

Day02

SAUDI WATER PARTNERSHIP COMPANY V SHUAIBAH EXPANSION PROJECT COMPANY

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By Roshan patel

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IN THE MATTER OF AN ARBITRATION UNDER THE UNCITRAL
ARBITRATION RULES 2021

B E T W E E N

SAUDI WATER PARTNERSHIP COMPANY

Claimant

- and -

SHUAIBAH EXPANSION PROJECT COMPANY

Respondent

- before -

Day02

Tuesday , 24 Sep 2024

1 09:12:07

2 09:28:18 (10.01 am)

3 10:01:25 PRESIDENT: Good morning, everyone. This is day 2 of

4 10:01:27 the hearing in case number PCA 2023-45.

5 10:01:32 Mr Hanke, is everyone who needs to be here from your

6 10:01:35 side here?

7 10:01:36 MR HANKE: Yes.

8 10:01:38 MR ROBB: Yes, also.

9 10:01:39 PRESIDENT: Excellent, thank you.

10 10:01:40 So do we have any housekeeping matters to deal with?

11 10:01:45 MR HANKE: Not from the claimant's side.

12 10:01:46 MR ROBB: Only to say that the formulation of the

13 10:01:50 variation which you had asked for in writing is with my

14 10:01:54 solicitors. If you're content and SWPC is content, it

15 10:02:00 will be emailed during the course of the morning.

16 10:02:01 PRESIDENT: Is that okay for you?

17 10:02:03 MR HANKE: As soon as we can have it, yes.

18 10:02:05 PRESIDENT: Perfect, that would be very helpful.

19 10:02:08 I think, then, our first witness will be ...

20 10:02:13 MR HANKE: Dr Meschi.

21 10:02:14 PRESIDENT: Perfect, is she here?

22 10:02:16 MR HANKE: Yes.

23 10:02:16 DR MELORIA MESCHI

24 10:02:24 PRESIDENT: Will Dr Meschi affirming or taking an oath?

25 10:02:30 MR HANKE: Oath.

1 10:02:30 PRESIDENT: Do we have the right book available?

2 10:02:46 MR HANKE: I think there might have been a mild

3 10:02:48 oversight on having the right book.

4 10:02:51 WITNESS: It doesn't matter.

5 10:02:52 PRESIDENT: If you wouldn't mind affirming, then, as

6 10:02:54 a practicality.

7 10:02:59 If you can first sit down and you should have in

8 10:03:01 front of you clean copies of the expert report and that

9 10:03:08 will be it.

10 10:03:12 In which case, when you're ready, do you have enough

11 10:03:14 space?

12 10:03:15 WITNESS: Can I actually put this on the floor?

13 10:03:17 PRESIDENT: Would it be helpful if you had a chair next

14 10:03:20 to you, to put them on a chair?

15 10:03:23 WITNESS: Yeah, maybe I'll try this. It's better.

16 10:03:40 PRESIDENT: I think you were here yesterday, so you know

17 10:03:42 how it works.

18 10:03:43 WITNESS: Yes.

19 10:03:44 PRESIDENT: Just remembering to keep your voice up and

20 10:03:46 speak slowly, so we can get the transcript.

21 10:03:49 If you could first repeat after me.

22 10:03:58 I, Dr Meloria Meschi.

23 10:04:02 WITNESS: I, Dr Meloria Meschi.

24 10:04:06 PRESIDENT: Solemnly and sincerely declare and affirm.

25 10:04:09 WITNESS: Solemnly and sincerely declare and affirm.

1	10:04:11	PRESIDENT: That the evidence I shall give.
2	10:04:13	WITNESS: That the evidence I shall give.
3	10:04:15	PRESIDENT: Shall be the truth.
4	10:04:16	WITNESS: Shall be the truth.
5	10:04:18	PRESIDENT: The whole truth.
6	10:04:19	WITNESS: The whole truth.
7	10:04:21	PRESIDENT: And nothing but the truth.
8	10:04:22	WITNESS: And nothing but the truth.
9	10:04:22	PRESIDENT: I affirm that I have followed.
10	10:04:23	WITNESS: I affirm that I have followed.
11	10:04:26	PRESIDENT: And will follow.
12	10:04:26	WITNESS: And will follow.
13	10:04:27	PRESIDENT: The tribunal's procedures.
14	10:04:29	WITNESS: The tribunal's procedures.
15	10:04:32	PRESIDENT: Regarding the accuracy.
16	10:04:33	WITNESS: Regarding the accuracy.
17	10:04:35	PRESIDENT: Truthfulness.
18	10:04:36	WITNESS: Truthfulness.
19	10:04:37	PRESIDENT: And fairness.
20	10:04:39	WITNESS: And fairness.
21	10:04:40	PRESIDENT: Of my evidence.
22	10:04:41	WITNESS: Of my evidence.
23	10:04:41	PRESIDENT: To the best of my ability.
24	10:04:43	WITNESS: To the best of my ability.
25	10:04:45	PRESIDENT: Thank you.

1 10:04:46 Mr Hanke.

2 10:04:47 Examination-in-chief by MR HANKE

3 10:04:49 MR HANKE: Dr Meschi, I may need you to pick up those

4 10:04:50 two bundles. I'm not quite sure, but within them you

5 10:04:53 should find your first report, if I could ask you to

6 10:04:56 turn to page 96 of that.

7 10:05:10 A.Yes.

8 10:05:10 Q.If you turn to the last page of the report, please.

9 10:05:14 It should be 96.

10 10:05:21 A.Okay.

11 10:05:22 Q.Is that your signature?

12 10:05:23 A.Yes.

13 10:05:24 Q.Does the contents of that report remain your true

14 10:05:27 professional opinion?

15 10:05:28 A.Yes.

16 10:05:29 Q.If you could take your second report, please, which

17 10:05:32 I'm assuming is in the second bundle. We can have it up

18 10:05:43 on screen, D103, and then to page 54. Is that your

19 10:06:11 signature?

20 10:06:12 A.It is.

21 10:06:12 Q.Does the contents of that report remain your true,

22 10:06:15 professional opinion?

23 10:06:16 A.Yes.

24 10:06:18 Q.Thank you. I believe you have a presentation that you

25 10:06:20 wish to make.

1 10:06:21 A.Yes.

2 10:06:22 MR ROBB: Sorry, is it worth also affirming the contents

3 10:06:25 of the joint table?

4 10:06:27 MR HANKE: Yes.

5 10:06:35 MR ROBB: D130.

6 10:06:38 MR HANKE: D130, please, then the final page on that

7 10:06:42 which is 29.

8 10:06:45 MR ROBB: The signatures are on page 2.

9 10:06:50 MR HANKE: Sorry, thank you. D130, page 2, that's your

10 10:06:55 signature there?

11 10:06:55 A.It is.

12 10:06:56 Q.The contents of the relevant column of this remain

13 10:06:59 your true professional opinion?

14 10:07:02 A.They do, yes.

15 10:07:03 MR HANKE: Thank you.

16 10:07:12 PRESIDENT: Mr Hanke, would you be able to call up --

17 10:07:14 give the instructions for her presentation to be called

18 10:07:20 it up as well.

19 10:07:26 MR HANKE: I don't have a reference for that.

20 10:07:30 MR KIRYUSHIN: I haven't seen those slides in the

21 10:07:32 hearing bundle, so I'm not sure if they were inserted

22 10:07:35 after Friday or not.

23 10:07:43 MR HANKE: Lloyd Michaux have them, but I don't think

24 10:07:44 they're in the bundle as such.

25 10:07:46 PRESIDENT: Okay, if they can get put into the bundle,

1 10:07:48 but they're on the screen, so we can work with that.

2 10:07:52 MR HANKE: Yes.

3 10:07:55 PRESIDENT: Dr Meschi, if you would like to give your

4 10:07:57 presentation.

5 10:07:57 Presentation by DR MESCHI

6 10:08:38 WITNESS: Good morning. My name is Meloria Meschi and

7 10:08:42 I am an economist and an econometrician, with over 25

8 10:08:48 years of experience, academic and professional.

9 10:08:54 Econometrics is the application of statistics to

10 10:09:00 economics and that's my area of expertise.

11 10:09:04 This morning, what I plan to do is go through the

12 10:09:08 following five things. First, I will give you a summary

13 10:09:11 of my instructions and then discuss the fundamental

14 10:09:16 economic and statistical concepts that are relevant to

15 10:09:20 my opinions, and the inflation indices in this dispute,

16 10:09:26 followed by the indexation approaches that have been

17 10:09:28 taken by the experts, and finally, just a few seconds,

18 10:09:34 the loss assessments of the figures.

19 10:09:38 My instructions are here. In summary, this is the

20 10:09:43 summary of my instructions, I am instructed to provide

21 10:09:48 my opinion from an economic and statistical perspective

22 10:09:53 on the appropriate indexation approach from

23 10:09:56 transitioning between successive COLI indices.

24 10:10:00 Second, to review and comment on Ms Harfouche's

25 10:10:05 reports and her preferred going forward approach.

1 10:10:10 To assume that the parties' rationale in including
2 10:10:13 the indexation clause was to adjust payments for true
3 10:10:16 inflation.
4 10:10:17 And finally, to assume that this tribunal has
5 10:10:21 discretion to consider any relevant factors when
6 10:10:27 determining the current dispute, including the accuracy
7 10:10:30 and bias of COLI 1999.
8 10:10:35 First of all, the theory and practice of statistics,
9 10:10:42 of measuring inflation, is a specialist topic and there
10 10:10:45 are some fundamental concepts that in my opinion, are
11 10:10:49 quite intuitive and are very important to this dispute.
12 10:10:53 Section 3 of my first report aims to provide an
13 10:10:57 overview of those concepts. I will remind you of the
14 10:11:03 most important ones in the next few slides.
15 10:11:07 It is very important that I make myself clear, so if
16 10:11:12 I don't, please ask me questions.
17 10:11:25 First of all, what is inflation? So inflation is
18 10:11:27 the rate of change of prices over time. It is
19 10:11:33 impractical and outrageously expensive to measure the
20 10:11:37 price of every single good and service in the economy,
21 10:11:40 and inflation is therefore unknown and must be estimated
22 10:11:47 using priced indices.
23 10:11:50 From an economic perspective, it is obvious that one
24 10:11:54 wants to measure true inflation, and accuracy and bias
25 10:11:57 are actually related to this. They are statistical

1 10:12:02 properties of price indices.

2 10:12:06 In general, they are statistical properties of all

3 10:12:11 statistical estimators, and have particular meaning in

4 10:12:14 statistics. They refer to how close an estimate is on

5 10:12:18 average to the true value being measured, and an

6 10:12:22 estimate is inaccurate or biased if it systematically

7 10:12:26 deviates from that true value that one seeks to measure.

8 10:12:30 An estimate can be known to be inaccurate or biased

9 10:12:35 based on fundamental statistical and economic

10 10:12:38 considerations without having to quantify that bias. If

11 10:12:43 we want to, we can quantify it by comparing the known

12 10:12:46 bias estimate to the true value or, if that is unknown,

13 10:12:53 to an estimate that is known to be unbiased.

14 10:12:56 To give you an example, if I want to measure the

15 10:13:00 average height of people in a city, I can use a sample

16 10:13:04 of men to do this. But that measure will be biased in

17 10:13:09 absolute terms, which means fundamentally inaccurate.

18 10:13:13 I can take a sample of men and women and I can

19 10:13:16 compare the average height of a sample of men and women

20 10:13:22 to the original estimate that I obtained with the sample

21 10:13:25 of men, but regardless of the size of the bias, the

22 10:13:35 estimate which has been taken from the men shall never

23 10:13:39 be used because it's fundamentally inaccurate.

24 10:13:42 So that's the difference between measuring something

25 10:13:46 and having something that's fundamentally inaccurate.

- 1 10:13:49 So what is the best thing to do when it comes to
- 2 10:13:51 inflation indices? How do we go about this in practice?
- 3 10:13:56 There are national statistical offices that are
- 4 10:13:58 responsible for designing and maintaining accurate
- 5 10:14:02 measures of inflation and therefore accurate inflation
- 6 10:14:05 indices.
- 7 10:14:07 This requires good methodologies based on sound
- 8 10:14:12 economic and statistical theory that are jointly
- 9 10:14:15 provided in the CPI manual, CPI, consumer price index,
- 10 10:14:21 manual, by international organisation.
- 11 10:14:23 So the working group of the ILO of the UN, the IMF,
- 12 10:14:28 the World Bank, OECD and Eurostat. They are the ones
- 13 10:14:33 who jointly publish these CPI manuals.
- 14 10:14:41 We can think of CPIs as tools to track the cost of
- 15 10:14:46 a large shopping basket that represents what the typical
- 16 10:14:51 household buys. For example, rice and bread are items
- 17 10:14:56 in this basket.
- 18 10:14:57 Statistical agency, how do they go about this?
- 19 10:15:01 First of all, they use what are called expenditure
- 20 10:15:04 surveys that are carried out at regular intervals, the
- 21 10:15:08 best practice is at least every five years, to determine
- 22 10:15:13 what has to go into that basket, so the items in the
- 23 10:15:15 basket.
- 24 10:15:17 Each item in this basket has a weight and the weight
- 25 10:15:21 is based on its importance in the expenditure of the

1 10:15:26 typical household. For example, rice may have a weight
2 10:15:29 of 1 per cent in the basket, and the whole set of
3 10:15:34 weights has to sum to 100 per cent, which is the total
4 10:15:38 expenditure.
5 10:15:39 Once the weights are set, they remain fixed until
6 10:15:43 the next survey is carried out. Then the CPIs are
7 10:15:48 calculated in two stages. So we can think of this as
8 10:15:52 going from the bottom to the top of a pyramid.
9 10:15:56 In the first stage, which is the bottom of the
10 10:15:59 pyramid, price indices for each item, which are called
11 10:16:03 also elementary aggregates, are calculated in the
12 10:16:08 following way.
13 10:16:10 For each item, for example rice, the prices of many
14 10:16:13 brands, many varieties of rice are collected from
15 10:16:16 a large sample of vendors. These prices are then
16 10:16:20 averaged into an index for rice using a mathematical
17 10:16:26 formula without using any weights, because the weights
18 10:16:30 are not available at that level.
19 10:16:32 In the second stage, going towards the top, these
20 10:16:37 are averaged to obtain high-level indices. For example,
21 10:16:42 food and non-alcoholic beverages is one such groupings.
22 10:16:47 Then, ultimately, the CPI, which is the top of the
23 10:16:50 pyramid.
24 10:16:52 All these in the second stage, all these indices are
25 10:16:58 based on the basket weights for the items.

1 10:17:02 So CPIs that use arithmetic rather than geometric
2 10:17:08 averaging in the first stage are known to be biased.
3 10:17:12 Their use is strongly discouraged.
4 10:17:14 So what is the difference between these two
5 10:17:18 statistics? The arithmetic average of your height,
6 10:17:23 I just get it by summing your heights and dividing by
7 10:17:27 three.
8 10:17:28 The geometric average, I just multiply your heights
9 10:17:32 and I raise it to the power of one-third. That's the
10 10:17:36 difference.
11 10:17:39 This is how indices are constructed when the weights
12 10:17:43 are fixed.
13 10:17:44 But as time passes, consumption patterns change and
14 10:17:49 the index need updating. When a new survey is carried
15 10:17:53 out, the composition of the basket and the weights
16 10:17:56 change.
17 10:17:57 The new updated CPI is more accurate by default than
18 10:18:01 the old one, because its weights are updated. This
19 10:18:06 updating process is called re-basing. Because the new
20 10:18:09 index is not completely comparable with the old one,
21 10:18:13 statistical agencies link them, and linking two indices
22 10:18:18 is an arithmetic operation that can either bring the old
23 10:18:22 index to the level of the new one or vice versa.
24 10:18:27 When the old index is brought to the level of the
25 10:18:30 new one, it's called backwards linking. The other way

1 10:18:34 around is forward linking.

2 10:18:36 PRESIDENT: Sorry, Dr Meschi, can I just ask a question.

3 10:18:39 You said that the new updated CPI is more accurate by

4 10:18:43 default. Is it only more accurate in relation to the

5 10:18:49 contemporaneous expenditure, because it's reflecting the

6 10:18:55 changing spending patterns, but it wouldn't necessarily

7 10:18:59 be more accurate if you had looked, say, five years

8 10:19:02 previously?

9 10:19:06 WITNESS: Yes.

10 10:19:08 PRESIDENT: Thank you.

11 10:19:09 WITNESS: Yes, because they are what is called last pair

12 10:19:13 indices. So the base of the index is the base period.

13 10:19:18 So it's five years -- of the weight is five years prior.

14 10:19:21 They all are -- they all share is characteristic, the

15 10:19:26 price indices.

16 10:19:27 PRESIDENT: Thank you.

17 10:19:28 WITNESS: Sorry, the CPIs.

18 10:19:34 So what are the inflation indices in this dispute?

19 10:19:39 Before I apply this concept in general, before

20 10:19:45 I speak about the indices in this dispute, I wanted to

21 10:19:51 ask you if you had any other questions?

22 10:20:02 So what are the indices in this dispute? There are

23 10:20:08 several issues of COLI indices in this dispute.

24 10:20:14 COLI 1999, 2007, 2013 and 2018.

25 10:20:20 COLI 1999 is inaccurate due to fundamental

1 10:20:24 statistical and economic considerations and let me show
2 10:20:29 you these in relation to this table.
3 10:20:33 The first column is COLI 1999 and in the first
4 10:20:41 instance, it uses arithmetic averaging formulae for
5 10:20:45 elementary aggregates. As I said before, these are
6 10:20:48 known to produce bias.
7 10:20:50 Second, it uses a classification framework for goods
8 10:20:56 and services which is not in line with international
9 10:20:59 standards, because the way all these goods are
10 10:21:01 classified has changed over time and the international
11 10:21:08 classification that is used now is called COICOP, which
12 10:21:15 is a classification that was first published in the
13 10:21:17 first instance in 1999, but it was not used by
14 10:21:21 COLI 1999. It was used by all subsequent indices.
15 10:21:28 In the third instance, this index is never used by
16 10:21:33 GaStat, is never linked to any other index.
17 10:21:38 The other indices do not have these shortfalls, so
18 10:21:45 that these defects are only unique to COLI 1999.
19 10:21:53 Also, I point to this line here. The weight
20 10:21:59 reference for COLI 1999 is 1999, but the GaStat changed
21 10:22:06 the weights in 2007. The weights were obtained with the
22 10:22:11 survey that was based on a different classification.
23 10:22:14 But the weights were changed in 1997, because in 1997 --
24 10:22:19 in 2007, sorry, they changed and adopted this COICOP
25 10:22:26 classification in the survey and they recalculated the

1 10:22:30 weights for COLI 1999 based on that survey.

2 10:22:38 So what is the effect of all this? COLI 1999

3 10:22:44 materially diverges from its successor indices between

4 10:22:48 2007 and 2013. Here there are two charts that show

5 10:22:54 this. The chart on the left shows the indices as they

6 10:22:59 were published and from this chart it is very hard to

7 10:23:04 say much about them, because they all have different

8 10:23:08 base years. The only thing we can see by looking at

9 10:23:13 this chart is that these three indices are all parallel

10 10:23:18 and the fact that they are parallel means that they are

11 10:23:22 linked, so that the statistical agency actually linked

12 10:23:26 them.

13 10:23:35 The chart on the right, I have brought them all back

14 10:23:37 to the same base year, which is 2005. The reason I have

15 10:23:39 done that is simply because that is the year of

16 10:23:41 reference in the WPA, and it is immediately obvious, by

17 10:23:47 looking at this line, that the blue line, which is

18 10:23:51 COLI 1999, takes off, starting in essentially 2007, and

19 10:23:58 departs from all the other lines.

20 10:24:03 Ms Harfouche has a different take on this chart.

21 10:24:07 I disagree with the premise of that analysis. I can

22 10:24:11 explain this later in the proceedings.

23 10:24:14 What I notice from this chart is that the blue line

24 10:24:19 shoots off and goes in a different direction altogether.

25 10:24:25 PRESIDENT: Sorry, if we can just go back to that slide,

1 10:24:27 please.

2 10:24:31 WITNESS: Yes, I can't do that with the mouse.

3 10:24:32 (Pause)

4 10:24:37 PRESIDENT: Thank you. What I notice in figure 4-3 is

5 10:24:42 that in the first sort of 25, 26, 27, that COLI 1999 and

6 10:24:50 COLI 2013 appear to be broadly the same and then

7 10:24:55 suddenly there's a deviation.

8 10:24:57 WITNESS: Yes.

9 10:24:58 PRESIDENT: What changed, or can you explain why they

10 10:25:00 were the same and then there was a deviation?

11 10:25:04 WITNESS: While they look the same in this line, they

12 10:25:07 are different. You can see in the next slide. What

13 10:25:12 changed is that all those indices are backtracked, they

14 10:25:16 are backtracked with weight from 2007, and in 2007,

15 10:25:22 COLI 1999 also had a change in weights, but based on

16 10:25:28 a different classification.

17 10:25:29 So the original weights, the original basket to

18 10:25:33 which the weights had to be applied was a basket that

19 10:25:37 was created with a different classification. So the

20 10:25:41 weights that were applied came from a survey that was

21 10:25:44 based on a different classification.

22 10:25:47 Just to give you an idea, I mean, going back to the

23 10:25:50 rice, 1999 had two types of rice, parboiled and brown

24 10:25:55 I think it was. But 2007 had different types of rice.

25 10:25:58 So the weights for rice that were calculated from the

1 10:26:04 2007 expenditure survey must have been different from
2 10:26:10 the ones that were calculated originally.
3 10:26:14 The combination, in my opinion, of this with the
4 10:26:20 formula effect is what caused that line to shoot off.
5 10:26:28 PRESIDENT: Sorry, can I just check. You said then that
6 10:26:30 the weights must have been different. Have you checked?
7 10:26:34 Do you know they were different?
8 10:26:39 WITNESS: The weights from 1999 to 2007?
9 10:26:42 PRESIDENT: Yes, because you said 2007 had different
10 10:26:45 types of rice, so the weights for rice that were
11 10:26:48 calculated for the 2007 expenditure survey must have
12 10:26:51 been different from the ones calculated previously.
13 10:26:54 I just wanted to check whether, when you said "must
14 10:26:58 have been", that was your conclusion, or whether you
15 10:27:01 checked and the weights were different.
16 10:27:05 WITNESS: No, because the weights at the level of the
17 10:27:07 elementary aggregates were not -- are never provided.
18 10:27:12 The weights above are provided. So the only thing that
19 10:27:15 we can see is that the weights for the aggregates are
20 10:27:19 different, not for the elementary ones. And we could
21 10:27:26 never reconcile them. What I was told by GaStat is that
22 10:27:30 they changed the weights in the 1999 formulae based on
23 10:27:37 2007 survey.
24 10:27:39 PRESIDENT: Thank you.
25 10:27:40 WITNESS: Then they applied the 1999 formulae to these

1 10:27:44 changed weights.

2 10:27:46 PRESIDENT: Thank you.

3 10:27:58 WITNESS: I have now explained what is the difference

4 10:27:59 between the COLI indices and we turn to the indexation

5 10:28:07 approaches.

6 10:28:07 So in this slide, what these two charts show is

7 10:28:15 GaStat's view of the most accurate measure of inflation,

8 10:28:19 which is the green line, and COLI 1999, which is the

9 10:28:24 blue line.

10 10:28:26 Let's start with the chart on the left, and what

11 10:28:29 does this chart tell us. This chart simply shows the

12 10:28:34 price path, right? It shows the price of rice, the

13 10:28:46 price of a kilo of rice.

14 10:28:49 Another way that we can show the same information is

15 10:28:55 on the chart on the right. So think about one kilo of

16 10:29:02 rice. The green line on the left here is the price of

17 10:29:06 one kilo of rice over this period of time. The green

18 10:29:11 line on the right simply shows how many kilos of rice

19 10:29:18 you can buy at each price. So, because this is the most

20 10:29:24 accurate estimate of inflation, according to GaStat, at

21 10:29:29 each price on this green line, you can buy one kilo of

22 10:29:34 rice.

23 10:29:35 The blue line is COLI 1999 and so it shows that by

24 10:29:40 the time the index was retired, whoever was buying rice,

25 10:29:50 according to that index, was able to buy more than one

1 10:29:56 kilo of rice. And the area, the grey area here, simply

2 10:30:01 shows how many more kilos of rice, if you want, the

3 10:30:09 party being paid with this blue line was able to afford.

4 10:30:18 Now, COLI 1999 was discontinued after January 2013

5 10:30:26 and the parties now need an index to use from 2014

6 10:30:30 onwards. The question is how to proceed, given that

7 10:30:35 COLI 1999 was discontinued in 2014. There are two ways

8 10:30:41 of doing this.

9 10:30:44 So the first way is the approach that has been taken

10 10:30:48 by Ms Harfouche, which is simply to carry on from the

11 10:30:54 blue line onwards.

12 10:30:59 So the consequence of this is that it essentially

13 10:31:02 bakes in the inflation, the cumulative inflation under

14 10:31:07 COLI 1999 and propagates it forward all the way to the

15 10:31:12 end.

16 10:31:14 When you look at the right, you can see that the red

17 10:31:19 line is nowhere close to the green line and that there

18 10:31:23 is increasingly more rice with respect to what the most

19 10:31:30 accurate measure of inflation is that can be afforded

20 10:31:34 under this approach.

21 10:31:36 So what I have done, what I propose to do, is to

22 10:31:58 link COLI 1999 to COLI 2007 in 2007 which is the base

23 10:32:06 year for COLI 2007, the year in which the weights were

24 10:32:09 changed, and simply move on from there.

25 10:32:15 What this does is if you want it split -- in a way

1 10:32:20 it splits the overpayment, moving forward, in the sense

2 10:32:27 that with respect to the green line, there is more,

3 10:32:32 still more rice to be afforded, but what it does, it

4 10:32:36 just corrects and takes away the overpayment, the grey

5 10:32:42 area, and brings it back to the level of the most

6 10:32:47 accurate measure of inflation.

7 10:32:52 It is absolutely true that there is a correction

8 10:32:55 here, but what I have attempted to do is I have

9 10:33:01 attempted to essentially guarantee margins over the

10 10:33:08 year, the lifetime of the project, because -- well, the

11 10:33:18 project is not over yet, there are five more years.

12 10:33:24 Do you have any questions?

13 10:33:28 PRESIDENT: I have a question, actually, for counsel,

14 10:33:29 because we're now over 20 minutes, even with my

15 10:33:33 questions.

16 10:33:35 What do you want to do about that?

17 10:33:38 MR ROBB: My view is that any time that's being used by

18 10:33:42 Dr Meschi now comes off SWPC's time. As long as we're

19 10:33:48 going to wrap up in the next five minutes or so, I'm not

20 10:33:52 going to rain on her parade, as it were, but we hear

21 10:33:59 what you say.

22 10:34:01 MR HANKE: I agree that the consequence must be that it

23 10:34:03 comes from my client's time. I think we're quite close

24 10:34:06 to that time now stopping anyway. But I agree with what

25 10:34:11 Mr Robb says.

1 10:34:15 PRESIDENT: We're happy for you to carry on, then.

2 10:34:17 Thank you.

3 10:34:18 WITNESS: Okay. How do we link future indices. There

4 10:34:21 are two possible situations for new index publication.

5 10:34:26 So the first one is back-to-back, so one index

6 10:34:30 terminates and the next index starts, and it starts,

7 10:34:36 let's say COLI 2007 terminates in 2012, December, and

8 10:34:45 COLI 2013 starts in January 2013, published with a few

9 10:34:50 months of backwards estimate, and you link them

10 10:34:55 back-to-back at the last time in which the old index was

11 10:35:00 available and then move forward.

12 10:35:03 There is a possibility of a period of overlap, which

13 10:35:07 I had not considered, because the last two indices were

14 10:35:10 never published with an overlap, but if that happens, my

15 10:35:15 proposal is to link them at the first possible time. So

16 10:35:22 link the new index, the more accurate index, to the old

17 10:35:25 index as soon as the new index is published, if there is

18 10:35:31 overlap. Then apply the new charge rate at the first

19 10:35:38 possible opportunity afforded by the WPA, which is

20 10:35:42 generally the year after.

21 10:35:44 I would say that this is, for me, consistent with my

22 10:35:59 instructions, avoids prolonged use of a less accurate

23 10:36:03 index, and so this is my approach.

24 10:36:09 I don't think I need to show the damages

25 10:36:12 calculations, because they are agreed among the experts,

1 10:36:16 so I could stop here.

2 10:36:20 MR GHAFARI: One question. Where there's a period of

3 10:36:21 overlap, do you essentially disregard the last part of

4 10:36:27 the previous index?

5 10:36:34 WITNESS: When there is an overlap in the approach, yes,

6 10:36:37 but as I said, I have not considered that before,

7 10:36:42 because I didn't think that this would happen, but, yes.

8 10:36:48 MR GHAFARI: Thank you.

9 10:37:01 PRESIDENT: I had one question for you, Dr Meschi,

10 10:37:03 because you say in your reports and you've mentioned

11 10:37:05 today that you had the instructions to assume that the

12 10:37:10 parties' rationale was to adjust to reflect true

13 10:37:15 inflation.

14 10:37:16 Is there anything about your analysis and what

15 10:37:19 you've done that would be different if you hadn't had

16 10:37:22 that instruction?

17 10:37:27 WITNESS: No. The reason why is because as an

18 10:37:36 economist, to me, you know, two parties wouldn't enter

19 10:37:42 in a contract if they wanted to reflect something that's

20 10:37:48 not true.

21 10:37:54 PRESIDENT: But --

22 10:37:55 WITNESS: To me, true inflation and inflation are the

23 10:37:59 same thing.

24 10:38:00 PRESIDENT: But it could simply have been a commercial

25 10:38:02 deal which reflected all sorts of inputs into the deal.

1 10:38:06 But is that something that -- you're only looking at the
2 10:38:11 inflation aspects?
3 10:38:14 WITNESS: I only look at the inflation aspects, so I've
4 10:38:17 been asked -- yes, I'm sorry, what other inputs into the
5 10:38:25 deal?
6 10:38:26 PRESIDENT: For example, it would be possible -- sort of
7 10:38:32 talking in the hypothetical here -- that the parties
8 10:38:36 might have agreed a tariff rate that was lower and then
9 10:38:41 agreed an index which they knew was what you would say
10 10:38:44 was overly generous, because those two would offset each
11 10:38:47 other. There's a lot of parameters when you're entering
12 10:38:51 into a commercial deal, not just inflation.
13 10:38:54 WITNESS: But I think in order to do that, they would
14 10:38:58 have had to know that that index was overestimating
15 10:39:02 inflation. I don't think they could possibly know it at
16 10:39:06 that time when they entered the contract. It was not
17 10:39:11 known that COLI -- when the contract was signed, it was
18 10:39:16 not publicly known that that index had these problems
19 10:39:24 and it was fundamentally flawed.
20 10:39:27 PRESIDENT: For example, was it known that it used the
21 10:39:29 arithmetic method rather than geometric method?
22 10:39:33 WITNESS: I don't think it was known publicly, no, no.
23 10:39:38 PRESIDENT: Okay.
24 10:39:39 WITNESS: Because the first time that this appeared
25 10:39:42 publicly was after COLI 2007 was published.

1 10:39:48 So what actually happened was that SAMA, in 2012 in
2 10:40:00 their annual report, was still showing inflation
3 10:40:05 according to COLI 1999 and they always go three,
4 10:40:13 four years back. In 2013, the next iteration of their
5 10:40:16 annual report, which if I'm not wrong is the 49th, they
6 10:40:20 showed inflation according to COLI 2007 and went a few
7 10:40:24 years back.
8 10:40:26 If one compares those two inflation, that's where
9 10:40:29 you see there is a problem. That's the first time that
10 10:40:32 you can see that there is actually a problem, that the
11 10:40:37 measure is different, and quite a bit so.
12 10:40:41 PRESIDENT: Thank you. No further questions from me at
13 10:40:44 this point.
14 10:40:46 MR KIRYUSHIN: Just to follow up on something that you
15 10:40:49 said in response to the chair's question.
16 10:40:52 You said the inflation, that it wouldn't matter to
17 10:40:56 you -- I'm just reading from the transcript. That it
18 10:40:58 wouldn't matter -- your analysis wouldn't differ if your
19 10:41:02 instructions on the true inflation were not there. But
20 10:41:06 I had understood, even on your slides, you mentioned
21 10:41:09 that bias and accuracy are basically properties of the
22 10:41:13 indices, so you either have accuracy in terms of
23 10:41:16 a reflection of what we're calling true inflation, as
24 10:41:21 opposed to certainty of the index that you have. Is my
25 10:41:26 understanding correct?

1 10:41:29 WITNESS: Accuracy in ... So you either have accuracy in
2 10:41:37 the sense of the ...
3 10:41:45 The certainty regarding the index is the certainty
4 10:41:48 regarding the use of the index you mean? Which index
5 10:41:54 you're using, or?
6 10:41:56 MR KIRYUSHIN: The reference point. So the index is my
7 10:41:59 reference point.
8 10:42:01 WITNESS: Your reference point is the charge rate
9 10:42:03 established in 2005 and then you escalate it according
10 10:42:07 to an index that you agree to use.
11 10:42:10 MR KIRYUSHIN: Correct.
12 10:42:11 WITNESS: Now, if you are asking me if the agreement was
13 10:42:18 to actually use that index until the index was no longer
14 10:42:23 available, that is the close of the WPA, so you use that
15 10:42:28 index until it's no longer available, or the parties
16 10:42:34 agree otherwise, or I think it says that there is an
17 10:42:37 independent expert who needs to determine on a different
18 10:42:44 index or a different methodology.
19 10:42:47 I am not a lawyer, so I can't really interpret this
20 10:42:53 clause in legal terms, but from an economist's
21 10:42:57 perspective, when you use an inflation index, you are
22 10:43:01 trying to -- and you apply it to a charge rate, you're
23 10:43:07 doing this to protect your margins over a certain period
24 10:43:10 of time. One of the reasons why this is a popular way
25 10:43:16 of doing it is because it actually prevents perverse

1 10:43:25 incentives that could arise from other types of
2 10:43:30 contracts.
3 10:43:31 This is, for example, the reason why, if you think
4 10:43:34 about the regulatory regimes in the UK, they are all
5 10:43:37 based on this type of formula. There's a ratchet
6 10:43:41 formula that lasts for five years, a charge rate is
7 10:43:44 agreed at the beginning between the regulator and the
8 10:43:47 regulated company, and then every year, it is increased
9 10:43:50 by a price index minus a factor that represents
10 10:43:57 efficiency, and that is in order to have the system as
11 10:44:02 transparent as possible and avoid continuously having to
12 10:44:06 go back and review this charge rate that is very time
13 10:44:10 consuming, expensive and litigious.
14 10:44:15 MR KIRYUSHIN: But again, just to -- perhaps I'm missing
15 10:44:19 it here, but you're saying it wouldn't matter whether or
16 10:44:23 not I was asked, you as an expert were asked, whether to
17 10:44:27 reflect true inflation or whether I was asked not to
18 10:44:29 reflect true inflation. It wouldn't change the outcomes
19 10:44:32 of your report?
20 10:44:38 WITNESS: It wouldn't, because from an economic
21 10:44:39 perspective, inflation -- you're not trying to measure
22 10:44:44 something that is false and in a contract, if you agree
23 10:44:50 to measure inflation, it must be through inflation --
24 10:44:53 the index, it must be that you are trying to reflect
25 10:45:02 that. What else would you reflect?

