IN THE COMPETITION APPEAL TRIBUNAL

Case No.: 1433/7/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Friday 4th April 2025

Before:
The Honourable Mrs Justice Joanna Smith
Derek Ridyard
Greg Olsen
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Dr Liza Lovdahl Gormsen

Class Representative

v

Meta Platforms, Inc. and Others

Defendants

A P P E A R AN C E S

Robert O'Donoghue KC, Tom Coates and Ian Simester On behalf of Dr Liza Lovdahl Gormsen (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

Tony Singla KC and James White On behalf of Meta Platforms (Instructed by Herbert Smith Freehills LLP)

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Friday, 4 April 2025

(10.30 am)

MRS JUSTICE JOANNA SMITH: Good morning, everyone. Some of you are joining us via live stream or on our website, so I must start therefore with the customary warning. An official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings. Breach of that provision is punishable as contempt of court.

May I begin with just a bit of housekeeping, Mr O'Donoghue, please, if I may. There will be a break mid-morning, as is usual. I should also just introduce to everyone Mr Greg Olsen who has joined the panel. We're delighted to have him with us.

I just also want to indicate to everyone that the Tribunal is very grateful indeed for the skeleton arguments that have been provided on the subject of split trial. We are extremely grateful to all of the parties for having considered the issues that we raised on the last occasion, and having done so with so much care. Having read the skeleton arguments, and considered the matter further, and notwithstanding that I was keen on the previous occasion to split the trial if at all possible, we have arrived at the view that we are persuaded that the right approach, and as is common ground in fact between both parties, is that this trial should be heard as a unitary trial. So we don't need to hear any further submissions on the issue of split trial, and apologies for having put the parties to the trouble of having prepared submissions. But I think it has been a useful exercise in any event, to consider whether there was a way in which it could be dealt with. It's also, I think, resulted in a slight reduction on both sides as to the timing for the trial itself.

What I'd like to do in a moment is to discuss the timescale for the trial, because there is a dispute between the two of you, and also dates for trial, because we do think that

it needs to be put into the diary sooner rather than later, and then we can come to the other issues. Does that assist?

MR O'DONOGHUE: That's extremely helpful. On behalf of those on this side of the bench, we welcome Mr Olsen to this interesting case. We need all the help we can get. We're very grateful. Madam, that's extremely helpful. The parties had a list of CMC issues, which is, with the usual caveats, agreed. It may be useful to hand that up --

MRS JUSTICE JOANNA SMITH: Very much so, yes, please.

MR O'DONOGHUE: -- as a running order for the rest of today, but I'm hopeful, in light of the very helpful indication on trial shape and that we need to list something at some point, that the rest of the issues will be quicker.

MRS JUSTICE JOANNA SMITH: Yes, I certainly would anticipate that's the case.

MR O'DONOGHUE: Yes, I think the heft of today really was on the shape of trial and unitary, and if not unitary, which split.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: On that basis, we can park Issue 1.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: Issue 2, we will come to shortly. Issues 2 and 3 really are hand in glove, because you will have seen from our skeleton we say, at a minimum, a trial needs to be listed to provide certainty to walk back from. We would also suggest, respectfully, that at least putting one of the tectonic plates of factual evidence in place is helpful to focus minds, because then we can work back from the trial, we have a window for the expert period, and we have a bit of buffer for disclosure. So we would say we certainly need to set down a trial date today, and we may also consider at least factual evidence, that will give a bit of structure. That's Issue 3. Then Issues 4 and 5 are expert disciplines. Issue 4 is accounting. Issue 5 is Meta's application for two

competition economists. Issue 6 I think is in slightly the wrong place, it goes more with disclosure. So Issue 6 is whether there should be an experts' meeting on disclosure issues.

MRS JUSTICE JOANNA SMITH: Yes, and I think we discussed that last time, didn't we?

MR O'DONOGHUE: Yes, to cut to the quick on that, we suggested that, it was not opposed at the time, I'd be surprised if it was opposed today, we suggested before 16 May, but we can come to that. Then on disclosure, there are at Issue 8 a bunch of issues around the EDQ and Disclosure Report. Issue 7, there's an issue as to in any event the list of issues, who goes first on that. Issue 9 is an adjunct to Issues 7 and 8, as to whether there is a need for perhaps a remote hearing of half a day interposed between now and July to make sure that July is effective and orderly. Then Issue 10, if we're correct on Issue 8, we say we should get the costs of the redone EDQ and the scope of --

MRS JUSTICE JOANNA SMITH: Yes, could I add one point to that and if you could tell me if it's inappropriate to do so, and that is the question of the proposed amendment that your client intends to make. It does seem to me to be extremely important for the Tribunal to understand the scope of that potential amendment, because it seems that it's going to be heavily opposed by the other side. It may raise certification issues, and we would want to know when you're intending to make that application and how you're proposing that it should be dealt with.

MR O'DONOGHUE: Yes. Well at least on the process side, I think there is a measure of agreement. You will have seen from footnote 12 of our skeleton that we say we have an extant claim for user damages.

MRS JUSTICE JOANNA SMITH: Yes, but that is objected to by Meta.

MR O'DONOGHUE: That is objected to. The way we've left things with Meta is we

don't accept that we need to amend, we will put forward *de bene esse* a draft amendment, and then whether we need to amend, and if we need to amend, whether that is then consented to, or, if opposed --

MRS JUSTICE JOANNA SMITH: It doesn't sound as if it is going to be consented to. I have had a look at the correspondence about this, and I've seen what Herbert Smith have said about what the Tribunal has previously said as to the nature of your case, and I must admit it doesn't look to me as if this is something that can just be got through without a full hearing.

MR O'DONOGHUE: We will see. So we will issue the application *de bene esse*, as I said. As to timing, we would hope to issue that promptly.

MRS JUSTICE JOANNA SMITH: When?

MR O'DONOGHUE: 25 April.

MRS JUSTICE JOANNA SMITH: By 25 April?

MR O'DONOGHUE: Yes.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: You will recall, Madam, that for the July hearing there is a reserve day. One possibility is that we include that as part of the reserve day, the other possibility of course is there is a separate hearing on that issue. They seem to me the menu of options.

MRS JUSTICE JOANNA SMITH: All right. We could certainly include in the order for today that you will issue your application to amend by 25 April.

MR O'DONOGHUE: Yes, with the caveats I indicated.

MRS JUSTICE JOANNA SMITH: Yes, all right. Well insofar as there are any other directions the parties can agree about that in terms of any evidence that Meta wants to put in, then perhaps you can discuss that over the short mid-morning break.

MR SINGLA: Could I just rise at this point? It may be helpful for the parties to

understand whether the Tribunal could accommodate an additional day in July, because that may be a convenient window for all concerned.

MRS JUSTICE JOANNA SMITH: Because at the moment we have the 15th, with the 16th in reserve.

MR SINGLA: That's right, but the issue is an important one, the user damages issue, and that may in itself require a day plus some reserve time. So if that were to turn into a three-day window that may be convenient, but only if the Tribunal --

MRS JUSTICE JOANNA SMITH: We will certainly investigate that at the mid-morning break. The one thing that I should indicate is that I'm not sure that all of us are going to be available for that hearing. When it was only a disclosure hearing that wasn't going to be a problem, I could have dealt with that myself, but insofar as the amendment application raises certification issues, I think we will need to have the whole Tribunal present, and I'm not sure that we're all going to be available in the middle of July. So it may be that that would have to go off until the autumn. It's not clear to me that there's any dire urgency in dealing with that, given that we're looking at a trial in 2027, unless somebody tells me otherwise.

MR SINGLA: Yes.

MRS JUSTICE JOANNA SMITH: All right. Thank you. Yes, Mr O'Donoghue.

MR O'DONOGHUE: That is the menu for today.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: I'm in your hands. Based on the list of CMC issues, I think we start with trial date, trial duration, and then we should set down at least some preliminary directions on the major elements.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: On the threshold question: should we list a trial today? We say emphatically yes, the CAT Rules say that active case management includes:

"Fixing a target date for the main hearing as early as possible, together with the timetable of proceedings up to the main hearing, taking into account the nature of the case."

We're at CMC2. In my respectful submission, it is high time that we have a vista to trial. We've given, I think, an indication that would be starting in May 2027, therefore to conclude this side of the summer. Of course, the claim was issued more than three years ago now, we had a false start with the initial issue with certification.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: But it is more than three years old, and we think that a trial around the middle of 2027 is a necessary step at this stage. As I indicated at the outset, we think if we're listing trial, the discipline at least of having a date for the factual evidence is an important one, because that then sets in place one of the two major tectonic plates, and allows a buffer for disclosure. I don't know if that is opposed. For the Tribunal's pen, we would suggest, assuming a May 2027 trial, that factual witness statements would be due on 23 July 2026, with reply evidence, if any, due on 25 September 2026. Those are the indicative dates we have put forward.

MRS JUSTICE JOANNA SMITH: The witness statements would be due 23 July 2026, with the reply evidence?

MR O'DONOGHUE: 25 September 2026.

MRS JUSTICE JOANNA SMITH: All right. Just help me with your trial estimate. You've now reduced it slightly to ten weeks. That's to include one week of Tribunal reading, is it, so it's nine weeks in court?

MR O'DONOGHUE: Meta says --

MRS JUSTICE JOANNA SMITH: I know they say eight weeks --

MR O'DONOGHUE: -- a minimum of ten, we say eight.

MRS JUSTICE JOANNA SMITH: I'm so sorry, I'm getting it the wrong way round.

You say eight, Meta says ten. You say eight with one week's reading, so seven weeks in court.

MR O'DONOGHUE: Yes. Madam, this is inexact, and one of the difficulties we face is that the length of trial will be a significant function of the number of factual witness evidence.

MRS JUSTICE JOANNA SMITH: Yes, and we don't yet know how many witnesses there are going to be.

MR O'DONOGHUE: There isn't a hint as to how much there should be, which isn't very helpful. What we have done in a rather rough and ready way is since we last convened we've had *Le Patourel*, we've had the *Kent* trial, and we know that CPOs on this scale can come with some difficulty, I think it has to be added. Mr Ridyard will undoubtedly have a degree of PTSD from *Le Patourel*, but something like seven to eight weeks seems achievable in cases of this kind. I appreciate that is very rough and ready, and it would have been better had we had at least a provisional indication from Meta as to the possible number of factual witnesses they would wish to put forward.

By contrast, on the expert side, I think we can see pretty clearly that it's a fixed number. There is some issue as to whether it's two for competition economics. There's a possibility I think of a behavioural or online choice architecture experts, but that is already I think tractable. The known unknown is the witness evidence, which falls into Meta's sphere primarily if not exclusively.

So doing the best we can, we think that, based on these rather rough and ready measures, something like a total of eight weeks is achievable, but we understand that, all else equal, the Tribunal would want to not schedule a trial that was unduly tight, would want at least some redundancy, or even buffer, built in, and it may be that something like nine weeks is the middle ground between eight and ten. But it really is for Meta I think to be a bit more forthcoming, frankly, on the question of factual

evidence. We do emphasise this is not their first rodeo. You will remember from December there is the *Klein* litigation. You will have seen from our skeleton they have just concluded a major proceeding with the European Commission, in which they've been found dominant in the very market we're dealing with in this case. There are a multiplicity of other proceedings which the Tribunal is broadly aware of. So this is not their first rodeo and they must, at this stage, at least provisionally, have some idea on the factual evidence side. To throw their hands in the air and say, "we literally have no idea, but there will be a lot of factual witnesses", really is not very cooperative or constructive at this stage. So I think it is really for Mr Singla to try and put some meat or flesh on that bone.

MRS JUSTICE JOANNA SMITH: All right.

MR SINGLA: I'm happy to do so --

MRS JUSTICE JOANNA SMITH: Thank you, Mr Singla.

MR SINGLA: -- I don't accept that any of these other proceedings have any relevance to what we're concerned with here. I mean, Madam, there are a number of points. There's not much between us on trial length, but I'll address you as to why we say it needs to be, at least at this stage when one's listing the trial, we say ten weeks. The second question is when should the trial be listed, and we say the Michaelmas term of 2027, and I'll come back to that. Then the third point is whether today is right for there to be some long stop dates, as Mr O'Donoghue I think puts it in his skeleton -- although I should say we have only just heard those dates which are being suggested.

MRS JUSTICE JOANNA SMITH: Yes, I hadn't seen them in the skeleton before.

MR SINGLA: No, just to foreshadow the submission, we would say that's inappropriate now. We should come back to that at the July CMC and look at directions more closely at that stage. In terms of duration, I don't accept for a moment that we

should be coming to the Tribunal at this very early stage of the case with a list of witnesses, but what we can do is explain to the Tribunal how one gets to ten weeks. One gets to ten weeks on a prudent basis very quickly if one just understands the scope of the factual and expert issues in this case, because, as you will know from the pleadings, essentially the claim is a full-scale attack on Meta's entire business model. The temporal scope in some places seems to go back 20 years, because they say, “look what you were doing at the outset, look how it changed over time”, and so on. So the factual evidence, without necessarily having a list of witnesses, all one needs to understand is whether it's a small number of witnesses at the end of the day or a large number of witnesses covering discrete topics. In terms of the issues in the case, I can give the Tribunal a flavour of just how voluminous the factual evidence is going to be. For example, there will need to be, I have something of a list of points, but just by way of example, factual evidence as to who are Meta's competitors on the user market. You'll understand there's a big debate between the parties as to the definition of the user side of the market, but also the advertiser side of the market. There's another big question as to the value that users receive from the Facebook service.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: And the different uses to which the service is put by different users. There's a major issue as to the investments and improvements over time, because, as I say, one has to go back many, many years on the Claimant's way of putting the case, and one of the key points that we will make at trial is , “look at the amount of investment that's gone in over time”. Then there's a distinction between online and offline advertising, because, again, you may have picked this up, it's in the summary of our Defence, but essentially what we're saying is the practice is ubiquitous in terms of these advertising platforms, and that's going to be one of the problems for the

Claimant at trial, but there will need to be evidence as to the ads-funded market as it were. Then there's all the different types of data, because, as you know, this claim is based on what the Class Representative describes as "Off-Facebook Data." We call that "Third Party Activity Data", but one of the questions is why have they alighted only upon that data when in fact other data is also relevant. There's personalisation of the Facebook service. There's all of the allegations in relation to the terms and conditions, and again those terms and conditions have changed over time. Then there are tools and controls offered by Meta to users, and again one would need to look at how those have evolved over time. A major issue is about profitability. I mean this is one of the reasons we said there needs to be a unitary trial. Profitability comes up at market definition, at dominance, at the abuse stage and also at the counterfactual causation stage. So a big issue in terms of profitability and revenue and so on. Then one would have to look at alternative business models and so on. So that's just to give the Tribunal a flavour as to why we say the factual evidence is going to be extensive. Again, doing this on a rough and ready basis, we suggest that there could be as much as three weeks of factual evidence. That's a reasonable estimate at this juncture. Then there's the expert evidence, and as you know this case will involve a great deal of expert evidence. There will have to be economic evidence and accounting evidence. That's already been agreed between the parties, and both parties are reserving the right to consider further expert evidence. So the Class Representative has said they may want an expert on choice architecture, and we have said we may want expert evidence on industry and behaviour. So there could be as many as three or four experts, and obviously I have an application for the two experts on the economists. So there are going to be either a series of hot tubs at trial, or cross-examination, or indeed both. It's quite common practice in this Tribunal now for there to be hot tubs, with the Tribunal leading the questioning, but then supplementary cross-examination

after the hot tub. So again, just on a rough and ready basis, we see there as being as much as three or four weeks of expert evidence, because again there's a question as to whether the Tribunal will sit for four or five days. There's an issue about whether the Tribunal would like pre-reading days before each expert topic, and then one also needs to build in time to write written closings. So one actually very quickly gets up to ten weeks of court time. We're not seeking to be scientific or prescriptive at this stage, but we are a long way from trial. We haven't even had the disclosure CMC. So we do respectfully submit that one should budget for a ten-week trial. Mr O'Donoghue's not really able to say how the whole trial can be compressed into seven weeks, or nine weeks, or wherever he is now, but I should say that the Class Representative in their budget on day one was a 12-week trial, then reduced it down to eight weeks, then at the last CMC they agreed 12 weeks, and now they are saying seven weeks. So in a sense they are not the most reliable in terms of having mapped out what this trial is actually going to look like.

