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5 **IN THE COMPETITION**  
6 **APPEAL TRIBUNAL**

CaseNo: 1379/5/7/20

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

12 1<sup>st</sup> November 2024

13  
14 Before:

15  
16 The Honourable Mr Justice Butcher  
17 Peter Anderson  
18 Simon Holmes

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

21  
22 BETWEEN:

23  
24 **Claimant**

25  
26 **Kerilee Investments Limited**

27  
28 v

29 **Defendants**

30  
31 **International Tin Association Limited**

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35  
36 **A P P E A R A N C E S**

37  
38  
39 Brian Beckett on behalf of Kerilee Investments Limited

40  
41 Laura Elizabeth John and Kristina Lukacova on behalf of International Tin Association  
42 (Instructed by CMS Cameron McKenna Nabarro Olswang LLP)

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48  
49  
50 **Friday, 1 November 2024**

1 (10.30 am)

2 **CMC hearing**

3 **THE CHAIR:** Good morning, everybody. This is the hearing of the CMC in this matter,  
4 there are a number of points on the agenda which we will need to address. I am not  
5 sure whether there's been any discussion as to who is going to go first and whether  
6 we are going to follow the agenda, although that seemed an essentially sensible way  
7 of approaching matters.

8 **MS JOHN:** Good morning, sir. In view of the fact that Mr Beckett is representing the  
9 Claimant in person this morning, I've come prepared to take us through the agenda.  
10 Even though it would usually fall to the Claimant, I am very happy to let Mr Beckett do  
11 it if that's what he would prefer and be comfortable with. But otherwise, I will address  
12 the points as they arise, if that's convenient.

13 **MR BECKETT:** Ms John, thank you very much. I would like to think I'm a metallurgical  
14 expert rather than a legal expert, so I would be only too happy for you to lead on.  
15 Thank you.

16 **MS JOHN:** Very well. Sir, I appear with Ms Lukacova today on behalf of the  
17 Defendant; Mr Beckett is here for the Claimant with Mr Arrowsmith as a McKenzie  
18 friend. I understand the Tribunal has indicated this morning that it is content for  
19 Mr Arrowsmith to be with Mr Beckett in that capacity.

20 I start with housekeeping. The Tribunal should have received from us four bundles,  
21 all of them in electronic only, as that's what I understand was requested. We have  
22 one open hearing bundle, we have a confidential bundle -- and pausing there, I don't  
23 propose to say anything confidential today and I hope we can stay in open session.  
24 There are just a couple of paragraphs in the witness statement from Mr Henderson  
25 which are confidential. I don't know whether the Tribunal has had the opportunity to  
26 read those in advance. If it hasn't, I will just flag them when we get to the appropriate

1 point and ask you to read it to yourselves and I'll try not to say anything which requires  
2 us to go into closed session today.

3 **THE CHAIR:** Right. I have read the witness statements.

4 **MS JOHN:** Thank you. The third bundle is a short volume of authorities, and the  
5 fourth is a supplemental bundle we filed yesterday, just to round up all of the  
6 correspondence and bits and pieces that have been flying about this week. So I hope  
7 the Tribunal has copies of all of those.

8 The draft agenda is in the open bundle at page 6. I'm going to start by running through  
9 that because the Tribunal will be pleased to hear that a certain amount of peace has  
10 broken out during the course of this week and there are a couple of items I can update  
11 you about which we don't actually need to spend any time on today.

12 Turning to that agenda, item 1(1) was the Defendant's application to strike out  
13 paragraphs of Mr Beckett's Third Witness Statement. That application has been dealt  
14 with by consent, so the Claimant has agreed to withdraw most of the paragraphs we  
15 objected to. We have agreed to them retaining one paragraph, paragraph 14, subject  
16 to us having permission to file brief reply evidence in 14 days if so advised.

17 I indicated in our skeleton argument that the question of costs on that application was  
18 still outstanding. That has also now been resolved. So as of last night, the parties  
19 have agreed costs in the case, so that has now been dealt with.

