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IN THE COMPETITION APPEAL TRIBUNAL

Competition Appeal Tribunal,
Victoria House,
Bloomsbury Place,
London WC1A 2EB

Thursday, 12th February 2004

Before:

**SIR CHRISTOPHER BELLAMY
(The President)**

**MR BARRY COLGATE
and
MR RICHARD PROSSER, OBE**

B E T W E E N:

UMBRO HOLDINGS LIMITED Applicant
- and -
THE DIRECTOR GENERAL OF FAIR TRADING Respondent

MANCHESTER UNITED PLC Applicant
- and -
THE OFFICE OF FAIR TRADING Respondent

ALLSPORTS LIMITED Applicant
- and -
THE OFFICE OF FAIR TRADING Respondent

JJB SPORTS PLC Applicant
- and -
THE OFFICE OF FAIR TRADING Respondent

MR NICHOLAS GREEN, QC and **MISS KELYN BACON** appeared on behalf of Umbro Holdings Limited.

MR P HARRIS appeared on behalf of Manchester United plc.

MR GEORGE PERETZ appeared on behalf of Allsports Limited.

MR STEPHEN MORRIS, QC, MR JON TURNER and **MISS ANNELI HOWARD** appeared on behalf of the Respondent.

CASE MANAGEMENT CONFERENCE

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1 THE PRESIDENT: Good morning, ladies and gentlemen. Welcome to Victoria
2 House. I hope the technology will not let us down this morning. I just
3 need to remind you to press red button when you are speaking and to turn
4 it off when you have finished.

5 I suggest, unless there are any preliminary points, we go
6 straight to the agenda. The first item is the structure of the hearing.

7 The Tribunal's present view is still that we should make every effort
8 to finish the witnesses in the first week and, subject to a point that
9 has arisen in relation to what is going to occur as regards Mr May and
10 Mrs Charnock, we would hope that we can start, as arranged, on Monday,
11 8th March and that cross-examination of the Office of Fair Trading's
12 witnesses can be completed by the end of Tuesday, 9th March, that is to
13 say most of those two days. When I say that, I mean the principal
14 witnesses, that is say, Mr Ashley Mr Ronnie, Mr Feloney. There may be a
15 question mark over Mr May and possibly Mr Protheroe. As regards the
16 rest of the witnesses, we would hope to finish cross-examination of the
17 Allsports and JJB witnesses in the remainder of that week and we are
18 quite happy to start with Mr Hughes at 9 o'clock on the Friday.

19 Let me just go on and finish the scheme as we see it as
20 regards the second week and then I will invite comments. It is probably
21 correct that we do need a day off for regrouping on Monday, 15th March.

22 From there on there is the question of how much should be done in
23 writing, how much should be done orally and, in particular, how much
24 time JJB and Allsports should have. At the moment we remain of the view
25 that JJB and Allsports should each have a day to put their case. How
26 they put their case is very much up to them. I think it is for them to
27 decide how much they want to put it in writing and how much they want to
28 put it orally. But, so far as the Tribunal is concerned, we are prepared
29 in principle to allocate a day each to JJB and Allsports, which on this
30 programme would be the Tuesday, the 16th and Wednesday, the 17th
31 respectively.

32 It seems to us that, by that stage of the proceedings, the
33 Office of Fair Trading, having already had the chance to open, should be
34 able to reply to both JJB and Allsports in a day. I know there are
35 replying to two parties, but it seems to us that if we gave Thursday,

1 | 18th March to the Office of Fair Trading for the Office of Fair Trading
2 | closing submissions, that would enable us to have closing replies from
3 | Allsports and JJB on the morning of Friday, 19th March.

4 | That programme, miraculously, would permit us to hear the
5 | Umbro penalty hearing on the afternoon of Friday, 19th March.

6 | Extremely reluctantly, at the moment it does seem to us that
7 | we do have to contemplate this case going into week three. But in week
8 | three we are, on this approach, simply left with the JJB, Allsports and
9 | Manchester United submissions on penalty, assuming in the case of JJB
10 | and Allsports that we get that far and assuming no unexpected
11 | developments in the course of proceedings. As we see it at the moment,
12 | there is no reason why the penalty part of the case should take more
13 | than two days at the outside. So we would assume that on Monday we
14 | would hear the bulk of the MU, JJB and Allsports submissions on penalty.

15 | Part of those submissions I think are joint or semi-joint submissions,
16 | or at least cover similar ground, though MU has particular points that
17 | it wants to make, with the Office of Fair Trading being able to reply on
18 | penalty and any closing remarks on penalty occurring on Tuesday, March
19 | 23rd.

20 | That, at the moment, is broadly how the Tribunal sees the
21 | programme for the hearing. **(Pause)** I think I would like to, at this
22 | stage, just go round the table and see if there are major principle
23 | objections to that plan. I think, Mr Morris, probably first reaction
24 | from the Office of Fair Trading, please.

25 | MR MORRIS: The first reaction of the Office of Fair Trading in that, in
26 | general, they are happy with that as the plan.

27 | THE PRESIDENT: Yes, thank you Yes, Mr Hoskins.

28 | MR HOSKINS: We are very happy with that too.

29 | THE PRESIDENT: I am getting on fine so far! Mr Peretz.

30 | MR PERETZ: I shall just add to the general happiness. We are happy
31 | with that plan.

32 | THE PRESIDENT: I am sure things will be downhill from here on in.

33 | MR HARRIS: Yes.

34 | MR GREEN: I hate to disagree.

35 | THE PRESIDENT: Yes, good morning, Mr Green. Fine. I do not know

1 | whether you have made any further progress with the Court of Appeal?

2 | MR GREEN: At the moment we understand we are starting on the Monday,
3 | but the Court of Appeal will not be able to update us until nearer the
4 | time.

5 | THE PRESIDENT: Let us treat that as the structure of the hearing. We
6 | will write to you and confirm that in general.

7 | As far as the next item is concerned, which is witnesses, I
8 | think we have now had indications from all parties as to the witnesses
9 | that are sought to be called. As far as I am aware, there is a possible
10 | issue as to whether Mrs Charnock and/or Mr May give evidence. If that
11 | is the outstanding issue as far as witnesses are concerned perhaps we
12 | ought to deal with that straightaway. I think is it for you, Mr Peretz,
13 | to update us on this.

14 | MR PERETZ: Yes. We argue the point very fully in our written
15 | submissions. We wish the position to be entirely clear. I think we
16 | indicated during the course of the hearing on 22nd January that it is a
17 | course we might adopt in regard to Mr May's evidence.

18 | THE PRESIDENT: As I understand it, you are saying; "Well, we are
19 | prepared to renounce Mrs Charnock."

20 | MR PERETZ: Indeed.

21 | THE PRESIDENT: "If we renounce Mrs Charnock, there is really very
22 | little basis for the Office of Fair Trading being able to call Mr May."

23 | MR PERETZ: Yes. I put in forward slightly tentatively.

24 | THE PRESIDENT: Excuse me a moment. You need to switch your mike on, I
25 | think, Mr Peretz.

26 | MR PERETZ: We are all getting used to this.

27 | THE PRESIDENT: Yes, it is the new technology. If anybody has not
28 | switched theirs off, also switch them off. We can manage four on at one
29 | time, but after that the system tends to get a bit chaotic. Yes, sorry,
30 | go on.