As I say, based on experience more than anything else, a ten-week trial, with openings and closings and all of that factual and expert evidence, we do submit that is the appropriate estimate at this stage. Obviously that can be kept under review, but those really are my submissions as to how one gets up to ten weeks. It would be unfortunate in my respectful submission for the Tribunal to say, on Mr O'Donoghue's, what he admits is a very rough and ready basis, is to say, “okay, seven weeks”. That's just an arbitrary figure. It would be regrettable, in my submission, if we were to run into difficulties down the line, if in fact the Tribunal does accede to applications for more expert evidence. Then in fact we're looking at extending the trial length. So we do submit that it should be ten weeks.

As to when it should be listed, we submit it should be Michaelmas 2027. We mapped out some directions at the last CMC. Although our primary position then was that no

trial should be listed, we did map it all out, and I can show you what we said at the last CMC. In a nutshell, everything is still up in the air in terms of disclosure, expert evidence, factual evidence and so on and it is simply inappropriate to pick the summer of 2027 and say, "everyone has to work back from there". In fact, the Tribunal will be in a much better place in July to understand what the scope of disclosure is going to be, and indeed how long disclosure will take. That's very much something in this case that will fall on our shoulders, disclosure, and what we are concerned about is some discussion that the trial should go in at the summer of 2027, and then we have to approach everything on that footing. In fact, if one builds in some slack for voluminous disclosure, potentially additional experts and then some slack for there to be pleading amendments and potentially disclosure applications and all the usual pre-trial steps, again, if one's just approaching this with some prudence, we would say the trial should be listed in Michaelmas 2027 for ten weeks. If it's helpful, I can show you what we were saying at the last CMC, just so you will remind yourself.

MRS JUSTICE JOANNA SMITH: Thank you.

MR SINGLA: Our skeleton from the last CMC is in the supplemental bundle.

MRS JUSTICE JOANNA SMITH: Mr Singla, could you bear with me, I managed to dial myself out of Opus just now, I need to get back into it. **(Pause)**

I'm afraid I can't get into it at the moment. In fact, Mr Singla, I'm going to need to be able to access this. I need to rise for just a couple of minutes in order to get back in. I'm so sorry. I pressed something which means I'm out and I can't get back into it, so forgive me. Can we just take five minutes while I sort this out?

(10.52 am)

(A short break)

(10.55 am)

MR SINGLA: Do you need the reference?

MRS JUSTICE JOANNA SMITH: Yes, please.

MR SINGLA: It's supplemental bundle CMC2F, tab 9.1, page 25.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: To be clear at the outset, I'm not showing you this because these are the directions we say you should make today.

MRS JUSTICE JOANNA SMITH: This is what you were proposing last time?

MR SINGLA: Yes, and this is really why we say today, if you're going to list a trial, it should be Michaelmas 2027, because just very roughly, we were saying on the last occasion that there be disclosure by 31 October, you see in paragraph 6. Now, obviously things have moved on quite considerably, because the Class Representative has (Inaudible) disclosure hasn't happened because they didn't want our *Klein* disclosure, as you know, and so that October date will have to shift by several months. But you will see in terms of the consequential directions, the factual evidence last time, we were saying February 2026 and then supplemental. If one pushes those dates back to take into account the disclosure date going back, the timetable will move on. Then there's expert evidence, and there's going to be multiple experts and sequential exchange. I think the Class Representative, I saw in their skeleton, I think they said that would be sequential, at least to some extent. Again, this is just to show you that on the last occasion, in the hope that we would complete disclosure as at October of this year, we were suggesting a trial at the end of 2027. At this stage, again, we now haven't made any progress on disclosure. That's something we'll have to come back to later today, but essentially if the Tribunal's looking at listing a trial date in a world where we really have no idea until we get to the July CMC what the scope of disclosure is going to be. One of the problems, I'll come back to this later, is the Class Representative not engaging with what they want in terms of disclosure. So it's not Meta's fault, I should say at this stage, that we can't give you a date as to when

disclosure will be complete today, because we need to know from the Class Representative what they want. So again, just applying a degree of common sense, we would suggest one should build in slack and aim for, there's not really much between the parties, but if one's looking at before the summer or after the summer, we would respectively suggest that after the summer in 2027 does make sense.

Then the final point was the long stop dates. Really, we can't actually see any benefit in the Tribunal today putting in dates for factual witness statements. It's difficult to see why that's going to be of any assistance to the parties or the Tribunal. Surely, the right time to look at that sort of point would be in July, when you'll be setting a date for disclosure, and then everything will flow from there? It's quite hard to see why one needs to know now, particularly as we'll be doing the witness statements, it's quite difficult to know why Mr O'Donoghue's side needs to know now what the date should be for witness statements. Unless I can assist, those are my submissions.

MRS JUSTICE JOANNA SMITH: That's helpful, thank you, Mr Singla.

Mr O'Donoghue.

MR O'DONOGHUE: Very quickly, Madam, on duration, I'm not going to die in a ditch on this, I mean the difference between eight and ten.

MRS JUSTICE JOANNA SMITH: It does seem to me, I'll obviously discuss with my colleagues in a moment, that it's prudent to allow for slack, given that we don't really have a clear understanding yet of how long the trial is going to take, and also given the number of issues that Mr Singla has identified.

MR O'DONOGHUE: Of course, that means the difference between slack and flab --

MRS JUSTICE JOANNA SMITH: I say that. Obviously it must be clear to everyone that, insofar as, as we go along it appears that any timescale we fix today can be reduced, then it should be, but my inclination at the moment would be to fix a longer rather than a shorter period.

MR O'DONOGHUE: One thing I would say is the suggestion that expert evidence could take up to four weeks is a very, very surprising one indeed. I am not aware of any case like this where that long has been spent on experts. It is worth bearing in mind, as things stand the only permission granted is for one competition expert each. We'll come to the accountancy in a minute, but the idea that we get from that up to four weeks seems to me a bit --

MRS JUSTICE JOANNA SMITH: I understand that, but I think the pragmatic approach is to err on the side of caution.

MR O'DONOGHUE: I'll say no more than that. On timing, it is very important to us for two reasons. First of all, we mentioned this I think in our skeleton for the first CMC, Professor Scott Morton is not available in Michaelmas 2027 because of teaching commitments at Yale. That's a very significant issue.

MRS JUSTICE JOANNA SMITH: Not available at all in Michaelmas 2027?

MR O'DONOGHUE: She has ongoing teaching commitments during that period.

MRS JUSTICE JOANNA SMITH: No, that's different from saying whether she's available for periods of time when she could give her evidence.

MR O'DONOGHUE: Well, she teaches in Yale. Our understanding is that she has weekly, at least weekly commitments during that period, and therefore to interpose her for a subset of that period is going to be very, very challenging.

MRS JUSTICE JOANNA SMITH: How was she going to address giving evidence in the summer term?

MR O'DONOGHUE: She doesn't have teaching commitments at all during that period.

MRS JUSTICE JOANNA SMITH: Right, yes.

MR O'DONOGHUE: That's one, we say, quite fundamental issue, given that she's been our expert for some time. Secondly, as a matter of clear impression, the suggestion that more than two years from today we couldn't possibly be ready for this

trial seems to me a surprising one. This is the second CMC. We have made some initial progress on disclosure since December, not much, as I will come to, but the suggestion, for example, that in a year's time we could not reach a terminus on disclosure again seems to me surprising, and actually quite concerning as an opening salvo from Meta. The suggestion that, by June of next year, they could not be ready, for example, with factual evidence seems to me again to be quite surprising. Again, I come back to the point that this case started in 2022, and we would be concerned that more than four years after the claim commenced that we couldn't get to trial. That seems to me very much achievable and very much to be commended. Then there was a lot of rhetoric on this being a challenge to Meta's business model. With respect, I would submit the Tribunal should attach no weight to that at this stage. I will make three quick remarks.

First of all, for many, many years, Meta's business model operated very profitably without any access to this Off-Facebook Data. So this is not new. Second, as a result of the Digital Markets, Competition and Consumers Act, Meta is about to make a series of quite significant changes to its business model in any event. Third, the Tribunal may have seen in the last couple of weeks there's been a settlement in the Tanya O'Carroll case, where again there will be a series of significant changes to Meta's business model. So the suggestion that this case is the straw that breaks the camel's back in my submission is rhetoric only. We say for all those reasons, the summer of 2026 is entirely realistic, and has --

MRS JUSTICE JOANNA SMITH: 2027?

MR O'DONOGHUE: 2027, and should be commended to the Tribunal.

MR SINGLA: Madam, could I just respond. The point about Professor Scott Morton's availability, we say it's just completely inappropriate for these proceedings to be listed at the convenience of the Class Representative's expert. The Tribunal has to take into

account all of the work that needs to go into the trial and that includes the disclosure and the factual witness statements and all of the other expert reports. She is going to be only one of a number of experts at this trial. To ask the Tribunal to list the trial at the convenience of the expert, without any evidence before the Tribunal as to her commitments, as to whether there's a week in Michaelmas she can make herself available, we do really regard that as inappropriate. The Class Representative has come today seeking a listing of the trial on the second occasion and there is no evidence whatsoever. We do submit it would be prejudicial to Meta for this whole case to revolve around Ms Scott Morton, in circumstances where we have no information around her availability.

I've explained how we get to the end of 2027, Michaelmas, and, with respect, there's no detail. Mr O'Donoghue is simply saying the summer would be better. He hasn't actually sought to map out any of how we get there, and I did try to explain to the Tribunal how we have arrived at Michaelmas. The other point I should mention is there is going to be, as you know, this application to amend to bring user damages in. That could well lead to an appeal, because we say in fact there is binding Court of Appeal authority that says it is all hopeless as currently put by the Class Representative. That's another factor, because there will be that matter proceeding in parallel, and one doesn't know where that could end up in terms of appellate authority and so on. So again, for those reasons, we do submit that Michaelmas really is the appropriate window.

MRS JUSTICE JOANNA SMITH: Yes, all right. I'm going to rise, because I'd like to discuss those last points with my colleagues. If you can just give us five minutes, thank you.

(11.04 am)

(A short break)

(11.09 am)

Ruling

MRS JUSTICE JOANNA SMITH: With thanks to you both for your submissions, the Tribunal has decided that this case should take place for a period of ten weeks and that it should start in the week commencing 20 September 2027 and run to the end of November 2027. That is slightly over ten weeks, so as to give us some wriggle room. We consider that it is necessary to list the trial for the Michaelmas term rather than for the summer term, in circumstances where we are satisfied that there is a substantial amount to be done before the date of trial. The scope of the work to be done is not yet clear, but having been taken through the various directions that were proposed on the previous occasion by Meta, we are satisfied that there is likely to be a need to undertake a great deal of work between now and the time of trial, and that we must be realistic, therefore, in identifying the trial date.

We have borne in mind what we have been told about the availability of the Class Representative's expert. However, we are somewhat surprised that, in circumstances where we were being asked to list the trial date today by the Class Representative, no evidence was supplied as to the availability of the expert. With modern forms of communication, we see no reason to suppose that the expert cannot attend online, or indeed that she could not be present for the material parts of the trial when she will be giving her evidence and her opposing expert or experts will also be giving evidence. We do not consider that the timing of this complex and substantial trial should be dictated by the availability of one expert.

As for the proposal as to long stop dates, we are not satisfied that any directions as to the service of evidence need to be addressed at this hearing. We consider that detailed directions for trial should be fixed at the next hearing in July.

MR O'DONOGHUE: If we now move on to category 2, expert issues.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: The Class Representative doesn't oppose Meta's application for an accounting expert.

MRS JUSTICE JOANNA SMITH: Yes. Just on that, Mr O'Donoghue, on the previous occasion I indicated, I think you have referred to this in your skeleton argument, that I would want to have an identified list of issues that the accounting expert was going to address. Mr Singla in his skeleton has identified some of those and has referred to them in his evidence, and there's a couple of footnotes I think where they are addressed, but I do not consider that to be sufficient, because it does seem to me that it is very important that everyone understands the precise issues to which the accounting evidence will go in advance, so that the permission that is granted by the Tribunal for reliance on accounting evidence is restricted only to those identified issues. I don't want there to be any ambiguity around the evidence that the accountants will be giving.

MR O'DONOGHUE: Yes. It picks up on a point Mr Ridyard made in December, which is that the clear blue water between competition economics and accounting expertise needs to be defined.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: Our non-opposition to this application should not be confused with enthusiasm for it. You're quite right, madam, Mr Singla was, it was indicated very clearly to him that he needed to produce a list of issues to which the accounting evidence --

MRS JUSTICE JOANNA SMITH: I think I said as much on the last occasion.

MR O'DONOGHUE: Yes, you did, and the dribs and drabs in footnotes, with respect, is not adequate. So really that is a matter for Mr Singla.

MRS JUSTICE JOANNA SMITH: Mr Singla.

MR SINGLA: Madam, I apologise if we haven't met what the Tribunal exactly was asking for. We've obviously done a significant amount of work for the Class Representative now to consent.

MRS JUSTICE JOANNA SMITH: Yes, of course, and I do appreciate that, you're both agreed. I'm not suggesting there shouldn't be accounting evidence, but I'm saying I don't think the Tribunal wants to give permission for that evidence until it is clear what it will cover.

MR SINGLA: I understand. One way forward would be for the Tribunal to grant permission in principle, subject to a list of issues being agreed or approved, so that the parties can then move forward as it were with the confidence that an order has been made. To be clear, we do not envisage any duplication. We thought we'd done a sufficient amount of work in Mr Wisking's statement to explain -- the profitability question is really, as you would expect, what the accounting evidence is to be directed at. It is not in any way duplicative of what the economists will be dealing with. It will be an input into what the economists are looking at. Perhaps I could respectfully ask the Tribunal to make the order, given that the parties are agreed, but of course we will go away and agree a list of issues, which frankly both sides need to engage with. It's not simply for us to do.

MRS JUSTICE JOANNA SMITH: All right. Mr O'Donoghue, does that appear to you to be a sensible approach to take?

MR O'DONOGHUE: It does, with respect, put the cart somewhat before the horse. The Tribunal needs to understand first what is the division of labour, and then and only then can a question in principle as to approval be made --

MRS JUSTICE JOANNA SMITH: To be fair to Mr Singla, you have already accepted that accounting evidence should be provided, so I'm not clear why you're potentially going to step back from that. I'm not clear why we couldn't say in principle there should

be an order for accountants, subject to the Tribunal being satisfied as to the issues identified in due course.

MR O'DONOGHUE: Yes, we have no issue with that.

