

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CH 1998 D No. 2149.

Court No. 58
The Royal Courts of Justice
The Strand
LONDON EC4

30th June 1999

Before:

MR JUSTICE LADDIE

JOHN ALFRED DONOVAN
(Plaintiff)

-v-

SHELL UK LTD
(Defendant)
(by Original Action)

AND BETWEEN

SHELL UK LTD
(Plaintiff by Counterclaim)

-and-

(1) JOHN ALFRED DONOVAN
(2) DON MARKETING UK LIMITED
(3) ALFRED ERNEST DONOVAN
(Defendants to Counterclaim)
(by Counterclaim)

MR G COX, assisted by MS L LANE, instructed by Royds
Treadwell, appeared on behalf of the Plaintiffs.

MR G HOBBS, assisted by MR P ROBERTS, instructed by DJ
Freeman, appeared on behalf of the Defendant.



SMITH BERNAL

INTERNATIONAL

A LEGALINK COMPANY

[1] Wednesday, 30th June 1999
 [2] (10.30 am).
 [3] MR HOBBS: My Lord, Stuart Carson, please, to the witness
 [4] box.
 [5] MR STUART CARSON (sworn)
 [6] Examination-in-chief by MR HOBBS
 [7] MR HOBBS: Mr Carson, can I just ask you: do you have
 [8] somewhere near you a file C2?
 [9] A: Yes.
 [10] Q: Can I just ask you, please, to turn behind tab number 7
 [11] in file C2.
 [12] A: Yes.
 [13] Q: Mr Carson, do you have a document there that has the
 [14] page number 164 at the bottom and the heading "Witness
 [15] Statement of Stuart Carson"?
 [16] A: I do.
 [17] Q: Just look through that document, please. Do not read
 [18] it, but go through it to page 170.
 [19] A: Yes.
 [20] Q: Mr Carson, is that a statement you have made for the
 [21] purposes of these proceedings?
 [22] A: It is.
 [23] Q: And are the contents of that statement true to the very
 [24] best of your knowledge and belief?
 [25] A: They are.

Page 1

[1] what I will do is in fact ask the witness on this
 [2] document.
 [3] Mr Carson, would you please have open E1. Would
 [4] you, in that document, please, turn first of all to
 [5] page 449.
 [6] A: Yes.
 [7] Q: Do you have there a document which is headed
 [8] "Don Marketing Promotional Games and Contests" carrying
 [9] the date 24th July 1990?
 [10] A: Yes.
 [11] Q: It is a two-page document, running on in the bundle to
 [12] page 450, the next page?
 [13] A: Yes.
 [14] Q: Is this a document you have looked at?
 [15] A: I have been shown the document recently by DJ Freeman.
 [16] Q: Would you turn to page 450.
 [17] A: Yes.
 [18] Q: Do you see that there are two names at the bottom of
 [19] that page?
 [20] A: Yes.
 [21] Q: The first of the two names at the bottom of that page is
 [22] yours?
 [23] A: Indeed.
 [24] Q: Right. First of all, can I ask you this: do you have
 [25] any recollection of seeing this document before it was

Page 3

[1] Q: Please wait where you are.
 [2] MR JUSTICE LADDIE: You will recall, Mr Hobbs, the matters
 [3] you put to Mr Donovan relating to the letters of
 [4] 24th July 1990. Are you going to ask this witness to
 [5] say anything more about the letters of 24th July 1990?
 [6] The course is entirely up to you, Mr Hobbs.
 [7] MR HOBBS: I understand, my Lord.
 [8] MR JUSTICE LADDIE: I do not see why Mr Cox should raise
 [9] hurdles just to knock them down. If you are not going
 [10] to raise the hurdle, that is it. I am quite content for
 [11] that to be the course you adopt.
 [12] MR HOBBS: I understand.
 [13] MR JUSTICE LADDIE: I would draw your attention to E1,
 [14] page 450, the penultimate line.
 [15] MR HOBBS: Your Lordship said E1?
 [16] MR JUSTICE LADDIE: E1, page 450, the penultimate line.
 [17] MR HOBBS: Yes, I am aware of that. What I need to do is
 [18] just check with the witness statement.
 [19] MR JUSTICE LADDIE: It does not deal with it. I am quite
 [20] content, if you are happy to leave it that way. Fine.
 [21] MR HOBBS: Yes. What your Lordship - I understand -
 [22] MR JUSTICE LADDIE: I do not want you to explain what I am
 [23] after. The witness is in the court.
 [24] MR HOBBS: I understand perfectly. In view of what
 [25] your Lordship has already said about hurdles, I think

Page 2

[1] shown to you by DJ Freeman?
 [2] A: No.
 [3] Q: Do you have any recollection of discussing or hearing
 [4] about the contents of this document?
 [5] A: Not that I believe. May I just check it to be sure?
 [6] Q: Please do.
 [7] A: No particular recollections on that.
 [8] Q: You say no particular recollection?
 [9] A: Correct.
 [10] Q: How clear are you on what you are saying?
 [11] A: Well, at the time that I worked in this department
 [12] I would talk to - I do not know - a dozen agencies
 [13] over a period of, say, a fortnight. Everyone would talk
 [14] to me about loyalty programmes, loyalty schemes,
 [15] collection schemes, games, Smart Cards, Swipe Cards,
 [16] acetate cards. So the types of things mentioned in here
 [17] are all things that were discussed on a daily basis. So
 [18] I have no recollection of a particular discussion with
 [19] Don Marketing about this letter or the contents of this
 [20] letter. Nothing in that letter is surprising or new to
 [21] me, so ...
 [22] Q: So far as this letter is concerned, what is your best
 [23] recollection as to the point in time at which you first
 [24] saw it?
 [25] A: The first time I am clear I saw it is, whatever, a

Page 4

[1] couple of months ago when I was shown it by DJ Freeman.
 [2] **MR JUSTICE LADDIE:** Just before you finish, Mr Hobbs, are
 [3] you going to ask him any questions about the prior
 [4] letter, and the first paragraph in the prior letter,
 [5] which is also not dealt with in his witness statement?
 [6] **MR HOBBS:** Yes, I think I should. Now that I have started
 [7] on this document at 449, I think I should do that. I am
 [8] trying to remember now how many documents there are in
 [9] here which refer to this witness.
 [10] **MR JUSTICE LADDIE:** The point is this, Mr Hobbs: we all know
 [11] what is at issue and I do not intend to make any
 [12] findings unless the matters in issue have been properly
 [13] canvassed with the relevant witnesses. It does seem to
 [14] me that 446 is another one. At least the first
 [15] paragraph.
 [16] **MR HOBBS:** Yes, I understand that. Of course, what I am
 [17] looking at are other documents in this file as well.
 [18] You have E1 open still in front of you, have you not, Mr
 [19] Carson?
 [20] **A:** Yes.
 [21] **Q:** Would you look at page 439 in there, please.
 [22] **A:** Yes.
 [23] **Q:** Do you have open in front of you there a document which
 [24] is dated 20th July 1990?
 [25] **A:** Yes.

Page 5

[1] letter. Just let me scan it.
 [2] **Q:** When you say "scan it", I would like you to look in
 [3] particular, please, and read to yourself carefully the
 [4] first paragraph.
 [5] **A:** Yes.
 [6] **Q:** You see that your name is mentioned there?
 [7] **A:** Yes.
 [8] **Q:** You see the context in which your name is mentioned
 [9] there? Yes, Mr Carson?
 [10] **A:** Yes. Sorry, can I have another moment to ...
 [11] **Q:** Yes, do.
 [12] (10.45 am)
 [13] **A:** Yes.
 [14] **Q:** In that time I think you were just reading on in the
 [15] letter, were you not?
 [16] **A:** Yes.
 [17] **Q:** How much of it did you read beyond that first paragraph?
 [18] **A:** I have read briefly all of it.
 [19] **Q:** You will see in the first paragraph of that letter that
 [20] there is a statement made:
 [21] "Thank you for confirming by telephone Shell's
 [22] approval of the letter to Sainsbury's, which you have
 [23] now cleared with Stuart Carson and senior management."
 [24] Do you have any recollection, please, of any such
 [25] clearance procedure being gone through with yourself?

Page 7

[1] **Q:** Addressed to yourself, Stuart Carson, and carrying the
 [2] heading:
 [3] "Dear Stuart, Star Trek, the game ..."?
 [4] **A:** Yes.
 [5] **Q:** Mr Carson, can you recollect seeing that letter?
 [6] **A:** I could not honestly say "Oh, I recollect seeing that
 [7] letter" any more than any other letter from nine years
 [8] ago. I recollect the Star Trek game, I recollect doing
 [9] the games Mr Donovan - it does not surprise me to see
 [10] the letter. Can I recall receiving it? No.
 [11] **Q:** In the letter that we had open - the letter at
 [12] 449 - what I would like you to do is turn back to 446.
 [13] **A:** Yes.
 [14] **Q:** You will see a letter of 24th July 1990, if your
 [15] pagination is the same as mine. Do you have that?
 [16] **A:** Yes.
 [17] **Q:** Just look at that letter, please. Again, it is a
 [18] two-page letter. Is this a document that you have seen
 [19] before today?
 [20] **A:** I think again I may have been shown it by DJ Freeman.
 [21] **Q:** Do you have any recollection of seeing this letter or
 [22] hearing about the matters referred to in it prior to
 [23] that point in time when you discussed it with
 [24] DJ Freeman?
 [25] **A:** Obviously again no particular recollection of the

Page 6

[1] **A:** No, none at all.
 [2] **Q:** Do you remember having any discussions with Mr King at
 [3] this point of time - July 1990 - in relation to the
 [4] subject matter of a multibrand loyalty scheme?
 [5] **A:** No recollection at all. I would be very surprised that
 [6] there could be such a conversation, because we were in
 [7] the final stages of planning to exit promotions
 [8] altogether. Something which I had been working on for
 [9] around nine months. So we had a very clear and specific
 [10] need for a short-term game as a mechanism to exit the
 [11] promotions, and no requirement at all at that time to
 [12] continue with anything else.
 [13] **Q:** Did Mr King work in the same office space as yourself?
 [14] **A:** Yes, we had basically adjacent desks. Closer than the
 [15] two of us.
 [16] **Q:** Closer than you and I are now?
 [17] **A:** Yes.
 [18] **Q:** Were you in regular communication with him about what he
 [19] was doing?
 [20] **A:** Absolutely. We worked very much as a team. Paul had
 [21] all the contacts and all the experience, knew everybody
 [22] in the industry. I was the one who was good at the
 [23] financial analysis and making the details work. So we
 [24] worked together on it.
 [25] **Q:** The court has been told that Mr King was not a

Page 8

[1] particularly well man at this point in time; 1990. From
 [2] your own recollection, was he in attendance in the
 [3] office during July or throughout July 1990, doing the
 [4] best you can?
 [5] A: I cannot say for sure what his attendance was in
 [6] July 1990. Certainly, when I first joined, he was
 [7] absent for an extended period of time due to ill
 [8] health. That was for something like the first three
 [9] months. But that was a period in early 1989; that he
 [10] was away for an extended period. I do not recall
 [11] anything more than normal kind of levels of absenteeism
 [12] or - I was aware Paul suffered from stress-related
 [13] conditions, but I do not believe he was off for an
 [14] extended period in July 1990, to the best I can
 [15] recollect.
 [16] Q: I believe you have just indicated you worked quite
 [17] closely with him. Could you give my Lord an indication
 [18] of just how closely you did work with him at this period
 [19] of time?
 [20] A: I considered Paul - I still do consider Paul a good
 [21] friend. It was a very close working relationship
 [22] between Paul, myself and an assistant, Liz Halford. It
 [23] was quite a stressful and difficult working environment
 [24] that regularly involved taking risks that were very
 [25] difficult to quantify or manage and that creates a very

Page 9

[1] cannot remember having been shown any documentation.
 [2] I want to try to take your mind back to 1990, if I can.
 [3] Because, you, I think - did you join the Promotions
 [4] Department in 1989?
 [5] A: Early 1989.
 [6] Q: Early 1989. And you left, I think, in October 1990?
 [7] A: Yes, that would be right.
 [8] Q: If it is in your witness statement, I assume -
 [9] A: Yes.
 [10] Q: It is not a memory test. It says it in your witness
 [11] statement, so I assume, when you did that, you probably
 [12] had better means of consulting some records or
 [13] something.
 [14] A: Sure.
 [15] Q: Can you help me: Mr King, when you first joined, was a
 [16] senior person within that department, was he not?
 [17] A: He was not the most senior person but he was an
 [18] important person, yes.
 [19] Q: He had many years' experience in the promotions field
 [20] for Shell, had he not?
 [21] A: He had.
 [22] Q: He, as you said, had all the contacts, knew
 [23] people - many people - in the industry?
 [24] A: Correct.
 [25] Q: And he presided over many successful promotions for

Page 11

[1] tight team spirit.
 [2] Q: I must ask you just once again: you have looked through
 [3] this letter we have open?
 [4] A: Yes.
 [5] Q: You read it to yourself just now: 446 to 447?
 [6] A: Yes.
 [7] Q: Please, doing the best you can, do you have any
 [8] recollection of the subject matter of what is discussed
 [9] in there being communicated to you by Mr King?
 [10] A: No, no. I do not believe so. All I can say is no
 [11] recollection. That is long time ago. It is talking
 [12] about the kinds of things we talked about all the time
 [13] with many different suppliers, so ... That is the best
 [14] I can do.
 [15] Q: Thank you very much. Mr Cox will have some questions
 [16] for you.
 [17] Cross-examination by MR COX
 [18] MR COX: Mr Carson, it comes to, this really, does it not:
 [19] you could have had such a discussion with Mr King, but
 [20] it is nine years ago, you were discussing all kinds of
 [21] things and you just cannot remember?
 [22] A: As I said, I have got no recollection. For me to
 [23] speculate, it would be only speculation. I have no
 [24] recollection.
 [25] Q: In your witness statement you in fact say that you

Page 10

[1] Shell; that is right, is it not?
 [2] A: I do not know what you mean by "presided".
 [3] Q: He had been responsible for organising and arranging
 [4] them on behalf of Shell?
 [5] A: Well, we are talking about things that happened before
 [6] my time. I do not know his role. I am sure he played
 [7] an important role in many promotions.
 [8] Q: But he was, as it were, the person to whom one would go
 [9] for advice in this area if one was talking about
 [10] promotions within the department?
 [11] A: It would depend who "one" was. If one was Jim Slavin,
 [12] Head of Retail, then, no, he would have come to me for
 [13] example.
 [14] Q: Yes. But, if you wanted to tap experience, it was
 [15] Mr King who had the most of it, was it not?
 [16] A: Yes. As I said before, if you wanted to tap knowledge
 [17] of what had been done before, who were the best people
 [18] in the industry to talk about, you would certainly talk
 [19] to Paul King. If you wanted to understand the
 [20] profitability, the dynamics, the impact on Shell in
 [21] terms of sales, in terms of how you actually organise
 [22] and deliver one of these things, then you would talk to
 [23] me. But, in all probability, you would actually talk to
 [24] both of us.
 [25] Q: As far as promotional ideas were concerned, that was

Page 12

[1] King's field. Yours were the technicalities, the
[2] finance side?
[3] A: You are trying to create a picture of two people doing
[4] two different things. We worked as a team.
[5] Q: No, I am asking you a question.
[6] A: You gave me that impression. We worked closely as a
[7] team. I specialised in the financial analysis, some
[8] risk management, those sorts of things. Paul
[9] specialised more in contacts with the industry. Clearly
[10] Paul had a big input on the financial analysis, thinking
[11] through redemption patterns and so on. I spent a lot of
[12] time working with people in the industry. For example,
[13] in the Star Trek promotion, I think I was dealing with
[14] Mr Donovan more than Paul King.
[15] Q: Yes. That is one of the things I wanted to come on to.
[16] Because, in or around May of 1990, it appears that there
[17] was quite a lot of quite frenzied activity relating to
[18] the taking-up of the Star Trek promotion; is that
[19] right? Can you remember it?
[20] A: May 1990 would be about right. We were planning to exit
[21] in the final quarter of 1990. I was very clear - we
[22] were very clear that we needed a game and Star Trek was
[23] the most exciting theme that had come our way, in my
[24] view.
[25] Q: What in fact happened to Shell's policy was that it did

Page 13

[1] Mickey heads on or something.
[2] Q: Just have a look at it: Concept 1; Concept 2 was a
[3] leaflet controlled game, Shell Monte Carlo; Concept 3, a
[4] board game; Concept 4, multibrand loyalty programme. If
[5] we turn over -
[6] A: Sorry, where are you in the document now?
[7] Q: If we go to 333.
[8] A: Yes.
[9] Q: "The following concepts and ideas have been developed as
[10] being suitable promotional vehicles for the UK retail
[11] petroleum market and presented for consideration. Some
[12] of the schemes could be brought within two weeks.
[13] Others longer, as they involve third parties as
[14] co-promoter."
[15] Then, if you turn the pages, there is a series
[16] of discussions of these different concepts. By the end
[17] of 1989 was the policy to come out of promotions
[18] altogether?
[19] A: I cannot remember the exact timing of decisions. There
[20] was - let me think. We came out in October 1990. It
[21] took about six to nine months to actually plan that
[22] because of the anticipated huge wave of points coming
[23] back in.
[24] Q: But you did not come out?
[25] A: On the very day that we exited, indeed many of the

Page 15

[1] not exit in the last quarter of 1990, did it?
[2] A: It did not, no.
[3] Q: No. Did you know that Mr King had commissioned from
[4] Don Marketing - possibly amongst others but certainly
[5] Don Marketing - in the latter part of 1989 some
[6] thinking concerning what Shell should do? Have a look
[7] at file E1 in front of you. See if it helps jog your
[8] memory. Page 331. This was a presentation, as you see
[9] the date, on 23rd October 1989. You were in the
[10] department at that time obviously?
[11] A: Yes.
[12] Q: Were you aware of this presentation?
[13] A: I honestly cannot say. I would receive I do not know
[14] how many presentations of this type in a month.
[15] Q: Yes.
[16] A: Throughout that entire period.
[17] Q: Let us have a look at it together, if we can. Because
[18] it may be something that helps you. It is divided into
[19] four sections, four concepts really. One, as you see at
[20] page 332, a Shell Disneytime promotion. That actually
[21] was taken forward. Does this jog your memory? But the
[22] licensing arrangement fell down.
[23] A: I know we did something with Disney as part of the
[24] Collect and Select catalogue. I do not think it was
[25] this. I think it was just stuff like golf clubs with

Page 14

[1] filling stations had the posters up advertising the
[2] exit. It was the first day of the Gulf war and a
[3] decision was handed down from on high - from on very
[4] high - I have no idea from where - that said "That's
[5] it. We are not pulling out of promotions". More
[6] specifically "We are not running a scratch card game
[7] whilst it could be viewed that our boys are down in the
[8] Gulf fighting for oil rights. That would be
[9] inappropriate ..." et cetera, et cetera. Therefore no
[10] scratch card game. Therefore no exit from promotions.
[11] So that decision was made on that day, literally as the
[12] war broke.
[13] Q: And there was no exit from promotions? Do you know
[14] that?
[15] A: Yes, that is what I am saying.
[16] Q: Back in 1989, as I say, there were a number of
[17] presentations by Don Marketing. I want to ask you
[18] whether you were aware of them: the first on
[19] 23rd October, that we are looking at. If you turn the
[20] page to 348, you will see a proposal to enhance the
[21] Collect and Select Scheme, which was perceived as being
[22] a bid jaded by then, was it not?
[23] A: By whom?
[24] Q: By Shell.
[25] A: Promotions per se were modelled by me to be financially

Page 16

[1] unattractive. That was all promotional schemes: our own
[2] and competitors', that we were looking at returns on.
[3] It was an inevitable diminishing returns situation. It
[4] is a competitive situation. Each oil company - if you
[5] take collection catalogues, each oil company looks at
[6] everybody else's catalogue, sees who offers the cheapest
[7] hair drier and does something less, in terms of number
[8] of gallons of fuel to be bought, so they will pitch a
[9] bit lower. The next round, everybody pitches a bit
[10] lower. The thing just becomes unviable.

[11] Q: So either you did something completely different or you
[12] got out?

[13] A: In my view you got out.

[14] Q: Right. But the alternative was to do something
[15] completely different, was it not?

[16] A: You would have to come up with something that was a lot
[17] more completely different than a multibrand scheme,
[18] because they were also modelled. We were already doing
[19] multibrand-type promotions. I do not comment on
[20] whatever this specific proposal is from Don Marketing,
[21] because that is after my time. But, in my view,
[22] multibrand also was non-viable.

[23] Q: Can you have a look at 348, please.

[24] A: Yes.

[25] Q: Again, specifically on the one we have just looked at

Page 17

[1] A: No, but I am not sure whether that would be a formal
[2] brief or not. Around I do not know how many agencies
[3] would consider themselves to have a standing brief.
[4] I mean, Shell is the honey pot and the agencies are the
[5] bees. Most of them would consider themselves to have a
[6] standing brief to come up with ideas. Paul may have
[7] given Don Marketing a much more formal brief or he may
[8] not.

[9] Q: Without telling you necessarily?

[10] A: He may have done. I would be surprised if he had not
[11] told me. I think it is more likely, if he did give a
[12] formal brief, that he told me and I have forgotten. But
[13] this is just speculation.

[14] Q: Let us suppose it was not a formal brief. Let us
[15] suppose he simply asked them to make a presentation
[16] along these lines. Would you necessarily get told?

[17] A: How can I answer a question "somebody might have down
[18] something and not told me". Would I expect to discuss
[19] the vast majority of issues of any import with Paul?
[20] Yes, I would. It was a noisy office. We would talk all
[21] day, much as we are now. It is a continuous flow.
[22] But ...

[23] Q: All right. Let us go on. I am just trying to get at
[24] what you remember and what you are saying about this
[25] presentation in November, for a start. Is this

Page 19

[1] briefly, you cannot recall the presentation on
[2] 23rd October 1989; is that the answer?

[3] A: This one, page 348?

[4] Q: Page 331 we have looked at. I just want to get your
[5] answer clear: you cannot recall it?

[6] A: 331?

[7] Q: Yes. The one we have just looked at. Can you remember
[8] a presentation on 23rd October 1989, Don Marketing
[9] presenting these ideas or discussion of it?

[10] A: I can remember that Don Marketing quite regularly would
[11] present ideas to us. They were one of the more regular
[12] suppliers. I have no recollection of this particular
[13] presentation, Disneytime. Frankly, if we took up an
[14] idea, I am likely to recall it. If we did not, it was
[15] in the morass of ideas that we did not take up.

[16] Q: Let us go to 348. That was an enhancement proposal for
[17] Collect and Select. If you will turn the page, we will
[18] have a look

[19] "Shell has given Don Marketing a wide brief [this
[20] is 16th November 1989] to provide possible creative
[21] solutions to cover several contingencies."

[22] Do you see that?

[23] A: Yes.

[24] Q: Again, were you aware that Mr King had given
[25] Don Marketing that brief?

Page 18

[1] something that you would have discussed with Paul King?
[2] (11.00 am)

[3] A: When you say the presentation in November, we are on ...

[4] Q: 348 onwards. Is this something you would have discussed
[5] with Paul King?

[6] A: You are asking me to comment on things that I have just
[7] told you I do not recall. I can tell you it is the type
[8] of thing I would expect to discuss with Paul King, but
[9] I can tell you no more.

[10] Q: So you cannot remember discussing that. Just move on a
[11] little in time, if you would. That whole document
[12] discusses enhancements to Collect and Select,
[13] introducing games, ideas of that kind to try and jazz it
[14] up, if I can put that colloquialism on it. If you turn
[15] now to page 378, you will see how, as far as the papers
[16] are able to take us - these papers - we can see how
[17] things developed. 378; Mr Donovan's company, Mr Donovan
[18] is writing to Mr King, National Promotions Manager,
[19] concerning the Disneytime concept. Indeed, it had been
[20] presented to Shell New Zealand and it had been very
[21] favourably received. We see the remainder of it.

[22] Again, I just want to ask you - it is probably
[23] the same answer. Forgive me for asking you questions
[24] which you may feel are self-evident - do you have any
[25] recollection of that?

Page 20

[1] A: Of this letter, no.
 [2] Q: Of the subject it discusses?
 [3] A: No. I have got the vaguest recollection that we dealt
 [4] with Shell New Zealand on something, because I think we
 [5] had to send them a bunch of redemption cards that they
 [6] wanted to copy the design of or something. It might
 [7] have been to do with this or it might have been to do
 [8] with something else.
 [9] Q: Turn the page, would you. 19th February 1990. Record
 [10] of a meeting in relation to Mr King's visit to
 [11] Stowmarket. Did Mr King go out of the office from time
 [12] to time and visit agencies?
 [13] A: Yes, of course.
 [14] Q: Again, discussions there. Disneytime concept. There is
 [15] concern about the licensing fee, and it will be
 [16] perceived more as a Disney promotion than one mounted by
 [17] Shell. He intends to contact the Disney people in
 [18] London to see how much they might want as a royalty.
 [19] "He has asked us to look at the format and design
 [20] again to see if we can create a stronger linkage with
 [21] the Shell brand."
 [22] This is February 1990. No sign here at least of
 [23] Mr King saying "Forget about it, there is no need to go
 [24] on. We are pulling out", is there?
 [25] A: In this letter, no.

