare parts from car
12 dealerships."

13 A. Yes.

14 Q. So you would always know who had won an RFQ if Autoliv
15 had not won it?

16 A. Yes, we were able by buying spare part to identify
17 suppliers on the different cars.

18 Q. "... which Autoliv uses to build a database of incumbent
19 suppliers for various projects."

20 Do you see that?

21 A. Yes, I see that.

22 Q. So you would always know for any project who
23 the incumbent was?

24 A. We -- we try to -- when -- especially when we lost
25 the business, we try to understand which supplier has

1 been awarded, and when there is an interest for our
2 company, when the vehicle is on the market, we buy
3 the produced and we manage technical analysis of the --
4 of the product to understand if we have technical gap
5 between our solution and what is in the vehicle.

6 Q. Exactly, so that is the next paragraph of your -- sorry,
7 the next sentence of this paragraph:

8 "An internal Autoliv department also conducts
9 benchmarking analyses using these parts, to understand
10 how they differ from the technical solutions proposed by
11 Autoliv's engineering teams."

12 So you had a very detailed understanding of
13 the precise technical content of your competitors'
14 parts?

15 A. We had an understanding of the technical content of our
16 competitor, yes.

17 Q. At paragraph 21 of your first statement {C/1/8}, you
18 say:

19 "Another factor in the pricing of a product is
20 the logistical cost of supplying it, which is influenced
21 by factors such as the distance between the supplier and
22 OEM production plants, and any additional costs such as
23 customs duties."

24 A. Yeah.

25 Q. Again, Autoliv would have a very good understanding of

1 the cost -- of the logistical costs involved if products
2 had to be transported between the OSS suppliers'
3 production plant and the car manufacturers' production
4 plant, that is part of your business, is it not?

5 A. Part of the business is to create a kind of business
6 intelligence and create business intelligence based on
7 most of the time public data. So when we discuss about
8 logistic, where you have the map of where Autoliv plants
9 are located and where competitor plants are located, and
10 when there is a new RFQ and when you know where
11 the customer will produce the new car, then you can
12 clearly identify which competitor has a plant close to
13 the production plant of the OEM, and then you can
14 imagine that they will use this plant to produce
15 the part because they will be more competitive because
16 they will have less logistic -- logistic cost than if
17 you produce at 5,000km from the customer plant.

18 Q. Can we go back to your exhibit right at the end
19 pages 844 to 845 of your exhibit, which is at {C/2/844},
20 and we see this email, the very last in the chain, the
21 first appearing on the page. This was ultimately sent
22 to you, this thread of emails.

23 A. Yes, I see that.

24 Q. It concerns, again, the A9. If one goes to the last
25 email -- the first in time at the end of page 2, "PSA

1 A9" from Mr Malmhagen to Mr Rivière:

2 "Dear Christophe.

3 "During todays airbag review it was presented that
4 we have a 30% cost increase due to change of spec from
5 the customer.

6 "What are your plans to recover the cost increase,
7 how and when?"

8 Mr Christophe Rivière replies:

9 "We have already provided a rough estimation to PSA.
10 Now as soon as we have the appropriate solution, we will
11 send the quotation to get the formal approval. (For
12 sure ..."

13 Sorry. This is page 3 -- sorry, this is {C/2/845}
14 of the exhibit?

15 THE CHAIRMAN: Can we start that again, please, Mr West.

16 MR WEST: The first email, or both emails? I will perhaps
17 go back to the beginning.

18 THE CHAIRMAN: Yes, I think so.

19 MR WEST: So Mr Malmhagen, you will see, in the middle of
20 the page:

21 "Dear Christophe.

22 "During todays airbag review it was presented that
23 we have a 30% cost increase due to change of spec from a
24 customer.

25 "What are your plans to recover the cost

1 increase~..."

2 Mr Rivière replies:

3 "Dear Pelle, we have ..."

4 THE CHAIRMAN: I am not sure we are on the right page. Can
5 you just take this a little bit more slowly, Mr West.

6 MR WEST: Page {C/2/845}.

7 So the bottom email, earliest in time,
8 Pelle Malmhagen emailing Mr Rivière about a 30% cost
9 increase on the airbags on the A9; do you see that?

10 A. I can see that, yes.

11 Q. Mr Rivière saying:

12 "We have already provided a rough estimation ..."

13 So this is the email now at the top:

14 "... as soon as we have the appropriate solution,
15 we'll send the quotation to get the formal approval."

16 The previous page {C/2/844}, later in time, about
17 two-thirds of the way down, Mr Malmhagen emails:

18 "Dear Christophe,

19 "Thanks for your answer, please keep me updated and
20 include this issue on our monthly follow up."

21 There is then a part in French where Mr Rivière
22 forwards this on to Mr Kerouanton, and then,
23 subsequently, he forwards it to you, as we saw at
24 the top?

25 A. Yes.

1 Q. We see reference to an F-E-T-E, which we discussed
2 yesterday. That is a change notice, in effect?

3 A. This is correct. This is an engineering change.

4 Q. This is being sent to you because of your technical
5 role?

6 A. Yeah, that is right.

7 Q. This looks like a change during development; is that
8 right?

9 A. This is correct.

10 Q. We saw earlier that Mr Malmhagen was VP of sales for
11 Europe; that is right?

12 A. He was in charge of sales for Europe, yes. So as A9 was
13 one of the biggest programmes in Europe, of course
14 the financial performance of the A9 programme was
15 important for him.

16 Q. But also vice president of the VW business unit?

17 A. Correct.

18 Q. He was getting involved here in an Autoliv project for
19 PSA, the A9?

20 A. For me, it was with the role of responsible for sales
21 for -- for Europe. And, again, for Volkswagen, this
22 subject would not have any connection with Volkswagen
23 business, it was a very specific PSA subject.

24 Q. Still on the A9, could you look at {J1/50/1} to
25 {J1/51/1}.

1 A. And if you can allow me, the reason of the discussion
2 here is that, at the initial -- at the RFQ, it was -- we
3 sold a product with -- for an airbag, a passenger
4 airbag, with a cushion of 90-litre, and during
5 the development, for different reason, we had
6 the request to increase the size of the cushion from
7 90-litre to 105-litre, so then this increased the cost
8 of the product. We have regular review, this subject
9 has been highlighted during one meeting saying, "We have
10 an increase of cost because we need to change
11 the product", and then, finally, we have the discussion,
12 "Okay, if we need to change the product, what will be
13 the negotiation that we will manage with the customer"?

14 Q. Thank you.

15 Still on the A9, could you look at tabs 50 to 51.
16 Again, one of these is in French and then the next tab
17 is the translation {J1/51/1} {J1/50/1}. I am going to
18 be looking at 51.

19 A translation of an email from Benedicte Chassery,
20 do you know who she was, or is?

21 A. She's an account manager in the PSA business unit.

22 Q. This email says, "A9 - from Takata's perspective"; do
23 you see that?

24 A. I see that, yes.

25 Q. "I've spoken to Oliver Bastien this afternoon ..."

1 Do you recall who was, or maybe you do not know?

2 A. Sorry?

3 Q. He appears to be from Takata?

4 A. Yes.

5 Q. "... on the referral point ..."

6 Ie, A9 from Takata's perspective:

7 "... and mentioned the A9 to him.