MR RIDYARD: Just to clarify, it's not just a matter of making sure there's no duplication between the economics and the accounting, but also we want to understand the scope of the accounting exercise. Both things need to be crystal clear.

MR SINGLA: Yes, of course.

MRS JUSTICE JOANNA SMITH: All right. In that case, we will make an order that, in principle, permission is granted for both parties to rely on accounting evidence at trial, subject to the issues that those accountants are going to be dealing with being identified in a list, which should then be agreed by the parties and approved on the next occasion by the Tribunal. If you can include that in the order.

MR O'DONOGHUE: Yes.

MRS JUSTICE JOANNA SMITH: Thank you.

MR O'DONOGHUE: We then move to issue 5, which really is Mr Singla's application, so I will respond to that.

MRS JUSTICE JOANNA SMITH: Yes. Mr Singla.

MR SINGLA: Madam, we foreshadowed this application at the last CMC.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: Essentially, we seek the Tribunal's permission for there to be two competition economists. The reason for that is straightforward. It is going to be a significant undertaking in these proceedings for one expert to address all of the issues that arise. I went through a number of issues earlier in terms of the factual evidence, but in terms of the expert evidence for the economists alone, there's obviously market definition, which is a hotly contested issue. The Class Representative pleads three different markets. We say they're all misconceived.

There will be a big battle at trial as to the market definition. Then there's dominance. Then there's abuse, and there are two abuses as you know. Then causation --

MRS JUSTICE JOANNA SMITH: Well, they're said to be two sides of the same coin.

MR SINGLA: I won't take up time now, but they're not two sides of the same coin. There's going to be a considerable amount of work for the competition experts -- the economists to deal with. We therefore submit -- Mr Wisking explains this in his second statement, that having carefully considered this in conjunction with the proposed experts the volume of work in these proceedings justifies a division of labour, and that's paragraphs, so you have it, 41 and 42 of Mr Wisking. I do emphasise that he has consulted with proposed experts as to how to manage this significant undertaking. There will be no duplication, to be clear. The dividing line will be market definition and dominance for one expert, and the other will address abuse, causation and quantum and loss.

MRS JUSTICE JOANNA SMITH: I'm interested by what you say on that, because whilst you might be able to ensure there's no duplication in the reports, I wonder what happens when one gets to trial and those experts are being hot tubbed or cross-examined. It does seem to me that there's more scope then for there to be overlap in the way in which they approach the case.

MR SINGLA: With respect, I would say a couple of things. One, I would say that's not a matter for now, in the sense that that's obviously something the Tribunal can manage and the parties will need to manage between now and trial. Secondly, I highly doubt, with respect, the problem will actually eventuate. In the sense that, in my experience, and the experience of this Tribunal, the hot tubs generally will be topic by topic, for there will be, for example, a hot tub on market definition and a separate hot tub on, let's say, abuse. So if different experts were dealing with different topics, there wouldn't be any scenario in which experts were covering or trespassing on the ground covered

by another expert. So that's how ultimately the trial, in my respectful submission, is likely to be managed. But of course that's also something that can be looked at very closely. For example, in the runup to trial, it's very common for there to be an agenda or list of issues for each hot tub and so on. So it would be very clear, and I'm sure the Tribunal will be very vigilant to that.

The other point that I wanted to stress is that this actually has happened in other cases. Of course, there is a limit to how much one can really glean from the experience in other cases, but to be clear, the Tribunal should understand that two competition economists were instructed in I think the *Kent v Apple* case. I'll just perhaps show you that. It was agreed, I should stress. If you just have a look at *Kent v Apple*, which is tab 14 of the authorities bundle. It's volume 1.

MRS JUSTICE JOANNA SMITH: Which paragraph?

MR SINGLA: Sorry, just give me a moment. I think it's page 4. Yes, it's paragraph 6. You will see: "The parties were agreed that permission should be given to provide evidence from the following experts, two experts on competition economics."

Paragraph 7: "It is said that the extent of the issues which the experts will need to cover justifies two experts."

I do accept that that's obviously an agreed position in that case, but it's of some relevance for the Tribunal to be aware that that was the position in *Kent v Apple*. It also happened in *Coll v Alphabet*, albeit there were some specific reasons concerning the expert there appearing in two different cases. It also occurred in the *Le Patourel* case, which is a recent collective proceedings case in this Tribunal. So this is by no means unprecedented. I mean the scale of these collective proceedings means perhaps this is going to be something that one sees more frequently. Moreover, there is no prejudice whatsoever to the Class Representative, because, of course, if the Tribunal accedes to this application, she will be entitled to call two experts as well, and

this won't add to the overall costs, or lead to any delay. It's just a case of dividing up the work that needs to be done. Notwithstanding that there's no prejudice to the Class Representative. They do oppose the application, but in my submission --

MRS JUSTICE JOANNA SMITH: When you say it won't add to any cost, the Class Representative has already provided an expert report dealing with everything, so it will involve her in having to incur additional costs by instructing a new expert, won't it?

MR SINGLA: Well, (a) they haven't covered everything, it is a preliminary report from --

MRS JUSTICE JOANNA SMITH: Yes, sure, and there will be a subsequent report, but nonetheless they had been operating on the basis that their expert would be dealing with everything.

MR SINGLA: Yes, that's right, in the sense that to date they've only had one expert. Obviously it's a matter for them whether they would like Professor Scott Morton to cover everything at trial, that doesn't necessarily follow that we should be confined to one expert. But equally, in my submission it's not as if it was too late for them to call an additional expert, in the sense that her report, as they've been very keen to stress, was a preliminary report only. So plainly when one moves beyond the disclosure stage, that's when the lion's share of the expert work will be carried out. So I don't accept, with respect, that there's any prejudice. It's up to them, essentially, but the question is whether we've done enough to persuade the Tribunal that on our side there's going to be so much work that it would be fair to divide it between two experts. I was just going to say that the only points they make in opposition seem to us to be bad points, because in their skeleton you will have seen that one point they make, I think this is footnote 1 in their skeleton, is the fact that Meta will have an accounting expert is a reason to refuse Meta permission for two economists, because the accountant will do a material part of the work that would otherwise have been done by

a competition expert. We say that's misguided. It's really going over ground we've perhaps just covered. They are very separate, and that will become clear in the list of issues. But the accounting evidence is not a substitute for the economics. As I say, the economists will be dealing with market definition, dominance, abuse, and so that point in my submission goes nowhere. They agree we'll need an accounting expert. They obviously agree that competition economics will be very important, and all we're really saying is the economist work should be divided up into two.

Then the second point they make is paragraph 48.5. This is the only reference as far as I'm aware to some prejudice. What they say is they would be prejudiced, because in a hot tub Meta would have two economists and they would only have one. But with respect, that concern is not really a valid one, because, as I've just explained, and as the Tribunal will be aware, the way these things are ultimately conducted is there won't be a scenario in which it's two experts on Meta's side covering the same issues, such that there's a hot tub with two against one. I can understand in one sense the concern about there being two against one, but it's not going to work like that. That's the whole point about the issues being divided up. We do respectfully submit it is a matter really for the Tribunal as to whether you understand and appreciate the huge amount of work that needs to be undertaken on our side, and whether, in line with these other cases, in fact a dividing line can be drawn. To the extent the Class Representative opposes the application, one needs to scrutinise why are they opposing. What really is the problem from their perspective, given that they can call two if they want to, and it won't add, as it were, to the costs or the delay at trial. Unless I can assist any further, those are my submissions.

MRS JUSTICE JOANNA SMITH: No, thank you, Mr Singla. Mr O'Donoghue.

MR O'DONOGHUE: Madam, can I deal first with the principle reasons against Meta's proposal and then deal with the particular reasons they put forward to justify the

application. The main objection of principle is that this is a multi-sided market case, one side being the users, the other side being the advertisers, and the different sides of the market need to be considered not just at the stage of market definition, but also when it comes to abuse and quantum in an integrated manner. The problem with Meta's proposal is that one of its economists would be siloed into dealing with issues of multi-sided market at the stage of market definition and dominance, and his or her analysis would not be integrated into the other economist's analysis of abuses, causation and quantum of loss. The siloing of the multiple sides of the market in our submission would be unwise and give rise to issues. All of the Tribunal's substantive rulings to date in these proceedings have emphasised the need for an integrated assessment of the various sides of the market, and not just at the market definition and dominance stage. If I could just quickly give the references. In the first certification judgment at page 29, the Tribunal said: "Meta contended that the outcome of the unfair price abuse allegation would be significantly affected by the fact that the Facebook service was provided in the context of a two-sided market. That may or may not be the case, but the methodology for the assessment of quantum needs to be sufficiently robust to deal with that point."

That's the first substantive judgment. Then in the second certification judgment, early last year, on page 16, the Tribunal, under abuse on this occasion, said: "The viability of Facebook, this being a two-sided market, might very well depend on Meta's monetisation of such data."

That's the Tribunal's two substantive rulings.Then if you look at Professor Scott Morton's first report, it's in bundle 2B of the CMC bundle. It's in tab 2 of the hard copy. If one, for example, first of all looks at the table of contents, and you see for example 5.5.1, so this is under quantum, you will see she has a section, "The implications of Facebook's multi-sidedness and the possibility of advertiser side

overcharges to the methodology". You can see straight away within quantum that the question of multi sidedness is central to her analysis. Then if one goes into the report, for example at 18(a).

MRS JUSTICE JOANNA SMITH: Which page is that?

MR O'DONOGHUE: Internal page 7, CMC2B bundle, page 12. She says: "Given the two sidedness of Facebook and zero monitoring price, I consider the appropriate way to assess whether an unfair price bargain is struck with users is to assess Facebook's profitability, so as to consider whether Facebook is achieving supercompetitive profits or financial performance across both sides of the platform and whether the incremental data for off-Facebook tracking contributed significantly to this financial performance." Again when it comes to this question of abuse, limb 1 of United Brands, she is saying multi-sidedness is fundamental to her analysis. Then at 250, on page 71 --

MRS JUSTICE JOANNA SMITH: 71 of the electronic bundle?

MR O'DONOGHUE: Yes. Again, this is in limb 2 of United Brands, she has comparators with other two-sided markets. Indeed, if one looks at the background section to her report, that, too, has a significant component dealing with two-sided markets. In the Tribunal's two substantive rulings, and in Professor Scott Morton's report, two sidedness straddles market definition, dominance, abuse and quantum, and we say it needs to be looked at in an integrated manner. Indeed, that, we say, is actually common ground. If one looks at Wisking 2, paragraph 42, it's in bundle 2B, tab 8.

MRS JUSTICE JOANNA SMITH: At page?

MR O'DONOGHUE: 15.

MRS JUSTICE JOANNA SMITH: Thank you.

MR O'DONOGHUE: The second half, he says: "[t]he particular complexities of the multi-sided nature of the market in which Meta operates (which the Class

Representative has acknowledged and put in issue), the expert evidence for market definition and dominance will need to consider the approach to market definition on both the user- and advertiser-sides of the market and the interaction between them, making this analysis more complex and extensive ..."

We agree with that as far as it goes, but with respect he is looking at the wrong end of the telescope, or at least the incomplete picture. The need to consider the interaction between the different sides of the market is not confined simply to market definition and dominance. It also bleeds into abuse, causation and quantum. We say that there are problems in disaggregating or siloing one set of economists to deal with two sidedness in the context of market definition and dominance from the rest of the economic analysis. That is the core objection of principle.

Then just to pick up on a few final points. The second reason Mr Wisking gives, at 42 and 43, is he talks about the burden for a single expert to undertake, but he gives no recognition of the fact that the burden on the competition economist will be significantly reduced if, as has now been ordered, there is an accounting expert to deal with profitability. The profitability issues are likely to be weighty ones, so this is a real saving. The Tribunal will have seen from Professor Scott Morton's first report that there is a considerable chunk of that report dealing with issues of profitability.

Second, we say it is not the norm, contrary to what Mr Singla suggested, that two or more economists would deal with the whole host of issues. He mentioned three cases. I'm conscious, madam, that you commented at the first CMC that comparisons in case management terms with other cases --

MRS JUSTICE JOANNA SMITH: Yes, we must consider each case on its own merits.

MR O'DONOGHUE: But at least statistically there is a point I can make, which is that he's identified three examples. I checked the Tribunal's website overnight. There are 60 cases under section 47(b). So three out of 60, as far as I'm aware, have suggested

two or more competition economists. So this is not the norm by any stretch of the imagination.

Two final points. First there was a tentative suggestion that this would not add to costs. Of course it would, because the second expert will have to read into the case as a whole. It is obvious, in my submission, axiomatic, that if one has two experts that the cost will incrementally increase, that is an iron law of litigation. It was then suggested by Mr Singla in response to the Tribunal's question as to wouldn't there be an unfairness to the Class Representative in Meta having two bites of the cherry in the context of expert evidence. His answer to that is, “well there is no need to worry, because those issues can be dealt with sequentially in different modules at trial”. First of all, that remains to be seen. Second, and more fundamentally, it gives rise to what I would call the mouse hole problem, because when the Tribunal is confronted with the market definition economist, it is obvious from what I've outlined in terms of the interlinkage between two sidedness across all elements of the case, that we would run into a problem very quickly whereby the market definition economist saying, "well that's not for me, that's for the mouse hole over there". Then when we get to the second expert, he or she says, "well that's not for me, that's for the expert you heard last week". So there is actually a significant practical problem for the Tribunal in that the issues end up being ping ponged between the different experts, and that gives rise to a real difficulty in terms of falling between two stools at trial.

So there are objections of principle, there is a fundamental practical objection, and indeed a question of fairness, because if we had a single economist, or even if we have two economists, the suggestion that they either get a second bite in a second hot tub, or they get to have a sort of interplay and play their economists off each other, we say has nothing to commend it at trial and indeed gives rise to unfairness. For those reasons we say that is an unnecessary and inappropriate direction.

MRS JUSTICE JOANNA SMITH: Thank you, Mr O'Donoghue. Mr Singla.

MR SINGLA: I can't really say much more, other than Mr Wisking, who is a very experienced solicitor in these sort of proceedings, gives evidence to the Tribunal that in the context of this particular case, given the volume of issues, that this is going to be a significant burden for a single expert. Moreover, he says at paragraph 42, without waiving privilege, he's discussed this split with Meta's proposed experts, who have agreed this is an efficient way of dividing the issues. One can always stand up in front of the Tribunal and say there's this problem and there's that problem and so on. Of course, Mr O'Donoghue came to the Tribunal trying to persuade you that you could do the first trial on an assumption of dominance, which we said was completely unworkable. In a sense it's always easy to put up obstacles, but the question for the Tribunal is: is this a case where in fact the number of issues is just so great that it would be an extensive burden? We submit yes, and the onus would obviously be on us to ensure that there is no issue of duplication, still less an issue of some lacuna, Mr O'Donoghue's reference to ping pong. One's going to have to manage that situation, but it's not beyond really the wit of either Herbert Smith or these responsible and experienced experts to ensure that their dividing lines are clear. It's also not unusual for there to be experts as it were to consider issues, so, for example, the expert considering abuse, to take into account what another expert has said on market definition. It's actually quite common for expert evidence to line up in that particular way. As I say, there is no real prejudice to the Class Representative, because if they want to do the same, they can, and if they don't want to, that's entirely a matter for them, but it is a very substantial burden on a single expert to deal with all of these issues, now that the Tribunal has ordered a unitary trial. I can't really assist any further.

