Neutral citation [2023] CAT 42

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1586/4/12/23

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

23 June 2023

Before:

HODGE MALEK KC
(Chair)
DR WILLIAM BISHOP
PAUL LOMAS

Sitting as a Tribunal in England and Wales

BETWEEN:

DYE & DURHAM LIMITED
DYE & DURHAM (UK) LIMITED

Applicants

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

TM GROUP (UK) LIMITED

Intervener

RULING (WITNESS EVIDENCE)

A. INTRODUCTION

1. On 21 April 2023 the Applicants ("**D&D**") filed an application for review pursuant to s.120 of the Enterprise Act 2002 (the "**Act**") of a decision by the Respondent (the "**CMA**") dated 29 March 2023 **("the Decision")**, in which it assessed as non compliant D&D's proposal to pursue the demerger and AIM admission of TM Group (UK) Limited **("TMG")**[1] in parallel to a private sales process ("the **AIM Proposal**"). The AIM Proposal was set out in the Proposal Paper – Twin Track Divestment Process dated 23 February 2023 submitted by D&D to the CMA ("the **Proposal Paper**").

2. The Decision followed the CMA's Final Report of 3 August 2022, in which it concluded that D&D's merger with TMG would result in a substantial lessening of competition in the market for property search report bundles ("**PSRBs**") and required the full divestiture of TMG. The Decision assessed the AIM Proposal against Final Undertakings dated 13 October 2022 ("**the Final Undertakings**"), in which D&D agreed to complete the sale of TMG to an Approved Purchaser within the Divestiture Period.

3. Pursuant to the Tribunal's Order of 17 May 2023, made following a case management conference on 15 May 2023, TMG was granted permission to intervene in these proceedings. TMG intervenes in support of the CMA. This is the Tribunal's on the admissibility of a witness statement that TMG sought to adduce. Nothing in this ruling regarding the admissibility of evidence prejudges the issues that D&D has raised in its application for review (the "**s.120 Application**").

B. BACKGROUND

4. D&D is a leading provider of software to legal, financial and business professions with customers in Australia, Canada, the United Kingdom and

[1] AIM (formerly the Alternative Investment Market) is a stock market operated by the London Stock Exchange.

Ireland. It produces a range of software which (among other things) automates the property searches typically conducted when real estate is conveyed. The results of these searches are provided to conveyancers in the form of PSRBs.

5. On 8 July 2021, D&D acquired TMG. Like D&D, TMG also provides PSRBs to conveyancers across England and Wales. D&D did not seek prior merger clearance for its acquisition of TMG and, after the transaction completed, the CMA opened an investigation into the transaction. On 18 May 2022, the CMA published its provisional findings, in which it provisionally concluded that the merger may be expected to result in a substantial lessening of competition. On the same day, the CMA published a notice of possible remedies which identified divestiture as a potential remedy. D&D engaged with the CMA's investigations and discussed possible remedies. On 3 August 2022, the CMA published its Final Report which required D&D to divest TMG in its entirety. On 13 October 2022, D&D gave (and the CMA accepted) the Final Undertakings. In brief, the effect of the Final Undertakings is that D&D must divest TMG to a purchaser approved by the CMA by a specified date. If D&D does not do so, then the CMA may appoint a Divestiture Trustee to do so on D&D's behalf.

6. Since 13 October 2022, D&D has been engaged in a private sale process to divest TMG by selling it to a third party buyer, in accordance with the Final Undertakings. As at the date of the s120 Application, negotiations with bidders were continuing. However, D&D has been concerned that the originally proposed sales process may not lead to a divestment of TMG on acceptable terms. D&D has therefore, in consultation with its financial advisers and with the CMA, continued to explore other possible methods of divesting TMG in line with the Final Undertakings, including the AIM Proposal.

7. The AIM Proposal as explained in the Notice of Application now envisages D&D entering into a corporate restructuring whereby TMG would be transferred to a new public limited company, known as Dye & Durham Callisto plc ("**Spinco**"), whose shares would be (a) admitted to trading on AIM and (b) transferred to D&D's existing shareholders so that they could be traded on AIM by those shareholders. Spinco would then and thereby, in D&D's view, function as an independent entity, separate from D&D.