20 The next item on the agenda is security for costs. There is our application for security,  
21 and also our application for the costs of making that application. That is still  
22 outstanding and I'm going to come back to that in a moment.

23 Item 2.1, the assessment of our costs of the applications the Claimant brought back in  
24 May. The Tribunal may recall that the order made there was that we would get our  
25 costs to be subject to summary assessment today if not agreed. They were agreed  
26 yesterday, so the Claimant has offered us £24,000 for those costs which we have

1 | accepted.

2 | **THE CHAIR:** Well done. I'm grateful for that sensible solution.

3 | **MS JOHN:** Thank you. Item 2.2, this was on the agenda partly for the Tribunal's  
4 | information. So there was one further application that was made in May for the  
5 | Claimant to amend its Statement of Claim. We were awarded our costs of and  
6 | occasioned by the amendment, and that also was ordered to be subject to summary  
7 | assessment today if not agreed.

8 | The parties had agreed that this particular item can be deferred so we don't push for  
9 | that assessment to be dealt with by a litigant in person today. It's on the agenda simply  
10 | because there is an item in the draft order which provides for that to be dealt with at  
11 | the next convenient date. It's there so the Tribunal is aware of what the paragraph in  
12 | the order relates to.

13 | Item 3, the procedural timetable, that's the directions for next steps. We believe there  
14 | is still some outstanding disagreement on that, which we will need to ask the Tribunal  
15 | to assist with. The draft timetable to trial is an item the Tribunal asked to be put on the  
16 | agenda, so we understand that is also still to be discussed today.

17 | That leaves us with considerably shortened business today. It's essentially security  
18 | for costs, directions, and the timetable for the hearing. Starting on security for costs,  
19 | if that's a convenient one to take first, the parties have been discussing this.  
20 | Unfortunately it's not been possible to reach an agreement. There is a question about  
21 | how we move forward with this application and, in particular, whether it should be  
22 | business for today.

23 | I understand Mr Beckett would like to apply for this to be either adjourned to a later  
24 | date, if that's possible, or, if not, for it to be determined on the papers. Perhaps I should  
25 | hand to him to explain what he would like to say about that.

26 | **MR BECKETT:** Thank you. As you can imagine, it's quite challenging for us as

1 a -- sorry, for me as a litigant in person to deal with costs applications. On that basis,  
2 we've set out in our letter of 23 October how it could be dealt with, and we've made  
3 without prejudice proposals to your claim in our letter dated yesterday, which are in  
4 the bundle for discussion.

5 **THE CHAIR:** Yes. Mr Beckett, one area which Ms John says you could certainly be  
6 in a position to deal with today is the financial position of the Claimant and at least be  
7 able to explain to the Tribunal where the land lies in relation to that. In particular,  
8 I think the question of whether you actually contend that there should not, in principle,  
9 be security for costs, given the financial position of the Claimant company.

10 **MR BECKETT:** Could I please ask for a pause to discuss this briefly with my  
11 McKenzie friend?

12 **THE CHAIR:** Yes, yes.

13 **MR BECKETT:** Thank you. **(Pause)**

14 Sorry, thank you for extending me that time. Without prejudice, in view of the fact that  
15 we've not instructed counsel presently, we acknowledge that there is a question,  
16 arguably a need, for security for costs and we've made proposals to the Defendant to  
17 the tune of offering them £200,000 sterling in recognition of the security.

18 **THE CHAIR:** Right. So as I understand the position, there's no dispute in principle  
19 that security should be provided. The issue is the amount --

20 **MR BECKETT:** The amount and the timing.

21 **THE CHAIR:** -- and the timing, yes.

22 **MR BECKETT:** Yes.

23 **THE CHAIR:** Your desire, Mr Beckett, is that there should be further negotiations in  
24 relation to those amounts and timing before there's a ruling on it, is that right?