MRS JUSTICE JOANNA SMITH: All right, Mr Singla, thank you.

MR O'DONOGHUE: Madam, could I just give you one reference if I may? It's

paragraph 30 of Mr Wisking's second statement. It's at CMC2B, tab 8, page 11. In the context of his split trial proposal being a fallback position, he says: "The issues concerning the alleged abuses…are closely intertwined with the allegations as to market definition and dominance, such that there are significant efficiencies in trying the two issues together, for both practical reasons, given the likely overlap of factual and witness evidence, and substantive reasons, given the evaluative judgments that the Tribunal will have to make."

That is the efficiency or linkage point. It is *a fortiori* given the two sidedness problem I showed you, and it follows that there are inefficiencies in decoupling these issues and having two effectively siloed economists dealing with them. They need to be considered in an integrated manner --

MR SINGLA: Madam, just to be clear, there's no inconsistency in terms of what we were saying. On the question of unitary trial, the parties obviously, as you know, agreed that there should be a unitary trial, because the same issues on the pleadings came up. That in my submission is actually a completely different point to whether it's possible for the experts to consider separate issues. It's just not right to try and conflate the two, because the question on the expert evidence is: could the abuse expert take the expert evidence that's been considered by another expert on market definition? Yes, that would be relevant to the abuse question, but it really is in my submission possible and common in fact, perhaps not in this Tribunal, but generally in expert evidence, it's quite common for experts to dovetail their evidence. So the abuse expert will take into account what the other expert said on market definition, but the mere fact that the underlying issues crop up at different stages of the case is in my submission really not the same point as whether experts could carve things up.

MRS JUSTICE JOANNA SMITH: All right, I follow. Looking at the time, it's 11.40 am, so now would be a suitable time to break in any event. I'm going to break for ten

minutes until 11.50 am, and we will consider our decision on that. Thank you all very much.

(11.38 am)

(A short break)

(11.50 am)

Ruling

MRS JUSTICE JOANNA SMITH: We must now deal with Meta's application to rely on two experts at the trial in the field of competition economics. Rules 21(1) of the Competition Appeal Tribunal Rules provides that the Tribunal may give directions as to whether the parties are permitted to provide expert evidence, and at 21(2), that 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 various factors. Those factors include at 21(2)(d) and (e) the prejudice that may be suffered by one or more parties if the evidence is admitted or excluded and whether the evidence is necessary for the Tribunal to determine the case. The Guide to Proceedings at paragraph 7.65 makes clear that as regards expert evidence, the Tribunal will take into account the principles and procedures envisaged by part 35 of the CPR, notably that expert evidence should be restricted to that which is reasonably required to resolve the proceedings. It is for the party seeking to call expert evidence to satisfy the Tribunal that expert evidence is properly admissible and relevant to the issues which the Tribunal has to decide, and would be helpful to the Tribunal in reaching a conclusion on those issues.

This is an unusual application, because the need for experts in the field of competition economics is accepted, but Meta says nevertheless that it wishes to call two experts in the same field. In his submissions, Mr Singla KC relied on a couple of other cases in this Tribunal, in which permission had been granted to do just that. The Tribunal is

not much assisted by other cases, but must have regard to the circumstances of the case with which it is concerned, and I bear firmly in mind the point that Mr O'Donoghue KC made, that this sort of order is most certainly not the norm. The only reason provided by Meta for wishing to rely upon two experts in the same field is that, to quote the skeleton argument, the expert evidence will be a “hugely significant undertaking", such that the division of labour between two experts can be justified. So essentially Meta relies on no more than the volume and scale of the work that will be required in this field of expertise. The Tribunal cannot see that that is a good reason to subvert the ordinary rule that each party may instruct one expert in any given field of expertise. Furthermore, there is certainly no necessity for two experts and it is not even suggested (whether in Mr Singla’s skeleton argument or in Meta’s evidence for this hearing) that two experts in the field of competition economics are reasonably required to resolve the proceedings. Given that we are now looking at a trial in the Michaelmas term of 2027, it is difficult to see why a single expert will be unable to carry out the work required in advance of that date, even if it is substantial. He or she will no doubt have support from others within their own firm, albeit that their opinions will ultimately be their own. I observe that the Tribunal will in due course be looking to restrict the extent of the experts' reports by reference to page numbers, or something of that nature, so as to ensure that they do not become unwieldy or overly long-winded for the purposes of trial. The Class Representative's expert does not appear to consider that there is any difficulty in dealing with all of the issues. Furthermore, it is difficult to see how duplication between the two experts proposed would not be an inevitable consequence of permitting this application (notwithstanding Mr Wisking's evidence) and thereby lead to an increase in costs. We accept the submissions from Mr O'Donoghue that an integrated assessment is critical. We are very concerned at the potential dangers involved in attempting to “silo” experts in the same fields into

different areas of the case, including the potential practical issues that this may give rise to at trial. We are not swayed by the evidence from Mr Wisking that the two experts concerned have agreed that this is an efficient way of dealing with the issues arising in this case. No doubt they may well have agreed that, but that is largely irrelevant to the question which the Tribunal is concerned with in assessing whether to make an unusual order permitting reliance on two experts in the same field.

Finally, we consider that permitting Meta to have two experts would either produce a potentially uneven playing field for the Class Representative, or, if she felt it necessary also to instruct a second expert, would unnecessarily lead to an increase in costs. In either event we consider that she would suffer unnecessary prejudice. For all those reasons, we do not consider that evidence from two experts in the same field is reasonably required, much less that it is necessary, in order to resolve these proceedings and we reject the application.

MR O'DONOGHUE: Madam, we now move to issue 6, which as I said at the outset is I understand not opposed, it's really a matter for the Tribunal. The question of a joint meeting --

MRS JUSTICE JOANNA SMITH: Yes, sorry, I've temporarily lost my sheet with the issues on it.

MR SINGLA: Mr O'Donoghue says it's not opposed, but I do have something to say about it. We do oppose an order in the terms sought.

MRS JUSTICE JOANNA SMITH: This is directions for a joint meeting of the parties' experts, yes.

MR O'DONOGHUE: Madam, it's a very short point. The experts in our submission on questions of disclosure will be important and in particular if one thinks of for example issues of profitability, market definition and dominance, it is heavily expert-led and driven, and therefore there is an obvious logic and pragmatic appeal to the expert

being involved at an early stage in terms of shaping disclosure. What we had suggested was that some time before say the middle of May, with a view to making the July CMC as effective as possible, the experts would meet and see if they could make progress on discovery, disclosure. We think that sort of hiatus or gap or staging is necessary for the CMC to be effective. In December, we made a similar suggestion. It was not at that stage opposed. We do not see the issue with having a direction that there should be a meeting by a certain date, and in particular one of the issues with disclosure in adversarial litigation is that it is often too adversarial and there is a lot of gamesmanship. In our submission, it is very often the case that sensible experts with less skin in the game can expedite matters of disclosure in a sensible way. That can be a significant benefit compared to the attritional interpartes correspondence.

MRS JUSTICE JOANNA SMITH: Well, the experts should have no skin in the game, because they owe their primary duty to the court.

MR O'DONOGHUE: Indeed. For all those reasons, we think this is not only a sensible step, we say an essential step, and we don't understand on what sensible basis it could be opposed.

MRS JUSTICE JOANNA SMITH: Thank you, Mr O'Donoghue. Mr Singla.

MR SINGLA: Madam, consistent with our position at the last CMC, we don't object in principle, but we do have a couple of concerns. I mean the first is 16 May is incredibly tight, and so we do object to the suggestion there should be an order that the experts should meet by that date.

More fundamentally, perhaps, we are concerned about any idea that the experts as it were should lead the disclosure approach.We obviously understand why Mr O'Donoghue wants the experts involved, but without any specifics as to what exactly the experts are going to be discussing, we are concerned about agreeing to the terms of paragraph 6. One will understand that obviously it's not for the experts to

be advocating what disclosure ought to be provided. They can obviously identify some categories that they think may be relevant, but ultimately it's a question of whether those categories that experts identify are actually properly tethered to the pleadings, whether that disclosure is proportionate, and whether indeed that disclosure is available. So there are different types of meetings that one can foresee happening between experts when --

MRS JUSTICE JOANNA SMITH: One could have an exploratory meeting between experts to discuss the categories of documents they think, on a preliminary basis, may be of relevance to the reports that they're going to be writing in due course, or the issues they will be considering.

MR SINGLA: Quite possibly, but taking it further than that is something that we would be very concerned about, so that one doesn't want this to become a disclosure exercise driven by the experts, because there are all manner of other issues that effectively are ones for the lawyers to consider. What we are concerned about is, despite this being the second occasion on which Mr O'Donoghue has suggested this, we've not had any clarity or specificity as to what it is that the Class Representative envisages the experts will be discussing. So we're not looking to be difficult or unreasonable. We can see the sense perhaps in some kind of meeting, but what we would respectfully suggest is that the Class Representative should send to Meta an agenda, or a draft agenda, so that we can see exactly what they envisage the experts discussing. It's unsatisfactory in our submission simply for the Tribunal to say, on the basis of what one's heard from Mr O'Donoghue, "well of course the experts should meet and discuss disclosure". That's just far too vague. So we want to ensure that the right parameters are set down.

MRS JUSTICE JOANNA SMITH: I follow that.

MR SINGLA: That's the only point, it's not really an objection of principle, but it is

unsatisfactory the way it's put.

MRS JUSTICE JOANNA SMITH: Thank you, Mr Singla. Mr O'Donoghue, that does seem to be a fair point.

MR O'DONOGHUE: I think, in fairness to the Class Representative, if one looks at paragraph 50.2 of our skeleton, that's exactly what we have proposed. 50.2: "It is likely that disclosure-related issues can be narrowed through such expert meetings, and Professor Scott Morton has already identified certain areas where she expects the experts should be able to reach an agreed position as regards to what documents and data are required for the assessment."

Of course that is a starting point, but it is an important starting point.

MR SINGLA: To be clear, that's hopeless. What I'm asking for is an agenda from the Class Representative, "the experts should discuss X, Y and Z". 50.2 just says essentially "the experts should be involved in disclosure". That's the problem that we have on this side. I think you have the point.

MRS JUSTICE JOANNA SMITH: You're going to need to be more specific than that as to what the experts are going to be doing.

MR O'DONOGHUE: Yes, there is an annex in Scott Morton 1 which sets out a whole range of disclosure issues, they at least should be ventilated, we can give further specificity --

MRS JUSTICE JOANNA SMITH: Are they issues that she has identified go to the expert issues in the case, or are they just generally all sorts of issues that she's identified that may go to other matters as well?

MR O'DONOGHUE: The former. On dates, I mean our concern on dates is that it has to be a date that allows the CMC to be effective, whether that's the middle of May or the end of May.

MRS JUSTICE JOANNA SMITH: Of course we were looking at a CMC on the last

occasion at the end of June, and because of my lack of availability as it turned out we had to put it back. So you've gained an additional couple of weeks, so I would have thought that pushing the date back to at least the end of May, or very beginning of June, would not cause any difficulties, or ought not to.

MR O'DONOGHUE: Yes, we're perfectly content.

MRS JUSTICE JOANNA SMITH: The question is what the experts are going to be discussing.

MR O'DONOGHUE: Yes.

MRS JUSTICE JOANNA SMITH: All right. Is there any objection on your side to the provision of an agenda identifying precisely what it is that the experts will be discussing?

MR O'DONOGHUE: No, we're happy to do that.

MR SINGLA: That's very helpful, I'm grateful to my learned friend. Can I perhaps just show you the appendix? In a sense I don't need to, because he's just confirmed he will go first, but it's actually quite helpful for the Tribunal to see the appendix to Ms Scott Morton's report. It's in CMC2B, and it's tab 2, page 165. It is actually quite important for the Tribunal to understand --

MRS JUSTICE JOANNA SMITH: This is Appendix C?

MR SINGLA: Exactly. That's essentially what she's identified she would like by way of disclosure. That's not an agenda for the meetings. I think you have that point, that they need to explain what it is that the experts are going to consider, but it is useful for the Tribunal to see that she's obviously given some thought to what disclosure she would want.

MRS JUSTICE JOANNA SMITH: That could form part of discussion that the experts have, given that she's obviously already given thought to that.

MR SINGLA: Yes.

MRS JUSTICE JOANNA SMITH: But I follow, you want an overarching agenda as to specifically what they will be dealing with, and that may be one of the factors that they're dealing with.

MR SINGLA: I just wanted to show that to you, because when we get into a debate a list of issues for disclosure, it's also useful for the Tribunal to have Appendix C in mind.

MRS JUSTICE JOANNA SMITH: All right. Mr O'Donoghue, can you bear with me one moment. **(Pause)**

Mr O'Donoghue, what we're going to do, please, is require that the Class Representative provides an agenda for the meeting, in respect of which I think comments can then be made by Meta, and that on the basis of that agenda, if it is agreed, the parties will go forward to a meeting to be held either right at the end of May or beginning of June, I'm happy for you to arrange the date for the convenience of your experts. If it can't be agreed, then I think you're going to have to submit it to the Tribunal, and we will make a decision. I'm not encouraging that, but I want this to move forwards. So I would encourage everybody, please, to cooperate with that, so that we don't have to be troubled with looking at what the experts should be discussing.

MR O'DONOGHUE: Yes.

MRS JUSTICE JOANNA SMITH: If that can be included in the order.

MR O'DONOGHUE: Yes, madam, as I will come to, what's happened on the EDQ and Disclosure Report orders does not give us a lot of confidence in this (Inaudible). We do have a concern that, if the agenda has to agreed, that it ends up, frankly, being hijacked by non-agreement and we go back to square one.

MRS JUSTICE JOANNA SMITH: The problem is if it is not agreed, you may find yourself in a position where Meta's expert will not even attend a meeting with you. So we need to find a situation where either it is agreed by both parties or the Tribunal imposes an agenda on the parties, and I fully intend that we will do that if you can't

agree it.

MR O'DONOGHUE: Again, the input of the experts on these issues is we say --

MRS JUSTICE JOANNA SMITH: I understand that, but they are not to have an input across all areas of disclosure, because there will be aspects of disclosure in this case which will have nothing to do with the experts, and will have to be led by the legal teams.

MR O'DONOGHUE: Yes, certainly.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: Madam, then there are the disclosure issues. What I would respectfully propose is we start with issue 8, which then links with 10, and then I think 7 and then finally 9.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: That seems to us the logical order of things. Starting with issue 8, which is then linked to the cost point in 10, the Tribunal will recall from the December CMC that the EDQ and Disclosure Report process was a very important preliminary step in ensuring that the July CMC on disclosure would be as effective as possible. With regret, we say there are a series of quite fundamental defects in what has been produced. Can I just give you the headline points and then I'll take you through them briskly? The documents fail to identify the amount of disclosure on any particular issues, as Meta was directed by the Tribunal to do in December. They say nothing concrete or useful on custodians. They fail to identify other disclosure parameters or answer other questions. They fail to give any reasoned indication of cost, a bald seven-figure sum is simply asserted, and there has, with respect, and with regret, been a shenanigan to do with the confidentiality of the EDQ disclosure, which has hampered our preparations and which does not give those of us on this side of the room a lot of confidence that the disclosure process going forward is going to run very smoothly.

