IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1697/5/7/24(T)

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Thursday 20th March 2025

Before:

Andrew Lenon KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Yew Freight Trading Limited

Claimant

- V -

Puro Ventures Limited

Defendant

A P P E A R AN C E S

Julian Gregory on behalf of Yew Freight Trading Limited (Instructed by Nexa Law)

Alan Bates on behalf of Puro Ventures Limited (Instructed by IBB Law)

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Thursday, 20 March 2025

(10.30 am)

CHAIR: Good morning.

MR BATES: Good morning, sir.

MR GREGORY: Good morning.

CHAIR: Who's going to kick off?

Submissions by MR BATES

MR BATES: Well, sir, I probably should, given that it's my party that requested the hearing. I'm Mr Bates, I appear for the defendant, Puro Ventures. My learned friend, Mr Gregory, appears for the claimant, Yew Freight.

If I can just check that the tribunal has, first of all, the hearing bundle and then my skeleton, which came in yesterday. And then there should also be a letter from Nexa Law on behalf of Yew Freight that came in yesterday, I think effectively in lieu of a skeleton. Does the tribunal have all of those?

CHAIR: Yes, it does.

MR BATES: Well, I'll avoid repeating the points I've already made in my skeleton, which I'm sure the tribunal has already read.

I have to say at the outset that I read Nexa Law's letter of yesterday with a degree of surprise. In particular, some of the suggestions in it, for example, that there might not yet be an application from Yew Freight to amend its particulars of claim by way of filing the claim form. Also, that even if there is such an application, it might be that it would be appropriate for that document, the claim form, to be filed as some sort of supplementary pleading adding more detail, and that the defendant either would not, or at least not yet, be being asked to file a defence to it, and also that the appropriate time for the amended claim form to be filed might be after the disclosure stage of the proceedings and that the defendant would then file

a responsive pleading only at that stage.

So against that background, sir, it's important to actually keep in mind what was actually filed by the claimant on 17 January. I'm sure the tribunal has already seen this, but if I can just take the tribunal to the document that was filed; it's page 49 of the bundle, but it's electronic page 50.

(Pause)

This is what was filed on 17 January in circumstances where we as the defendant have been expecting a short, simple application for the entire proceedings to be assigned to the fast-track procedure in accordance with rule 58 and that was what was provided for in the timetable that had been agreed between the parties.

You can see what was then filed, which is the document headed, "Application for a split trial and fast-track designation". So the concept of a split trial is there being introduced.

Then one can see at paragraph 1, it says, "This is an application for the tribunal to make the following orders:" and then there are three, effectively three, applications comprised within this document. The first is (a) an application for a split trial whereby trial 1 would be dealing with particular issues to do with the lawfulness of restrictions on passive sales and all other issues would go into trial 2.

The second is not an application actually for the whole proceedings to go into the fast track under rule 58 but effectively for trial 1 to be subject to fast tracking.

And then the third application, you can see it there is:

"... directions that Yew Freight may file a CAT Claim Form (a draft version of which is attached); [secondly, that] Puro Ventures should file a Defence in response; and [then] Yew Freight may, if so advised, file a Reply."

Then at paragraph 2 you can see that:

"Annexed to this Application are: (a) a draft ... Claim Form (one clean version, one version showing track changes from the High Court Particulars of Claim."

So what we say is that it is clearly being presented as an amendment to the particulars of claim

there or in replacement of the particulars of claim, otherwise why provide it as a track change document. And then:

"(b) a provisional budget setting out the costs and disbursements likely to be incurred in the proceedings [and then in brackets] (this is, of course, potentially subject to revision in the light of Puro Ventures' response to this Application).

"The attached draft Claim Form sets out the background facts, allegations of infringement and the relief claimed, and annexes key documents."

So that's why our understanding is that there is an application being made now, so it's already before the tribunal, for the particulars of claim to be amended. Although there's a mark-up, it's effectively by way of substitution with the so-called claim form. One can see that that's the case by looking at the mark-up, which I'm sure the tribunal has looked at, but in any event, it starts from page 99. And one can see that whilst there's a sort of token effort in the first few pages to mark-up changes against the existing text, there's then pages and pages and pages of red, entire red, and one can see that this is simply a re-pleading, an attempt to start again, in terms of setting out the claimant's case.

And of course, this is something the claimant has been able to do without receiving any disclosure from the defendant. So I'm not sure why there should be any need to wait for the disclosure stage before pleading amendments of this kind are being made. And indeed, it's hard to see, in a case like this, what disclosure is going to add in terms of the ability for the claimant to plead its case; it's clear what's in the agreements between the defendant and the operators of the regional branches, and the claim of being a party to those arrangements, knows what's in them, it knows what's in the out of area policy. So all of that, it's unsurprisingly been able to plead all along.