8. To this end, D&D has been discussing the possibility of pursuing an AIM admission with the CMA and Monitoring Trustee on various occasions in early 2023. As part of this process, D&D filed submissions with the CMA in February 2023 and it filed supplemental submissions on 6 March 2023. The CMA issued its provisional decision on 8 March 2023 indicating that the AIM Proposal would not be acceptable ("the Provisional Decision"). The CMA gave D&D three working days to make further submissions before the provisional decision became final. D&D filed these submissions on 13 March 2023. The CMA issued the Decision on 29 March 2023.

9. In its s.120 Application, D&D submits that, by the Decision, the CMA declined to:

   (1) approve the AIM Proposal the "**AIM Decision**");

   (2) vary D&D's Final Undertakings (if the same were needed) so as to allow D&D to transfer its shareholding in TMG to Spinco (the "**Variation Decision**"); or

   (3) approve Spinco as a form of approved purchaser, even if no variation of the Final Undertakings were required (the "**Approval Decision**").

10. D&D contends that the effect of the Decision is:

    (1) to prevent D&D from proceeding with the divestiture of TMG through a transfer of D&D's shareholding in TMG to Spinco even though Spinco would (once admitted to AIM) meet the CMA's purchaser approval criteria;

    (2) to prevent D&D from divesting TMG in a different manner from a direct sale to a third party purchaser, namely by transferring the shareholding in TMG to Spinco as an independent entity whose shares would be admitted to trading on AIM;

(3) to preclude variation of the Final Undertakings (if the same were needed) to permit a divestment of TMG via an AIM admission of Spinco, even though this would have the significant benefit of improving the competitiveness of the sales process and, if the sales process failed to produce a satisfactory outcome, would result in Spinco operating as a functionally independent entity, capable of competing with D&D in the relevant market; and

(4) to proceed on the narrow basis that a variation to the Final Undertakings would be required, that such a variation should not be permitted, and that the AIM Proposal would not meet certain "suitable purchaser" requirements which the CMA would wish to apply.

11. D&D challenges the Decision on the following principal grounds.

(1) The CMA erred in law in finding that the AIM Proposal would require a variation to the Final Undertakings given by D&D to the CMA. No variation was necessary, since the structure envisaged that (once admitted to AIM) Spinco could readily – and should – have been treated as a prospective purchaser of TMG, eligible for approval (**Ground 1**).

(2) The CMA proceeded in the Approval Decision to consider the purchaser approval criteria, but erred in law in applying those criteria on the facts of this case, with the resulting erroneous legal conclusion that the purchaser approval criteria were not met (**Ground 2**). In particular:

(a) The CMA erred in law in considering the purchaser approval criteria in relation to TMG itself, or to the shareholders of TMG/Spinco, rather than to Spinco.

(b) The CMA erred in law in finding that the independence criteria were not met.

(c) The CMA erred in law in finding that the capability and commitment criteria were not met.

(d) The Approval Decision was otherwise *Wednesbury* unreasonable in taking into account irrelevant considerations, failing to take into account material considerations, was vitiated by procedural unfairness and/or was irrational.

(3) Alternatively, to the extent that the Tribunal finds against D&D on Ground 1, but rules in favour on Ground 2, the CMA erred in law in taking the Variation Decision, finding that no variation to the Final Undertakings should be given, since the AIM Proposal brings with it a suitable purchaser mechanism which has the additional advantage of enabling existing shareholder values to be maintained, with no associated risk to the competition concerns that lie behind the divestiture requirement. The Variation Decision was in those circumstances disproportionate, vitiated by other errors of law and/or was *Wednesbury* unreasonable (**Ground 3**).

(4) D&D also challenged the CMA's decision refusing to extend the deadline for divesting TMG until a date after the conclusion of the Application (the "**Extension Decision**"). As D&D's challenge to the AIM Decision would become academic unless the deadline is extended, D&D contended that the Extension Decision was disproportionate and infringed D&D's statutory right to pursue an effective review of the contested Decision (**Ground 4**). This ground is no longer a live issue as the CMA has agreed to extend time until some date after the decision of this Tribunal on the Application.

12. Both the CMA and TMG as intervener seek to uphold the Decision.

13. TMG seeks to rely on a witness statement by Mr Joe Pepper dated 30 May 2023 ("**Pepper 1**"), the CEO of TMG. This was served together with its Statement of Intervention.