Starting with the first issue, again I can take this briskly, I hope we can wrap everything up by lunchtime, neither the EDQ nor the Disclosure Report give any sense of the disclosure or sources of disclosure that may be available to particular issues. There is no attempt to map the limited and high level information in those documents about document repositories on to any particular issues in the litigation which will require disclosure.The genesis of the order is important, we say. If we can go back to the transcript of the December CMC, we say it's very, very clear what was directed, and what has been done does not respect that direction. It's in CMC2C, which is the transcript, and it's in tab 12. I want to start on page 66.

MRS JUSTICE JOANNA SMITH: Yes, I have it.

MR O'DONOGHUE: It's at line 16. Mr Singla said: "Madam, in my submission, the disclosure and EDQ should cover those matters which Meta considers to be relevant to the issues in the case, and not some unilateral position of what Ms Vernon says."

Then the chair says: "Correct, no, it must cover the issues that Meta considers to be relevant, and if then the Class Representative thinks that issues have been omitted, that will be a matter for argument in due course."

If we then go back to page 28, please.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: It starts at line 12. Mr Singla says: "The issues in this case will be defined by the pleadings, obviously, and we know the pleadings have not yet closed. So the issues in dispute will in fact crystallise in the new year when Meta serves its defence and the Class Representative serves its reply."

Then page 38, lines 4 and 5, Mr Singla says: "We [have], having the defence and therefore, the issues being clear ..."

Then on page 48, lines 26 to 49, he says: "... in January they will have our defence, so they will understand what the issues are from Meta's perspective in this case ..."

If one then turns to the Disclosure Report, paragraph 1.9, that's in CMC2D on page 6.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: Meta now says, having said in December, well the pleadings will crystallise all of this, they say it's impossible to identify the issues in this case, and the EDQ, this is at CMC2D, tab 1, page 1, makes exactly the same point. As a result, what the Disclosure Report contains is an extraordinarily high level list of sources of documents that may exist, and that may be relevant, and the EDQ contains almost nothing that is of any use to either the Class Representative or the Tribunal. If one looks for example at 4.20 of the Disclosure Report, that's on page 13 --

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: -- you will see a shopping list of possible sources of custodian documents. The only illumination provided is "such as emails". Some further detail is given in the following paragraphs on the nature of the sources, and then at paragraph 4.30 on page 23 there is a broad list of other platforms, which may contain what they call non-custodian documents, but, as you can see, it's extraordinarily high level. There is, for example, a reference in 4.30.9 to accounting and finance systems, and you see reference to employee organisational charts, but there's no details, never mind any issues or concrete proposals.

The failure in the Disclosure Report, what it doesn't do, is to say this source in particular will be relevant for the profitability issues, or something like that, or this source will contain documents which show how Meta uses Off-Facebook Data for advertising services. So as an initial roadmap for knowing what might be where in relation to specific issues, it is really of no value whatsoever.

Again, regretfully, Meta's approach in this area is uncooperative, in an area where the Tribunal has expected to see cooperation from the parties, in particular in cases of information asymmetry. It has not done what it told the Tribunal it would do, and what

the Tribunal asked it to do. Meta is plainly wrong to suggest, as it does in multiple places, that it cannot even distill a single issue for the issues of disclosure from the pleadings, and indeed in four minutes this morning, in terms of accountancy issues and issues for trial, we heard more from Mr Singla than we've heard in four months culminating in these documents. Even in the context of split trial, if you look for example at Mr Wisking, his second statement at CMC2B, he's identified a large number of issues that would form part of a split trial. That's paragraphs 15 and 16 of CMC2B, tab 8, page 5.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: There you have several pages of issues that he has identified. We had a list of accounting issues in their skeleton. We had a list of trial issues again from Mr Singla this morning. So they have no issue with identifying the issues when necessary, and yet the Disclosure Report is effectively *carte blanche* when it comes to anything of utility. What is particularly surprising of course is that Meta's own defence has a quite lengthy summary at the start, an overview of the issues from its perspective. You will see, for example, in that summary, they mention things like privacy tools, relation to third party advertisers, value of features of the Facebook service, the terms and conditions, what other platforms do and so on. It must know all of this, because it's pleaded it, and it must be able to formulate the sources that it thinks appropriate to search on these topics.

We do emphasise the point that Meta has recently done a similar exercise several times over on at least some of these issues, so must have the necessary information to do it. We have set out in multiple documents that Meta has in the last two years engaged in a whole series of litigations and regulatory processes where, for example, market definition and dominance, and closely related issues, have been very closely examined. They include in the UK the Facebook-GIPHY merger, examined by the

CMA, the European Commission's Facebook Marketplace decision, published in the last few weeks, and so on. It is obviously the case that Meta has engaged in information gathering and disclosure processes in relation to these investigations. It must know what documents it has provided previously on issues such as market definition and dominance to these regulatory authorities, but there is none of that specificity in the Disclosure Report. It says in 4.12 of the Disclosure Report that it has had regard to these proceedings, but it has not said, conspicuously, what disclosure was given in those proceedings, what searches it undertook in relation to, for example, market definition and dominance, and why those searches already completed will not do in the context of these proceedings. Meta could, of course, and should, we say, have engaged with experts to give an idea of the kind of disclosure which might be required on these issues and considered the availability of that disclosure. It does not appear to have done so. For example, it would have been perfectly open to Mr Parker to say, "This is what I will need to conduct a market definition exercise. Do you, Meta, have those documents?" But Meta has not undertaken, at least based on this Disclosure Report, that simple step, or at least communicated the results to the Class Representative. Indeed, in Wisking 1, paragraph 68, Meta previously said that it intended to get its accountancy expert involved at an early stage in the process precisely for this purpose, and yet that does not appear to have been done, certainly in the context of its economic expertise.

A further criticism we say is that the Disclosure Report is obviously defective in that it effectively seeks to reopen a point which Meta raised and lost at the first CMC. The entire premise of the Disclosure Report and EDQ order and direction in December was that allowing Meta time to complete those documents after its Defence and the close of pleadings would allow Meta to construct the Disclosure Report and EDQ by reference to the crystallised pleaded issues, but now the pleadings having closed and

having obtained extra time for those issues to percolate, it turns around in the Disclosure Report and says, "Well, even with the pleadings having closed, we cannot identify even a single issue for disclosure, certainly with any specificity".

Again, just to quickly give you the genesis of this, because it's quite important, as the Tribunal will recall at the first CMC, and Mr Singla said that on Meta's proposal at the time, which involved the Class Representative drafting a list of issues for disclosure before meaningful information about disclosure would be provided, he said, if we go to the CMC transcript again, it's at page 59, lines 8 to 10.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: He says there the Class Representative: "... will get custodian and repository information, but only once the list of issues for disclosure has been settled."

Then at lines 17 and 18, he asked why should they get custodian information/repository information if it is not tethered to the pleadings.

Then, madam, at 19 to 22 you said: "Well, I can see that, Mr Singla. I can see that is also an argument for saying that insofar as the Tribunal decides that there should be a Disclosure Report and EDQ, that should only come some time after close of pleadings. It could not be provided before pleadings have closed."

Then Mr Singla persisted, he said well, the Disclosure Report and EDQ were necessary, and he should still have his list of issues for disclosure first.

Then the Tribunal ultimately agreed with the Class Representative proposal, which was that she should first be given a Disclosure Report and EDQ to allow her to understand the full universe of disclosure, after which a list of issues for disclosure could be prepared and an order for disclosure made by reference thereto. You will see, madam, from page 66 that Mr Singla sought and obtained additional time to make sure that he had sufficient buffer after pleadings had closed for these issues to

crystallise. On page 66, lines 22 to 23, he initially sought 3 March, and then you responded: "It does seem to me, as I have indicated earlier, that you shouldn't be providing such a document until all the pleadings have been closed."

Then at page 67, the first couple of lines: "... I think their reply is due on 3 March, so I rather wonder if you actually want a little more time than that."

Then you will see at line 6 he asked for 3 April, and a compromise position was reached, whereby the documents were to be provided on 20 March. So Meta having said that the Disclosure Report and EDQ would need to be tethered to the pleadings, and having sought and obtained extra time to do exactly that, now turns around and says they are unable in the Disclosure Report to identify even a single issue for disclosure purposes. Indeed, we say it's even more objectionable. Meta tried at the first CMC to say that the Class Representative should go first with the list of issues for disclosure, before getting the sort of information that is contained in the Disclosure Report and EDQ. Having lost on that point, and having been directed by the Tribunal to do the Disclosure Report and EDQ by reference to what Meta considered the issues in the proceedings for disclosure, its EDQ and Disclosure Report are now replete with the point that unless and until the Class Representative produces a list of issues for disclosure, Meta cannot even identify any issue for disclosure. We say, respectfully, it is bad enough to ignore the Tribunal's clear direction, but to do so on the basis of effectively relitigating a point they raised and lost on at the first CMC is really beyond the pale.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: That's the first objection. The other three objections are much, much shorter. The second defect we say is neither the EDQ nor the Disclosure Report sets out any possible concrete custodians. You will see, for example, the answer to question 2 in the EDQ, which is in the first tab.There's a cross-reference to the

Disclosure Report, but the Disclosure Report does not contain any list of custodians, even provisional. We say that is unsatisfactory for several reasons. First, it is obstructive for Meta to say that it does not know what the issues are, for the reasons I've already given. Second, the Tribunal specifically in December asked for custodians to be identified. It said in its ruling on page 65 of the transcript, at lines 5 to 9: "... we do think the Class Representative is entitled to know what documents exist, where they are held and who the custodians are, and so forth, before she identifies the documents she requires. It is only by approaching disclosure in this structured way that the Tribunal and the Class Representative can be assured that Meta has turned its mind to the relevant documents that are available."

Third, Meta's approach ignores the ordinary requirements in the Tribunal's Rules on the contents of a EDQ and Disclosure Report, CAT Rule 60(1)(b) describes a Disclosure Report as a document "with whom documents are or may be located". So it is not compliant with the Rules, and quite apart from the Tribunal's direction.

Fourth, Meta has clearly taken a view on who does hold these documents, because the Disclosure Report indicates, for example at paragraphs 3.2 and 3.5, that it has issued various litigation holds. It therefore knows exactly who has been subject to these holds, and yet won't even mention a single name or position of any custodian. Meta has on its own report plainly gone through an exercise of identifying custodians, so it is entirely unclear why it has defied the requirements of the Rules and the Tribunal's direction in failing to provide any information on this issue.

The third defect is that neither the EDQ nor the Disclosure Report sets out a possible date range or keywords or other information on the parameters of Meta searches. There are large, unexplained and unjustified gaps. If one, for example, looks at the EDQ, question 1, that's at CMC2D, page 1, tab 1.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: It is unanswered for the same specious reason about the absence of a list of issues for disclosure, which I have addressed on you already. Then if one looks at question 3 of the EDQ, page 2 concerns properly relevant forms of electronic communication, column C: are you going to search these documents? It is unanswered for the same reason. Under questions 4 and 5, columns D and E, again entirely blank, and on this occasion for no apparent reason whatsoever. Question 6 concerns search terms, and again, not a single concrete proposal advanced and the same unsatisfactory reason given. Several other questions are again unanswered, questions 10 and 12 for example. There are large and unjustified gaps in the EDQ, and the information that Meta has provided is, with respect, useless. This defeats the entire purpose for which these documents were ordered and prepared, and again we reiterate, it's not as if Meta was starting with a blank page on these issues, it's been litigating and involved in regulatory proceedings on these issues for many, many years. The penultimate point is there is no concrete indication, certainly a reasoned indication, as to the likely costs. Again, Rule 60(1)(b)(iv) says that a Disclosure Report must give an estimate of the broad range of likely costs of giving disclosure. The Disclosure Report simply has a bald suggestion on section 5 of page 31 of CMC2D that it will cost a seven-figure sum. It is entirely unreasoned, and we don't even have an indication as to whether it is a low-, high- or mid-seven-figure sum. That is obviously not very helpful to the Tribunal or the Class Representative in seeking to approach disclosure in a proportionate manner.

Then, finally, we had what with respect can only be described as gamesmanship or a shenanigan on the confidentiality of the Disclosure Report and EDQ. We have set out the chronology at paragraphs 56 and the following of our skeleton, but the salient points are short and clear. Meta raised the confidentiality of its Disclosure Report and EDQ on 18 March, which is two days before these documents were supposed to be

served. We did receive a copy of the EDQ, which was initially claimed also to be confidential, but that claim was abandoned on 20 March. But as I showed the Tribunal, that document is essentially useless, since it mainly cross-refers to the Disclosure Report. It then took Meta until 26 March to provide a confidential version of the Disclosure Report to the Class Representative, and we received the non-confidential version the next day, the 27th. Can I just show the Tribunal the redactions? There are four. Two of them concern an email and an address. That's on page 2. On page 30 we have a single figure which is redacted and then a part of a sentence. So there really is no good reason why the Class Representative had to wait a week for these meagre redactions. Two of the four redactions are contact information, which we frankly had no interest in. One, as I indicated is a single figure, again, a small bit, and the last one is one and a half sentences. There was manifestly no good reason why the Class Representative was not immediately sent on 20 March a non-confidential version of the Disclosure Report, especially since Meta had more than three months to prepare these documents. The Tribunal will have seen in our skeleton that in its 20 March letter Meta even contended at one point, and I quote: "There is no obligation on the Meta entities pursuant to paragraph 3 of the order to serve copies of the Disclosure Report and EDQ on the Class Representative on 20 March."

The documents that were specifically intended to get in train a meaningful and effective disclosure process, which were supposed to be provided to the Class Representative on 20 March, they said we don't even have to serve these on you on 20 March. So literally every trick in the book is being employed to ensure we don't get the documents or that it's delayed and we get them in dribs and drabs, sort of death by a thousand cuts. The Disclosure Report extraordinarily describes Meta's approach to disclosure, and I quote, as "constructive" in several places. I regard this adjective as abuse of the English language in the circumstances. This really is gamesmanship

of the worst kind. The Tribunal is entitled to expect Meta to be cooperative. There is an extraordinary asymmetry of information, and what has been served up in this Disclosure Report and EDQ and the gamesmanship that proceeded it is anything but cooperative. It sets, in my respectful submission, a rather depressing and attritional vista for the disclosure to come. That is why we have tried to inject an orderly and rigorous process, that is why we've suggested the expert meetings, that's why we've suggested the possibility of a remote short hearing to iron out issues in advance of 15 July. We say that the Tribunal's objective and direction in December has effectively been ignored by Meta, they have in practice cocked a snook at the direction and the order. It has set us back, it has hampered our preparations for this CMC, and it has threatened to undermine the effective and orderly preparation of disclosure matters going forward. That is why we say they should be -- can I just show you the order we seek in our draft order? It's in bundle CMC2G. It's paragraph 7. Essentially they should redo these documents in a way that's compliant, and we say the cost of redoing that, paragraph 9, should be borne by Meta, and not be costs in the case. Those are the orders we seek in relation to the Disclosure Report and the EDQ.

MRS JUSTICE JOANNA SMITH: Thank you.

MR SINGLA: Madam, the problem with those submissions is that there's conflation actually at two levels. There's a conflation between pleaded issues and issues for disclosure and there's a conflation in relation to what a list of issues for disclosure does and what a Disclosure Report is supposed to do. I'm going to need to take some time to explain and separate out those points.

Starting with the list of issues, one has to actually go back to the first CMC to understand what the argument was on that occasion. I'd like to show you the Class Representative's position at the last CMC, was that it would produce the first draft of a list of issues for disclosure. I'm just focusing now on the list of issues for disclosure,

because two separate orders are sought, and it's important in my submission to separate out the two matters. Just on list of issues for disclosure, it's actually helpful to remind oneself of what the Class Representative was saying in its skeleton. If one turns up CMC2F 8.1 in the supplemental bundle.