And of course, in correspondence, they've suggested when we've been debating the timetable as to how matters might be dealt with if this hearing today was to be avoided, they've suggested that we should already have started work on drafting our defence to the claim form, and that

it's on that basis that they've suggested that, for example, a week or even less than a week might be sufficient time to allow for us from the date when they serve the amended claim form, if given permission to do so, for us then to respond to it. So it's quite hard to see how that fits with the suggestion that this is all something for the future after disclosure.

And so it's against the background of what we understood was being asked for that we've asked for the tribunal to list this hearing. Essentially, because what is set out in those first couple of paragraphs of the split-trial application document is a completely upside-down approach to running proceedings because the claimant's trying to have it both ways.

On the one hand, they want to put in a draft amended claim form now; indeed it's actually nested within its application for split trial and fast tracking of the first trial and with an application apparently to follow for cost capping, which would be put on the basis that the tribunal accepts those parts of the application, so that's the split trial and the fast tracking.

But then on the other hand, the claimant is saying, well, maybe we're not in fact seeking to amend the particulars of claim now, and this might be something for down the line. And it basically means that the tribunal is being asked by the claimant to take account of the claimant's reformulated case as set out in its amended claim form but in circumstances where, by the time of the CMC when these issues about split trial and fast tracking and cost control, et cetera, are all being considered, that the defendant wouldn't have had an opportunity to plead to that document.

And with respect to my learned friend, that is just obviously an uneven and bizarre approach to identifying the issues and case managing proceedings of this kind.

Now, I've got a few points to make, they are fairly obvious ones, I'll take them quickly. I mean, first of all, yes, we're in the tribunal, not the High Court, but pleadings are still important documents. Exchange pleadings at the start of the case are the basis for ascertaining the issues. For that reason, we say, is the second point. The tribunal should not, save in exceptional circumstances, be being asked to make case management decisions based on effectively a new

pleading by one party to which the other party hasn't had an opportunity to plead back.

Thirdly, we say that proceedings should be conducted in an organised way, not only because efficiency requires it but fairness requires it and that means, we say, you start with the pleadings, you then identify the issues from looking at the parties' pleadings, put them in a list of issues, and then you can properly deal with disclosure and case management issues, like the scope of expert evidence, whether there should be a split trial, which of the issues in the list of issues should go into which trial, and any applications for cost capping can all be done by reference to the pleadings and the issues set out in the list of issues. So that's what we say in terms of the process that should be followed.

In relation to the issue of whether or not any pleading amendments are actually necessary at all, the defendant's position is that the existing pleadings are sufficient; that time and money has been spent on producing them, they've been in place and define the scope of the proceedings for a number of months, so they are sufficient -- there's no need to revisit them.

But if the claimant wishes to amend its case at this early stage in the proceedings, then the usual principles apply, which is that a party seeking to amend its pleadings should do so as early as possible and it should pay the costs of an occasion by its amendments. This is just standard stuff.

At paragraph 11 of that split trial application, there's a suggestion there that this might all be necessary because of issues to do with the defendant's pleading being inadequate in some way. Well, if a claimant considers that a defendant's response to the claim is inadequate or legally wrong or whatever, and wants to raise that issue, there are tools available for doing it, whether by way of the claimant's reply or by a request for further information. It's a bizarre way of dealing with it to say that the solution is for the claimant to amend its particulars of claim. It just doesn't make sense.

And then in relation finally to the cost capping and the timing of how that should be dealt with. I mean, this is really a separate issue from the question of whether the claimant's pleading

amendment should be permitted and whether that should be done before we get on to dealing with case management at the first CMC.

But just in relation to cost capping, it's a pragmatic point from the defendant about how this should be dealt with, which is that if the application, as it seems to be, is not as would be usual for a rule 58 fast-track allocation application in respect of the whole proceedings, but rather in respect of a bespoke arrangement that the claimant wants, whereby certain issues are allocated to the first of two trials and that fast tracking applies specifically and only to the first trial and the cost cap is in respect of that fast track bit of the proceedings, then the parties need to know that that is, if it is, what the tribunal's decided to do and which issues are going into that trial. And also, very importantly, whether the tribunal agrees with the claimant's position that no expert evidence is going to be needed for that first trial in order that we can then sensibly produce a cost budget for that trial 1, if that's what the tribunal decides, in order that the tribunal can properly deal with cost capping. So that's a separate issue really, but we say it's just pragmatic that the tribunal should decide on these questions of split trial and which issues and expert evidence, et cetera, first, before we produce cost budgets to inform any cost capping process. But as I say, that's really a subsidiary point that's raised by my learned friend's letter in lieu of skeleton for today.