31 | MR PERETZ: We put this submission forward perhaps fairly tentatively
32 | because we are not entirely certain -- the Tribunal's reasoning on
33 | admission of Mr May was quite short and we do not necessarily want to
34 | reopen or call into question the Tribunal's judgment, but we did feel we
35 | need to make the position clear.

1 THE PRESIDENT: Yes. I think it is certainly in our mind to ask both
2 Allsports and the Office of Fair Trading how crucial the evidence of Mrs
3 Charnock, on the one hand, and Mr May, on the other hand, is. Because
4 in a sense they are both, as we understand it -- we may not have
5 completely correctly understood it -- as it were, somewhat second line
6 employees. They are not directly involved in the principal events
7 surrounding the makings of the agreements and I do not think it is
8 alleged they are present at the relevant meetings between the principal
9 parties, so their evidence is to some extent somewhat subsidiary in that
10 respect. If it is not really essential to have them physically give
11 evidence, it may not be particularly useful that they should do so.

12 MR PERETZ: I think we agree with that. Certainly from our point of
13 view the evidence of Mrs Charnock was, frankly, incidental to our case.

14 It was dealing with a meeting which the Office of Fair Trading no
15 longer relies on in the context of allegations of pressure, for the
16 fairly obvious reason, among others, that it took place after the period
17 of the alleged infringement.

18 THE PRESIDENT: Yes.

19 MR PERETZ: We felt it necessary, out of an abundance of caution, to say
20 something about it in Mrs Charnock's witness statement. We were not
21 quite sure why that meeting was mentioned in the decision in any event,
22 so we are perfectly happy to forget all that evidence.

23 THE PRESIDENT: Let us see what the Office of Fair Trading says, Mr
24 Peretz.

25 MR MORRIS: The Office of Fair Trading's position is that Mr May's
26 evidence, as it stands in that witness statement, is highly material and
27 significant evidence on the issue of pressure and complaints and the
28 Office of Fair Trading would wish to rely on that evidence in that
29 witness statement.

30 THE PRESIDENT: How far does it add, in practice, to what Mr Ronnie and
31 Mr Feloney are presumably going to tell us about on your case?

32 MR MORRIS: One of the criticisms of the Office of Fair Trading's case
33 on pressure is that the allegations are all rather general and
34 particularised. Here is evidence from Mr May of regular telephone
35 contact at his level with Mrs Charnock about complaints from Allsports

1 or about discounting. To that extent, leaving to one side the
2 circumstances in which that evidence has now been placed before the
3 Tribunal, we do say that that is evidence we would wish to rely on.
4 Whether that is material which is so central that it requires
5 cross-examination is a separate question, but I would envisage my
6 learned friend to take the view that if we were wishing to rely on Mr
7 May, then Allsports would wish to cross-examine him. I think the
8 application is effectively for Mr May's evidence as a whole to be
9 excluded rather than an application about the necessity for them being
10 called.

11 The matter, we would also say, was effectively dealt with at
12 the last hearing in circumstances where the objection made to Mr May's
13 evidence that was raised by Allsports at that last hearing was an
14 objection on the grounds that it was being adduced to support the case
15 on retailer pressure. That objection, of course, was not accepted
16 because the case on retailer pressure has been allowed to go forward.

17 We would further say, sir, that in a way once that evidence is
18 there, it would, in our respectful submission, be highly artificial for
19 the Tribunal to ignore what is relevant evidence, to put it to one side.

20 You, sir, will be well aware of the relevant passages in the various
21 judgments about the importance of seeing the evidence in the round and
22 the public interest in considering all the evidence referred to in your
23 judgment of 29th January. We submit that, just like in the case of Mr
24 Ronnie, effectively, once it is there, it really would be wholly
25 artificial for it to be ignored. So we do say we would wish to rely on
26 that, sir.

27 THE PRESIDENT: Could you just take me, Mr Morris, I have not got it
28 completely to hand -- it may take us a moment to find it -- to your
29 particulars.

30 MR MORRIS: I do not know where they are in any bundle. I have got
31 them in my...

32 THE PRESIDENT: I do not know whether the learned...

33 MR MORRIS: I do not know where they have been filed. (Pause) If you go
34 to Volume 2 of the Tribunal correspondence (Trib 2), page 601.

35 THE PRESIDENT: Page 601.

1 MR MORRIS: 602 in fact. If you go to the bottom of, page 602 you will
2 see, under the first heading, 21(b), "Matters relied upon as
3 constituting complaints and pressure about discounting by Allsports",
4 the fourth indent is Mr May, paragraph 7 to 12.

5 THE PRESIDENT: Can somebody tell me where we find Mr May?

6 MR MORRIS: File 2 -- I do not know whether this is orange or pink?
7 Salmon, I am told. I am not sure that these days one should be
8 referring to salmon! It is orange/pink, File 2, tab M, page 196.

9 THE PRESIDENT: Right. (Pause) Yes. (Tribunal confer) Do you want to
10 come back on what Mr Morris was saying there, Mr Peretz?

11 MR PERETZ: I will just put my microphone back on. Just to put it in
12 context, I do not know whether the Tribunal wants to turn these up, but
13 it might be helpful just to have a quick look at the statement of Mrs
14 Charnock. I am afraid I have no idea whether that is in the Tribunal's
15 bundles.

16 THE PRESIDENT: Let us just see because if it is filed in alphabetical
17 order it will be in File 1.

18 MR PERETZ: I may be able to shortcircuit this.

19 THE PRESIDENT: Page 211, yes, we have it.

20 MR PERETZ: The key paragraphs are paragraphs 31 to 41.

21 THE PRESIDENT: Yes, hang on.

22 MR PERETZ: You see, starting at paragraph 37, it is a fairly
23 comprehensive statement dealing with the meeting of 24th October, which
24 was essentially the purpose of this part of the statement.

25 THE PRESIDENT: Although it is preceded by a certain amount of comment
26 about the general nature of her discussions with Mr May.

27 MR PERETZ: Yes, in order to set the 24th October meeting in context.

28 THE PRESIDENT: So she is sort of setting the scene, and what Mr May is
29 saying in his evidence is that is the scene but it is not quite the
30 whole picture because there was more to it than that.

31 MR PERETZ: Yes. The way in which we rely on those paragraphs can then
32 be seen in our defence at paragraph 6.5(2) of the defence, page 43 of
33 our defence.

34 THE PRESIDENT: Just a moment. You mean the yellow file?

35 MR PERETZ: I mean the Notice of Appeal.

1 THE PRESIDENT: You mean the Notice of Appeal?

2 MR PERETZ: I mean the Notice of Appeal. The terminology is to some
3 extent counterintuitive.

4 THE PRESIDENT: Page 31?

5 MR PERETZ: Page 43, paragraph 6.5(2), which is the only point at which
6 we refer to this part of Mrs Charnock's witness statement.

7 THE PRESIDENT: Yes.

8 MR PERETZ: As to paragraph 222, dealing with Umbro's memo of 27th
9 October, that reports the 24th October meeting, see Mrs Charnock's
10 witness statement. That is the only reliance we place on what Mrs
11 Charnock says -- simply that comment.