14. D&D objects to large parts of this evidence and submits that none of Pepper 1 satisfies the *Powis* test (see below) and asks that the entire witness statement be disallowed. D&D objected to Pepper 1 in its Reply to the Statement of

Intervention and requested that the matter be dealt with on the papers without an oral hearing. The Tribunal directed that any response to the objection be served prior to the substantive hearing fixed for 2 days commencing 26 June 2023. This response was provided by way of annex to the Intervener's Skeleton Argument on 20 June 2023 and D&D filed short submissions in reply on 22 June 2023 in accordance with the Tribunal's directions. D&D has also filed a witness statement in reply from its General Counsel, Charlie MacCready dated 2 June 2023 in relation to two aspects covered in Pepper 1 (the Twin-track Proposal and TMG's letter in support, and the sales process).

15. TMG submits that the Tribunal can dismiss D&D's appeal without having to reach a final view on the admissibility of Pepper 1. Unless, *per* Ground 3, D&D can persuade the Tribunal that it provided sufficient justification for a variation of the Final Undertakings to include the AIM Admission proposal, the issues raised under Ground 2 – to which the Pepper 1 evidence goes – do not arise for consideration.

16. The Tribunal considers that it is appropriate to resolve these objections as to admissibility prior to the substantive hearing, rather than dealing with it at the hearing or admitting the evidence *de bene esse* and then making any necessary ruling in the judgment dealing with the substance of the proceedings.

C. LEGAL FRAMEWORK

17. Section 120 of the Act provides that:

> "**120. Review of decisions under Part 3**
>
> (1) Any person aggrieved by a decision of the CMA … under this Part in connection with a reference or possible reference in relation to a relevant merger situation or a special merger situation may apply to the Competition Appeal Tribunal for a review of that decision.
>
> …
>
> (4) In determining such an application the Competition Appeal Tribunal shall apply the same principles as would be applied by a court on an application for judicial review.
>
> …"

18. The Tribunal Rules that relate to evidence in applications for a review of a decision under s.120 of the Act are Rules 9(4)(h), 21, 26 and 27.

19. Rule 9(4)(h) (read in conjunction with Rule 26) of the Tribunal Rules requires applicants to identify any new evidence provided in support of their application.

20. Paragraph 7.73 of the Competition Appeal Tribunal Guide to Proceedings 2015 (the "**Guide**") states that:

> "The [2015 Tribunal Rules] refer to 'the substance' to reflect the fact that matters are often put forward at the administrative stage less formally, for example in correspondence or at meetings. The requirement to identify evidence as 'new' therefore does not apply where the substantive material was placed before the Regulator although it was not in the form of a witness statement or expert report that is produced for the purpose of the proceedings in the Tribunal."

21. Paragraph 7.77 of the Guide provides that "*the failure to identify evidence as being 'new' does not of itself render the evidence inadmissible*".

22. Rule 21 of the Tribunal Rules gives the Tribunal the power to admit or exclude evidence. It provides that:

> "**Evidence**
>
> **21.**—(1) The Tribunal may give directions as to—
>
> (a) the provision by the parties of statements of agreed matters;
>
> (b) the issues on which it requires evidence, and the admission or exclusion from the proceedings of particular evidence;
>
> (c) the nature of the evidence which it requires to decide those issues;
>
> (d) whether the parties are permitted to provide expert evidence;
>
> (e) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally; and
>
> (f) the way in which evidence is to be placed before the Tribunal.
>
> (2) In deciding whether to admit or exclude evidence, the Tribunal shall have regard to whether it would be just and proportionate to admit or exclude the evidence, including by reference to the following factors—
>
> (a) the statutory provision under which the appeal is brought and the applicable standard of review being applied by the Tribunal;

(b) whether or not the substance of the evidence was available to the respondent before the disputed decision was taken;

(c) where the substance of the evidence was not available to the respondent before the disputed decision was taken, the reason why the party seeking to adduce the evidence had not made it available to the respondent at that time;

(d) the prejudice that may be suffered by one or more parties if the evidence is admitted or excluded;

(e) whether the evidence is necessary for the Tribunal to determine the case.

(3) Unless the Tribunal otherwise directs, no witness of fact or expert witness may be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any directions of the Tribunal.