25 **MR BECKETT:** Yes, that's right.

26 **THE CHAIR:** Okay. Well, I think I understand -- I'm looking to my fellow panel

1 members. I think I understand what your position is, sufficiently to hear Ms John  
2 again.

3 **MR BECKETT:** Sorry, Ms John, can I please ask my McKenzie friend one more  
4 question?

5 **THE CHAIR:** Of course, yes, please do. **(Pause)**

6 **MR BECKETT:** Yes, thank you. No problem, Ms John. Carry on, thank you.

7 **THE CHAIR:** Thank you, Mr Beckett. Yes, Ms John?

8 **MS JOHN:** That's certainly a very helpful clarification that there's no dispute as to the  
9 principle that security should be provided. I am very grateful for that. The dispute is  
10 just about the amount and the timing. Timing of payment is certainly something we  
11 are entirely pragmatic about. Our concern, as indicated in the skeleton, is we want  
12 this to be in place by the time it's needed.

13 The time it's needed, we haven't discussed yet because we don't have a direction for  
14 the expert process so we can't identify exactly when it concludes, but it looks likely to  
15 be around mid-March time. That's the proposal in our draft directions, so we are quite  
16 happy that the Claimant takes some time to pay, if that is required.

17 As to the question of the amount, I appreciate that it's difficult for a litigant in person to  
18 look at a cost estimate and make detailed submissions about whether its contents are  
19 reasonable or not. I do take the point that that is challenging. However, the Tribunal  
20 may have seen that the Claimant has already made some submissions in writing about  
21 our costs estimates, so he does feel able to make various points about that. There's  
22 no reason he can't make those points to the tribunal again today.

23 As to whether we are likely to get anywhere in terms of compromise on the application  
24 with additional time, it's always possible, of course, but in my submission, somewhat  
25 unlikely. This matter has been on foot for quite a long time. We first wrote to the  
26 Claimant after its 2022 accounts were published last autumn. We wrote again in July.

1 The first time we got any engagement at all was the day before the application was  
2 due to be filed. It's true we have now had a proposal during the course of this week,  
3 but it's really not the case that the parties have not had adequate time to engage in  
4 good faith negotiation around this.

5 So I'm concerned that we are unlikely, realistically, to make any further progress with  
6 the benefit of an additional few months. As Mr Beckett said, the offer that has been  
7 made is for £200,000. Our application is for £740,000, so the parties are quite a long  
8 way apart still. If we do defer it, the question then arises of what happens if we can't  
9 agree it, how is it going to be resolved? Do we deal with --

10 **THE CHAIR:** At least one conceivable possibility is this: we don't give a figure today,  
11 we lay down a timetable for any further submissions in writing in relation to quantum,  
12 if it remains in issue. And that, we say, we will resolve that issue of quantum by, let's  
13 say, the end of the year. So if we give a timetable for the submission of anything  
14 Mr Beckett wants to say, let's say by the middle of November, anything you want to  
15 say in reply two weeks afterwards, and we will resolve it on paper by the end of  
16 the year. I'm just thinking aloud here, but that's at least a possibility.

17 **MS JOHN:** Yes. Well, we wouldn't set our face against a paper determination, so if  
18 the Tribunal feels that's a pragmatic --

19 **THE CHAIR:** This is only quantum now because the principle has been conceded.

20 **MS JOHN:** Yes, of course.

21 **THE CHAIR:** So in those circumstances, really, the idea that we need to have another  
22 oral hearing seems to me to be a little unnecessary.

23 **MS JOHN:** I'm content with that. I think in that case, sir, Mr Beckett indicated in one  
24 of his letters -- I'm sorry, I'm not sure exactly which one, perhaps 23 October, but  
25 I think he had requested to have until the middle of December to put in submissions.  
26 I think he's hoping to have a little more time to find new representatives and get them

1 up to speed.