12 When the Office of Fair Trading applied to adduce Mr May's
13 evidence, it was late in two senses: first of all, it was late because
14 it was not served with the Office of Fair Trading's defence; but,
15 secondly, and perhaps more fundamentally, it was late in that the Office
16 of Fair Trading has had three years to get evidence from Mr May. He was
17 an employee of Umbro at all material times. He was, therefore,
18 presumably, covered by Umbro's offer----

19 THE PRESIDENT: Just hang on a moment. (**Pause**) Yes.

20 MR PERETZ: He was covered by Umbro's offer of cooperation. The Office
21 of Fair Trading could doubtless have seen him at any time. As far as we
22 can tell, there was no attempt to contact him or speak to him. There
23 was no illusion to this being, if I can put it this way, a conduit of
24 pressure at any stage whatsoever during the Rule 14 procedure. This is
25 a completely new allegation.

26 THE PRESIDENT: I do not know that it is so much an allegation as just a
27 painting of the general evidential background against which the Office
28 of Fair Trading says these events took place.

29 MR PERETZ: It is an entirely new vehicle of pressure involving somebody
30 who was not accused at any previous time of putting pressure on Umbro --
31 a new cast of characters in the pressure story.

32 THE PRESIDENT: Yes.

33 MR PERETZ: The hook upon which the Office of Fair Trading hung, to be
34 frank, the whole hook, the only hook on which they hung the application
35 to adduce Mr May's evidence was that it was responsive, as they put it,

1 to what Mrs Charnock was saying. There was no other basis advanced for
2 it.

3 THE PRESIDENT: Mrs Charnock was saying certain things before she gets
4 to the meeting of October 24th.

5 MR PERETZ: Indeed she does.

6 THE PRESIDENT: That is what they say: it was not sort of quite the
7 whole picture. She has talked about the general nature of the
8 discussions with Mr May. She says that was the extent of the
9 relationship. She says that Mr May would contact her when Umbro was
10 launching a new kit. Then, at paragraph 35, she goes on to say:

11 "Within these discussions we did discuss the selling price of the kits."

12 That is what they were replying to.

13 MR PERETZ: One can see an argument that they are entitled to respond to
14 that. We would simply deal with that argument by saying we no longer
15 propose to rely on that. We never did rely on it save to the very
16 limited extent of paragraph 6.5(2) in the Notice of Appeal, where it is
17 clear that the only way in which we relied on it was sort of setting the
18 scene for the account of a meeting which is now no longer relied on as
19 an incidence of pressure and took place after, as far as we are
20 concerned, any relevant event in these proceedings. We are perfectly
21 content, insofar as it is still relevant, to deal with that meeting by
22 saying the uncontested fact that it took place after any of the relevant
23 events. That is all, frankly, we need to say about that.

24 THE PRESIDENT: Yes.

25 MR PERETZ: Putting our point shortly, with that hook removed, there is
26 no need for the Office of Fair trading to respond to any case we are
27 putting because we are not putting it any more. We make no positive
28 case.

29 THE PRESIDENT: Yes.

30 **R U L I N G**

31 THE PRESIDENT: The Tribunal has to rule on a particular point that has
32 arisen in relation to two----

33 MR MORRIS: Sir, I hesitate to interrupt. There were one or two other
34 points I did not make. I do not know whether they would be of any
35 assistance?

1 THE PRESIDENT: I think it is all right. Thank you very much, Mr
2 Morris, I do not need to call on you.

3 ----in relation to two witness statements that are in issue:
4 one produced by Allsports by Mrs Charnock and one produced by the Office
5 of Fair Trading by a Mr May.

6 The Tribunal, in its recent judgment, has already ruled in
7 principle on the admissibility of Mr May's statement on the basis that
8 that statement was in response to the statement of Mrs Charnock and
9 completed the evidential picture as far as the Tribunal was concerned.

10 Allsports, in its submissions today, has now indicated that it
11 is prepared to withdraw the evidence of Mrs Charnock. Allsports argues
12 that if it does so, then there is no longer any basis for the admission
13 of Mr May's statement. In effect, Allsports submits that Mr May's
14 statement should, in those circumstances, not be taken into account by
15 the Tribunal in these proceedings. So the issue is not whether so much
16 Mr May or Mr Charnock should be cross-examined but whether their
17 evidence should be in the case at all.

18 In our view, at this stage of the proceedings, now that both
19 statements have been filed, they are part of the material that is before
20 the Tribunal. We would regard it as somewhat artificial at this stage
21 to seek to remove from the Tribunal's file either the statement of Mrs
22 Charnock or the statement of Mr May.

23 In addition, Mrs Charnock in her statement, although she is
24 dealing in part with a meeting that took place on 24th October 2000, at
25 paragraphs 33 to 36 of her statement makes various observations about
26 the nature of her general discussions with Mr May and she also makes
27 certain assertions as to whether or not the selling price of kits was
28 discussed. It is essentially in reply to that evidence that Mr May
29 gives evidence about the general nature of the discussions which took
30 place between him and Mrs Charnock at their level. Albeit that neither
31 Mrs Charnock or Mr May are, as it were, the principal participants in
32 the alleged agreements, in that they operated at the somewhat lower
33 level of responsibility, it seems to the Tribunal that the evidence of
34 Mr May continues to be part of the general evidential picture, even if
35 Allsports no longer seeks to rely on Mrs Charnock. So we are not at

1 | this stage able to accept the submission that if Mrs Charnock's
2 | statement is withdrawn by Allsports, then the basis for the admission of
3 | Mr May's statement falls away. It is, in our view, very difficult at
4 | this stage of the proceedings to remove evidence from the Tribunal's
5 | files which we have already ruled was legitimately filed on behalf of
6 | the Office of Fair Trading.

7 | So, in those circumstances, the Tribunal's position is that
8 | the evidence of Mrs Charnock and Mr May should, in both cases, remain on
9 | the Tribunal's file.

10 | We now have to deal with the question of whether either or
11 | both of those witnesses need to be cross-examined by Allsports or the
12 | Office of Fair Trading respectively.

13 | I take it, Mr Peretz, you would like to cross-examine Mr May;
14 | is that right?

15 | MR PERETZ: Yes, I can confirm that. Secondly, may I do what we did on
16 | a previous occasion and formally apply for permission to appeal, with
17 | that application, it seems to be the sensible course, stood over until
18 | after the main hearing?

19 | THE PRESIDENT: Yes, very well.

20 | MR MORRIS: We would want to cross-examine Mrs Charnock, but we envisage
21 | it would be very short.

22 | On the question of permission to appeal, that is other issue
23 | that arises in relation to the 29th January judgment. I put down the
24 | marker I may wish to say something on that at some stage.

25 | THE PRESIDENT: Since it has arisen why do we not see if we can get it
26 | out of way, Mr Morris? I think our position is that, an indication of
27 | an intention to appeal having been made, in fact in the case of the
28 | ruling we have just made the time for making that application would not
29 | expire until 11th March anyway, which would be during the hearing of the
30 | appeal. Our inclination is simply to extend the time for appealing
31 | interlocutory judgment until we have given judgment on the main case, so
32 | as to leave all possibilities open. That is our present thinking, if
33 | that helps you at all.

34 | MR MORRIS: I am grateful for that indication. If I may, I will be very
35 | brief. We would submit actually, if there is an application for

1 permission to appeal in relation to the 29th January judgment it should
2 be made now, within the normal time. I think technically it has now
3 been made and it is sought to be adjourned.

4 THE PRESIDENT: It has been opened but not developed.

5 MR MORRIS: We would ask that it should be determined. The general
6 proposition that we make is that there is something rather nonsensical
7 about the idea of a party applying for permission to appeal against a
8 judgment allowing a case to proceed to trial and at the same time asking
9 the Court to adjourn that application until after the end of the very
10 trial in question.