8 "He told me that Takata had not been overzealous

9 this time, that they had responded but did not hit as

10 hard on B7 ..."

11 B7 was the Citroën C4; do you remember that?

12 A. Time to time, a little bit lost with the full name, but

13 I would say yes.

14 Q. Fortunately, we have a list. So that is the Citroën C4,

15 apparently:

16 "He thinks ... the A9 is for Autoliv."

17 Do you see that?

18 A. I see that, yes.

19 Q. Now, were you aware of discussions of this kind going on

20 at this time?

21 A. No, I was not aware. On top of that, 2009, I was in

22 engineering, so ...

23 Q. Could you look at {J1/232/1}.

24 THE CHAIRMAN: If you did not have any other questions, I

25 just wanted to clarify, do you know who Olivier Bastien

1 is?

2 A. So Olivier Bastien -- Oliver Bastien was an account
3 manager in Autoliv, and then he left Autoliv to join
4 Takata.

5 THE CHAIRMAN: Do you know when he left Autoliv to join
6 Takata?

7 A. I don't remember.

8 MR WEST: So there was an individual within Takata who had
9 formerly been at Autoliv that the Autoliv people would
10 be familiar with?

11 A. Sorry, can you repeat?

12 Q. At this time there was an individual, Mr Bastien,
13 working for Takata, with whom the Autoliv team would be
14 familiar?

15 A. I wouldn't say "familiar".

16 Q. Could you look at {J1/232/1}. So this is an email from
17 Mr Rivière to Mr Carlson and Ms Eriksson, again about
18 the A9, so we are still on the A9:

19 "Dear Jan,
20 "Please find below an updated chart about
21 A9 'hardware' offer."
22 Then this:
23 "For [driver airbag/passenger airbag/front
24 seatbelt/rear seatbelt], I presented 2 scenariii to
25 PSC2."

1 If you remember the PSC2 meeting minute, only the 6%
2 EBIT scenario was approved.

3 A. I remember.

4 Q. So here Mr Rivière is explaining there were two:

5 "Scenario 1: based on B7 lessons learned ..."

6 That was the Citroën C4:

7 "... it's a rough estimation of estimated market
8 price and corresponding profitability."

9 Now, that was, as we saw earlier, the quotation on
10 which Takata had shown some zeal; do you remember that?

11 A. I remember that.

12 Q. "Scenario 2: 6% ebit level."

13 Now, that was the one which was approved, not
14 scenario 1; do you remember that?

15 A. I remember that.

16 Q. Indeed, it goes on to say that:

17 "Only scenario 2 was approved ... and the 1st offer
18 we submit to PSA is based on this approval."

19 Then he says:

20 "I think it's not sure competition will maintain
21 such aggressive prices as they did for B7, therefore
22 it's worthwhile trying to get some PSA feedback before
23 considering being more aggressive."

24 So what seems to have happened is that the PSC
25 committee meeting were presented with two scenarios, one

1 was based on the strong price competition Takata had
2 shown for the B7 and the other was based on the 6% EBIT
3 level, and only the second was approved, and here we
4 have Mr Rivière saying he is not sure the competition
5 will be as aggressive as they were on the B7. But you
6 are not able to assist as to where Mr Rivière got his
7 impression that competition would not be as aggressive?

8 A. I don't know -- I don't know the history behind. Now,
9 if I'm correct, the date of this email is before
10 the date of the previous email you show me, so ...

11 And -- and when -- when you finish an RFQ, or you
12 get the award, and then you know at which price you have
13 been awarded. When you lost a business, you have, most
14 of the time, from PSA, an information about your lack of
15 competitiveness, even if it's only in terms of
16 percentage: you were 5/10% more expensive than your
17 competitor. True or not, this is information we can get
18 from -- from PSA.

19 And then, when you have a new RFQ that come, you
20 also refer to the previous one saying, "Okay, last time
21 we lost the business and we got the information that we
22 were 10% more expensive than the competitor, so we
23 consider that the new reference, the new sales price
24 reference, is at this level", and this is how we can
25 build scenario. It does not mean that you are in

- 1 contact with -- with any competitor.
- 2 Q. Well, what we do know is that Ms Chassery got her
3 information from her contact within Takata, Mr Bastien;
4 that is right? We saw that earlier.
- 5 A. Sorry?
- 6 Q. We saw that earlier?
- 7 A. Yes.
- 8 Q. At paragraph 36 of your statement {C/1/13} you are
9 referring to PSA's negotiating strength and you say that
10 it sought costs information, but you do not suggest it
11 is any different in that regard to any other car
12 manufacturers, and seeking costs information as part of
13 an RFQ response {C/1/13}?
- 14 A. I'm not too sure that I understand the question, I'm
15 sorry.
- 16 (Question interpreted)
- 17 I'm sorry, I would like to -- to present
18 the question. I do not understand why where you refer
19 to "any other car -- car manufacturer".
- 20 Q. Well, is the position that you are just not able to
21 assist about whether other car manufacturers do
22 the same?
- 23 A. I don't know -- I don't know if the other car
24 manufacturers are doing the same compared to what PSA is
25 doing.

1 Q. The same, for example, in relation to long-term
2 agreements: you do not know whether that was any
3 different as between PSA and any other car manufacturer?

4 A. I -- I know that, generically, there are discussions
5 between Autoliv and the different OEMs regarding long --
6 long-term agreements. Same, I know that there are
7 discussions between Autoliv and other OEMs, in terms of
8 breakdown, but the level of detail requested, I don't
9 know what is the level of detail requested and I don't
10 know what is the level of annual price reduction are
11 requested by the other customer.

12 Q. When PSA made a request for quotation, there was only
13 a small number of OSS suppliers it could ask to bid;
14 that is right, is it not?

15 A. It depend what you put behind "low". There were four
16 suppliers in the PC --

17 Q. Four.

18 A. -- PSA panel at that time. So is it low or not?

19 Q. So that would be Takata, Autoliv, TRW and KSS; is that
20 right?

21 A. This is correct.

22 Q. If you look at your second witness statement,
23 paragraph 11, that is {C/7/4}, you say:

24 "My recollection is that, in the 2000s, we had very
25 good levels of business with PSA and that, in light of

1 PSA's market share strategy for its suppliers, we felt
2 we had reached a saturation point with how much business
3 PSA would award us. We were therefore focused on
4 retaining the market share and business we had achieved.
5 By this, I mean that our focus was on competitive bids
6 to supply successor platforms, and to continue supply
7 for projects where we were the incumbent supplier."

8 You said something similar at paragraph 15 {C/7/6}:

9 "While PSA's expectation was that Autoliv would bid
10 for all projects it was invited to tender for, Autoliv
11 was most focused on successor platforms and maintaining
12 supply where it was the incumbent supplier."

