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4 record.

5 **IN THE COMPETITION**

Case No: 1432,1434,1438-1439/1/12/22

6 **APPEAL**

7 **TRIBUNAL**

8
9 Salisbury Square House
10 8 Salisbury Square
11 London EC4Y 8AP

12 Thursday 18th May 2023

14 Before:

15 The Honourable Lord Ericht

16 Eamonn Doran

17 Professor David Ulph CBE

18
19 (Sitting as a Tribunal in England and Wales)

20
21 BETWEEN:

22 **Appellants**

23
24 **Advanz Pharma Corp and Others**

25
26 v

27 **Respondent**

28
29 **Competition and Markets Authority**

30
31 **“Prochlorperazine Decision”**

32 **APPEARANCES**

33
34 Mark Brealey KC (Instructed by Morgan, Lewis & Bockius UK LLP) on behalf of Advanz &
35 Messrs, Cresswell, Brown and Duncan.

36 Sarah Ford KC & Sarah Bousfield (Instructed by CMS Cameron McKenna Nabarro Olswang
37 LLP) on behalf of Alliance

38 David Scannell KC & Charlotte Thomas (Instructed by Clifford Chance LLP) on behalf of
39 Cinven

40 Aidan Robertson KC & Matthew O'Regan (Instructed by Maitland Walker LLP) on behalf of
41 Lexon & Mr Sonpal

42 Hannah Bernstein (Instructed by Maitland Walker LLP) On behalf of Mr Debangshu Dey

43 Tristan Jones & David Bailey on behalf of the Competition & Markets Authority

44 Christopher Buckley On behalf of Mr Butterfield

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1 **Thursday, 18 May 2023**

2 **(10.30 am)**

3
4 **Case management conference**

5 **LORD ERICHT:** Just before we formally begin, I have to make an announcement
6 about the website. Some of you are joining us livestream on our website so I must
7 start therefore with the customary warning. An official recording is being made and an
8 authorised transcript will be produced but it is strictly prohibited for anyone else to
9 make an unauthorised recording, whether audio or visual, of the proceedings and
10 breach of that provision is punishable as contempt of court.

11 Just before we begin, it may be helpful if I give a general introduction and I do that
12 because I am conscious there are a lot of you here and we have to make that sure we
13 have a structured and efficient discussion of the various case management issues
14 which we have to deal with today.

15 So first of all, I would like to thank you all for the skeleton arguments which you have
16 produced and also the discussions which you've had which have led to the
17 identification of the particular issues to be discussed today.

18 I am proposing to take the agenda which has been produced, the original agenda had
19 item 1, division of time for submissions; item 2, approach to cross-examination, and
20 I want to start by looking at item 2, approach to cross-examination by parties, because
21 essentially that is about the allocation of time for witness evidence.

22 So some introductory remarks in relation to that. The first introductory point I would
23 like to make is that the Tribunal proposes to start at 10 o'clock on every day. We are
24 conscious that there is a lot to get through in the days allocated so when I say we'll
25 start at 10 o'clock that means we will be coming on to the bench at 10 o'clock to
26 actually start the business so if there's any preliminary matters or organisation of

1 witnesses or anything which has to be done then that should be done before
2 10 o'clock. Similarly if we are having any breaks or anything during the day, if we say
3 it's a 10-minute break, we'll be back on the bench 10 minutes later and expect to be in
4 a position to proceed.

5 We have a tight timetable and I think most of you were at the previous case
6 management hearings and you'll recall the immense efforts that were made on behalf
7 of the Tribunal and also on behalf of parties to get a workable timetable and the
8 timetable we have consists of a first tranche and then a few weeks for written
9 submissions to be produced and then the second tranche which is the oral
10 submissions.

11 That structure is extremely important because if we get behind the timescale on the
12 first tranche then we lose the opportunity for people to write written submissions and
13 then we maybe have to come back with still witness evidence in the second tranche
14 and that is just not going to work.

15 So our view is that the priority for the first tranche is that we must complete all the
16 witness evidence in the first tranche and that is the overarching principle which will
17 inform our discussion this morning.

18 So that is why I want to start with a discussion of the examination of witnesses. As
19 I say, I have read all your skeletons for today. I don't propose to ask you each in turn
20 to address us on it. I propose to do this thematically. So I would like to consider the
21 timetable which has been produced. We've had a detailed timetable this morning,
22 which is very helpful. It doesn't have the level of detail which we had hoped at this
23 stage. We'd hoped that there could have been a more detailed timetable agreed by
24 the parties so we are going to approach this today by looking at that timetable and
25 ascertaining in more detail what time is needed for the parties. So we are looking first
26 of all at the witness evidence. I am proposing to take you line by line through that but

1 before that again just a couple of general remarks.

2 The first question is for all of you. Are you all satisfied that the witnesses listed in this
3 timetable are all the witnesses that you require us to hear oral evidence from? If
4 anyone disagrees with that, can they say that now? No, everyone is agreed with that,
5 thank you.

6 The second question, and I think this is probably for you, Mr Scannell, is I have
7 identified an issue arising out of your -- sorry, is Mr Scannell here? Yes, thank
8 you -- an issue I wanted to clarify just arising out of your original note of appeal and in
9 your original note of appeal it's paragraph 10. You don't need to find it. I will tell you
10 what the point is. You make a point that you have had no access to the undertakings
11 personnel with a view to calling them as witnesses and then later on at paragraph 77
12 you seem to have a complaint about lack of access to witnesses, so I would just like
13 to clarify with you, do you remain concerned about a lack of access to witnesses?

14 **MR SCANNELL:** No, sir, we do not. We make the point in our notice of appeal that
15 we have not had access to witnesses primarily to highlight to the Tribunal that we won't
16 be calling any witnesses and to explain the approach that we've taken to this appeal
17 which is legal in nature.

18 **LORD ERICHT:** Thank you very much. I am grateful for that clarification because if
19 there had been remaining access to witness problems we would be considering what
20 orders we might make between now and the start of the trial but we don't need to deal
21 with that.

22 So if we could look at the draft timetable which has been produced and the first day of
23 witnesses is Thursday, 8 June, which starts off with a CMA cross-examination of
24 Mr Butterfield. It occurred to us that it may be unlikely that that day would start with
25 a cross-examination. The examinations-in-chief will be the written statements but I am
26 not -- whose witness is Mr Butterfield?

1 **MS FORD:** Sir, it's my witness.

2 **LORD ERICHT:** Thank you.

3 Would you be proposing to start off by any examination-in-chief at all, even a very brief
4 one, for adoption of statement?