MRS JUSTICE JOANNA SMITH: Yes, at page?

MR SINGLA: First of all at paragraph 21 on page 8. You'll see that they were asking for an orthodox structure, and you'll see that the Class Representative, you will see the parties can consider and seek to agree a list of issues for disclosure. The Class Representative can, with the benefit of a Disclosure Report, identify what relevant documents might be available to Meta, and then 3, a disclosure order. Then if you look at paragraph 26 on page 10, you will see good reasons now to adopt her proposal. The Class Representative is willing to prepare a draft list of issues for disclosure by 20 February. If one goes, it's the same point, but 57.2, which is page 23, you will see again, actually one needs to go over the page, but the Class Representative was going to prepare the draft list of issues for disclosure. Just to put the point beyond any doubt, at page 27 one can see the summary of the parties' directions. You'll see on the left hand side, 20 February, "Class Representative to prepare a list of issues for disclosure", do you see that?

MRS JUSTICE JOANNA SMITH: I do, that was to be after the Disclosure Report and EDQ.

MR SINGLA: Exactly. But pausing there, in my submission they were absolutely right to say that so far as the list of issues for disclosure was concerned they should go first. This is ultimately their claim, and they need to identify what disclosure they want from Meta in order to pursue that claim. Now, that is --

MRS JUSTICE JOANNA SMITH: Well, that may be right, Mr Singla, but I made it absolutely crystal clear to you, and you asked me specifically on the last occasion

what issues your disclosure documents had to go to, report, et cetera, and I made it clear that those were the issues identified by Meta, and that has not been done.

MR SINGLA: Can I take this in stages, with respect, because I am going to just build this up in stages?

MRS JUSTICE JOANNA SMITH: All right, take your course.

MR SINGLA: Their position was that they would provide the list of issues for disclosure, the first draft, but that they wanted a Disclosure Report and an EDQ first. That's the point that we resisted. It was a debate ultimately, as I described it, a debate about sequencing. We lost that debate, and you're right, obviously you ordered us to provide a Disclosure Report and an EDQ. They now say that in fact you ordered us to prepare a list of issues for disclosure, that's really the thrust of what's being said, and that's why they now seek an order that we should do that, even though their own position was that they would provide the first draft, subject to receiving a Disclosure Report and an EDQ. The only basis on which they seem to have done a 180, which is that now Meta should provide the first draft of a list of issues for disclosure, is the exchange that I had with you. Can we just go back to the transcript?

MRS JUSTICE JOANNA SMITH: Certainly.

MR SINGLA: Because it's interesting that he didn't take you to page 65 of the transcript. I would ask the Tribunal to turn that up. It's CMC2C, tab 12, page 56. This is your ruling. If you start actually at the bottom of page 64: "We consider that the Class Representative's proposal, on the other hand, allows the Class Representative and the Tribunal to approach disclosure on an informed basis. That is not to say that the Class Representative has a licence to then request all sorts of documents which do not answer any issues in the case ..."

Then if one goes to the next paragraph: "... we do think [they] are entitled to know what documents exist, where they are held ... before she identifies the documents that she

requires. It is only by approaching disclosure in this structured way ..."

Madam, the debate was about whether we should provide the Disclosure Report and EDQ first, but there was never any suggestion, still less an order, that so far as the list of issues for disclosure was concerned, Meta should provide a draft. This is really quite important, and I'm going to come to the criticisms of the Disclosure Report and the EDQ in a moment, but when we had the exchange, the clarification that I sought over the page on the transcript, that was not either me seeking clarification, or, in my respectful submission, madam, were you saying that we should provide a list of issues for disclosure. What we were actually seeking clarification on was that Ms Vernon in her witness statement had referred to all manner of investigations that had nothing to do with this case, for example investigations concerning WhatsApp, and the clarificatory point at line 16 to 21. That exchange was simply to confirm that the Disclosure Report and EDQ wouldn't have to cover things like a WhatsApp investigation in an African jurisdiction. It was never being suggested that Meta would provide a list of issues for disclosure. It was always clear that the Class Representative would provide the first draft of that document, and the only debate was the sequencing, which I accept we were obviously ordered to do the Disclosure Report and EDQ first, but in terms of what they're asking now, again one has to keep these things separate. They are asking now for an order that we should serve a list of issues for disclosure, and we say that's not what they were asking for at the December CMC, it's not what the Tribunal ordered, and there's no good reason in principle why a claimant, a class representative, should be suggesting that the Defendants should go first and identify what are the issues on which disclosure should be provided. One has to keep, again, pleaded issues, and issues for disclosure, separate.

So a list of issues for disclosure is, in a one-sided case like this, where the burden of disclosure will fall on the defendants, it's for the claimant to identify those documents

that she says she needs to pursue her claim. Now that is the ordinary starting point in the CAT and also in the High Court. If one was thinking about this in terms of a DRD in the High Court, the claimant goes first with a draft list of issues for disclosure. So it's common practice. That's the usual position. The claimant provides this list. It's all the more important, we submit, in this case that the claimant should go first, because of the state of their pleadings. We've referred to the comments by the Tribunal on previous occasions about the prolix and essentially inappropriate nature of the pleadings. It's over 200 pages, and it's impossible to decipher from the pleadings what the issues are on which the Class Representative actually wants disclosure. We've heard, both on this occasion and on the previous occasion, and you'll recall we offered the *Klein* disclosure, some 400,000 documents. That was actually something that they had asked for back in February of last year and then they changed tack at the CMC. Their concern at the CMC was "well we don't want to have," as Mr O'Donoghue expressed in his usual way, "we don't want to have material dumped on us."

So what we submit is, if their concern is about receiving material that they don't want, or some kind of budgetary concerns which are now prayed in aid in the skeleton, it's all the more important that they should go first on the list of issues for disclosure. They are the ones who know the documents -- it's not about information asymmetry, this is really quite important, this is why it's important to keep the documents separate. When one's considering the list of issues for disclosure, there's no information asymmetry question there, because they must be able to identify, having pleaded 200 pages-odd, they must be able to identify what are the issues upon which they actually want documents.

I showed you Appendix C of Professor Scott Morton earlier, and you'll see they've already given this some thought. She has a long shopping list of documents that she considers that she would require to pursue her opinions. At paragraphs 18 to 21 of

Mr O'Donoghue's skeleton, they've also set out a framework of issues. So we are actually, on this side of the court, we are quite perplexed on the list of issues for disclosure as to why they are saying Meta should go first. It's not for Meta, for example, to decipher the temporal scope or the geographic scope of disclosure. We need to see what their proposals are. It may actually be helpful just to look at the pleading, because on one view, if you just quickly turn up the claim form, which I know you're familiar with.

MRS JUSTICE JOANNA SMITH: Certainly.

MR SINGLA: But it's quite useful to remind oneself of how vague the claim is in terms of its pleadings. It's behind tab 4.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: You'll see for example in the summary, so if you turn up page 3, you'll see at S7, the whole case is put in terms of the change in the business model. So it's said when it faced at least some competition, it sought to position itself as a privacy centric service. As it gained market power over time, it ramped up the volume of data. You'll see (a) in the early period of its operation, and then (b), there's reference to events in 2007, and at the end of (b), 2009, and then June 2014. This goes back, on one reading of the pleading, 20 years, but do they want 20 years worth of disclosure? It's completely unclear to us. That's why, with respect, in line with the usual practice, but particularly in a case where the pleadings are so vague and so broad, on one particular reading. If one looks, for example, if you go to the main pleading, page 54, it's just another example, tab 4.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: Or if you start at page 28, sorry. It's a good example. I don't have time to take you through all of this. But if you look at page 28, paragraph 49, over time as Facebook gained market power, and you'll see again (a), in the early period of its

operation, and then you'll see (b), as Facebook gained increasing market power. So this is all put in terms of going back to day 1, as it were. Then you'll see at 50, references to events in 2012, for example. Then I was going to take you to page 54 really to make the same point, that this case on one view just goes back 20 years. Paragraph 95. They're putting in issue all the changes in the terms and conditions, and so on, the nature of the service. Therefore we say --

MRS JUSTICE JOANNA SMITH: Mr Singla, forgive me. When you say on one view, that is their pleaded case. So on any view, their case appears to go back to 2007 or 2005 or whatever it is. Why is there an issue about that?

MR SINGLA: Well, that's the pleaded issue, but it doesn't follow that the disclosure will be sought going back 20 years.That's the critical question. Now we're talking about disclosure, and we're not talking about a list of pleaded issues, we're talking about what disclosure do they want. This is why I mentioned the proportionality point. If we were going through this and say well here's 20 years worth of disclosure, there were howls of protest at the idea that we would give them 480,000 documents from *Klein*. You'll recall the debate we had at the CMC, and you'll see what they say in their skeleton today about budgetary concerns. That's why the onus is on them, as it is in every other case, frankly, where a claimant's bringing a claim. It's for them to say we want the following disclosure. That's the purpose of the list of issues for disclosure.

MRS JUSTICE JOANNA SMITH: I entirely understand what you say about that, but that doesn't justify non-compliance with the Rules in relation to the Disclosure Report, which have been pointed out.

MR SINGLA: Madam, sorry to interrupt, but in my submission they're seeking two separate orders. One is for Meta to provide the list of issues for disclosure, and the second is for Meta to redo the Disclosure Report and EDQ. I am going to address you on that.

MRS JUSTICE JOANNA SMITH: In relation to your first point, what you're saying is on the last occasion, it was never indicated or anticipated that you would be required to provide the list of issues for disclosure first. What was being discussed was that you would provide your Disclosure Report and your EDQ, and that then a list of issues would be produced by the Class Representative?

MR SINGLA: Correct. He's not accurately described their position, nor the debate that we were having at the hearing.

MRS JUSTICE JOANNA SMITH: I follow.

MR SINGLA: And there's nothing in the order that suggested that we should have to provide the list of issues for disclosure. So whereas, I showed you the schedule to their skeleton, they were saying we will provide a first draft, the only debate we were having was whether before they do that, we would provide a Disclosure Report. I'll come to whether it's deficient or not. We need to unlock this. The parties have reached an impasse, and we submit we need to work out what the next stage should be, and on the list of issues for disclosure, which is all I'm addressing you on at the moment, we say they were plainly right with what they say at the first CMC that they would go first. Nothing's changed. In fact, what's changed is frankly the lack of engagement we've had, or the nature of the submissions that are being made. We do find it very difficult to understand why a claimant in Mr O'Donoghue's shoes, complaining about proportionality and budget and so on, why they are not willing to say, we would like the following types of disclosure. His emphasis on the need for expert meetings and so on, that's exactly in line with what we're suggesting, they should provide the agenda for those meetings, and as a claimant they have to take the initiative.

That's all I really want to say on the list of issues for disclosure, and it's really important, madam, with respect, to keep these points separate. That's why he's gone straight to the deficiencies as he puts it, on the Disclosure Report, but they are actually two

separate matters.

MRS JUSTICE JOANNA SMITH: Yes. Well of course they are interrelated, because there is a question about how easy it is to prepare the list of issues for disclosure if the Disclosure Report is not conducted properly. One of the things that we were clearly saying in our ruling was in order to have a proper structure to this exercise, that exercise has to be done first, the EDQ and the Disclosure Report, so that the Tribunal and the Class Representative understand what the universe of documents is and who the custodians are and so forth, and can then identify the list of issues for disclosure.

MR SINGLA: Yes. They're related to some extent, but I don't accept that they are in a position now, as a result of the Disclosure Report and EDQ, that they've received, that they are unable to produce a list of issues for disclosure. Our position was they could have done that even without those documents, but one has to really ask oneself why are they unable to put pen to paper in terms of documents that they want to pursue their claim? That's really the difficulty that we have, understanding why they're trying to put the ball in our court in drafting up a list of issues. That's what we say on 7(a) of the draft order, that they should go first.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: So far as the alleged deficiencies are concerned, again, I have to take some time over this. First of all, starting with the Rules, so Rule 60 as you know says that a Disclosure Report should describe briefly what documents exist or may exist that are or may be relevant to the matters in issue in the case, describes where and with whom the documents are located, and so on. What the complaint seems to be is that the Disclosure Report is at too high a level, but to be clear at the outset, it's actually not the function of a Disclosure Report, still less a Disclosure Report served at a very early stage.It's just not incumbent on Meta to list out individual documents. It's perfectly acceptable, in my submission, for Meta to describe categories of documents. I'll come

to the detail of the drafting in a moment, but just as a starting point, it is appropriate to deal with is this on a category by category basis. That's in any case, but here, again, the problem is it is very difficult to understand from the pleading, not so much what the pleaded issues are, but what the issues for disclosure are. If one looks at the Disclosure Report, it's CMC2D, tab 2.4, because I completely accept, madam, that you obviously directed us to do this, but there's then a separate question as to what is in fact feasible. So I don't accept that there's been some breach of the order in the way Mr O'Donoghue was describing it. Meta obviously had to go away in light of the Tribunal's direction and do the best that they could, but that didn't make it an easy task at all. If one looks at 1.6, you'll see the reference there to the extremely wide-ranging and ill-defined pleadings, and you will see the example, so some of the date ranges in 1.6.1 and 1.6.2 and so on, and 1.6.3, the generalised theory of harm. Then 1.7 is the criticism by the Tribunal of the way in which the case has been pleaded. Then what is explained at 2.1 is that Meta has sought to adopt a constructive approach by seeking to identify potentially relevant classes of documents. Then if one goes through the document, you will see at 4.1: "This section addresses documents which exist or may exist and which Meta considers are or may be relevant to matters in issue in the parties' pleadings in the proceedings insofar as can be ascertained."

In other words, subject to the caveat that actually it's a very, very difficult pleading to follow, Meta has tried to engage with what the Tribunal has asked it to.

Then you'll see 4.6, early period documents, and an explanation is given at 4.9: "The majority of business communications will likely be emails."

Then at 4.10 and 11, identifying document and data management systems, and then 4.12, which is important: "Meta has had regard to all the internal repositories from which documents were collected and/or produced in the various proceedings referred to by the Class Representative in the Amended Claim Form. Meta has detailed those

repositories which may contain documents that are potentially relevant."

So just pausing there, that's exactly the exchange that I was having with you. In other words, Meta was able to produce this document by reference not to Ms Vernon's list of WhatsApp investigations in all other jurisdictions, but actually to look at what material might be potentially relevant, and that's where a relevance filter has been applied. Then there's a long section on identifying custodial documents, and you'll then see the section starting at 4.20, and you'll see that the drafting: "The following categories of documents which exist or may exist and are or may be relevant to the pleaded period."

There's actually a lot of detail here. Of course, Mr O'Donoghue was very selective in the passages he went to, but I would ask the Tribunal to look at it, there's actually pages and pages of information here about custodial documents, and the sources of the custodial documents. It runs all the way through --

MRS JUSTICE JOANNA SMITH: There's no information of the custodians, notwithstanding that Meta has apparently put a hold on custodians' documents, which means that it must be possible to identify the likely custodians.

MR SINGLA: I accept there's no detail on individual custodians. I do accept that, but I don't accept that this is a deficient document. One has to go back to Rule 60, where that's just talking about briefly describing. There's pages and pages of the repositories of the custodial documents, and then at 4.29, you'll see a reference to the *Klein* proceedings. You're obviously familiar with the *Klein* proceedings. So thought has gone into material from the other proceedings that have been pleaded out.