11 If we envisage what might happen in this case, the proposition
12 that it should be postponed works on the assumption that, effectively,
13 that there would be no grounds for a successful appeal on the merits but
14 that nonetheless, come the end of this case, there would be an
15 application for permission to appeal only against the decision that the
16 case should have been allowed to proceed to trial. In our submission,
17 that is the rather odd situation. We would suggest that it is a matter
18 which ought to be determined now. If, in the course of the trial, there
19 is a further application halfway through for some form of summary
20 disposal, that is on a question of law that I think envisaged in
21 paragraph 97 of the judgment, then, of course, if there is a ruling
22 then, then that can be subject to a separate appeal. But we do say that
23 really it makes no sense for this discrete application for permission to
24 appeal against the judgment that has just been given to be sort of put
25 on the back burner and raised later in circumstances where the idea of
26 it arising as a separate ground seems very hard to envisage.

27 In our submission, if they have got a case on the question of
28 principle about whether the Office of Fair Trading's on the England
29 agreement should be allowed to proceed to trial, that case should be
30 raised and determined once and for all, or certainly the application for
31 permission to appeal should be raised and determined.

32 That is all we have to say on it, sir. It seems to us the
33 idea----

34 THE PRESIDENT: I agree, Mr Morris, it is a somewhat, unorthodox is not
35 quite the right word, but it is a somewhat unusual situation that we are

1 | faced with for which we are trying to find a sensible procedural
2 | solution. Allsports, as I understand it, quite sensibly, does not
3 | actually feel compelled to rush to the Court of Appeal straightaway
4 | because they take the view their case is a perfectly well-founded case
5 | anyway. But they wish to preserve their legal rights, which is in many
6 | ways fair enough. So the question is what is the best procedure of
7 | seeing if we can balance these things, including, of course, the
8 | question of legal certainty and not leaving loose ends lying around any
9 | more than is necessary, which is the point you are stressing.

10 | MR MORRIS: Yes.

11 | THE PRESIDENT: There are various ways of doing it. One would be to
12 | invite Allsports to make their application for permission to appeal and
13 | then deal with it. That involves a certain amount of work. It involves
14 | identifying a point of law. It involves arguing it. It involves your
15 | responding to it. It involves the Tribunal ruling on it. We cannot
16 | just take these things on the hoof. We have to deal with them
17 | seriously. All of which, at this stage, is a certain diversion of
18 | attention from the preparation for the hearing, which everybody agrees
19 | ought to go ahead, and we certainly for our part strongly take that
20 | view.

21 | Insofar as the events of this morning are part of that scene,
22 | there is now an additional point where they have still got a month from
23 | today in which to -- or perhaps it is 28 days, Mr Peretz will remind me.

24 | MR PERETZ: In fact it is a month.

25 | THE PRESIDENT: It is a month, thank you. In which to reflect on the
26 | position, which would take us right to the middle of the hearing. We
27 | have no means of compelling them to make their application any earlier
28 | than that. Well, I suppose we have: we could abridge the time. But we,
29 | for our part, would not particularly want to use our available time
30 | dealing with the question of appeal rather than getting on with
31 | preparing the hearing.

32 | So I think at the moment, unless my colleagues have got any
33 | strong views, we think the best and most sensible order is simply to
34 | extend the time for an application for permission to appeal until the
35 | delivery of judgment by the Tribunal on the main case or until further

1 order. If the situation changes, you can apply for that order to be
2 changed so that it can be in some way brought forward if it becomes
3 necessary. But it may never be necessary for us to deal with this case
4 on certain scenarios, either because Allsports' main appeal succeeds, or
5 it fails but on a basis that has nothing to do with the issues that we
6 have been discussing. In both cases, there would not be any need for us
7 to the deal with the application for permission to appeal.

8 MR MORRIS: Very well, sir. I understand entirely the priority of
9 preparing for 8th March. I understand the reasons you have put forward.

10 The reason we raise the matter is that we would suggest that it is not
11 really good enough for them to keep dangling an application. We have
12 not seen a reasoned application. We obviously would resist it and think
13 it would be unfounded in any event. There is an element of us saying to
14 the Tribunal: "Come on now. Let's not keep these things in the back
15 pocket. If you have an got application to make, make it." I think it
16 what we are saying.

17 Obviously, I have highlighted in my submissions that the idea
18 of this being a self-standing point is pretty farfetched in any event.
19 I am not going to be able to persuade you to deal with before the 8th,
20 so there it is. But the reason we raise it is actually we are
21 effectively saying, if they were dangling appeals, they should make
22 their mind up and let everybody know what that point is going to be.
23 They have not done that. That was really the point we were trying to
24 make .

25 THE PRESIDENT: I think, Mr Morris, we have sympathy for your point of
26 view but we think in the overall interests the better order is to extend
27 of time for appealing on the judgment of 29th January and the ruling we
28 have made today until the Tribunal gives judgment on the main appeals or
29 until further order.

30 MR PERETZ: I might just add it is not a question of making our mind up.

31 It is the question of: first. Whether resources are best employed to
32 go to the Court of Appeal; secondly, the impact that that might have on
33 the hearing date----

34 THE PRESIDENT: We understand entirely your position, Mr Peretz.

35 MR PERETZ: Thank you very much.

1 THE PRESIDENT: Very well. If we now revert to the agenda. If I put one
2 or two bundles back in their place. (Pause)

3 Item 3 is the issues to which examination of each of the
4 witnesses will be directed. I think at least for our part we have a
5 certain amount of information about that at the moment. There is one
6 question, however, we would like some help on from JJB and Allsports,
7 not necessarily now but possibly in any skeleton argument or preliminary
8 indication. At some point the Tribunal needs to know whether your
9 submission as Appellants is that the Office of Fair Trading's witnesses
10 are not truthful witnesses or whether your case is that they are in some
11 way mistaken or unreliable or that their evidence does the support the
12 inferences which the Office of Fair Trading seeks to draw, or in some
13 other way. I think we do need to know at some point whether it is
14 essentially an assault on the good faith of the witnesses or on the
15 reliability of their recollection. I am not inviting you to comment
16 now, but I think it is reasonable to inquire in advance of the
17 proceedings which of the those various alternatives it is likely to be.

18 MR HOSKINS: Sir, I understand. The difficulty I can foresee is the way
19 in which we attack the witnesses will depend on cross-examination.

20 THE PRESIDENT: Mr Hoskins, at this stage of the case, which has now
21 being going on for some time, it does not seem to the Tribunal
22 unreasonable that you should have a view on whether the evidence that is
23 being put forward to the Tribunal is honest evidence or not. You must
24 be able, I think, in normal circumstances at least, to be able to take
25 instructions and discover whether your clients simply disagree with the
26 recollection of the witnesses or the inferences that are drawn from
27 their statements or whether they are in fact saying that these witnesses
28 are not honest witnesses. That must be something that is within your
29 power to determine as part of your case. I am not asking you to say now
30 which it is, but I am simply indicating that it would be helpful to the
31 Tribunal, I think, to have some indication on that point at some stage
32 before we actually start cross-examination.

33 MR HOSKINS: Sir, I hear what you are saying.

34 THE PRESIDENT: Perhaps you would reflect on it.

35 MR HOSKINS: Yes, absolutely.

1 MR PERETZ: If I can make a point. We have very fully pleaded out the
2 reasons why we say the Office of Fair Trading's witnesses are not to be
3 believed. With respect, it is somewhat difficult for us to determine
4 for ourselves whether, for example, Mr Ronnie is dishonest or whether,
5 as Mr Green put it in front of the OFD, he simply had difficulty
6 remembering anything which occurred a week ago. We simply do not know.
7 It may be one, it may be the other. It may well be clearer after we
8 have had a chance to cross-examine him.