Page 21

[1] with you.
 [2] A: Sure.
 [3] Q: We will go on through this document, if we may.
 [4] McDonald's Trivial Pursuit:
 [5] "The game has made an impression on him and he
 [6] seems concerned there may be some other possible format
 [7] better than Disneytime ... noticed about McDonalds how
 [8] many people are playing the game and the amount of
 [9] interest it has created."
 [10] Then there is a discussion about Famous Names
 [11] promotion. If you will follow it through with me:
 [12] "Paul authorised us to go ahead with developing
 [13] the Famous Names concept for representation to him next
 [14] week. However, since his visit, we have realised there
 [15] are a number of insurmountable problems to overcome."
 [16] And discussion about those.
 [17] A: Yes.
 [18] Q: If we turn the page, we will see, after discussion about
 [19] possible McDonald's promotion, reference to a
 [20] "Let's Go Racing". Does that Let's Go Racing concept
 [21] mean anything to you?
 [22] A: No.
 [23] Q: "Paul has asked us to represent Let's Go Racing, on
 [24] which they held an option until 1986. This does not
 [25] seem to present any problems but worth discussing the

Page 23

[1] Q: In anything we have seen so far. There is a
 [2] presentation in October, there is a presentation in
 [3] November, you have seen letters concerning New Zealand
 [4] and Disneytime in February. Here we are, a record of a
 [5] meeting discussing Disneytime. Have a look further
 [6] down. I appreciate it is years since you have had an
 [7] opportunity to look at all of this.
 [8] A: It is fascinating to look back, but ... What I might be
 [9] able to do is to shortcut. Because I will not be able
 [10] to recall individual documents.
 [11] Q: No. But what you did say, you see, is that you would be
 [12] surprised in July about anything that discussed possible
 [13] future promotions - you said "possible". I suppose you
 [14] implied Star Trek - because there was a distinct and
 [15] definite decision to pull out. I just want to see if
 [16] that is apparent to an agency dealing with you. Do you
 [17] see the point?
 [18] A: Yes, and ideally it would not be apparent to agencies or
 [19] suppliers for as long as one could keep that the case.
 [20] Q: What in fact we will see happening - and this is why
 [21] I would like you to go through and just help me.
 [22] I appreciate I am touching a very dim and distant
 [23] recollection, often no doubt blurred together. But
 [24] I would like to just see if these things touch or
 [25] trigger, for a particular purpose, any recollections

Page 22

[1] format in terms of prize levels. Paul has also asked us
 [2] if possible to create one further game option for his
 [3] consideration when he revisits the offices next week.
 [4] We should take into account the seasonal aspect of the
 [5] promotional period: October, November and December."
 [6] Do you see that?
 [7] A: Sorry, which bit?
 [8] Q: The second paragraph under Let's Go Racing:
 [9] "We should take into account the seasonal aspect
 [10] of the promotional period: October, November and
 [11] December."
 [12] Again, it would appear certainly no apparent
 [13] decision - apparent decision, though there may well
 [14] have been discussion - at this time of coming out of
 [15] promotions. Would you agree?
 [16] A: No, I would not agree. Looking at that paragraph, it
 [17] would appear to me that all of these are short-term game
 [18] promotions. It would appear to me, but not based on
 [19] strong memory. It would appear to me in the context of
 [20] this that Paul was talking to Don Marketing about a game
 [21] to help us exit the promotion. I base that on the
 [22] period which Paul is clearly seeking ideas for
 [23] October, November and December. So ...
 [24] Q: "Apart from the brief for a major promotion indicated
 [25] above, Paul has indicated he will be asking us to

Page 24

[1] develop smaller scale games."

[2] And then talk about cards. Over the page on
[3] 19th March 1990, page 381, you will see reference for
[4] the first time in these papers to something called
[5] "Project Harbour". A letter to Mr King on 19th March:
[6] "We are pleased to learn that you have
[7] successfully re-established contact with one of the
[8] original potential partners for the proposed multibrand
[9] game promotion."

[10] Now, if I say Megamatch to you, does it jog any
[11] memories?

[12] A: Yes, Megamatch, I remember the name. It was before my
[13] time in the department, but it was a very successful
[14] promotion I believe.

[15] Q: Well, Make Money was the matching halves game?

[16] A: That is the one I am thinking of.

[17] Q: Megamatch was the multibrand version. You could play it
[18] across sectors and in different retailers?

[19] A: I recall the name. I was confusing the two.

[20] Q: Are you familiar with the Megamatch concept, the
[21] multibrand concept?

[22] A: Yes, at a high level. I can remember no detail of it,
[23] but, at a high level, yes.

[24] Q: Have a look at that letter again. Do you recall any
[25] discussion with Paul King now about the multibrand game

Page 25

[1] October 1989 through the early part of 1990 with Mr King
[2] with no mention of your name so far?

[3] A: Sure.

[4] Q: Again, it would appear, would it not, that you were not
[5] hands-on involved with these discussions?

[6] A: You are asking me about letters, about things that
[7] I have told you I do not recall and then saying "Were
[8] you involved or not?" I cannot say. I can tell you how
[9] we worked together, as I have described. I can tell you
[10] things about the policy of the department. I can
[11] probably tell you things about promotions that we
[12] actually implemented. There is an outside chance
[13] I might recall some names, as in Megamatch. But detail
[14] of this conversation or that letter ... I just feel I am
[15] trotting out the same answer.

[16] Q: I must ask you. We can agree this: if you say "cannot
[17] remember", I will understand the answer you have just
[18] given to be implied in that short retort. All right?

[19] A: Okay.

[20] Q: "On your instructions, we are now considering the
[21] implication of a 16-week promotional period, commencing
[22] presumably in mid-August. We will take into account the
[23] desire to introduce seasonal prizes in the run-up to the
[24] Christmas period. Such a change would, in our view, be
[25] essential to maintain interest over an extended period."

Page 27

[1] promotion?

[2] A: That is the Megamatch, is it? You are saying they are
[3] the same?

[4] Q: Yes?

[5] A: I am sorry to be so unhelpful. It is just a desperately
[6] long time ago.

[7] Q: I understand.

[8] A: I recall the name Megamatch. I am sure we talked about
[9] it in some context. I cannot remember what. I am sure
[10] we talked about it lots of time. But can I recall this
[11] letter or that letter, this conversation or that, it is
[12] just too long ago and it is just buried in too high a
[13] volume of similar discussions with lots and lots of
[14] agencies and in-house and so on.

[15] Q: It is really just the name Megamatch that you recall?

[16] A: I recall the name Megamatch. Absolutely, yes.

[17] Q: Again, what it seems to show is that you were not
[18] actually hands-on involved in these discussions between
[19] Mr King and Mr Donovan's company?

[20] A: Well, as I say, I have no recollection of it. I have
[21] not read the letter to deduce what it seems to show.

[22] Q: Let us just have a look through, if we may. I want to
[23] try to gauge the relationship, as I say, respective
[24] relationship of the parties. What we have seen to date
[25] is discussions, or records of discussions, ongoing from

Page 26

[1] Then discussion of inclusion of seasonal prizes:

[2] "We assume that our responsibilities for managing
[3] the above project will include the following functions:
[4] "Advice on the development and form of the
[5] promotion ..."

[6] And the numbers of responsibilities are
[7] enumerated. If we turn the page:

[8] "Advice on matters of security ... Our standard
[9] management fee for previous Shell game promotions was
[10] 17.65 per cent. We received a concept fee for the two
[11] promotional concepts we devised: Make Merry and Bruce's
[12] Lucky Deal. The concept fee for the last one 50,000.
[13] The multibrand matching halves concept now under active
[14] consideration was created by us. This was acknowledge
[15] by Ken Danson on behalf of Shell. We did in fact make a
[16] presentation to the current proposed partner at a senior
[17] level but, on Ken's instructions, wrote to them saying
[18] the timing was not right. We then spent nearly six
[19] months in developing the project for Shell with other
[20] potential partners before Ken decided to shelve the
[21] project and run Collect and Select."

[22] Mr King apparently has been in touch with a
[23] potential partner and is actively
[24] considering - certainly under a project named
[25] Harbour - the possibility of running the Megamatch

Page 28

[1] game. Again, is the answer the same: cannot remember?
 [2] A: I do not see any reference in here to Mr King
 [3] contacting -
 [4] Q: The first paragraph:
 [5] "... pleased to learn you have successfully
 [6] re-established contact with one of the original
 [7] potential partners ..."
 [8] A: Yes.
 [9] Q: Discussion of fee.
 [10] MR JUSTICE LADDIE: It might be helpful, Mr Cox, if you give
 [11] him a clue who the potential partner was. We know who
 [12] it was.
 [13] MR COX: Tesco, I think, my Lord.
 [14] MR JUSTICE LADDIE: What Mr Cox is putting to you is
 [15] apparently Mr King had contacted Tesco. Now, will you
 [16] address Mr Cox's question?
 [17] A: Yes. Sorry, could I have the question again?
 [18] MR COX: Do you recall Mr King re-establishing contact with
 [19] Tesco through a company, as I am informed, Francis
 [20] Killingbeck Baines for the possible purpose of running a
 [21] Megamatch game?
 [22] A: I cannot recall anything that specific. I recall FKB
 [23] were a regular contact. I am now going into speculation
 [24] that Tesco would be a very good partner to have. Any
 [25] supermarket would be a good partner to have. But, no,

[1] "The following outline concepts have been
 [2] developed in response to a brief from Shell as being
 [3] potential promotional vehicles for the UK retail
 [4] petroleum market."
 [5] Mr Donovan enjoyed, in 1990, Mr Carson, did he
 [6] not - Mr Donovan's company - an excellent reputation
 [7] with Shell?
 [8] A: In terms of currency of dealing, I would say it had
 [9] obviously declined with Collect and Select. But
 [10] definitely a quality company, definitely a quality
 [11] individual. Somebody we spoke to. It speaks for itself
 [12] that we have clearly had discussions on a repeat basis.
 [13] Q: Indeed. The relationship between Shell, at least the
 [14] personnel at Shell who preceded you and went on,
 [15] Mr King, and Don Marketing was quite close in that there
 [16] was a bond of trust based on previous success, was there
 [17] not?
 [18] A: There was certainly a bond of trust. Quite close,
 [19] I guess in some contexts but in the context of being
 [20] quite close to a number of agencies. So I would not
 [21] want to kind of imply preferred agency status or
 [22] something like that. But certainly trust. You cannot
 [23] go into a game promotion with somebody without trust.
 [24] There are so many pitfalls.
 [25] Q: Don Marketing had a track record with Shell by that

[1] I do not remember anything.
 [2] Q: You do not recall it. Running a game like Megamatch
 [3] across sectors though would be something you would have
 [4] expected to be discussed?
 [5] A: Yes, yes.
 [6] Q: At what stage would you have expected Mr King to discuss
 [7] it with you?
 [8] (11.15 am)
 [9] A: Certainly I would have expected it to be discussed fully
 [10] if it became something that he was serious about,
 [11] excited about, thought seriously we should consider.
 [12] I would find it pretty astounding to think that anything
 [13] was taken to a real level of development without me
 [14] being contacted - well, without me being party to the
 [15] thinking and the development. As far as I can recall,
 [16] pretty much any ideas were discussed, sometimes with a
 [17] joke as the idea hit the trash can and some, I am sure,
 [18] hit the trash can without being shared.
 [19] Q: Right. Let us go on, if we may. On 384, 12th March,
 [20] just a little bit before, there had been another
 [21] presentation. I will not go through the detail, but it
 [22] refers to four concepts again: Famous Names, Smile and
 [23] Win, Let's Go Racing and Shell Disneytime. Again we
 [24] need not concern ourselves too much, save to say that,
 [25] at 386:

[1] time, did it not?
 [2] A: In terms of running various games, yes.
 [3] Q: Successful promotions. Indeed, the position is that,
 [4] whether rightly or wrongly, Don Marketing considered
 [5] itself to be peculiarly indebted to Shell, in the sense
 [6] that it considered it had a special relationship with
 [7] Shell. Mr King must have discussed that with you, did
 [8] he not?
 [9] MR JUSTICE LADDIE: Sorry, are you asking him whether
 [10] Don Marketing felt itself indebted to Shell? That is
 [11] not a question he can answer, is it?
 [12] MR COX: My Lord is quite right. Let me rephrase the
 [13] question. Let me ask you by reference to a document.
 [14] If you could take the page in front of you. Keep your
 [15] finger at page 386, if you would. Turn in the bundle to
 [16] page 429.
 [17] A: Yes.
 [18] Q: This is a letter to you, which I dare say again -
 [19] although I have to put these questions to you for a
 [20] particular purpose, Mr Carson, I quite appreciate you
 [21] may think we have all gone mad. Because, recalling a
 [22] letter on 17th July 1990, there is a pretty fat chance
 [23] you will remember. Can I ask you to read it through
 [24] briefly to yourself and then we will ask you some
 [25] questions about it.

[1] A: Yes.

[2] Q: That is an exactly accurate reflection, is it not, of
[3] the nature of the relationship - making allowance
[4] possibly for a bit of poetic licence - but it is a good
[5] and accurate reflection of the nature of the
[6] relationship between Shell and Don Marketing?
[7] MR JUSTICE LADDIE: Mr Cox, once again, just to make it of
[8] use on the transcript: it is either good and accurate or
[9] it has poetic licence. You had better ask him whether
[10] it is good or accurate or it has poetic licence and, if
[11] so, where is the poetic licence.

[12] MR COX: All right. That is a fair summary, is it not?

[13] A: When I read it I saw something which I did not think was
[14] appropriate. Let me just find it again. The final
[15] paragraph in the middle:

[16] "It was agreed on an informal basis that, if you
[17] accepted any ideas proposed by third parties, you would
[18] use our services to plan and manage the game."

[19] I can make no comments on whether that informal
[20] agreement was made or not. In my view, that would not
[21] be a fair reflection of how I saw the relationship
[22] between Shell and Don Marketing: that they would have an
[23] automatic in. It was a very clear policy of the
[24] department to make sure that everything was done in the
[25] most straightforward and above board kind of a way.

Page 33

[1] anybody's intellectual property. Because everybody came
[2] with the same ideas and, before you knew it, a promotion
[3] which could be 70 per cent of the way to implementation,
[4] suddenly somebody comes along with the idea and you have
[5] said "Oh, yes, it will be your intellectual property"
[6] and you are into a debate.

[7] Q: So you, in your time, were very clear about that, were
[8] you?

[9] A: Everybody was, in my time. I was, Paul King was,
[10] Liz Halford was, Mark Foster was.

[11] Q: Did you have written policy to this effect? Did you
[12] write letters to this effect?

[13] A: I do not know if we had a written policy. I certainly
[14] did not write one. I do not believe Mark Foster did.
[15] But in no sense was there any doubt about the policy.
[16] That was made very clear to me, if it needed to be, when
[17] I arrived.

[18] Q: Let us just go on. I may come back it that.
[19] Concentrating on this as a statement: that you must have
[20] talked to Mr King as to whether or not Mr Donovan was
[21] reasonably fairly assessing the position and, if he had
[22] said no, presumably you would have replied?

[23] A: You are asking me to comment on a reaction to a letter
[24] that I tell you I cannot recall. I do not know whether
[25] I spoke to Mr King. All I can tell you is, reading the

Page 35

[1] That just smacks to me - not to suggest that
[2] Don Marketing are not top quality et cetera et cetera
[3] but to say "you have an automatic in". Somebody may
[4] have said it. I do not think it fairly reflects the
[5] relationship at the time.

[6] Q: I think it is probably referring to a period before your
[7] arrival. Because what you may not be aware of is this
[8] company had restarted in 1989 after a period of several
[9] years when it had gone out of existence in 1986. So
[10] that, in 1990, the company only had a year or so - this
[11] new company - a year or so trading. What is being put
[12] forward there - if you would like to read it again.
[13] I do not know if you agree - is a description of a
[14] relationship that possibly had a reference to the past.
[15] Do you follow? Rather than the imminent future as being
[16] introduced to you. If it had been fundamentally wrong,
[17] would you have replied to it or gone on dealing with
[18] Mr Donovan?

[19] A: If there are things that I felt were implying a special
[20] relationship, or intellectual property rights or
[21] something like that, which every single person who ever
[22] rang in with an idea would say "I have this fantastic
[23] idea but I need a special relationship, I need you to
[24] recognise I own the idea" and so on. The response was
[25] always the same: no, we never in advance recognise

Page 34

[1] letter now, immediately as I scanned down it, I thought,
[2] hang on, that sounds a little too cozy. Which
[3] obviously, from all the agencies' point of view, is
[4] something they are always trying to create an impression
[5] of being very cozy. From Shell's point of view it is
[6] always important to be clear that ideas we used would be
[7] paid for, ideas that we did not use would not be paid
[8] for and nobody had - there was never any recognition of
[9] intellectual property.

[10] Q: What in fact you did do - again, it may help you
[11] indicate whether or not you felt happy with this - is
[12] that you recommended, did you not, yourself personally,
[13] Mr Donovan's company to various international divisions
[14] of Shell as being one of the best in the business?

[15] A: I do not recall doing it particularly, but I would not
[16] at all be surprised. Because my reservation is about
[17] that one line. As I have already said, Don Marketing
[18] particularly primarily in the context of scratch card
[19] games, in my view, certainly would have been the person
[20] to deal with.

[21] Q: Let us just have a look at it. 459. If you had been
[22] unhappy with the relationship, one assumes you would not
[23] have done this, would you? 459; just have a quick look
[24] at it. September 24th, a letter from Norska Shell:
[25] "Dear sir, we have been referred to you by

Page 36

[1] Mr Stuart Carson, Shell UK, as we understand that your
 [2] company is one of the best companies specialising in
 [3] promotional games and contests and we hope you are able
 [4] to help us with the following: Shell Norway wants to
 [5] launch a promotion for the cash paying private segment
 [6] as soon as possible. Our main objective is to build
 [7] loyalty and to increase market share."
 [8] Then a request for assistance. Certainly by
 [9] September - there are other examples actually. If
 [10] you - there is a letter at 461 from Mr Donovan's
 [11] company to Helsinki, Finland Shell - which I think is
 [12] probably different, Finland and Norway, unless they have
 [13] a joint company - about Shell having advised an enquiry
 [14] regarding to Make Money specifically there.
 [15] **MR JUSTICE LADDIE:** That one does not actually say it was
 [16] Mr Carson. You had better stick with the other one,
 [17] because that is nice and clear.
 [18] **MR COX:** My Lord, I will. We are back at 459. It would
 [19] appear, would it not, that you personally felt a respect
 [20] for Don Marketing and I think you agree with that?
 [21] **A:** Yes, I tried to make that clear, yes.
 [22] **Q:** You would have been able to discuss with Mr King his
 [23] understanding and recollection and opinion concerning
 [24] Don Marketing, would you not?
 [25] **A:** I would have been able to of course, yes.

Page 37

[1] I recall it, but that is the best I can say.
 [2] **Q:** It is about Sherlock Holmes:
 [3] "Have you given any more thought about the
 [4] suggestion of a Sherlock Holmes theme game."
 [5] We will not go through it. The advantages are
 [6] discussed. A collector game:
 [7] "An attachable collector game would be an easy to
 [8] play collect and win game ... possible to arrange for
 [9] all the claims to be forwarded by a Sherlock Holmes
 [10] Baker Street address ..."
 [11] The reason I ask you, if you turn the page to 417,
 [12] you actually reply to this. Because it would look as
 [13] though this was one you thought you might go forward
 [14] with, and Mr King did. Because you replied:
 [15] "Dear Mr Donovan, thank you for your letter passed
 [16] to myself by Paul King. After initial consideration of
 [17] the Sherlock Holmes game proposal you are offering us,
 [18] I would like to give further thought towards making use
 [19] of it in our promotional mix for the final quarter."
 [20] **A:** Yes.
 [21] **Q:** Would that indicate that what happened is Mr King has
 [22] thought this is actually imminently usable. So he has
 [23] spoken to you and you have taken it up?
 [24] **A:** I guess. I do not know whether I have taken it up or
 [25] whether I just happened to be the one who has

Page 39

[1] **Q:** And you almost certainly would have done, would you not?
 [2] **A:** Almost certainly.
 [3] **Q:** It is almost certain that you would have consulted
 [4] Mr King about Don Marketing and received the word back
 [5] that this was a trustworthy and excellent company?
 [6] **A:** Absolutely.
 [7] **Q:** Yes. So, if we go back to page 381, you have told us
 [8] you would have expected Mr King to have consulted you
 [9] when a thing had reached a serious stage of
 [10] development. In other words, he wanted to go forward
 [11] with it; is that right?
 [12] **A:** Yes.
 [13] **Q:** If it were simply a prospect for the future, you would
 [14] not have expected him to consult you?
 [15] **A:** I would usually expect him to consult me. Well,
 [16] "consult" sounds like seeking my formal approval.
 [17] I would expect to talk to him about it.
 [18] **Q:** Thank you for that. Let us go on, if we may, in time,
 [19] past the document we have just looked at and to
 [20] 14th May at 414. A letter to Mr King about a
 [21] Sherlock Holmes game?
 [22] **A:** Yes.
 [23] **Q:** Do you remember anything about a Sherlock Holmes game?
 [24] **A:** I think I do. If pressed, maybe I remember it because
 [25] in one of the statements it talks about. I think

Page 38

[1] responded. I do not know.
 [2] **Q:** So there is no magic, as it were, in you reply. It
 [3] could have been Mr King, it could have been you?
 [4] **A:** Yes.
 [5] **Q:** "Please bear with me until after 4th June when I will
 [6] have a clear idea about the possibility."
 [7] You then ask on a compliment slip for the standard
 [8] trading terms and conditions. 418. Over the page at
 [9] 419, you will see that Mr Sotherton, Mr Donovan's
 [10] colleague, sends you a copy of the standard terms and
 [11] conditions. Again, I do not suppose you recall these
 [12] particularly; is that right?
 [13] **A:** I am on 419 now, yes?
 [14] **Q:** Yes.
 [15] **A:** I do not recall the particular letter.
 [16] **Q:** Can you turn the page to 421. Again, Megamatch; I have
 [17] asked you. You remember the name.
 [18] **A:** Yes.
 [19] **Q:** But in fact there was discussion about Megamatch
 [20] directly with you, was there not? With Don Marketing.
 [21] Does that ring a bell?
 [22] **A:** It does not ring a bell. There may well have been,
 [23] there may well not have been.
 [24] **Q:** Have a look at this letter, Mr Carson.
 [25] 25th June addressed to you:

Page 40

[1] "Dear Stuart, re J Sainsbury Plc. Sainsburys have
 [2] never before expressed the slightest interest in
 [3] promotional games. I was, therefore, very surprised to
 [4] receive a letter this morning from Brian Horley, their
 [5] Advertising and Marketing Manager, taking us up on an
 [6] offer to make a presentation. I therefore thought it
 [7] might be worthwhile taking advantage of the opportunity
 [8] to mention the multibrand game concept to them. Hence,
 [9] my call to you this morning requesting permission to do
 [10] so."

[11] Do you agree with me: that letter seems to have at
 [12] least two implications, if it is correct: first, there
 [13] was a telephone call between yourself and Mr Donovan.
 [14] Do you agree with that?

[15] A: Yes.

[16] Q: And you have no reason to suspect otherwise, have you?

[17] A: To suspect that the call did not take place?

[18] Q: Yes.

[19] A: As I say, we are into areas that I have said I do not
 [20] recall. I have no reason to suppose anything or not
 [21] suppose anything.

[22] Q: The second implication is that you had some prior
 [23] knowledge at least - some prior knowledge - of the
 [24] multibrand game concept which he is referring to.
 [25] Because he says:

Page 41

[1] thing. So it would not surprise me at all not to be
 [2] going round telling people "By the way, we are thinking
 [3] of exiting promotions".

[4] Q: Because, of course, to assemble a consortium of
 [5] retailers for a multibrand game, as you were told by
 [6] Mr Donovan in the letter we looked at on 25th May, had
 [7] taken quite a number of months of chairing meetings, do
 [8] you recall that letter we looked at? He describes what
 [9] happened?

[10] A: You are trying to ask me to comment on things that
 [11] I keep saying I do not recall. This thing says "a
 [12] multibrand game" and you say that is the same as the
 [13] consortium of retailers of another letter. I do not
 [14] know if it is or it is the same as Megamatch or if it is
 [15] a different multibrand game.

[16] Q: I appreciate you are in a situation of disadvantage and
 [17] I have not been able to take you through all of these
 [18] documents. But, if you will just keep your finger
 [19] there, just to try to reassure you, if I can, and go
 [20] back to page 345, you will see in
 [21] 23rd October presentation - these discussions,
 [22] I appreciate, were held with Mr King mainly. But you
 [23] have a look at that. You will see in the last
 [24] paragraph on 345:

[25] "Our concept stems from the multibrand Megamatch

Page 43

[1] "I thought it might be worthwhile taking advantage
 [2] of the opportunity to mention the multibrand game
 [3] concept."

[4] And he does not explain it. If you had come to
 [5] that fresh, I assume you might have said "What is
 [6] that?" But it looks as though you had had some prior
 [7] knowledge of it?

[8] A: That is what the letter looks like, yes.

[9] Q: "I will make it clear to Sainbury's that the approach in
 [10] regard to the multibrand game is at our instigation and
 [11] purely to explore the possibility of joint promotional
 [12] activity between Shell and Sainbury's without any
 [13] commitment from either party."

[14] Now, 25th June; if that letter is right and you
 [15] have said "Okay, go ahead" - it is not any skin off
 [16] Shell's nose, I suppose - but "go ahead". It does not
 [17] suggest you say "Don't bother, John" - it is not a
 [18] criticism, but I just need to get to the truth, if I can
 [19] - "because we are exiting".