MRS JUSTICE JOANNA SMITH: Well, we had a discussion about the *Klein* proceedings on the last occasion, and one of the concerns that the Tribunal had about that was the 480,000 documents hadn't been searched for relevance by Meta. The matter is no further forward in this document, is it?

MR SINGLA: Well, 480,000 are referred to at 4.29.3, but I would respectfully submit it's just not something that one needs to do in the context of a Disclosure Report. Effectively, madam, what you're putting to me is that since the December CMC a relevance review should have been conducted of the 480,000. That would be grossly disproportionate. In my respectful submission, that can't be what the Tribunal expected us to do. Frankly, that would never be done at the Disclosure Report stage. So we haven't actually begun the disclosure exercise, so we couldn't have conducted a review of the 480,000, and there are limitations to how far we can take this exercise. That's in a sense the reason we were having the debate on the last occasion, because we knew that if we were ordered to do something like this, there would be a limit to how far one can take it, and that's why we were saying on the last occasion, we do need a list of issues for disclosure and we can then start to give them the more granular information once they tell us what they do regard as being relevant and proportionate in these proceedings. So a level of granularity will emerge in due course, but in my submission it's unfair to suggest on the *Klein* documents that we should have conducted a relevance review.

Then at 4.30 onwards, you'll see a long list of the non-custodial repositories, and again you will see at 4.30, which exist or may exist, and are or may be relevant. This is exactly the sort of information that one would see in a Disclosure Report. For example, I don't want to take too long over all of this, but you'll see the individual headings, so employee organisational charts, and then you'll see 4.32, so the content management system, and you'll see that in 4.32.2, you'll see it became a centralised system. So there's an identification of the sorts of documents that are going to be found on that system. If one looks at 4.34, for example, you'll see again the market intelligence, and you'll see the data platform is used primarily for confidential market research and so on. So there's an identification of the sorts of documents that are going to be found on

these platforms. Another example, if one looks at 4.35, you'll see research library, Meta maintains an internal collection and so on, and 4.35.2, these documents include. So there's actually quite a level of detail as to the sorts of documents and the platforms upon which they can be found. This just goes on. If one actually takes the time to read the whole thing, you'll see there's a breakdown of all the repositories and a description of the sorts of documents that are found.

In my respectful submission, there has to be a degree of common sense about how far one can take a document like this at this stage of the proceedings. I understand the Tribunal made us do it, but it was also, inevitably, at an early stage of the proceedings where the next stage, on the Class Representative's view of the world -- at the last CMC, they were saying the next stage would be that they would provide a list of issues for disclosure. If they want more granular information, what they should now do is take all this information about the repositories and the types of documents and say right, well with the benefit of this, we will now, as we said we would in December, produce a list of issues for disclosure. What they're actually asking us to do is completely unconstructive, in my submission. They're saying you should go away and redo this. It's all back to front, in my submission. The way to break the impasse, to kick off this disclosure exercise in earnest, is for them actually now to produce the list of issues for disclosure. If they want to flush out details about particular custodians and so on, that will come out in the wash, but one can't just keep sending us back as it were to do this exercise in the abstract. And that's the real difficulty, that they're conflating the list of issues for disclosure with the Disclosure Report and the EDQ.

I see the time, but on the EDQ, in fact what he misses is that the EDQ cross-refers the Disclosure Report. One actually needs to read the two documents together. It's inevitable that we can't at this stage start to give detail about key word search terms.

That's actually absurd, to expect us to do that now.

Then the final point he makes, which is not an order that he seeks, but the row about confidentiality, we say they've completely mischaracterised what was going on. I'll just deal with this very, very shortly, because we wrote to the Tribunal. Just to give you a flavour of the sort of unreasonable approach we're having to deal with, they say that we were amending the confidentiality ring. In fact, the existing confidentiality ring only ever covered the litigation funding agreement produced by the Class Representative. So it was inevitable that that document would have to be amended, and all Herbert Smith was seeking to do was to bring that confidentiality ring into line with the sorts of rings that one sees in all sorts of cases, when they're dealing with documents generally in the case. We don't accept for a moment that it in any way hampered their ability to prepare for today, but I don't want to take up time, because no order is being sought. The really important point, madam, is the parties have reached an impasse, and we say the way to unlock this is for there to be a list of issues for disclosure, and we really can't understand why they're unwilling to do it. They've seen our attempt at going first, as it were, they're not happy with that. Our concern is if you send us off to do a draft list of issues for disclosure, we'll just be going round the houses. They'll say this is deficient and that's deficient, as opposed to taking the initiative themselves and driving the case forward as a claimant should do.

MRS JUSTICE JOANNA SMITH: All right, Mr Singla, thank you. Bearing in mind the time, we will break now until 2.05, and Mr O'Donoghue you will have an opportunity to reply to that then. Thank you all very much.

(1.03 pm)

(The short adjournment)

(2.05 pm)

MRS JUSTICE JOANNA SMITH: Mr O'Donoghue.

MR O'DONOGHUE: Madam, in view of Mr Singla's submissions I can be very brief, I have a handful of points.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: First, Mr Singla candidly admitted that there has been breach of the Tribunal's direction. He admitted fair and square that on custodians, which they were ordered to provide indications on, they have not done so. So that alone justifies the order we seek, but it goes further. If we can go back, madam, to your ruling, it's in the CMC2C bundle, tab 12.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: It starts, madam, on page 62.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: The sequence of what was directed and ordered is very clear. If one sees at the bottom of 62 "the parties disagree", so our proposal, which was accepted, is you start the disclosure process with EDQ and Disclosure Report. Then we will seek to agree a list of issues you asking that as a starting point and then you move on to that shaping disclosure, so that was what was the driving all of this.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: If one then goes over to 64, a critical component in our submission for that order, direction, you see in line 4 the inevitable asymmetry of information, and it's important for the Class Representative to be provided with full information about the potential universe of available disclosure. Just, while we are here, to pick up on a point Mr Singla made, he says, "Oh well, look at Fiona Scott Morton's first report, she has an annex", that was already dealt with in December where you said, madam: "That the Class Representative's expert has already been able to identify categories of disclosure she wishes to see does not, in our view, undermine this point."

Then at line 9 we have what you ruled, madam, on *Klein*: "Meta's proposal for the provision of the *Klein* documents by way of initial disclosure does not address this requirement for full information."

I come back to *Klein*, because you put the point to Mr Singla fair and square, “well you told me in December *Klein* is the Alpha and Omega on disclosure and they have now had four months to ruminate on this and not a jot has been added as to what *Klein* does and doesn't say on disclosure.” If one thinks about this for about two seconds, to do the Klein discovery is called in the US exercise, they must have had some issues in mind. They must have had custodians. They must have had repositories. All that has been done and yet there isn't a hint of a suggestion in this 32-page so-called Disclosure Report as to what on earth is going on in *Klein* and how that can be transposed onto these proceedings. The position is *a fortiori* in relation to the CMA Meta-GIPHY merger, the Commission's Marketplace decision, the German investigations, all these other investigations we rely on and what should have been done in the context of being directed to provide full information was to indicate to the Class Representative and the Tribunal, in these proceedings, “we have done the following disclosure exercises, we've identified these custodians, these repositories, across these issues, here is this output, in our preliminary view this maps on to these proceedings in the following ways.”,Then the ball is in our court to say “okay, what about this? What about that? Is that issue missing?” That's the dynamic process the Tribunal had in mind and this so-called Disclosure Report really doesn't begin to address those directions. Then over the page at 65 again, madam, you use the words "on an informed basis" in line 1. It's not just the Class Representative. It's also the Tribunal who needs to be informed. That is critical. Mr Singla took you to the next point, which is fair, that we don't have licence to sort of ask for things willy-nilly, and we accept that of course. Then a very clear direction in the next paragraph: "... the

Class Representative is entitled to know what documents exist, where they are held and who the custodians are, and so forth ..."

That has not been complied with in any shape or form and that is the long and the short of this application. Mr Singla, with respect, obfuscated and not only has no good answer to that point, but effectively admitted on custodians and *Klein* that they have not complied with your direction, madam. As you'll see, madam, at line 7 this was not done for the sake of neatness or to be obtuse, you said: "It is only by approaching disclosure in this structured way that the Tribunal and the Class Representative can be assured that Meta has turned its mind to the relevant documents that are available." Again, that's simply not occurred. Then, finally, at 66, Mr Singla essentially sought clarification as to what he was being required to do. You see line 16: "... in my submission ..."

So this was his point: "... the Disclosure Report and EDQ should cover those points which Meta considers to be relevant to the issues in the case, and not ..."

Essentially the Class Representative's view. You said: "Correct. No, it must cover the issues that Meta considers to be relevant, and if then the Class Representative thinks that issues have been omitted, that will be a matter for argument in due course."

That was the sequence: Stage 1, Disclosure Report and EDQ, full information; Stage 2, armed with that material we could then get momentum into discovery. The Disclosure Report at least at the outset was candid that that was the direction which was made. If one looks at the Disclosure Report 1.4, it's CMC2D, page 2.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: Tab 2, page 4, it actually quotes, madam, your direction back as the context for this report: cover the issues that Meta considers relevant by the class information, full information about the potential universe of available disclosure, and in no shape or form does this Disclosure Report achieve those objectives. Much was

made of the point, “well, we don't understand the issues in this case, we don't even know how to begin.” There was a sort of flailing submission, "well, we couldn't even possibly begin to address a single issue in these proceedings." (a) that was the issue that Mr Singla raised and lost on in December. (b) We have not had a single request for further information on any of the issues in our pleading. In fact, his lack of clarity or alleged lack of clarity in the pleaded case was raised for the first time in Mr Wisking's statement in the skeleton. We had a very narrow request for information on the distinction between business users and other users, to which we put in a brief response. We've heard nothing on that, but we have not heard a peep on this alleged lack of clarity on our case. It surfaces for the first time many months after your direction was made, madam. We say, plain and simple, there has been non-compliance on a significant scale with the Tribunal's ruling.

A couple of final points. Mr Singla, again without a sort of hint of being backwards in coming forwards, said: “well, it is a question of sequencing.” Now, we had the sequencing debate in December. He wanted us to go first, then EDQ and Disclosure Report. He lost on that point. He did not seek to appeal that point and the vista presented to the Tribunal for today is actually quite troubling. He says, having raised that point and lost on the sequencing and not appealed -- again, this was, with respect, somewhat shameless -- he said there's no point in ordering us to do what you directed us to do in December, because we are not going to do it again. That is effectively their position. It's a very, very serious matter indeed when a large wealthy multi-national comes to this jurisdiction, ignores the Tribunal's direction, says in terms: “we will not comply even if you force us to do so.” It is cocking a snook at this jurisdiction on a grand scale and we are very concerned on this side of the room with the cost effect of this attritional scorched-earth policy, where every single issue and perfectly clear directions are used as satellite opportunities to ramp up costs, cause delay, ignore the

Tribunal's directions, and try to blame the Class Representative. t is simply not on. In my respectful submission, on disclosure and other matters, a very clear signal needs to be sent to this defendant that this gamesmanship and ignoring the Tribunal's directions and racking up costs for no good reason has to stop.

Ruling

MRS JUSTICE JOANNA SMITH: The Class Representative now applies for the Defendants to serve a list of issues for disclosure and a compliant Disclosure Report and EDQ. We have heard substantial argument on this point and I am not going to go into a great deal of detail for the purposes of this ruling. The Tribunal has had regard to all of the parties' submissions.

Suffice to say for present purposes, that the Tribunal considers that it is unfortunate that the Disclosure Report does not appear as helpful as was anticipated at the last hearing. The Tribunal does not accept that the Defendants are unable to identify many key issues for disclosure in this case, even if it cannot identify fully the temporal or geographical limits. We consider that the Defendants should have been able to identify in more detail the issues arising in the case so as to enable it to provide more useful information in the Disclosure Report and EDQ. In this regard, we note that no request for further information has been made in relation to the Class Representative's case, notwithstanding that it is said throughout the Disclosure Report that the Defendants are unable to identify the issues in the case. Notwithstanding those observations, however, the Tribunal considers that it is now important to focus on how to take this case forward in a sensible and pragmatic way. Specifically, in a way that will enable the Tribunal to make sensible orders on disclosure at the next hearing in July 2025.

Turning then to the question of a list of issues for disclosure, we bear in mind

Mr Singla's submissions that the Class Representative has not previously sought a list of issues for disclosure from the Defendants, but was anticipating at the last hearing that she would provide her own list of issues for disclosure following the service of the Disclosure Report and EDQ by Meta. Ordinarily the task of identifying an initial list of issues for disclosure would be on the claimant and we are not sure (and here have some sympathy with Mr Singla's submissions) why the Class Representative does not appear to want to take the lead on this, which we would have thought could only be to her advantage.

In any event, a list of issues for disclosure plainly needs to be prepared as soon as possible, and we do not accept that the identification of such a list cannot be done by the Class Representative without a more detailed Disclosure Report or EDQ from Meta. We see little advantage in requiring Meta to produce the first draft of a list of issues for disclosure in circumstances where the question of the breadth of the disclosure required by the Class Representative is really a matter for her and it is plain that her expert has already given thought to some of the disclosure issues that will arise in the expert context. We will discuss the timings in a moment with counsel, but once a list of issues for disclosure has been provided by the Class Representative, we consider that the Defendants must then engage with that list of issues and that the parties must cooperate with a view to agreeing them. If agreement proves impossible then, once again, the Tribunal will decide the matter on the papers and we will need appropriate directions in today's order to address this eventuality.

I turn then to the question of the Disclosure Report and EDQ. As I have already said, we do not consider the Disclosure Report and EDQ to be as helpful as they should have been in light of the discussions that took place at the last hearing. We also do not consider the Disclosure Report to be compliant with Rule 60 of the Tribunal's Rules. Specifically there is plainly no attempt, as Mr Singla frankly accepted, to identify

relevant custodians and there is also no real attempt to identify the likely costs of the disclosure exercise, a matter which is of considerable importance to the Class Representative. Although we do not consider it appropriate to require the Defendants to revisit the Disclosure Report and EDQ in its entirety at this stage, it will have to address the issue of custodians. Furthermore, once the list of issues for disclosure has been agreed, we consider that the Defendants must revisit the Disclosure Report and EDQ, with a degree of granularity that it has not presently engaged in, including (i) as to the costs of disclosure; and (ii) detail in relation to the 480,000 *Klein* documents. As to the latter, Meta must explain in detail how it says the 480,000 documents (or some of those documents) are relevant to the disclosure issues identified. We would expect all of this to be done before the next hearing in July, so as to maximise the scope for a useful hearing on that occasion.

Finally, we urge cooperation between the parties on issues such as this. We remind the parties of their obligation to cooperate under Rule 4(7) of the Tribunal's Rules. We note in particular that we have heard argument today about an issue arising on confidentiality. We do not consider that that is an issue that should have arisen if both parties had been approaching the litigation in the right spirit or that it was an issue that ought to have been ventilated in front of the Tribunal. On a slightly tangential point, we observe that if the confidentiality ring needs to be varied, then we would expect the parties to address that between themselves and cooperate properly in relation to any such variation and we would certainly expect that to be done in advance of the next hearing.

Mr O'Donoghue, you will need to work out, together with Mr Singla, what order needs to be made to reflect the decision that we've just made.

MR O'DONOGHUE: Yes, we've read the Tribunal's message and will cooperate loud and clear.

MRS JUSTICE JOANNA SMITH: Thank you.