2 **MR ANDERSON:** If it's of any assistance, Ms John, I think it's the letter of 29 October,  
3 page 1, the end of paragraph 2.1 of Mr Beckett's letter.

4 **MS JOHN:** Thank you, Mr Anderson, I'm grateful. I would be content for him to have  
5 that additional time if it will allow the parties to attempt negotiation and allow him the  
6 time to find representatives. I think as long as we have a determination by the end of  
7 January, unless Mr Beckett says otherwise, that ought to give the claimant adequate  
8 time still to be able to pay by the middle of March.

9 **THE CHAIR:** Right. So you would be content that Mr Beckett has until mid-December,  
10 am I right, to put --

11 **MS JOHN:** I think that's what he had asked for, yes.

12 **MR ANDERSON:** The letters ask for 15 November, just to be clear.

13 **MS JOHN:** I beg your pardon.

14 **MR ANDERSON:** But there is nothing set in stone about that, obviously, maybe just  
15 check with Mr Beckett what he wants.

16 **THE CHAIR:** Mr Beckett, I had thought you wanted until the middle of November and  
17 that seems -- what's your position?

18 **MR BECKETT:** My apologies. Please I can take advice once more?

19 **THE CHAIR:** Of course, of course.

20 **MR BECKETT:** Thank you. **(Pause)**. Sorry, my friend has just advised me that as  
21 we don't have counsel retained, and given the timing of the anticipated available  
22 counsel, we really need until mid-December at the earliest, if you could extend us that  
23 time. And that was in our letter I believe of 23 October.

24 **THE CHAIR:** Well, Ms John says she is content with that. What I would then want to  
25 be sure is that we can fit in a proper timetable for us to have resolved this matter well  
26 before the end of January next year.

1 **MR BECKETT:** That would be fine from our perspective, thank you.

2 **THE CHAIR:** Ms John, if we said 15 December, I'm not sure what day of the week  
3 that is --

4 **MS JOHN:** I'm just trying to get my diary up now. 15 December is a Sunday, so the  
5 13th is the previous Friday.

6 **THE CHAIR:** 13 December for Mr Beckett to put in -- if this remains in issue, to put in  
7 any material he wants to put in as to the quantum of security which should be provided.  
8 Obviously if you've managed to agree it in correspondence, then nothing needs to be  
9 put in. We just need to be told and we will embody it in an order.

10 **MS JOHN:** Yes.

11 **THE CHAIR:** But if you haven't agreed, then Mr Beckett is to put in any submissions  
12 as to quantum and timing by 13 December.  
13 And then Ms John, when are you going to reply by?

14 **MS JOHN:** I will see if anyone sends me a frantic email objecting. But subject to  
15 instructions, I think we can do seven days, 20 December. I don't think anyone will  
16 want this hanging around over Christmas.

17 **THE CHAIR:** No. Then I think the Tribunal -- we may have to have a word between  
18 ourselves as to how much of our Christmas holiday we are going to spend on this, but  
19 I think we would probably try and resolve this by the beginning of the following term,  
20 so something like -- I don't know what it is -- by 7 January or something like that.

21 **MR ANDERSON:** Yes.

22 **THE CHAIR:** Right. Whatever that ...

23 **MR HOLMES:** What day of the week is it?

24 **MS JOHN:** 7 January is a Tuesday.

25 **MR HOLMES:** What's the end of the week?

26 **MS JOHN:** The 10th.

1 **THE CHAIR:** We will aim to have ... we will have resolved it by 10 January. Is that  
2 enough to be going on with?

3 **MS JOHN:** Subject to one point: there is also the question of our costs of the  
4 application. Presumably if that can't be agreed, we should make our application for  
5 costs on paper also by the 13th, and Mr Beckett can reply by the 20th, so the same  
6 timetable reversed for the parties.

7 **THE CHAIR:** Mr Beckett, do you have anything to say about that? I have to say that  
8 sounds like a very sensible suggestion by Ms John.

9 **MR BECKETT:** Agree completely, thank you.