5 **MS FORD:** Presently no, we would envisage asking Mr Butterfield to swear his
6 statements and insofar as there are any minor corrections, of which I am presently not
7 aware of any, then we would ask him to make those before he swears the truth of his
8 statement but subject to that, no.

9 **LORD ERICHT:** Thank you. In terms of this timetable then what needs to be added
10 to the timetable at the start of day Thursday, 8 June is a period for a brief perhaps
11 5-minutes examination-in-chief.

12 Then we have the CMA cross-examination which is according to this timetable to take
13 two days. Is that the end of the questioning of Mr Butterfield or are there going to be
14 any other questioning of Mr Butterfield and if there is I want to establish in which order
15 Mr Butterfield will be questioned and how much time is spent? So who would be the
16 first person to question Mr Butterfield after cross-examination?

17 **MS FORD:** Sir, I certainly envisage that there may be re-examination, obviously one
18 cannot tell until that is --

19 **LORD ERICHT:** Would that be --

20 **MS FORD:** That would probably be at the end.

21 **LORD ERICHT:** We'll come back to that, we are just trying to identify all the people
22 who are going to cross. We'll come back to your point. Is anyone proposing to
23 cross-examine Mr Butterfield other than the CMA?

24 **MR ROBERTSON:** Sir, if I can just set out the position.

25 **LORD ERICHT:** I apologise, I have a list of who you all are but there are a lot of
26 people here and I don't know you, so if people wouldn't mind identifying who they are

1 and who they speak for.

2 **MR ROBERTSON:** I should have put on my Robertson tartan tie. Aidan Robertson
3 for Lexon and for Mr Sonpal.

4 **LORD ERICHT:** Thank you.

5 **MR ROBERTSON:** Our position, and I believe it's the position of the other appellants
6 as well, is that in relation to each of the other parties' witnesses, we reserve our
7 position as to whether we might wish to cross-examine Mr Butterfield on anything that
8 has emerged during his cross-examination by the CMA.

9 **LORD ERICHT:** Yes.

10 **MR ROBERTSON:** At the moment I don't expect to do that. So that's why I described
11 it as a reservation of position. I don't expect to do that for Mr Butterfield or for any of
12 the other witnesses called by the other parties. But it is just you can't predict what's
13 going to come out on the CMA's cross-examination and so that's why we've alerted
14 the other parties to that position and I think it's a generally shared reservation amongst
15 the other appellants.

16 **LORD ERICHT:** Certainly the Tribunal does not have a difficulty with that but we want
17 to try and build this facility into the timetable, so thank you. Is there anyone else
18 who -- well, first of all is there anyone who would want to definitely cross-examine or
19 would other people want to associate themselves with Mr Robertson, that they
20 may wish to depending on how things go?

21 **MR BREALEY:** Mark Brealey. We are in the same boat, just reservation, we are only
22 talking, I would imagine, 10 minutes, 15 minutes maximum. Also, it's not really
23 cross-examination, it would be questions. Because if I start cross-examining
24 Mr Butterfield, you may put less weight on his answer. So it's not really
25 cross-examination. It would be more of a question and answer session, clarification.
26 So I don't think any of us are in the business of cross-examining the defendants of

1 other appellants. Sir, I have discussed that with Mr Jones and I understand that the
2 CMA are prepared to allow a little bit of flexibility here as well.

3 **MS FORD:** Sir, for our part, we've made a similar reservation, we have no present
4 intention to cross-examine any of the other witnesses but we simply indicate that it
5 may become necessary depending on what comes out in the course of oral evidence.

6 **MR SCANNELL:** If I may, sir, the Cinven Appellants make the same reservation,
7 although I daresay it's even less likely in our case that we will want to ask any
8 supplemental questions.

9 **MS BERNSTEIN:** Sir, if I may, the same position for Mr Dey.

10 **MR JONES:** Tristan Jones for CMA. Can I just make a few observations which I hope
11 will assist. You may have seen in the skeletons, you will have seen in the skeletons,
12 there was a bit of a debate about possible cross-examination by appellants of each
13 other's witnesses. I had raised that really for discussion and to make sure we were all
14 on the same page. I mention it only because my impression is that we are all on the
15 same page in the sense that I was worried that some of the appellants might be
16 thinking that they would come in and "cross-examine" other witnesses when actually
17 what they were doing was trying to reinstate the evidence-in-chief in the witness
18 statement and obviously that wouldn't be appropriate and my strong impression from
19 what has been said and from other discussion and from reading the skeleton
20 arguments is that isn't intended.

21 So that point of principle I have raised and I think it's been helpful. I hope I wasn't
22 setting hares running but that was why I raised it.

23 On the practicalities, I simply wanted to reinforce a point which Mr Brealey made,
24 which was he referred to flexibility, and all of my learned friends have said they are not
25 sure whether they might need to cross-examine and of course one can't be sure, as
26 Mr Brealey I think also said, how long one might need in re-examination.

1 We understand that. We appreciate that. If it assists, all of the parties have agreed
2 that witnesses will be available the day before they are scheduled to give evidence
3 and the day after if necessary and so your comments earlier about the need for this to
4 complete within the window is very well understood, if I may say so, especially by the
5 CMA because I fully appreciate that burden falls particularly on me and my team. One
6 can't predict what will happen in cross-examination, one can't predict how quickly one
7 will progress perfectly but we clearly need to fit it in the timetable and we will do that.
8 The reason I mention flexibility is it just goes to the point about what gets built into the
9 timetable. It does seem us to that there is scope for a bit of slippage, let us say. It
10 would be particularly unfortunate if Mr Butterfield slipped over because there is then
11 a big gap before he comes back but worst case scenario, if that were to happen and
12 people were re-examining on the 15th, this is probably an awful example because of
13 how much time there would be between those two but it's a generic example, worst
14 case scenario what then happens is we have to cut the next witness shorter than we
15 were planning.

16 So our hope would also be that we could approach it with a degree of flexibility.

17 **LORD ERICHT:** Thank you.

18 Yes, Ms Ford, did you want to say something about re-examination?

19 **MS FORD:** Sir, only that in relation to each of our witnesses there is a possibility that
20 some re-examination may be necessary. We are of course not in the position to
21 specify how long that might be at this stage but what we envisaged would be that in
22 the usual way the time available for each witness would include the possibility of
23 re-examination at the end if necessary.

24 **LORD ERICHT:** Yes, just drawing all this together then, if we look at 8 June, we start
25 the CMA cross-examination, well if we start at 10 o'clock with a 5-minute
26 examination-in-chief which then goes on to cross-examination which finishes at 4.30

1 that day and on Friday the 9th if the cross-examination were aiming to be finished at
2 15.30, which is actually the same number of hours given we've gained another two
3 half hours, then any other cross by other parties or re-examination, there would be an
4 hour for that at the close of the afternoon. Does that seem a reasonable way to do it?