…"

23. As set out in the Tribunal's recent admissibility ruling in these proceedings, [2023] CAT 32 (the "**Admissibility Ruling**"), there are limited circumstances in which fresh evidence may be admitted in judicial review proceedings and the Tribunal will adopt a restrictive approach. The parties were invited by the Tribunal to address their submissions by reference to the principles set out in that ruling, not least because it is appropriate and fair to adopt a consistent approach to the admission of factual evidence by all parties.

24. The relevant test for fresh evidence is that set out in *R v Secretary of State for the Environment, ex parte Powis* [1981] 1 WLR 584, subject to the extensions in *Lynch v General Dental Council* [2003] EWHC 2987 (Admin). The case of *R (Law Society) v Lord Chancellor* [2018] EWCA Civ 2094 is also relevant. In short, factual evidence by way of witness statement not before the decision maker will be allowed where it is evidence: (a) showing what material was before or available to the decision-maker; (b) relevant to the determination of a question of fact on which the jurisdiction of the decision-maker depended; (c) relevant in determining whether a proper procedure was followed; or (d) relied on to prove an allegation of bias or other misconduct on the part of the decision-maker: *Powis* at 595G. These categories are not necessarily exhaustive and further categories can be developed: *Law Society* at [38].

25. The Tribunal will not usually exclude relevant evidence which it considers is necessary to fairly resolve the issues in the proceedings, and in limited

circumstances this may include witness evidence as to the impact and implications of the decision under challenge and the proportionality of the decision, where they are correctly raised as issues in the challenge. The parties should avoid witness evidence on collateral matters which do not fall for determination in the proceedings.

26. The Tribunal in *Tobii AB (Publ) v CMA* [2019] CAT 23 **("*Tobii*")** explained that the context of Tobii's substantive application brought under s.120 of the Act was important. The Tribunal stated, at [65]:

> "The principles of judicial review [in a merger application] confine the nature and scope of scrutiny by the Tribunal to the process undertaken in – not the merits of – the CMA's decision-making, and the Tribunal is under an obligation to determine merger appeals as expeditiously as possible. These are key factors that impact on the Tribunal's assessment at the case management stage of the proceedings as to what evidence is required to deal with Tobii's s.120 Application justly and at proportionate cost."

27. The Tribunal's general approach in judicial review cases has been that permission to adduce factual evidence not before the decision maker is not granted unless the *Powis* test is met. Where the party seeking to adduce the factual evidence claims that it is not new in substance, the Tribunal has looked at the content and nature of the evidence to determine whether it is necessary, taking into account that it is a specialist Tribunal.

28. If the factual evidence is not new in substance, the Tribunal will consider its content and nature to decide whether it is necessary to determine the application under s.120: *Tobii* at [23], [68], [76]. Since it is not the function of a factual witness to engage in argument or opinion, evidence containing such matters, or repeating matters already present in other documents, should not be admitted: *Tobii* at [69] – [70], [77]. As explained in paragraph 7.61 of the Guide:

> "As regards witnesses of fact, a witness statement should simply cover those issues, but only those issues, on which the party serving the statement wishes that witness to give evidence in chief. Thus it is not, for example, the function of a witness statement to provide a commentary on the documents in the case file, to set out quotations from such documents or to engage in matters of argument."

D. THE PARTIES' SUBMISSIONS

(1) D&D

29. D&D submits that certain parts of Pepper 1 are inconsistent with the Admissibility Ruling.

30. D&D's position is as follows:

(1) **Paragraphs 1 to 10** - D&D does not take issue with these sections.

(2) **Paragraphs 11 and 13-16** reproduce TMG's submissions to the CMA (with added gloss and opinion evidence) and should be excluded for the same reason that the Tribunal excluded parts of Proud 1 in the Admissibility Ruling. They are not merely "*more useful background*" as is suggested by TMG. As the Tribunal noted at [90] of the Admissibility Ruling, "*It is not necessary to repeat what is already in the papers and material provided to the CMA in a contentious witness statement. The Tribunal for itself can look at what was submitted in the light of the submissions being made in the Application and by counsel at the substantive hearing*."

(3) **Paragraph 27** expresses TMG's "concerns" and is therefore clearly opinion evidence. It should be excluded for the same reason that the Tribunal excluded parts of Proud 1. As the Tribunal explained at [89] of the Admissibility Ruling, "*Opinion evidence is largely inadmissible, unless it falls within one of the exceptions such as expert evidence. To the extent that Proud amounts to the opinion of Proud it is inadmissible."*

(4) **Paragraphs 33-36 and 38** contain opinion evidence and should be excluded.

