IN THE COMPETITION APPEAL TRIBUNAL Case No: 1517/11//7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Wednesday 14 February – Thursday 28 March 2024

Before:

The Honourable Sir Marcus Smith (President)
Ben Tidswell
Professor Michael Waterson

(Sitting as a Tribunal in England and Wales)

MERCHANT INTERCHANGE FEE UMBRELLA PROCEEDINGS

TRIAL 1

A P P E A R A N C E S

Kieron Beal KC, Philip Woolfe, Oliver Jackson & Antonia Fitzpatrick (instructed by Stephenson Harwood LLP and Scott+Scott UK LLP) on behalf of the Stephenson Harwood LLP and Scott+Scott UK LLP Claimants

Brian Kennelly KC, Jason Pobjoy, Isabel Buchanan & Ava Mayer (Instructed by Linklaters LLP and Milbank LLP) on behalf of Visa

Sonia Tolaney KC, Matthew Cook KC, Owain Draper & Veena Srirangam (Instructed by Jones Day) on behalf of Mastercard

Tuesday, 5 March 2024

(9.02 am)

MS TOLANEY: Good morning, may I please call Ms Ruth Riviere, who is on the remote access.

MS RUTH RIVIERE (called)

Evidence given via videolink

THE PRESIDENT: Of course.

Ms Riviere, can you see and hear us? Are you on mute? We can see you, but I did not hear you there?

A. No, I am not on mute.

THE PRESIDENT: Yes, you are loud and clear now. That is very good. I wonder if you could just, for the record, state your full name, please.

A. Ruth Eleanor Whitten Riviere.

THE PRESIDENT: Thank you. I think you have been provided with a form of words which constitute the affirmation of your evidence to the court. Do you have that?

A. I do.

THE PRESIDENT: Ms Riviere, would you mind reading that out and that will be your swearing as a witness?

A. I, Ruth Riviere, do solemnly sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth.

THE PRESIDENT: Ms Riviere, welcome to the court. I am the President of the Tribunal and you will shortly be asked some questions by Ms Tolaney, your counsel.

Before I hand over to Ms Tolaney, just two points. First of all, the environment in which you are in, it seems very clear there is no noise, you are not expecting to be disturbed or anything like that, it is all good, is it?

A. It is, yes.

THE PRESIDENT: There is no one else with you in the room; you are on your own?

A. Correct.

THE PRESIDENT: Very good. Access to documents is, like us, via the EPE screen on Opus; is that correct?

A. Yes, I have a second screen in front of me with the document.

THE PRESIDENT: That is excellent. Just by way of general warning to ourselves, counsel and you, there is a slight degree of latency in the sound. I think everyone should pause before they ask the next question otherwise we are going to get a bit of a car crash in terms of asking you questions and getting your answers, so I think if everyone can take it very slowly, it will be painful but I think that will be better for all concerned. If there is any technical breakdown or problem that you have hearing us, let us know and we will deal with it because we obviously want the best evidence that you can give and we do not want the infrastructure to let us down.

With that, I hand you over to Ms Tolaney.

Examination-in-chief by MS TOLANEY

MS TOLANEY: Thank you. Good morning, Ms Riviere, can you hear me?

A. I can.

Q. Do you have a copy of the witness statement you provided in these proceedings before you?

A. I do.

Q. Can you please turn to page 8 {RC-F3/2/8}?

A. Yes.

Q. Is that your signature?

A. It is.

Q. Can you confirm that the contents of the statement are true to the best of your knowledge and belief?

A. Sorry, there was a (inaudible - audio breakdown).

Q. Did you hear the question? The question was: please can you confirm that the contents of the statement are true to the best of your knowledge and belief?

A. They are.

MS TOLANEY: Thank you, Mr Beal will ask you some questions.

Cross-examination by MR BEAL

MR BEAL: Good evening, Ms Riviere, I am sorry we are keeping you up so late.

In paragraph 7 you suggest you moved to New Zealand

for the first time in 2017; is that correct? {RC-F3/2/2}
A. That is correct.
Q. So you were not involved for Mastercard in New Zealand before that point?
A. Correct.
Q. I assume then that quite a lot of your evidence is derived from you reading the documents?
A. Correct.
Q. Now, following the settlement that you described with the Commerce Commission, I assume that from your reading Mastercard removed any anti-steering rules from the New Zealand scheme; is that right?
A. Correct.
Q. They also removed the prohibition on surcharging?
A. That is correct.
Q. Mastercard then set a maximum rate for interchange fees and consumer credit and debit cards; correct?
A. Correct.
Q. So the rules from 2009 essentially meant that MIFs, as we call them, could be set bilaterally?
A. Sorry, just to confirm, "MIF" is Merchant Interchange Fee?
Q. Yes.
A. Yes, they would be allowed to be set bilaterally.
Q. But if there was no bilateral agreement then the issuer

was permitted to set a published rate?

A. Yes.

Q. Provided it did not exceed the maximum set by the scheme?

A. Correct.

Q. If no rate was published by an issuing bank, then the MIF, the multi-lateral interchange fee, would be zero?

A. Correct.

Q. The Commerce Commission had reached separate settlement agreements with issuing banks in New Zealand so that the MIFs that they charged were reduced?

A. I am not across the agreements between the issuers in this case.

Q. Could I ask you, please, to look in bundle {RC-J3/41/1}. This is a press release from the Commerce Commission from October 2009 and it suggests that the settlement that they have reached including with seven separate financial institutions ushered in a new competitive landscape and they thought that it paved the way for interchange fees in New Zealand to be set by competition.

Then about four paragraphs down, it says:

"The commitments made by the institutions will put immediate downward pressure on interchange fees while ensuring that those fees remain transparent and open to competitive forces in the future."

So the Commerce Commission thought that this was a victory for competition?

A. That seems to be what they are saying, yes.

Q. In your experience, did any acquirers and issuers then ever agree rates bilaterally?

A. No, they did not.

Q. We know that the issuers were allowed to publish a default issued rate that they wanted, did any issuer ever fail to publish a rate?

A. No, they notified us that they wanted the maximum rate.

Q. So nobody ever failed to notify you such that the default rate was zero?

A. That was before my time but not to my understanding, no.

Q. It is right that the acquirer, the merchant acquirer, in this situation had no option but to take the rate that had been set by the issuer?

A. Correct.

Q. As a result of the Honour All Cards Scheme, merchants had no option but to take that rate for the purposes of the Merchant Service Charges that they themselves paid?

A. The steering was removed as part of the settlement but, yes, the merchant would not be allowed -- would need to take the rate that was -- was set by the issuer.

Q. So there was no negotiation between the merchant and the

merchant acquirer as to a core component of the Merchant Service Charge that the merchant was paying?
A. I -- as the scheme we would not be aware of any negotiation between the merchant and the merchant acquirer.
Q. But there was no way that the merchant could change the MIF rate that the issuer had set, was there?
A. If the issuer had opted for the maximum rate and the issuer and acquirer had not negotiated a different rate, then correct.
Q. So the only way for a merchant to change things was to try and agree an individual deal with an individual issuer?
A. Yes, yes.
Q. I think we have had evidence in this hearing that certain big merchants did get rebates from certain issuers. Do you know anything about that?
A. I am not across any agreements between the merchants and the issuers.
Q. Now, it is true, is it not, that a number of bodies after this settlement in New Zealand identified that there were systemic problems with the retail payment market in New Zealand?
A. Who -- who was that, sorry?
Q. We can look at a few of them. You have referred for

example to the Ministry for Business reports. But let us go first, if we may, please, to a review that is at {RC-J3/86/6}. This is part of a retail payment systems review that was conducted by BERL and it provided a review of the market and if you could look, please, down -- halfway down the page there is a section that begins "inefficiency of payment card systems", can you see that?

A. Yes.

Q. There is a citation from an economist called Wright and then it says:

"This inefficiency is a consequence of the systems' characteristic arrangements, hence it is a systematic inefficiency, because:

"Payment card systems raise merchant service fees ... in response to merchants' need to accept cards despite the price rise, because merchants accept cards to attract customers ...

"The issuing banks have substantial market power and this enables them to set high interchange fees that influence MSFs.

"More intense competition alone will not reverse or mitigate this form of pricing."

Turning over the page, please, to page 7 {RC-J3/86/7}. We see in the second paragraph that:

"MSFs in this model are expected to systematically trend upwards because as Carlton and Frankel ... observe, it is likely that the growing use of inducements from issuing banks to cardholders is 'a direct function, not only of intensified competition among credit card issuers but also of high interchange fees'."

So what we see, do we not, is that the system that was put in place drives higher interchange fees through the setting mechanism and that in turn leads to more premium cards being issued and so on.

A. That is what you have just read talks to, yes.

Q. Could we then, please, look at page 10 {RC-J3/86/10}. There is a paragraph there halfway down the page from the OECD. Would you mind just reading those two paragraphs there beginning "The OECD" and then beginning "Imposition of the three rules"? (Pause)

A. Yes.

Q. Have you read that? That is a precursor to the point I then want to make, please, which is at page 11 {RC-J3/86/11} where, if we look at the first paragraph on page 11, there is a section that begins:

"The interchange fee cap set by the schemes effectively becomes the default interchange rate as issuers want to set the highest possible rate. In practice issuers have consistently set their interchange fees at the maximum levels possible and the market structure allowed them to do so."

Can you see that?

A. Yes.

Q. So that was the general position, was it not, set out in paragraph 1 there. If we scroll down, please, to paragraph 4, it says:

"Only some merchants are able to negotiate better terms with acquiring banks. SMEs are not able to do either of these things to a significant degree and are forced to bear the brunt of the bias against merchants explained by Wright. Large merchants may be able to qualify for strategic merchant rebates."

So in short, if a merchant had countervailing buying power it could put pressure on its acquirer especially if it was an acquirer that was also the issuer of cards, to get a better deal; is that fair?

A. Yes, that seems that is what this is talking about, yes.

Q. Now, in your witness statement you refer to two reports from the MBIE. I am going to deal with those in turn. The first report from 2016 is at bundle {RC-J3/85/7}. Can we look, please, at paragraph 11. This was the Ministry of Business, Innovation and Employment identifying economic inefficiency in the credit card market and it estimated that:

"... current market incentives drive at least NZD 45 million per year of additional cost to the economy through the use of more expensive credit card networks compared to lower cost EFTPOS networks."

Just pausing there. The EFTPOS network was a debit scheme, was it not, in New Zealand, and still is?

A. Yes, it still is, it is a switch, you have a scheme around it but yes, it is a domestic debit switch.

Q. It does not have any interchange fees, does it?

A. It is free to accept for merchants; the issuers pay for it.

Q. Could we then please look in this report at paragraph 117, page 33 {RC-J3/85/33}. Issuers themselves received a variety of different revenue streams from having a card scheme running, did they not?

A. Yes.

Q. We see that at least for one issuing bank they were using interchange income to fund a rewards programme? You see that at the bottom?

A. Among other -- yes.

Q. There was no obligation, was there, under the scheme rules to put the money into a reward scheme, it just chose to do that?

A. Correct, it would be reward schemes as well as other features, benefits, innovation, and fraud that they might want to spend on that proposition.

Q. Please could we look at page 35, paragraph 126. {RC-J3/85/35}. This report cited findings from the ECB, which I think is probably the European Central Bank, that:

"Merchant acceptance of card schemes will vary less in response to an increase in the price of accepting payment than consumer use of card payments in response to a change they face."

So there is a differential stickiness, is there not, between card merchants and cardholders in terms of card payment fees?

A. That is what this is saying, yes.

Q. Merchants have to multi-home card payments whereas typically a cardholder would hold either a Mastercard or a Visa card, but not both?

A. That is not true in New Zealand. The average number of cards per adult is three and a bit, I think, so there is a chance they would hold both.

Q. But they are unlikely to hold a Mastercard credit card and a Visa credit card?

A. They might do, they might not.

Q. Well, an issuing bank in New Zealand will typically give its customers a debit card; correct?

A. Correct.
Q. That is because in this modern age they cannot pay for anything without it, is that fair?
A. They would give them a debit card and potentially an EFTPOS card as well, which is different in New Zealand.
Q. Whether or not they got a credit card would be a matter for negotiation between the issuing bank and the cardholder, correct?
A. Correct.
Q. Could we then please look at page 42, paragraph 162 {RC-J3/85/42}. What this indicates is that schemes were still imposing an Honour All Cards Rule and therefore:
"... merchants who accepted a scheme's credit cards were not allowed to steer customers away from high cost cards towards low cost credit cards."
You have got no reason to think that is not a correct statement, have you?
A. My understanding is that the settlement allows for a merchant to steer between schemes and to lower cost payments if they want.
Q. Could we then please look -- the settlement, by the way, was only a three-year period settlement, was it not?
A. The broader infrastructure it set out was enduring.
Q. Could we then please look at page 47 {RC-J3/85/47}? We

see a series of issues are identified and that the interchange business model was resulting in economic inefficiency and increased costs, can you see that?

A. I can, yes.

Q. Then scrolling down to paragraphs 185 on the next page, to page 48, {RC-J3/85/48} paragraphs 185-188 give more detail about that. It identifies incentives in the market that are leading to issues and we see in paragraph 188 in particular:

"Due to the flow of interchange, in many cases consumers do not face anywhere near the full cost of their payment choice."

They identify three factors.

"Firstly more than 70% of credit card spend now earns rewards."

So there was a skew towards premium cards. Can you see that as the first factor?

A. Yes.

Q. Then the second one is:

"These rewards are substantially funded through interchange, rather than annual fees [which meant] that the cost of using a credit card can be negative for a cardholder."

I.e. they earn more money by using a card to pay for something than they have to pay.

Then thirdly:

"Few merchants surcharge, meaning that the costs a merchant faces in accepting payment are averaged out across all consumers."

So that was the concern that the MBIE was identifying, was it not?

A. That is what is laid out here, yes.

Q. Well, this is a report that you have referred to in your witness statement so I am assuming you have read this before?

A. Yes.

Q. Then at page 50, please, paragraph 194, {RC-J3/85/50} we see that the competition between the issuers for consumers through rewards programmes was fuelling upward pressure on interchange fees paid by merchants, which were then passed on to consumers as a class.

It said:

"We estimate that the presence of credit card rewards increase prices of goods and services for consumers by NZD 187 million per annum."

Higher prices were faced by all consumers.

So that is a detrimental effect, is it not, of the way that the payment card scheme has been structured?

A. Yes, that is what it is saying.

Q. At page 53, please, paragraphs 204-205, {RC-J3/85/53} it

identifies a long-standing economic distortion that is growing. Can you see that?
A. Yes.
Q. In paragraph 23 of your witness statement, that is page 7, {RC-F3/2/7} you say that:
"[My] understanding is that the manifesto commitment and Issues Paper were not driven by any kind of concern regarding potential conduct infringing competition law."
You say rather it was prompted by concerns that lower interchange fees were available elsewhere. But in reality, all of the aspects of the report that we have just looked at were identifying competition concerns, were they not?
A. Yes. My understanding in the more recent conversations and papers by MB, which were while I was in New Zealand, the primary concern was -- and they often pointed to Australia and the UK -- that interchange was lower in those markets.
Q. Could we go to that more recent December 2020 paper. It is {RC-J3/111/1}, starting at page 1. This is the issues paper from MBIE when in December 2020 when you were in New Zealand, correct?
Sorry, I did not hear an answer?
A. Yes, that is correct. I was in New Zealand.
Q. Page 7, please. {RC-J3/111/7} If we scroll down,

please, to subparagraphs (c) and (d) the Ministry is identifying limited competitive constraints on the setting of interchange fees and the competition between issuers in fact driving up interchange fees.

It says:

"Most merchants lack bargaining power with their banks and have limited ability to steer consumers or surcharge without risking losing sales. Small business merchants are particularly affected."

Do you see that?

A. Yes, I do.

Q. At page 8, top of page 8, {RC-J3/111/8}, subparagraph (e) identifies that various overseas jurisdictions are trying to regulate this issue:

"Many have relied on generic competition law remedies to remove restraints that limit competition. However, this has had limited success in reducing merchant service fee levels. Of those jurisdictions that have pursued regulatory options."

So it is a global problem, is it not, this drive up in rates of interchange fees that merchants can do nothing about?

A. Yes, this same paper does elsewhere in it talk about the fact that interchange fees have come down a bit over the prior couple of years. I cannot remember the exact paragraph, but it is in there as well.

Q. Please could we look at page 11, paragraphs 14 and 15 {RC-J3/111/11}. This is part of a section that is identifying the problems and the objectives and the Ministry is looking at a theory of harm to see whether it is supported by the evidence and then it is analysing the problem by reference to a counterfactual. What I am suggesting to you is that that is a classic analysis of the competitive structure of the market. Are you in a position to say one way or the other?

A. I am not sure I quite understand the question.

Q. You have given an opinion that this report does not have anything to do with competition analysis or the promotion of competition or with dealing with the competition concern. So I was just trying to establish to what extent that is true. What I am putting to you is that these paragraphs show that the Ministry is very much looking at things from a competitive perspective?

A. I was reflecting on the conversations that I had been part of with MB around this time and a lot of that conversation and the conversation with industry groups and particularly Retail New Zealand who was very active in the conversation pointed a lot to the difference versus the UK and versus Australia.

Q. Could we look, please at page 15, paragraph 40

{RC-J3/111/15}. This is paragraph 37, it is dealing with the EFTPOS switch-to-issuer route in contrast to paragraph 40, we see that in a typical four-party model the customer uses the card at the merchant's point of sale, payment instruction is sent by the switch to the acquirer, which is the merchant's bank. The acquirer then sends the payment instruction to the issuer for clearance but in return is also charged an interchange fee.

"In general, under this business model the acquirer incurs the costs of the transaction and fully recovers this cost from the merchant through a 'merchant service fee'."

So the Ministry at this stage is recognising that there is a charge that the merchant pays for the benefit of a credit card being used at that merchant's store; correct?

A. Credit or a scheme debit card. Sorry, just a clarification, a scheme debit if it is used contactlessly, a scheme debit card if it is dipped would be switched by the EFTPOS network and would be free to the merchant.

Q. Right, so contact in person payments zero MIF. Contactless payments debit MIF essentially dictated by the cap set by the Mastercard scheme?

Sorry, that will not be on the transcript because you nodded; would you please just confirm that was a yes?

A. Correct.

Q. Thank you. Could we look, please, at page 18, paragraph 49 {RC-J3/111/18}. We see there that the interchange fee is generally the largest component of the merchant service fee at or around 70 to 80% of the value. Can you see that?

A. Yes.

Q. We know, do we not, that that fee is going to be used to provide a revenue source to the issuing bank, which the issuing bank can use as it sees fit, correct?

A. Correct. I think that 70 to 80% would vary massively depending on the merchant and their agreement with their acquirer.

Q. At paragraph 52 on this page, we see that the participating issuers may set lower interchange fees through bilateral negotiation but generally target the scheme caps, can you see that?

A. Yes.

Q. So the scheme by setting the cap is pretty much guaranteeing that a given income stream will be available to the issuing bank?

A. Correct. An important element, and it is referenced in the second half of that, is that EFTPOS is not free, the issuers pay a fee for each of those transactions and so the interchange that they get on scheme fees is part of the broader consideration because when cards in New Zealand are used over the domestic switch they are not free and the issuers pay a fee for those. So there are slightly different broader card economic considerations for an issuer in New Zealand.

Q. Yes. Back in the days when banks issued chequebooks that customers used, the banks would have to pay for those chequebooks to be produced, would they not?

A. Correct.

Q. They would have to pay for those cheques to then be settled on presentation to the issuing bank?

A. Correct.

Q. There was never any suggestion that shops would have to pay for a customer to use a chequebook, was there?

A. But you do see charges for cheques being used now because there is a higher cost to use those.

Q. Who imposes those charges?

A. I am assuming the bank that cashes the cheque.

Q. Who do they impose that charge on?

A. Either the consumer or the business.

Q. You will have to help me because I am not aware of a bank charging a shop for a cheque that a customer, bank customer, uses in a shop. Are you aware of that in New Zealand?

A. No, we do not have cheques any more.

Q. Right. Could we look, please, at page 23, paragraph 75. {RC-J3/111/23} We see that the problem identified in the fourth line down is that:

"... banks largely determine the fees and inducements for debit and credit card schemes for both sides of the market within the scheme rules and caps. They use incentives to steer consumers to those payment [schemes]."

So in essence it is the issuing banks, is it not, that is determining what turns out to be very large income flows moving from merchants ultimately to the issuing banks?

A. Yes, that is what this is saying.

Q. Could we look, please, at paragraph 80, page 24 {RC-J3/111/24}. The Ministry then looks at features that are making surcharging problematic or steering problematic and the first factor identified in subparagraph (a) is that for some merchants, accepting credit cards is likely to be essential. If they accept credit cards from a scheme, the Honour All Cards Rule mean that they are unable to steer customers away from high cost cards.

So it is right, is it not, that the Honour All Cards Rule was still being applied in New Zealand and was deterring steering away from high cost cards?

A. My understanding is the settlement did allow for steering but I can understand that, you know, trying to explain to a customer or for a merchant to identify that fee would be tricky.

I think it is important, though, to note the first bit which says that accepting credit cards is likely to be essential for their business, so if they see credit cards as helping them to increase their number of customers, increase their basket size, increase the number of times they might come back, then that is where there is a cost in the system, interchange is a balance between those two sides.

Q. The report goes on at page 27, paragraph 92 {RC-J3/111/27} onwards to look at what are assessed to be the extent of competitive constraints on the pricing that might be charged and then it looks at barriers to competition and innovation. I am not going to go through those in detail but suffice to say that the Ministry was very much looking at classic competition issues, was it not, in terms of the competitive structure of the market?

A. It was but I think it is important that the EFTPOS as a low cost or free to merchant network has seen no innovation at all, so you could argue that it was not able to compete because it had no pricing around it so you cannot use EFTPOS contactlessly, you cannot use it online, you cannot use it internationally and so that was, you know, one of the considerations in terms of the competition.

But other people in market are investing to compete and EFTPOS, the free option, was not doing that.

Q. Well, the issuing banks and the acquiring banks could have made EFTPOS terminals accept contactless technology, could they not?

A. Yes, and most terminals do accept both.

Q. But they decided not to allow the EFTPOS cards to be capable of functioning with a terminal which was a contactless terminal as a contactless means of payment?

A. That is because EFTPOS does not work with a contactless -- it does not have contactless technology in it, it is a magstripe technology.

Q. But the technology could be made to work with EFTPOS so that a contactless payment on that card was switched to the issuing bank directly without going via the acquirer?

A. If it was a -- if the issuer and the acquirer and it was not an on us transaction then that is true. But otherwise the contactless protocol reads -- reads different data and magstripe is Track 2 Data and contactless is an encrypted transaction.

Q. At paragraph 24 to 26 of your witness statement, {RC-F3/2/7} you summarise the legal position under the Retail Payment Systems Act 2022.

I do not propose to go through that in detail; if we can just agree some broad parameters. We have already looked at it in this Tribunal. The purpose of the Act was to promote competition as you recognise in paragraph 24, correct, competition and efficiency?

A. Yes.

Q. Essentially a series of caps were then imposed by the legislation; is that right?

A. That is right.

Q. That included a cap of a zero MIF for debit cards in person payments; correct?

A. Correct.

Q. Both Visa and Mastercard were designated as the payment systems caught by this cap?

A. Yes.

Q. So the position for in person payments by debit card in New Zealand since this Act came into force has been that nobody has paid any interchange on those transactions?

A. Where there is contact transactions, correct.
Q. So have we seen in New Zealand a complete fall out --
A. Just --
Q. Sorry, go on.
A. Sorry. Just for clarity, issuers pay for each of those contact or EFTPOS transactions, but there has not been a merchant MIF paid for it.
Q. When you say the issuers pay, who pays them?
A. So the issuers pay the switch anywhere between 3 and 10, 20 cents a transaction when an EFTPOS transaction is made and that goes to pay the switch.
Q. Have we suddenly seen American Express, for example, invade the debit card market in New Zealand?
A. No, we have not seen them grow in debit. My understanding is they have grown in credit.
Q. Of course in credit, the system is still the issuer can set the level of credit card fees for MIFs up to the level of the cap?
A. Correct.
MR BEAL: Thank you. I do not have any further questions.

Questions by THE Tribunal

PROFESSOR WATERSON: Good evening, I am a member of the Tribunal, Michael Waterson. I just wanted clarification. When someone opens a bank account, do they automatically get issued with an EFTPOS card and

a debit card or is that up to negotiation with the bank?
A. That is up to the bank. However, if they are not issued with a separate EFTPOS magstripe card they are still able to access the EFTPOS network by dipping or swiping their scheme debit card.
PROFESSOR WATERSON: Right. So to that extent, then, innovation has taken place in that they can use the debit card as an EFTPOS card if they choose?
A. They -- but all the innovation and debit has happened on the scheme side, the EFTPOS transaction is still a magstripe transaction coming off that card; it just resides in the same card.
PROFESSOR WATERSON: Right. I see, yes. So who runs the EFTPOS system?
A. So that was originally a company owned by the banks called Paymark. It was then sold to Ingenico and it is now owned by Worldline.
PROFESSOR WATERSON: Thank you.
THE PRESIDENT: Mr Beal, nothing arising out of that?
MR BEAL: No, thank you.
THE PRESIDENT: We have no further questions.
Ms Tolaney, any re-examination?
MS TOLANEY: I do not have anything further, thank you.
THE PRESIDENT: No.
Ms Riviere, thank you very much for your assistance.

We will end the connection now with our thanks and gratitude. You are released from the witness box, at least the virtual witness box you are sitting in. Thank you very much.

A. Thank you very much.

(The witness withdrew)

MR BEAL: Sir, if it helps with the next witness I am going to be a bit longer, so I do not know if the Tribunal wanted to take the break at this juncture.

THE PRESIDENT: Rather than interrupt, let us do that. We will rise for 10 minutes.

(9.48 am)

(A short break)

(9.59 am)

THE PRESIDENT: Ms Tolaney.

MS TOLANEY: Thank you, may I call Mr Willaert, please.

MR BART WILLAERT (affirmed)

THE PRESIDENT: Mr Willaert, do sit down, make yourself comfortable, you should have some water there in a glass.

A. Thank you.

THE PRESIDENT: A folder to which you will be taken and a screen.

You should know that documents are summoned here electronically. If you need to see any other parts or

pages of a document where it is multi page, do please ask counsel and it will be brought up but you do not have agency over the screen yourself. So do not hesitate to ask if you want to see anything.
A. Thank you.
THE PRESIDENT: Before I hand over to counsel, it is obviously clear from the Sainsbury's decision but I should put it on the record of course you all know that I have encountered Mr Willaert before many years ago and said what we said in our judgment then.
I do not anticipate that that has any difficulties. I am afraid I cannot remember very much about the evidence you gave eight years ago and I suspect you cannot remember much about the proceedings, but it should be on the record that we have crossed swords as witnesses of fact before.
With that, I will hand over to Ms Tolaney.

Examination-in-chief by MS TOLANEY

MS TOLANEY: Good morning, Mr Willaert. I think you should have a folder in front of you.
A. I have.
Q. In the first tab I suspect is your witness statement if you want to open it and have a look at that.
A. I see that, yes.
Q. Yes, could you turn please to page {RC-F3/1/28}.

A. I am at 28.
Q. Is that your signature?
A. That is my signature.
Q. Could you please confirm that the contents of the statement are true to the best of your knowledge and belief?
A. They are to the best of my knowledge, thank you.
MS TOLANEY: Thank you, I think Mr Beal will ask you some questions.

Cross-examination by MR BEAL

MR BEAL: At paragraph 13, page 3 of that statement, {RC-F3/1/3} your main statement, you refer to five witness statements from other proceedings that you have made. Can you see that?
A. I see that.
Q. Those witness statements have broadly sought to justify Mastercard's setting of Merchant Interchange Fees and the rates you imposed on acquirers and merchants; correct?
A. They provide that clarification, yes.
Q. You sought to suggest that your rules did not infringe article 101(1) or alternatively they could be justified for an exemption under 101(3); correct?
A. I provided in this witness statement various number of clarifications in answer to various questions that are

quite, quite broad yes.
Q. You have relied on a number of things in the course of those five statements. You have relied for example on the fact that the issuing banks allegedly incur costs that the MIF revenue is intended to cover; correct?
A. Correct.
Q. Those alleged costs include, for example, dealing with fraud, giving a payment free period and so on?
A. Correct.
Q. You have also relied on the alleged need to balance the system between issuers and acquirers; is that right?
A. That is correct, yes.
Q. You claim that if MIFs were not available to generate a positive income stream for issuers, then Amex would capture the payment card market; is that fair?
A. I have talked about it in this witness statement particularly to respect in the premium cards, yes.
Q. These were all arguments that you also advanced to the EU Commission before they took their decision in December 2007?
A. I -- I was not part of that fuller argumentation so I cannot testify to that.
Q. But it is right, is it not, that to the extent that those arguments were raised and we can perhaps have a look at an example of them, if we turn to bundle

{RC-J3/73/56} -- sorry, this is in fact a separate point from the Mastercard I decision but let us go here anyway. We see in recital (179) according to Mastercard and you then can read what is said there, it is a four-party system, it is intended to provide compensation for services and then the Commission notes in recital (180) that the scheme rules do not require or recommend issuers to use MIF revenues for any specific purpose.

So that is an example of the same argument being run in the course of the Mastercard II investigation; correct?

A. This is what this statement says, yes.

Q. So you were involved in the Mastercard II investigation?

A. I was not involved, no.

Q. What were you doing during the Mastercard II investigation?

A. Can you clarify the period you refer?

Q. You were working for Mastercard in 2015?

A. I was working for Mastercard yes.

Q. Nobody approached you to help with assistance in responding to the Commission's investigation?

A. Absolutely, that is possible, yes.

Q. It is possible they did or possible?

A. Yes, it is possible they did, yes.

Q. Going back to the December 2007 decision against Mastercard, you are obviously aware of it, are you not, because you have referred to it on several occasions in your witness evidence?
A. Yes.
Q. You would accept that Mastercard's contentions were not accepted by the European Commission as a basis for granting an exemption from the competition law provisions?
A. I am not a lawyer, so I cannot.
Q. Well, you did not win before the European Commission, did you?
A. That is correct, yes.
Q. You then applied to annul that decision with the General Court and the General Court did not find in your favour either?
A. That is correct, yes.
Q. You then appealed to the Court of Justice and they did not find in your favour either?
A. That is correct.
Q. Then coming back to the proceedings before the Competition Appeal Tribunal back in 2015/2016, you presented substantially the same arguments there, did you not, for Mastercard?
A. I cannot testify to that; I am not a lawyer, I did not

make those cases.

Q. We do have your witness statements you prepared for those proceedings and would you accept that those witness statements from the earlier proceedings raise many of the same points that you are now advancing here in your witness statement in this case? We can look, for example, in this statement that you have made at paragraphs 12 through to 15 and you explain exactly what those statements dealt with. {RC-F3/1/4} by all means refresh your memory.

A. Yes. Yes, this is my statement, yes.

Q. It is right, is it not, that this Tribunal back in 2016 did not find in Mastercard's favour?

A. That is correct, yes.

Q. Then you went on appeal to the Court of Appeal and they dismissed your appeal?

A. That is correct, yes.

Q. The Supreme Court then rejected Mastercard's appeal on a further appeal?

A. That is correct, yes.

Q. Of course, you must accept must you not, that they were right in those decisions?

A. I am not a -- I am not sure that I agree.

Q. Well, following those hearings, Mastercard paid out on those claims, did it not?

A. I was not -- I am not aware of those.

Q. You are not aware of the settlement that was reached following the Supreme Court decision? I am not asking for details.

A. Again I am in general aware, yes, I am not asking of the details.

Q. You did not carry on fighting, did you? You did not have another hearing before the Tribunal dealing with substantive issues?

A. Actually, can you repeat the question?

Q. Yes, you did not have another round of litigation with this Tribunal after the Supreme Court decision?

A. No, not that I am aware of.

Q. Mr Willaert, do you know who an individual by the name of Mr Hiroo Onoda was?

A. No, it does not ring a bell no.

Q. He was the Japanese Second World War soldier who spent 30 years in the jungle not being aware that Japan had surrendered. Do you ever feel like that?

A. No, not necessarily, no.

Q. Now, I am not going to go through all your old evidence line by line. But for the record we do not accept that most of it is relevant and we do not accept the evidence underlying it. I just want to put that marker down.

By way of an example only, could we look, please, at paragraph 15.3 of your witness statement, page 4 {RC-F3/1/4} and you say in 15.3.1:

"The costs incurred by issuing and acquiring banks in relation to the transaction process ..."

Are a fact you have dealt with.