5 **MR JONES:** Yes, sir.

6 **LORD ERICHT:** Thank you. Then if that is an acceptable template we might just then
7 apply that to all the other witnesses throughout but I'll just go through to clarify. The
8 next one is 15 June, Mr Dawson. Is that Ms Ford?

9 **MS FORD:** He is also our witness and we would be content for that template to apply.

10 **LORD ERICHT:** So we will apply that to Mr Dawson. That would then mean that on
11 Friday, 16 June Mr Dawson's cross-examination would finish at 12 noon. Well, it
12 would effectively finish at the break. We've got a break 11.45 to 12, so it would finish
13 at the break and then we would have 12 till 1 for any cross-examination.

14 **MR JONES:** Save for this small point, which is when you move the start time of the
15 day forwards we might need to move the breaks forwards as well, only because Opus
16 have requirements about when the breaks are so we need to look at all of that in the
17 round.

18 **LORD ERICHT:** That's a very good and practical point, so thank you for that. All we'll
19 say is I am not going to specify the breaks. What we'll just specify is that Mr Dawson's
20 cross-examination lasts until 12 and then there's an hour for any further cross or
21 re-examination.

22 Then we start Mr Sonpal. Ms Ford, your witness again.

23 **MR ROBERTSON:** No, it's mine.

24 **LORD ERICHT:** Mr Robertson.

25 **MR ROBERTSON:** I think we only gain extra half an hour for Mr Sonpal because he
26 starts on the Friday afternoon.

1 **LORD ERICHT:** Yes, he starts on Friday afternoon, yes.

2 **MR ROBERTSON:** So we gain the extra half an hour, as it were, on the Monday, so
3 his cross-examination stops at 16.00.

4 **LORD ERICHT:** Yes, sorry, can I just wind back a bit. It starts at 2 o'clock in the
5 afternoon.

6 **MR ROBERTSON:** Yes.

7 **LORD ERICHT:** At that point would you be proposing to have examination-in-chief
8 and, if so, is that just 5 minutes again?

9 **MR ROBERTSON:** Yes.

10 **LORD ERICHT:** So a 5-minute examination-in-chief at two. Then what was your point
11 about the end of that day?

12 **MR ROBERTSON:** Then moving on to the Monday, so Mr Sonpal is in purdah over
13 that weekend.

14 **LORD ERICHT:** Yes.

15 **MR ROBERTSON:** And then on the Monday we'll start at 10.

16 **LORD ERICHT:** Yes.

17 **MR ROBERTSON:** That means that brings forward end of his cross-examination from
18 16.30 to 1600.

19 **LORD ERICHT:** Well, that's not going to be enough, so if we are saying we are
20 allowing an hour for any cross-examination or re-examination ... are we going to bring
21 him back or are we just going to say his examination is until 15.30?

22 **MR ROBERTSON:** Our preference is 15.30.

23 **LORD ERICHT:** It's the CMA's cross-examination so I should really ask them.

24 **MR ROBERTSON:** That's why I said it's my preference.

25 **LORD ERICHT:** Yes. Would we be able to finish Mr Sonpal at 15.30 to allow the hour
26 of other people to question?

1 **MR JONES:** Sir, I should say it's Professor Bailey who is going to be cross-examining
2 Mr Sonpal and he's just been whispering to me that he'd much rather that didn't
3 happen because there is a lot to get through with Mr Sonpal. So if it helps, just on the
4 likely length of re-examination, this may not assist but I did yesterday evening look
5 back at the transcripts from the Hydrocortisone hearing before Christmas which was
6 similar in that there was an agreement. There were witnesses who were
7 cross-examined for two days, re-examination at most was 10 minutes and there was
8 one party who wanted to cross-examine another party's witness and they took
9 20 minutes on it but that was planned in advance, I am not saying my learned friends
10 won't do that but half an hour on that day for Mr Sonpal's re-examination and further
11 cross strikes us as a good amount of time.

12 **LORD ERICHT:** Anyway, you say that you need until 4 o'clock to complete your
13 cross-examination?

14 **MR JONES:** Yes.

15 **LORD ERICHT:** We'll make it 4 o'clock to complete your cross-examination. Then
16 after that our normal hour, we've only got half an hour but if we have to sit slightly
17 longer to accommodate that, that's fine. Otherwise, Mr Sonpal will have to come back
18 the next day.

19 **MR JONES:** I am grateful, sir.

20 **LORD ERICHT:** Mr Dey, whose witness is Mr Dey?

21 **MS BERNSTEIN:** Mine, Hannah Bernstein.

22 **LORD ERICHT:** Yes, would you require a brief examination-in-chief?

23 **MS BERNSTEIN:** Yes, thank you.

24 **LORD ERICHT:** Do you think 5 minutes would be enough for that?

25 **MS BERNSTEIN:** Yes, thank you.

26 **LORD ERICHT:** And he is due to finish that day. Could we finish him at 15.30 and

1 then have the hour for other questioning?

2 **MR JONES:** A similar point, I'm afraid. We would very much prefer to have until
3 4 o'clock. Again, he's only on one day, which maybe suggests less need for a long
4 re-examination. I appreciate you are just asking me about how long we want, we
5 would very much like until 4 o'clock.

6 **LORD ERICHT:** You appreciate I am trying to accommodate what people think.

7 **MR JONES:** Absolutely.

8 **LORD ERICHT:** I am not trying to cause any difficulties. We'll make that until 4 o'clock
9 for Mr Dey. That gives half an hour for questioning and if more than half an hour is
10 needed then we can sit a little bit later that night or come back the next day.

11 **MS BERNSTEIN:** Thank you.

12 **LORD ERICHT:** Then Mr Cresswell.

13 **MR BREALEY:** Sir, that is me. That's Advanz/Focus.

14 **LORD ERICHT:** Yes.

15 **MR BREALEY:** Cresswell, 5 minutes in the morning. He is there for two days so
16 I would imagine cross-examination will finish around about 3.30 or if it goes to 3.45
17 that's fine. But say 3.30, which is the same as for Butterfield.

18 Then on Mr Brown, he is mine, again 5 minutes for him to swear his statement. Then
19 again I don't mind if the CMA want to finish at 4 o'clock so that it's just a half hour at
20 the end of the day with some flexibility; and exactly the same for Mr Duncan on
21 26 June as well, 5 minutes in the morning and then cross-examination finishes about
22 4 with half an hour for re-examination or any further questions from the Tribunal.