In conclusion, the main issue before the tribunal today is this: should the claimant be required to elect now as to whether it wishes to amend its particulars of claim by way of these draft amendments that it submitted, or should that issue be deferred off to be dealt with at the CMC? For the reasons I've set out, the defendant says that we should deal with it and it needs to be dealt with now. Now, if the claimant does wish to do that, to amend its pleadings now, then so be it but it should then be required to pay the costs of an occasion by those amendments; the defendant should have an opportunity to plead back to it; there should be an opportunity to reply and then after that we should have the first case management conference where the pleadings are already settled and there's a list of issues, et cetera.

Alternatively, if the claimant doesn't want to proceed on that basis, then the tribunal should simply say, "Well, you've had your opportunity, your application to amend your particulars of claim is refused and we'll simply proceed on the basis of the existing pleadings" and that way we can deal with these issues of split trial, et cetera, on the basis of the existing pleadings.

So unless you've got any questions for me, those are my submissions.

CHAIR: No, thank you. I don't see at the moment why cost capping couldn't be dealt with at the CMC. I mean, I appreciate that the estimates of costs would depend on what directions were made at the CMC, but on the other hand, presumably, cost schedules could be prepared on sort of alternative bases.

MR BATES: Well, yes, we don't object to the principle of cost capping being dealt with at the CMC. Our issue is simply with the suggestion that we should have to provide multiple cost budgets on multiple bases for different eventualities, and whether that is an efficient way of dealing with things, rather than dealing with them separately.

I mean, the question, for example, of whether there should be expert evidence in the first trial will have a radical impact on the amount of costs; it will massively affect the length of the first trial. And of course we know from these sorts of competition claims that expert costs very often end up being the largest part of the cost of the proceedings. There's a stark difference between the parties about this, because my learned friend's position seems to be that the question of whether the various arrangements between the defendant and its branch operators is an infringement by object, is simply a legal question that doesn't require any economic evidence at all, because it might require a little bit of factual evidence, but not much.

CHAIR: Yes. I see that. I appreciate that expert evidence is likely to take up a large proportion of the cost, but at the moment I can't really see why those costs couldn't be estimated by the CMC. That's my only point, really.

MR BATES: Yes. Well, I hear what the tribunal says on that. It may well be the case that, at high level, anyway, it would be possible to produce some estimates. But as I say, this is really

a subsidiary point, I think, for the purposes of this hearing.

CHAIR: Yes, I understand.

Mr Gregory, I have to say that, having heard from Mr Bates, there does seem to be force in his point that it's unsatisfactory for this proposed amendment to be somehow on the table but somehow off the table in terms of what its status is. I am inclined, at the moment, to say that, really, it's time for the claimant to make up its mind. If it wants to proceed with this amendment as per its original application, then it should do so, and I would be prepared to give permission now.

I'm not happy with the idea that when we get to the CMC, it's there; there hasn't been any response to it by the defendant, but the tribunal is being asked to make directions by reference to it.

Submissions by MR GREGORY

MR GREGORY: Sir, thank you for that indication. Perhaps I can just sort of go ahead and make my submissions and try to change your mind on that, and then we can see where we get to.

CHAIR: Sure.

MR GREGORY: I was going to start with an overarching point of principle or approach. The fast track regime is designed to allow claims to be brought in the tribunal by individuals and small businesses, by ensuring they can be brought quickly and with limited risks as to costs. This is, as you know, such a claim; the value of the claim is modest; Yew created a small company with only three employees and limited financial resources, and there's a real chance that the claim will not be sustainable if costs are not tightly controlled.

The fast-track application will be determined at the CMC, but given the circumstances and the fact that a fast-track application has been made, we say that you should determine the present application with the objectives of the fast track in mind. In particular, and subject to

requirements of fairness -- and I'll address the points that you've made about that -- you should ask what approach would allow the claimant to be determined as quickly and cheaply as possible, so as to facilitate the access to justice objectives of the fast-track regime.

CHAIR: Well, I see that, Mr Gregory, but I mean, it might be said that it's not necessarily the most conducive way of keeping costs to a minimum to produce a particulars of claim for the High Court and then to amend it quite substantially -- substantively -- in the CAT. You know, there may be reasons for that, but it doesn't seem to me that it's entirely consistent with what, as you say, is the objective of the fast-track procedure.