You say:

"If participants can't cover their costs of operating, they won't issue or accept Mastercard payment cards."

Now, that is simply a repeat of the contentions you have previously made, is it not?

A. It is, it is probably a repetition, yes.

Q. Are you aware that banks have many sources of revenue?

A. Yes, banks have many source of revenue. They vary depending on the country.

Q. If we look, please, at paragraph 15.3.1, you refer to free banking. It is right, is it not, that when an issuing bank offers a bank customer a bank account, it receives the benefit of the money that the customer puts in the account, it can use that money?

A. They can.

Q. It uses that money to invest in the markets and generate a return?

A. Yes, they do.

Q. Many bank accounts also have charges that are payable by

the account holder; correct?
A. Some banks, some markets, they depend on the market. For instance in the French market there are higher charges; UK market, lower charges.
Q. In practice, the revenue that the MIF scheme, the MIF rates generate just generically provides a very substantial revenue source to issuing banks, does it not?
A. It does.
Q. Merchants have no say in the amount of that revenue source, correct?
A. They do not.
Q. In 2006, for example, the figures suggest that roughly 1.5 billion in domestic interchange fee revenue had been generated for issuing banks by domestic MIFs in the EEA. Are you familiar with that figure?
A. I do not recall the exact figure, but it ...
Q. Could we look, please, in {RC-M1/3/4}. In paragraph 8 of this witness statement, which is Mr Tittarelli's witness statement from the Asda proceedings, he gives that figure. Can you see that?
A. Yes, this is what is stated here as the intra-EEA default interchange fee.
Q. Then circa 1.5 billion for domestic?
A. Yes, that is what it states.

Q. Mastercard has calculated that interchange fees typically accounted for around 30% of issuer's total card payment revenues in Europe; can you see that?
A. That is what the statement said, yes.
Q. That is obviously not dealing with total revenues in banks in Europe; that is simply revenue attributable to card payments, correct?
A. Yes.
Q. So it is fair to say a substantial source of revenue is also derived from card payment revenues that do not relate to the MIF?
A. Yes.
Q. Those card payment revenues would typically be for example the cardholder fees, interest payments?
A. Correct.
Q. Transaction fees?
A. Depending on the market. In markets like the UK where you have free banking, you have no consumers paying for the cards, you would have -- banks would have other revenue sources.
Q. Could we look, please, at bundle {RC-M1/4/8}, paragraph 30. This is Mr Keith Douglas's first witness statement. He is referring there to the way in which the acquisition of Switch led to rates being charged in a certain way. It says:

"Responsibility for setting default interchange fee rates remained with S2 Card Services ... S2's board was dominated by the major banks, some of whom -- for instance NatWest and Barclaycard -- were 'net acquirers'."

Now, back in the day in the United Kingdom, all of the issuing banks were also acquiring banks, were they not, so pre 2004, 2005?

A. Many were, yes.

Q. There was a no issuing without acquiring rule, was there not? No acquiring without issuing rule, if you want to put it the other way round?

A. Yes, correct, yes.

Q. So you had to do both to be part of the scheme?

A. Mmm.

Q. So in essence back in these days there was some pressure, was there not, to keep MIF rates relatively low because the net acquirers were resistant to higher interchange fees; that is what Mr Tittarelli says?

A. This is what the statement says, yes.

Q. Do you accept it is correct?

A. No, there will be a dynamic, between issuing acquirers and clearly what we have seen as a result in that market that Maestro was not a competitive product in the market and as a result of that, it lost market share.

Q. I am going to come on to the Maestro evidence you give in a moment. But a short point is that that evidence was not accepted by this Tribunal in 2016, was it? Your evidence on Maestro?

A. Yes, that is correct.

Q. Now, Mastercard also chooses, does it not, to keep MIF rates low when it is entering new markets? Could we look, please, at bundle {RC-J3/45/2}. What you are trying to do here you will see under "Luxembourg", three or four paragraphs down you are trying to target entry into Luxembourg and you want to position Maestro as a competitive brand towards Luxembourg issuers and what you are then there proposing is a reduction in MIF rates; can you see that?

A. Yes, it proposes that, yes.

Q. It is proposing that, is it not, because it needs to drive up acceptance rates from merchants?

A. Typically this and I do not know the full context of this proposal, but typically it would want to bring a competitive product to market and if possible if we wanted to strengthen the acceptance, it could be that it is a reduction of the interchange as it is proposed here.

Q. We see that at the bottom of page 2, do we not:

"As for Belgium ... the introduction of a lower rate for Low Value Payments transactions will enable the opening up of the acceptance ..."

Amongst certain effectively low value merchants such as kiosks, parking, bakeries etc?

A. Yes, correct. The scheme has the objective to grow the acceptance and the volumes and in this case specific rates are put in place to open up that acceptance, yes.

Q. What we have seen certainly since 2009 is a separation between acquiring businesses and issuing banks; is that right?

A. It has been a trend, yes.

Q. Therefore the countervailing pressure that a single acquirer issuer entity might bring to bear to keep MIF rates down has gone predominantly. If you have got independent acquirers from issuers, issuing banks are going to say: well, I am going to prefer my interests and acquirers do not have enough countervailing clout to do anything about it?

A. Yes, yes.

Q. Of course once you are into a market, and you have an established presence, and we know that Mastercard and Visa both have very significant established presence in the UK, there is no pressure to offer these reduced MIFs, is there?

A. We -- it depends on the objectives, sometimes for specific reasons there are new rates introduced, as for instance for contactless or low value payments as the example in Luxembourg, sure.

Q. In the period up until the Interchange Fee Regulation came into effect in December 2015, there was a trend towards increases in MIF rates year-on-year, was there not?

A. I do not agree with that. I think the interchange rates have decreased. Clearly this varies across different countries in different situations.

Q. Paragraph 22 of your first statement, page 7, {RC-F3/1/7} when I say "first" I mean in these proceedings, the Umbrella Proceedings statement, you see that it says there:

"Prior to the IFR, domestic default interchange fees were generally set at different [rates]."

You then describe the caps coming in.

Then in the last sentence, you say:

"As a result after the IFR, consumer domestic interchange fees were all harmonised to the level of the caps".

That is not strictly true, is it, because in Ireland, the debit rate is 0.1%?

A. There are some markets where the specific local situations, either local regulations or local agreements

in place where the rate is different.
Q. Are you aware of the specific Irish rate?
A. I am not aware of this, no.
Q. At paragraph 25.1, you maintain that the MIF revenues are essential for issuers. Why can issuing banks not cover their cardholder operations simply as a general cost of their business?
A. So issuers have multiple costs to deal with, as I have explained in my witness statement and depending on the market circumstances, they have other options to partially cover the cost. Cardholder fees is one of them that we see in some markets, interest rates in other markets like the UK. Cardholder fees are simply more in some of the continental markets, but interchange remains an important part of revenues and remains an essential part for the issuers to go into this business and issue cards and distribute.
Q. If a cardholder values having a card to pay for things you could expect the cardholder to be willing to pay money for that card, could you?
A. In some markets that is the case, yes. We have seen some markets where competition is that there is free banking it is very hard for an issuer to compete in the market and go out and get a charge for a card. In other markets where that is the custom, like for instance in

the French market, it is easier to do so, so it depends on the market context.

Q. We know for example that banks pretty much must offer their customers a debit card because otherwise the customer is not going able to use an ATM or to buy anything; correct?

A. Correct, that is correct.

Q. So that is just a standard cost to the business, is it not, of producing a payment card that can be used by a customer for banking transactions?

A. Yes, yes, I would say so, a debit card is a standard product. Clearly the services the bank provides around that card come with a cost and so the banks would not be able to cover these costs. They might change that product construct.

Q. You would not expect shops to pay for a chequebook issued by an issuing bank to its customer, would you?

A. There are markets where shops pay for receiving cheques, not that there are that many markets left for cheques, though.

Q. No. You are not aware of any rules in UK or Ireland where a merchant has to pay --

A. I am not a specialist for cheques in the UK unfortunately, no.

Q. Mastercard is essentially representing here, is it not, the interests of the issuing bank?

A. No, that is not -- that is not what we are presenting here.

Q. Right. You seek to compete to get more issuers on board by offering better interchange fees; that is what the -- that is what you are driving at, is it not, in 25.1?

A. Yes, we are saying that we do need to provide an economic model, we need to provide a competitive product for the issuers to be able to compete and win that issuing business, that is an important part of what we do. It is not the only part. We also need to have acceptance, we also need to bring innovation to our products.

Q. Let us be candid about this: your main competitor is Visa, is it not?

A. Absolutely, yes.

Q. Visa, as we know, has a substantial membership interest that consists of issuing banks; correct? The people who are members of Visa --

A. The customers of Visa.

Q. No, no, the people who are members of the Visa scheme are to a large part issuing banks?

A. Yes, issuing banks, yes.

Q. So you have got two competing schemes where the constituency that is benefiting is a constituency of issuing banks, so they are not going to be sad, are they, that each of you are vying to set higher interchange fees?

A. Clearly the banks would want to have a higher interchange fee to be competing in the issuing market but as I explained in my witness statement, there is also a balance on the other side, the merchant and the acquiring side.

Q. I am just wondering where that balance comes from because you are competing with Visa, you are competing on the basis that if we offer issuing banks more money they will issue more of our cards and we will therefore earn more scheme fees and Visa is doing exactly the same thing. So it is upwards only competition in terms of prices, is it not?

A. There is definitely a competition in that space and clearly there is an upwards drive in that space, yes.

Q. Now, I am going to turn to deal with your proposal for counterfactuals which I think you start addressing at around paragraph 25.3 of your first statement and you offer two potential counterfactuals, as I understand it: one is a unilateral model of issuer rate setting and the other is said to be a bilateral agreement with no default rules?

A. That is correct.

Q. Now, in fact we know, do we not, that previously Mastercard has explored other alternatives than a four-party system when looking at the fallout from the Mastercard I Commission decision?
A. That is correct.
Q. So could we look, please, in bundle {RC-M1/2/24}, and this is your first witness statement in the Morrisons case, in the litigation in the High Court, the Asda proceedings. We see in paragraph 84.1 that you were discussing the potential introduction of a fee based premium product where it said:
"The credit cards would not attract interchange on domestic transactions.
"Issuers would receive a distribution incentive based on total GEV ...
"The acquirer fee, based on a grid, aimed to take into account differences in merchant category and size ...
"Merchants would have a choice whether or not to accept the card although the Honour All Cards Rule would still apply when the product was used abroad ..."
So that was proposing, was it not, a -- what is described in paragraph 85 as a robust alternative to an interchange fee but you did not think it would be viable, did you?

A. No, it was, it was definitely a viable model. We did not go ahead with it, we also sought some feedback from customers on that as I think I included in my witness statement.
Q. At paragraph 87, you say:
"Alhambra was ultimately shelved in light of (a) the regulatory uncertainty that existed as a result of the EC's move to regulate interchange fees and (b) personnel changes within the management of Miles & More ..."
So as I understand the answer you have just given me you recognised that this would have been a viable option but for the situation at the time?
A. Correct.
Q. Now, you also considered, did you not, a Hybrid New Business Model or HNBM?
A. Can you specify what you mean with hybrid?
Q. Let us have a look, {RC-M1/3/7}. You will see there at paragraph 15 the Hybrid New Business Model is described. This is said to be the primary alternative to the interchange system that Project Forward focused on developing.
Then the formulation is given in paragraph 16, it says the model was formulated as follows, collect funds through an increase in the existing acquiring volume fee. That is an acquirer fee, is it, paid to the --

A. It is an acquirer fee, correct.
Q. With the increase being set to recover a share of any reduction in MIF flow.
Then 2, create a fund from these increased fees which would be used to fund the payment of financial incentives to issuers.
Then 3, leave room for commercial negotiation with both issuers and merchants in exchange for incremental business to Mastercard.
So that was a model that was put forward but the reason why that was not accepted was because of European Commission concerns about its -- effectively it was replacing the MIF or replicating the MIF. We see that at {RC/M1/5/8}. You see that this is the Commission responding to Mastercard's proposals:
The first option of a new reduced interchange was not acceptable.
The second option of substituting intra-EEA default interchange fees with domestic interchange was not acceptable because it was merely cosmetic without substantive merit.
Then the third option was the HNBM and it said Mastercard had not provided the Commission with sufficient details and therefore cannot eliminate the possibility that the formulas would be used to replicate

the MIF.

This was essentially saying, was it not, this is simply a device to give effect to a transfer of revenue from shops via their acquirers to issuing banks but with different clothing?

A. Yes, I see what -- what the Commission responded on the statement, yes.

Q. Because of that concern from the European Commission, you did not push ahead with the HNBM, did you?

A. We did not, no.

Q. You did however get so far as to pilot the model in Germany and the United Kingdom, as I understand it.

Could we look, please in Mr Lane's first statement, {RC-M1/7/6}. We see this is a fee-based model that is being trialled on a pilot basis, paragraph 18:

"The merchant continues to pay a Merchant Service Charge to the acquirer.

"The acquirer pays Mastercard an acquirer fee for merchant transactions. The acquirer fees would be differentiated ..."

So you have the sort of volume effect and then negotiated rebates.

Then incentives to the largest merchants with the high spend, so you get a rebate for high volume transactions being processed.

Then paragraph 18.3:

"Issuers would receive ... the incentive/distribution fee. This was essentially a fee for access to the issuers' distribution network and access to the cardholder."

"This fee would also be negotiable, with rewards/incentives for issuers who delivered high-spend."

You then said at 18.4 there would be no set flows between issuers and acquirers other than the transaction amount.

We see strict minimum spend requirements and premium cardholders paying cardholder fees to the issuer. Mastercard would however -- see 18.7 -- actively manage all financial flows.

So Mastercard is still involved, it is still a scheme but you do not have any interchange at all?

A. Correct.

Q. So that as a model is plausible and viable, correct?

A. It has not been put in place yet but this was the model we were contemplating, yes.

Q. Then paragraph 20, going back to the premium model, fee-based premium model, two pilots were set in place in Germany and the UK but the button was then not pushed on putting it into operation?

A. Correct.
Q. The reason why it was not proceeded with was two-fold: firstly we have already seen that the Commission was a bit nervous about this, correct, the incentive structure because the Commission was worried that it essentially replicated the transfer of funds from interchange?
A. It could be one of the reasons, yes.
Q. I think the other reason was that you would have to relax the Honour All Cards Rule for it to work. If we look, please, at {RC-M1/7/9}, we see UK management ultimately decided not to go ahead, paragraph 30, with the UK model. Firstly operating model complexity, limited time and resources to launch before legislation, contrasting views on the possibility/opportunity of relaxing HACR: Management were concerned that a change to the HACR in the UK would set a precedent not only for the rest of Europe but the rest of the world, then a lack of sufficient regulatory certainty.
So that was the reason why ultimately the UK did not press ahead with this model, correct?
A. That is what the statement says yes.
Q. You accept, do you not, that it is perfectly possible to have a default settlement at par scheme for a four-party payment scheme?

A. No, I do not.

Q. One possible example operates in Canada, does it not? If we look at bundle {RC-J3/111/38}, we see under paragraph 125, this is the New Zealand Ministry of Business setting out the Canadian -- its findings on the Canadian credit market:

"Canada also has a domestic ... card product, Interac, which offers online and contactless functionality (although acceptance is limited). Interac currently operates under an order issued by the Canadian Competition Tribunal which dictates that it must operate on a not-for-profit basis. This means that Interac only charges fees that are sufficient to cover its costs, and it has set its interchange fee at zero."

So that is an example, is it not, of a payment system in Canada operating with a zero MIF?

A. That is what it says here, yes.

Q. You are not in a position to dispute that, are you?

A. No, I am not familiar with the economical model of Interac.

Q. It is right, is it not, that zero MIFs is also being used in Norway and Denmark, do you know that?

A. In Norway I am aware of that, yes.

Q. Denmark?

A. I am not aware of Denmark, no.

Q. Are you aware that the Maestro debit scheme in Switzerland had a zero MIF?

A. I am aware, yes.

Q. In terms of Denmark please could we turn to bundle {RC-J5/18/53} and three substantive paragraphs down there is a paragraph that begins "Banning or setting low interchange fees", can you see that paragraph?

A. Yes.

Q. Then four lines, five lines after that it says:

"For instance, in Norway the absence of interchange fees for debit cards is accompanied by a very high level of card acceptance by merchants and usage. Denmark also has one of the highest card usage rates in the EU at 216 transactions per capita with a zero MIF debit scheme."

Then it refers to your Maestro scheme in Switzerland.

So it is perfectly possible, is it not, to have in place a payment scheme with a zero MIF?

A. These are also examples of schemes, particularly if you are thinking about Denmark and the Norwegian schemes, that have challenges to bring in innovation to the market. But yes.

Q. But they still maintain very high acceptance?

A. They maintain high acceptance. But if we are looking at new spaces like e-commerce, for instance, or contactless they typically have struggled to get into that space and have struggled to follow the consumers where they want to spend, yes.

Q. Who was it that introduced contactless technology?

A. International schemes.

Q. International schemes?

A. Correct.

Q. So Visa and Mastercard introduced contactless technology and you changed the MIF rates, did you not, to permit the soft landing of a new product in the market?

A. Yes, we adapted the interchange to enable these technologies to take up.

Q. Could we look please at paragraph 25.5 of your statement, you are there proposing a unilateral model along the New Zealand line. Now, that unilateral regime I would just like to establish what it would look like for your hypothetical world for Mastercard. Firstly, it would be based on a scheme rule, would it not? You would need to have a scheme rule dealing with this in the Mastercard --

A. Yes, there would be a rule to allow the issuers to set the rates, yes.

Q. We have not seen a drafted one, have you got to the stage of thinking this through so that you might have drafted something out?

A. No, I have not.
Q. This model would have a zero or default settlement at par zero MIF or default settlement at par as a basic underlying rule, correct?
A. Yes.
Q. Unless an issuer notified the scheme of a higher MIF that it wanted to charge?
A. Correct.
Q. Obviously if an issuer failed to apply to register a MIF then the consequence would be that issuer would face zero interchange fees under the model?
A. Correct.
Q. In paragraph 25.4, given what you suggest about incentives for issuers, it is likely, is it not, that all issuers would set a rate up to the cap save perhaps for bargaining with individual large merchants who had countervailing power?
A. I think that is realistic.
Q. The consequence of that would be that the scheme would necessarily set a price floor for the MSC at the level of the cap you are envisaging that all of the issuers will issue at this rate so that is going to be the prevailing rate in the market, is it not?
A. Yes, except for a potential few bilaterals that could exist in the market as well but I would expect most

issuers to set a rate at a cap.
Q. If that is right then that rate is operating as the bare minimum that will be paid by Merchant Service Charges by merchants?
A. Correct.
Q. Or Merchant Service Charges by merchants.
That in essence is the whole point of the rule, is it not, it is to preserve this transfer of revenue from the shops via the acquirers to the issuing banks so that you are providing issuing banks with an incentive to issue your cards?
A. The idea is to have an economic model for the issuers to be able to issue the cards and to do this in a way that is no longer based on a collective rule of setting the rate but here individual issuers can determine the rate.
Q. I am just looking at what your objective is because we have discussed earlier and whilst I do not agree with it it is your view that MIF revenue is a critical source of income for issuers?
A. Correct.
Q. You are very keen to continue providing issuers with this critical source of income, are you not?
A. Correct.
Q. The whole point of this UIF scheme is to enable you to continue to offer them the serious inducement of large

revenue streams so that they can issue your cards?
A. Exactly, correct, that they can continue to offer and cover the costs, yes.
Q. Under this model I assume that you would rely on the existing IFR to cap the level at which the cap could be set?
A. Correct.
Q. That does not apply to commercial cards, so the commercial card cap would have to be set by Mastercard?
A. Correct.
Q. For interregional MIFs, again not covered by the IFR, so that cap would have to be set by Mastercard?
A. Correct, yes.
Q. But your confident assumption is that all issuers would therefore set a rate, all issuers would issue a rate publicly, that set the rate at the cap?
A. That is what I would expect to happen.
Q. Exceptions to that, can I just explore what this would look like in your model. If a large merchant like Amazon said to Mastercard: I am not very happy with that cap rate, we want a better deal on Mastercard credit cards that are used for Amazon Prime products, for example, then you would do a deal with Amazon, would you not?
A. It could be that that is the case, yes.

Q. So you would be prepared to sanction a variation from this issuing model in order to take into account strategically important merchants?
A. Yes and the model also allows for bilaterals so an acquirer could make an arrangement with an issuer to make -- negotiate a specific rate, yes.
Q. I assume that Mastercard would not want to publish the individual rates that it was doing deals with individual merchants at because that would be commercially sensitive?
A. Correct.
Q. As a result of this, and we have just established that whatever the MIF rate was set at would necessarily establish a floor for the Merchant Service Charge, in reality the MIF rates that Mastercard was setting by way of cap would necessarily establish the floor for the Merchant Service Charge; correct?
A. Correct, yes.
Q. Now, in terms of interregionals, interregional fees now cover, do they not, transactions between EEA issuers and UK merchants following Brexit?
A. I am not involved in that any more in this point in time.
Q. Is the UK still in the --
A. No, it is not any longer.

Q. Following Brexit, Mastercard chose to increase its fees?
A. It could very well be I am not an expert since I am ...
Q. So your unilateral interchange model would still involve Mastercard setting the cap floor price for the Merchant Service Charge at the rate that was then applied to EEA transactions with UK merchants?
A. If you could repeat the question?
Q. We are dealing with transactions between cards that are being issued by EEA banks and merchants in the United Kingdom, so a French card being used in London at Marks & Spencer?
A. Correct.
Q. The MIF under your model that would apply to that transaction would have been set as a cap by Mastercard; correct?
A. Correct, yes.
Q. You have accepted that the consequence of that MIF is that it establishes a floor for the Merchant Service Charge that Marks & Spencer's acquirer would charge Marks & Spencer?
A. Correct, yes.
Q. Are you aware that the Interchange Fee Regulation has been revoked in this country but that revocation has not yet been implemented?
A. I am not aware, no.

Q. How would a cap be set for domestic MIFs if that revocation were brought into force? Just assume in my favour for a moment that there is legislation that says it is revoked but they have not brought it into force yet. Who is going to set the cap once the IFR is revoked in the UK?

A. If the IFR is revoked, it would typically be the schemes would set the rates with the IFR. Of course the IFR is a cap as such and issuers can set the rate independently up to the cap.

Q. But we have agreed, I think, that save for these bilateral deals with big merchants, the cap is likely to rule the roost, is it not?

A. Yes, the issuer will typically set the rate up to the cap that is allowed by the IFR.

Q. Are you aware that the New Zealand model of the unilateral interchange fee model was considered by the New Zealand legislature not to resolve competitive inefficiencies, are you aware of the New Zealand legislation?

A. No, I am not. No.

Q. Now, the alternative counterfactual you suggest is the bilateral scenario. You have referred at some point I think to bilaterals being used in the Maestro scheme; Is that right?

A. That is correct.
Q. Bilaterals in that scheme were subject to a recourse to arbitration, were they not?
A. Correct.
Q. There was a default rate set by Mastercard that applied for the interim period between the dispute on bilaterals arising in the arbitration and the arbitration telling you what the answer was?
A. For Maestro in UK it was not Mastercard setting the rates.
Q. Yes, I am sorry.
A. It is S2 board who set rates.
Q. The scheme was being run by S2?
A. Correct, correct.
Q. You understand that and it was S2 setting the rates?
A. Correct.
Q. S2 for the Maestro scheme basically applied a temporary MIF --
A. Correct.
Q. -- until the outcome of the arbitration?
A. Correct.
Q. The evidence is that that process usually led to bilateral agreements at the settlement rate. Are you aware of that?
A. Yes.

Q. Well, let us have a look, it is {RC-M1/2/12}. So this is part of your witness statement --
A. Yes.
Q. -- from the Asda proceedings. At paragraph 39, it says:
"It was my understanding from historic documents one of the main problems which caused Mastercard to lose competitive position were the rates were set too low. Under the UK Maestro scheme interchange fees were set by bilateral negotiation, however there was a fall-back interchange fee which was not historically set by Mastercard which applies in the event of disagreement pending the settling of a bilateral fee by arbitration. It was applied therefore on a temporary basis."
You can see that?
A. Correct.
Q. If we go, please, to {RC-M1/4/7}, paragraph 29, this is in Mr Keith Robert Douglas's evidence, he says:
"The domestic rules for Switch and Maestro provided that interchange fees would be set bilaterally between each issuer and acquirer pair. However, in the event that an agreement could not be reached, the level would be determined by arbitration with a default interchange fee applying in the interim. In practice, however, bilateral rates were generally at or around the level of the default rate since this was expected to be the

outcome of any arbitration."

Just on that point, the arbitration was an arbitration established under, presumably, the Maestro rules, was it?

A. I would assume so, yes.

Q. We do not have a copy of those rules, as far as I am aware. But in practice, it appears that the arbitration was not used. Do you know that?

A. I am not aware of that.

Q. Could we look, please, in bundle {RC-Q2/2/123}, this is part of the OFT decision that was subsequently set aside by this Tribunal but at paragraph 389 it has a factual statement where it says four lines down, paragraph 389:

"In practice because of the existence of the MIF set by MMF, the parties typically do not enter bilateral agreements to determine the amounts of the interchange fee and the mechanism for arbitration provided by MCE in the domestic rules is not used."

Who are MCE; is that Mastercard Europe?

A. Mastercard Europe, I would assume.

Q. The UK domestic rules that they footnote, footnote 350, the rules for arbitration were therefore set by the scheme itself.

A. This is what it says here.

Q. The bilateral model was also considered by Mastercard in the Mastercard I decision but that still involved Mastercard providing all the processing related services such as clearing and settlement calculation, did it not? Let us have a look, let us put it in context, it will be easier {RC-M1/7/14}.

Could we look, please, at paragraph 50 of Mr Lane's statement for the Asda proceedings. Mastercard considered encouraging domestic bank bilaterals, can you see the subheading?

A. Yes.

Q. "Mastercard would still provide all of the processing related services such as clearing and settlement calculation but the direct terms of dealing would be negotiated by each issuer/acquirer pair. We considered that this would be more robust in the face of the regulation since the interchange would be based on bilateral commercial negotiation and not centrally determined by Mastercard."

What put the kibosh on this, it seems, was when the interchange fee rate also applied to bilaterally negotiated interchange fees; correct?

A. Please can you repeat the question?

Q. Sorry?

A. Can you repeat?

Q. If we look at paragraph 52:

"The potential problems at the present time were that, with an Interchange Fee Regulation regulating rates, we considered that acquirers might not agree to pay a higher interchange than the regulated levels ... Also, a bilateral-based system would also be fairly complex to set up ... it would require a number of separate agreements ..."

Then 53:

"Ultimately this was not progressed because bilaterals were expressly included in the scope of the Regulation by the Recitals".

Correct?

A. Yes, if there is Interchange Fee Regulation, yes.

Q. Your third witness statement in the Morrisons case, this is {RC-M1/10/3}, at paragraphs 8-9, you say:

"It is certainly the case that four-party payment schemes based on bilateral agreements at a national level have existed and do continue to exist."

Just pausing there. Are you aware of any in the UK or Ireland?

A. No, I am not aware, no.

Q. You then say:

"I am not aware of any that exist in a market with competing schemes without a competitive permanent or temporary default interchange fee."

So you are saying in order to get these off the ground you need to have a default back-up in case the negotiation fails; correct?
A. Correct, because the issuer will have an incentive to increase in the negotiation the rate and so you have a default rate, or in case of additional default rate you have a cap by the IFR, for instance, that allows to, to come to a more settled rate actually.
Q. You then say in paragraph 9:
"Bilateral agreements alone without any form of support would not, in my view, work because of the uncertainty inherent in them both for existing issuers/acquirers pairs and new entrants."
Just pausing there, when you say "any form of support" you mean you need to have some default rule that will force one or other of the hands because otherwise bilateral negotiation by itself will not drive an outcome; is that fair?
A. Correct, yes.
Q. So you either need a default settlement rule at par, in which case essentially you are saying the acquirers are in the strongest position because they can simply say "no thank you"; correct?
A. Yes, they could say "no thank you" but then you might also have the issuing banks that say "no thank you" and

do not participate in the scheme.

Q. Or, if you set it the other way and you have a cap under the scheme --

A. If you have a cap or a default interchange rate, you have --

Q. The issuer can simply insist on that and bilateral negotiations will naturally default to that level; correct?

A. Correct.

Q. So this is not really genuine negotiation in the old-fashioned sense, is it, an issuer, an acquirer saying we will negotiate what we are prepared to pay because one or either of them will always fall back on the default rule in the scheme in order to generate an outcome to the negotiation issue?

A. You have markets where you have different rates but clearly in many of the cases you will see that if there is default interchange, typically the default interchange is what is used and that is the limited amount of bilaterals and if you would have a cap, interchange fee cap, that is what I would expect, because of the negotiation these are the rates to end up with.

Q. You also need the Honour All Cards Rule here, do you not, because otherwise people would be able to negotiate bilaterally for the lower cost cards and refuse to take the higher cost cards?

A. The Honour All Cards Rule plays a role but I would say that in this case typically it would help to bring either the new players, new issuers, smaller issuers and protect them. Because if you are a big issuer, you are HSBC, you come into the market, it is hard for an acquirer to refuse its cards. If you are a smaller one it is easier. So I do think there is a benefit for that role.

Q. Let us just take that example. Imagine you are a tech start-up and you have a payment scheme on a software app that runs on the rails of the Mastercard card, Mastercard say, "Delighted to have you on board, thank you very much for issuing our card digitally through a digital wallet"; that is a perfectly plausible scenario, correct?

A. Correct.

Q. So you welcome on board this issuer to the scheme and that issuer says: how am I going to generate market presence? So they rely on the innovation, they rely on the fact that the app is easy to use, correct?

A. They will also probably rely on the fact that if they issue a Mastercard that that is accepted everywhere their consumers go.

Q. Precisely and that requires the Honour All Cards Rule, does it not?
A. Correct, correct.
Q. Right. In your fifth witness statement, this is {RC-M1/14/6}, you give an example of a payment scheme providing differentiated payments. Could you look, please, at paragraph 20. So what was being offered in this German product, perhaps rather than unfairly taking you through a witness statement you may not have -- you probably have read it recently because it is your own witness statement, but could you just cast an eye over 20 and 21 and then I will ask you a question.
A. Yes. (Pause) Yes, I have read it.
Q. That is representing, is it not, an opportunity for differentiated pricing?
A. Correct.
Q. Where you can take the super-duper service and pay more or you can take a restricted service and pay less?
A. Correct.
Q. That is not a system that has ever been put in place, is it?
A. No, it has not, no.
Q. You say this sort of scheme would have been put in place if MIFs had been reduced to zero?
A. Correct.

Q. You might think that that scheme gives merchants more choice than the default rule scheme; is that fair?
A. It gives choice, yes, it gives less protection.
Q. Surely that is a more realistic counterfactual, is it not, than the redrafting of the scheme rules that your bilateral scenario would require? This is easier to implement?
A. No, I would not say this is easier to implement and I would also say this is typically an example of a scheme where you see no innovation, so forget about contactless, forget about the use of this scheme in the online world.
So it is a possibility if there would be a force to say you need to operate on zero interchange, yes, this is a model, but it is definitely not, I would say, the most preferred model if you want to have a vibrant ecosystem.
Q. If there was innovation that was leading to an enhanced service that a merchant would appreciate, then you would expect to see that in a differentiated pricing model for the interchange fee that is payable? So innovation would not be stifled, you could charge more for something you did that was --
A. Yes, but some of the innovations, let us take contactless, for instance, the issuer does not have

a possibility to say: I just give you contactless for this merchant and not for another merchant. You have to invest in equipping the cards, you have to invest in equipping the system. So there is broader ecosystem investments that you need to make to bring out that -- that technology. Same goes for online e-commerce and protection of -- fraud protection in services. So there are generally investments an issuer would need to recover. If they would not do that, they would not have a business model.

Q. When you introduced contactless you already said how you lowered interchange fees to help merchant acceptance of a new product?

A. A higher interchange fee for issuers that put in place contactless as well.

Q. Why would issuers have a higher --

A. Because they have a higher cost to issue a chip, that is contactless enabled.

Q. But the interchange fee that was initially set was set at a lower level to encourage merchant acceptance, it was --

A. It depends on the market. In many of the markets you have PayPass or contactless interchange that is a higher rate than basic chip rate.

