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SD

Thursday , 03 Oct 2024

194

s this correct? So we can see that -- A. Yes. Q. Above an below the line ^^, so we can see that there are even on COLI 1999, there are three years out of eight where it understates inflation? A. Yeah, in fact, actually, I can -- you see, what happens here is that in 2007, it's the base year for essentially

more than in another, what you are assuming is that actually, people are not substituting them, which is, you know, a bit of a stretch anyway, it's not compatible with economic theory and the way consumers behave. Q. It's a matter for the individual NSO, i

primary aggregate level ^^; is that correct? A. Yes, I would think so. But, you know, as I said, I user would look another ^^ what is going -- the values, will say what is going on and call a statistician, hopefully. PRESIDENT: Can I just ask a quick question. Ath met I can and geometric averages, the average that you've got on your chart here i

hers in over the -- Q. Then divided by eight? A. I think it's seven or eight? Yeah, it's eight, because there is a blue line there, yes.

those years, right? What they have to do in 2007, they change the weights, but -- sorry, they didn't change the weight

culation on my part. In those two years, it was lower, 1999. Only a statistician or economist would be in a position to understand

er years. But then they also back casted it, but they back casted it on the basis of the weights of 2007 and the reason why they were d

elevation licence, there are countries where you have a competitive power supply, for example, and people can switch from one to another, the lucky ones who can do that. Q. Is it correct also that eve

COLI 1999 is above 0, then netting off the three years where it's below 0 t

e arithmetic, there are two of them. ^doc name)s. Q. So it says this gentlemen convenience ^^ in general although there may be cases in which little or no substitution takes place within the elementary aggregate and the car live might b

That's why they slowly changed ^^. Q. Then we get to D9 -- could we go to D9-25, please. Then we can see look at paragraph 9.37. You have seen this as being part of the approach to aggregating for elementary aggregat

there's a paragraph which begins the paragraph in the middle there beginning the IWGPS ^doc). A. Where is it? Q. The paragraph that begins it's in the middle of the page on the screen, the IWGPS? A. Yes. Q. Can you see? Yes? You can see that it says as you go down, you say, because of practical resource constraints some of the current representations may not be immediately obtain ^reading...) NSOs and they should therefore serve as guidelines or targets for agencies." ^doc. Do you see

e 9.3? Yes, is geometric, is that right? Yes, it is. And really, I'll do. Q. Again, this is very much guidance to be followed in accordance with the individual state's resources and constraints? A. Yes, but if you commit yourself to it, I mean, they had six stage, how many stages were there in the letter that Page No. 192 □ 2 □ 2 □ 1

you see? Yes? You can see that it says as you go down, you say, because of practical resource constraints some of the current representations may not be immediately obtain ^reading...) NS

is this one of your exhibits, I think. ^ itch -- (overspeaking) -- ^^? A. No, I'm say that is GaStat say that they -- Q. I'm going to move on to D100, please, at page 13. There's a paragraph wh

ur labour studies, services -- The labour bureau statistics, LBS, yeah, it's also the ILO strongly enough, which is unfortunately labour organisation ^. Q. Can I just check that you confirm that you accept that the CPI manual

happens is that the weights that were -- the goods that were in that basket corresponded to elementary items in

MR ROBB: It would be arithmetic. PRESIDENT: Arithmetic, yeah. A. It's the average dif

So here what you're doing is you're making an evaluation of accuracy in relative term, aren't you? A. No, because in the CPI manual, actually advises that it doesn't matter what you use in the second stage. They

would like? A. Yes. Q. It's your first report,? A. Is it 6.6? Q. 6.6. A. Yeah, okay. I'm there. Q. Here you deal with this, this is about COLI 1999 being an inaccurate measure

matter. MR ROBB: No, it's not another 10 minutes so it will be more than 10 minutes so definitely coming back tomorrow. PRESIDENT: All right. In which case we will finish for this evening. Thank you very much, Dr Meschi. As before, please

people normally buy, there is a lot of substitutions and what substitution means is that when the price of something, let me tell you ^^ ^ let's ^ or even rice, right, and th

general electricity. This kind of things. But for what people normally buy, there is a lot of substitutions and what substitution means is

These are all average concepts. So on average, you will. But it can be lower in a year also in ^^ but in average you will overstate it, yes. Q. Then we can look at

will then I have dinner with them if I don't talk about? I think it's safer not to. WITNESS: Okay, okay. PRESIDENT: Thank you. Then we'll see you back here, if you could be back here abo

adding up the blue for 1999 it's taking the extent to which for each ye

entirely to this manual. Then in 2024, in the metadata, it's one of the exhibits if Ms Harfouche's report, her second re

to the consumer price index, they actually stated that they follow the CPI manual. Q. In 2024? A. Yeah, but they told me in 2020 and they have done this throughout. The thing is that you have to be compliant otherwise as I said,

a classification that is not the same as the original one. I don't have the basic weights of the two, but judging from what is happening to that line, the combination of those we

(reading...) slat via to review the index number formula according to the CPI manual." ^doc. Q. Thank you. Can we move to paragraph 5.20, by is at D1-71. You see that. You give some reasons as to why you think that its ou

in particular -- in this case, because there was no reason -- because the agency had linked the indices and there was no reason to believe that this index had

ment of the lat via statistical -- how do you skal it, the statistical system in case statistics of lat via and what the OECD actually said at the ^^ as a conclusion of that assessment. So it says lat via index ^^ elementstry level are not based o

to go to paragraphs 3.41 and 3.42 of your first report at D1-41. Then we can turn over to D1-42 where you deal with the inaccuracy

link it all the way back to COLI 2007 in COLI 2013. Nobody would do that, would they? A. I mean, why shou

they couldn't possibly have done that, could they? Because they didn't have the COLI 2013 data until 2018? A. Yes, correct.

PETER TREY
6e78ff

JEFFREY consider what was available at the time, the information that was available at the time, ie so you only do it at the end when the new index is published, and so the exception for that is C

BOBBITREY geometric averages, the average that you've got on your chart here is
6e78ff

RRB
6e78ff

BOLLTREY
6e78ff

POL TREY
6e78ff

Highlights

with the way that they back casted based on the 2007

Unassigned
e9e90e

and geometric averages, the average that you've got on
your chart here is that an arithmetic or a geometric?
A. Just an average. Sorry, a arithmetic.
KRR
5a65ff
l
a3ff95

lower, 1999.
Only a statistician or economist would be in a position

KRR
5a65ff
l
a3ff95
Unassigned
e9e90e

Q. I would like to move now to your second reason, which is
the suggestion that call # is an inaccurate measure of
inflation. So I think we can agree that all indices are -- no indices truly measure true inflation?
Unassigned
e9e90e

Page No. 1

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1 09:13:01
2 00:15:18
3 09:15:21
4 09:15:22
5 09:15:29
6 09:15:45
7 09:15:52
8 09:16:00
9 09:16:01
10 09:16:01
11 09:16:02
12 09:16:02
13 09:16:03
14 09:16:03
15 09:16:04
16 09:16:07
17 09:28:07
18 09:28:07
19 09:28:08
20 09:28:08
21 09:28:11
22 09:28:13
23 00:10 .. :18
24
25 10:01 ..
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Test test.

Good morning everyone. This is the day 2 of the hearing.

Testing mic number 1, testing mic number 2, testing mic number 3, testing mic number 4, testing mic number 5, testing mic number 6, testing mic number 7, testing mic number 8

(10.01 am)

PRESIDENT: Good morning, everyone. This is day 2 of the hearing in case number PCA 2023-45.

Mr Hanke, is everyone who needs to be here from your

1 10:01:29

side here.

2 10:01:31

MR HANKE: Yes.

3 10:01:32

MR ROBB: Yes, also.

4 10:01:34

PRESIDENT: Excellent, thank you.

5 10:01:38

So do we have any housekeeping matters to deal with.

6 10:01:39

MR HANKE: Not in the claimant's side.

7 10:01:45

MR ROBB: Only to say that the termlation of the variation

8 10:01:48

which you had asked for in writing is with my

9 10:01:52

solicitors. If you're content and SWPC is content, it

10 10:01:55

will be emailed during the course of the morning.

11 10:01:57

PRESIDENT: Is that okay for you.

12 10:01:58

MR HANKE: As soon as we can have it, yes.

13 10:02:01

PRESIDENT: Perfect, that would be very helpful.

14 10:02:03

I think, then, our first witness will be.

15 10:02:07

MR HANKE: Dr Meschi.

16 10:02:11

PRESIDENT: Is she here?

17 10:02:18

MR HANKE: Yes.

18 10:02:23

PRESIDENT: Will Dr Meschi affirming or taking an oath.

19 10:02:24

MR HANKE: Oath.

20 10:02:40

PRESIDENT: Do we have the right book available?

21 10:02:43

MR HANKE: I think there might have been a mild oversight on

22 10:02:45

having the right book.

23 10:02:46

WITNESS: It doesn't matter.

24 10:02:48

PRESIDENT: If you wouldn't mind affirming as

25 10:02:50

a practicality. Heading ^

Page No. 3

1 10:02:52

If you can first sit down and you should have clean

copies of the expert report and that will be it.

In which case, when you're ready, do you have enough

space.

WITNESS: Can I actually put this on the floor.

PRESIDENT: Would it be helpful if you had a chair next to

you to put them on a chair.

WITNESS: Yeah, maybe I'll try this. It's better.

PRESIDENT: I think you were here yesterday, so you know how

it works.

WITNESS: Yes.

PRESIDENT: Just remembering to keep your voice up and speak

slowly, so we can get the transcript.

If you could first repeat after me.

I Dr Meira methy witness I Dr Mel chesschy.

PRESIDENT: Solemnly and sincerely declare and affirm.

That the evidence shai give.

WITNESS: That the evidence I shall give.

PRESIDENT: Shall be the truth witness shall be the truth.

PRESIDENT: The whole truth.

WITNESS: The whole truth.

PRESIDENT: And nothing but the truth.

WITNESS: I affirm that I have followed I affirm that I have

followed and will follow and will follow the tribunal's

procedures.

Page No. 4

1 10:04:23

WITNESS: The tribunal's prior dures.

PRESIDENT: Regarding the accuracy.

WITNESS: Regarding the accuracy.

PRESIDENT: Truthfulness.

WITNESS: Truthfulness.

PRESIDENT: And fairness.

WITNESS: And fairness.

PRESIDENT: Of my evidence.

WITNESS: Of my evidence.

PRESIDENT: To the best of my ability.

WITNESS: To the best of my ability.

PRESIDENT: Thank you.

Mr When.

15 10:04:41

Examination-in-chief by Mr Hanke

MR HANKE: Dr Meschi, I might ^^ I'm not quite sure, but

within them you should find your first report, if

I could ask you to turn to page 96 of that.

A. Yes.

202409240004Q. If you turn to the last page of the report, please. It

should be 96.

A. Okay.

Q. Is that your signature?

A. Yes.

Q. Does the contents of that report remain your true

Page No. 5

1 10:05:21

professional opinion?

2 10:05:21
A. Yes.

3 10:05:22
Q. If you could take your second report, please, which I'm

4 10:05:36
assuming is in the second bundle. We can have it up on

5 10:05:39
screen, D112, page 39 -- sorry, D103 ^, and then to page 54. Is that your signature?

6 10:05:55
A. It is.

7 10:06:05
Q. Does the contents of that report remain your true,

8 10:06:08
professional opinion?

9 10:06:10
A. Yes.

10 10:06:11
Q. Thank you. I believe you have a presentation that you

11 10:06:12
wish to make.

12 10:06:15
A. Yes.

13 10:06:15
MR ROBB: Sorry, is it worth also could affirming the

14 10:06:21
content of the joint table.

15 10:06:27
MR HANKE: Yes.

16 10:06:29
MR ROBB: D130.

17 10:06:30
MR HANKE: D130, please, then the final page on that which

18 10:06:38
is 2.

19 10:06:43
MR ROBB: The signatures are on page 2.

20 10:06:48
MR HANKE: Sorry, thank you. D130, page 2, that's your

21 10:06:49
signature there?

22 10:06:50
A. It is.

23 10:06:52
Q. The contents of the relevant column of this remain your

24 10:06:55
true professional opinion?

25 A. They do, yes.

1 10:06:57

MR HANKE: Thank you.

3 10:07:01

4 10:07:05
Presentation by Dr Meschi

PRESIDENT: Mr Hanke, would you be able to call up -- give

instructions for her presentation, call it up as well

^^7 10:07:19

MR HANKE: I don't have a reference for that.

MR KIRYUSHIN: I haven't seen those slides in the hearing

bundle, so I'm not sure in they were inserted after

Friday or not.

MR HANKE: Lloyd Michaux have them, but I don't think

they're in the bundle as such.

PRESIDENT: Okay, if they can get put into the bubble, but

we're on the screen, so we can work with that.

MR HANKE: Yes.

PRESIDENT: Dr Meschi, if you would like to give your

presentation.

19 10:07:51

Presentation by Dr Meschi

WITNESS: Good morning. My name is Melra Meschi and I am an

economist and ^^ with over 25 years of experience,

academic and professional, an economic metrics is the

application of statistics to economics and that's my

area of expertise.

This morning, what I plan to do is go through the

Page No. 7

1 10:09:01

following five things. First, I will give you some are

you of my instructions and then discuss the fundamental

economic and statistical concepts that are relevant to

minutes and the inflation indices in this dispute,

followed by the index cation approaches that have been

taken by the experts and finally, just a few seconds,

the loss assessments of the figures.

My instructions are here. In summary, this is the

summary of my instructions. I am instructed to provide

my opinion from an economic and statistical perspective

on the appropriate indexation approach from

transitioning between successive COLI indices. Second,

to review and comment on Ms What are's reports and her

preferredding if forward approach.

To assume that the parties' rationale in including

the indexation clause was to adjust payments for true

inflation.

And finally, to assume that this tribunal has

discretion to consider any relevant factors when

determining the current dispute, including the accuracy

and bias of COLI 1999.

First of all, the theory and practice of statistics,

of measuring inflation, is a specialist topic and there

are some fundamental concepts that in my opinion, are

quite intuitive and are very important to this dispute.

1 10:10:47

Section 3 of my first report aims to provide an

overview of those concepts. I will remind you of the

most important ones in the next few slides.

It is very important that I make myself clear, so if

I don't, please ask me questions.

First of all, what is inflation? So inflation is

the rate of change of prices over time. It is

impractical and outrageious I will expensive to measure

the price of every single good and service in the

economy and inflation is therefore unknown and must be

estimated using priced indices.

From an economic perspective, it is obvious that one

wants to measure true inflation and accuracy and bias

are actually related to this. They are statistical

properties of price indices.

In general, statistical properties all ^^ have

particular meaning in statistics. They refer to how

close an estimate is on average to the true value being

measured and an estimate is inaccurate or biased in its

systematically deviates from the true value that one

seeks to measure ^^.

An estimate can be known to be inaccurate or biased

based on fundamental statistical and economic

considerations without having to quantify that bias. If

we want to, we can quantify it by comparing the known

1 10:12:42

bias estimate to the true value or if that is unknown,

to an estimate that is known to be unbiased.

To give you an example, if I want to measure the

average height of people in a city, I can use a sample

of men to do this. But then measure will be pie yased

in absolute terms, which means fundamentally inaccurate.

I can take a sample of men and women and I can

compare the average height of a sample of men and women

to the original estimate that I obtained with the sample

of men, but regardless of the size of the bias, the

estimate which has been taken from the men shall never

be used because it's fundamentally inaccurate.

So that's the difference between measuring something

and having something that's fundamentally inaccurate.

So what is the best thing to do when it comes to

inflation indices? How do we go about this in practice?

There are national statistical offices that are

responsible for designing and maintaining accurate

measures of inflation and therefore accurate inflation

indices.

This requires good methodologies based on sound

economic and statistical theory that are jointly

provided in the CPI manual, CPI consumer price index,

manual, by international organisation.

So the working group of the ILO of the UN, the IMF,

1 10:14:21

the World Bank, OECD and your statistic ^, they are the

ones who jointly publish these CPI manuals.

(euro stat ^

^name)

We can think of CPIs as tools to track the cost of

a large shopping basket that represents what the typical

household buys. For example, rice and bread are items

in this basket. Statistical agency, how could they go

about this? First of all, they use what I call the

expenditure surveys that are carried out at regular

intervals, the best practice is at least every five

years, to determine what has to go into that basket. So

the items in the basket.

Each item in this basket has a weight and the weight

is based on its importance in the expenditure of the

typical household. For example, rice may have a weight

of 1 per cent in the basket and the whole set of weights

has to sum to 100 per cent, which is the total

expenditure.

Once the weights are set, they remain fixed until

the next survey is carried out. Then the CPIs are

calculated in two stages. So we can think of this as

going from the bottom to the top of a pyramid.

In the first stage, which is the bottom of the

pyramid, price indices for each item, which are called

1 10:15:57

also arithmetic aggregates are calculated in the

following way (elementary ^ for each item, for example

rice, the prices of many brands, many varieties of rice

are collected from a large sample of Venn DrS. These

prices are then averaged into an index for rice using

a math that the call formula without using any weights,

because the weights are not available at that level.

In the second stage, going towards the top, these

are averaged to obtain a high-level indices. For

example, food and non-alcoholic beverages is one such

groupings. Then, ultimately, the CPI, which is the top

of the pyramid. All these in the second stage, all

these indices are based on the basket weights for the

items.10:16:56

So CPIs that use arithmetic rather than geometric

averaging in the first stage are known to be biased.

Their use is strongly discouraged. So what is the

difference between these two statistics? The arithmetic

average of your height, I just get it by summing your

heights and dividessing by three.

The gee met I can average I just multiply your

heights and raise it to the power of one-third.

That's the difference.

This is how indices are constructed when the weights

are fixed.

Lloyd Michaux (ask@lloydmichaux.com)
Asia-Pacific | Middle East | India

1 10:17:38

But as time passes, consumption patterns change and

the index need updating. When a new survey is carried

out, the composition of the basket and the weights

change.

The new updated CPI is more accurate by default than

the old one, because its weights are updated. This

updating process is called re basing. Because the new

index is not completely comparable with the old one,

statistical agencies link them and linking two indices

is an arts met I can operation that can either bring the

old index to the level of the new one or vice versa.

When the old index is brought to the level of the new

one, it's called backwards linking. The other way

around is forward linking.

PRESIDENT: Sorry, Dr Meschi, can I just ask a question.

You said that the new updated CPI is more accurate by

default. Is it only more accurate in relation to the

contemporaneous expenditure while because it's

reflecting the changing spending patterns, but it

wouldn't necessarily be more accurate if you would

looked, say, five years previously?

WITNESS: Yes.

PRESIDENT: Thank you.

WITNESS: Yes, because they are what is called last pair

indices ^ so the base of the index is the base period

1 10:19:11

So it's five years -- of the weight is five years prior.

They all are - the whole ^^ is characteristic the price

indices.

PRESIDENT: Thank you.

WITNESS: Sorry, the CPIs.

So what are the inflation indices in this dispute?

Before I apply this concept in general, before

I speak about the indices in this dispute, I wanted to

ask you if you had any other questions?

So what are the indices in this dispute? There are

several issues of COLI indices in this dispute.

COLI 1999, 2007, 2013 and 2018.

COLI 1999 is inaccurate due to fundamental

statistical and economic considerations and let me show

you these in relation to this table.

The first column is COLI 1999 and in the first

instance, it uses arts met I can averaging formula for

elementary aggregates ^^. As I said before, these are

known to produce bias.

Second, it uses a classification framework or goods

and services which is not in line with international

standards, because the way all these goods are

classified is as changed over time and the international

classifications that used now is called copy pop ^name),

which is a classification which was first published in

1 10:21:10

2 10:21:15
the first instance in 1999 but it was not used by

3 10:21:21
COLI 1999. It was used by all subsequent indices.

4 10:21:27
In the third instance, these end cease never used by

5 10:21:34
GaStat, is never linked to any other index.

6 10:21:38
The other indices do not have these shortfalls. So

7 10:21:45
that these defects are only unique to COLI 1999.

8 10:21:54
Also, I point to this line here. The weight

9 10:22:59
reference for COLI 1999 is 1999, but the GaStat changed

10 10:22:06
the weights in 2007. The weights were obtained with the

11 10:22:08
survey that was base on a different classification. But

12 10:22:12
the weights were changed in 1997, because in 1997 -- in

13 10:22:19
2007, sorry, they changed and adopted these copy cop

14 10:22:23
classification in the survey ^ and they recalculated the

15 10:22:00
weights for COLI 1999 based on that survey.

16 10:22:07
So what is the effect of all this? COLI 1999

17 10:22:43
materially diverges from its successor indices between

18 10:22:01
2007 and 2013. Here there are two charts that show

19 10:22:52
this. The chart on the left shows the indices as they

20 10:22:57
were published and it is from this chart is very hard to

21 10:23:03
say much about them, because they all have different

22 10:23:07
base years and the only thing we can see by looking at

23 10:23:12
this chart is that these three indices are all paralegal

24 10:23:14
and the fact that they are paralegal means that they are

25 10:23:18
linked, so that the statistical agency actually linked

them.

Daily Transcript Service

1 10:23:28

2 10:23:31
The chart on the right, I have brought them back to

3 10:23:33
the same because year of 2005. The reason I have done

4 10:23:35
that is simply because that is the year of reference in

5 10:23:43
the WPA and it is immediately obvious by looking at this

6 10:23:48
line, that the blue line, which is COLI 1999 takes off

7 10:23:53
starting in essentially 2007 and departs from all the

8 10:23:57
other lines.

9 10:24:01
Ms Harfouche has a different take on this chart.

10 10:24:04
I disagree with the premise of that analysis. I can

11 10:24:07
explain this later in the proceedings.

12 10:24:11
What I notice from this line is that -- from this

13 10:24:15
chart is that the blue line shoots off and goes in

14 10:24:18
a different direction altogether.

15 10:24:21
PRESIDENT: Sorry, if we can just go back to that slide,

16 10:24:24
please.

17 10:24:30
WITNESS: Yes, I can't do that with the mouse.

18 10:24:36
PRESIDENT: Thank you. What I notice in figure 4-3 is that

19 10:24:45
in the first sort of 25, 26, 27, that COLI 1999 and COLI

20 10:24:49
2013 appear to be broadly the same and then suddenly

21 10:24:51
there's a deviation.

22 10:24:52
Yes.

23 10:24:55
PRESIDENT: What changed or can you explain why they were

24 10:24:58
the same and then there was a deviation.

25 10:25:01
WITNESS: They look the same in this line, they are

different. You can see in the next slide. What changed

1 10:25:06

is that all those indices are backtracked, they are

backtracked with weight from 2007 and in 2007, COLI 1999

also had a change in weights, but based on a different

classification. So the original weights, the original

basket, to which the weights had to be applied, was

a basket that was created with a different

classification. So the weights that were applied came

from a survey back that was based on a different

classification.

Just to give you an idea, I mean, going back to the

rice, 1999 had two types of rice, par boiled and brown

I think it was?

A. But 2007 had different types of rice. So the weights ^

for rice that were calculated from the 2007 expenditure

survey must have been different from the ones that were

calculated originally.

The combination, in might be, of this with the

formula effect is what caused that line to shoot off.

PRESIDENT: Sorry, can I just check. You said then that the

weights must have been different. Have you checked? Do

you know they were different?

WITNESS: The weights from 1999 to 2007?

PRESIDENT: Yes, because you said 2007 had different types

of rice, so the weights for rice that were calculated

for the for # expenditure survey must have been

1 10:26:45

different from the ones calculated previously. I just

wanted to check whether when you say must have been",

that was your conclusion or when whether you checked and

the weights were different.

WITNESS: No, because the weights at the level of the

elementary ago bats were not -- are never provided. The

weights above are provided. So the only thing that we

can see is that the weight for the aggregates are

different, not for the elementary ones. And we could

never reconcile them. What I was told by ga stated is

that they changed the weights in the 1999 formula based

on 2007 survey.

PRESIDENT: Thank you.

WITNESS: Then they applied the 1999 formulae to these

changed weights.

PRESIDENT: Thank you.

WITNESS: I have now explained what is the difference

between the COLI indices and this is we turn to the

indexation approaches.

So in this slide, there's what these two charts show

is GaStat view of the most accurate measure of

inflation, which is the green line, and COLI 1999, which

is the blue line.

Let's start with the chart on the left and what does

this chart tell us. This chart simply shows the price

1 10:28:33

2 10:28:40
path, right? It shows the price of rice, the price of

3 10:28:43
a kilo of rice.

4 10:28:49
Another way that we can show the same information is

5 10:28:55
on the chart of the right. So think about one kilo of

6 10:29:00
rice. The green line on the left here is the price of

7 10:29:06
one kilo of rice over this period of time. The green

8 10:29:11
line on the right simply shows how many kilos of rice

9 10:29:17
you can buy on each -- at each price. So because this

10 10:29:21
is the most accurate estimate of inflation, according to

11 10:29:26
GaStat, at each price on this green line, you can buy

12 10:29:29
one kilo of rice.

13 10:29:31
For the blue line is COLI 1999 and so it shows that

14 10:29:43
by the time the index was retired, whoever was buying

15 10:29:49
rice, according to that index, was able to buy more than

16 10:29:54
one kilo of rice and the area, the grey area here,

17 10:30:02
simply shows how many more kilos of rice, if you want,

18 10:30:09
the party being paid with this blue line was able to

19 10:30:11
afford.

20 10:30:16
Now, COLI 1999 was -- this continued

21 10:30:22
after January 2013 and the parties now need an index to

22 10:30:29
use from 2014 onwards. The question is how to precede

23 10:30:33
given that COLI 1999 was discontinued in 2014 and there

24 10:30:37
are two ways of doing this.

25 10:30:41
So the first way is the approach that has been taken

by Ms Harfouche, which is simply to carry on from the

1 10:30:48

2 10:30:52

blue line onwards.

3 10:30:56

So the consequence of this is that essentially bakes

4 10:31:00

in the inflation, the cumulative inflation under

5 10:31:05

COLI 1999 and progress gates it forward all the way to

6 10:31:10

the end. When you look at the right, you can see that

7 10:31:16

the red line is nowhere close to the green line and that

8 10:31:22

there are increasing -- there is increasingly more rice

9 10:31:25

with respect to what the most accurate measure of

10 10:31:29

inflation is than can be afforded under this approach.

11 10:31:52

So what I have done is what I propose to do is to

12 10:31:59

link COLI 1999 to COLI 2007 in 2007 which is the base

13 10:32:03

year for COLI 2007, the year in which the weights were

14 10:32:08

changed and simply move on from there.

15 10:32:17

What this does is if you want in a way is split the

16 10:32:21

overpayment, moving forward, in the sense that with

17 10:32:26

respect to the green line, there is more, still more

18 10:32:31

rice to be afforded, but what it does, it just corrects

19 10:32:37

and takes away the overpayment, the grey area and brings

20 10:32:41

it back to the level of the most accurate measure of

21 10:32:45

inflation.