13 So where you were not the incumbent supplier that
14 bid would be less of a priority for Autoliv; I think you
15 are telling us that?

16 A. I'm coming back to the business intelligence. We were
17 aware that there were four suppliers in the PSC -- in
18 the PSC panel. You understand that if there are four
19 players, PSA, they have to give business to all of them,
20 otherwise, if you have no business with one customer,
21 there is no reason to continue to work with this
22 customer. So it -- and at that time, we had already
23 a significant market share with PSA, so our possibility
24 to continue to grow our market share with PSA was
25 completely limited, and the strategy at that time was to

1 keep and to secure the market share we had with PSA,
2 knowing that PSA would not be ready to give us more
3 market share because it would not be possible for them
4 to manage four suppliers and having one with 80% of
5 market share, so we consider that current market share
6 at that time was more or less the maximum we could get,
7 and then the strategy was more to secure and to keep
8 the market share, meaning that, working to keep business
9 on our incumbent business.

10 Q. Then at paragraph 19 of your second statement, on
11 {C/7/7}, at the end of that paragraph, you say:

12 "For RFQs [where] we were not the incumbent, or
13 which were not a successor platform, Autoliv still made
14 competitive bids, but was conscious of the likelihood
15 that it would not win such business, and therefore would
16 not bid at a level that would set a lower benchmark for
17 supply which PSA could use to exert pressure on us to
18 cut prices on existing serial supply."

19 So you accept there that a bid for the supply of one
20 OSS component could become a benchmark for the supply of
21 another OSS component?

22 A. In the RFQ process, each time you have a new vehicle,
23 PSA was asking for a new price roughly X% below
24 the previous one. So if, at a certain point of time,
25 a business is not strategic for you, you don't have

1 interest to give a low price knowing that you have a low
2 chance to get the business and to create a new reference
3 in terms of sales price, because you would give
4 information that, for the current business, this is
5 potentially something that you can achieve, and then
6 immediately you have the question how you can reduce
7 your current price to be at this level.

8 MR WEST: Thank you, Mr Corbut.

9 A. Thank you, Mr West.

10 MR SCANNELL: No questions.

11 THE CHAIRMAN: Thank you very much. You are released from
12 your oath.

13 A. Thank you.

14 Thank you, Mr Turner.

15 (The witness withdrew)

16 THE CHAIRMAN: We were anticipating a further joint expert
17 document today. Is that in hand?

18 MR WEST: It is in hand. I am not sure of the exact timing.
19 I think it is currently with Dr Majumdar.

20 THE CHAIRMAN: But we should get it today at some point?

21 MR WEST: Can I give you an update after the short
22 adjournment?

23 THE CHAIRMAN: Yes, of course.

24 There was also some talk about standard errors.

25 MR WEST: That document has been prepared.

1 THE CHAIRMAN: That has been prepared. Perhaps you could
2 let us have that, if that has already been ...

3 MR WEST: After lunch, we then have Mr Squilloni, who will
4 be a lot quicker, I hope.

5 THE CHAIRMAN: Thank you very much, Mr West.

6 (1.05 pm)

7 (The short adjournment)

8 (2.03 pm)

9 MR SCANNELL: Could we now call Mr Squilloni, please.

10 MR PIETRO SQUILLONI (affirmed)

11 Examination-in-chief by MR SCANNELL

12 MR SCANNELL: Good afternoon, Mr Squilloni.

13 A. Good afternoon.

14 Q. Please could you pick up the bundle in front of you,
15 open it up and look for tab 3, or can you see that on
16 the screen in front of you {C/3/1}.

17 A. Yes, I see it in front of me.

18 Q. Is that your first witness statement in these
19 proceedings?

20 A. Yes, it is.

21 Q. Please turn to page {C/3/18} of that document?

22 A. Yes.

23 Q. Beside the date of 6 February 2024, is that your
24 signature?

25 A. Yes, it is.

1 Q. Please could you now pick up the same bundle {C/8/1},
2 tab 8 this time, or can you see that page on the screen
3 in front of you, page 1?

4 A. I see.

5 Q. Is that your second witness statement in these
6 proceedings?

7 A. It is.

8 Q. Turn to {C/8/4} of that document, please.

9 A. Yes.

10 Q. Beside the date, 5 March 2024, is that your signature?

11 A. Yes, it is my signature.

12 Q. Are the contents of both of the witness statements you
13 have identified as your witness statements in these
14 proceedings true to the best of your knowledge and
15 belief?

16 A. They are.

17 Q. Is that the evidence you wish to give to the Tribunal in
18 these proceedings?

19 A. Yes, it is.

20 MR SCANNELL: Thank you. You will now be asked some
21 questions by counsel for the Claimants.

22 Cross-examination by MR WEST

23 MR WEST: Good afternoon, Mr Squilloni.

24 Could we start with your role within Autoliv,
25 please, discussing your role at Autoliv, your jobs. You

1 joined the company in 2003, is that right, as an
2 apprentice?

3 THE TRANSCRIBER: Sorry, could you switch your microphone
4 on?

5 (Pause).

6 MR WEST: Is that now on?

7 So, Mr Squilloni, you joined Autoliv in 2003 as an
8 apprentice; is that right?

9 A. Yes, that's right.

10 Q. You remained in that status for two years?

11 A. Yes, correct.

12 Q. Then between 2005 and 2013, you held a programme
13 management role; is that right?

14 A. That's right.

15 Q. Could you just explain to the Tribunal what a programme
16 manager does?

17 A. Yes. The programme manager in Autoliv at the time was
18 a role mainly on technical, engineering and timing
19 aspects to ensure that we were providing to the customer
20 the on-time results of the project in terms of quality,
21 delivery, and the goods were fulfilling the customer
22 specification.

23 Q. Is it right that you would work on projects after
24 the RFQ process was complete?

25 A. Actually, part of my role as programme manager was also

1 to coordinate some of the activities during the RFQ
2 phase and, in the specific, I was responsible to handle
3 what is called the technical review during the RFQ. It
4 means to prove our capability to fulfil the customer
5 requirements according to the product specification. So
6 that was the parts that I was responsible for during
7 the RFQ. And then after the RFQ, I was following up
8 the projects until the start of production.

9 Q. You are quite right, Mr Squilloni, you say in
10 paragraph 24, this is tab 3 of bundle C, page 8 {C/3/8}:

11 "The response to an RFQ therefore involves multiple
12 stakeholders. I have previously worked predominantly on
13 the technical aspects of a quotation ..."

14 Do you see that?

15 A. Yes, that's correct.

16 Q. Then, from 2013 to 2017, you were a customer technical
17 manager; is that right?

18 A. Yes, that's right.

19 Q. You have been the Autoliv business unit director --

20 I will start that again.

21 You have been the Autoliv business unit director for
22 FCA only since 2017?

23 A. That's correct.

24 Q. Now, this case, as you know, is concerned with

25 the period between 2002 and 2011; were you aware of

1 that?