(5) **Paragraph 35** also purports to contain opinion evidence of UK market practice and Canadian securities law (even though Mr. Pepper does not

claim to be an expert) and amounts to the partial deployment of privileged legal materials. It should be excluded for the same reason that the Tribunal excluded Franklin-Adams 1. The Tribunal noted at [93] of the Admissibility Ruling that "*It is not satisfactory to file a statement such as this without clearly indicating what is fact and what is expert opinion, and a statement without the usual declarations as to qualifications, conflicts of interest, expertise, independence and an express reference to the overriding duty to the Tribunal.*" Those observations apply *a fortiori* to paragraph 35 of Pepper 1.

(6) **Paragraphs 37 and 38** reproduce TMG's submissions to the CMA (with added gloss and opinion evidence) and should be excluded.

(7) **Paragraphs 44, 45 and 49** contain opinion evidence and should be excluded.

(8) **Paragraphs 50 and 51** contain opinion evidence and should be excluded.

(2) TMG

31. TMG submits that Pepper 1 should be admitted as it responds to aspects of D&D's own evidence that have been found to be admissible by the Tribunal. In particular, paragraphs 19-22 of Pepper 1 responds to the suggestions in paragraphs 3.2 and 3.5 of Proud 1 that TMG was somehow obstructing or delaying the private sale process.

32. Turning to the various parts of Pepper 1, TMG makes the following submissions:

(1) **Paragraphs 1-5** are introductory only.

(2) **Paragraphs 5-9** explain who TMG is and the early steps in the merger approval process. This is essentially useful background, and TMG notes that similar evidence in Section 2 of Proud 1 was admitted.

(3) **Paragraphs 10-17** set out in detail the CMA's position on the merger and in particular on remedies. This is in large part more useful background and should therefore be admitted for the same reasons why Section 2 of Proud 1 was admitted. However, the paragraphs also make an important point on a conflict of interest when it came to remedies between TMG and D&D, namely that they had differing views, leading to separate representation, on remedies. D&D's appeal is keen to play up the AIM Admission proposal as one fully endorsed by TMG. This is not correct, and the divergence on remedies between D&D and TMG from the outset of the remedies process is relevant and material evidence in this connection. Moreover, it all predates the Decision.

(4) **Paragraphs 18-27** deal with the private sale process. Much of this is also helpful background, and so should be admitted on the same basis as similar aspects of Proud 1. This section also responds to the points made in paragraphs 3.2 and 3.5 of Proud 1 that TMG was somehow obstructing or delaying the private sale process: see in particular Pepper 1, paragraphs 19-22. Justice requires that TMG can respond to such an allegation, even if D&D is now keen to backpedal on this point in its skeleton argument.

(5) **Paragraphs 28-43** deal with the AIM Admission process:

(i) **Paragraphs 28-32** explain that D&D's evidence on TMG's support for the AIM Admission is not complete. In particular, it did not bring to the Tribunal's attention the revised, signed letter of 27 February 2023 submitted by TMG to the CMA.

(ii) **Paragraphs 33-35** deal with TMG's growing understanding, and concerns, in relation to the implications of the AIM Admission process. This is important further context for why D&D has not accurately set out TMG's position in relation to the AIM Admission process. It would be unjust to allow D&D to

suggest that TMG had strongly supported the AIM Admission process when its support was muted and has waned further over time as the full implications of the AIM Admission process have presented themselves. Furthermore, there is case law to the effect that TMG can provide the Tribunal with the up-to-date position, particularly where D&D raises proportionality arguments.

(iii) **Paragraphs 36-37** deal with background and context.

(iv) **Paragraph 38** deals with a 21 March 2023 call in which TMG made known its views on the AIM Admission proposal to the CMA. This is relevant and material evidence to understand the material that was before the decision-maker prior to the adoption of the Decision. In particular, it goes directly to the concerns set out in paragraph 65 of the Decision concerning TMG's concerns as to its ability to raise finance, which the CMA found were sufficient that the capability and commitment criteria under the Purchaser Approval Criteria were not satisfied by the AIM Admission proposal.

(v) **Paragraph 39** is background and context.