[20] A: Sorry, is that a question or a statement?

[21] Q: It does not look as though you have said "Do not bother,
 [22] John, because we are exiting out of these things"?

[23] A: It does not look as though and exiting a promotion is
 [24] not something one would want to broadcast before you
 [25] built the infrastructure to actually manage the whole

Page 42

[1] game we have proposed to Shell."

[2] In the letter of 17th July at 381, you will see
 [3] that Mr King - the one we looked at before about
 [4] Project Harbour, where Mr King is trying to establish
 [5] contact with:

[6] "... one of the original potential partners for
 [7] the proposed multibrand game promotion ... considering
 [8] the implications of a 16-week promotional period".

[9] Just read it, please, because there is a serious
 [10] point to this and I am concerned that you should have it
 [11] on board. You are the only person I can ask about what
 [12] happened in 1990. So it is important.

[13] A: Which bit do you want me to read?

[14] Q: The first six lines of that letter please.

Project Harbour:

[15] "We are pleased to learn you have successfully
 [16] re-established contact with one of the original
 [17] potential partners for the proposed multibrand game
 [18] promotion. On your instructions, we are now considering
 [19] the implications of a 16-week promotional period
 [20] commencing presumably in mid-August."

[21] If you turn the page you will see that, at the
 [22] penultimate paragraph on 382, Mr Donovan describes how
 [23] it took nearly six months to develop the project for
 [24] Shell with other potential partners. So, on
 [25]

Page 44

[1] 25th June 1990 - page 421 - you must have had a
 [2]-discussion with Mr King that would have been able to
 [3] inform you about the history of the Megamatch project
 [4] and his intentions regarding it, must you not?
 [5] (11.45 am)
 [6] A: I feel that slow because my head is spinning with the
 [7] dates and the page numbers that were jumping back and
 [8] forth. Can you say again which date?
 [9] Q: Yes, Mr King is considering running the Mega Match
 [10] multi-brand game promotion.
 [11] A: You say, I am not agreeing with you.
 [12] Q: The letter suggests that. We have not yet been told that
 [13] is a forgery. So let us have a look at 381.
 [14] A: Which letter says we are -
 [15] Q: 381.
 [16] "On your instructions, we are now considering the
 [17] implications of a 16 week promotional period commencing
 [18] presumably in mid-August"
 [19] A: It is a vast walk from there to saying that we are doing
 [20] the promotion, but we clearly are talking about it,
 [21] thinking about it, etcetera.
 [22] Q: So when, on 25th June, at page 421, you have the
 [23] conversation with Mr Donovan about an approach to
 [24] Sainsburys, you must have known or consulted Mr King
 [25] about the background to that, must you not?

[1] Match. You have been spoken to about an approach to
 [2] Sainsburys. Then, within a few days, there is a
 [3] suggestion of Star Trek.
 [4] Now, you remember the Star Trek -
 [5] A: I remember the Star Trek.
 [6] Q: I think you are an enthusiast with Star Trek?
 [7] A: I am not a Trekkie enthusiast. I am an enthusiast for the
 [8] promotion at the exact time it was intended to run.
 [9] Q: You are fond of the Star Trek programme?
 [10] A: It is okay. No, but, to be fair, it was not because I
 [11] thought, "Oh, I like Star Trek so let us do a Star Trek
 [12] promotion." I liked the idea because it coincided with a
 [13] launch of one of the Star Trek movies at exactly the
 [14] time we wanted to run the promotion; Gene Roddenberry
 [15] was over from the States, a lot of press coverage, et
 [16] cetera, so it is not just I, personally, like Trekkies
 [17] or something, but it made a lot of sense.
 [18] MR JUSTICE LADDIE: I do not want you to be too rude about
 [19] Trekkies; you do not know who you might offend! Q. You
 [20] get all kind of Star Trek references form now on. Beam
 [21] me up, Scottie, comes to mind!
 [22] Can we concentrate on it. You have a letter at
 [23] 245, "Dear Stuart", this seems to be the first
 [24] suggestion. We will not need to go through all of it. It
 [25] really is just the idea being put to you with, I think

[1] A: If that is the same multi-brand game referred to in this
 [2] letter that I do not recall, as in that letter that I do
 [3] not recall, then probably, though I do not recall, I
 [4] spoke to Paul King about it, assuming he was around at
 [5] the time. I am honestly not trying to be obstructive.
 [6] In-between March and June, I will have probably
 [7] talked to about fifteen different people about fifteen
 [8] different multi-brand loyalty games options, short-term,
 [9] long-term collection schemes.
 [10] Q: Let us -
 [11] A: If you know the body of evidence you have says this
 [12] multi-brand, that multi-brand, is the same one,
 [13] et cetera, et cetera, hypothesising, yes, I quite likely
 [14] spoke to Mr Paul King, I do not know if that is an
 [15] answer.
 [16] Q: No. Thank you. That is fine. You have had a letter on
 [17] 25th June. One thing then happens, there is an approach
 [18] to Mr Horley on 10th July, 422. You do not have the full
 [19] chain of correspondence here but there has been contact
 [20] with Sainsburys about Disney Time. Then, in the middle
 [21] of these contacts with Sainsburys, which you will see on
 [22] 10th July, and indeed there is one with Safeway at 424,
 [23] Mr Donovan suggests to you at 425 the idea of Star Trek.
 [24] So you see, up until this point, Mr King has been
 [25] dealing with ideas generally, and particularly Mega

[1] they call it, the visual, do they not, in 428, the
 [2] suggested idea?
 [3] It would appear that, between 13th July and 17th
 [4] July, at 429, you had obviously taken up with interest
 [5] the idea because, at 429, the letter to you reads:
 [6] "As you seem to be close to making a decision on
 [7] the choice of the game specialist, perhaps it might be
 [8] appropriate to remind you of some of the points we made
 [9] about our services and experience during our meeting."
 [10] Then the letter we have already looked at, setting
 [11] out the qualifications of Don Marketing for running this
 [12] particular game and being chosen as the game specialist
 [13] to go with; do you see?
 [14] A: Yes.
 [15] Q: Thereafter - again you may not be able to help me or
 [16] remember but - it looks as though there was some quite
 [17] urgent deadline to meet. 18th July, there is an
 [18] immediate talk by Mr Donovan to the Paramount Licensing
 [19] Agency.
 [20] MR JUSTICE LADDIE: 431, yes.
 [21] MR COX: 431, my Lord. On the same day, at 434, a letter to
 [22] you:
 [23] "I confirm I have received a phone call from Sarah
 [24] Harmer, advising us the video company will be launching
 [25] all 79 of the original Star Trek series on video."

[1] So it does seem there will be a huge amount of
[2] interest. There is the point about Gene Roddenberry
[3] travelling over to the UK; Mr Donovan informing you
[4] about that. If we go over, on 5 pm on the same day, all
[5] these letters that we have just been looking at on the
[6] same day, a fax about Paramount's Licensing Agency
[7] correspondence.

[8] On 20th July, a letter about fees:

[9] "Dear Stuart, Star Trek: The Game. [439].

[10] You indicated during our telephone conversation
[11] yesterday that you wished to discuss our fees regarding
[12] the above project during today's meeting."

[13] So from 13th July, when the first letter is
[14] written, this idea has gathered momentum to the point
[15] where, by 20th July, within the space of a week, you
[16] have indicated a wish to discuss fees. It looks as if it
[17] happened quite quickly?

[18] A: Yes, it happened very quickly. It was a no-brainer. We
[19] knew we wanted to do a scratch card game. It was only a
[20] matter of the right theme, and it did not take long at
[21] all to think through and think it was a good thing.

[22] Q: In fact, I wonder if I could have - my Lord, I have
[23] some further copies of correspondence that I wish to put
[24] in the bundle X, if your Lordship pleases.

[25] MR JUSTICE LADDIE: If it is material which fits into the

Page 49

[1] Q: Could you take volume 1 in front of you.

[2] MR JUSTICE LADDIE: We will call this 415 A, shall we?

[3] MR COX: Yes, my Lord.

[4] 415 A, if you could pop it into that file.

[5] MR JUSTICE LADDIE: In fact it is the next three pages as
[6] well, is it not? No, next 2.

[7] MR COX: Next 415 A and B, my Lord.

[8] MR JUSTICE LADDIE: 415 B and C, it is a three page fax. All
[9] those go together.

[10] MR COX: Do you have it?

[11] A: Do you have a pen I could ...?

[12] MR COX: My solicitor will give you one. (Handed) If you
[13] could just pop 415 A, B and C on that.

[14] This is a fax, Don Marketing to Claire Hickman,
[15] whom you will recall, cc to Paul King. If you turn the
[16] page, it is a copy form for reverse of the game pieces
[17] for a Shell Select Shop game. Now, that Shell Select
[18] Shop game was, at the time, being actively considered -
[19] can you recall this - by Mr King?

[20] A: Obviously, I do not recall the letter. I am just trying
[21] to see if I can recall the content of it.

[22] Q: No. Have a look at this next one, if you would, which
[23] may help you. It is the letter of 25th June, the next
[24] one in the bundle.

[25] MR JUSTICE LADDIE: We will call this one - shall we put it

Page 51

[1] sequence in these bundles, it is probably better for us
[2] to give them A, B and C numbers and to slip them in
[3] behind the documents here.

[4] MR COX: That may well be right.

[5] MR JUSTICE LADDIE: Otherwise we will forget about them.

[6] MR COX: My Lord, yes. Perhaps that might be done later or
[7] as we go along.

[8] MR JUSTICE LADDIE: Let us do it as we go along. It is much
[9] easier. Then the transcript will match up with the
[10] bundles.

[11] MR COX: May I hand your Lordship a bundle of them.

[12] MR JUSTICE LADDIE: As we go through them we will slip them
[13] in.

[14] MR COX: Now, let us just have a look. Have you have not
[15] been given a bundle?

[16] A: Thank you. (Handed)

[17] Q: The first one perhaps you could slip it back. It is from
[18] Roger Sutherland to Claire Hickman. Do you recall a
[19] Claire Hickman?

[20] A: Yes.

[21] Q: Who was she?

[22] A: She was, I guess, from Project Link's point of view an
[23] account manager, or something, somebody in Project Link,
[24] who were an agency we used more in a project management
[25] role than a creative role.

Page 50

[1] after the one of 25th June.

[2] MR COX: Yes, 421 A, I suggest, and B. It goes with a little
[3] illustration of how -

[4] MR JUSTICE LADDIE: Those are 421 A and B.

[5] MR COX: You see on the same day as Mr Donovan has mentioned
[6] and written to you about Sainsburys, he has also written
[7] to Mr King about this Select Shop promotion:

[8] "The enclosed bromide is illustrative of the final
[9] size of the price symbols that appear on the scratch
[10] cards however the paste-up of this bromide has to go
[11] through two film stages and the reverse copy is also
[12] being sent."

[13] What it appears - and I am going to suggest this
[14] to you - it may be you cannot help me - is that by
[15] about May there had been a, sort of, division of
[16] responsibility between you and Mr King. He is running
[17] some things; you are dealing with others. It may just be
[18] you were tremendously busy, I do not know. Can you help
[19] me?

[20] A: I do not think there is any change in the nature of
[21] Paul's and my working patterns before or after May. I
[22] mean, you are drawing the inference from a set of
[23] letters which are only one of the many agencies we were
[24] dealing with. Did we walk round joined at the hip and
[25] always jointly consult on everything? No. Was there any

Page 52

[1] greater division of responsibility? I do not think so.
 [2] I could only characterise it in the way I
 [3] suggested. It was a team. We worked very closely
 [4] together. We communicated very closely. On average, Paul
 [5] would focus more on the kind of contact side of the
 [6] business and I would focus more on the analysis, but
 [7] that is a skew not a division.
 [8] Q: But you have become very closely involved mainly in the
 [9] Star Trek game?
 [10] A: Yes, I cannot remember how closely Paul was involved. I
 [11] was clearly closely involved. I remember that, yes.
 [12] Q: Do you remember how it came about you took it up? Was in
 [13] fact Shell running with another promotion and then it
 [14] sort of went wrong, or something like that?
 [15] A: No. We were looking - as I explained what happened. We
 [16] had this long running scheme, Collect and Select. I had
 [17] done the analysis which said this is just not viable. We
 [18] had done lots of things to try and make it viable,
 [19] working with other retailers and so on, spread costs to
 [20]
 [21] Q: To enhance it?
 [22] A: Enhance it but, at the end of the day, it is a
 [23] diminishing returns issue. No other promotions that I
 [24] looked at in the industry were making money either, to
 [25] my analysis.

Page 53

[1] A: Other potential partners, in the broadest possible
 [2] sense, people who were not Shell, who could (a) share
 [3] costs and (b) give us access to customers who did not
 [4] already go into Shell petrol stations. Therefore, from a
 [5] promotional point of view, you are much more likely to
 [6] get incremental sales, instead of just rewarding people
 [7] who were buying anyway.
 [8] So we went through lots of approaches like that.
 [9] Still, to my mind, it was not economically viable.
 [10] I must be waffling, because I have forgotten the
 [11] back end of the question.
 [12] MR COX: I probably have as well. So you tried to enhance
 [13] Collect and Select by considering ideas of giving offers
 [14] with other third parties, really redeeming offers; is
 [15] that right?
 [16] A: Amongst a whole raft of different ideas.
 [17] Q: Which is a fairly conventional and traditional way of
 [18] offering prizes in a collection scheme, is it not?
 [19] A: All promotions are the same, and they are all different,
 [20] so which one is conventional and which are --
 [21] Q: But the Select Shop promotion, in any event, Mr King is
 [22] being written to by Mr Donovan and you on Star Trek,
 [23] because, if we see, that is the letter of 25th on Select
 [24] Shop.
 [25] There are then the letters we have already seen to

Page 55

[1] Q: Were you an accountant by background?
 [2] A: No, I am an engineer by background.
 [3] MR JUSTICE LADDIE: You said by this stage you had done a
 [4] number of things to try and make it viable, correct?
 [5] A: Correct, yes.
 [6] Q: It had been running for sometime?
 [7] A: Collect and Select was running before I joined, yes, for
 [8] I am not sure exactly how long, but it was well in place
 [9] before I joined.
 [10] Q: You said you tried to spread costs?
 [11] A: Yes, well, the kind of things that I did when I first
 [12] came in, in addition to those things that were already
 [13] being done, were to try and understand better the costs
 [14] of actually running a sales promotion, to understand the
 [15] impact of redemption and so on, and that led to various
 [16] things. It led to changing some of the operational ways
 [17] that we ran promotions to reduce costs. We had
 [18] ridiculous chains of redemption patterns, of multiple
 [19] partners involved, when there was no need to negotiate
 [20] contracts, and lots of promotions with other parties,
 [21] albeit to Boots or cinema vouchers. We had lots of
 [22] discussions. We had a lot of discussions that did not go
 [23] anywhere with Trusthouse Forte, whatever.
 [24] Q: Is that what you meant when you talked about "other
 [25] retailers"?

Page 54

[1] Sainsburys with that conversation with you in the
 [2] background. Why would Mr Donovan speak to you, if one is
 [3] looking at 421? Was it simply that you had been the one
 [4] he spoke to when he rang the office, or what?
 [5] A: Yes, most likely.
 [6] Q: So he could have spoken --
 [7] A: That is pure speculation, I guess, so ...
 [8] Q: There was no special reason why he should have to speak
 [9] to you on this subject?
 [10] A: As opposed to Paul?
 [11] Q: As opposed to Paul, for example.
 [12] A: Not that I am aware of. If you are talking about formal
 [13] authority to sign things off, then, as I recall, formal
 [14] authority was probably with Mark Foster, de facto
 [15] decision making was with Paul and I as a team.
 [16] Q: So he could have spoken to Mr King but, in fact, on 25th
 [17] June, he had had the conversation with you. It may just
 [18] have been you were the one in the office?
 [19] A: It may have been. As I said, I do not recall the letter.
 [20] I do not recall the conversation. The letter certainly
 [21] suggests a phone call.
 [22] Q: Let us go on, because if we come now we have had a look
 [23] at the progress between the 13th, very rapid progress
 [24] between the 13th and the 20th. All the letters on Star
 [25] Trek are to you, if one looks at 425, at 429, 431.

Page 56

[1] MR JUSTICE LADDIE: Just a second.
 [2] MR COX: 434, a fax at 435, and then 439. When you are
 [3] getting close to dealing with running a promotional game
 [4] like this, is it quite busy?
 [5] A: It is always, or it was always, very busy.
 [6] Q: Particularly, when you are about to launch a game?
 [7] A: Always; that is why Paul had poor health. It is always
 [8] high pressured. It is always busy because you are either
 [9] in build up to launching a promotion, or you know that
 [10] the second that the thing is out there you have the next
 [11] one to come.
 [12] I am sure there were some kind of waves and
 [13] troughs, but it was not a calm environment that peaked
 [14] into stress levels sometimes; it was always very busy.
 [15] Q: I see. Let us have a look at the next one, 441, because,
 [16] at page 439, it would appear that you are going to have
 [17] a meeting on 20th July 1990, because Mr Donovan has
 [18] written:
 [19] "You indicated during our telephone conversation
 [20] yesterday [19th] that you wish to discuss our fees
 [21] regarding the above project."
 [22] MR JUSTICE LADDIE: Did you say 441?
 [23] MR COX: 439.
 [24] MR JUSTICE LADDIE: Sorry, I thought you said 441.
 [25] MR COX: I will move there in a minute, but just to see

Page 57

[1] A: I remember the game, obviously. I do not remember this
 [2] letter, or particularly remember discussing the fees -
 [3] Q: Do you remember the meeting on Friday 20th July?
 [4] A: No, I am sorry.
 [5] Q: Do you remember that, in the background, Mr King was
 [6] dealing still with the idea of a link-up with a major
 [7] grocer in the Mega Match game?
 [8] A: I just do not know these things. I just do not recall.
 [9] Q: Do you remember that, in the course of that discussion
 [10] of running the Project Harbour with Sainsburys as a
 [11] possible partner, there had also been discussion with
 [12] Sainsburys about a longer term collection scheme for the
 [13] future, not imminently but in the future?
 [14] A: As part of discussions of Harbour?
 [15] Q: Yes.
 [16] A: No, as I have said, I do not recall the Harbour
 [17] discussion.
 [18] Q: Mr King was, in the past, happy to request from Don
 [19] Marketing - were you aware of this - an arrangement
 [20] whereby an idea would be held at Shell's disposal? In
 [21] other words, Don would not go to other people with an
 [22] idea; were you aware of that?
 [23] A: Not that I - no, I do not think so.
 [24] Q: Does it, as a particular concept, surprise you?
 [25] A: Paul King had an arrangement with Don Marketing in which

Page 59

[1] where we are, there is obviously to be a meeting on the
 [2] 20th July, and there is a detailed discussion about
 [3] fees. There are important elements, including the
 [4] provision of an adequate number of game variations, a
 [5] lot of things have to be considered when you want to run
 [6] one of these things, security numbers, costs,
 [7] everything, correct?
 [8] A: Correct.
 [9] Q: What this is, is an indication that:
 [10] "As we recognise it would give us a negotiating
 [11] lever if Shell were to proceed further without the fees
 [12] being agreed to their satisfaction, we are happy to
 [13] undertake, relying on the fact that Shell have always
 [14] treated us fairly in the past, that we will accept your
 [15] decision on the fees to be charged. It does not mean to
 [16] say we will not argue our case, but it is more important
 [17] to move ahead with the other elements which need to be
 [18] tackled urgently if the promotion is to be launched by
 [19] the target date."
 [20] So it is really Don Marketing saying, "We will
 [21] abide, although we will argue it, we will accept what
 [22] you decide in the end on fees, correct?"
 [23] A: That is what that paragraph says, yes.
 [24] Q: Again, I do not suppose you remember anything of these
 [25] details in this letter?

Page 58

[1] they would take no ideas to anybody other than Shell?
 [2] Q: No, no, if Mr King liked an idea -
 [3] A: Right.
 [4] Q: - He would say to Don Marketing, "Do not go anywhere
 [5] else with that idea", and they would reach an
 [6] arrangement, and had on occasions in the past, as we
 [7] shall see, that Don would not, for a period of time, go
 [8] anywhere else with the idea. So that it would be at
 [9] Shell's disposal, it would be in the drawer for Shell if
 [10] Mr King liked it?
 [11] A: Well, if you are talking about historic things, you
 [12] would have to ask Paul. If it is before my time, I have
 [13] no idea. In the time I was there, I was not aware of any
 [14] arrangement. I cannot comment. You would have to ask Mr
 [15] Donovan or Mr King whether Paul had said, informally,
 [16] "Please do not handle this idea." I have no idea. I am
 [17] certainly not aware of - you say arrangement, that
 [18] implies a formal thing, then nothing that I am aware of.
 [19] Q: Can I show you what I mean and see if it helps you. Have
 [20] a look at volume 1, page 42. Do you recall a Mr Danson?
 [21] Was he there in your time?
 [22] A: When you say volume 1, E1 or ...?
 [23] Q: E1; do you have it?
 [24] A: Page 42.
 [25] Q: Ken Danson; do you know him?

Page 60

[1] A: I recall his name. He was before my time in the
 [2] department so I did not know him.
 [3] Q: Page 42. This is 8th November 1995, in relation to
 [4] "Let's Go Racing", 42:
 [5] "Following our discussions this morning I confirm
 [6] that we are willing to grant Shell an option on
 [7] the "Let's Go Racing" promotion as presented and
 [8] described in our proposal dated 2nd August, 1985.
 [9] "The option will be in force for a period of two
 [10] years from the date of this letter, and during this
 [11] period we will not present or disclose the concept to
 [12] any third party without prior written consent from
 [13] Shell. Shell will have the right to mount the
 [14] promotion", and so on.
 [15] "The fees payable to Don Marketing for these
 [16] services, less the option fee, which would be deducted,
 [17] would be subject to final negotiation, but would be in
 [18] keeping with the scale of fees established for Bruce's
 [19] Lucky Deal.
 [20] "The option fee would be equivalent to the
 [21] eventual remaining balance of the share-out prize fund
 [22] from Bruce's Lucky Deal."
 [23] I appreciate you know none of these details, but
 [24] there is an example. There had been a share out prize
 [25] fund which Don Marketing had managed for Shell, and

Page 61

[1] promotion in the drawer so to speak and I hope that we
 [2] will be able to use it, in the not too distant future.
 [3] Meanwhile many thanks for your letter and look forward
 [4] to our next meeting."
 [5] You, in fact, reached a not dissimilar arrangement
 [6] in relation to Star Trek in the end, did you not?
 [7] A: I would say we reached a very dissimilar arrangement.
 [8] Q: By that, I mean you preserved Star Trek - the agreement
 [9] was that Don would not go anywhere else with the Star
 [10] Trek idea, is that not right, when you cancelled it?
 [11] A: No, my recollection of it was that because literally the
 [12] entire thing was printed and distributed, as I said, we
 [13] cancelled the promotion on the day that it went live,
 [14] which is a pretty unusual thing to do.
 [15] My recollection - well, it is not really my
 [16] recollection, I was shown a letter or something in the
 [17] statements.
 [18] Q: You have been shown it recently?
 [19] A: I have seen something in a statement or a letter about a
 [20] split in the fee, which is the fee payable, which is
 [21] what brought it back to mind, but that was nothing do
 [22] with preserving options as such; it is simply
 [23] commercially trying to recognise in a fair way that Don
 [24] Marketing were losing out and we were losing out, well,
 [25] who was going to loose out entirely? Well -

Page 63

[1] whatever was left, the arrangement was, would be the
 [2] so-called fee - there may have been nothing left but
 [3] the so-called fee - for this arrangement.
 [4] So it was a kind of arrangement based upon,
 [5] really, a willingness on the part of Don Marketing to
 [6] preserve its relationship with Shell. Had you heard
 [7] about that, had Mr King?
 [8] A: I was at university when this was going on so ...
 [9] Q: 1985, well -
 [10] A: Never mind no recollection; I had no knowledge at all.
 [11] Q: But had he talked to you about the general concept of
 [12] holding on to ideas he thought were good ones by
 [13] reaching some kind of arrangement?
 [14] A: No, because - well, no, I am not sure there is a
 [15] because, just no.
 [16] Q: Have a look at the page which is the Shell letter back,
 [17] 43:
 [18] "Thank you for your letter of 8th November,
 [19] confirming our recent phone call concerning the "Let's
 [20] Go Racing" promotion.
 [21] "This letter is to confirm that the principles
 [22] outlined in your letter are acceptable to us and that
 [23] the amount in question will be the remaining balance
 [24] from the Bruce's Lucky Deal prize fund.
 [25] "It is of course very handy to have a back-up

Page 62

[1] Q: The letter you are referring to, I think, is at 456, is
 [2] it not? If you want to have a look at it. Particularly
 [3] the arrangements are at 457. It does not appear to have
 [4] been set out anywhere else.
 [5] "Taking all of the above into account, we
 [6] would be prepared to accept the reduced fees figure
 [7] discussed of £150,000, invoicing you immediately for the
 [8] balance of £62,000. This would be on the basis that we
 [9] will either be asked to complete the Star Trek project
 [10] at a later date, and invoice you for a further sum of
 [11] £37,500 to cover reactivation and completion of the
 [12] project, or provide an alternative game theming at a
 [13] cost to be negotiated. This arrangement would include
 [14] Shell retaining the right to use the Star Trek concept
 [15] at any time of their choosing up until the end of 1991,
 [16] with no further concept fee being payable to us.
 [17] Obviously the necessary licensing arrangement would have
 [18] to be made..."
 [19] So it was an arrangement where, on cancellation,
 [20] one of the things you wanted to ensure was that Don did
 [21] not go anywhere else with the idea, I suppose, was it?
 [22] A: No, what I wanted to ensure was that we did not pay the
 [23] entire lot out, not even having run the promotion.
 [24] Q: No, but equally, it was clear that one of your concerns
 [25] must have been, surely, that they did not go somewhere

Page 64

[1] else in the meantime?
 [2] **A:** Absolutely not, and that is something I am very clear
 [3] on. Why can I be clear on that when I am so hazy on most
 [4] things? I disagreed very, very strongly with ever
 [5] running the StarTrek game.
 [6] **Q:** You disagreed?
 [7] **A:** Once the time period had passed. The whole point of Star
 [8] Trek, the only reason I saw it as a valuable theme for a
 [9] scratch card was to coincide with the film launch with
 [10] Gene Roddenberry, etcetera, etcetera.
 [11] I argued strongly that all the cards should be
 [12] burnt because why have a security risk of all these
 [13] cards stored? Why bother? Just do not embarrass yourself
 [14] by putting out a promotion that has completely missed
 [15] the optimum time to do it. So -
 [16] **Q:** Mr Carson, have a look -
 [17] **MR JUSTICE LADDIE:** So?
 [18] **A:** So I can only say, from my point of view, I had no
 [19] interest in an option for the future because I did not
 [20] think the promotion should be run in the future.
 [21] **MR COX:** Have a look at 458.
 [22] "Dear John, thank you for your letter of
 [23] 4th September 1990 concerning your fees following the
 [24] postponement of Operation Enterprise, the terms of which
 [25] are acceptable to me. Please now submit an invoice for

Page 65

[1] the outstanding fees, i.e. 62,000 which we will
 [2] process as soon as possible. I also confirm our
 [3] agreement to the terms stated for possible reactivation
 [4] of Operation Enterprise in 1991 and hope that this will
 [5] be possible."
 [6] **A:** I can only suggest that I was probably being a little
 [7] mean, in that I did not really hope it was possible, but
 [8] I was quite happy not to pay the 62,500.
 [9] **Q:** In fact, it was run, as you know, in March 1991?
 [10] **A:** Very much against my opinion and not by me.
 [11] **Q:** You had left by then, presumably?
 [12] **A:** That is correct.
 [13] **Q:** I suppose you did not care much one way or the other?
 [14] **A:** Well, I cared but I thought it was a stupid thing to do,
 [15] personally. I had no influence.
 [16] **Q:** Of course it is just a day or so after that, at 459,
 [17] plainly, at this time, you had recommended to
 [18] Shell Norway about the company Don Marketing?
 [19] **A:** Yes, this in no way reflected on Don Marketing as a
 [20] company. It was out of everybody's control.
 [21] **Q:** Quite. You say you were not keen on it, but it does
 [22] anyway seem that, as part of that arrangement, although
 [23] unnecessarily so, Don Marketing undertook not to go
 [24] anywhere else with the idea; that is what it comes down
 [25] to?