Q. Now?

A. Yes.
Q. So what happened was when you brought it in, you offered a lower rate to get everyone to take it. Once you had got everyone to take it, you then upped the rates because you thought it was more valuable?
A. That is not true. We have markets where we have brought the technology where we exactly did it, as I have actually also put it my witness statement.
Q. Could we look, please, at paragraph 25.10, page 10 of your witness statement in the Umbrella Proceedings. You say bilaterals with no default rules would also have been a realistic alternative to default interchange fees and would have ensured the issuers could obtain the revenue stream.
    That is what we have discussed. You are confident that Mastercard would have put this in place rather than the default settlement rule.
    Clearly, on any view, given the way that you are competing with Visa, you would prefer to still offer substantial revenue fees to issuing banks; correct?
A. Correct.
Q. From --So when you say it is more likely to have happened, what you mean is it was a more commercially advantageous outcome from your perspective; correct?
A. I would say from us, but also for the broader ecosystem.

Q. But what you are not considering is how easy it would be to put this in place and the consequences of what it might entail; correct?

Settlement at par is a known option. You know you can do it, you know it is viable. The Supreme Court has held it is a viable system, so we put that to one side. That works; correct?

A. Well, I would not say that issuers necessarily participate in settlement at par. If they would have no revenue stream to compensate their costs I think there would be a real risk for the scheme, and then I think you would come back to other options like we have just discussed in the German model.

Q. In the Supreme Court it was common ground between Mastercard and the Claimants in that case that default settlement at par worked. It was accepted to be an acceptable way of structuring a scheme that would work; correct?

A. Correct.

Q. Now, this bilaterals scenario you posit, you say no default rules. Can I just chase down exactly what you mean by that?

A. Yes, I would say that this, the idea here is that you come to a mechanism to allow the issuers to have revenues to invest and to compensate their costs by making bilateral agreements. There is no collective rule to put that in place, so issuers and bilaterals would, for instance, practically they would get a certain period, typically we give in the UK market six months to adjust to a new regime. So they would have six months to enter into bilateral agreements between issuer and acquirer.

Clearly, this is possible because there is an interchange fee cap. So I would expect that negotiation to be actually quite straightforward to happen over six months. Then they would notify these bilaterals to Mastercard who would implement them in the system.

Q. Now, you would still have required merchants to accept Mastercard cards, would you not, otherwise you would end up with a payment system that you did not think would work properly?

A. Mastercard cards hopefully would be accepted. Merchants are not forced, but can do that, yes.

Q. You would still have the Honour All Cards Rule, would you not?

A. Yes, the Honour All Cards Rule would be still part of that.

Q. This would not work, would it, if the Honour All Cards Rule was not in place?

A. I think it would land in more or less the same place.

I do not see there would be a big difference.

Q. Let us just explore that, if we may, for a moment.

Surely if I am a big shop and I am free to say I do not want to take platinum cards but I will take the standard Mastercard credit option, that would lead to premium cards not being put in place; correct? They would not be accepted by large merchants because large --

A. It depends on what are the costs agreed in the bilateral between the acquirer and the issuers, and hence what the costs would be that the acquirer charges the merchants for this.

If they would be negotiating in this case with IFR cap in place, for instance for a credit card, I would expect them to land at, for instance, 30 basis points if that would be the cap.

Q. What if the merchant says I do not want to pay 30 basis points for accepting a platinum card, I want to pay less, which, on the Honour All Cards Rule, if that has gone then they are free to do that, are they not? They are free to say I do not want take those cards?

A. Sure, sure. They could indeed only take a part of the card. But if you are a merchant and you have the consumer in your shop and you have the choice to do business for a small fee of 30 basis points, my case is that the merchant will actually take that business.

Q. Well, Amazon, when they had the dispute with Visa over Prime, decided to say that they were not going to take credit cards from Visa full stop?

A. But they did not do it.

Q. They did not do it in the end because they negotiated an outcome that was better for them; correct? As far as we know.

A. I do not know. But they did not stop accepting the Visa cards.

Q. So what you would see if you did not have to accept the full range of Mastercard cards would be that a large merchant would have an option to say to their merchant acquirer we are simply not going to take those cards?

A. Yes, I accept the rule would be a way the merchant could have more choice to accept even, within cards, accept this one or that one, but I think that would be a challenge. It would be especially a challenge, as I mentioned, for the smaller banks because the merchants could refuse the smaller banks and then the big banks they will not refuse, and would also be a challenge for more innovative products because it is very hard as a bank to bring a new product out in the market and not know if your merchant is going to accept the card.

Q. Surely if you are bringing out a new product in the markets, you are a new issuer, you would be prepared to do a deal with an acquirer to encourage acceptance by having lower interchange fees agreed bilaterally with large merchants as a way of getting your product into the market?

A. Not necessarily. You also need to recover your costs for your new products as well.

Q. The tech start-up that has not got any market presence would need to offer as low an interchange fee as it could in order to guarantee maximum card acceptance; correct?

A. Yes. Exactly. It would be, it would be much harder for that tech start-up to bring out a new product and get it to scale, because it cannot count on the fact that he knows that the merchant is going to accept the card.

Q. So that would introduce into the market a set of card transactions in which the MIF was below whatever the rate was set by bilaterally by reference to the interchange fee cap?

A. Yes, that could happen. But also what could happen is that there would be less of those innovative players coming into the market to actually do that, because there is a lot of risk associated because you do not know if you are going to get acceptance.

Q. If you are a large merchant like Marks & Spencers and

you have a tech start-up coming to you, you could do a deal. Mr Steeley was very clear he was open to deals, and if you are doing a deal then the parameters of the negotiation change, do they not, you can have a choice?
A. Yes, yes, there would be more choice then.
Q. So that choice would lead to competition in the market; correct?
A. I would -- I am not sure that that would be the outcome, because there would be more uncertainty in the market as well and would also (inaudible) economic model. More uncertainty, less economic model, and that typically does not drive innovation.
Q. That uncertainty would mean that nobody would know who was going to set what rate, so there would be genuine uncertainty in a competitive market; correct?
A. Well, I would say the backdrop is that we still have a cap at IFR and you would still have the issuer negotiating for the rates.
Q. But once you remove the need for merchants to accept all Mastercard credit cards you are in a world where individual negotiation is possible on different terms which would not necessarily be at the rate.
A. I think it is very unlikely that if a new player goes to an issuer and says -- or a merchant goes to an issuer that they would actually go first and say, hey, I am

going to give a special deal to this merchant. I am not sure that is going to happen, because they are also competing in the issuing space with the other banks. So they need to be sure that they have a competitive product. If they give away part of the value they can have a less attractive economic model.

Q. It is entirely foreseeable, is it not, a new digital wallet entrant running on the rails of a Mastercard credit product would be able to go to large merchants and partner up with a large merchant and say: if you advertise us as a new payment method, innovating round the edges with a splash screen on the app page and links to shopping retail links and a dedicated link to Marks & Spencers you can imagine innovation around the edges where that would be a popular product in the market?

A. Yes, and who would be the issuer.

Q. The issuer would be --

A. Because the issuer --

Q. -- the digital wallet provider.

A. Okay. So the issuer would also -- okay, if the wallet provider would be the issuer in this case they would need also to be competing and they would be competing in a market where you have part of the market, the banks, operating at an economic, for instance, higher because they do not have to deal with the merchant, and then they have this new issuer which has a business model that can operate on the lower economics.

I think it is -- I am not sure that is going to play out very well.

Q. The point I am putting to you is that in order to stop competition in the market developing in a way that drives down the interchange fees below the cap, you have to put in place the Honour All Cards Rule so that all issuers are treated the same, do you not?

That is the only way you can guarantee the level of interchange revenue that is going to be given through the interchange process to the issuing banks?

A. No, I think there is an opportunity to negotiate separate rates. I think the Honour All Cards Rule helps to guarantee if you bring a new product to market that it is accepted.

Q. Going back to your bilateral agreement, no default rules, the default rules you are talking about there are a default interchange fee rate; is that right? Is that the no default rule you are talking about?

A. Yes, the fact that you have to settle at a, at a default interchange rate, yes.

Q. You would still have to have a clearing and settlement process, would you not, as a scheme?

A. There would be a process, yes, that participants could

use or not use, yes.
Q. If you did not have a clearing process and a settlement process coming centrally through Mastercard, you would not have a Mastercard scheme, would you?
A. No, you can clear and settle with other providers, you do not necessarily need to use Mastercard, particularly in a place where you have bilateral agreements.
Q. How would you end up being able to control payment transactions if none of the parameters for the payment transaction comes through Mastercard?
A. But if there is a bilateral agreement between the issuer and the acquirer, they could choose to process that in a different way.
Q. So if --
A. It is not Mastercard setting the rates, it is -- here we are in a rule where the issuer and the acquirer have an agreement and they could choose to use Mastercard to process that and execute that, they can also choose not to do so.
Q. So we are dealing here with -- as I understand it, you are not talking about the bilateral arrangements directly with the merchants whereby the merchant gets a strategic rebate?
A. I am talking about the bilaterals between the acquirer and issuer, that is the interchange bilateral.

Q. So we have a merchant acquirer like Worldpay, and we have an issuer like Lloyds, for the sake of argument, and what you are suggesting is that Worldpay would agree with Lloyds that they would take all of their card payments away from the Mastercard processing and settlement system and just do it between themselves?
A. I am not suggesting that they need to do that. I am just saying that that is -- that could be an option.
Q. But then they are not using the Mastercard scheme at all?
A. The scheme and the processing are two separate things. You can process and -- through a third party and still apply our scheme rules.
Q. Perhaps we just need to explore this a bit more. When you are talking about clearing and settlement, can we just look at perhaps some of the old Maestro rules and pick it up at bundle {RC-J3/10/407}. These are the old rules for settlement. If we look in clause 10.1.1 there was an obligation to have a settlement account. Can you see that?
A. Yes.
Q. It said:

"Each member must open a settlement account at the central settlement bank designated by Mastercard Europe."

So the way I understand this, and tell me if I am wrong, was that each member would have their own settlement account; correct?
A. That is what it says, yes.
Q. That would be both an issuer and an acquirer?
A. I would assume so, yes.
Q. They would be the account holder for this central settlement account; correct?
A. Yes.
Q. The central settlement bank would be designated by Mastercard Europe for both of them; is that right?
A. That is what it says here.
Q. Mastercard would not be that bank, would it? Mastercard is not a bank.
A. No, we are not a bank, no.
Q. So Mastercard would have its own bank, I do not know, Barclays, pick one of the big five at random.
So Barclays would hold settlement accounts for both Lloyds and Worldpay when they were settling into the Mastercard scheme; is that correct?
A. That could be an example, yes.
Q. The actual transfer of funds would be from account to account in accounts both held by Barclays; is that right?
A. I am not a settlement expert but I can imagine that it

could work like that.
Q. Okay. Well, we had this yesterday. Who is the settlement expert amongst the five witnesses that I am able to cross-examine in these proceedings?
A. I am not a settlement expert.
Q. No, I know you are not, you say you are not. Who is? Who is, out of the five people? You are, as I perceived it, I am afraid, for better or worse, and I mean no discourtesy to any of the other witnesses, I thought you were the main witness, because you are in the position of having settled the five witness statements in the Asda proceedings and you are here again today. You have not got out for good behaviour yet.
So we are in a position, are we not, where I have to cross-examine you on the big ticket items? Is there a colleague of yours you would rather I directed these questions to who is going to give evidence?
A. I am not aware of that.
Q. Okay. Well, I am afraid I am going to have to do it with you then. I am sorry about this. It is painful for both of us, if that is any consolation.
Could I ask you, please, then how this would work? So essentially an acquirer, a merchant acquirer, has merchants. Let us just break this down.
A. Correct.

Q. Go through this from bottom up. The merchant has a series of transactions with customers during the course of a day, which, I do not know, 2,000 customers pay with a Mastercard credit card and those transactions represent payment to that merchant of the goods that the customers are buying; say, 2,000 sales transactions in a store. What happens at the end of that day is that the merchant prepares a batch file of transactions which go to the merchant acquirer; correct?
A. Yes.
Q. The merchant acquirer, there is an authorisation process, which I am going to --
A. That is separate, yes.
Q. That batch file of transactions represents the money that the merchant wants to be paid, and the central acquirer then submits that batch file to Mastercard for processing; correct?
A. Yes, that is correct.
Q. Or settlement and clearing?
A. I can imagine that it would work like that, yes.
Q. Say that there are five issuing banks whose cardholders have made those 2,000 transactions, you are then in a position where Mastercard can work out which of the issuing banks owes that merchant how much money --
A. Correct.

Q. -- via the central acquirer?
A. Mmm.
Q. What Mastercard does is it knocks off competing entries; correct? So, flows of funds going either way, which is the clearing process, and it then comes up with a settlement figure for money that has to be paid by a given issuing bank to that merchant via the merchant acquirer; correct?
A. That is what I would imagine happens, yes.
Q. That is a net settlement process. So if, for example, for some reason rather than it being Worldpay, which is not an issuing bank, it was Barclays, which is an issuing bank, you might have flows of money going both ways; correct?
A. That could be, yes.
Q. So Mastercard ends up with a given figure that is owed by a given issuing bank to a given merchant via the --
A. Acquirer.
Q. -- merchant acquirer?
A. Yes.
Q. Mastercard then says to the issuing bank this is how much you need to pay; correct?
A. I would imagine that, yes.
Q. If we look at page 408, there was under the Maestro rules an exceptional clearing and settlement procedure

which, on an exceptional basis, allowed for clearing files to be exchanged directly between members.

Now, I infer from that that the end-of-day files that a merchant acquirer is receiving from a given merchant could then be sent directly to the issuing bank; is that right?

A. That is what I understand, what it says yes.

Q. But that was exceptional and it was in the Europe region, and it was dealing, I think, with intra-European transactions only; is that right?

A. This is what this paragraph says.

Q. So this is not dealing with the domestic situation?

A. This paragraph covers indeed intra-European transactions.

Q. If we have a look at the modern rules, they are in bundle {RC-J3/130/180}. Tab 130, please, page 180. I hope I have got that right. Thank you very much.

So we see under rule 8.2, "Net Settlement":

"A customer that uses the interchange system for the authorisation and clearing of transactions is required to net settle in accordance with the corporation's settlement standards."

Can you see that?

A. Yes.

Q. So if you are relying on the Mastercard system to obtain authorisation for a transaction, and you are clearing the transaction with Mastercard, then Mastercard requires that there be net settlement from the issuer to the acquirer; can you see that?

A. Yes.

Q. The exception is in the next paragraph where it says:

"However, an acquirer and an issuer may, with respect to a particular transaction, agree to settle directly between themselves pursuant to a bilateral agreement."

When it says a particular transaction, what is that dealing with?

A. I am not the expert in these rules. I could not comment on that.

Q. Could we then, please, look at clause 8.3 on the next page {RC-J3/130/181}. It says:

"A transaction settled between customers gives rise to the payment of the appropriate interchange fee or service fee, as applicable"

I infer from that, and tell me if I have got this wrong, that that relates to every individual transaction between a given cardholder and a given merchant, because it is on every single transaction from a cardholder to a merchant that an interchange fee becomes payable; correct?

A. Yes.
Q. So what is envisaged, at least on the face of these rules, is bilateral agreements in relation to a on a transaction-by-transaction basis. How many transactions would that involve on a daily basis for the Mastercard scheme?
A. Millions.
Q. More than millions. Billions perhaps?
A. Sure.
Q. On a given day?
A. Mmm.
Q. That is not viable, is it?
A. Excuse me, my screen is not very stable. Okay. Now it is back.
THE PRESIDENT: Yes, it has gone back.
A. Okay, it is back.
MR BEAL: That is simply not viable, is it?
A. In this form it seems hard to operationalise. I do not know if there are easier ways to do this technically.
Q. Could we look, please, at page 287, {RC-J3/130/287} because of course this is subject to the rules for the European region, so it is important to see what they say.
This is dealing with net settlement. 8.2.2 we are dealing with settlement messages. Now, of course the

way that the batch files get transferred into Visa and the way authorisation is dealt with relies on an underlying financial institution infrastructure, does it not, such as SWIFT messaging, secure messaging being used between financial institutions to direct payment transfers; correct?
A. I think you mean Mastercard and --
Q. Sorry.
A. I am not -- I am not the expert how it technically would operate, but I assume these batch files would be transferred in a secure way, yes.
Q. We end up with a position where messages are going into the Mastercard system, messages are coming out of the Mastercard system and the Mastercard system is directing payment transfers between the settlement accounts held at a bank that we have seen, and that is the way it works, is it not?
A. Yes, that could be the way it works, yes.
Q. These rules then say:

"Customers' net obligations are calculated by the corporation's proprietary small value clearing systems ..."

Just pausing there, the corporation, i.e. Mastercard, has its own small value clearing system. Can you see that?

A. No, unfortunately my screen is blank. Now it is back.
Q. That is in contrast, is it not, to the very large clearing systems that operate in the UK by LCE and so on, centralised clearing counterparties, CCPs, London Clearing House etc?
A. I could not comment on that.
Q. You do not know?
A. Apologies.
Q. It then says:

"... financial messages [are] submitted by the customers to the interchange system."

It says how you can modify them subsequently.

Then it says:

"The corporation subsequently creates instructions reflecting each customer's end-of-day net obligations. Customers are required to effect funds transfers in accordance with these instructions, which result in the assumption or discharge of payment obligations between customers."

Now, if somebody were to default on that settlement obligation, heaven forbid, Mastercard would pursue the defaulting party, would it not, for failure to pay?
A. I would assume so, yes.
Q. We then see details of the interchange fees are set out in the settlement manual; correct?

A. Yes.

Q. I assume that that settlement manual does not have any direct relevance to this case because it has not been disclosed except for seven pages, and if we could look at those seven pages, please. That is at {RC-R/23/1}.

So if we look, skim through what this excerpt shows, and I am assuming this is the only relevant part of the services fee manual otherwise it would have been disclosed to us. It deals with bilaterally agreed fees and that provides a mechanism by which, if there is exceptionally -- indeed, so exceptionally we are not aware of any in the UK -- if there is a bilaterally agreed fee, it can be plugged into the Mastercard system. Is that a fair way of putting it?

A. Yes, correct, yes.

Q. Now, we do not have the wider settlement manual so I am assuming there is nothing in the settlement manual that will help us on this particular issue that you are aware of?

A. Not that I am aware of, no.

Q. So in other words within the Europe region there are rules established, are there not, to require the centralised clearing and settlement of payment instructions through the Mastercard system?

A. I think that is what the rules said, yes.

Q. I hope that is what we have established. Of course, if that system did not exist Mastercard would have no control over the payment transactions, would it? You would not be able to provide the authorisation to the issuing bank to direct the certain sum of money to go to the acquiring bank, the merchant acquirer?

A. Yes, it needs to operate in way that ultimately the two parties get settled and trust that they get settled.

Q. What happens if you have a bank that is both an issuer and acquirer, like Barclays or Lloyds, and they have on us transactions, do those come through the Mastercard scheme as well?

A. I am not the expert, but I do not think they need to come through the system, yes.

Q. Well, they may not need to but do they choose to come through the system?

A. Some do. Some do.

Q. They obviously do not pay -- I am being reminded that I need to give the transcriber a break, so this will be the last question before I invite the Tribunal, with the Tribunal's permission, to take a short break.

On us transactions do not bear an interchange fee because there is no interchange; correct?

A. That is in most cases, correct.

Q. I am assuming that if they are using Mastercard cards,

you would rather they use the Mastercard system for clearing and settlement purposes otherwise you do not know the transactions are going on, do you, so you cannot charge scheme fees?
A. Correct, yes.
Q. Otherwise you cannot charge for the use of the Mastercard brand?
A. We can. Mastercard brand pricing and the way that is collected is different. It does not necessarily need to be processed. You might know that many of the transactions on Mastercard cards are not processed by the Mastercard system.
Q. So they would be processed elsewhere but an interchange fee is still currently due?
A. Not --
Q. Not for a --
A. Correct.
Q. -- for everything else.
A. Correct.
MR BEAL: I am going to take a break there, with the Tribunal's permission.
THE PRESIDENT: Yes, of course. How are you doing, Mr Beal?
MR BEAL: Well, I am getting there. I am getting there. It is taking a little longer than I had hoped.
THE PRESIDENT: That is understood.

MR BEAL: Part of the problem is, as always, I am dealing with something that has not actually been covered in the witness statement.

THE PRESIDENT: No, I understand. We will see how we go.

Just so that you are aware, I will have some questions for the witness. I suspect we all will.

MR BEAL: I am hoping that the 10-minute break will enable me to streamline.

THE PRESIDENT: There is no criticism at all. This is very helpful material so carry on as you consider best.

We will rise in that case for 10 minutes.

(11.28 am)

(A short break)

(11.40 am)

THE PRESIDENT: Mr Beal, just before you resume just a point of information, Mastercard should know, you probably already have it, but the CPR rule 32.12 order has been made. We have got copies in court if you need it, but just so that you know that that is --

MR COOK: We are grateful, sir.

MR BEAL: Mr Hirst, just as a point of information, can attend at 2 pm tomorrow. So we are hoping to fit him in then.

THE PRESIDENT: I will leave that to the parties to sort.

Back to the questions.

MR BEAL: Yes.

You considered bilateral negotiations between large acquirers and large issuers in the UK when dealing with the fallout from the OFT investigation. When I say you, I mean Mastercard, not necessarily you personally.

Can we look, please, at bundle {RC-J3/10.1/1}. If we look at page 1, it is identifying the setting up of bilateral agreements between the largest UK acquirers and issuers in case of a negative decision from the CAT. Strengths are it would allow you to keep an interchange fee, I think, for PL cards. What are PL cards?

A. Pay later cards, I would say, credit cards -- sorry, my screen.

Q. It gives an:

"Opportunity for new joiners to issue credit cards ..."

Weaknesses are:

"How to persuade members to enter into such a bilateral agreement and to issue 'white label' cards (especially for those who are net acquirers ..."

Central acquirers, it is said, would benefit from a competitive advantage versus UK acquirers.

So, clearly you were worried that Barclays as a net acquirer would simply not agree to this system; is that right?

A. It is indicated as a weakness here, yes.
Q. You were worried that cross-border acquiring would become more attractive, thus driving down interchange fees at a domestic level; correct? (Pause)
Central acquirers, it says, would benefit from a competitive advantage. According to MC rules, domestic IC applies for central acquiring. So if the domestic interchange fee comes down to zero, then central acquirers can come in and charge zero; correct?
A. Yes, that is what it says here.
Q. Now, in Ms de Crozals' witness statement, which you have read and endorsed in part, at paragraph 22, that is {RC-M1/13/7}, she suggests that in the post-IFR world acquirers and issuers could agree bilateral agreements in advance.
The difficulty with that suggestion, is it not, is how would an acquirer know what a merchant was willing to pay in advance?
A. Well, I would, I would imagine that the acquirers and merchants have relationships and terms of contract and they set them out for a certain amount of time. So if that changes they would renegotiate them, change them, similarly as all negotiations.
Q. An acquirer that was an on us acquirer, so issuer and acquirer together, would be able to offer a lower rate

than an acquirer that was independent of an issuing bank; correct?
A. Yes, they could for on us card, yes.
Q. So an acquirer would not know in advance at what rate to set without having buy-in from merchants that they were offering the best deal?
A. I am not sure I follow that, sorry.
Q. So an acquirer is trying to do a deal with a merchant, but according to Ms de Crozals what should happen here is that the acquirer should have already done a deal in advance with an issuer as to what they are prepared to charge.
What I have just put to you is that an acquirer that is also part of an issuer would know what they can charge because it is a single entity. An acquirer that is not part of issuer would not know if that rate is going to be undercut by the single entity?
A. Correct, correct. But the acquirer would need to -- if it is one issuer that is part of themselves, so they are one entity, they would also need to deal with all the other issuers in the market.
Q. Yes, but they may take the view that in order to drive acquirer acceptance so that they clean up in the acquiring market, they would undercut the market rate?
A. Yes, yes.

Q. Therefore, trying to agree something in advance is going to be very difficult for an acquirer, is it not, because of this uncertainty, this competitive uncertainty?
A. I would think that they would first negotiate the acquiring and the issuer rates, the bilaterals, and then they could have a basis to negotiate with the merchant; that is that.
Q. If you have already agreed that you are going to pay 0.3% for a credit card --
A. Correct.
Q. -- you go out to the market and the merchants say why am I paying you 0.3%, Barclays, through Barclaycard, is offering me 0.25% for credit cards, they have no business, that acquirer has no business?
A. Yes.
Q. Now, the reality is, is it not, that the whole purpose of this rule on bilaterals that you are proposing is to enable the issuer to try and set at the level of the cap for the most part, that is the objective behind this bilateral counterfactual that you are advancing?
A. I think it would end up at that rate, yes.
Q. Are you aware that the threat of merchant non-acceptance has prompted Mastercard in the past to change its pricing plans? Can you think --
A. Yes.

Q. -- think of a situation with Sainsbury's, for example? Tesco, sorry, and Sainsbury's?

A. I am not specifically aware of those, but I can imagine situations where that could be the case, yes.

Q. So the scheme has been prepared to offer bespoke deals to strategic merchants?

A. That could be the case. I was not involved in those.

Q. Can we look, please, in bundle {RC-J5/24.01/158} at paragraph 245 of this Tribunal's decision in the Sainsbury's matter. It says:

"Mastercard developed strategy to increase its market presence in the debit market through the creation of a new product ... Mastercard initially set a combined ad valorem and fixed fee interchange fee structure."

It then refers to chip and pin and so on. It says:

"A number of major UK retailers refused to accept any fee structure containing an ad valorem rate. As a result of the difficulty gaining acceptance, in the course of 2007 Mastercard switched to a flat, per transaction, fee for debit Mastercard transactions."

So that was the scheme responding to lack of merchant acceptance by lowering its rates; can you see that?

A. Correct, yes.

Q. Now, I am going to move on to the Central Acquiring

Rule, and I can make this substantially quicker by clearing the air in this way. You have referred throughout your witness statement to a series of regulatory decisions. Do you remember that?
A. Yes.
Q. You have characterised those regulatory decisions in a certain way, and rather than test your patience and, indeed, the patience of the Tribunal as a matter of law I am telling you why we disagree with those, I simply want to hit the headline points on where we end up with these decisions. Do you understand?
A. Okay.
Q. So the first one is the Mastercard II decision dealing with the Central Acquiring Rule. The consequence of this, was it not, was that Mastercard was fined a substantial amount of money by the European Commission?
A. Yes.
Q. You had to change your Central Acquiring Rule; correct?
A. Correct, yes.
Q. That reasoning, about the Central Acquiring Rule, was objecting to the impact of that rule on that market at the relevant time?
A. Mm-hm.
Q. Is there any reason that you can think of why that

objection to the structure of the rule would not apply equally to the period before 2014?

A. I am not sure that -- I am not a lawyer, so I cannot argue it in -- from a legal perspective, but I do understand the need for the rule also before 2014, because we -- and I can go into --

Q. The rule did not change, did it, between, say, 2007 and 2014?

A. No, no. It did not, no.

Q. The reasons that the Commission gave, let us have a quick look at them to put it in context. It is {RC-J3/73/96}. So this is in the Statement of Objections, not in the final decision. But we can see at recital 320 the matters, the factors that the Commission is taking into account when deciding that it does not like this rule. Correct? What the Commission say is that when doing so, when having this acquirer other than in the merchant's country:

"... the acquirer is obliged to ensure that it does not disadvantage the merchant, the cardholder or the issuers in the country of the merchant and must, unless it has concluded a bilateral agreement ... apply the applicable domestic MIF in the country of the merchant."

So that basically constrains the pricing options, does it not, of the acquirer based in a different member

state than the member state of the merchant?
A. That is what the Commission statement says, yes.
Q. That rule in the abstract was the rule that the Commission did not like, and that rule applied throughout in substance. Are you aware of that?
A. Well, I am aware that the Commission did not object for many years, until 2019, to the Central Acquiring Rule for Mastercard.
Q. But the reason it did not object until -- well, it did. This document is from 2015, so it clearly objected before 2019.
What did take place in 2018 was that you submitted a settlement offer to the EU Commission, did you not? That is {RC-J5/30/7}. This is part of the European Commission decision in Mastercard II, and if we look at recital 10, it says:
"On 3 December 2018, Mastercard submitted a formal offer of co-operation ... acknowledging that its cross-border acquiring rules amounted to a decision ..." that infringed Article 101.
Can you see that?
A. Yes, I see that, yes.
Q. That was effectively four and a half years after Visa had entered into its commitments arrangements with the European Commission for its cross-border acquiring rule;

correct?

A. Correct.

Q. At paragraph 43 of your statement, can I just make sure I have got this properly understood, you seem to suggest in paragraph 43, page 20, that if the CAR had not existed back in the day prior to 2014, you would have directed all domestic MIFs to be harmonised to a given level; is that right?

A. Yes, we wanted to ensure we would not lose our issuing business, yes.

Q. Everywhere in Europe everyone would have been paying the same price for the transactions on a MIF basis?

A. Yes, it would have lowered -- it would have raised the rates in low countries to make sure that, for instance, in an important market like the UK that we would be competitive from an issuing perspective, yes.

Q. So you will have had a coordinated price increase in any market where there was a lower MIF available?

A. Yes.

Q. Paragraph 44, are you saying that you consciously chose not to follow Visa's example because you thought it gave you a competitive advantage for the issuers, competing for the issuers?

A. Excuse me, can you repeat the question? I was reading my statement here.

Q. At paragraph 44 you say this would have resulted in lower MIF countries adopting a higher MIF.
A. Correct.
Q. This would most likely have been done by Mastercard increasing rates. Any particular domestic interchange that could not be increased due to national regulation would have been excluded from the adjustment process.
So in essence, you would have tried to keep the MIFs as high as possible precisely because that would generate greater MIF revenue for the issuers; is that right?
A. No, it will be to protect the issuing business in the market, in particular in the UK market, if we would not have done that and central acquirers would have lowered the interchange that issuers in the UK market could get on Mastercard branded cards, then we would expect the issuers to choose another brand and flip our cards, and would result in losing our business in the market.
Q. At paragraph 49 you refer to the modification to the Central Acquiring Rule in December 2015, and that was to comply with the IFR; is that right?
A. Correct.
Q. You there say {RC-F3/1/21}:
"... I do not consider that Mastercard could have operated without the modified CAR after December ... To

do so would have allowed central acquirers to export low domestics MIFs from countries where the national government had decided to set a lower cap than the IFR ..."

One example of that lower cap is the Irish 0.1% debit rate, is it not?

A. Yes, that you mentioned.

Q. So the purpose of the CAR as implemented by Mastercard post December 2015 is to keep acquirers in Ireland from offering cross-border the lower 0.1% debit rate?

A. The purpose of the rate is to make sure that we have competitive playing fields in the UK market with the acquirers, and of course that we protect our issuing business for the same reasons as we had before the IFR.

Q. Now, in terms of the Honour All Cards Rule, I think we have already had a fairly detailed discussion on that. What I am going to suggest to you is in a number of regulatory decisions, the European Commission has launched a sustained critique of the Honour All Cards Rule. Are you aware of that?

A. Historically, yes. I also am aware that they are in some way retained in the Interchange Fee Regulation.

Q. Well, the Honour All Cards Rule is only retained, is it not, to the extent of the honour all issuers rule?

A. The honour all products rule as respect to the prepaid debit and credit categories that are regulated by the Interchange Fee Regulation.

Q. On a category-by-category basis?

A. Correct, which is quite largely similar as Mastercard had in place.

Q. Are you aware that the Interchange Fee Regulation at recital 14 states expressly that it is not determining the position under Competition Law?

A. I am not aware, no.

Q. Not aware, fine.

At a number of points in relation to these rules, you say, well, of course it would be not acceptable for one to apply to you and one to apply to Visa. That disappears, does it not, if a rule is unlawful for you it must be unlawful for Visa? It necessarily follows, does it not, if the rule is substantively the same?

A. I would imagine so.

Q. In terms of the non-discrimination rule, can we look, please, at bundle {RC-J3/69/79}. That states that:

"A merchant must not engage [at 5.9.1] in any acceptance practice that discriminates against or discourages the use of a card in favour of any other acceptance brand."

Can you see that?

A. Yes.

Q. That rule still exists if we look, please, at bundle {RC-J3/130/115}. Under 5.12.1:

"A merchant must not engage in any acceptance practice that discriminates against or discourages the use of a card in favour of any other acceptance brand."

Can you see that?

A. I see that.

Q. At page 26 --

A. It also says modifications appear in separate --

Q. So that is at page 267.

A. Okay.

Q. We see that discrimination provision at the bottom of the page, 5.12.1 {RC-J3/130/267}. That simply says in the second paragraph:

"A merchant must not be prevented from expressing a preference for the use of the Mastercard or Maestro payment application."

It does not otherwise qualify, does it, the fact that it is not open to merchants to discriminate in favour of another acceptance brand?