23 **LORD ERICHT:** Thank you. So we'll just check with the CMA then in terms of
24 Mr Brown.

25 **MR JONES:** Yes, Mr Brealey's suggestion sounds absolutely right for Mr Brown and
26 the same for Mr Duncan.

1 **LORD ERICHT:** We just want to be absolutely clear so we get notice. So what time
2 would you finish with Mr Brown?

3 **MR JONES:** 4 o'clock.

4 **LORD ERICHT:** So again we'd have at least half an hour and we would sit later if
5 necessary to finish that. Then the same for Mr Duncan, 4 o'clock with the half an hour
6 unless we needed to sit longer. Thank you.

7 Mr Mehta, whose witness is that?

8 **MS BERNSTEIN:** Mine, thank you. 5 minutes for examination-in-chief 10 till 10.05
9 and then 10.05 till 1 or 12.55. It would be helpful to have 10 minutes set aside for the
10 possible re-examination or cross-examination or a little bit longer if that's possible but
11 I appreciate it's difficult that day.

12 **LORD ERICHT:** Yes.

13 **MR JONES:** That in fact looks quite easy because if that does start at 10 or 10.05, if
14 we take cross-examination through to 12.30, that's as long as we want anyway and
15 then there's half hour before lunch.

16 **LORD ERICHT:** Good. So Mr Mehta will finish at 12.30 for the cross and then we'll
17 have half hour for any other questions and Dr Chowdhury.

18 **MS FORD:** Dr Chowdhury is our expert witness giving evidence on Alliance's
19 forecasts so we don't envisage that it would be necessary for other parties to
20 cross-examine Dr Chowdhury on Alliance's internal forecasts. In the usual way, there
21 may need to be some re-examination but one envisages that would be relatively brief.

22 **LORD ERICHT:** So you would need 5 minutes for introductory chief, would you?

23 **MS FORD:** Sir, yes.

24 **LORD ERICHT:** Then I'll just ask the CMA how long they expect to need?

25 **MR JONES:** Sir, two and a half hours have been provisioned. We are not going to
26 need two and a half hours. It's a little difficult to predict precisely because it may

1 depend on what comes out in the factual evidence before Dr Chowdhury. If we
2 schedule two hours, I think that will be too much and we'll be going home early and
3 everyone will be happy, sir.

4 **LORD ERICHT:** I will be extremely happy because that's the last day of evidence. It
5 also means there's that slight flexibility if we do begin to overrun, we know there is
6 a bit more flexibility in the last day. So we'll make that until 4 o'clock for CMA
7 cross-examination and then till 4.30 for anyone else who wants to ask any questions.
8 So I think that deals with item 2 on the agenda, approach to cross-examination by
9 parties, but before I leave that is there anything else anyone wishes to raise on that?

10 **MR JONES:** Sir, could I just make sure that we have entirely understood the
11 Tribunal's approach to the flexibility. My understanding is you've set a timetable which
12 you would, if I can put it this way, very, very much like us to keep to and we will do our
13 absolute best to do that.

14 It's also the case that the parties have made the witnesses available days before and
15 after and, sir, do I also take away that it would be sensible for them to maintain that
16 degree of flexibility in case it becomes necessary?

17 **LORD ERICHT:** The purpose of the timetable is to make sure that we are sufficiently
18 organised, that we have a plan --

19 **MR JONES:** Yes.

20 **LORD ERICHT:** -- which means that we'll complete the evidence during that time. As
21 we all know, once you get started things can go quicker or go slower. So we will not
22 be imposing a guillotine saying you must stop mid-question because it's 4 o'clock and
23 your time has finished but we really expect everyone to stick to that timetable unless
24 there is a good reason not to and we will have the flexibility to go a bit longer or start
25 someone -- if we go quicker, we might be looking to bring tomorrow's witness in today
26 just to make most use of the time.

1 **MR JONES:** Thank you.

2 **LORD ERICHT:** Good. So moving on to the next item on the agenda, which is
3 opening, closing and reply submissions. I am very pleased that we have satisfactory
4 agreement on the amount of witness time we need because one of the things we have
5 been discussing is because it was so important to ensure that we had all the witnesses
6 that if we needed more time we were going to ask for shall we say more concise
7 opening submissions to allow more witness time but it doesn't sound like that will be
8 necessary. So we have the Monday, Tuesday and Wednesday available for opening
9 submissions.

10 I think if we just deal with this, on Monday, 5 June there may be some initial
11 housekeeping matters which take us 5 minutes, 10 minutes, 15 minutes, so we'll just
12 deal with them. Hopefully they won't impact on the opening submissions by the
13 appellant number 1. So I think we need to go through this timetable again. Who is
14 appellant number 1?

15 **MR ROBERTSON:** We've had a discussion amongst us this morning about batting
16 order.

17 **LORD ERICHT:** Yes.

18 **MR ROBERTSON:** I don't think we've come to a final conclusion on it. I am looking
19 at Ms Ford.

20 **MS FORD:** Sir, it's a point that has only been discussed between us this morning but
21 as I understand it the proposal would be that Mr Scannell opens his appeal dealing
22 primarily with the points of law that are in issue in his appeal. We will then open second
23 on behalf of Alliance.

24 **MR ROBERTSON:** It would then be Lexon up third, Mr Brealey fourth and then
25 Ms Bernstein for Mr Dey.

26 **LORD ERICHT:** Thank you. So let's just go through then and look at the breakdown

1 of timing for that. Mr Scannell, on this timetable you have until 12.15. Is that
2 satisfactory?

3 **MR SCANNELL:** Yes, sir, that's satisfactory. That is assuming the 15 minutes that
4 you mentioned for housekeeping at the beginning, which gives me two hours. I should
5 perhaps explain, because you may not yet know of the concession that we've made
6 in respect of the length of time required to open our appeal, that whereas in our
7 skeleton argument we expressed the preference that we would have two and
8 a half hours to open, we have now accepted in the interests of equality between the
9 appellants that we will have two hours to open our appeal.

10 **LORD ERICHT:** Thank you. Well, you will appreciate that this panel is very well
11 informed about your cases and we have your notes of appeal, we have your answers
12 and we have the reply and we also have your skeletons for your openings. So we
13 certainly hope that you will not require time to tell us what we already know and any
14 oral submissions can be concise and focusing on the particular issues which you wish
15 us to focus on. So hopefully that can be done within the timescales that we are talking
16 about here.

17 **MR JONES:** Sir, I hesitate to raise this point because in a sense it's a point against
18 me but I think my learned friend may have overlooked the fact that 10 till 12.15 is two
19 and a quarter hours but that's with a 15-minute break in the middle and so when you
20 raised point about needing 15 minutes potentially for housekeeping at the start, that
21 would actually squeeze my learned friend below the two hours that he's mentioned,
22 but it might be that there's enough flex in the timetable to accommodate that.