MR GREGORY: Well, perhaps I can address that in two ways: the first is just to discuss some of the advantages of not having the amended pleadings until after the CMC; the second point is just to explain why we thought the provision of the draft claim form would actually facilitate your judgment on the fast-track application, and including in relation to the trial issues.

So we consider it better for the amendments to take -- well, originally we would have been happy for a round of pleading amendments to take place shortly after the transfer to the CAT, but the defendants did not want to do that. We are now in a position where, if the round of pleading amendments take place, then the CMC will need to be vacated, potentially with significant delay. It will also frontload costs, prior to the tribunal's determination of an appropriate cost cap.

It's obviously possible -- well, indeed perhaps likely -- that it will not be necessary for the defendant to plead in full to the claimant's case as set out in the draft claim form. Most obviously, if you determine that there should be a trial 1 that focused on the object restriction point, it will not be necessary for any further pleadings to take place in relation to effects, at least at this stage.

Similarly, we do note that at the CMC you will be considering issues relating to disclosure, and you'll have the parties high-level disclosure proposals. It may be that having seen those proposals, it's apparent that it would actually be helpful to have an initial tranche of disclosure

before the pleading amendments take place.

The next question is whether it's necessary to resolve whether the pleading amendments will be permitted in order to prepare properly for the CMC. In terms of whether we should be allowed to amend, well, I think you've indicated that you would be minded to amend. It's obviously very early in the proceedings and there's no, in principle, objections that people raise at a late stage in the pleadings to amendments don't apply.

So the issue then is: does the current status of the pleadings -- so we have the High Court pleadings, but also the draft claim form -- mean that it's not possible effectively to draw up a list of issues and prepare for the CMC? We say that is perfectly possible. In fact, that was the very purpose of filing them.

I will make good these points by reference to the documents in a moment, but I'd first just summarise the position at a high level. You will have seen that the High Court's particulars of claim is pretty short -- admirably concise, you might say. Of course, Yew Freight is a small franchisee with limited resource. Puro Ventures is a much larger franchisor. Critically, it also has a much better understanding of its own distribution arrangements, including the restriction on passive sales.

Faced with an allegation that they were anti-competitive, you would have hoped that it would rebut that allegation by reference to the details of the nature of its restrictions and how it enforces them. But as you will see, it did not do that. Instead, it hid behind what were essentially bare denials, and relied on a number of points that we say are essentially hopeless, that amount to little more than an attempt to kick up dust.

To be frank, what we were concerned with at that stage, given the need for the case to be allocated to the fast track for it to be financially viable, was that Puro Ventures would respond by saying, "This is a very complicated case, there are all these points that need to be determined, and the trial will be too complex and lengthy for the fast track".

So the draft claim form was designed to make it clear that, in fact, this is a very simple case.

We pleaded out further particulars in the hope of making it clear to the defendant, as well as the tribunal, that some of the points, including the defence, are hopeless and should not significantly complicate the proceedings.

If I may, I'll just take you briefly to the pleadings, starting with the particulars of claim. It starts in the hearing bundle at page 25. I'd be grateful if you could turn to page 29.

CHAIR: Yes.

MR GREGORY: You may already have read these paragraphs, but if you could refresh your memory of paragraphs 8 to 13.

CHAIR: Yes.

MR GREGORY: So in summary, it pleads that Puro Ventures' franchise arrangements infringe chapter 1 and article 101. It refers specifically to the restrictions on passive sales, and to the 2020 and 2023 Out of Area Policy documents, and it says those restrictions constitute hardcore restrictions for the purpose of the Block Exemption provisions.

The next pleading is the defence. That's at page 40, and I'd be grateful if you could turn to that. It starts at page 36, but I'd like you to look at page 40, paragraph 9. So what that is, is essentially a bare denial that there's an infringement. Paragraph 9.4 pleads that the arrangements can benefit from the block exemption regulations without any supporting reasoning.

Turn over to page 42, once you've finished with that paragraph, and look at paragraph 10.3.3. That says there's no vertical agreement at all between the parties because they're in an agency relationship.

Finally, I'd be grateful if you could look at paragraph 11, which starts at the bottom of the same page.

CHAIR: Yes.

MR GREGORY: That refers to the two Out of Area Trading Policies, but instead of advancing any sort of positive case based on what they say or how they're enforced, it suggests that they

were mere understandings, and that only written contractual terms are relevant to the claim.

We were very concerned that these points would remain on the table at the time of the CMC, when we considered them to be entirely hopeless, and they're not serious points.