9 THE PRESIDENT: Any clarity on that issue that can be given I think from
10 the Tribunal's view would be welcome. Do you have any comment on that,
11 Mr Morris?

12 MR MORRIS: I do not think we do, thank you.

13 THE PRESIDENT: Before we leave the question of witnesses, there are one
14 or two----

15 MR HOSKINS: So sorry, before we move on, I understand we have been
16 asked to make that representation but one might say the same of the
17 Office of Fair Trading. If the question is to be asked of us is it not
18 also one for the Office of Fair Trading? What is their case in relation
19 to our witnesses: are they liars or are they mistaken?

20 THE PRESIDENT: Yes.

21 MR MORRIS: I am not sure I can resist that. Can I give that some
22 thought?

23 THE PRESIDENT: Would all parties please give some thought as to how far
24 they are able to clarify this aspect of the case with the Tribunal.
25 Maybe you will tell us you cannot clarify it any further than you have
26 already until we have had some cross-examination. But I think there is
27 a difference between a cross-examination that impugns the honesty of a
28 witness and a cross-examination that impugns the reliability of a
29 witness's recollection. We may have to see how it goes.

30 MR MORRIS: Very well.

31 MR PERETZ: The practical difficulty is that one's cross-examination may
32 shift halfway through, depending on the answers the witness is giving.

33 THE PRESIDENT: In either direction, I suppose, yes.

34 MR PERETZ: In either direction.

35 THE PRESIDENT: Yes.

1 THE PRESIDENT: Thank you for that intervention, Mr Hoskins.

2 On the question of the witnesses, there are three housekeeping
3 points and one point of semi-principle. The housekeeping points are
4 that I think we ought to have a small and perhaps manageable bundle of
5 any documents that you want to put to the witnesses. We have a rather
6 large collection of bundles now, but it may be that there is quite a
7 small number of documents that the witnesses actually need. If we can
8 somehow arrange it so that the witness does not have to manhandle
9 several lever arch files, the better, insofar you feel able. I can see
10 wise heads nodding in that direction. So far as you can. And,
11 obviously, a non-confidential version of relevant documents. So I would
12 be grateful if somebody could think about that as a practical point. I
13 am just thinking of the man in the witness box looking for what he is
14 being asked about.

15 MR MORRIS: Can I make one observation on that, sir, and it is this. It
16 may be that certain documents can be put together because it is not
17 going to come as a surprise. But there may well be circumstances in
18 which any particular counsel----

19 THE PRESIDENT: May want to ask somebody to look----

20 MR MORRIS: Look afresh at the document, without them having it sort of
21 pre-prepared so that "these are the documents you are going to be
22 cross-examined on". Sir, I just make that observation.

23 THE PRESIDENT: Can I leave that for the parties to consider.

24 MR MORRIS: If there is a standard comment, I suppose, about the
25 decision itself perhaps, or parts of it, then that may be possible, but
26 we would not want to rule out other documents being handed up at the
27 time.

28 THE PRESIDENT: If you could all respectively mentally envisage how this
29 cross-examination might go and the physical operation of it and make
30 arrangements to facilitate that, we would be grateful.

31 MR MORRIS: I am grateful, sir.

32 THE PRESIDENT: Secondly, we would not wish at some point to, as it
33 were, run out of witnesses. Well, we would be quite glad not to have
34 more witnesses than we need, but insofar as we are trying to do the
35 witnesses in the first week, arrangements do need to be made to alert

1 witnesses to the fact that they need to be here and at certain times and
2 matters of that kind. We have a specific time for Mr Hughes: 9 o'clock
3 on the Friday. But, again, if somebody could liaise behind the scenes
4 with the dates and times and so forth that the particular witnesses need
5 to be here and to make sure they are here, that, of course, would also
6 very be helpful.

7 We have not actually been invited in this case to issue any
8 witness summonses as such, but that is a reserve power should the need
9 arise. I do not envisage that it would arise but we have that power.

10 MR MORRIS: Sir, in that regard may I suggest that the schedule attached
11 to our submissions -- it does not matter whether it is option 1 or
12 option 2 because I think the first week is the same -- if we can use
13 that as a sort of template to work on so that the relevant witnesses can
14 be told based on that. It is annex 1 on page 10 of our submissions for
15 today. You will see we have a first week structure there. We would
16 suggest if everybody works off that for the time being, so that where
17 people go over on a day they can be warned to be there for both days and
18 perhaps people coming in -- I cannot see an example actually but I
19 suppose if we went short -- I do not think Mr Feloney would be needed on
20 the first day but there may be circumstances where he might need to --
21 no, I am not sure he would.

22 THE PRESIDENT: I would have thought Mr May and Mr Protheroe need to be
23 warned for the afternoon of the Tuesday, for example, and so on through
24 the list.

25 MR MORRIS: Very well.

26 THE PRESIDENT: We need also to arrange somewhere for the witnesses to
27 be, a room where they can wait.

28 That takes me on to the next point, as to what views the
29 parties have as to the presence or otherwise in the courtroom of
30 particular witnesses while other witnesses are being cross-examined. Is
31 this a case where, for one reason or another, the witnesses who have
32 not yet given evidence should not be present when certain witnesses give
33 evidence, or should everybody, in principle, be present, or what? I do
34 not know if that is a point to which you have given any thought on how
35 we should approach it.

1 MR MORRIS: Sir, that is something we have given some thought to. We
2 take the view it would be a good idea. It is particularly, or maybe
3 perhaps only solely, where witnesses are giving evidence about the same
4 particular event, for example, the 8th June meeting in 2000. Also the
5 meetings in relation to the centenary kit, which were the 8th and 15th
6 June 2001. So those witnesses who are giving evidence about particular
7 meetings, we think it will be a good idea that the evidence is given
8 not in the presence of others who are to give evidence on the same
9 subject matter.

10 THE PRESIDENT: Let us just explore how you think that might work, Mr
11 Morris. First of all, certainly in a criminal proceeding the defendant
12 is always present. Here the "defendants" are corporate bodies.

13 MR MORRIS: Yes.

14 THE PRESIDENT: So, insofar as they can be present, they may or may not
15 be entitled to be present by virtue of members of their board of
16 directors. So that is sort of one issue.

17 A second issue is how do you see this in practice working? If
18 these witnesses are giving evidence and other witnesses have not yet
19 given evidence, are you further submitting that the witnesses who have
20 not yet given evidence should not see a transcript of evidence that has
21 been given, should not have any contact with their legal advisers as to
22 what evidence has been given, or what? How do you see it working?

23 MR MORRIS: I think we would go that far, sir. If this is a line that
24 the Tribunal----

25 THE PRESIDENT: The Tribunal is completely neutral on it but felt it
26 necessary to explore the issue at this stage.

27 MR MORRIS: Can I deal with the first issue, the question of the
28 defendants. We would suggest that since the defendants are in fact
29 corporate defendants, then it should be the case that Mr Whelan and Mr
30 Hughes would not be present when the evidence was given by Mr Ashley;
31 that they are not the company. But, nevertheless, we do entirely
32 recognise that difficulty and that point and that does make the position
33 somewhat difficult in relation to them. We accept your concern about
34 that and it may be that that is something which cannot be done. But we
35 would suggest there is not any reason why they should not be there, why

1 | they should be there, or there is not any reason why they should not be
2 | excluded in those circumstances. But if you were not persuaded by that,
3 | then we would see that----

4 | THE PRESIDENT: There is a recent ruling by Mr Justice Tomlinson in the
5 | Bank of England case on this issue which I have not had the chance to
6 | refresh my memory about. That is a civil case but it is a civil case in
7 | which allegations of gross misfeasance are being made against particular
8 | individuals in which I think he ruled that the individuals should be
9 | present during the cross-examination.