2 A. Yes.

3 Q. Over that period, you did not hold a commercial role in
4 Autoliv's FCA business unit, did you?

5 A. I did not have a commercial role in the business unit at
6 the time.

7 Q. You were predominantly in a programme management role at
8 that time?

9 A. Yes.

10 Q. I am not going to ask the witness this question, but
11 just ask the Tribunal to note that it follows from
12 the evidence we have heard today that none of
13 the Autoliv witnesses were actually involved in
14 the business units serving any of the claimant OEMs at
15 the time of the facts of this case.

16 If we look at document {J1/611/1}.

17 THE CHAIRMAN: Sorry, tab?

18 MR WEST: 611.

19 THE CHAIRMAN: 611, I beg your pardon.

20 MR WEST: It will be familiar.

21 THE CHAIRMAN: Yes, I have got it.

22 MR WEST: You can see this is a diagram, Mr Squilloni?

23 A. Yes.

24 Q. We see, at this time, the Fiat individual appears under
25 the GM rubric in this diagram and that is because there

1 was the purchasing partnership between Fiat and GM; were
2 you aware of that?

3 A. Yes. So, even if I could not find a date of
4 the document, I noticed that the Fiat account was under
5 the organisation of the GM account, so I suppose that
6 this organisation chart is referred at the time that
7 Fiat was allied with GM.

8 Q. The individual in charge of the account is Mr Podio, we
9 see?

10 A. Yes, Mr Podio.

11 Q. If we go over to {J1/612/1}, this is a later diagram, we
12 think about 2006 or after, and we see that Fiat is no
13 longer part of the GM business unit; can you see that?

14 A. Yeah, I see.

15 Q. But the individual in charge of the Fiat business unit
16 is still Mr Podio?

17 A. That's correct.

18 Q. If we could go back to your witness statement. At
19 paragraph 14 on {C/3/5}, you say -- you talk about the:

20 "... high degree of specificity in the OSS products
21 supplied to different OEMs ..."

22 You say that is reflected in their pricing; do you
23 see that?

24 A. Yes, I see.

25 Q. But it is not the case, is it, that the same product

1 could never be reused for more than one project?

2 A. Even though we have a few cases, it can be that a single
3 product can be reused in more than one application. But
4 at that time I was mainly working for Fiat, this was
5 really a rare situation. Most of the cases, all
6 the products were specific for each application.

7 Q. I had in mind paragraph 43 of your witness statement on
8 {C/3/13} of this tab, where you say:

9 "The same or very similar products may be used in
10 multiple projects, with minimal or no changes required."

11 Do you see that?

12 A. I see.

13 Q. Then looking at paragraph 18 of your first statement
14 {C/3/6}, this is about the number of suppliers, you say:

15 "During the period 2002-2011, FCA had three main OSS
16 suppliers: Autoliv, TRW Automotive ... (later ZF/TRW),
17 and Key Safety Systems ('KSS') (now Joyson Safety
18 Systems, or 'JSS'). Whilst Takata was generally a major
19 OSS supplier, it was not a material supplier for FCA in
20 Europe."

21 So your evidence is that Takata was not one of
22 the OSS suppliers used by Fiat at that time?

23 A. The best that I remember, I don't have in mind any
24 business for Takata in that period of time for Fiat.

25 Q. You go on:

1 "TRW remains a major competitor, and historically
2 held the largest market share of FCA's business. JSS
3 was once a strong competitor, but its market share has
4 progressively declined over the past twenty years.
5 Historically, KSS was the key supplier of seatbelts for
6 FCA's Alfa Romeo vehicles, however, in the period around
7 2005-2008, I recall that KSS had some difficulties with
8 its supply of seatbelts, failing to meet FCA's
9 expectations, which gave Autoliv an opportunity to take
10 a substantial amount of business from KSS for
11 Alfa Romeo. Prior to 2008, to the best of my
12 recollection, Autoliv had no share of the supply for
13 Alfa Romeo."

14 So is it right that there were three main suppliers,
15 at least until 2005, being Autoliv, TRW and KSS?

16 A. Until 2005, and also after.

17 Q. And also after.

18 But you say that KSS's share declined between 05 and
19 08?

20 A. Yes, that's correct.

21 Q. So there were only a very limited number of suppliers,
22 and in practice I suggest to you that that would limit
23 Fiat's bargaining power in relation to OSS products; is
24 that right?

25 A. May I have the question repeated, please?

1 Q. In practice, that would limit Fiat's bargaining power in
2 relation to OSS products?

3 A. I can only express my opinion, and from my perspective,
4 having never worked for purchasing in an OEM but always
5 in a supplier, I do not consider that having a limited
6 panel of three suppliers is a strong limitation of
7 the bargaining capability of an OEM.

8 Q. At paragraph 29 of your statement on {C/3/9}, you say:

9 "I suspect that the Purchasing team at FCA always
10 requests that the Engineering team approve more than one
11 supplier -- and indeed I cannot recall an instance since
12 2003 where we were the only possible supplier from
13 a technical perspective for an RFQ for a new vehicle or
14 platform."

15 But it is necessary, for there to be any
16 competition, that there be more than one supplier, is it
17 not?

18 A. Yes, correct.

19 Q. At paragraph 22 {C/3/7} of your statement, you say:

20 "In my experience it is not acceptable for FCA ..."

21 Sorry:

22 " ... it is not acceptable to FCA for a supplier to
23 decline to quote where it has been invited to do so ...
24 (which Autoliv may otherwise be inclined to do if, for
25 example, forecast volumes are very low and the business

1 is not likely to be profitable)."

2 I suggest to you that is not a real issue for
3 Autoliv, because if it wishes, it can put in a high
4 quote which it knows will not be acceptable to FCA.

5 A. In my opinion, quoting a very high price, or better to
6 say, to my experience, quoting a very high price for
7 a business is an evident sign to customer that this
8 business is not desired by the company, and this is
9 something that normally is escalated by the customer
10 because they have interest that we put all our effort to
11 compete in the business. So even though it's not
12 forbidden, formally, or we are not by contract forced to
13 submit an RFQ and to submit a competitive price, we
14 receive a lot of pressure from management, because it's
15 a matter of a partnership and long-time relationship to
16 support the customer also for small business.

17 Q. But, ultimately, Autoliv would only put in a quote if it
18 thought it was in Autoliv's best interests as a business
19 to do that?

20 A. That's not always the truth. In fact, when we were
21 required to support the business which was not in our
22 interest but it was important for the customer, we were
23 still supporting the business, quoting and getting
24 the business.

25 Q. In paragraph 57 you mention that FCA historically

1 refused -- sorry, this is on {C/3/17}:

2 " ... FCA historically has refused all together to
3 index raw materials prices (an indexation protocol was
4 only put in place as recently ...) As such, we had no
5 recourse to seek compensation from FCA for any increases
6 in raw materials prices, although I note that FCA also
7 did not typically seek reductions for decreases in raw
8 materials prices either."

9 So you accept that this is a case where this could
10 be to the benefit of either side? If prices go up, then
11 there is a benefit to FCA that there is no indexation,
12 but if they go down, that is a benefit to Autoliv?