If you could turn to the draft claim form; turn to page 69. I'd be grateful if you could read paragraphs 4 to 6. (Pause)

The essence of the case is the same as in the High Court's particulars.

Now, I just want to go to some of the new bits of text. I'd be grateful if you could turn to page 81, paragraphs 27 to 31. (Pause)

We think, for those reasons, the argument that the parties are in an agency relationship is hopeless. Having seen that reasoning, the defendant may be willing to abandon the point, which would narrow the issues. But if it still wants to maintain its agency argument, it can add it to the list of issues, and it can obviously elaborate on its position in more detail in its response and in its skeleton and at the CMC.

If they do that, then I will likely try to persuade you at the CMC that it has little prospect of success and should not be included within trial 1. But in any event, it's not necessary for the defendant to plead fully in response to that point for it to be identified as an issue.

I'd be grateful if you could turn ahead to page 84, subparagraph (d) and (e) in the middle of the page. I'd be grateful if you could read them. (Pause)

These are trite propositions of competition law; the defendant's contention that only written terms matter for competition law analysis is also hopeless. Again, if they want to include that point, they can include it on the list of issues, and again, I shall try to persuade you at the CMC that it's not a serious point that's going to detain us for very long.

Now, the block exemption point. I'd be grateful if you could turn to page 87. I'm not going to ask you to read this section, but pages 87 to 89, the provisions in the block exemption regulations and principles from the case law, make it clear that restrictions on passive sales are hard core restrictions that prevent arrangement from benefiting from an exemption.

Based on those provisions and principles, it's abundantly clear that the defendant's passive sales restrictions are hardcore restrictions. Again, if the defendant does not accept that, it can include that point on the list of issues, and again, we can address at the CMC how long that point is likely to take to resolve.

Finally, I'd be grateful if you could turn over to page 90. This section is explaining why the defendant's passive sales restrictions have the object of restricting competition. This is, we say, the essential issue in the case that should be the focus of trial 1. If you look at the bottom of page 90, I'd be grateful if you could read paragraph 50(a) and 50(b).

If, as we say, it's clear the defendant's passive sales restrictions are a hardcore restriction for the purpose of the block exemptions, it's to be expected that they will also constitute an object restriction. The defendant is bound to contest this point, because otherwise it will lose the case, but to avoid losing, we say it basically has to pull a rabbit out of a hat.

We obviously don't have time to go through the draft claim form in more detail, but I showed you these points because I hope that they're illustrative. The key points I would highlight are these:

One, that the essence of the case has not changed from the High Court particulars; and two, that the position is essentially the same as if we had provided voluntary, further and better particulars.

The draft claim form will help to narrow the issues by making it clear what our position is on various points, including some of the more surprising points that were included in the defence. It is possible that the defendant will accept that some of its points are hopeless and will abandon them, narrowing the issues. If it wants to maintain them, there is no need for it to plead a detailed defence in response, at least at this stage. It can just include the point on the list of issues, and briefly summarise its position in advance of the CMC. We can then discuss with the CMC, first whether a point should be included in trial 1, assuming you accept the split trial proposal, and second, and in any event, how much time it's likely to take to resolve at trial.

So that's why we say there's no need for a full round of amended pleadings prior to the CMC, which would simply cause delay and increase costs. The list of issues and the fast-track application can be determined on the basis of the existing pleadings -- including the ones in the High Court, taking into account the further particulars provided in the draft claim form.

Obviously, if you're against me on that, I would need to address you on how the costs of any pre-CMC amendment should be dealt with. But perhaps I can wait and see what your position is.

In relation to cost capping, I don't think I need to say anything, given the indications you gave to Mr Bates; we've obviously set out our position on that at paragraphs 25 to 35 of the letter that we sent in yesterday. In summary, for the reasons you gave, it should be possible for the parties to produce cost estimates on an alternative basis. It may be that significant progress can be made at the CMC in relation to the cost capping issues.

Unless you had any questions, those were my submissions on the central point regarding the pleading amendments.

CHAIR: Okay. Do you have anything else to add, Mr Bates? Sorry, you're muted.

Reply submissions by MR BATES

MR BATES: Sorry, sir.

Only to say, by way of very brief reply that, in my submission, really, Mr Gregory's making my submissions for me in the sense that what he's setting out is illustrative of the unfairness of his approach. What he's proposing to do at the CMC is to rely on his amended claim form in order, it said, to show that parts of the defendant's existing defence are wrong or unarguable, or won't take up much time at trial. Also, he says that it may be that the defendant would abandon aspects of its defence based on what's in the amended claim form.