Page 66

[1] **A:** Yes. What I am saying is it was of no relevance to me.
 [2] What was relevant to me was not to pay the entire fee
 [3] upfront. The best of my recollection is that originally
 [4] Don Marketing wanted us to pay the whole thing. We said
 [5] we would pay a reduced fee and they said, "Well, how
 [6] about a reduced fee, and pay the rest if we
 [7] reactivate?", which to me was just fine. I had
 [8] absolutely no intention of reactivating.
 [9] **Q:** You confirmed your agreement to the terms relating to
 [10] the reactivation and in fact it was reactivated?
 [11] **A:** Indeed, it was.
 [12] **Q:** Yes, and in fact, you knew at the time that
 [13] Don Marketing would not, or would consider itself at
 [14] least, be able to go anywhere else with the idea?
 [15] **A:** Yes, I mean, I do not have a strong recollection of
 [16] that, because that is not what I was interested in, but
 [17] it is clear from the letters that I would be aware of
 [18] that.
 [19] **Q:** So if we go back to 439, 20th July, I suggest to you
 [20] that things are happening extremely fast. This is a
 [21] Friday afternoon. This is the first piece of business
 [22] that Don Marketing Limited, while you had been there,
 [23] had actually done with Shell, was it not, actual
 [24] transacted business that was going through?
 [25] **A:** To the best of my recollection, yes.

Page 67

[1] **Q:** Do you recollect that Mr Donovan gave it very, very
 [2] careful and close attention?
 [3] **A:** We met. We had phone calls. What attention he gave it,
 [4] outside of that, not only can I not remember, how would
 [5] I know? I am sure he would. I am sure it is an important
 [6] promotion to them as well.
 [7] **Q:** If we can look over the page at 441. The 20th is a
 [8] Friday. The 21st/22nd obviously the weekend. On Monday,
 [9] you faxed Mr Donovan. Is that your writing on that fax?
 [10] **A:** Yes.
 [11] **Q:** Asking to hand deliver, over the page, a brief
 [12] handwritten note from you.
 [13] "Our print-buyer, Alan Roman, is very anxious to
 [14] start the tender process for the board."
 [15] It looks as though there is some deadline for
 [16] that. Is there a target date to go?
 [17] **A:** Everything was always - probably, if you find any fax
 [18] in there, they probably all say "urgent, hand deliver".
 [19] Everything was always urgent. I do not recall a specific
 [20] deadline, but I have no doubt we were under time
 [21] pressure; we always were.
 [22] **Q:** What you were asking for was:
 [23] "... a written specification for the board
 [24] required and game piece size. If unable to provide the
 [25] above, please advise me when this will be possible."

Page 68

[1] That is I suppose to check the cost of how much it
 [2] is going to cost for these game pieces and so on, is it?
 [3] A: I guess, I do not particularly recall.
 [4] Q: As at Friday, no fees agreed, Friday 20th. Don say, "We
 [5] realise it will be bargaining, so no fees agreed."
 [6] No specification for the board. If you will turn
 [7] the page to 443, 23rd July, a letter to Miss Harman of
 [8] the Paramount Licensing for Star Trek. Over the page, at
 [9] 445, again 24th July, a fax from you at 6 o'clock in the
 [10] evening, I think, 18.06. Reference to the theme music.
 [11] Now, that was in response to this fax, which I
 [12] wonder if you could put in. It is the next document of
 [13] your loose bundle.
 [14] A: Just one page?
 [15] Q: Just the one page, I think.
 [16] MR JUSTICE LADDIE: This should go in front of 445, should
 [17] it?
 [18] MR COX: My Lord, it should.
 [19] MR JUSTICE LADDIE: Let us call that 444.
 [20] A.
 [21] MR COX: Mr Donovan has faxed to you about the theme music.
 [22] You have replied at 6 minutes past 6. It is not unusual
 [23] for you to work late, I expect?
 [24] A: No.
 [25] Q: There is the next, my Lord, the next one is a duplicated

Page 69

[1] 452.
 [2] On 27th July, Mr Donovan and his company are
 [3] submitting a breakdown of fees for the project:
 [4] "... hopefully provide a basis for our
 [5] discussions. Please note that they do not represent our
 [6] profit, as the sums involved will have considerable
 [7] overheads and direct costs set against them for
 [8] implementation and handling.
 [9] "We found that receiving a commission on the game
 [10] piece print cost for the previous Shell UK promotional
 [11] games was the fairest way of gearing our remuneration
 [12] (for services provided) to the size and scale of the
 [13] promotion."
 [14] Talk about the sizable team involved, previous
 [15] examples of fees and so on.
 [16] Then it is set out in some depth in the next few
 [17] pages. It concludes the letter with:
 [18] "We hope that we have always conducted our
 [19] business in a highly professional and conscientious
 [20] manner and are not aware of any complaints about our
 [21] performance during long association with Shell UK. We
 [22] want to maintain those high standards of integrity and
 [23] services for Shell in the coming months (and hopefully
 [24] years!) and trust that we will be able to agree fees
 [25] which reflect our input and expertise."

Page 71

[1] copy of the loose bundle; I apologise for that. That one
 [2] can be put aside. That is already there, yes. So it is
 [3] the next one:
 [4] "Urgent, warp 10 even if the dilithium crystals
 [5] cannot take it, Cap'n."
 [6] MR JUSTICE LADDIE: Where do we put this one?
 [7] MR COX: My Lord, we think it goes after the fax we have
 [8] that is at 445.
 [9] MR JUSTICE LADDIE: 445 accompanies it.
 [10] MR COX: It is an example of what you were saying about
 [11] urgent?
 [12] A: That is just one sheet.
 [13] Q: That is all we have I am afraid. It is simply you have
 [14] obviously faxed again with some document two other pages
 [15] in it marked "urgent".
 [16] Now, in the meantime, Mr King, I suggest to you,
 [17] is talking to Mr Sotherton about the development of the
 [18] Mega Match idea and the whole issue relating to
 [19] Sainsburys that you had had some input into some days
 [20] before.
 [21] Now, you cannot help me one way or the other with
 [22] that, I assume?
 [23] A: No, I do not think I can, no.
 [24] Q: If you will have a look, we will go over for the moment
 [25] the next few pages until we come, please, to 27th July,

Page 70

[1] So, as of Friday, can you help me when you think
 [2] the actual firm decision was taken to go ahead with this
 [3] project?
 [4] A: The Star Trek thing?
 [5] Q: Yes.
 [6] A: In my head, about 15 seconds after I saw the thing. The
 [7] rest was detail. In terms of formal signing off, I
 [8] cannot remember.
 [9] Q: There were other things to think about, were there not,
 [10] costs, fees?
 [11] A: Yes, but in the cost of running a game, Don Marketing's
 [12] fees - though I never would have talked like this at
 [13] the time - were irrelevant, really, small beer in the
 [14] cost of the great scheme of things. So there is an awful
 [15] lot to work out but, in terms of the concept, I thought
 [16] it would have mass market appeal and so on, and was tied
 [17] in with something that would give all kinds of publicity
 [18] for free, at exactly the time we wanted it. From that
 [19] point of view, immediately it was clear to me that that
 [20] was a good idea.
 [21] Q: You would not have told Mr Donovan that, of course, that
 [22] would be bad commercial bargaining practice, would it
 [23] not?
 [24] A: Indeed, yes. I am sure I was reasonably enthusiastic,
 [25] but no doubt Mr Donovan might remember better than me

Page 72

[1] exactly what I said, but I certainly would not have
 [2] said, "I do not care what your fees are because" -
 [3] Q: You would not have said it is certain to go ahead? You
 [4] would have held some-
 [5] A: Indeed, I was trying to be clear in my own mind. I was
 [6] certain I wanted to go forward with it; that is not the
 [7] same as saying it is certain to go ahead.
 [8] Q: Now, in the course of this, I want to ask you, it may
 [9] have been seen to be perfectly redundant at the time,
 [10] but Mr King had asked Don Marketing whether or not,
 [11] before speaking to Sainsburys in any detail, he would be
 [12] able to preserve the idea of a multi-brand loyalty
 [13] programme put by Mr Donovan to him in 1989, you have
 [14] looked at it, and find some arrangement of doing so.
 [15] Now, as I have understood all your previous
 [16] answers, you have no recollection one way or the other
 [17] about that?
 [18] A: That is correct.
 [19] Q: In the many discussions that you had over the phone,
 [20] this was always perceived as a long term idea, some
 [21] years away, five or six years away;
 [22] A: This being Mega Match or this being the multi-brand?
 [23] Q: The multi-brand loyalty concept, that group?
 [24] A: So they are different; you see this is why it gets very
 [25] confusing. They are different -

Page 73

[1] MR JUSTICE LADDIE: Quite. Mr Cox please let the witness
 [2] finish answering the question "Now you would be
 [3] astounded" Why?
 [4] A: I would be astounded to think that Paul was
 [5] discussing a long term sales promotional programme five
 [6] or 6 years, at a time when we had all agreed this was
 [7] not - Shell should get out of sales promotions
 [8] MR COX: I think you have misunderstood me which is,
 [9] forgive me, why I interrupted, sometimes it is
 [10] inevitable I am afraid. The position is this, now I am
 [11] not saying it was a five or 6 year programme. What I am
 [12] asking you to assume is that the programme, the idea the
 [13] concept, it was understood would probably not be used
 [14] for a number of years five or 6 possibly. It was in the
 [15] distant future do you see?
 [16] A: Okay and in the distant future it a game or it was a
 [17] long term scheme.
 [18] Q: It was a loyalty programme.
 [19] A: Long term.
 [20] Q: All Mr King wanted do was say, he liked the idea may be
 [21] one day in a few years time Shell would want to come
 [22] back to this, do you see its always a distant prospect?
 [23] A: Right.
 [24] Q: You would not really have been interested in that, in
 [25] the sense that it was distant, it did not have any real

Page 75

[1] Q: One is a game; the other is a loyalty programme.
 [2] A: So -
 [3] MR JUSTICE LADDIE: Are you asking him to assume it was
 [4] always a five or six year project or are you putting it?
 [5] MR COX: I am asking that he should assume that it is always
 [6] considered to be a long term prospect; do you follow?
 [7] A: Before you were talking about Mega Match. You are
 [8] contending, you are putting to me, that at the time we
 [9] were talking about Star Trek, Paul was talking to
 [10] Don Marketing about a five to six year lifespan
 [11] promotional campaign; is that what you are saying, or
 [12] you are asking about?
 [13] Q: He was talking about Mega Match, which was a game of
 [14] three months, but closely related to Mega Match was
 [15] another idea which you have briefly looked at, which was
 [16] called the multi-brand loyalty concept?
 [17] A: Sorry, I have not seen anything on a five to six year
 [18] multi-brand loyalty concept. We are even getting
 [19] confused and we only have this stuff in front of us, let
 [20] alone all the other multi-brand things I had in front of
 [21] me. Mega Match is the name, a five year programme.
 [22] MR JUSTICE LADDIE: No, stop, five year programme what?
 [23] A: Five year programme. I have no recollection. I would be
 [24] astounded, but I cannot say that I did not happen but I
 [25] would be astounded to think there was-

Page 74

[1] relevance to your problems at the time?
 [2] A: I am not sure I understand what you mean by not
 [3] interested in.
 [4] Q: I am obviously not putting myself clearly. If somebody
 [5] had come to you, if King had come to you and said,
 [6] "Look, I like this idea, Stuart, I know we cannot use
 [7] it now because we're going to come out probably of
 [8] Collect and Select, but we may have use of it in a few
 [9] years time because it is actually quite a good idea."
 [10] You would not have bothered at all, would you about
 [11] King?
 [12] A: I would have bothered to reiterate the whole argument
 [13] about why we definitely should not get back into sales
 [14] promotions.
 [15] Q: But King may not have agreed with you?
 [16] A: He might not, but I do not believe we had the
 [17] discussion. That is something I would expect to recall
 [18] because it would have astonished me.
 [19] Q: Well, just have a look would you at the letter, which
 [20] you said that you cannot recollect one way or the this
 [21] is 449. A letter to Mr Horley which you had a quick look
 [22] at already, setting out an idea. Do you recollect that
 [23] letter that you had a look at earlier this morning.
 [24] MR JUSTICE LADDIE: Page?
 [25] MR COX: Page 449, my Lord.

Page 76

[1] A: Are you waiting for me to confirm.
 [2] Q: Yes.
 [3] A: Yes, I see.
 [4] Q: You see:
 [5] "Paul King [on the second page of it] of Shell has
 [6] given me authority to disclose to you that he recently
 [7] approached Tesco (via FKB) to explore the possibility of
 [8] a joint promotion. This followed up a meeting which
 [9] John Donovan had with Tesco directors some time ago on
 [10] Shell-led consortium principle. Although Tesco
 [11] apparently gave a favourable response to FKB, Shell
 [12] senior management decided against pursuing the
 [13] discussions with Tesco. We have reason to believe that
 [14] Sainsburys will be Shell's preferred partner. We
 [15] informed Shell of our discussions with you and Mr King
 [16] subsequently approved the content of this letter, which
 [17] was drafted following a long telephone conversation with
 [18] him."
 [19] Pause there. You have no recollection one way or other
 [20] about that I take it?
 [21] A: No.
 [22] Q: No. If Mr King as we have seen he was, I suggest to you,
 [23] was discussing the Mega Match game principle with
 [24] Tescos, out of which this other idea you see grew,
 [25] please assume that for me now, you had no knowledge of

Page 77

[1] letters that I do not recall and conversations that
 [2] Mr King may have had with people about promotions that I
 [3] do not recall. I do not recall having a discussion about
 [4] something in five or six years time. So -
 [5] Q: But would you, that is the point, if it was mentioned
 [6] merely as a distant proposition which really had no -
 [7] there was no sacrifice and no skin off Shell's nose
 [8] involved with it?
 [9] A: Well, I can only say I do not recall, you know - should
 [10] I recall; should I be annoyed with myself for not
 [11] recalling? I do not know, I mean, I guess I would
 [12] expect it to be more likely than some things to come to
 [13] mind because it would have been surprising. But, you
 [14] know, does that therefore mean it did not happen then?
 [15] Well, of course it does not. It could have happened and
 [16] I do not recall. We are into -
 [17] Q: Let us just go on if we can. You had originally agreed
 [18] to the Sainsburys content on Mega Match because, as I
 [19] understand it, it would have been no skin off Shell's
 [20] nose; if you look that letter we looked at before. As I
 [21] understand your witness statement?
 [22] A: I think what I would have said in my witness statement
 [23] was I have no recollection of the conversation at all.
 [24] If there was a conversation, I cannot imagine me saying
 [25] I would object because -

Page 79

[1] that either according to you, or certainly no
 [2] recollection?
 [3] A: Can you say that again, sorry you lost me.
 [4] Q: You have no recollection of him even discussing the Mega
 [5] Match game principle with anybody, Mr King?
 [6] A: No. As I say, I cannot barely remember the Mega Match
 [7] name. Barely.
 [8] Q: Then thereafter there's discussion about:
 [9] "Either Don Marketing or Shell will be in contact
 [10] with you at an appropriate date in the future to discuss
 [11] making a detailed presentation to Sainsburys (and other
 [12] selected potential partners). Bearing in mind the
 [13] cyclical nature of promotional activity on petrol
 [14] forecourts, we anticipate that there is likely to be a
 [15] substantial interval, perhaps five years or six years
 [16] before Shell decides that the timing is suitable."
 [17] Do you see the point - it is a long way away, possibly
 [18] never, but a long away way?
 [19] A: Yes.
 [20] Q: Now, if Mr King had mentioned to you, it would have been
 [21] no skin off Shell's nose if you were not giving much in
 [22] return or anything in return for it, if Don Marketing
 [23] were willing to hold that for the disposal of Shell,
 [24] would it?
 [25] A: Well we are off into speculation land talking about

Page 78

[1] Q: Shell had nothing to lose. Is that not right?
 [2] A: It is nothing to do with nothing to lose.
 [3] Q: Just have a look at your witness statement.
 [4]
 [5] MR JUSTICE LADDIE: It is not a matter of nothing to lose,
 [6] you were about to say? Mr Cox had asked you whether you
 [7] had anything to lose and
 [8] you said "It is not a matter of having nothing to lose",
 [9] but then Mr Cox started asking you the next question?
 [10] A: Do not ask me what I was about to say.
 [11] MR JUSTICE LADDIE: Forget it.
 [12] MR COX: I am sorry, I cannot always hear very well.
 [13] Can you have look at your witness statement. You
 [14] have it there in front of you.
 [15] A: Yes. Do you recall which part we are reading from?
 [16] Q: If you will just have a look. Just a moment.
 [17] A: Yes. Got it.
 [18] Q: Seven:
 [19] "I had no recollection of any such conversation to
 [20] which I was a party and indeed I had no recollection of
 [21] him ever having put the idea of a multibrand loyalty
 [22] programme to me. This is hardly surprising in the
 [23] context of literally dozens of ideas being put to us
 [24] every month. However, on 25 June 1990 he wrote to me
 [25] about some correspondence he had had with Sainsbury's,

Page 80

[1] to whom he wished to put a multibrand game concept. He
[2] certainly did not need my permission to put a concept to
[3] Sainsbury's and I cannot recall his telephoning me (as
[4] his letter states) to seek such permission but if he did
[5] so I am sure that I would have said I had no objection.
[6] Indeed I had no reason or authority to object."

[7] The innuendo of that, the meaning of that really
[8] is it would simply not have been any skin off Shell's
[9] nose. Is it not? Why object?

[10] A: I do not think it is innuendo. It says I did not have
[11] any "reason or authority to object" as opposed to "I had
[12] authority but it was no skin off my nose".

[13] Q: But there is a reason is there not? If Shell's name is
[14] going to be mentioned to a major retailer like
[15] Sainsburys, courteous and proper of Mr Donovan perhaps,
[16] but in any event there is a perfect reason why you might
[17] say no. You might not have wanted it to happen or, you
[18] might have said the name of Shell be mentioned to
[19] Sainsburys or, you might have said no we are not
[20] bothering about this sort of thing; we are coming out?

[21] A: Again, we are back into areas where I am, kind of,
[22] trying to work back as opposed to being able to recall
[23] properly. This is when, June? So, I imagine, still, at
[24] that stage we were not wanting to do anything that
[25] indicated we were coming out of promotions.

Page 81

[1] somebody has already brought the same idea but, if we
[2] use an idea we will pay you for it.

[3] Q: Yes.

[4] A: I do not recall, any time, wanting to take any kind of
[5] option because things were very short term. We were
[6] constrained, typically, to respond within - not to
[7] over commit ourselves beyond about three months, and so
[8] I do not recall any time wanting to, kind of, defer
[9] options. I either liked the ideas or I did not and
[10] usually, as with the Star Trek thing, to me anyway, the
[11] idea has its time, it is not a universally wonderful
[12] idea. So that is the approach I took in my discussions.

[13] Q: Mr Carson, Shell, in having this idea at its disposal,
[14] was simply losing absolutely nothing, was it? And giving
[15] absolutely nothing, in effect, in return?

[16] A: You are asking me about a scheme that I keep telling you
[17] I do not even recall anything about. If we are on the
[18] multi-brand one now and not the Mega Match one?

[19] Q: Yes.

[20] A: The Mega Match, I recall the name and scant little
[21] else. The other one I have no recollection of. I do
[22] not see how I can answer any - you can ask me to
[23] speculate on things but I do not see how I can answer
[24] properly on -.

[25] Q: All right, I understand.

Page 83

[1] So, I cannot imagine I would want to clamp down on
[2] discussions, because it is a very, kind of, incestuous
[3] market. Everybody knows what everybody doing. All you
[4] would have to do is stop asking for ideas. You might as
[5] well put a banner up.

[6] Q: I suggest to you - I cannot answer to what happened
[7] between Mr King and you, or ask you questions about it.

[8] But, I suggest to you, it is perfectly consistent that
[9] you have been spoken to by Mr King along the same lines
[10] - it is really no "Shell has no interest to lose in
[11] this" - if Don Marketing were prepared not to go
[12] anywhere else with an idea Mr King liked. You would
[13] have taken the same approach would you not - why not?

[14] A: Sorry, I did not realise a question was coming I thought
[15] was just a statement.

[16] Q: You would have taken the same approach if Mr King had
[17] said Don Marketing are prepared to leave this idea open
[18] for us. You would have taken exactly the same approach,
[19] the multi-brand loyalty programme?

[20] A: No. I can tell you what approach I did take, if that
[21] helps. My approach was always - the same people would
[22] come with an idea; they would say this my idea, it is my
[23] intellectual property et cetera, et cetera, you must
[24] acknowledge that before I reveal the idea. I would say
[25] I am not prepared do that because almost certainly

Page 82

[1] A: - you know, what I would or would not have done with a
[2] scheme I do not really know anything about.

[3] Q: So it comes to this; forgive me I have been pressing
[4] you. It is just that in your witness statement, you
[5] make certain remarks about the idea of an option that
[6] struck me as a bit odd. Perhaps you could just have a
[7] look at it. Page 169.

[8] The reason why you set out and felt that an option
[9] would not have been agreed to, as you put it there, are
[10] set out from 1 to 6, I think, in that statement. I just
[11] want to go through them with you, if I may, because, I
[12] suggest to you that, in fact, you may have had a
[13] misunderstanding of what the nature of this arrangement
[14] is; at least when you were consulted and this witness
[15] statement was taken from you by D J Freeman.

[16] First, let us come to some of the ones we can
[17] actually deal with:

[18] "(2) I would not and could not undertake any
[19] individual promotion or use any particular supplier
[20] unless they were the best for that job."

[21] Why is that a reason that an option could not be
[22] granted by Don Marketing to Shell?

[23] A: These are reasons why I disagreed with the assertion
[24] that adopting the Star Trek game was done in some way as
[25] payment for an option. It does not mean that Shell

Page 84

[1] could never have - somewhere in the great - you know,
[2] Shell could have some options somewhere. I am only
[3] trying to say Shell, as an entity could never have an
[4] option on anything because I was running a Star Trek
[5] promotion. I was saying - .

[6] **Q:** No. You are talking about this one. Why is this a
[7] relevant reason, at 2:

[8] "I would not and could not undertake any
[9] individual promotion or use any particular supplier
[10] unless they were the best for that job."

[11] I just want to know why you said it?

[12] **A:** Well, what I am trying to say is that, I would not use
[13] one supplier or take one promotional idea unless I
[14] thought it was the best one. I would not do it because
[15] by doing that bought me an option on something else,
[16] because -

[17] **Q:** No, but Shell by simply having Don's agreement to go
[18] nowhere else with a particular idea, was not undertaking
[19] any individual promotion. You were not undertaking any
[20] individual promotion or to use any particular supplier
[21] were you?