23 **LORD ERICHT:** I am not really concerned about this at this stage, we may not need
24 any housekeeping. We will just have to see how it goes. What I want to establish
25 here is that your submissions will close at 12.15. Obviously on the day, if there has
26 been a delay in getting started, we'll accommodate that.

1 **MR SCANNELL:** I am grateful. The bottom line is that I require two hours. Thank
2 you.

3 **LORD ERICHT:** Then appellant two, I think that's you, Ms Ford.

4 **MS FORD:** Sir, yes.

5 **LORD ERICHT:** You've been given until 3.15, is that adequate?

6 **MS FORD:** Sir, yes, that's as we understand it 45 minutes before the short
7 adjournment and then an hour and 15 minutes after, so two hours in total, and we are
8 content with that.

9 **LORD ERICHT:** Then appellant three is Lexon, who would have the rest of that
10 afternoon and the day next until 11 o'clock. Is that acceptable?

11 **MR ROBERTSON:** Yes, we'll stick to two hours, we're all experienced European
12 advocates, so we know the importance of keeping to deadlines.

13 **LORD ERICHT:** I'm afraid we don't have the magic button that switches the translation
14 off after 15 minutes.

15 **MR ROBERTSON:** I am sure you will improvise.

16 **LORD ERICHT:** Thank you. Then appellant four.

17 **MR BREALEY:** We are happy. I am not sure why we are in yellow, on my sheet
18 anyway, but we are happy with our time.

19 **LORD ERICHT:** Ms Bernstein.

20 **MS BERNSTEIN:** We are happy with our time as well, thank you.

21 **LORD ERICHT:** Excellent. Then the next day, Wednesday the 7th, the CMA have
22 a day. They have the extra half hour on that day. Is that acceptable?

23 **MR JONES:** Yes, sir, very much. Thank you.

24 **LORD ERICHT:** Thank you. Let us go on now to closing submissions and let's just
25 deal with the timetabling first since we are looking at the timetable. Appellant one,
26 that's Mr Scannell. That's starting on Wednesday, 26 July at 10 o'clock. What time

1 | would you need on that day?

2 | **MR SCANNELL:** We require one day to close our appeal. I will not be taking the
3 | Tribunal to any of the penalty points on our appeal in opening, so I will be addressing
4 | all of that in closing. So we will require one day to close. I am grateful.

5 | **LORD ERICHT:** Appellant two, Ms Ford? Thursday you start at 10.

6 | **MS FORD:** Sir, that's fine from our perspective. We ask for a day to close, so that
7 | will be fine.

8 | **LORD ERICHT:** Appellant three again starting at 10, you would have that day to close.

9 | **MR ROBERTSON:** Yes, on behalf of Lexon and Mr Sonpal, thank you.

10 | **LORD ERICHT:** Appellant four again starting at 10, you would have that day to close.

11 | **MR BREALEY: (Nodded).**

12 | **LORD ERICHT:** Yes. Then on Tuesday, 1 August you have the morning,
13 | Ms Bernstein, and you would have that extra half hour of course. Is that suitable?

14 | **MS BERNSTEIN:** Thank you, yes.

15 | **LORD ERICHT:** Thank you. Then we have CMA's closing submissions starting at
16 | 2 o'clock on the Tuesday running through the Wednesday and the Thursday and on
17 | this timetable you are down to finish at 12.30 on the Friday. We'll come back in
18 | a minute about timing for reply but in terms of setting out your submissions, what is
19 | your view of that timetable?

20 | **MR JONES:** Sir, I don't need that long. If we are starting at 10 on the Wednesday
21 | and the Thursday, that gives me extra hour, I would finish by 11.30 on the Friday,
22 | which maybe helps the next stage of the process.

23 | **LORD ERICHT:** Thank you. So we'll start all these days at 10 and we'll finish the
24 | CMA at 11.30.

25 | In terms of replies, appellant one reply? We would now start that at 11.45. Ms Ford,
26 | how long would you need?

1 **MS FORD:** Sir, we had originally indicated that we would essentially cut our cloth
2 according to the time available, we'd also indicated that we thought it was appropriate
3 for there to be parity as between various appellants in terms of timing.

4 **LORD ERICHT:** I think the way I'd like to approach this is I'd like to establish how long
5 you need and then if it turns out that we don't have enough days for that then we might
6 be looking at whether the CMA would have to cut their cloth as well. So I think we
7 start with how long you need and then we'll see how we can accommodate that within
8 the days available.

9 **MS FORD:** As we understand it, we've just gained an extra hour and 15 minutes,
10 which divided amongst the five would give an extra 15 minutes per party.

11 **LORD ERICHT:** Yes.

12 **MS FORD:** We had indicated we would manage with 30 minutes given that that was
13 the time available but we would find 45 minutes a suitable length of time.

14 **LORD ERICHT:** So if we were to give you what is at the moment down in green as
15 CMA closing slot 11.45 till 12.30 would be for you, would that be acceptable?

16 **MS FORD:** Sir, yes.

17 **LORD ERICHT:** Yes, thank you. So appellant two would then have 12.30 to 1 slot if
18 that is going to be --

19 **MS FORD:** Sorry, sir, I have realised that I am in fact appellant two, so it would be
20 appellant one in that slot.

21 **LORD ERICHT:** I am sorry, I am just going to talk about appellants rather than try to
22 put the right people in. So appellant one, you'd be going first. How long would you
23 need?

24 **MR SCANNELL:** We are happy with the proposal that you just made to my learned
25 friend Ms Ford, so 30 to 45 minutes depending on how things go should be fine.

26 **LORD ERICHT:** If you took that green slot 11.45 to 12.30?

1 **MR SCANNELL:** Indeed.

2 **LORD ERICHT:** Then appellant two, if you had 12.30 to 1.15 then or make it 12.30 to
3 1 and if you need a little longer we could go into the lunch hour for another 5 or
4 10 minutes.

5 **MS FORD:** Or 15 minutes after the short adjournment, would that also work?

6 **LORD ERICHT:** Yes, I think appellant one is going to finish at 12.30, so if we said you
7 were to go -- let's just work out 12.30 to 1.15 and then we'll have a short lunch and
8 then we'll come back after lunch. Who would we have after lunch then? We'd have
9 appellant three?

10 **MR ROBERTSON:** Yes, 45 minutes, we will cut our cloth.

11 **LORD ERICHT:** So you would have 2 till 2.45.