13 A. So, at the time, there was no indexation, of course,
14 depending on the trend of raw material, it could be
15 a benefit for us or a benefit for FCA.

16 Q. At paragraphs 23 to 27 of your statement {C/3/7}, you
17 discuss Autoliv's response to RFQs. I am not going to
18 go through that in detail, except to ask this. Once
19 the business had granted authority for a quote,
20 Autoliv's local sales team could not set a price that
21 went below that, or at least not without seeking a fresh
22 authorisation?

23 A. That is correct, because we always need to follow
24 a process and require highest level management approval
25 to submit a quote.

1 Q. At paragraph 35 {C/3/11} you talk about FCA target
2 prices. You say:

3 "The entire process, from receipt of an RFQ until
4 contract award, usually takes at least 5 or 6 months
5 the process can. The process can, however, be much
6 longer if FCA has an overly optimistic approved target
7 price. In those circumstances, the best bidder may have
8 to wait for the target price to be adjusted through
9 FCA's internal processes, which can cause a few months'
10 delay."

11 So you accept that FCA would not always achieve its
12 target prices?

13 A. Yes, not always achieved the target prices.

14 Q. Going on to paragraph 40 on {C/3/12}, about halfway down
15 the paragraph, or perhaps beginning at the beginning to
16 make it -- put it in context, you say:

17 " ... FCA typically asks Autoliv to demonstrate its
18 ability and commitment to supply FCA's anticipated
19 volumes, by request evidence that the tools and
20 production lines for supply of the product are capable
21 of meeting certain annual and lifetime volumes. There
22 is therefore an imbalance between FCA and its
23 suppliers: we have the obligation to maintain
24 a production capacity that often does not match actual
25 production volumes (or risk falling short if capacity is

1 not maintained), whereas FCA is not exposed to any risk
2 if it does not meet its volume forecasts over the course
3 of a vehicle's serial production lifetime."

4 I suggest to you that it would not make sense for
5 volumes to be guaranteed, because that would mean that
6 FCA was obliged to purchase steering wheels, for
7 example, for vehicles that do not exist.

8 A. In fact, the point is not to require the OEM to protect
9 in case they don't realise the volumes. Nobody could
10 expect that they are purchasing products for cars that
11 are not produced. But in the FCA terms and conditions,
12 the volumes were always subject to the market
13 fluctuation without any compensation to the suppliers.
14 It means that, if Autoliv was investing in tools and
15 lines and hiring people to produce high amount of
16 components and the demand was quite lower than what was
17 expected, there was no compensation at all provided to
18 Autoliv.

19 So, to clarify the sentence in the paragraph 40 of
20 my statement, I was more suggesting that there was no
21 compensation at all when the volumes were not realised
22 and not that I was expecting that FCA was purchasing
23 the products whatever car production was possible based
24 on the market.

25 Q. But if volumes were lower than forecast, Autoliv could

1 raise that the next time it was negotiating with FCA in
2 relation to discounts, for example?

3 A. That is correct. Sometimes we used this as an argument
4 when we wanted to negotiate a new business or
5 the condition for the new business.

6 Q. Overall, the risk in relation to volumes that you
7 identify was an acceptable commercial risk which Autoliv
8 was prepared to take?

9 A. I consider it's part of the risk management, when we
10 accept to run a business with a customer.

11 Q. Can I show you one document at {J1/356/1}.

12 A. Yes.

13 Q. There is an email from you on the third page here
14 {J1/356/3}. In fact, is this from -- it is from
15 Mr Podio sent to you; is that right?

16 A. Right.

17 Q. He says:

18 "As I told you I'm very afraid about what I received
19 as 'informal' info from Fiat side during this vacation
20 period:

21 "KSS solved noise problem about buckle and they want
22 to be back again in [seatbelt] business for Fiat."

23 So the date of this is 2008. It looks like KSS is
24 still struggling to regain the trust of Fiat; is that
25 right?

1 A. I don't see a matter of trust with Fiat, I see more
2 a reference to fulfilling a specification with regards
3 to the noise from one of their components.

4 Q. I was just looking at the words "they want to be back
5 again in [seatbelt] business for Fiat".

6 A. Yes, and from this email I understand that their issue
7 to be back on the seatbelt business for Fiat was their
8 inability to fulfil the Fiat requirements for noise.

9 Q. So you say this is unrelated to your statement in bundle
10 {C/3/6}, paragraph 18, where you talk about KSS having
11 difficulties in its -- as a seatbelt supplier to Fiat in
12 the period 2005 to 2008?

13 A. No, I think the two topics are somehow related, even
14 though I was not aware at the time of my statement of
15 the specific nature of the technical problem while it
16 seems from -- or my interpretation from the email from
17 Mr Podio is that it was a specific issue on the buckle,
18 so one seatbelt component, and especially on the noise
19 that caused the inability to fulfil the Fiat
20 requirements.

21 Q. I understand. You say:

22 "TRW proposed new interesting solution also for
23 noise (as you know they want to have back the new Punto.

24 "Takata has the best products without any problems,
25 (no pretens. [seatbelt]

1 "Autoliv till now is solving the noise problem with
2 a 'antediluvian' foam cover solution that is taking up a
3 big part of the boot.

4 "I agree with Pietro that absolutely we have to put
5 solutions on Fiat's table during the current sourcings,
6 if not the risk is to be out.

7 "Pelle and Frank.

8 "sorry if we have to disturb you again but please we
9 need your support, as you can see we are seriously in
10 high risk in this moment.

11 "About economic side take care that for AR 955
12 the cost from [Autoliv] is about 140k€ for the cover
13 foam + for 199 FLP we will increase costs, what do you
14 think to lunch a VEVA project?"

15 On the previous page, page 2 {J1/356/2},
16 Mr Pelle Malmhagen responds:

17 "Dear Colleagues.

18 "What are we doing here? The situation is getting
19 serious?"

20 Then there is a further response on {J1/356/1} to
21 Mr Malmhagen from Mr Lombarte.

22 My question to you is, did Mr Malmhagen often get
23 involved in PSA sourcings of this kind?

24 A. So, first, I think that the question is about FCA, and
25 Mr Malmhagen, to what I can remember, in his position of

1 vice president for Europe seatbelt organisation, was
2 involved any time there was an escalation from
3 the account because of issues also related to technical
4 specification fulfillment, like it is in the specific
5 case of the email.

6 MR WEST: Thank you very much, Mr Squilloni.

7 MR SCANNELL: No questions.

8 THE CHAIRMAN: Thank you very much, Mr Squilloni, you are
9 released from your oath. Thank you.

10 A. Thank you, sir.

11 (The witness withdrew)

12 Housekeeping

13 THE CHAIRMAN: Right, nothing else to deal with today?

14 MR WEST: No. I think the -- I am told the ball is, as it
15 were, still in Dr Majumdar's court on the new joint note
16 which has been asked for. Mr Hughes has filed his
17 response to the most recent note from Dr Majumdar with
18 the explanation about the changes to part numbers, or
19 rather the technical changes that did not involve
20 changes to part numbers. That should have been filed
21 and will find its way into the bundles.