[22] **A:** Sorry, I am obviously not making myself clear, or I had
[23] not made myself clear in the statement, maybe. I am not
[24] trying to suggest these are reasons why Shell could not
[25] take an option out on some scheme somewhere or anything.

Page 85

[1] about, because, you could call it just an arrangement,
[2] but working in that environment, we were very clear
[3] about how careful you had to be about arrangements and
[4] understandings; people were forever sending you free
[5] televisions as a "sample" and "please feel free to keep
[6] it". Well, you cannot. You have to be so careful. It
[7] has to go straight back. You cannot have any
[8] arrangements and understandings and links. In my view,
[9] it has to be absolutely clear each...

[10] **Q:** Paul King, we have seen and Ken Danson; there were such
[11] arrangements?

[12] **A:** I have said, I am not trying to suggest Shell is not
[13] allowed to have an option with somebody because I ran a
[14] promotion. I am not at all trying to suggest that.

[15] **Q:** Just have a look - sorry.

[16] **MR JUSTICE LADDIE:** Go on. Mr Cox ran over your answer
[17] again. You are not saying that Shell could not have an
[18] option, but?

[19] **A:** I am trying to - these points are trying to address, as
[20] I understood it, the assertion that, in some way, the
[21] Star Trek promotion was a payment or a reward or
[22] something, an exchange, an arrangement; call it whatever
[23] you want. In some way, there was some kind of quid pro
[24] quo between running Star Trek and/or using Don Marketing
[25] and some option.

Page 87

[1] What I am saying, is that the notion that that option
[2] was taken was out - how could you express it - that
[3] the - start again.

[4] The notion that Star Trek was taken out, was
[5] undertaken or Don Marketing were used, or whatever, in
[6] return for receiving some option; that is what this is
[7] saying. I would dispute that. There can be some other
[8] discussion somewhere else about an option but, if the
[9] suggestion is that option was "paid for" by Shell taking
[10] out this Star Trek promotion, that is what 1 to 6 are
[11] trying to address.

[12] **Q:** It was simply an arrangement of convenience whereby
[13] Don Marketing said: well, since you are going ahead with
[14] Shell and with Star Trek; in order to encourage you to
[15] do so they said to Mr King "Accommodate his request and
[16] we will do it; we will hold this idea at Shell's
[17] disposal".

[18] So, it is not being suggested it was some kind of
[19] necessary consideration that Star Trek would not have
[20] gone ahead without this arrangement, do you understand,
[21] it was in the margins?

[22] **A:** So, if you are saying: could Don Marketing have had a
[23] discussion with Paul King that I am not aware of, about
[24] an option? They could have done. I am surprised that I
[25] did not hear about it. That, I certainly did not hear

Page 86

[1] What I am saying is, that I am very clear on,
[2] there is no connection, there is no arrangement, there
[3] is no payment or understanding, to the best of my
[4] knowledge, and I do not see how. I will be astounded if
[5] Paul had made some kind of arrangement unbeknownst to
[6] me.

[7] **MR JUSTICE LADDIE:** If there was an arrangement which in
[8] some way connected this long term loyalty project to
[9] Star Trek?

[10] **A:** Yes.

[11] **MR JUSTICE LADDIE:** If that had happened. Can you tell me,
[12] would you have expected to have been told about that? I
[13] would have expected to have been told about. I would
[14] have been livid about it. You do not need to get into
[15] arrangements. Around a £33 million pound budget, I
[16] could spend, drop 30K on an option, if I wanted to. I
[17] would have been very uncomfortable about that type of
[18] linkage, because it is then not clear and clean to why I
[19] ran a particular promotion with Don Marketing.

[20] **MR JUSTICE LADDIE:** This was something that was discussed
[21] between Mr King and Mr Sutherland. Assume that had been
[22] drawn to your attention; you had been told about it by
[23] Mr King?

[24] **A:** Yes.

[25] **MR JUSTICE LADDIE:** What do you think the prospects are,

Page 88

[1] that you would have forgotten such a conversation?
 [2] A: Zero. Zero. I would have gone to Jim Slavin if
 [3] necessary. If I could not have unwound it myself, I
 [4] would have gone to the head of retail and said "This is
 [5] wrong".
 [6] MR JUSTICE LADDIE: What do you think the prospects are that
 [7] you would have forgotten about it now?
 [8] A: Zero, because that is how strong my reaction would have
 [9] been. I did not go to Jim Slavin. Sorry, I should be
 [10] clear - there are 6 or 7 levels in Shell's hierarchy
 [11] above me.
 [12] MR COX: But Mr Carson -
 [13] A: I was even more black and white in those days than I am
 [14] now.
 [15] Q: Forgive me. I know I keep interrupting you and I am
 [16] sorry for it. It is just that we are going to be a very
 [17] long time, because I am determined to try to get across
 [18] to you, what I am suggesting to you, in fact, took
 [19] place.
 [20] This whole transaction was really perceived as
 [21] nothing very important at all, by both Mr King and
 [22] Don Marketing. It was long term. It was a distant,
 [23] dim, future prospect, but, it was an idea that
 [24] Mr Donovan was keen on and Mr King was. So, they
 [25] arranged between each other or, rather, Mr Sullivan did

Page 89

[1] said, were, people would send you - "do not return that
 [2] sample for the catalogue, you just keep that. We have
 [3] nowhere to put it anyway."
 [4] That kind of thing, you know, would be the thin
 [5] end of a wedge that would lead to ruin and I would have
 [6] no truck with it. Paul would have no truck with it, to
 [7] the best of my knowledge. He is the one who warned me
 [8] about all the perils of it.
 [9] Q: That is simply just wrong, is it not? Just have a look
 [10] at page 22 of the file 1, would you?
 [11]
 [12] MR JUSTICE LADDIE: Mr Cox, I am going to say it to you one
 [13] last time and I mean one last time. If the witness is
 [14] talking and answering a question I do not expect you to
 [15] interrupt him and run over his answer. You have just
 [16] done it again. I know that you are enthusiastic to put
 [17] your client's case and I understand that. I understand
 [18] the importance to your client, but I have to decide this
 [19] case on the evidence. It is not helpful if you run over
 [20] a witness in the middle of giving an answer. So,
 [21] please, keep your enthusiasm in check just so that the
 [22] witness -
 [23] MR COX: I will do my very best. Yes.
 [24] Now, Mr Carson have a look at page 22 please. I
 [25] have already shown you one of them. We are going to get

Page 91

[1] and Mr Donovan's colleague, a very - sort of a
 [2] gentleman's agreement.
 [3] They called it an option. But, it was just, if
 [4] you go ahead with Star Trek, which probably you already
 [5] were, we will hold this idea for you, Paul. It was
 [6] perceived as being years away, of no great importance,
 [7] it had just happened to be mentioned in the course of
 [8] other discussions with Sainsburys. Of course, it was
 [9] preserving Don Marketing's position as the person who
 [10] had come up with that particular idea.
 [11] If you had been told all that and it was years
 [12] away, and Shell was not having to pay anything or do
 [13] anything, or acknowledge anything, but was just going to
 [14] get the benefit of that idea, if it ever wanted to come
 [15] back to it, with no skin off its nose, you would not
 [16] have perceived that as important?
 [17] A: I think have just made it clear that I would.
 [18] Q: Why?
 [19] A: Because, just thinking about it now, the hairs stand up
 [20] on the back of my neck. The nature of working in that
 [21] environment is dozens, tens, maybe hundreds, of
 [22] agencies, freebie suppliers, gizmo inventors approaching
 [23] the team, always wanting to form a strong relationship,
 [24] form a preferred relationship, something like that. And
 [25] so the things that happened all the time, as I have

Page 90

[1] to the truth, please. I appreciate you may, sitting
 [2] now, nine years later, have come to these conclusions,
 [3] but at the time, I suggest to you, certainly Mr King was
 [4] not of your mind. It is a great pity he is not here.
 [5] Page 22. This is Mr King's letter to Mr Donovan,
 [6] 3rd June 1981?
 [7] A: Sorry, I have the wrong document.
 [8] Q: 22, file E1.
 [9] A: I am looking that middle of a typed document about
 [10] Option One or something.
 [11] Q: Page 22 at the bottom?
 [12] A: Yes.
 [13] Q: You have - no, no you are--
 [14]
 [15] MR JUSTICE LADDIE: I think you are looking at the witness
 [16] statements. Bundle to your left.
 [17] MR COX: Let us have a look at page 22.
 [18] "Dear John,
 [19] Following our meeting on Friday with your
 [20] colleague, I confirm that within the timescale agreed to
 [21] us..."
 [22] You do not have it? I am sorry.
 [23] A: Yes.
 [24] Q: You have it?
 [25] A: 3rd June 1981. Yes.

Page 92

[1] Q: "... I confirm that within the timescale agreed by us,
[2] ie, 10 days from 29 May, you will 'work up' a
[3] promotional concept based on the Make Money Theme but
[4] with a new "slant" as discussed with you at the meeting.
[5] I agree to pay you a figure of £500 to cover your
[6] artwork costs on the understanding that this promotional
[7] idea remains the sole right of
[8] Don Marketing/Shell UK Oil until we agree mutually to
[9] differ this arrangement for this particular
[10] promotion..."

[11] Does that send up hairs on your head?

[12] A: No.

[13] Q: Why not?

[14] A: Why would it? Shell is paying for costs. There is no
[15] free gift. There is no implication. I do not see what
[16] is it, that you feel, suggests that there is a problem.

[17] Q: I am being very careful, because the last thing want to
[18] do is have the learned judge on me again. Can you tell
[19] me when you have finished the answer. It is not like
[20] "roger and out" but perhaps you could just tell me,
[21] because sometimes I do not quite catch the tail end of
[22] it.

[23]

[24] MR JUSTICE LADDIE: Mr Cox, carry on.

[25]

Page 93

[1] Q: Then you have had a look at 42 have you not?

[2] MR JUSTICE LADDIE: No, we will stop there, Mr Cox, for
[3] lunch.

[4] (1.05 pm)

[5] (Adjournment for lunch).

[6] (2.00 pm)

[7] MR COX: Thank you, Mr Carson, I have no further questions.

[8] MR HOBBS: I have no re-examination, my Lord.

[9] MR JUSTICE LADDIE: Just one second, Mr Carson. May I ask

[10] you to look at E1, page 446. I just want to make sure

[11] I have this right. 446 is a letter to Mr King. It does

[12] not say it has been copied to you. All right?

[13] A: Yes.

[14] MR JUSTICE LADDIE: But it does say that the enclosed

[15] letter, the one to Sainsburys, was the subject of

[16] discussion; the contents of it were the subject of

[17] discussion. If you look at page 446, the first

[18] paragraph. If you read that to yourself.

[19] A: Yes.

[20] MR JUSTICE LADDIE: You see the reference to "revised

[21] version"?

[22] A: Yes.

[23] MR JUSTICE LADDIE: It appears that there was a version

[24] before. The one that was sent to Sainsburys was the

[25] second, at least, version?

Page 95

[1] MR COX: Thank you, my Lord. This promotional idea remains
[2] the sole right of Don Marketing/Shell UK Oil. This
[3] promotional idea?

[4] A: Yes.

[5] Q: That is plainly, is it not, an agreement that the idea
[6] remains the right of both Shell and Don Marketing?

[7] A: Okay. Well, first I was not even at university, I was
[8] doing my O' levels when this letter was written.

[9] Secondly, as best I can tell from the context of the
[10] letter, Shell is making a payment to cover some costs
[11] incurred and to secure an agreement to work together on
[12] something or other.

[13] Q: All right. That is your answer?

[14] A: As I take it from this letter, I mean, I have no
[15] knowledge of it. That, to me, is nothing like the issue
[16] which I was describing, where there start to become
[17] arrangements and gentleman's agreements and ambiguities
[18] and links. As far as I can see, and I was not a party
[19] to it, that is a straight payment for a service.

[20] Q: It also deals with promotional idea, does it not, and
[21] purportedly to the rights to an idea?

[22] A: Service meaning, to do a piece of art work for me and
[23] give me.

[24] I do not know if that is, technically, called an
[25] option but an option, I guess.

Page 94

[1] A: Yes.

[2] MR JUSTICE LADDIE: I am anxious that you do not try and
[3] reconstruct things that you cannot remember. So far, as

[4] I understand it, you have tried hard not to do that.

[5] Assume that there had been a discussion of a letter to

[6] be sent by Don and that letter had been discussed with

[7] Mr King, Mr King putting an input into its drafting. So

[8] Don was going to write to Sainsburys, but the content of

[9] what was to be sent was going to be discussed with

[10] Mr King and Mr King was going to have some sort of

[11] control over the content. First of all, would that have

[12] been unusual thing to have happened?

[13] A: I think so. I think so. That is the best I can say.

[14] I am trying to bear in mind your caution about

[15] reconstructing.

[16] MR JUSTICE LADDIE: I assume you do not recall any of this?

[17] A: No.

[18] MR JUSTICE LADDIE: If that had happened - Mr King was

[19] helping to draft a letter to be sent by an outside

[20] agency to a third party - would you have expected him

[21] to draw that to your attention: to tell you that he was

[22] doing that?

[23] A: Certainly if he attached any importance to it.

[24] MR JUSTICE LADDIE: I see.

[25] A: I would not expect it in the sense of entitlement or

Page 96

[1] authority. I would expect in the probability sense of
[2] the word: the probability would be that he would.
[3] **MR JUSTICE LADDIE:** If he had told you that, that he was
[4] revising a letter for somebody else to send to a third
[5] party, would you have expected to remember that now? Or
[6] is it just --

[7] **A:** I think it would be very much the context specifically.

[8] **MR JUSTICE LADDIE:** All right. If you look at page 447, the
[9] middle paragraph there. This is what he said to

[10] Mr King:

[11] "On the basis that Shell does adopt our proposal
[12] for a Star Trek themed blockbuster, we confirm our
[13] agreement as you requested to forego an option fee on
[14] the multibrand loyalty scheme. This is on the
[15] understanding that the rights to the multibrand scheme
[16] remain vested solely with Don Marketing."

[17] So this is saying the condition or term or
[18] understanding is: Don Marketing retain rights --
[19] exclusivity effectively: that is what "solely" means --
[20] exclusivity for this multibrand scheme. Once again,
[21] would you have expected Mr King to tell you that that
[22] was what he was agreeing?

[23] **A:** I would expect so. Again, it is -- is that memory or
[24] reconstruction? It is sort of memory --

[25] **MR JUSTICE LADDIE:** You do not remember it?

Page 97

[1] being the case at all.

[2] **MR HOBBS:** I am sorry, I did not hear the last answer,
[3] my Lord.

[4] **A:** I was saying the notion that Don Marketing had
[5] recommended to Shell and Shell had decided to move out
[6] of long-term promotions because of a recommendation by
[7] Don Marketing suggested to me that Don Marketing had an
[8] exaggerated view of their influence over Shell
[9] management and, to me, I see it as not the case at all:
[10] that they are the people who suggested or persuaded
[11] senior management to make that decision.

[12] **MR JUSTICE LADDIE:** Thank you very much, Mr Carson. Do you
[13] want to ask any further questions?

[14] **MR COX:** I do not think so, my Lord.

[15] **MR JUSTICE LADDIE:** Mr Hobbs?

[16] **MR HOBBS:** I do not, my Lord. Thank you.

[17] **MR JUSTICE LADDIE:** Thank you very much, Mr Carson.

[18] **MR HOBBS:** Mr Carson can be released in the ordinary way,
[19] I hope.

[20] **MR JUSTICE LADDIE:** Yes, thank you.

[21] (The witness withdrew)

[22] **MR HOBBS:** Can I now call Mr Andrew Lazenby, please, to the
[23] witness box.

[24] **MR ANDREW JOHN LAZENBY (sworn)**

[25] Examination-in-chief by MR HOBBS

Page 99

[1] **A:** I do not remember it. Yes, I would have expected that
[2] to be the case.

[3] **MR JUSTICE LADDIE:** Tell me once again, doing the best you
[4] can -- tell me if you cannot -- if he told you that he
[5] was entering into an understanding for exclusivity, for
[6] what may have been many years, with Don, would that be
[7] something you would have expected to remember?

[8] **A:** Yes, definitely. Definitely.

[9] **MR JUSTICE LADDIE:** Mr Carson, do you recall who decided to
[10] take Shell out of long-term/short-term promotions?

[11] **A:** I do not recall who would have made the formal
[12] decision. I expect it would have been agreed by
[13] Jim Slavin, who was the Head of Retail, Shell UK oil
[14] retail. I personally was certainly, I guess, the
[15] advocate, the person who was proposing strongly and
[16] putting forward various pieces of analysis to suggest
[17] that this just did not make sense.

[18] **MR JUSTICE LADDIE:** Please look at page 446, the last
[19] paragraph, the first two lines.

[20] **A:** Yes.

[21] **MR JUSTICE LADDIE:** This is suggesting that it was Don's
[22] suggestion -- recommendation -- that Shell comes out.
[23] How does that accord with your recollection?

[24] **A:** That strikes me as Don having no concept of their
[25] relative influence on Shell. I cannot imagine that

Page 98

[1] **MR HOBBS:** The file I would like the witness to have first,
[2] please, is file C2. Mr Lazenby, do you have that file,
[3] C2?

[4] **A:** Yes.

[5] **Q:** Could you please in that file turn behind tab 1. You
[6] will there find a long document which is headed "Witness
[7] statement of Andrew Lazenby" beginning on stamped
[8] numbered page 1. Do you see that?

[9] **A:** Yes.

[10] **Q:** Turn to page 69 of that document. Is that your
[11] signature there?

[12] **A:** It is.

[13] **Q:** And do you recognise this document as a statement you
[14] prepared for the purposes of these proceedings?

[15] **A:** It looks like it, yes. As far as I can tell. It looks
[16] identical to the one I prepared.

[17] **Q:** Can I ask you this: are the contents of that statement
[18] true to the very best of your knowledge and belief?

[19] **A:** They are.

[20] **Q:** Please wait where you are. Mr Cox will have some
[21] questions for you.

[22] Cross-examination by MR COX

[23] **MR COX:** Mr Lazenby, I want to get as straight as I can just
[24] what you are saying, if I may. As I understand it -- am
[25] I right -- you deny any discussion on 12th May of any

Page 100

[1] multibrand loyalty concept?
 [2] A: I cannot remember any detailed discussion about that
 [3] subject at that meeting.
 [4] Q: Right. Can I have an answer to my question -
 [5] I appreciate how you might have misunderstood it: do you
 [6] deny any discussion of the multibrand loyalty concept on
 [7] 12th May?
 [8] A: The meeting on 12th May was predominantly about two
 [9] promotions, which were games. I recall that clearly,
 [10] having looked at the documents in particular. I cannot
 [11] remember any discussion about anything else in detail.
 [12] Q: So do you deny any discussion of the multibrand loyalty
 [13] concept on 12th May?
 [14] A: I cannot remember whether it was discussed or not and,
 [15] checking all of the documents that I have to hand, the
 [16] contemporaneous notes that I took during the meeting,
 [17] there is no record of it.
 [18] Q: Right. Let us have a look, if we may, at your witness
 [19] statement, so that I can understand exactly what you are
 [20] saying about this. You have it, I think, in front of
 [21] you?
 [22] A: I do, yes.
 [23] Q: If you will turn to page 6. I will show you why it is
 [24] that I have a slight failure to understand completely
 [25] what you are saying. You say at paragraph 10, second

Page 101

[1] "This was not a subject that had been considered
 [2] in conversation."
 [3] That is a positive assertion:
 [4] "This was not a subject considered in
 [5] conversation, otherwise I would have made a note of it."
 [6] Is that something you wish to repeat in the
 [7] witness box on oath before his Lordship today?
 [8] A: It is.
 [9] Q: So this was not a subject that had been considered in
 [10] conversation; is that what you say?
 [11] A: What this means is that anything that was discussed in
 [12] detail at the meeting which was of consequence I made a
 [13] note of. Particularly if it was something which I would
 [14] have needed to remember later, because I was having so
 [15] many meetings all the time. New concepts were arriving,
 [16] hitting us all the time. I needed to make a note of
 [17] these things whenever they were discussed, however they
 [18] arose.
 [19] Q: But do you contend that it was not discussed? You said
 [20] "any matter of consequence". That does not of course
 [21] exclude a reference to a discussion which was not the
 [22] immediate priority of the meeting, does it?
 [23] A: Sorry, can you repeat that?
 [24] Q: That does not exclude - matters of consequence recorded
 [25] in your note - references to other subjects not the

Page 103

[1] line down:
 [2] "I have absolutely no recollection of anyone
 [3] mentioning multibrand loyal cards."
 [4] Well, you have said that again just a moment ago:
 [5] "It was my practice to keep comprehensive notes of
 [6] meetings with agencies and suppliers and my notes of
 [7] this meeting contain no reference whatsoever to the
 [8] discussion about a multibrand loyalty scheme."
 [9] Again, you have said that a few moments ago:
 [10] "This was not a subject that had been considered
 [11] in conversation, otherwise I would have made a note of
 [12] it. If (contrary to my clear recollection) the idea of
 [13] a multibrand loyalty scheme was mentioned, it could only
 [14] have been in passing."
 [15] I hope I will be permitted just a degree of
 [16] tolerance when I express my failure completely to
 [17] understand what exactly you are saying. Are you saying
 [18] that you have a clear recollection that it was not
 [19] discussed?
 [20] A: I have a clear recollection of definitely discussing two
 [21] promotional game concepts. I have no recollection at
 [22] all of discussing anything other than those two
 [23] promotional game concepts.
 [24] Q: You seem to be saying a little bit more than that in
 [25] your witness statement, do you not?

Page 102

[1] immediate focus of the meeting?
 [2] A: No, it does not exclude that. I could have made notes
 [3] about anything else.
 [4] Q: I am sorry?
 [5] A: I could have made notes about anything else which was
 [6] mentioned during the course of the meeting.
 [7] MR JUSTICE LADDIE: I think he has misunderstood the
 [8] question. Put it again.
 [9] MR COX: I will put it again: you have just told us that you
 [10] would have made a note of anything of consequence in the
 [11] meeting?
 [12] A: Yes.
 [13] Q: We know that there was an immediate focus of that
 [14] meeting -
 [15] A: Yes.
 [16] Q: - particular recommendations or proposals being put?
 [17] A: Yes.
 [18] Q: If the multibrand loyalty concept was discussed, it
 [19] would not have been the immediate focus of the meeting;
 [20] correct?
 [21] A: I assume so, because that was not the purpose of the
 [22] meeting.
 [23] Q: Exactly. Do I understand you to say that you would have
 [24] made a note, even if it was not the immediate purpose
 [25] and focus of the meeting?

Page 104

[1] A: Yes. If it was discussed, I would have made a note. If
 [2] it was of importance. I mean, you have to remember the
 [3] context here is that there was a large number of people
 [4] talking to us all the time about a large number of
 [5] concepts and ideas, with some or all of the features
 [6] common between them and I had seen a variety of those
 [7] all the time. These were coming thick and fast.
 [8] Q: You see, you did it again there just a moment ago. You
 [9] said "If it was of importance". That is really what
 [10] I am trying to get at, you see. Are you saying that you
 [11] might have discussed this in the meeting, but not made a
 [12] note because it did not seem to you to be important?
 [13] A: What I am saying is that it is just possible - and this
 [14] is now speculation - that it was mentioned in passing
 [15] at some stage during the meeting and I might not have
 [16] made a note of it for a variety of reasons. Either
 [17] I was not concentrating on it. For example, if we were
 [18] leaving the meeting room and I had packed up my papers.
 [19] I would not make a note of it then. Or if it was
 [20] something which was a throwaway comment, or I regarded
 [21] as a throwaway comment, I would not have made a note of
 [22] it. Or if it was something which was not unique or
 [23] unusual or different, I would not have made a note of
 [24] it.
 [25] Q: Did you ever ask for the submission of some earlier

[1] Q: You see, did you not say to DJ Freeman in 1997 that you
 [2] had asked for a copy of the Megamatch proposal? Because
 [3] you had been interested in Megamatch?
 [4] A: I cannot remember, but Megamatch was one of the two
 [5] games that were being proposed on the day and I was -
 [6] Q: It was indeed. Have a look at E10, please.
 [7] (2.15 pm)
 [8] Maybe there is a simple explanation, but I just
 [9] want to ask you about it. It starts, this section, at
 [10] 4736. But if you look at 4739, this, do you understand,
 [11] is DJ Freeman, Shell's solicitors -
 [12] A: Sorry, I do not have it yet.
 [13] Q: I beg your pardon. DJ Freeman, Shell's solicitors,
 [14] writing a note or report on how it; that is to say, the
 [15] solicitors firm, viewed the case, having investigated
 [16] the matter carefully, including having had interviews.
 [17] You will see at the top, page 4739:
 [18] "At the meeting Mr Lazenby expressed interest in
 [19] the Megamatch idea and it was as a result of that
 [20] discussion that Mr Donovan was asked to re-submit his
 [21] 1989 proposal which contained the Megamatch concept."
 [22] Do you see that?
 [23] A: Yes.
 [24] Q: "Mr Lazenby does not recall the loyalty card idea being
 [25] mentioned, though it may well have been. But he is

[1] proposal at that meeting?
 [2] A: At that meeting?
 [3] Q: Yes.
 [4] A: I cannot recall that, but it would appear I did.
 [5] Because there is a letter sent to me afterwards.
 [6] Q: Which was what?
 [7] A: What was what?
 [8] Q: Which was what proposal? If it appeared that you did
 [9] ask for a proposal, which proposal was it?
 [10] A: Having review the documents, the letter that was sent as
 [11] a consequence contained part of the 1989 proposal to
 [12] Paul King; Concept 4.
 [13] Q: But which do you think you asked for?
 [14] A: I do not know whether I asked for one or not. I cannot
 [15] recall talking about this in that meeting.
 [16] Q: Are you sure that you have never said to somebody that
 [17] you did in fact ask for an earlier proposal to be
 [18] re-submitted?
 [19] A: What, on this subject?
 [20] Q: Yes, on 12th May.
 [21] A: I cannot think of any reason why I would ask - why
 [22] I would tell somebody else who was not at the meeting or
 [23] for any reason that I had asked for a document coming
 [24] from earlier on. I mean, there is no reason that
 [25] I would do.