12 **MR ROBERTSON:** 2 till 2.45 bearing in mind that it will be a Friday afternoon at the
13 beginning of August, it's not in anybody's interests to drag that out any longer than
14 necessary.

15 **LORD ERICHT:** I can speak for my fellow Tribunal members, we endorse that. So
16 then we'd have appellant four starting at 2.45. How long would you like?

17 **MR BREALEY:** 45 minutes.

18 **LORD ERICHT:** So that would give you until 3.30.

19 **MR BREALEY:** 3.30, a break and then ...

20 **LORD ERICHT:** Then appellant four. So that is you, appellant four, yes, and then ...

21 **MS BERNSTEIN:** I am content with 45 minutes as well if that's possible.

22 **LORD ERICHT:** We'll have to fit in a break as well at some point in that afternoon. I'll
23 come back to the break in a minute but if we started you at 3.30 that would give you
24 until 4.15 and that 15 minute break we'd have to fit in in the afternoon. So it looks as
25 if, if we give you 45 minutes, we should get everything completed by 4.30 that
26 afternoon, allowing for the break.

1 **MS BERNSTEIN:** Yes, thank you.

2 **LORD ERICHT:** Thank you. Well, I think that has been very helpful. Does anyone
3 have anything else to say about the timetabling of the submissions before we move
4 on? No.

5 In that case, what we now need is this appeal timetable to be updated to cover all of
6 that. I don't know who has produced this document.

7 **MR JONES:** I think the CMA has produced it. We would be very happy to update it.

8 **LORD ERICHT:** Would you be happy to update that and send it round to the other
9 parties and also to the Tribunal to make sure that we are all happy that it adequately
10 reflects what we've discussed today and then that can be the timetable?

11 **MR JONES:** Yes.

12 **LORD ERICHT:** Thank you. Now, in relation to other matters about closing
13 submissions, we issued a letter earlier this week with the proposal about closing
14 submissions and it dealt with two things, first of all the timetabling for that and,
15 secondly, the length. So if we might address the timetabling. Our proposal is that
16 CMA to file written closings at 4.00 pm on 11 July, all other parties 4.00 pm on 18 July
17 and any reply from CMA, which will be limited to responding to any points of other
18 parties, to be filed at midday on 24 July.

19 Is that timetable acceptable or does anyone wish to make any comments on it?

20 **MR JONES:** Sir, it is absolutely acceptable. There is a point which I wanted to draw
21 to your attention, I think now might be the moment to do it, which is in a case
22 management conference in a different pharma case yesterday the Tribunal president
23 made some comments which indicated that the judgments in Hydrocortisone and
24 Liothyronine, which have several of the same parties in, are likely -- I don't want to put
25 it too high but the broad indication was that we can expect those around July.

26 **LORD ERICHT:** Right.

1 **MR JONES:** I only mention that so that everyone is aware of it. They may or may not
2 say anything relevant. Only one of those cases concerns an agreement, it raises legal
3 issues which are very different to this case but one can imagine that that might happen
4 and people might want to comment on it. I don't think one can plan for it but I wanted
5 to make sure the Tribunal and all of my learned friends were aware of that likelihood.

6 **LORD ERICHT:** That's useful. Subject to any views anyone else might have about
7 that, what we'd then propose to do is to make an order with that timetable that I've just
8 indicated but obviously that can be revisited at the end of the first phase. If there has
9 been a judgment that's come out that necessitates that to be looked at again we can
10 look at that again as and when that arises.

11 The other suggestion that we've made is in terms of written closings to be limited to
12 75 pages and the CMA's responsive reply limited to 50 pages. Are there any
13 observations on that?

14 **MR JONES:** I apologise that I keep popping up but I do have one observation, which
15 is it would help to make clear whether that's, as it were, per counsel or per individual.
16 I mean, in other words, does one expect four of those submissions from Mr Brealey,
17 for instance, because he's representing four parties and submitted four skeletons or
18 would it be one since they are all running essentially the same case?

19 **LORD ERICHT:** Thank you. I will ask, Mr Brealey.

20 **MR BREALEY:** Quite frankly, I had not clocked that one. I do have three directors
21 and one company. I would seek the indulgence of 100 pages, so, for all four, that's
22 25 each, because from a personal point of view I do like to assist the Tribunal with
23 extracts from the evidence and I believe I can do that in 100 pages and still do justice
24 to the three directors.

25 **LORD ERICHT:** Well, given that you are actually representing several people, I think
26 it's not unreasonable to give you an extra 25 pages. So we will allow that.

1 **MR BREALEY:** Thank you.

2 **LORD ERICHT:** So far only in relation to you. If anyone else wants to make a similar
3 request, we'd be happy to hear it.

4 **MR ROBERTSON:** We act for two parties but we'll stick to the 75 pages between
5 them.

6 **LORD ERICHT:** Thank you. Everybody else content with the 75? Okay.

7 So that deals with item 3 on the agenda. Does anyone have anything else they wish
8 to say about item 3 on the agenda?

9 Now we move to item 4 on the agenda, which is the protocol for use of inner
10 confidentiality ring versions of documents and Opus 2 during the trial. I think we've
11 had an indication that there might be an agreement and some sort of protocol that
12 could be agreed on this. What is the position in relation to this?

13 **MR JONES:** There is a letter in the bundle which starts at page 241, which is H5/241,
14 in which, sir, off the back of the Tribunal's letter, the CMA wrote to the parties and
15 suggested a protocol. It's a little bit fiddly so I think it would help, I hope, if I just
16 explained a little bit about what the CMA has said on these issues because it's not
17 precisely what Mr Brealey had suggested in his skeleton for Advanz.

18 **LORD ERICHT:** Well, just bear with me because I am trying to -- I don't think I've seen
19 this letter before. We do have it, I do have it on the screen but it's just I don't think my
20 colleagues have had a chance to see that.

21 **MR JONES:** The most efficient manner is for me to sit down in that case and allow
22 you to read it.

23 **LORD ERICHT:** The other way to look at it is, if parties are agreed then all we need
24 to be given is their agreed proposal and if they are not agreed then we have to identify
25 what they are not agreed about.

26 **MR JONES:** Yes, sir, very well. I don't know the extent to which it's disagreed

1 because no one has replied to it. So perhaps on that basis I should let my learned
2 friends say if they agree.

3 **LORD ERICHT:** I think what we are going to do is park this one for the meantime.
4 We are going to deal with other items on the agenda and then we'll have an
5 adjournment and people can discuss it and at the end of that hopefully you can come
6 back and agree the position.

7 **MR JONES:** I am grateful, sir.

8 **LORD ERICHT:** If not then we can have a discussion about it.

9 **MR JONES:** Yes.