In my submission, all of that shows that it's right to have the case properly pleaded out first, because if there are points in the amended claim form to which the defendant has no answer,

then we won't defend in relation to those points, and that will be clear from our defence to that document. But I'm very concerned as to the fairness and what I would be expected to do at a CMC in effectively trying to litigate out all of the issues in the case, and decide how strong or weak the defendant's position is, based on the claimant's amended claim form, which it has no permission to file.

CHAIR: I'll give a short ruling.

Ruling on the application

CHAIR: This hearing has been arranged in order to deal with certain procedural issues that have arisen.

The claimant, Yew Freight's, claim in the proceedings is that the arrangements made with it by the defendant, Puro Ventures, which involve the provision of courier services organised through branches, one of which is operated by Yew Freight, are in breach of the Chapter I prohibition.

The claim form was issued in the High Court on 11 September 2024, and was served with the particulars of claim. The proceedings were transferred to the Tribunal by order dated 7 October 2024, and the defence filed and served on 11 October 2024.

On 24 January 2025, a consent order was made which required Yew Freight, if it wished, to apply for the claim to be subject to the fast-track procedure, such application to be filed and served by 17 January 2025. The order also made provision for Puro Ventures to respond to any such application by 13 February. It also made provision for a list of issues to be filed, and for a CMC to be fixed on 23 April, with a time estimate of one day.

On 17 January, Yew Freight filed a fast-track procedure application, which included an application for certain issues to be tried at a first trial, and for an application for permission to amend the particulars of claim. The application envisaged that the application for permission would be dealt with at the CMC. In response, Puro Ventures has applied to the Tribunal to

make directions, including directions that there should be a full set of revised pleadings to be filed and served in advance of the CMC, and for Yew Freight to pay the costs of the amendment. Also, there is an application that there should be no cost capping dealt with at the CMC.

Yew Freight's position is that it is not necessary for the amendment to be dealt with before the CMC. It says that the essence of the claim has not changed; that the amended particulars effectually provide further and better particulars; they also clarify matters. It is submitted that, in response to the draft amendment, it is possible that Puro Ventures will abandon certain points, and that can help with the preparation of a list of issues, even without any formal defence having been served. Yew Freight also submits that dealing with the amendments as part of the CMC will delay matters and may also increase costs, because it may be that, depending on the directions made at the CMC, it will not actually be necessary for the entirety of the amendment to be pleaded to; in particular, matters that are not going to be dealt with at the proposed first trial.

In response, Puro Ventures submits that this is an upside-down approach. It is unsatisfactory that the Tribunal should be asked to take account of an amended claim form at the CMC, in circumstances where it has not had an opportunity to respond to it, and that it is through an exchange of pleadings that the issues will be properly identified, and that will assist with the case management of the case at the CMC.

I understand the legitimate objective of Yew Freight to minimise costs insofar as it can, given that it is a small business and that it wants to take full advantage of the fast-track procedure. I consider, nevertheless, that it would be of assistance to the Tribunal at the CMC for Puro Ventures to have responded to the draft amendment in a conventionally pleaded defence rather than in correspondence, and by reference to a list of issues. If Yew Freight wishes to rely on the proposed amended claim form at the CMC, then it needs to ask for permission to amend now, and I will grant permission enabling the defendant, Puro Ventures, to put in

a defence, and potentially a reply by Yew Freight, which can then be considered in the round at the CMC. I don't envisage that this will entail a significant delay in the outcome of the case.

CHAIR: That's just my reading on the first point.

Housekeeping

MR GREGORY: All right, sir, perhaps I could just briefly address you on the next steps, which is that I'd ask for seven days in which to put in an amended pleading. One thing we'll need to consider is whether actually we put in the full draft claim form that was attached, or whether we cut it back a bit to try and focus on some key points.

CHAIR: Yes, that seems sensible. How long do you want for your defence, Mr Bates?

MR BATES: Four weeks, sir. Obviously it's difficult, but I say that given the length of the document to which we're being asked to plead, and the extent to which it's new. Now, obviously, if Mr Gregory is able to file something shorter, then it may be that we need less time. But I have to approach matters on the basis of the draft I've already got. I can't know how much shorter his amended version would be.

CHAIR: Well, Mr Gregory, four weeks; it doesn't seem to me to be excessive. So we'll say four weeks for the defence. What about a reply?

MR GREGORY: Let me just check where that actually falls. So one week for the claim form takes us to 27 March. Four weeks later takes us to, I think, 17 April. That's towards, or just prior to the Easter weekend. Could I ask for two weeks for the reply, particularly given the Easter weekend?