[1] quite clear that the main focus of the meeting was
 [2] Megamatch."
 [3] Do you have that passage?
 [4] A: Yes, I can see that.
 [5] Q: Did you ever tell DJ Freeman that Mr Donovan was asked
 [6] by you to re-submit his 1989 proposal which contained
 [7] the Megamatch concept?
 [8] A: I cannot remember ever discussing this with anyone.
 [9] What this is talking about I suspect - it may be
 [10] slightly paraphrased or something - is that what the
 [11] meeting was about was Megamatch. It was being proposed
 [12] in the meeting, it was one of the two concepts that were
 [13] under discussion in the meeting. We probably spent half
 [14] the meeting talking about Megamatch.
 [15] Q: Exactly. Indeed it was. You could not have asked for
 [16] the 1989 proposal which contained the Megamatch concept
 [17] because, as of course you now remember, I am sure, the
 [18] Megamatch concept was part of 12th May written
 [19] proposal. So there would have been no possible way you
 [20] would have asked for the 1989 Megamatch concept
 [21] proposal: it was already in front of you.
 [22] A: I had a proposal in front of me. There is a variety of
 [23] ways, I suspect, that prior documents might have been
 [24] requested. For example, if Mr Donovan or Mr Sotherton
 [25] had mentioned that there were prior proposals. For

[1] example. But that is supposition, so ...
[2] Q: Were you not recollecting here in fact, when you were
[3] interviewed by Messrs DJ Freeman, that you had in fact
[4] asked for the 1989 Concept Four, multibrand loyalty
[5] concept proposal?
[6] A: I do not think I was. It may well be that I had seen
[7] the letter afterwards, which covered Concept Four being
[8] sent to me.
[9] Q: "It was as a result of that discussion that Mr Donovan
[10] was asked to re-submit his 1989 proposal which contained
[11] the Megamatch concept."
[12] There you were saying - if this is a faithful
[13] representation by Messrs DJ Freeman of your instructions
[14] to them - that you had asked Mr Donovan to re-submit
[15] something but it had been Megamatch. Now that of course
[16] could not be correct. Is it possible that your
[17] recollection then was of having asked him for something
[18] but having forgotten that it was the 1989 Concept Four?
[19] A: I just said it is possible that, if it was mentioned in
[20] the course of the proposal, that this Megamatch had been
[21] proposed previously, I might well have said "Well, what
[22] was that previous proposal about?" In which case
[23] John Donovan and Roger Sotherton might have said "Okay,
[24] we will send you a copy of it". It is possible, but
[25] I do not have any record and I do not have any

Page 109

[1] or that reflected in this report?
[2] A: I do not think there is very much conflict between the
[3] two. As I said earlier, I do not recall loyalty being
[4] discussed. I do not recall cards being discussed. But
[5] these were things which were in the open forum, which
[6] many agencies were coming and talking to me about quite
[7] frequently at the time.
[8] Q: Forgive me, because I am just trying to get what you are
[9] actually saying about 12th May, which is where I want,
[10] if I may, to continue.
[11] (2.30 pm)
[12] Is it the case then that it may well have been
[13] mentioned at the meeting?
[14] A: As I said, I cannot remember and I have no record
[15] otherwise to be able to say that. It is possible it was
[16] mentioned in passing. But I have no recollection of it
[17] and no means of saying whether it was or not.
[18] Q: So should his Lordship read into paragraph 10 at page 7
[19] of your witness statement, in-between the lines that
[20] say: "This was not a subject that had been considered in
[21] conversation, otherwise I would have made a note of it",
[22] but it may well have been considered in conversation?
[23] A: No, that is not how I would put it. As I said earlier
[24] on, if it was mentioned, it may have been mentioned in
[25] passing. I cannot remember whether it was or not.

Page 111

[1] recollection of either asking or not for it.
[2] Q: It could not have been Megamatch. You had a full
[3] proposal for Megamatch in front of you on 12th May, as
[4] one of the purposes of the meeting, did you not?
[5] A: I did. But, as I am saying, they could well have
[6] mentioned that it had been on the table with Shell
[7] previously. In which case, I would normally have said
[8] "Well, what was the previous proposal?"
[9] Q: But it was not in 1989.
[10] A: What was not?
[11] Q: The last Megamatch proposal had been in 1985, as
[12] I recollect. The 1989 proposal was Concept Four. Were
[13] you not recollecting then, when you were talking to
[14] DJ Freeman in an interview - because I suppose
[15] DJ Freeman got their instruction from somewhere on this
[16] - that you had asked for a 1989 document?
[17] A: I cannot remember what I was getting at in the meeting
[18] in 1997. I cannot remember the detail of that meeting
[19] with DJ Freeman.
[20] Q: Have a look at the line below it:
[21] "Mr Lazenby does not recall the loyalty card idea
[22] being mentioned at the meeting, though it may well have
[23] been."
[24] Which is right: what you have said in your witness
[25] statement and again to his Lordship just a moment ago,

Page 110

[1] Q: Let us have a look, if we may, just a little bit further
[2] than 12th May. Could you have a look in the first place
[3] at volume E2/973. This was the proposal that was
[4] actually in front of you on 12th May 1992. Do you
[5] recognise it? I dare say you have had endless
[6] opportunity to look at these documents over the last few
[7] months?
[8] A: I have.
[9] Q: Have you been given time off?
[10] A: I have been released so that I can be in court. I have
[11] a few other things to do before and after.
[12] Q: Let us have a look at 973. "Strictly confidential".
[13] The proposals are for 1993 and 1994. First Megamatch;
[14] 975 and set out there the two most successful
[15] promotional games ever mounted and so on:
[16] "Shell have been kind enough to acknowledge it was
[17] Don Marketing who persuaded them to run the new updated
[18] version of Make Money in 1984 ... believe that by next
[19] year the time will be right to make the Make Money magic
[20] work for Shell again ... We propose that Shell invites
[21] major partners operating in non-competitive trades to
[22] participate in a mould-breaking promotion whereby
[23] half-notes received from all participating outlets would
[24] be interchangeable ..."
[25] And some discussion of the nature of that. There

Page 112

[1] are some visuals later on in the document. The other is
 [2] a Shell Treble Chance game and finally, at the
 [3] conclusion of 980:
 [4] "Outline concepts ..."
 [5] Some puff about the company:
 [6] "Finally we are in contact with National
 [7] Heritage ... could mount a promotion to coincide with
 [8] the launch of the new lottery ... pleased to follow up."
 [9] There is then a note:
 [10] "RGS mentioned multibrand loyalty card scheme
 [11] presented to Paul King ... AL said Shell could be
 [12] interested but at a later date ... will ask Paul for
 [13] proposal to make sure it is retained for the long-term."
 [14] Now, pause there. You have seen this document
 [15] before, I assume? You have been shown it?
 [16] A: Yes.
 [17] Q: Are you saying - just so that I understand what you are
 [18] saying about 12th May - that Mr Sotherton has forged
 [19] that note because it could not have taken place?
 [20] A: All I can say about this is that I cannot remember
 [21] discussing this, although it may have happened.
 [22] I cannot remember seeing Roger Sotherton write this in
 [23] the meeting.
 [24] Q: Are you saying that it is a note recorded there in bad
 [25] faith, because it does not reflect the upshot of a

[1] Q: So you are not saying that. Well, that is helpful. Let
 [2] us look on, if we may, to the letter that you referred
 [3] to a moment ago in your evidence at 981. Mr Sotherton
 [4] has made a note of a conversation that, although you
 [5] cannot remember, you agree may well have been held.
 [6] That reflects it accurately, does it not?
 [7] A: It may have happened.
 [8] Q: Well, as you said to DJ Freeman, it may well have been.
 [9] So on 14th May 1992 you received a letter, which I think
 [10] you admit receiving, do you not?
 [11] A: It was in Shell files. It was, therefore, received.
 [12] I cannot remember whether I read it at the time.
 [13] Q: We will come back to Shell files in due course and what
 [14] was there. If you will look at your witness statement,
 [15] just so that I can be helped what you actually are
 [16] saying, you see, about this particular time: page 7
 [17] again, paragraphs 11 and 12:
 [18] "The only proposal of his that I was interested in
 [19] was Megamatch. John Donovan suggested a preparation
 [20] time of six weeks for this promotion ... [You knew that
 [21] was far too short] ... and I had doubts about the
 [22] credibility of Don Marketing [based upon that]. Shell
 [23] usually planned a significantly longer preparation
 [24] period for a promotional launch.
 [25] "On 14th May 1992 John Donovan informed me that he

[1] discussion with you concerning the multibrand loyalty
 [2] concept? Is that what you are saying?
 [3] A: I cannot say whether it is in bad faith or not. I do
 [4] not know when it was written. I did not see it being
 [5] written. As I said earlier on, I cannot remember
 [6] discussing this in the meeting.
 [7] Q: Are you saying that Roger Sotherton has effectively told
 [8] a lie in writing in that note because it never happened?
 [9] A: What I am saying is - as I have said at the beginning
 [10] and in the witness statement - that I cannot remember
 [11] it being discussed. It may have been mentioned in
 [12] passing. If it was mentioned in passing, then clearly
 [13] Roger Sotherton might have made a note about it at some
 [14] stage.
 [15] Q: Thank you. I just want to get it clear, you see, what
 [16] your case is, Mr Lazenby. It is not always perfectly
 [17] clear and lot of it has come out late. You are not
 [18] saying then - and this may be very helpful because we
 [19] can accomplish a degree of unanimity - that this note
 [20] is a forged lying note and does not represent a
 [21] conversation with you?
 [22] A: I am not saying that. I cannot remember the
 [23] conversation. Therefore, I am going on to surmise that
 [24] it could well have been written, if we had happened to
 [25] have the conversation, which I cannot remember.

[1] would contact potential parties for the Megamatch
 [2] proposal. I have seen a letter John Donovan wrote to
 [3] Boots which confirms that he envisaged a Megamatch
 [4] game."
 [5] Now, do I take it that the first line of
 [6] paragraph 12:
 [7] "On 14th May 1992 John Donovan informed me that he
 [8] would contact potential parties ..."
 [9] Refers to the letter of 14th May?
 [10] A: It does, which I saw when I was preparing the witness
 [11] statement. I cannot remember seeing the letter when
 [12] it - on 14th May or thereabouts. 14th May 1992. I may
 [13] indeed not have read it in detail.
 [14] Q: Right. It is not a long letter. Have a look at it. It
 [15] is at 981. You refer in your witness statement,
 [16] paragraph 12 in that first line, I suppose, to the first
 [17] paragraph:
 [18] "Roger Sotherton and I would like to thank you for
 [19] the time you gave to our presentation. With your
 [20] authority, I will now be contacting the various
 [21] potential partners we discussed in relation to the
 [22] multibrand proposal. I will supply them with outline
 [23] proposals, plus invitations to taken exploratory
 [24] discussions at Shell-Mex House in June as per
 [25] instructions."

[1] So that is dealt with in line 1 of paragraph 12 of
[2] your witness statement, is it:
[3] "... John Donovan informed me that he would
[4] contact potential parties for the Megamatch proposal."

[5] A: Yes.

[6] Q: The second paragraph reads, as I am no doubt you are
[7] very well aware now:

[8] "We also noted your interest in the related
[9] multibrand loyalty card proposal to Paul King dated
[10] 23rd October 1989 and I enclose a copy of the proposal
[11] for your further inform. Please read Concept 4. I am
[12] glad you agreed that the idea has sufficient merit to be
[13] retained on file for Shell's further consideration, at
[14] an appropriate time in the future."

[15] Did you reply to that letter?

[16] A: No, I did not. As I said, I am not sure I even read it
[17] at the time and particularly not in detail. We received
[18] a lot of mail all the time, much of it speculative.
[19] This, being written on 14th May, must have arrived a day
[20] or two after that. I was on holiday for a week or so
[21] after that. So it probably hit my in-tray at a time
[22] when I had been away for a week and a bit. Then,
[23] shortly after that, I think I had another completely
[24] separate different proposal from Mr Donovan about
[25] something else.

Page 117

[1] Q: He told you what was happening, what he was do, who he
[2] was approaching, did he not?

[3] A: I cannot recall him doing that.

[4] Q: You cannot?

[5] A: No. Going back to the original letter on 12th
[6] May - 14th May, it is quite possible that, in the
[7] meeting, in the discussion about Megamatch, I would say,
[8] well - I would challenge the credibility of being able
[9] to tie up any third parties. Many, many agencies or
[10] individuals would come to us with an idea of linking
[11] with a High Street retailer - Sainsburys and Boots
[12] spring to mind - everyone would come along with that.
[13] It is a good idea, but it is nothing unless you actually
[14] can serve up the contacts. So the tenor of the meeting
[15] would normally go along the lines of "Well, are you sure
[16] you can bring those people?" Now, in some instances
[17] agencies then read into that an approval to go out with
[18] Shell's blessing to sign up these people. But that is
[19] not what it was intended as: it was intended more as a
[20] challenge to whether the partners were actually
[21] forthcoming for whatever the proposal might be.

[22] Q: Yes. But on 14th May you had - we will come back to
[23] that because I want to trace that a little bit and we
[24] will see where you are being kept informed by Mr Donovan
[25] of his progress with the Megamatch scheme throughout the

Page 119

[1] Q: Forgive me, you were interested, according to your
[2] witness statement and indeed the report from DJ Freeman,
[3] in Megamatch, were you not?

[4] A: I was, because it seemed like a good proposal.

[5] Q: Have you seen it in your witness statement there?

[6] A: Whereabouts?

[7] Q: Paragraph 11:

[8] "The only proposal of his I was interested in was
[9] Megamatch."

[10] A: Yes. That is saying that, between the two proposals
[11] that he put forward at 12th May meeting, that one seemed
[12] to be the more interesting and indeed it was appealing.
[13] I found it appealing at the time. We were looking for
[14] ideas for a promotion later on in the year.

[15] Q: So you knew of course, because this letter said it, that
[16] he was following up contacts with big third party
[17] players, various potential partners; yes?

[18] A: As I said, I may not have read the letter at the time.

[19] Q: Well, for example, on 19th May he wrote to you again.
[20] Have a look at it, please. Just have a look at the
[21] letters immediately afterwards to people like: Tesco,
[22] 983; Woolworth, 984; Little Chef, 985; WH Smith's, 986;
[23] and 987, Boots and so on. These contacts with third
[24] parties Mr Donovan kept you abreast of, did he not?

[25] A: How do you mean?

Page 118

[1] summer. Do you not remember that?

[2] A: I remember being kept in touch with - at some stages
[3] and particularly, when we were on the verge of making
[4] decisions, there was quite a lot of contact regarding
[5] Megamatch. However, there were a variety of other
[6] things which were on the table as well. Not only with
[7] Mr Donovan. We had 20 or 30 proposals into the
[8] department every week and six concurrent promotions
[9] going on at the same time. So there was a high degree
[10] of contact about all sorts of things. Some of those
[11] would have been about contacts with third parties.

[12] Q: Yes, and, as we shall see, we will come back to it. On
[13] 14th May, back at 981, in this three-paragraph letter,
[14] there was an invitation to you to read Concept 4?

[15] A: Yes.

[16] Q: You are not sure whether you read the letter, let alone
[17] Concept 4?

[18] A: Correct. As I said, I was going on holiday the next day
[19] for a week and a bit. So it is likely, if it arrived on
[20] that day, it remained unread until at least a week or
[21] two later.

[22] Q: Yes. It would have been just on your desk when you came
[23] back to your office, would it not?

[24] A: With all the other papers, faxes and documents of six
[25] concurrent ongoing promotions, yes.

Page 120

[1] Q: You, of course, knew that Mr Donovan - because he said
[2] so here - was going to go ahead with trying to approach
[3] various potential partners. Are you really saying that,
[4] when you read that letter, you did not read the second
[5] paragraph of it?

[6] A: I might not have read it at all. As I said, almost a
[7] week after I came back, Mr Donovan arrived with a
[8] completely different - a new concept.

[9] Q: You might not have done?

[10] A: I might have looked at it and flicked through it and
[11] seen that it referred to the meeting on the 12th and
[12] picked up that it was about Megamatch and that was it.
[13] There may have been the Concept 4 attached to the back.
[14] I may have flicked through it, but I cannot remember.
[15] It may not have been particularly appealing. Because it
[16] was the kind of thing all sorts of people were putting
[17] up at the time.

[18] Q: Why did you not say that in your witness statement?
[19] Just have a look at it before you answer me. Why did
[20] you not say anything of that kind within the statement
[21] you gave to DJ Freeman?

[22] A: Which bit?

[23] Q: Paragraph 12.

[24] (2.45 pm)

[25] All you say in this witness statement is that you

Page 121

[1] A: In my witness statement I was reporting how I remembered
[2] things to happen. I was not try to controvert any
[3] possible bit of evidence which I was seeing in other
[4] things. I looked at the note. It seemed to be just
[5] reflecting what the meeting was about and that the
[6] action was going forward with Megamatch and looking for
[7] a few potential partners. That seemed to match with
[8] what I seemed to recall at the time.

[9] Q: And the second paragraph says:

[10] "We noted your interest in the multibrand loyalty
[11] concept. Please read Concept 4. Glad you agreed the
[12] idea has sufficient merit to be retained on file ..."

[13] By the time you made the witness statement surely
[14] you appreciated the significance of that paragraph?

[15] A: I do not think I did.

[16] Q: You did not? You did not -

[17] A: I cannot remember why I did not put it in the particular
[18] terms that I have put it in today.

[19] Q: In your witness statement you said that no such
[20] conversation had happened:

[21] "This was not a subject that had been considered
[22] in conversation, otherwise I would have made a note of
[23] it. If (contrary to my clear recollection) the idea of
[24] the scheme was mentioned, it could only have been in
[25] passing."

Page 123

[1] were informed that he would contact potential parties
[2] for Megamatch.

[3] A: Yes. What this says is that the letter informed me that
[4] it did. This was prepared once I had seen this letter
[5] in the last few months.

[6] Q: Why did you not say to DJ Freeman, for the purposes of
[7] evidence in this court, and relating to the second
[8] paragraph "I never read it" or "I do not think I did"
[9] or "I might not have done"?

[10] A: I do not know why I stated it in those terms then.

[11] Q: Were you asked about it?

[12] A: About what?

[13] Q: The second paragraph of the letter on 14th May.

[14] A: At which stage?

[15] Q: When you gave your witness statement.

[16] A: I cannot remember being asked about it.

[17] Q: But it would have struck you as immediately relevant,
[18] would it not, when you saw the letter, to make your
[19] witness statement?

[20] A: In what sense?

[21] Q: The second paragraph deals with the very multibrand
[22] loyalty card proposal that you know this whole case is
[23] about. I am just asking you why it is there is this
[24] rather surprising omission to deal in any way at all
[25] with the important paragraph?

Page 122

[1] Then there is this letter that comes two days
[2] later. I simply ask you one more time: why was it that
[3] you omitted - can you think now of the reason - to
[4] deal with it in your witness statement?

[5] A: I could not remember discussing this in the meeting.
[6] I cannot remember reading the letter at the time. It
[7] may well have been mentioned in passing. I cannot
[8] really add very much to that. I cannot remember why
[9] I did not include it in my witness statement. It did
[10] not seem - I do not know - I do not think I read it
[11] probably at the time.

[12] Q: Did you know at the time these witness statements go
[13] into evidence? You were aware of that, of course. It
[14] was for the purposes of evidence. You knew that?

[15] A: Yes.

[16] Q: And presumably a solicitor from DJ Freeman came to
[17] assist or take the statement from you, did they?

[18] A: They took my statement, yes.

[19] Q: So it was for the purposes of evidence, for the learned
[20] judge to base his conclusions upon, in relation to this
[21] case; you knew that?

[22] A: Yes. Of course, I did not know the full process before
[23] having come to court here for the case. But it was
[24] clear that it was going to be used as evidence, yes.

[25] Q: Did you think that you might not have to come here to

Page 124

[1] give evidence before the court live, so to speak?
 [2] A: No, I knew I was going to have to come live.
 [3] Q: Anyway, let us move on, if we may. Because it is not as
 [4] simple as that. Let me understand, if I can, just so
 [5] I am absolutely clear about it: do you say or do you say
 [6] not that Mr Donovan kept you posted, as it were, from
 [7] time to time as to his progress with the potential
 [8] partners for Megamatch?
 [9] A: I cannot remember specifically. He would probably have
 [10] mentioned in passing on one or two occasions. I cannot
 [11] remember specifically. I cannot remember, for example,
 [12] him definitely coming back and saying "I have now got X
 [13] person on the cards. They are going to do it with you".
 [14] But he may have done. I cannot remember.
 [15] Q: One thing is for sure, of course: you met Mr Donovan
 [16] and, indeed, Mr Sotherton on 4th June 1992, did you not?
 [17] A: I believe I did, yes.
 [18] Q: Mr Donovan asked you: had you got the multibrand loyalty
 [19] concept, did he not?
 [20] A: I cannot remember. That meeting was about another game
 [21] proposal.
 [22] Q: Three weeks later he met you on 4th June 1992, did he
 [23] not?
 [24] A: Yes.
 [25] Q: He had sent to you a document in which you had expressed

Page 125

[1] in the year in 1993.
 [2] Q: Thank you. Exactly. Indeed, Megamatch went into a
 [3] research for which Shell paid, did it not?
 [4] A: It did.
 [5] Q: And it went into research some time I think in June, did
 [6] it not?
 [7] A: It was in June or July. Some time around there.
 [8] Q: It finished in July. So Megamatch was very topical?
 [9] A: Mmm.
 [10] Q: And the contact with partners. But on 4th June you
 [11] would have literally received, within that week before,
 [12] Concept 4, would you not?
 [13] A: Yes, probably, yes.
 [14] Q: Mr Donovan, as it is perfectly natural for him to have
 [15] done, I suggest to you, said: "Have you got it?" And
 [16] you thanked him for it and said "Yes, I have".
 [17] A: It sounds logical, but I cannot remember. As I say, it
 [18] did not stand out in my mind, even when I look at it.
 [19] It is a load of generic -
 [20] Q: We will come to that. Just have a look at your witness
 [21] statement, would you, at paragraph 126. You deal for
 [22] the first and only time, with the meeting of 4th June at
 [23] paragraph 126. Do you have it?
 [24] A: I do, yes.
 [25] Q: "On 4th June 1992 I attended a meeting with Mr Donovan,

Page 127

[1] interest on 14th May. You had only just got back from
 [2] holiday on 4th June, had you not?
 [3] A: I had been back for a week or so.
 [4] Q: A week, and on 4th June you met Mr Donovan. Are you
 [5] saying that the subject of what he had just sent you
 [6] never raised its head on 4th June?
 [7] A: I am saying that I cannot remember having discussed
 [8] that. What we talked about at that meeting was the
 [9] proposal, the new game, the new concept which he was
 [10] bringing along completely fresh, completely unrelated to
 [11] anything else. It was almost as an afterthought to the
 [12] first meeting.
 [13] Q: Sorry, what was an afterthought to the first meeting?
 [14] A: It was as if, three weeks later, another good idea had
 [15] come up and suddenly there was another big idea, another
 [16] great new theme, and that was the one that was brought
 [17] along on 4th June.
 [18] Q: And Mr Donovan asked you, in the course of that meeting,
 [19] with Mr Sotherton present, did you have the multibrand
 [20] loyalty concept and you thanked him for it?
 [21] A: I cannot remember whether he did or not and I cannot
 [22] remember discussing it at all. I would imagine we
 [23] probably talked about Megamatch. Because, at the time,
 [24] we were preparing Megamatch for research against a
 [25] variety of other competitor promotions for use later on

Page 126

[1] who was attempting to persuade me to adopt his Megamatch
 [2] promotion."
 [3] We will come back to that:
 [4] "At this meeting Mr Donovan also put forward an
 [5] idea for a Nintendo theme promotional game called
 [6] Super Mario Land involving cash prizes, playcards,
 [7] holidays and gameboys."
 [8] You then mention what you thought of that
 [9] Nintendo. You were keener on Megamatch; do you see that
 [10] at 127?
 [11] A: Yes.
 [12] Q: Apart from that reference in your witness statement, you
 [13] say nothing at all about any discussion on
 [14] 4th June about whether you had received the multibrand
 [15] loyalty concept and Concept 4, do you?
 [16] A: If you tell me so. I cannot remember exactly. But I do
 [17] not recall discussing it, so it would be correct that it
 [18] is not recorded.
 [19] Q: Let us just get this clear from now on: you have a
 [20] mental blank about 12th May?
 [21] A: No, I have a very clear memory that we talked about two
 [22] particular proposals and it is just possible that, if
 [23] something else which might have been mentioned in
 [24] passing or as we left the room, that more accurately
 [25] reflects what you are trying to say.