A. It does not say that. It says that a merchant must not be prevented from expressing a preference for the use of Mastercard or Maestro.

Q. In terms of acceptance brand what I am going to suggest to you is that that covers any card brand that is not Mastercard brand; correct?

A. Correct. Yes.

Q. Moving on to the new surcharging rule, as I understand it, what you do in paragraph 69 is summarise the law.

A. Correct.

Q. So I am not going to go through that with you.

A. Correct.

Q. Do you accept in principle, however, that if surcharging is possible, it can operate to drive down the interchange fees that are charged for a transaction?

A. Not necessarily. I think it is a way to, to, for merchants to recuperate and to get additional income.

Q. Could we look, please, at bundle {RC-J3/58/2}. First paragraph. It describes surcharging and circumstances in which it is --

A. Correct.

Q. It says:

"This makes MC current products uncompetitive in terms of value proposition for business debit card holders, because MC business products are treated as credit, and surcharged more and higher, while Visa business debit is treated as debit."

That then prompted, see the last two paragraphs on that page, a change --

A. Yes.
Q. -- in the Merchant Interchange Fees being charged, so that you would not be surcharged disproportionately as you saw it compared to a Visa product. Can you see that?
A. Yes, exactly.
Q. Co-branding and co-badging. It is perfectly possible in principle, is it not, for Maestro cards, for example, to be badged -- co-branded, sorry, or co-badged with this switch system; that used to happen?
A. Yes, correct.
Q. My understanding is that it is done in nine markets in Europe with Mastercard as a brand?
A. Correct.
Q. Indeed it is a good way of breaking into the debit market in certain areas. I think Luxembourg was the one?
A. Correct, yes.
Q. In your third witness statement, bundle {RC-M1/10/9}, at paragraph 25.2, you explained how Mastercard introduced a lower interchange rate than the domestic scheme, Cartes Bancaires. Cartes Bancaires was a scheme that Mastercard was co-badged with, was it not?
A. Correct.
Q. So the presence of both those payment systems on one

card enabled the merchant via the consumer to choose which of the two payment schemes should be used?

A. Correct.

MR BEAL: Thank you. I do not have any further questions for you.

A. Thank you.

Questions by THE Tribunal

MR TIDSWELL: Yes. Can I just ask you a couple of questions about maintaining the balance. You have talked about maintaining the balance between the merchants and the acquirers on one hand and the issuers on the other in the setting of the MIF.

A. Correct.

MR TIDSWELL: What I am interested in is how you go about maintaining that balance over time in relation to the MIFs. I am not talking about setting a new MIF, but adjustments you might make over time. My question is essentially whether that is simply an incremental process. I am talking with generality; I appreciate there may be exceptions. But in the generality is it just an incremental process where you would see factors that might cause you to think that some adjustment was necessary to the assessment you had made before, or whether you ever -- or in the generality whether you sit down and look at the MIF and think about the balance afresh at any particular point in time. Does that make sense as a question?

A. Yes, it does. So what we typically do is we regularly would review a MIF in a certain country to make sure that the balance is right, but also to make sure we meet new requirements. So that is -- first of all typically what the process includes is we are looking at the issuers' cost and then external costs conducted for that. That is the basis, that is one input, and so over time as costs change you would have different inputs into that process.

But it is not the only input into the process. If there are new technology evolutions, for instance, chip and pin at some point was a new technology for allowing more secure payments, contactless, e-commerce transactions will come into the mix as well, and then you will adjust the rate structures, the level, but also the rate structures to include that.

Clearly competitive position is also an important element. If our competition increases or, for instance, Amex launches a new product or Visa would launch a new product, you take that into account so that you overall are in balance, that you can have a good issuing outcome but also that you can have merchant acceptance that you develop that.

MR TIDSWELL: Thank you.

So when you say -- I think you said you regularly would review the MIF, does that mean you would ask yourself the question as to whether things had changed that meant that you needed to adjust it, or do you mean that you would look at whether you had set it correctly in the first place to get the balance? Do you see the distinction I am trying to make?

A. Yes. I would say we typically would look at it based on the new elements in the market that you are looking at, yes.

MR TIDSWELL: Yes. So you would make a basic assumption that at some stage you have set an appropriate balance and then you would think about --

A. Correct.

MR TIDSWELL: -- the things that might have happened since that might require an adjustment?

A. Correct.

MR TIDSWELL: Yes, that is helpful. Thank you.

Can I ask you a different question about costs. If we could have a look at your witness statement, please, at paragraph 15.3.1, {RC-F3/1/4} I think that is -- yes, there it is. Just the last sentence here, you say:

"Such issuers simply will not issue Mastercard payment cards if they are not going to generate sufficient revenues to cover these costs."

I think Mr Beal asked you some questions about that.

A. Yes.

MR TIDSWELL: Can I ask you to look at your first witness statement, which is {RC-M1/2/10}, at para 31.

You are talking here about the process of setting the balance, and you say at the end of that:

"Normally, this results in an interchange fee which is set below the costs incurred by the issuer."

A. Correct.

MR TIDSWELL: I was not sure I could reconcile those two statements, it may just be me, but I wondered if you could just explain to me how they fit together.

A. Yes. Typically when we set the interchange process we would make sure that issuers could recover their costs. So we have the costs inputs from the issuers and we typically would set it below the cost level, slightly below the cost level, then of course taking other factors into account, competitive dynamics, new technologies, objectives you want to achieve in the market, and so that is typically what we do in that process.

So if you can go back to --

MR TIDSWELL: Yes, go back to the statement.

A. -- because the context there -- correct. If I could see

the previous statement back.
MR TIDSWELL: So that is {RC-F3/1/4}, yes.
A. Yes.
MR TIDSWELL: The last sentence there you are saying, so I think you have just told me that you are deliberately not setting it at or above the issuers' costs. So how does that fit with the last sentence here that the issuers will not have an incentive if the costs are not covered?
A. Clearly there are multiple incomes for issuers, and so interest rates is one of them, particularly if we are talking about -- about credit cards basically, and the costs is one, one element as well, and it is that balance that we are setting, and clearly we are not saying that in that you recover every single cost to the interchange. There are more costs that you are covering, but there needs to be a balance and if it is out of balance, issuers will move away from issuing a certain product, as we have seen with the Maestro product in the UK very clearly as well.
MR TIDSWELL: Yes, thank you. That is very helpful.
PROFESSOR WATERSON: Could I ask a couple of questions.
A. Of course.
PROFESSOR WATERSON: Actually following on from what Mr Tidswell was asking you about. Have the number of

issuers issuing Mastercard products grown over time?
A. Yes. I would say so. We have got an increasingly new segment of issuers that is growing there. It is a dynamic market and you have got new players coming into that, smaller issuers, FinTech issuers that come up.
PROFESSOR WATERSON: Many of these are monoline issuers; they are not acquirers?
A. Correct, yes.
PROFESSOR WATERSON: So presumably they do not enter the market out of the goodness of their own heart, they enter the market because they want to make money in it?
A. Correct, yes.
PROFESSOR WATERSON: So presumably they would anticipate covering their costs?
A. Correct, yes.
PROFESSOR WATERSON: Right, and how do you -- about the onboarding process for a new issuer, what do they have to do in order to become a Mastercard product issuer?
A. There are multiple, multiple, I would say multiple (inaudible) things that are taken into account and which are done during onboarding. Clearly they need to have a licence to be able to issue. Mastercard clearly also need to be, have the appropriate licence to operate in a market to issue cards and do that payment role. Then

they will typically go to a selection of what products they want to bring out, which segment, and that is then a discussion, if it is with Mastercard, with the Mastercard sales and product teams to make sure they got the right products to go after the opportunity that they want to in the customer segment they want to serve.

PROFESSOR WATERSON: Right. I see. So they get a licence from Mastercard and also a licence in the country?

A. Correct.

PROFESSOR WATERSON: Banking ...

A. Correct, yes.

PROFESSOR WATERSON: Thank you.

So a different sort of question now. When you were talking with Mr Beal earlier you were talking about at one point about the deal with, or a potential deal with Amazon; it was a hypothetical example.

A. Correct, yes.

PROFESSOR WATERSON: But this was an example in the context of bilaterals.

A. Correct.

PROFESSOR WATERSON: So in the context of bilaterals, would Amazon do a deal with Mastercard or a deal with the issuers?

A. I think Amazon could do a deal with different players. I do not think there is one answer. They could do a deal with an acquirer, they could do a deal with Mastercard, they could do a deal with the issuer. Clearly if they wanted to, to discuss with -- on a specific programme they could work with an issuer.

I am not sure to what extent that that would happen. I think there is the economic discussion and each of these parties would need to weigh what is the benefit and outcome of this, of this deal. For instance, if you are an issuer what is Amazon going to bring to the table. I already have a customer, they have a card in place, so (inaudible) they will go on. But they could, they could for different players, yes.

PROFESSOR WATERSON: Roughly how many issuers does Mastercard have in the scheme in Britain?

A. I would say between 30 and 50.

PROFESSOR WATERSON: So Amazon would have to do a deal with all of those?

A. Well, they would, they would not need to do a deal with all of them. They would not need to do that if -- because, I mean, if you relate to the bilateral example that I gave, it would be the acquirer that would do the deal, not Amazon. The acquirer would need to deal with the issuer, and so if you are -- I mean, if you are an issuer and you negotiate that, so if you are HSBC and you are negotiating for making sure that your product is accepted in the market, you have to deal with Worldpay, Barclays, Elavon, Lloyds, and five -- five acquirers would cover about 90% of the volume of your card portfolio. So it is not like there is -- I mean, that is an impossible negotiation; it is relatively doable at a domestic level. Clearly if you go cross-border, that is a different story.

PROFESSOR WATERSON: Thank you.

THE PRESIDENT: I am afraid you are going to have questions from all three of us.

A. Thank you.

THE PRESIDENT: I would ask you some fairly basic questions, and I apologise if I retread ground covered by Mr Beal but I am going to ask them nonetheless.

If you perceive there to be a difference in your answers between the Visa position and the Mastercard position, I would be grateful if you could say so. I appreciate you are giving evidence for one and not the other, but I will try and articulate my questions at a level of generality that is true for payment schemes generally.

So with that introduction, I think you would agree that the point of a payment system or payment scheme is to ensure payment by the consumer/cardholder to the merchant?

A. Correct, yes.

THE PRESIDENT: That will be the basic goal.

A. Correct, that is the basic objective, yes.

THE PRESIDENT: Part of that basic goal would be to ensure that the payment obligation incurred by the consumer is unequivocally discharged as against the merchant?

A. Correct, yes.

THE PRESIDENT: So that once, as it were, payment has been made, however it is done, there is no further recourse by the merchant against the consumer?

A. Correct, yes.

THE PRESIDENT: So I go into the shop, I pay however it is, I leave with the goods and --

A. The merchant is sure he is going to get paid, yes.

THE PRESIDENT: Exactly so. Now, previously that was done by cash, notes and coins.

A. (Nods)

THE PRESIDENT: It was done directly as between the consumer and the merchant in that something physical was transited one to the other.

A. Yes.

THE PRESIDENT: The universality that made it all work was really by the operation of the state.

A. (Nods).

THE PRESIDENT: The costs of the scheme, money, were borne by the state.

A. The taxpayer.

THE PRESIDENT: By the taxpayer. One then gets overlaid new schemes, things like cheques, which operate as an alternative to cash with advantages and disadvantages.

A. Yes.

THE PRESIDENT: Costs which are incurred not by the taxpayer but by the participants in the system.

A. Right.

THE PRESIDENT: So sticking for the moment with cheques, and I will be leaving that rather defunct institution in a moment, but if one sticks with cheques at the moment one has the costs of issuing chequebooks and the costs of clearing.

A. (Nods).

THE PRESIDENT: Yes. Those costs all have got to be borne by someone.

A. (Nods).

THE PRESIDENT: Right. Now, moving away from cash and cheques, what we have got is a situation where the payment in a payment scheme is done, as it were, indirectly.

A. (Nods).

THE PRESIDENT: Do you understand what I mean by that?

A. Yes, I understand.
THE PRESIDENT: What one has got is a chain where one moves money but it is not really money, it is debt. One moves it from a cardholder account to the issuing bank, perhaps via the scheme, but then to the acquirer and then to the merchant.
A. Yes.
THE PRESIDENT: So one has a chain, and would you accept the description of the chain as a series of bilateral contracts?
A. Probably, yes. Yes, I can see the logic, yes.
THE PRESIDENT: I mean, to be clear, they are obviously interconnected because they are a chain.
A. Correct.
THE PRESIDENT: I am not suggesting otherwise, and equally clearly they are no doubt substantially in standard form so that they work together, because although we agree they are bilateral they are in need of working together.
A. Correct, yes.
THE PRESIDENT: So that what one has is a situation where if I go into a shop and pay for goods with my card, I am not paying the merchant, but there is a system which ensures by this circuitous route the merchant is paid.
A. Correct, yes.
THE PRESIDENT: The complexity that arises out of all of

this is that whereas cash is a very easy thing to understand, I hand over notes and coins, I get my good in return, the payment system involves a massive degree of complexity because of the multiple different participants in the scheme and the indirect way in which the debt is paid by the cardholder to the merchant. So for schemes like Visa and Mastercard, and I am sure others, would you accept that settlement is a fundamental part of a payment system?

A. Yes, I think it is very important because both parties in the end need to feel comfortable that they are joined in the scheme, either as an issuer and consumer or as merchant and an acquirer, that you can rely on it, that you are going to get the funds in the end, and that is a trust in the settlement scheme or mechanism behind it, yes.

THE PRESIDENT: To be clear, it is complicated because one has got many, many cardholders who are also consumers.

A. Correct.

THE PRESIDENT: One has many, many merchants who accept the cards, one has not quite so many but nevertheless a number of acquirers who act as the interface between the merchants and the scheme, and then on the other side one has got again not as many as there are consumers, they have a reasonably large number of issuing banks, 30

to 50 in this jurisdiction.
A. (Nods).
THE PRESIDENT: Then one has all the account holders of whom there are very, very many.
A. Correct.
THE PRESIDENT: So somehow one needs to have a system which makes sure that the very significant sums of money that are flowing through the system go in the right place.
A. (Nods).
THE PRESIDENT: Unless one has an absolutely reliable and robust settlement system, the payment system just will not work.
A. Correct, yes.
THE PRESIDENT: Okay. Now, would you say that the relationship between payments through a scheme, be that Mastercard or Visa, and cash has changed over the years?
A. Yes, I would say. You would see, you would see a decline in cash in general and an increased adoption of various methods of electronic and digital payments of which Mastercard and Visa are definitely very present, but also other payments and increasingly new, even account to account type of payments, yes.
THE PRESIDENT: Would it be fair to say that at the beginning of payment schemes, there were a number of problems? One was that there were high transaction

costs, which meant that for very low value transactions cash was cheaper than card. Do you accept that?

A. Yes.

THE PRESIDENT: Equally, there was a -- can I call it a trust issue, people prefer paying by cash rather than the card because the schemes were new?

A. (Nods).

THE PRESIDENT: Yes. But then as you say the technology moves away from a paper-based system of vouchers and imprinters, I am going back many, many years now, to, what, was the next development chip and pin?

A. Chip and pin.

THE PRESIDENT: Then one had contactless.

A. Contactless, yes.

THE PRESIDENT: Then one had contactless intermediated by things like Apple Pay.

A. Correct, yes.

THE PRESIDENT: Which is a different form of contactless, would you agree, and do correct me if I am wrong about that?

A. It is ultimately the same technology but it is in a very nice Apple phone that you can access it and use it, so you use your experience from Apple.

THE PRESIDENT: But is there a difference in terms of, for instance, transaction value? I mean, I can do more with my Apple phone in terms of amount than with contactless payment, or have I got that wrong?

A. No, I do not think there are any differences there, no. It is a way to access and experience payments in a simpler way. Rather than taking out your plastic card, you take out your phone.

THE PRESIDENT: I understand, thank you.

But at the end of the day, we have now got to a situation which I think you accepted earlier, where actually paying by card is significantly faster and more convenient for the consumer and for the merchant.

A. It is hard for me to argue differently. Yes, I think so.

THE PRESIDENT: I am very grateful.

So going to the chain by way of which the payment operates from the cardholder to the merchant, there is no difficulty in, as it were, agreeing the links in the chain. We discussed earlier that these are bilateral agreements and you either choose to participate in the chain or you do not, and that is true for everyone in the chain.

A. Correct.

THE PRESIDENT: Now, there may be, and I am not going to ask you very much about this, but there may be questions of market power that make agreement inevitable.

A. (Nods).
THE PRESIDENT: Just to give an example, if one looks at the typical merchant these days, if you want foot fall in your shop or, even more so, clicks on your website, you are going to have to accept card payments.
A. Yes.
THE PRESIDENT: That is a reality of the world that gives the schemes a certain level of market power because they are needed by merchants to sell to consumers, yes?
A. Correct.
THE PRESIDENT: But subject to that, and I am not going to ask anything further about market power, subject to that you can choose pretty freely whether to enter or not and what terms on which you do enter.
A. Correct.
THE PRESIDENT: We see of course that some entities are more able to negotiate, someone like Amazon, than others.
A. Correct.
THE PRESIDENT: That is just competition.
A. Correct.
THE PRESIDENT: Okay. So, so far we have been discussing a chain and I now want to come to the role of the interchange fee, which is not part of the chain. It acts as a cut-across in that one has a payment moving from acquirers as a group to issuing banks as a group.

A. Correct.

THE PRESIDENT: So it is shortcutting the chain. Do you understand what I mean by that?

A. Yes, I think I understand. Bilateral agreements are also possible in that part of the chain.

THE PRESIDENT: Well, I am going to be coming to that, if I may. That is what I am moving on to.

But first of all, can I ask you this: if you decided, just as quickly as you could, and I am sure it would involve an awful lot of work on the detail, but if you decided to get rid of the interchange fee, what do you think would happen?

A. If there would be no interchange fee?

THE PRESIDENT: If you said we are just not interested in this form of money flow.

A. Well, clearly -- I mean, today that will be directly impacting the issuers that have all these products out there and that have a business out there. So that will be the biggest impact immediately.

What I would expect would happen is if, if, a competitor, Amex or Visa, would have an interchange there, I would think that those issuers would move over to a competitor where they actually would get that interchange and that revenue stream.

So that is one logical step that I would see, because they would -- why would I stay with Mastercard if you would have no interchange? I would flip to a competitor where I have interchange. That is -- that is one possibility that I think is a very realistic one.

THE PRESIDENT: So because of the money flows that are going to issuers, specifically because of the interchange fee, that is the reason they continue to participate and is the only way you can keep them in the scheme?

A. Yes, I would say absolutely. I think it is a very important part, and we have seen in the live example of Maestro where we were at lower interchange, there was the interchange, there was a lower interchange versus competitors, we lost significant market share. So that actually happened; the issuers in the UK moved away from one product where interchange was lower and moved away to a product that had a higher interchange. It is really what would happen.

THE PRESIDENT: Is it your position that there is nothing that Mastercard or Visa could do about that? I mean, assuming that we get rid of this interchange fee, is it an inevitability that the issuing banks will just shift to a scheme that does have something like that?

A. Yes, I -- I do think so. I mean, issuers, issuers are clearly looking to operate an economical model that makes sense. So something that has costs and/or revenues, they are not going to be very interested and they are going to try to seek alternatives. We have seen that with the domestic schemes, with the schemes that operate at zero interchange that they have not been very successful, either in going after e-commerce or other spaces, or that they have lost market share.

So issuers do try to move away, and if you would put -- you would need to operate at a zero interchange, I think the chances are real that issuers would look for alternatives and that -- that would be -- they would really look for alternatives where they could have a better business model. I am very convinced of that.

They are not just going to continue to do cards, they will reduce the benefits, they will trim them down and they will move over to payment options that give them more economic models. It is going to shift to another model.

THE PRESIDENT: Okay. Hypothetically speaking, why could a scheme not -- and I want this to be a neutral question between Visa and Mastercard, so let us proceed on the basis it is true for both, and if you say it is not you can tell me why. Why does the scheme not negotiate bilaterally with the issuing banks and say, look, we are cutting the interchange fee because it is quite obvious that the regulators do not like it and we have decided that we are just going to get rid of it, but we recognise you are losing a money flow, let us renegotiate the terms of our deal, the bilateral deal between the scheme and the issuing banks and ensure that the money flows are, as it were, diverting, going a different route, rather than making any monetary change? Why is that not a way in which you could prevent the stampede of issuing banks leaving this hypothetical scheme?

A. Yes, so, today clearly the interchange does not go to Mastercard, it goes from the acquirer to the issuer, and same for Visa, and so the -- the amounts of the -- of that interchange is significantly bigger than the amounts that Mastercard or Visa could negotiate directly with an issuer. So you could negotiate a deal but it would by far not offset that economic reality.

THE PRESIDENT: So your answer is it is a loss-making proposition for the scheme?

A. Yes. If you would, if you would have no interchange and you would negotiate with the issuers that would make it fairly hard.

THE PRESIDENT: Right. So why would you not then, at the same time, renegotiate the deal as between the scheme and the acquirers and say, look, you are going to have to pay more because the way the scheme works is we need the issuing banks in, you are going to have to pay more? You are paying it already, it would just go via the contractual chain that we have been discussing?

A. I -- I think that is an option. I think it is an option that the scheme negotiates with the acquirers specific rates and then collect them and then have a separate negotiation with the issuer. I think it is -- I mean, we discussed today a few alternative business models, Hybrid New Business Models that have been considered, and I think they -- they, indeed, that refers to such construct. Yes, that is an option.

THE PRESIDENT: Thank you, that is helpful.

Now, moving to the re-establishment, we have hypothesised the getting rid of the interchange fee. Now let us work out whether one could have a bilateral interchange fee as you were discussing with Mr Beal a few minutes ago.

A. Yes.

THE PRESIDENT: Now, there are a number of difficulties with the bilateral as between issuers and acquirers, and if I may I will just unpack them with you and see what you say about them.

The first difficulty is a technical one. It is a costly process to put in place systems whereby these negotiations can be undertaken?

A. It depends. If we are speaking domestically in the UK market, the number of acquirers and issuers is probably still manageable and so I do not think that is super, super complex. If you think about doing that globally or cross-border, that is then -- I would definitely agree it is very -- then it becomes much more complex to put that in operation.
THE PRESIDENT: Complex, expensive but not impossible?
A. Correct, yes. It is not the most -- I mean, it is not the most efficient way to do it, but as we have seen in some countries it exists, so it is possible.
THE PRESIDENT: So it is what the Royal Court(?) would call transaction costs, being perhaps sufficiently high to make it a non-viable way of going about things, but that is as high as you put it?
A. Yes, and clearly I think the importance, and also in my statement, I think, is having in this case an interchange fee relation that works as a cap as part of these negotiations.
THE PRESIDENT: Well, that is where I am coming to, because you discuss caps and the need for control in paragraph 25 and particularly paragraph 25.6 of your statement in these proceedings, and perhaps we can just get that up so you can see it. That is {RC-F3/1/9}. Yes, there we are.

A. Yes.

THE PRESIDENT: Yes, you say in terms, just so that we remind ourselves, that you need to have some sort of restrictions on what is being negotiated and that is because of other rules within the ecosystem, if I can call it that.

A. It is market power, it is the issuing market power. I think the issuer will have an incentive to negotiate as high as possible rates, and either by having a default interchange as a cap or having the Interchange Fee Regulation as a cap will limit that, and that allows to -- to come to an end conclusion that negotiation.

THE PRESIDENT: So is what you are saying this, and do push back if I am mischaracterising your evidence, but is what you are saying this: you cannot actually have a true bilateral negotiation without controls without doing significant violence to other parts of the scheme?

A. I think it would be very hard, yes.

THE PRESIDENT: So you are never going to get a case of true bilaterals unless you change the scheme, because it gives too much power to one side rather than the other; here the issuing banks would have too much power and would be able to extort too much revenue out of the acquirers. Would that be --

A. I am not necessarily sure that it is the scheme.

I would say it is the market power of the issuers.

If you are an acquirer and your business is acquiring transactions and serving the merchants, you want those transactions to come in. So an issuer, a big issuer comes in with a big portfolio, multiple millions of consumers, they have a certain market power to negotiate that bilateral, and issuers, as they are competing between the different issuers and the new issuers that will come up with more fancy features on their cards and more of these cases, I think they will have this drive to go to a higher level of interchange also as part of a normal economical negotiation.

So I think it would be very helpful and needed to have a sort of a cap, either default interchange or in this case the IFR, to come to a resolution there.

THE PRESIDENT: Of course the group of acquirers is a relatively small and manageable number, and certainly within the UK, perhaps worldwide. But what you are saying is that they need cards in the system in order to sell their services to merchants.

A. Correct, correct.

THE PRESIDENT: So they are more willing to pay as a group?

A. Yes, they prefer definitely a lower -- they definitely prefer a lower interchange fee, for sure. But their main business is also to serve these merchants, so they will want to continue that business, yes.

THE PRESIDENT: I see. So if it all comes down to market power, is not what we were discussing earlier, namely a two-fold negotiation between the scheme on the one side with acquirers and the scheme with issuing banks in order to control these flows to keep people in, a more efficient way of ensuring the differing negotiating positions and costs bases of both sides of the market are reflected rather than having a single interchange fee that is, as it were, cutting across the chain of transactions that we have been discussing?

A. Yes, there is -- I think there is something to say for that. I think there are multiple pros and cons. The advantage of the interchange fee is transparent and it is also equal for every one of the different players in the system, and so that level of transparency and that level of harmonisation for the same card as a merchant, big, small merchants you pay the same, has merits as well in the system. So, I mean, that would be something that you would lose if you would do that in a different, in a different way.

THE PRESIDENT: Thank you very much.

Mr Beal, have you got any questions?

MR BEAL: Nothing, thank you.

THE PRESIDENT: Ms Tolaney?

Re-examination by MS TOLANEY

MS TOLANEY: Thank you. Just a few questions.

You were asked today -- it is at page 86 [draft] of the transcript; we do not need to go to it -- about how practical it would be to agree a bilateral agreement individually for each transaction. In that context I think you were referred to evidence you had given in the previous proceedings about markets in which bilateral agreements had been reached, giving the example of Maestro in the UK.

A. Correct.

Q. So just taking that, would those bilateral agreements have to be separate agreements for each individual transaction?

A. No. No, they would not. It would be a simple paper where you just indicate in a simple way for this transaction this is the rate for that transaction; it is a very simple set of rates in a quite simple contract, I would say.

Q. Can you therefore have a single bilateral agreement covering all transactions between an issuer and an acquirer?

A. Correct. Yes, absolutely.

Q. So could I just show you {RC-R/24/1}, please. Are you able to explain what this is, please?

A. Yes. So this is a -- is a way to -- to make a bilateral agreement. So this is a standard form to -- for participants and customers to indicate their information, name, address, their number, how they can be identified in the system.
Q. Is it correct that this is the form Mastercard provides for issuers and acquirers to register?
A. Yes.
Q. A bilateral agreement?
A. Correct.
Q. Could we go to page 3, please {RC-R/24/3}. You see the first box on the side. Does all MCC mean Mastercard cards, is that the ...?
A. It means merchant category codes. So all the merchant category codes are subject to this, yes.
Q. Does this permit a single bilateral agreement to be applied to all transactions between the relevant counterparties?
A. Yes.
MS TOLANEY: Thanks. I have nothing further.
THE PRESIDENT: Thank you very much. Thank you --
A. Thank you.
THE PRESIDENT: We are really very grateful to you for your time. You are released from the witness box with thanks. Thank you very much.

A. Thank you.

(The witness withdrew)

MS TOLANEY: May I call Ms Suttle, please.

THE PRESIDENT: Thank you.

MS DEBORAH SUTTLE (sworn)

Examination-in-chief by MS TOLANEY

THE PRESIDENT: Ms Suttle, do sit down, make yourself comfortable. There is some water there and a glass, I hope.

You will be taken to some documents, some in paper but some electronically. The electronic documents will come on screen before you, but they will come up when they are summoned by the operator.

A. Okay.

THE PRESIDENT: If you need to see any other parts of the document because some of these are multi-page, just say so and we will make sure it comes up, because this is not a memory test. You are not expected to remember every document. You ask what you need to see and we will find it.

So with that introduction, I will hand you over to counsel.

A. Thank you.

MS TOLANEY: Good afternoon, Ms Suttle. I am hoping in front of you is a file with your witness statement in

it. I think it may be at tab 3 of the bundle, have a look, or tab 4 {RC-F3/4/1}.
A. That is okay. Thank you.
Q. Could you please turn to page {RC-F3/4/22}?
A. Yes.
Q. Is that your signature?
A. Yes.
Q. Can you please confirm that the contents of your statements are true to the best of your knowledge and belief?
A. They are.
MS TOLANEY: Thank you. Mr Beal will ask you some questions.
A. Thank you.

Cross-examination by MR BEAL

MR BEAL: Ms Suttle, you have divided the businesses into three separate categories; SMEs, mid-market and large business and then multinational businesses. That is purely internal to Mastercard, is it?
A. It is -- it is an internal definition to Mastercard and you will find the majority of commercial issuers here in the UK may have slightly different variations on that. So, for example, a multinational commercial issuer obviously is pan-European global; a traditional tier 1 might have a slightly different definition in

terms of whether it is domestic.

Q. That is principally for marketing reasons, is that right?

A. No, it is not for marketing reasons. It is for how we define our products and services to those customers.

Q. In paragraph 9.3.1 you refer to SMEs being most likely to switch between commercial card providers for reduced fees and higher loyalty rewards. Would you recognise that some businesses for example require their employees to pay an extra fee if they want to access rewards points?

A. Yes.

Q. Businesses need to make debit cards available for the ordinary purchasers of the business, do they not?

A. They do.

Q. Many SMEs may not offer rewards programmes at all?

A. It depends on the supplier of those services, yes.

Q. At paragraph 10.3, you talk about a period of up to 45 days interest free credit. Obviously that does not apply to debit cards, does it?

A. That does not apply to debit cards.

Q. At paragraph 10.4, you refer to virtual cards. Virtual cards are a commercial card, are they not?

A. They are.

Q. So when, for example, one books a flight on Booking.com

it generates a virtual card reference that is a virtual card held by Booking.com?
A. Yes.
Q. That then means that it is Booking.com that is effectively the cardholder in that relationship?
A. Yes. There are various other use cases for virtual cards, not just in the travel space.
Q. Of course. But you will accept that virtual cards have been an increasing and emerging force in the commercial card market?
A. Yes.
Q. That transaction would bear a Merchant Interchange Fee at a higher rate, would it not? If we look please at bundle {RC-F2/3/5}, this is part of Mark Buxton's witness statement for Jet2, he is describing how he ends up paying a higher rate for commercial cards -- sorry. At paragraph 22, he says a virtual card is a single use card. These attract high interchange fees in the range of 1.5 to 2%, can you see that?
A. Yes, I can.
Q. That is a commercial card that, historically at least, has been charging a higher rate for an interchange fee than a common or garden commercial card?
A. There are ranges of interchange fees for commercial cards from 75 basis points to 200 basis points, so I do

not know what you mean by common or garden commercial card.
Q. A small business credit card for example.
A. Yes.
Q. That would be typically a lower interchange fee rate than this?
A. A small business card?
Q. Yes.
A. Yes.
Q. Now paragraph 18 of your witness statement. The features of commercial card products, you say, are far more complex and sophisticated than consumer credit and debit cards. But the reality is, is it not, that a small business having a debit card is not in a significantly different position than a consumer having a debit card?
A. I think you are correct, yes.
Q. So the answer is it depends. If one is comparing a large corporate scheme with a premium rate platinum card, that might be different from a common or garden debit card run by a hairdressers in the High Street?
A. Yes.
Q. At paragraph 32, page 13, as far as I can see you acknowledge that the underlying mechanism by which the Merchant Interchange Fee is set for a commercial card

does not differ in the mechanics than for setting it for a consumer card.
A. No, it does not differ. But there is a key difference which I think the EU Commission called out in terms of the complexity of commercial card transactions.
Q. The only significant difference in terms of the -- were you here when the learned President was describing the series of bilateral agreements round the --
A. I was not, no.
Q. No. Okay.
A. Sorry.
Q. That is fine. The difference with a commercial card is that typically it may be the business that has the account with the issuing bank --
A. Yes.
Q. -- rather than the individual cardholder?
A. Yes.
Q. Then who gets the individual card will be at the discretion of the business rather than obviously an individual?
A. Yes.
Q. At paragraph 24.3 at page 10, it is right, is it not, I am not going to go into the figures, but it is right that corporate cards have typically constituted only a small part of the overall commercial cards market?