1 10:45:06 I don't think any party will agree not to reflect
2 10:45:09 true inflation. If an index doesn't reflect true
3 10:45:13 inflation, there are perverse incentives, it becomes
4 10:45:17 arbitrary, and if that is the case, there is always one
5 10:45:20 party that wins and one party that loses.
6 10:45:25 MR KIRYUSHIN: Thank you. That's much clearer.
7 10:45:30 PRESIDENT: No further questions from the tribunal at
8 10:45:32 this stage.
9 10:45:35 Mr Hanke, anything further from you?
10 10:45:37 MR HANKE: Nothing further from me.
11 10:45:38 Cross-examination by MR ROBB
12 10:45:40 MR ROBB: Thank you very much.
13 10:45:45 Dr Meschi, is that the correct pronunciation of your
14 10:45:47 name? I just want to make sure: Dr Meschi?
15 10:45:49 A.Yeah, I think for people who speak English, to
16 10:45:52 pronounce my surname "Mes-ky" is too difficult, so
17 10:45:56 I always say "Mesh-y". I myself say "Mesh-y" unless I
18 10:45:59 am speaking to Italians.
19 10:46:01 Q.Okay, I will go with "Mesh-y", then?
20 10:46:04 A.Yeah, I think it's easier.
21 10:46:05 Q.If that's okay.
22 10:46:07 So as a preliminary point, obviously you know I'm
23 10:46:10 here to ask you some questions. My aim is asking the
24 10:46:14 questions is to test your evidence, but the key part of
25 10:46:17 that is that you understand the questions, so that when

1 10:46:20 you give an answer, you know what you're answering.

2 10:46:24 I will endeavour to make my questions clear. Obviously

3 10:46:28 if there comes a time, and I'm sure there will do, when

4 10:46:31 my question is not sufficiently clear, please ensure

5 10:46:33 that you say "I don't understand" and I will attempt to

6 10:46:37 rephrase it to make it clearer, because I don't want to

7 10:46:40 try and trick you, I just want to make sure that I'm

8 10:46:42 getting your clear answers.

9 10:46:46 So moving on now, can I just ask you, please, when

10 10:46:49 were you first retained in relation to this dispute?

11 10:46:53 A.When I was first retained?

12 10:46:55 Q.By SWPC in relation to this dispute?

13 10:47:00 A.It was -- the exact date I do not remember, but it was

14 10:47:03 about -- it was during the pandemic, it must have been

15 10:47:08 about June 2020. I can't remember the exact date. But

16 10:47:14 I think it must have been that date.

17 10:47:19 Q.Have you been retained by SWPC in relation to other

18 10:47:22 disputes?

19 10:47:23 A.No. In the past? No. I am retained in relation to

20 10:47:29 other disputes, the SWEC.

21 10:47:32 Q.In relation to related disputes, how many other

22 10:47:35 disputes are you retained in by SWPC for?

23 10:47:39 A.Three.

24 10:47:40 Q.Including this one?

25 10:47:41 A.Yes.

1 10:47:50 Q.I just want to pick up now by looking at your
2 10:47:52 instructions and the meaning of true inflation. Can we
3 10:47:58 start, please, by having paragraph 1.30 of your first
4 10:48:02 report, which is D1-14.
5 10:48:37 Sorry, it's D1, page 14, paragraph 1.30 at the
6 10:48:47 bottom.
7 10:48:48 PRESIDENT: Dr Meschi, it will come up on the screens
8 10:48:50 either side of you as well.
9 10:48:52 A.Right.
10 10:48:53 MR ROBB: Do you have that there?
11 10:48:54 A.So my first report, this is which -- this is not the
12 10:48:59 first report in this arbitration.
13 10:49:02 Q.Yes.
14 10:49:03 A.It is? Oh. Okay.
15 10:49:16 This is the second part. Okay. Okay.
16 10:49:25 Q.So here you say:
17 10:49:27 "In preparing my report, I am instructed to assume
18 10:49:29 that the Parties' rationale in including the indexation
19 10:49:30 clause was to adjust payments for 'true' inflation ..."
20 10:49:34 Do you see that?
21 10:49:36 A.Yes.
22 10:49:41 Q.Then perhaps we could go through to page D1-23, which
23 10:49:48 is within the same report, paragraph 2.15(3). Do you
24 10:50:01 have that?
25 10:50:05 Then you can see there what you've headed this

1 10:50:08 subparagraph:

2 10:50:08 "Ms Harfouche's approach to indexation is not

3 10:50:11 consistent with the Parties' rationale for the inclusion

4 10:50:13 of the indexation clause in the WPA."

5 10:50:15 Do you see that?

6 10:50:25 A. So this is which report?

7 10:50:27 Q. This is your first report, we're in the same document.

8 10:50:29 A. Okay.

9 10:50:31 Q. You can see there you have said one of the reasons --

10 10:50:33 this is one of your reasons for disagreeing with

11 10:50:35 Ms Harfouche's approach, is that it's not consistent

12 10:50:38 with what you're instructed is the parties' rationale

13 10:50:42 for inclusion of the indexation clause in the WPA. Do

14 10:50:45 you see that?

15 10:50:46 A. Yes.

16 10:50:50 Q. So you don't say in your reports what is meant by or

17 10:50:57 what you understand by true inflation, but you do say

18 10:51:00 that in the joint statement at item 4. If we can have

19 10:51:04 that up. It's D130, page 4.

20 10:51:22 Do you have that?

21 10:51:24 A. Do you want me to read the first paragraph?

22 10:51:26 Q. No, I just want to make sure we've got the right bit

23 10:51:30 and you can see there.

24 10:51:31 Here you say -- and this is something you said

25 10:51:34 earlier in your presentation -- that it would be

- 1 10:51:36 prohibitively expensive and impractical to calculate
- 2 10:51:39 true inflation; is that correct?
- 3 10:51:43 A.Where is it? Is it on the --
- 4 10:51:47 Q.Yes, sorry, if you go down, if you scroll down a bit
- 5 10:51:50 further, it's the value of -- the paragraph that begins:
- 6 10:51:55 "The value of 'true' inflation ..."
- 7 10:51:57 A.So:
- 8 10:51:57 "The value of 'true' inflation is not known with
- 9 10:52:00 certainty. This is because it would be impractical and
- 10 10:52:02 prohibitively expensive to track the price of every good
- 11 10:52:06 and service ..."
- 12 10:52:08 Q.Yes. So effectively what you're saying here is in the
- 13 10:52:13 real world, nobody knows what true inflation is?
- 14 10:52:22 A.Essentially, you cannot measure it.
- 15 10:52:27 Q.Yes.
- 16 10:52:27 A.You cannot measure it. Your best measure is the price
- 17 10:52:32 index. I mean, essentially, everything that has to do
- 18 10:52:37 with the population is not known in the real world. If
- 19 10:52:43 it was known, statistics wouldn't exist.
- 20 10:52:46 Q.Okay, but I'm just trying to clarify with you that you
- 21 10:52:50 accept that in the real world, no one can know what true
- 22 10:52:54 inflation is at any point in time?
- 23 10:52:56 A.No one can know, they can only measure it in an
- 24 10:53:01 unbiased way or in a biased way.
- 25 10:53:04 Q.If you've been instructed to assume that the parties'

1 10:53:06 rationale was to track true inflation, do you accept

2 10:53:11 that that means, on that instruction, that the parties

3 10:53:15 intended to do something which was simply not possible?

4 10:53:21 A.No, because I consider true inflation as inflation.

5 10:53:25 When I say inflation, to me it means something very

6 10:53:32 specific, actually. Because as a statistician, as an

7 10:53:38 economist, right, I know that you can't have a measure

8 10:53:41 of every price. So what you are trying to measure, you

9 10:53:45 are trying to get as close as possible to that measure

10 10:53:47 and that is what statistics does. What you are trying

11 10:53:52 to do to use the closest possible measure to that and

12 10:53:56 not to choose a measure that you know is biased. Why

13 10:54:03 would you want to do that?

14 10:54:04 Q.But your instruction was to assume the parties

15 10:54:07 intended to track true inflation; is that correct?

16 10:54:10 A.Yes.

17 10:54:11 Q.Right. And you accept that it's not possible to track

18 10:54:14 true inflation; is that correct?

19 10:54:16 A.No, I don't accept that. You can estimate true

20 10:54:19 inflation. I mean, that's what a statistician does.

21 10:54:26 Q.You say that you track true inflation, or you equate

22 10:54:33 true inflation in your reports with the next accurate

23 10:54:42 index; is that correct?

24 10:54:46 A.What you cannot measure is every single price that

25 10:54:51 exists. What you can do is you can track true inflation

1 10:54:57 via an appropriate estimator. The same way as we track

2 10:55:05 just about everything else. You can't also measure GDP,

3 10:55:11 right, by tracking every single thing that is produced,

4 10:55:17 but you can estimate GDP and produce an estimate and

5 10:55:22 that is what statistical offices do. They produce

6 10:55:25 estimates of underlying population quantities that are

7 10:55:33 the true quantities.

8 10:55:39 Q.Is it your view that you don't need a true value, you

9 10:55:41 just need a more accurate estimator; is that correct?

10 10:55:43 A.You need a best estimate, yes.

11 10:55:46 Q.I see. So you have reinterpreted the instructions as

12 10:55:51 meaning that the parties intended to use the next best

13 10:55:56 estimator; is that correct?

14 10:55:58 A.The best measure that there was of the underlying

15 10:56:01 inflation, which for all intents and purposes is true

16 10:56:05 inflation, because it's the best measure that there is.

17 10:56:10 Q.I think you said that during the period when COLI 1999

18 10:56:14 was being used, there was no basis for saying that it

19 10:56:18 was inaccurate; is that correct?

20 10:56:19 A.Yes, yes.

21 10:56:22 Q.I think you refer to the fact that when SAMA started

22 10:56:28 publishing reports in 2013, it was possible to see that

23 10:56:32 there was a divergence between COLI 1999 and COLI 2007;

24 10:56:37 is that correct?

25 10:56:39 A.Mm-hmm.

1 10:56:39 Q.But that didn't tell you that -- it just told you that
2 10:56:42 there was a difference in estimate, it didn't tell you
3 10:56:44 why there was a difference in estimate, did it?
4 10:56:48 A.Me? I wasn't there in 2013. But anybody who would
5 10:56:54 have looked at those -- let's say that I'm somebody who
6 10:56:58 has to pay and is paying according to a certain formula,
7 10:57:06 right? And all of a sudden, I realise, okay, in the
8 10:57:09 last two years, I've paid this much, this proportion.
9 10:57:13 This year, I'm noticing that it was actually quite
10 10:57:18 different. What is going on here? Let's try to see if
11 10:57:21 we can rectify this situation.
12 10:57:24 Q.What I'm trying to say is that you could have seen
13 10:57:26 there was a difference in the numbers being produced by
14 10:57:29 the two indices, but it didn't tell you the reason for
15 10:57:32 the difference, did it?
16 10:57:34 A.No, I would have asked the statistical office. If
17 10:57:37 I had been asked at that time, what is going on, give us
18 10:57:40 your opinion, the first thing I would have done is what
19 10:57:43 I did in 2020, try to set up a meeting with GaStat. At
20 10:57:47 that time it wasn't GaStat, it was CDSI, I think.
21 10:57:52 Q.If we go back to paragraph 1.30 of your report, your
22 10:57:54 first report, D1, page 14.
23 10:58:01 A.This is my first report?
24 10:58:02 Q.Yes. We can see that as part of -- the reason why you
25 10:58:26 were instructed about the parties' rationale was

1 10:58:29 something that SEPCO had said in its previous
2 10:58:30 arbitration. Do you see that? Then you footnote 43 and
3 10:58:35 44 on page 15, if we just scroll down so we can make
4 10:58:38 sure we get it. We see the references are to the SOC in
5 10:58:45 the previous arbitration at paragraph 3.6 and
6 10:58:48 paragraph 3.2. Do you see that?
7 10:58:49 A.Yes.
8 10:58:50 Q.If we could bring up paragraph 3.2, which is at B90,
9 10:58:57 page 12, please.
10 10:59:13 So we can see 3.2:
11 10:59:15 "It was never the intention of the Parties that the
12 10:59:17 local portions of the Charge Rates, which rely on
13 10:59:19 indexation, would be adjusted in a manner inconsistent
14 10:59:20 with real movements in prices (ie inflation) in the
15 10:59:24 KSA."
16 10:59:24 Do you see that?
17 10:59:25 A.Mm-hmm.
18 10:59:26 Q.Then 3.6, I just want to focus on the last part of
19 10:59:30 that paragraph:
20 10:59:32 "The Parties put this Rationale into effect in the
21 10:59:34 Agreement through periodic adjustments to the Charge
22 10:59:36 Rates for inflation as measured by movements in agreed
23 10:59:39 USA and KSA price indices."
24 10:59:41 Do you see that?
25 10:59:43 A.Yes.

1 10:59:44 Q.So if we go back to your paragraph 1.30.

2 10:59:50 A.Sorry, can I read that again?

3 10:59:54 Q.Yes.

4 10:59:55 A.Is it in ... (Pause)

5 11:00:07 Okay.

6 11:00:11 Q.If we go back to your report, paragraph 1.30, where

7 11:00:14 you quote from those paragraphs. Do you see? If we can

8 11:00:18 just scroll down a bit so we can get the second part of

9 11:00:21 paragraph 1.30. You see that?

10 11:00:27 But you didn't quote, you didn't refer in

11 11:00:29 paragraph 1.30 to the sentence which said in the

12 11:00:31 statement of claim:

13 11:00:31 "The Parties put this Rationale into effect in the

14 11:00:34 Agreement through periodic adjustments to the Charge

15 11:00:36 Rates for inflation as measured by movements in agreed

16 11:00:39 USA and KSA price indices."

17 11:00:41 Did you?

18 11:00:42 A.This is my instruction.

19 11:00:46 Q.I see. So you didn't go and read this yourself?

20 11:00:52 A.Sorry?

21 11:00:53 Q.You didn't go and read the statement of claim

22 11:00:55 yourself, did you? Did you --

23 11:00:57 A.I read the statement of claim, but this is, I mean,

24 11:01:00 a long time ago, but this is what my instruction says.

25 11:01:08 And didn't they track inflation following the

1 11:01:12 inflation indices in the KSA? It was -- that was

2 11:01:19 COLI 1999 when they agreed to use it.

3 11:01:22 Q.Yes. You're saying you just copied and pasted the

4 11:01:26 instruction given to you by SWPC into your report?

5 11:01:30 A.It was given to me by DLA, not SWPC.

6 11:01:34 Q.When I say SWPC in this case, I mean DLA. So you just

7 11:01:38 copied and pasted the bit from DLA's instruction into

8 11:01:40 your report, did you?

9 11:01:41 A.That's my instruction, yes.

10 11:01:56 Q.If we just look now at paragraph 5.24 of your first

11 11:02:01 report, D1-73.

12 11:02:31 Look towards the end of that. You say at the end,

13 11:02:38 very final sentence:

14 11:02:39 "Put simply, SWPC overpaid SEPCO for many years."

15 11:02:43 Do you see that? And in fact, you're making that

16 11:02:53 statement because of what came out from

17 11:02:57 GaStat's November 2020 view; is that correct?

18 11:03:06 A.The GaStat 2020 view provided me with an index of what

19 11:03:17 they considered to be the most accurate measure of

20 11:03:24 inflation, and they provided it to me in 2020, because

21 11:03:28 that is when I asked. But already -- had I asked them

22 11:03:39 in 2014, I would have probably received the same answer,

23 11:03:47 because they didn't link to indices, so they would have

24 11:03:50 given me COLI 2007.

25 11:03:54 Q.But whether it happened in 2014 or 2020, when you're

1 11:03:58 saying "SWPC overpaid SEPCO for many years" --

2 11:04:03 A.Yes.

3 11:04:03 Q.-- that's on the basis of applying a non-contractual

4 11:04:06 index; is that correct?

5 11:04:10 A.No, it is a windfall essentially. I didn't say that

6 11:04:18 they shouldn't have or -- that's just an estimate of

7 11:04:21 a windfall that was caused by the application of an

8 11:04:25 index that overstated inflation.

9 11:04:31 Q.But to say that someone overpaid means, suggests that

10 11:04:35 they should have been paying a lesser amount; do you

11 11:04:38 agree?

12 11:04:40 A.They should have -- if they had used the most accurate

13 11:04:44 measure of inflation, which was not available at that

14 11:04:48 time, therefore they couldn't have used it, they would

15 11:04:53 have paid less. So it's an unintended windfall.

16 11:05:01 Yes, it's an unintended windfall. It's an

17 11:05:06 overpayment --

18 11:05:07 Q.Well, it depends what you mean by intended. Do you

19 11:05:09 agree that COLI 1999 was in fact specified in the

20 11:05:12 contract?

21 11:05:13 A.Of course it was specified. It was the only index

22 11:05:15 available. They couldn't have done anything else.

23 11:05:18 Q.So your statement, that there has been overpayment for

24 11:05:23 many years, depends on applying an index that wasn't

25 11:05:27 available at the time; is that correct?

- 1 11:05:32 A.Yes, yes, it's an estimate.
- 2 11:05:34 Q.And an index that wasn't included in the contract?
- 3 11:05:38 A.Yes, in fact, nobody is asking anybody for any money
- 4 11:05:41 back. That's just to give an idea of what the windfall
- 5 11:05:52 was from using that index.
- 6 11:05:57 Q.I'm very happy for you to keep on using words like
- 7 11:05:59 windfall, because it explains your attitude. So your
- 8 11:06:04 attitude is that and your understanding of the process
- 9 11:06:07 is that SEPCO has received some kind of undeserved
- 10 11:06:15 benefit and your job is to try and put that right; is
- 11 11:06:18 that correct?
- 12 11:06:18 A.No, not at all. I have been asked for my opinion from
- 13 11:06:23 an economical statistical perspective of what is, would
- 14 11:06:28 be, the appropriate way of linking these indices. So
- 15 11:06:35 I have gone and spoken to the statistical agency and
- 16 11:06:39 I made up my mind as to what this implies. From that
- 17 11:06:45 perspective, this is what is implies. So --
- 18 11:06:50 Q.Okay, but you've said, you've used words like
- 19 11:06:54 overpayment, you've used words like windfall?
- 20 11:06:57 A.Yes.
- 21 11:06:58 Q.And your view, I think, is that SEPCO obtained
- 22 11:07:03 a benefit under the contract which it really shouldn't
- 23 11:07:07 have had and therefore, when you're assessing the
- 24 11:07:11 appropriate way of linking, one factor to take into
- 25 11:07:14 account is how to undo that benefit; is that correct?

1 11:07:17 A.No, they did not enjoy a benefit that they shouldn't
2 11:07:23 have had. Right? That was a windfall and it was
3 11:07:26 unintended and that is what it was, but then moving
4 11:07:31 forward, the question is, does it have to propagate
5 11:07:36 forever or not? My opinion is that because it is based
6 11:07:40 on an index that is fundamentally flawed, it should not.
7 11:07:48 But then, you know, this is my opinion of an economist.
8 11:07:51 I'm not a lawyer. From the point of view of an
9 11:07:55 economist, that's the way it is.
10 11:07:59 Q.We will investigate the way in which you approach it
11 11:08:01 in due course.
12 11:08:02 I just want to touch on one more point on the idea
13 11:08:07 of true inflation, because I think it's very important
14 11:08:09 that we distinguish true inflation from the idea of the
15 11:08:15 actual inflation experienced by any particular
16 11:08:18 individual. Do you agree those are two very different
17 11:08:22 concepts?
18 11:08:23 A.Yes.
19 11:08:27 Q.Measuring true inflation is not the same as trying to
20 11:08:31 measure the actual inflation experienced by any
21 11:08:34 individual?
22 11:08:37 A.It's not the same thing and it's not what -- the
23 11:08:42 parties agreed to measure, to escalate the charge rate,
24 11:08:49 according to the measure of general price inflation in
25 11:08:52 Saudi Arabia, not to measure according to any other

1 11:09:01 measure or their individual experience of inflation.

2 11:09:07 The inflation that is experienced by a single

3 11:09:12 individual, a single individual, cannot be estimated.

4 11:09:15 That's why they estimate the inflation experienced by

5 11:09:21 the typical household, because this is all done on

6 11:09:26 average. And also bias is an average concept.

7 11:09:45 Q.I'm going to suggest to you that SWPC's instruction to

8 11:09:48 you about the parties' intentions in regard to true

9 11:09:53 inflation is a fundamental part of your opinion, isn't

10 11:09:56 it?

11 11:09:59 A.Can you repeat the question, please?

12 11:10:01 Q.SWPC's instruction to you about the parties'

13 11:10:03 intentions with respect to true inflation is

14 11:10:06 a fundamental part of your opinion, isn't it?

15 11:10:13 A.I took into account that instruction in forming my

16 11:10:17 opinion, but it is not a fundamental part of it.

17 11:10:24 I think it's a fundamental part of it from what concerns

18 11:10:26 the law, but for what concerns the economics, and the

19 11:10:30 statistics, it is not.

20 11:10:35 Q.I see. So if we could perhaps pick up -- it's

21 11:10:39 throughout certainly your first report. Paragraph 5.22,

22 11:10:47 D1, page 72. Do you have that?

23 11:11:00 A.5.22?

24 11:11:02 Q.5.22, so again you're referring to the parties'

25 11:11:04 rationale?

1 11:11:15 A.This is what Ms Harfouche says.

2 11:11:18 Q.No, you are saying:

3 11:11:20 "I am instructed to assume that the Parties'

4 11:11:21 rationale for including the indexation clause in the WPA

5 11:11:24 was to adjust payments for 'true' inflation."

6 11:11:26 Yes?

7 11:11:27 A.Mm-hmm.

8 11:11:28 Q.Then you use that to explain something that

9 11:11:32 Ms Harfouche has said. If we go to paragraph 6.3 in the

10 11:11:43 same report, which is page D1-79. 6.3(1), you again

11 11:11:56 refer to parties' rationale as instructed to you by ...

12 11:12:10 A.Yes.

13 11:12:12 Q.We can even go back to paragraph 5.30, which is at

14 11:12:18 D1-74 to 75. Again, if we scroll down to the second

15 11:12:32 half of the paragraph:

16 11:12:33 "In my opinion, this is clearly inconsistent with

17 11:12:36 the Parties' rationale as stated by..."

18 11:12:40 I think that should be -- I think that's supposed to

19 11:12:43 be "by SWPC". Is that a typographical error?

20 11:12:52 A.SEPCO. It's not SWPC.

21 11:12:54 Q.Sorry?

22 11:12:59 PRESIDENT: You were very quiet, then, Dr Meschi.

23 11:13:03 I didn't hear?

24 11:13:03 A.Sorry?

25 11:13:05 MR ROBB: Sorry, it should be the first ...

1 11:13:09 A.I don't understand the question.

2 11:13:11 PRESIDENT: No, I was just asking you to speak up.

3 11:13:12 A.Sorry.

4 11:13:13 PRESIDENT: Could you also --

5 11:13:15 A.Maybe I should drink.

6 11:13:16 PRESIDENT: Can you also make sure that you say "yes" or

7 11:13:18 "no", because a couple of times you have sort of said

8 11:13:20 "mm-hmm", which comes out on the transcript and it's not

9 11:13:23 clear whether you were agreeing or not.

10 11:13:25 A.Sorry.

11 11:13:26 PRESIDENT: That's quite all right.

12 11:13:36 MR ROBB: So here you've referred to the parties'

13 11:13:40 rationale and you said "as stated by SEPCO."

14 11:13:44 A.Can I actually read the whole thing, because

15 11:13:46 I don't --

16 11:13:47 Q.Of course.

17 11:13:47 A.I don't know what this refers to. Maybe I should --

18 11:13:53 is this my first report?

19 11:13:56 Q.Yes. You can see the date on the top right hand

20 11:13:59 corner of 4 July.

21 11:14:01 A.Okay. So 5.30. Let me just go there and read it on

22 11:14:09 this. (Pause)

23 11:15:23 Yes, okay. I finally understand. It's maintaining

24 11:15:30 the margins. This is what it is referring to.

25 11:15:36 Q.So is the reference to SEPCO a typographical error and

1 11:15:41 should that be SWPC, or do you mean to refer to SEPCO?

2 11:15:47 A.I think it's what was written in the statement of

3 11:15:50 claim.

4 11:15:51 Q.I see, so this is your own assessment of what SEPCO is

5 11:15:56 saying in the statement of claim?

6 11:15:58 A.There was one sentence in the statement of claim.

7 11:16:02 I mean, I think it's going to take too long for me to go

8 11:16:06 and read everything back. I have to figure out where

9 11:16:10 this is coming from.

10 11:16:13 Q.Sorry, when I asked you earlier on about your

11 11:16:17 instruction at paragraph 1.30 and the references to the

12 11:16:21 SEPCO statement of claim, you told me that you had just

13 11:16:25 effectively copied and pasted whatever DLA had told you

14 11:16:28 to put into your instructions; is that correct?

15 11:16:35 A.This was my instruction. I didn't copy and paste. It

16 11:16:38 was the instruction.

17 11:16:40 Q.Yes, sorry. I'm trying to -- copy and pasting is

18 11:16:43 not -- I'm not trying to criticise you, because that's

19 11:16:46 what an expert would do. If an expert is given an

20 11:16:49 instruction, you'd take that, copy and paste means you

21 11:16:51 copy it out of the document that DLA sent you and put it

22 11:16:54 into your report in a completely unaltered fashion; is

23 11:16:57 that correct?

24 11:16:58 A.In a completely?

25 11:16:59 Q.Unaltered fashion?

1 11:17:01 A.Yes.

2 11:17:01 Q.Yes, exactly. So when I asked you earlier on about

3 11:17:06 this instruction, my understanding of your answer was

4 11:17:09 that you hadn't gone back to read the statement of claim

5 11:17:13 yourself?

6 11:17:17 A.I did read the statement of claim, but I read it

7 11:17:20 a long time ago. It was the statement of claim in the

8 11:17:28 first arbitration and my instruction stayed the same for

9 11:17:34 four years. I can't remember everything from four years

10 11:17:36 ago.

11 11:18:06 Q.If we could go to paragraph 5.35, which is at D1-76.

12 11:18:26 Do you have that?

13 11:18:28 A.Mm-hmm.

14 11:18:32 Q.This is again part of your explanation about why your

15 11:18:37 approach is to be preferred to that of SEPCO; is that

16 11:18:40 correct?

17 11:18:42 A.Yes.

18 11:18:45 Q.The first point is that you say that your position is

19 11:18:51 more balanced, because SWPC is "not seeking a 'true up'

20 11:18:57 for historic overpayments". Can I understand what you

21 11:19:00 mean by that, which is that SWPC is not seeking to

22 11:19:05 recover payments it made between 2009 and 2013, when

23 11:19:14 COLI 1999 was the index being used?

24 11:19:18 A.It's more balanced for a simple reason. The payments

25 11:19:21 made up to 2013, as far as I'm concerned, are the sunk

1 11:19:26 cost, right? So it's something that happened and cannot
2 11:19:29 be modified in any way, shape or form, because they were
3 11:19:34 contractually agreed.
4 11:19:37 It's more balanced because these payments that were
5 11:19:40 made were linked to an index that was wrong, and if you
6 11:19:47 actually continue that linking and continue along that
7 11:19:52 inflation path, you carry on making these -- you bake
8 11:20:01 those payments into the future, and it is when you are
9 11:20:05 looking at the future that you can modify the situation.
10 11:20:10 The position is more balanced, because essentially
11 11:20:13 you are rectifying something that had gone wrong.
12 11:20:18 Q.Sorry. That's not actually what you're saying here.
13 11:20:21 You're referring -- I just want to check what you mean
14 11:20:23 by "seeking a 'true up' for historic overpayments".
15 11:20:28 I had understood that what you're saying there is
16 11:20:33 that you think the position is more balanced because
17 11:20:37 SWPC is not seeking to recover so-called overpayments
18 11:20:42 between 2009 and 2013; is that correct?
19 11:20:49 A.It provides certainty through the application of the
20 11:20:54 contract as it was up to the end of that index, when the
21 11:20:59 COLI 1999 stopped being produced, so they are --
22 11:21:07 Q.I'm not actually getting an answer to the question,
23 11:21:09 I don't think.
24 11:21:09 Just focusing on the words used, "historic
25 11:21:13 overpayments", yes?

1 11:21:16 A.Yes.

2 11:21:16 Q.Can I just check that what you mean there is payments

3 11:21:23 made by SWPC between 2009 and 2013, and the overpayment

4 11:21:31 bit is the difference between what they actually paid

5 11:21:34 and what they would have paid if GaStat's November 2020

6 11:21:40 view had been in the contract?

7 11:21:44 A.Yes. Yes, yes, it's what you said, we're going to

8 11:21:49 call it windfall.

9 11:21:53 Q.No, I know you call it a windfall.

10 11:21:59 A.Yes, of course.

11 11:21:59 Q.I know you're not a lawyer, but you do understand,

12 11:22:02 don't you, that there have been no bases at all for SWPC

13 11:22:05 to try and --

14 11:22:06 A.Of course.

15 11:22:07 Q.-- recover those payments?

16 11:22:08 A.It's a sunk cost, it's a sunk cost to the unlucky

17 11:22:12 party. I mean, it could have been the other way around.

18 11:22:16 Q.So what you're trying to do here with your approach is

19 11:22:22 to effectively recompense SWPC for those what you call

20 11:22:28 overpayments by reducing their payments in the future?

21 11:22:34 A.No. Let's restart the clock and apply what I know is

22 11:22:43 an index that is not fundamentally inaccurate and biased

23 11:22:53 and that has never been linked or used by GaStat ever

24 11:22:59 since.

25 11:23:03 Q>Your argument about, or SWPC's instruction to you

1 11:23:07 about the parties' alleged intentions, that's the basis

2 11:23:11 on which you consider it appropriate to make

3 11:23:16 a statistical and economic analysis of the indices; is

4 11:23:21 that correct?

5 11:23:24 A.The statistical and economic analysis of the indices,

6 11:23:27 I made them according to another instruction. I have to

7 11:23:36 go back to my instructions now.

8 11:23:40 Q.I think it might be paragraph 1.18?

9 11:23:44 A.1.30?

10 11:23:45 Q.No, that's only part of ...

11 11:23:47 A.No, it's paragraph 1.29 in the same report.

12 11:23:51 Q.Yes. Okay --

13 11:23:58 A.Here it is. (5):

14 11:24:01 "Provide my opinion from an economic and statistical

15 11:24:03 perspective, on the appropriate approach for adjusting

16 11:24:07 the local portion of the Charge Rates to account for the

17 11:24:10 successive discontinuation and replacement of COLI 1999,

18 11:24:15 COLI 2007, COLI 2013 and COLI 2018 in KSA."

19 11:24:23 This is what I was instructed to do.

20 11:24:27 Q.I see. Then in terms of your analysis of accuracy, do

21 11:24:35 you accept that that is not going to be relevant to the

22 11:24:40 consideration of how to link COLI 1999 and COLI 2007, if

23 11:24:46 the tribunal does not accept SWPC's case as to the

24 11:24:51 parties' intentions?

25 11:24:55 A.That is a legal question. In terms of my analysis,

1 11:25:04 right, from an economic point of view, that is my
2 11:25:11 opinion, right? That those indices, that's how those
3 11:25:17 indices should be linked, because of the way that there
4 11:25:20 is a fundamental flaw in COLI 1999.
5 11:25:30 Q.Is your answer that even if you hadn't been given an
6 11:25:32 instruction as to the parties' intentions from SWPC,
7 11:25:37 your analysis -- you would still consider that your
8 11:25:40 analysis of accuracy and the merits of the various
9 11:25:42 indices would still be relevant to the linking between
10 11:25:44 COLI 1999 and COLI 2007?
11 11:25:47 A.From my perspective, from my expertise, yes. There
12 11:25:55 are two issues here. One is contractual and one is
13 11:26:02 statistical. So from a statistical point of view, I am
14 11:26:07 confronted with an index that has never been used, has
15 11:26:13 never been linked in any published material or in any
16 11:26:18 document that I have been given by GaStat, since it was
17 11:26:23 discontinued.
18 11:26:24 So from a statistical perspective, that index should
19 11:26:28 be discarded, and it's not because I say it; it's
20 11:26:31 because that's what GaStat has done.
21 11:26:34 I say it because it's fundamentally biased.
22 11:26:38 Then you go -- and that's what GaStat has done, they
23 11:26:42 went to pains to backcast COLI 2007 all the way to 1980,
24 11:26:53 so that they didn't have to link it to COLI 1999.
25 11:26:58 Then there is the contractual issue, right, which is

1 11:27:02 a different issue, which you can't just jump from one to
2 11:27:05 another. You have to link them at some point because
3 11:27:09 you have to continue this.
4 11:27:10 So the question is, how do you do it? Do you
5 11:27:13 continue it by forecasting into the future and
6 11:27:18 projecting into the future what was the difference
7 11:27:23 between the two, or do you try and rectify the
8 11:27:28 situation?
9 11:27:29 To me, from a statistical perspective, there is no
10 11:27:33 doubt about what you need to do. But I am not the one
11 11:27:37 who's making this decision and I'm not a lawyer.
12 11:27:40 Q.Can we just test what you said against what you say at
13 11:27:43 item 20 of the joint statement, which is at D130,
14 11:27:49 page 11.
15 11:27:57 A.This is the joint statement?
16 11:27:58 Q.Yes.
17 11:27:59 Does she have a hard copy of the joint statement?
18 11:28:01 I wonder whether that might be easier.
19 11:28:04 MR HANKE: We'll turn it up for her.
20 11:28:06 MR ROBB: It might just be easier, because it's moving
21 11:28:09 things around and it runs over the page as well.
22 11:28:41 You have been given it in A4, so I hope your
23 11:28:43 eyesight is better than mine.
24 11:28:44 A.Okay.
25 11:28:45 Q.Bottom right-hand corner, I'm hoping you've got the

1 11:28:47 bundle version, so it should have page numbers and

2 11:28:50 your --

3 11:28:50 A.Page 11, yeah, it's here.

4 11:28:52 Q.Can I just check before asking you to look at it that

5 11:28:55 actually this is legible for you; yes?

6 11:28:59 A.Yeah, because I got an eye operation and I can finally

7 11:29:02 read and see now.

8 11:29:06 Q.Item 20, the question that was being put or the issue

9 11:29:09 that was being put to the two experts was:

10 11:29:11 "If the Tribunal does not accept the instruction to

11 11:29:14 Dr Meschi that the Parties' rationale in including the

12 11:29:17 indexation clause was to adjust payments for 'true'

13 11:29:19 inflation, then the Going Forward Approach applies to

14 11:29:22 the transition from COLI 1999 to COLI 2007."

15 11:29:24 Do you see that?

16 11:29:29 A.Yeah.

17 11:29:31 Q.You say:

18 11:29:32 "The wording of this issue is not factually

19 11:29:34 correct."

20 11:29:37 But then you go on to say:

21 11:29:39 "Whilst the Parties' intentions is one of SWPC's

22 11:29:42 arguments ..."

23 11:29:44 You then recite a number of SWPC's legal arguments

24 11:29:48 and we can see that from the first sentence of the

25 11:29:51 second paragraph, where you say:

1 11:29:54 "This is merely a restatement of SWPC's legal
2 11:29:56 position."
3 11:29:59 A.Yes.
4 11:30:00 Q.You're just reciting there what you understand to be
5 11:30:03 SWPC's legal position; is that correct?
6 11:30:10 A.This is my -- I received an instruction as to that,
7 11:30:18 right, as to the fact that the tribunal has ... what is
8 11:30:25 the word?
9 11:30:26 Q.Has a wide -- is granted a wide discretion?
10 11:30:28 A.Yes, yes, has discretion to decide that, yeah, that
11 11:30:33 was an instruction. The arguments in the first
12 11:30:38 paragraph are my opinion as to why COLI 1999 is ...
13 11:30:49 Q.Well, let's just read what you said. We know that you
14 11:30:52 got a new instruction in your second report about the
15 11:30:54 wide discretion and that instruction wasn't in your
16 11:30:57 first report?
17 11:30:57 A.No, no, it was not.
18 11:31:04 Q.My reading of this, what you said here, especially
19 11:31:09 where it says, "This is merely a restatement of SWPC's
20 11:31:12 legal position", is that what you've set out above is
21 11:31:16 simply what you've been told by SWPC; is that correct?
22 11:31:22 A.Yeah, that is essentially a new instruction that
23 11:31:27 I received when I wrote my second report. But that
24 11:31:31 didn't change my opinion at all, because I provided my
25 11:31:34 opinion on the basis of my expertise, not on the basis

1 11:31:40 of these things. It's not changed throughout -- how

2 11:31:43 many reports did I write -- four reports.