10 | MR MORRIS: It may be that I can leave it like this. This is something
11 | that we had thought of as an issue. We have not raised it and did not
12 | intend to raise it today, partly because, to be honest, we have not
13 | necessarily----

14 | THE PRESIDENT: You had not reached a concluded view.

15 | MR MORRIS: ----got all the answers. We think it is an issue. It is an
16 | issue in this case because certain key facts turn on direct accounts of
17 | specific meetings.

18 | THE PRESIDENT: Yes.

19 | MR MORRIS: In those circumstances, there is good reason to hear each
20 | individual witness separately on those particular key meetings.

21 | THE PRESIDENT: Yes.

22 | MR MORRIS: It may be that the best way forward is for us all to go away
23 | and think about this issue and revisit it in the housekeeping at the
24 | beginning of the case on the 8th, or in fact deal with it sometime
25 | between now and the 8th. I do not know whether that is a suggestion,
26 | rather than a have a ruling now.

27 | THE PRESIDENT: I am a bit reluctant to rule now because I do not think
28 | people have had a chance to consider it fully. Let us hear what Mr
29 | Hoskins and Mr Peretz have got to say.

30 | MR HOSKINS: Sir, I think we are very strongly of the view that all the
31 | witnesses can be present if they want at any stage. If I can make four
32 | points why we think that is appropriate.

33 | THE PRESIDENT: Yes, of course.

34 | MR HOSKINS: The first was just to pick up your own point, sir, which is
35 | in a criminal trial the defendant is present. Mr Morris tries to

1 distinguish the company from the individuals and says that Mr Whelan is
2 not the company. The point is the same. Mr Whelan's conduct is being
3 impugned, acting as a company. It is Mr Whelan who is the accused, if
4 you like.

5 THE PRESIDENT: Yes.

6 MR HOSKINS: We say fundamental fairness requires that if he so desires
7 he should be present throughout the hearing.

8 The second point is whether one looks at this as a criminal or
9 a commercial matter.

10 THE PRESIDENT: We are not looking at it really as a criminal matter,
11 obviously.

12 MR HOSKINS: No, obviously. That is why I move on. As I say, that is
13 what would happen in a criminal trial. The analogy is individuals'
14 conduct being impugned. That is what I draw from that.

15 In terms of a commercial trial, the standard practice is all
16 the witnesses, if they wish, can be present. That applies even if it is
17 a fraud trial, for example, where you do have allegations of dishonesty.

18 All the witnesses would be present. That obviously is seen to work
19 very well otherwise the rule would be different.

20 The third point is that we want to be able to take
21 instructions from our clients throughout the hearing. The notion that
22 certain of the clients will sit out for all, part or some of the hearing
23 and will not be allowed to see transcripts in advance of themselves
24 giving evidence we submit is unacceptable. We should have access to all
25 our client at all times and that should be an informed access, i.e.
26 they know what has been going on in the hearing.

27 THE PRESIDENT: I do not know whether there is a distinction between
28 your client quae client and your client quae witness, because quae
29 witness one has to be a bit careful about contacts with someone who is
30 about to give evidence about the evidence they are about to give, if you
31 see what I mean.

32 MR HOSKINS: Sir, I think Lord Grabiner has sufficient experience not to
33 cross that line. He will be well aware of the existence of the line.

34 THE PRESIDENT: I am not saying everybody does not know the rules -- of
35 course they know the rules -- but I am just seeking to explore what we

1 | should do in this particular situation.

2 | MR HOSKINS: Sir, that is the rule. You have to be careful with
3 | witnesses, absolutely. But that applies in the two scenarios I have
4 | taken. A criminal trial, a commercial trial, it is the same rule and
5 | that is the way the system works. Counsel know the rule and we abide by
6 | the rule. It is not a problem. But the need to get informed
7 | instructions we say is an important one.

8 | The fourth one is just one practical one which is actually
9 | quite useful sometimes. If someone has given evidence and another
10 | witness has heard it, you may want to ask the second witness the
11 | reaction to what the first witness has said. If we take the view that
12 | no witnesses are to be present, that is not possible except by hearsay:
13 | "Mr X said blah, blah, blah. What do you say?" That does not really
14 | work. We say all the indications are that any witness who wishes to
15 | attend should be able to attend.

16 | THE PRESIDENT: Yes, thank you. Yes, Mr Peretz.

17 | MR PERETZ: Sir, I entirely concur with Mr Hoskins. I just add the
18 | further practical point: a lot of this case turns on what happened at
19 | various key meetings at which the person present for my client was Mr
20 | Hughes. There is no one else from whom we can get instructions.

21 | THE PRESIDENT: No. I think the best way forward is this, Mr Morris.
22 | Both the Appellants seem to want to have their witnesses present in
23 | court, or at least no restriction on the presence of possible witnesses
24 | or future witnesses in court. Would you care to reflect on the
25 | discussions we have had. That would be the normal proceeding, I think,
26 | unless the Tribunal make a different order. If you wish to invite the
27 | Tribunal to consider making a different order, if you could write to us
28 | within seven days, copied to the others, with the arguments, we will
29 | listen to your position and we will take into account any response from
30 | the Appellants. We will try and make up our minds or at least give an
31 | indication before the Monday morning, so that people know what to
32 | expect. Is that a reasonable way forward?

33 | MR MORRIS: (Pause) Yes. The only thing we would add is that there
34 | should be a time limit if there is going to be a response. If we put
35 | something in writing and there is going to be a response from the

1 Appellants, there should be some time for them to respond so the matter
2 can be revolved.

3 There are a couple of observations I think I could make on the
4 submissions of the Appellants, but I will not do that at the moment. We
5 will leave it there.

6 THE PRESIDENT: Yes. If they could be kind enough to reply within three
7 days of getting your letter, that would be very convenient, I am sure.

8 The fourth point was the situation regarding Umbro's counsel.
9 I think we have already touched on that, Mr Green.

10 MR GREEN: Yes.

11 THE PRESIDENT: I think we have given you a fairly fixed slot on that
12 Friday afternoon and we hope we can stick to it.

13 MR GREEN: Yes. We are very grateful. Thank you.

14 THE PRESIDENT: I think the Tribunal's indication is that, whatever the
15 state of the witnesses or the submissions, we will do our utmost to hear
16 Umbro's penalty appeal on the Friday afternoon.

17 MR GREEN: We are very grateful for that.

18 THE PRESIDENT: Now, Livenote. Perhaps the parties would be kind to
19 update us on what your thinking on this is.

20 MR MORRIS: I think that we are agreed. I think. I think the position
21 actually is that the Office and JJB are positively in favour, but
22 Allsports do not want to be left out. They want to be in our gang on
23 this! So I think they express some reservation but have bowed to the
24 wishes of the majority.

25 The position is that we would like it. We will share the
26 expense. I think technically the position, as I understand it, is that
27 the Tribunal and building facilities here is more than capable of having
28 it set up.