22 10:32:50

It is absolutely true that there is a correction

23 10:32:55

here, but what I have attempted to do is I have

24 10:33:02

attempted to essentially guarantee margins and over the

25 10:33:11

year, in the lifetime of the project, because -- the

project is not over yet, there are five more years

1 10:33:17

2 10:33:21
Do you have any questions?

3 10:33:25
PRESIDENT: I have a question, actually, for counsel,

4 10:33:28
because we're now over 20 minutes even with my

5 10:33:28
questions.

6 10:33:32
Is what do you want to do about that?

7 10:33:36
MR ROBB: My view is any time that's being used by Dr Meschi

8 10:33:43
now comes off SWPC's time. As long as we're going to

9 10:33:49
wrap up in the next five minutes or so, I'm not going to

10 10:33:54
rain on her parade, as it were, but we hear what you

11 10:33:54
say.

12 10:33:56
MR HANKE: I agree that the consequence must be that it

13 10:34:00
comes from my client's time. I think we're quite close

14 10:34:05
to that time now stopping anyway. But I agree with what

15 10:34:08
Mr Robb says.

16 10:34:09
PRESIDENT: We're happy for you to carry on, then. Thank

17 10:34:11
you.

18 10:34:13
WITNESS: Okay. How do we link future indices in there are

19 10:34:19
two possible situations for new index publication. So

20 10:34:25
the first one is back-to-back, so one index terminates

21 10:34:32
and the next index starts and starts, let's say -- call

22 10:34:41
2007 terminates in 2012 December and COLI 2013 starts in January 2013, published with a few months of

23 10:34:51
backwards estimate, and you link them back-to-back at

24 10:34:55
the last time in which the old index was available and

25 10:34:57
then move forward.

There is a possibility of a periods a overlap, which

Page No. 21

1 10:35:01

I had not considered, because the last two indices were

never published with the overlap, but if that happens,

my proposal is to link them at the first possible time.

So to link the new index more accurate index to the

old index^^ as soon as the new index is published, if

there is overlap.

Then apply the new charge rate at the first possible

opportunity afforded by the WPA, which is generally the

year after.

I would say that this is, for me, consistent with my

instructions. Aindividuals prolonged use of a less

accurate index and so this is my approach.

I don't think I need to show the damages

calculations, because they are agreed among the experts,

so I could stop here.

MR GHAFFARI: One question. Where there's a period of

overlap, do you essentially disregard the last part of

the previous index?

WITNESS: When there is an overlap in the approach, yes, but

as I said, I have not considered that before, because

I didn't think that this would happen, but, yes.

MR GHAFFARI: Thank you.

PRESIDENT: I had one question for you, Dr Meschi, because

you say in your reports and you've mentioned today that

you had the instructions to assume that the parties

1 10:37:05

rationale was to adjust to reflect true inflation.

Is there anything about your analysis and what

you've done that would be different if you hadn't had

that instruction?

WITNESS: No. The reason why is because as an economist, to

me, you know, two parties wouldn't enter in a contract

if they wanted to reflect something that's not true.

PRESIDENT: But --

WITNESS: Inflation, true inflation are the same thing ^^.

PRESIDENT: But it could simply have been a commercial deal

which reflects all sorts of inputs into the deal, but is

that something that you're only looking at the inflation

aspects?

WITNESS: I only look at the inflation aspects, so I've been

asked -- yeah, I'm sorry. What other inputs into the

deal?

PRESIDENT: For example, it would be possible -- sort of

talking in the hypothetical here, that the parties might

have agreed a tariff rate that was lower and then agreed

an index which they knew was what you would say was

overly generous, because those two would off set each

other. That there's a lot of parameters when you're

entering into a commercial deal, not just inflation.

WITNESS: But I think in order to do that, they would have

had to know that that index was overestimating

1 10:38:56

2 10:39:00 inflation. I don't think they could possibly know it at

3 10:39:05 that time when they entered the contract. It was not

4 10:39:11 known that COLI -- when the contract was signed, it was

5 10:39:17 not publicly known that that index had these problems

6 10:39:20 and it was fund mentally flawed.

7 10:39:22 PRESIDENT: For example, was it known that it used the ath

8 10:39:32 met I can method rather than geometric method.

9 10:39:31 WITNESS: I don't think it was known publicly, no, no.

10 10:39:32 PRESIDENT: Okay.

11 10:39:37 WITNESS: Because the first time that this appeared publicly

12 10:39:51 was after COLI 2007 was published. So what actually

13 10:39:55 happened was that SAMA, in 2012, in the unwas report ^^

14 10:40:04 was still showing inflation according to COLI 1999 and

15 10:40:09 they always go three, four years back. In 2013, the

16 10:40:01 next iteration of their annual report, which if I'm

17 10:40:14 wrong is the 149th, they showed inflation according to

18 10:40:20 COLI 2007. When a few years back ^.

19 10:40:22 If one compares those two inflation, that's where

20 10:40:26 you see there is a problem. That's the first time that

21 10:40:30 you can see that there is actually a problem, that the

22 10:40:35 measure is different, and quite a bit so.

23 PRESIDENT: Thank you. No further questions from me at this

24 10:40:40 point.

25 MR KIRYUSHIN: Just to follow up on something that you said

in response to the chair's question.

1 10:40:45

You said the inflation that it wouldn't matter to

you I'm just reading from the transcript. That it

wouldn't matter -- your analysis wouldn't differ in your

instructions on the true inflation were not there. But

I had understood even on your slides, you mentioned that

bias and accuracy are basically properties of the

indices, so you either have accuracy in terms of

reflection of what we're calling true inflation as

opposed to certainty of the index that you have. Is my

understanding correct?

WITNESS: Accuracy in -- so you either have accuracy in the

sense of the -- but the certainty regarding the index is

the certainty regarding the use of the index you mean?

Which index you're using or?

MR KIRYUSHIN: The reference point, so the index is my

reference point.

WITNESS: Your reference point is the chart rate established

in 2005 and then you escalate it according to an index

that you agree to use.

KIRYUSHIN: Correct.

WITNESS: Now, if you are asking me if the agreement was to

actually use that index until the index was no longer

available, that is the close of the WPA, so you use that

index until it's no longer available, or the parties

agree otherwise, or I think it says that there is an

1 10:42:31

independent expert who needs to determine on a different

index or a different methodology.

I am not a lawyer, so I can't really interpret this

clause in legal terms, but from an economist

perspective, when you use an inflation index, you are

trying to – and you apply it to a charge rate, you're

doing this to protect your margins over a certain period

of time. One of the reasons why this is a popular way

of doing it is because it actually prevents perverse

incentives that could arise from other types of

contracts. This is, for example, the reason why, if you

think about the regulatory regimes in the UK, they are

all based on this type of formula. There's a ratchet

formula that a charge rate is agreed at the beginning

between the regular interest and the regulated company

and then every year, it is increased by a price index

minus a factor that represents efficiency and that is in

order to have the system as transparent as possible and

avoid continuously having to go back and review this

charge rate that is very final consuming, expensive and

22 10:44:09

MR KIRYUSHIN: But again, just to perhaps I'm missing it

here, but you're saying it wouldn't matter whether or

not I was asked you as an expert were asked ^ whether to

reflect true inflation or whether I was asked not to

1 10:44:23

2 10:44:26 reflect true inflation. It wouldn't change the outcomes

3 10:44:31 of your report.

4 10:44:33 WITNESS: It wouldn't, because from an economic perspective,

5 10:44:39 inflation, you're not trying to measure something that

6 10:44:44 is false and in contract, if you agree to measure

7 10:44:52 inflation, it must be through inflation ^^ the index, it

8 10:44:58 must be that you are trying to reflect that. What else

9 10:45:01 would you reflect? I don't think any party will agree

10 10:45:06 not to reflect true inflation. If an index doesn't

11 10:45:11 reflect true inflation, there are perverse incentives,

12 10:45:13 it becomes arbitrary and if that is the case, there is

13 10:45:18 always one party that wins and one party that loses.

14 10:45:?? MR KIRYUSHIN: Thank you. That's much clearer.

15 10:45:?? PRESIDENT: No further questions from the tribunal at this

16 10:45:28 stage.

17 10:45:30 Mr Hang, anything further from you.

18 10:45:32 MR HANKE: Nothing further from me.

19 10:45:32

20 10:45:34 Cross-examination by Mr Robb

21 10:45:?? MR ROBB: Thank you very much.

22 10:45:40 Dr Meschi, is that the correct pronunciation of your

23 10:45:42 name? I just want to make sure, Dr Meschi?

24 10:45:47 A. Yeah, I think for people who speak English, to pronounce

25 10:45:50 my surname mess can I is too difficult, so I always say

me she ^. I myself say ^^ Italians

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1 10:45:54

Q. Okay, I will go with Meschi, then?

A. Yeah, I think it's easier.

Q. If that's okay.

So as a preliminary point, obviously you know I'm here to ask you some questions. My aim is asking the questions is to test your evidence, but the key part of that is that you understand the questions, so that when you give an answer, you know who you're answering.

I will endeavour to make my questions clear. Obviously if there comes a time, I'm sure there will do, when my question is not sufficiently clear, please ensure that you say "I don't understand" and I will attempt to rephrase it to make it clear here, because I don't want to try and trick you, I just want to make sure that I'm getting your clear answers.

So moving on now, can I just ask you, please, when were you first retained in relation to this dispute?

A. When I was first retained?

Q. By SWPC in relation to this dispute?

A. It was the exact date I do not remember, but it was about it was during the pandemic, it must have been about June 2020. I can't remember the exact date. But I think it must have been that date.

Q. Have you been retained by SWPC in relation to other disputes?

1 10:47:17

A. No. In the past? No. I am retained in relation to

other disputes, the SWEC.

Q. In relation related dispute, how many other disputes are

you retained in by SWPC for ^^?

A. Three.

Q. Including this one?

A. Yes.

Q. I just want to pick up now by looking at your

instructions and the meaning of true inflation. Can we

start, please, by having paragraph 1.30 of your first

report, which is D114.

Sorry, it's D1, page 14, paragraph 1.30 at the

bottom.

PRESIDENT: Dr Meschi, it will come up on the screens either

side of you as well.

A. Right.

MR ROBB: Do you have that there?

A. So my first report, this is which -- this is not the

first report in this arbitration.

Q. Yes. It is? Okay.

This is the second part. Okay. Okay.

Q. So here you say in preparing my report I'm instructed to

assume that the parties action article in including

^reading...) was to adjustment payments for true

inflation." ^doc

1 10:49:27

2 10:49:29
Do you see that?

A. Yeah.

3 10:49:34

Q. Then perhaps we could go through to page D1-23, which is

4 10:49:34
within the same report, paragraph 2.15(3). Do you have

6 10:49:56
that?

5 10:49:58
Then you can see there what you've headed this

7 10:50:02
subparagraph Ms Harfouche's approach to indexation is

8 10:50:04
not consistent with the parties action article for the

9 10:50:06
inclusion of the indexation clause in the WPA." ^doc.

10 10:50:16
Do you see that?

11 10:50:20
A. So this is which report?

12 10:50:22
Q. This is your first report, we're in the same document.

13 10:50:24
A. Okay.

14 10:50:27
Q. You can see there you have said one of the reasons --

15 10:50:29
this is one of your reasons for disagreeing with

16 10:50:34
Ms Harfouche's approach, is that it's not consistent

17 10:50:35
with what you're instructed is the parties rationale for

18 10:50:38
inclusion of the indexation clause in the WPA. Do you

19 10:50:39
see that?

20 10:50:46
Yes.

21 10:50:50
Q. So you don't say in your reports what is meant by or

22 10:50:50
what you understand by true inflation, but you do say

23 10:50:59
that in the joint statement at item 4, we can have that

24 10:51:05
up. It's D130, page 4.

25
Do you have that?

1 10:51:17

A. Do you want me to read the first paragraph?

Q. No, I just want to make sure we're got the right ^^ you

can see there.

Here you say -- and this is something you said

earlier in your presentation -- that it would be

probabliatively expensive and impractical to calculate

true inflation, is that correct?

A. Where is it? Is it on the --

Q. Yes, sorry, if you go down, if you scroll down a bit

further, it's the value of -- paragraph begins the value

of true inflation ^doc)?

A. "The value of true inflation is not known with certainty.

This is because it would be impractical and

prohibittatively expensive to track the price of every

good and service ..." ^doc.

Q. Yes. So effectively what you're saying here is in the

real world, nobody knows what true inflation is?

A. Essentially, you cannot measure it.

Q. Yes.

A. You cannot measure it. Your best measure is the price

index. I mean, essentially, there are everything that

has to do with the population is not known in the real

world. If it was known statistics wouldn't exist.

Q. Okay, but I'm just trying to clarify with you that you

accept that in the real world, no one can know what true

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1 10:52:47

inflation is at any point in time?

A. No one can know, they can only measure it in an n

biassed way or in a biased way.

Q. If you've been instructed to assume that the parties

rationale was to track true inflation, do you accept

that that means on that instruction, that the parties

intended to do something which was simply not possible?

A. No, because I consider true inflation as inflation.

When I say inflation, to me it means something very

specific, actually. Because as a statistician, as

average economist, right, I know that you can't have

a measure of every price. So what you are trying to

measure, you are trying to get as close as possible to

that measure and that what statistics does. What you

are trying to do to use the closest possible measure to

that and not to choose a measure that you know it's

biased. Why would you want to do that?

Q. But your instruction was to assume the parties intended

to track true inflation; is that correct?

Yes. 10:54:04

Q. Right. And you accept that it's not possible to track

true inflation, is that correct?

A. No, I don't accept that. You can estimate true

inflation. I mean, that's what a statistician does.

Q. You say that you track true inflation you equate true

1 10:54:27

inflation in your reports with the next accurate

indecision; is that correct?

A. What you cannot ^ measure is every single price that

exists. What you can do is you can track true inflation

via an appropriate estimator. The same way as we track

just about everything else. You can't also measure

Guangdong P, right, by tracking every single things that

produced, but you can estimate Guangdong P and produce

an estimate and that was what statistical offices do.

They produce estimates of underlying population

quantities that are the true quantities.

Q. Is it your true that you don't need a true value, you

just need a more accurate estimator; is that correct?

A. You need a best estimate, yes.

Q. I see. So you have reininterpretted the instructions as

meaning that the parties intended to use the next best

estimator; is that correct?

A. The best measure that there was of the underlying

inflation, which for all intends and purposes is true

inflation, because it's the best measure that there is.

Q. I think you said that during the period when COLI 1999

was being used, there was no basis for saying that it

was inaccurate; is that correct?

A. Yes, yes.

Q. I think you refer to the fact that when SAMA started

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1 10:56:21

publishing reporting in 2013, ^ it was possible to see

that there was a divergence between COLI 1999 and

COLI 2007, is that correct?

A. Mm-hmm.

Q. But that didn't tell you that it just told you that

there was a difference in estimate, it didn't tell you

why that there was a difference in estimate, did it?

A. Me? I wasn't there in 2013. But anybody who would have

looked at those -- let's say that I'm somebody who has

to pay and this paying according to a certain formula,

right? And all of a sudden, I realise, okay, in the

last two years, I've paid this much, this proportion.

This year, I'm noticing that it was actually quite

different. What is going on here? Let's try to see if

we can recollect few this situation.

Q. What I'm trying to say is that you could have seen there

was a difference in the numbers being produced by the

two indices, but they didn't tell you the reason for the

difference, did it ^^?

A. No, I would have asked the statistical office. If I had

been asked at that time what is going on, give us your

opinion, the first thing I would have done is what I did

in 2020, try to set up a meeting with GaStat, at that

time wasn't GaStat, was CDSI, I think ^.

Q. If we go back to paragraph 1.30 of your report, your

1 10:57:48

first report, D1, page 14.

A. This is my first report?

Q. Yes. We can see that as part of -- the reason why you

were instructed about the parties' raise article was

something that SEPCO had said in its prove arbitration."

^doc.

Do you see that? Then you footnote 43 and 44 on

page 15, if we just scroll down so we can make sure we

get it. We see the references are to the SOC in the

previous arbitration at paragraph 3.6 and paragraph 3.2.

Do you see that?

A. Yes.

Q. If we could bring up paragraph 3.2, which is at B90,

page 12, please.

So we can see 3.2:

"It was never the intention of the parties that the

local portions of the charge rates, which rely on

indexckisation would be ^reading...) real movements in

prices ie inflation in the KSA." ^doc.

Do you see that?

A. Mm-hmm.

Q. Then 3.6, I just want to focus on the last pat of that

paragraph.

"The parties put this rationale into effect in the

agreement through periodic adjustments to the charge

1 10:59:29

rates for inflation as measured by movements in agreed

USA and KSA price indices." ^doc.

Do you see that?

A. Yes.

Q. So if we go back to your paragraph 1.30,?

A. Sorry, can I read that again?

Q. Yes.

A. Is it in ... (Pause).

Okay.

Q. Going back to -- if we go back to your report, paragraph 1.30, where you quote from those paragraphs.

Do you see, if we can just scroll down a bit is we can

get the second part of paragraph 1.30. You see that.

But you didn't quote, you didn't refer in paragraph 1.30

to the sentence which said in the statement of claim the

parties put this rationale into effect in the agreement

through periodic adjustments to the charge rates for

inflation as measured by movements in agreed USA and KSA

price indices." ^doc.

Did you?

A. This is my instruction.

Q. I see. So you didn't go and read this yourself?

A. Sorry?

Q. You didn't go and read the statement of claim yourself,

did you? Did you --

A. I read the statement of claim, but, I mean, a long time

1 11:00:54

ago, but this is what my instruction says. Didn't they

track inflation following the inflation indices in the

KSA? It was ^^ that was COLI 1999 when they agreed to

use it.

Q. Yes. You're saying you just copied and pasted the

instruction given to you by SWPC into your report?

A. It was given to me by dla, not SWPC.

Q. When I say ^^ I mean dla, so you just copied and pasted

the bit from dla's instruction into your report, did

you?

A. That's my instruction, yes.

Q. If we just look now at paragraph 5.24 of your first

report, D1273.

Look towards the end of that. You say at the end,

very final sentence:

"Put simply, SWPC overpaid SEPCO for many years."

^doc.

Do you see that? And in fact, you're making that

statement because of what came out from

GaStat's November 2020 view; is that correct?

A. The GaStat 2020 view provided me with an index of what

they considered to be the most accurate measure of

inflation and they provided it to me in 2020, because

that is when I asked. But already, had I asked them in

2014, I would have probably received the same answer,

1 11:03:41

because they didn't link to indices, so they would have

given me COLI 2007.

Q. But whether it happened in 2014 or 2020, when you're

saying SWPC overpaid SEPCO for many years ^doc)?

A. Yes.

Q. That's on the basis of applying a non-contractual index;

is that correct?

A. No, it is a windfall essentially. I didn't say that

they shouldn't have or -- that's just an estimate of

a windfall that was caused by the application of an

index that overstated inflation.

Q. But to say that someone overpaid means, suggests that

they should have been paying a lesser amount; do you

agree?

A. They should have -- if they had used the most accurate

measure of inflation, which was not available at that

time, therefore they couldn't have used it, they would

have paid less. So it's an unintended windfall.

Yes, it's an unintended windfall. It's an

overpayment -- (overspeaking) -- ^^.

Q. It depends what you mean by intended. Do you agree that

COLI 1999 was in fact specified in the contract?

A. Of course it was specified. It was the only index

available. They couldn't have done anything else.

Q. So your statement that there has been overpayment for

1 11:05:17

2 11:05:21
many years depends on applying an index that wasn't

3 11:05:26
available at the time; is that correct?

4 11:05:28
A. Yes, yes, it's an estimate.

5 11:05:31
Q. And an index that wasn't included in the contract?

6 11:05:37
A. Yes, in fact, nobody is asking anybody for any money

7 11:05:46
back. That's just to give an idea of what the windfall

8 11:05:50
was from using that index.

9 11:05:53
Q. I'm very happy for you to keep on using words like

10 11:05:57
windfall, because it explains your attitude, so your

11 11:06:00
attitude is that and your understanding of the process

12 11:06:06
is that SEPCO has received some kind of undeserved

13 11:06:11
benefit and your job is to try and put that right; is

14 11:06:12
that correct?

15 11:06:16
A. No, not at all. I have been asked for my opinion from

16 11:06:23
an economical statistical perspective of what is --

17 11:06:28
would be the appropriate way of linking these indices.

18 11:06:32
So I have gone and spoken to the statistical agency and

19 11:06:38
I made up my mind as to what this implies. From that

20 11:06:43
perspective, this is what is implies. So --

21 11:06:48
Q. Okay, but you've said, you've used words like

22 11:06:50
overpayment, you've used words like windfall?

23 11:06:51
A. Yes.

24 11:06:57
Q. And your view, I think, is that SEPCO obtained a benefit

25 11:07:02
under the contract which it really shotn't have had and

therefore, when you're assessing the appropriate way of

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1 11:07:05

linking one factor to take into account is how to undo

that benefit; is that correct?

A. No, they did not enjoy a benefit that they shouldn't

have had. Right? That was a windfall and it was

unintended and that is what it was, but then moving

forward, the question is, does it have to propagate

forever or not? My opinion is that because it is based

on an index that is fundamentally flawed, it should not.

But then, you know, this is my opinion of an economist.

I'm not a lawyer. From the point of view of an

economist, that's the way it is.

Q. We might investigate the way in which you approach it in

due course.

I just want to touch one more point on the idea of

true inflation, because I think it's very important that

we distinguish true inflation from the idea of the

actual inflation experienced by any particular

individual. Do you agree those are two very different

concepts?

A. Yes.

Q. Measuring true inflation is not the same as trying to

measure the actual inflation experience by any

individual?

A. It's not the same thing and it's not what -- the parties

agreed to measure to escalate the charge rate, according

1 11:08:42

to the measure of general price inflation in Saudi

Arabia, not to measure according to what any other

measure or their individual experience of inflation.

The inflation that is experienced by a single

individual, a single individual, cannot be estimated.

That's why they estimated the inflation -- the inflation

experienced by the typical household, because this is

all done on average and also bias is an average concept.

Q. I'm going to suggest to you that SWPC's instruction to

you about the parties' intentions in regard to true

inflation is a fundamental part of your opinion, isn't

it?

A. Can you repeat the question, please?

Q. SWPC's instruction to you about the parties' intentions

with respect to true inflation is a fundamental part of

your opinion, isn't it?

A. I took into account that instruction in forming my

opinion, but it is not a fundamental part of it.

I think it's a fundamental part of it from what concerns

the law, but for what concerns the economics, and the

statistics, it is not.

Q. I see. So if we could perhaps pick up -- throughout

your certainly your first report, paragraph 5.22, D1,

page 72. Do you have that?

A. 5.22?

Page No. 41

1 11:10:55

Q. 5.22, so again you're referring to the parties'

rationale?

A. This is what Ms Harfouche says.

Q. No, you are saying:

"I am instructed to assume that the parties'

rationale for including the indexation clause in the

within amount was to adjust the payments for true

inflation." ^doc.

Yes?

A. Mm-hmm.

Q. Then you use that to explain something that Ms Harfouche

has said. If we goo to paragraph 6.3 in the same

report, which is page D1-79, 6.3(1), you again refer to

parties

rationale as instructed to you by ...?

A. Yes.

Q. We can even go back to paragraph 5.30, which is at D1-74

to 75. Again, if we scroll down to the second half of

the paragraph:

"In my opinion, this is clearly consist if the wert

parties rationale as stated by." ^doc.

I think that should be -- I think that's supposed to

be by SWPC. Is that a typographical error?

A. SEPCO, it's not SWPC.

Q. Sorry?

1 11:12:53

PRESIDENT: You were very quiet, then, Dr Meg. I didn't

hear. 2 11:12:58

MR ROBB: Sorry, it should be the first ...?

A. I don't understand the question.

PRESIDENT: No, I was just asking you to speak up?

A. Sorry.

PRESIDENT: Could you also --

A. Maybe I should drink.

PRESIDENT: Can you also make sure that you say "yes" or

"no", because a couple of times you said mm-hmm, by

comes out on the transcript and it's not sure whether

you were agreeing or not?

A. Sorry.

PRESIDENT: That's quite all right.

MR ROBB: So here you've referred to the parties' rationale

and you said as stated by SEPCO." ^doc?

A. Can I actually read the whole thing, because I don't --

Q. Of course.

I don't know who this refers to. Maybe

I should -- is this my first report?

Q. Yes. You can see the date on the top right hand corner

of 4 July?

A. Okay. So 5.306789 let me just go there and read it on

this. (Pause).

Yes, okay. I finally understand. Is maintaining

the margins. This is what it is referring to.

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1 11:15:30

2 11:15:34 Q. So is the reference to SEPCO a typographical error and

3 11:15:40 should that be SWPC or do you mean to refer to SEPCO?

4 11:15:45 A. I think it's what was written in the statement of claim.

5 11:15:49 Q. I see, so this is your own assessment of what SEPCO is?

6 11:15:52 MR ROBB: Saying in the statement of claim?

7 11:15:55 A. There was one sentence ^ in the statement of claim.

8 11:15:58 I mean, I think it's going the take too long for me to

9 11:16:01 go and read everything back. I have to figure out where

10 11:16:06 this is coming from.

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

12 11:16:15 instruction at paragraph 1.30 and the references to the

13 11:16:18 SEPCO statement of claim, you told me that you just

14 11:16:23 effectively copied and pasted whatever DLA had told you

15 11:16:28 to put into your instructions; is that correct?

16 11:16:31 A. This was my instruction, I didn't copy and paste. It

17 11:16:33 was the instruction.

18 11:16:37 Q. Yes, sorry. I'm trying to copy and pasting is not --

19 11:16:39 I'm not trying to criticise you, because that's what an

20 11:16:42 expert would do. If an expert is given an instruction,

21 11:16:45 you take that, could by and paste means you copy it out

22 11:16:48 of the document that that send you and put it into your

23 11:16:51 report in a completely unaltered fashion; is that

24 11:16:51 correct?

25 11:16:52 A. In a completely?

Q. Unaltered fashion?

1 11:16:54

A. Yes.

Q. Yes, exactly. So when I asked you earlier on about this
instruction, my understanding of your answer was that
you hadn't gone back to raid the statement of claim
yourself?

A. I did read the statement of claim, but I raid it a long
time ago. It was the statement of claim in the first
arbitration and my instruction stayed the same for four
years. I can't remember everything from four years ago.

Q. If we could go to paragraph 5.35, which is at D1-76. Do
you have that?

A. Mm-hmm.

Q. This is again part of your explanation about why your
approach is to be preferred to that of SEPCO; is that
correct?

A. Yes.

Q. The first point is that you say that your position is
more balanced because SWPC is not seeking a true up for
historic overpayments. Can I understand what you mean
by that, which is that SWPC is not seeking to recover
payments it made between 2009 and 2013, when COLI 1999
was the index being used?

A. It's more balance for simple reason. The payment made
up to 2013, as far as I'm concerned, are the sunk cost,
right? So it's something that happened conditioned

1 11:19:22

2 11:19:25
cannot be modified in anyway, shape or form because

3 11:19:31
there were contractually agreed. Is more balanced

4 11:19:38
because these payments that were made were linked to an

5 11:19:44
index that was wrong and if you actually continue the

6 11:19:48
linking and continue along that inflation path, you

7 11:19:55
carry on making these -- you bake those payments into

8 11:20:00
the future and it is when you are looking at the future

9 11:20:03
that you can modify the situation.