Page 128

[1] Q: No, not in passing. Sufficient for Mr Sotherton to make
[2] a perfectly decent and honest note, although you have
[3] sat here and watched him accused of forgery and
[4] perverting the course of justice. Sufficient for him to
[5] make an honest note on his presentation document that
[6] now you say you do not deny; correct?

[7] A: I am saying I did not see him write the note. He might
[8] have written it during the meeting, he might have
[9] written it immediately afterwards. It might be
[10] reflecting what we discussed in the meeting. I cannot
[11] say any more than that.

[12] Q: Sufficient for Mr Donovan to write you a letter
[13] enclosing the concept in which you had expressed
[14] interest on 14th May; correct?

[15] A: That would be logical with having discussed it. Whether
[16] in passing or in the main course, yes.

[17] Q: And, on 4th June, do you think it is likely that there
[18] was a discussion about at least whether you had received
[19] the document?

[20] A: Mr Donovan may have asked, may have mentioned it.

[21] Q: Well, he would be bound to, would he not?

[22] A: Not necessarily. He was trying to talk to me about
[23] Megamatch and bringing in a completely new proposal. He
[24] might have mentioned it, he might not. I might have
[25] read it by then, I might not. Quite frequently the mail

Page 129

[1] loyalty-building schemes. Our big idea is for Shell to
[2] create the ultimate loyalty-building programme. Whether
[3] adopted now or at a later date, it would overcome the
[4] main weakness in all previous loyalty-building schemes
[5] organised by individual retailers. We refer to the
[6] frustration of trying to accumulate sufficient points to
[7] acquire one of the more expensive gifts on offer. In
[8] Shell's current promotion, car drivers covering an
[9] average mileage tend to lose interest when it becomes
[10] apparent just how long it takes to collect the required
[11] number of points for the more attractive gifts. Our
[12] concept stems from the multibrand Megamatch game we have
[13] proposed to Shell. Instead of interchangeable game
[14] pieces, the universal currency in the scheme would be
[15] vouchers, tokens or even points accumulated by using
[16] plastic loyalty cards. The concept expands on the idea
[17] outlined in page 41 of Don Marketing's Project 100
[18] proposal to Shell UK dated 26th June 1986.

[19] "Consumers could collect points for a variety of
[20] gifts and other offers. This would create more
[21] widespread appeal with any single dimension redemption
[22] item. The scheme would involve several major multiples
[23] operating in complementary but non-competitive trades,
[24] each with national representation, participating in a
[25] promotional programme of epic size. Financial

Page 131

[1] in the department used to stack up.

[2] Q: I suggest to you that you had read it, you did discuss
[3] it on 4th June and you thanked him for it. Did you not?

[4] A: I have said I cannot remember. I cannot remember
[5] discussing it. I remember talking about Nintendo,
[6] I remember the meeting, the meeting room,
[7] Roger Sotherton had a Nintendo gameboy that he was
[8] playing with. I cannot remember talking about anything
[9] else. It is logical that we might discuss Megamatch,
[10] since we were taking that on. We were developing it.
[11] I cannot remember talking about anything else.

[12] Q: Let us go back to what you would have read. It is at
[13] E1/345.

[14] (3.00 pm)

[15] Concept 4; I want to refresh and reacquaint you
[16] with it, if I may. Forgive me if we look at it, but so
[17] we have the themes in mind:

[18] "A multibrand loyalty programme. Promotion
[19] activity on petrol forecourts tends to be cyclical, as
[20] proved by Make Money. Indeed Shell is now considering a
[21] return to short-term activity after a period of six
[22] years."

[23] This document, of course, is dated in 1989;
[24] 23rd October:

[25] "The same may well happen with long-term

Page 130

[1] institutions could be involved. Don Marketing had
[2] meetings with Barclays and the Post Office in regard to
[3] Project 100. Participating organisations could
[4] advertise, issue and redeem the promotional currency.
[5] The project would combine the enormous High Street
[6] visibility and huge customer franchise of the proposed
[7] partners to create a long-term promotion reaching every
[8] UK household, thereby generating unprecedented interest
[9] in participation. It could also take advantage of the
[10] vast purchasing power of the consortium to achieve
[11] economies of scale to minimise the marketing and
[12] merchandise costs. A multibrand collection scheme
[13] linking together a group of the largest retailers in the
[14] UK would make a huge impact for the user on a short-term
[15] or long-term basis. We predict that Megamatch and this
[16] proposed development of the multibrand promotional
[17] concept will come to pass. The benefits will be reaped
[18] by the first consortium to be set up. As with the
[19] Megamatch proposal, Shell could take the lead role,
[20] perhaps even setting up an entirely separate venture to
[21] market the scheme."

[22] If you read that, you would have deduced the
[23] clearest relevance to your own department's thinking at
[24] the time, would you not?

[25] A: How do you mean "deduced"?

Page 132

[1] Q: You knew at that point, on 12th May 1992, Mr Lazenby,
[2] that your department was considering a change of
[3] direction and policy, did you not, in relation to
[4] promotions?

[5] A: I was aware there was a project ongoing which
[6] particularly focused on use of technology and
[7] promotions. I was also aware that the whole time the
[8] whole department was always seeking for what to do in
[9] the future. The general feeling in the
[10] department - I was still relatively new there - was
[11] that we should be moving back to long-term promotions,
[12] having been in short-term promotion for some time.
[13] Nothing was approved. I knew that that was one option.
[14] I was particularly keen on it myself and I knew my boss
[15] was interested in it. But nothing was approved on
[16] long-term promotions until way after that.

[17] Q: Can I just dissect that answer for a minute. The first
[18] leg of it was that you knew there had been projects
[19] ongoing looking into the use of technology in
[20] promotions; correct?

[21] A: Correct, and going beyond that into linking the
[22] technology to how the promotion would be used. Which
[23] was why such a technology-based project was being run
[24] from the promotions department: being run by promotions
[25] experts.

Page 133

[1] boss was keen, on long-term promotions; correct?

[2] A: I did not know my boss's specific feelings on the
[3] subject at the time. Further my brief, if you like, was
[4] to manage ongoing promotions, which were all the
[5] short-term promotions. I did not have much - and that
[6] was managing six short-term promotions. Now,
[7] personally, I was then interested in long-term
[8] promotions, yes. Because I could see the value they
[9] would give, compared to what we were trying to run with
[10] short-term promotions.

[11] Q: Do you agree with your previous answer: that you were
[12] keen and you knew your boss was keen on long-term
[13] promotions as of 12th May 1992?

[14] A: (Pause). I cannot remember what I knew about what my
[15] boss thought. It was quite clear to me from very soon
[16] after I joined the department and started trying to run
[17] the short-term promotions that long-term ones solved
[18] many of the problems we were having to deal with on a
[19] day-to-day basis. Therefore, yes, I was interested in
[20] long-term promotions.

[21] Q: And Mr Donovan came along with a long-term promotion, a
[22] big idea, on 12th May in which you expressed interest,
[23] did you not?

[24] A: Mr Donovan came along with two games on 12th May, which
[25] were short-term promotions, which might or might not

Page 135

[1] Q: You were keen on it and you knew your boss was keen on
[2] it?

[3] A: I knew nothing about the technology to speak of at that
[4] stage. I was keen and interested in long-term
[5] promotions because I could see the problems caused by
[6] short-term promotions. We were losing market share to
[7] competitors who had continued in long-term promotions
[8] when we had pulled out. We had lost significant market
[9] share. They had picked it up and we were continuing to
[10] lose market share without saving any of the costs which
[11] we had hoped to save by going into short-term
[12] promotions.

[13] Q: I quite agree with you, if I may say, that you were keen
[14] on long-term promotions as at 12th May 1992. Which was
[15] my question; do you agree?

[16] A: It was one of the options before us. We were looking at
[17] a variety of things. Still on the table was whether we
[18] pulled out of promotions altogether.

[19] MR JUSTICE LADDIE: I think the question Mr Cox is putting
[20] to you is: you said you were keen. That is what he
[21] asked you.

[22] A: I guess I could see the problems with short-term
[23] promotions and long-term promotions would solve some or
[24] all of those.

[25] MR COX: You were keen, by 12th May 1992, and you knew your

Page 134

[1] have fitted into our immediate requirements. He may, in
[2] passing, have mentioned something else, which would be a
[3] generic idea which fitted with what many other people
[4] were proposing to us at the same time. I had seen other
[5] ideas of the same sort prior to that meeting. So, if
[6] I had seen it, it would have been nothing particularly
[7] revolutionary. Particularly since I was interested in
[8] long-term promotions.

[9] Q: That was not my question, Mr Lazenby. My question was:
[10] it fitted very neatly and snugly into what you knew to
[11] be your department's thinking at the time and on what
[12] you were keen, did it not?

[13] A: I do not remember seeing or discussing the concept. So
[14] you are asking me to presume what I would have thought
[15] of at the time. If I had discussed it or if it had been
[16] mentioned - it was on the agenda. It was on the agenda
[17] with almost every agency we were talking with. They
[18] were all saying "Go back into long-term
[19] promotions", "use technology" and "link with partners".
[20] They were all saying that all the time.

[21] Q: Yes. Let us have a look at the history. Because, if
[22] you will just look at your witness statement first, you
[23] will see why I am asking these questions. Have a look
[24] at paragraph 10 again, would you, page 7. One of the
[25] reasons why you dismiss, in that paragraph, the

Page 136

[1] possibility or probability that you discussed anything
[2] like this on 12th May:
[3] "I do not recall requesting the document or
[4] reading it at the time. My focus remained very much on
[5] short-term promotions at that time and I was not overly
[6] concerned with long-term promotions."

[7] Do you see that?

[8] A: Yes.

[9] Q: Now, in fact, as you have just said, I suggest to you,
[10] you were keen and you knew your boss was keen, as of
[11] 12th May, in an important change of direction towards a
[12] long-term loyalty promotion, were you not?

[13] A: I was aware that he was interested, because he had got
[14] me involved in a number of meetings which we had had
[15] with other people prior to that meeting. I was not
[16] actually working on long-term promotions specifically
[17] until much later in 1992.

[18] Q: Really? How long did it take, do you think now, before
[19] you became quite intimately involved in the Project Onyx
[20] subsequently leading to Hercules?

[21] A: I became aware of it before the meeting - before the
[22] meeting with Don Marketing on 12th May.

[23] Q: How long before you had quite close intimate
[24] involvement: you were involving yourself closely in this
[25] important change of policy? How long, do you think?

Page 137

[1] working with technology or whatever.

[2] Q: No, Mr Lazcnby. You knew on 26th May -

[3] A: I am sorry?

[4] Q: We will come back to that. You knew it was a long-term
[5] proposal being proposed by Mr McMahon. He represented
[6] Fortronic on 26th May.

[7] A: I did not know he represented Fortronic and, so far as
[8] I can remember, the reason why I called him on
[9] 26th May was because he had sent me a letter which
[10] flagged up that he had a great new idea for a new
[11] promotion which Shell should be doing. Now, that kind
[12] of letter, sometimes we followed it up immediately,
[13] sometimes we did not. On that occasion it appears
[14] I rang him straightaway. I probably had a gap in my
[15] diary, having been away for a week or so, and that was
[16] what - and, in the course of the discussion, it
[17] probably transpired that that was what he wanted to talk
[18] about. That was his big idea.

[19] Q: Do you recollect now - because I do not want to take an
[20] unfair advantage of you - whether or not you had had
[21] any earlier indication from Mr McMahon or his company as
[22] to the scheme he was putting forward? Do you actually
[23] recollect?

[24] A: Yes, I recollect that I had not had anything from him or
[25] his company prior to that. I do not recall anything at

Page 139

[1] You said "late 1992" a minute ago. Are you serious?

[2] A: No, I said "later in 1992" and, so far as I can recall,
[3] it was July or August - it was certainly by August. It
[4] was possibly July, possibly June.

[5] Q: Possibly May?

[6] A: I was on holiday for a week or two in May.

[7] Q: You were back by 26th May, were you not?

[8] A: I was back on 26th May, as it happens.

[9] Q: And on 26th May you telephoned Mike McMahon of
[10] Concept Systems; do you remember?

[11] A: I now remember, having reviewed the documents and so on,
[12] yes.

[13] Q: You spoke to him about his proposals for a Smart Card,
[14] electronic, in a long-term loyalty promotion on
[15] 26th May, did you not?

[16] A: I suspect what happened there was that I received either
[17] a telephone call or a letter of some sort which flagged
[18] up, as many people did, a proposal, completely
[19] unprompted, which said "I have got the best thing since
[20] sliced bread. You need to talk to me." So I probably
[21] rang him therefore.

[22] Q: On a long-term loyalty promotion?

[23] A: Well, then, when we started discussing on the phone,
[24] and, as the discussion went on, he would then have told
[25] me that it was actually a long-term loyalty promotion

Page 138

[1] all from Concept Systems or from Mike McMahon.

[2] Q: Let us come back to 12th May. Because we will see how
[3] you become involved. As at 12th May I want to focus, if
[4] we can, upon your lines at page 7, paragraph 10, the
[5] last line of that paragraph:

[6] "My focus remained very much on short-term
[7] promotions at that time and I was not overly concerned
[8] with long-term promotions."

[9] Let us just have a look to what extent, if we can,
[10] you had been involved. I want to ask you about that.
[11] You arrived at the department on 1st February, did you
[12] not, or early February 1992?

[13] A: Yes.

[14] Q: And you joined, replacing a gentleman called McNab; is
[15] that right?

[16] A: Alan McNab, yes.

[17] Q: Did you report to Mr Watson, who you describe as your
[18] boss?

[19] A: Yes.

[20] Q: Who reported on to Mr Swceny, later on to Mr Leggatt?

[21] A: Yes.

[22] Q: When you arrived, Mr Watson and you got on well
[23] together?

[24] A: I would say we did get on well. We had worked together
[25] in the past.

Page 140

[1] Q: In the department was you and who else? Can you just
 [2] give me the team?
 [3] A: The other people working in promotions were Tim Han-
 [4] nagan
 [5] and Paul King, and there were two promotional
 [6] assistants: Jackie Freeman and Liz Proctor, now Halford.
 [7] Q: So essentially the people were Hannagan, King, you
 [8] and Watson?
 [9] A: And the two promotional assistants.
 [10] Q: And the two promotional assistants, who were slightly
 [11] lower down the ladder, were they?
 [12] A: A bit, but we all worked together as a team. I would
 [13] say we worked together as a team, except for Paul, who
 [14] was a bit to one side.
 [15] Q: You shared an office with Mr King, did you not?
 [16] A: All five of us shared the same office and we all worked
 [17] on national promotions except for Paul, who worked on
 [18] specialist - sort of specific other promotions, like
 [19] truckers and for shops and carwashes and things. So it
 [20] was not directly related to the stuff we were doing with
 [21] national promotions.
 [22] Q: When you arrived, presumably you would have spent some
 [23] little time finding your feet in the department, would
 [24] you? Asking around and finding what the thinking was?
 [25] A: I arrived at a time of high activity - well, it was
 always high activity actually. I had a brief period of

Page 141

[1] overlap with Alan McNab, when there was no formalised
 [2] kind of handover process. It was a case of sitting and
 [3] watching him, what he did, and being waved towards a
 [4] cabinet of files and being told to read through it or
 [5] whatever. Then, as a kind of - I cannot remember ever
 [6] sitting with and spending time in a formalised, detailed
 [7] way with anyone else in the department. I was moving
 [8] from just next door to them, so I knew them all anyway
 [9] from the normal course of events, the normal business.
 [10] Q: But, on 16th March, you attended a meeting with GHA
 [11] Powerpoints, did you not?
 [12] A: Yes.
 [13] (3.15 pm)
 [14] Q: And just have a look at your witness statement again at
 [15] page 7. It was you and Mr Watson meeting GHA Power
 [16] Points, correct?
 [17] A: Where, at the bottom, 13?
 [18] Q: Yes, it is not actually mentioned in this witness
 [19] statement. You simply say:
 [20] "David Watson continued negotiations with GHA
 [21] Power Points", but in fact you attended?
 [22] A: It talks about a Power Points meeting I went to earlier
 [23] on in the witness statement.
 [24] Q: Let us have a look. You are probably right.
 [25] A: It is page 4, point 6.

Page 142

[1] Q: 4, point 6?
 [2] A: Page 4, number 6.
 [3] Q: Yes. Thank you very much. That is very helpful. On 16th
 [4] march, you attended the GHA Power Points meeting?
 [5] A: Yes.
 [6] Q: That was one of the meetings, I suppose, that you
 [7] referred to a little while ago, when you said you
 [8] attended some meetings with your boss?
 [9] A: Yes.
 [10] Q: Mr Watson asked you to attend that meeting, did he?
 [11] A: I cannot remember exactly. The meeting was called by a
 [12] gentleman called Brian Varburton, who I was dealing with
 [13] indirectly because he was the main contact at our
 [14] fulfillment agency. It is, therefore, possible the
 [15] contact with GHA came through Brian Varburton or direct
 [16] from David Watson, because Brian Varburton knew David
 [17] Watson anyway, as well. Therefore, I cannot remember why
 [18] or why not -
 [19] Q: You may have arranged a meeting?
 [20] A: I cannot remember who arranged the meeting. I doubt I
 [21] arranged the meeting.
 [22] Q: Well, it was not Mr Hannagan because he says it was not?
 [23] A: As far as I recall, Tim was off sick at the time, or
 [24] something like that.
 [25] Q: Yes, so it must have either been you or Mr Watson, must

Page 143

[1] it not?
 [2] A: It could have either been one of us, or it could have
 [3] been Brian Varburton's suggestion. Indeed, I suspect it
 [4] was Brian Varburton's suggestion. There is no other
 [5] reason for him to be involved in this.
 [6] Q: Why were you present at this meeting?
 [7] A: David asked me to come along to it, because I think I
 [8] was dealing closely with Brian Varburton and we were not
 [9] quite sure what the tenor of the meeting might be. We
 [10] thought it might be relating to our existing activities,
 [11] the fulfillment activities, that Neilsens were doing for
 [12] us.
 [13] Q: But you had a presentation document, had you not, about
 [14] what was to be presented?
 [15] A: As far as I remember, we received the presentation at
 [16] the meeting.
 [17] Q: This was in the grain, according to Mr Watson, of his
 [18] researches into a long-term loyalty promotion. You are
 [19] not suggesting this was somehow unexpected and all
 [20] cropped up once the meeting started, "Good Lord, glory
 [21] be, it is about a long-term promotion, are you?
 [22] A: I cannot remember how it came up. I do not think we
 [23] received a proposal that they were going to put to us
 [24] before then. We normally did not.
 [25] Q: It was arranged in order that Power Points could present

Page 144

[1] to you, not you personally but to Shell, a long-term
 [2] loyalty scheme, was it not?
 [3] A: It looks like that, yes, I would not argue with that,
 [4] but I do not know why they arranged it, but it looks
 [5] like they arranged it so they could present to us a
 [6] long-term scheme which they had formulated.
 [7] Q: I understood you earlier on to have said that, when you
 [8] came into the department, or soon after, by the 12th,
 [9] you knew there had been a project ongoing into the use
 [10] of technology and long-term schemes, and you had been
 [11] present at a number of meetings relating to long-term
 [12] schemes?
 [13] A: By 12th May?
 [14] Q: Yes.
 [15] A: Yes.
 [16] Q: One of them was the GHA Power Points presentation, was
 [17] it not?
 [18] A: Yes.
 [19] Q: Which was fixed within the grain, and the whole point
 [20] was to further explore the interest of Mr Watson in a
 [21] change of direction, was it not?
 [22] A: I mean, I cannot speak for what David Watson was feeling
 [23] at the time. What GHA were doing here was they had
 [24] formulated, completely independently from us, this
 [25] product, Power Point, which was a concept bringing

Page 145

[1] short-term promotions on a consecutive basis full time.
 [2] Q: But there was a problem, was there not? The problem was
 [3] that Shell senior management have taken a decision to
 [4] pull out of the long-term and go back to the short-term,
 [5] had they not? -
 [6] A: Yes.
 [7] Q: And the top brass were perceived to be against long-term
 [8] promotions, were they not, Jim Slavin, for example?
 [9] A: They were certainly committed to following their
 [10] strategy, which was not with long-term promotions; it
 [11] was moving out of them into short-term promotions. They,
 [12] therefore, were not going to be interested if we talked
 [13] to them about long-term promotions.
 [14] Q: So that any consideration of a different thinking
 [15] represented - I do not want to put an exaggerated gloss
 [16] on it but - as heresy
 [17] A: It was challenging the system; we could all do that all
 [18] the time. There was nothing wrong with that.
 [19] Q: There is nothing wrong with that, but it amounted to
 [20] Watson believing this, him taking it into his
 [21] confidence, did he not, and saying, "This is what I
 [22] believe", and you reaching the same conclusion? You
 [23] agreed.
 [24] A: There was no secrecy about it. It was clear he believed
 [25] that; everybody else in the department thought that as

Page 147

[1] together retailers, using technology, issuing,
 [2] redeeming, all the stuff that is generic out in the
 [3] market, putting it in one place, and, at that stage,
 [4] they let us know they were going around the market,
 [5] speaking to all potential partners who could have
 [6] joined, us being one of them.
 [7] Q: All I am trying to establish at the moment is why it
 [8] was, and what you knew. By 12th May 1992, you knew that
 [9] your boss was very keen on a change of policy and
 [10] direction as you have agreed, did you not?
 [11] A: I knew he was interested in it.
 [12] Q: Keen was the word you used, was it not?
 [13] A: I cannot remember what I said; interested, keen.
 [14] Q: You had been aware of that because you had attended
 [15] meetings with those proposing long-term loyalty schemes
 [16] first, correct?
 [17] A: Mm.
 [18] Q: Second, Mr Watson, I have no doubt, had discussed with
 [19] you his private thinking concerning the way in which
 [20] Shell should go, had he not?
 [21] A: He may well have done but, also, having been in the
 [22] department for a while, it was clear to me it was not
 [23] working in a sustainable manner.
 [24] Q: Clear to you as well?
 [25] A: It is very difficult to keep going a string of

Page 146

[1] well, as far as I can remember.
 [2] Q: But management did not?
 [3] A: I do not know whether we had discussed it with
 [4] management at the time, but we understood clearly they
 [5] were not going to be interested in our proposals for a
 [6] large cost long-term scheme.
 [7] Q: So Mr Watson, you knew by 12th May, you knew within a
 [8] couple of months of arriving, that Mr Hannagan had been
 [9] given a project to look into long-term schemes,
 [10] particularly the use of technology?
 [11] A: Yes.
 [12] Q: Have a look at your witness statement; that is where I
 [13] get this from.
 [14] "When I joined the department" - this about
 [15] halfway down paragraph 5 of page 3:
 [16] "When I joined the department, I dealt with
 [17] short-term promotions. We have a number of such
 [18] promotions on the go at any one time. I was aware that
 [19] Tim Hannagan was working on reports on the use of
 [20] technology in promotions (...read to the word...) Onyx."
 [21] When you mentioned technology, Watson suggested
 [22] you speak to Hannagan. You knew, did you not, that Mr
 [23] Watson had given that project to Mr Hannagan to look
 [24] into; it follows from what you say?
 [25] A: Yes.

Page 148

[1] Q: You knew Watson was eager to challenge the received
 [2] doctrine of senior management but, first, it was
 [3] important to prove it, was it not?
 [4] A: It was important to have a concept which we were happy
 [5] with, which would work and which we felt confident we
 [6] could implement.
 [7] Q: Yes, a long-term concept that would have appeal and be
 [8] persuasive to management as being something different
 [9] from Collect and Select, correct?
 [10] A: We put together the strategy later on in the year and
 [11] that describes it succinctly.
 [12] Q: But you knew that was the essential problem from earlier
 [13] on March and April, did you not?
 [14] A: What was the essential problem?
 [15] Q: To convince senior management that if you were to go
 [16] into a long-term promotion, first, you knew senior
 [17] management had to be convinced?
 [18] A: Yes.
 [19] Q: Second, if senior management were to be convinced, you
 [20] would have to have a scheme that was radically different
 [21] from Collect and Select, would you not?
 [22] A: It would be completely illogical to revive something
 [23] which was a repeat of Collect and Select, it would get
 [24] us nowhere, so, yes, but that is logical.
 [25] Q: Of course. I am grateful to you for giving me that

Page 149

[1] Q: They did, all long-term convention schemes, not unlike
 [2] Collect and Select?
 [3] A: Very similar.
 [4] Q: And you and Watson knew well before 12th May 1992 that
 [5] if you were to persuade Shell management, you had to
 [6] have an idea that would be perceived as fundamentally
 [7] different from Collect and Select, apart from anybody
 [8] else, did you not?
 [9] A: We would not have put up a proposal that was not
 [10] different because it would not have got us anywhere.
 [11] Q: You needed to convince Shell management, did you not,
 [12] that it was different?
 [13] A: We needed a concept, we needed a proposal, to put to
 [14] Shell management, yes.
 [15] Q: Yes, all right. Fine. You needed a concept. They were
 [16] not likely to go back to something like Collect and
 [17] Select?
 [18] A: That is what I said.
 [19] Q: Yes. So, on 12th May, to come back to that as our date
 [20] again, you were looking out, were you not, for ideas
 [21] that might assist you and Watson to develop such a
 [22] concept?
 [23] A: I was looking out as my main focus of attention for
 [24] short-term promotions.
 [25] Q: But you were also aware of the need for, and interested

Page 151

[1] commendation, because that is what I am hoping to be,
 [2] you see, logical. I want you just to confirm it and if
 [3] you disagree let me know.
 [4] Collect and Select had been perceived as - I may
 [5] be using adjectives you do not agree with and verbs -
 [6] tired and faded, correct?
 [7] A: Perceived by people in Shell management?
 [8] Q: Yes, not working?
 [9] A: The problem was not that it was not working, it was not
 [10] working as well as people wanted, or whatever. It had a
 [11] variety of problems; one of which was the fact that some
 [12] motorists could not collect enough points for the
 [13] reward. There were a whole load of other reasons why it
 [14] was withdrawn; that is only one.
 [15] One of the other reasons was there was a large and
 [16] growing liability of unused points out in the market,
 [17] which we could not manage, and we did not know how to
 [18] manage that. It would not be correct to say it was a
 [19] complete disaster.
 [20] Q: I am not saying that.
 [21] A: It was as good as all the competitor's promotions, and
 [22] the reason for the moving of it was to get a break and a
 [23] point of differentiation between all of the other
 [24] competitors all doing the same thing. Mobil, SMB, at the
 [25] time we pulled out, all had long-term schemes.