3 11:31:48 Q.It's relevant, isn't it, because here in paragraph 20

4 11:31:50 you're being asked to present your opinion on the

5 11:31:52 assumption that the tribunal does not accept SWPC's case

6 11:32:00 as to the parties' rationale, aren't you?

7 11:32:05 A.Yes, yes, but the issue is this, you know. Even

8 11:32:09 without that rationale, the tribunal could still decide

9 11:32:14 that because the index is fundamentally wrong, it's

10 11:32:19 fundamentally inaccurate. And because it overstates --

11 11:32:26 it's an overstated measure of inflation, there could be

12 11:32:31 a different approach to follow.

13 11:32:33 Q.Okay, but --

14 11:32:33 A.Which is not my decision to make, but if they have the

15 11:32:37 discretion to do so, they could do so.

16 11:32:45 Q.The first point is that in your first report, you

17 11:32:53 didn't have this discussion, this instruction about the

18 11:32:56 tribunal's discretion?

19 11:32:58 A.No.

20 11:32:59 Q.So this second instruction comes in on the basis that:

21 11:33:05 what happens if the tribunal does not accept SWPC's case

22 11:33:11 as to the rationale; is that right?

23 11:33:15 A.This is an item on the joint statement. If they don't

24 11:33:22 accept that, they can still consider the fact that that

25 11:33:28 index was biased, was a biased measure of inflation, and

1 11:33:34 therefore, there can be an alternative way of linking
2 11:33:41 the two indices. The indices are linked; the issue is
3 11:33:45 when do you link them.
4 11:33:50 Q.Yes, but what I'm trying to get at is that the matters
5 11:33:53 which are set out in the first paragraph, beginning
6 11:33:58 "Whilst the parties' intentions", that was another
7 11:34:01 instruction to you from SWPC, was it?
8 11:34:06 A.Yes, the instruction about the parties' intention has
9 11:34:11 been the same throughout all four reports, yes.
10 11:34:14 Q.Sorry. In this paragraph, there's not only
11 11:34:19 a reference to the parties' intentions, but there's also
12 11:34:22 then, if you read on, it says:
13 11:34:23 "Whilst the Parties' intentions is one of SWPC's
14 11:34:27 arguments, SWPC's case is also that the Independent
15 11:34:31 Expert, as well as the Tribunal ... were granted a wide
16 11:34:34 discretion ..."
17 11:34:36 Then you say:
18 11:34:38 "Those facts, SWPC says, include..."
19 11:34:42 Then you list out some facts, yes?
20 11:34:44 A.Mm-hmm.
21 11:34:45 Q.I just want to be clear -- I don't think it's going to
22 11:34:48 be controversial -- that everything in this paragraph
23 11:34:50 has been presented to you by SWPC; is that correct?
24 11:34:54 A.Everything in the first paragraph?
25 11:35:00 Q.Yes.

1 11:35:08 A.Well, "COLI 1999 was a fundamentally inaccurate index"
2 11:35:14 is my opinion and it has -- what does "RDC" mean?
3 11:35:22 Q.Reply and defence to counterclaim.
4 11:35:24 A.Oh, okay. It is my opinion and it has been -- and it
5 11:35:30 is SWPC opinion, but this is my opinion.
6 11:35:35 Q.Dr Meschi, I was focusing on the words, "SWPC says",
7 11:35:41 which led me to conclude that you were simply recording
8 11:35:45 something that you had been instructed by SWPC. I'm not
9 11:35:50 asking at the moment whether you agree or disagree with
10 11:35:52 it. I'm just saying --
11 11:35:54 A.Yes, I was instructed by -- I said it in the
12 11:35:59 presentation. I was instructed to assume about the
13 11:36:02 rationale of the parties and I was instructed that the
14 11:36:05 tribunal has this discretion, I don't remember the exact
15 11:36:11 wording, but...
16 11:36:16 Q.Are you agreeing that everything in this first
17 11:36:17 paragraph is just something that you were instructed by
18 11:36:21 SWPC?
19 11:36:32 A.The first paragraph is:
20 11:36:33 "The wording of this issue is not factually
21 11:36:38 correct."
22 11:36:38 Q.Sorry, I'll rephrase. Can we agree that everything in
23 11:36:41 the paragraph beginning:
24 11:36:41 "Whilst the Parties' intentions ..."
25 11:36:43 Yes?

1 11:36:44 A."... is one of SWPC's arguments, SWPC's case is also
2 11:36:49 that ..."
3 11:36:50 (Witness reads to herself)
4 11:36:55 Yes.
5 11:36:57 Q.This was just -- everything in this paragraph was an
6 11:36:59 instruction to you from SWPC?
7 11:37:01 A.Yes, yes.
8 11:37:02 PRESIDENT: Sorry, Dr Meschi, can I just understand,
9 11:37:05 that paragraph starting:
10 11:37:06 "Whilst the Parties intentions ..."
11 11:37:08 Were you given those words and instructed to put
12 11:37:12 them in the joint table, or is this you paraphrasing --
13 11:37:16 A.No, no, no.
14 11:37:17 PRESIDENT: -- what you've been told previously?
15 11:37:19 A.This is not -- no, I wasn't instructed to put those
16 11:37:26 words in the table.
17 11:37:33 PRESIDENT: I just wanted to understand what you meant
18 11:37:34 when you said these were your instructions. So these
19 11:37:37 are your instructions you've received previously, which
20 11:37:40 you're paraphrasing?
21 11:37:43 A.Yes, my instructions that I received are that the ones
22 11:37:49 that I read to you before. I actually have the
23 11:37:53 presentation. I can read them to you again.
24 11:37:56 PRESIDENT: No, you don't need to. I just wanted to
25 11:37:58 understand when you were saying in relation to this

1 11:37:59 paragraph --

2 11:38:00 A.Yeah, I wasn't told by anybody what I had to put in

3 11:38:02 this paragraph. No, no.

4 11:38:06 PRESIDENT: Thank you.

5 11:38:08 MR ROBB: Dr Meschi, just to be clear, if you are making

6 11:38:12 it clear that something is what you've been told or what

7 11:38:15 one party thinks, then obviously you can take that from

8 11:38:19 that party and that's not a problem, as long as it's

9 11:38:22 clear that that's what the party are saying, not what

10 11:38:26 you're saying?

11 11:38:28 A.Yes, as I said, what I'm saying is about COLI was

12 11:38:32 a fundamentally inaccurate index, and I actually do

13 11:38:41 believe that there is no other -- although:

14 11:38:45 "... the Parties' intention in agreeing an

15 11:38:47 indexation clause was to track real inflation ..."

16 11:38:51 And this is the statement by SWPC and it's also my

17 11:38:59 instruction, I actually, from a professional point of

18 11:39:03 view, I cannot believe that they may have intended to do

19 11:39:08 anything else. Why would you index something to -- why

20 11:39:11 would you actually create an indexation in order to

21 11:39:16 follow a distorted measure of inflation? To me, it

22 11:39:21 makes no sense.

23 11:39:24 (Witness reads to herself)

24 11:39:30 And if this is -- if this is established SWPC

25 11:39:36 position, it is a position that I actually agree with.

1 11:39:42 Q.Looking at the time --

2 11:39:43 A.And that's the third -- that's the (c). I do you

3 11:39:46 agree with that. Because from an economic point of

4 11:39:49 view, that is the result of all this, yeah.

5 11:39:56 MR ROBB: I think we started at 10 o'clock, we're

6 11:39:58 finishing at 1, so we're about I think halfway through.

7 11:40:02 Is now a sensible time to take a break?

8 11:40:05 PRESIDENT: Yes, the transcriber is nodding, so yes,

9 11:40:09 that's a good time to have a break.

10 11:40:11 Dr Meschi, we will have a 20-minute break now.

11 11:40:14 During the break, please do not speak to anyone,

12 11:40:16 including your assistants, but you can obviously speak

13 11:40:21 for cups of tea and coffee and the like, but don't

14 11:40:25 discuss your evidence with anyone.

15 11:40:27 WITNESS: Of course.

16 11:40:28 PRESIDENT: Thank you.

17 11:40:29 (11.40 am)

18 11:40:31 (A short break)

19 12:00:25 (12.00 pm)

20 12:00:43 PRESIDENT: Dr Meschi, just to remind you that you are

21 12:00:46 still under the affirmation you gave previously.

22 12:00:50 Mr Robb.

23 12:00:50 MR ROBB: Thank you.

24 12:00:52 Dr Meschi, can we turn up joint statement item 20,

25 12:00:59 so that was D130, page 11. It was the bit we were

1 12:01:06 looking at just before the break.

2 12:01:08 A.Yes, yes, yes.

3 12:01:09 Q.In the first bit I just want to check that I've

4 12:01:13 understood your evidence correctly, which is that you

5 12:01:15 had drafted the paragraph that begins:

6 12:01:18 "Whilst the Parties' intentions is one of SWPC's

7 12:01:22 arguments ..."

8 12:01:27 A.Yes.

9 12:01:27 Q.You drafted that. But I think you also said in the

10 12:01:30 course of your evidence that you didn't know what "RDC"

11 12:01:33 meant; is that correct?

12 12:01:34 A.I do not?

13 12:01:35 Q.You did not know what "RDC" meant?

14 12:01:38 A.Yes, I'm sorry, I just forgot.

15 12:01:42 Q.So you forgot?

16 12:01:44 A.Yeah, I didn't think quickly enough, I guess. I don't

17 12:01:50 know, it didn't occur to me what it meant.

18 12:01:54 Q.And you're sure this wasn't drafted for you by DLA?

19 12:01:58 A.No. No, no, no.

20 12:02:05 Q.So you had gone through the pleadings, had you, to

21 12:02:09 identify these parts of SWPC's case, had you?

22 12:02:15 A.Yes.

23 12:02:18 Q.I see. You use the word "could" in the second

24 12:02:30 paragraph. You say the tribunal:

25 12:02:31 "... could decline to apply [the] Going Forward

1 12:02:35 Approach..."

2 12:02:36 Do you see that?

3 12:02:38 A.Is it the second?

4 12:02:39 Q.It's the second large paragraph.

5 12:02:41 A.The one after the ...?

6 12:02:43 Q.It says:

7 12:02:44 "I consider that if the Tribunal accepts that it has

8 12:02:47 this wide discretion, and takes into account any of the

9 12:02:49 above considerations, it could decline to apply

10 12:02:53 Ms Harfouche's Going Forward Approach ..."

11 12:02:55 Do you see that?

12 12:03:04 A.Okay, at the end of the page, yes.

13 12:03:06 Q.At the bottom of the page.

14 12:03:07 A.Yes, yes.

15 12:03:14 Q.Now, I'm going to suggest to you that the reason why

16 12:03:16 you use the word "could" is because, in your view, in

17 12:03:21 fact, the proper way to go forward, if the tribunal does

18 12:03:27 not accept SWPC's case as to the parties' intentions, is

19 12:03:31 that the going forward approach should apply, isn't it?

20 12:03:45 A.It means that it could do that or it could do

21 12:03:47 something else.

22 12:03:50 Q.I'm asking you that if you had the discretion and you

23 12:03:55 weren't allowed to take account of SWPC's case as to the

24 12:03:58 parties' intention, then your view would be that the

25 12:04:01 going forward approach should apply, wouldn't it?

1 12:04:08 A.What this sentence means ... (Pause)

2 12:04:23 So it's in two parts, right:

3 12:04:25 "... if the Tribunal accepts that it has this wide

4 12:04:30 discretion ..."

5 12:04:31 Which is the instruction:

6 12:04:34 "... and takes into account any of the above

7 12:04:36 considerations ..."

8 12:04:38 Which is the situation with COLI 1999 and the

9 12:04:42 resulting unfairness, blah, blah, blah, then it could

10 12:04:46 decline to apply that approach and use another one.

11 12:04:51 Q.I see that, and I'm asking a slightly different

12 12:04:54 question. I'm asking you, if you assume that SWPC's

13 12:05:00 case as to the parties' intentions is wrong, yes, and if

14 12:05:05 you had the discretion that --

15 12:05:08 A.If I had the discretion?

16 12:05:10 Q.If you had the discretion you refer to, you would

17 12:05:12 consider that the only sensible approach would be to

18 12:05:14 adopt the going forward approach, wouldn't you?

19 12:05:17 A.If the tribunal is wrong, and the parties didn't have

20 12:05:23 the intention of tracking true inflation. How could

21 12:05:32 I not? I mean, this is very hypothetical. I mean, for

22 12:05:38 me, it's not possible that somebody wants to track

23 12:05:41 something else, but ...

24 12:05:46 So even if they didn't want to track true inflation,

25 12:05:51 that's what you're asking me, right? Even if they

1 12:05:54 didn't want to track true inflation, what should they
2 12:05:58 do?
3 12:05:59 My decision would be, if you wanted to track -- even
4 12:06:05 if you didn't want to track true inflation, you should
5 12:06:07 be doing what is right, because if that is not what you
6 12:06:12 do, you're going to create winners and losers, and in
7 12:06:17 one case, in this particular case that we have here,
8 12:06:21 there is one winner and one loser, it could be switched
9 12:06:24 around if the situation was the opposite with the index.
10 12:06:28 And you don't really want to -- I wouldn't want to
11 12:06:31 find myself in that situation, but that's me.
12 12:06:34 Q.When you say, "could", the tribunal "could decline to
13 12:06:37 apply [the] Going Forward Approach", that means
14 12:06:40 presumably that the tribunal could also properly apply
15 12:06:43 the going forward approach, couldn't it?
16 12:06:45 A.It's their decision, not mine.
17 12:06:50 Q.I just want to deal with some of the facts or some of
18 12:06:54 the issues that were raised by SWPC in this part of
19 12:06:56 the -- in JS20 that you've referred to. So you have
20 12:07:04 three items that are said to be relevant. Do you see
21 12:07:09 that? (a), (b), (c)?
22 12:07:12 A.Yes.
23 12:07:13 Q.We know that we are dealing -- this is on the
24 12:07:15 hypothesis that the tribunal does not agree with SWPC's
25 12:07:18 case as to the parties' intentions.

1 12:07:20 A.Okay.

2 12:07:21 Q.Do you agree?

3 12:07:24 A.So we are discussing a hypothetical situation in which

4 12:07:30 (b) doesn't apply. Is that what you're asking?

5 12:07:33 Q.The first point is that (b) clearly doesn't apply,

6 12:07:37 does it?

7 12:07:37 A.In what case?

8 12:07:38 Q.If the tribunal does not accept SWPC's case as the

9 12:07:42 parties' rationale, then plainly the factor referred to

10 12:07:47 at subparagraph (b) can't apply?

11 12:07:49 A.The factor -- yes, of course -- well, yes.

12 12:07:56 Q.And if (b) falls away, then item (a) also falls away,

13 12:08:05 doesn't it?

14 12:08:06 A.No, it's still a fundamentally inaccurate index and

15 12:08:10 the result is still unfair. (a) doesn't follow from

16 12:08:13 (b). (a) is -- well, as far as I'm concerned, is

17 12:08:20 a fact. Of course it's my opinion, but it's -- yeah,

18 12:08:27 it's still a fundamentally inaccurate index. It doesn't

19 12:08:31 depend on what the parties thought.

20 12:08:33 And the same with (c). It doesn't depend on the

21 12:08:36 intentions of the parties. COLI is a fundamentally

22 12:08:41 inaccurate index, as far as I'm concerned, and the

23 12:08:46 results would be unfair, because it would be projecting

24 12:08:50 that inflation forevermore, until 2029.

25 12:08:54 Q.So your approach on here is what you consider to be

1 12:08:58 a matter of fairness, is it?

2 12:09:01 A.From an economic point of view, yes. It's not --

3 12:09:10 I appreciate it is not legal, but from an economic point

4 12:09:13 of view, yeah.

5 12:09:18 Q.When you talk about "non-existent inflation", what

6 12:09:22 you're really talking about is the fact that the

7 12:09:23 COLI 2007 estimate of inflation turned out to be lower

8 12:09:27 than that of COLI 1999?

9 12:09:30 A.It could have turned out to be higher. COLI 1999

10 12:09:33 would still be wrong. But if it was higher, the

11 12:09:38 situation would have been reversed.

12 12:09:51 Q.The point here is that when you talk about

13 12:09:53 non-existent inflation, you're simply talking about the

14 12:09:55 fact that the two indices have different estimates of

15 12:09:58 inflation over the same time period; is that correct?

16 12:10:04 A.There are two indices, one of which is fundamentally

17 12:10:09 flawed and overestimates inflation systematically due to

18 12:10:15 its mathematical -- to the flaws that I have described

19 12:10:20 in my presentation this morning.

20 12:10:23 The other index does not have those characteristics,

21 12:10:32 so that other index is not flawed, right?

22 12:10:36 So the flawed index is measuring, to an extent,

23 12:10:43 inflation that is not there, that does not exist.

24 12:10:46 Just to give you an example of what I'm trying to

25 12:10:52 say. When in 2003 Gordon Brown changed the Bank of

1 12:11:00 England inflation target, because the CPI had been
2 12:11:08 introduced a few years earlier, the inflation target was
3 12:11:11 the RPI. The RPI is like COLI 1999, in terms of
4 12:11:17 formulae, so in terms of bias. The CPI is not.
5 12:11:22 What did Gordon Brown do? He changed from RPI
6 12:11:27 minus 2.5 to CPI minus 2. That's what Gordon Brown did,
7 12:11:31 because there was a difference between these two
8 12:11:35 indices, the RPI was flawed and therefore, you couldn't
9 12:11:39 force the economy to follow a target that was obviously
10 12:11:47 based on a component of inflation that was non-existent,
11 12:11:52 because it was mis-measured. That is what I meant.
12 12:11:59 Q.If you ever have two indices which measure inflation
13 12:12:02 of the same period, and you have different results,
14 12:12:07 different estimates, that can happen, yes?
15 12:12:09 A.Yes.
16 12:12:11 Q.So on your analysis here, it wouldn't matter why the
17 12:12:14 two indices had different measures of inflation. Your
18 12:12:19 argument at (c) would simply would be the same, wouldn't
19 12:12:22 it?
20 12:12:23 A.My argument about?
21 12:12:24 Q.At item (c) would be the same?
22 12:12:27 A.No, because if two indices have different measures of
23 12:12:31 inflation, and one is biased in a fundamental way and
24 12:12:43 one is not, then it is unfair.
25 12:12:45 Q.If we assume the later index is more accurate than the

- 1 12:12:48 earlier index, that's a fair assumption, isn't it?
- 2 12:12:51 A.Well, okay, successive indices are always more
- 3 12:13:01 accurate than the indices before. The reason why
- 4 12:13:03 they're accurate is because of the question that the
- 5 12:13:05 president asked me this morning, right, is because of
- 6 12:13:08 the way they are weighted, and the fact that the weights
- 7 12:13:13 are based on surveys that are five years long. In the
- 8 12:13:15 case of COLI 2007, 10 years old.
- 9 12:13:24 That is an inaccuracy that is known and is part of
- 10 12:13:28 all the indices.
- 11 12:13:31 The fact that you are basing an index on a formula
- 12 12:13:35 that is known to be fundamentally biased and it should
- 13 12:13:39 not be used, right, is what makes a difference between
- 14 12:13:44 those two indices.
- 15 12:13:47 Q.If two successive indices -- for example, COLI 2007
- 16 12:13:52 and COLI 2013, they diverge, don't they?
- 17 12:13:57 A.They don't?
- 18 12:13:57 Q.They diverge, don't they?
- 19 12:13:59 A.All the indices diverge to a certain extent.
- 20 12:14:01 Q.Exactly. So what I'm suggesting here is it doesn't
- 21 12:14:08 matter why the indices diverge. You're going to have
- 22 12:14:12 the same unfairness that you talk about whenever the
- 23 12:14:15 indices diverge, aren't you?
- 24 12:14:17 A.No, no, because one is biased in a fundamental way and
- 25 12:14:22 another one is not biased in a fundamental way. In

1 12:14:26 statistics, what you're trying to do, right, you're

2 12:14:29 trying to measure the underlying parameters of

3 12:14:32 a population. In this case, an average. That's all

4 12:14:36 we're trying to do. But it's a complex measurement,

5 12:14:39 because it's not just taking the average of five items.

6 12:14:44 What happens is that because you are measuring the

7 12:14:48 average, you are having a measure which has a margin of

8 12:14:52 error around it, and because of that, every measure has

9 12:14:58 a certain degree of accuracy or inaccuracy. But when

10 12:15:04 a measure is fundamentally biased, it doesn't matter

11 12:15:08 what size the measure is. It should never be used.

12 12:15:11 It's like saying the example that I gave before: you're

13 12:15:15 trying to measure the height of people living in Dubai

14 12:15:17 and only take a sample of, you know, young men. That's

15 12:15:24 going to be biased, regardless, and you shouldn't do

16 12:15:28 that, because it's wrong.

17 12:15:30 Q.Can I just understand this. Your evidence is that it

18 12:15:34 doesn't matter why -- it doesn't matter why there's

19 12:15:38 a difference between two indices and it doesn't matter

20 12:15:42 what the extent of that difference is in numerical

21 12:15:45 terms?

22 12:15:46 A.It matters why there is a difference, because the

23 12:15:48 difference could be due to the uncertainty around the

24 12:15:56 confidence interval of that measure, it could be due to

25 12:16:00 a fundamental error in the way that the index is

1 12:16:04 constructed, like with everything else.

2 12:16:10 Q.Just to take some very crude examples, these are

3 12:16:14 entirely made-up numbers, just to illustrate the point.

4 12:16:18 So don't --

5 12:16:19 A.Okay, okay.

6 12:16:20 Q.I'm not trying to tie them to any particular set of

7 12:16:23 indices.

8 12:16:23 If you have two indices and one of them is, as you

9 12:16:30 say, biased for a fundamental reason, and the next index

10 12:16:32 isn't, and that the two indices when -- diverge by

11 12:16:36 10 per cent, okay?

12 12:16:39 Then let's take another two indices, where the first

13 12:16:45 index doesn't have what you call a fundamental

14 12:16:49 inaccuracy, but still measures different inflation from

15 12:16:53 its successor index and that difference is 20 per cent,

16 12:17:00 right?

17 12:17:03 So you're saying that there would be no unfairness

18 12:17:08 under your item (c) with respect to that second example,

19 12:17:11 but there would be with the first example?

20 12:17:17 A.So if the index is biased and it measures a difference

21 12:17:26 as 10 per cent and the other two indices are not biased,

22 12:17:31 right, they cannot have a difference of 20 per cent.

23 12:17:39 It's not possible.

24 12:17:42 Q.Okay, let's say that in the two examples, both sets of

25 12:17:46 indices are diverged by 10 per cent, so they both

- 1 12:17:51 diverge by 10 per cent, by the same actual amount. Is
- 2 12:17:54 your evidence that your treatment of these two sets of
- 3 12:17:57 indices would differ because of the reason of the
- 4 12:18:01 divergence on the first set?
- 5 12:18:03 A.Can you please qualify what the divergence of
- 6 12:18:06 10 per cent mean? How is it measured?
- 7 12:18:10 Q.When you take a starting point and then you get to an
- 8 12:18:14 end point, the same number of years later?
- 9 12:18:18 A.The same?
- 10 12:18:18 Q.Number of years later, so you're measuring like with
- 11 12:18:21 like?
- 12 12:18:22 A.Okay, okay, I get you. So if you're measuring like
- 13 12:18:24 for like, and we are going more into the practicality of
- 14 12:18:31 what is being discussed here, if you measure like for
- 15 12:18:36 like, the two indices in this dispute, which are
- 16 12:18:41 COLI 1999 --
- 17 12:18:42 Q.Sorry, I'm not asking you about the indices in
- 18 12:18:44 dispute, I'm just asking you -- that's why I was trying
- 19 12:18:46 to put aside all the indices in this dispute --
- 20 12:18:47 A.Yes, but that's not going to happen.
- 21 12:18:50 Q.So your evidence then is that you couldn't have two
- 22 12:18:55 sets of indices diverging by the same amount, say
- 23 12:18:58 10 per cent, over the same number of years, if only one
- 24 12:19:03 of those indices was fundamentally biased?
- 25 12:19:07 A.I don't think it can happen, because you see both

1 12:19:11 indices have the same underlying problem, right, that

2 12:19:15 you have a margin of error, that you have a confidence

3 12:19:18 interval, blah, blah, blah, that every index has.

4 12:19:22 But one has another problem, which is on top, and

5 12:19:26 that problem, which is on top, is the fact that it is

6 12:19:30 known to be biased upwards, ie to systematically

7 12:19:36 overestimate inflation. And so if I really do measure

8 12:19:40 them like for like, that's not going to happen.

9 12:19:44 Q.I see, so you're saying that your (c) could never

10 12:19:47 happen in the case where there's no fundamental

11 12:19:50 inaccuracy, as you describe it?

12 12:19:53 A.My (c) -- hold on.

13 12:19:56 Q.Do you have it?

14 12:19:57 A.Yeah, yeah, I do have it.

15 12:20:04 Yes, because if an index was not biased, right, it

16 12:20:11 would be on average -- so essentially, let's go back one

17 12:20:15 second and define "bias", right? Bias is the systemic

18 12:20:20 tendency of an estimator, any estimator, to

19 12:20:28 systematically deviate from the true value on average.

20 12:20:31 So if it is known to be systematically upward

21 12:20:36 biased, it means that every single -- on average, that

22 12:20:42 index will overestimate the true value more than an

23 12:20:46 index that is known not to be biased. That is the

24 12:20:51 definition.

25 12:20:53 So how can it happen that you have an index that is

1 12:20:58 known to be upward biased, that returns the same gap as

2 12:21:06 an index that is known not to be?

3 12:21:10 Q.You accept, don't you, that if you have a later index

4 12:21:13 which measures lower inflation over the same period as

5 12:21:16 an earlier index, but no fundamental inaccuracy as far

6 12:21:21 as you're concerned, that still would mean you're

7 12:21:25 embedding some non-existent inflation?

8 12:21:30 A.If I have an index that measures over-inflation, what

9 12:21:33 you're saying is that because it is still an estimate --

10 12:21:38 yes, I mean, you can see it. Actually, you can see

11 12:21:40 that. We can see that in my presentation. It's on --

12 12:21:45 I can show you. It's on slide -- where is it? It's

13 12:21:54 slide 13 -- 14. Could you please pull that up.

14 12:22:11 14, the next one. So you see, when you're linking

15 12:22:16 the indices, the way I have linked the blue line, right,

16 12:22:22 there is still a difference between the green line,

17 12:22:25 which is essentially if the indices were linked the way

18 12:22:35 they have been linked by GaStat, so in the base year,

19 12:22:43 and the way that we need to link them, because of the

20 12:22:46 commercial nature of this transaction, because you can't

21 12:22:51 carry on going back, carry on going back.

22 12:22:54 So what is happening here is that you link them, but

23 12:22:58 each successive index is more accurate than the other.

24 12:23:03 It is unbiased and there is still the light pink colour

25 12:23:10 that shows an overestimate over what the statistical

- 1 12:23:17 agency of Saudi Arabia considers to be the most accurate
- 2 12:23:22 measure of inflation. So that happens every time. But
- 3 12:23:27 those indices are not biased, fundamentally, but the
- 4 12:23:32 index before that is.
- 5 12:23:34 Q.If we could go to slide 10 within this. We're looking
- 6 12:23:43 at figure 4-3 on the right-hand side.
- 7 12:23:47 A.Yes.
- 8 12:23:50 Q.We can see there, can't we, that the green line is
- 9 12:23:52 2007 and then the red line, or orange --
- 10 12:23:58 A.Is 13, the red line. Actually, the red line is 2007,
- 11 12:24:02 2013 and 2018, they're all linked.
- 12 12:24:06 Q.Exactly, but we can see that the green line
- 13 12:24:07 overestimates inflation compared to 2013 and 2018?
- 14 12:24:14 A.Yes, it does. I mean, the thing with the green line
- 15 12:24:19 is that by the time you get to 2017, right, the weights
- 16 12:24:27 in that index are 10 years old. So, yeah.
- 17 12:24:36 Q.And so on your analysis, that is non-existent
- 18 12:24:40 inflation, isn't it?
- 19 12:24:43 A.Yes, yes, it is, it is. But it's not fundamentally
- 20 12:24:46 biased, the index, it's just old, it's just that it was
- 21 12:24:51 published with much delay.
- 22 12:24:56 Q.But it still creates -- why doesn't that create the
- 23 12:24:58 unfairness that you talk about in your item (c)?
- 24 12:25:01 A.It doesn't create the unfairness because it is an
- 25 12:25:06 index that is not biased in a fundamental way. It does

1 12:25:10 not systematically overestimate inflation. And that is

2 12:25:13 why it has been linked by the agency in previous periods

3 12:25:22 to all the other indices.

4 12:25:26 So if they thought there was something really

5 12:25:29 seriously wrong with that index, they would have done

6 12:25:30 exactly the same as they did with COLI 1999, they

7 12:25:35 wouldn't have linked it, which is something that they

8 12:25:38 actually did.

9 12:25:40 So the reason why we are having this issue is

10 12:25:44 because we are actually linking in 2013, and not because

11 12:25:54 of the fact that the index has a real -- it's

12 12:26:01 fundamentally flawed, yes.

13 12:26:11 Q.Sorry, I didn't really follow that last:

14 12:26:16 "... the reason why we are having this issue is

15 12:26:16 because we are actually linking in 2013, and not because

16 12:26:19 of the fact that the index has a real -- it's

17 12:26:21 fundamentally flawed..."

18 12:26:24 Which linking are you talking about?

19 12:26:25 A.So essentially, what I am trying to say here is that

20 12:26:31 the statistical agency published COLI 2013 -- COLI 2007

21 12:26:40 until 2017.

22 12:26:43 Q.Yes.

23 12:26:44 A.Right? And I made a mistake. In 2013, when the new

24 12:26:52 index was published, okay -- no, I didn't make

25 12:26:56 a mistake, actually.

1 12:26:57 In 2013, when the new index was published, the
2 12:27:01 statistical agency linked those two indices, right, and
3 12:27:06 that is why there is the dot in 2013. But they didn't
4 12:27:13 publish 2013 until January 2018. So they published it
5 12:27:22 five years after they had done the survey.
6 12:27:26 By the time they published that index, and therefore
7 12:27:30 it was available for linking forward for the purpose of
8 12:27:36 this contract, COLI 2007 had essentially continued and
9 12:27:42 was still existing and was over-measuring inflation by
10 12:27:46 virtue of having weights that were very, very old. But
11 12:27:51 not by virtue of the fact that it was fundamentally
12 12:27:54 flawed.
13 12:27:56 So the amount of -- if you want, the amount -- not
14 12:28:02 the amount, but the inaccuracy of each successive index
15 12:28:08 changes on the basis of how old the weights in that
16 12:28:12 index are.
17 12:28:13 So you can see that also the red and the grey line,
18 12:28:22 right, there is a slight difference between the two, and
19 12:28:27 the reason why is -- and it's much less than with the
20 12:28:32 green line, because if you think about it, COLI 2013 is
21 12:28:37 based on weights from 2013. It was published at the end
22 12:28:44 of -- what was it? When was it published? At the end
23 12:28:51 of 2019, right, in January 2020. So it was six years
24 12:28:58 old, seven years old. The other one was older.
25 12:29:04 So as GaStat becomes more -- you know, goes forward

1 12:29:10 in their programme of publishing these indices,
2 12:29:20 according to international standards, they are getting
3 12:29:22 closer and closer to carrying out the surveys every
4 12:29:26 five years and to publish the results as soon as they
5 12:29:32 possibly can, because the majority of statistical
6 12:29:35 offices do the survey, link the index and move on in
7 12:29:40 a period of months, while it took much longer, this
8 12:29:44 agency, to do these things.
9 12:29:52 Q.Going back to where we were. Your evidence is then
10 12:29:59 that it does matter why the indexes diverge and it
11 12:30:05 doesn't matter by how much they diverge; is that right?
12 12:30:07 A.It matters why they diverge, yes, it matters why they
13 12:30:12 diverge. And it matters what the statistical agency
14 12:30:16 considers them to be.
15 12:30:19 Q.But then the second part of that is, your evidence is
16 12:30:22 that it doesn't matter by how much the two indices
17 12:30:25 diverge?
18 12:30:26 A.Not in terms of assessing the fundamental bias, no.
19 12:30:30 You can measure the bias, but you know from the premises
20 12:30:38 of -- you know, from your fundamental knowledge of
21 12:30:43 statistics that one is biased and the other one is not.
22 12:30:48 Because you know, just to go back to that example that
23 12:30:51 I had about, you know, measuring the height of people in
24 12:30:54 a city, right? Okay. So you can say, okay, let's
25 12:30:58 measure the height of people in a city. Let's take

1 12:31:01 a sample of men and do that. And then you get, oh, the
2 12:31:05 average height of men in the city is 1 metre 75. So the
3 12:31:12 average of people in the city is 1.75.
4 12:31:16 And then somebody tells you, no, this is wrong, it's
5 12:31:21 biased. You should do something else, you should take
6 12:31:23 men and women. And then you take men and women and you
7 12:31:26 say, oh, the average of men and women is 1.73. So it's
8 12:31:33 not a big deal. I can use it. This is good. Why not?
9 12:31:37 Then you go in another city and you take men and you
10 12:31:41 find that the average height of men in that city is
11 12:31:44 1.87. Are you doing the right thing? What happens if
12 12:31:49 you take the measure of women and they all look like me,
13 12:31:53 then the average height of people in that city, for
14 12:31:55 sure, is not, you know, 2 centimetres less than the one
15 12:32:04 of men.
16 12:32:04 So the fact that you're using the bias estimator,
17 12:32:07 because that's what it's called, it's called an
18 12:32:10 estimator, statistic, is wrong on principle because if
19 12:32:15 you do it again and again and again, and this is the
20 12:32:20 statistics for you, you get the results that are wrong
21 12:32:24 and eventually, you get to a result that is so wrong
22 12:32:29 that you have COLI 1999.
23 12:32:33 MR GHAFARI: May I ask a question?
24 12:32:35 MR ROBB: Please, of course.
25 12:32:36 MR GHAFARI: When you look at figure 4.3 and you look

1 12:32:41 at COLI 2007, that green section that shoots up, the gap
2 12:32:45 between 2007 and the black line underneath it, that
3 12:32:50 delta, that white space in between, would you describe
4 12:32:53 that as an inaccuracy?
5 12:32:58 A.The gap between?
6 12:32:59 MR GHAFARI: The green line shown and the black line
7 12:33:03 underneath it. Is that an inaccuracy, that difference,
8 12:33:08 that divergence?
9 12:33:09 A.It is an inaccuracy that is caused by the fact that
10 12:33:14 the index is old and the weights are higher, but it's
11 12:33:17 not a fundamental inaccuracy caused by the use of
12 12:33:22 a measurement that is biased. It's something that you
13 12:33:29 can't avoid, if you want. Unless you publish it on
14 12:33:32 time, you can't avoid that. But if you use
15 12:33:37 a fundamentally biased measure, you will repeat and
16 12:33:40 repeat and repeat and repeat the error. That's why they
17 12:33:45 changed the methodology.
18 12:33:47 MR GHAFARI: I understand that. Follow-up question.
19 12:33:50 Can that divergence, let's call it inaccuracy, ever get
20 12:33:53 to the magnitude that is equivalent to the magnitude
21 12:33:58 that you would get if you have a biased index, for
22 12:34:05 difference reasons --
23 12:34:07 A.For practical reason, no, because they will never wait
24 12:34:11 as long as they waited in the other -- how long will
25 12:34:15 they have to wait in order for the wait to have that

1 12:34:19 effect?