MR SINGLA: I wonder, subject to the Tribunal, if we could perhaps take five or ten minutes to take instructions to try and nail these dates down this afternoon?

MRS JUSTICE JOANNA SMITH: Yes, of course. We were due to be sitting here all day. If it would assist so that we at least have some clarity in the order by having a discussion now then I have certainly no objection to that, I think it's very sensible.

MR SINGLA: I am grateful. Perhaps before you rise, there were two other matters I was going to raise, unrelated to disclosure, in terms of other business. One was just to seek clarification as to the user damages amendment application. I think the Tribunal was going to consider availability in the autumn. I think we were proceeding on the basis that it would not come on before the autumn, is that --

MRS JUSTICE JOANNA SMITH: I know that I am due to be doing quite a long trial in the Technology and Construction Court starting at the beginning of October. Of course, I don't know whether that will stand up, but I also know that I am the vacation duty judge for the last two weeks in September. I could potentially say to listing: “well, I need to sit in the CAT for one of those days.” So if you were able to identify a day in the last two weeks of September and, subject to the availability of my colleagues, who I obviously haven't checked with yet, then that might be a time when we could do it. I see nodding. Derek, would that be suitable for you? We'll check that and perhaps we can come back to you, but if perhaps the parties could take some instructions on those last two weeks in September --

MR SINGLA: Yes.

MRS JUSTICE JOANNA SMITH: -- that might be a time when that application could be heard.

MR SINGLA: I am grateful. That's very helpful to know. Then the final point was a very small point concerning the CMA's intervention.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: Which is slightly jumping ahead, but the draft order you'll see deals with this at paragraphs 9 to 12. We are content with those provisions, but the one point we would seek to amend is in paragraph 10, "The parties shall serve any further statements of case", and so on. We would simply ask the Tribunal to add that those should be non-confidential versions of those documents.

MRS JUSTICE JOANNA SMITH: Non-confidential.

MR SINGLA: Non-confidential, because we don't understand that the CMA will become party to the confidentiality ring. I hope that's not controversial.

MRS JUSTICE JOANNA SMITH: Is that controversial, Mr O'Donoghue?

MR O'DONOGHUE: Well, it may be controversial to the CMA --

MR SINGLA: Yes. No, of course the CMA aren't here --

MRS JUSTICE JOANNA SMITH: I follow that, but it's not controversial to your client?

MR O'DONOGHUE: For the CMA's intervention to be effective, the suggestion that potentially large swathes of material would be off limits to them --

MRS JUSTICE JOANNA SMITH: If the order were to give the CMA liberty to apply in relation to issues of confidentiality, that would deal with the point, wouldn't it?

MR SINGLA: Of course that is the issue, yes.

MRS JUSTICE JOANNA SMITH: All right. Yes, thank you. Would you like me to rise now? Is there anything else you wanted to say, Mr O'Donoghue?

MR O'DONOGHUE: I think we've sort of covered it. So issue 9 was something we have floated, that there would be a sort of intermediate remote hearing to deal with preparatory work for July, and the Tribunal has helpfully indicated things could be dealt with on paper.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: I assume there would be general liberty to apply if something

cropped up.

MRS JUSTICE JOANNA SMITH: Yes, if it turns out that, for whatever reason, the parties think it can't be dealt with on the papers and you need a hearing, then potentially I could do a hearing in May.

MR O'DONOGHUE: Yes, that's extremely helpful.

MRS JUSTICE JOANNA SMITH: But I am not encouraging a hearing because I think that the points that have been left over are perfectly capable of being dealt with on the papers, and I am not inviting yet further argument about issues for disclosure, for example.

MR O'DONOGHUE: Yes.

MRS JUSTICE JOANNA SMITH: Which I am not sure I would find very edifying.

MR SINGLA: 10 minutes perhaps, just to --

MRS JUSTICE JOANNA SMITH: Yes, of course. It's 2.25 pm. Why don't I give you until 2.40 pm, 15 minutes? Thank you all very much.

(2.27 pm)

(A short break)

(2.43 pm)

MRS JUSTICE JOANNA SMITH: Mr O'Donoghue.

MR O'DONOGHUE: Madam, just to give you a quick run through of where we reached. I have only discussed one of those dates with Mr Singla, so apologies. All of this is with a view to 15 July being as effective as we can reasonably make it.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: Working back, we will produce the list of issues as directed by 25 April.

MRS JUSTICE JOANNA SMITH: The same date as the date for the service of your application in relation to the amendment?

MR O'DONOGHUE: I was going to come back to that.

MRS JUSTICE JOANNA SMITH: Okay, sorry.

MR O'DONOGHUE: In a nutshell, we are hoping with these front-loaded directions and the fact this may now not be until September that we would get a couple of extra weeks on the --

MRS JUSTICE JOANNA SMITH: Okay, yes, so you will produce the list of issues for disclosure by 25 April?

MR O'DONOGHUE: Yes, on the same day as the agenda for the proposed experts' meeting.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: Also, on the 25th, Meta would produce its list of custodians and this is mentioned in the Disclosure Report, we would also ask for an organogram so we can understand how these people fit within the organisation.

MRS JUSTICE JOANNA SMITH: Have you managed to discuss that with Mr Singla yet?

MR O'DONOGHUE: I haven't. I mean the organograms are mentioned in the Disclosure Report. It should be possible, but I haven't had a chance to discuss it with him.

MRS JUSTICE JOANNA SMITH: I will hear from him in a moment.

MR O'DONOGHUE: Then they would have two weeks to respond on the list of issues and expert agenda. There would then, following on from the Tribunal's strong recommendation that the parties need to cooperate more, in the week of 12 May there would be meetings between the solicitors' firms and the experts to try and finalise both the expert issues and the list of issues. We would then --

MRS JUSTICE JOANNA SMITH: That sounds very sensible, if I may say so, yes.

MR O'DONOGHUE: Thank you. Then, again working back from 15 July, we think we

would need a guillotine of around 23 May if there were outstanding disputes that need to be resolved by the Tribunal. We hear you, madam, loud and clear, ideally on paper, even more ideally not at all.

MRS JUSTICE JOANNA SMITH: Yes.

MR O'DONOGHUE: But we can do the best we can. Again with an eye to 15 July, Meta would then produce its revised EDQ and Disclosure Report by 6 June and candidly if it is much later than then there will be questions as to effectiveness of the hearing on 15th. Then finally on the amendment we would respectfully ask for an additional two weeks, both because of the front-loaded new directions and because this may be heard later than anticipated.

MRS JUSTICE JOANNA SMITH: Yes, so two weeks from 25 April, that's some time in May?

MR O'DONOGHUE: 9 May.

MRS JUSTICE JOANNA SMITH: 9 May. Right. All right thank you, Mr O'Donoghue. Mr Singla.

MR SINGLA: We are not terribly far apart, so we had 25 April Mr O'Donoghue wants for the list of issues

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: We had 9 May for our response, that gives us two weeks to respond to the list of issues.

MRS JUSTICE JOANNA SMITH: I think that that was agreed by Mr O'Donoghue, yes.

MR SINGLA: Exactly, and we also agreed with the guillotine of 23 May.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: Either for the parties to agree or the Tribunal to rule on paper.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: Then we had three weeks for our Disclosure Report, that is 13 June, on

the basis that that still gives a month between the Disclosure Report and the July hearing and obviously one would hope that in the space of four weeks the parties can make substantial progress. We didn't have a separate date. I think Mr O'Donoghue was pushing for a list of custodians on 25 April.

MRS JUSTICE JOANNA SMITH: Yes, he was.

MR SINGLA: As we understood what the Tribunal directed, it was that the Disclosure Report would need -- the next version of the Disclosure Report would need to grapple with custodians, costs and *Klein*, and so we didn't understand you to impose the requirement on us to do something more by way of custodians --

MRS JUSTICE JOANNA SMITH: Well, in fact I was intending that you should do something in relation to custodians rather earlier than that.

MR SINGLA: I see.

MRS JUSTICE JOANNA SMITH: On the basis that that is the clear and obvious breach in the Disclosure Report. Is there any reason why you can't do that earlier?

MR SINGLA: Yes, could I try to persuade you?

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: The key point, and this is actually very important, is temporal scope.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: In a sense one can't really grapple with custodians on a more granular basis until we actually know what the temporal scope of disclosure will be. You will understand if one is asking who is in a particular role, the next question is at what point in time, so that's why we understood --

MRS JUSTICE JOANNA SMITH: I understand that you can't grapple with what all the custodians will be, but presumably you can identify what some of your main custodians are likely to be, given the nature of the case?

MR SINGLA: Then, with respect, the process becomes slightly unwieldy, if one is

dealing with a subset of custodians and then later custodians. We would respectively submit we will do this. We obviously heard what the Tribunal said and we intend to ensure that the next version of the Disclosure Report deals properly with custodians, we obviously do intend to do that --

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: -- but in my respectful submission now that there is going to be a process of a list of issues it would be manifestly more efficient for the custodians piece to be folded in with for example the *Klein* piece and costs and so on, so that one can take a look at all of that in the round.

MRS JUSTICE JOANNA SMITH: All right, I can see that.

MR SINGLA: It would be of much more use to the Class Representative if we had that extra time to do that. Apart from that, the organograms point is an entirely new one. I would need to take instructions, but we don't immediately understand what that would look like and one doesn't ever see organograms as part of a Disclosure Report.

MRS JUSTICE JOANNA SMITH: I think the concern is to understand where custodians sit within the organisation.

MR SINGLA: Right, well it may be possible do that without an organogram, but if that's what's being sought then I think all the more we would say the custodians point should come in at the Disclosure Report stage.

MRS JUSTICE JOANNA SMITH: All right, Mr O'Donoghue. Thank you, Mr Singla.

MR O'DONOGHUE: Madam, I think the main difference is on custodians. We saw the Disclosure Report, both in relation to these particular proceedings and *Klein* and other proceedings, litigation holds are already in place. There is no reason why by the 25th we can't be told which custodians are subject to those holds and where they sit in the organisation. If that needs some updating in the report in June so be it, but there's no reason why we should wait until June --

MRS JUSTICE JOANNA SMITH: Just help me with what exactly you want to know. Do you want to know who the people are in respect of whom a hold has been put on their documents?

MR O'DONOGHUE: Yes, and how they fit within the Meta organisation. Whether that's by way of organogram or narrative we don't mind, but we need to understand are these the right people for the reporting chains and so on, just to understand how they fit within the organisation. The only other point, madam, the EDQ was suggested by 13 June. I think there's a real risk that four weeks before the hearing, with applications needing to go in shortly thereafter, that's quite tight.

MRS JUSTICE JOANNA SMITH: Well on the other hand it is in your client's interests for that document to be as detailed as it can possibly be --

MR O'DONOGHUE: Yes.

MRS JUSTICE JOANNA SMITH: -- if that means that the Defendants need more time to do that, my own feeling would be that it might be sensible to give them that time so you get something that's as detailed as they can manage.

MR O'DONOGHUE: With that important caveat, yes.

MRS JUSTICE JOANNA SMITH: Because I am expecting the granularity and the compliance with the Rules that we have already discussed and if that needs a little bit more time to 13 June then I would have thought that that would be a sensible thing to do.

MR O'DONOGHUE: Yes, all right.

MR SINGLA: Can I have one more go at this custodians point?

MRS JUSTICE JOANNA SMITH: Yes, Mr Singla.

MR SINGLA: Because we do genuinely struggle to understand what they will do with a very long list of custodians, which is not tethered to a list of issues that is going to come, in fact to be either agreed or approved only weeks later. So there is an element

of, given where we've reached, now as the Tribunal said we have to move this forward, just asking for a list in the abstract is actually not going to move things forward. They will get all of that information, but only a few weeks later.

Ruling

MRS JUSTICE JOANNA SMITH: The Tribunal agrees with Mr Singla in relation to custodians. On reflection, it is not clear what purpose would be served by requiring Meta to provide information about the identity of its custodians in advance of receipt of the list of issues for disclosure. Accordingly, we shall order that Meta must provide information about the identity of its custodians in the revised Disclosure Report that is to be provided by 13 June. I hope I have already made it clear that the Tribunal will expect that revised Disclosure Report, now that there will have been a proposed list of issues for disclosure provided by the Class Representative, discussions between solicitors and experts as to those issues and (hopefully) agreement or a determination on the issues from the Tribunal, to be fully compliant with the Rules and sufficiently detailed so as to ensure that orders for disclosure can be made by the Tribunal at the hearing in July. The last thing we want is for that hearing to be in some way ineffective because of a failure to comply with the Order that the Tribunal has made today.

MR SINGLA: Madam, I didn't address you on the amendment application. We are obviously content, if the Tribunal is not going to hear that until the autumn --

MRS JUSTICE JOANNA SMITH: For the date to be 9 May?

MR SINGLA: Of course, yes.

MRS JUSTICE JOANNA SMITH: Yes, when would you want to serve your evidence in relation to that?

MR SINGLA: Can I just take instructions?

MRS JUSTICE JOANNA SMITH: Yes, of course.

MR SINGLA: We would ask for 20 June.

MRS JUSTICE JOANNA SMITH: I can't at the moment see that there could be any objection to that, could there, Mr O'Donoghue?

MR O'DONOGHUE: No.

MRS JUSTICE JOANNA SMITH: Right, so 20 June for that. Just before I forget, Mr Singla, sorry, on the custodians.

MR SINGLA: Yes.

MRS JUSTICE JOANNA SMITH: I can very well see the sense in your client providing at least some indication as to where the relevant individuals sit in the organisation, whether that's in the form of a formal organogram or in some other form. I think it's right that the Class Representative should understand where those people sit in the overall organisation.

MR SINGLA: Yes, it is just that an order, for example, that you have to produce an organogram would be problematic.

MRS JUSTICE JOANNA SMITH: I am not going to require that.

MR SINGLA: I am grateful.

MRS JUSTICE JOANNA SMITH: But I am indicating that information in some form about their roles within the organisation must be provided.

MR SINGLA: Yes, of course. So far as the listing of the amendment application is concerned, I think we have some availability in the last two weeks of September --

MRS JUSTICE JOANNA SMITH: I need to tell you in fact that we can all do, and so can the CAT, any time in the week of 22 September.

MR SINGLA: I am grateful.

MRS JUSTICE JOANNA SMITH: Is there a date in that week that everybody else can do?

MR SINGLA: Could we take that away? I think it should be doable, but we will consult.

MRS JUSTICE JOANNA SMITH: Yes.

MR SINGLA: It's very helpful to have that indication from the Tribunal's perspective.

MRS JUSTICE JOANNA SMITH: I'd be grateful, and if you could let us know that as soon as possible so that we don't have other things going into our diaries that might affect that.

MR SINGLA: Yes, of course. I believe that's it.

MRS JUSTICE JOANNA SMITH: Anything else? No?

MR O'DONOGHUE: Not on our side, madam.

MR SINGLA: I am sorry, can you just give me a moment?

MRS JUSTICE JOANNA SMITH: Yes, of course, Mr Singla. Take your time.

MR SINGLA: I am grateful, but there's nothing else.

MRS JUSTICE JOANNA SMITH: All right. In that case, thank you very much indeed to both of you for your very helpful submissions. If you could provide a copy of the order agreed as soon as possible and we will get that signed off and sealed. I will see you I hope in July, but if absolutely necessary possibly in May, but, as I've said, I am not encouraging that. Thank you all very much indeed.

(2.55 pm)

(The hearing concluded)