A. Yes. I think they are quite, quite different from the consumer piece.

Q. Then at paragraph 26, as I understand it, the market figures you give there, but I am not going to go into because they are confidential, you have done so on the basis of the percentage of the value of the transactions made on commercial cards, correct?

A. Are we looking at clause 26, sorry?

Q. At paragraph 26, page 11 --

A. Yes.

Q. -- you give a table with what I understand to be market shares.

A. It is a table that we worked with the RBR with, yes.

Q. Yes. I am not going to go into the detail, but it is sufficient for my purposes that I just establish that you derive that by value of transactions rather than number of transactions?

A. Yes.

Q. That is because that is a more acceptable way of identifying market share?

A. Yes.

Q. At paragraph 34, please, page 13, you then identify certain differences between consumer cards and commercial cards, is that right?

A. Yes.

Q. What I am going to suggest to you is each of those would be a difference from the perspective of the issuer of the cards but not from the perspective of a merchant acquirer?

A. Can you just repeat the question, sorry?

Q. Yes. The differences you are looking at credit/debit splits, transaction value, revenues, etc, product features; those are all things that matter from the perspective of the issuing bank, the person who is issuing the card. They do not necessarily matter for a Worldpay who simply is arranging for each of the different variants of the card to be acquired and therefore for the money to be paid on those cards to the merchant acquirer's merchant?

A. No, but they will have a product identifier which says it is a commercial small business or a commercial debit card.

Q. From the point of view of the merchant acquirer, they want to have as broad a range of cards capable of being accepted so that they can offer a suite of acquiring services to shops?

A. Yes.

Q. From the shop's perspective, subject to cost, they want to accept as many cards as possible to ease and facilitate the payment process for their customers?

A. Yes.
Q. So most large merchants have no choice, do they, but to accept commercial cards or suffer a real risk of a loss of business?
A. They will suffer a loss of business if they decline the card, obviously. But I think from a commercial card perspective they are an unregulated product as deemed by the EU, so a merchant has a choice whether to decline that transaction or accept it or add a surcharge.
Q. We have seen from virtual cards, for example the online travel agencies, that quite frequently they are used specifically for buying transactions directly for consumers?
A. Yes.
Q. Notwithstanding the fact that from the acquirer's perspective they have to accept all these cards and from a merchant they have to accept these cards, a different interchange fee is charged for each?
A. Yes.
Q. At paragraph 34.1, you talk about the additional market power -- the additional power, sorry, that corporations can exert on issuers to deal with negotiations for the cards that will be issued to the corporates. None of that has an impact, does it, on the relationship between the merchant acquirer and the shop; that is something

between the corporation and the issuer?
A. Yes.
Q. Looking at charge cards next in paragraph 34.2. Charge cards are effectively a form of credit card, are they not, except that it requires monthly payment?
A. Yes, they are.
Q. At 34.3, you are dealing with transaction value. Again, differences in transaction value are not going to affect the relationship between a shop and the shop's merchant acquirer as such?
A. No.
Q. At 34.4, you talk about revenues and you talk about revenue streams flowing from commercial cards different to those on consumer cards. Whose revenue streams are you talking about there?
A. The revenue streams of the issuing banks.
Q. The issuing bank typically on a commercial card, if it is a credit card, will set a rate of interest, is that right?
A. On a commercial credit card?
Q. Yes.
A. On a credit card rather than a charge card?
Q. Yes.
A. Yes.
Q. On a debit card they would not?

A. No.
Q. Whether or not they issue a charge card with an interest free period is a matter between the issuing bank and the cardholder?
A. It is the issuing bank and the corporate.
Q. Sorry, the corporate --
A. Yes.
Q. -- which is for these purposes the cardholder?
A. Sorry. Yes.
Q. There are of course some consumer charge cards, are there not, which are paid off each month?
A. Yes.
Q. Paragraph 34.5 talks about product features. Again, the particular features offered by a corporate card regime is very much a matter between the issuing bank and the corporate business that is being offered the service?
A. Yes.
Q. It is true, is it not, that in the consumer card space some banks have an array of features available for premium cards. One need only think of a platinum Mastercard credit card for example or an Amex black card for example for very bespoke schemes that are available for consumer cards?
A. Yes.
Q. At 34.6 you talk about risk. How do you know about risk

rates for issuers?
A. I do not know about specific risk rates, but from my time managing our commercial issuers, I am a -- I am a consumer customer and I have a credit line of £10,000 and that is at my risk and the bank's risk in the hope that I am going to pay that off. As an employee of Mastercard I will have a significantly higher line if I need to travel to see customers so that line is bigger so it is a greater risk rather than the actual specifics in terms of --
Q. There are two ways of approaching risk, are there not; one is the amount of money that is at risk, which is an absolute value which you are talking about with the cap --
A. Yes.
Q. -- what the card can bear?
A. Yes.
Q. The other is the risk of default?
A. Yes.
Q. Now, surely the overall risk is going to be reflected in the interest rate that is charged for that card, is it not?
A. I do not know that.
Q. Well, let us have a look at an example for APR for a Visa platinum consumer card. That is {RC-J5/117/1}.

A. Yes, I can see that.
Q. This is a Barclaycard premium credit card consumer rate and it is giving a representative APR of around 25%. Can you see that?
A. Yes, I can.
Q. Can we then please look at {RC-J5/93/2}, an Australian business rate business card, business signature card with a purchase interest rate of 18.5% there. Can you see that?
A. I can see that.
Q. Obviously the risk of default from IBM is going to be substantially less than the risk of default from, without casting aspersions --
A. On me.
Q. A semi-skilled manual worker?
A. Yes.
Q. Of course, the bank before it issues the card will conduct credit checks for both consumers and for businesses?
A. Yes.
Q. It will conduct Know Your Client checks and any anti-money laundering checks?
A. Yes.
Q. Paragraph 34.7 deals with pricing. Again, how much the bank charges by way of fees is surely a matter between

the bank and its customer, is it not?
A. It is, yes.
Q. At 34.8 when you are describing competitors, you are describing competition between competing payment methods going beyond a card payment scheme so to include cheques and bank transfers, is that right?
A. Yes.
Q. But we know, do we not, that card payments account for roughly 60% of all payments in the UK?
A. 60% of all -- all payments or commercial payments?
Q. All payments.
A. If you have that number, yes.
Q. Well, {RC-J5/50.2.1/11}.
A. It is not here yet, sorry.
Q. {J5/50.2.1/11}. "Payment Markets Headlines" and then at page 11, we look down.
A. Yes, I can see the 45.7 billion.
Q. "In 2022 card payments accounted for 59% of all payments in the UK. In 2032 card payments are forecast to account for 65%."
Obviously in the commercial card space if you are dealing with commercial payments you also have to then factor in bank to bank transfers, CHAPS, faster payments, everything else so the figures are going to be different, but --

A. There is a broader -- a broader view, yes.
MR BEAL: We will come back to those, if we may, after the short adjournment, if that is a convenient moment?
THE PRESIDENT: Ms Suttle, we are going to rise now until 2 o'clock. Is 2 o'clock all right? We have two --
MR BEAL: Could I beg, please, 1.45 just so that we know we are done today with Mastercard witnesses.
THE PRESIDENT: That is fair. We have no problem with that.
Ms Suttle, if you come back at 1.45 we will resume and finish your evidence then. Whilst you are having your break, please do not talk about your evidence to anyone for obvious reasons.
We will see you at 1.45. Until then.
(1.01 pm)
(The short adjournment)
(1.45 pm)
THE PRESIDENT: Good afternoon, Mr Beal.
MR BEAL: Ms Suttle, welcome back. Please can we look at paragraph 35, page 16 of your witness statement. {RC-F3/4/16}.
You say there that MIF revenue is important for issuers. Have you looked at an issuing bank's revenue streams in detail?
A. No, I have not worked at a bank to look at their revenue streams implicitly.

Q. I assume from that answer you do not know what proportion of overall revenue is attributable to MIF revenue?
A. No.
Q. Nothing in Mastercard's rules requires issuing banks to use MIF revenue for a particular purpose, does it?
A. No, it does not.
Q. So when you say transactions costs are higher, what is the basis for that proposition in paragraph 35?
A. I think the transaction costs are higher because the rates that are applied on a commercial card are larger than a standard card. So the -- the bps on a commercial transaction is more significant because there will be associated risk with those transactions at the higher level.
Q. Right, I am not sure I follow that, but it probably does not need to detain us now.

Paragraph 36, please, you have suggested that the Commission was not interested in commercial cards when proposing the Interchange Fee Regulation; is that right?
A. I think they excluded it, I am not -- I would not want to say that they are not interested in it, but they excluded it.
Q. That is my words, not the Commission. Could we look, please, at RC-J3/18/54. It should be part of the impact

assessment for the IFR.

A. Could you just make it a little bit bigger, sorry?

Q. J3/18/54. That is clearly not the right reference, so could we try J4/18/54. Okay, let us move on.

RC-J5/18/54, there we are, it is my fault.

We there see, do we not --

THE PRESIDENT: Is that large enough for you?

A. Yes, it is now, thank you.

THE PRESIDENT: I share your issues.

A. Yes, sorry. I can definitely see it now, thank you.

MR BEAL: That has still, I am afraid, given me the wrong reference, I am simply going to move on, I am afraid.

Paragraph 38 of your statement, please, page 17. {RC-F3/4/17}

A. Yes.

Q. You say that features are expensive for issuers to provide on a payment card and they predominantly use interchange revenues to fund them.

How do you know they use those revenues predominantly to fund those features?

A. During the conversations I had with them whilst I was in role they were clear that some of the interchange revenue went to fund some of the complexity of these products.

They are very different needs from a consumer card, so I take your point from earlier in terms of the small business, but when you think about mid and large corporate organisations, they do much more than just the payment facilitation, they have features and benefits, whether that is realtime data insights, whether that is ability to make changes through an online tool or various other complexities. It is very different on a corporate commercial card than it is on a consumer card.

Q. The point I am trying to make I think is a slightly more basic one, which is you are not in a position to know what proportion of revenues are used to cover which cost?

A. Not specific proportion, no.

Q. So it is the use of the word "predominant" that I was just wondering how you formed an assessment of what the largest contribution to a particular range of costs was going to be?

A. From my conversations with the issuers.

Q. At paragraph 39 you refer to a commercial presentation, I am not going to go through the detail because it is confidential, but none of the commercial presentation that you refer to there is a product of Mastercard rules, is it?

A. No, it is part of our product line strategy.

Q. You have not audited the use of any MIF income at any given issuing bank?
A. No.
Q. The level of the MIF set for commercial card is not in fact calibrated by reference to the costs incurred by the issuer, is it?
A. I believe that the way that we calculate the interchange is based on the market conditions, geographics, the vertical at which the product applies to. So my example here in, in paragraph 39, was a clear delineation with Mastercard explaining if you wanted to issue a premium product that would attract a different rate from a standard product, you would have to add these certain features and benefits to attribute that.
Q. Could we look, please, at {RC-J3/27/3}. Halfway down that page you refer there is a reference to a competitive comparison. Can you see that?
A. 4? Or number 4, sorry?
Q. Yes.
A. Yes.
Q. This is part of a pre-read for the 38th EIC, so the Committee that sets interchange. You will see:
"Table 3 below provides an estimate of the weighted average POS interchange fee differential between Mastercard Professional card when compared to Visa's

..."

Then there are some figures which we did not go through.

When working out what rates to set, see under "Conclusions" in 6 at page 4 {RC-J3/27/4}.

A. I cannot see number 6 at the minute, sorry.

Q. It is coming up now, I hope.

A. Thank you.

Q. Under "Conclusion":

"The launch of the Mastercard Professional card program in Europe will enable Mastercard issuers to identify and migrate genuine business expenditure on personal payment card program to an appropriate commercial card program, open up opportunities ..."

What that is saying is we are launching this new product, it is a commercial card product?

A. Yes, it is a small business product.

Q. Small business product and you are offering interchange rates above that, can you see, forecast of what the impact would be on weighted average point of sale interchange fees?

A. Yes.

Q. None of that is done by reference to any particular costs of an issuer, is it?

A. I cannot comment on that. I was not part of the pricing

committee but I would imagine they looked at the different types of products in terms of a small business card and a professional card and I think the professional card is a product that allows you to have personal and business expenses so there will be some additional costs at the back end of that for the issuer to delineate between those types of transactions.
Q. Could we look, please, at (RC-J3/50/3}.
A. I can see that.
Q. At the bottom of that page it says:
"Despite the similarity of costs related to all the products the corporate card rate has been set higher than the purchasing and fleet card rates for most of intra-country as well as cross-border programmes as shown in the charts below.
"In Europe, the rates differentiation is driven by the previous decision to raise corporate card rates for competitive reasons while reducing the rates of purchasing and fleet products to increase their acceptance."
Again that seems to suggest, does it not, that where you have common costs you can still have differential interchange fee rates, therefore the interchange fee cannot reflect the underlying common costs set?
A. I cannot comment on the background to this. It is

a clear view of mandatory and optional and I would imagine that they did a market study to understand the benefits of those differentials on those rates.
Q. Could we then please look at {RC-J3/83/1}. This is a proposal to position debit Mastercard for business commercial as a competitive product from an issuer perspective and then to implement specific interchange rates for debit business and debit Mastercard prepaid commercial, can you see that in the executive summary?
A. I can.
Q. Then if we look at {RC-J3/82/2}, please, we see in the first paragraph that when debit business had first been introduced and positioned as a cheque substitute and interchange rates had followed that pricing model, a number of retailers had objected and responded unfavourably.

We then see there is a section on contactless and the second paragraph under contactless says:

"These specific interchange rates aim to strike a good balance between the costs of contactless payment processing whilst remaining competitive in the marketplace and most importantly delivering an interchange that will be attractive to merchants with higher volumes of low value payments."

So what is driving this, is it not, is the need to

get issuing banks on board to issue and therefore that is not necessarily driven at the costs proposition; it is driven at simply providing an attractive revenue stream for issuing banks?
A. I think it is making Mastercard a -- a market competitive product that launched that.
Q. {RC-J3/83/3}, bottom of the table there, under C1 there is a reference to approved charity waiver and there is a rate given there. Why was that rate offered?
A. I do not know.
Q. At {RC-J3/83/4}, the middle of the page, there is a rationale for the proposed interchange rate and structure said to be based on five pillars. We see there that part of it was to move to a not uncommon structure. So you were moving from pence per transaction to an ad valorem rate because it was now more acceptable and can you see that as 1? Have I got that the wrong way round?
A. No, I think that is fine, I can see it now, the 4.
Q. It says:
"Moreover it is not uncommon to see in the UK nowadays debit card purchases for thousands of pounds on financial services".
So insofar as the previous sticking point of ad valorem percentage rate being unfavourable to a pence

per transaction rate for merchants had been superseded by market developments?

A. Yes.

Q. Then 2 deals with the prospect of compensating issuers for the costs of its PayPass i.e. contactless functionality. But you do not in this proposal itemise specifically what those costs would be, do you?

A. No.

Q. In contrast in 4 you are looking at average transaction values which is something you do have data on, that is not tied into any particular costs analysis, is it?

A. It would appear not.

Q. Then at {RC-J3/83/6}, we see that in fact what is motivating the proposed rates by way of a rationale is in part to mirror proposed rates for a different product; and secondly to have an interchange fee higher than another interchange fee in order for better customer messaging that sets a particular product as an enhanced debit product. Can you see that?

A. I can.

Q. So that is all presentation to the market based on interchange rates rather than any underlying cost analysis, is it not?

A. Yes.

Q. Could we then look, please, at {RC-J3/105/2}. This is

a confidential document, so I am not going to deal with the detail. But can you see under "Background" --
A. Yes.
Q. -- there is a reference to changing the rates --
A. I can.
Q. -- to adapt to certain things?
A. Yes.
Q. Then the detail is then set out in the appendix. None of that again is tied into a costs analysis, is it?
A. Not according to the details on here, no.
Q. Paragraph 41, page 17 of your witness statement, {RC-F3/4/17-18} you set out a table with some costs overleaf, top of page 18.
A. Yes.
Q. Those are estimates, as I understand it; is that right?
A. Yes.
Q. Where did you get the data to form the basis for those estimates?
A. We can see the rates at which interchange is calculated and we anonymised that by our customer base.
Q. Is there an underlying data source for these figures?
A. It will be from Mastercard's transactional data.
PROFESSOR WATERSON: What was the heading for this table?
A. I think it is on the previous page.
MR BEAL: Split between SME and large market -- no, I am not

sure what the heading is.

A. I think it is interchange revenues.

Q. I am sorry, is it a revenue assessment rather than a costs assessment?

A. Yes.

Q. I see. I beg your pardon, that was an incorrect premise for my question, I am sorry.

Paragraph 42, you then say that if the MIFs were not available, commercial cards with the same functionality would not be issued. You are not suggesting however here that the entire commercial card market would disappear, are you?

A. I think if Mastercard's interchange rates went to zero I think it would make us very hard to compete.

Q. Well, you would still expect, would you not, virtual cards to exist for payments by online travel agencies, amongst others?

A. Without interchange?

Q. Yes.

A. No.

Q. Surely the online travel agencies need to be able to pay for customers' transactions for flights and hotels using a business card, do they not?

A. They use virtual cards usually.

Q. A virtual card is a commercial card?

A. Yes.
Q. So they would need a commercial card because it is part of their structure for doing business?
A. Yes.
Q. So there would be demand from at least them for a business card proposition?
A. I think there would be demand for virtual cards. If Mastercard did not have its interchange rates, they would look at other alternatives like Apta Cash which has been around for a while.
Q. We have already established, have we not, that a small merchant will need a debit card to be able to pay for any business transaction?
A. A debit card, a small business.
Q. Yes.
A. Yes.
Q. That is not going to disappear overnight, is it?
A. No.
Q. At paragraph 43.1 you say corporate clients generally place emphasis on fees being low. Can you see that?
A. Yes.
Q. Why should merchants not be able to place emphasis on the charges they pay for merchant acquiring being low?
A. I cannot answer that question.
Q. Paragraph 44, you deal with American Express. As

I understand it, your position is that American Express has an implied interchange fee; is that right?
A. It is, yes.
Q. You recognise however that American Express no longer has the GNS products?
A. No, it does not.
Q. So what American Express does is it charges cardholders where appropriate for having its cards and it charges merchants a Merchant Service Charge for using its cards in their shops?
A. Yes.
Q. That does not involve any transfer between merchants to anyone else, does it?
A. I do not understand -- I do not know the Amex business model well enough to answer that.
Q. Could we look please at bundle {RC-J5/30.1/9}. Halfway down that page I hope you will see a section that begins "American Express does not have interchange fees"; can you see that?
A. I do.
Q. This was a submission that Amex made to the PSR as part of the payment review and you have got no reason to doubt that that was not an accurate submission, do you?
A. No.
Q. In terms of the risk of people leaving commercial cards

offered by Mastercard to go to American Express, as I understand it, it is not necessarily the risk of cardholders switching, it is a risk of issuers deciding to place their faith in the Amex brand when they issue a commercial card; is that right?
A. Can you just repeat the question, sorry?
Q. Yes. If we look, for example, at paragraph 47 {RC-F3/4/19} you say for example, 47.1, fifth line:
"I think, though, that Amex would eventually be able to leverage the higher revenues flowing from its merchant discount rate to displace Mastercard and Visa completely in the SME credit card market."
When you say "displace", what are you envisaging will happen?
A. I would imagine that small businesses that currently have a Mastercard card with features and benefits that the issuers retract from that market, the small business, and that would leave the small business available to call on Amex to provide a small business card for them.
Q. So this would be a case of an issuing bank using Amex as a payment card system, is that right, on your analysis?
A. No, because I think as a small business you ring Amex direct, I do not think Amex has relationships with issuers like a co-brand, probably.

Q. So it would be the risk of small businesses saying:
I prefer the Amex product --
A. Yes.
Q. -- as a business?
A. It has --
Q. Business credit card?
A. It has the features and benefits that I want compared to issuer A.
Q. Does Amex currently offer a business debit card?
A. Debit, no.
Q. Are you aware that the PSR formed the view that Amex did not pose a competitive constraint to Visa and Mastercard in the market for card acquiring services?
A. Card acquiring services.
Q. Yes, we can look at this. It is bundle {RC-J6/3/82}. At paragraph 1.342, this is card payments generally:
"We considered if there are any payment methods that are effective substitutes for card payments ... such that use of these payment methods exerts competitive constraints ...
"We examined in our merchant survey, whether merchants that accept Mastercard and Visa cards could instead accept other payment methods ... such as American Express ...
"We found that many merchants accept cards other

than Mastercard ... However, cards issued under other card payment systems, such as American Express, are unlikely to represent an effective substitute for merchants ..."

So regardless of what position a particular business may take, the reality is, is it not, that acceptance levels of Amex cards are substantially behind acceptance levels for Visa and Mastercard cards?

A. I -- I disagree with that statement. I mean, they have a foothold of 50% in the small business market here in the UK and, you know, Amex are historically steeped in the travel and hospitality industry and they have a good acceptance coverage there. So not wishing to say the PSR are wrong but that would not be my opinion.

They offer a substitute card quite admirably.

Q. Could we look, please, at {RC-J5/35.01/26}. We see at the top of that page:

"The number of American Express cards decreased at a [rate] of 12% between 2014 and 2016 as customers turned away from the higher fees charged for these cards in comparison to bank cards."

It then says:

"However, the number of such cards increased ... between 2016 and 2018. This rise was due to increased marketing activities ... raising its visibility and profile amongst merchants and customers ..."

Following the ruling in which it no longer offered after that GNS services.

So we see an attempt by Amex to increase its market share; can you see that?

A. Yes.

Q. Now what I would like to do is look at the market shares in question for commercial cards. Can we look please at {RC-J5/27/129}. This is an RBR commercial cards report, it is dealing with UK scheme market shares and it recognises market shares of commercial cards by scheme which covers Visa, Mastercard and American Express. Can you see that?

A. I can.

Q. In terms of share of value of card payments on the right-hand side, we see that American Express at this time which was 2018 stood at 5%, can you see that?

A. Yes, I can.

Q. If we then please look at page -- let me just cover the definition of payment cards so that we are on the same page on that. Please can we go to page 5 on this document {RC-J5/27/5}. You will see that here at the bottom "Definitions":

"Commercial cards are defined as cards issued to businesses to cover expenses such as fuel, procurement, and travel and entertainment. They include Business, Corporate, Purchasing, Lodge and Fuel cards ..."

Can you see that?

A. Yes, I do.

Q. So it is a very broad definition of commercial cards that the RBR is considering; correct?

A. Yes.

Q. Can we then please look at bundle {RC-J5/40/23}. Bearing in mind we have seen that Amex is making a concerted effort and its GNS programme has gone, it is launching an all-out assault on the market in terms of marketing. Can we look please at the bottom of that page at the bar graphs under "Share of total purchase volume", between 2018 and 2019 Amex's share dropped from 11% to 10%, did it not?

A. It did, yes.

Q. In terms of Ireland if we look, please, at page 92, {RC-J5/40/92} as far as I can see there is no reference to Amex at all there, is there?

A. I do not think they have an acceptance footprint in Ireland.

Q. At page 95, {RC-J5/40/95} that is confirmed. Because in terms of share of purchase volume, it is only Visa and Mastercard that are shown; is that right?

A. Yes, well I cannot see any green on there.

Q. Could we then, please, look at page 191 in this tab {RC-J5/40/191} this is the UK market and the total purchase volume -- sorry, the key insights on the right-hand side, it says in 2019 approximately 4% of total UK card payments and 11% of volume were spent on commercial cards; can you see that?
A. Yes, I do.
Q. Within that 11%, 45% was business cards and corporate was 28%? Correct?
A. Yes.
Q. If we then, please, move on to 194 {RC-J5/40/194} we can see the UK figures and in terms of total values for commercial debit volume -- sorry --
A. Debit.
Q. Commercial cards more generally, both prepaid, debit, credit and charge, you will see that Amex's market share decreased from 16% to 15% in 2019?
A. Yes.
Q. That does not bespeak, does it, a viable competitive threat to the joint dominance of Visa and Mastercard in the commercial card market?
A. I think they have a foothold, I think 15% is a pretty big share.
Q. Can I refer you, please, to bundle {RC-J3/113/3}, this is a confidential document so I am going to be careful

how I deal with it. It does not appear from this presentation of the European landscape that Amex is featuring as a consideration, does it? This is your --
A. I think.
Q. -- 2021 commercial strategy for commercial cards?
A. It features as a real threat.
Q. Where do I see Amex mentioned here?
A. Top right box.
Q. With that percentage figure, I am not going to say what it is?
A. No, no, no. Yes, I do see it as a real threat. If you think about it, if you think about it in the FinTech space, so without revealing anything that is on the screen here, who would have forecast three or four years ago the likes of Revolut, Monzo, Starling would be able to capture market share?
I think from Mastercard's perspective, you know, we competitively bid for every single piece of business that we either secure or unfortunately lose. So I think the number here in the top right hand is a real threat.
Q. Could you please go to bundle {RC-J3/125/30}. This is the 2022 RBR study, it is "restricted confidential" so I will not cite it, but we can see network shares on the left-hand side for the SMB share. Again I am going to put to you that that does not show a viable threat, does

it?

A. I will repeat my earlier question, my earlier answer. I think it does. Anybody that is competing in this space irrespective of share is a threat.

Q. Could you look please at {RC-J3/125/50}. This confirms the position in Ireland, does it not, again I could not see?

A. I cannot see.

Q. Any indication there of --

A. I imagine that is due to the acceptance footprint.

Q. I mean more generally, you accept, do you not, that the acceptance rates for Amex are much lower than for Visa and Mastercard?

A. Yes.

Q. You would accept that merchants see Mastercard and Visa cards as "must take" cards but they do not treat Amex the same way?

A. I do not know how merchants treat Amex.

Q. The high level of charges payable to Amex would surely deter or even preclude many merchants from switching to them?

A. It could, but there are a fair proportion of merchants that do accept Amex.

Q. Yes, and if they valued Amex to the extent they are willing to pay the price that Amex charges they would be using Amex services already, would they not?

A. I guess it is a choice on the merchant's behalf, yes.

Q. What I am going to suggest to you is that if commercial MIF rates were reduced or even removed entirely Amex would respond by reducing its own charges to its own business customers?

A. I cannot comment on what Amex would do.

Q. That there is no real risk of all issuing banks who have business customers switching en masse to Amex because businesses still need a card to be accepted?

A. I think businesses do need a card to be accepted but I think in the mid to large corporate, I think as I say in my witness statement, it might not necessarily go to Amex. They might continue to push for the EFT, Electronic Funds Transfer, you know, you see from those share perspectives.

Q. In the event that the MIF rates for commercial cards are reduced or even extinguished, banks would simply find another way of funding their commercial card propositions to enable demand in the market to be met?

A. I think within most banks they have to have standalone businesses that cover the costs and create a level of income. If you remove the interchange as you saw from the table in my witness statement, it is significant. I do not see anywhere in the mid to large corporate space where they would be able to cover those costs.

Q. Finally, please, at page 31 of your report, {RC-F3/4/31} this is marked as "restricted confidential" so I will tread carefully, but at paragraph 18, you refer to the introduction of a new rate. That reflected, did it not, the countervailing buyer power from the entity that is under consideration?

A. Say that again, just -- sorry, you do not need to explain, just say it again?

Q. Yes. Paragraph 18 we see a proposal was made to cover a particular situation.

A. Yes.

Q. That situation reflected the buying power of that particular entity. A special deal was done because it was a big entity, correct?

A. I -- I assume so.

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

THE PRESIDENT: We have no further questions. Any re-examination?

Re-examination by MS TOLANEY

MS TOLANEY: Can I just ask you one question. If you go to paragraph 26 of your witness statement, please. You were asked if you considered Amex to be a threat. This is a confidential table but can you look at that question in the context of these market shares. Do you have anything else to add?

THE PRESIDENT: The document has just vanished.

A. It is fine, I have it here.

THE PRESIDENT: You have it.

A. Without divulging the absolute values I think they have a real foothold and they will come fighting tooth and nail should Mastercard interchange rates be removed or reduced.

MS TOLANEY: Thank you.

THE PRESIDENT: Ms Suttle, thank you for your time and your evidence and we are very grateful to you, you are released from the witness box with our thanks so thank you very much.

A. Thank you very much.

(The witness withdrew)

MS TOLANEY: May I call Ms Devine, please.

MS KELLY DEVINE (sworn)

THE PRESIDENT: Do sit down and yourself comfortable, there is some water there in the glass.

A. Thank you.

THE PRESIDENT: A bundle and also a screen. Most of the documents will come up electronically, if you need to see other parts of the document, other pages, just say and they will be brought up but you cannot control the screen yourself, so you have to ask, so do.

I will hand you over to Ms Tolaney who has some questions for you.
A. Thank you.

Examination-in-chief by MS TOLANEY

MS TOLANEY: Good afternoon, I think you should have in front of you at tab 3 a witness statement that you have given in these proceedings.
A. Yes.
Q. Could you go to paragraph 6, please. {RC-F3/3/2}. I believe you had one correction you wanted to make?
A. Yes, in February I stepped down as a board member of UK Finance because it was the end of my three-year term.
Q. Thank you. Could you turn, please, to page 8? {RC-F3/3/8}
A. Yes.
Q. So subject to that correction, please could you confirm that the contents of your statement are true to the best of your knowledge and belief?
A. Yes.
MS TOLANEY: Thank you, Ms Fitzpatrick will have some questions for you.
THE PRESIDENT: Ms Fitzpatrick.

Cross-examination by MS FITZPATRICK

MS FITZPATRICK: Can we start, please, on page 2 of your statement at paragraph 4 {RC-F3/3/2}?

A. Yes.
Q. On the fifth line there you say that when you were Vice President, Consumer Issuing (UK) you were responsible for several strategic issuing customers; do you see that?
A. Yes, I do.
Q. Which customers were those?
A. I do not know if I can remember all of them but they included NatWest, Lloyds, Virgin Money, a number of others, Metro.
Q. Thank you. You then go on to say that when you were Senior Vice President, Head of Issuing (UK&I) you led a large team managing Mastercard's partnerships with banks. It would be fair to say, would it not, that Mastercard's partnerships with issuing banks are very important to it?
A. Yes, they are.
Q. At paragraph 5 on the third line, you say that in your current role your responsibilities include customer relationships. Who are your customers for that purpose?
A. A huge variety so that includes issuers, acquirers, some merchants, digital partners, government, certain government open entities, a variety.
Q. Would it be fair to say that the majority of those customers are issuing banks?

A. By number, no. By revenue probably also not.
Q. Thank you. On page 3 of your statement, {RC-F3/3/3} in section C, you discuss what you say is the importance of interchange fees. It is perfectly possible, is it not, for a four-party payment card scheme to operate without any interchange fees at all?
A. Not, not that I am aware of, no.
Q. Okay, so you are not aware for example of the EFTPOS debit system in New Zealand which functions with default settlement at par.
A. No, I am not familiar with that.
Q. Okay and are you aware that the European Commission's decision against Mastercard in 2007 found that a counterfactual scenario with default settlement at par was a realistic scenario for Mastercard?
A. I am not familiar with that agreement, no.
Q. Okay. Well, just for the sake of argument, in that counterfactual, the Commission found that cardholders would pay issuers for their services, merchants would pay acquirers for their services, and both issuers and acquirers would pay scheme fees to Mastercard.
There is nothing implausible about that set of arrangements, is there?
A. I think the question is whether in this market it would be viable to move from something that is commonly

accepted, which is that the use of card is generally fee free, would it be possible to transition to something where everyone pays? I think that would be challenging, I think it would be challenging for a first mover to set a foot in that direction because clearly they would be at a disadvantage to their competition and they would also be challenged -- we talked before about American Express, we know American Express offers fee free products in the market that do attract an interchange, albeit under a broader guise, so they are able to offer strong propositions.

So I -- I would question whether it would be viable for a bank to be able to charge card fees and in that way replace interchange revenue and still have competitive products.

Q. But a four-party payment scheme could still exist, could it not, without interchange fees? We are talking about kind of extent of competition but the question is about existence really --

A. I mean, if you play out the scenario of what might happen if we did not have interchange fees, so two different things could happen. One is on the issuer side directly, if you are an issuer and you were no longer able to collect interchange from Mastercard, the rational thing to do would be to see if you could earn that interchange somewhere else. So I would expect those issuers to seek alternatives, you know, whether that is Visa, if that were feasible, if not Visa, American Express, if that were feasible, so that would be the first way in which we could lose business.

The second way we could lose business is indirectly and that is by issuers choosing to disinvest in card products, to target different audiences, to change the products or alternatively by cardholders moving to better products such as the Amex example I just gave. Whether that would eliminate our business completely, I do not know. But I think between those three things it would substantially damage our business.