2 12:34:20 Because if you look at --

3 12:34:22 MR GHAFARI: Don't extend the five-year period of wait

4 12:34:24 Assume that period of wait stays the same, but can there

5 12:34:28 be other factors that cause the same divergence?

6 12:34:33 What I'm going back to is the initial question that

7 12:34:36 Mr Robb asked: can you ever get the 10 per cent as

8 12:34:39 against the 10 per cent, whereas this 10 per cent is

9 12:34:43 caused by fundamental bias and this 10 per cent is

10 12:34:46 caused by other reasons.

11 12:34:56 A.What other reason can there be? I mean...

12 12:34:59 MR GHAFARI: Other than wait, just wait.

13 12:35:02 PRESIDENT: For example, if there was a significant

14 12:35:04 change in what is in the basket, or the weight that's

15 12:35:07 applied to what is in the basket.

16 12:35:12 A.The thing is that the way that -- so you mean habits,

17 12:35:15 consumption habits of people. That is why you do it

18 12:35:21 every five years or less, because that is not a long

19 12:35:26 enough period for habits to change consistently.

20 12:35:30 There could be a situation where you have very rapid

21 12:35:34 technological change and therefore, the items in the

22 12:35:38 basket change in quality and they change in price, and

23 12:35:42 the reason -- think about, for example, you introduce

24 12:35:47 smartphones, right, and smartphones every year, they

25 12:35:50 become more and more powerful, and so their prices

1 12:35:54 change, right? So what statistical agencies do in that
2 12:35:58 respect is they adjust for the differences in quality by
3 12:36:03 using different methodology, one is called Hedonic price
4 12:36:07 analysis, there are other methodologies.
5 12:36:10 That way they obtain comparable prices and use those
6 12:36:21 comparable prices in calculating the index, so that they
7 12:36:24 make sure that they are comparing like for like.
8 12:36:29 It's very -- yeah. You can make adjustments and
9 12:36:35 they do make adjustments and that's a very -- yeah, it's
10 12:36:39 a very good question, actually, because it will happen
11 12:36:43 unless you make an adjustment, which is what is done.
12 12:36:49 It will happen, yes.
13 12:36:55 MR GHAFARI: Thank you.
14 12:36:56 MR ROBB: The first point I wanted to get to, which
15 12:37:01 I don't think I've had a complete answer to, is that in
16 12:37:07 your mind, if there is a fundamental inaccuracy in one
17 12:37:13 of the indices, it doesn't matter how big the gap is
18 12:37:17 with what you would call the more accurate index; is
19 12:37:21 that right?
20 12:37:23 A.Yes, you shouldn't use it.
21 12:37:25 Q.No, no, in your mind, if there is a fundamental
22 12:37:27 inaccuracy, it doesn't matter what the effect of that
23 12:37:31 fundamental inaccuracy is in numerical terms; is that
24 12:37:37 your evidence?
25 12:37:38 A.Yes, yes.

1 12:37:58 You can actually see it from here, because you see,
2 12:38:00 if you actually bring them both to the comparable, you
3 12:38:05 shouldn't bring them both back. So 1999, you compare
4 12:38:11 the blue and the red line, and then you compare the
5 12:38:14 green and the black, right? So one way of doing it is
6 12:38:19 you can say, okay, you know, I compare them over
7 12:38:22 a period of time that is consistent. So the period of
8 12:38:26 timing which those two indices, the green and the black
9 12:38:30 line, are actually different, it's four years, right?
10 12:38:40 But the blue line and the red line have been published
11 12:38:42 together since 1980, even though the blue line is no
12 12:38:48 longer anywhere to be seen on the website of GaStat. So
13 12:38:53 those two lines go back a very long way together.
14 12:38:58 The reason why here they start in 2005 is because
15 12:39:03 I link them. Not because they are linked at that time.
16 12:39:07 They are never linked. They were never linked by
17 12:39:10 GaStat.
18 12:39:11 Now, if you really want to link them, and measure
19 12:39:15 the distance between them, you have to start in 2007.
20 12:39:18 2007 is the year in which the green line starts, exactly
21 12:39:24 the same way as 2013 is the year in which the grey line
22 12:39:29 start. And 2007 is also the year in which the weights
23 12:39:34 of the blue line were changed.
24 12:39:37 So if you had to do a comparison in the distance
25 12:39:41 between those two lines, you can't start in 2005,

1 12:39:44 because that's a very arbitrary point. You start in

2 12:39:47 2007 and you go four years to 2011, and that is the

3 12:39:52 correct -- and then you measure the area underneath and

4 12:39:55 see if they are the same. That's how you do it.

5 12:40:01 Q.Can we move on now, please, to another topic. Can we

6 12:40:04 go to paragraphs 5.4 to 5.6 of your first report.

7 12:40:08 That's D1, page 66.

8 12:40:28 A.5.4 of my first report. (Pause). Okay, yes.

9 12:40:41 Q.So here you're considering the going forward approach;

10 12:40:47 is that correct?

11 12:40:48 A.Yes.

12 12:40:52 Q.You illustrate this, which shows that the -- in your

13 12:40:55 graph at figure 5-1, where you show what the going

14 12:41:01 forward approach means as to how you link COLI 1999 to

15 12:41:06 COLI 2007?

16 12:41:07 A.Yes.

17 12:41:07 Q.What you're showing is that COLI 2007 should be

18 12:41:10 lifted, raised, so that the beginning of 2007 matches

19 12:41:15 the end of COLI 1999?

20 12:41:17 A.Mm-hmm.

21 12:41:19 Q.For the moment, shall we just assume that under the

22 12:41:21 agreement, the parties agreed to use COLI 1999 for as

23 12:41:23 long as it was available?

24 12:41:26 A.Yes.

25 12:41:28 Q.Then you say at 5.5 on the same page:

1 12:41:35 "Under this approach, the adjusted Charge Rates will
2 12:41:37 reflect cumulative inflation under each index for as
3 12:41:39 long as that index is available."
4 12:41:40 Do you see that?
5 12:41:48 A.Yes.
6 12:41:50 Q.That's right, because this treatment, I think we can
7 12:41:53 agree, uses cumulative inflation, not year on year, as
8 12:41:56 the method of adjustment; is that correct?
9 12:42:03 A.But also the two methods are equivalent, right? So
10 12:42:07 they always reflect cumulative inflation. Also the year
11 12:42:15 on year, that reflects cumulative inflation. It's the
12 12:42:19 same. They are the same.
13 12:42:21 Q.I understand that mathematically they will produce the
14 12:42:26 same result.
15 12:42:27 A.Yes.
16 12:42:27 Q.But what I'm saying is you agree -- this shouldn't be
17 12:42:29 controversial?
18 12:42:31 A.No, no.
19 12:42:31 Q.That the agreement actually uses cumulative inflation
20 12:42:32 as the basis for adjustment?
21 12:42:34 A.Yes, yes, it doesn't use year on year, yes, it goes
22 12:42:38 back to 2005.
23 12:42:42 Q.So what you're saying here is that the going forward
24 12:42:45 approach uses the COLI 1999 cumulative inflation for as
25 12:42:48 long as COLI 1999 is available; is that correct?

1 12:42:52 A.COLI 1999 cumulative inflation, and then it cumulates

2 12:42:59 the 2007 to the COLI 1999, yes. But COLI 1999 is no

3 12:43:03 longer available. COLI 1999 is available until 2014 and

4 12:43:08 then the linking approach cumulates it forever --

5 12:43:15 I mean, until the end of the contract, not forever.

6 12:43:19 Q.Can I ask you to go to paragraph 6.6, which is D1-80.

7 12:43:49 Here you're describing your approach.

8 12:43:52 A.Yes.

9 12:43:53 Q.We can see at 6.5, you refer to the expression

10 12:43:58 "reasonable retroactive correction"?

11 12:44:13 A.6.5. Yes.

12 12:44:18 Q.That's your approach, isn't it? You're carrying out

13 12:44:21 what you consider to be a reasonable retroactive

14 12:44:23 correction?

15 12:44:24 A.Yes.

16 12:44:25 Q.We can see that illustrated graphically at your figure

17 12:44:28 6-1, which is at D1-83.

18 12:44:39 A.Yes.

19 12:44:46 Q.At paragraph 6.6(2), you explain, at D1-81, you

20 12:45:02 explain your approach and you say:

21 12:45:09 "Prior to January 2014, COLI 1999 is used as per the

22 12:45:12 WPA (so this express term of the WPA is not

23 12:45:15 disregarded). However, from January 2014 onwards, the

24 12:45:19 rate of inflation implied by COLI 2007 (instead of the

25 12:45:22 relatively inaccurate rate of inflation implied by

1 12:45:25 COLI 1999) is used."

2 12:45:29 A.Yes.

3 12:45:30 Q.So the first point is here you're judging COLI 1999

4 12:45:34 and COLI 2007 in relative accuracy terms?

5 12:45:38 A.Yes.

6 12:45:39 Q.So that's part of your analysis, isn't it, about the

7 12:45:42 relative inaccuracy, not just fundamental inaccuracy?

8 12:45:45 A.Yes, that is misspoken. I apologise. Yes. It is

9 12:45:53 absolutely misspoken there. You're right.

10 12:45:56 Q.I'm not suggesting you've misspoken at all. Are you

11 12:45:59 saying you want to correct your report?

12 12:46:02 A.Well, in this case, it is -- yeah, it is inaccurate,

13 12:46:06 and it's also relatively inaccurate, but it is

14 12:46:09 fundamentally inaccurate. If we want to go there, the

15 12:46:12 term "relatively" should be deleted.

16 12:46:18 Q.Then perhaps we could go down, just whilst we're here,

17 12:46:22 just to confirm if there is anything else you want to

18 12:46:24 change about your report at this stage, into

19 12:46:27 subparagraph (3), where you're dealing with COLI 2007 to

20 12:46:34 COLI 2013, where you do use what you call the going

21 12:46:39 forward approach; is that correct?

22 12:46:40 A.Yes.

23 12:46:42 Q.You say:

24 12:46:47 "While I consider that COLI 2013 is more accurate

25 12:46:50 than COLI 2007 for the reasons set out in Section 3 and

1 12:46:53 Section 4, I consider that COLI 2007 is not as
2 12:46:56 inaccurate as COLI 1999."
3 12:46:59 Do you see that?
4 12:47:00 A.Yes.
5 12:47:00 Q.Again, that's a relative inaccuracy concern, isn't it?
6 12:47:05 A.Yes, as I explained before, COLI 1999 is inaccurate in
7 12:47:11 a fundamental way. COLI 2007 has this issue with the
8 12:47:16 weights, because it's older by 2017, yes.
9 12:47:23 Q.But the only fair reading of this bit of the report is
10 12:47:27 that you are comparing how close to -- presumably you're
11 12:47:31 comparing how close to what you consider to be true
12 12:47:34 inflation COLI 1999 is and COLI 2007 is; that's what
13 12:47:39 you're doing, isn't it?
14 12:47:40 A.No, no, it's not what I'm doing. What I'm doing is
15 12:47:42 saying one index is fundamentally inaccurate, the other
16 12:47:46 one is inaccurate by way of construction, because it's
17 12:47:50 an old index, right, and therefore, first of all, from a
18 12:47:56 statistic -- okay. Let's actually look at the two
19 12:48:02 aspects. Let's look at the statistical aspect and let's
20 12:48:06 then look at the contractual aspect.
21 12:48:08 So from a statistical point of view, one is
22 12:48:12 fundamentally inaccurate and the other one is not. So
23 12:48:16 from a statistical point of view, what the agency did is
24 12:48:24 one was never linked and the other one was linked on the
25 12:48:29 base year, at the base year. But the base year, 2007,

1 12:48:34 by 2017, was 10 years old. So when the new index comes

2 12:48:42 in, which is 2013, what are you going to do? The

3 12:48:47 statistician links it in 2013 and discards the green

4 12:48:53 spinoff, overshoot. But here we are talking about two

5 12:48:58 parties in a contract. So what do you do? You say,

6 12:49:02 okay, I have to strike a balance here. I can't

7 12:49:07 constantly go back. I go back once because there is

8 12:49:11 a real problem.

9 12:49:14 But when I move forward, I don't do that. Because

10 12:49:17 otherwise it becomes every time you have to go back.

11 12:49:21 So you strike a balance and you say I link them in

12 12:49:25 December 2017, and then you wait for the next index to

13 12:49:34 come.

14 12:49:36 So it's two different things. One is the

15 12:49:39 statistical aspect of it and the other one is what

16 12:49:42 should be done for this contract.

17 12:49:46 I have some guiding principles among which there is

18 12:49:53 what I call the tradeoff between certainty and accuracy,

19 12:49:57 which are important in this respect. They are not

20 12:50:01 important to a statistician, but they are important in

21 12:50:04 this respect. So that is why I do that.

22 12:50:07 Q.So in this bit you're not using your sort of

23 12:50:12 econometrician, statistician expertise; is that correct?

24 12:50:16 A.Fortunately I also have another PhD. I have a PhD in

25 12:50:21 economics and economic policy, so that's also part of my

1 12:50:24 expertise.

2 12:50:24 Q.But in this subparagraph (3) that we've just been

3 12:50:28 looking at, you are using the language of relative

4 12:50:32 accuracy and inaccuracy, aren't you?

5 12:50:35 A.Yes, as I explained to you, what that means.

6 12:50:39 Q.No, but when you said "is not as inaccurate as

7 12:50:42 COLI 1999", that can only be a statement about --

8 12:50:44 A.It's not --

9 12:50:45 Q.-- the amount of divergence?

10 12:50:48 A.No, it's not as inaccurate because one is

11 12:50:49 fundamentally inaccurate and the other one is not. It's

12 12:50:53 not just -- it's not a matter of size. It's not

13 12:50:56 a matter of size.

14 12:50:59 Q.Okay. For the present purposes, you'd just like the

15 12:51:02 tribunal to delete through the word "relatively" in your

16 12:51:06 subparagraph (2)?

17 12:51:10 A.Yes.

18 12:51:16 Q.Just going back to subparagraph (2). A bit of

19 12:51:20 divergence because I was trying to understand where your

20 12:51:22 evidence currently was. I'm going to suggest to you

21 12:51:25 that you'd said, and we looked at this when you were

22 12:51:29 looking at the going forward approach, that the going

23 12:51:31 forward approach retains the cumulative inflation under

24 12:51:34 COLI 1999; is that correct?

25 12:51:36 A.Yes.

1 12:51:38 Q.And that was a consequence of using COLI 1999 for as
2 12:51:41 long as it was available?

3 12:51:44 A.Yes.

4 12:51:46 Q.But when you're engaged in your retroactive
5 12:51:49 correction, you are disregarding that express term about
6 12:51:52 using COLI 1999 for as long as possible, aren't you,
7 12:51:57 because you're replacing that cumulative inflation with
8 12:51:59 the cumulative inflation implied by COLI 2007?

9 12:52:05 A.But COLI 1999 didn't exist anymore.

10 12:52:10 Q.No, but the cumulative inflation which was implied up
11 12:52:12 to 2013, that has to be retained if you're going to use
12 12:52:17 COLI 1999 for as long as possible?

13 12:52:20 A.No. I mean, I can use COLI 1999 for as long as
14 12:52:28 possible until 2014, and then from then on, when it's no
15 12:52:35 longer possible to use it, I can make a correction.

16 12:52:38 Q.I see. So when we go --

17 12:52:41 A.I don't know -- this is a legal point, actually,
18 12:52:44 because I don't -- what is it that this was --

19 12:52:51 Q.Can I take you now to paragraph 5.31 at D1-75. Do you
20 12:53:08 have that?

21 12:53:08 A.Yes, yes.

22 12:53:09 Q.You say:

23 12:53:10 "I explain at paragraph 5.24 above that SWPC
24 12:53:13 overpaid SEPCO for many years due to COLI 1999
25 12:53:17 overstating the 'true' rate of inflation relative to

1 12:53:20 more accurate indices."

2 12:53:22 A.Yes.

3 12:53:22 Q.If we just pause there. Again, what you're talking

4 12:53:26 about is a relative accuracy and the divergence between

5 12:53:30 COLI 1999 and later indices?

6 12:53:35 A.No, no, no. What I mean here is that if you compare

7 12:53:38 it to more accurate indices, COLI 1999 was overstating,

8 12:53:46 overestimating the rate of inflation. That's what

9 12:53:54 I mean.

10 12:53:58 Q.In this paragraph, what you're saying is that the

11 12:54:08 cause of your concerns about COLI 1999, this, you have

12 12:54:10 to lower the starting point for COLI 2007 by removing

13 12:54:14 the cumulative inflation implied by COLI 1999 between

14 12:54:18 2007 and 2013, and replacing it with the inflation

15 12:54:22 implied under COLI 2007; is that correct?

16 12:54:26 A.I am not removing the cumulative inflation, because if

17 12:54:30 I had removed the cumulative inflation, then there would

18 12:54:33 be no overpayment. I'm just making a correction,

19 12:54:42 avoiding that cumulative inflation to be projected

20 12:54:49 forward for the whole life of the contract.

21 12:54:55 Q.In fact, what you're --

22 12:54:57 A.So, yes.

23 12:54:58 Q.What you're correcting is the use of COLI 1999 up to

24 12:55:01 2014 by replacing it with COLI 2007; that's what you're

25 12:55:05 doing, isn't it?

1 12:55:10 A.No, I'm not removing the use of COLI 1999 up to 2014

2 12:55:14 because if I had done that, then I would have said the

3 12:55:24 windfall, the overpayment, whatever we want to call it,

4 12:55:29 should be given back. So, you know -- yes. So I'm not

5 12:55:36 removing it, no. I'm just making a correction.

6 12:55:43 As I said before, whatever overpayment, whatever

7 12:55:49 cumulative inflation that was not supposed to be there,

8 12:55:56 is like a sunk cost. Until then, we take it as it is,

9 12:56:00 and from 2014 onwards, we try to rectify the situation.

10 12:56:12 Q.I'll just start by touching on the new instructions

11 12:56:16 you received in your second report.

12 12:56:19 There were two new instructions in your second

13 12:56:21 report, weren't there? The first is at paragraph 1.5 of

14 12:56:25 your second report at D103, page 5.

15 12:56:41 Really, you have to read paragraph 1.4 and 1.5.

16 12:56:49 Paragraph 1.4 starts at D103-4 and over to D103-5.

17 12:56:59 Do you see that?

18 12:56:59 A.Yes, yes.

19 12:57:01 Q.This is the instruction as to the discretion or the

20 12:57:05 approach of the independent expert as set out in the

21 12:57:09 contract; is that right?

22 12:57:11 A.So this one is the independent expert and the second

23 12:57:14 one is that the tribunal has similar discretion.

24 12:57:18 Q.Exactly, and that was the point we looked at in

25 12:57:20 relation to item 20 of the joint statement, is it?

1 12:57:25 A.About the instruction of the tribunal, yes.

2 12:57:28 Q.Yes. Sorry. I think you were nodding your head and

3 12:57:32 I think --

4 12:57:32 A.Yes.

5 12:57:32 Q.-- as the president suggested, if you could just make

6 12:57:33 sure yes for the transcript.

7 12:57:35 A.Yes. I did say, three times.

8 12:57:38 Q.The second of these new instructions is at

9 12:57:40 paragraphs 3.15 and 3.16, which is D103, page 18.

10 12:58:04 Really, you can start at 3.14, because that's where

11 12:58:11 you're dealing with it. You say that Ms Harfouche:

12 12:58:14 "... repeats the wording from Appendix 13 of the

13 12:58:18 agreement, emphasises the words '... if the index is not

14 12:58:20 available ...' [and says] that she understands that the

15 12:58:24 Parties have agreed that COLI 1999 should be used 'as

16 12:58:27 long as it is available', and opines that 'this suggests

17 12:58:30 to me that the Parties have agreed to continue following

18 12:58:31 this approach for the subsequent indices'."

19 12:58:34 Then at 3.15 you say it is not for you:

20 12:58:37 "... to opine on what the Parties in fact have, or

21 12:58:40 have not, agreed to do."

22 12:58:42 Then you take the relevant part of appendix 13 and

23 12:58:49 you cite it there. Then your new instruction is:

24 12:58:54 "I am instructed to assume that the correct

25 12:58:55 interpretation of this clause is that a new index could

1 12:58:58 be adopted by mutual agreement (or an Independent Expert
2 12:59:02 decision, or an Arbitral Tribunal) even if the old index
3 12:59:05 is still available."
4 12:59:05 Because you've emphasised the words, "or if the
5 12:59:12 parties agree otherwise", do you see that?
6 12:59:17 A.Yes.
7 12:59:18 Q.So just to understand how you've approached this
8 12:59:22 question, is it your understanding of your instruction
9 12:59:28 that an independent expert or tribunal could replace an
10 12:59:32 existing index when it was available, without the
11 12:59:36 agreement of the parties?
12 12:59:59 A.What I understand from this is that this instruction
13 13:00:13 means that the tribunal has the same discretion as the
14 13:00:17 independent expert. That's how I understand it. In
15 13:00:23 3.15, so the -- yes, that's how I understood it.
16 13:00:29 Q.No, no. The instruction about the tribunal's
17 13:00:32 discretion, that was the instruction we looked at first
18 13:00:36 of all and it's the one that's referred to in joint
19 13:00:39 statement 20. This is a different instruction you're
20 13:00:41 being given here, isn't it, at 3.16?
21 13:00:44 A.How is it different? In terms of even if the old
22 13:00:48 index is still available?
23 13:00:49 Q.Yes, that's a new instruction, isn't it?
24 13:00:52 A.No, because it's written here, right? It says:
25 13:00:57 "... as published by official ... or, if the index

1 13:00:58 is not available or if the parties agree otherwise ..."

2 13:01:02 So there are two "ors", right? It could be that the

3 13:01:06 index is not available or it could be that the parties

4 13:01:09 agree otherwise.

5 13:01:11 Q.Yes, I understand that, I'm trying to understand what

6 13:01:13 you understood here and how that might have impacted

7 13:01:16 your opinions. So --

8 13:01:19 A.No, my opinion was not impacted by any of this. You

9 13:01:23 know, my opinion is not a legal opinion. My opinion is

10 13:01:29 what I think as a -- in my area of expertise, what

11 13:01:34 I think is the right thing to do.

12 13:01:38 Q.But hold on. This is an instruction.

13 13:01:40 A.Yes.

14 13:01:41 Q.And so presumably, this instruction has become

15 13:01:44 relevant to the way you express your opinion in your

16 13:01:47 report, hasn't it?

17 13:01:52 A.But if it was relevant to the opinion in my report --

18 13:01:55 the instruction at 3.16, you mean?

19 13:01:59 Q.The instruction which -- you have to read

20 13:02:02 paragraph 3.15 and 3.16 to understand the instruction?

21 13:02:05 A.Okay, right.

22 13:02:07 Q.I'm asking you, is that instruction relevant to your

23 13:02:09 report?

24 13:02:14 A.It's not relevant to the conclusions. I mean, it's

25 13:02:17 always been -- I have always had the same opinion. The

1 13:02:22 issues with "or if the parties agreed otherwise", means

2 13:02:26 that it could very well be that you can use a different

3 13:02:33 mutually agreed index, but this is not what happened

4 13:02:38 here. So there was no index available when COLI 1999

5 13:02:48 was being produced. There was nothing else. There was

6 13:02:51 just COLI 1999. It's the same for the following

7 13:02:58 indices. And, yeah.

8 13:03:10 Q.I'm just looking at the time. I think maybe --

9 13:03:13 A.And the mutually -- maybe I can finish the answering

10 13:03:18 this question.

11 13:03:20 The way I interpret this is that this clause gives

12 13:03:23 the possibility of actually, even if, when COLI 1999 is

13 13:03:33 no longer available, right, gives you the possibility of

14 13:03:38 linking COLI 2007 to COLI 1999 at a prior date than at

15 13:03:46 the end of COLI 1999. So that linking in 2007.

16 13:03:56 Q.Sorry, which bit do you say gives you the possibility

17 13:04:00 of linking at an earlier date?

18 13:04:06 A.So in 2013, right, when the index -- when COLI 1999

19 13:04:15 became no longer available, there are two ways of doing

20 13:04:18 this, right? One way is to say, okay, we move forward

21 13:04:23 from this point. Another way is to say, okay, we

22 13:04:28 actually link them in 2007. So we link them at the

23 13:04:34 moment where COLI 2007 is no longer available, but it is

24 13:04:39 COLI 2007, it's not COLI 1999, so.

25 13:04:46 Q.But that's not what you're saying at paragraph 3.16.

1 13:04:49 You're saying:

2 13:04:50 "I am instructed to assume that the correct

3 13:04:52 interpretation of this clause is that a new index could

4 13:04:55 be adopted by mutual agreement (or an Independent Expert

5 13:04:58 decision, or an Arbitral Tribunal) even if the old index

6 13:05:01 is still available."

7 13:05:02 A.Yes, this refers to the overlap. This refers to the

8 13:05:10 overlap. So if two indices are available at the same

9 13:05:14 time, where do you link them. So if we exclude the 2007

10 13:05:23 issue, it's for a possible future index that is going to

11 13:05:29 be published probably next year, I would guess, and will

12 13:05:34 be the last index in this contract.

13 13:05:37 Q.Okay, so --

14 13:05:37 A.If it was -- sorry, it was published concurrently,

15 13:05:42 which is something that I have not ...

16 13:05:48 Q.What I'm interested in is where you say -- obviously,

17 13:05:53 if the parties agree something, they can agree anything

18 13:05:55 they like. But let's leave that aside.

19 13:05:58 Are you saying that even if there's no agreement

20 13:06:01 between the parties, your understanding is that an

21 13:06:05 independent expert or an arbitral tribunal can adopt

22 13:06:10 a new index, even if the old index is still available?

23 13:06:16 A.Yes, they could just say: oh, look, there is an index

24 13:06:22 that reflect -- you know, there is a PPI, why don't we

25 13:06:26 use the PPI. If they agree, why not? But I don't know.

1 13:06:33 I'm --

2 13:06:33 Q.Well, sorry, the question was on the basis there

3 13:06:35 wasn't any relevant agreement between the parties. So

4 13:06:38 answering by reference to an agreement is not going to

5 13:06:40 help. So I'm asking again --

6 13:06:43 A.The question is asked, you know, what could be done if

7 13:06:48 the index is not available. The parties could have

8 13:06:50 agreed, right? The answer is -- the question was asked

9 13:06:54 in hypotheticals. I mean, you're asking me to interpret

10 13:07:01 a legal provision, you know. This is not for me to do.

11 13:07:08 MR ROBB: No, I'm asking you to explain your

12 13:07:10 understanding of your instruction, but I think we'll

13 13:07:12 have to return to that after lunch.

14 13:07:16 PRESIDENT: Thank you, Mr Robb. We'll now break for an

15 13:07:19 hour. So we're back at 5 past 2.

16 13:07:25 (1.07 pm)

17 13:07:28 (The luncheon adjournment)

18 13:54:04 (2.03 pm)

19 14:03:26 PRESIDENT: We'll get started again. Dr Meschi,

20 14:03:28 I remind you you're still under your affirmation and

21 14:03:30 Mr Robb, if you would like to continue.

22 14:03:32 MR ROBB: Thank you.

23 14:03:34 Dr Meschi, before we continue with the line of

24 14:03:38 questioning before lunch, I would just like to give you

25 14:03:41 a chance to consider one of the answers you gave earlier

1 14:03:45 on about the differences between COLI 2007 and

2 14:03:50 COLI 2013, and I think then you were saying that the

3 14:03:54 only reason for the difference was the outdated basket

4 14:03:58 being used for COLI 2007; is that correct?

5 14:04:02 A.Yes, there is another reason, but that's not what has

6 14:04:07 caused that kind of problem.

7 14:04:10 Q.Perhaps we could just look at -- I think just so

8 14:04:14 everyone understands what you're talking about, go to

9 14:04:17 table 4-1 of your first report, page D1-52.

10 14:04:21 A.Yes.

11 14:04:23 Q.Here what you've done is you've compared various

12 14:04:25 aspects of the four indices and explained how things

13 14:04:31 have changed.

14 14:04:34 One of the things that we can see that's changed

15 14:04:36 between COLI 2007 and COLI 2013 is the final line, which

16 14:04:41 is where the method of aggregating items for the general

17 14:04:46 index has changed from arithmetic in COLI 2007 to

18 14:04:51 geometric in COLI 2013?

19 14:04:53 A.Yes.

20 14:04:55 Q.So that's another difference that would have had an

21 14:04:58 impact on the inflation estimated by the two indices?

22 14:05:04 A.Yes, it does, it's just not a fundamental issue,

23 14:05:09 because the geometric means there are used on the higher

24 14:05:15 level indices, which have weight, so they do not have

25 14:05:23 the same effect on the index as the use of the

1 14:05:29 arithmetic means on the elementary aggregates.

2 14:05:35 So there is a quote in my report. I think it's in

3 14:05:41 the first one. Is it possible to look for a word?

4 14:05:53 TECHNICIAN: Yes, ma'am.

5 14:05:54 A.Can you check for "Tor", T-O-R? Can you find

6 14:06:01 anything? There is a quote from the CPI manual.

7 14:06:07 "Fisher"?

8 14:06:20 I'm so sorry.

9 14:06:21 MR ROBB: We might come to this later, but let me put it

10 14:06:27 in this way. The question is, or the position then is

11 14:06:30 that in addition to the issue about the basket, there

12 14:06:37 was a methodological change between COLI 2007 and

13 14:06:42 COLI 2013?

14 14:06:43 A.Yeah.

15 14:06:44 Q.But your view is that that difference is not as

16 14:06:49 significant as the change between arithmetic and

17 14:06:51 geometric averaging between COLI 1999 and COLI 2007 in

18 14:06:56 respect of the elementary aggregates?

19 14:06:58 A.Yes, it doesn't impart bias, fundamental bias to the

20 14:07:02 indices. It is because of the different way that the

21 14:07:09 indices are treated.

22 14:07:12 So the higher aggregates are all weighted, right?

23 14:07:17 So they use the basket of weight, and so the distortions

24 14:07:24 that happen in the lower level, because of the absence

25 14:07:29 of weights, are not -- they do not happen in the higher

1 14:07:33 level weight. It's because when you don't put a weight,
2 14:07:39 what you're doing essentially, there are implicit
3 14:07:43 weights in those indices that create distortions. Then,
4 14:07:48 depending on what type of arithmetic index you use,
5 14:07:51 there is a different type of distortion. But they are
6 14:07:59 quite serious and those indices are strongly discouraged
7 14:08:06 by --
8 14:08:07 Q.We'll be coming back to that, but I just wanted to
9 14:08:10 clarify there was another difference between the two
10 14:08:11 indices?
11 14:08:12 A.Yes, but it's not substantive in any way.
12 14:08:16 Q.Returning to where we were before the lunch break,
13 14:08:23 where we were dealing with your understanding of the
14 14:08:33 instruction that had been given to you at
15 14:08:35 paragraphs 3.15 and 3.16 of your second report, which
16 14:08:42 was, just so we get it back, it's D103, page 18.
17 14:09:01 Just want to make sure you have that.
18 14:09:38 Do you have it? If you --
19 14:09:39 A.Yes, I have it.
20 14:09:42 Q.-- say "yes", just so we can be clear that you have
21 14:09:44 it.
22 14:09:45 This was the instruction given to you. It wasn't in
23 14:09:47 your first report but you refer to it in your second
24 14:09:49 report.
25 14:09:50 I just want to understand how you have understood

1 14:09:53 this question, okay, and how you have understood this
2 14:09:57 instruction.
3 14:10:00 A.This is my first report, 3.15.
4 14:10:04 Q.No, your second report, which is why I want to check
5 14:10:09 you have the document. It's the one that's on the
6 14:10:11 screen?
7 14:10:11 A.Yes, yes. Okay. Yes, right.
8 14:10:17 Q.Right. What I want to understand, this is the
9 14:10:20 instruction that was given to you for your second
10 14:10:21 report?
11 14:10:22 A.Yes.
12 14:10:23 Q.I want to understand how you have understood that
13 14:10:26 instruction. As I read paragraph 3.16 -- you tell me
14 14:10:37 whether this is how you understood it -- that you were
15 14:10:39 being instructed that an independent expert or tribunal
16 14:10:43 could have replaced COLI 1999 with COLI 2007 when
17 14:10:48 COLI 1999 was available, even if the parties had not
18 14:10:52 agreed to do so?
19 14:10:57 A.Even if the -- when COLI 1999 was available?
20 14:11:04 Q.Assume there's no relevant agreement by the parties
21 14:11:06 about replacing an index.
22 14:11:09 A.Right.
23 14:11:10 Q.There's no agreement from the parties.
24 14:11:12 A.Okay.
25 14:11:12 Q.Is your understanding of this instruction that an

1 14:11:16 independent expert or tribunal could have replaced

2 14:11:19 COLI 1999 with COLI 2007, even when COLI 1999 was

3 14:11:25 available?

4 14:11:30 A.So in that one year in which they were --

5 14:11:34 Q.As an example.

6 14:11:36 A.Whether that was the only time where they were --

7 14:11:38 Q.Let's take that as the point.

8 14:11:41 A.Not if anybody asked them. So it would have been

9 14:11:47 necessary that -- and that's my understanding. So the

10 14:11:53 parties did not agree on substituting an index and then

11 14:11:58 somebody comes from outside and substitutes it?

12 14:12:02 Q.I'm just trying to understand what you understood

13 14:12:04 about this and the significance of the words, "or if the

14 14:12:10 parties agree otherwise", which you've underlined in

15 14:12:13 your paragraph 3.15?

16 14:12:16 A.It could have been that, for example ... I don't know.

17 14:12:33 You're asking me to interpret a legal clause --

18 14:12:38 Q.That's the point. I'm really not asking you to do

19 14:12:40 some legal interpretation. You've been given an

20 14:12:42 instruction as an expert by your client and it is

21 14:12:46 important to understand if you understood that

22 14:12:48 instruction and how you understood that instruction.

23 14:12:50 A.So I understand this instruction in a very simple way.

24 14:12:53 It's that if there is a dispute about this index, an

25 14:13:04 expert can determine what to do with it and it could be

1 14:13:08 either about the index at any time because it looks
2 14:13:12 like -- yes:
3 14:13:14 "... if the index is not ... or if the parties agree
4 14:13:19 otherwise ..."
5 14:13:20 So it could be ... yeah.
6 14:13:23 Q.To avoid interpreting the clause, and to focus on your
7 14:13:25 instruction, which is really what you ought to be
8 14:13:27 concerned with, why do you focus on paragraph 3.16?
9 14:13:31 What I'm trying to understand is here you appear to be
10 14:13:34 saying -- you appear to be being told that an
11 14:13:38 independent expert or arbitral tribunal could adopt
12 14:13:46 a new index, "even if the old index is still available".
13 14:13:51 Do you see that?
14 14:13:55 A.Yes, because it's says:
15 14:13:57 "... or, if the index is not available or if the
16 14:13:59 parties agree otherwise ..."
17 14:14:01 So the parties may agree that the index is there,
18 14:14:03 but it's not really appropriate, right? And then they
19 14:14:11 can say, okay, this index is not working for us. Then
20 14:14:18 let's change it. I want to change it this way. No,
21 14:14:21 I want to change it the other way. We don't agree.
22 14:14:24 Let's go to an independent expert.
23 14:14:27 That's how I interpret it.
24 14:14:32 Q.I see. We'll follow this through --
25 14:14:34 A.I'm just trying to figure out what this means and

1 14:14:38 that's how I interpret it.

2 14:14:39 Q.That's how you interpreted it when you were preparing

3 14:14:41 your report?

4 14:14:42 A.This instruction really didn't make much sense when --

5 14:14:46 not it didn't make much sense -- didn't change my

6 14:14:49 opinion when I wrote my report, because what really

7 14:14:55 mattered to me is, how do you do the transition?