10 **THE CHAIR:** That's all I think probably that needs to be said, save only this, and this  
11 may be a question for management of expectations: it seems to us that the sum of  
12 £200,000 is likely to be significantly light in relation to the amount of security. But we  
13 are obviously not making any final determination of that because that's the whole  
14 purpose of these further submissions. But an initial indication we hope won't come  
15 amiss, that, that is still -- that looks just, at the moment, to be light. But I think that's  
16 all we need to say about that.

17 **MR BECKETT:** Thank you.

18 **MS JOHN:** I'm grateful, sir, thank you.

19 In that case, we move on to the directions. The most recent draft of these which the  
20 Tribunal has is in the supplementary bundle at tab 4. There should be a hyperlink,  
21 otherwise it begins at page 153. This was the draft as of yesterday afternoon. There  
22 have been a couple of points, as I indicated at the outset, agreed overnight, so this is  
23 itself slightly out of date, for which I apologise. But the paragraphs we are concerned  
24 with now I think are not affected.

25 It's paragraphs 1 to 6, the proposals. These are in fairly standard form. As indicated  
26 in the skeleton argument, they've been structured to accommodate a trial commitment

1 | which my expert has between late April and early June.

2 | I understand that there is some controversy around these directions. I am afraid I'm  
3 | not particularly clear from the correspondence exactly which direction it relates to, so  
4 | it's probably most efficient if I hand over to Mr Beckett to explain what he says about  
5 | these directions.

6 | **MR BECKETT:** Again, please may I take some advice?

7 | **THE CHAIR:** Yes, of course.

8 | **MR BECKETT:** Thank you. **(Pause)**.

9 | Thank you very much for that. Ms John -- sorry, my apologies. I'm being reminded  
10 | I'm addressing the court.

11 | In respect of your expert evidence, or the expert evidence provided, during which you  
12 | made, from a metallurgical perspective, a very interesting analogy about baked bean  
13 | tins. You might recall, I think it was a couple of years ago. I think the point that we  
14 | are trying to make is what exactly is it that your expert is hoping to attain from the  
15 | situation? Because if it's to justify the extent, can you please tell us so, because as  
16 | far as we can see, the extent of the scale is not something that's yet to be considered.

17 | **(Pause)**

18 | **MS JOHN:** Okay, may I respond?

19 | **THE CHAIR:** I think although Mr Beckett very politely addressed himself to me and  
20 | us, I think it really is a question for you, Ms John.

21 | **MR BECKETT:** Apologies for that.

22 | **MS JOHN:** A general explanation of the structure of the directions. So the Tribunal  
23 | may recall that there was a particular structure given to the directions. They were first  
24 | put in place in July 2022 -- tab 38 of the open bundle if the Tribunal wants to look back.  
25 | The structure that was put in place was that the parties would serve their factual  
26 | witness statements and reports from their industry experts at the same time. There

1 would then be replies by the factual witnesses and by the industry experts. Once all  
2 of that evidence was completed, the economists would then have a complete suite of  
3 information and evidence available with which to prepare their reports. So we would  
4 have a CMC to take stock and then, after that, the economists would file their reports  
5 on how they suggested to the Tribunal the preliminary issues/questions ought to be  
6 answered. So that was what was intended.

7 The Tribunal will recall from the discussions we had back in May that the Claimant has  
8 not followed that structure. It has elected to produce a single amalgamated report that  
9 includes both its industry expert evidence and its economic expert evidence. Now, as  
10 we said at the time, we had no objection to that per se, although we did try to persuade  
11 the Tribunal that the reports ought to be separated. The Tribunal was against me on  
12 that and so we have proceeded on that basis.

13 But what we are trying to propose now in this set of directions is essentially the next  
14 stage of the process. We have filed our factual witness evidence. We have filed our  
15 industry expert report. We have not filed anything from our economist. They have  
16 been waiting to see the replies of the factual witnesses and the replies of the industry  
17 experts, which are now in, and our experts are ready to prepare their report. That's  
18 the reason why there is provision being made here for us to file a further expert report  
19 from an economist.