Q. We will come back to some of those possibilities in just a moment.

On page 3 of your statement, paragraph 10, {RC-F3/3/3} first line, you say interchange fees provide a revenue stream for financial institutions, do you see that?

A. Yes, I do.

Q. Interchange fees are in fact intended to pass an income stream from merchants to issuing banks; correct?

A. Correct.

Q. In simple terms, Mastercard through its rules on interchange is telling acquirers to give money to issuers to subsidise the provision of payment cards to customers; that is right, is it not?

A. To contribute to the provision, yes.

Q. Now, thinking generally about issuing bank's costs of cash, and I am thinking now about the costs of running cash machines, of storing cash, of Securicor vans and contracts, transporting cash safely from A to B, theft risk, counterfeit risks, that sort of thing, those costs are significant for issuing banks, are they not?

A. I am. I do not know much about cash but I would imagine that there are costs associated. I could not speak to magnitude.

Q. Those costs would be more significant, would they not, than electronic and damage material payments of the kind that Mastercard and Visa facilitate?

A. I do not know automatically that they would be. I do not know.

Q. Okay.

Thinking now about a different payment instrument. If an issuing bank were to provide a customer with a free chequebook and pen, the issuing bank would not expect an acquirer or a merchant to pay from that, would they?

A. I do not believe they do, no.

Q. Paragraph 10 of your statement, the second line, you say

that interchange fees are intended to reflect the value generated for merchants by issuers?
A. Yes.
Q. Merchants can assess for themselves how much value they ascribe to cards being issued to cardholders, can they not? They do not need Mastercard to decide that for them?
A. I suppose they can act by deciding whether to accept cards or not.
Q. Indeed.
A. So yes.
Q. If they considered payment by card to be a benefit with them, they could decide whether to accept cards, they could reflect the value of accepting payment by card by offering a discount against the cash price at the till, something like that, could they not?
A. If rules allow, then yes.
Q. Paragraph 10 of your statement again, the sentence starting the fourth line down. You talk about certain costs which you indicate merchants contribute to through interchange fees.
So you refer at the end of the fifth line to cost of fraud and at the beginning of the sixth line to cardholder defaults; do you see that?
A. I do, yes.

Q. Why would a merchant face a risk of fraud or cardholder default on a debit transaction?
A. So there is always the possibility that the card has been taken by a third party and therefore the transaction is fraudulent so that is how fraud could occur. In terms of how cardholder default could occur, that could occur if it was a transaction operating within an overdraft but I do accept that cardholder default is obviously much more prevalent in the context of a credit card than it would be in a debit card.
Q. Thinking about the risks of fraud falling on the merchant now, so when a cardholder presents their debit card to the merchant, the acquirer authenticates the payment with the issuer prior to authorisation; that is right, is it not?
A. That is correct, yes.
Q. If insufficient funds are available, the debit card payment would simply not be authorised?
A. That is correct, yes.
Q. That is almost instantaneous, that process?
A. Yes.
Q. That is debit cards. With credit card transactions, the risk of cardholder default is borne by the issuer, is it not, as they are the one extending credit to the cardholder who may fail to make their minimum

repayments?

A. I think all of these costs are borne by the issuer I think the point I am trying to make is that the benefit is shared between the issuer and the merchant.

Q. Well, insofar as these risks are borne by the issuer, an issuer could reasonably be expected to see those risks of one of the ordinary costs of doing business as an issuing bank, could it not, and it could be expected to price for those risks when setting interest rates or other bank charges or fees?

A. I -- the benefits are provided and I think the merchants do benefit from those to some extent. Absolutely the cardholders do as well, you are correct to say that. The way the market is set up makes it very difficult in most cases for those particular costs to be recovered from cardholders beyond things like interest which are charged in some instances, but by no means all.

Q. Issuing banks are responsible for vetting their customers upfront, are they not, they to make sure they are genuine and not fraudsters?

A. They are, yes, there is lots of rules around that.

Q. The issuer can more efficiently assess cardholder fraud risk than an acquirer more merchant; that is right, is it not?

A. They can, yes.

Q. For an issuing bank, the cost of that vetting process is again just one of the costs of doing business as a bank?
A. It is a cost of doing business but it directly provides a benefit to the merchant by them doing that, yes.
Q. But it is true, is it not, there is no good reason to expect an acquirer or a merchant to pay for the issuers' costs of vetting its customers, apart from that Mastercard can make it pay through interchange fees?
A. I believe the rationale, the purpose of interchange is to ensure that all those who benefit from card payments take a share in the cost of card payments, that is the sort of underlying principle of what interchange does. So if we are talking about the costs of making sure that somebody is who they say they are, if we are talking about the costs of making sure someone has the funds available to them, that that transaction is a legitimate transaction and is not being used for some nefarious purpose then yes, absolutely, there are benefits to the issuer providing that but there are benefits to merchants as well and in my mind it therefore logically makes sense for merchants to take some share of the cost.
Q. In the final three lines of paragraph 10, you note other costs which you indicate should be paid for by merchants through interchange fees: everyday transactional costs,

wider costs of onboarding new customers and so on. Do you see that?
A. I see that I say that those are costs that issuers incur yes.
Q. In any event, the issuing bank has a customer and has a relationship with the customer, does it not; in some cases a long established one?
A. Absolutely.
Q. Within that relationship, the issuer benefits from bank charges and simply having money on deposit that can be used to fund its traditional banking business?
A. That depends on the issuer, that would not be true for every issuer. So if I take an example of an e-money issuer, when you think about how they are able to hold money on deposit, they have to keep that in a custodian fund on which they cannot necessarily earn the kind of returns to which you are referring. So I absolutely accept for the majority of issuers they may be earning revenue from other sources, but that is by no means true for all issuers.
Q. An issuing bank would see the supply of a debit card as a simple cost to the banking relationship, would it not?
A. As part of -- yes, as a cost of the banking relationship certainly.
Q. Like the provision of monthly statements or electronic

payment facility through Faster Payments?
A. Yes, that is one of those products that is typically offered as part of a current account.
Q. You would not expect the payee's bank to fund the issuing bank's cost of the Faster Payments system, would you?
A. Again that depends. So if you think about something like fraud, when there is a fraud on a Faster Payments transaction, new regulation is being introduced to ensure that the cost of that fraud is actually split evenly by the payee bank and payer bank. So yes, I would -- depending on the circumstances, there are circumstances in which I would expect that cost to be shared.
Q. Moving on to paragraph 11, you discuss the value to issuers of revenue they receive from acquirers under the schemes. You would accept, would you not, that issuing banks receive income from interest from credit card holders?
A. Yes.
Q. You would accept that they also receive income -- issuers, this is -- from any other charges or fees payable by bank customers or cardholders?
A. Yes.
Q. They receive the value of any money held on deposit in

the cardholder's bank?

A. Yes.

Q. Which they can use for investment.

They also benefit, do they not, issuers, from offering a good service to their customer because they can monetise through the sale of financial services, mortgages, insurance products; that kind of thing?

A. If -- if they have that. Again, thinking about money or thinking about a newer bank like Monzo, it is not necessarily the case that they have lots of other services in which they are looking to cross-sell. But yes, for many banks of course they have the opportunity to cross-sell to their base.

Q. Paragraph 11 again, five lines down, you say:

"... interchange fees are the only revenue stream that generates enough income to allow issuers to offer a product that is attractive to customers."

Then you say:

"I do not believe that issuers are able to match the interchange fee income they receive from alternative sources."

How do you know about the relative sources of issuer income, have you looked at the accounts of any of the issuing banks?

A. Primarily through extensive conversations with issuers over the years, my understanding is that they typically run sort of products, so there will be a card division within a bank, that card division will have its own P&L associated with it and that P&L will be looked at, you know, in and of its own merits when considering, you know, levels of investment, when considering sort of product, when considering ongoing spend, when considering cuts, if cuts need to be made.

So my understanding -- no, I do not have direct, I have never been -- worked for a bank, but it is through sort of extensive ongoing conversations.

Q. So are you in a position to say, for instance, what proportion of issuer revenue comes from their MIF income?

A. No, I am not.

Q. Are you in a position to say how much money issuing banks make from reinvesting some sold on current accounts?

A. No.

Q. Can you tell us how much income UK issuers receive from interest payments on credit cards, for instance?

A. No, I cannot. I did see a statistic that UK Finance provide that says something like roughly 50% of credit balances in the UK attract interest.

Q. We will come to that shortly actually. Can we go to page 4 of your statement please, still paragraph 11, four lines down from the top of page 4, {RC-F3/3/4}. You say this:

"Income received from interest on credit balances would not be sufficient [to match interchange revenue, that is, because] as regards credit card transactions, issuers do not receive interest from the large portion of cardholders who pay off their balances monthly ..."

What is your basis -- what is the basis for your belief that issuers do not receive interest on a large proportion of credit cards?

A. Both from conversations with issuers and also from, you know, backed up by that UK Finance statistic I just mentioned and we know that that varies significantly by issuer as well. So to give an example, the big grocery retailers/bank whose cardholders typically take the card because of their allegiance to that retailer and, you know, spend it weekly with their shop. Very typically, they tend to be what we would call a transactor, i.e. they pay off their balance every month. So some financial institutions, a very small percentage of their book would actually attract interest. So they are just funding the -- the interest free period.

Q. Can we go, please, to RC-J5/56 --

PROFESSOR WATERSON: Just coming back on that point about

this large grocery retailer who also has a bank. When you say they would pay their balance off, do they use credit cards to buy their groceries?
A. Possibly, yes. Because, it is -- typically they would have a reward programme and that is why people engage with the programme which benefits both the bank and obviously the retailer as well, that is why they do it, to create that sort of loyalty with the product and with the brand.
PROFESSOR WATERSON: So it would be a credit card rather than a debit card that they would use?
A. Yes, yes.
PROFESSOR WATERSON: Thank you.
MS FITZPATRICK: Can we go to {RC-J5/56.3/1}, this may well be the document that you are talking about, Ms Devine. It is UK Finance's card spend update for November 2023 which was published just under three weeks ago.
You will see a subheading on the left-hand side "Key data highlights" and then under that another subheading "Card transactions by UK cardholders both in the UK and overseas"?
A. Yes.
Q. At the third bullet point underneath that subheading, you see outstanding balances on credit card accounts have grown by 9.8% over 12 months to November 2023 and

49.5% of outstanding balances incurred interest compared to 50.9 in December -- November, sorry, 2022. Do you see that?

A. I do see that, yes.

Q. Then can we go to page 2, please. {RC-J5/56.3/2} Can we zoom in on the middle section of that page under the heading, thank you, "Credit cards -- UK cardholders".

So the first graph there shows value of transactions and the figure on the right-hand side shows 20.9 billion worth of credit card transactions in November 2023. Do you see that?

A. Yes.

Q. Can we go to page 4, please. {RC-J5/56.3/4} Can we look at the third main section on that page titled "UK credit card holders". Can we scroll down, please, to the final -- I think it is four lines, thank you. So on the first line of that final four lines the numbers in that row are in millions so you can see there average outstanding balances, credit card balances, exceeding 60 billion throughout the year between November 2022 and November 2023. Do you see that?

A. I do, yes.

Q. On the next line, you can see that the proportion of those balances bearing interest is consistently around 50%?

A. Yes.

Q. So issuers do receive interest on what in aggregate are considerable outstanding credit card balances, do they not?

A. Yes.

Q. Going back to page 3 of your statement, {RC-F3/3/3} looking at the second to last line in paragraph 11 at the bottom of the page, you say:

"Fees charged to cardholders are not practical in the UK and Irish issuing markets."

Do you see that?

A. Yes.

Q. But Amex charges fees to cardholders, does it not, and cardholders are also charged fees for premium cards; that is right, is it not?

A. For premium cards, yes, and Amex do charge fees certainly for some cards but not all cards.

Q. So it is practical, is it not, to charge cardholders fees?

A. For certain cards, yes, you are right.

Q. Now, if you are saying that cardholder fees -- and I think this is what you are saying -- are not practical for debit cards --

A. Also for some credit cards.

Q. Are you simply saying that those kinds of cards are the basic options that are expected to come along with any current account?

A. I am saying I suppose that the market expectation in the UK is of free banking and it would be relatively difficult for that to change.

Q. But some customers --

A. Sorry.

Q. No, you go ahead.

A. I was going to say when -- particularly when there are other free products in the market place, you know, for a bank who provides a free product to suddenly say I am going to start charging you for that product but other free products continue to exist, I would think most consumers would consider their choice in that instance. So I think that that would be a difficult transition to make.

Q. But as a matter of principle, if cardholders value the use of the cards as a payment instrument that is a good reason to expect they would be willing to pay to hold a card, is it not?

A. I do not know. Everyone could probably answer that question for themselves.

Q. Let us come to this point about free banking. So at the very bottom of page 3, you say that cardholders in the UK have a strong -- and Ireland have a very strong expectation of what you call free banking but in fact cardholders do effectively pay for banking services, do they not?

A. Sorry, I did not catch that.

Q. I am sorry, cardholders do effectively pay for banking services, do they not?

A. In what way did you have in mind?

Q. Well, they allow their money to be held on account to be used by bank and often the bank does not pay interest, for example, on current account balances and the difference between the time value of money and any interest that is received by the customer from the bank would be consideration moving from the customer to the bank in return for the banking service provided, would it not?

A. Yes, I would agree that. I am not sure most people would think of that as paying a fee for banking, but you are right, in effect they are.

Q. Can we go to --

THE PRESIDENT: So what you are saying, Ms Devine, is that there is a psychological mindset in the cardholder group where they prefer to pay, even if it is subconsciously in one way they are paying, but in a manner that is perhaps more hidden from them or in a way that they find more acceptable to pay?

A. Yes, I think it is two things. I think one, it is that psychological barrier of not seeing a number, which obviously changes things a little bit. I think the second point is that we do have American Express in the marketplace offering fee free cards and as a consequence if my bank suddenly said "I am going to charge you £X a month" and I did a bit of Googling Money Supermarket that said "here is an Amex fee free card" I, and many others, I suspect, would consider transferring to Amex. Yes, there are acceptance gaps with Amex that might mistake that difficult to do, but obviously the more people who move to Amex, one might expect their acceptance footprint to go and to overcome that challenge. So I think it is both psychological and a competitive point.

THE PRESIDENT: Well, but will not Amex have exactly the same problem that any incumbent has that does not have market share in this sort of thing, in that if you have a network that does not have broad acceptance, then people will not come in unless there is a big shove to do that.

A. I one is I would say Amex -- and I speak as having worked at Amex for a period of time, what Amex talk about is having acceptance where you need it. So no, they do not have fully widespread acceptance but for certain constituents and communities, they absolutely do have the relevant footprint and people who have American Express cards and have benefits associated with that will seek to shop at shops that accept American Express cards, so they can change the behaviour of their cardholders.

So I think that is one piece of it. I think also there is always a bit of a chicken and egg with acceptance and issuing, but as more and more American Express cards were issued, you would possibly expect the acceptance to move with that so that over time that problem would be remediated.

THE PRESIDENT: Thank you.

MS FITZPATRICK: Can we go to page 4 of your statement, paragraph 12 {RC-F3/3/4} in that paragraph, you refer to a threat on the issuing side from Amex.

A. Yes.

Q. Amex does not offer a bank account to cardholders, does it?

A. No, it does not.

Q. Does it offer debit cards?

A. No, it does not.

Q. The Amex GNS system that you refer to in the penultimate sentence of that paragraph is historic, is it not; it does not exist any more?

A. It does not exist any more. When the Interchange Fee Regulation came in, which they were affected by, they decided to leave the market because of what they called regulatory burden.

Q. In any event, Amex's market share is very small compared to Visa and Mastercard's, is it not?

A. It is, yes.

Q. Even in commercial cards where it is most successful Amex's share is a small fraction of Visa and Mastercard, is it not?

A. In some elements of commercial card, yes. As I say, though, I think what we are talking about here is the counterfactual of if we did not have interchange and they did have interchange and potentially more significant interchange, would that be able to create viable products, would they shift their strategy in order to capture that opportunity? I think if I was the head of the American Express business -- I am speculating here -- clearly that is something that I would try to do.

Q. But with a market share of between 3 and 5%, Amex is hardly in a position to mount a significant competitive threat to Mastercard, is it?

A. I -- I do not think it is possible to say that because someone has a relatively small market share today that precludes them from having a large market share tomorrow, particularly if they were to have a significant advantage such as being able to earn greater interchange, greater revenue than their competitors. I -- I think with most markets you would see market share shift in that eventuality.

Q. Looking at page 5 of your statement, paragraph 17 {RC-F3/3/5}, in the first line you say interchange fees are equally important to Mastercard. I am going to suggest to you that as regards the alleged need to secure MIFs for revenue purposes, that alleged need and fact relates to a specific concern about the business profitability of Mastercard; that is right, is it not?

A. Interchange is important to us for two reasons not directly related to our revenue since clearly we do not collect interchange, but it is important to us both to enable us to be competitive so that people continue to issue Mastercard cards as opposed to other cards, but also so that in turn, our issuers can be successful and competitive in their marketplace and retain their customers and grow their businesses.

So it is important to us for our revenue absolutely but indirectly because of how it enables issuers to be successful.

Q. Looking at page 6, paragraph 20 {RC-F3/3/6} at the top

of the page. You say that interchange is important for a payment card scheme to have a viable business?
A. Yes.
Q. But the Mastercard scheme has survived the interchange fee caps imposed by the IFR, has it not?
A. It has, yes.
Q. In any event, since the IFR caps were imposed, scheme fees have increased have they not?
A. That is a complicated question as to whether scheme fees have increased. Elements of scheme fees have increased, yes.
Q. Let us look at a document, shall we? Can you go, please, to {RC-J5/43/1}, this is the final report from the PSR's review into market acquiring services dated November 2021, as you can see. Can we go to page 10, please. {RC-J5/43/10} Can we zoom in on paragraph 1.16 at the bottom of the page. There the PSR says:
"In our final terms of reference we said we would examine how scheme fees have changed over the period 2014 to 2018. Our analysis indicates that scheme fees have increased significantly over the period and a substantial proportion of these increases are not explained by changes in the volume, value or mix of transactions."
Do you see that?

A. I do see that, yes.
Q. So there is clearly scope, is there not, on that basis for Mastercard to charge acquirers for the benefit of supplying services to merchants through an increase in scheme fees?
A. Just a tiny bit of context on these numbers. What I would say the PSR's analysis did not take into account was the change in the separation of switch in scheme between those periods, so we did talk to the PSR about the fact their analysis over this period was not apples with apples.
There certainly is scope for us to charge scheme fees to acquirers. Of course we are always -- when we do that, there is always a question of what value are we returning for that. Many of our services are optional, they are not services that acquirers have to take, so we have to compete in the marketplace for those and not just with Visa. So it is a complicated picture.
Q. But is your evidence, Ms Devine --
A. It is Devine, yes.
Q. Is your evidence, Ms Devine, that scheme fees did increase significantly over the period or that they did not?
A. I cannot give specific evidence as to that period because I was not in the kind of role that enabled me to

have oversight of that. I can say that we challenged the PSR significantly strongly on their conclusions.

Q. Okay. Can we go to page 20 of this report, please {RC-J5/43/20} and look at -- just zoom in, please, on figure 1. Thank you. So if you look at the issuing side, so cardholder issuer scheme, you could, could you not, have a calibration of cardholder fees flowing to the issuer and scheme fees flowing from the issuer to the scheme that made the interchange fee redundant?

A. You could, subject to the challenges with reducing interchange fees that I have walked through. I will not do that again.

Q. Can we go back to page 4 of your statement, please, {RC-F3/3/4} paragraph 14, second line, you say that absent interchange fees, the third line in fact, there would be a significant issuer revenue deficit. How do you know about that significant issuer revenue deficit given that you were not able to tell me earlier what proportion of issuer revenue related to MIFs?

A. I suppose just from the conversations I have had with issuers I have some sense of the scale of interchange that they earn and I also have some sense that the portfolios that they run are not -- you know, are profitable but are not necessarily hugely profitable because those are the conversations that we have.

If I put those two pieces of data together, that is my assumption. But you are right, I cannot speak from personal experience or be specific about that.

Q. Okay. On page 4 of your statement, paragraph 15, {RC-F3/3/4} the second line, you assert there that without interchange fees, issuers could need to decide whether to exit markets completely. But in a world with no interchange fees, all issuing banks would be affected in the same way, would they not, so there is no reason, is there, to think that a lack of interchange would be a factor motivating the market exit of any one issuer more than another?

A. I think every, if a revenue stream changes significantly, you would look at -- you know, you would clearly look at the profitability of your business and make a decision as to whether the next dollar you were going to invest or where you are going to spend next year made sense to invest in that business. So I think all businesses would have to look at their mix of, you know, of businesses and decide whether that made sense.

To take a few examples where -- I am not saying they would exit the market, but where I think they would very seriously contemplate it, if you were a global issuer with a global footprint who had a UK business you might say: look, do I want to invest my next dollar in the UK or where I can earn a return from interchange, I would say, so they might consider exiting the market.

If you were a card issuer only, i.e. you were not a bank with lots of other services, you might say: okay, do I want to continue to be a card issuer given I can no longer earn interchange?

So I think it is easy to point at a big bank and to ask yourself the question whether they would want to cross-subsidise this or not. I am not sure they would necessarily. But I understand that debate but they are by no means the only people in this marketplace.

Q. Can we go to {RC-J5/10.8/1}, please. Ms Devine, are you aware that the Reserve Bank of Australia began regulating interchange fees in 2003?

A. I am not, no.

Q. Okay. Well, this is a letter from the Australian bank Westpac to the Reserve Bank of Australia which related to a review of those regulations, those reforms in Australia's payment system. You can see it is dated 31 August 2007.

Can we zoom in, please, on the subheading (i):

"What have been the effects of the reforms to date?"

So you can see there is a further subheading under that saying "Interchange".

The second paragraph beneath that says:

"Lower cost to merchants have been offset by increased net fees charged to cardholders in the form of higher fees, lower benefits and reduced interest free periods. This has resulted in banks substantially maintaining profitability levels, competitive impacts aside, following the reforms."

Do you see that?

A. I do see that, yes.

Q. So it is perfectly possible, is it not, for an issuing bank to offset a reduction in interchange revenue in a way -- in such a way that it substantially maintains profitability levels?

A. Yes, it certainly seems like it was possible in these circumstances, yes.

Q. Can we go to the top of page 5 of your statement, please {RC-F3/3/5}. In the final sentence of paragraph 15 there, you say that -- and this is a point in the absence of interchange fee revenue, some issuers would likely have stopped issuing consumer credit or debit cards. It is not at all likely, is it, that banks would restrict debit cards when their customers need them?

A. As I say, I do not agree with that. If I think about all of the new market entrants we have had in the UK recently, people like Monzo and Starling who have entered the market just issuing prepaid cards and then debit cards, that has been the extent of their business for a long period of time. They are now developing those businesses but for a long period that was the extent of their business. I am not sure how or why they would have continued to do that if they were not earning any revenue. As new entrants, I do not see how they could have charged fees because you have got big incumbents who would not have been charging fees.

So I -- I do think it is feasible that some would have stopped issuing both credit cards and debit cards.

Q. Staying at page 5 --

THE PRESIDENT: Just pausing there. I mean, are you saying that they just would not enter the market because if you are not issuing debit cards, you really are not allowing customers access to any form of banking service at all?

A. I think if it is not -- yes, if it is not possible to earn a reasonable return on a credit or a debit card, then I am not sure why, if that is the sort of extent of your business, I am not -- yes, I am not sure you would enter the market or, you know, for instance we talked about monoline providers who just do credit cards, maybe they would exit the business.

THE PRESIDENT: So what you are saying is that the interchange fee is the reason, maybe not the sole reason but the predominant reason for certain participants in

the market to enter and without the interchange fee,
they would not enter?
A. I think yes, I think if you are looking at a card business on a standalone basis, interchange revenue is a significant piece of the puzzle and therefore if you have a standalone cards business, I am not sure it would make sense to participate without interchange. Obviously for a bigger bank that has other lines of business, it is different.
THE PRESIDENT: I put to you the example of monoline providers who do not have a more diversified form of business provision?
A. Yes.
THE PRESIDENT: I quite understand that there is --
A. Others.
THE PRESIDENT: -- other sources.
PROFESSOR WATERSON: But coming back on that. The implication is that market entry by these monoline providers is they see the business as actually quite profitable?
A. Presumably yes, they believe that they can make a good rate of return, I would agree.
PROFESSOR WATERSON: So we have not seen them shrinking away?
A. No, we have not.

PROFESSOR WATERSON: In response to the drop in interchange fees?

A. Well, most of these new entrants happened sort of post IFR because -- frankly because technology enabled it. What we have seen is them seek to move into other product areas where they can continue to monetise, so to provide lines of credit, for example, loans. So we have seen them to seek to continue to diversify their business beyond cards but absolutely they believed in the current environment they can make a rate of return on a card payment.

PROFESSOR WATERSON: Thank you.

MS FITZPATRICK: Page 5, paragraph 16. The second sentence beginning on the third line, you talk about the IFR and the effect of the caps and you say the reduction -- four lines from the bottom, you say:

"... the reduction in interchange fee revenue impacted products with more attractive T&Cs and/or significant benefits such as cardholder rewards."

Now, there is no reason is there why merchants should have to subsidise cardholder rewards?

A. No, I would think logically unless I think there are circumstances under which certain merchants do choose to because it helps to create loyalty or interest in that business, but I agree with you in general terms.

Q. So the only reasons why merchants would have been doing so before the IFR was because Mastercard could make them through setting interchange fees?
A. Yes, I guess that they considered the broader picture, but yes.
Q. Okay. I have a few questions now on the alternative options you discuss in your statement so can we go back to page 2, please, at paragraph 8 {RC-F3/3/2}. You refer to three alternative options for Mastercard if it could not set positive interchange fees for transactions covered by the IFR, do you see that?
A. Yes.
Q. The first of those very bottom of page 2, 8.1, is zero interchange or default settlement at par?
A. Yes.
Q. Then if we go to page 6 of your statement, paragraph 21 {RC-F3/3/6}, in the final sentence you say: if we try to operate with zero default interchange and then you say we could not operate in the credit card markets nor potentially the debit card market in competition with Amex, but we have established, have we not, that Amex does not provide debit cards?
A. No, but they offer a charge card and many people would uses charge card as sort of proxy for a debit card. So what could happen, for example, is you would have your

salary paid into your bank account every month. You would not pay for a debit card with your bank because you would not want to pay for that, you could take a free chargecard from American Express, spend on that and then do a direct debit payment to pay off your card charge every month. I accept that is a bit convoluted and not everyone would choose to do that, although actually it is a very economic thing to do because you earn rewards on your American Express chargecard, and therefore it could be a proxy for debit for some people.

Q. You then say that you do not think that Mastercard could compete in the debit and credit card markets against Visa?

A. Yes.

Q. Are you aware that the European Commission treated default settlement at par as appropriate for consumer cards in its decision in 2007?

A. I do not know the details around that.

Q. Okay, but are you aware it did so?

A. I am not, but I am sure they did.

Q. They did and that conclusion was endorsed by the Court of Justice of the European Union.

Are you aware that Mastercard did in fact operate with default settlement at par on intra-EEA transactions for period of time as a result of the Commission

decision in 2007?
A. I have been made aware that we did that for a short period of time. I did not join the company until 2015 so it is very secondhand knowledge.
Q. Evidently because we are here today, Mastercard was able to compete with both Visa and Amex during that period, was it not?
A. Yes. To provide a bit of context with issuers it takes some time to migrate a portfolio from one scheme to another. So if you have a reasonable expectation that rates will be, you know, comparable over a period of time, then you would not necessarily take that decision, so -- but I do not know the details of that case.
Q. Okay. Turning back to page 3, top of page 3, paragraph 8.2, {RC-F3/3/3} you refer to the second option under consideration which is a system, you say, of unilateral issuer rate setting. When did Mastercard begin considering that option?
A. I do not know that.
Q. Okay. So can we look, please, at {RC-C1/3/1}. So you may not have seen this before, Ms Devine, but this is Mastercard's Defence to the Pendragon claim which is one of the claims in these proceedings and if we go to page 48, please {RC-C1/3/48}. We will see it is dated right at the bottom 18 September 2020. If we now go to

page 31, {RC-C1/3/31}. At the very top of that page the plea there is that:

"The only realistic counterfactual for consumer cards for the post IFR period is one in which there is no default rule of any kind in relation to settlement with the result that issuers and acquirers had to negotiate settlement terms including interchange fees bilaterally."

Do you see that?

A. I do see that, yes.

Q. Okay. Can you provide any insight as to why Mastercard has abandoned the view that bilaterals were the only realistic counterfactual?

A. I cannot, no, I can only say that in conversations with my legal team, they believe that unilateral is feasible. I am not sure why that has changed.

Q. Right. In terms of the unilateral system, what you are proposing is an amendment to the Mastercard rules; correct?

A. I believe so, yes.

Q. So there would be a specific rule that provided for that system to be in place?

A. Yes.

Q. Are you aware of any draft document or other document in existence that sets out the amendments that would need

to be made?
A. I have not seen it, no.
Q. Okay. On page 6 of your statement, paragraph 23 {RC-F3/3/6} at the first line, you say that you do not see any potential issue with putting such a system in place. What is that comment based on?
A. I suppose that is based on my business perspective, so clearly not speaking as a lawyer, but looking at it from, you know, how would it work from a business perspective, would it drive the relevant business outcomes, could it be enacted? In that context I do not see an issue.
Q. But this proposed system has not actually been considered by Mastercard, has it, internally by any working group or project, nothing like that?
A. I do not know the answer to that question.
Q. Okay but it presumably it would be a big technical change, would it not, quite operationally complex, a substantial project?
A. I -- I do not know. I mean, any change to interchange fees is not -- is not straightforward but it is something that we do. It is a parameter within a system.
Q. But this would not be just a change to interchange fees, would it, it would be a change to the way the system

operated, who set the fees and you would have to work out the parameters within which rates were set, that sort of thing?

A. I -- I do not necessarily see it as being that complicated. My understanding -- and, you know, I am not an expert in the details of the rules, but my understanding is that we would put in place a rule that empowered or that required acquirers to accept the rate that was set by issuers and then we would need issuers to submit to us via some sort of form as to what rates they were submitting and then we would need to enter those rates into the system and they are already calibrated in such a way that they can be set by issuers.

So on the face of it, it does not appear to be something that is overwhelmingly complicated.

Q. Okay, so let us just go to how you describe it in paragraph 8.2. You say as follows, beginning on the second line, in the absence of bilateral agreements those transactions would settle at par, i.e. with zero default interchange, unless the relevant issuer had previously set its own interchange fee rate for them; do you see that?

A. I do, yes.

Q. So you are saying there, are you not, that the rules

would envisage issuers setting rates in any event and that those rates would form sort of backdrop for any bilateral negotiations that took place?
A. There could be bilateral agreements just as there can be today. We enable bilateral agreements today within our system.
Q. It would be highly unlikely, would it not, that an issuer would fail to set a rate?
A. I would imagine so, yes.
Q. In fact the overall objective of the new unilateral system would be to secure a stream of interchange revenue for issuing banks, would it not?
A. Yes, it would.
Q. It is not at all likely, is it, that an issuer would consider entering into a bilateral negotiation if the Mastercard rules say that they can set a rate in advance and know that the acquirer will have to accept it regardless?
A. No, and that is typically not what they do today either so that makes sense to me.
Q. All right. Let us look now at paragraph 8.3 on page 3, {RC-F3/3/3} this is the final option. You say:

"We would not have set any default settlement rules for those transactions but instead left their settlement to be negotiated bilaterally between issuers and acquirers."

Do you see that?

A. Yes, I do.

Q. Okay. Can we go to page 6, please, paragraph 24 {RC-F3/3/6} very bottom of the page, you refer to there being no default rules. Do you see that?

A. I do, yes.

Q. Great and can we go now to the bundle, {RC-R/22/1} please. So as part of these proceedings, Mastercard's legal team has provided a mark-up of the settlement rules which shows how there would be difference if the bilaterals option were to be implemented and this is that document. Have you seen this before?

A. I have not, no.

Q. Can we go to page 2, please. {RC-R/22/2}. Can we zoom in on 8.2 there, "Net settlement". So that is the current net settlement rule. Are you familiar with that rule?

A. I am not, no.

Q. Okay, let us read it together.

"A customer that uses the interchange system for the authorisation and clearing of transactions is required to net settle in accordance with the corporation's settlement standards."

Then it says:

"The issuer and acquirer may, with respect to a particular transaction, agree to settle directly between themselves pursuant to a bilateral agreement."

Do you see that?