10 11:20:06
The position is more balanced, because essentially

11 11:20:11
you are rectifying something that had gone wrong.

12 11:20:14
Q. Sorry. That's not actually what you're saying here.

13 11:20:16
You're referring -- I just want to check what you mean

14 11:20:21
by seeking a true up for historic overpayments ^doc).

15 11:20:27
I had understood that what you're saying there is

16 11:20:31
that you think the position is more balanced because

17 11:20:35
SWPC is not seeking to recover so-called overpayments

18 11:20:40
between 2009 and 2013; is that correct?

19 11:20:43
A. It provides ^^ through the application of what -- of the

20 11:20:53
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 11:21:02
Q. I'm not actually getting an answer to the question,

23 11:21:07
I don't think. Just focusing on the words used historic

24 11:21:08
overpayments, yes?

25 11:21:09
A. Yes.

26 Q. Can I just check that what you mean there is payments

Page No. 46

1 11:21:17

made by SWPC between 2009 and 2013 and the overpayment

bit is the difference between what they actually paid

and what they would have paid in GaStat's November 2020

view had been in the contract?

A. Yes, yes, yes. Is what you said we're going to call it

windfall.

Q. No, I know you call it a windfall.

A. Yes, of course.

Q. I know you're not a lawyer, but you do understand, don't

you, that there have been no bases at all for SWPC to

try and --

A. Of course.

Q. -- recover those payments?

A. It's a sunk cost, it's a sunk cost to the unlucky party.

I mean, it could have been the other way around.

Q. So what you're trying to do here with your approach is

to effectively recompense SWPC for those what you call

overpayments by reducing their payments in the future?

No. Let's restart the clock and apply what I know is an

index that is not fundamentally inaccurate and biased

and that is not -- has never been linked or used by

GaStat ever since.

Q. Your argument about or SWPC's instruction to you about

the parties' alleged intentions, that's the basis on

which you consider it appropriate to make a statistical

1 11:23:11

and economic analysis of the indices; is that correct?

A. The statistical and economic analysis of the indices

I made them according to another instruction. I have to

go back to my instructions now.

Q. I think it might be paragraph 1.18?

A. 1.30?

Q. No, that's only part of --

A. No, it's paragraph 1.29 in the same report.

Q. Yes. Okay --

A. Here it is (5):

"Provide my opinion from an economic and statistical

perspective on the appropriate approach for adjusting

the local portion of the charge rates to account for the

successsive discontinuation and replacement of

COLI 1999, COLI 2007, call if and COLI 2018 in KSA."

^doc.

This is what I was instructed to do.

Q. I see. Then in terms of your analysis of accuracy, do

you accept that that is not going to be relevant to the

consideration of how to link COLI 1999 and COLI 2007 if

the tribunal does not accept SWPC's case as to the

parties' intentions?

A. That is a legal question. In terms of my analysis,

right, from an economic point of view, that is my

opinion, right? That those indices, that's how those

1 11:25:10

indices should be linked, because of the way that there

is a fundamental flaw in COLI 1999.

Q. Is your answer that even if you hadn't been given an

instruction as too the parties' intentions from SWPC,

your analysis -- you would still consider that your

analysis of accuracy and the merits of the various

indices would still be relevant to the linking between

COLI 1999 and COLI 2007?

A. From my perspective, from my expertise, yes. There are

two issues here. One is contractual and one is

statistical. So from a statistical point of view, I am

confronted with an index that has never been used, has

never been linked in any published material or in any

document that I have been given by GaStat, since it was

discontinued.

So from a statistical perspective, that index should

be discarded, and it's not because I say it is because

that's what GaStat has done.

I say it because it's fundamentally biased.

Then you go -- and that's what GaStat has done, they

went to pains to back cast COLI 2007 all the way to

ideal 0, so that they didn't have to link it (1980 ^ to

COLI 1999. Then there is the contract actual issue,

right, which is a different issue, which you can't just

jump from one to another. You have to link them at some

1 11:27:02

2 11:27:03
point because you have to continue this.

3 11:27:07
So the question is how do you do it? Do you

4 11:27:12
continue it by forecasting into the future and

5 11:27:17
projecting into the future what was the difference

6 11:27:22
between the two, or do you try and rectify the

7 11:27:22
situation?

8 11:27:26
To me, from a statistical perspective, there is no

9 11:27:31
doubt about what you need to do, but I am not the one

10 11:27:34
who's making this decision and I'm not a lawyer.

11 11:27:38
Q. Can we just test what you said against what you say at

12 11:27:45
item 20 of the joint statement, which is at D130,

13 11:27:50
page 11.

14 11:27:51
A. This is the joint statement?

15 11:27:54
Q. Yes, does she have a hard copy of the joint statement?

16 11:27:57
I wonder whether that might be easier.

17 11:27:59
MR HANKE: We'll turn it up for her.

18 11:28:02
MR ROBB: It might just be easier, because it's moving

19 11:28:34
things around and it runs over the page as well.

20 11:28:36
You have been given it in A4, so I hope your eye

21 11:28:39
sight is better than mine?

22 11:28:38
A. Okay.

23 11:28:41
Q. Bottom right-hand corner, I'm hoping you've got the

24 11:28:42
bundle version, so it should have page numbers and

25 11:28:43
your --

A. Page 11, yeah, it's here.

1 11:28:46

Q. Can I just check before asking you to look at it that

actually this is legible for you. Yes?

A. Yeah, because I got an eye operation and I can finally

read and see now.

Q. Item 20, the question that was being put or the issue

that was being put to the two experts was if the

tribunal does not accept the instruction to Dr Meschi

that the parties' rationale and including the indexation

clause was to adjust payments for true inflation, then

the going forward approach applies to the transition

from COLI 1999 to COLI 2007." ^doc.

Do you see that?

A. Yeah.

Q. You say that the wording of this issue is not factually

correct, but then you go on to say whilst the parties

intentions is one of SWPC's arguments, ^doc) you then

recite a number of SWPC's legal arguments and we can see

that from the first sentence of the second paragraph.

Where you say:

"This is merely a restatement of SWPC's legal

position." ^doc?

A. Yes.

Q. You're just reciting there what you understand to be

SWPC's legal position; is that correct?

A. This is my -- I received an instruction as to that,

1 11:30:11

right, as to the fact that the tribunal has -- what is

the word?

Q. Is granted a wide discretion?

A. Yes, yes, has discretion to decide that, yeah, that was

an instruction. The arguments in the first paragraph

are my opinion as to why COLI 1999 is..

Q. Let's just read what you said. We know that you got

a new instruction in your second report about the wide

discretion and that instruction wasn't in your first

report?

A. No, no, it was not.

Q. My reading of this, what you said here, especially where

it says this is merely a restatement of SWPC's legal

position, is what you've set out above ^doc) is simply

what you've been told by SWPC; is that correct?

A. Yeah, that is essentially a new instruction that

I received in my -- when I wrote my second report. But

I didn't change my opinion at all, because I provided my

opinion on the basis of my expertise, not on the basis

of this is things. It's not changed throughout any

reports that I write ^^ four reports.

Q. It's relevant here, isn't it, because here in

paragraph 120 you're being asked to present your opinion

on the assumption that the tribunal does not accept

SWPC's case as to the parties rational, aren't you ^2

1 11:31:58

A. Yes, yes, but the issue is this, you know. Even without

that rationale ^dict), the tribunal could still decide

that because the index is fundamentally wrong, and is

fundamentally inaccurate, ^ and because it overstates --

it's an overstated measure of inflation, that could be

a different approach to follow.

Q. Okay, but --

A. Which is not my decision to make, but if they have the

discretion to do so, they could do so.

Q. The first point is that in your first report, you didn't

have this discussion, this instruction about the

tribunal's discretion?

A. No. 11:32:55

Q. So this second instruction comes in on the basis that

what happens if the tribunal does not accept SWPC's case

as to the rationale; is that right?

A. This is an item on the joint statement. If they don't

accept that, they can still consider the fact that that

index was biased, was a biased measure of inflation and

therefore, there is there can be an alternative way of

linking the two indices. The end cease are lib asked,

the issue is when do you link them ^.

Q. Yes, but what I'm trying to get at is that the matters

which are set out in the first paragraph beginning

"whilst the parties' intentions", that was another

Page No. 53

1 11:33:55

instruction to you from SWPC, was it?

A. Yes, the instruction about the parties' intention has

been the same throughout all four report, yes.

Q. Sorry. In this paragraph, there's not only a reference

to the parties' intentions, but there's also then if you

read on, it says:

"Whilst the parties' intentions is one of SWPC's

arguments, SWPC's case is also that the independent

expert, as well as the tribunal, were I can'ted a wide

discretion." ^doc.

Then you say:

"Those facts SWPC says, include." ^doc.

Then you list out some facts, yes?

A. Mm-hmm.

Q. I just want to be clear -- I don't think it's going to

be controversial -- that everything in this paragraph

has been presented to you by SWPC; is that correct?

A. Everything in the first paragraph?

Q. Yes. 11:35:01

A. Well, COLI 1999 was a fundamental inaccurate measure of

inaccurate index is my opinion and ^doc) it has -- what

does RDC mean?

Q. Reply and defence to counterclaim.

A. Okay. It is my opinion and it has been -- and it is

SWPC opinion, but this is my opinion.

1 11:35:30

Q. I'm focusing on the words SWPC says", which led me to

conclude that you were simply recording something that

you had been instructed by SWPC. I'm not asking at the

moment whether you agree or disagree with it. I'm just

saying.

A. Yes, I was instructed by -- I said it in the

presentation. I was instructed to assume about the

rational of the parties ^ and I was instructed that the

tribunal has this discretion, I don't remember the exact

wording.

Q. Are you agreeing that everything in this first paragraph

is just something that you were instructed by SWPC?

A. The first paragraph is the wording of this issue is not

factually correct." ^doc.

Q. Sorry, I'll rephrase. Can we agree that everything in

the paragraph beginning whilst the parties' intentions

^doc)?

202409240054A. Is one of the ^^ arguments ^^ SWPC case is than also

that (witness reads to herself) ^. Yes.

Q. This was just -- everything in this paragraph was an

instruction to you from SWPC?

A. Yes, yes.

PRESIDENT: Sorry, Dr Meschi, can I just understand, that

paragraph starting "whilst the parties intentions ^doc)

were you given those words and instructed to put them in

Page No. 55

1 11:37:05

2 the joint table or is this you paraphrasing --

3 A. No, no, no.

4 PRESIDENT: -- what you've been told previously?

5 A. This is not -- no, I wasn't instructed to put those

6 words in the table.

7 PRESIDENT: I just wanted to understand what you meant when

8 you said these were your instructions. So these are

9 your instructions you've received previously which

10 you're paraphrasing?

11 A. Yes, my instructions that I received are that the ones

12 that I read to you before. I actually have the

13 presentation. I can read them to you again.

14 PRESIDENT: No, you don't need to. I just wanted to

15 understand when you were saying in relation to --

16 A. Yeah, I wasn't told by anybody what I had to put in this

17 paragraph. No, no.

18 PRESIDENT: Thank you.

19 MR ROBB: Dr Meschi, just to be clear, if you are making it

20 clear that something is what you're been told or what

21 one party thinks, then obviously you can take that from

22 that party and that's not a problem as long as it's

23 clear that that's what the party are saying, not what

24 you're saying?

25 A. Yes, as I said, what I'm saying is about COLI was

fundamentally inaccurate index and I actually do believe

1 11:38:35

that there is no other -- although the parties'

intention in agreeing an indexation clause was to track

real inflation and this is ^doc) the statement by SWPC

and it's also my instruction, I actually, from

a professional point of view, I cannot believe that they

may have intended to do anything else. Why would you

index something to -- why would you actually create an

indexation in order to follow a ^^ measure of inflation?

To me it makes no sense. (witness reads to hrs).

And if this is -- if this is established SWPC

position, it is a position that I actually agree with.

Q. Looking at the time --

A. And that's the third -- that's the (c), I do you agree

with that. Because from an economic point of view, that

is the result of all this, yeah.

MR ROBB: I think we started at 10 o'clock, we're finishing

at 1, so we're about I think we've halfway through. Is

now a sensible time to take a break?

PRESIDENT: Yes, the transcriber is nodding, so yes, that's

a good time to have a break.

Dr Meschi, we will have a 20-minute break now.

During the break, please do not speak to anyone

including your sis tantsds, but you can obviously speak

for cups of tea and coffee and the like, but don't

discuss your evidences with anyone else.

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1 11:40:20

WITNESS: Of course.

PRESIDENT: Thank you.

(11.40 am)

(A short break)

(12-point

(12.00 pm)

PRESIDENT: Dr Meschi, just to are behind you that yourself still under the affirmation you gave previously.

Mr Robb.

MR ROBB: Thank you. Dr Meschi, can we turn up joint statement item 20, so that was D130, page 11. It was the bit we were looking at just before the break?

A. Yes, yes, yes.

Q. In the first bit Ijy want to check that I understood your evidence correctly, which is that you had drafted the paragraph that begins:

"Whilst the parties' intentions is one of SWPC's arguments." doc?

A. Yes.

Q. You drafted that. But I think you also said in the course of your evidence that you didn't know who RDC meant; is that correct?

A. I do not?

Q. You did not know who RDC meant?

A. Yes, I'm sorry, I just forgot.

1 12:01:35

2 12:01:38
So you forgot?

3 12:01:44
A. Yeah, I didn't think quickly enough, I guess. I don't

4 12:01:47
know, it didn't occur to me what it meant.

5 12:01:52
Q. And you're sure this wasn't drafted to you by DLA?

6 12:01:58
A. No, no, no.

7 12:02:03
Q. So you had gone through the pleadings, had you, to

8 12:02:09
identify these parts of SWPC's case, had you?

9 12:02:11
A. Yes.

10 12:02:31
Q. I see. You use the word "could" in the second

11 12:02:32
paragraph. You say:

12 12:02:38
"The tribunal could decline to apply the going

13 12:02:39
forward approach." ^doc.

14 12:02:38
Do you see that?

15 12:02:32
A. Is it the second?

16 12:02:35
Q. It's the second large paragraph --

17 12:02:37
A. The one after the --

18 12:02:37
Q. It says:

19 12:02:40
"I consider that if the tribunal accepts that it has

20 12:02:43
this wide discretion and takes into account any of the

21 12:02:46
above considerations, it could decline to apply

22 12:02:48
Ms Harfouche's going forward approach ..." ^doc.

23 12:02:57
Do you see that?

24 12:03:00
A. Okay, at the end of the page, yes.

25 12:03:00
Q. At the bottom of the page?

A. Yes, yes.

1 12:03:07

2 12:03:10
Now, I'm going to suggest to you that the reason why you

3 12:03:15
use the word "could" is because, in your view, in fact,

4 12:03:21
the proper way to go forward, if the tribunal does not

5 12:03:28
accept SWPC's case as to the parties' intentions, is

6 12:03:38
that the going forward approach should apply, isn't it?

7 12:03:41
A. It means that it could do that or it could do something

8 12:03:43
else.

9 12:03:48
Q. I'm asking you that if you had the discretion and you

10 12:03:52
weren't allowed to take account of SWPC's case as to the

11 12:03:55
parties' intention, then your view would be that the

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

13 12:04:15
A. What this sentence means (Pause).

14 12:04:21
So it's in two parts, right? If the tribunal

15 12:04:27
accepts that it has this wide discretion, which is the

16 12:04:31
instruction, and it takes into account any of the above

17 12:04:35
considerations, which is ^doc) the situation with

18 12:04:38
COLI 1999 and the resulting unfairness blah, blah, blah,

19 12:04:43
then it could decline to apply that approach and use

20 12:04:44
another one.

21 12:04:48
Q. I see that and I'm asking a slightly different question.

22 12:04:55
I'm asking you if you assume that SWPC's case as to the

23 12:05:01
parties' intentions is wrong, yes, and if you had the

24 12:05:02
discretion that --

25 12:05:03
A. If I had the discretion?

Q. If you had the discretion you refer to, you would

1 12:05:05

2 12:05:08 consider that the only sensible approach would be to

3 12:05:11 adopt the going forward approach, wouldn't you?

4 12:05:17 A. If the tribunal is wrong and the parties didn't have the

5 12:05:26 intention of tracking true inflation, how could I not?

6 12:05:31 ^^I mean, this is very hypothetical. I mean, for me,

7 12:05:37 it's not possible that somebody wants to track something

8 12:05:43 else. So even if they wanted -- didn't want to track

9 12:05:47 true inflation, that's what you're asking me, right?

10 12:05:50 Even if they didn't want to track true inflation, what

11 12:05:55 should they do? And my decision would be if you wanted

12 12:06:00 to track -- even if you didn't want to track true

13 12:06:05 inflation, you should be doing what is right, because if

14 12:06:09 that is not what you do, you're going to create winners

15 12:06:12 and losers and in one case, in this particular case that

16 12:06:15 before here, there is one winner and one loser, it could

17 12:06:20 be switched around if the situation was the of sit with

18 12:06:22 the index.

19 12:06:24 And you don't really want to -- I wouldn't want to

20 12:06:27 find myself in that situation, but that's me.

21 12:06:31 Q. When you say could, the tribunal can decline to apply

22 12:06:34 the going forward approach ^doc), that means presumably

23 12:06:37 that the tribunal could also properly apply the going

24 12:06:43 forward approach, couldn't it. It's their decision, not

25 12:06:43 mine.

Q. I just want to deal with some of the facts or some of

1 12:06:48

the issues raised by SWPC in this part of the -- in JS20

that you've referred to. So you have three items that

are said to be relevant. Do you see that? (a), (b),

(c)?

A. Yes.

Q. We know that we are dealing -- this is on the hypothesis

that the tribunal does not agree with SWPC's case as to

the parties' intentions?

A. Okay.

Q. Do you agree?

A. So we are discussing a hypothetical situation in which

(b) doesn't apply. Is that what you're asking?

Q. The first point is that (b) clearly doesn't apply, does

it?

A. In what case?

Q. If the tribunal does not accept SWPC's case as the

parties' rationale, then plainly the factor referred to

at subparagraph (b) can't apply?

A. The factor -- yes, of course -- well, yes.

Q. And if (b) falls away, then item (a) also falls away,

doesn't it?

A. No, it's still fundamental inaccurate index and the

result is still up fair. (a) doesn't follow from (b).

(a) is -- well, as far as I'm concerned is a fact. Of

course it's my opinion, but it's -- yeah, it's still

1 12:08:21

2 12:08:25 a fundamentally inaccurate index. It doesn't depend on

3 12:08:29 what the parties thought and the same with (c). It

4 12:08:33 doesn't depends on the intentions of the parties. COLI

5 12:08:37 is a fundamentally inaccurate index, as far as I'm

6 12:08:43 concerned, and the results would be unfair, because it

7 12:08:47 would be projecting that inflation forever more, until

8 12:08:48 2029.

9 12:08:52 Q. So your approach on here is what you consider to be

10 12:08:55 a matter of fairness, is it?

11 12:09:01 A. From an economic point of view, yes. Is not --

12 12:09:06 I appreciate it is not legal, but from an economic point

13 12:09:11 of view, yeah.

14 12:09:16 Q. When you talk about non-existent inflation, what you're

15 12:09:18 really talking about is the fact that the call #

16 12:09:21 estimate of inflation turn out to be lower than that of

17 12:09:23 COLI 1999?

18 12:09:27 A. It could have turned out to be higher. COLI 1999 would

19 12:09:32 still be wrong. But fit was higher, it would be -- the

20 12:09:44 situation would have been reversed.

21 12:09:47 Q. The point here is that when you talk about non-existent

22 12:09:49 inflation, you're simply talking about the fact that the

23 12:09:51 two indices have different estimates of inflation over

24 12:09:57 the same time period; is that correct?

25 12:10:08 A. There are two indices. One of which is fundamentally

flawed and overestimates inflation systematically due to

1 12:10:11

its mathematical -- to the flaws that I have described

in my presentation this morning. The other index does

not have those characteristics, so that other index is

not flawed, right?

So the flawed index is measuring to an extent,

inflation that is not there, that does not exist, just

to give you an example of what I'm trying to say. When

in 2003, Gordon brown changed the Bank of England

inflation target, because the CPI had been introduced

a few years earlier, the inflation target was the RPI.

The RPI is like COLI 1999, in terms of formulae, so in

terms of bias.

The CPI is not. What did gore bon brown do? He

changed from RPI minus 2.5 to CPI minus 2. That's what

Gordon brown did, because there was a difference between

these two indices, the RPI was flawed and therefore, you

couldn't force the economy to follow a target that was

obviously based on a component of inflation that was

non-existent because it was Ms Measured. That is

what I meant.

Q. If you ever have two indices which measure inflation of

the same period, and you have different results,

different estimates, that can happen, yes?

A. Yes.

Q. So on your analysis here, it wouldn't matter why the two

1 12:12:09

2 12:12:13 indices had different measures of inflation. Your

3 12:12:16 argument at (c) would simply would be the same, wouldn't

4 12:12:17 it?

5 A. My argument about?

6 Q. At item (c) would be the same?

7 A. No, because if two indices have different measures of

8 inflation and one is biassed in a fundamental way and

9 one it is not then it is unfair ^^.

10 Q. If we assume the later index is more accurate than the

11 later indecision, that's a fair assumption, isn't it?

12 A. Well, okay, successive indices are always more accurate

13 than the indices before. The reason why they're

14 accurate is because of the question that the precedent

15 asked me this morning, right, is because of the way

16 (president^ they with weighted and the fact that the

17 weighs^^ five years long in the case of COLI 2007, 10

18 years old. That is an inaccuracy that is known and is

19 part of all the indices. The fact that you are basing

20 an index on a formula that is known to be fundamentally

21 biased and it should not be used, right, is what makes

22 a difference between those two indices.

23 Q. If two successcy indices -- for example, COLI 2007 and

24 COLI 2013 they diverge, don't they?

25 A. They don't?

Q. They diverge, don't they?

1 12:13:52

All the indices diverge to a certain extent.

Q. Exactly. So what I'm suggesting here is it doesn't

matter why the indices diverge. You're going to have

the same unfairness that you talk about whenever the

indices diverge, aren't you?

A. No, no, because one is biased in a fundamental way and

another one is not biased in a fundamental way. In

statistics, what you're trying to do, right, you're

trying to measure the underlying parameter of

a population. In this case, ^^ that's all we're trying

to do, but it's a complex measurement, because it's not

just taking the average of five items.

What happens is that because you are measuring the

average, you are having a measure which has a margin of

error around it and because of that, every measure has

a certain degree of accuracy or inaccuracy. But when

a measure is fundamentally biased, it doesn't matter

what size the measure is. It should never be used.

It's like saying the example that I gave before, you're

trying to measure the height of people living in Dubai

and only take a sample of, you know, young men. That's

going to be biased, regardless, and you shouldn't do

that, because it's wrong.

Q. Can I just understand this. Your evidence is that it

doesn't matter why -- it doesn't matter why there's

1 12:15:32

a difference between two indices and it doesn't matter

what the extent of that difference is in numerical

terms?

A. It matters why there is a difference, because the

difference could be due to the uncertainty around the

confidence interval of that measure, it could be due to

a fundamental error in the way that the index is

constructed, like with everything else.

Q. Just to take some very crude examples, these are

entirely made up numbers, just to illustrate the point.

So don't

A. Okay, okay.

Q. I'm not trying to tie them to any particular set of

indices.

If you have two indices and one of them is, as you

say, biased for a fundamental reason and the next index

isn't, and the two indices when diverged by 10 per cent

^, and then let's take another two indices, where the

first index doesn't have what you call a fundamental

inaccuracy, but still measures different inflation from

its successor index and that difference is 20 per cent,

right?

So you're say that is there would be no unfairness

under your item (c) with respect to that second example,

but there would be with the first example?

1 12:17:12

So if the index is biased and it measures a difference

as 10 per cent and the other two indices are not biased,

right, they cannot have a difference of 20 per cent.

It's not possible.

Q. Okay, let's say that in the two examples, both sets of

indices are diverged by 10 per cent, so they both

diverge by 10 per cent by the same actual amount. Is

your evidence that your treatment of these two sets of

indices would differ because of the reason of the

divergence on the first set?

A. Can you please qualify what the divergence of

10 per cent mean? How is it measured?

Q. When you take a starting point and then you get to an

end point, the same number of years later --

A. The same?

Q. Number of years later, so you're measuring -- like with

like? 12:18:15

A. Okay, okay, I get you. So if you're measuring like for

like and we are going more into the practicality of what

is being discussed here, if you measure like for like,

the two indices in this dispute, which are COLI 1999 --

Q. Sorry, I'm not asking you about the indices in dispute,

I'm just asking you -- that's why I was trying to put

I side all the ^^?

A. Yes, but that's not going to happen

1 12:18:43

Q. So your evidence then is that if you couldn't have two

sets of indices diverging by the same amount, say

10 per cent, over the same number of years, if one of

them -- if only one of those indices was funds mentally

biased?

A. I don't think it can happen, because you see both

indices have the same underlying problem, right, that

you have a margin of error, that you have a confidence

interval, blah, blah, blah, that is every index has.

But one has another problem, which is on top, and

that problem, which is on top, is the fact that it is

known to be biased upwards, ie to systematically

overestimate inflation and so if I'm really do measure

them like for like, that's not going to happen.

Q. I see, so you're saying that your (c) could never happen

in the case of where there's no fundamental inaccuracies

as you describe it?

A. My (c) -- hold on.

Q. Do you have it?

A. Yeah, yeah, I do have it. Yes, because if it an index

was not biased, right, it would be an average -- so

essentially, let's go back one seconds and define bias,

right? Bias is the systemic tendency of an estimator,

any estimator, to systematically deviate from the true

value on average. So if it is known to be

1 12:20:27

systematically upward biased, it means that every single -- on average, that index will overestimate the

true value more than an index that is known not to be

biased. That is the dif in addition.

So how can it happen that you have an index that is

known to be upward biased, that returns the same gap as

an index that is known not to be?

Q. You accept, don't you, that if you have a later index

which measures lower inflation over the same period as

an earlier index, but no fundamental inaccuracies as far

as you're concerned, that still would mean you're

embedding some non-existent inflation?

A. If I have an index ^^ inflation because what you're

saying is that because it is still an estimate -- yes,

I mean, you can see it. Actually, you can see that. We

can see that in my presentation. It's on -- I can show

you. It's on slide -- where is it? It's slide 13 --

14. Could you please pull that up.

14, the next one. So you see, when you're linking

the indices, the way I have linked the blue line, right,

there is still a difference between ^^ the way they have

been linked by GaStat, so in the base year, and the way

that we need to link them because of the commercial

nature of this transaction, because you can't carry on

going back, carry on going back.

So what is happening here is that you link them, but

1 12:22:52

each successive index is more accurate than the other.