20 We then made provision, of course, for the Claimant to produce a reply to that  
21 evidence from their economic evidence. It simply means that what we have here is,  
22 instead of what was originally envisaged, which was -- I'm sorry, my mind has gone  
23 blank. We are now providing for a sequential exchange, rather than simultaneous  
24 exchange -- that's the word I was reaching for. We now have sequential.

25 So it's still standard form directions. It's a slight departure from what was being  
26 proposed before. But that's the reason why there is provision for my expert to put

1 anything in. It's not because I'm trying to sneak in evidence on quantum or the extent  
2 of any effects. Those are not matters which arise on the preliminary issues. Those  
3 are all to be dealt with much further down the line, if my client loses at the preliminary  
4 issues trial, which of course I say it won't.

5 **THE CHAIR:** Yes. You say Mr Beckett's position is completely safeguarded by the  
6 fact that he can put in a supplemental report from the Claimant's expert in the area of  
7 economics?

8 **MS JOHN:** Well, I say he's protected by his ability to put in a reply to my economist.  
9 So the Tribunal --

10 **THE CHAIR:** That's what I was trying to say. Did I not say that?

11 **MS JOHN:** The Tribunal -- I think you are recalling, sir, a discussion that we also had  
12 in May where Mr Nathan KC said he wanted a provision included in the order that  
13 would allow the Claimant's economist to put in a supplemental report to address the  
14 factual witness statements and the industry experts because, of course, that was  
15 something which originally they hadn't done. So what he had asked for was  
16 an additional report from Fair Links added in between.

17 The reason that that is not a part of the directions is because the Claimant has already  
18 done it. They produced a report in September which comprised a reply report from  
19 their industry expert, so a reply to the evidence our industry expert put in. In addition,  
20 in that same document, their economist also updated his opinion in the light of the  
21 factual witness statements and the industry expert reports. So because he's already  
22 done that, we have not included provision for it -- I'm sorry, I'm not sure if I'm making  
23 myself clear. Would it be helpful if I showed you the document itself?

24 **THE CHAIR:** Speaking for myself, I think that would be helpful.

25 **MS JOHN:** Yes, certainly. It's also in the supplementary bundle, tab 3.

26 **THE CHAIR:** Page?

1 **MS JOHN:** It begins at page 96. If we scroll through the table of contents -- it is  
2 a rather eccentric document, I should say. We see the table of contents, it looks  
3 exactly the same as the original report which was filed in May. If we scroll through to  
4 page 102, starting at paragraph 12, they set out the scope of their work. If the Tribunal  
5 just reads paragraphs 12 to 14 to itself, there's an explanation of what has been done.

6 **(Pause)**

7 **THE CHAIR:** Right.

8 **MS JOHN:** So then if we scroll ahead on to page 104, you can start to see what's  
9 been done in practice. What we have in the original black text is the report that was  
10 filed in May, and then we have passages interspersed among those in blue text which  
11 comprise either, where there's the initials TW at the start of the paragraph, that is reply  
12 evidence from the Claimant's industry expert. Or, scrolling down, there is a passage  
13 headed "R2" after paragraph 29, the initials AMF. That is their economist -- I'm not  
14 sure I'm going to pronounce his name right -- Mr de Feuardent. That's a passage from  
15 him where he has added a comment from an economic perspective based on what he  
16 has seen in the underlying evidence. Let's see if I can find a better example than that.  
17 If we turn to page 125, here we have a section with the heading "B. Definition of  
18 relevant markets in relation to the mineral supply chain", paragraph 101. We can see  
19 this is a discussion of how we apply the SSNIP test, which is an economic device for  
20 defining the relevant market. If we scroll down under paragraph 108, we can see some  
21 comments from TW, that's the industry expert. Then under paragraph 110, we get  
22 paragraphs R42 to R46, comments from Mr de Feuardent. In his paragraph R44, he's  
23 commenting on the witness statements of Ms Nimmo and Mr Daudin. Those are my  
24 two factual witnesses. Paragraph R45, a comment on the evidence of Wood  
25 Mackenzie, who are my industry experts.