A. Yes.

Q. Okay. So let us look now at the modification in red. So this would be a new Europe region rule, as it says there, and you can see that that red text would disapply that rule from intra-country consumer transactions in the UK or the Republic of Ireland, and says it would not apply also to intraregional consumer transactions in the Europe region, etc.

Then the next paragraph says:

"For the avoidance of doubt, no part of the Mastercard Rules should be interpreted as imposing any obligations on issuers and acquirers in relation to the settlement of such transactions."

Do you see that?

A. I do, yes.

Q. Okay. So as a result of this change, the rules themselves would provide for no guarantee, would they, that a given transaction would be settled, you would need a bilateral agreement in place covering that transaction in order to clear and settle through the Mastercard system?

A. My understanding is -- and I am straying into areas where I am not an expert, but my understanding is that in essence the IFR provides for that to happen, the nature of the IFR is that it mandates that an issuer can only retain 20 or 30 basis points and therefore in essence means that there has to be settlement net of a cap of 20 or 30. So my understanding is that is why this is feasible, because the IFR in essence creates that settlement guarantee and therefore no Mastercard rule is required.

Q. But the IFR does not require issuers and acquirers to enter into bilateral agreement with one another, does it not?

A. It does not, no, but it does require for an issuer to settle and to retain a maximum of 20, 30.

Q. I do not think it requires any settlement, Ms Devine, I think it just imposes caps on the interchange fees that can be charged by the issuer?

A. I defer to the lawyers. In discussion with my legal team, my understanding is because you can only retain 20 or 30 by definition, you have to settle the rest but clearly not my area of expertise.

Q. I have to put some questions to you about this in any event, I am afraid, because you have given evidence on this, so please be patient with me.

Can we go, please, to the top of page 7 of your statement, paragraph 24, {RC-F3/3/7}. There you say under the bilaterals option, "issuers and acquirers could operate with either ... a network of bilateral agreements between them across the market or (ii) transactions taking place without any existing agreement in place with interchange fees being agreed on settlement."

Do you see that?

A. I do, yes.

Q. Okay. I am going to suggest to you that it is highly unlikely that any transactions would already be taking place using Mastercard cards if settlement could not be taken for granted?

A. As I have just said, you know, I apologise that we do not have the expert on settlement that everyone would like, my understanding is that IFR does guarantee that and therefore there would be certainty. But I think your point that there is uncertainty in this is a valid one. I think what we would do is seek to create certainty so when we introduce this system, we would give people six to nine months, probably, we typically do nine months in the UK, I know six months was mentioned earlier, in the UK we try and make it nine months to enable agreements to take place to create that certainty.

But I think we have that fall-back position whereby if for some reason agreements were not reached, my understanding is that there would be settlements because that is what the IFR covers.

Q. I might need to take this step by step. So the IFR does not compel issuers and acquirers to enter into bilateral agreements.

So just take this in stages. There is no reason, is there, why a merchant would accept a Mastercard card if there was no certainty, and the IFR provides no certainty, that they would get paid through the schemes for the goods and services that they were parting with?

A. If there were no certainty, yes, I do not agree with the other part of that statement, but if there were no certainty, no.

Q. Just to go through this step by step to summarise what I understand to be the situation: if there were no default rules of settlement and no bilateral agreement in place. So at that point in time, prior to any bilateral agreement, the issuer would not be obliged to settle a payment with the acquirer, so the acquirer would have no certainty that they were going to be paid; correct?

A. I do not believe so, no.

Q. Okay.
A. As I said, the nature of the IFR means they cannot earn more than 20 or 30. Clearly if they did not settle, they would be earning more than 20 or 30, but that really is probably a legal question.
Q. Okay. Would you agree, Ms Devine, that the settlement obligation between the issuer and acquirer is really fundamental to the whole idea of a four-party payment system?
A. It certainly is the way in which our scheme is constructed today and I think it is pretty traditional with four-party schemes. I have lost my -- I do not know if everyone has, but I have lost my -- I do not know if that is just me. It is back, thank you.
Q. So moving on then. In the next sentence of paragraph 24, so this is the one that starts on the third line, you say:
"Given that in either respect [so that is under options (i) or (ii)], acquirers would have to deal with issuers whose cardholders transacted their merchants in order to get paid (as a result of the Honour All Cards Rule) issuers would be able to insist on their required settlement rate ..."
Do you see that?
A. I do, yes.

Q. Okay. So in those circumstances that you described there, any bilateral negotiation would essentially be a bit of a sham, would it not?
A. I do not think it would be a sham. But I think the most highly likely outcome was that the deal would be done at 20, 30 and I think there are a few reasons for that. I think issuers would be motivated to do that otherwise they would not be competitive with issuers who had got 20, 30 but also I suppose just to share two other data points. We know that merchants accept many types of transactions at a greater cost than card payments and we can all debate the cost of payments, but whether it is cash, buy now, pay later, PayPal, Amex. So that leads me to believe that there is not a reason acquirers or merchants would have a fundamental problem with 20, 30.
Secondly, in my conversations with merchants, 20, 30 has never been a significant point of conversation.
Q. So if we cannot agree it would be a sham maybe we can agree it certainly would not be a free negotiation if it would inevitably produce the same result as if the issuer set the rate unilaterally?
A. I think the market dynamics have slightly more power on the side of the issuer, which, yes, means it would move to the cap.
Q. But it would not be a free negotiation, would it, if the

issuer could just insist on what you say is the required settlement rate; the acquirer would just have to accept it, there would be no real negotiation?

A. Yes, if that is how you determine a free negotiation, then you are right.

Q. Okay.

When you refer to the Honour All Cards Rule in that sentence that we have just been through --

A. Yes.

Q. -- it seems to me that what you specifically have in mind is the Honour All Issuers element of that rule; is that right?

A. Yes, when I am talking about the dynamic here then yes, I suppose it is the issuer's part that is particularly relevant.

Q. Okay. If, as you say across lines 4 and 5, that it is as a result of the Honour All Issuers Rule, let us say, that issuers can insist on a fee at the level of the IFR caps, it would follow, would it not, that without the Honour All Issuers Rule, the negotiated fee might be below the caps?

A. Yes, I have been giving this one a lot of thought. I think there is a few things that cap -- I would expect the very largest issuers to still be able to earn the 20, 30 so if you have got tens of millions of cardholders, acquirers and merchants would want to accept those transactions so they would attend to the caps, so then the question is really what would happen for smaller merchants -- smaller issuers who would no longer be benefiting from the Honour All Cards Rule? So those issuers have a choice, they could certainly accept a lower rate. Of course then they become less competitive with the larger issuers and over time there is a question as to how viable their business is, can they keep and retain cardholders who perhaps could move to the bigger issuers with better propositions.

So I think yes, it is possible to see that smaller issuers might end up agreeing a different rate, but over time they would be less competitive, their cardholders would be likely to migrate to the larger issuers and what you end up with is the market as a whole skewing towards the caps at 20, 30.

Q. So issuers might agree on their interchange fees, that is helpful.

Let us think about merchants though. The merchants would not be obliged by any rule, would they, to accept an issuer's cards if they considered the interchange fee was too high on those cards?

A. Not if there was an Honour All Cards Rule.

Q. So in those circumstances a merchant could potentially go to the market and say to acquirers there: I will agree a merchant services agreement with whichever acquirer can offer the lowest interchange fees for accepting cards issued by HSBC, say?

A. They could and indeed they can do that today, albeit in the context of the Honour All Cards Rule existing.

Q. Okay. Well, let us think about circumstances without the Honour All Cards Rule because I am specifically concerned with a scenario where the merchant is not obliged to accept the issuer's cards. I mean, they would have greater bargaining power in that scenario, would they not, both the issuer and the acquirer trying to negotiate on their behalf?

A. They would but then again if we play that through, if you are a major merchant who believes that you can negotiate that, you might go to your acquirer and say I want you to negotiate a better rate. You know, would that apply to all of the merchants that are acquired by that acquirer and would they all back up that threat? I do not think every merchant would see that trade-off in exactly the same way. So I think there is a question as to whether acquirers would do bilaterals for all of their -- you know, that could potentially risk transactions for all of their customers. That could potentially put that acquirer in a very uncompetitive position.

Q. But absolute --

THE PRESIDENT: Ms Fitzpatrick, sorry, when you reach a convenient moment, we probably will have a break, but only when.

MS FITZPATRICK: I only have about four more questions, so if I can be permitted to proceed with that.

In this scenario without the Honour All Issuers Rule, as we have just referred to the prospective acquirers, they would have an incentive, would they not, to compete to be able to offer lower interchange fees to merchants, especially if that merchant could guarantee a large volume of transactions so a big merchant like M&S, for example?

A. Yes, they would have that incentive.

Q. Issuers would have in that scenario a significant commercial incentive to agree to a lower interchange fee if it meant their cards would be accepted by such a large merchant?

A. I do not -- I am not sure that that follows. I think that there is the possibility that, you know, if I were one issuer and I was not certain that a fellow issuer would make the same decision I do not want to be uncompetitive; if I accept 15 instead of 30 and they are still getting 30, then I am now in an anti-competitive position. So I am not sure the incentive is for the issuer to do that. But also again if I am the issuer and I am sitting there thinking: hang on a minute, 20, 30 was endorsed by the European Commission, they are accepting buy now pay later and PayPal, which comes at a higher cost than the products I am offering, so do they really mean they are going to turn off all of my cards? I am not sure that that would be a credible threat and therefore I would probably try and hang on to my 20, 30.

Q. But all in all, in a post IFR world and without the Honour All Issuers Rule, it is quite possible is it not, that interchange fees would be agreed at a lower level than the caps?

A. I am not sure it is, no.

MS FITZPATRICK: I do not have any questions on your evidence on unbundling at paragraphs 25 to 27, the Claimants do not consider it relevant for this trial but I have to put a marker down that your evidence in those paragraphs is not accepted.

Those are all my questions.

THE PRESIDENT: Thank you, Ms Fitzpatrick. I certainly have some questions. What we will do is rise for 10 minutes and we will have a break and you can have a stroll. Please do not talk to anyone about your evidence in those 10 minutes but we will resume in 10 minutes.

(3.27 pm)

(A short break)

(3.39 pm)

THE PRESIDENT: Thank you. Yes.

Questions by THE Tribunal

MR TIDSWELL: Can I ask you a question, please, about something you said in your evidence a bit earlier and it is page 176 of the [draft] transcript, hopefully that will come up just here. It is just at [draft] line 10, I think, where you are talking about two things that might happen if we went to a zero interchange fee, I think. The first question I want to ask you about is you seem to be suggesting here that issuers might seek alternatives with American Express and I was just a bit confused about that because I thought we had established that after the GNS exit there was no way for an issuer to transact with Amex. Is that the position?

A. Yes, your understanding is correct. So post the IFR, there was no GNS option. I suppose my point there is if Visa and Mastercard were not able to offer an interchange to our issuers, that might make Amex reevaluate that decision because all of a sudden they would have a significant advantage in the marketplace. So I was sort of -- at that point I was speculating on what American Express's strategy would be, so hence that meant if it was feasible.

MR TIDSWELL: When you say if that were feasible?

A. Exactly, if they chose to make what offering.

MR TIDSWELL: Then you also seem to suggest in there I think that there might be a flow of issuers to Visa.

Again, I was not completely sure I understood, maybe it is a question of what the counterfactual one is thinking about.

A. Yes.

MR TIDSWELL: I think if we get to the position where Mastercard cannot charge at anything other than a zero interchange fee, then I think it follows that as a matter of legality then Visa could not either. So they would be presumably in the same position in which case you would not get that flow; is that how you understand that?

A. That is how I understand it and just to build on that, if I may.

MR TIDSWELL: Yes, of course, please.

A. What we are saying is that is why we would seek to look at other alternatives because I would expect Visa to be doing the same thing and if they found an alternative and we did not, that is when we would expect to see the flow. So that is why those options that we lay out in

8.2 and 8.3 would consider those because of the risk of Visa identifying them and us not identifying them.

MR TIDSWELL: Yes, I understand that, that is really helpful. But assuming at least at that stage you are in a competitive environment with Visa both trying to find a solution to it and one of you may be more or less successful and of course in those circumstances issuers may prefer the more successful than the other one, but that is a proper competitive environment, is it not?

A. Yes, exactly.

MR TIDSWELL: I think then absent any change of position by Amex, which of course we just do not know about.

A. Yes.

MR TIDSWELL: Assuming that you and Visa are trying to find the right answer, you actually then I think drop into the second of your scenarios which is when you get into the question of whether issuers might choose to withdraw from the market; is that right?

A. Yes, choose to withdraw or change the shape of their offerings. You know, we talked about transactors where you do not attract interest, so they could just say: look, we do not want to serve those sorts of customers any more, we will focus our credit portfolios where we can actually lend and earn a return on our lending. So it night not be a wholesale exit for everyone; for some it might be exiting parts of the market, for example.

MR TIDSWELL: All the issuers would be facing the same problem but, as you say, they might have different characteristics, they might choose to respond to it in a different way.

A. Yes.

MR TIDSWELL: It is possible and I think this was put to you that at that stage there might be some -- it would be open possibly for merchants to influence some of those decisions, depending on their views as to what those outcomes were, if they were in a position where they could, for example, refuse cards or particular types of cards.

A. Yes, and I think as an issuer it is sort of both a competitive dynamic but it is also competition within your own business for where you spend your time, money and energy as well.

So, yes, there are lots of factors that could influence that.

MR TIDSWELL: Of course the customer preference for the issuer as to whether they wanted to have a debit card and indeed whether they are prepared to pay for a credit card.

A. Yes.

MR TIDSWELL: Yes, that is really helpful thank you.

PROFESSOR WATERSON: So I have got -- just coming back on one of those points. It seemed to me that issuers who came into the market often offered zero fees on transfers of debits?

A. Yes, and balances.

PROFESSOR WATERSON: Yes, I could not remember.

A. Yes.

PROFESSOR WATERSON: Actually that seemed to me, I wondered why this was and then I suddenly realised: of course, they are differentially attracting people who do not pay off and so they -- although in the beginning they are losing money, after a while people who do -- they not have got -- most of their people do not pay off because those have been people who they have drawn and therefore, you know, their business is with those sort of people, where they can charge high interest rates after the free period?

A. Yes, I would -- I would speculate that the hope would be that they would not transfer again and therefore that you get to charge the interest in the following period, yes.

PROFESSOR WATERSON: So I have got a couple of questions, or maybe three questions, about merchants.

You may have said, I do not recall whether you said but certainly other people have said about Mastercard and Visa being "must take" cards.

Now, in a situation where in the -- earlier in the development of the market, where not every major player decided to accept credit cards, you can see that there is a competitive advantage for those that decide to do so.

A. Mm-hm.

PROFESSOR WATERSON: Then obviously, companies like Marks & Spencer and John Lewis decided in the end that they wanted to do that rather than have their alternative schemes. In a situation where everyone, virtually everyone, not everyone, virtually everyone accepts cards, there is no differential advantage in accepting a card anymore, is there?

A. No. You are right. There is no positive differential for you accepting it and others not, but I suppose there is the absence of the negative differential, if I may, of you stopping accepting it and others continuing to do so. Yes, you would lose those advantages.

The kind of advantages that retailers talk to me about might include things like how quickly you can get people through a till, data, some of the costs associated with cash and so on. So, yes, you are not differentiating the rest of your competition because you are the same, because clearly if you stopped you would

then be at a disadvantage.
PROFESSOR WATERSON: Actually on the point of data, I think the Tesco Clubcard and the Nectar card have been -- particularly the Clubcard -- have been extraordinarily valuable to those merchants and so they have got value through that.
A. (Nods).
PROFESSOR WATERSON: Maybe -- I do not know how they would weigh that with anything else, but they have certainly got a huge amount of value through the use of those cards in understanding about customers.
A. Absolutely. That data would be hugely valuable and probably more valuable than card data realistically because they know more about those cardholders and can see more details of what they purchase.
PROFESSOR WATERSON: Yes. So they know everything about -- I mean, Tesco I think has a million different letters that it sends out to different people dependent on their purchases.
A. It is extraordinary.
PROFESSOR WATERSON: Now, the third question, and please tell me if you cannot answer this question because you think it would be wrong to answer it, but I see that you are a non-exec at Dunelm.
A. Yes.

PROFESSOR WATERSON: So the obvious question that arises to me is, and as I say, please tell me if you cannot answer it: have Dunelm ever talked to you about interchange fees and various issues related to card payments and so on?

A. Not directly related to card. We have talked about sort of peripheral topics such as, you know, the acquirer that they might choose to work with or, you know, buy now pay later. But clearly, I am very careful with the firewall to put my Dunelm hat on or to put my Mastercard hat on and to make sure I am being very respectful of both of the roles that I hold.

PROFESSOR WATERSON: Thank you.

THE PRESIDENT: Can I ask you about fraud, Ms Devine.

A. Yes.

THE PRESIDENT: I do not want specifics; I want to sort of skate on the surface. But as a general proposition apart from the criminals themselves, everyone wants less of it.

A. Yes.

THE PRESIDENT: But eliminating it or reducing it costs money, and this is something which is certainly not completely but perhaps not even considerably in the hands or in the control of the schemes themselves.

A. We definitely have a role to play.

THE PRESIDENT: You certainly have a role to play --
A. Yes.
THE PRESIDENT: -- but there are others who have certainly significant, possibly a more significant role to play.
A. Probably, yes. I think, yes, you are right because ultimately we cannot make a decision about any particular transaction. We can provide information and insight, but ultimately the decision sits elsewhere.
THE PRESIDENT: Clearly data is going to be very important.
A. Yes.
THE PRESIDENT: But at the end of the day it is the merchant who accepts the transaction from the customer and it is the issuing bank that issues cards that enables transactions to take place. So they are on the front line.
A. Yes.
THE PRESIDENT: Obviously you all are aligned in your interests, but it is a collaborative venture, effectively.
A. Yes.
THE PRESIDENT: So to what extent do you as a scheme seek to give guidance or even set out codes of practice to issuing banks and acquirers in terms of what is best practice to eliminate fraud, or is it something that you consider they should be left to evolve their own best

practice?

A. No, that is absolutely something we spend time on. That is everything from, as you said, providing advice, so we might have forums where we bring people together to have -- with appropriate legal representation in the room because we have competitors in a room, but where Mastercard and we might bring other experts in to provide best practice, and all the way through to providing tools that help people to identify fraud, and that is both to merchants, to acquirers and to issuers, which were some of the optional services I was talking about.

So absolutely we have a role to play, and that is really because the nature of the data that we can see is different to that particular -- you know, most people can see their piece of the puzzle; we can see less depth but more breadth. So it is about how we bring that complementary knowledge to the knowledge that the individual players might have.

THE PRESIDENT: I suspect in the longer run the roles and influence of the schemes is greater than in the shorter run. I am thinking about things like new card design, new longer term security measures, the design of the infrastructure that exists in the merchants; all of these things are things that the scheme would be thinking about with a view to promulgating, as it were, the next iteration of card and card processing regimes.

A. Yes. I mean, hugely critical for us, the concept of sort of trust in the brands is one of the key values.

THE PRESIDENT: So fraud costs or costs of dealing with fraud could be broadly categorised into two heads. One is the losses arising out of irrecoverable transactions where there has been fraud which has not been stopped, which is very negative but someone has got to pay for it, and then there is the more positive thing which is investing to stop it happening in the future and causing it to reduce.

A. Exactly.

THE PRESIDENT: Am I right in understanding that part of the purpose of the interchange fee is to compensate the issuing banks against both costs of fraud; would that be a fair consideration?

A. Yes, I think so.

THE PRESIDENT: But as payment, it is essentially a number of basis points per transaction type; it does not differentiate between those issuing banks that are good at stopping fraud and those issuing banks that are bad at stopping fraud.

A. Yes, that's correct.

THE PRESIDENT: So essentially it rewards all issuing banks equally?

A. The interchange does, yes, you are right.

THE PRESIDENT: Yes. So has some thought been given to evolving the interchange fee into a less blunt tool so that you differentiate between, let us say, the issuing bank that is investing in fraud prevention and, indeed, the acquirer that is investing in fraud prevention, in different ways no doubt, and obviously accepting the scheme of the role, it is not particularly pertinent to my question here, has thought been given to nuancing the fee structure in the scheme so as to incentivise investment in fraud prevention?

A. Not, not to the best of my knowledge. It may have done, but it is certainly not something I have been made aware of.

Two observations, if I may. I think one is we do, through our own negotiations with issuers, incentivise them to do better on fraud. So we have thought about encouraging issuers to do better because that benefits the whole ecosystem. To my knowledge we have not done it through interchange, and I suppose one of the things we would consider when we thought about that is for newer entrants or people who are dealing with portfolios that are more inclined to fraud, such as prepaid cards, how do we make sure that we are not making it unfeasible for those to participate in the marketplace versus someone like Lloyds, who has got 30 million customers and an awful lot of data and an awful lot of expertise. That is not to say it would be insurmountable, but that is definitely one the things we would have to work through to make something like that work.

THE PRESIDENT: Thank you.

You mentioned through your negotiations with issuers you give advice. Could you put a little more flesh on that? I mean, is it in the form of guidance notices or consultations, or does it reflect the price that they pay to the scheme to participate?

A. It varies. So, you know, we have experts in this space who spend a lot of time having one-to-one conversations that will be everything from how do you structure your systems, what data do you get, what do you do with the data, how do you think about risk processes. So it is sort of one-to-one advice, it is forums. Most of that will be free, if you like, and then there might be paid for services such as a specific consulting engagement to go in and really analyse exactly what you do and help recommend improvements or particular services and data we could provide, and that is the same for issuers and acquirers and, indeed, merchants.

THE PRESIDENT: Very grateful. Thank you very much.

Ms Fitzpatrick, anything arising out of those questions?

Further cross-examination by MS FITZPATRICK

MS FITZPATRICK: Just two short points, sir.

So in your exchange with Professor Waterson, Ms Devine, Tesco Clubcards were mentioned. So Tesco Clubcard is not a payment card, is it?

A. No, it is not.

Q. Okay. Then the second question relates to your exchange with the President on guidance and codes of practice as to best practice for eliminating fraud. There is nothing in the Mastercard rules on that, is there?

A. I -- I do not know the answer to that question, whether it is in the rules or not. Sorry.

Q. So I am just thinking about, for instance, rule 6.3, which, for the Tribunal's reference, is at {RC-J3/130/129}. That rule, for instance, relates to the limitation of cardholders' liability for unauthorised use of their card. So that is an example of something that is provided for in the rules, but certainly as far as I am aware there is no nothing on best practice to eliminate fraud within the rules?

A. Yes, I do not know. I do know that where we see excessive fraud, because I have had some of these conversations where we see excessive fraud, we would absolutely be engaging with issuer, acquirer or merchant, typically if it is merchant it would be via the acquirer, to resolve that situation because it is bad for the whole ecosystem - for us and for all of the participants. Whether that is codified in the rules I am afraid I do not know.

MS FITZPATRICK: No further questions.

THE PRESIDENT: Thank you.

Ms Tolaney?

MS TOLANEY: Nothing from me, thank you.

THE PRESIDENT: Ms Devine, thank you for your time and evidence. We are very grateful. You are released from the witness box with our thanks.

A. Thank you very much. Thank you.

(The witness withdrew)

MS TOLANEY: Thank you. May I call Ms Sarmiento, please.

MS LYDA SARMIENTO (sworn)

Examination-in-chief by MS TOLANEY

THE PRESIDENT: Sit down, make yourself comfortable. I hope -- yes, there is some water and a glass.

You will be asked some questions. Before we come to those, you have a screen in front of you. Documents will come up on that. If you need to see any other parts of the documents then do just say and you will be taken to it so that you can see it if you need to.

I will hand you over to Ms Tolaney.

MS TOLANEY: Good afternoon. Hopefully, I think it will be in tab 5, there should be a copy of your witness statement in these proceedings {RC-F3/5/1}.

A. Yes.

Q. Thank you. Could you please turn to page {RC-F3/5/17}. Is that your signature?

A. Yes, it is.

Q. Could you confirm to the best of your knowledge and belief that the contents of this statement are true?

A. Yes, that is correct.

MS TOLANEY: Thank you. Mr Beal has some questions for you.

Cross-examination by MR BEAL

MR BEAL: Please could we turn up {RC-J3/130/417}. This should be part of the Mastercard rules.

We see at the top there the definition of an interregional transaction is one in which the acceptance location is a different region from the region in which the card was issued. Can you see that?

A. Yes, I can.

Q. Then:

"In the Europe region, the term 'interregional transaction' includes any 'inter-European transaction', as such term is defined in the 'Europe region' chapter."

Intra-European transaction is then dealt with further down that page, and that includes:

"An intra-non-SEPA transaction or an intra-SEPA transaction, but not an inter-European transaction."

My understanding from that is that an intra-SEPA transaction would be an intra-European transaction under the Mastercard rules; is that right?

A. Yes, based on this, yes.

Q. The UK is still in the single European payment area, is it not?

A. That is correct, yes.

Q. The single European payment area operates to harmonise, does it not, electronic payments throughout the SEPA territory?

A. I do not know how to answer that question.

Q. A transaction between Ireland and France would be a SEPA transaction under Mastercard rules; is that right?

A. As per this definition, yes.

Q. But a transaction between Ireland and the UK would also be an intra-SEPA transaction because the UK is still part of SEPA?

A. That is correct.

Q. Therefore, seemingly, the substantial terms on which those retail payment transfers will take place for each type of transaction would be the same, would they not? They are both intra-SEPA transactions?

A. Can you repeat that question?
Q. Yes. We have just established that a transaction between Ireland and France is a SEPA transaction, which means it has the backing of the single European payments area as an infrastructure; correct?
A. Correct.
Q. We have just established that, the UK still being part of SEPA, a transaction between UK and Ireland would also be an intra-SEPA transaction?
A. That is correct.
Q. So I am saying essentially that the two transactions from the perspective of the Mastercard rules are treated as being functionally the same?
A. As intra-European transactions as defined in the rules, yes.
Q. But Mastercard has been applying interregional MIFs, which is what you deal with in your witness statement, to those transactions since Brexit, has it not?
A. Yes. Because with Brexit we were released from the IFR obligations, so we are applying MC-2 rates for these corridors.
Q. So you voluntarily, rather than treating the intra-EEA MIF at 0.3%, as it is capped, you decided to apply the interregional rate as given by the Commitments decision to the European Commission; correct?

A. I am not familiar with the exact terms of the Commissions of IFR and MC-2, but I am assuming that with Brexit and the release from IFR we could effectively apply different rates as the UK is no longer part of those commitments.
Q. The upshot of this was that you charged more for an EEA UK transaction than you did before for card not present transactions?
A. With the release from IFR, that is correct. Those trades were set about 10 years ago, the 20 and 30 levels. They were set in the context of our card present transaction and they were not, and are not, the adequate benchmarks for card not present.
Q. Are you aware that the PSR has decided to investigate that post-Brexit increase in MIFs?
A. I am aware.
Q. You were aware of their interim decision that finds no basis for that differential treatment in, for example, a change in the costs?
A. I am aware that is their opinion.
Q. At paragraph 11 of your witness statement, page 3 {RC-F3/5/3}, you say that:
"Interregional transactions and their competitive dynamics are different to domestic payment card transactions."

But we have just seen, have we not, that in a SEPA context there is nothing to draw a distinction between them?
A. No, they are different. Interregional transactions carry higher costs than a plain domestic -- other transactions like domestic transactions.
Q. But you are applying now an interregional rate to a transaction between, say, France and the United Kingdom?
A. We are applying -- yes, that is correct, interregional rates, yes.
Q. Are you saying that the competitive landscape for merchants between France and the UK changed dramatically on 1 January 2021 in terms of payment infrastructure?
A. No, I am not saying that. What I am saying is that those levels, again they are not and were not appropriate benchmarks for card not present transactions. They were established using card present transactions as the base.
So the release from IFR gave us the opportunity to address that imbalance.
Q. When we come on to look at the figures that you have given in paragraph 13, for interregional transactions, do those figures include UK EEA transactions?
A. I am not certain.

Q. At paragraph 17 {RC-F3/5/4}, you say:
"Interregional transactions are generally also higher costs for issuers ..."
Why would those costs have gone up overnight in Brexit?
A. Again, the costs did not go up overnight. With regulations the costs never went away. What we have done is reflecting their appropriate levels to provide sufficient contribution for the higher costs associated with this type of transaction.
Q. So are you saying that a transaction between Ireland and Northern Ireland generates a significantly different cost risk in terms of fraud than a transaction between Northern Ireland and Wales?
A. Yes. I would say so.
Q. Where do we find the underlying data and analysis that backs up that proposition?
A. Not as specific to the corridors, but we provide reference within my witness statements. You can find the interregional costs on, I believe, paragraph 18 or 19 of my statement.
But also I can reference interregional fraud rates, right, the costs associated with these type of transactions that could be attributed to the higher fraud profile, higher credit losses. The fact that in

some cases you have the costs of issuers taking money in foreign settlement accounts, you have the cost of funds for credit cards associated with the interest-free period and --

Q. Just --

A. Can I finish, please?

Q. Do finish.

A. Thanks. In some of these cases what our data has proven is that these costs could be twice as much as those rates in a domestic transaction setting. When we are talking about card not present interregional transactions as a data point, non-fraud related charge-backs, and that is refunds due to our buyer protection offer in the card payments, that could be up to five times higher than that of a card present domestic transaction.

So, yes, there are higher costs associated with these type of transactions.

Q. At paragraph 19 you provide some cost data. You say that has been based on a study prepared by Edgar Dunn in February 2012; is that correct?

A. That is correct.

Q. That was provided to the European Commission; correct?

A. That is correct.

Q. The European Commission obviously did not accept that

data, did it, because it issued a Statement of Objections to Mastercard requiring it to do something about its interregional MIFs?
A. I am not aware of their position as it relates to whether they accepted or not. I am not.
Q. You are aware, however, that Mastercard chose to commit to a level of MIF which was perceived to be acceptable to the European Commission for interregional fees; correct?
A. By the European Commission. Our stance has been that those levels are not appropriate.
Q. If we look at the costs that you have identified in the table, you have got non-US costs itemised there and you show a figure for Europe where the risk cost and the financial carrying cost is said to be, for example, substantially lower, is it not, than the overall costs for Canada or for the South American market?
A. At that period of time, right, that is what this table is about. What you see on the table below, I think it is paragraph --
Q. I am simply making --
A. -- 18.
Q. -- an observation about two figures being different, so please just listen to the question.
A. Sure.

Q. Those figures are different; correct?
A. They are.
Q. Yes. So the underlying costs that Edgar Dunn has identified 12 years ago is different; correct?
A. It differs by region, that is correct.
Q. Those regions bear the same multi-lateral interchange fee for interregionals, do they not? There is only one interregional rate that is set for these transactions?
A. Yes, they are harmonised outside of the MC-2 commitments, that is true.
Q. It is true also, is it not, that the intra-EEA rates have not been based on any costs assessment conducted by Mastercard?
A. You mean the MC-2 level commitments?
Q. Generally when rates were changed for intra-EEA rates there was no costs of assessment analysis done?
A. Apologies, I do not understand the question. Are you referring to the post-Brexit rates?
Q. Let us have a look at a document that might make it easier. It is {RC-J3/11.5/3}.

So this is a Mastercard proposal at the 20th European Interchange Committee slides dealing with intra-EEA interchange rates, and you will see that what is being discussed here is the way in which the interchange rates are going to be changed. If we go

please to page 11, {RC-J3/11.5/11} you can see that a series of intra-EEA rate comparisons are made between Mastercard and Visa. Can you see that?
A. I can.
Q. At the bullet point at the bottom of that page, it says:
"Mastercard [interchange] current competitive advantage maintained on the issuing side."
Just pausing there. That is because the Mastercard rate is higher than the Visa rate; correct?
A. No. I mean, competitive advantage could be our position, our acceptance position in the market, but on the issuing side I am assuming that represented an appropriate contribution to their cost.
Q. Well, it says:
"Mastercard [interchange] current competitive advantage maintained on the issuing side."
So we are just dealing with the issuing side, and that competitive advantage is obtained simply on the basis of a MIF rate comparison between Mastercard's MIF rate for intra-EEA and Visa's MIF rate for intra-EEA, is it not?
A. Yes, that is correct.
Q. If we then please look at page 13 {RC-J3/11.5/13}. What is being proposed here on an EEA change basis only, see scenario B at the top, is a reduction in the chip rate

for intra-EEA MIFs so that it comes down to 0.7, for example, from 0.8. Can you see that?
A. I can see it.
Q. That, in the first bullet point at the bottom of page, is said to address the interchange differential with Visa while still being competitive on the issuing side. Can you see that?
A. I see it.
Q. Part of the benefits of that was perceived in the last bullet on that page in inverted commas as demonstrating inter-scheme competition. Why would you need to demonstrate inter-scheme competition?
A. I cannot comment on this document. This happened in May 2007; I was not even part of the company then. So I am not aware of what the context of this document is.
Q. The recommendation finally at page 22 was to proceed with scenario B {RC-J3/11.5/22}. The point I am putting to you is that none of this analysis is predicated on a cost differential between the rate that was in place previously and the rate that was subsequently applied.
A. I think that is speculation. You will need to believe that this is a complete document and that analysis has not been conducted on the back end. Again, I cannot provide an opinion. The document is dated from 2007.
Q. Please could we then look at bundle {RC-J3/13/2}.