It is unbiased and there is still the light pink colour

that shows an overestimate over what the statistical

agency of Saudi Arabia considers to be the most accurate

measure of inflation. So that happens every time. But

those indices are not biased, fundamentally, but the

index before that is.

Q. If we could go to slide 10 within this. We're looking

at figure 4-31 on the right-hand side.

A. Yes.

Q. We can see there, can't we, that the green line is 2007

and then the red line or orange --

A. Is the red line. Actually, the red line is two #,

2013, and they're all linked.

Q. Exactly, but we can see that the green line

overestimates inflation compared to 2013 and 2018?

A. Yes, it does. I mean, the thing with the green line is

that by the time you get to 2017, right, the weights in

that line -- I mean, in that index are 10 years old.

So, yeah.

Q. And so on your analysis, that is non-existent inflation,

isn't it?

A. Yes, yes, it is, it is. But it's not fundamentally

biased, the index, it's just old, it's just that it was

published with much delay.

1 12:24:49

Q. But it still creates -- why doesn't that create the

unfairness that you talk about in your item (c)?

A. It doesn't create the unfairness because it is often

index that is not biased in a fundamental way. It does

not systematically overestimate inflation and that is

why it's been linked by the agency in previous periods,

to all the other indices. So they thought there was

something really seriously wrong with that index,

I would have done exactly the same as they did with

COLI 1999, they wouldn't have linked it ^^, which is

something that they actually did. So the reason why we

are having this issue is because we are actually linking

in 2013 and not because the fact of the fact that the

index has a real -- it's fundamentally flawed, yes.

Q. Sorry, I didn't really follow that last -- the reason

why we are ^ reading...) linking in 20 if and not because

of the fact that the index has a real fundamentally

flawed -- doc) which linking are you talking about?

A. So essentially, what I am trying to say here, is that

the statistical agency published COLI 2013 -- COLI 2007

until 2017?

Q. Yes?

A. Right? And I made a mistake. In 2013, when the new

index was pub libbed, okay -- no, I didn't make

a mistake, actually. In 2013, when the new index was

1 12:26:53

2 12:26:57
published, the statistical agency linked those two

3 12:27:05
indices, right, and that is why there is the dot in

4 12:27:14
2013. But they didn't publish 2013 until January 2018.

5 12:27:21
So they published it five years after they had done the

6 12:27:28
survey. By the time they published that index and

7 12:27:38
therefore it was available for linking forward for the

8 12:27:35
purpose of this contract, COLI 2007 had essentially

9 12:27:37
continued and was still existing and was overmeasuring

10 12:27:42
inflation by virtue of having weights that were very,

11 12:27:44
very old.

12 12:27:47
But not by virtue of the fact that it was fund

13 12:27:55
mentally flawed ^. So the amount of -- if you want, the

14 12:27:50
amount -- not the amount, but the inaccuracy of each

15 12:28:04
successive index changes on the basis of how old the

16 12:28:00
weighting that index are. So you can see that also the

17 12:28:10
red and the grey line, right, have -- there is a slight

18 12:28:20
difference between the two and the reason why is -- and

19 12:28:27
it's much less than with the green line, because if you

20 12:28:34
think about it, COLI 2013 is based on weights from 2013.

21 12:28:43
It was published at the end of -- what was it? When was

22 12:28:49
it published? T end of 2019, right, in January 2020. So

23 12:28:55
it was six years old, seven years old. The other one

24 12:28:59
was older even.

25 12:29:06
So as GaStat becomes more, you know, goes forward in

their programme of pub libbing these indices, according

1 12:29:13

to international standards, they are getting closer and

closer to carrying out the surveys every five years and

to publish the results as soon as they possibly can,

because the majority of statistical offices do the

survey, link the index and move n in a periods of

months. While it took much longer to these agency to do

these things^.

Q. Going back to where we were. Your evidence then that it

doesn't matter why -- it does matter why the indexes

diverge and it doesn't matter by how much they diverge;

is that right?

A. It matters why they diverge, yes, it matters why they

diverge. And it matters what the statistical agency

considers them to be.

Q. But then the second part of that is your evidence is and

it doesn't matter by how much the two indices diverge?

A. Not in terms of assessing the fundamental bias, no. You

can measure the bias, but you know from the premises

of you know, from your fundamental knowledge of

statistics that one is biassed and the other one is not.

Because you know, just to go back to that example that

I had about, you know, measuring the height of people in

a city, right? Okay. So you can say, okay, let's

measure the height of people in a city. Let's take

a sample of men and do that. And then you get, oh, the

1 12:30:59

average height of men in the city is 1 metre 75. So the

average of people in the city is 1.75.

And then you take -- then somebody tells you, no,

this is wrong, it's biased. You should do something

else, you should take men and women. And then you take

men and women and you say, oh, the average of men and

women in is 1.73, so it's not a big deal. I can use it.

This is good. Why not? Then you go in another city and

you take men and you finds that the average height of

men in that city is 187. Are you doing the right thing?

What happens if you take the measure of women and they

all look like me, then the average height of people in

that city, for sure, is not you know, 2 centimetres less

than the one of men. So the fact that you're using the

bias estimator, because that's its called it's an

estimator statistic, is wrong on principle because if

you do it again and again and again, and this is the

statistics for you, you get the results that are wrong

and eventually, you get to a result that is so wrong

that you have COLI 1999.

MR GHAFFARI: May I ask a question.

MR ROBB: Please, of course.

MR GHAFFARI: When you look at figure 4.3 and you look at

COLI 2007, that green section that shoots up, the gap

between 2007 and the black line underneath it, that

1 12:32:44

2 12:32:47
delta, that white space in between, would you describe

3 12:32:51
that as an inaccuracy?

4 12:32:56
A. The gap between?

5 12:32:57
MR GHAFFARI: The green line shown and the plaque line

6 12:33:01
underneath it. Is that an inaccuracy, a difference,

7 12:33:03
that divergence?

8 12:33:08
A. It is an inaccuracy that is caused by the fact that the

9 12:33:13
index is old and the weights are higher, but is not

10 12:33:20
a fundamental inaccuracy caused by the use of

11 12:33:23
a measurement that is biased. It's something that you

12 12:33:26
can't avoid, if you want, unless you publish it on time,

13 12:33:31
you can't avoid that. But if you use a fundamental are

14 12:33:35
you biased measure, you will re Peats and repeat and

15 12:33:39
repeat and repeat the error. That's why they changed

16 12:33:40
the methodology.

17 12:33:43
MR GHAFFARI: I understand that. Follow-up question. Can

18 12:33:47
that divergence, let's call it inaccuracy, ever get to

19 12:33:51
the magnitude that is equivalent to the magnitude that

20 12:33:59
you would get if you have a biased index, for difference

21 12:34:00
reasons.

22 12:34:05
A. For practical reason, no, because they will never wait

23 12:34:09
as long as they waited in the other -- how long will

24 12:34:12
they have to wait in order for the weight to have that

25 12:34:16
effect? Because if you look --

MR GHAFFARI: Don't extend the five-year period of weight

1 12:34:18

Assume that period of wait ^ stays the same, but can

there be other factors that cause the same divergence?

What I'm going back to is the initial question that

Mr Robb asked, can you ever get the 10 per cent as

against the 10 per cent, whereas this 10 per cent is

caused by fundamental bias and this 10 per cent is

caused by other reasons

A. What other reason can there be? I mean.

MR GHAFFARI: Other than weight, just weight.

PRESIDENT: For example, if there was a significant change

in what is in the basket or the weight that's applied to

what is in the basket.

A. The thing is that the way that -- so you mean

consumption ^^ of people, that is why that you do it

every five years, because (habits ^ or less, because

that is not a long enough period for habits to change

consistently. There could be a situation where you have

very rapid technological change and therefore, the items

in the basket change in quality and they change in price

and the reason -- think about, for example, you

introduce smartphone, right, and smartphones at every

year, they become more and more powerful, and so their

prices change, right? So what statistical agencies do

in that respect is they adjustment for the differences

in quality by using different methodology, one is called

1 12:36:00

iDon I can price analysis, there are those

methodologies.

That way they obtain a comparable prices and use

those comparable prices in calculating the index. So

that they make sure that they are comparing

like-for-like. It's very -- yeah. You can make

adjustments and they do make adjustments and that's

a very -- yeah, it's a very good question, actually,

because it will happen unless you make an adjustment,

which is what is done. It will happen, yes.

MR GHAFFARI: Thank you.

MR ROBB: The first point I wanted to get to, which I don't

think I've had a complete answer to, is that in your

mind, if there is a fundamental inaccuracy in one of the

indices, it doesn't matter how big the gap is with what

you would call the more accurate index; is that right?

A. Yes, you shouldn't use it.

Q. No, if your mind, if there is a fundamental inaccuracy,

it doesn't matter what the effect of that fundamental

inaccuracy is, in numerical terms, is that your

evidence?

A. Yes, yes.

You can actually see it from here, because you see,

if you actually bring them both to the comparable, you

shouldn't bring them both back. So 1999, you compare

1 12:38:04

2 12:38:08
the blue and the red line and then you compare the green

3 12:39:13
and the black, right? So one way of doing it is you can

4 12:39:16
say, okay, you know, I compare them over a period of

5 12:39:21
time that is consistent. So the period of timing which

6 12:39:20
those two indices, the green and the black line,

7 12:39:23
actually different, it's four years, right? But the

8 12:39:30
blue line and the reds line have been published together

9 12:39:42
since 1980, even though the blue line is no longer

10 12:39:47
anywhere to be seen on the website of fa statistic. So

11 12:39:51
those two lines go back a very long way together.

12 12:38:57
The reason why here they start in 2005 is because

13 12:39:00
I link them, not because they are linked at that time.

14 12:39:04
They are never linked. They were never linked by

15 12:39:04
GaStat.

16 12:39:08
Now, if you really want to link them, and measure

17 12:39:10
the distance between them, you have to start in 2007.

18 12:39:17
2007 is the year in which the green line starts, exactly

19 12:39:24
the same way as 2013 is the year in which the grey line

20 12:39:30
start. In 2007 is also the year in which the weights of

21 12:39:33
the blue line were changed. So if you had to do

22 12:39:35
a comparison between in the distance between those two

23 12:39:39
lines, you can't start in 2005, because that's a very

24 12:39:42
arbitrary point. You start in 2007 and you go four

25 12:39:46
years to 2011 and that is the correct -- and then you

measure the area underneath and see if they are the

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1 12:39:49

same. That's how you do it.

Q. Ask we move on now, please, to another topic. Can we go

to paragraphs 5.4 to a .6 of your first report. That's

D1, page 66?

A. Is 5.4 of my first report. (Pause). Okay, yes.

Q. So here you're considering the going forward approach;

is that correct?

A. Yes.

Q. You illustrate this, which shows that the in your graph

at figure 5.1, where you show that what the going

forward approach means is to how you link COLI 1999 to

COLI 2007?

A. Yes.

Q. What you're showing is that COLI 2007 should be lifted,

raised so at the beginning of 2007 matches the end of

COLI 1999?

A. Mm-hmm.

Q. For the moment, should we just assume that under the

agreement, the parties agree to use COLI 1999 for as

long as it was available?

A. Yes.

Q. Then you say at 5.5 on the same page:

"Under this approach, the adjusted charge rates will

reflect cumulative inflation under each index for as

long as that index is available." ^doc

1 12:41:36

2 12:41:43
Do you see that?

3 12:41:43
A. Yes.

4 12:41:47
Q. That's right, because this treatment I think we can

5 12:41:50
agree uses cumulative inflation, not year on year as the

6 12:41:58
method of adjustment; is that correct?

7 12:42:00
A. But also the two methods are equivalent, right? So they

8 12:42:08
always reflect cumulative inflation, also the year on

9 12:42:12
year, that reflects cumulative inflation. It's the

10 12:42:15
same. They are the same.

11 12:42:18
Q. I understand that math matically, they were produce the

12 12:42:20
same result?

13 12:42:21
A. Yes.

14 12:42:24
Q. What I'm saying is you agree ^^ controversial?

15 12:42:24
A. No, no.

16 12:42:27
Q. That the agreement ^^ for the pay sits of adjustment?

17 12:42:32
A. Yes, yes, it doesn't use year n year, yes, its goes back

18 12:42:35
to 2005.

19 12:42:38
Q. So what you're saying here is that the going forward as

20 12:42:41
approach is used as the COLI 1999 cumulative inflation

21 12:42:46
for as long as COLI 1999 is available; is that correct?

22 12:42:50
A. COLI 1999 cumulative inflation and then it accumulated

23 12:42:55
the 2007 to to COLI 1999, yes. But COLI 1999 is no

24 12:43:00
longer available. COLI 1999 is available until 2014 and

25 12:43:00
then the linking approach accumulates it forever,

I mean, until the end of the contract, not forever.

1 12:43:12

Q. Can I ask you to go to paragraph 6.6, which is D1-80.

Here you're describing your approach?

A. Yes.

Q. We can see at 6.5, you refer to the expression

reasonable receipt active correction"?

A. 6.5. Yes,

Q. That's your approach, isn't it? You're carrying out

what you consider to be a reasonable retroactive

correction?

A. Yes.

Q. We can see that illustrated graphically at your figure

6.1, which is at D1-83. (6-1.

A. Yes.

Q. At paragraph 6.6(2), you explain, D1-81, you say that

the - you explain your approach and you say prior

to January 2014, COLI 1999 is used as per the WPA so

this express term of the WPA is not disregarded.

However from January 2014 onwards the rate of inflation

implied by call # instead of the relatively inaccurate

rate of inflation implied by COLI 1999 is used." ^doc?

A. Yes.

Q. So the first point is here you're judging COLI 1999 and

call 2007 in relative accuracy terms?

A. Yes.

So that's part of your analysis, isn't it, about the

Page No. 82

1 12:45:35

relative inaccuracy, not just fundamental inaccuracy?

A. Yes, that is a misspoken. I apologise. Yes. It is

absolutely misspoken there. You're right.

Q. I'm not suggesting you've mistaken at all. Are you

saying you want to correct your report?

A. Well, in this case, it is -- yeah, it is inaccurate

and is also relatively inaccurate, but it is

fundamentally inaccurate. If we want to go there, the

term "relatively" should be deleted.

Q. Then perhaps we could go down, just whilst we're here,

just to confirm anything else you want to change about

your report at this stage, into subparagraph (3), where

you're dealing with COLI 2007 to COLI 2013, where you do

use what you call the going forward approach; is that

correct?

A. Yes.

Q. You say while I consider that COLI 2013 is more accurate

than COLI 2007 for the reasons set out in section 3 and

section 4 I consider that COLI 2007 is not as inaccurate

as COLI 1999." ^doc.

Do you see that?

A. Yes.

Q. Again, that's a relative inaccuracy concern, isn't it?

A. Yes, as I explained before, COLI 1999 is inaccurate in

a fundamental way. COLI 2007 has this issue with the

1 12:47:09

weights, because it's older by 2017, yes.

Q. But the only fair reading of this bit of the report is

that you are comparing how close to presumably you're

comparing how close to what you consider to be true

inflation COLI 1999 is and call 2007 is, that's what

you're doing, isn't it?

A. No, no, it's not what I'm doing. What I'm doing is

saying one index is funds meant I will inaccurate, the

other one is inaccurate by way of construction, because

it's an old index, right, and therefore, first of all --

okay. Let's actually look at the two aspects of the

let's look at the stay test call aspect and let's then

look at the contractual aspect.

So from a statistical point of view, one is

fundamentally inaccurate and the other one is not. So

from a statistical point of view, what the agency did is

one was never linked and the other one was linked on the

base here, at the base year ^. But the base year, 2007,

by 2017, was 10 years old. So when the new index comes

in, which is 2013, what are you going to do? The

statistician links it in 2013 and discard the green spin

off, overshoot. But here we are talking about two

parties in a contract. So what do you do? You say,

okay, I have to strike a balance here. I can't

constantly go back. I go back once because there is

1 12:49:06

2 12:49:07
a real problem.

3 12:49:10
But when I move forward, I don't do that. Because

4 12:49:11
otherwise it becomes every time you have to go back. So

5 12:49:31
you strike a balance and you say I link them in 2013 --

6 12:49:37
sorry, in December 2017 and then you wait for the next

7 12:49:22
index to come. So it's two different things. One is

8 12:49:31
the statistical as spectsdz of it and the other one is

9 12:49:40
what should be done for this contract.

10 12:49:46
I have some guiding principles among which there is

11 12:49:50
what I call the tradeoff between certainty and crass,

12 12:49:54
which are important in this respect. They are not

13 12:49:58
important to a statistician, but they are important in

14 12:50:03
this respect. So that is why I do that.

15 12:50:06
Q. In this bet you're not using your sort of I con what

16 12:50:14
tryings statistician expertise; is that correct?

17 12:50:14
A. Fortunately I also have another PhD, I have a PhD in

18 12:50:17
economics and economic policy, so that's also part of my

19 12:50:18
expertise.

20 12:50:23
Q. But in this subparagraph 3 that we've just been looking

21 12:50:27
at, you are using the language of relative accuracy and

22 12:50:28
inaccuracy, aren't you?

23 12:50:32
A. Yes, as I explained to you, what that means.

24 12:50:06
Q. No, but when you said is not as inaccurate as COLI 1999,

25 12:50:08
that can only be a statement about --

A. It's not --

Page No. 85

1 12:50:39

Q. -- the amount ofder ^^ because one is fundamentally

inaccurate and the other one is not. It's not just --

it's not a mer of size. It's not a matter of size.

Q. Okay. For the present purposes, you just like the

tribunal to delete through the word relatively in your

supplement 2 ^?

A. Yes.

Q. Just going back to subparagraph (2), made a bit of

divergence because I was trying to understand where your

evidence currently was. I'm going to suggest to you

that you said and we looked at this when you were

looking at the going forward approach that the going

forward approach retains the cumulative inflation under

COLI 1999; is that correct?

A. Yes.

Q. And that was a consequence of using COLI 1999 for as

long as it was available?

A. Yes.

Q. But when you're engaged in your retd active correction,

you are disregarding that express term about using

COLI 1999 for as long as possible, aren't you, because

you're replacing that cumulative inflation with the

cumulative inflation implied by COLI 2007?

A. But COLI 1999 didn't exist anymore.

No, but the cumulative inflation which was implied up to

1 12:52:09

2 that has to be retained in you're going to use

3 COLI 1999 for as long as possible?

4 A. No. I mean, I can use COLI 1999 for as long as possible

5 until 2014 and then from then on, where it's no longer

6 possible to use it, I can make a correction.

7 Q. I see. So when we go --

8 A. I don't know -- this is a legal point, actually, because

9 I don't -- what is it that this was --

10 Q. Can I take you now to paragraph 5.31 at D1-75. Do you

11 have that?

12 A. Yes, yes.

13 Q. You say:

14 "I explain at paragraph 5.24 above that SWPC

15 overpaid SEPCO for many years due to COLI 1999

16 overstating the true rate of even nation relative to

17 more accurate indices." ^doc?

18 A. Yes.

19 Q. I just pause there. Again, what you're talking about is

20 a relative accuracy and the divergence between COLI 1999

21 and later indices?

22 A. No, no, no. What I mean here is that if you compare it

23 to more accurate indices, COLI 1999 was overstating,

24 overestimating the rate of up nation. That's what

25 I mean.

Q. In this paragraph, what you're saying is that the

Page No. 87

1 12:54:02

because of your concerns about call the, you have to

lower the starting point for COLI 2007 by removing the

cumulative inflation implied by COLI 1999 between 2007

and 2013 and replacing it with the inflation implied

under COLI 2007; is that correct?

A. I am not removing the cumulative inflation, because if

I had removed the cumulative inflation, then there would

be no overpayment. I just making a correction.

Avoiding that cumulative inflation to be projected

forward for the whole life of the contract.

Q. In fact, what you're --

A. So, yes!

Q. What you've correcting is the use of COLI 1999 up to

2014 by replacing it with COLI 2007, that's what you're

doing, isn't it?

A. No, I'm not removing the use of COLI 1999 up to 2014

because if I had done that, then I would have said what

the windfall, the overpayment, whatever we want to call

it, should be given back. So, you know, yes. So I'm

not removing it, no. I'm just making a correction.

What was, as I said before, it is whatever overpayment,

whatever cumulative inflation that was not supposed to

be there, is like a sunk cost. Until then, we take it

as is and from 2014 onwards, we try to rectify the

situation.

1 12:56:06

Q. I'll just start by touching on the new instructions you

received in your second report. There were two new

instructions in your second report, witness there? The

first is at paragraph 1.5 of your second report at D103,

page 5.

You have to read paragraph 1.5 and 1.5.

Paragraph 1.4 starts am crave over to D103-5.

Do you see that?

A. Yes, yes.

Q. This is the instruction as to the discretion or the

approach of the independent expert as set out in the

contract; is that right?

A. So this one is independent expert and the second one is

the tribunal has similar discretion.

Q. That was the point we looked at in relation to item 20

of the joint statement, is it?

A. About the instruction of the tribunal, yes.

Q. Yes. Sorry, I think you're nodding your head and

I think if you could just I ^^?

A. Yes, I did say, three times.

Q. The second of these new instructions is at

paragraphs 3.15 and 3.16, which is D103, page 18.

Here you're dealing really you can start at 3.14,

because that's where you're dealing with it. You say

that Ms Harfouche repeats the wording from appendix 13

1 12:58:11

of the agreement and emphasises the words if the index

is not available and as I that she understands that the

parties have agreed that COLI 1999 should be used as

long as it is available and opines that this suggests to

me that the parties have agreed to continue following

this approach to the subsequent end seed." ^doc.

Then 3.15 you say it is not for you to opine on what

the parties have and in fact have or not have agreed

to." ^doc.

Then you refer -- you take that the relevant part of

appendix 13 and you cite it there. Then your new

instruction is question I am instructed to assume that

the correct interpretation of this clause is that a new

index could be adopted by a mutual agreement or an

independent expert decision or an arbitral tribunal even

if the old index is still available." ^doc.

Because you've emphasised the words or if the

parties agree otherwise, do you see that?

A. Yes.

Q. So just to understand how you've approached this

question, is your understanding of your instruction that

an independent expert or tribunal could replace an

existing index when it was available without the

agreement of the parties?

What I understand from this is that this instruction

1 13:00:07

means that the tribunal has the same discretion as the

independent expert. That's how I understand it. In

3.15, so the -- yes, that's how I understood it.

Q. No, no. The instruction that about the tribunal's

discretion, that was the instruction we looked at first

of all and it's the one that's referred to in joint

statement 20. This is a different instruction you're

being given here, isn't it, 3.16?

A. How is it different? In terms of even if the old index

is still available?

Q. Yes, that's a new instruction, isn't it?

A. No, because it's written here, right? It says ^^ or in

the index is not available or if the parties agree

otherwise. doc.

So there are two ^^ it could be that the index is

not available or it could be that the parties agree

otherwise.

Q. Yes, I understand that, I'm trying to understand what

you understood here and how that might have impacted

your opinions. So --

A. No, my opinion was not impacted by any of this. You

know, my opinion is not a legal opinion. My opinion is

what I think as -- in my area of expertise, what I think

is the right thing to do.

Q. But hold on. This is an instruction?

1 13:01:34

A. Yes.

Q. And so presumably, this instruction has become relevant

to the way you express your opinion in your report,

hasn't it?

A. But if it was relevant to the opinion in my report, the

instruction at 3.16, you mean?

Q. The instruction which you have to read paragraph 3.15

and 3.16 to understand the instruction?

A. Okay, right.

Q. I'm asking you, is that instruction relevant to your

report?

A. It's not relevant to the conclusions. I mean, it's

always been -- I have always had the same opinion. The

issues of if the parties agreed otherwise, means that

^doc) it could very well be that you can use a different

mutually agreed index, but this is not what happened

here. So there was no index available when COLI 1999

was being produced. There was nothing else. There was

just COLI 1999. It's the same for the following

indices. And, yeah.

Q. I'm just looking at the time. I think maybe --

A. And the mutually -- maybe I can finish the answering

this question.

The way I interpret this is that there is this

clause gives the possibility of actually even if when

1 13:03:25

COLI 1999 is no longer available, right, gives you the

possibility of linking COLI 2007 to COLI 1999 at a prior

date than at the end of COLI 1999. So that linking in

2007.

Q. Sorry, which bit do you say gives you the possibility of

linking at an earlier date?

A. So in 2013, right, when the index -- when COLI 1999

became no longer available, there are two ways of doing

this, right? One way is to say, okay, we move forward

from this point. Another way is to say, okay, we

actually link them in 2007. So we link them at the

moment where COLI 2007 is no longer available, but it is

COLI 2007 is not COLI 1999, so.

Q. But that's not what you're saying at paragraph 3.16.

You're saying I am instructed to assume that the correct

interpretation of this clause is that a new index could

be adopted by mutual agreement or an independent expert

decision, or an arbitral tribunal even if the old index

is still available." ^doc?

A. Yes, this refers to the overlap. This refers to the

overlap. So if two indices are available at the same

time, where do you link them? So for -- if we exclude

the 2007 issue, it's for a possible future index that is

going to be published probably next year, I would guess,

and the last index in this contract.

1 13:05:30

Q. Okay, so --

A. If it was sorry, it was published corn currently,

which is something that I have not --

Q. What I'm interested in is where you say obviously if the

parties agree something, they can agree anything they

like. But let's leave that aside. Are you saying that

even if there's no agreement between the parties, your

understanding is that an independent expert or an

arbitral tribunal can adopt a new index even if the old

index is still available?

A. Yes, they could just say, oh, look, there is an index --

you know, there is a ^^ why don't we use the PPI. If

they agree, why not? But I don't know. I'm --

Q. Well, sorry, the question was on the basis there wasn't

any relevant agreement between the parties. Answering

by reference to an agreement is not going to help. So

I'm asking again --

A. The question is asked, you know, what could be done if

the index is not available? The parties could have

agreed, right? The answer is -- the question was asked

in hypotheticals. I mean, you're asking me to interpret

a legal provision, you know. This is not for me to do.

Q. No, I'm asking you to explain your understanding of your

instruction, but I think we'll have to return to that

after lunch.

1 13:07:10

PRESIDENT: Thank you, Mr Robb. We'll now break for an

hour. So we're back at 5 past 2.

(1:07 pm)

(The luncheon adjournment)

(2:0

Testing the realtime. The time is 1.54 pm test test

test

(2:03 pm)

PRESIDENT: We'll get started again. Dr Meschi, I remind

you you're still under your affirmation and Mr Robb, if

you would like to continue.

MR ROBB: Thank you.

Dr Meschi, before we continue with the line of

questioning before lunch, I would just like to give you

a chance to consider whether the answers you gave

earlier on about the differences between COLI 2007 and

COLI 2013 and I think then you were saying that the only

reason for the difference was the outdated basket being

used for COLI 2007; is that correct?

A. Yes, there is another reason, but that's not what has

caused that kind of problem.

Q. Perhaps we could just look at -- I think just so

everyone understands what you're talking about, go to

table 4-1 of your first report, page D1-52?