26 So although provision wasn't made for it, what this document is doing is a dual

1 function. It's both the industry expert replying to the industry expert on my side, it's  
2 also the economist updating his evidence in the light of the factual evidence and the  
3 industry evidence that has been served. So that particular exercise now has already  
4 been done. There wasn't provision for it, but it's been completed. That is why we say  
5 there is really nothing further for Mr Beckett's economist to do at this stage. He's  
6 already done everything he could need to. All we need from the Claimant's  
7 perspective is provision for them to put in a reply after our economist has filed his  
8 report. And that's what the directions we have proposed now do.

9 **THE CHAIR:** Mr Beckett, now you have had an explanation from Ms John as to the  
10 nature of the order being sought. Is there anything you would like to say about it?

11 **MR BECKETT:** Very briefly, we think that Ms John has wrongly pigeonholed  
12 Mr de Feuarent, who is an economist, when ultimately that is not the role that he's  
13 played here.

14 **THE CHAIR:** I'm sorry, I didn't understand that. Could you just repeat that?

15 **MR BECKETT:** Yes. We believe that Ms John is pigeonholing Mr de Feuarent, who  
16 is an economist, when we don't believe that that's fulfilling the role that he's playing  
17 here. And he's made that, in our opinion, very clear in his report. **(Pause)**

18 **THE CHAIR:** Ms John, do you want to comment on that?

19 **MS JOHN:** I'm not entirely sure what to say to that. It's certainly true that Mr  
20 de Feuarent has identified in his report that he has some expertise in the industry, as  
21 well as being a pure academic consultant. But nonetheless, the evidence he has  
22 produced is the Claimant's evidence from an expert economist on the preliminary  
23 issues that have been listed.

24 I'm not sure if, I understand, it's now being suggested that the Claimant wants to  
25 produce a further report discussing the SSNIP test, or indeed to produce an additional  
26 individual as an economist -- I'm sorry, I'm slightly confused as to the point being

1 made. As far as I'm concerned, there is very clearly evidence that has already been  
2 filed from an economic expert on all of the questions before the Tribunal. I've shown  
3 you the passages explaining their position on the application of the SSNIP test, how  
4 you define the relevant markets in this case. Those address the preliminary issues  
5 and there is clearly already economic evidence which has been put in.

6 **THE CHAIR:** Yes.

7 **MR BECKETT:** May I take some more advice?

8 **THE CHAIR:** Yes.

9 **MR BECKETT:** Thank you. **(Pause)**

10 Thank you. We will be happy to -- sorry, my memory is dreadful. Can I please ...

11 **(Pause)**

12 We will be happy to provide a supplemental report and then a further reply report.

13 **(Pause)**

14 **MS JOHN:** Sorry, I don't know if the Tribunal wants to hear any further from me. But  
15 a supplemental report on what? It's already been done.

16 **THE CHAIR:** What would that report be addressing, Mr Beckett, the supplemental  
17 report?

18 **MR BECKETT:** Economics.

19 **THE CHAIR:** Yes, but what aspects? What sort of economics are you envisaging are  
20 distinct from either (a) what has already been said by your expert on economics, or (b)  
21 what might be said under the draft timetable in March in response to the Defendant's  
22 expert's report of January? **(Pause)**.

23 **MR BECKETT:** My colleague reminds me that the evidence that Mr de Feuardent has  
24 provided is not solely economic evidence and we would like the opportunity to broaden  
25 the information accordingly.

26 **THE CHAIR:** I don't understand that exactly. I mean, why is the fact that it is not

1 solely economic a reason why it should be broadened? Presumably the economic  
2 evidence you have wished to put in has been put in, or should have been.