8 14:14:58 Because I'm asked -- the instruction that mattered most

9 14:15:04 to me was the one I read to you before about how do you

10 14:15:07 do the transition? What is the appropriate approach to

11 14:15:13 do this transition? That was actually the question that

12 14:15:17 was substantive to me.

13 14:15:29 In order for that instruction not to be moot, there

14 14:15:37 had to be some kind of dispute about it and this is the

15 14:15:44 clause, I think, which is disputed. Because otherwise,

16 14:15:50 why would they ask me?

17 14:15:53 Q.Well, move on to paragraph 3.17, if you scroll further

18 14:15:56 down the page.

19 14:16:02 What you said here is that:

20 14:16:04 "... this debate is moot because the Parties have

21 14:16:06 used COLI 1999 for as long as it is available ..."

22 14:16:09 Do you see that?

23 14:16:10 A.Yes.

24 14:16:15 Q.Was it your understanding that the instruction we have

25 14:16:18 just been looking at has no application to the dispute

1 14:16:21 in relation to COLI 1999, COLI 2007, because your

2 14:16:26 understanding is the parties used COLI 1999 for as long

3 14:16:29 as it was available?

4 14:16:54 A.My position from a statistical perspective, right, if

5 14:16:58 you want to reflect inflation, the current index is not

6 14:17:05 doing this, then, while it's still being published, it

7 14:17:09 makes sense to switch to an index that is more accurate.

8 14:17:14 But now we are in 2024, and when I wrote my first

9 14:17:18 report, we were in 2020. It doesn't matter, because we

10 14:17:23 are many years after that and the parties did use the

11 14:17:28 index.

12 14:17:29 So we are going into the hypothetical and as far as

13 14:17:34 my opinion is concerned, it's moot, the debate.

14 14:17:40 Q.So to understand how you proceed in your second

15 14:17:43 report, do you proceed on the basis that the parties had

16 14:17:47 agreed in the WPA to use COLI 1999 for as long as it was

17 14:17:50 available?

18 14:17:52 A."... or if the parties agree otherwise ..."

19 14:18:00 I mean, the whole clause is here.

20 14:18:07 Q.Yes, I know, but I'm trying to understand how you've

21 14:18:09 proceeded in your second report?

22 14:18:11 A.So --

23 14:18:12 Q.Do you proceed in your second report on the basis that

24 14:18:15 the parties had agreed in the WPA to use COLI 1999 for

25 14:18:19 as long as it was available?

1 14:18:21 A.But it doesn't matter to me. They used it until 2013
2 14:18:29 and they had to change it in 2014. So the question is,
3 14:18:34 what do you do from 2014 onwards? You have to use
4 14:18:41 another index because the first index is no longer
5 14:18:44 available. What do you do? Do you go and use 2007 from
6 14:18:50 a different starting point, or do you use 2007 starting
7 14:18:57 from the last date at which was available?
8 14:19:04 Q.Right, so --
9 14:19:05 A.And is there any overriding reasons why you should
10 14:19:10 depart from using the approach that was proposed by
11 14:19:18 Ms Harfouche? In my opinion, there is.
12 14:19:20 Q.So am I right in thinking, then, that your evidence
13 14:19:23 now is that the instruction that we were looking at, at
14 14:19:26 paragraphs 3.15 to 3.16, was irrelevant to your report?
15 14:19:45 A.I mean, the parties didn't agree, right? It's not up
16 14:19:59 to me to decide what the parties have or have not done.
17 14:20:07 This is what I'm saying here. So the clause says:
18 14:20:13 "... if the index is not available or if the parties
19 14:20:16 agree otherwise ..."
20 14:20:16 What I am doing in 3.15 is responding to
21 14:20:20 Ms Harfouche, who's saying "if the index is not
22 14:20:24 available". Actually, there is another part of that
23 14:20:31 clause, which is "or if the parties agree otherwise",
24 14:20:34 blah, blah, blah blah, blah. This is what I'm saying
25 14:20:38 here.

1 14:20:41 Q.I want to be clear here. We were previously
2 14:20:44 approaching these paragraphs on the basis that this was
3 14:20:46 what you were instructed -- these were part of your
4 14:20:50 instructions; is that right?
5 14:20:53 A.Well, the crux of the matter is not what is written
6 14:20:58 here, it's what I'm responding to, and what I'm
7 14:21:01 responding to is actually in paragraph 3.14, right?
8 14:21:08 What I am responding to is Ms Harfouche:
9 14:21:13 "... repeats wording from Appendix 13 of the
10 14:21:16 agreement, emphasises the words, "... if the index is
11 14:21:20 not available ...", states that she understands that the
12 14:21:22 Parties have agreed that COLI 1999 should be used 'as
13 14:21:26 long as it is available', and opines that 'this suggests
14 14:21:29 to me that the Parties have agreed to continue following
15 14:21:33 this approach for the subsequent indices.'
16 14:21:35 I consider that it is not for Ms Harfouche (or
17 14:21:43 indeed me) to opine on what the Parties in fact have, or
18 14:21:46 have not, agreed ... I understand that SWPC has not
19 14:21:51 agreed to this, and that there is in fact a legal
20 14:21:54 dispute about how to interpret the terms of the WPA in
21 14:21:58 respect of future indexation changes. Ms Harfouche
22 14:22:04 neglects to emphasise the six words that follow:
23 14:22:09 '... if the index is not available or if the parties
24 14:22:11 agree otherwise ...'
25 14:22:15 Q.You're reading out bits of your report.

1 14:22:17 A.Yes.

2 14:22:18 Q.But what I was trying to understand was whether the

3 14:22:22 instruction that's in paragraph 3.16 is of any relevance

4 14:22:26 to the conclusions in your second report?

5 14:22:38 A.It is a legal issue to decide whether you have to --

6 14:22:43 whether there is something in this agreement, right,

7 14:22:45 that says that you have to use the cumulative inflation

8 14:22:50 that happened and put it forward forever.

9 14:22:59 What this is, what my position is, is this

10 14:23:04 instruction says that it doesn't have to be like that.

11 14:23:09 So if it doesn't have to be like that, what is the way

12 14:23:12 around to doing this? So in that respect --

13 14:23:21 Q.The instruction you were given in 3.16 was:

14 14:23:23 "... to assume that the correct interpretation of

15 14:23:25 this clause is that a new index could be adopted by

16 14:23:29 mutual agreement (or an Independent Expert decision, or

17 14:23:31 an Arbitral Tribunal) even if the old index is still

18 14:23:34 available."

19 14:23:36 Yes? That's what you --

20 14:23:38 A.Agreeing that's a new methodology, yes, a different

21 14:23:40 methodology, yes.

22 14:23:43 Q.Well, you don't mention that there. But it's a very

23 14:23:45 simple question. Did this instruction have any

24 14:23:48 influence on your second report?

25 14:24:00 A.I don't -- I mean, I haven't changed my -- in my

1 14:24:08 second report, I haven't changed my opinion at all from
2 14:24:10 what I was saying before, so how could this instruction
3 14:24:16 have had an influence on my second report?
4 14:24:19 Q.Well --
5 14:24:20 A.Which was the fifth one I wrote.
6 14:24:23 Q.All I'm doing is asking you a question about whether
7 14:24:26 you consider that this was relevant to any issue in your
8 14:24:29 report? If your answer is no, then that's fine.
9 14:24:31 A.Yeah, I don't think so. I mean, given I haven't
10 14:24:34 changed my opinion.
11 14:24:38 MR GHAFARI: I don't mean to jump in, but is the answer
12 14:24:41 not in 3.17? Are you not saying there that the issue is
13 14:24:50 moot?
14 14:24:51 A.Well, that's what I said before.
15 14:24:56 MR GHAFARI: Is your answer that the instruction at
16 14:24:59 3.16 --
17 14:25:03 A.The debate is moot.
18 14:25:03 MR GHAFARI: -- was relevant to your report or not
19 14:25:06 relevant to your report, not relevant because it's
20 14:25:10 academic or moot? I think that's what we're trying to
21 14:25:13 get at, unless I am misunderstanding and getting it
22 14:25:14 wrong.
23 14:25:15 A.Yes, because essentially the issue here is the way --
24 14:25:26 at the point that we have to make a decision, COLI 1999
25 14:25:31 had already been used, it has been used for as long as

1 14:25:34 it was available, and then it was dismissed and it was
2 14:25:42 not published again. The subsequent indices were not
3 14:25:50 published concurrently.
4 14:25:59 So this is all in the past. What is important is
5 14:26:03 what happens in the future. And what happens in the
6 14:26:06 future is going to happen when the next index is coming.
7 14:26:11 So what do you do with that next index? And what do you
8 14:26:16 do with the next index depends on how the index is
9 14:26:22 published.
10 14:26:23 So when I wrote my first report, I didn't consider
11 14:26:29 that the next index would be published in any way but
12 14:26:36 back-to-back. The same way the other indices have been
13 14:26:38 published. So there is only one point in time in which
14 14:26:41 you can actually physically link these indices. You
15 14:26:44 have no choice.
16 14:26:45 But in case the next index would actually be
17 14:26:54 published in a concurrent way for longer than 12 months,
18 14:26:57 then that instruction in 3.15 becomes applicable,
19 14:27:10 because if you want to reflect true inflation and use
20 14:27:13 the most accurate index, then, in my opinion, you have
21 14:27:17 to link the indices as soon as the new better one comes.
22 14:27:22 This doesn't imply any correction, it's just linked as
23 14:27:29 soon as the new index comes.
24 14:27:31 So that is the disagreement, because in my opinion,
25 14:27:35 that's when it should be done, and in Ms Harfouche's

1 14:27:39 opinion, it should be done at the very last moment when
2 14:27:48 the old index is published, and that is where my
3 14:27:52 instruction matters.
4 14:27:58 MR ROBB: So your evidence is that this instruction has
5 14:27:59 nothing to do with your opinion on COLI 1999, COLI 2007?
6 14:28:05 A.COLI 1999 and COLI 2007, I have expressed my opinion,
7 14:28:08 regardless.
8 14:28:14 Q.So --
9 14:28:15 A.As I said, COLI --
10 14:28:17 Q.Did you agree with my question, that your evidence is
11 14:28:20 that this instruction has nothing to do with your
12 14:28:23 opinion on COLI 1999 to COLI 2007?
13 14:28:27 A.The one in 3.15?
14 14:28:28 Q.Yes.
15 14:28:29 A.Yes, I did say before --
16 14:28:32 Q.I just want to be absolutely clear about your evidence
17 14:28:34 and if you're agreeing with me, I'm very happy to move
18 14:28:36 on.
19 14:28:37 A.Yes.
20 14:28:37 Q.Thank you.
21 14:28:39 Could we please go to the joint statement, which is
22 14:28:41 D130, page 23. Do you have that? This is item 33 of
23 14:29:08 the joint statement.
24 14:29:10 A.Mm-hmm.
25 14:29:10 Q.Looking at your column here, it starts off, you say:

1 14:29:13 "Ms Harfouche considers that my preferred approach
2 14:29:16 does not comply with the WPA because 'its starting point
3 14:29:18 in 2014, and thus all invoices thereafter, do not use
4 14:29:21 COLI 1999 for as long as it was available, but rather
5 14:29:24 use COLI 1999 from 2005 to 2007 and COLI 2007 from 2007
6 14:29:30 to 2013'."
7 14:29:32 Do you see that?
8 14:29:35 A. Yes.
9 14:29:35 Q. Then you say:
10 14:29:37 "I disagree. The WPA does not state that COLI 1999
11 14:29:41 should be used 'for as long as it was available'.
12 14:29:43 Rather, it states that COLI 1999 should be used '... or,
13 14:29:48 if the index is not available or if the parties agree
14 14:29:50 otherwise, then another mutually agreed index, or in the
15 14:29:53 event of a failure to agree then such index or method of
16 14:29:55 calculation as shall be determined by the Independent
17 14:29:57 Expert ...' The use of COLI 1999 prior to January 2014
18 14:30:03 is therefore consistent with the WPA."
19 14:30:06 Then you say:
20 14:30:08 "The six words emphasised above, mean that the
21 14:30:11 Parties can agree, or the Independent Expert (and, I am
22 14:30:14 instructed, this Tribunal), can determine a different
23 14:30:16 approach."
24 14:30:17 So I take it from here that here you are saying that
25 14:30:25 the instruction that you were given at paragraphs 3.15

1 14:30:27 and 3.16 of your second report is relevant to your
2 14:30:31 assessment of how to transition from COLI 1999 to
3 14:30:34 COLI 2007?
4 14:30:39 A.This is an answer to another question, though. The
5 14:30:42 question is whether my approach complies with the WPA,
6 14:30:48 not whether the WPA determines my approach.
7 14:31:03 Q.Sorry. But you're saying here, you're justifying your
8 14:31:09 approach by reference to the WPA by reference to the
9 14:31:13 clause that we were just discussing in the context of
10 14:31:15 the instruction at paragraphs 3.15 and 3.16 of your
11 14:31:19 second report?
12 14:31:19 A.Yes, yes. Yes, but the issue here is the opposite of
13 14:31:24 what you presented to me before. What you asked me
14 14:31:27 before was, does this instruction matter for what you
15 14:31:33 decided to do about linking COLI 1999 and COLI 2007.
16 14:31:37 And I responded, no, that instruction doesn't affect my
17 14:31:43 opinion how to link those indices.
18 14:31:47 But here the question is: does my opinion in my
19 14:31:51 approach comply with the WPA or not? And I say, well,
20 14:31:58 yes, it does, for these reasons, because this is what
21 14:32:00 that says.
22 14:32:01 I'm not saying that I have decided this in order to
23 14:32:05 comply with the WPA. I'm just saying that my approach
24 14:32:09 does comply with the WPA, because this is what the
25 14:32:13 WPA -- this is how I read the WPA, it's the other way

1 14:32:17 around.

2 14:32:17 Q.I see. So is your evidence, then, that if the words

3 14:32:20 "or if the parties agree otherwise" didn't exist, then

4 14:32:24 you would accept that your approach does not comply with

5 14:32:27 the WPA?

6 14:32:36 A.No, because -- no. Because there could still be

7 14:32:46 recourse to -- so if the index is not available, then

8 14:32:52 another mutually agreed index may not have been agreed

9 14:32:57 by the parties, but it can still be decided by an expert

10 14:33:02 or by a tribunal.

11 14:33:07 Q.Hold on. So you start this by saying that:

12 14:33:13 "The WPA does not state that COLI 1999 should be

13 14:33:15 used 'for as long as it was available'."

14 14:33:17 Do you see that?

15 14:33:18 A.Yes.

16 14:33:18 Q.Then you emphasise in the clause the words:

17 14:33:21 "... or if the parties agree otherwise ..."

18 14:33:22 Do you see that?

19 14:33:25 A.Yes.

20 14:33:28 Q.And then you say in the next paragraph down:

21 14:33:31 "The six words emphasised above ..."

22 14:33:34 And just to be clear, the words are:

23 14:33:35 "... or if the parties agree otherwise ..."

24 14:33:37 "... mean that the Parties can agree, or the

25 14:33:39 Independent Expert (and, I am instructed, this Tribunal)

1 14:33:42 can determine a different approach."

2 14:33:43 Do you see that?

3 14:33:46 A.Yes.

4 14:33:46 Q.So what you're saying here is that the reason that

5 14:33:51 your approach complies with the WPA is because of the

6 14:33:54 presence of the words:

7 14:33:55 "... or if the parties agree otherwise ..."

8 14:33:58 A.Yes.

9 14:33:59 Q.Right.

10 14:34:00 A.Among other things:

11 14:34:02 "... or if the parties agree otherwise ..."

12 14:34:05 This is a whole clause, yes.

13 14:34:07 Q.Yes, so if those words were not in that clause, so

14 14:34:11 imagine they were struck through, they just never

15 14:34:14 existed, then you're agreeing, aren't you, that --

16 14:34:16 A.Why should I argue that? The words are in that

17 14:34:18 clause.

18 14:34:19 PRESIDENT: Sorry, Dr Meschi, can you wait until the

19 14:34:21 question has been finished, otherwise the transcript

20 14:34:23 doesn't pick up.

21 14:34:24 A.Sorry, sorry.

22 14:34:25 MR ROBB: I'm just asking you to consider the position

23 14:34:29 that would exist, "or if the parties agree otherwise",

24 14:34:35 if those words were not in that clause. Okay?

25 14:34:38 A.Yes.

1 14:34:38 Q.So if those words were not this that clause, then your
2 14:34:42 position would be, as I understand it, that your
3 14:34:45 approach does not comply with the WPA?
4 14:34:50 A.It does, because there is another "or" there. It
5 14:34:53 says:
6 14:34:53 "... or, if the index is not available or if the
7 14:34:57 parties agree otherwise ... or in the event of a failure
8 14:34:59 to agree ... such index or method of calculation as
9 14:35:03 shall be determined by the Independent Expert ..."
10 14:35:05 So if "or if the parties agree otherwise" weren't in
11 14:35:14 there, you should change also "or in the event of
12 14:35:17 a failure to agree", right?
13 14:35:19 So you can't just take out these six words. They
14 14:35:23 are part, an integral part of this clause, or at least
15 14:35:26 it seems to me.
16 14:35:28 As I said, I am not a lawyer, but to me, when there
17 14:35:32 is one "or", two "or" and then three "or", they have to
18 14:35:36 be read in sequence.
19 14:35:40 Q.I'll debate contractual interpretation I'm sure at
20 14:35:43 a later stage.
21 14:35:45 But I want to go back to the point that you have
22 14:35:49 emphasised, in the following paragraph, these six words.
23 14:35:53 You've emphasised them in the text, "or if the parties
24 14:35:56 agree otherwise", just as you had done in your second
25 14:35:59 report, and you follow up on that emphasis in the next

- 1 14:36:04 paragraph by saying that you understand those words to
- 2 14:36:06 mean, in effect, that your approach complies with the
- 3 14:36:12 WPA; is that right?
- 4 14:36:16 A. Yes.
- 5 14:36:17 Q. So the logical consequence of that is if those words
- 6 14:36:20 did not exist, your approach would not comply with the
- 7 14:36:25 WPA, would it?
- 8 14:36:26 A. Those six words have to be read with everything that
- 9 14:36:30 comes afterwards.
- 10 14:36:33 Q. But I'm asking you to imagine the situation where
- 11 14:36:36 those words are struck through, don't exist.
- 12 14:36:39 A. Sorry, but if you struck through these words, you have
- 13 14:36:42 to add something to the next part of this sentence.
- 14 14:36:53 Q. No, Dr Meschi. I don't want to get involved in
- 15 14:36:56 contractual interpretation. I'm just trying to
- 16 14:36:58 understand what your approach is. Take it from me that
- 17 14:37:00 if you strike through those six words, the clause still
- 18 14:37:04 makes sense.
- 19 14:37:06 A. It doesn't make sense to me.
- 20 14:37:09 Q. You emphasised those six words as giving the basis
- 21 14:37:12 upon which your approach to linking complied with the
- 22 14:37:17 WPA, didn't you?
- 23 14:37:22 A. The six words are the words that have been ignored
- 24 14:37:28 before. That's why I emphasise the six words. The
- 25 14:37:33 parties can agree otherwise, or if they cannot agree, or

1 14:37:38 if they cannot agree, then ask an independent expert,
2 14:37:47 and then I have an instruction, this tribunal can still
3 14:37:52 decide on a different approach.
4 14:37:58 Q.But --
5 14:38:01 A.There is nothing in the WPA that says, as far as I can
6 14:38:07 tell, how do you link the indices.
7 14:38:13 Q.No, but you start this paragraph:
8 14:38:15 "I disagree."
9 14:38:18 A.Yes.
10 14:38:19 Q.Right? What you're disagreeing with is that COLI 1999
11 14:38:24 was to be used for as long as it was available; yes?
12 14:38:28 A.Yes.
13 14:38:29 Q.So your -- the process upon which -- the understanding
14 14:38:32 of the WPA on which you have proceeded is that it does
15 14:38:36 not require COLI 1999 to be used for as long as it is
16 14:38:40 available; is that correct?
17 14:38:48 A.It can be used if it is not available, or if the
18 14:38:53 parties agree otherwise, or, if they can't agree, an
19 14:39:01 independent expert.
20 14:39:02 Q.Well, you say:
21 14:39:07 "The WPA does not state that COLI 1999 should be
22 14:39:09 used 'for as long as it was available'.
23 14:39:10 Then you emphasise:
24 14:39:12 "... or if the parties agree otherwise ..."
25 14:39:13 Now, are you aware, has anyone ever suggested to you

1 14:39:20 that there is any agreement between the parties that

2 14:39:22 would satisfy the words, "or if the parties agree

3 14:39:27 otherwise"?

4 14:39:28 A.I don't know. I don't know. I guess if they had an

5 14:39:33 agreement, we wouldn't be here.

6 14:39:34 Q.Let's assume that there is no basis upon which anyone

7 14:39:39 could suggest that the parties have agreed otherwise.

8 14:39:43 A.Yes.

9 14:39:44 Q.So then we're just left with:

10 14:39:46 "... or, if the index is not available ..."

11 14:39:47 Yes?

12 14:39:50 A.Yes.

13 14:39:51 Q.And your approach, as we can see from the third

14 14:39:55 paragraph there, beginning "The six words ...", means

15 14:39:58 that if the only bit that this tribunal can be concerned

16 14:40:01 with is "for as long as it was available", then your

17 14:40:04 approach is not consistent with the WPA, is it?

18 14:40:08 A.No, I don't agree with you. Because what I understand

19 14:40:12 from this, I am emphasising those six words as opposed

20 14:40:17 to the fact that they were ignored, the index is not

21 14:40:23 available.

22 14:40:24 There are two ways in which, when you have an index

23 14:40:32 that is still available, you can move forward. One of

24 14:40:41 the parties could say, this index is doing something

25 14:40:46 wrong, right? And the other party may say, yes. And so

1 14:40:51 they agree. Or if they don't agree, they can go into
2 14:40:56 a different kind of process.
3 14:40:59 But my whole approach doesn't mention these six
4 14:41:03 words, no.
5 14:41:06 Q.Take it from me, in COLI 1999 to COLI 2007, there's no
6 14:41:12 question of the parties having ever agreed at any stage
7 14:41:17 that they needed to have a new index, is there?
8 14:41:20 A.No, but they obviously disagreed on how to move
9 14:41:23 forward once that index was -- I don't know when, when
10 14:41:29 was it, in 2014. They disagreed on how to move forward.
11 14:41:34 Q.This whole debate that you're explaining in this item
12 14:41:37 33 arises because you're concerned that Ms Harfouche has
13 14:41:41 said that your approach does not comply with the WPA,
14 14:41:47 yes? That's why, that's what this issue 33 -- we can
15 14:41:53 see that from the first paragraph of your column for
16 14:41:55 item 33?
17 14:41:57 A.Yes.
18 14:41:59 Q.So what you're trying to explain is why your approach
19 14:42:02 does comply with the WPA?
20 14:42:04 A.Yes.
21 14:42:04 Q.Is that correct?
22 14:42:05 A.Yes.
23 14:42:07 Q.And when you are trying to explain why your approach
24 14:42:10 complies with the WPA, the words that you alight on are:
25 14:42:14 "... or if the parties agree otherwise ..."

1 14:42:17 Is that right?

2 14:42:18 A.Well, I think this is -- the way I understand it is

3 14:42:21 explained in the paragraph below, right:

4 14:42:24 "The six words emphasised above, mean that the

5 14:42:27 Parties can agree, or the Independent Expert ..."

6 14:42:31 If the parties don't agree, the independent expert,

7 14:42:33 because if they agree otherwise or they don't, somebody

8 14:42:37 else can. That is why those six words are important.

9 14:42:45 They are important because they can either agree or not

10 14:42:50 agree. But there has to be the start of a discussion in

11 14:42:55 order to agree or not agree. So that is why.

12 14:43:04 Q.I'm going to put it to you again that the basis upon

13 14:43:06 which you consider that your approach complies with the

14 14:43:09 WPA is the presence of the words:

15 14:43:11 "... or if the parties otherwise agree ..."

16 14:43:14 A.No, it's:

17 14:43:16 "... or if the parties otherwise agree ... or in the

18 14:43:19 event of a failure to agree ..."

19 14:43:23 It's both.

20 14:43:27 Q.Well, you haven't referred to the latter words, have

21 14:43:31 you? You've focused very much on "or if the parties

22 14:43:34 agree otherwise", haven't you?

23 14:43:37 A.Yes, I am emphasising this, because it was not

24 14:43:40 emphasised before. It's just by contrast.

25 14:43:44 Q.No, because then you would have also emphasise the

1 14:43:48 words you have just mentioned for the very first time:

2 14:43:50 "... or in the event of a failure to agree ..."

3 14:43:51 You don't agree those, do you?

4 14:43:53 A."The six words emphasised above, mean that the Parties

5 14:43:55 can agree, or the Independent Expert ... can determine

6 14:43:59 a different approach."

7 14:44:02 Q.And the different approach is not to use COLI 1999 for

8 14:44:05 as long as it is available, isn't it?

9 14:44:09 A.It could be: let's forget about COLI 1999 and let's go

10 14:44:12 to the PPI, if there is a PPI. It could be: let's use

11 14:44:18 the same PPI that is used for the foreign portions. It

12 14:44:21 could be a lot of things. I don't know what it could

13 14:44:24 be.

14 14:44:27 Q.This is a debate about whether COLI 1999 has to be

15 14:44:30 used for as long as it's available, and you're saying

16 14:44:32 no, you don't have to use COLI 1999 for as long as it's

17 14:44:36 available, aren't you?

18 14:44:43 A.According to what is written here, as I said, this is

19 14:44:47 a moot point, but according to what is written here, you

20 14:44:50 have two possibilities. You can use it until it's

21 14:44:54 available or, if it is not available, or the parties

22 14:45:01 agree otherwise, you can use something else. Or, if you

23 14:45:08 don't agree, then you have to put it to an authority to

24 14:45:17 decide or somebody with authority to decide.

25 14:45:22 Q.But reading this together, when you refer to

1 14:45:25 a different approach in that third paragraph, you are
2 14:45:32 talking about an approach which is different from the
3 14:45:35 going forward approach; is that right?
4 14:45:39 A.My approach?
5 14:45:42 Q.When you refer to -- you say "a different approach",
6 14:45:45 yes?
7 14:45:46 A.Yes.
8 14:45:47 Q.Right. By "a different approach" you mean an approach
9 14:45:50 which is different from the going forward approach?
10 14:45:53 A.Yes, it could be any other approach.
11 14:45:59 Q.So the only basis on which you can do something other
12 14:46:01 than the going forward approach is the presence of these
13 14:46:05 six words.
14 14:46:09 A.No. Why?
15 14:46:12 Q.I'm just reading your words, Dr Meschi. What you have
16 14:46:17 said, and we can rephrase this now you have explained
17 14:46:21 what "a different approach" means:
18 14:46:22 "The six words emphasised above, mean that the
19 14:46:25 Parties can agree, or the Independent Expert (and, I am
20 14:46:29 instructed, this Tribunal) can determine [an approach
21 14:46:33 that is different from the going forward approach]."
22 14:46:34 Would that be a fair summary of what you're trying
23 14:46:38 to say?
24 14:46:47 A.The question is, does this approach comply with the
25 14:46:50 WPA or not? So this is the question, right? Does my

1 14:46:55 approach comply with the WPA or not? It complies with

2 14:46:59 the WPA because this is what the WPA says.

3 14:47:05 Q.Sorry, that --

4 14:47:07 A.So you're saying, well, if the WPA didn't say that,

5 14:47:11 would your approach comply with the WPA?

6 14:47:14 Q.No, that isn't even close to an answer to my question.

7 14:47:18 I'm going to look at the words that you use in item 33

8 14:47:22 in that paragraph that begins "The six words ..." Okay?

9 14:47:25 Right.

10 14:47:26 We had a debate a few moments ago about what you

11 14:47:28 meant by "determine a different approach", and you

12 14:47:31 agreed that what you meant there was that it can

13 14:47:36 determine an approach that is different from the going

14 14:47:38 forward approach proposed by Ms Harfouche?

15 14:47:42 A.But by Ms Harfouche, not by the WPA. The WPA doesn't

16 14:47:46 say that that is the approach you have to use.

17 14:47:49 Q.No, can we just focus on what the questions are.

18 14:47:54 So I asked you a question to find out exactly what

19 14:47:57 you meant by "a different approach" in that paragraph.

20 14:47:59 Yes? I asked you a question before to work out what you

21 14:48:04 meant by "a different approach" in that paragraph. Do

22 14:48:08 you remember that I asked you those questions?

23 14:48:14 You have to say "yes" or "no"?

24 14:48:15 A.Can you read it to me? I mean ...

25 14:48:20 Q.I asked you a question before --

1 14:48:21 A.Yes.

2 14:48:22 Q.-- about what you meant by "a different approach" in

3 14:48:25 that paragraph. Do you remember that question?

4 14:48:28 A.No.

5 14:48:28 Q.Okay. Let's try again.

6 14:48:32 I'm going to suggest to you again that where you

7 14:48:34 refer to "a different approach" in that paragraph, what

8 14:48:39 you --

9 14:48:39 A.In this one?

10 14:48:41 Q.The paragraph that begins "The six words ..."?

11 14:48:44 A.Yes.

12 14:48:45 Q.At the end of that you refer to "a different

13 14:48:46 approach". Do you see that?

14 14:48:57 A.Yes.

15 14:48:57 Q.Right. What I want to do is confirm what your view is

16 14:49:02 about what you intended to mean by the words

17 14:49:06 "a different approach". I'm suggesting to you that what

18 14:49:10 you meant was: can determine an approach that is

19 14:49:15 different from the going forward approach proposed by

20 14:49:18 Ms Harfouche.

21 14:49:23 A.Yes.

22 14:49:24 Q.Yes?

23 14:49:25 A.To be clear, Ms Harfouche considers that my approach

24 14:49:29 is not compliant, okay, and -- with the WPA. Because in

25 14:49:37 her opinion, in her opinion, not to the letter of the

1 14:49:39 WPA, her approach is the only one that complies.

2 14:49:44 Whether I agree or not with that, and I don't, then the

3 14:49:50 next question is, does my approach comply with it?

4 14:49:59 There are several, and we are talking -- yes, there are

5 14:50:05 several possibilities in which a compliant approach can

6 14:50:08 be produced.

7 14:50:14 Q.Can I just confirm, so you agree that what you meant

8 14:50:17 by "a different approach" was an approach that is

9 14:50:19 different from that proposed by Ms Harfouche as the

10 14:50:22 going forward approach. You've agreed with that. Say

11 14:50:26 "yes" or "no"?

12 14:50:26 A.Yes.

13 14:50:27 Q.Right. So the only basis that you put forward for

14 14:50:33 saying that the tribunal can determine a different

15 14:50:38 approach is the words "or if the parties agree

16 14:50:42 otherwise"?

17 14:50:44 A."... or if the parties agree otherwise ... or in the

18 14:50:48 event of a failure to agree then such index or method of

19 14:50:53 calculation shall be determined by the Independent

20 14:50:55 Expert ..."

21 14:50:55 So the whole sentence after the "or if the index is

22 14:51:01 not available". It's not just those six words, no.

23 14:51:05 Q.Can I just check: those are the only six words that

24 14:51:07 you've emphasised, aren't they?

25 14:51:09 A.Yes.

1 14:51:10 Q.And those are the six words you're referring to in
2 14:51:10 that third paragraph, aren't they?
3 14:51:12 A."... mean that the Parties can agree, or the
4 14:51:18 Independent Expert ..."
5 14:51:19 That's what I have written in that paragraph.
6 14:51:21 Q.Yes, but the words that you are referring to in that
7 14:51:24 paragraph are the words "or if the parties agree
8 14:51:27 otherwise"?
9 14:51:29 A.Yes, because if the parties do not agree, they call an
10 14:51:34 independent expert. If the parties agree, there is no
11 14:51:37 need. So that is the premise, "or if the parties agree
12 14:51:42 otherwise" is the premise for what comes afterwards.
13 14:51:45 That's why they are so important.
14 14:51:49 Q.But why are the words "or if the parties agree
15 14:51:51 otherwise" important?
16 14:51:52 A.Because if they don't -- if they agree, you don't have
17 14:51:56 the need to call an independent expert, and if they
18 14:51:59 don't, you call an independent expert or an arbitration
19 14:52:02 tribunal. That's how I read it. That's my
20 14:52:05 interpretation of this.
21 14:52:08 Q.The interpretation you gave and the explanation you
22 14:52:10 gave for your approach in the third paragraph only
23 14:52:15 focused on the six words "or if the parties agree
24 14:52:17 otherwise".
25 14:52:18 A.Yes.

1 14:52:18 Q.Do you agree? And that's what you say means that your

2 14:52:23 approach is consistent with the WPA?

3 14:52:27 A."The six words emphasised above, mean that the Parties

4 14:52:32 can agree, or the Independent Expert ..."

5 14:52:37 So what this means again, I shall say this again, is

6 14:52:42 that the parties can agree, so let's say that the index

7 14:52:47 is not available, or that the index is available and the

8 14:52:51 parties agree otherwise, or if they don't, they can go

9 14:52:55 to an independent expert.

10 14:53:03 Q.I'm probably going to have to --

11 14:53:04 A.Because -- yes, this is my way of reading this.

12 14:53:08 I mean, it's not the legal way. I don't know. But this

13 14:53:10 is -- the way I read it is: if the parties agree

14 14:53:13 otherwise, or if they can't agree, they can go to an

15 14:53:17 independent expert. But they first have to try to agree

16 14:53:20 before they can not agree. That's the way I interpret

17 14:53:22 it.

18 14:53:24 Q.Can I just ask you about the words at the end of the

19 14:53:26 second paragraph, the words that aren't italicised:

20 14:53:31 "The use of COLI 1999 prior to January 2014 is

21 14:53:36 therefore consistent with the WPA."

22 14:53:38 Am I right in thinking there's a typo and that

23 14:53:43 should be COLI 2007?

24 14:53:56 A.But COLI 2007 was not used prior to January 2014.

25 14:54:01 Q.I'm just trying to understand why you say the use

1 14:54:05 of -- having been through the words we've been through
2 14:54:08 on a number of occasions from the agreement, you then
3 14:54:12 say:
4 14:54:12 "The use of COLI 1999 prior to January 2014 is
5 14:54:16 therefore consistent with the WPA."
6 14:54:20 Why have the words, why in your opinion have the
7 14:54:24 words that you've set out got anything to do with
8 14:54:25 whether using COLI 1999 prior to January 2014 is
9 14:54:31 consistent with the WPA?
10 14:54:34 A.It's because of what is written. (Pause).
11 14:55:05 I think it's COLI 1999. It's consistent with the
12 14:55:09 WPA.
13 14:55:11 Q.Well, I mean, put it this way. COLI 1999 is actually
14 14:55:14 specified in the supplemental agreement. So I don't
15 14:55:16 think anyone has ever -- so far there hasn't been an
16 14:55:20 issue about whether COLI 1999 could be used prior
17 14:55:22 to January 2014. So I just don't understand why you
18 14:55:27 considered that the use of COLI 1999 prior
19 14:55:31 to January 2014, being consistent with the WPA, had
20 14:55:35 anything to do with the words you've just quoted?
21 14:55:40 A.Let me just -- give me a second. I want to read this
22 14:55:44 whole thing. (Pause)
23 14:56:13 Because this is an answer to what is written in the
24 14:56:15 first paragraph to the right, that refers to another
25 14:56:22 issue.

1 14:56:35 Q.Sorry, Ms Harfouche's first paragraph?

2 14:56:38 A.Yes, because I'm responding to that in this.

3 14:56:46 Q.Sorry. As I read it, your second paragraph, which

4 14:56:51 begins "I disagree", was a response to the point that

5 14:56:54 Ms Harfouche had made and you had set out in your first

6 14:56:58 paragraph; is that correct?