CHAIR: Yes.

MR GREGORY: So I think that would take us to 1 May.

CHAIR: Then how long after that would we need before the CMC?

MR GREGORY: I don't know whether we actually want to do this now, or whether we should just sort of liaise between the parties and the tribunal to try and find dates. I mean, I think the

things that need to be done are the list of issues; that can probably start to be worked on once we've got the defence. Obviously there might be minor changes when we get the reply, but most of it can be started on. We would then propose there should be an exchange of high-level disclosure proposals, and an exchange of cost estimates. I don't know whether it's best to try and fix dates now.

CHAIR: I'll leave that to the parties to sort out, but I have in mind a date in early June, as I think Mr Bates suggested.

MR BATES: Yes, sir. That's obviously subject to the tribunal's availability, but I think you've indicated, sir, that that would be possible for the tribunal. It seems to me, anyway, that allowing at least three or four weeks after pleadings have been finalised for the parties to complete the steps that Mr Gregory has just mentioned would be helpful. Indeed, we've suggested in our version of an earlier draft order that the parties' solicitors might actually have a conversation to sort out the list of issues and deal with some points, because the tribunal has seen the flavour of the correspondence so far, which hasn't been particularly helpful. Actually, if there's time for the parties to have a discussion -- you know, everyone's keen to progress these proceedings, actually, and in a sensible and proportionate way. The defendant's not a particularly large company by many standards either, and obviously the defendant wants to have certainty as to the lawfulness or otherwise of the arrangements it's operating.

Costs

CHAIR: Thank you. So the next issue is the question of the costs of the amendment; is that right?

MR BATES: Yes, sir. I'm not going to take up much time dealing with this because it's dealt with in my skeleton. But, in my submission, this is a situation where the claimant is essentially seeking to reformulate a case which isn't in any way being reformulated because of some disclosure or some external change; it is adding more detail that it considers that it would be

helpful to add in, and, in circumstances where the defendant has already incurred the costs of pleading its defence, and sees nothing wrong with its existing pleading, it's content to stand by its existing pleading. But if the claimant wants to reformulate its case, the standard order and the appropriate order is for the claimant to pay the costs of and occasioned by those amendments.

CHAIR: Mr Gregory, I would need some persuading that the standard order should be departed from. I mean, as I say, I understand your thinking underlying the amendments but, at the same time, as Mr Bates said, there's no general rule that a transfer to the CAT gives a claimant a free pass to amend its case and get the defendant to pay for any consequential amendments.

MR GREGORY: Well, I think what we would ask is that the issue of the costs be reserved to the CMC. I hear the indication you've given. I think the argument in favour of reserving it are that we obviously don't yet know what form the claimant's amendments will take, or what form the defendant's amended defence will take, or what costs will be incurred in relation to it. I would ask that the issue of the cost of the amendments be considered on a holistic basis at the CMC, when the tribunal will also be considering the wider issues of cost capping.

The context, of course, is that there is a real risk that the claimant will be deterred from bringing the claim if it's forced to incur significant costs at an early stage without any certainty as to the total level of costs that it will be subject to.

MR BATES: Sir, if I can just say, for the sake of clarity, that certainly the defendant is not asking for any assessment today of the quantum of the costs, it's simply asking for the usual order that, in principle, the costs of the amendments should be borne by the party seeking to make the amendments. I'm entirely content for the assessment of the amount of those costs to be dealt with at the CMC.

CHAIR: Yes, thank you. I am not going to depart from the usual order, which is that the claimant, Yew Freight, should pay the costs of amendments made by the defendant to its

defence, consequential upon the amended particulars of claim.

MR BATES: I am grateful, sir. I think, from my perspective, that deals with all the issues apart from the costs of today. I don't know if Mr Gregory has anything else to raise.

MR GREGORY: No. Nothing else apart from that.

CHAIR: Mr Bates, I have in mind that these costs should be costs in the case.

MR BATES: Well, I would seek to persuade you otherwise, sir, simply because, if one looks at the correspondence history, one can see that there were exchanges of letters and draft orders, et cetera, between the parties, and in the course of those communications, essentially everything was agreed, or could have been agreed, in terms of progressing matters in the way that we have arrived at today, apart from that the claimant would not accept that it should pay the costs of its amendment.

So that was the basis on which we've had to have this hearing today, because the claimant said, well, we're happy to have this exchange of pleadings, et cetera, but we don't think that we should agree to the usual formulation of order whereby the claimant has to pay the costs of those amendments. So that was the sticking point. That then led to delay, which meant that what could have been done perhaps in advance of the 23 April CMC, then became increasingly impossible because of the time that passed.