Page 150

[1] in, I suggest to you, concepts that would enable you to
 [2] go back into long-term promotions?
 [3] A: There were a variety of people who had put such concepts
 [4] to us in long and detailed and worked up formats, yes.
 [5] Q: Can I have an answer to my question, Mr Lazenby, forgive
 [6] me. You were looking out for ideas as of 12th May that
 [7] would help you convince Shell management to go back into
 [8] long-term promotions, were you not?
 [9] A: I would not say it was a pro-active, active activity
 [10] which I was doing, looking out for long-term promotional
 [11] ideas. I was looking for short-term promotional ideas.
 [12] My particular concern was finding a promotion to run
 [13] from about 6th January 1993; that is what my prime focus
 [14] was.
 [15] Now, all sorts of people at the time, and
 [16] particularly prior to this meeting, on a number of
 [17] occasions, had proposed going back into long-term
 [18] schemes in very worked up formats.
 [19] Q: I think you have given us that answer, but, again, I
 [20] would like, if I may, to press you on this for an answer
 [21] to my question.
 [22] You have said you were not looking out
 [23] particularly pro-actively, but you were interested in -
 [24] let us leave it at that, and see if we can get agreement
 [25] on that - ideas or concepts that would enable you to

Page 152

[1] persuade Shell management to go back into long-term
[2] schemes different from Collect and Select?

[3] A: I was interested in each presentation or proposal I had
[4] had from a variety of different people, which were
[5] anything from a very generic non-worked up format to a
[6] very worked up proposal. So, if you like, I was
[7] interested in discussing those things at certain times.
[8] If I saw something that was interesting, I would have
[9] picked up on it. If I had seen something interesting in
[10] that meeting, I would have made a note of it.

[11] Q: Somebody else made a note, Mr Sutherland did, as you
[12] know, which I now understand you are not to suggest it
[13] has been forged. Let us have a look at what exactly had
[14] been put to you by 12th May.

[15] You say "all sorts of people", and you give the
[16] impression that is the miasma of persons, but let us
[17] just have a look what it is that we can find in these
[18] documents and see if you can help us a little further.

[19] Let us go, if you would, to volume E1, 514. Volume
[20] 2, my Lord.

[21] MR JUSTICE LADDIE: Mr Cox, can I now put away bundle 10?

[22] MR COX: Your Lordship can. I do apologise, yes.

[23] MR JUSTICE LADDIE: Did you give the page number in E1? Was
[24] it E1 you said?

[25] MR COX: My Lord, I did. I will give your Lordship the page

Page 153

[1] to look at Project Nova and Project Onyx with you,
[2] because I think you have made it quite clear in your
[3] witness statement that related to use of technology in
[4] the schemes, correct?

[5] A: I knew nothing about Project Nova or project Onyx. My
[6] perception was it was particularly looking at the use of
[7] technology for promotions, which was why it was being
[8] run in the promotions department.

[9] Q: Quite so. On that, you and I, I think, can agree. If we
[10] need to, we can look at the document later in due
[11] course.

[12] I want to have in mind what Shell had been
[13] proposed by the 12th May 1992. If we can look at this.
[14] Page 515, a presentation by Senior King.

[15] "Loyalty schemes or frequent shopper schemes have
[16] existed in various guises for many years. The Co-op
[17] Dividend and Green Shield stamps being probably the best
[18] known."

[19] This is the retained agency really giving Shell
[20] the advice they had asked for, but:

[21] "With the advent [I suppose advent] of modern chip
[22] technology and the growing use of 'Mag Stripe' cards the
[23] potential for encouraging and rewarding loyalty has been
[24] increased beyond previously conceivable bounds.

[25] "In its most basic form, a magnetic stripe card

Page 155

[1] number. It is 514.

[2] A: Volume 2.

[3] MR COX: So, sorry, my Lord, my junior has told me I am
[4] wrong; it is E2, not volume 1.

[5] This is a document, one of those, I take it, that
[6] you are referring to, albeit not I think while you were
[7] still there, but no doubt this is in the background.

[8] What I want to establish is what Shell was
[9] proposing in term of long-term loyalty schemes, do you
[10] follow me, between, let us say, January and May 1992?
[11] Have you got the picture?

[12] A: Yes.

[13] Q: Now let us just have a look at this. I do not know if
[14] you were ever aware or re-read the Senior King
[15] presentation. I mean, you came to know them quite well
[16] later on in 1992. I do not know whether you read what
[17] they said in January 1992?

[18] A: I cannot remember specifically reading this scheme.
[19] Clearly I was not at the meeting; that was before I took
[20] over at the department. I frequently did have strategy
[21] meetings with them. At that time they were our retained
[22] agency. So I have a feeling, I am pretty sure, in April
[23] we had a review, a meeting, at which they probably went
[24] over some of this, if not all of it.

[25] Q: Let us have a look what it was, can we. I am not going

Page 154

[1] can be used to store information, usually in the form of
[2] points, eg, Mobil and Elf. In its most sophisticated
[3] form, it has a huge memory and can cope with multiple
[4] memory/function requirements and much more besides."

[5] This document reviews the current status of these
[6] cards in the market place. Then, if we look through the
[7] document, we will see that what it is dealing with is
[8] key considerations:

[9] "Level of reward, collection period, capturing
[10] data control, level of sophistication, equipment, this
[11] technology available."

[12] If you turn to 518, Argos/Mobil is looked at and
[13] how that scheme works. Page 518.

[14] A: Yes, it is looking at the technology.

[15] Q: It is looking at the technology?

[16] A: It is looking at the technology and the promotional
[17] aspects of it.

[18] Q: Let us have a look. This promotional aspect is familiar;
[19] Mobil tie up points with Argos, does it not?

[20] A: Yes.

[21] Q: Magnetised stripe card. Points awarded against
[22] purchase. One point for each 10p spent. Points
[23] redeemed at Argos against the price of goods. No data
[24] captured. Card holds 2,500 points.

[25] Virgin Freeway. Magnetic stripe card. Reward

Page 156

[1] scheme for frequent flyers. Points awarded against
 [2] spend. Monthly statements. Several types of sales
 [3] operation partners are included in the scheme; Dan Air,
 [4] Avis, Holiday Inn, City Airport, hotels of various
 [5] kinds, First Direct, Texaco. All participating brands
 [6] are 'travel related'. Points redeemed for aspirational
 [7] activities, gifts, eg, hot air ballooning, gliding. Data
 [8] collected but not sold. Only used to develop rewards.
 [9] If we turn the pages, we see:
 [10] Homebase, Spend and Save, Woolworths Rewards, the
 [11] Tops card, 522. Points awarded against purchase. Full
 [12] cards redeemed via postal application to the handling
 [13] house. Consumer receives #5 gift voucher for either
 [14] Marks & Spencers or Boots.
 [15] Elf, same story. The points redeemed at
 [16] Intersports sports shops.
 [17] Air Miles, membership card only token. Rewards
 [18] are accumulated from several partner sources; Shell UK,
 [19] Gas Boards, Natwest. Retailer has no knowledge
 [20] of members' of scheme as no data is collected. Air
 [21] Miles have some information from redemptions. Latitude
 [22] card for BA fliers.
 [23] Then we go through BHS Choice, Diners Club
 [24] Dividends. If you can turn the document around I am
 [25] afraid because then we have the length ways. These are

Page 157

[1] that we look at technology to support our promotions I
 [2] assume long-term.
 [3] Q: They were not proposing any particular promotional
 [4] framework for it, were they?
 [5] A: I cannot remember, without reviewing the document.
 [6] Q: Have a look through. General background, future
 [7] technology, the way ahead.
 [8] MR JUSTICE LADDIE: What page does this go on to, Mr Cox?
 [9] MR COX: My Lord, 543.
 [10] MR JUSTICE LADDIE: You read through it, Mr Lazenby.
 [11] I think he has done, Mr Cox.
 [12] MR COX: Yes, thank you. Again, technology the focus of
 [13] their concern in that document?
 [14] A: Basically, the focus of the document is technology, and
 [15] what it will enable us to do in the promotional context.
 [16] Q: Let us have a look at the summary and conclusions in
 [17] page 548. Senior King.
 [18] "All the majors have similar propositions in terms
 [19] of the retail forecourt and product. All are trying to
 [20] add their retail proposition by improving forecourt
 [21] facilities. The majors are a premium proposition and,
 [22] therefore, consumers expect additional facilities as
 [23] part of the price."
 [24] They are talking about oil companies here, are
 [25] they not?

Page 159

[1] the, sort of, ironically, are they called "par point
 [2] presentations" these documents? Something produced with
 [3] a computer anyway?
 [4] A: It is some sort of word processor document, yes.
 [5] Q: Senior King were really putting forward that they had
 [6] tied up with Hughes Electronics, had they not?
 [7] A: Yes.
 [8] Q: They were saying:
 [9] "The recession has driven over the past year an
 [10] explosion in the use of Magnetic Swipe cards for
 [11] loyalty based retail schemes. In its most basic form,
 [12] a magnetic stripe card can store information such as
 [13] points, as in the case of Mobil, Total and Elf.
 [14] "The technology employed in these schemes, whilst
 [15] offering a number of benefits to the retailer, ie,
 [16] loyalty, reward and added value, nevertheless still fall
 [17] short of achieving a truly interactive and intelligent
 [18] card based system that can fully exploit the potential
 [19] of these loyalty based schemes as a marketing tool."
 [20] What Senior King were really saying was that we
 [21] had a technology that, in some form or another, would be
 [22] able to be used in a loyalty promotion scheme, were they
 [23] not?
 [24] A: I cannot remember the rest of the detail without
 [25] reviewing the document, but they were proposing strongly

Page 158

[1] A: Yes.
 [2] Q: "They also expect promotions to be part of the premium
 [3] retailer proposition. Generally creating a difference is
 [4] difficult, and often the majors follow each other,
 [5] matching like for like."
 [6] Then they list Mobil, Elf, Esso, BP.
 [7] What they are doing:
 [8] "Even the smaller articles who sell on price, such
 [9] as Jet, are upgrading forecourts."
 [10] Discussion about young learner drivers. The role
 [11] of promotions dealt with at 550. Considerations at 551.
 [12] These are very general suggestions being made about what
 [13] the desirable objectives are, correct? Promotion must
 [14] enhance the Shell brand image?
 [15] A: Yes. These look like overhead slides to be used in a
 [16] presentation, where Senior King would have discussed all
 [17] this stuff in a meeting. So, as you do with overhead
 [18] slides, you have bullet points on which you discuss
 [19] things, that is general.
 [20] Q: If you look through it, what they are really saying is
 [21] it is an overview of promotional activity, identifying
 [22] what Shell needs to do, increase its brand image and so
 [23] on.
 [24] If you turn to 585, their summary, all the major
 [25] petrol retailers are running loyalty reward promotions,

Page 160

[1] the most recent ones using card technology.
 [2] - **MR JUSTICE LADDIE:** 585?
 [3] **MR COX:** 585, my Lord, this is the final summary.
 [4] A major threat to the petrol retailers is from
 [5] the grocery multiples setting up petrol stations on
 [6] their premises.
 [7] "The challenge for Shell will be to sustain its
 [8] market leadership and increase its share, by ensuring
 [9] that more brand switchers are converted to Shell for the
 [10] majority of their forecourt purchases.
 [11] "Targeting of promotions to significant niche
 [12] sectors will achieve this whilst ensuring that Shell
 [13] loyalists are sustained to guarantee the core business."
 [14] I have done my best to discern in that - I
 [15] appreciate you have been looking at it here - any
 [16] really concrete or specific suggestion at all. Was that
 [17] the type of advice you often got from retained agencies?
 [18] **A:** Well, we only had one retained agency for a short time
 [19] whilst I was there. Their role was to advise us in any
 [20] manner they thought fit. They would propose short-term
 [21] promotions for us; sometimes they would also act
 [22] strategically in this kind of basis.
 [23] **Q:** What it seems to be saying - would you agree - is the
 [24] others are all doing these different things and it is
 [25] difficult to do something different, although desirable?

Page 161

[1] **A:** Using technology.
 [2] **Q:** Using technology.
 [3] **A:** Yes.
 [4] **Q:** No word about the way the card will be employed, the
 [5] promotional framework in which it will be employed?
 [6] **A:** How do you mean?
 [7] **Q:** It is not suggested the way, the promotional context, in
 [8] which the card will be deployed, is it?
 [9] **A:** There are a lot of pages there. I cannot remember each
 [10] one, but certainly, at some stage in it, it was talking
 [11] about how the mechanic would work the filling station,
 [12] and how the points could be added and taken off and
 [13] redeemed for rewards and stuff. So there is at least an
 [14] indication of what it could be used for.
 [15] **Q:** There is certainly in there no suggestion of a
 [16] multi-brand loyalty concept, is there?
 [17] **A:** I cannot see that they are talking about a linkage with
 [18] other third party issuers and redeemers in this
 [19] proposal, no.
 [20] **Q:** Can we look, before we conclude for this afternoon, at
 [21] just one or two more documents. There is a meeting at
 [22] which you were not present, I know, with Mr Watson and
 [23] Mr Hannagan probably and you, when you eventually
 [24] arrived sometime. You had visited Scotland to look at
 [25] this Hughes Electronic technology. Did you become aware

Page 163

[1] **A:** Yes. I mean, the message of this is two things, I think;
 [2] one is, "It is getting hot out there; you have to
 [3] sharpen up your act and, secondly, you have to do
 [4] something different, and by the way we have something
 [5] here you might be interested in.
 [6] **Q:** A card?
 [7] **A:** A technology, yes.
 [8] **Q:** Technology. So that does not really - would you agree
 [9] with me - take one much further about the nature of any
 [10] scheme that is going to be run. It is simply we have
 [11] some technology that might help?
 [12] **A:** I mean, there is a lot of detail there about what
 [13] technology can do, and that is a significant part of
 [14] what the promotional concept would be. I imagine,
 [15] although I do not know, at the meeting they would have
 [16] discussed the promotional meat on the technology bones.
 [17] **Q:** It is not there, is it?
 [18] **A:** No, it is not.
 [19] **Q:** In fact, all they really say is, "Here are what the
 [20] opposition are doing and there is the technology." If
 [21] you look at - well, that is, as far as I understand it,
 [22] Senior King?
 [23] **A:** What they are going on to say here is they are
 [24] recommending a move to long-term loyalty.
 [25] **Q:** Yes, long-term loyalty.

Page 162

[1] of that?
 [2] **A:** Yes.
 [3] **Q:** That was 27th January, just a few days before you
 [4] arrived. They had flown up to Scotland to look at the
 [5] technology Senior King were examining. Really the next
 [6] thing is document E2, 723.
 [7] So we had a quick look. What I am going to ask you
 [8] to do, Mr Lazenby, again because I want you to be fairly
 [9] in a position to comment, is if, by arrangement with
 [10] your solicitor, you wish to have another look at these
 [11] documents, they can be detached from a copy and given to
 [12] you overnight. So Senior King presentations, if you
 [13] would like to have a look at overnight, by all means do.
 [14] **MR JUSTICE LADDIE:** It may be useful when we adjourn this
 [15] afternoon, if you would indicate to Mr Hobbs any
 [16] sizeable documents that you will reserve the right to
 [17] put in, not that you necessarily will put in.
 [18] **MR COX:** My Lord, that is what I will do.
 [19] **MR JUSTICE LADDIE:** Fine.
 [20] **MR COX:** Yes.
 [21] If we look at that document, this is a marketing
 [22] proposal for Shell UK Oil, prepared for Mr McNab, by Ron
 [23] Ogle, finance director. This is produced by a company
 [24] called The Tag Network Limited. It does not have it on
 [25] the front. But if you look in 725 and then 726, page 726

Page 164

[1] names:

[2] "A private limited company will be formed and,
[3] subject to Companies House approval, will trade as The
[4] Tag Network Limited."

[5] It discusses, if you will turn to 728:

[6] "Background market research carried out in July
[7] 1991 confirmed the feelings of many people within the
[8] sales promotion industry that promotions were losing
[9] their appeal because of the downmarket image and
[10] inconvenience associated with paper based promotions.

[11] "This change in attitude which it describes is
[12] entirely due to the arrival of the plastic
[13] card/electronic points concept."

[14] The situation today is that there are two plastic
[15] card-based promotions on forecourts, Mobil issuing Argos
[16] and Elf issuing points for sports gear.

[17] "In the opinion of Purchase Point the Mobil
[18] promotion is claimed to be the most successful
[19] redemption promotion in the UK, the 90s equivalent of
[20] Green Shield stamps."

[21] The Mobil, as you know, Mr Lazenby, so very well,
[22] because as we go through this we will see how you became
[23] an expert - I do not mean to criticise or mock you -
[24] you obviously got very much deeply into this entire area
[25] over the next year, two years, did you not?

Page 165

[1] write to the plastic card."

[2] Apart from that expression - again, I appreciate
[3] your need to read it through but have a look through, if
[4] you can, just while you are there - there is really no
[5] indication whatsoever, again, as to the promotional
[6] concept, except if you look at 3, 730, where they set it
[7] out:

[8] "The collector scheme would be merchandise based
[9] and revolve around a personalised catalogue produced to
[10] the specification of Shell (UK) Oil."

[11] The Greenshield catalogue is "downmarket and
[12] utilitarian. It is, however, our opinion that the same
[13] criticism can be levelled at Argos."

[14] They are proposing really a version of premier
[15] points for Shell, are they not? Have a little look at
[16] it, if you like.

[17] **MR JUSTICE LADDIE:** Where does it say about downmarket?

[18] **MR COX:** Just under 3.2, my Lord, at 730, second paragraph.

[19] **MR JUSTICE LADDIE:** Yes, I have it.

[20] **MR COX:** What is being suggested is the upmarket version of
[21] Argos Premier Points catalogue.

[22] **MR JUSTICE LADDIE:** I think the way the scheme is to
[23] operate, Mr Cox, is set out at 731, paragraph 3.2, that
[24] shows it.

[25] **MR COX:** That is, yes. I was just giving Mr Lazenby time to

Page 167

[1] **A:** Clearly, in putting together SMART, yes.

[2] **Q:** Mobil is a scheme where they collect points for buying
[3] oil and go along to Argos and redeem it against the
[4] catalogue?

[5] **A:** Yes.

[6] **Q:** This document, having referred to that, suggests:

[7] "It is common knowledge that, following the
[8] withdrawal of Green Shield, who were testing Green
[9] Shield points, plan to introduce their scheme, Total Oil
[10] plan to introduce their scheme during the four weeks
[11] commencing 11th November."

[12] Now, this may be an earlier document from 1991. We
[13] will have to look at it. It appears it, but:

[14] "Their ultimate goal is to have 400 sites
[15] operating 1 month before Christmas. I am not in a
[16] position to disclose the offer, but the urgency and
[17] emphasis being placed on being up and running for the
[18] month of December should in itself indicate that it is
[19] not a merchandise based collector scheme but something
[20] which could be linked with a high street
[21] retailer/retailers."

[22] "The opportunity for Shell Oil would be, for the
[23] present and the foreseeable future, the limiting factor
[24] to anyone wishing to enter the plastic card promotion
[25] market will be the availability of machines to read and

Page 166

[1] get to that.

[2] **A:** Yes.

[3] **Q:** It is really just a straightforward buy oil, gather
[4] points and change it for a catalogue?

[5] **A:** That is what it looks like, although it keeps referring
[6] to Green Shield stamps. I have a feeling these guys
[7] might have been associated with that, so they would have
[8] Green Shield stamps in the back of their minds.

[9] **Q:** And would be using it as a point of reference perhaps?

[10] **A:** They may well have had in the scope of the concept they
[11] would develop it, but clearly I do not know.

[12] **Q:** Up until this point, with both Senior King and this
[13] presentation, there is simply nothing that suggests a
[14] multi-brand loyalty concept, is there?

[15] **A:** As I say, none of the papers seem to indicate
[16] multi-brand loyalty concepts from these two at all.

[17] **Q:** We will go stage-by-stage so we can get to it. There may
[18] be a point you argue it does, so I want to get to that
[19] in due course; do you follow?

[20] **A:** Yes.

[21] **Q:** Up until this point, nothing suggests a multi-brand or a
[22] multi-brand loyalty concept?

[23] **A:** Not in these two proposals, but the idea is in the
[24] market.

[25] **Q:** You say that. We will come to it. What we have to go on

Page 168

[1] is evidence, you see.

[2] - A: The evidence is that Air Miles was operating from the
[3] end of the 80s.

[4] Q: We will come to Air Miles because, as I think you know,
[5] Mr Lazenby, we completely disagree that that is the
[6] same, but let us have a look. Can you turn in the
[7] witness statements to tag 3, volume C?

[8] A: C2.

[9] Q: Witness statements. I want you to go to Mr Watson's
[10] statement, which is C2, the white one?

[11] A: Yes.

[12] Q: He, helpfully, summarises - I am going to ask you
[13] whether you agree with this - the position that he had
[14] reached in his thinking. He has described on page 100,
[15] paragraph 15, his visit on 27th January 1992 to Hughes
[16] Electronics. He describes at paragraph 16:

[17] "At this stage, I felt Shell was falling behind
[18] its competitors" - a view with which you subsequently
[19] agreed because you arrived about this time?

[20] A: Yes.

[21] Q: "Senior King giving strategic advice [we have looked at
] some of that] suggested a medium term promotional
] strategy for 1992 whilst investing in the development of
[24] a long-term loyalty mechanic unique to Shell."

[25] He is referring there to Hughes Electronics

Page 169

[1] statement as to what Mr Watson puts down there in
[2] paragraph 17?

[3] A: I assume what he is saying here is what is in his mind.
[4] He recruited me to the job to manage short-term
[5] promotions. I cannot remember when he first talked to me
[6] about technology or the move to long-term promotions. I
[7] certainly cannot say that is what was in his mind when I
[8] joined the department in February.

[9] Q: On 14th February 1992, if we can quickly conclude, do
[10] you recall - you may not have reviewed the papers; you
[11] had only just arrived a fortnight - an agency called
[12] Sheard Thomson Harris promoting the Tag card?

[13] A: Yes, I recall the agency, and I recall the thing called
[14] the Tag card, but I do not think I ever looked at a
[15] detailed concept.

[16] Q: That was simply another technology suggestion, was it
[17] not?

[18] A: No. As far as I remember, it was a very cheap
[19] technology, linked with some kind of standard
[20] promotional on-site rewards and mail order.

[21] Q: Exactly, standard promotional on-site rewards and mail
[22] order.

[23] Q: So, as at 14th February, and really until we get to 16th
[24] March, there is not a single proposal remotely
[25] resembling to Shell a multi-brand loyalty concept, is

Page 171

[1] technology?

[2] A: Yes.

[3] Q: Their view was, if we were to return to long-term, we
[4] could not carry on using paper, and an electronic system
[5] seemed the way forward.

[6] "At this stage, my priorities were as follows in
] priority order; long-term promotion, rather than a
] series of short-term promotions; an electronic loyalty
] scheme rather than a paper one, and a link with third
[9] parties", because he subsequently says:

[11] "Having third parties in the scheme was the least
[12] important issue. Although our competitors were keen on
[13] the involvement of third parties, I was keen to get a
[14] scheme that would meet the needs of Shell, with the
[15] capacity to bring in third parties at a later date."

[16] Do you see that?

[17] A: Yes.

[18] Q: As at the point of your arrival in February 1992, the
[19] thinking of Shell had reached no further than that we
[20] should probably use electronic cards and maybe have some
[21] link with third parties, correct?

[22] A: I mean, I cannot speak for exactly what was in the mind
[23] of David Watson or anyone else in the department.

[24] Q: You discussed, presumably, when you arrived and over the
[25] ensuing weeks. Do you agree that is an accurate

Page 170

[1] there?

[2] A: Of the three proposals you put, it is not stated
[3] explicitly, no.

[4] Q: I wonder whether your Lordship would feel that is an
[5] appropriate moment?

[6] MR JUSTICE LADDIE: I assume that we will be with this
[7] witness for sometime tomorrow?

[8] MR COX: I regret so, my Lord.

[9] (Adjourned at 4.05 pm to Thursday, 1st July 1999)

Page 172

- [1] MR STUART CARSON (sworn)
- [2] Examination-in-chief by MR HOBBS 1
- [3] Examination-in-chief by MR HOBBS 1
- [4] Cross-examination by MR COX 10
- [5] MR ANDREW JOHN LAZENBY (sworn)
- [6] Examination-in-chief by MR HOBBS 99
- [7] Examination-in-chief by MR HOBBS 99
- [8] Cross-examination by MR COX 100
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