Yes

1 14:04:16

Q. Here what you've tonne is you've compared various

aspects of the ^^ indices and explained how things have

changed. One of the things that we can see that's

changed between COLI 2007 and COLI 2013 is the final

line, which is where the method of aggregating items for

the general index has changed from ath met I can in

COLI 2007 to geometric in COLI 2013?

A. Yes.

Q. So that's another difference that would have had an

impact on the inflation estimated by the two indices?

A. Yes, it does. It's just not a fundamental issue,

because the geometric means there are used on the higher

level indices, which have weight, so they do not have

the same affect on the index as the use of the

arithmetic means on the elementary aggregates.

So there is a quote in my report. I think it's in

the first one. Is it possible to look for a word?

TECHNICIAN: Yes, ma'am?

A. Can you check for for, TOR, can you find anything?

There is a quote from the CPI manual, fisher.

I'm so sorry.

MR ROBB: We might come to this later, but let me put it in

this way. The question is that or the position then is

that in addition to the issue about the basket, there

was a method logical change between COLI 2007 and

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1 14:06:36

COLI 2013?

A. Yeah.

Q. But your view is that that difference is not as significant as the change between arithmetic and geometric between COLI 1999 and COLI 2007 in respect of the elementary aggregates?

A. Yes, it doesn't impart bias from the mental bias to the indices. It is because of different way that the indices are treated. So the higher aggregate are all weighted, right? So they use the basket of weight and so the distortions that happen in the lower level, because of the absence of weights, are not -- they do not happen in the higher level weight, is because when you don't put a weight, what you're doing essentially there are implicit weight in those indices that create a distortions. Then depending on what type of arithmetic index you use, there is a different type of distortion. But they are quite serious and they are -- these indices are strongly discouraged by --

Q. We'll be coming back to that, but I just wanted to clarify there was another difference between the two indices?

A. Yes, but it's not substantive in any way.

Q. Returning to where we were before the lunch break, where we were dealing with your understanding of the

1 14:08:26

3 14:08:30 instruction that had been given to you at

2 14:08:30 paragraphs 3.15 and 3.16 of your second report, which

4 14:08:55 was just so we get it back, it's D103, page 18.

5 14:09:07 Just want to make sure you have that.

6 14:09:31

7 14:09:33 Do you have it?

A. 8 14:09:36 Yes, I have it.

Q. 9 14:09:38 Just say yes so we can be clear that you have it ^^.

10 14:09:41 This was the instruction given to you. It wasn't in

11 14:09:48 your first relationship but you refer to it in your

12 14:09:44 second report.

13 14:09:47 I just want to understand how you have understood

14 14:09:51 this question. Okay? And how you have understood this

15 14:09:54 instruction.

A. 16 14:09:57 This is my first report, 3.15.

Q. 17 14:10:03 No, your second report, which is why I want to check you

18 14:10:05 have the document, it's the one that's on the screen?

A. 19 14:10:11 Yes, yes. Okay. Yes, right.

Q. 20 14:10:13 Right. What I want to understand, this is the

21 14:10:15 instruction that was given to you for your second

22 14:10:17

A. 23 14:10:17 Yes.

Q. 24 14:10:22 I want to understand how you have understood that

25 14:10:28 instruction. As I read paragraph 3.16 -- you tell me

whether this is how you understood it -- that you were

1 14:10:32

2 14:10:36
being instructed that an independent expert or tribunal

3 14:10:42
could have replaced COLI 1999 with COLI 2007 when

4 14:10:45
COLI 1999 was available even if the parties had not

5 14:10:50
agreed to do so?

6 14:10:58
A. Even if the -- when COLI 1999 was available?

7 14:11:00
Q. Assume there's no relevant agreement by the parties

8 14:11:02
about replacing an index?

9 14:11:03
A. Right.

10 14:11:05
Q. There's no treatment about from the parties?

11 14:11:06
A. Okay.

12 14:11:11
Q. Is your understanding of this instruction that an

13 14:11:14
independent expert or tribunal could have replaced

14 14:11:21
COLI 1999 with COLI 2007 even when COLI 1999 was

15 14:11:23
available?

16 14:11:27
A. So in that one-year in which they were --

17 14:11:29
Q. As an example.

18 14:11:30
A. Whether there was is the only time -- (overspeaking) --

^^19 14:11:32

20 14:11:34
Q. Let's take that as the point.

21 14:11:36
A. Not if anybody asked them. So it would have been

22 14:11:43
necessary that -- and that's my understanding. So the

23 14:11:49
parties did not agree on substituting an index and then

24 14:11:55
somebody comes from outside and substitutes it?

25 14:11:58
Q. I'm just trying to understand what you understood about

this and what the significance of the words were or if

1 14:12:03

the parties agree otherwise" which you're underlined in

your paragraph 3.15?

A. It could have been that, for example -- I don't know.

You're asking me to interpret a legal clause --

Q. That's the point. I'm really not asking you to do some

legal interpretation. You've been given an instruction

as an expert by your client and it is important to

understand if you understood that instruction and how

you understood that instruction?

A. So I understand this instruction in a very simple way,

is that if there is a dispute about this index, an

expert can determine what to do with it and it could be

either about the index any time because it looks like --

if the parties agree otherwise ^doc) ^^ so it could be

yeah. 14:13:16

Q. To avoid intending the clause and focus on your

instruction, which is really what you ought to be

concerned with. Why do you focus on paragraph 3.16?

What I'm trying to ^^ understand is here you appear to

be saying -- you appear to be being told that an

independent expert or arbitral tribunal could adopt

a new index even if the old index is still available.

Do you see that?

A. Yes, because it's says or if the index is not available

or if the parties agree otherwise ^doc) so the parties

1 14:13:55

may agree that the index is there, but is not really

appropriate, right? And then they can say, okay, this

index is not working for us. Then let's change it.

I want to change it this way. No, I want to change it

the other way. We don't agree. Let's go to an

independent expert. That's how I interpret it.

Q. I see. We'll follow this through --

A. I'm just trying to figure out what this meaning and

those I interpret it.

Q. That's how you interpret it when you were preparing your

report?

A. This instruction really didn't make much sense -- now it

doesn't make much sense -- didn't change my opinion when

I wrote my report. Because what really mattered to

me is how do you do the transition? Because I'm

asked -- the instruction that made -- that mattered most

to me was the one I read to you before about how do you

do the transition? What the the appropriate approach to

do this transition? That was actually the question that

was substantive to me.

In order for that instruction not to be moot, there

had to be some kind of dispute about it and this is the

clause, I think, which is disputed. Because otherwise

why would they ask me? ^^.

Q. Well, we move on to paragraph 3.17 if you scroll further

1 null

2 null

3 null

4 null

5 null

6 null

7 null

8 null

9 null

10 null

11 null

12 null

13 null

14 null

15 null

16 null

17 null

18 null

19 null

20 null

21 null

22 null

23 null

24 14:17:45

25 14:17:51
available?

A. Or if the parties agree otherwise ^doc). I mean, they

1 14:17:57

2 14:19:00

clause is here ^^.

3 14:18:03

Q. Yes, I know, but I'm trying to understand how you've

4 14:18:04

proceeded in your second report?

5 14:18:05

A. So

6 14:18:09

Q. Do you proceed in your second report on the basis that

7 14:18:13

the parties had agreed in the WPA to use COLI 1999 for

9 14:18:14

as long as it was available?

8 14:18:22

A. But it doesn't matter to me. They used it until 2013

10 14:18:29

and they had to change it in 2014. So the question is

11 14:18:35

what do you do from 2014 onwards? You have to use

12 14:18:38

another index because the first index is no longer

13 14:18:43

available. What do you do? Do you go and use 2007 from

14 14:18:52

a different starting point or do you use 2007 starting

15 14:18:57

from the last date at which was available?

16 14:18:58

Q. Right, so

17 14:19:05

A. Is there any overriding reasons why you should depart

18 14:19:11

from using the approach that was proposed by

19 14:19:13

Ms Harfouche. In my opinion, there is.

20 14:19:16

Q. So the - am I right in thinking, then, that your

21 14:19:19

evidence now is that the instruction that we were

22 14:19:25

looking at at paragraphs 3.15 to 3.16, was irrelevant to

23 14:19:39

your report?

24 14:19:55

A. I mean, the parties didn't agree, right? It's not up to

25 14:20:00

me to decide what the parties have or have not done.

This is what I'm saying here. So the clause says if the

1 14:20:07

2 14:20:10 index is not available or if the parties agree

3 14:20:14 otherwise, what I am doing in 3.15 is responding to

4 14:20:18 Ms Harfouche, who's saying if the index is not

5 14:20:25 available. Actually, there is another part of that

6 14:20:30 clause, which is or if the parties agree otherwise ^doc)

7 14:20:32 blah, blah, blah blah, blah, this is what I'm saying

8 14:20:34 here.

9 14:20:38 Q. I want to be clear here. You previously were

10 14:20:40 approaching this paragraph-paragraph basis of what you

11 14:20:45 were instructed -- these were part of your instructions;

12 14:20:46 is that right?

13 14:20:52 A. Well, the crux of the matter is not what is written

14 14:20:55 here, is what I'm responding to, and what I'm responding

15 14:21:00 to is actually in paragraph 3.14, right? What I am

16 14:21:05 responding to is Ms Harfouche repeats wording from

17 14:21:13 appendix 13 of the agreement and emphasises the words if

18 14:21:15 the desk is not available states that she understands

19 14:21:18 that the parties have agreed that COLI 1999 should be

20 14:21:23 used as long as it is available and opines that this

21 14:21:26 suggests to me that the parties have agreed to continue

22 14:21:31 following this approach for the subsequent indices."

23 14:21:33 ^doc.

24 14:21:36 I consider that this is not for Ms Harfouche or

25 14:21:39 indeed me to opine on what the parties in fact have or

have not agreed. I understand that SWPC has not agreed

1 14:21:45

to this; and that there is in fact a legal dispute about

how to interpret the terms of the WPA in respect of the

future indexation changes. Ms Harfouche neglects to

emphasise the six words that follow if the intention is

not available or if the parties agree otherwise." ^doc.

Q. You're reading out bits of your report?

A. Yes.

Q. But can I -- what I was trying to understand was whether

the instruction that's in paragraph 3.16 is of any

relevance to your -- the conclusions in your second

report.

A. It is a legal issue to decide whether you have to --

whether there is something in this agreement, right,

that says that you have to use the cumulative inflation

that happened and put it forward forever.

What this is, what my position is, is this

instruction says that doesn't have to be like that. So

if it doesn't have to be like that, what is the way

around to doing this? So in that respect, --

Q. The instruction you were given in 3.16 was to assume

that the correct interpretation for this clause is that

a new index could be adopted by mutual agreement or an

independent expert decision or an arbitral tribunal even

if the old index is still available." ^doc.

Yes? That's what you --

1 14:23:31

2 14:23:34 A. Agreed a new methodology, yes, a different methodology

3 14:23:36 ^^, yes.

4 14:23:39 Q. Well, you don't mention that there. It's a very simple

5 14:23:53 question. Did this instruction have any influence on

6 14:23:58 your second report?

7 14:24:00 A. I don't -- I mean, I haven't changed my -- in my second

8 14:24:04 report, I haven't changed him at all from what I was

9 14:24:10 saying before, so how could this instruction have had an

10 14:24:13 influence on my second report?

11 14:24:14 Q. Well --

12 14:24:16 A. Which was the fifth one I wrote.

13 14:24:30 Q. All I'm doing is ask you a question about whether you

14 14:24:33 consider that this was relevant to any issue in your

15 14:24:34 report? If your answer is no, then that's fine.

16 14:24:38 A. Yeah, I don't think so. I mean, given I haven't changed

17 14:24:41 my opinion -- I don't mean to jump in, but is the

18 14:24:42 answer not in 3.17 (Mr Gaff ^ are you not saying there

19 14:24:44 that the issue is moot?

20 14:24:49 A. Well, that's what I said before.

21 14:24:53 MR GHAFFARI: Is your answer that the instruction at 3.16

22 14:25:02 was relevant to your report ^^ or not relevant to your

23 14:25:05 report, not relevant because it's academic or moot?

24 14:25:08 I think that's what we're trying to get at,

25 14:25:09 ^^ (overspeaking) -- ^^?

A. Yes, because essentially the issue here is the way -- at

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1 14:25:20

the point that we have to make a decision, COLI 1999 had

already been used, it has been used for as long as it

was available and then it was dismissed and it was not

published again.

The subsequent indices were not published

concurrently. So this is all in the past. What is

important is what happens in the future. And what

happens in the future is going to happen when the next

index is coming. So what do you do with that next

index? And what do you do with the next index depends

on how the index is published. So when I wrote my first

report, I didn't consider that it was -- that the next

index would be published in any way but back-to-back.

The same way the other indices have been published. So

there is only one point in time in which you can

actually physically link these indices. You have no

choice.

But in case the next index would be -- would

actually be published in a concurrent way for longer

than 12 months, then that instruction in 3.15 can become -- becomes applicable, because if you want to

reflect to inflation and use the most accurate index,

then, in my opinion, you have to link the indices as

soon as the new better one comes. This doesn't imply

any correction, is just linked as soon as the new index

comes.

1 14:27:24

So that is the disagreement, because in my opinion,

that's when it should be done and in Ms Harfouche's

opinion, it should be done following -- at the very last

moment when the old index is published and that is where

my instruction matters.

MR ROBB: So your evidence is that this instruction has

nothing to do with your opinion on COLI 1999, COLI 2007?

A. COLI 1999 and COLI 2007 I have expressed my opinion

regardless.

Q. So

A. As I said, I call --

Q. Did you agree with my question, that your evidence is

that this instruction has nothing to do with your

opinion on COLI 1999 to COLI 2007?

A. The one in 3.15?

Q. Yes.

A. Yes, I did say before --

Q. I just want to be absolutely clear about your evidence

and you're agreeing with me, I'm very happy to move on?

A. Yes.

Q. Thank you. Could we please go to the joint statement,

which is D190, page 23. Do you have that? This is item

33 of the joint statement. Looking the your column

here, it starts off you say Ms Harfouche considers that

my preferred approach does not come pie WPA because its

1 14:29:11

starting point this 2014 and thus all invoices

thereafter do not use COLI 1999 for as long as it was

available, but rather use COLI 1999 from 2005 to 2007

and COLI 2007 from 2007 to 2013." ^doc.

Do you see that?

A. Yes.

Q. Then you say:

"I disagree. The WPA does not state that COLI 1999

should be used for as long as it was available. Rather,

it states that COLI 1999 should be used or, if the index

is not available or if the parties agree otherwise, then

another mutually agreed index, or in the event of

a failure to agree then such index or method of

calculation as shall be determined by the independent

expert. The use of COLI 1999 prior to January 2014 is

therefore consistent with WPA." ^doc.

Then you say:

"The six words emphasised above, mean that the

parties can agree, or the independent expert and I am

instructed this tribunal, can determine a different

approach." ^doc.

So I take it from here that here you are saying that

the instruction that you were given at paragraph 3.15

and 3.16 of your second report, is relevant to your

assessment of how to transition from COLI 1999 to

1 14:30:32

COLI 2007?

A. This is an answer to another question, though. The

question is whether my approach complies with the WPA,

not whether the WPA determines my approach.

Q. Sorry. But you're saying here, you've justifying your

approach by reference to the WPA by reference to the

clause that we were just discussing in the context of

the instruction at paragraph 3.15 and 3.16 of your

second report?

A. Yes, yes. Yes, but the issue here is the of sit of what

you presented to me before. What you asked me before

was does this instruction matter for what you decided to

do about len king COLI 1999 and COLI 2007 and that is,

no, that instruction doesn't affect my opinion how to

link those indices. But here the question is: does my

opinion in my approach comply with the WPA or not? And

I say, well, yes, it does, for these reasons, because

this is what that says.

I'm not saying that I have decided this in order to

comply with the WPA. I'm just saying that my approach

does comply with the WPA, because this is what the

WPA this is how I read the WPA, is the other way

around.

Q. I see. So is your evidence, then, that if the words or

if the parties agree otherwise" didn't exist, then you

1 14:32:18

would accept that your approach does not comply with the

2 14:32:20

WPA?

3 14:32:29

A. No, because -- no. Because there could still be

4 14:32:40

recourse to -- if the index is not available, then

5 14:32:46

another mutually agreed index may not have been agreed

6 14:32:50

by the parties, but can still be decided by an expert or

7 14:32:57

by a tribunal.

8 14:33:00

Q. Hold on. So you start this by saying that the WPA does

9 14:33:05

not state that COLI 1999 should be used for as long as

10 14:33:09

it was available. Do you see that ^doc)?

11 14:33:12

A. Yes.

12 14:33:15

Q. Then you emphasise in the clause the words or if the

13 14:33:19

parties agree otherwise ^doc) do you see that?

14 14:33:21

A. Yes.

15 14:33:24

Q. And then you say in the next paragraph down:

16 14:33:28

"The six words emphasised above just to be clear the

17 14:33:31

words are or if the parties agree otherwise ^doc)

18 14:33:33

meaning that the parties can agree or the independent

19 14:33:35

expert and I am instructed this tribunal can determine

20 14:33:37

a different approach." ^doc.

21 14:33:38

Do you see that?

22 14:33:40

A. Yes.

23 14:33:45

What you're saying here is that the reason that your

24 14:33:47

approach complies with the WPA is because of the

25 14:33:47

presence of the words "or if the parties otherwise

1 14:33:51

2 14:33:52
agree?

3 14:33:52
A. Yes.

4 14:33:53
Q. Right.

5 14:33:58
A. Among other things. Or if the parties agree otherwise,

6 14:34:00
this is a whole clause, yes.

7 14:34:05
Q. Yes, so if those words were not in that clause, so

8 14:34:07
imagine they were struck through, they just never

9 14:34:09
existed, that you're agreeing, aren't you, that --

10 14:34:10
A. Why should I argue that? The words are in that clause.

11 14:34:14
PRESIDENT: Sorry, Dr Meschi, can you wait until the

12 14:34:16
question has been finished otherwise the transcript

13 14:34:17
doesn't pick up?

14 14:34:19
A. Sorry, sorry.

15 14:34:22
MR ROBB: I'm just asking you to consider the position that

16 14:34:26
would exist or if the parties agree otherwise", if those

17 14:34:30
words were not in that clause. Okay?

18 14:34:32
A. Yes.

19 14:34:35
Q. So if those words were not this that clause, then your

20 14:34:39
position would be, as I understand it, that your

21 14:34:43
approach does not kilometre ply with the WPA?

22 14:34:47
A. It does, because there is another "or" there. It says

23 14:34:51
"or if the index is not available or if the parties

24 14:34:55
agree otherwise or in the event of a failure to agree

25 14:34:57
such index or method of calculation as shall be

determined by the independent expert." ^doc

1 14:35:00

2 14:35:08 So if the parties agree otherwise were in there, you

3 14:35:12 should change or in the event of a failure to agree ^^,

4 14:35:17 right? So you can't just take out these six words.

5 14:35:20 They are part, an integral part of this clause or at

6 14:35:25 least it seems to me. As I said, I am not a lawyer, but

7 14:35:29 to me when there is one or, two or and then three or,

8 14:35:34 they have to be read in sequence. ^.

9 14:35:37 Q. I'll debate contractual interpretation I'm sure at

10 14:35:42 a later stage. But I want to go back to the point that

11 14:35:46 you have emphasised in the following paragraph these

12 14:35:49 sick words. You've emphasised them in the text or if

13 14:35:52 the parties agree otherwise", just as you had done in

14 14:35:57 your second report, and you follow up on that emphasis

15 14:35:59 in the next paragraph by saying that you understand

16 14:36:05 those words to mean, in effect, that your approach

17 14:36:10 complies with the WPA; is that right?

18 14:36:10 A. Yes.

19 14:36:14 Q. So the logical consequence of that is if those words did

20 14:36:18 not exist, your approach would not comply with the WPA,

21 14:36:20 would it?

22 14:36:23 A. Those six words have to be read with everything that

23 14:36:27 comes afterwards.

24 14:36:30 Q. But I'm asking you to imagine the situation where those

25 14:36:33 words are struck through, don't exist.

A. Sorry, but if you struck through these words, you have

1 14:36:36

to add something to the next part of this sentence.

Q. No, Dr Meschi. I don't want to get involved in

contractual interpretation. I'm just trying to

understand what your approach is. Take it from me that

if you strike through those six words, the clause still

makes sense.

A. It doesn't make sense to me.

Q. You emphasise those six words as giving the basis upon

which your approach to linking complied with the WPA,

didn't you?

A. The six words are the words that have been ignored

before. That's why I emphasise the six words. The

parties can agree otherwise or if they cannot agree, or

if they cannot agree, then ask an independent expert,

and then I have an instruction, this tribunal can still

decide ston a different approach.

Q. But

A. There is nothing in the WPA that says, as far as I can

tell, how do you link the indices.

Q. No, but you start this paragraph I disagree"?

A. Yes.

Q. Right? What you're disagreeing with is that COLI 1999

was to be used for as long as it was available; yes?

A. Yes.

Q. So your process upon which the understanding of the WPA

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1 14:38:27

2 14:38:31
on which you have proceeded is that it does not require

3 14:38:38
COLI 1999 to be used for as long as it is available; is

4 14:38:47
that correct?

5 14:38:50
A. It can be used if it is not available or if the party

6 14:38:55
agree otherwise or if they can't agree, an independent

7 14:38:56
expert.

8 14:39:02
Q. Well, you say the WPA does not state that COLI 1999

9 14:38:06
should be used for as long as it was available." ^doc.

10 14:39:07
Then you emphasise or if the parties agree

11 14:39:07
otherwise." ^doc.

12 14:39:13
Now, are you aware, has anyone ever suggested to you

13 14:39:18
that there is any agreement between the parties that

14 14:39:2
would satisfy the words "or if the parties agree

15 14:39:22
otherwise"?

16 14:39:30
A. I don't know. I don't know. I guess if they have an

17 14:39:32
agreement, we wouldn't be here.

18 14:39:32
Q. Let's assume that there is no basis upon which anyone

19 14:39:36
could suggest that the parties have agreed otherwise.

20 14:39:37
A. Yes.

21 14:39:41
Q. So then we're just left with or if the index is not

22 14:39:43
available"; yes?

23 14:39:44
A. Yes.

24 14:39:49
Q. And your up approach, as we can see from the third

25 14:39:52
paragraph there, beginning the six words, means that if

the only bit that this tribunal can be concerned with is

1 14:39:55

for siries it was available", then your approach is not

consistent with the WPA, is it?

A. No, I don't agree with you. Because what I understand

from this, I am emphasising those six words as pop esed

to the fact that they were ignored, the index is not

available. There are two ways in which when you have an

index that is still available, you can move forward.

The party -- one of the parties could say this index is

doing something wrong, right? And the other party may

say yes, and so they agreement or if they don't agree,

they can go into a different kind of process.

But my whole approach doesn't mention the six words,

no!

Q. We take it from me there is no -- in COLI 1999 to

COLI 2007, there's no question of the parties having

ever agreed at any stage that they needed to have a new

up desk, is there?

A. No, but they obviously disagreed on how to move forward

once that index was, I don't know when, when was it, in

2014, they disagreed on how to move forward.

Q. This whole debate that you're explaining this this item

33 arises because you're concerned that Ms Harfouche has

said that your approach does not comply with the WPA,

yes? That's what this issue 33, if we can see that from

the first paragraph of your column for item 332.

1 14:41:52

A. Yes.

Q. So what you're trying to explain is why your approach

does comply with the WPA?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And when you are trying to explain why your approach

complies with the WPA, the words that you alight are ^^

otherwise, is that right?

A. Well, I think this is -- the way I understand it is

explained in the paragraph below, right? The six words

emphasised above mean that the parties can agree, or the

independent expert if the parties don't agree the

independent expert, because it's if they agree otherwise

or they don't (^doc) somebody else can. That is why

those six words are important. They are important

because they can either agree or not agree. But there

has to be the start of a discussion in order to agree or

not agree. Is that is why.

Q. I'm going to put it to you again that the basis upon

which you consider that your approach complies with the

WPA is the presence of the words "or if the parties

otherwise agree"?

A. No, is or as the parties otherwise agree or in the event

of a failure to agree" it's both ^doc)

1 14:43:20

Q. Well, you haven't referred to the latter words, have

you? You've focused very much on or if the parties

agree otherwise", haven't you?

A. Yes, I am emphasising this, because it was not

emphasised before. It's just by contrast.

Q. No, because then you would have also emphasise the words

you have just mentioned for is very ^^ or or ^^ you

don't agree those, do you?

A. Six words emphasised above mean that the parties can

agree or independent expert can determine a different

approach. doc.

Q. And the different approach is not to use COLI 1999 for

as long as it is available, isn't it?

A. It could be let's forget about COLI 1999 and let's go to

the PPI if there is a PPI. It could be let's use the

same PPI that is used for the foreign portions. It

could be a lot of things. I don't know what it could

be. 9 14:44:20

Q. This is a debate about whether COLI 1999 has to be used

for as long as it's available and you're saying no, you

don't have to use COLI 1999 for as long as it's

available, aren't you?

A. According to what is written here, as I said, this is

a moot point, but according to what is written here, you

have two possibilities. You can use it until it's

1 14:44:48

available or if it is not available, or the parties

agree otherwise, you can use something else. Or if you

don't agree, then you have to put it to an authority to

decide or somebody with authority to decide.

Q. But reading this together, when you refer to a different

approach in that third paragraph, you are talking about

an approach which is different from the going forward

approach; is that right?

A. My approach?

Q. When you refer to -- you say a different approach, yes?

A. Yes.

Q. Right. By a different approach you mean an approach

which is different from the going forward approach?

A. Yes, it could be any other approach.

Q. So the only basis on which you can do something other

than the going forward approach is the presence of these

six words.

A. No. Why?

Q. I'm just reading your words, Dr Meschi. What you have

said, and we can rephrase this now you have explained

what a different approach means. The six words

emphasised above mean that the parties can agree, or the

independent expert and I am instructed this tribunal)

can determine an approach that is different from the

going forward approach ^doc) would that be a fair

1 14:46:30

summary of what you're trying to say?

A. The question is does this approach comply with the WPA

or not? So this is the question. Right? Does my

approach comply with the WPA or not? It complies with

the WPA because this is what the WPA says.

Q. Sorry, that --

A. So you're saying that if the WPA didn't say that, would

your approach comply with the within amount?

Q. No, that isn't even close to an answer to my question.

I'm going to look at the words that you use in item 33

in that paragraph that begins "the six words". Okay?

Right.

We had a debate a few moments ago about what you

meant by determine a different approach and you agreed

that what you meant there was that it can determine an

approach that is different from the going forward

approach proposed by Ms Harfouche?

A. By Ms Harfouche, not by the WPA. The WPA doesn't say

that that is the approach you have to use.

Q. No, can we just focus on what the questions are. So

I asked you a question to find out exactly what you

meant by a different approach in that paragraph. Yes?

I asked you a question before to work out what you meant

by a different approach" in that paragraph. Do you

remember that I asked you those questions? You have to

1 14:48:08

say "yes" or "no"?

A. Can you read it to me? I mean.

Q. I asked you a question before?

A. Yes.

Q. about what you meant by a different approach in that

paragraph. Do you remember that question?