29 THE PRESIDENT: Our only hesitation, and it is a very prudent hesitation
30 on the part of the Registrar, is that with the new and as yet untried
31 technology that we have in this room we do not want to risk a situation
32 in which we have a breakdown of some sort and we are left with the a
33 technological debacle of some kind. I think, at the moment at least,
34 the Registrar's plan is to see if Smith Bernal can be contacted next
35 week to discuss the technical issues, if there are any, to make

1 absolutely sure that we are not running a technical risk that we would
2 rather not run. We need to resolve that technical issue. We might need
3 to have some kind of back-up arrangement for a manual transcript.

4 MR MORRIS: Presumably that could be arranged with Smith Bernal in any
5 event.

6 THE PRESIDENT: That would be the normal transcript arrangements.

7 MR MORRIS: Precisely. I think my understanding is that so far the
8 direct contact -- I am being corrected behind me -- has been between my
9 clients and Smith Bernal and that we have been taking the lead in this.

10 THE PRESIDENT: Yes. The Tribunal has not had any---

11 MR MORRIS: We need to liaise with the Registrar. We have
12 correspondence with them, which I think is the bundle, but perhaps we
13 can liaise with the Registrar as to how we take it forward next week?
14 All the details, I do not know if you have seen it? The Registrar is
15 nodding. In the Allsports bundle at page 861 to 868 is what we have as
16 to where the correspondence is for the Registrar and the Tribunal's
17 information. I am sure that can be taken forward.

18 THE PRESIDENT: Yes. Our provisional view is we will do our best to
19 accommodate the wishes of the parties, but we do need to be absolutely
20 satisfied we are not heading for a technical catastrophe in this
21 respect. We will take it forward on that basis, if we may, at the
22 moment.

23 MR PERETZ: I ought formally to say that we have not yet received final
24 instructions to join Livenote, but I anticipate we will get those
25 instructions. That is simply formally for the record.

26 THE PRESIDENT: In the last resort it would be a matter of a costs order
27 of some kind at the end of proceedings if for some reason you were
28 holding out, as it were.

29 While we are on the subject of technology, could I just flag
30 for information one point, which is that this room is equipped with
31 cameras. The cameras are, therefore, capable of filming the entire
32 proceedings and one can have the cameras running during the proceedings.

33 At the moment I have directed the camera should be switched off, so
34 there is no camera running. The Tribunal is somewhat hesitant about
35 getting ahead of the practice of the main court system in this kind of

1 area. But, at some stage, we may have to discuss with the parties what
2 use, if any, should be made of that technology that is now available to
3 us. But, as at present advised, we are not really proposing to make any
4 use of it for the purposes of this case.

5 In practice, had the camera been running, everything that has
6 happened up to now would now be on a tape and if we had had a witness
7 evidence giving evidence, that evidence would be available on camera to
8 the parties. I am not talking about broadcasting it on television or
9 anything of that kind, but that technology is now available and at some
10 point we may have to give thought to what, if any, use is made of it.
11 At the moment I simply give you that for information and leave it there.

12 The next item on our list is the bundles. I think we would,
13 if we may, like to express our warm gratitude for all the work that has
14 gone into organising and preparing the bundles because, as far as I can
15 see at the moment, the bundles are now working fairly well. We have got
16 everything colour-coded and I hope we can find things fairly easily.
17 Thank you very much for that.

18 We then come to the question of further directions. I want to
19 say a word in a moment about where we are in the confidentiality issue.

20 But let us see whether we can get various other issues or questions out
21 of the way.

22 As far as I can see, there are not any other major issues
23 except there may possibly be some residual point about the KPMG report
24 or not, I just do not know. Are there any further directions or orders
25 anyone is seeking?

26 MR HOSKINS: As far as I am aware from discussions this morning, it is
27 pretty well resolved. There may be some loose ends, but I think we can
28 deal with them between ourselves.

29 MR MORRIS: Yes, that is the position on KPMG. We are almost there, I
30 think, and it can be dealt with offline for the rest of the matters.

31 THE PRESIDENT: Are there any other directions or indications any party
32 is then seeking for this case?

33 MR MORRIS: I have one or two other matters. The first is the question
34 of further witness statements from Allsports, for which there was a best
35 endeavours deadline of today, or yesterday. No such statements have

1 appeared. We would ask that if they are going to appear, they should
2 appear pretty quickly. I can expand on that in the light of anything Mr
3 Peretz says in a moment.

4 THE PRESIDENT: Yes.

5 MR MORRIS: Obviously, the confidentiality ruling is something you are
6 going to deal with, but I would in that regard stress the fact that that
7 does have an impact on bundle preparation.

8 Just for your information, my instructions are that, following
9 that ruling, it is possible that that will require another two day's
10 work for two people from the Office of Fair Trading to amend the
11 decision and to do a final version of the decision itself. So there is
12 work to be done consequential upon the ruling. So, from the Office's
13 point of view, we would obviously ask that the ruling should be sooner
14 rather than later. But the ruling itself is not a matter which concerns
15 us.

16 The there is one, I think, further matter that we have raised
17 if with JJB which concerns Mr Lane-Smith and his notes or the fact that
18 he did not have any notes. We have written a letter, I think on 9th
19 February, to DLA on that issue. We understand from discussions this
20 morning that they are going to go back to Mr Lane-Smith and they are
21 going to check that issue.

22 I think, from my point of view, those are the only other...
23 There was an issue in relation to Manchester United and the letter which
24 was to go with the clip of correspondence. I understand that has also
25 been dealt with by Mr Turner and Mr Harris.

26 THE PRESIDENT: I think Mr Harris has served some further clarification.

27 MR MORRIS: He has served some further, but I think there may be some
28 further further yet to come.

29 THE PRESIDENT: Further furthers, are there?

30 MR HARRIS: Yes, that is broadly right and will take the form of
31 inter-solicitor correspondence to meet any confusion or need for
32 clarification.

33 THE PRESIDENT: Thank you, Mr Harris.

34 MR MORRIS: Actually I could raise one point about Manchester United. I
35 am not sure this has been dealt with but it occurred to us last night.

1 That is that, as I understand it, they have made two amendments to their
2 Notice of Appeal. As I understand it, the amendments are on single
3 sheets of paper, sort of added in the schedules. I do not know, I may
4 be wrong, whether they have produced a composite amended Notice of
5 Appeal which would have both those amendments in? If they have not, we
6 might suggest for the pleadings bundle it would be easier if that those
7 additional paragraphs were actually put together so that we have a
8 single amended Notice of Appeal. It is a minor point but I raise it.

9 MR HARRIS: Sir, that is our intention. It may already have been done
10 and it is simply awaiting filing. But if it has not, it will be done in
11 that way.

12 THE PRESIDENT: Thank you very much, Mr Harris.

13 MR MORRIS: I am grateful. Those are all my points, sir.

14 THE PRESIDENT: Thank you. Mr Hoskins, have you got other matters?

15 MR HOSKINS: Sir, just to tie up one loose end, if I may. There was
16 certain correspondence that was copied to the Tribunal concerning the
17 statement of Alison Eves, suggesting it should be added to the bundle.
18 I know the Office of Fair Trading were objecting. I want to report that
19 that has been resolved and it is to be added to the bundle.

20 THE PRESIDENT: That seems to us a very sensible course since it is
21 referred to in the decision and it is a document we have already got.