7 14:57:00 A.I think so, yes.

8 14:57:04 Q.Yes, okay. Tell me which bit of Ms Harfouche's column

9 14:57:09 you say you're responding to with the words:

10 14:57:11 "The use of COLI 1999 prior to January 2014 is

11 14:57:14 therefore consistent with the WPA."

12 14:57:17 A.Yes:

13 14:57:17 "... COLI 1999 prior to January 2014 is therefore

14 14:57:21 consistent with the WPA."

15 14:57:23 I have not used COLI 2007 prior to January 2014.

16 14:57:30 I have linked COLI 2007 to COLI 2013 prior to 2014, but

17 14:57:40 I've not used it. It's used from 2014 onwards.

18 14:57:46 Q.Sorry, none of this is an explanation of what you

19 14:57:49 meant and what you were trying to say with the words:

20 14:57:52 "The use of COLI 1999 prior to January 2014 is

21 14:57:55 therefore consistent with the WPA."

22 14:57:56 I'm just trying to understand why you thought the

23 14:58:03 words you'd dealt with previously about "or if the

24 14:58:06 parties agree otherwise" have got anything to do with

25 14:58:08 whether the use of COLI 1999 prior to January 2014 is

1 14:58:12 consistent with the WPA?

2 14:58:31 A.Because what it says before is that I've been using

3 14:58:37 COLI 1999 from 2005 to 2007, and COLI 2007 from 2007 to

4 14:58:44 2014. I've used COLI 1999 and that use is consistent

5 14:58:49 with the WPA. If you want to use COLI 1999, yes.

6 14:58:59 Q.Are you now saying that we should just ignore the word

7 14:59:03 "therefore"?

8 14:59:05 A.What is therefore?

9 14:59:06 Q.It is in the final sentence of your second paragraph:

10 14:59:10 "The use of COLI 1999 prior to January 2014 is

11 14:59:13 therefore consistent ..."

12 14:59:14 A."...is therefore consistent ..."

13 14:59:16 Yes.

14 14:59:17 Q.Would you like us to read it as if the word

15 14:59:20 "therefore" has been deleted?

16 14:59:21 A.No.

17 14:59:29 Q.So what is the relationship between the clause you've

18 14:59:31 just cited and your conclusion that:

19 14:59:34 "The use of COLI 1999 prior to January 2014 is

20 14:59:36 therefore consistent with the WPA."

21 14:59:40 A.My use of COLI 1999 prior to January 2014, the way

22 14:59:45 I have used it, is therefore consistent with the WPA.

23 14:59:48 Because I have used COLI 1999 prior to January 2014 and

24 14:59:54 I have linked it to COLI 2007 prior to January 2014, and

25 15:00:01 that use that I have made of COLI 1999 is consistent

1 15:00:05 with the WPA. Because it was used until the very last
2 15:00:10 moment that it was available. And from thereon, it was
3 15:00:18 used as -- it was linked to COLI 2007. That is the use
4 15:00:25 of COLI 1999 prior to 2014.
5 15:00:29 It was used in two ways. It was used in the
6 15:00:32 invoices, because that was the index that was agreed
7 15:00:36 upon, and then it was used to do the linking in 2007 in
8 15:00:43 a way that I consider to be consistent to the WPA and
9 15:00:48 Ms Harfouche does not. That is how -- this is what this
10 15:00:52 sentence means, the last one.
11 15:00:55 Q.I'm afraid I'm going to have to move on.
12 15:00:57 Now, do you recall that we were discussing the same
13 15:01:00 instruction about "or if the parties agree otherwise" in
14 15:01:04 your second report? You said that in fact, it was
15 15:01:09 irrelevant to your opinion?
16 15:01:13 A.Yes.
17 15:01:15 Q.But clearly, here, you are suggesting that those words
18 15:01:20 are very relevant to your opinion, aren't you?
19 15:01:22 A.No. As I said before, what this is is an answer
20 15:01:29 whether my approach complies with the WPA, not whether
21 15:01:33 the WPA complies with my approach.
22 15:01:37 My approach is independent. I have been asked: what
23 15:01:41 would you do if you were in 2014 and you were put the
24 15:01:48 question, how do you link -- what do you do? I have
25 15:01:53 simply said in my reports what I would have done. And

1 15:01:57 consistently, from the first report, where there was no

2 15:02:01 issue of COLI 2018, all the way to my last, I've never

3 15:02:07 changed my opinion.

4 15:02:08 Q.Do I take it from your answer then that when you've

5 15:02:10 approached it, you've basically ignored the terms of the

6 15:02:13 WPA?

7 15:02:14 A.When I approached it, I approached it to ask the

8 15:02:17 question, is there something wrong with this index,

9 15:02:22 "yes" or "no". If there is something wrong, how would

10 15:02:27 you do -- if there was nothing wrong, how would you

11 15:02:31 approach the transition? If there was something wrong,

12 15:02:34 how would you approach the transition?

13 15:02:37 For my opinion, if there is something wrong, I will

14 15:02:40 try to rectify what is wrong. That is what my approach

15 15:02:46 has tried to do.

16 15:02:50 Q.Again, sorry, that isn't an answer to the question.

17 15:02:53 My question is, when you've embarked on your approach,

18 15:02:56 have you put to one side and ignored the terms of the

19 15:02:59 WPA?

20 15:03:06 A.I mean, if the WPA said, you have to use the going

21 15:03:10 forward approach come rain or high water, of course

22 15:03:14 I would have -- I couldn't have done anything, right?

23 15:03:18 But because it gives leverage to do something else,

24 15:03:23 I have actually tried to do it.

25 15:03:27 So the way I see this is like there is a possibility

1 15:03:31 of choosing an approach, what should this approach be?

2 15:03:38 But the fact that there is a possibility does not have

3 15:03:41 any impact on my approach.

4 15:03:46 Q.Sorry, that's not -- again, not an answer to the

5 15:03:49 question. My question is, when you've set out writing

6 15:03:52 your opinion, which now covers four reports, I think,

7 15:03:56 have you put to one side and ignored the terms of the

8 15:03:59 WPA?

9 15:04:00 A.I didn't even consider them, because I think if I am

10 15:04:04 instructed, right, there must be a reason why I am

11 15:04:09 instructed. Because there is room for expressing an

12 15:04:18 opinion on these matters. Otherwise why would I -- you

13 15:04:24 know -- I wouldn't have been instructed otherwise.

14 15:04:30 Q.So do you agree -- let's say this tribunal finds that

15 15:04:36 the words "or if the parties agree otherwise" are simply

16 15:04:39 not relevant to this dispute.

17 15:04:40 A.That what is not relevant?

18 15:04:41 Q.That the words "or if the parties agree otherwise",

19 15:04:45 yes? Your emphasised words. If the tribunal finds that

20 15:04:48 those words are simply not relevant to this dispute?

21 15:04:53 A.They're not relevant to my approach. I don't know if

22 15:04:57 they're relevant to the dispute or not. I am not

23 15:04:59 qualified to give you that answer.

24 15:05:05 Q.Sorry --

25 15:05:06 A.I --

1 15:05:07 PRESIDENT: Dr Meschi, you need to wait until Mr Robb
2 15:05:09 has finished putting his question before you answer.
3 15:05:13 MR ROBB: Thank you.
4 15:05:14 So if the tribunal finds that the words "or if the
5 15:05:18 parties agree otherwise" are not relevant to this
6 15:05:21 dispute, do you agree that your approach is not
7 15:05:25 consistent with the WPA?
8 15:05:27 A.No.
9 15:05:35 Q.Could you just explain why you consider it still to be
10 15:05:37 relevant to the dispute? Why your approach would be
11 15:05:44 compliant with the WPA?
12 15:05:46 A.Sorry, can you say this again?
13 15:05:48 Q.Can you explain on that basis why you say your
14 15:05:51 approach would be compliant with the WPA?
15 15:05:57 A.My approach complies with the WPA because there is
16 15:06:03 a possibility of having an expert or a tribunal to
17 15:06:09 decide an approach.
18 15:06:14 Q.But if the tribunal finds that the clause requires
19 15:06:20 that the parties use COLI 1999 for as long as it's
20 15:06:23 available, and the words "or if the parties agree
21 15:06:29 otherwise" aren't relevant, then do you agree that your
22 15:06:32 approach is not consistent with the WPA?
23 15:06:35 A.For as long as they are?
24 15:06:37 Q.For as long as COLI 1999 was available.
25 15:06:41 I'll start again, because I can see you're getting

1 15:06:43 a bit lost.

2 15:06:45 Let's assume the tribunal finds two things. One,

3 15:06:47 the parties agreed that COLI 1999 would be used for as

4 15:06:50 long as it was available. Two, the words "or if the

5 15:06:53 parties agree otherwise" are not relevant. Yes?

6 15:06:58 In that situation, do you agree that your approach

7 15:07:03 is not consistent with the WPA?

8 15:07:07 A.What about ... no. No, because if the index is not

9 15:07:23 available, the tribunal has to find that there is only

10 15:07:32 one approach and that is the going forward approach. If

11 15:07:38 the tribunal finds that there is only one approach and

12 15:07:43 that is the going forward approach ...

13 15:07:51 Q.Right, that's again not an answer to the question.

14 15:07:53 A.What was the question? I am a bit confused.

15 15:08:08 Q.Assume the tribunal finds two things. First, the

16 15:08:13 parties agreed that COLI 1999 would be used for as long

17 15:08:16 as it was available.

18 15:08:19 A.Okay.

19 15:08:19 Q.Second, the words "or if the parties agree otherwise"

20 15:08:23 are not relevant.

21 15:08:26 A.Okay.

22 15:08:26 Q.In that situation, do you agree that your approach is

23 15:08:29 not consistent with the WPA?

24 15:08:33 A.No. And the reason why I don't agree with that is

25 15:08:37 because COLI 1999 was used until it was available. It

1 15:08:50 was. It came out of a publication at the end of 2013

2 15:08:58 and until then, it was used to issue invoices. It was

3 15:09:05 used until it was available.

4 15:09:09 Q.So I come back to the question. What on earth have

5 15:09:11 the words "or if the parties agree otherwise" got to do

6 15:09:14 with the tribunal being able to determine a different

7 15:09:20 approach?

8 15:09:31 A.Because, "if the parties agree otherwise", if they

9 15:09:33 don't, they have to go to the tribunal.

10 15:09:43 Q.I'm going to move on. I may have to come back to

11 15:09:45 this.

12 15:09:47 I want to look at what you call your guiding

13 15:09:49 principles, which are in your first report at

14 15:09:52 paragraph 6.3, which is D1-79.

15 15:09:59 A.The second or the first?

16 15:10:01 Q.Your first report. D1-79.

17 15:10:26 A.Okay.

18 15:10:26 Q.These are your principles, do you recognise these?

19 15:10:29 A.Yes, yes, yes, yes.

20 15:10:31 Q.Paragraph 6.3. Then just to be clear, you've got

21 15:10:34 footnote 200 towards the bottom of the page:

22 15:10:40 "I do not express any opinion on whether these

23 15:10:42 principles are consistent with the relevant legal

24 15:10:44 framework."

25 15:10:45 Do I understand, when you say "relevant legal

1 15:10:48 framework," you mean the WPA?

2 15:10:51 A.Yes.

3 15:10:58 Q.So the first -- your first principle, if we look at

4 15:11:02 this:

5 15:11:03 "The indexation approach should adjust the local

6 15:11:04 portion of Charge Rates in line with an accurate

7 15:11:04 estimate of the 'true' rate of inflation."

8 15:11:10 So we can accept, I think you'll accept that true

9 15:11:13 inflation is never actually measured; is that right?

10 15:11:19 A.True inflation is never known. It's estimated, yes.

11 15:11:28 Q.And you say that the estimate is by -- I think you

12 15:11:36 said this before --

13 15:11:38 A.The indices.

14 15:11:39 Q.Yes. And it's the next best estimate which is the

15 15:11:42 next estimate; is that correct? Yes?

16 15:11:46 A.Yes.

17 15:11:47 Q.So you never know; it's only when the next index comes

18 15:11:51 out you understand what the best measure of inflation

19 15:11:53 was in any period?

20 15:11:55 A.Either that, or if you know the formulas, but in this

21 15:11:59 case, the formulas were not known.

22 15:12:02 Q.I see, the formulas weren't known, so you would never

23 15:12:05 know whether COLI 2007 was an accurate estimate of true

24 15:12:11 inflation until you got COLI 2013, and you would never

25 15:12:15 know about COLI 2013 until you got to COLI 2018; is that

1 15:12:18 right?

2 15:12:18 A.No, you know about COLI 2007 because the formulas were

3 15:12:22 published, so it was known. They were published in

4 15:12:27 I think 2016 by GaStat. They were published.

5 15:12:39 Let me tell you where it is. It's the GaStat annual

6 15:12:51 in 2017. They do publish -- I need to go to the

7 15:12:59 extracts.

8 15:13:03 Q.While you're doing that, can I just check, you're

9 15:13:05 saying the COLI 2007 formulas were known in about 2016?

10 15:13:12 A.Yes. Just one second. I have to find them.

11 15:13:26 So I think it is D14-1-7.

12 15:13:46 Yeah, this is the one.

13 15:13:47 Q.I see, so this is the methodology; I think I saw from

14 15:13:49 the index page that it was published in 2017?

15 15:13:52 A.Yes.

16 15:13:53 Q.So you wouldn't know whether you could accept --

17 15:13:57 COLI 2007 which was published in January 2013?

18 15:14:02 A.Yes.

19 15:14:03 Q.And you wouldn't know about whether that was, in your

20 15:14:07 mind, a sufficiently accurate estimate of inflation

21 15:14:09 until 2017?

22 15:14:11 A.Well, you would know that it would be -- you asked me

23 15:14:19 vis-à-vis 2013. 2013 had not been published when this

24 15:14:24 was published. 2013 was published a year later.

25 15:14:28 Q.Okay, but just then rephrasing the question, given

1 15:14:31 your answer, is that you wouldn't know about the

2 15:14:35 accuracy or otherwise of COLI 2007 until 2017?

3 15:14:45 A.You would know that there was a problem between the

4 15:14:48 two indices because there was quite a difference in the

5 15:14:52 estimated inflation, and I guess that is why, in 2014,

6 15:14:59 there was no agreement as to how to move forward, to the

7 15:15:02 best --

8 15:15:06 Q.That is absolutely not even close to being an answer

9 15:15:08 to the question.

10 15:15:09 A.Okay.

11 15:15:09 Q.We're asking about COLI 2007. You said that you

12 15:15:16 wouldn't know about whether an index was accurate or

13 15:15:19 otherwise until you have seen the formulae, yes?

14 15:15:24 A.Yes.

15 15:15:25 Q.And then you decided to go to this document which is

16 15:15:29 dated 2017, yes?

17 15:15:31 A.Yes.

18 15:15:32 Q.Which has the formulae for, you say, COLI 2007?

19 15:15:35 A.Yes.

20 15:15:37 Q.So as I understand your evidence, nobody could know

21 15:15:40 whether COLI 2007 was an accurate index until 2017?

22 15:15:52 A.Fundamentally biased, yes.

23 15:15:56 Q.Yes, okay. So until 2017, you couldn't know whether

24 15:16:00 COLI 2007 was, in your words, a fundamentally biased

25 15:16:04 index or not?

1 15:16:06 A.Yes, you could only know that it had a completely
2 15:16:09 different measure of inflation from COLI 1999, and you
3 15:16:15 could know that COLI 1999 and COLI 2007 had not been
4 15:16:21 linked by the statistical agency, which should have
5 15:16:27 given quite a red flag.
6 15:16:30 Q.Sorry, again, you're answering -- trying to answer
7 15:16:33 different question. I understand your huge theme that
8 15:16:37 you want to push at every single moment is that you
9 15:16:39 don't like COLI 1999. We all understand that.
10 15:16:42 A.No, that's not it.
11 15:16:43 Q.Please let me finish. What I'm asking you now is
12 15:16:45 about COLI 2007. So going back to COLI 1999 is not an
13 15:16:48 answer to my questions.
14 15:16:51 So what I'm trying to say is that you get COLI 2007
15 15:16:54 in January 2013, yes?
16 15:16:56 A.Yes.
17 15:16:58 Q.And your evidence is you don't know whether this is
18 15:17:00 a fundamentally inaccurate index until 2017; is that
19 15:17:06 correct?
20 15:17:09 A.You don't know if this is a fundamentally inaccurate
21 15:17:12 index until you see the formula.
22 15:17:17 Q.Is that correct?
23 15:17:18 A.Yes.
24 15:17:18 Q.And that's 2017, on your evidence?
25 15:17:21 A.That is 2017. As I said, you only know that that

1 15:17:26 index is not linked with the index before, and you know

2 15:17:33 that this index is very different in terms of the

3 15:17:35 inflation that it represents. So in my view, if you

4 15:17:45 think that there is a problem, you ask the statistical

5 15:17:49 agency.

6 15:17:52 Q.But in --

7 15:17:54 A.Because the statistical agency will know.

8 15:17:57 Q.But just taking COLI 2007, you're not going to know

9 15:18:00 whether it's good, bad or otherwise until 2017; is that

10 15:18:05 correct?

11 15:18:08 A.You know that it's better than 1999; you don't know

12 15:18:11 what it is vis-à-vis the next one.

13 15:18:14 Q.Exactly. So you would have four years of COLI 2013

14 15:18:19 before you got to know whether, in your view, it had

15 15:18:24 a fundamental statistical bias?

16 15:18:27 A.COLI 2017?

17 15:18:30 Q.No, 2007.

18 15:18:32 A.Sorry, 2007. I personally would think, personally,

19 15:18:43 from an expert point of view, if I see that

20 15:18:46 a statistical agency is not linking to indices, I know

21 15:18:50 that one of the two is wrong, right? So the one that is

22 15:18:53 wrong has to be the old one, because otherwise they

23 15:18:57 wouldn't have published a new one. That's how I would

24 15:18:59 see it.

25 15:19:03 If I was somebody who's using these indices, I will

1 15:19:06 say, okay, let me pause for a second, let me look at
2 15:19:10 what's going on here. Let me ask GaStat, why is it that
3 15:19:14 these indices are so different? And then they will tell
4 15:19:19 you.
5 15:19:19 Q.But GaStat doesn't say anything about COLI 2007, apart
6 15:19:23 from publishing it, until 2017; is that correct?
7 15:19:27 A.In the public, no, but if you ask them privately.
8 15:19:40 Q.In terms of your first principle, to know whether
9 15:19:43 you've got an accurate estimate of the true rate of
10 15:19:45 inflation, you're going to need the formulae; is that
11 15:19:47 correct?
12 15:19:54 A.So, my first principle.
13 15:19:57 Q.The first principle --
14 15:19:59 A.Yes.
15 15:19:59 Q.-- is that you:
16 15:19:59 "... should adjust the local portion of Charge Rates
17 15:20:01 in line with an accurate estimate of the 'true' rate of
18 15:20:04 inflation."
19 15:20:05 Yes?
20 15:20:05 A.Yes.
21 15:20:06 Q.Right. So just taking COLI 2007, you wouldn't know
22 15:20:10 whether you had an accurate estimate of the true rate of
23 15:20:12 inflation for about four years; is that correct?
24 15:20:21 A.Until about four years later?
25 15:20:23 Q.Yes.

1 15:20:24 A. Officially, you wouldn't know, but you could know it

2 15:20:26 unofficially by simply asking the statistical agency.

3 15:20:32 Q. I see.

4 15:20:33 The other point about your first principle is that

5 15:20:39 we know what you think about COLI 1999, but you would

6 15:20:42 agree, wouldn't you, that as the parties specified

7 15:20:45 COLI 1999 in the supplemental agreement, your first

8 15:20:51 principle is not compatible with the WPA, is it?

9 15:21:03 A. But when they were actually using COLI 1999, nobody

10 15:21:11 knew that there was any problem with that index.

11 15:21:14 Nobody. And they didn't have anything to compare it to,

12 15:21:22 to say, hold on a second, what's going on here? So,

13 15:21:26 yes, it was compatible -- compliant. It was the only

14 15:21:31 index that was available. They couldn't have done

15 15:21:34 anything else.

16 15:21:38 Q. I agree they couldn't have done anything else, but

17 15:21:40 your first principle just isn't consistent with the WPA,

18 15:21:43 is it?

19 15:21:45 A. Why not?

20 15:21:46 Q. Because the parties agreed to adjust the local portion

21 15:21:50 of the charge rates in accordance with an estimate of

22 15:21:53 inflation which you consider is not an accurate

23 15:21:55 estimate?

24 15:21:56 A. But I didn't know.

25 15:21:59 Q. Okay. Let's move on to the second principle. No

- 1 15:22:06 index tells you what true inflation is; is that correct?
- 2 15:22:08 A.The true inflation -- the population inflation, no.
- 3 15:22:14 It's an estimate, an index.
- 4 15:22:17 Q.And each index is just an estimate of true inflation;
- 5 15:22:21 is that correct?
- 6 15:22:22 A.Each index, yes.
- 7 15:22:25 Q.Generally, indices become more accurate over time; is
- 8 15:22:29 that correct?
- 9 15:22:33 A.Successive, you mean, or individually?
- 10 15:22:35 Q.Yes, successive indices will become more accurate over
- 11 15:22:38 time?
- 12 15:22:39 A.They will become more accurate because of the weights,
- 13 15:22:42 because of the weights. Because as time passes, the
- 14 15:22:45 weights become old. So that is by default.
- 15 15:22:52 Q.But also we know that NSAs often make methodological
- 16 15:22:57 changes to indices as they move forward in time; is that
- 17 15:23:01 correct?
- 18 15:23:03 A.There are methodological changes which can correct for
- 19 15:23:11 fundamental inaccuracies, like the methodological change
- 20 15:23:15 that happened between COLI 1999 and COLI 2007, and there
- 21 15:23:24 was the fundamental inaccuracy that came from the
- 22 15:23:28 formula for the elementary aggregates, and then there
- 23 15:23:31 was another inaccuracy that came from the use of a very
- 24 15:23:39 outdated classification methodology, because prior to
- 25 15:23:46 COICOP, which was issued in 1999, the classifications

1 15:23:51 followed what was called SNA, which is a system of
2 15:23:56 national accounts, and the last SNA published I believe
3 15:24:00 was in 1968.
4 15:24:04 So this was the two reasons why that index was
5 15:24:07 fundamentally inaccurate and the following ones were
6 15:24:11 not.
7 15:24:14 Q.In your first report, you said that the going forward
8 15:24:18 approach was only valid where the only change between
9 15:24:22 indices was re-basing and there were no methodological
10 15:24:25 changes?
11 15:24:26 A.Fundamental methodological changes.
12 15:24:32 Q.If we look at paragraph 2.14 of your first report,
13 15:24:36 D1-22.
14 15:24:52 A.Yes.
15 15:24:58 Q.You say that you refer to the going forward approach
16 15:25:01 and you say that's only to be used where the new index
17 15:25:05 has been re-based, and we know from your definition of
18 15:25:08 "re-base" that it doesn't include any methodological
19 15:25:10 changes, does it?
20 15:25:12 A.Any fundamental methodological changes. I mean, it
21 15:25:16 has to be a substantive methodological change in order
22 15:25:20 for something -- for an agency not to link to indices.
23 15:25:28 It has to be fundamental. So every five years.
24 15:25:43 Q.Re-basing, you've defined re-basing as simply being
25 15:25:47 only a change to the basket of goods and services. Is

- 1 15:25:52 that agreed?
- 2 15:25:53 A.Yes, yes, of course.
- 3 15:25:55 Q.So you accept that COLI 2007 to COLI 2013 went beyond
- 4 15:26:00 re-basing, didn't it?
- 5 15:26:01 A.It went beyond the change of weight, yes. It involved
- 6 15:26:05 also a change in the calculation methodology of the
- 7 15:26:15 higher aggregates.
- 8 15:26:19 Q.So it went beyond a re-basing, as you've defined it?
- 9 15:26:22 A.Yes, it also had a methodological change, yes, but
- 10 15:26:26 that methodological change, as I said, was not
- 11 15:26:29 substantive, it was compliant with international
- 12 15:26:34 guidelines and standards, which GaStat is committed to.
- 13 15:26:44 That's why they linked it. They themselves linked it.
- 14 15:26:50 Q.I want to move on to your third principle.
- 15 15:26:54 A.Yes.
- 16 15:26:55 Q.So -- let's go back to your second principle.
- 17 15:27:06 I would suggest to you that if you were going to
- 18 15:27:08 apply your second principle properly, you would have
- 19 15:27:12 also said that the going forward approach shouldn't
- 20 15:27:14 apply between COLI 2007 and COLI 2013?
- 21 15:27:17 A.My second approach?
- 22 15:27:19 Q.Second principle, paragraph --
- 23 15:27:20 A.Sorry, my second principle.
- 24 15:27:21 Q.D1-79.
- 25 15:27:23 A.No, because it didn't have -- COLI 2007 did not -- the

1 15:27:32 methodological changes did not justify any need for
2 15:27:43 applying anything but --
3 15:27:46 Q.So your evidence is that in looking at how you do
4 15:27:48 these transitions, you've got to get into the formulae,
5 15:27:53 yes?
6 15:27:54 A.I have to get into the formulae?
7 15:27:55 Q.Somebody is going to have to get into the formulae to
8 15:27:57 understand what's been going on; is that right?
9 15:28:00 A.Somebody has to know what changes have been made, and
10 15:28:05 one good way of knowing what changes have been made, if
11 15:28:08 these changes are consistent, is by looking at what the
12 15:28:14 agency actually does. In a way it's like the proof of
13 15:28:20 the pudding is in the eating. If the agency links the
14 15:28:23 indices without any problems, it means that the indices
15 15:28:27 can be linked.
16 15:28:28 So every time that they published a next index, they
17 15:28:32 published it also backwards, and when you look at how
18 15:28:39 it's published backwards, you can see that it's nothing
19 15:28:42 but the old index re-based. So you know that they are
20 15:28:46 linking them. So you know that there is no problem,
21 15:28:50 that the indices are all linked.
22 15:28:51 Q.And you're talking here about the GaStat November 2020
23 15:28:56 approach; is that right?
24 15:28:57 A.No, no, no. I am looking about GaStat in every time
25 15:29:02 that they -- every time they publish a new index, so for

1 15:29:06 example, when they published COLI 2007 in 2013, they
2 15:29:14 also published it looking back.
3 15:29:17 So they published it for -- it's in SAMA 49. They
4 15:29:24 published for 2013, 12, 11. They always do that. And
5 15:29:30 so from that, you can see whether it's been linked or
6 15:29:33 not. So they do this for 2013, they do this with 2007,
7 15:29:38 they do with this 2018. And --
8 15:29:41 Q.Sorry, the point was, if you're going to understand
9 15:29:43 why the indexes are different, as I understand it you
10 15:29:49 are going to have to look at the formulae which are
11 15:29:51 published for each index eventually; is that correct?
12 15:29:54 A.No, you first look at whether the indices are linked
13 15:29:57 or not. If the indices are linked, then they are
14 15:30:03 compatible, right, because the agency has linked them.
15 15:30:06 If the indices are not linked, then you ask the agency,
16 15:30:10 why haven't you linked them? Can you give me an
17 15:30:19 explanation why these indices are not linked? If they
18 15:30:22 don't want to give you an explanation, you can ask them,
19 15:30:25 okay, why don't you give me your best -- your view of
20 15:30:30 the most accurate measure of inflation?
21 15:30:34 So if they give you the index that's linked, then
22 15:30:38 you realise, okay, they have linked it. But if they
23 15:30:44 don't -- as they didn't, they didn't give me a measure
24 15:30:47 where there was a linking between certain indices --
25 15:30:50 then you know that there is a fundamental problem,

1 15:30:53 because there are cases in which the agency may not want

2 15:30:58 to state that there is something wrong with an index.

3 15:31:07 Q.We'll come to GaStat's 2020 view in due course.

4 15:31:12 A.That's not in 2020. You can ask them any time.

5 15:31:15 I asked them in 2020 because that is when I was

6 15:31:18 instructed.

7 15:31:21 MR ROBB: I think that's an appropriate time, it's 3.30,

8 15:31:22 unless the tribunal thinks we ought to press on.

9 15:31:27 I understand we're finishing at 5.30, so if we can have

10 15:31:29 a 20-minute break now?

11 15:31:31 PRESIDENT: That's quite all right, yes.

12 15:31:33 We'll break for 20 minutes and as before, if you

13 15:31:36 could not talk to anyone about your evidence.

14 15:31:38 Thank you.

15 15:31:40 (3.31 pm)

16 15:31:43 (A short break)

17 15:31:44 (3.57 pm)

18 15:57:55 PRESIDENT: We'll restart, then. Dr Meschi, as before,

19 15:57:58 you're still under your affirmation. Thank you.

20 15:58:01 MR ROBB: Can we pick up where we left off in terms of

21 15:58:03 looking at your principles. We've been through the

22 15:58:09 first two principles, we're now looking at the third

23 15:58:12 principle.

24 15:58:13 A.Yes.

25 15:58:17 Q.So I just want to clarify, obviously, that if --

1 15:58:25 I think you say here that this doesn't make any sense,
2 15:58:28 does it, because you've got -- if there's an overlap
3 15:58:32 between the two indices. If you look at your third
4 15:58:34 principle:
5 15:58:34 "The indexation approach should always use the most
6 15:58:37 accurate index that is available, as soon as it is made
7 15:58:38 available. That index should be linked to the previous
8 15:58:41 index in the last month for which that previous index
9 15:58:44 was available."
10 15:58:44 So if there's an overlap between the publication of
11 15:58:48 the two indices, then that approach won't work, because
12 15:58:51 you've got to make a choice between the last point in
13 15:58:54 time at which the old index is available, or the first
14 15:58:57 point in time at which the new index is available?
15 15:59:00 A.Yes, actually, can I explain? The second part of this
16 15:59:05 point (3), that index should be linked, it's new in this
17 15:59:10 report. It was not in my 2022 report and in my 2020.
18 15:59:19 Is it possible to pull up my 2022 report? Because
19 15:59:25 I appreciate what you are asking --
20 15:59:29 Q.As I understand it, you've clarified it later, by
21 15:59:32 saying at this stage, you didn't think there would ever
22 15:59:35 be an overlap?
23 15:59:36 A.Yes, yes.
24 15:59:38 Q.But if there is an overlap, that approach obviously
25 15:59:41 can't work. You have to make a choice --

- 1 15:59:43 A.Yes, yes, because I assume -- so maybe there is no
- 2 15:59:47 need. I assume that the next index that's going to come
- 3 15:59:54 out is going to come out in the same way as 2013 and
- 4 15:59:58 2018 have come out. So there is going to be -- when the
- 5 16:00:06 new index comes out, the other one immediately stops.
- 6 16:00:15 And, sorry, Ms Harfouche actually pointed out to me,
- 7 16:00:20 but what happens if they come out concurrently? And
- 8 16:00:26 that is what I clarified in the second report.
- 9 16:00:30 Q.Thank you. Then I just want to look at your decision
- 10 16:00:36 to link COLI 2007 and COLI 1999 in 2007 and not in any
- 11 16:00:42 other year. Do you accept that choosing to link those
- 12 16:00:47 two indices in 2007 provides the best financial outcome
- 13 16:00:51 for SWPC?
- 14 16:00:55 A.The best in what sense?
- 15 16:00:58 Q.The lowest amount they will end up having -- they
- 16 16:01:01 would have to pay SEPCO. Do you agree that linking in
- 17 16:01:04 2007 provides the best outcome for SWPC?
- 18 16:01:09 A.The fairest? As far as I'm concerned, yeah, it's the
- 19 16:01:13 fairest.
- 20 16:01:15 Q.No, I --
- 21 16:01:16 A.You can link them in 2005.
- 22 16:01:18 Q.Yes, and if you linked them in 2005, then SEPCO's
- 23 16:01:23 losses would be greater than linking in 2007, wouldn't
- 24 16:01:25 they?
- 25 16:01:31 A.If I link them in 2005 SEPCO's losses would be

1 16:01:34 greater?

2 16:01:36 Q.Yes?

3 16:01:37 A.I don't know because I've not done the calculation.

4 16:01:40 I've linked them in 2007 for a number of reasons.

5 16:01:44 Q.Yes, but for example, if we look at your figure 4-4 at

6 16:01:51 D1, page 58, we can see that in 2007, COLI 1999 gives

7 16:02:14 you a lower estimate than COLI 2007, and in 2006 they're

8 16:02:22 about the same. Do you see?

9 16:02:25 A.Yes. But --

10 16:02:29 Q.Do you agree that if you had linked them in 2005, then

11 16:02:31 you would have ended up with a greater loss for SEPCO

12 16:02:35 than by linking in 2007?

13 16:02:38 A.If you link them in 2005, you do the same -- that is

14 16:02:44 not possible, because actually, if you link them in

15 16:02:48 2005, it is the same approach as it's used in the

16 16:02:51 invoices. It's mathematically equivalent.

17 16:02:59 Essentially, what it does -- yes, it's the identical

18 16:03:03 approach as there is in the invoices. Identical. And

19 16:03:08 then, if that is the case, there wouldn't be any losses

20 16:03:18 in my calculation, while there is.

21 16:03:22 The reason why, I think it can be seen from -- there

22 16:03:30 is a graph that explains it quite easily, which is in my

23 16:03:37 presentation, it's slide 14.

24 16:03:50 So if you link them in 2005, you adjust on the green

25 16:03:59 line.