3 **MR BECKETT:** Please, if I may take instructions ... sorry, because he's not completed  
4 it, is the answer to your question.

5 **MR ANDERSON:** I suppose the inevitable question there is: why is it not complete,  
6 especially as you have already put in, as I understand it, a supplemental report  
7 already? Why don't you just put in a reply report?

8 **MR BECKETT:** No, we did put in a reply report, not a supplemental report.

9 **THE CHAIR:** At the moment, I can't see why you should be entitled to put in  
10 a supplemental report which says things which ought to have been included in the  
11 original report.

12 **MR BECKETT:** I may just ... **(Pause)**

13 We have nothing else to say. That's the case.

14 **THE CHAIR:** Perhaps we should have a break and I will discuss this with my  
15 colleagues as to what we should do in relation to this.

16 **MR BECKETT:** Thank you.

17 **(11.18 am)**

18 **(A short break)**

19 **(11.26 am)**

20 **THE CHAIR:** We have had an opportunity to think about this. We don't consider that  
21 the Claimant should be given permission to file a further supplemental report from its  
22 expert in the area of economics, given the steps which have already been taken in  
23 relation to the service of a report and additional comments in relation to that evidence.  
24 So what we intend to do is make the orders which are sought by the Defendant in  
25 relation to these matters, namely that by 31 January 2025, the Defendant is to serve  
26 and file its expert report in the area of economics on the issues to be considered at

1 the preliminary issues hearing; and that by 14 March 2025, the Claimant is to serve  
2 and file a reply report from its expert in economics, if any.

3 **(Pause)**

4 Is that sufficient, Ms John?

5 **MS JOHN:** From my perspective, yes. It would be helpful if Mr Beckett could confirm  
6 whether there are any aspects of the directions he objects to. I don't think I had  
7 gleaned any further issues in correspondence, save for possibly a question mark over  
8 the way the preliminary issues have been framed. But it may be we have dealt with  
9 this issue already.

10 **MR BECKETT:** No further objections from our side. Thank you.

11 **THE CHAIR:** Thank you. So that deals with all the other parts of the pre-trial  
12 timetable, does it?

13 **MS JOHN:** I believe so, yes.

14 **THE CHAIR:** We do think that this case probably would benefit from a pre-trial review.

15 **MS JOHN:** I completely agree, sir. There is a provision at paragraph 6 of the draft  
16 case management order. If we go back to page 155 of the supplementary bundle, the  
17 direction we have suggested is that by the end of November, the parties have to attend  
18 the registry to fix a date for a PTR for around four weeks before the start of the trial,  
19 with a time estimate of one day.

20 **THE CHAIR:** Yes. As to the trial timetable, we don't think we can really say  
21 anything or expect that to be addressed today because Mr Beckett is not at the  
22 moment represented and it's a bit difficult to be too precise about that.

23 **MS JOHN:** Yes.

24 **MR BECKETT:** We agree, and that's very kind of you. Thank you.

25 **THE CHAIR:** Is there anything else?

26 **MS JOHN:** Nothing further from my perspective, sir, thank you.

1 **MR BECKETT:** Nothing further from our perspective either. Thank you again.

2 **THE CHAIR:** Well, thank you both. Ms John, can you draw up/revise the order. That  
3 can of course include a recital in relation to the agreement in relation to the principle  
4 of security for costs.

5 **MS JOHN:** Yes, thank you. We'll take care of that. We will do our best to agree it  
6 with Mr Beckett. It might be helpful to have a deadline for filing it with the Tribunal,  
7 just to focus minds in the meantime. If we say seven days --

8 **THE CHAIR:** Seven days, that sounds very sensible.

9 **MR BECKETT:** Agree, thank you.

10 **THE CHAIR:** Thank you all very much.

11 **MR BECKETT:** Thank you.

12 **(11.32 am)**

13 **(The hearing concluded)**

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