A. No.

Q. Okay. Let's try again.

I'm going to suggest to you again that where you

refer to "a different approach" in that paragraph, what

you

A. In this one?

Q. The paragraph that begins "the six words"?

A. Yes.

Q. At the end of that you refer to a different approach".

Do you see that?

A. Yes.

Q. Right. What I want to do is confirm what your view is

about what you intended to mean by the words a different

approach". I'm suggesting to you that what you meant

was can determine an approach that is different from the

going forward approach proposed by Ms Harfouche.

Yes.

Q. Yes?

A. To be clear, Ms Harfouche considers that my approach is

1 14:49:23

not compliant, okay, and with the WPA. Because in her

opinion, in her opinion, not to the letter of the WPA,

her approach is the only one that complies. Whether

I agree or not with that and I don't, then the next

question is does my approach comply with it? There are

several and we are -- yes, there are several

possibilities in which a compliant approach can be

produced.

Q. Can I just confirm that -- you agree that what you meant

by a different approach was an approach that is

different from that proposed by Ms Harfouche as the

going forward approach. You've agreed with that. Say

"yes" or "no"?

A. Yes.

Q. ^ so the only basis that you put forward for saying

that the tribunal can determine a different approach is

the words "or if the parties agree otherwise"?

A. Or "parties agree otherwise or in the failure in the

event of a failure to agree then such index or method of

calculation shall be determined by independent expert."

^doc.

So the whole sentence after the or if the index is

not available. It's not just those six words, no.

Q. Can I just check that those are the only six words that

you've emphasised ^^?

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1 14:51:03

A. Yes, why those ^^ aren't they?

A. Mean that the parties can agree or the independent

expert, that's what I have written in that paragraph.

Q. Yes, but the words that you are referring to in that

paragraph are the words or if the parties agree

otherwise?

A. Yes, because if the parties do not agree, they call an

independent expert. If the parties agree, there is no

need. So that is the premise or if the parties agree

otherwise is the premise for what comes afterwards.

That's why they are so important.

Q. But why are the words if the eater ^^ important?

A. Because if they don't, if they agree, you don't have the

needs to call an independent expert and if they don't,

you call an independent expert or an arbitration

tribunal. That's how I read it. That's my

interpretation of this.

Q. The interpretation you gave and the explanation you gave

for your approach in the third paragraph only focused on

the six words or if the parties agree otherwise, do you

agree?

A. Yes.

And that's what you say means that your approach is

consistent with the WPA?

A. The words emphasise above mean that the parties can

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1 14:52:26

agree, or the independent expert." ^doc.

So what this means again, I shall say this again, is

that the parties can agree, so let's say that the index

is not available or that the index is available and the

parties agree otherwise or if they don't, they can go to

an independent expert.

Q. I'm probably going to have to --

A. Because -- yes, this is my way of reading this. I mean,

it's not the legal way. I don't know. But this is the

way I read it is if the parties agree otherwise or if

they can't agree, they can go to an independent expert.

But they first have to try to agree before they cannot

agree. That's the way I interpret it.

Q. Can I just ask you about the words at the end of the

second paragraph, the words that aren't italicised:

"The use of COLI 1999 prior to January 2014 is

therefore consistent with the WPA." ^doc.

am I right in thinking there's a typo and that

should be COLI 2007?

A. But COLI 2007 was not used prior to January 2014.

Q. I'm just trying to understand why you say the use of

having been through the words we've been through on

a number of occasions from the agreement, you then say:

"The use of call KWR-9 prior to January 2014 is

therefore consistent with the WPA." ^doc.

1 14:54:14

Q. Why have the words, why in your opinion have the

words you've set out got anything to adopt ^ accurately

why the 9 prior to January 2014 is consistent with the

WPA?

A. It's because of what is written (Pause).

I think it's COLI 1999. It's consistent with the

WPA.

Q. Well, I mean, put it this way. COLI 1999 is actually

specified in the supplemental agreement, so I don't

think anyone has ever, so far there hasn't been an issue

about whether COLI 1999 could be used prior

to January 2014. So I just don't understand why you

considered that the use of COLI 1999 prior

to January 2014 being consistent with the WPA, had

anything to do with the words you've just quoted?

A. Let me just -- give me a second. I want to read this

whole thing. (Pause).

Because this is an answer to what is written in the

first paragraph to the right, that refers to another

issue.

Q. Sorry, Ms Harfouche's first paragraph?

A. Yes, because I'm responding to that in this.

Q. Sorry. As I read it, your second paragraph, which

begins I disagree was a response to the point that

Ms Harfouche had made and you had set out in your first

1 14:56:51

2 14:56:54 paragraph, is that correct?

3 14:56:57 A. I think so, yes.

4 14:57:02 Q. Yes, okay. Tell me which bit of Ms Harfouche's column

5 14:57:04 you say you're responding to with the words:

6 14:57:07 "The use of COLI 1999 prior to January 2014 is

7 14:57:10 therefore consistent with the WPA." ^doc?

8 14:57:15 A. Yes, COLI 1999 prior to January 2014 is therefore

9 14:57:19 consistent with the WPA." ^doc.

10 14:57:25 I have not used COLI 2007 prior to January 2014.

11 14:57:32 I have linked COLI 2007 to COLI 2013 prior to 2014, but

12 14:57:39 I've not used it, it's used from 2014 onwards.

13 14:57:44 Q. Sorry, none of this is an explanation of what you meant

14 14:57:46 and what you were trying to say with the words the use

15 14:57:50 of COLI 1999 prior to January 2014 is therefore

16 14:57:56 consistent with the WPA." ^doc.

17 14:57:58 I'm just trying to understand why you thought the

18 14:58:00 words you dealt with previously about or if the parties

19 14:58:03 agree otherwise have got anything to do with the use of

20 14:58:08 COLI 1999 prior to January 2014 is consistent with the

21 14:58:26 WPA." ^doc?

22 14:58:31 A. Because what it says before is that I've been using

23 14:58:38 COLI 1999 from 2005 to 2007 and COLI 2007 from 2007 to

24 14:58:42 2014. I've used COLI 1999 and that use is consistent

25 14:58:50 with the WPA. If you want to use COLI 1999, yes.

Q. Are you now saying that we should just ignore the word

1 14:58:57

"therefore".

A. What is therefore?

Q. It is in the final sentence of your second paragraph.

The use of call why the priority January 2014 is

therefore dc?

A. Is therefore consistent. ^doc) yes.

Q. Would you like us to read it as if the word "therefore"

has been deleted?

A. No.

Q. So what is the relationship between the clause you've

just cited and your conclusion that use of COLI 1999

prior to January 2014 is therefore consistent with the

WPA.^^doc?

A. My use of COLI 1999 prior to January 2014, the way

I have used it, is therefore consistent with the WPA.

Because I have used COLI 1999 prior to January 2014 and

I have run asked it to COLI 2007 prior to January 2014

and that use that I have made of COLI 1999 is consistent

with the WPA. Because it was used until the very last

moment that it was available and from there on, it was

used as it was linked to COLI 2007. That is the use of

COLI 1999 prior to 2014. It was used in two ways. It

was used in the invoices because that was the index it

was agreed upon, and then it was used to do the linking

in 2007 in a way that I consider to be consistent to the

1 15:00:40

WPA and Ms Harfouche does not. That is how -- this is

what this sentence means, the last one.

Q. I'm afraid I'm going to have to move on.

Now do you recall that we were discussing the same

instruction about or if the parties agree otherwise" in

your second report, you said that in fact, it was

irrelevant to your opinion?

A. Yes.

Q. But clearly, here, you are suggesting that those words

are very relevant to your opinion, aren't you?

A. No! As I said before, what this is is an answer whether

my approach complies with the WPA, not whether the WPA

complies with my approach. My approach is end per

innocent. I have been asked what would you do if you

were in 2014 and you were put the question how do you

link -- what do you do? This is what have simply said

in my reports what I would have done and consistently

from the first report, where there was no issue of COLI

2018 all the way to my last, I've never changed my

opinion.

Q. Do I take it from your answer then that when you've

approach it you've basically ignored the terms of the

WPA?

A. When I approached it I approached it to ask the question

is there something wrong with this index? If there is

1 15:02:15

something wrong, "yes" or "no". If there is something

wrong, how would you do -- if there was nothing wrong,

how would you approach the transition? If there was

something wrong, how would you approach the transition?

For my opinion, if there is something wrong, I will try

to rectify what is wrong and that is what my approach

has tried to do.

Q. Again, sorry, that isn't an answer to the question. My

question is when you've embarked on your approach, have

you put to one side and ignored the terms of the WPA?

A. I mean, if the WPA said you have to use the going

forward approach come rain or high water, of course

I would have, I couldn't have done anything, right? But

because it gives leverage to do something else, I have

actually tried to do it. So the way I see this is like

there is a possibility of choosing an approach. What

should this approach be? But the fact that there is

a possibility does not have any impact on my approach.

Q. Sorry, that's not -- again, not an answer to the

question. My question is when you've set out writing

your opinion which now covers four report, I think, have

you put to one side and ignored the terms of the WPA?

I didn't even consider them, because I think if I am

instructed, right, there must be a reason why I am

instructed. Pause there is room for expressing an

1 15:04:11

opinion on these matters, otherwise why would I -- you

know -- I wouldn't have been instructed otherwise.

Q. Do you agree let say this tribunal finds that the words

or if the parties agree otherwise are simply not

relevant to this dispute?

A. That what is not relevant?

Q. About that the words or if the parties agree otherwise",

yes, you emphasise words, if the tribunal finds that

those words are simply not relevant to this dispute?

A. They're not relevant to my approach. I don't know if

they're relevant to the dispute or not. I am not

qualified to give you that answer.

Q. Sorry

A. No.

PRESIDENT: You need to wait until Mr Robb has finished

putting his question before you answer. ^^.

MR ROBB: Thank you.

So if the tribunal finds that the words or if the

parties agree otherwise" are not relevant to this

dispute, do you agree that your approach is not

consistent with the WPA?

A. No.

Could you just explain why you consider it still to be

relevant to the dispute? Why your approach would be

compliant with the WPA?

1 15:05:39

A. Sorry, can you say this again?

Q. Can you explain on that basis why you say your approach

would be compliant with the WPA?

A. My approach complies with the WPA because there is

a possibility of having an expert or a tribunal to

decide an approach.

Q. But if the tribunal finds that the clause requires that

the parties use COLI 1999 for as long as it's available,

and the words or if the parties agree otherwise aren't

relevant, then do you agree that your approach is not

consistent with the WPA?

A. For as long as they are?

Q. For as long as COLI 1999 was available -- I'll start

again, because I can see you're getting a bit lost.

Also assume the tribunal finds two things. One, the

parties agreed that COLI 1999 would be used for as long

as it was available. Two, the words or if the parties

agree otherwise are not relevant. Yes?

In that situation, do you agree that your approach

is not consistent with the WPA?

A. What about -- no, because if the index is not available,

so the tribunal has to find that, there is only one

approach and that is the going forward approach. If the

tribunal finds that there is only one approach, that is

the going forward approach.

1 15:07:44

Q. Right, that's again not an answer to the question.

A. What was the question? I am a bit confused.

Q. Assume the tribunal finds two things. First, the parties agreed that COLI 1999 would be used for as long as it was available.

A. Okay.

Q. Second, the words or if the parties agree otherwise" are not relevant.

A. Okay.

Q. In that situation, do you agree that your approach is not consistent with the WPA?

A. No! And the reason why I don't agree with that is because COLI 1999 was used until it was available. It was. It came out of a publication at the end of 2013 and until then, it was used to issue invoices. It was used until it was available.

Q. So I come back to the question. What an earth are the words or if the parties agree otherwise got to do with your am the tribunal being able to determine a different approach?

A. Because if the parties agree otherwise, if they don't, they have to go to the tribunal.

I'm going to move on. I may have to come back to this.

I want to look at what you call your guiding principles which are in your first report at

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1 15:09:47

paragraph 6.3, which is D179.

A. The second or the first.

Q. Your first report. D1-79 ^.

A. Okay.

Q. These are your principles, do you recognise these?

A. Yes, yes, yes, yes.

Q. Paragraph 6.3. Then just to be clear, you've got

footnote 200 towards the bottom of the page:

"I do not express any opinion on whether these

principles are consistent with the relevant legal

framework." doc.

Do I understand when you say relevant legal

framework, you mean the WPA?

A. Yes.

Q. So the first -- your first approximately, if we look at

this ^, the indexation approach to add ^reading...)

charge rates in line with ^reading...) true rate of

inflation." ^ doc.

So we can accept, I think you'll accept that true

inflation is never actually measured; is that right?

A. True inflation is never known. It's estimated, yes.

Q. And you say that the estimate is by I think you said

this before

A. Indices.

Q. Yes, -- (overspeaking) -- ^^?

1 15:11:34

A. It's the next best estimate which is the next estimate;

is that correct yes. Yes.

Q. So you never know it's only when the next index comes

out you understand what the best measure of inflation

was at any in any period?

A. Either that or if you know the formulas, but in this

case, the formulas were not known.

Q. I see, the formulas weren't known, so you would never

know whether 2013 -- COLI 2007 was an accurate estimate

of true inflation until you got COLI 2013 and you would

never know about COLI 2013 until you got to COLI 2018;

is that right?

A. No, you know about COLI 2007 because the formulas were

published, so it was known. They were published in

I think 2016 by GaStat. They were published. Let me

tell you where it is. It's the GaStat annual in 2017.

They do publish -- I need to go to the extracts.

Q. While you're doing that, can I just check, you're saying

the COLI 2007 formulas were known in about 2016?

A. Yes. Just one second. I have to find them.

So I think it is D14-1-7.

Yeah, this is the one.

I see, so this is the methodology and I think I saw from

the index page that it was published in 2017?

A. Yes.

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1 15:13:47

Q. So you wouldn't know whether you could accept --

COLI 2007 which was published in January 2013?

A. Yes.

Q. And you wouldn't know about whether that was, in your

mind, sufficiently accurate estimate of inflation until

2017?

A. Well, you would know that it would be -- you asked me

vis-`-vis 2013. 2013 have not been published when this

was published. 2013 was published a year later ^dict).

Q. Okay, but just then rephrasing the question, given your

answer: Subcontractor that you wouldn't know about the

accuracy or otherwise of COLI 2007 until 2017?

A. You would know that there was a problem between the two

indices because there was quite a difference in the

estimated inflation and I guess that is why in 2014,

there was no agreement as to how to move forward --

Q. That is absolutely not even close to being an answer to

the question.

A. Okay.

Q. We're asking about COLI 2007. You said that you

wouldn't know about whether an index was accurate or

otherwise until you have seen the formulae, yes?

Yes.

Q. And then you decided to go to this document which is

dated 2017, yes?

1 15:15:25

A. Yes.

Q. Which has the formulae for, you say, COLI 2007?

A. Yes.

Q. So as I understand your evidence, you would not --
nobody could know whether COLI 2007 was an accurate
index until 2017?

A. From the mentally biased, yes ^^.

Q. Yes, okay. So until 2017, you couldn't know whether
COLI 2007 was, in your words, a fundamentally biased
index or not?

A. Yes, you could only know that it had a completely
different measure of inflation from COLI 1999 and you
could know that COLI 1999 and COLI 2007 had not been
linked by the statistical agency, which should have
given quite a red flag.

Q. Sorry, again, you're answering -- trying to answer
different question. I understand that your huge theme
you want to push at every ^^ you don't like COLI 1999.
We all understand ^^?

A. No, that's not it.

Q. Please let me finish. What I'm asking you now is about
COLI 2007, so going back to COLI 1999 is not an answer
to my questions. So what I'm trying to say is that you
get COLI 2007 in January 2013, yes?

A. Yes.

1 15:16:51

Q. And your evidences is you don't know whether this is

a fundamentally inaccurate index until 2017; is

that correct?

A. You don't know if this is a fundamentally inaccurate

index until you see the formula.

Q. Is that correct?

A. Yes.

Q. And that's 2017 on your evidence?

A. That is 2017, you only -- as I said, you only know that

that index is not linked with the index before and you

know that this index is very different in terms of the

inflation that it represents. So in my view, if you

think that there is a problem, you ask the statistical

agency.

Q. But in --

A. Because the statistical agency will know.

Q. But just taking COLI 2007, you're not going to know

whether it's good, bad or otherwise until 2017; is that

correct?

A. You know that it's better than 1999, you don't know what

it is vis-à-vis the next one.

Q. Exactly. So you would have four years of COLI 2013

before you got to know whether, in your view, it had

a fundamental statistical bias?

A. COLI 2007?

1 15:18:23

Q. No, 2007?

A. Sorry, 2007. I personally would think, personally, from an expert point of view, if I see that a statistical agency is not linking to indice, I know that one of the two is wrong, right? So the one that is wrong has to be the old one, because otherwise they wouldn't have published a new one. That's how I would see it. If I was somebody who's using these indices, I will say, okay, let me pause for a second, let me look at what's going on here, and let me ask GaStat why is it that this indices are so different? And then they will tell you.

Q. But GaStat doesn't say anything about COLI 2007 apart there publishing it until 2017; is that correct?

A. In the public, no, but if you ask them privately.

Q. In terms of your first principle, to know whether you got an accurate estimate of true rate of inflation, you're going to need the formulae; is that correct?

A. So my first principle.

Q. The first principle is that you should adjustment the ^^ charge rates in line with an accurate estimate of the true rate of inflation; yes?

A. Yes.

Right. So just taking COLI 2007, you wouldn't know whether you had an accurate estimate of the true rate of inflation for about four years; is that correct?

1 15:20:14

A. Until about four years later?

Q. Yes.

A. Officially, you wouldn't know, but you could know it

unofficially by simply asking the statistical agency.

Q. I see. The other point about your first principle is

that we know what you think about COLI 1999, but you

would agree, wouldn't you, that as the parties

specified COLI 1999 in the supplemental agreement, your

first principle is not compatible with the WPA, is it?

A. But when they were actually using COLI 1999, nobody knew

that there was any problem with that index, nobody. And

they didn't have anything to compare it to, to say, hold

on a second, what's going on here? So, yes, it was

compatible -- compliant. It was the only index that was

available. They couldn't have done anything else.

Q. I agree they couldn't have done anything else, but your

first principle just isn't consistent with the WPA, is

it?

A. Why not? Because the parties agreed to adjust the local

portion profit charge rate in accordance with n estimate

of inflation which you consider is not an accurate

estimate?

A. But I department know ^^.

Q. Let's move on to the second principle. No up decision

tells you what true inflation is; is that correct?

1 15:22:03

A. What true inflation -- the population inflation, no.

It's an estimate, an index.

Q. And each index is just an estimate of true inflation; is

that correct?

A. Each index, yes.

Q. Generally, indices become more accurate over time; is

that correct?

A. Successive you mean or individually.

Q. Yes, discusscy indices will become more accurate over

time. They will become more accurate because of the

weights, because of the weights, because as time passes,

the weights become old. So that is by default.

Q. But also we know that NSAs often make methodological

changes to indices as they move forward in time; is that

correct? There are methodological changes which are --

which can correct for fundamental inaccuracies like the

methodological change that happened between COLI 1999

and COLI 2007 and there was the fundamental inaccuracy

that came from the formula for the elementary aggregates

and then there was another inaccuracy that came from the

use of a very outdated classification methodology,

because prior to COICOP, which was issued in 1999, the

classifications followed what was called S and A ^ which

is a system and national accounts and the last S and A

published I believe was in 1968. So this was the two

1 15:23:58

2 15:24:02 reasons why that index was fundamentally inaccurate and

3 15:24:09 the following ones were not.

4 15:24:12 Q. In your first report, you said that the going forward

5 15:24:15 approach was only valid with the only change between

6 15:24:19 indices was re basing and there were no methodological

7 15:24:20 changes?

8 15:24:37 A. I und meant call methodological changes.

9 15:24:42 Q. Look at paragraph 2.14 of your first report, D1-22.

10 15:24:51 A. Yes.

11 15:24:54 Q. You say that you refer to the going forward approach and

12 15:04:58 you say that's only to be used where the new index has

13 15:25:01 been re based and we know from your definition of re

14 15:25:07 based that it doesn't include any methodological

15 15:25:09 changes, does it?

16 15:25:11 A. Any fundamental method logical changes, I mean, it has

17 15:25:18 to be a substantive methodological change in order for

18 15:25:05 something for an agency not to link to indices. It has

19 15:25:27 to be fundamental. So every five years.

20 15:25:40 Q. Re basing, you've defined re basing as simply being only

21 15:25:46 a change to the baskets of goods and services. Is that

22 15:25:46 agreed?

23 15:25:46 A. Yes, yes, of course.

24 15:25:52 So you accept that COLI 2007 to COLI 2013 went beyond re

25 15:25:55 basing, didn't it?

A. Well beyond the change of weight, yes. It involved also

1 15:26:00

2 15:26:09
a change in the calculation methodology of the higher

3 15:26:12
aggregates.

4 15:26:15
Q. So it went beyond a re basing as you're defined it?

5 15:26:18
A. Yes, it was also had a method lodge dal change, yes, but

6 15:26:23
that methodological change, as I said, was not

7 15:26:27
substantive, it was compliant with international

8 15:26:32
guidelines standards, which GaStat is committed to.

9 15:26:42
That's why they linked it. They themselves linked it.

10 15:26:48
Q. I want to move on to your third principle.

11 15:26:49
A. Yes.

12 15:27:00
Q. Let's go back to your second principle.

13 15:27:03
I would suggest to you that if you were going to

14 15:27:05
apply your second principle properly, you would have

15 15:27:09
also said that the going forward approach shouldn't

16 15:27:11
apply between COLI 2007 and COLI 2013?

17 15:27:13
A. My second approach.

18 15:27:13
Q. Second principle, paragraph --

19 15:27:15
A. Sorry, my second principle.

20 15:27:17
Q. 101-79.

21 15:27:20
A. No, because it didn't have -- COLI 2007 did not -- the

22 15:27:26
methodological changes did not justify any need for

23 15:27:41
applying anything but --

24 15:27:42
Q. So your evidence is that in looking at how you do these

25 15:27:47
transitions, you've got to get into the formulae, yes?

A. I have to get into the formulae.

1 15:27:48

Q. Somebody is going to have to get into the formulae to

understand what's been going on; is that right?

A. Somebody has to know what changes have been made and one

good way of knowing what changes have been made, if

these changes are consistent, is by looking at what the

agency actually does, in a way it's like the proof of

the pudding is in the eating. If the agency links the

indices without any problems, it means that the indices

can be linked.

So every time that they published a next index, they

published it also back wards and when you look at how

it's published backwards, you can see that its nothing

but the old index re based. So you know that they are

linking them. So you know that there is no problem,

that the indices are all linked.

Q. So that what you're talking here about the

GaStat November 2020 approach; is that right?

A. No, no, no. I am looking about GaStat in every time

that they every time they publish a new index, so for

example, when they published COLI 2007 in 2013, they

also published it looking back. So they publish it

for it's in SAMA 49, they publish for 2013, 12, 11.

They always do that and so from that, you can see

whether it's been linked or not. So they do this for

2013, they do this with 2007, they do with this 2018

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1 15:29:34

And 15:29:35

Q. Sorry, the point was if you're going to understand why

the indexes are different, as I understand it you are

going to have to look at the formulae which are

published for each index eventually; is that correct?

A. No, you first look at whether the indices are linked or

not. If the -- if the indices are linked, then they are

compatible, right, because the agency has linked them.

If the indices are not linked, then you ask the agency

why haven't you linked them? Can yougy me an

explanation why these indices are not linked F they

don't want to give you an explanation, you can ask them,

okay, why don't you give me your best -- your view of

the most accurate measure of inflation? So if they give

you the index that's linked, then you realise, okay,

they have linked it. But if they don't, as they didn't,

they didn't give me a measure where there was a linking

between certain indices, then you know that there is

a fundamental problem, because there are cases in which

the agency may not want to state that there is something

wrong with an index.

Q. We'll come to GaStat's 2020 view in due course.

A. That's not in 2020. You can ask them any time. I asked

them in 2020 because that is when I was instructed.

Q. I think that's an appropriate time. It's 3.30. Unless

1 15:31:18

the tribunal thinks we ought to press on. I understand

we're finishing at 5.30, so if we can a 20-minute break

now.

PRESIDENT: That's quite all right, yes.

We'll break for 20 minutes and as before, if you

could not talk to anyone about your evidence. Thank

you.

(3.31 pm)

(A short break)

(3.57 pm)

PRESIDENT: We'll restart, then. Interest mess, as before,

you're still under your affirmation. Thank you.

MR ROBB: Can we pick up where we left off in terms of

looking at your principles and we've been through the

first two principles, now looking at the third

principle?

A. Yes.

Q. So just want to clarify obviously that if -- I think you

say here that this doesn't make any sense, does it,

because you've not -- if there's an overlap between the

two indices; if you look at your first principle, the

indexation approach should always use the most accurate

^reading...) as soon as it is made available. That

index should be linked to the previous index in the last

month for which that previous index was available."

1 15:58:38

^doc. 15:58:38

Is if there's an overlap between the publication of

the two indices, then that approach won't work, because

you've got a make a choice between the last point in

time at which the old index is available or the first

point in time at which the new index available?

A. Yes, actually, can I explain? The second part of this

point (3), that index should be linked, it's new in this

report, it was not in my 2022 report and in my 2020.

Is it possible to pull up my 2022 report? Because

I appreciate what you are asking --

Q. As I understand it, you've clarified it later, by saying

at he stage, you didn't think there would ever be an

overlap?

A. Yes, yes.

Q. But if there is an overlap, that approach obviously

can't work. You have to make a choice --

A. Yes, yes, because I assumed, so maybe there is no need.

I assume that the next index that's going to come out is

going to come out in the same way as 2013 and 2018 have

come out. So there is going to be -- when the new index

comes out, the other one immediately stops. Sorry,

Ms Harrouche actually pointed out to me, but what

happens if they come out concurrently? And that is what

I clarified in the second report.

1 16:00:23

Q. Thank you. Then I just want to look at your decision to

link COLI 2007 and COLI 1999 in 2007 and not in any

other year. Do you accept that choosing to link those

two indices in 2007 provides the best financial outcome

for SWPC?

A. The best in what sense?

Q. The lowest amount they will end -- they would have to

pay SEPCO. Do you agree that linking in 2007 provides

the best outcome for SWPC?

A. The fairest. As far as I'm concerned, yeah, it's the

fairest.

No, I --

A. You can link them in 2005.

Q. Yes, and if you link them in 2005, then SEPCO's losses

would be greater than linking in 2007, wouldn't they?

A. If I link them in 2005 SEPCO's losses would be greater?

Q. Yes?

A. I don't knowing because I've not done the calculation.

I've linked them in 2007 for a number of reasons.

Q. Yes, but for example, if we look at your figure 4-4 at

D1, page 58. We can see that in 2007, COLI 1999 gives

you a lower estimate than COLI 2007 and in 2006, they're

about the same. Do you see?

A. Yes. But

Q. Do you agree that if you linked them in 2005, then you

1 16:02:25

would have ended up with a greater loss for SEPCO than

by linking in 2007?