- 1 16:04:02 Q.Yes. What we see from there is that COLI 1999 is
- 2 16:04:08 lower than COLI 2007?
- 3 16:04:13 A.You have --
- 4 16:04:14 Q.The blue line is lower than the green line for
- 5 16:04:17 a period prior to 2007, isn't it?
- 6 16:04:20 A.Yes, but then the green line is the line that is going
- 7 16:04:23 to be forever. So what that means is the light pink
- 8 16:04:32 area, that's wiped out completely.
- 9 16:04:35 Q.No, if you had linked them in 2005, you would not have
- 10 16:04:39 wiped out all the losses; you would have increased
- 11 16:04:45 SEPCO's losses, wouldn't you? (Pause)
- 12 16:05:06 Can I move on? I'll come back to that.
- 13 16:05:08 Can I move on to your fourth principle, which is
- 14 16:05:10 over the page at D1-80.
- 15 16:05:16 A.Okay.
- 16 16:05:18 Q.It's your fourth principle, it's in the paragraph
- 17 16:05:20 we've been looking at, it just happens to be over the
- 18 16:05:23 page. Here you're talking about a tradeoff between
- 19 16:05:27 certainty and accuracy. Do you agree?
- 20 16:05:30 A.It's D ...?
- 21 16:05:35 Q.D1-80, subparagraph (4) at the very top of the page.
- 22 16:05:40 A.Yes.
- 23 16:05:41 Q.This is your fourth principle?
- 24 16:05:42 A.Yes.
- 25 16:05:45 Q.Presumably by "accuracy" you mean how close an index

- 1 16:05:53 is to estimating true inflation?
- 2 16:05:55 A.Yes, it's the accuracy of the index, yes, yes.
- 3 16:06:02 Q.You can only quantify the accuracy of the index by
- 4 16:06:05 reference to the next index; is that right?
- 5 16:06:09 A.Yes.
- 6 16:06:12 Q.So when you're talking about a tradeoff between
- 7 16:06:14 accuracy and certainty, that means you're talking about
- 8 16:06:17 accuracy in a relative sense, not an absolute sense,
- 9 16:06:21 aren't you?
- 10 16:06:21 A.Yes, because as I said, apart from the fundamentally
- 11 16:06:26 wrong issue, successive indices are always more accurate
- 12 16:06:33 by default. So essentially the question that then you
- 13 16:06:36 have is that, given that these indices are being
- 14 16:06:38 published with a few years delay, what do you do? Do
- 15 16:06:43 you go back every time and then you are in a situation
- 16 16:06:48 where you are always on the green line, as it were, so
- 17 16:06:53 you get the most accurate estimate, or do you actually
- 18 16:06:59 give also weight to certainty?
- 19 16:07:05 Unless there is a reason to believe that there is
- 20 16:07:08 a fundamental bias, and therefore there is a fundamental
- 21 16:07:19 reason to rectify the situation, you make a judgment
- 22 16:07:26 call as what is the best thing to do in that respect.
- 23 16:07:33 So that is what I meant. That's why to me that
- 24 16:07:36 principle is important.
- 25 16:07:38 Q.Thank you. Can I just now move on to -- just stepping

- 1 16:07:41 back a bit, looking at the two ways in which contracts
- 2 16:07:44 can deal with inflation in a long-term project.
- 3 16:07:48 A.Okay.
- 4 16:07:49 Q.There are two basically ways that you can deal with
- 5 16:07:52 it. First, you can use published inflation indices; is
- 6 16:07:55 that correct?
- 7 16:07:56 A.Yes.
- 8 16:07:58 Q.Here, everyone takes the risk that the actual
- 9 16:08:01 inflation experienced by the contracting party will be
- 10 16:08:04 greater or less than the inflation estimated in the
- 11 16:08:07 published index?
- 12 16:08:09 A.Can you point me to where this is written?
- 13 16:08:11 Q.No. It's not in your report. I'm asking you some
- 14 16:08:14 questions. I'm asking you some questions about your
- 15 16:08:16 experience about how you can use --
- 16 16:08:17 A.Oh, okay, okay, yes.
- 17 16:08:20 Q.First of all, the first option is to use published
- 18 16:08:23 inflation indices?
- 19 16:08:25 A.Yes.
- 20 16:08:25 Q.There, everyone takes the risk that the actual
- 21 16:08:28 inflation experienced by the contractual party will be
- 22 16:08:30 greater or less than the inflation estimated in the
- 23 16:08:32 published index; is that right?
- 24 16:08:37 A.Everybody?
- 25 16:08:39 Q.People take the risk, contracting parties take the

- 1 16:08:41 risk that the actual inflation experienced by the
- 2 16:08:43 contracting party will be greater or less than the
- 3 16:08:47 inflation estimated in the published index?
- 4 16:08:49 A.Yes.
- 5 16:08:51 Q.This approach of using published inflation indices
- 6 16:08:55 favours certainty, simplicity and clarity?
- 7 16:08:59 A.Okay.
- 8 16:09:00 Q.Do you agree?
- 9 16:09:02 A.With respect to what?
- 10 16:09:04 Q.Do you agree that using published inflation indices
- 11 16:09:07 favours certainty, simplicity and clarity?
- 12 16:09:13 A.Yes, but with respect to what?
- 13 16:09:16 Q.Well --
- 14 16:09:17 A.I mean, you say that there are two approaches, right?
- 15 16:09:19 Q.Okay, so we'll move on to the second approach.
- 16 16:09:22 The second approach is you can look at the actual
- 17 16:09:23 costs to the party that is being compensated and how
- 18 16:09:27 those costs change over time due to inflation. Some
- 19 16:09:31 sort of cost-plus mechanism?
- 20 16:09:32 A.Okay.
- 21 16:09:33 Q.Yes? That's another type of method of dealing with
- 22 16:09:36 inflation?
- 23 16:09:37 A.Yes, yes.
- 24 16:09:37 Q.And you agree that that is a complicated,
- 25 16:09:38 time-consuming and expensive process?

- 1 16:09:43 A.Well, I guess that it's prone to a lot of quarrels.
- 2 16:09:49 So that will be expensive, because it requires a lot of
- 3 16:09:54 scrutiny, right?
- 4 16:10:09 Q.Just checking my ... "a lot of quarrels", sorry.
- 5 16:10:11 Because I couldn't see my transcript, I couldn't check
- 6 16:10:15 the ...
- 7 16:10:16 A.It's my accent.
- 8 16:10:17 Q.No, no. A lot of disputes.
- 9 16:10:19 A.Yes.
- 10 16:10:20 Q.But we know that some contracts do adopt this method,
- 11 16:10:24 the sort of cost-plus method, presumably because the
- 12 16:10:27 parties value perceived precision over certainty; is
- 13 16:10:35 that fair enough?
- 14 16:10:36 A.I think if they wanted real certainty, because there
- 15 16:10:39 is uncertainty when it comes to inflation, if they
- 16 16:10:44 wanted complete certainty, they would say: okay, let's
- 17 16:10:50 calculate a charge, which is an underlying cost plus
- 18 16:10:58 a margin, at times zero, and then just add x per cent
- 19 16:11:02 every year. And that would be the certainty,
- 20 16:11:06 100 per cent certainty, right?
- 21 16:11:08 And then there would be on the other side, you would
- 22 16:11:11 say: okay, let's not do that, let's check the cost every
- 23 16:11:14 single year, or whatever interval you have to do, and
- 24 16:11:19 then add a margin on top, and that will be the complete
- 25 16:11:23 accuracy provided that they can agree that that is --

1 16:11:29 right?

2 16:11:30 Then there would be something in the middle, which

3 16:11:34 balances the two, which would be: let's index to the

4 16:11:38 inflation.

5 16:11:40 Yes. Yes. Yes.

6 16:11:44 Q.I suggest to you the parties here have chosen

7 16:11:46 a process that favours certainty, simplicity and

8 16:11:50 clarity; is that right?

9 16:11:53 A.Certainty, simplicity and clarity over the one that is

10 16:11:57 100 per cent accuracy you mean?

11 16:12:00 Q.You agreed with me before that using published

12 16:12:03 inflation indices favours certainty, simplicity and

13 16:12:06 clarity; do you agree?

14 16:12:07 A.Yes, I do, I do agree --

15 16:12:08 Q.So that's what the parties have chosen here?

16 16:12:11 A.-- as a --

17 16:12:11 Q.And that's what the parties have chosen here?

18 16:12:14 A.In this particular dispute?

19 16:12:16 Q.Yes.

20 16:12:16 A.That's what the parties have chosen.

21 16:12:18 Q.Yes. And your approach requires a case-by-case

22 16:12:22 analysis of each index, doesn't it?

23 16:12:27 A.No.

24 16:12:29 Q.Well, you have to look at why each index has been

25 16:12:33 brought in, its methodologies, you've got to make an

1 16:12:37 assessment of whether there's any fundamental flaws in
2 16:12:39 your view, before you can decide the correct way to link
3 16:12:42 these indices; is that right?
4 16:12:44 A.No, you just look at whether the index has been linked
5 16:12:47 or not. That gives you the answer. Then you use it and
6 16:12:53 move forward.
7 16:12:56 Q.Before you were saying you would needs to look at
8 16:12:59 things like the formulae, et cetera?
9 16:13:02 A.Yeah, in order to assess the type of bias that there
10 16:13:04 is.
11 16:13:04 Q.Yes.
12 16:13:05 A.You know, if I want to assess the type of bias that
13 16:13:07 there is, I need to know how the index has been
14 16:13:10 calculated, but the very fact that the index is linked
15 16:13:14 means that the index here is acceptable.
16 16:13:17 Q.But the fact that you've said that things like
17 16:13:21 fundamental bias, et cetera, are relevant
18 16:13:25 considerations, means that your view is that you have
19 16:13:27 got to examine such things from a statistical
20 16:13:31 perspective before you can make a decision about an
21 16:13:34 index; is that right?
22 16:13:35 A.But that is done by the statistical agency, right?
23 16:13:39 I mean, that's what they do. They publish the indices.
24 16:13:43 Every time they publish one index, or at least GaStat,
25 16:13:48 every time it publishes the new index, it links it or it

1 16:13:52 doesn't link it to the previous one, and the only time

2 16:13:57 where they haven't done that is in 2012, 13.

3 16:14:05 Q.Can I ask you to look at item 15 of the joint

4 16:14:08 statement, which is D130, page 9.

5 16:14:26 A.Oh, you said item 15. I was on page 15.

6 16:14:36 Q.Item 15, D130, page 9.

7 16:14:41 A.Okay, right.

8 16:14:53 Q.So you say:

9 16:14:53 "... in situations where the new index is changed in

10 16:14:55 a way that goes beyond a simple re-basing, the

11 16:14:57 appropriate linking method must be evaluated on

12 16:14:59 a case-by-case basis."

13 16:15:01 Do you see that towards the bottom of your first

14 16:15:05 paragraph?

15 16:15:10 A.Yes.

16 16:15:16 Q.So, unless you're going to change your evidence, as

17 16:15:18 I understand it, your view is that you've got to

18 16:15:21 consider whether each index goes beyond a simple

19 16:15:23 re-basing and then, where it does go beyond a simple

20 16:15:27 re-basing, you have got to evaluate on a case-by-case

21 16:15:30 basis?

22 16:15:31 A.Yes, that's correct, that's correct.

23 16:15:33 Q.Your evaluation on a case-by-case basis means you've

24 16:15:36 got to have a statistical input to examine the formulae,

25 16:15:41 whether there's any statistical bias or flaws, all that

1 16:15:44 kind of thing, before you can approach your case-by-case
2 16:15:47 basis?
3 16:15:49 A.No. I mean, if the statistical agency goes and links
4 16:15:56 the index, it means that the index is linkable and it
5 16:15:59 has been linked. It's only if he doesn't link it, then
6 16:16:05 you open the proverbial can of worms and you have to go
7 16:16:09 and yourself check why there is -- whether there is
8 16:16:13 something fundamentally wrong.
9 16:16:15 But if they link them, it is on a case-by-case
10 16:16:19 basis. You just look at whether they're linked or not.
11 16:16:22 If they're linked, it means that the statistical
12 16:16:27 agencies considered them linkable and therefore, that
13 16:16:34 there are no problems with them, in terms of bias.
14 16:16:38 Q.But then the explanation you have just given is not
15 16:16:44 the same explanation you gave at item 15, is it? The
16 16:16:48 explanation you have just given is not the same
17 16:16:48 explanation you gave at item 15 of the joint statement?
18 16:16:53 A.Why?
19 16:16:55 Q.Because once it goes beyond a simple re-basing, here,
20 16:16:59 you say you've got to evaluate on a case-by-case basis.
21 16:17:01 You don't refer anything to what the national statistics
22 16:17:05 office does.
23 16:17:13 A.I mean, you assume that they are correct, if they are
24 16:17:16 linked, no?
25 16:17:19 Q.I'm going to move on.

1 16:17:22 Can we please now go to page D1-68 of your first
2 16:17:28 report, paragraph 5.11.
3 16:17:58 Do you have it there?
4 16:17:59 A.Yes, I do.
5 16:18:00 Q.Here you give your six reasons for your view about why
6 16:18:04 the going forward approach is not appropriate for
7 16:18:07 COLI 1999 to COLI 2007; is that right?
8 16:18:09 A.Yes.
9 16:18:13 Q.Is it correct that all these reasons only apply if the
10 16:18:19 tribunal accepts SWPC's case about the parties'
11 16:18:22 rationale? Do you agree that?
12 16:18:27 A.The tribunal can accept or not whether this approach
13 16:18:35 is correct or not. But as far as I am concerned, the
14 16:18:40 going forward approach, regardless of the rationale, is
15 16:18:45 incorrect for all these reasons.
16 16:18:49 Q.If we just pause there. If we look at item (3), one
17 16:18:57 of the reasons you've given is because you say the going
18 16:19:02 forward approach isn't consistent with the parties'
19 16:19:04 rationale?
20 16:19:05 A.Yes, yes.
21 16:19:07 Q.Yes, so if the tribunal doesn't accept SWPC's
22 16:19:10 rationale, that reason must fall away?
23 16:19:13 A.(3), yes, of course, of course.
24 16:19:24 Q.Moving on to the various reasons, so reason (2),
25 16:19:28 you've got two parts to reason (2). First, it's "an

1 16:19:32 inaccurate measure of inflation", and secondly, it's

2 16:19:36 been "effectively disregarded by SAMA and GaStat"?

3 16:19:38 A.Yes.

4 16:19:40 Q.Can we look at the argument that it's been effectively

5 16:19:44 disregarded by SAMA and GaStat.

6 16:19:49 A.Yes.

7 16:19:49 Q.We can pick that up in your first report at D1-58,

8 16:20:04 paragraph 4.12. It's on the screen for you.

9 16:20:32 A.Yes, I'm there.

10 16:20:45 Q.The reasons you give in 4.12 through to 4.25, I think

11 16:20:58 are as follows:

12 16:21:00 "GaStat has removed some data pertaining to

13 16:21:03 COLI 1999 from its website."

14 16:21:04 That's the first one.

15 16:21:05 Then you say GaStat provided you with

16 16:21:07 its November 2020 view of the most accurate estimate of

17 16:21:10 inflation, and this does not include any data from

18 16:21:12 COLI 1999.

19 16:21:14 And then:

20 16:21:14 "Once COLI 2007 is available, SAMA no longer refers

21 16:21:19 to COLI 1999 inflation [or linked] the indices."

22 16:21:23 Those are the reasons you give in your report; is

23 16:21:25 that right?

24 16:21:26 A.Yes.

25 16:21:29 Q.The first point I want to see if we can agree is that

1 16:21:35 at no time, either publicly or privately, has either

2 16:21:38 GaStat or SAMA said that they have decided to disregard

3 16:21:41 COLI 1999?

4 16:21:46 A.Are you asking me?

5 16:21:47 Q.Yes.

6 16:21:48 A.They have told me, when we had a meeting, they said

7 16:21:56 that the indices could not be linked and they gave me

8 16:22:01 their measure of -- their view of the most accurate

9 16:22:12 inflation index that did not contain COLI 1999, and they

10 16:22:21 have actually taken out COLI 1999 from their website for

11 16:22:28 all the values prior to January 2001 and subsequent to

12 16:22:33 December 2011. That is in figure 4-5.

13 16:22:38 Q.Yes, sorry, Dr Meschi, I'm trying to distinguish

14 16:22:40 between inferences that you've made from things that

15 16:22:43 GaStat has done, and whether GaStat has ever actually

16 16:22:47 said to you: yes, we have decided to disregard

17 16:22:50 COLI 1999.

18 16:22:50 I'm going to put it to you that at no time has

19 16:22:53 GaStat said to you: we are disregarding COLI 1999?

20 16:22:56 A.I didn't ask them that question.

21 16:22:58 Q.Ah, okay.

22 16:22:58 A.I asked them if they had linked it or not, and they

23 16:23:01 said that they couldn't be linked. Publicly they have

24 16:23:05 never made that statement, but I would not -- I would

25 16:23:09 never expect them to do so.

1 16:23:10 Q.So you didn't ask them the question and they've
2 16:23:15 never -- so you're right, you're agreeing with me that
3 16:23:17 they've never said: we disregard COLI 1999?
4 16:23:20 A.Not in public, never, no.
5 16:23:22 Q.Not only in public, but not in private either, have
6 16:23:25 they?
7 16:23:25 A.No, I haven't asked them. I asked them if they linked
8 16:23:28 them, which is to me the same.
9 16:23:33 Q.It's true, isn't it, that at the meeting to discuss
10 16:23:35 its November 2020 view, GaStat expressly said that they
11 16:23:39 had linked COLI 1999 and COLI 2007?
12 16:23:44 A.That is in the minutes, but I have not found it
13 16:23:47 anywhere. It's nowhere to be seen.
14 16:23:51 Q.So you agree that -- why don't we just bring it up,
15 16:23:55 it's D11, page 4.
16 16:24:02 A.D?
17 16:24:02 Q.It will have to be on the screen.
18 16:24:04 A.Oh, sorry.
19 16:24:10 Q.If you scroll down, it should be 3:
20 16:24:17 "As for the data linking between the 1999 CPI and
21 16:24:20 2007 CPI, the linking occurred at the general price
22 16:24:22 index only ..."
23 16:24:23 Then there's an explanation.
24 16:24:26 A.Yes.
25 16:24:27 Q.So the point is that, insofar as GaStat has said

1 16:24:31 anything expressly about whether they've linked

2 16:24:33 COLI 1999 and COLI 2007, they have said that they have

3 16:24:37 linked it, haven't they?

4 16:24:40 A.These are from the minutes of the meeting, right?

5 16:24:43 When I received these minutes, I prepared a list of

6 16:24:48 questions in which I asked the follow-up question. But

7 16:24:56 the meetings were not forwarded to GaStat, so GaStat

8 16:25:02 were never asked that follow-up question.

9 16:25:04 So what I have is the fact that they have not --

10 16:25:12 they have never provided, publicly or privately, any

11 16:25:17 evidence. That is for me, any evidence that this index

12 16:25:22 had ever been linked, and that is for me enough. Yes,

13 16:25:29 it is enough.

14 16:25:30 They may have their own -- very good reasons for not

15 16:25:34 wanting to say, to make certain statements, because they

16 16:25:39 may have an impact on ...

17 16:25:47 Q.Pausing there, so unless you're going to say that in

18 16:25:50 this minute GaStat is either mistaken or not telling the

19 16:25:54 truth, then it is clear that GaStat did not effectively

20 16:25:57 disregard 1999, isn't it?

21 16:26:01 A.Well, they did, because effectively they did disregard

22 16:26:05 it, actually, because they never linked it anywhere.

23 16:26:07 Anywhere.

24 16:26:08 Q.In this minute, GaStat say they have done the linking,

25 16:26:10 don't they?

1 16:26:11 A.They may have done the linking and realised that it
2 16:26:13 was wrong and therefore put it aside and never published
3 16:26:16 it. It was never published, and it was not given to me
4 16:26:20 either.
5 16:26:21 Q.Basically, you're picking and choosing between various
6 16:26:24 things that GaStat has done and GaStat has said. GaStat
7 16:26:28 is saying here --
8 16:26:29 A.No --
9 16:26:30 Q.-- they've done the linking.
10 16:26:31 A.I'm not picking and choosing. From the evidence
11 16:26:35 that's before my eyes, and from the fact that there
12 16:26:39 obviously is a problem with that index, it is obvious,
13 16:26:45 obvious to me, that that index was never linked and that
14 16:26:49 there were some very, very important reasons why that
15 16:26:53 index was not linked.
16 16:26:57 Q.When you say that GaStat effectively disregarded
17 16:27:00 COLI 1999, when are you saying this happened?
18 16:27:03 A.Sorry?
19 16:27:04 Q.When do you say that GaStat effectively disregarded
20 16:27:07 COLI 1999?
21 16:27:09 A.When they published COLI 2007 without linking it to
22 16:27:13 the prior index. Already, that is already a sign that
23 16:27:20 the index was no longer in use. While for all
24 16:27:26 successive indices, when they published them, they had
25 16:27:29 linked them to a number of years prior.

1 16:27:32 Q.But you wouldn't know about what GaStat was going to
2 16:27:35 do with later indices until those later indices were
3 16:27:38 published. So you wouldn't have known about how it was
4 16:27:39 going to treat COLI 2007 and COLI 2013 until 2018, would
5 16:27:45 you?

6 16:27:47 A.I wouldn't, no. I was doing this in 2020 and 2022 and
7 16:27:54 2024. In 2013, you know that they had not linked. And
8 16:28:06 if you use these indices -- like, for example, you're
9 16:28:11 linking the PPI -- you are using the American PPI for
10 16:28:14 the other, for the foreign portion of these charges,
11 16:28:19 right? And you will have seen that the American PPI are
12 16:28:23 all linked to each other without any problems.

13 16:28:36 Q.Can we look at the list of questions that SWPC
14 16:28:38 provided to GaStat and we can pick that up at D101-3.
15 16:28:59 Then if you scroll down to 6. This was a question
16 16:29:04 that you prepared, was it?

17 16:29:07 A.Yes.

18 16:29:09 Q."Please could you provide documents describing the
19 16:29:11 specific reasons why the relevant statistical agency
20 16:29:15 decided to retire COLI 1999 and replace it with
21 16:29:17 COLI 2007?"

22 16:29:19 Then we can see you asked, were there any particular
23 16:29:23 deficiencies, were there any particular guidelines, if
24 16:29:27 we scroll down, please, and:

25 16:29:31 "Was the calculation of COLI 1999 inconsistent with

1 16:29:32 these guidelines, and if so, how?"

2 16:29:37 Then we get the answer from GaStat in the letter of

3 16:29:40 5 November 2020, which is at I think it is D92. No. It

4 16:29:53 might be B92.

5 16:30:06 If we go down to page 5. Yes, these are the answers

6 16:30:14 that you got back from GaStat; is that right?

7 16:30:17 A.Yes, yes.

8 16:30:20 Q.We can see at item 3 they explain the "Changes to

9 16:30:25 (Phases of) the CPI".

10 16:30:28 A.Yes.

11 16:30:30 Q.If we go through this, they start very early in the

12 16:30:33 process, we can see, in 1980. If we can go through to

13 16:30:36 page 6, please.

14 16:30:40 In fact, sorry, if you could go back up to where we

15 16:30:44 were, just to explain, pick out a part that they --

16 16:30:47 a bit further up.

17 16:30:51 So they say there:

18 16:30:57 "... constantly updating all aspects of the CPI

19 16:30:59 Program in order to improve and develop the CPI Program

20 16:31:02 and achieve the highest standards of accuracy and

21 16:31:02 comprehensiveness in relation to the CPI Program data.

22 16:31:07 The important factor for change is to reflect the

23 16:31:09 changes in household consumption pattern in the

24 16:31:14 [KSA]..."

25 16:31:15 Then:

1 16:31:15 "GaStat (formerly, Central Department of Statistics
2 16:31:19 and Information ...) is committed to introduce updates
3 16:31:22 to the CPI in accordance with the latest international
4 16:31:24 recommendations ..."
5 16:31:25 So that's the general approach they have.
6 16:31:27 If you go through to page 6. If we can scroll down
7 16:31:37 so we can see the reference to "Phase four". This is
8 16:31:43 COLI 1999, isn't it, in phase four?
9 16:31:46 If you just keep scrolling down, we'll get "Phase
10 16:31:49 four" towards the top of the page -- no, the other way,
11 16:31:52 so "Phase four" at the top. That's it.
12 16:32:01 Do you recognise this? You must remember this,
13 16:32:04 presumably? Do you remember this?
14 16:32:07 A.Yes.
15 16:32:09 Q.So then this phase four is COLI 1999, isn't it?
16 16:32:14 If we scroll a bit further down we can see, there we
17 16:32:16 go, the reference to 1999.
18 16:32:26 Then if we go to "Phase five", that's then
19 16:32:29 describing the COLI 2007.
20 16:32:32 If we just pause there. Is that correct?
21 16:32:34 A.Yes, it is.
22 16:32:36 Q.So there's nothing there saying that, in respect of
23 16:32:40 COLI 2007, no statement there that COLI 1999 should be
24 16:32:44 disregarded, is there?
25 16:32:45 A.No, not at all.

1 16:32:52 Q.When you met privately with GaStat, they didn't say
2 16:32:54 that COLI 1999 should be treated differently from other
3 16:32:57 indices, did it?
4 16:33:01 A.They did say to me that it couldn't be -- they did say
5 16:33:05 it in the meeting that the index couldn't be linked, and
6 16:33:09 that's why I asked the follow-up question.
7 16:33:15 Q.We looked at the meeting minutes before and they said
8 16:33:17 that the index could be linked.
9 16:33:19 A.Yes, I know. They say that they had linked the index
10 16:33:23 in the minutes, but when we were in the meeting, they
11 16:33:26 said that the indices couldn't be linked, and that's why
12 16:33:31 I asked a series of follow-up questions. Because they
13 16:33:38 discussed the linking of the meetings, the formulae.
14 16:33:41 So I --
15 16:33:43 Q.So you --
16 16:33:44 A.I prepared a series of questions to be asked.
17 16:33:48 They're not ...
18 16:33:51 Q.So you're saying the minutes are inaccurate, are you?
19 16:33:53 A.Sorry?
20 16:33:53 Q.Are you saying that the minutes are inaccurate?
21 16:33:55 A.Yes, absolutely. They weren't inaccurate; they didn't
22 16:33:59 cover everything that was discussed and therefore we
23 16:34:01 asked follow-up questions, but the follow-up questions
24 16:34:06 were not delivered to GaStat. Because we were very,
25 16:34:12 very close, because essentially what happened was that

1 16:34:15 I was appointed in June. In July we asked for an
2 16:34:21 appointment to discuss these indices with GaStat. We
3 16:34:25 finally managed to get this appointment for November,
4 16:34:29 but by 17 December, the report was due, and therefore,
5 16:34:36 there wasn't any more time. But I did prepare a list of
6 16:34:41 questions for them, about the things that were not in
7 16:34:47 the minutes, but had been discussed in the meeting.
8 16:34:51 Q.So your evidence is that in that meeting, you were
9 16:34:53 told --
10 16:34:54 A.Yes.
11 16:34:54 Q.-- that GaStat, what? Can you remember the precise
12 16:34:58 words? I think it's really important that you give us
13 16:35:00 the precise words.
14 16:35:03 A.Sorry?
15 16:35:04 Q.What were the precise words that GaStat used?
16 16:35:09 A.They said that the indices could not be linked. It's
17 16:35:12 in the -- I think the precise words are in those
18 16:35:15 minutes. I can't remember them.
19 16:35:20 Q.We just looked at the minutes.
20 16:35:21 A.Sorry, are in the follow-up questions that I prepared,
21 16:35:25 but this was four years ago. So the precise words
22 16:35:27 I cannot remember. But I do remember very distinctly.
23 16:35:32 Because otherwise, quite apart from the fact that they
24 16:35:35 actually hadn't linked the indices, so I had no reason
25 16:35:38 not to believe them.

1 16:35:41 Q.You didn't say anywhere in your reports that the
2 16:35:44 minutes weren't accurate, did you?
3 16:35:47 A.Oh, no, no, I wouldn't.
4 16:35:50 Q.In the reports that you've served for this
5 16:35:51 arbitration, you haven't said that the minutes of those
6 16:35:55 meetings were inaccurate, have you?
7 16:35:58 A.No. I didn't base my opinion just on these meetings,
8 16:36:06 but also on what I heard and what I saw.
9 16:36:09 Q.But hold on. You know when you put in your reports
10 16:36:12 you're supposed to put in everything that's relevant,
11 16:36:15 yes?
12 16:36:16 A.Of course, yes.
13 16:36:18 Q.And you don't think that mentioning that you were told
14 16:36:21 something different in a meeting than what's in the
15 16:36:23 minutes that you rely on is something that's worth
16 16:36:25 mentioning in your report?
17 16:36:27 A.It is in those questions, in those follow-up
18 16:36:32 questions. If you want, we can --
19 16:36:37 Q.As far as I know, we don't have those follow-up
20 16:36:38 questions. I think we'll have to move on, but it's not
21 16:36:43 in your report, is it?
22 16:36:44 A.No, it's not in my report.
23 16:36:48 Q.We'll come back to that.
24 16:36:50 A.Because essentially, what happened was that they
25 16:36:52 provided me with the index, and so from that index, it

1 16:36:59 was very obvious to me that they had not linked 1999 to
2 16:37:10 anything; they linked all the other indices, and I had
3 16:37:12 all the information that I needed to have.
4 16:37:15 Q.In the meeting --
5 16:37:16 A.Without --
6 16:37:17 Q.But in the meeting they actually said they had linked
7 16:37:19 COLI 1999 to COLI 2007, didn't they?
8 16:37:23 A.They said what you read.
9 16:37:26 Q.Yes.
10 16:37:26 A.Yes, but they didn't do it.
11 16:37:28 Q.You don't know what they've done, do you?
12 16:37:30 A.Well, they may have done it or tried to do it, but
13 16:37:33 they never published it. It's not in the public domain
14 16:37:36 anywhere.
15 16:37:39 Q.Can we just move on now to your reasoning based on
16 16:37:42 SAMA, I think in the joint statement at item 28, which
17 16:37:47 is D130, page 18. At the bottom of page 18, do you have
18 16:38:06 that? You say:
19 16:38:07 "Regarding SAMA I agree with Ms Harfouche's point...
20 16:38:10 that SAMA appears to treat the switch to COLI 2007 in
21 16:38:14 a similar manner as the switches to COLI 2013 and
22 16:38:16 COLI 2018."
23 16:38:18 So you're agreeing with Ms Harfouche that SAMA
24 16:38:28 treats COLI 1999 in the same way as the later indices;
25 16:38:32 do you agree?

1 16:38:34 A.Yes. They don't prepare the indices, they just
2 16:38:38 publish them, and I agree with Ms Harfouche, yes.
3 16:38:41 Q.That was just based on a straightforward examination
4 16:38:43 of the SAMA reports, wasn't it?
5 16:38:46 A.Yes, yes.
6 16:38:48 Q.Ms Harfouche referred to SAMA's 54th annual report as
7 16:38:52 showing that in 2018, SAMA referred only to COLI 2013
8 16:38:56 and not COLI 2007. Do you agree with that?
9 16:39:01 A.Yes, yes, I agree with that.
10 16:39:03 Q.And you had the 54th annual report from SAMA as your
11 16:39:07 exhibit MM-19, which is at D23. Then we go to page 9
12 16:39:25 and page 10. Scroll down a bit, I think. There we can
13 16:39:36 see the reference to, in table 7.1, we see the reference
14 16:39:45 to:
15 16:39:45 "General Consumer Price Index for All Cities
16 16:39:49 (2013=100)".
17 16:39:51 That's COLI 2013, isn't it?
18 16:39:55 A.Yes.
19 16:39:57 Q.So you had all the information to hand, but you still
20 16:40:01 concluded that SAMA's treatment of COLI 1999 was
21 16:40:04 materially different from its treatment of later
22 16:40:06 indices?
23 16:40:09 A.Yes, I made a mistake. There is actually a document
24 16:40:14 that is the minutes of a meeting in 2015, a meeting that
25 16:40:20 SAMA had with WEC and other companies, where the

1 16:40:24 representative for SAMA said that COLI 1999 had been --

2 16:40:34 I don't remember the exact words, but essentially had

3 16:40:37 been dismissed and should not be considered. But my

4 16:40:45 understanding is that the minutes of these minutes are

5 16:40:50 not in evidence.

6 16:40:51 Q.Yes, exactly.

7 16:40:52 I'm slightly surprised that Dr Meschi felt it

8 16:40:55 appropriate to refer to a document that she clearly

9 16:40:57 knows isn't in evidence and presumably she knows we

10 16:41:00 don't accept the provenance or authenticity of that

11 16:41:03 document.

12 16:41:03 So that's the brief document which SWPC declined to

13 16:41:07 apply to have put in.

14 16:41:09 So I would say I was surprised by Dr Meschi's

15 16:41:12 behaviour, I'm not actually, but it's not appropriate

16 16:41:14 for her to be making reference to documents that she

17 16:41:16 knows aren't in the bundle.

18 16:41:20 I request the tribunal ignore that statement.

19 16:41:26 So you accepted in the joint statement that

20 16:41:33 Ms Harfouche was right and I'm going to put it to you

21 16:41:35 that any reasonable consideration of those SAMA reports,

22 16:41:39 which you had, would have revealed that Ms Harfouche was

23 16:41:43 correct, wouldn't it?

24 16:41:45 A.Yes, I agree with her. She's right.

25 16:41:48 Q.So I am going to suggest to you what's happened is you

1 16:41:49 started out with a preconceived idea about COLI 1999,
2 16:41:51 and you simply tried to find evidence to support your
3 16:41:56 ideas about COLI 1999, and you've just gone on and
4 16:41:58 ignored any evidence that's inconsistent with that idea;
5 16:42:02 is that correct?
6 16:42:03 A.No. I accepted that this is wrong, that I was wrong
7 16:42:09 with this, but to me, the fact that -- again, the fact
8 16:42:18 that the statistical agency did not ever link an index
9 16:42:28 to another is proof that that statistical agency does
10 16:42:35 not consider that index linkable. They have never
11 16:42:39 linked it, never.
12 16:42:42 Q.Can I move on, please, to your arguments around the
13 16:42:45 removal of data relating to COLI 1999. This is at page
14 16:42:49 D1-59 of your first report, at paragraphs 4.14 to 4.15.
15 16:43:04 Then we'll deal with the other parts of your report.
16 16:43:06 You accept, don't you, that COLI 1999 data is
17 16:43:10 available for 2001 to 2010 on the GaStat website?
18 16:43:14 A.It is, yes, it is. To December 2011, not 2010.
19 16:43:23 Q.If you look on the GaStat website for those years,
20 16:43:26 you're only going to get COLI 1999 data, aren't you?
21 16:43:29 A.For what? For those dates?
22 16:43:32 Q.For those years?
23 16:43:33 A.No, you don't, because there is a historical series in
24 16:43:39 2014 that goes back for many years and then there is the
25 16:43:44 metadata, which is accessible, and it goes back to 2015

- 1 16:43:53 for the public use, and it has a link for people who
- 2 16:44:01 have -- how do you call it -- the password for
- 3 16:44:07 historical data, and it has an email address that people
- 4 16:44:10 can write to if they want the series that goes back.
- 5 16:44:17 Q.Can we please take up Ms Harfouche's second report,
- 6 16:44:22 D112, page 16.
- 7 16:44:40 I'm sure you've considered this, haven't you?
- 8 16:44:45 A.Yes, that's 2014 and that's the series that -- that's
- 9 16:44:49 the link to where the longer series is, in Excel.
- 10 16:44:57 Q.Yes, so if you go into the 2014 year, then you can
- 11 16:45:01 find historical data; is that right?
- 12 16:45:03 A.Yes, because these are the releases, right?
- 13 16:45:06 Q.But, sorry, if we go to D112, page 14, this shows you
- 14 16:45:17 what happens if you go into particular years for 2002 to
- 15 16:45:25 2010. You only get COLI 1999 data, don't you?
- 16 16:45:29 A.This is 2024.
- 17 16:45:32 Q.But do you agree that if you go on to the GaStat
- 18 16:45:34 website and click on their years for 2002 to 2010, you
- 19 16:45:40 only get COLI 1999 data?
- 20 16:45:43 A.Yes, you get the PDF. There are no Excel files,
- 21 16:45:47 because those are the releases. Those are the releases.
- 22 16:45:50 In 2002 to 2010, what they released was COLI 1999, but
- 23 16:46:00 funnily enough, for those years you don't have the Excel
- 24 16:46:05 file, you only have the PDF.
- 25 16:46:09 I don't know if -- I think there must be a picture

1 16:46:13 in Ms Harfouche's report of those years.

2 16:46:15 Q.But the point is, if people want to find out what

3 16:46:17 inflation was for those years today, what they will be

4 16:46:20 finding is COLI 1999 data; isn't that correct?

5 16:46:25 A.No, they will go to the -- they should go to the

6 16:46:27 metadata, because nobody will want to find the data into

7 16:46:31 a PDF file or -- into the metadata, there is the API and

8 16:46:35 they can get the whole series.

9 16:46:39 Q.The only way you can find COLI 2007 data for those

10 16:46:42 years if you go into the 2014 file; is that correct?

11 16:46:48 A.On the releases, yes, because that's when it was

12 16:46:50 released.

13 16:46:54 Q.What we can see is that GaStat is still publishing

14 16:46:57 COLI 1999 data, isn't it?

15 16:47:00 A.When?

16 16:47:01 Q.Well, this is, as far as we know, this is the --

17 16:47:04 A.Yes, these are the releases, these are the official

18 16:47:06 releases of the data.

19 16:47:07 Q.There's nothing on the GaStat website to say that this

20 16:47:13 data shouldn't be used, is there?

21 16:47:16 A.No.

22 16:47:18 Q.GaStat's actions show that they continue to publish

23 16:47:22 and make available to the public COLI 1999 data for the

24 16:47:26 years 2002 to 2010?

25 16:47:28 A.They don't publish it. That document that is on the

1 16:47:32 website was published in 2002. Now it starts from 2002.

2 16:47:39 Every year they take a year out. So those are the

3 16:47:41 releases. Those are the official publications. In

4 16:47:45 those years, those were the publications.

5 16:47:49 Q.In addition, you can still get the COLI 1999 data for

6 16:47:54 years prior to 2001 on the SAMA website in its 48th

7 16:47:58 annual report, can't you?