22 THE CHAIRMAN: Right.

23 MR WEST: I believe he has also now found the equivalent
24 figures to the ones that I put to Mr Arango in relation
25 to the other OSS components, so seatbelts and airbags.

1 THE CHAIRMAN: So, as I understood where we got to was that
2 sometimes -- if it is substantial and it matters, there
3 will be a change, but there will not necessarily always
4 be a change and quite where the dividing line is,
5 I expect we have not established that with any
6 precision.

7 PROFESSOR NEUBERGER: Am I right in thinking that
8 the question of numbers is relevant specifically to
9 the RFQ question and the argument between the experts
10 about how to take account of the uncertainty in the RFQ
11 date? Is that where the ...?

12 MR WEST: Exactly.

13 PROFESSOR NEUBERGER: Is the clarification, or
14 the counter-statement -- sorry, is the dispute between
15 the experts on the seatbelt numbers, or the -- is that
16 fed into the joint report on the RFQ dates and
17 the implication on the regression, or has that come
18 separate?

19 MR WEST: I think that has been fed into the new updated
20 joint document that is being asked for and that is being
21 prepared.

22 PROFESSOR NEUBERGER: So that the new joint document will
23 take account of all this debate about part numbers which
24 at the moment leaves me somewhat confused, I must say;
25 is that right?

1 MR WEST: They have been progressed in parallel. I see my
2 friend has risen.

3 MS FORD: It is important to point out we received a new
4 note from Mr Hughes at lunch time --

5 THE CHAIRMAN: Sorry, this is a note on what?

6 MS FORD: This is Mr Hughes' response to Dr Majumdar's note.
7 I propose to spare the Tribunal --

8 THE CHAIRMAN: How many notes are we getting? Are we
9 getting a single note?

10 MS FORD: There is a single note from Mr Hughes which
11 contains his response to Dr Majumdar. The experts are
12 also working on what the Tribunal has requested, which
13 is the update in narrative form to the joint expert
14 statement.

15 THE CHAIRMAN: I hope it is not necessary to get another
16 expert report from Mr Hughes. I hope what he can do is
17 he can put his comments in the joint. So insofar as you
18 are now producing a joint report identifying areas of
19 agreement and difference and what the key points that
20 the Tribunal will have to decide, if Mr Hughes has any
21 further points, it can just go straight into that, can
22 it not? It does not need another report and then
23 a document summarising what is in the earlier report.

24 MR WEST: Mr Hughes has already filed, as I have explained,
25 a further report.

1 THE CHAIRMAN: He may have filed it, but we have not
2 read it.

3 MR WEST: I am afraid it is information he wishes to give in
4 response and it explains the points about
5 the different changes and that some of them involve new
6 part numbers and some of them do not.

7 THE CHAIRMAN: Why can it not just go into a single -- why
8 can we not have a single document?

9 MR WEST: Well, I think because the idea is that the single
10 document will be an agreed document, but Mr Hughes has
11 some points he wishes to make from his own perspective.

12 THE CHAIRMAN: Right, so the document is not necessarily
13 just an agreed document, it is also identifying, just as
14 the earlier joint report did, it is identifying areas of
15 dispute, things that matter and we need to decide.

16 Anyway, I will leave it with you. I will not try and --

17 MR WEST: I have no doubt Mr Hughes will want you to read
18 and consider his report.

19 THE CHAIRMAN: Yes, well, I hope it is short, and that does
20 not seem to stop the joint document progressing. So we
21 have a further note from Mr Hughes, we have a joint
22 document bringing us up to date and then now we also
23 have a new front on part numbers, the relevance of which
24 we are little baffled at the time.

25 MS FORD: Yes, I rise only to point out that because we have

1 only received Mr Hughes' latest effort at lunch time,
2 I do not anticipate that Dr Majumdar will be in
3 a position to respond to that in the joint expert
4 document that the Tribunal has requested by close of
5 play today.

6 THE CHAIRMAN: Right, okay, then we will just have to extend
7 the time for it, because we do want it in that document.
8 So ...

9 PROFESSOR NEUBERGER: It seems that the exchange has to be
10 brought to an end, because we need to prepare for
11 the hot tub on Monday, and if we are going to get into
12 the weeds of part numbers rather than talk about broader
13 economics, it will be a complete mess, and so I am very
14 keen that we actually have a document which ignores any
15 irrelevant details which may be in dispute and which
16 focuses on the issues we can actually usefully discuss
17 in the hot tub.

18 MS FORD: Absolutely. Well, we can certainly refer
19 the experts to the comments the Tribunal has made, and
20 hopefully they will be able to --

21 THE CHAIRMAN: Is Dr Majumdar in court?

22 MS FORD: Dr Majumdar, no, I believe he is working away
23 on --

24 THE CHAIRMAN: Ah, good, well, I am pleased with that. So
25 we will need to find out. It really would be helpful if

1 something can be got to us today.

2 MS FORD: I fear that the obstacle to that may be Mr Hughes'
3 new note, and so the way in which -- one way in which to
4 address it would be simply to say: this is the position
5 subject to responding to Mr Hughes' note.

6 THE CHAIRMAN: What is in Mr Hughes' note?

7 MR WEST: It is the explanation of this point, mainly
8 the point about the amendments to technical
9 specifications and whether that would lead to a change
10 in part number, but it does also --

11 THE CHAIRMAN: Right, but Mr Hughes cannot possibly know
12 about that, that is a question of fact we have explored
13 with the witnesses, is it not?

14 MR WEST: No, he does know about it from the data. So
15 the document that I showed to Mr Arango was prepared by
16 Mr Hughes based on the PSA data. That one only related
17 to steering wheels; he has now been able to do the same
18 job in relation to both.

19 THE CHAIRMAN: But is there a dispute between the parties as
20 to the fact that part numbers sometimes change, when
21 there are technical changes to components mid-contract,
22 that sometimes the part numbers will change -- that
23 seems necessarily so, otherwise all sorts of
24 complications could arise -- but if they are minor
25 changes, the part numbers may not change? Is that not

1 just the common position? Do we really need to explore
2 it beyond that, unless either of the parties is
3 disputing that?

4 MR WEST: That is a common position, but only because of
5 the response that Mr Hughes was able to prepare to
6 Mr Arango, because --

7 THE CHAIRMAN: If it is a common position, we do not need
8 evidence on it.

9 MR WEST: Well, I think that is probably right. Whether
10 anyone will wish to say that these changes are more
11 likely to be one rather than the other and therefore
12 that supports one sensitivity rather than the other,
13 I am not sure.