A. If you link them in 2005, you do the same -- that is not

possible, because actually, if you link them in 2005, it

is the same approach as it's used in the invoices. It's

mathematically equivalent.

Essentially, what it does -- yes, it's the identical

approach as in the invoices, identical. And then if

that is the case, there would be -- there wouldn't be

any losses in my calculation while there is ^^. The

reason why I think it can be seen from -- there is

a photograph that explains it quite easily ^ which is in

my presentation, it's slide 14. So if you link them in

2007 - 2005, you adjustment on the green line.

Q. Yes. What we see from there is that COLI 1999 is lower

than COLI 2007?

A. You have

Q. The blue line is lower than the green line for a period

prior to 2007, isn't it?

A. Yes, but then the green line is the line that is going

to be forever. So what that means is the light pink

area, that's wiped at completely.

Q. No, if you had linked them in 2005, you would not have

wiped out all the losses, you would have increased

SEPCO's losses, wouldn't you? (Pause)

1 16:04:59

Can I move on? I'll come back to that.

Can I move on to your fourth principle, which is

over the page at D1-80.

A. Okay.

Q. It's your fourth principle ^^ which just happens to be

over the page. Here you're talking about a tradeoff

between certainty and accuracy. Do you agree?

A. Is D?

Q. D1-80, subparagraph (4) at the very top of the page.

A. Yes.

This is your fourth principle?

A. Yes.

Q. Presumably by accuracy you mean how close you are to --

how close an index is to estimating true inflation?

A. Yes, is the accuracy of the index, yes, yes.

Q. You can only quantity few the accuracy of the index by

reference to the next index; is that right?

A. Yes.

Q. So when you're talking about a trade off between

accuracy and certainty, that means you're talking about

accuracy in a relative sense, not an absolute sense,

aren't you?

A. Yes, because as I said, apart from the fundamentally

wrong issue, successive indices are always more accurate

by default. So essentially the question that then you

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1 16:06:29

have is that given that these indices are being

published with a few years delay, what do you do? Do

you go back every time and then you are in a situation

where you are always on the green line, as it were, so

you get the most accurate estimate or do you actually

give also weight to certainty? Unless there is a reason

to believe that there is a fund meant bias and therefore

there is a fundamental reason to rectify the situation,

you make a judgment call as what is the best thing to do

in that respect. So that is what I meant. That's why

to me that principle is important.

Q. Thank you. Can I just now move on to -- step back

a bit, looking at the two ways in which contracts can

deal with inflation in a long-term project.

A. Okay.

Q. There are two basically ways that you can deal with it.

First, you can use published inflation indices; is that

correct?

A. Yes.

Q. Here even takes the risk that the actual inflation

experienced by the contracting party will be greater or

less than the inflation estimated in the published

index?

A. Can you point me to where this is written?

Q. No, it's not in in your report. I'm asking you some

1 16:08:07

questions. I'm asking you some questions about your

experience about how you can use --

A. Okay, okay, yes.

Q. First of all, the first opportunity published inflation

indices --?

A. Yes.

Q. There even takes the risk that the actual inflation ^^

contractual party will be greater or less than the

inflation estimated in the published index; is that

right?

Everybody?

Q. People take the risk, contracting parties take the risk

that the actual inflation experienced by the contracting

party will be greater or less than the inflation

estimated in the published index?

A. Yes.

Q. This approach of using published inflation indices

favours certainty simplicity and clarity?

A. Okay.

Q. Do you agree?

A. With respect to what?

Q. Do you agree that using published inflation indices

favours certainty, simplicity and clarity?

A. Yes, but with respect to what?

Q. Well -- I mean, you say that there are two approaches,

1 16:09:12

A. right? 16:09:12

Q. 16:09:15 We'll move on to the second approach. Second approach

is 16:09:18 you can look at the actual costs to the parties that

being 16:09:22 compensated and how those costs change over time

due to inflation. 16:09:26 Some sort of cost-plus mechanism?

A. Okay. 16:09:26

Q. 16:09:28 About yes? That's another type of method dealing with

inflation? 16:09:30

A. Yes, yes. 16:09:31

Q. 16:09:33 You agree that that is a complicated time consuming and

expensive process? 16:09:36

A. Well, I guess 16:09:43 that it's prone to a lot of quarrels. So

there will be spend receive. 16:09:47 Because it requires a lot

of scrutiny, right? 16:10:02 (expensive ^.

Q. 16:10:07 A lot of quarrels sorry. Pause I couldn't see my

transcript. I couldn't check ^^? 16:10:10

A. It's my accent. 16:10:12

Q. No, no, a lot of disputes? 16:10:13

A. Yes. 16:10:15

Q. By we know 16:10:18 that some contracts do adopt this method of

the sort of cost plus method, 16:10:21 presumably because the

parties value perceived precision over certainty, is 16:10:28

that fair enough? 16:10:30

A. I think if they 16:10:36 wanted real certificate, because there

is uncertainty when it comes to inflation, if they

1 16:10:38

2 16:10:45 wanted complete ^ certainty, they would say, okay, let's

3 16:10:51 have -- let's calculate a charge which is an underlying

4 16:10:55 cost plus a margin, at times zero and then just add

5 16:10:59 X per cent every year ^^. And that would be the

6 16:11:02 certificate, 100 per cent certificate, right? And then

7 16:11:05 there would be on the other side, you would say, okay,

8 16:11:08 let's not to that. Let's check the cost every single

9 16:11:1? year or whatever interval you have to do, and then add

10 16:11:13 a margin on top and that will be the complete accuracy

11 16:11:23 provided that they can agree that that is -- right?

12 16:11:27 Then there would be something in the middle, which

13 16:11:33 balances the two, which would be let's index to the

14 16:11:37 inflation. Yes, yes, yes.

15 16:11:4? Q. I suggest to you the parties here have chosen a process

16 16:11:43 that favours certificate, simplicity and clarity; is

17 16:11:46 that right?

18 16:11:47 A. I?

19 16:11:51 A. Certainty, simplicity and clarity over the one that is

20 16:11:54 100 per cent accuracy you mean?

21 16:11:57 Q. You agreed with me before that using publish inflation

22 16:12:00 indices favours certainty, simplicity and clarity, do

23 16:12:00 you agree?

24 16:12:02 A. Yes, I do, I do agree.

25 16:12:05 Q. That's what the parties have chosen -- and that's what

the parties have chosen here ^^?

1 16:12:08

A. In this particular dispute?

2 16:12:09

Q. Yes.

3 16:12:10

A. That's what the parties have chosen.

4 16:12:11

Q. Yes. And your approach requires a case by case analysis

5 16:12:16

of each index, doesn't it?

6 16:12:23

A. No.

7 16:12:23

Q. You have to look at why each index has been brought in,

8 16:12:28

it's methodologies, you've got to make an assessment of

9 16:12:30

whether there's any fundamental flaws in your view

10 16:12:33

before you can decide the correct way to link these

11 16:12:37

indices, is that right?

12 16:12:43

A. No, you just look at whether the index has been linked

13 16:12:47

or not. That gives you the answer. Then you use it and

14 16:12:50

move forward.

15 16:12:50

Q. Before you were saying you would needs to look at things

16 16:12:52

like the formulae, et cetera?

17 16:12:56

A. Yeah, in order to assess the type of bias that there is.

18 16:12:58

Q. Yes.

19 16:12:58

A. You know, if I want to assess the type of bias that

20 16:13:00

there is, I need to know how the intention has been

21 16:13:03

calculated, but the very fact that the index is linked

22 16:13:07

means that the index here is acceptable.

23 16:13:11

Q. But the fact that you've said that things like

24 16:13:14

fundamental bias, et cetera, are relevant

25 16:13:18

considerations, means that your view is that you have

1 16:13:21

got to examine such things from a statistical

perspective before you can make a decision about an

index, is that right?

A. But that is done by the statistical agency, right?

I mean, that's what they die. They publish the indices,

every time they publish one index or at least GaStat,

every time it publishes the new index, it links or it

doesn't link it to the previous one and the only time

where they haven't tunnel that is in ^ 2012, 13.

Q. Can I ask you to look at item 15 of the joint statement,

which is D130, page 9.

A. You said item 15.

Q. Item 15, D150, page 9.

A. Okay, right. (D130 ^.

Q. So you say in situations where the new indecision has

changed in a way this wonder yowed a simple rebasing you

appropriate linking method must be evaluated on

a case by case basis." ^doc.

Do you see that towards the bottom of your first

paragraph?

A. Yes.

Q. So unless you're going to change your evidence, as

I understand it, your view is that you've got to

consider whether each index goes beyond a simple

rebasing and then where it does go beyond a simple

1 16:15:20

2 16:15:23
rebasing, you have got to evaluate on a case-by-case

3 16:15:24
basis?

4 16:15:26
A. Yes, that's correct, that's correct.

5 16:15:30
Q. Your evaluation on a case-by-case basis means you've got

6 16:15:34
to have a statistical even put to examine the formulae,

7 16:15:37
whether there's any statistical bias or flaws all that

8 16:15:40
kind of thing before you can approach your case-by-case

9 16:15:43
basis?

10 16:15:49
A. No. I mean, if the statistical agency goes and links

11 16:15:53
the index, it means that the index is Lynncable and it

12 16:15:58
has been linked. It's only if he doesn't link it, then

13 16:16:02
you open the proverbialial can of worms and you have to

14 16:16:06
go and yourself check why there is -- whether there is

15 16:16:11
something fundamentally wrong. But if they link them,

16 16:16:14
it is on a case-by-case basis. You just look at whether

17 16:16:19
they're linked or not. If they're linked, it means that

18 16:16:26
the statistical agencies considered them Lynncable and

19 16:16:30
therefore, that they there are no problems with them, in

20 16:16:32
terms of bias.

21 16:16:37
Q. But then this is the explanation you have just given is

22 16:16:42
not the same explanation you gave at item 15, is it?

23 16:16:45
Tap than of the joint statement ^^?

24 16:16:49
A. Why?

25 16:16:53
Q. Because once it goes beyond a simple rebasing here, you
say you've got to evaluate on a case-by-case basis, you

1 16:16:55

2 16:16:59
don't refer anything to what the national statistics

3 16:17:06
office does.

4 16:17:00
A. Is I mean, you assume that they are correct, if they are

5 16:17:13
linked, no?

6 16:17:15
Q. I'm going to move on.

7 16:17:21
Can we please now go to page D1-6806 your first

8 16:17:51
report, paragraph 5.11.

9 16:17:53
Do you have it there?

10 16:17:53
A. Yes, I do.

11 16:17:58
Q. Here you give your six reasons for your view about where

12 16:18:01
the going forward approach is not appropriate for

13 16:18:04
COLI 1999 to COLI 2007; is that right?

14 16:18:06
A. Yes.

15 16:18:12
Q. Is it correct that all these reasons only apply if the

16 16:18:17
tribunal accepts SWPC's case about the parties'

17 16:18:21
rationale? Do you agree that?

18 16:18:29
A. The tribunal can accept or not whether this approach is

19 16:18:34
correct or not. But as far as I am concerned, the going

20 16:18:40
forward approach regardless of the rationale, is

21 16:18:43
incorrect, for all these reasons.

22 16:18:50
Q. If we just pause there. If we look at item (3), one of

23 16:18:55
the reasons you've given is because it's not -- you say

24 16:18:58
the going forward approach isn't consistent with the

25 16:19:00
parties' rationale?

A. Yes, yes.

1 16:19:01

Q. If the tribunal doesn't accept SWPC's rationale, that

reason must fall away?

A. ^ck num)(3), yes, of course, of course.

Q. Moving on to the various reasons, so reason 2, you've

got two parts to reason 2, first it's an an accurate

measure of inflation and secondly it's been effectively

disregarded by SAMA and GaStat?

A. Yes.

Q. Can we look at the argument that's it's been effectively

disregarded by SAMA and GaStat.

202409240160A. Yes.

Q. We can pick that up in your first report at D1-58,

paragraph 4.12. It's on the screen for you?

A. Yes, I'm there.

Q. The reasons you give on 4.12 through to 4.25, I think

are as follows: GaStat has removed some data pertaining

to COLI 1999 from its website, that's the first one.

Then you say GaStat provided you with its November 20 to

view of the most accurate estimate of inflation this

does not include any data from COLI 1999 and then once

COLI 2007 was available, SAMA no longer referred to

COLI 1999 inflation or the linked the indices." ^doc.

Those are the reasons you give in your report; is

that right?

A. Yes.

1 16:21:22

Q. The first point I want to see if we can agree is that at

no time either publicly or privately, has either GaStat

or SAMA said that they have decided to disregard

COLI 1999?

A. Are you asking me?

Q. Yes.

A. They have told me when we had a meeting, they said that

the indices could not be linked and that they gave me

their measure of their view of the most accurate

inflation index that did not contain COLI 1999 and they

have actually taken out COLI 1999 from the website for

all the values prior to January 2001 and

subsequent December 2011. That is in figure 4-5.

Q. Yes, sorry, I'm trying to distinguish between inferences

that you've made from things that GaStat has done and

whether GaStat has ever actually said to you, yes, we

have decided to disregard cooling 9. I'm going to put

it to you that at no time has GaStat said to you better

disregarding COLI 1999?

A. I didn't ask them that question. I asked them in they

had linked it or not and they said that they couldn't be

linked publicly they have never made that statement ^,

but I would not -- I would never expect them to do so.

Q. You didn't ask them the question and they've never -- so

you're right, you're agreeing with me that they're never

1 16:23:11

said we disregard COLI 1999?

A. Not in public, never, no.

Q. Not only in public, but not in private either, have

they?

A. No, I haven't asked them, I asked them in they linked

them, which is to me the same.

Q. It's true, isn't it, that at the meeting to discuss

its November 2020 view, GaStat expressly said that they

had linked COLI 1999 and COLI 2007?

A. That is in the minutes, but I have not found it

anywhere. It's nowhere to be seen.

Q. So you agree that why don't we just bring it up, it's

D11, page 4.

A. D?

Q. It will have to be on the screen.

A. Sorry.

Q. If you scroll down. It should be 3. As for the data

linking between KWR-9D the CPI and 2007 CPI the linking

occurred at the general price index only due requested

then there's an explanation?

A. Yes.

Q. So the point is that ^doc) insofar as GaStat has said

anything expressly about whether they've linked

COLI 1999 and COLI 2007, they have said that they have

linked it, haven't they?

1 16:24:34

A. These are from the minutes of the meeting, right? When

I received these minutes, I prepared list of questions

in which I asked the follow-up question. But the

meetings were not forwarded to GaStat, so GaStat were

never asked that follow-up question. So what I have is

the fact that they have not -- they have never provided

publicly or privately, any evidence. That is for me,

any evidence that this index had ever been linked and

that is for me enough. Yes, it is enough. They may

have their own -- the very good reasons for not wanting

to say, to make certain statements, because they may

have an impact on --

Q. Pausing there, so unless you're going to say that in

this minute, GaStat has either mistaken or not telling

the truth, then it is clear that GaStat did not

effectively disregard 1999, isn't it?

A. Well, they did, because effectively they did disregard

it, actually, because they never hin asked it anywhere,

anywhere.

Q. In this minute, GaStat say they have done the linking,

don't they?

A. They may have done the linking and realise that it was

wrong and therefore put it aside and never published it.

Was nerve publish n ^^ not given to me ithere.

Q. Basically, you're picking and choosing between various

1 16:26:17

things that GaStat has done and GaStat has said. GaStat

is saying here --

-- (overspeaking) -- ^^

A. No.

Q. ^^ I'm not picking and chootding. I am, from the

evidence that's before my eyes, and from the fact that

there obviously is a problem with the index, it is

obvious, obvious to me, that that index was never linked

and that there were some very, very important reasons

why that index was not linked.

When you say that GaStat effectively disregarded

COLI 1999, when are you saying this happened?

A. Sorry, if.

Q. When do you say that GaStat effectively disregarded

COLI 1999?

A. When they publish COLI 2007 without linking it to the

prior index. It's already, that is already a sign that

the index was not longer in use. While for all

successive indices when they published them, they had

linked them to a number of years prior.

Q. But you wouldn't know about what GaStat was going to do

with later indices until those later indices were

published. You would ^^ COLI 2007 and COLI 2013 until

2018, would you?

A. I wouldn't, no. I was doing this in 2020 and 2022 and

1 16:27:48

In 20 if, you mean that they had ^ not linked and

if you use these indices, like, for example, you're

linking the preponderance I, you are American the PPI

for the other, for the foreign portion of these charge,

right? And you will have seen that the American PPI are

all linked to each other without any problems.

Q. Can we look at the list of questions that SWPC provided

to GaStat and we can pick that up at D101-3.

Then if you scroll down to 6. It says this was

a question that you prepared, was it ^?

Yes.

Q. Please could you provide documents describing the

specific reasons why the relevant stay sties call agency

decided to retire COLI 1999 and replace it with

COLI 2007?*

^doc) then we can see you asked whether any

particular deficiencies, whether any particular

guidelines, if we scroll down, please. Was the

calculation of COLI 1999 guidelines and if so how ^^

^doc) then we get the answer from GaStat in the letter

of 5 November 2020, which is at I think it is D92. No.

It might be B92.

If we go down to page 5. Yes, these are the answers

that you got back from GaStat; is that right?

A. Yes, yes.

1 16:30:13

Q. We can see at item 3 they explain the changes to the

phases of the CPI?

A. Yes.

Q. If we go through, they start very early in the process.

We can see in 1980. If we can go through to page 6,

please. In fact, sorry, if you could go back up to

where we were, just explain, pick out a part that

they bit further up.

So they say there constantly updating all as experts

of the CPI programme in order to improve and develop the

CPI programme and chai the highest (^ck reading...)

comprehensiveness in relation to the CPI programme data.

The important factor for change is to reflect the

changes in household consumption patterns in the KSA

GaStat formally central ^reading...) information is

committed to introduce updates to CPI in accordance with

the latest international recommendations requested

that's the general approach they have ^doc) if you go

through to page 6. If we can scroll down so we can see

the reference to phase four. This is COLI 1999, isn't

it, in phase four, if you just keep scrolling down,

we'll get phase four towards the following page, no, the

other way, so phase four at the top. That's it.

Do you recognise this, you must remember this,

presumably? Do you remember this?

1 16:32:01

A. Yes.

Q. So then this phase four is COLI 1999, isn't it? If we

scroll a bit further down, there we go, the reference to

1999. Then if we go to phase five, that's then

describing the COLI 2007. If we just pause there. Is

that correct?

A. Yes, it is.

Q. So there's nothing there saying that in respect of

COLI 2007, no statement there that COLI 1999 should be

disregarded, is there?

No, not at all.

Q. When you met privately with GaStat, they didn't say that

COLI 1999 should be treated differently from other

indices, did it?

A. They did say to me that it couldn't be -- they did say

it in the meeting that the index couldn't be linked and

that's why I asked the follow-up question.

Q. We looked at the meeting minutes before and they said

that the index could be linked?

A. Yes, I know. They say that they had linked the

intention in the minutes, but when we were in the

meeting, they said that the indices couldn't be linked

and that's why I asked a series of follow-up questions,

because they discussed the linking of the meetings, the

formulae. I --

1 16:33:37

Q. So you

A. I prepared a series of questions to be asked. They're

not - 16:33:44

Q. You're saying the minutes are inaccurate, are you?

A. Sorry.

Q. Are you saying that the minutes are inaccurate?

A. Yes, absolutely. They weren't inaccurate. They didn't

cover everything that was discussed and therefore, we

asked follow-up questions, but the follow-up questions

were not delivered to GaStat. Because we were very,

very close, because essentially what happened was that

I was appointed in June, in July we asked for an

appointment to discuss these indices with GaStat. We

finally managed to get this appointment for November,

but by 17 December, the relationship was due ^ and

therefore, there wasn't anymore time. But I did prepare

a list of questions for them about the things that were

not in the minutes, but have been discussed in the

meeting.

Q. So your evidence is that in that meeting, you were

told -

A. Yes.

Q. that GaStat what? Can you remember the precise

words? I think it's really important that you give us

the precise words.

1 16:34:57

A. Sorry?

Q. What were the precise words that GaStat used?

A. They said that indices could not be linked. It's in the -- I think the precise words are in those minutes.

I can't remember them.

Q. We just looked at the minutes?

A. Sorry, are in the follow-up questions that I prepared,

but this was four years ago. So the precise words

I cannot remember. But I do remember very distinctly.

Because otherwise, quite apart from the fact that they

actually hadn't linked the indices, so I have no reason

not to believe them.

Q. You didn't say anywhere in your reports that the minutes

weren't accurate, does you?

A. Oh, no, no, I wouldn't.

Q. In the reports that you've served for this arbitration,

you haven't said that the minutes of those meetings were

inaccurate, have you?

A. No. I didn't base my opinion on just on these meetings,

but I also on what I heard and what I saw.

Q. But hold on. If you know when you're putting your

reports you're supposed to put in everything that's

relevant, yes?

A. Of course, yes.

Q. And you don't think that mentioning that you were told

something different in a meeting than what's in the

1 16:36:16

minutes that you rely on is spg that's worst mentioning

in your report?

A. It is in those questions, in those follow-up questions.

If you want, we can --

Q. As far as I know, we don't have those follow-up

questions. I think we'll have to move on, but it's not

in your report, is it?

A. No, it's not in my report.

Q. We'll come back to that?

Because essentially, what happened was that they

provided me with the I decision and so from that index,

it was very obvious to me that they had not linked KWR-9

to anything they linked all the other indices and I had

all the information that I needed to have.

Q. In the meeting --

A. Without --

Q. But in the meeting they actually said they had linked

COLI 1999 to COLI 2007, department they?

A. They said what you read.

Q. Yes

A. Yes, but they didn't do it.

Q. You don't know who they've done, do you?

A. Well, they may have done it or tried to do it, but they

never published it. It's not in the public domain

anywhere.

1 16:37:32

Q. Can we just move on now to your reasoning based on SAMA.

I think in the joint statement at item 28, which is

D130, page 18. At the bottom of page 18, do you have

that? You say:

"Regarding SAMA I agree with Ms Harfouche's point

that SAMA appears to treat the switch to COLI 2007 in

a similar manner ^^ 2013 in COLI 2018." ^doc.

So you're agreeing with Ms Harfouche that SAMA

treats COLI 1999 in the same way as the later indices,

do you agree?

A. Yes, they don't prepare the indices, they just publish

them and I agree with Ms Harfouche, yes.

Q. That was just based on a straightforward examination of

the SAMA reports, wasn't it?

A. Yes, yes.

Q. Ms Harfouche referred to SAMA's 54th annual report as

show that is in 2018, SAMA referred only to control 13

and not COLI 2007. Do you agree with that?

A. Yes, yes, I agree with that.

Q. And you had the 54th annual report from SAMA as your

exhibit mm19, which is at D23. Then we go to page 9 and

page 10. Scroll down a bit, I think. There we can see

the reference to in table 7.1, we see the reference to

general consumer price index for all cities 2013 equals

is hundred. That's COLI 2013, isn't it?

1 16:39:50

A. Yes. 2 16:39:51

Q. You had all the information to hand, but you still 3 16:39:54

concluded that SAMA's treatment of COLI 1999 was 4 16:39:57

materially different from it treatment of later indices? 5 16:40:02

A. Yes, I made a mistake. There is actually a document 6 16:40:07

that is the minutes of a meeting in 2015 with a meeting 7 16:40:13

that SAMA had with WEC and other companies where the 8 16:40:17

representative for SAMA said that COLI 1999 had been -- 9 16:40:22

I don't remember the exact words, but essentially had 10 16:40:27

been dismissed and should not be considered. But my 11 16:40:32

understanding is that the minutes of these minutes are 12 16:40:43

not in evidence. 13 16:40:46

Q. Yes, exactly. Slightly surprised that Dr Meschi felt it 14 16:40:46

appropriate to refer to a document that she clearly 15 16:40:50

knows isn't in evidence and presumably shes no that we 16 16:40:53

don't accept the provenance or authenticity of that 17 16:40:56

document. So that's the brief document which SWPC 18 16:41:02

declined to apply to have put in. So I would say I was 19 16:41:04

surprised by Dr Meschi' ^ck) I'm not actually, but it's 20 16:41:05

not appropriate for her to be making reference to 21 16:41:10

documents that she knows aren't in the bundle. 22 16:41:13

I request the tribunal ignore that statement. 23 16:41:29

So you accepted in the joint statement that 24 16:41:30

Ms Harrouche was right and I'm going to put it to you 25 16:41:38

that any reasonable, can of those SAMA reports which you

1 16:41:34

had would have revealed that Ms Harfouche was correct,

wouldn't it?

A. Yes, I agree with her. She she's right.

Q. One could suggest to you what's ^^ preconceived idea

about COLI 1999 and you simply try to find evidence to

support your ideas about COLI 1999 and you've just gone

on and ignored any evidence that's inconsistent with

that idea; is that correct?

A. No. I accepted that this is wrong, that I was wrong

with this, but to me, the fact that -- again, the fact

that the statistical agency did not ever link an index

to another is proof that that statistical agency does

not consider that index linkable. They have never

linked it, never.

Q. Can I move on, please, to your arguments around the

removal of data relating to COLI 1999. This is at page

D1-59 of your first report, which is at paragraphs 4.14

to 4.15. Then we'll deal with the other parts of your

report, but you accept, don't you, that COLI 1999 data

is available for 2001 to 2010 on the GaStat website?

A. It is, yes, it is. 2 December 2011, not 2010.

Q. If you look on the GaStat website for those years,

you're only going to get cot 9 data, aren't you?

A. For what? For those dates?

Q. For those years?

1 16:43:26

A. No, you don't, because there is historical series that

goes in 2014, that goes back for many years and then

there is the metadata which is accessible and it goes

back to 2015 for the public use and it has a link for

people who have -- how do you call it -- the password

for historical data and it has an email address that

people can write to if they want the see are you that is

goes back.

Q. Can we please take up Ms Harfouche's second report,

D112, page 16.

I'm sure you've considered this, haven't you?

A. Yes, that's 2014 and that's the series that -- that's

the link to where the longer series is, in Excel.

Q. Yes, so if you go into the 2014 year, then you can find

historical data, is that right?

A. Yes, because these are the releases, right.

Q. Sorry, if we go to D112, page 14, this shows you what

happens if you go into particular years for 2002 to

2010. You only get COLI 1999 data, don't you?

A. This is 2024.

Q. But do you agree that if you go on to the GaStat website

and click on their years for 2002 to 2010, you only get

COLI 1999 data?

A. Yes, you get the PDF, there are no Excel feels, because

those are the releases, those are the releases. In 2002

1 16:45:46

to 2010, what they released was COLI 1999, but funnily

enough, for those years you don't have the Excel file,

you only have the PDF. I don't know if -- I think there

must be a picture in Ms Harfouche's report of those

years.

Q. The point is if people want to find out what inflation

was for those years today, what they will will finding

is COLI 1999 data, isn't that correct?

A. No, they will go to the -- they should go to the met

data, because nobody will want to find the data into

a PDF file or into the metadata, that is the API and

they can get the whole series.