8 16:48:00 A.SAMA doesn't -- yeah, but those are -- that is the

9 16:48:02 archive of the annual report. What are they going to

10 16:48:06 do? Take the annual reports out of the website?

11 16:48:09 Q.If we can go to paragraphs 3.24 and 3.25 of D112,

12 16:48:19 page 15. I'm sure you've considered these. This is

13 16:48:25 where Ms Harfouche has explained by reference to the

14 16:48:30 metadata as to how we got to the current position in

15 16:48:34 terms of the continued publication of the COLI 1999

16 16:48:39 data. Do you see that?

17 16:48:45 Do you agree that the metadata shows that COLI 1999

18 16:48:49 was deleted in its entirety from the CDSI website

19 16:48:54 sometime between 10 October 2013 and 10 February 2014?

20 16:48:58 Do you agree with that?

21 16:49:00 A.Where do you read it? Sorry, which paragraph is it?

22 16:49:05 Q.Look at 3.24 and 3.25?

23 16:49:07 A.Okay, let me read it.

24 16:49:08 Q.I'm sure you must have read this before.

25 16:49:18 (Pause)

1 16:49:40 A.Yes, on 10 February 2014, CDSI -- the page had been
2 16:49:52 taken off their site. That's what is written here.
3 16:49:58 Well, actually, no, between 10 October 2013 to
4 16:50:04 10 February 2014, the whole historical series of
5 16:50:10 COLI 1999 was taken off that website, because it's no
6 16:50:13 longer in the web archives.
7 16:50:16 Q.And then, at some time afterwards, COLI 1999 data for
8 16:50:20 2001 to 2011 was restored on GaStat's website; is that
9 16:50:24 correct?
10 16:50:26 A.The release was -- yeah, the bulletins are there, the
11 16:50:31 bulletins, yes. Those are official publications.
12 16:50:37 Q.Then I'm going to suggest to you that the decision by
13 16:50:40 GaStat to restore 11 years of COLI 1999 data and show it
14 16:50:44 as inflation for these years on its current website is
15 16:50:47 not consistent with it having effectively disregarded
16 16:50:50 COLI 1999; do you agree?
17 16:50:54 A.No, I don't agree, because they have disregarded it
18 16:50:58 because they haven't linked it. So the inflation that
19 16:51:01 is measured in Saudi Arabia, if you want a historical
20 16:51:08 series of inflation in Saudi Arabia, you're not going to
21 16:51:13 get into that historical series any data point that
22 16:51:21 belongs to COLI 1999.
23 16:51:24 Q.I understand your point about what they've published
24 16:51:26 in terms of linking, but you had chosen in your report
25 16:51:29 to make -- one of the reasons that you said that GaStat

1 16:51:32 had effectively disregarded was about what data was
2 16:51:35 available on the website. Do you agree?
3 16:51:40 A.They have taken out data and also they have not linked
4 16:51:44 the index. It's both. It's not just one thing.
5 16:51:46 Q.Well, no, I agree, but in relation -- just looking at
6 16:51:48 the data, in relation to what in fact happened about the
7 16:51:52 data in relation to COLI 1999 on the GaStat website,
8 16:52:00 that is not consistent, is it, with GaStat having
9 16:52:03 effectively disregarded COLI 1999?
10 16:52:09 A.Okay, let's put it like this. You are a statistical
11 16:52:12 agency, you have an obligation to publish every month
12 16:52:16 a bulletin. That bulletin is published in PDF. You put
13 16:52:20 that bulletin up on your website. You are changing the
14 16:52:27 index. You do a switch from an index, 1999, because
15 16:52:33 that's the index, to 2007.
16 16:52:37 What happens in the normal circumstances is that you
17 16:52:41 do 2007, you link it to the index before, right, and you
18 16:52:46 move on. This is what they're done for 2013, this is
19 16:52:49 what they've done for 2018.
20 16:52:52 In 2007, they went and re-backcast COLI 2007 all the
21 16:53:00 way to 1980 and put that on the website, instead of
22 16:53:07 COLI 1999. To me, that tells me that they have
23 16:53:14 disregarded COLI 1999, because otherwise they would have
24 16:53:16 linked them and moved on.
25 16:53:20 That is my opinion. It's enough. Essentially

1 16:53:27 proof, as far as I'm concerned.

2 16:53:30 Q.Can we move now to GaStat's November 2020 view. This

3 16:53:35 was provided to you on a retrospective basis in 2020?

4 16:53:39 A.In 2020, yes.

5 16:53:41 Q.That wasn't available to the parties in 2014, was it?

6 16:53:45 A.No, what was available to the parties in 2014 were the

7 16:53:51 two reports by SAMA, the annual reports, the 2012 that

8 16:53:56 had COLI 1999 and the 2013, which is 49, that had

9 16:54:04 COLI 2007. And they had a few years of overlap from

10 16:54:13 which the inflation rates could be inferred. That is

11 16:54:19 what was available to the parties at that date.

12 16:54:25 Q.But we've agreed, haven't we, that there's nothing in

13 16:54:27 the SAMA reports that tells you that you should be

14 16:54:30 treating COLI 1999 differently from any other later

15 16:54:34 index, haven't we?

16 16:54:37 A.I do agree, yes, I do agree. Ms Harfouche is

17 16:54:42 absolutely correct with that.

18 16:54:43 Q.So I'm not sure why you're referring to SAMA reports,

19 16:54:46 because they're not going to tell you anything special

20 16:54:46 about COLI 1999, are they?

21 16:54:49 A.I am referring to them for a different reason,

22 16:54:51 actually. I am referring to them because that is how

23 16:54:58 the parties could have, could have seen, or maybe they

24 16:55:03 did see, I don't know, that there was a big difference

25 16:55:07 between these two indices.

1 16:55:10 Q.But at that stage, they wouldn't have known whether
2 16:55:13 that difference between those two indices was
3 16:55:16 significant, because you would have to see, in order to
4 16:55:18 understand that, you would have to know what the
5 16:55:20 difference between COLI 2007 and COLI 2013 was, and even
6 16:55:25 what the difference between COLI 2013 and COLI 2018 was,
7 16:55:28 to know whether it was a significant difference?
8 16:55:31 A.They could have seen whether it was a difference to
9 16:55:33 them and they could have said -- taken pause and tried
10 16:55:37 to figure out what to do about it.
11 16:55:45 Q.So, accepting that they could see in 2014 that there
12 16:55:49 was a difference between COLI 1999 and COLI 2007, that's
13 16:55:58 how you -- that's why you rely on the SAMA reports. As
14 16:56:09 I say, whether that difference was a significant one
15 16:56:12 wouldn't be known because you didn't have anything to
16 16:56:14 compare it to, because you can't compare it to COLI 2007
17 16:56:16 to COLI 2013, or COLI 2013 to COLI 2018?
18 16:56:22 A.No, but what you could have done -- and can I have
19 16:56:25 table 4-2 of D1-64?
20 16:56:37 These are the inflation rates in the two SAMA annual
21 16:56:42 reports. This is the 48, which was published in 2012,
22 16:56:46 and this is the 49, which was published in 2013.
23 16:56:51 So in 2012 -- and the next two columns are COLI 1999
24 16:57:05 and COLI 2007. And so from this, you can see that the
25 16:57:09 48 report has COLI 1999, and the 49 has COLI 2007, and

1 16:57:16 as Ms Harfouche rightly says, this is the way they treat
2 16:57:19 the indices, always.
3 16:57:21 Now, somebody could have said: okay, hold on
4 16:57:23 a second here. So in 2011, inflation was 5.0 per cent
5 16:57:30 that we put into this contract, but actually now they
6 16:57:34 are saying that it's 3.7. In 2010, it was 5.3 and now
7 16:57:40 they are saying it's 3.8. In 2009 it was 5.1 and now
8 16:57:45 they're saying that it's 4.1. What is going on?
9 16:57:49 They could have done that.
10 16:57:50 And then they knew that in 2008 it was 9.9 and they
11 16:57:57 could have thought: what is happening here?
12 16:57:59 That is what I would have done, for sure, if
13 16:58:04 I had -- can you imagine if these are rates on your
14 16:58:07 mortgage?
15 16:58:11 Q.But we know, don't we, that whenever a new index is
16 16:58:14 published, it's likely to be more accurate than the
17 16:58:17 previous index; is that correct?
18 16:58:19 A.It's going to be more accurate, but for sure, when you
19 16:58:21 see these, you are starting asking questions. Maybe
20 16:58:26 they did ask questions, and that is why we are here.
21 16:58:31 I don't know. For sure, I personally would question it.
22 16:58:42 Q.Nothing that -- GaStat didn't say when it published
23 16:58:46 COLI 2007 that COLI 1999 was inaccurate, did it?
24 16:58:51 A.A statistical agency has a responsibility to make sure
25 16:59:02 that they're not going to wreck the economy. So what

1 16:59:06 I'm trying to say is that on the basis of these
2 16:59:09 inflation rates, interest rates are set, exchange rates
3 16:59:14 then are determined. To just say, oh, sorry, you know,
4 16:59:21 we made a mistake for 10 years and we're publishing
5 16:59:23 something that is wrong, would have been catastrophic.
6 16:59:29 I mean, there was an article yesterday, yesterday,
7 16:59:33 on the Financial Times, which is about Germany of all
8 16:59:38 countries, my husband's country, and Germany, the
9 16:59:41 statistical office of Germany, for the first time, has
10 16:59:46 failed to publish on time some data on the revenues of
11 16:59:52 companies and attributing this to an IT glitch, and all
12 16:59:59 hell broke loose because, you know, people don't know
13 17:00:03 whether to believe it or not.
14 17:00:05 So, of course it is a serious thing, and inflation
15 17:00:10 is fundamental, to the point where, if you are
16 17:00:20 a statistical agency and you are excused of having
17 17:00:23 either tampered, or having been cavalier with the
18 17:00:28 publication of inflation figures, your country can be
19 17:00:32 censured by the IMF. This happened to Argentina
20 17:00:41 in 2013.
21 17:00:42 So a statistical agency, in my opinion, will be
22 17:00:46 very, very careful before saying: you know what, we
23 17:00:50 published something that was completely wrong.
24 17:00:52 In fact, when you think about what happened in the
25 17:00:56 UK, for example, they published the CPI in the 1990s,

1 17:01:03 the consumer price index, and it was substituted, as

2 17:01:10 I said, for the RPI in the inflation target in 2003, and

3 17:01:17 it took until 2013, and the whole series of studies and

4 17:01:27 consultations for that RPI to be removed from being

5 17:01:32 the national statistics, after it had already lost its

6 17:01:38 job to set the inflation and therefore, as a target for

7 17:01:44 interest rates and everything else, for what was going

8 17:01:47 on in the economy. It took decades in the UK.

9 17:01:50 Q.And we know from the experience in the UK, that it's

10 17:01:54 perfectly possible for a national statistics

11 17:01:58 organisation to say that the previous index that people

12 17:02:04 have been using, which in that case is RPI, is an

13 17:02:07 inaccurate measure and should be replaced by CPI. And

14 17:02:10 that was all very open and the transition was made, as

15 17:02:14 you say. So actually there's good evidence from the UK

16 17:02:17 that it's perfectly possible to move in a considered way

17 17:02:22 from one index to another index, and there is no reason

18 17:02:30 why that couldn't have been done in the KSA. But in

19 17:02:36 fact the KSA never did that, did it?

20 17:02:38 A.The UK published -- if I'm not wrong, the CPI was

21 17:02:44 published for the first time in 1996. Okay? In 2013,

22 17:02:52 which is 17 years later, the UK said, this index is not

23 17:03:00 good enough. After 17 years of using the CPI, the RPI

24 17:03:04 is not good enough, so it's no longer a national

25 17:03:08 statistic. We will continue to publish it because there

1 17:03:11 are gilts that expire in 2030, but this index cannot be
2 17:03:17 used for policy purposes. And it has not been used for
3 17:03:21 policy purposes since 1996.
4 17:03:24 So it took them 17 years before they actually came
5 17:03:27 out and said: this index is not a national statistic.
6 17:03:32 Q.What I want to move now to is, as I said, GaStat was
7 17:03:36 providing its view in November 2020 as the most accurate
8 17:03:39 estimate of inflation on a retrospective basis; is that
9 17:03:41 correct?
10 17:03:42 A.Yes.
11 17:03:43 Q.So, just in the way they did it, given they're working
12 17:03:46 retrospectively, it made sense, because they were trying
13 17:03:49 to provide their most accurate view, that they would use
14 17:03:55 COLI 2018 for as long as they could; is that correct?
15 17:03:59 Going backwards?
16 17:04:00 A.No, they didn't use COLI 2018. They used 2018 as the
17 17:04:06 equal to 100, so it was re-based. But 2018, it was 2018
18 17:04:11 from 2018 to 2020. Before that was 2013. You can see
19 17:04:19 it from slide 10, for example. My slide 10. You can
20 17:04:30 see very clearly there, actually. You can see it. They
21 17:04:37 are all linked.
22 17:04:40 You can see it actually, it's in both, in both the
23 17:04:46 figures, because in the left, you can see they are all
24 17:04:51 parallel. The dotted line are all parallel to each
25 17:04:54 other, which means that they essentially estimated the

- 1 17:04:57 same relative inflation, they are all the same index.
- 2 17:05:01 So COLI 2007. Then in 2013, COLI 2013. Then in 2018,
- 3 17:05:09 COLI 2018. They are all linked.
- 4 17:05:13 Q.Yes, but it's correct, isn't it, that in the
- 5 17:05:15 retrospective view, it used COLI 2018 as far back as it
- 6 17:05:21 could; is that right?
- 7 17:05:21 A.It's not COLI 2018. It's the base year of COLI 2018.
- 8 17:05:26 COLI 2018 is the combination of three indices. It's
- 9 17:05:30 COLI 2007 from 1980, all the way to 2007. Sorry, all
- 10 17:05:42 the way to 2013. So from 1980 till 2013, it's
- 11 17:05:52 COLI 2007.
- 12 17:05:53 From 2013 to 2018 it's COLI 2013. Then it's COLI
- 13 17:06:00 2018.
- 14 17:06:03 They didn't estimate COLI 2018 going back.
- 15 17:06:07 Q.No, no. I think you're actually agreeing with me.
- 16 17:06:10 The way they've done it is they've linked in the index
- 17 17:06:13 year for each different COLI; is that right?
- 18 17:06:17 A.In the base year.
- 19 17:06:17 Q.Sorry -- okay.
- 20 17:06:18 A.In the base year, yes. In the base year. That's what
- 21 17:06:21 statistical agencies, they all do that.
- 22 17:06:23 Q.But the point is they were doing it retrospectively,
- 23 17:06:27 weren't they?
- 24 17:06:28 A.No, they weren't. They did it as they published the
- 25 17:06:30 indices.

1 17:06:32 Q.No, but the one you were given in November 2020 --

2 17:06:34 because at that point, in November 2020, GaStat had all

3 17:06:42 the information available to it, didn't it, about

4 17:06:44 COLI 2007, COLI 1999, COLI 2013 and COLI 2018, didn't

5 17:06:51 it?

6 17:06:52 A.When they published COLI 2013, which unfortunately was

7 17:07:01 published a few years after 2013, so it was published

8 17:07:06 with a delay, they actually estimated it starting for

9 17:07:10 a few years before. And the four years before was

10 17:07:14 COLI 2007. That's why I'm saying that they have linked

11 17:07:17 them. They linked them all. They are all linked.

12 17:07:21 Q.Yes, and they --

13 17:07:22 A.And they link them contemporaneously as they were

14 17:07:25 publishing them, but they published them with delay.

15 17:07:28 Q.But in 2020, GaStat was able to take a retrospective

16 17:07:34 view, wasn't it, looking back?

17 17:07:36 A.Well, I asked for a historical series.

18 17:07:39 Q.Yes?

19 17:07:39 A.Yes, yes.

20 17:07:40 Q.Okay. Basically, what they've done is they've taken

21 17:07:50 COLI 2018 going backwards until there's no COLI 2018

22 17:07:56 data, and then they link to COLI 2013; is that correct?

23 17:08:06 A.They have taken 2007 and linked it to 2013, in 2013

24 17:08:10 they linked it to 2018, because you link on the base

25 17:08:16 year. And the reason why they do that is because that

1 17:08:19 is the year of the expenditure survey on which each
2 17:08:24 successive subsequent index weights are based. So that
3 17:08:29 is how they link. It's not GaStat; it's every
4 17:08:33 statistical agency does that. Each and even of them.
5 17:08:37 Q.But the retrospective view is using, at each stage,
6 17:08:42 what it regards as the most accurate index as far back
7 17:08:47 as it can; is that correct?
8 17:08:48 A.Yes, but the most accurate index is, from 2018
9 17:08:53 onwards, is COLI 2018. From 2018 to 2013 it's
10 17:09:01 COLI 2013, because from 2013 to 2018, COLI 2018 is not
11 17:09:12 COLI 2018. It's COLI 2013 linked to -- that's why they
12 17:09:18 are parallel. They are parallel. They just shift them
13 17:09:20 downwards. Statistical agencies tends to do backward
14 17:09:27 linking, not forward linking, because they link all the
15 17:09:31 index to the new one which is more accurate. That's why
16 17:09:34 you see them going down.
17 17:09:36 Q.Yes, absolutely. I actually don't think we are
18 17:09:38 disagreeing.
19 17:09:41 The point is that they take advantage of the fact
20 17:09:43 that they are doing this on a retrospective basis, don't
21 17:09:45 they?
22 17:09:49 A.They have to, because this is an historical series and
23 17:09:51 when they have published them, they already -- they
24 17:09:53 published them. When they published COLI 2007, they
25 17:09:58 didn't link it to anything. So the year before 2007

1 17:10:02 were a different index, from 1999. When they published

2 17:10:09 COLI 2013, when they published it, right, 2013 was 2013

3 17:10:19 only from 2013 onwards. Before that was linked to 2007.

4 17:10:25 And the same for 2018, and I would guess the next one

5 17:10:28 will be the same.

6 17:10:30 Q.Am I right in thinking that you use the fact that

7 17:10:32 GaStat has linked COLI 2007, COLI 2013, and COLI 2013

8 17:10:38 and COLI 2018 in the index reference years to the later

9 17:10:42 indices, as a support for your approach to COLI 1999 to

10 17:10:46 COLI 2007?

11 17:10:48 A.As part of it, as part of it, yes, yes.

12 17:10:52 Q.But GaStat's actions don't justify your approach, do

13 17:10:56 they? Because the fact that GaStat can do it on

14 17:11:05 a historical basis doesn't provide a justification for

15 17:11:09 users acting in the same way, because we know that the

16 17:11:13 reference year will be several years prior to

17 17:11:15 publication of the later index; is that right?

18 17:11:21 A.Are you saying in general or in this particular case?

19 17:11:24 Q.In this case.

20 17:11:24 A.In this particular case. In 2007 also the weights --

21 17:11:33 2007 is the year in which COLI 1999 goes kind of

22 17:11:38 berserk, and it's also the year in which its weights

23 17:11:43 were changed and so that is why -- that's another reason

24 17:11:48 why I link them in 2007.

25 17:11:52 Q.That's not --

1 17:11:56 A.I think I have written it --

2 17:11:59 Q.I'll try the question again.

3 17:12:01 So historically, looking back historically, GaStat

4 17:12:05 linked, for example, COLI 2013 with COLI 2007 in 2013;

5 17:12:20 is that right?

6 17:12:22 A.Yes, yes. But also contemporaneously. That's when

7 17:12:26 they linked them.

8 17:12:27 Q.But a user in 2013 couldn't possibly have done that,

9 17:12:32 could they? Because they didn't have the COLI 2013 data

10 17:12:35 until 2018?

11 17:12:36 A.Yes, correct.

12 17:12:38 Q.It wouldn't make any sense at all, would it, for

13 17:12:41 a person, a user in 2018 to say: oh, I have now got the

14 17:12:47 COLI 2013 data, so I'm going to link it all the way back

15 17:12:51 to COLI 2007 and COLI 2013. Nobody would do that, would

16 17:12:56 they?

17 17:12:58 A.I mean, why should they do that? COLI 2018 was

18 17:13:04 already linked back. You mean for the purpose of

19 17:13:11 contracts or for --

20 17:13:14 Q.For example?

21 17:13:14 A.For the purpose of contracts. So as I explained, for

22 17:13:17 the purpose of a contract, in this particular -- in this

23 17:13:23 case, because there was no reason -- because the agency

24 17:13:31 had linked the indices and there was no reason to

25 17:13:34 believe that this index had any problems, that's what

1 17:13:39 I propose to do. I don't propose to go back every time.

2 17:13:44 I propose to use the going forward approach. The only

3 17:13:48 exception is that blue line.

4 17:13:54 Q.For the links between COLI 2007 and 2013, and 2013 and

5 17:14:00 2018, you only consider what was available at the time,

6 17:14:05 the information that was available at the time, ie so

7 17:14:07 you only do it at the end when the new index is

8 17:14:11 published, and so the exception for that is COLI 1999 to

9 17:14:16 2007, where you give yourself the benefit of hindsight;

10 17:14:19 is that right?

11 17:14:21 A.Yes.

12 17:14:24 Q.I would like to move now to your second reason, which

13 17:14:26 is the suggestion that COLI 1999 is an inaccurate

14 17:14:31 measure of inflation.

15 17:14:35 So I think we can agree that all indices are -- no

16 17:14:41 indices truly measure true inflation?

17 17:14:45 A.Where are we?

18 17:14:46 Q.I'm just moving on to your reason 2. We can go back

19 17:14:49 to it, if you would like?

20 17:14:51 A.Yes.

21 17:14:51 Q.It's in your first report.

22 17:14:57 A.Is it 6.6?

23 17:14:58 Q.6.6.

24 17:14:59 A.Yeah, okay. I'm there.

25 17:15:14 Q.Here you deal with this, this is about COLI 1999 being

1 17:15:23 an inaccurate measure of inflation. You rely on the

2 17:15:29 fact that there is a statistical inaccuracy in

3 17:15:33 COLI 1999; is that correct?

4 17:15:36 A.Fundamental, yeah.

5 17:15:42 Q.Can we go to paragraphs 3.41 and 3.42 of your first

6 17:15:46 report at D1-41.

7 17:16:06 Then we can turn over to D1-42 where you deal with

8 17:16:14 the inaccuracy in COLI 2007, where you say:

9 17:16:24 "... the arithmetic average also results in

10 17:16:26 overstating inflation at this stage ..."

11 17:16:27 So this is at the high level, yes?

12 17:16:31 A.Yes.

13 17:16:31 Q.3.42:

14 17:16:32 "... albeit this overstatement is generally smaller

15 17:16:35 than at the first stage."

16 17:16:35 Do you see that?

17 17:16:41 A.Yes.

18 17:16:42 Q.So here, what you're doing is you're making an

19 17:16:45 evaluation of accuracy in relative terms, aren't you?

20 17:16:49 A.No, because the CPI manual actually advises that it

21 17:17:00 doesn't matter what you use in the second stage. They

22 17:17:02 are all unbiased. What matters is what you use in the

23 17:17:05 first stage, and in the first stage, you should never

24 17:17:09 use arithmetic averages. And so the quote that I have

25 17:17:14 in the next paragraph is for an inspection that the OECD

1 17:17:20 did, an assessment of the Latvia statistical -- how do
2 17:17:29 you call it -- the statistical system in case statistics
3 17:17:35 of Latvia, and what the OECD actually said at the end,
4 17:17:41 as a conclusion of that assessment.
5 17:17:43 So it says:
6 17:17:45 "[Latvia's] Index calculations at the elementary
7 17:17:47 level are not based on a Jevons-type [ie geometric
8 17:17:51 averaging] index ... formula. Price indices of lower
9 17:17:55 aggregation levels are calculated as the ratios of
10 17:17:57 arithmetic mean prices in the reference and base
11 17:18:00 periods, which does not enable capturing the replacement
12 17:18:05 effect within the elementary aggregates. The OECD
13 17:18:09 Secretariat strongly encourages the CSB [Central
14 17:18:13 Statistical Bureau of Latvia] to review the index number
15 17:18:16 formula according to the CPI Manual."
16 17:18:20 Q.Thank you. Can we move to paragraph 5.20, which is at
17 17:18:23 D1-71. Do you have that?
18 17:18:50 You have given some reasons as to why you think it's
19 17:18:53 out of date -- you think it's inaccurate, and 5.21 you
20 17:18:57 refer to the out-of-date basket. Do you see that?
21 17:19:03 A.Yes.
22 17:19:04 Q.The basket, I think you said the basket was updated in
23 17:19:07 2007; is that correct?
24 17:19:11 A.Yes, but you see, the thing is that the basket for
25 17:19:16 COLI 1999 was selected from a system of national

1 17:19:26 accounts that was not compatible with the survey that

2 17:19:29 was done in 2007, because that survey was done based

3 17:19:34 according to the COICOP, which is the international

4 17:19:39 standard.

5 17:19:40 So what happens is that the weights that were -- the

6 17:19:45 goods that were in that basket corresponded to

7 17:19:51 elementary items in the COICOP that were not completely

8 17:19:57 comparable. So the weights were, if you want, shown in,

9 17:20:04 do you say, into a classification that is not the same

10 17:20:12 as the original one.

11 17:20:18 I don't have the basic weights of the two, but

12 17:20:24 judging from what is happening to that line, the

13 17:20:30 combination of these weights with the formulae for these

14 17:20:35 elementary aggregates is what created then -- not

15 17:20:39 created, it exacerbated the issue.

16 17:20:43 Q.I see. Can we move now to the next point, which is in

17 17:20:46 relation to what you call the out-of-date approach to

18 17:20:50 averaging. You say that both the CPI manual and the US

19 17:20:54 Bureau of Labor -- is that studies, services, BLS?

20 17:20:59 A.The Labor Bureau of Statistics. LBS, yeah, it's also

21 17:21:03 the ILO, strangely enough, which is International Labour

22 17:21:05 Organisation.

23 17:21:07 Q.Can I just check that you confirm that you accept that

24 17:21:10 the CPI manual is only advisory, it's not prescriptive?

25 17:21:14 Do you agree with that?

1 17:21:16 A.Yes, but I also have to say that what GaStat have said
2 17:21:20 to me, I think in the letter that they wrote, is that
3 17:21:25 they are committed to it. So they committed themselves,
4 17:21:29 GaStat, to this manual.
5 17:21:33 Then in 2024, in the metadata, it's one of the
6 17:21:42 exhibits if Ms Harfouche's report, her second report
7 17:21:49 I think, in the metadata that they publish for the
8 17:21:57 consumer price index, they actually stated that they
9 17:22:00 follow the CPI manual.
10 17:22:03 Q.In 2024?
11 17:22:05 A.Yeah, but they told me in 2020 and they have done this
12 17:22:10 throughout. The thing is that you have to be compliant.
13 17:22:13 Otherwise, as I said, there are consequences.
14 17:22:17 Q.Can we look at the preface to the CPI manual 2020,
15 17:22:20 which is at D100?
16 17:22:22 A.They follow the 2004, that's what they mention.
17 17:22:28 Q.Okay, we'll come to that in a second.
18 17:22:28 We'll go to -- this is one of your exhibits,
19 17:22:30 I think, the CPI manual 2020?
20 17:22:33 A.No, no, I'm saying that GaStat say that they --
21 17:22:36 Q.I'm going to move on to D100, please, at page 13.
22 17:22:50 There's a paragraph which begins, the paragraph in
23 17:22:53 the middle there, beginning:
24 17:22:55 "The IWGPS ..."
25 17:22:58 A.Where is it?

1 17:22:59 Q.The paragraph that begins in the middle of the page on
2 17:23:02 the screen:
3 17:23:02 "The IWGPS ..."
4 17:23:05 A.Yes.
5 17:23:05 Q.Can you see? Yes?
6 17:23:08 You can see that it says, as you go down:
7 17:23:12 "Because of practical resource constraints, some of
8 17:23:14 the current recommendations may not be immediately
9 17:23:15 attainable by all NSOs, and they should therefore serve
10 17:23:20 as guidelines or targets for agencies ..."
11 17:23:22 Do you see that?
12 17:23:23 A.Yes, I do.
13 17:23:26 Q.Again, this is very much guidance to be followed, but
14 17:23:28 in accordance with an individual state's resources and
15 17:23:34 constraints?
16 17:23:39 A.Yes, but if you commit yourself to it, I mean, they
17 17:23:42 had six stages -- how many stages were there in the
18 17:23:52 letter that GaStat wrote to me? And the reason why they
19 17:23:55 did that was to comply to this.
20 17:23:58 Q.Over time?
21 17:24:01 A.That's why they slowly changed --
22 17:24:07 Q.Then we get to D9 -- could we go to D9-25, please.
23 17:24:26 Then we can see. Look at paragraph 9.37. You have seen
24 17:24:38 this as being part of the approach to aggregating for
25 17:24:43 elementary aggregates?

- 1 17:24:45 A.Yes.
- 2 17:24:46 Q.If we see at 9.37, Jevons is geometric; is that right?
- 3 17:24:54 A.Yes, it is.
- 4 17:24:55 Q.And Carli is arithmetic?
- 5 17:24:57 A.Is one of the arithmetics, there are two of them.
- 6 17:25:00 Q.So it says that:
- 7 17:25:01 "... Jevons emerges as the preferred index in
- 8 17:25:03 general, although there may be cases in which little or
- 9 17:25:07 no substitution takes place within the elementary
- 10 17:25:09 aggregate and the Carli might be preferred. The index
- 11 17:25:12 compiler must make a judgment on the basis of the nature
- 12 17:25:15 of the products actually included in the elementary
- 13 17:25:17 aggregate."
- 14 17:25:18 A.Yes.
- 15 17:25:18 Q.Is that correct?
- 16 17:25:19 A.Yes, I mean, think about it. For example, examples of
- 17 17:25:23 these are things like the television licence; in
- 18 17:25:29 countries where there is a single supplier, the power
- 19 17:25:32 rates, what people pay for electricity. These kind of
- 20 17:25:36 things. But for what people normally buy, there is
- 21 17:25:41 a lot of substitution, and what substitution means is
- 22 17:25:45 that when the price of something -- let me tell you
- 23 17:25:49 aggregate, for example. Let's say that you are buying
- 24 17:25:49 razors, or even rice, right, and there is one brand of
- 25 17:25:57 rice that all of a sudden costs more, or in one

1 17:26:00 supermarket costs much more than in another. What you

2 17:26:03 are assuming is that actually, people are not

3 17:26:07 substituting them, which is, you know, a bit of

4 17:26:10 a stretch anyway, it's not compatible with economic

5 17:26:13 theory and the way consumers behave.

6 17:26:16 Q.It's a matter for the individual NSO, isn't it, to

7 17:26:19 decide on the basis of local circumstances how it's

8 17:26:22 going to approach these matters?

9 17:26:23 A.Of course, because, you know, there are countries

10 17:26:25 where they don't have a television licence. There are

11 17:26:28 countries where you have a competitive power suppliers,

12 17:26:32 for example, and people can switch from one to another,

13 17:26:35 the lucky ones who can do that.

14 17:26:38 Q.Is it correct also that even if arithmetic averaging

15 17:26:40 at the elementary aggregate level tends to overstate

16 17:26:43 inflation, that does not mean that an index will in fact

17 17:26:47 overstate inflation in any particular year, because it's

18 17:26:50 only one factor of many that will determine whether

19 17:26:53 inflation is overstated or understated?

20 17:26:55 A.The bias is an average. These are all average

21 17:26:59 concepts. So on average, you will. But it can be lower

22 17:27:02 in a year, also in two, but on average you will

23 17:27:06 overstate it, yes.

24 17:27:07 Q.Then we can look at your second report at D103,

25 17:27:12 page 31.

1 17:27:35 Do you see that? What you've presented here is

2 17:27:37 a diagram to show whether there's an overstatement. So

3 17:27:45 the zero line is accurate in accordance with GaStat's

4 17:27:50 2020 view; is that correct? So we can see the zero --

5 17:27:57 A.Yes.

6 17:27:58 Q.Above and below the line. So we can see that there

7 17:28:02 are, even on COLI 1999, there are three years out of

8 17:28:07 eight where it understates inflation?

9 17:28:10 A.Yeah, in fact, actually, I can -- you see, what

10 17:28:16 happens here is that in 2007, it's the base year for

11 17:28:25 essentially what happened in 2007, they changed the

12 17:28:29 weights, the two years before, because the GaStat view,

13 17:28:36 right, is COLI 2007 in those years, right? What they

14 17:28:42 have to do in 2007, they changed the weights, but --

15 17:28:48 sorry, they didn't change the weights. They published

16 17:28:50 the 2007 expenditure survey, that was the base year for

17 17:28:56 COLI 2007, and they publish that index going forward all

18 17:29:00 the way to whatever years.

19 17:29:04 But then they also backcasted it, but they

20 17:29:08 backcasted it on the basis of the weights of 2007, and

21 17:29:13 the reason why they were doing that is because they

22 17:29:17 substituted 2007 with 1999 without linking, and so there

23 17:29:22 was a bit of a -- there was some issue, I think, with

24 17:29:33 the way that they backcasted based on the 2007 weights

25 17:29:39 that may have created a problem, but this is speculation

1 17:29:42 on my part. In those two years, it was lower, 1999.

2 17:29:49 Q.Only a statistician or an economist would be in

3 17:29:52 a position to understand the effect of using arithmetic

4 17:29:54 averaging and not geometric averaging at the elementary

5 17:29:58 aggregate level; is that correct?

6 17:29:59 A.Yes, I would think so. But, you know, as I said,

7 17:30:04 a user would look at those indices, the values, and

8 17:30:08 would say, what is going on, and call a statistician,

9 17:30:11 hopefully.

10 17:30:13 PRESIDENT: Can I just ask a quick question.

11 17:30:15 Given we have been discussing arithmetic and

12 17:30:17 geometric averages, the average that you've got on your

13 17:30:21 chart here, is that an arithmetic or a geometric?

14 17:30:25 A.Just an average. Sorry, arithmetic.

15 17:30:29 MR ROBB: It would be arithmetic?

16 17:30:30 PRESIDENT: Arithmetic, yes.

17 17:30:32 A.It's the average difference.

18 17:30:37 PRESIDENT: Okay.

19 17:30:38 MR ROBB: It's adding up, the blue for 1999, it's taking

20 17:30:43 the extent to which for each year, adding up for each

21 17:30:47 year the COLI 1999 is above zero, then netting off the

22 17:30:50 three years where it's below zero, to get a net number

23 17:30:53 and then dividing by eight, presumably?

24 17:30:58 A.It's the sum over the --

25 17:31:00 Q.Then divided by eight?

1 17:31:07 A.I think it's seven or eight? Yeah, it's eight,
2 17:31:11 because there is a blue line there, yes.
3 17:31:14 MR ROBB: Yes. We're at 5.30, which I think is our
4 17:31:21 scheduled ...
5 17:31:22 PRESIDENT: Yes, I was just wondering, how much longer
6 17:31:24 will you be? If it wasn't much longer ...
7 17:31:27 MR ROBB: No, it's not another 10 minutes. It will be
8 17:31:32 more than 10 minutes, so we definitely ought to be
9 17:31:33 coming back tomorrow.
10 17:31:35 PRESIDENT: All right. In which case we will finish for
11 17:31:37 this evening. Thank you very much, Dr Meschi. As
12 17:31:40 before, please don't talk to your assistants or any
13 17:31:43 members of the legal team about your evidence overnight.
14 17:31:47 WITNESS: Can I have dinner with them if I don't talk
15 17:31:48 about?
16 17:31:52 CHAIRMAN: I think it's safer not to.
17 17:31:54 WITNESS: Okay, okay.
18 17:31:55 PRESIDENT: Thank you.
19 17:31:56 Then we'll see you back here about 9.20, ready to
20 17:32:00 start at 9.30.
21 17:32:04 WITNESS: Okay.
22 17:32:05 (5.32 pm)