10 **LORD ERICHT:** Moving on to the fifth item, whether it would assist the Tribunal to
11 have a core bundle of documents. It would be of immense assistance to us to have
12 a hard copy written core bundle of documents.

13 Now, in our letter of earlier this week we made a provisional suggestion that it would
14 contain pleadings, skeletons and the Decision, and the key contemporaneous
15 documents. I think the CMA had identified there were about 100 documents which will
16 be the main documents of contention to which witnesses will be referred. So the other
17 items which subsequently we thought would be useful to have are chronologies.

18 Now, there are two chronologies which we've seen. The first chronology also serves
19 as the index to the chronological bundle which was produced as a result of our
20 previous order. It would be helpful if the core bundle also had that index which gives
21 a very helpful list of all the documents in chronological order.

22 There is a second chronology which we have seen. It was referred to in paragraph 12
23 of Advanz's skeleton. Advanz has prepared a file of factual chronology, IR-E/1.1/1. It
24 would be helpful also to have that in hard copy form in the core bundle. We also had
25 a query about that factual chronology, which is: is that an agreed factual chronology?

26 **MR JONES:** It's not, but we think we can make it, on the CMA's part, agreed relatively

1 | painlessly because it is we think a good start and it did occur to us that it might be
2 | helpful for us to agree to it. There's obviously a few disputes about did something
3 | happen on a particular date or not, but by and large the way it has been presented
4 | already is to say, for example, Lexon says this happened, the CMA disputes it, and
5 | we think that's the right way to do it.

6 | So, sir, we've not discussed it with my learned friends yet but it did occur to us that
7 | that would be sensible and that we then could put it in as an agreed chronology.

8 | **MS FORD:** Sir, for our part, we are in a similar position. We saw it for the first time
9 | when it was attached to Advanz's skeleton and so we have been reviewing it and it's
10 | not agreed in that sense but we envisage that it can be.

11 | **MR ROBERTSON:** The same goes for Lexon.

12 | **MS BERNSTEIN:** And for Mr Dey.

13 | **MR BREALEY:** I am pleased I have been of assistance.

14 | **LORD ERICHT:** In that case, shall we order that an agreed chronology based on the
15 | document referred to in paragraph 12 of the Advanz skeleton is lodged within seven
16 | days and included in the core bundle?

17 | **MR JONES:** Sir, might I make some other observations on the core bundle?

18 | **LORD ERICHT:** Certainly.

19 | **MR JONES:** One is just to pick up on the contemporaneous bundles. I had said
20 | we think there's about 100 documents. We'll of course liaise with my learned friends.
21 | We'll try not to get involved inside disputes about what's important and what's not. Of
22 | course you'll be able to look at all documents.

23 | **LORD ERICHT:** Just to be clear, we will have all the documents.

24 | **MR JONES:** You'll have all the documents.

25 | **LORD ERICHT:** We have them electronically and we have one hard copy bundle as
26 | well. I think it runs to 38 volumes. We didn't think it was necessary to spend the

1 money on duplicating that numerous times.

2 **MR JONES:** No, ideally we'd get it into two, possibly three lever arches, so that's
3 going to be the objective and it might follow from that that some of the bigger
4 documents which we might go to repeatedly might not go in the core because it's just
5 disproportionate to have large documents in the core.

6 **LORD ERICHT:** I think the principle should be, it should be documents that we really
7 need to examine in detail.

8 **MR JONES:** Right.

9 **LORD ERICHT:** Rather than it should be documents that are small.

10 **MR JONES:** Understood.

11 **LORD ERICHT:** So I would rather have an extra few lever arch files which included
12 all the important documents than to try and reduce it.

13 **MR JONES:** I understand. Sir, that's very helpful. My second point was you had
14 asked for some other bundles which we will produce and broadly speaking I think they
15 should each fit into a lever arch, so there should be a pleadings lever arch, et cetera,
16 that's what I am hoping. The way mine are printed out at chambers has managed to
17 do that. Witness statements is one that you didn't ask for, sir, but I think they would
18 also fit into a lever arch if that would assist, an additional bundle just with the witness
19 statements in.

20 **LORD ERICHT:** I think that would assist, yes.

21 **MR JONES:** The final point I wanted to make is a really very practical point, which is
22 we will print these in the normal way, double-sided A4, unless you tell us otherwise
23 and, for example, I have this very nice spiral-bound version of the Decision, I think one
24 of my learned friends made a similar comment in their skeleton, one can also do them
25 A5. Maybe not for now but to say if it would assist the Tribunal to have any of these
26 in a different format, of course we'll do that.

1 **LORD ERICHT:** My preference is just to have them in ring binders because I find ring
2 binders -- I don't know if you have a preference to have a spiral ... We will take you
3 up on your very kind offer to do the spiral binding for the Decision.

4 **MR JONES:** Yes.

5 **LORD ERICHT:** And we'll leave it to your discretion if there's any other similarly hugely
6 large documents that you think would be easier to have a spiral binding, that's fine,
7 but otherwise we would just have them in ring binders. I shall ask my colleagues: do
8 you have any preference to whether it should be double-sided or single-sided? I tend
9 to have a preference to have it single-sided, then I can make notes on the blank page
10 opposite it. Fine with that? So if we could have it single-sided, that gives us the
11 flexibility to take notes... And when would you think we could be provided with these
12 hard copies?

13 **MR JONES:** Can I take that away and come back -- I understand there's going to be
14 a short break, so I can ask my solicitors, who will be able to give an answer on that
15 and I can give the answer on that afterwards. Thank you, sir.

16 **MS BERNSTEIN:** Sir, before we move on, I have a short point on this. Mr Dey doesn't
17 have a pleading and therefore in that sense he's disadvantaged.

18 **LORD ERICHT:** Yes.

19 **MS BERNSTEIN:** Would it be possible for transcripts of the interviews to be included
20 within the core bundle as much of the relevant evidence is set out in those interview
21 transcripts?

22 **MR JONES:** Yes, those transcripts, I don't know if it would be helpful to have a debate
23 about one particular document now, but those transcripts are actually the documents
24 I had mind when I said those large documents. It might be that we could put in
25 Mr Dey's transcripts but of course there is a witness statement from Mr Dey, but they
26 are quite chunky documents and once you start putting them in the core bundles -- sir,

1 you mentioned the large volume of material there already is, the first tranche of those
2 bundles are actually just little -- going back to the little and big document debate but
3 the small contemporaneous documents don't take up that much space and then you
4 get later on in that run to documents which take up half a bundle because they're
5 things like transcripts of interviews. So that would be my note of caution. I think it
6 might be better to look at what is actually key evidence and to use Mr Dey's witness
7 statement and skeleton argument to find what his case is because that's where it has
8 been set out.