Q. The only way you can find COLI 2007 data for those years

if you go into the 2014-file; is that correct?

A. On the releases, yes, because that's when it was

released.

Q. What we can see is that GaStat is still publishing

COLI 1999 data, isn't it?

A. When?

Q. Well, this is as far as we know, this is the --

A. Yes, these are the releases, these are the official

releases of the data.

Q. There's nothing on the GaStat website to say that this

data shouldn't be used, is there?

A. No.

1 16:47:12

Q. GaStat's actions show that they continue to publish and make available to the public COLI 1999 data for the years 2002 to 2010?

A. They don't publish it. The document that is on the website was published in 2002. Now it starts from 2002. Every year they take a year out. So those are the releases. Those are the official publications. In those years, those were the publications.

Q. In addition, you can still get the COLI 1999 data for years prior to 2001 on the SAMA website in its 48th nual report, can't you?

A. SAMA doesn't -- yeah, but those are -- that is the ^^ annual report, what are they going to do? Take the annual reports out of the website?

Q. If we can go to paragraphs -- 3.24 and 3.25 of D112, page 15. I'm sure you considered these. This is where Ms Harrouche has explained by reference to the metadata as to how we got to the current position in terms of the publication of the continued publication of the COLI 1999 data ^. Do you see that?

Do you agree that the met data shows that in COLI 1999 was deleted in its entirety from the C ^^ website between system time between 10 October 20 ^^ 10 February 2014. Do you agree with that?

A. Where do you read it? Sorry, which paragraph is it?

1 16:48:58

Q. Look at 3.24 and 3.25?

A. Okay, let me read it.

Q. I'm sure you must have read this before. (Pause).

A. Yes, on 10 February 2014, CDSI -- the page had been

taken off their site. That's what is written here.

Well, actually, no, between 10 October 2013 to

10 February 2014, the whole historical series of

COLI 1999 was taken off that website, because it's no

longer in the web archives.

Q. And then at some time afterwards, COLI 1999 data for

2001 to 2011 was restored on GaStat's website; is that

correct?

A. The release was -- yeah, the bulletin are there, the

bulletins, yes. Those are official publications.

Q. Then I'm going to suggest to you that the decision by

GaStat to restore 11 years of COLI 1999 data and show it

as inflation for these years on its current website is

not consistent with it having effectively disregarded

COLI 1999, do you agree?

A. No, I don't agree. Because they have disregarded it

because they haven't linked it. So the inflations that

measured in Saudi Arabia, if you want a historical

series of inflation in Saudi Arabia, you're not going to

get into that historical series any data point that

belongs to COLI 1999.

1 16:51:17

Q. I understand your point about what they've published in

terms of linking, but you had chosen in your report to

make one of the reasons that you said that GaStat had

effectively disregarded was about what data was

available on the website. Do you agree?

A. They have taken out data and also they have not linked

in the up desk, it's both. It's not just one thing.

Q. I agree, but in relation -- just looking at the data, in

relation to what in fact happened about the data in

relation to COLI 1999 on the GaStat website, that is not

consistent, is it, with GaStat having effectively

disregarded COLI 1999?

A. Okay, let's put it like this. You are a statistical

agency, you have an obligation to publish every month

a bulletin. That bulletin is published if PDF. You put

that bulletin up on your website. You are changing the

index. You do a switch from an index 1999, because

that's tin desk, to 2007. What happens in the normal

circumstances is that you do 2007, you link it to tin

desk before, right, and you move on. This is what

they're done for 2013, this is what they've done for

2018. In 2007, they went and re back cast, COLI 2007

all the way to 1980 and put that on the website instead

of COLI 1999. To me, that tells me that I have

disregarded KWB-9, because otherwise they would have

1 16:53:10

linked them and moved on. That is my opinion. It's

enough. Essentially proof as far as I'm concerned ^^.

Q. Can we move now to GaStat's November 2020 view. This

was provided to you on a retrospective basis in 2020?

A. In 2020, yes.

Q. That wasn't available to the parties in 2014, was it?

A. No, what was available to the periods in ^ 2014 were the

two reports by SAMA, the annual reports, the 2012 that

had COLI 1999 and the 2013 which is 49 that had

COLI 2007. And they had a few years overlap from which

the inflation rates could be inferred. That is what was

available to the parties at that date.

Q. But we've agreed, haven't we, that there's nothing in

the SAMA reports that tells you that you should be

treating COLI 1999 differently from any other later

index, haven't we?

A. I do agree, yes, I do agree. Ms Harfouche is absolutely

correct with that.

Q. I'm not sure why you're referring to SAMA reports

because near ^^ about COLI 1999, are they?

A. I am referring to them for a different reason, actually.

I am referring to them because that is how the parties

could have or could have seen or maybe they did see,

I don't know, that there was a big difference between

these two indices.

1 16:55:04

Q. But at that stage, they wouldn't have known whether that

difference between those two indices was significant,

because you would have to see in order to understand

that, you would have to know what the difference between

COLI 2007 and COLI 2013 was and even what the difference

between COLI 2013 and COLI 2018 was to know whether it

was a significant difference?

A. They could have seen whether it was difference to them

and they could have said taken pause an try to figure

out what to do about it.

Q. Accepting that they could see in 201-4245 there was

a difference between COLI 1999 and COLI 2007, and that's

how you rely on the -- that's why you rely on the SAMA

reports. As I say, whether that difference was

a significant one wouldn't be known because you didn't

have anything to compare it to, because you can't

compare it to call # to COLI 2013 or COLI 2013 to COLI

2018? 16:56:15

A. No, but what you could have done and can I have table

4-2 of D1-64?

These are the inflation rates in the two SAMA annual

reports. This is the 48 which was published in 2012 and

this is 49, which was published in 2013.

So in 2012, and the next two columns are COLI 1999

and COLI 2007 and so from this, you can see that the 48

1 16:57:03

2 16:57:10
report has a COLI 1999 and the 49 has COLI 2007 and as

3 16:57:13
Ms What are rightly says, this is the way they treat the

4 16:57:14
indices always.

5 16:57:17
Now, somebody could have said, okay, hold on

6 16:57:24
a second here. So in 2011, inflation was 50 per cent

7 16:57:27
that we put into this contract, but actually now they

8 16:57:33
are saying that it's 3.7. In 2010, it was 5.3 and now

9 16:57:37
they are saying it's 3-pointle. In 2009 it was 5-point

16:57:43
and now they're saying that 4.1. What is going on?

11 16:57:44
They could have done that.

12 16:57:51
And then they knew that in 2008 it was 9.9 and they

13 16:57:55
could have thought what is happening here? ^^ that is

14 16:57:58
what I would have done for sure if I had -- can you

15 16:58:04
imagine if these are rates on your mortgage?

16 16:58:07
Q. But we know, don't we, that whenever a new index is

17 16:58:11
published, it's likely to be more accurate than the

18 16:58:13
previous index; is that correct?

19 16:58:15
A. It's going to be more accurate, but for sure when you

20 16:58:20
see those, you are starting asking questions. Maybe

21 16:58:24
they did ask questions. And that is why we are here.

22 16:58:31
I don't know. For sure, I personally would question it.

23 16:58:34
Q. Nothing that GaStat didn't say when it published

24 16:58:50
COLI 2007 that COLI 1999 was inaccurate, did it?

25 16:58:56
A. Statistical agency has a responsibility to make sure

that they're not going to wreck the economy. So what

1 16:58:59

I'm trying to say is that on the basis of this inflation

rates, interest rates are set, exchange rates then are

determined. To just say, oh, sorry, you know, we made

a mistake for 10 years and we've publishing something

that is wrong, would have been catastrophic. I mean,

there was an article yesterday, yesterday, on the

Financial Times, which is about Germany of all

countries, my husband's country, and Germany, the

statistical office of Germany, for the first time, has

failed to publish on time some data on the revenues of

companies and attributing this to an I. The glitch and

whole hell broke loose because, you know, people don't

know whether to believe it or not. So of course it is

a serious thing and inflation is fundamental to the

point where if you are a statistical agency and you are

excused of having been either tampered or having been

cavalier with the publication of inflation figures, your

country can be censored ^ by the IMF. This happened for June 2013 ^^.

So a statistical agency, in my opinion, will be

very, very careful before saying, you know what, we

publish something that was completely wrong. In fact,

when you think about what happened in the UK, for

example, they published the CPI in the 1990s, the

consumer price index, and it was substituted, as I said,

for the RPI and the inflation target in 2003, and it

1 17:01:10

took until 2013 and the whole series of studies and

consultations for that RPI to be removed from being

a national stay test ticks, after it had already lost

its job to set the inflation and therefore, as a target

for interest rates and everything else, for what was

going on in the economy. It took decades in the UK.

Q. We know that from the experience in the UK, this it's

perfectly possible for a national statistics

organisation to say that the previous index people have

been using which in that case is RPI, is an inaccurate

measure and should be replaced by CPI and that was all

very open and the transition was made as you say. So

actually there's no -- there's good evidences from the

UK that it's perfectly possible to move in a considered

way from one index to another index and there is no

reason why that couldn't have been done in the KSA, but

in fact the KSA never did that, did it?

A. The UK published -- if I'm not wrong, the CPI was

published from the first time in 1996. Okay? In 2013,

which is 17 years later, the UK said this index is not

good enough, after 17 years of using the CPI, the reason

I is not good enough, so it's no longer a national

statistic.

We will continue to publish it because there are

guilds that spire in 2030, but this index cannot be used

1 17:03:11

for policy purposes and it has not been used for policy

purposes since 1996. So it took them 17 years before

they actually came out and said this index is not

a national statistic.

Q. What I want to move now to is as I said, GaStat was

providing its view in November 2020 as the most accurate

estimate of inflation on a retrospective basis; is that

correct?

Yes.

Q. Just in the way they did it, given they're working

retrospectively, it made sense, because they were

provided their most accurate view, is that they would

use COLI 2018 for as long as they could; is that

correct? Going backwards?

A. No, they didn't use COLI 2018, they used 2018 as the

equal to 100, so it was rebased, but 2018 was 2018 from

2018 to 2020, before that was 2013. You can see it from -- it's slide 10, for example. My slide 10. You

can see very clearly there, actually. You can see it.

They are all linked. You can see it actually between

both, in both the figures, because in the left, you can

see they are all parallel. The dotted line are all

parallel to each other, which means that they are

essentially estimated the same relative inflation, they

are all the same index. So COLI 2007, then in 2013,

COLI 2013, then in 2018 COLI 2018. They are all linked.

1 17:05:07

Q. Yes, but it's correct, isn't it, that in the
retrospective view, it used COLI 2018 as far back as it
could, is that right?

A. It's not COLI 2018, it's the base year of COLI 2018.
COLI 2018 is the combination of three indices. It's
COLI 2007 from 1980, all the way to 2007. Then it is
call -- sorry, all the way to 2013. So from 1980 till
2013 it's COLI 2007. From 2013 to 2018 it's COLI 2013.
Then it's COLI 2018. They didn't estimate COLI 2018
going back.

Q. No, no, I think you're actually agreeing with me. That
the way they've done it they've linked in the index year
for each different COLI, is that right?

A. In the base year.

Q. Sorry?

A. In the base year, yes. In the base year. That's what
statistical agency they all do that.

Q. But the point is they were doing it let spickatively,
weren't they?

A. No, they weren't. They did it as they published the
indices.

Q. No, but the one you were given in November 2020, because
at that point, in November 2020, GaStat had all the
information available to it, didn't it, about COLI 2007,
COLI 1999, COLI 2013 and COLI 2018, didn't it?

1 17:06:45

A. When they published -- when they published COLI 2013,

which unfortunately it was published a few years after

2013, so it was published with a delay. They actually

estimated starting for a few years before and the four

years before was COLI 2007. That's why I'm saying that

they have linked them. They link them all. They are

all linked.

Yes, and they --

A. And they link them contemporaneously as they were pub

rushing them but they published them with delay.

Q. But in 2020, GaStat was able to take a retrospective

view, wasn't it, looking back?

A. I asked for a historical series.

Q. Yes?

A. Yes, yes.

Q. Okay. Basically, what they've done is they've taken

COLI 2018 until there's no English going backwards until

there's no COLI 2018 data and then they link to

COLI 2013; is that correct?

A. They have taken 2007 and linked it to 2013 and 2013 and

linked it to 2018, because you link on the bay year and

the reason why they do that is because that is the year

of the expenditure survey on which each successive

subsequent index weights are based. So that is how they

link. It's not GaStat is every statistical agency does

1 17:08:28

2 17:08:31
that. Each and even of them.

3 17:08:35
Q. But the res specifictive view is using at each stage,

4 17:08:39
the most -- what it regards as the most accurate index

5 17:08:41
as far back as it can; is that correct?

6 17:08:46
A. Yes, but the most accurate index is from 2018 onwards,

7 17:08:53
is COLI 2018. From 2018 to 2013 it's COLI 2013, because

8 17:08:58
from 2013 to 2018, COLI 2018 is not COLI 2018, it's

9 17:09:03
COLI 2013 linked to -- that's why they are parallel.

10 17:09:12
They are parallel. They just shift them downwards.

11 17:09:20
They do statistical agencies tends to do backward

12 17:09:25
linking, not forward linking, because they link all the

13 17:09:27
index to the new one which is more accurate. That's why

14 17:09:30
you see them going down.

15 17:09:34
Q. Yes, absolutely. I actually adopt think we disagreeing.

16 17:09:39
The point is that they take advantage of the fact

17 17:09:42
that they are doing this on a retrospective basis, don't

18 17:09:44
they, they have to, because this is an historical series

19 17:09:47
and when they have published them, they already -- they

20 17:09:52
publish them when they publish COLI 2007, they didn't

21 17:09:57
link it to anything. So the year before 2007 where

22 17:10:01
a different index from 1999. When they publish

23 17:10:12
COLI 2013 when they published it, right, 2013 was 2013

24 17:10:18
only from 2013 onwards, before that was linked to 2007.

25 17:10:22
And the same for 2018 and I would guess the next one

will be the same.

1 17:10:24

Q. am I right in thinking that you use the fact that GaStat

has linked COLI 2007, COLI 2013 and COLI 2013 and COLI

2018 in the index reference years to the later indices

as a support for your approach to COLI 1999 to

COLI 2007?

A. As part of it, as part of it, yes, yes.

Q. But GaStat's actions don't justify your approach, do

they? Because the fact that GaStat can do it on

a historical basis doesn't provide adjudication for

users acting in the same way because we know that the

reference year will be several years prior to

publication of the later index; is that right?

A. Are you saying in general or in this particular case.

Q. In this case. Negligence this particular case. In 2007

also the weights -- 2007 is the year in which COLI 1999

goes kind of berserk and it's also the year in which its

weights were changed and so that is why -- that's

another reason why I link them in 2007.

Q. That's not --

A. I think I have written it --

Q. I'll try the question again. So historically, looking

back historically, GaStat linked, for example, COLI 2013

with COLI 2007 in 2013; is that right?

A. Yes, yes. But also contemporaneously. That's when they

linked them.

1 17:12:22

Q. But a user in 2013 couldn't possibly have done that,

could they? Because they didn't have the COLI 2013 data

until 2018?

A. Yes, correct.

Q. It wouldn't make any sense at all, with it, for a person

in user 2018 to say I have now got the COLI 2013 data,

so I'm going to link it all the way back to COLI 2007 in

COLI 2013. Nobody would do that, would they?

A. I mean, why should they do that? COLI 2018 was already

linked back. You mean for the purpose of contracts or

for

Q. For example?

A. For the purpose of contracts. So as I explained, for

the purpose of a contract, in this particular -- in this

case, because there was no reason -- because the agency

had linked the indices and there was no reason to

believe that this index had any problems, that's what

I propose to do. I don't propose to go back every time.

I propose to use the going forward approach. It's the

only exception is that blue line ^.

Q. For the links between COLI 2007 and 2013 and 2013 and

2018, you only consider what was available at the time,

the information that was available at the time, ie so

you only do it at the end when the new index is

published, and so the exception for that is COLI 1999 to

1 17:14:10
2007, where you give yourself the benefit of hindsight;

is that right?

A. Yes.

Q. I would like to move now to your second reason, which is

the suggestion that call # is an inaccurate measure of

inflation. So I think we can agree that all indices are -- no indices truly measure true inflation?

Where are we?

Q. I'm just moving on to your reason 2. We can go back to

it if you would like?

A. Yes.

Q. It's your first report,?

A. Is it 6.6?

Q. 6.6.

A. Yeah, okay. I'm there.

Q. Here you deal with this, this is about COLI 1999 being

an inaccurate measure of inflation. You rely on the

fact that there is a statistical inaccuracy in

COLI 1999; is that correct?

A. Fundamental, yeah.

Q. Can we go to paragraphs 3.41 and 3.42 of your first

report at D1-41.

Then we can turn over to D1-42 where you deal with

the inaccuracy in COLI 2007, where you say the

arithmetic average also resulted in overstating

inflation at this stage." ^doc

1 17:16:21

So this is at the high level, yes?

A. Yes.

Q. "Albeit this overstatement is generally small than

at the first stage." ^doc.

Do you see that?

Yes.

Q. So here what you're doing is you're making an evaluation

of accuracy in relative term, aren't you?

A. No, because in the CPI manual, actually advises that it

doesn't matter what you use in the second stage. They

are all unbiased. What matters is what you use in the

first stage and in the first stage, you should never use

arithmetic averages and so the quote that I have in the

next paragraph is for an inspection that the OECD did,

an assessment of the lat via statistical -- how do you

skab it, the statistical system in case statistics of

lat via and what the OECD actually said at the ^^ as

a conclusion of that assessment.

So it says lat via index ^^ elementstry level are

not based on a ^^ geometric averages index formula price

indices ^^ lower aggregation levels are cats collated

ratios ^^ mean prices in the reference and base fields

these reads read which does not enable capturing the

replacement de effect within the elementary aggregate

1 17:18:01

2 17:18:07

the OECD secretariat strongly encourages the CSB, the

3 17:18:10

central extra ^reading...) slat via to review the index

4 17:18:14

number formula according to the CPI manual." ^doc.

5 17:18:21

Q. Thank you. Can we move to paragraph 5.20, by is at

6 17:18:42

D1-71.

7 17:18:46

You have that. You give some reasons as to why you

8 17:18:49

think that its out of date -- you think it's inaccurate

9 17:18:56

and 5.21 you refer to the out of date basket. Do you

10 17:18:57

see that?

11 17:18:57

A. Yes.

12 17:18:59

Q. The basket, I think you said the basket was updated in

13 17:19:06

2007; is that correct?

14 17:19:10

A. Yes, but you see the thing is that the basket for

15 17:19:20

COLI 1999 was selected from system of national accounts

16 17:19:26

that was not compatible with the survey that was done in

17 17:19:29

2007, because that survey was done based according to

18 17:19:31

the ^ which is the international standard.

19 17:19:39

So what happens is that the weights that were -- the

20 17:19:45

goods that were in that basket corresponded to

21 17:19:50

elementary items in the COICOP that were not completely

22 17:19:55

comparable. So the weights were, if you want, shown in

23 17:20:01

do you say ^ into a classification that is not the same

24 17:20:14

as the original one. I don't have the basic weights of

25 17:20:20

the two, but judging from what is happening to that

line, the combination of these weights with the formulae

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1 17:20:27

for these elementary aggregates is what created then --

not created, it was exacerbated the issue.

Q. I see. Can we move now to the next point, which is in

relation to what you call the out of date approach to

averaging. You say that both the CPI manual and the US

bureau of labour studies, services --

The labour bureau statistics, LBS, yeah, it's also the

ILO strongly enough, which is unfortunately labour

organisation.

Q. Can I just check that you confirm that you accept that

the CPI manual is only advisory, it's not prescriptive?

Do you agree with that?

A. Is yes, but I also have to say that what GaStat have

said to me any think in the letter that I wrote, is that

they are committed to it. So they committed themselves

to the GaStat, to this manual. Then in 2024, in the

metadata, it's one of the exhibits if Ms Harfouche's

report, her second report I think, in the metadata that

they publish for foo the consumer price index, they

actually stated that they follow the CPI manual.

Q. In 2024?

A. Yeah, but they told me in 2020 and they have done this

throughout. The thing is that you have to be compliant

otherwise as I said, there are consequences.

Q. Can we look at the preface to the CPI pannual 2020,

1 17:22:14

which is at D100?

A. They follow the 200 he ^ ^.

Q. We'll go to this is one of your exhibits, I think. ^

itch -- (overspeaking) -- ^^?

A. No, I'm say that is GaStat say that they --

Q. I'm going to move on to D100, please, at page 13.

There's a paragraph which begins the paragraph in

the middle there beginning the IWGPS ^doc).

A. Where is it?

Q. The paragraph that begins it's in the middle of the page

on the screen, the IWGPS?

A. Yes.

Q. Can you see? Yes?

You can see that it says as you go down, you say,

because of practical resource constraints some of the

current representations may not be immediately obtain

^reading...) NSOs and they should therefore serve as

guidelines or targets for agencies." ^doc.

Do you see that?

A. Yes, I do.

Q. Again, this is very much guidance to be followed in

accordance with the individual state's resources and

constraints?

A. Yes, but if you commit yourself to it, I mean, they had

six stage, how many stages were there in the letter that

1 17:23:46

2 17:23:49
GaStat wrote to me? And the reason why they did that

3 17:23:52
was to comply to this.

4 17:23:57
Q. Over time?

5 17:24:01
A. That's why they slowly changed ^^.

6 17:24:30
Q. Then we get to D9 -- could we go to D9-25, please. Then

7 17:24:31
we can see look at paragraph 9.37. You have seen this

8 17:24:37
as being part of the approach to aggregating for

9 17:24:38
elementary aggregates?

10 17:24:39
A. Yes.

11 17:24:47
Q. If we see at 9.37, ^^ is geometric; is that right?

12 17:24:48
A. Yes, it is.

13 17:24:50
Q. And car live is arithmetic?

14 17:24:50
A. Is one of the arithmetic, there are two of them. ^doc

15 17:24:54
name)s.

16 17:24:59
Q. So it says this gentlemen convenience ^^ in general

17 17:25:00
although there may be cases in which little or no

18 17:25:02
substitution takes place within the elementary aggregate

19 17:25:06
and the car live might be preferred. The index compiler

20 17:25:08
must make a judgment on the basis of the nature of the

21 17:25:10
products actually inincluded in the elementtry

22 17:25:11
aggregate." ^doc?

23 17:25:12
A. Yes.

24 17:25:12
Q. Is that correct?

25 17:25:16
A. Yes, I mean, think about it. For example, examples of

these are things like the television licence, in

1 17:25:22

countries where there is a single supplier, the power

rates, what people pay for electricity. This kind of

things. But for what people normally buy, there is

a lot of substitutions and what substitution means is

that when the price of something, let me tell you ^^ ^

let's ^ or even rice, right, and there is one brand of

rice that all of a sudden costs more, only one

supermarket costs much more than in another, what you

are assuming is that actually, people are not

substituting them, which is, you know, a bit of

a stretch anyway, it's not compatible with economic

theory and the way consumers behave.

Q. It's a matter for the individual NSO, isn't it, to

decide on basis of local circumstances how it's going to

approach these matters?

A. Of course, because, you know, there are countries where

they don't have a television licence, there are

countries where you have a competitive power supply, for

example, and people can switch from one to another, the

lucky ones who can do that.

Q. Is it correct also that even if arithmetic averaging as

level tends to overstate inflation, that does not mean

that an index will in fact overstate inflation in any

particular year because it's only one factor of many

that will determine whether inflation is overstated or

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1 17:26:48

understated?

A. The bias is an average. These are all average concepts.

So on average, you will. But it can be lower in a year

also in --- but in average you will overstate it, yes.

Q. Then we can look at your second report at D103, page 31.

Do we see that? What you've presented here is

a diagram to show whether there's an overstatement. So

the zero line is accurate in accordance with GaStat's

2020 view, is that correct? So we can see that --

A. Yes.

Q. Above and below the line ^^, so we can see that there are

even on COLI 1999, there are three years out of eight

where it understates inflation?

A. Yeah, in fact, actually, I can -- you see, what happens

here is that in 2007, it's the base year for essentially

what happened in 2007, they changed the weights and the

two years before, because the GaStat view, right, is

COLI 2007 in those years, right? What they have to do

in 2007, they change the weights, but -- sorry, they

didn't change the weights, they published 2007

expenditure survey, that was the base year for COLI 2007

and they publish that index going forward all the way to

whatever years. But then they also back casted it, but

they back casted it on the basis of the weights of 2007

and the reason why they were doing that is because they

1 17:29:10

substitutessed 2007 with 1999 without linking and so

<mark>there was a bit of -- there was some issue, I think,</mark>

with the way that they back casted based on the 2007

weights, that may have created a problem, but this is

<mark>speculation on my part. In those two years, it was

lower, 1999.</mark>

Only a statistician or economist would be in a position

to understand the effect of using ath met I can

averaging and not geometric averaging and get the

elementary aggregate level ^^; is that correct?

A. Yes, I would think so. But, you know, as I said, I user

would look another ^^ what is going -- the values, will

say what is going on and call a statistician, hopefully.

<mark>PRESIDENT: Can I just ask a quick question. Ath met I can

and geometric averages, the average that you've got on

your chart here is that an arithmetic or a geometric?</mark>

A. Just an average. Sorry, a arithmetic.

MR ROBB: It would be arithmetic.

PRESIDENT: Arithmetic, yeah.

A. It's the average difference.

PRESIDENT: On.

MR ROBB: It's adding up the blue for 1999 it's taking the

extent to which for each year adding up for each year

the COLI 1999 is above 0, then netting off the three

years where it's below 0 to get a net number and then

1 17:30:47

2 17:30:51
quitting by eight, presumably ^?

3 17:30:54
A. It's the sum over the --

4 17:31:00
Q. Then divided by eight?

5 17:31:05
A. I think it's seven or eight? Yeah, it's eight, because

6 17:31:07
there is a blue line there, yes.

7 17:31:15
Q. Yes. We're at 5.30. Which I think is our scheduled?

8 17:31:19
Yes, how much longer will you be if it wasn't

9 17:31:23
much longer?

10 17:31:25
MR ROBB: No, it's not another 10 minutes so it will be more

11 17:31:28
than 10 minutes so definitely coming back tomorrow.

12 17:31:31
PRESIDENT: All right. In which case we will finish for

13 17:31:33
this evening. Thank you very much, Dr Meschi. As

14 17:31:36
before, please don't talk to your assistants or any

15 17:31:41
members of the legal team about your evidence overnight.

16 17:31:45
WITNESS: Can I have dinner with them if I don't talk about?

17 17:31:47
I think it's safer not to.

18 17:31:50
WITNESS: Okay, okay.

19 17:31:51
PRESIDENT: Thank you. Then we'll see you back here, if you

20 17:31:56
could be back here about 9.30 ready to start at 9.30.

21 17:31:57
^.

22 17:31:59
WITNESS: Okay.

23 17:32:04
(5.32 pm)

24 17:32:04
(The hearing adjourned until 9.30 am on the following day)

I N D E X