But, as I've set out in my skeleton, we are only asking, in our cost schedule, for our costs since 18 February 2025. The significance of that is that it's the date of Nexa Law's letter, which is at page 375 of the bundle, and that's where the draft order which the defendant had provided was returned by Nexa Law with their markup, which then follows over the subsequent pages. Maybe the tribunal hasn't had an opportunity to study this document in detail, but you can see there that the amendment of pleadings is essentially agreed, subject to some small quibbles about the precise dates; all dates that have now passed, unfortunately. But the disagreement at paragraph 4 is in relation to whether or not the costs should be paid by the claimant.

The position taken by the defendant is we're happy for you to amend, but only if we have the

protection of the usual order for the costs of that. That was the point of disagreement. The other matters in this draft order, as you can see, are essentially agreed, save for some minor points about precise dates --

CHAIR: Well, there's the cost capping, isn't there?

MR BATES: -- and the capping, yes, paragraphs 13 and 14. So the reality, in my submission, is that we would not have been here today, with all the costs of this additional hearing, if the claimant had not taken that position. While the costs of today are not huge, they are nevertheless significant, and there is a need to reflect some sort of deterrent for parties who raise costs by taking positions that lead to the necessity for a hearing like this. So I would invite the tribunal to order costs in respect of the period from the 18 February letter. The amount that we've asked for is £8,529.50, which, in my submission, is a clearly reasonable amount, in respect of specifically the costs driven by the need for this hearing from 18 February onwards. It's significantly less, actually, than the amount that the claimant's claimed in its cost schedule, which is --

CHAIR: I saw that.

MR BATES: Yes. The costs prior to 18 February, of dealing in correspondence with discussions of whether or not there should be exchange of further pleadings, et cetera; all of that will either be costs in the case, because it's part of general case management, or it will be costs arising from the amendment application, which will be dealt with at the CMC. But I do ask for those costs, of the £8,500, as being costs that have been driven specifically by the claimant's position on which they have not succeeded at this hearing, which has been the main issue, actually, at this hearing.

CHAIR: Mr Gregory, what do you say?

MR GREGORY: Well, we'd ask you to maintain your initial instinct that the costs should be costs in the case. I think you have found against us, but you recognise that this was a valid attempt by Yew Freight to try to narrow the issues ahead of the CMC, you know, with the goal

of trying to ensure the efficient conduct of the proceedings, and an outcome which is compatible with the fast-track objectives.

I showed you the pleadings. One of the reasons for the draft claim form was to try and knock on the head some thoroughly bad points which the defendant had taken in their defence, in the hope of eliminating them. There's also, obviously, the context that this is a case that's been transferred to the CAT from the High Court. CAT pleadings ordinarily do allow you to plead points of law in a way that High Court pleadings do not, and actually, those additional pleadings have been critical here, and will play a valuable role in helping the tribunal to prepare for the CMC.

The defendant obviously failed on its cost-capping application, and, again, I just refer you back to the overall context. I mean, this is a claim brought by a very small claimant, and there is a real risk of it being deterred from continuing the proceedings if it has to bear significant costs at the outset.

RULING ON COSTS

CHAIR: I have to deal with the costs of today. Mr Bates submits that I should order the claimant, Yew Freight, to pay its costs on the basis that it has essentially succeeded on the main issue, and it is asking for its costs from the 18 February. Mr Gregory, for Yew Freight, submits that the claimant's position was not an unreasonable one in seeking to, as it saw it, to allow the proceedings to be case managed in a cost-efficient way, and it also makes the point that Puro Ventures has failed on its application to eliminate cost capping from the CMC.

My initial view was that the cost should be costs in the case, and I remain of that view, although I entirely agree with Mr Bates that it is important for the parties to conduct this litigation constructively, and to avoid unnecessary dispute and unnecessary costs being incurred in the future. So that's my order.

MR GREGORY: I'm very grateful. I think the only points remaining, then, are for us to go away and the parties to try to agree a timetable leading up to the CMC. We can obviously be in touch with the tribunal registry about available dates.

CHAIR: Okay. All right. Can I leave it to you to agree a form of order?

MR GREGORY: Yes, of course.

CHAIR: Okay.

MR BATES: Yes, of course. Thank you.

CHAIR: Thank you very much.

MR GREGORY: Thank you very much.

MR BATES: Thank you.

(11.26 am)

(The hearing adjourned)