14 PROFESSOR NEUBERGER: Can I just try and inject a note of
15 realism into the whole thing. The major issue, as far
16 as I can see, is that there is a model produced by
17 Mr Hughes, Dr Majumdar has attacked it on a number of
18 grounds, one of the important grounds is excessive
19 sensitivity and lack of robustness, but the RFQ
20 sensitivity is one of a number of issues where he has
21 questioned sensitivity, therefore, to fight the last
22 yards of the battle on RFQ dates in detail -- I mean,
23 the RFQ date sensitivity is obviously important in
24 itself, but to spend too much effort on the last couple
25 of yards of that particular argument may not be

1 a productive use of time, either for the experts or for
2 the Tribunal.

3 MR WEST: I obviously hear what you have said, Professor,
4 but Mr Hughes has prepared a response, as I say, which
5 has been submitted, my friend is not trying to keep it
6 out, and none of this is my fault.

7 THE CHAIRMAN: You are saying none of this is your fault.
8 No, it is not a question of blame, so do not be
9 sensitive, Mr West, about that.

10 MR WEST: Well, I did try and draw a line under this on
11 Wednesday morning.

12 THE CHAIRMAN: I think we will direct that you, counsel,
13 discuss this and see if a common position can be --
14 along the lines I suggested can be arrived at, in which
15 case, insofar as Mr Hughes is putting in anything
16 further, it will have nothing to do with part numbers.

17 MR WEST: We shall see if we can hammer out a common
18 position.

19 THE CHAIRMAN: I really do not think -- in the final
20 analysis, I do not think Mr Hughes is in a position to
21 say what the practice was at either of the companies.

22 MR WEST: Neither is Dr Majumdar.

23 THE CHAIRMAN: All he can do is make some observations in
24 a few documents that he is having a look at. So we have
25 explored it with the fact witnesses, which is clearly

1 the appropriate thing to do, we have arrived at
2 a slightly vague position, but it seems unlikely that we
3 could conceivably drill down on that in a useful,
4 productive way any further. So would it be helpful if
5 we rise for ten minutes and you put your heads together
6 on this now and say whether --

7 MR WEST: Yes, although I should just mention, Mr Hughes'
8 report is not entirely about that, it does also provide
9 a more general response to Dr Majumdar's most recent
10 note and attempts to explain where, in Mr Hughes' view,
11 the debate now stands, and that obviously feeds into
12 the joint document as well.

13 THE CHAIRMAN: Yes, so hopefully that will be -- without
14 necessarily keeping it out, that will hopefully be
15 a document we never really have to look at in any
16 detail, because it will be dealt with in the joint
17 report that is being produced.

18 MS FORD: Sir, I am rising because it may assist to identify
19 what we say came out of Mr Arango's cross-examination
20 about the circumstances in which one would and would not
21 have a change in part number.

22 THE CHAIRMAN: Well, leave that for the moment. I would
23 like you all to put your heads together. I will give
24 you ten minutes, and you can inform me what your
25 different positions are, if you do not have a joint

1 position, and then we can see if it is necessary to
2 resolve it. So we will rise for ten minutes.

3 (2.43 pm)

4 (A short break)

5 (3.02 pm)

6 THE CHAIRMAN: Where have we got to, Mr West?

7 MR WEST: What I proposed to my friend, with agreement, is
8 the following, that:

9 "We agree that when there is a change to
10 the technical specifications of a part in serial
11 production, there may or may not be a change to the part
12 number."

13 Now, I understand my friend does agree that, but she
14 wishes to add something else, which she will have to
15 explain to you.

16 MS FORD: Sir, the only points that we would wish to add are
17 that Mr Arango, in cross-examination, gave two examples
18 of the situations in which one may or may not see a part
19 number change and we do not want that evidence that he
20 has given to essentially be disregarded, because it does
21 enable the Tribunal to assess qualitatively
22 the likelihood that in any particular scenario one would
23 or would not see a part number change.

24 THE CHAIRMAN: No, but there did seem to be a little bit of
25 tension between what he said in his evidence and what he

1 had written in his report, which was, if you recall,
2 when we -- I cannot remember where his report is.

3 MS FORD: So Mr Arango would have had a statement. Is
4 the Tribunal referring to --

5 THE CHAIRMAN: Sorry, his statement. I beg your pardon.

6 MS FORD: He is at {D/8/1}. Whether it has been added to
7 the Tribunal's ...

8 THE CHAIRMAN: It has.

9 MS FORD: Tab 8 {D/8/8}.

10 THE CHAIRMAN: He dealt with it --

11 MS FORD: So the key paragraph is probably paragraph 7
12 {D/8/2}.

13 THE CHAIRMAN: I turned up the wrong report.

14 MS FORD: It is his third statement.

15 THE CHAIRMAN: Yes. It was really paragraph 6:

16 "... other examples include changing the colours of
17 the webbing, changing the connector type or changing the
18 plastic cover. As well as design changes, there may be
19 changes in raw material ... "

20 MS FORD: Yes, so that is simply identifying the types of
21 changes that one might see to an OSS part.

22 THE CHAIRMAN: So, sorry, starting at the beginning of 6 he
23 says:

24 "It is common for changes to be made to OSS parts
25 during their serial life. For instance, a customer may

1 change the length of a webbing for a seat belt or modify
2 the length of a buckle. For a steering wheel,
3 a customer might add cosmetic parts or switches. Other
4 examples include changing the colours of the webbing,
5 changing the connector type or changing the plastic
6 cover."

7 I think some of the cosmetic -- one of the cosmetic,
8 which was changing from a -- to a silky from a sheen to
9 a something else did not involve a change in part
10 number. That was my understanding of the evidence but
11 no doubt you will correct me.

12 But I think the point of reaching an agreed position
13 is not that it is an agreed position and then you get to
14 qualify that by the evidence, otherwise we have not got
15 an agreed position, so if you want --

16 MS FORD: Well, sir, we do not want to disregard
17 the evidence and say --

18 THE CHAIRMAN: Well, I am asking you to reach an assumed
19 position. So Mr West has made his position clear. If
20 you do not agree with that, you will have an uphill
21 struggle to say that that is not a fair description of
22 where we are on part numbers. We think getting into
23 the detail of part numbers is an unnecessary distraction
24 in this case. Part numbers may change, whatever
25 Mr West's -- could you read it out again, Mr West?

1 MR WEST: Yes:

2 "... when there is a change to the technical
3 specifications of a part in serial production there may
4 or may not be a change ..."

5 THE CHAIRMAN: So there may or may not be a change in those
6 circumstances, and if you say Mr Arango is saying
7 something different --

8 MS FORD: No, I am saying that Mr Arango has given two
9 specific examples which provide the Tribunal with
10 a degree of insight and colour as to the circumstances
11 where parts may or may not change and we do feel that
12 that is useful evidence and we do not want an agreement
13 on a vague statement like "may or may not" to obscure
14 the additional evidence that has been given in these
15 proceedings as to the circumstances when it might or
16 might not.

17 THE CHAIRMAN: Well, you have heard the Tribunal's views, we
18 would like you to reach an agreed position, and
19 Mr West's position seems to reflect the Tribunal's
20 understanding. If it requires qualifying, then explain
21 what your submission is. Adding colour is not something
22 that we find helpful at this stage.