What we see here is Mastercard Europe looking at pay later POS commercial cards, and it is comparing that position with intra-European and intra-EEA. So it is looking at rates across different regions, and then under "Background" at the bottom of the page, it says:

"Currently Mastercard faces a competitive advantage for issuers on cross-border transactions between EEA countries. However, for cross-border transactions between non-EEA countries, as well as between EEA and non-EEA countries, Visa's interchange fees are significantly higher."

So when looking at how to set interregional fees, the primary driver was the competitive position vis-à-vis Visa, was it not?

A. I cannot speculate. I did not take part of those decisions.

Q. Now, could we then look, please, at paragraph 18 of your witness statement. You are referring there to the costs analysis that was prepared by Edgar Dunn in 2007. So if you are --

A. I am sorry, I am not -- sorry to interrupt. I am not yet on paragraph 13.

Q. 18.

A. 18. Okay.

THE PRESIDENT: At the bottom the page, but you will need both pages, I think.

MR BEAL: 4 and 5, yes. If we look in particular at the top of page 5, we get the date 2007 for the Edgar Dunn figures that are at the bottom of page 4, the Edgar Dunn report, sorry, that is at the bottom of page 4.

So this is a 2007 study and you are relying on this data as an example, are you not, of costs studies that have been conducted by Mastercard?

A. Yes, that is correct.

Q. So you are prepared to go back to 2007 to rely on cost data, but you are not prepared to look at the decision-making from 2007 because you say you were not involved?

A. This is data. I cannot speculate about the process that took place for those decisions that were made in 2007, no.

Q. Well, we can see what the European Commission made of this data, can we not, because if we turn to bundle {RC-J5/11/171}, at recital 616 through to 619, we see the European Commission rejecting any suggestion that the MIF is a collective reallocation of costs, and it says contrary to Mastercard's assertion -- this is at recital 616 -- the allocation of fraud and default costs between issuers and acquirers as well as the timing of settlements in its system are not intrinsically linked to the level of the MIF.

It then refers to certain worldwide charge-back and settlement procedures and then to other MIF rates, and it is making the point there is no intrinsic link between the MIF and those rules.

Then 618, it says:

"Second, as to a link between the timing of payments and the interchange fee, it is difficult to see the relevance of Mastercard's comparison between Europe and Brazil."

It is then saying while it may be correct that merchants in Brazil wait on average 28 days to be paid, a representative of the Brazilian Finance Ministry linked the 28-day settlement period in Brazil to hyperinflation. So what had happened was Mastercard was trying to rely on very high interest rates payable in a country in a period of hyperinflation, as they have done in this case with Argentina.

Then 619, please, on that page {RC-J5/11/172}:

"In conclusion, Mastercard's allegation that in the absence of the Mastercard MIF other collective measures would inevitably have to be taken that would yield similar (negative) effects on merchant fees as the Mastercard MIF, are unconvincing. At any rate ... without a MIF ... shows that Mastercard would not be 'destablised' ..."

So it is rejecting, is it not, the suggestion that somehow you intrinsically need this money to go to pay for specific costs in order to have a viable open card system?

A. That is the conclusion. What I will add in the case of Brazil, when the system does not function in the way that it is meant to function, meaning providing all the value and the benefits to merchants, and prompt payment is part of that value, the D plus 28 days settlement has moved that set of benefits on to the acquirers.

Now, Brazilian merchants are faced with hefty fees on the acquiring side. So in essence you have a cause that was attributed to the issuer moving now to the acquiring side of the equation and merchants ultimately paying for those costs.

We do not make -- as a clarification, we do not make decisions on the levels of interest rates that are established by the issuer in any country.

Q. You have also then relied, as we have seen in paragraph 19, on the updated data in 2012 from Edgar Dunn, and that has been dealt with, has it not, in the Commission Statement of Objections. This is bundle {RC-J3/73/128}.

If we look, please, at recital 448 in the middle of the page there -- sorry, top of the page there, what the Commission said was:

"As concerns the cost allocation argument, the Commission has already held in its 2007 Mastercard decision that this argument is opaque. The Commission, moreover, held that this argument is doubtful in the light of Mastercard's statement that in practice the scheme does not allocate costs."

It then says:

"The principle behind this ... seems to be that every actor ... should pay for the services it enjoys. However, Mastercard did not explain why and how a cost reallocation would lead to efficiencies. Moreover, the Commission notes that if the principle that each actor should bear the cost of the services it enjoys were to be accepted, then the acquirers' costs of providing services which benefit cardholders should also be taken into account."

Just pausing there.

It is right, is it not, that none of the studies that you have referred to tried to analyse the benefit given to issuing banks and cardholders by the activities of merchant acquirers?

A. I am sorry, what is the question?

Q. The question is: a merchant acquirer provides benefits

to cardholders and issuing banks with the steps it takes to undertake, for example, fraud detection measures?
A. I think there are different measures that both the issuer and acquirer take to protect the system from fraud.
Q. That is absolutely right. So where do we see the detail of the studies that Mastercard has undertaken to work out what the costs are incurred by an acquirer which are for the benefit of the other side of the platform?
A. They are not in my reference.
Q. So it is a one-sided analysis that only looks at the benefit conferred allegedly by the issuer to the acquirer; is that right?
A. No. We analyse the benefits in the ecosystem in general, and that benefit provided by the issuers is real.
We are talking about incremental sales that are provided to the merchant for the acceptance of debit and credit products. The access to credit lines, so otherwise that sale -- if the consumer did not have access to the credit line, that sale would not have happened. Before this is even more prevalent in a card not present in an interregional environment, you have the benefits of prompt payment, right, that in credit we are referring to the interest-free period, which is in

other terms a short-term working capital loan that a foreign institution, financial institution is providing to merchants. So the benefits are taken into consideration as part of the determination of interchange.

Q. I am going to put something to you and I would like you to say yes or no, please. The last sentence at recital 449, the Commission found that the cost studies that Mastercard provided focus only on the issuing side and do not consider acquirers' costs. My question to you is: you cannot confirm that that is not true, can you?

A. I cannot confirm that is right either.

Q. If you look, please, at footnote 512, it is right, is it not, that this decision records Mastercard's Associate General Counsel saying:

"We are not specifically allocating any cost ... It may be useful to measure somebody's costs. But we are not allocating specific costs. Is that clear?"

So it was never part of Mastercard's process, was it, that you would allocate specific interchange revenue for a specific purpose of a specific cost?

A. We do not -- and we do not dictate how interchange revenue is used by the issuers. It is our understanding based on conversations with issuers that this is how it is used; it is to cover a proportion of the higher costs associated with, in the case of interregional transactions, cost of fraud etc that I have mentioned in my statement.

Q. If you look, please, at recital 452 at the bottom of page 128, you will see that the Commission found that there was no correlation between the level of the MIFs and the issuers' costs, and the internal documents from the European Interchange Committee do not suggest there is such a link between the levels of the interregional MIFs and the issuers' costs either. Can you see that?

A. Again, those are their conclusions.

Q. More generally, it is right, is it not, that issuing banks routinely provide for debit and credit cards to be used abroad?

A. That is correct.

Q. If significant costs savings existed if you simply decided that you were willing to take a benefit from not using your card abroad, then you would expect cardholders to pay an additional charge for using a card abroad; correct?

A. It depends on the portfolio. There are cards that do not carry foreign transaction fees.

Q. Conversely, there are many payment card systems that do charge a transaction fee for foreign transactions, are

there not?
A. Yes.
Q. You are aware, are you not, that the acquirers bear fraud risk under the schemes through the charge-back procedure?
A. Yes.
Q. They bear a credit risk if the merchant defaults on the refund?
A. I am not -- I am not quite certain about that last one, so I cannot answer.
Q. At paragraph 21 of your statement, which is at page 6, you refer to an Oxera report dealing with domestic transactions on the one hand and interregional transactions being card not present. That data obviously is before Brexit, so it does not include EEA UK transactions, does it?
A. I am assuming that is the case, yes.
Q. At paragraph 22, you say {RC-F3/5/6}:

"The percentage of CNP transactions have grown since then."

You refer to interregional versus domestic for CNP ratios. Do the figures you provide in paragraph 22 include or exclude EEA UK transactions?
A. I believe they exclude it. Can I please go to appendix B? Yes, they exclude it.

Q. So they exclude intra-EEA transaction?
A. Yes.
Q. So these figures that are given, I am obviously not going to cite them, do not deal, for example, with card transactions involving Amazon when Amazon is a Luxembourg company that receives payment from UK customers?
A. Yes, that is correct. That is -- that would be flagged as intra-EEA for the purpose of this data set.
Q. So when I buy something from Amazon and it is an Amazon direct purchase and they choose to sell it to me through a Luxembourg entity, that is a card not present transaction, is it not?
A. Yes.
Q. Are you suggesting that Amazon sales into the United Kingdom present a higher risk of fraud than an online domestic purchase from a small merchant?
A. Can you ask that question again?
Q. Yes. I am asking you to compare and contrast two transactions. One is an online transaction with Luxembourg, Amazon in Luxembourg, and the other is an online transaction with a small company based in Birmingham, choosing a city at random. Are you really suggesting to me that there is a significant difference in the fraud risk between --

A. Between a domestic and a cross-border transaction? Yes.
Q. Okay. So I am more at risk of merchant fraud if I buy something from Amazon than I am if I buy something from a very small merchant in Birmingham?
A. If the transaction is domestic, yes. On average cards less risk, yes.
Q. Now, paragraph 23.2 of your witness statement, you refer to the charge-back procedure, but it is right, is it not, that it is merchant acquirers that bear the bulk of the fraud and credit risk associated with charge-back procedures?
A. No, the data that I am citing is referring to charge-backs are not attributable to the merchant. Hence they are assumed by the issuer.
Q. Where do we find that?
A. So non-fraud-related charge-back rates on card not present, this is the refunds that are absorbed by the issuer.
Q. Why would the refund be absorbed by the issuer?
A. Under the buyer protection rules.
Q. But if the merchant has not supplied the goods, then it is the merchant acquirer that is left holding the baby in terms of the money, is it not? The merchant acquirer -- if I am a customer and I buy goods online from a French company and the French company never

delivers, I instigate the charge-back procedure. My issuing bank will get the money back from the merchant acquirer, and if the merchant in France is no longer there or has become insolvent or is fraudulent, then it is the merchant acquirer that is left holding the baby?
A. They will undergo a dispute process under our charge-back programme. So if we discover that it is related to merchant activities then the merchant will absorb that cost. If it is proven that it is non-related, the issuer will absorb that risk. That second study is reflected there.
Q. So in other words, if it is a problem with authorisation at the issuer's end, then the issuer bears responsibility?
A. Yes.
Q. At paragraph 24 you talk about the costs of issuing on interregional transactions relating to the costs that issuers incur to stage money in Mastercard settlement accounts outside of their own country, and from what I understand, you say there are only a limited number of foreign currencies that can be maintained for an interregional settlement process; is that right?
A. That is correct.
Q. That settlement operates on a net basis, does it not?
A. That is my understanding, yes.

Q. So typically, for example, each US tourist using a card in London will pay an international transaction charge for using a credit card; correct?
A. Not all of them. As I said, it depends on the portfolio and the issuer.
Q. Each UK tourist in New York will pay an international transaction card for using a credit card where the credit card issuer requires one?
A. Where they establish those terms, yes.
Q. Imagine if the values of each of those transactions from each of those individuals was the same. So that it was the equivalent of, say, $100 on a transaction. It is right, is it not, that the settlement values will go in opposite directions? So you have got a US transaction with a US-issued card taking place in London and a UK-issued card taking place in New York. You have a situation where the money flows are going to be net settled, so actually the exchange of funds will be zero on a net basis?
A. But you are talking about two different transactions.
Q. Through net settlement, through the system as a whole, each issuer and each acquirer will conduct thousands of and thousands and millions of transactions; correct?
A. That is correct.
Q. Some of those transactions will go one way and some of

them will come the other; correct?

A. That is correct, but settlement happens at the settlement service level, so it will depend on the currency of that transaction. So it depends on how it is set up.

Q. But if they are all channelled through a limited number of international settlement accounts, say, dollar transaction accounts, yen transaction accounts, you are going to end up with a funneling system of net settlement for those foreign currency settlement accounts, are you not?

A. To the extent that the issuer and the acquirer are settling in the same currency, yes, potentially.

Q. But what you are saying is the way the system works is you force everyone to select a number of -- limited number of currencies so that they all settle on the same terms and settlement will go two ways, will not it?

A. Up to the issuers and acquirers to decide what settlement service and currencies are better for them. That is how they set up.

Q. So the answer is surely that with this type of interregional transaction, you have a cardholder potentially paying multiple international transaction card fees, but net settlement producing a cost saving for issuers and acquirers?

A. No, I am sorry, but you are giving an example of two different, two different cardholders, one that is located in the US and one that is from a card issued in the UK.
Q. On an aggregated basis they will be issuing --
A. That is the issuer or the acquirer position. It is not the cardholder's position.
Q. No, but issuers and acquirers have net settlement on an aggregated basis; correct?
A. Yes, yes.
Q. So an issuing bank will find that it is receiving funds for interchange from a variety of different countries?
A. Yes.
Q. Those funds will go into a settlement account?
A. Correct.
Q. If that issuing bank is also an acquiring bank it is also paying interchange fees through a settlement account?
A. Yes.
Q. That aggregated process produces a cost saving, does it not; it is the benefit of net settlement?
A. If you are assuming that there is the same financial institution that will be on-us, so yes, the issuer will be optimising their operations. I am assuming -- I am speculating right now. I am not very familiar with the

on-us set-up.

Q. I have put the point. I am going to move on.

It is right, is it not, that international transaction fees provide a very useful source of fee income for the schemes?

A. International transaction ... well, scheme fees are just a small proportion of the overall cost of acceptance, and smaller as compared to interchange.

Q. At paragraph 25 you refer to the credit offer by an issuer to its credit cardholder. That is surely a matter, is it not, between the issuer and the cardholder?

A. In paragraph 25 I am describing the process related to the prompt payment.

Q. What you are saying is there is an interest-free period -- it is the same argument that was made to the European Commission. You are saying there is an interest-free period and therefore the acquirer draws the benefit of the transaction being financed through an interest-free period; correct? That seems to be what you are saying. If you are not saying that, tell me what you are saying.

A. No. What I am saying is that usually how cardholders and consumer -- well, cardholders and issuers are interacting is based on a D plus 45. So that is the time from where a consumer goes to a merchant and the bill actually gets paid. So for that period of time of 45 days the merchant is extended a working capital loan, in essence, right, because they are paid on D plus zero?

Q. But that does not work with debit cards, does it?

A. No. This is an example that is predicated on credit.

Q. So if it is predicated on credit, the terms on which credit is given is going to be a matter between the cardholder and the issuing bank?

A. Yes.

Q. That is the point I was trying to make.

Now, you suggest that the merchant is getting advance credit from that arrangement with you. But the merchant is simply being paid for the goods that it has just sold to the US tourist in London; correct?

A. They are getting paid D plus zero, D plus 1 immediately. They do not have to wait for the 45 days for the consumer to pay their bank to get access to their funding.

Q. Why should they not be paid immediately when they transferred ownership of the goods to the customer who just walked out of the shop?

A. That is part of the, of the benefits of the system. Otherwise they will require that consumer to pay

immediately with their funds.
Q. If I obtain --
A. If they -- can I finish my answer?
Q. Of course.
A. If they did not have those funds, right, if they were limited by the amount of cash in their wallet, they will either walk away or consume a lesser amount, less sales to that merchant.
Q. So if I buy a car from a motor dealership and I drive that car away but I have paid for it on a hire purchase agreement, are you saying that somehow the car dealership should be paying for, or paying somebody for the interest advantage I have obtained from being able to not pay for that car immediately?
A. Yes, that is part of their terms, right. They will need to find a way to fund their business, and usually how business do that if they do not have access to working capital, and that is predominantly happening for small merchants, they will go and ask for a small business loan.
Q. Please can I ask you to look at paragraph 28.3.
Now, you mention there China UnionPay. That is predominantly a Chinese domestic card payment system, is it not?
A. Not necessarily. They have significantly expanded their

acceptance footprint outside of China.

Q. Could we look, please, at bundle {RC-J5/41.04/16}. This is dealing with Europe market shares on the right-hand side. Second bullet up from the bottom, it says:

"Diners Club, UnionPay and JCB cards together held a negligible share of overall volume in the region."

This is from a 2021 RBR analysis.

So it is right, is it not, that they had a negligible share of the European market in 2021?

A. According to this data, yes.

Q. Could we then look please at page 140 {RC-J5/41.04/140}. Can you see there on the right-hand side, three bullets up from the bottom:

"As of end-2020," and we are dealing here with Ireland, "there are no three-party scheme cards issued issued in Ireland and issuers are not thought to be planning to introduce these in the near future."

Well, let me just qualify that. Do you know whether China UnionPay is a 3 or 4 party scheme?

A. 4 party.

Q. Then, so assuming it is not a 3 party scheme, we then look at page 141, please, {RC-J5/41.04/141} and at the top of that page it says:

"Visa and Mastercard remain the only open-loop schemes issued in Ireland though a small number of private label cards are also issued."

So China UnionPay does not actually have any issued cards in Ireland at all, does it?

A. Now we are talking about issuance. We are not talking about acceptance, and international schemes like China UnionPay are broadly accepted especially in industries that are relevant to interregional transactions, that is hotels, restaurants and tourist hot spots.

Q. Can we then please look at page 144 and we will deal with acceptance levels.

You will see that at the bottom, "number of merchant outlets by scheme (thousand)", dealing with expanded acceptance issues. You will see that UnionPay has 29,000 merchant outlets, JCB has 10,000 merchant outlets compared to each Visa and Mastercard having 159,000 merchant outlets at acceptance levels, and this again is for Ireland.

A. That might be the case for Ireland, but as it relates to global footprint, there are nearly over 100 million locations, 200 million cards issued outside of China, and they claim as per their recent press release that they have acceptance nearly of 70% at the UK level and that acceptance is even higher for interregional relevant industries.

Q. So the two markets we are interested in for this trial are UK and Ireland. I have just shown you Ireland. We are now going to go to the UK, and that is at page 289.

This is market share in the UK for issuing volume. We see on the right-hand side {RC-J5/41.04/289}:

"Diners Club and JCB had less than 1% share of UK card volume."

I cannot see a reference to ChinaPay, China UnionPay. Can you see any reference there?

A. Now, would this be domestic or would this be --

Q. This is the United Kingdom, volume of share purchase by card.

A. Okay, that is the data displayed in 2020, yes.

Q. Then if we look at acceptance levels which are then dealt with at page 292, we see that our second bullet up from the right-hand side, China UnionPay has something about approaching the level of 50% of the acceptance levels of Visa and Mastercard. Can you see that?

A. Again, it seems that this data comes from 2020. In their most recent press release, China Union claims around 70% acceptance in the UK, and again, if we are talking about interregional transactions I will say they are widely accepted in the categories that are relevant for this type of spend.

Q. So I am conscious I have got more than 15 minutes' worth of questions left. I do not know what the Tribunal would like to do. With a fair wind and depending on the answers, I could be done in 20, but it is certainly not going to be much quicker than that, I am afraid.

THE PRESIDENT: No, I understand. It has been a long day.

Can I first ask the transcriber how you are feeling?

What I am wondering is whether we do not start at 10 o'clock tomorrow and give you half an hour to finish.

MR BEAL: That would certainly enable me to finish by 10.30, if it is not too much of an inconvenience.

THE PRESIDENT: Ms Tolaney?

MS TOLANEY: I think I would have no problem with that, but I just think we do need to check with the witness because --

THE PRESIDENT: I am just squaring the various interests.

MS TOLANEY: -- I am not sure she is available.

THE PRESIDENT: Do you have a preference?

A. Unfortunately I have business critical meetings tomorrow.

THE PRESIDENT: Okay. In that case I am very grateful to you for carrying on. Mr Beal, we will proceed but try and make it 20.

MR BEAL: Yes.

What I am going to suggest to you is that the European Commission on a number of occasions has found that cost studies and costs analysis does not actually

trigger the setting of the interregional MIF. Are you familiar with what they found?
A. No.
Q. At paragraph 30 of your witness statement, you say interchange fees are a critical part of Mastercard's interchange business model, and you say they seek to compensate issuers, and potential issuers, for a portion of the value. You then say if those MIF funds were not received, issuers would not offer payment cards to their customers. Can you see that?
A. Yes.
Q. Are you aware that the European Commission has expressly disagreed with that proposition?
A. You have just made me aware of that.
Q. At paragraph 37.1, page 11, you say that it is important for interregional MIFs to redress the imbalance between issuers and acquirers' costs.
Are you aware that the language you use there is almost verbatim a submission that was made to the European Commission?
A. No, I was not aware.
Q. Did you select this language for inclusion in your witness statement?
A. My witness statement was created with advice of counsel, so I am not surprised if the language matches.

Q. What your witness statement does not deal with is the Commission's rejection of that submission, but I assume from your previous answers you are not aware of the Commission's rejection of that proposition?
A. No, I was not aware.
Q. Would not any UK citizen who wishes to travel to France or Spain wish to use their debit card there in order to take money out of cash machines?
A. Yes.
Q. You are not suggesting that French or Spanish citizens are any different when they come here, they would want to use a cash machine on Fleet Street to take money out if they needed some cash?
A. That is their choice, yes.
Q. Are you really suggesting that there is a significant difference in the fraud risk between those two situations?
A. You are talking about ATM transactions so the profile is -- the fraud profile tends to be different. I will assume that cross-border ATM transactions, yes in fact carries higher risk than a domestic transaction.
Q. If an English citizen buys some goods from a very large French retailer, Christian Dior or something, and those goods are delivered cross-border, does that pose a significantly different risk from a UK customer buying

an online domestic purchase from Paul Smith in Leeds?
A. Now are you talking about both E commerce transactions yes.?
Q. Both E commerce?
A. Yes.
Q. You are saying there is a fundamental difference between those two?
A. Yes, it does.
Q. It is right that for any issued card it is vital that it is able to offer good international recognition these days?
A. Yes, that is part the value proposition, yes.
Q. So issuing banks would always want to offer an option for their cards that they issued to be used in a foreign country?
A. If their economic model -- if their business model is good enough, yes, they will want to maintain that.
Q. Can I suggest to you that you have significantly overstated the threat posed by other regimes if interregional fees were reduced to zero?
A. That is your opinion.
Q. We know, do we not, that when Mastercard was forced to charge a zero intra-EEA MIF for the period of just over 12 months from June 2008 to July 2009 that Amex did not suddenly come steaming into Mastercard's market and

sweep up all the customers?

A. Allow me it remind you that would apply between those corridors. Issuers in the UK and EEA still benefited for the higher interregional interchange that their cardholders are attracting when they fly abroad. So they had a reliable source of revenue.

Q. It is also right, is it not, that when the Commitments decisions came in and you were forced to cap your interregional fees you did not suddenly suffer a loss of customers in favour of Amex or China UnionPay or anyone else?

A. I do not have the data to prove that unfortunately.

Q. At paragraph 38 you say Amex effectively had an interchange fee. How did they have an interchange fee?

A. What we are talking about is an implicit interchange fee as different and as interchange which is what operates in the four-party model.

Q. Are you aware that Amex has confirmed to the PSR in this jurisdiction that it does not have any interchange fees?

A. They do not, I am talking about implicit interchange and what that means is that they get the vast majority of their revenues through the discount rate, right, that is the equivalent to a merchant service fee. If you see the revenues, that is about 55% of the total revenues, while their costs associated with their issuing business, with their card member business, is about 60%.

So you could only infer that in order for them to maintain those levels of expenses there is an internal reallocation of that revenue so that is what we call implicit interchange.

Q. At paragraph 40, {RC-F3/5/11} you say that:

"Rates that we have fixed for interregional interchange fees in the past ... 15 years have been relatively stable."

That is so, is it not, even though different countries and different issuing jurisdictions will have different levels of fraud associated with them and different economic complexity?

A. They have, they are meant to reflect on average the benefits and provide a contribution to the cost that issuers around the world incur to provide those benefits so it is meant to be a weighted average of those markets.

Q. At paragraph 46, top of page 13, {RC-F3/5/13} you suggest that in the absence of interregional MIFs, it is possible that travellers might not have travelled. Is that what you are saying? You are saying that the MIF has had a substantial benefit for destination countries because merchants get to sell more goods when tourists turn up providing a substantial volume of card present sales to travellers who may not otherwise have travelled."

Are you saying that without interchange fees, no tourists would have come to London?

A. I am saying that without interchange fees that could provide a contribution to issuers extending products that have interregional functionality, the landscape will be completely different. It will be still limited to the most affluent cards have expanded the market, the travel market to the less affluent type of consumers, yes.

Q. The reality is that the demand for an interregional functionality is always going to be very strong, is it not?

A. Again what we are talking about is a counterfactual world where interchange would not have existed 10 years ago. So that will have meant that the market would not have developed as it has today.

Q. The point I am putting to you is that people 12, 15 years ago, 20 years ago, wanted to be able to use -- to be able to buy stuff abroad; correct?

A. To the extent they had the funds available to buy, to travel and buy, yes, which was extremely limited to the affluent consumer.

Q. So it was only the affluent that went abroad, was it,

12 years ago?
A. The vast majority, yes.
Q. Okay. Are you saying now that this demand exists that there was no issuing bank that would be willing to offer interregional functionality?
A. Sorry, I did not get that question?
Q. Well, you are saying 12 years ago this demand, as I understand it, only existed for very rich people, it was only rich people that went abroad and then now you are saying: no, it is open to everyone because Merchant Interchange Fees have opened up the market and everyone can travel. So we are now in a position where there is this demand for international acceptance, I am asking you what is the position now in the counterfactual?
A. Consumers are in a position where they can access credit lines that are offered through the credit products that are enabled for interregional transactions, hence they can purchase tickets, they can come to London, they can spend with those cards. So, yes.
Q. The very simple point I am putting to you is that very many cardholders these days would like to be able to use their card aboard, do you accept that?
A. Yes, in a world where the system has not changed and issuers could offer that functionality because they get the proper contribution to the costs that they incur to

provide the benefits to the cardholders; yes.

Q. So if I have your evidence correct, and tell me if I have got this wrong, if MIFs were to disappear tomorrow, that is it, issuers would throw up their hands in horror and say: we are not going to let anyone use any of their cards abroad ever again?

A. I am not saying that. Again the counterfactual is an area that I provide in my witness statement based on was from 10 years ago and how the market would have developed in today's --

Q. I am asking you now to --

A. Yes, can I finish my answer? In today's world, right, issuers will be faced with one -- different scenarios, and consumers are the same -- increasing their fees to cardholders; second, they will be limiting the interregional functionality or the credit portfolio offering; and the third option that consumers will face is to actually switch to a card that does not necessarily make them pay us, such as high fees and offers similar benefits as it relates to interregional functionality.

So I do not believe that the system will be able to function as it is today, issuers would not be able to pass those costs onto cardholders.

Q. Assume that every issuing bank in the United Kingdom is

unable to generate interregional MIFs as a source of income, and just assume that people still want to have an interregional function. The reality is that the first issuing bank that offered that function would be able to generate significant cardholder acceptance of its products, would it not?
A. Yes, in principle. But it would not come at zero cost to that consumer so they will need to be willing to pay for access to that functionality and that will be again limiting the access of the consumer base to those that could pay it, the affluent.
Q. So a number of issuing banks would therefore suddenly have an incentive to offer this functionality because they would be able to draw in more cardholding customers because it is something that cardholders would value?
A. Again it would not come at that zero cost to those consumers.
Q. Do you accept that cardholder acceptance is much lower for the other rival schemes compared to Mastercard and Visa?
A. Yes, I will accept that. We have reached what is called universal acceptance, so yes. But what I would argue is that because we are talking about interregional transactions, that they are widely accepted in the categories again that matters, that is travel and

entertainment related categories.

Q. Obviously if interregional MIFs were reduced to zero then the consequence of that would be that the Merchant Service Charges paid by merchants would fall, would they not?

A. Not necessarily. That would assume an interchange plus plus model, in that case I would say yes, but in the cases for small merchants who are known to be put into bundle structures, they will be still tied to their contractual relationships with acquirers and that means usually higher Merchant Service Charges.

Q. Over time the Merchant Service Charges would drop considerably, would they not?

A. Hard to speculate.

Q. If those charges dropped, especially for the IC plus plus contracts, then you would expect merchants to be more willing to accept foreign cards, would you not?

A. Sorry, I did not get that.

Q. If the costs associated with accepting a foreign card in a UK shop decreases, it is more likely that merchant will accept foreign cards, correct?

A. Yes.

Q. Now, bundle, please, {RC-J3/76/4}, these are some mitigation business strategies associated with interregional interchange no longer being available. In

the left-hand column you will see that there is a series of options that are considered, series of mitigating steps. You have not referred to these at all in your witness statement, have you?
A. I was not aware of these documents, again they are dated from 2015. I was not provided access to this information before.
Q. At paragraph 54, you do explore -- this is page 14, {RC-F3/5/14}, you do explore certain steps that Mastercard might have taken if interregional MIFs had been removed, but it is right, is it not, that none of these mitigation steps have been put in place post the Commitments decision?
A. That is correct. Again, the statements were based on a counterfactual world where interchange would not exist.
Q. Can I suggest to you at paragraph 62 that the suggestion that China UnionPay is in any fit state to pose a viable competitive threat to Visa and Mastercard in the United Kingdom or Ireland is fanciful?
A. I would not consider that statement to be necessarily accurate in light of the -- of the data that they have recently disclosed and in light of the fact that you will need to actually conduct a study at the industry specific level, especially for those of interregional

transactions, you will discover that they are widely accepted.

MR BEAL: That is all the questions I have for you, thank you to the transcriber for being patient with me.

THE PRESIDENT: We have no questions. Any re-examination?

MS TOLANEY: Nothing from me, thank you very much.

THE PRESIDENT: Ms Sarmiento, it has been a long evening thank you very much for your indulgence, we are very grateful to you for your evidence and you are released from the witness box.

(The witness withdrew)

Thank you very much.

Before I forget, can I thank everyone who has supported the process. It has been a very long day starting at 9 and finishing at just past 5. Thank you all.

We are dealing with another witness at 2 o'clock, that is the plan, is it not? I think we will finish our questions in the concurrent evidence session, even if we start at 10.30, but for safety's sake ought we perhaps to start at 10? Would there be any serious inconvenience if we suggested that? I hope there would not.

MR BEAL: No, sir, we are entirely in your hands and you have been very fair with us today overrunning to the extent that we have.

THE PRESIDENT: Let us start at 10 o'clock.

MR COOK: There is one point to mention of course which is Dr Niels's third report, the supplemental numbers. I understand the objection is still maintained.

THE PRESIDENT: Right and you need that --

MR COOK: That is a matter that should not detain the Tribunal for very long because we see them as updating numbers that were in Dr Niels' first and second report.

MR BEAL: I hope I can bring light, not heat. We do not mind it going in, we are going to deal with it.

THE PRESIDENT: That is very helpful. I was going to say, but it probably is helpful, I do say it anyway. Our inclination is to admit late evidence but those who have it admitted should be under no illusions as to how we will treat its weight because of course you will not have had a full opportunity to respond to it and we will take that fully into account when considering what is said in at that statement. If it is mere updating, that is one thing if it is more than that, it is another, we are not in a position to say anything about that now. But that is our general approach.

MR BEAL: I anticipate, but I do not know, and Mr Dryden may mention it of his own volition.

THE PRESIDENT: We are very grateful.

In that case we admit the third statement of Dr Niels on that basis. We will resume at 10 o'clock tomorrow morning with the concurrent -- our intention would be to swear all the witnesses then, not to do it again when they give evidence but to make it clear now that none of them will be going into purdah at all. They will be free to discuss their evidence not only during any break in the hot-tub but also afterwards and they will go into purdah when they give their proper evidence for cross-examination, so I just want that to be clear.

10 o'clock tomorrow morning.

(5.05 pm)

(The hearing was adjourned until 10 o'clock, Wednesday, 6 March, 2024)