9 **MS BERNSTEIN:** I appreciate that point and I appreciate the significance of the
10 length. The difficulty is that selective extracts of these transcripts were relied upon
11 and only a certain amount can be drawn out within a witness statement or a skeleton.
12 There's the transcript of Mr Dey and Mr Brundan and Mr Mehta which are all very
13 relevant to Medreich's and Mr Dey's position and that's why we would request that
14 those be included.

15 **LORD ERICHT:** So just to be clear, what you would like are the witness statements
16 from whom?

17 **MS BERNSTEIN:** Mr Dey and Mr Mehta, although I understand --

18 **LORD ERICHT:** That's a witness statement?

19 **MS BERNSTEIN:** Yes.

20 **LORD ERICHT:** Then you'd also like transcripts?

21 **MS BERNSTEIN:** Yes, there's two interviews with Mr Dey, one with Mr Mehta and
22 one with Mr Brundan.

23 **LORD ERICHT:** Sorry, who was the last one?

24 **MS BERNSTEIN:** Mr Brundan. Thank you.

25 **LORD ERICHT:** Thank you. I will just ask everyone else. Are there any transcripts
26 of interviews which the rest of you want to be included in this or are we only looking at

1 these ones for the purpose of this discussion?

2 **MS FORD:** Sir, we have put in a Civil Evidence Act notice in relation to Mr Tweedale's
3 transcript. So if transcripts were to go into the core bundle it would make sense, in
4 our submission, for that one to be included.

5 **LORD ERICHT:** Any advance on that?

6 **MR ROBERTSON:** In an ideal world, we would have a separate core bundle devoted
7 to transcripts because the CMA did interview a number of individuals. I can deal with
8 it by way of submission, referring the Tribunal to relevant parts, but it sounds like we
9 have a bundle there of transcripts which probably has about two-thirds of them in
10 already.

11 **LORD ERICHT:** Yes. I am just going to have a discussion now with my colleagues
12 here.

13 Thank you. I appreciate the reasons why you are suggesting these, Ms Bernstein, but
14 how we would like to proceed is as follows. We will not have any transcripts in the
15 core bundle. We already have one hard copy of 38 volumes which I will be using, so
16 I will already have a hard copy so we don't need to duplicate that, and my colleagues
17 have indicated that they are happy to look at the electronic versions of the transcripts.

18 **MS BERNSTEIN:** Thank you.

19 **LORD ERICHT:** So we'll have no transcripts in the core bundle. Is there anything
20 else we need to deal with before we adjourn and then come back and look at the
21 protocol and confidentiality?

22 **MR BREALEY:** No, I don't think so.

23 **LORD ERICHT:** Good. We'll adjourn. We are not going to put a time limit on this
24 because when we come back we would like to have a clear agreement as to what
25 happens, and if it's possible to actually write that down all the better. We'll leave
26 parties to sort that out and we can be advised when you are ready for us to return.

1 We will now adjourn.

2 **(11.34 am)**

3 **(A short break)**

4 **(11.51 am)**

5 **MR JONES:** Sir, I am pleased to be able to say that we have all agreed on the protocol
6 which is at page 244 of the bundle.

7 **LORD ERICHT:** Yes, just give us a second to read that.

8 **MR JONES:** 244, sir. **(Pause)**.

9 **LORD ERICHT:** Thank you. We are happy with that protocol also. So we will proceed
10 on the basis that that is the protocol which is being used in respect of confidentiality.

11 **MR JONES:** Sir, it may assist just to put this on your radar as well which is on that
12 second bullet point, which is talking about confidential information from, among others,
13 non-parties, the main non-party whose confidential information might be looked at is
14 of course Medreich. What this protocol envisages is that if I wanted, for example, to
15 show anyone, Mr Dey for example, Medreich's confidential documents, I would first
16 need to get permission from Medreich if I wanted him to see the confidential
17 information.

18 I simply wanted to note that we are in correspondence, the CMA is in correspondence
19 with Ashurst, Medreich's solicitors, already about that and there's not going to be a big
20 issue. There might be a few documents where there is a problem, but hopefully there
21 won't be any and we are hoping that that will be ironed out and we'll be able to show
22 all the Medreich documents to the relevant individuals.

23 Sir, the second point which I wanted to raise which I've been asked to mention is that,
24 in addition to this commercial confidential information, there is some personal
25 confidential information about the two people who you might want to hear from but
26 who are not giving evidence, and that's Mr Tweedale and Mr Brundan. The Decision

1 lists I think nine key individuals and seven of them are giving evidence, those two are
2 not.

3 I have just been asked to make absolutely clear, sir, that nothing is said about that in
4 open court, that the reasons why they are not giving evidence, which you will at some
5 point need to look to, to explain why they are not here, that is confidential. I think we
6 are all agreed that everyone needs to keep that in mind, if I can just put it that way,
7 and it is not going to be shown to other witnesses, there's no reason to show it to other
8 witnesses.

9 Sir, you also asked about timing of the bundles. But shall I come back to that? I see
10 my learned friend wants to say something perhaps about confidentiality. No, just
11 getting comfortable in the seat, right.

12 Sir, on the bundles, I understand that Opus need several days to print bundles, I say
13 several days, hopefully two or three, but it apparently took two days to print that run of
14 bundles for the Tribunal last time, so one needs to factor that in. On the other hand,
15 clearly the Tribunal would benefit from having these bundles as soon as possible.

16 It seemed to us that the quickest route -- and when I say us, I mean the CMA, I have
17 not yet run this by my learned friends -- we can produce indexes, including a proposed
18 index for a contemporaneous documents bundle, tomorrow. There's no reason why
19 that shouldn't go out tomorrow. I hope there won't be much debate about it and that
20 we could agree it on Monday. If there is debate, it may be that it flows into Tuesday.
21 So, without making too rash a promise, we really should be able to get that to the
22 Tribunal by the end of next week and hopefully before then.

23 **LORD ERICHT:** Thank you. That's perfectly acceptable. So we can just note that
24 parties will cooperate on producing the bundles and we expect to have them by the
25 end of next week.

26 **MR JONES:** Yes, sir.

1 **LORD ERICHT:** Thank you. Are there any other matters we need to deal with today?

2 **MR JONES:** No.

3 **MR BREALEY:** I don't believe so.

4 **LORD ERICHT:** I would just like to thank you all. That's been a very cooperative and
5 efficient hearing today and we look forward to seeing you all again in a couple of
6 weeks' time. We are now adjourned.

7 **(11.58 am)**

8 **(The hearing adjourned)**

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