(vi) **Paragraph 40** deals again with the suggestion in Proud 1 that TMG was somehow not cooperating in relation to the private sale process. This is disputed.

(vii) **Paragraphs 41-43** deal with the delays to the overall remedies process. This is factual background that is not substantially in dispute.

(6) **Paragraphs 44-49** deal with the impact of the AIM Admission process on TMG. This evidence should be admitted because it deals directly with the point made repeatedly in the Decision that the delay and uncertainty

associated with the AIM Admission process could adversely affect TMG: see in particular Decision, paragraphs 17, 34, 59, 65. Whilst the Decision does not refer specifically to this evidence, it does, as noted, refer to the basic concern underpinning the evidence concerning the impact and implications of the AIM Admission process on TMG. Moreover, courts in judicial review cases have admitted evidence as to the impact and implications of the challenged decision. Similarly, where D&D suggests that the AIM Admission process is a proportionate remedy, there is case law to the effect that TMG can provide the Tribunal with the up-to-date position.

(7) **Paragraphs 50-51** deal with the impact of the AIM Admission process on the divestiture and private sale process. In circumstances where D&D is keen to suggest that the AIM Admission process would not cause delay (see in particular MacCready, TMG should be permitted to present evidence going in the other direction.

E. THE TRIBUNAL'S ANALYSIS

33. In their reply submissions D&D have confined their challenge to Pepper 1 to paragraphs 11, 13-16, 27, 33-36, 38, 44-45 and 49-51. It is therefore not necessary to consider the remaining paragraphs. Pepper 1 is primarily served in support of TMG's opposition to Ground 2 of D&D's challenge to the Decision, so issues of relevance and necessity should be largely focused on that aspect of the proceedings.

34. Paragraphs 10 to 17 relate to the CMA's position on the merger and remedies and refers to TMG's own position before the CMA during the CMA's investigation and remedies. This is not new evidence but essentially summarises what was before the CMA. The Tribunal considers this to be a helpful summary and does not regard it as in effect being submission or comment. The Tribunal therefore declines to exclude paragraphs 11, and 13 to 16 of Pepper 1.

35. Paragraphs 18 to 27 deal with the private sale process. The Tribunal excludes paragraph 27 as it is in reality a submission and relates to the period after the Decision was made.

36. Paragraphs 28 to 43 deal with the AIM admission process. Paragraphs 33 to 35 deal with the impact of that process on TMG and are admissible as regards paragraphs 33 and 34. As regards paragraph 35 the first and last sentences may be retained as they also deal with the impact of the process on TMG. The remainder of paragraph 35 is to be excluded as it does not assist the Tribunal and purports to summarise the AIM Rules. It also is a summary of what could be categorised as expert opinion, which in itself is inadmissible.

37. Paragraph 36 is to be excluded save for the first sentence which is a statement of fact. The remainder of the sentence is a summary of its understanding of the CMA's position which is irrelevant. The CMA's position is clearly set out in the CMA's Provisional Decision and ultimately the Decision.

38. Paragraphs 37 and 38 summarises TMG's position before the CMA, and the impact of the Proposal on TMG. It is a helpful summary of its position taken at the time and is not to be excluded.

39. Paragraphs 44 to 49 deal with the impact on TMG on what it considers to be the delay caused by the Proposal. Paragraphs 44, 45 and 49 are to be excluded as essentially they are submission.

40. Paragraphs 50 and 51 relate to the impact of the AIM Admission on divestiture and private sale process. In effect they are a summary of TMG's opposition to the challenge to the Decision and are submission. These paragraphs are to be excluded.

41. Nothing in this Ruling should be taken from excluding TMG from advancing matters which may properly be made by way of submission at the substantive hearing. This ruling emphasises the need for parties and their advisors to focus on what factual evidence by way of witness statements filed for challenges to merger decisions is really necessary and will actually be of assistance to the Tribunal.

F. CONCLUSION

42. For the reasons set out in this ruling, the Tribunal orders as follows:

Pepper 1 is admitted, save for paragraphs 27, 35 (except the first and last sentences), 36 (except the first sentence), 44, 45, 49, 50, 51.

Hodge Malek KC
Chair

Dr William Bishop

Paul Lomas

Charles Dhanowa O.B.E, KC (*Hon*)
Registrar

Date: 23 June 2023