23 MS FORD: Well, the first point then --

24 THE CHAIRMAN: I am not going to ask you to do it now, you
25 are going to have to address this in closing, but in

1 order to assume a position Mr West says he is not
2 required to put in any further evidence.

3 MS FORD: Yes, we are not suggesting further evidence is
4 required. We are simply seeking to rely on what
5 Mr Arango said when asked about it.

6 THE CHAIRMAN: Yes, you have made that submission.

7 Anything else?

8 MR WEST: Just before the Tribunal rises, can I clarify
9 the timetable from now on. As I understand it, we have
10 three days now of economic experts next week, two of
11 hot-tubbing --

12 THE CHAIRMAN: Hold on, do not go too fast, I have not got
13 it in front of me. So we are hot-tubbing on Tuesday --
14 sorry, the Monday and the Tuesday, cross-examination on
15 the 30th. Is that in accordance with your
16 understanding? We have a buffer day --

17 MR WEST: On the 30th? It is the 16th, sorry.

18 THE CHAIRMAN: Sorry, I am looking at completely
19 the wrong -- I beg your pardon. So 14th, 15th and 16th,
20 we expect to conclude the economic evidence, but it is
21 important, so we will keep the 17th as a buffer day.

22 MR WEST: Then, is it right then that we proceed with
23 the German law experts on the 21st?

24 THE CHAIRMAN: Yes. Yes, that is the position.

25 MR WEST: I think Professor Bailey is going to give you some

1 submissions about German law at some point as well.

2 PROFESSOR BAILEY: So in relation to that I am really in
3 the Tribunal's hands. I think the point that was
4 canvassed in opening was whether it would help
5 the Tribunal to have short opening submissions on
6 the German law points, but it may indeed be that we
7 could proceed straight to cross-examination and distill
8 the points in closing and that may be a quicker and
9 easier way to manage the point.

10 THE CHAIRMAN: I mean, we will have a lot of other things to
11 deal with in closing, so if we are here anyway on
12 the Monday, it might make sense. Perhaps we could have
13 -- are you both cross-examining?

14 MR WEST: Yes.

15 THE CHAIRMAN: What is your estimate? I think I said up to
16 45, but that was a maximum target.

17 PROFESSOR BAILEY: 45 minutes was the maximum for each
18 party.

19 THE CHAIRMAN: Yes, so would you need that long?

20 MR WEST: There or thereabouts, yes.

21 THE CHAIRMAN: Right.

22 PROFESSOR BAILEY: I agree with my learned friend.

23 THE CHAIRMAN: So I think it would be sensible to have
24 submissions straight after. Let us hear the evidence.
25 So if we start at 10, then we will be through by 11.30,

1 and then we can have submissions.

2 PROFESSOR BAILEY: By that do you mean closing submissions,
3 so straight after the evidence?

4 THE CHAIRMAN: Yes. I mean, I do not suppose you are going
5 to hear any great surprises in the cross-examination, so
6 it is not as if you cannot prepare submissions, and then
7 we will have sort of half an hour each and submissions
8 bringing it together.

9 I will re-read the stuff from the skeletons before,
10 so I am not completely at sea.

11 MR WEST: Sir, on that basis, I assume we are not also
12 hearing Mr Bailey opening it as well.

13 THE CHAIRMAN: No, Mr Bailey, we just go straight in and
14 then however you want to -- I suggest you have a speech
15 each with whoever goes first gets literally five minutes
16 in reply, that is all, so that sort of thing. So I do
17 not know who wants to go first. It is your case.

18 PROFESSOR BAILEY: I suppose, technically, it is the defence
19 or the Defendants.

20 THE CHAIRMAN: Yes, it is, so you go first, then Mr West,
21 and then you just get five minutes in reply if there is
22 anything.

23 PROFESSOR BAILEY: In terms of the timing of those closings,
24 would you anticipate that being immediately after
25 the cross-examination?

1 THE CHAIRMAN: Yes, immediately after.

2 PROFESSOR BAILEY: Would there be an opportunity for perhaps
3 half an hour just to sort of --

4 THE CHAIRMAN: I do not think that will be necessary.

5 PROFESSOR BAILEY: Okay.

6 THE CHAIRMAN: I mean, if it is necessary, we can -- if
7 a particular problem has arisen and you have some
8 answers that you really were not expecting and some new
9 cases, we will case manage that on the morning, but
10 I think assume that we will just press ahead while it is
11 all fresh in our mind and then that topic is done.

12 MR WEST: The Tribunal will be happy then just to have
13 the transcript of the closing without any written
14 closing on the German law point?

15 THE CHAIRMAN: Yes, you have both dealt with it reasonably
16 fully in your opening, have you not?

17 PROFESSOR BAILEY: Well, we have both set out the position,
18 I think, in terms of the joint expert statement, where
19 there is common ground, and we have both dealt with what
20 their experts say about the points of disagreement.

21 THE CHAIRMAN: Right, if there is anything extra you want to
22 put in at this stage, feel free to put it in, let us
23 say, by close of business on the 16th. So if you have
24 further submissions, if you need to elaborate anything
25 -- I appreciate you will not have heard the evidence,

1 but if you want to put anything -- if you were holding
2 things back for your closing and you need to say
3 anything extra, it seems quite a -- two short points.

4 PROFESSOR BAILEY: They are, yes.

5 THE CHAIRMAN: Then, after the cross-examination, if you are
6 in difficulty and you want to apply just for more time
7 or to push back the closing, you can, but there will
8 need to be a reason for it.

9 PROFESSOR BAILEY: I am grateful.

10 MR WEST: Sorry, I am just being asked to clarify the length
11 of time we have for closing submissions on
12 the German law point.

13 THE CHAIRMAN: I suggest half an hour each should be
14 sufficient.

15 MR WEST: Half an hour.

16 THE CHAIRMAN: We will have read the materials, we will have
17 heard the cross-examination. I mean, if you really do
18 need longer, obviously let us know.

19 MR WEST: Sir, one other point that occurs to me is that, in
20 relation to the suspension point, it depends in part on
21 a factual issue, which is the scope of the Commission
22 investigation. Now, that is not something we have
23 addressed you on so far, so we may have to address you
24 on the documents about that. There are some documents
25 about that.

1 THE CHAIRMAN: Right. Have those documents been referred to
2 in the skeleton?

3 MR WEST: They have been referred to. Whether we have given
4 the references or not ...

5 So, for example, there is the dawn raid notice,
6 which I think is relied on.

7 THE CHAIRMAN: Yes. You can pick those things up in some
8 additional submissions. I said you can put in
9 additional submissions by the 16th and you can pick
10 those up then. I am taking this course because the view
11 is the cross-examination is unlikely to assist, but we
12 have got it there out of an abundance of caution --

13 PROFESSOR BAILEY: We will do our best.

14 THE CHAIRMAN: -- because you are there. But if it does
15 raise any unexpected things, we will look at it again,
16 of course.

17 (3.15 pm)

18 (The Court adjourned until 10.30 am on Monday,

19 14 October 2024)

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