22 MR HOSKINS: I will not say anything.

23 THE PRESIDENT: Yes, Mr Peretz. The question is about your witnesses, I
24 think.

25 MR PERETZ: Yes, I want to say something about that but it might be
26 helpful if first -- you indicated, sir, you were going to give us some
27 update on the position with regards confidentiality.

28 THE PRESIDENT: Yes.

29 MR PERETZ: It might be helpful to have that first because one of the
30 things that we were, certainly two weeks ago, hoping to deal with in
31 witness statement was also the material covered by the outstanding
32 confidentiality dispute, about which, for obvious reasons, I can say no
33 more.

34 THE PRESIDENT: On confidentiality what we would like to do when we have
35 got to the end of this case management conference is, as it were, go

1 | into conclave with legal advisers and discuss with you where we are on
2 | the question of confidentiality and raise with you a couple of residual
3 | points that we have in mind. So the easiest way to update you on that,
4 | I think, is if we go into camera in a moment.

5 | Could I just ask in that respect whether we have a
6 | representative of Sportsworld International present?

7 | MS JAVAID: I am present, sir, but I do not have any authority to make
8 | submissions.

9 | THE PRESIDENT: No, no, but I think it is useful if you are present so
10 | that you can stay when we discuss the confidentiality and keep note of
11 | what is said and then report back. Thank you very much indeed. We will
12 | do that in a moment.

13 | Apart from the question of confidentiality, Mr Peretz, what is
14 | the situation regarding your witness statements?

15 | MR PERETZ: Yes, I can update the Tribunal. We wrote a letter on 6th
16 | February explaining the position as it stood then. There are,
17 | essentially, three people involved from whom we would wish to seek
18 | witness statements. Two of them, Mrs Charnock and Mr Guest, are no
19 | longer employees of Allsports. In the case of Mrs Charnock that is
20 | perhaps news to the Tribunal because she left Allsports in January.

21 | THE PRESIDENT: So she has very recently left?

22 | MR PERETZ: Very recently left, yes. There have been some difficulties
23 | in connection with each of those. In the case of Mrs Charnock, she no
24 | longer works for Allsports. She does not have a fax or e-mail. We
25 | spoke to her the day after the judgment on the tri-cut (?) application
26 | warning her that we would need to talk to her and posting her the
27 | witness statement of Mr May. She finally managed to arrange to see us
28 | yesterday. By "us" actually I mean me and Mr Trainer (?) behind me. We
29 | have now interviewed her. The next stage will be obviously for her to
30 | review and to comment on her draft witness statement.

31 | As far as Mr Guest is concerned, we have had even more
32 | difficulties. We attempted first to contact him by e-mail and phone,
33 | the only details that we had, again after the 29th January judgment. We
34 | received no response from him despite repeated attempts to contact him
35 | by phone and e-mail. The first we heard from him was a phone call this

1 Monday, Monday, the 9th, midday. That was an e-mail contact. We first
2 spoke to him on the phone on Tuesday morning, which the news was he was
3 about to go to California first thing on the Wednesday morning. Mr
4 Trainer and I both then dropped everything to go up and see him. In my
5 case that involved spending six hours on a Virgin train which
6 entertained a diversion to Liverpool! I cannot resist reading that into
7 the record. We finally managed to get to see him quite late on Tuesday
8 by that stage and, again, we have interviewed him. I suspect the future
9 difficulty with him may be that contact with California is notoriously
10 difficult because of the eight-hour time difference and we simply have
11 no idea how busy he is going to be on his business trip. All we can do
12 is our best in that regard.

13 There is a suggestion from the Office of Fair Trading that we
14 ought to put witness statements in in dribs and drabs. We are not
15 attracted by that course because, frankly, it is helpful to everybody if
16 the witness statements can be complete rather than have to put
17 supplementary witness statements in, in this case supplementary
18 supplementary witness statements in, commenting on points that have been
19 made by other witnesses or reacting to them. It appears to be sensible
20 to do it as package, as it were, rather than separately.

21 So I think our position is that any witness statements that we
22 serve we will aim to serve such witness statements as we decide to serve
23 the middle of next week. We think that is a realistic deadline and
24 allows a bit of flexibility to deal, for example, with difficulties in
25 contacting witnesses. One has these difficulties with witnesses who are
26 not one's employees. They have no duty to cooperate with us. One is
27 reliant on their goodwill. One does not want to be too heavy-handed
28 with them. They have other priorities than dealing with this case which
29 to them are perhaps more pressing and it can be difficult. It is also
30 important in any case for the witness statements to be complete and
31 accurate and that, for example, ambiguities are resolved. It is
32 particularly difficult in this case, if I may say so, when one is
33 dealing with events that happened many years ago, four years ago now in
34 some cases. One is facing to some extent new material from the Office
35 of Fair Trading, new allegations, which the witnesses have to try and

1 remember and deal with. The witnesses are trying to recollect
2 conversations that they had some years ago and where differences of what
3 may seem to them to be relatively fine distinctions may actually have a
4 considerable degree of legal importance, so that precision is absolutely
5 essential. That means one must be careful about the wording and
6 precisely what is being said. It is very important that witnesses do
7 not inadvertently say something which is not quite what they meant to
8 say.

9 Can I draw the Tribunal's attention just generally to the
10 fact that we have not missed a single deadline this case.

11 THE PRESIDENT: No one has criticised Allsports in any way, Mr Peretz,
12 certainly not the Tribunal.

13 MR PERETZ: You can be confident we are doing our best.

14 THE PRESIDENT: Yes, I am sure. If we said Friday, February 20th for
15 your witness statements.

16 MR PERETZ: We are pretty confident that would be----

17 THE PRESIDENT: You said the middle of the week, but that gives you just
18 a day or two more to dot the Is and cross the Ts.

19 MR PERETZ: I think what I can say is with that week we would hope to --
20 we will do it as quickly as we can.

21 THE PRESIDENT: Yes, well, if you can do it sooner, so much the better.

22 MR PERETZ: If we can do it earlier we will. We are very grateful for
23 that. It allows for a certain degree of slippage if, for example, we
24 have real difficulty in contacting one of the witnesses.

25 THE PRESIDENT: You can come back to us if you get into difficulties.

26 MR PERETZ: I am very grateful for that.

27 THE PRESIDENT: There was a third witness you were going to tell us
28 about.

29 MR PERETZ: That was just Mr Hughes. Obviously, he is, effectively,
30 our client and he is less of a problem.

31 THE PRESIDENT: Just, excuse me one moment. Mr Peretz, just to be
32 clear, in relation to Mrs Charnock and Mr Guest you do not at the moment
33 envisage any difficulty about their physical presence at the hearing on
34 the dates when they are expected to be here? They are not reluctant to
35 come?

1 MR PERETZ: There is no question that they are reluctant to come. No,
2 it is simply that they are trying to lead their lives.

3 THE PRESIDENT: Yes, of course. No, I understand. Yes, Mr Morris.

4 MR MORRIS: Sir, we do think Friday, the 20th is really too long.
5 First, Allsports were put on notice about gathering this evidence as
6 long ago as the December case management conference. This has been a
7 point that has been flagged for a long time and not to take any steps
8 until 29th January is, in our respect, somewhat remiss on their part.

9 Secondly, and more practically, we are due to serve our
10 skeleton argument on Monday, 23rd February. Really to get it no doubt
11 Friday, late on Friday, is not soon enough for us to be able to deal
12 with those in our opening skeleton. We do suggest that possibly
13 Wednesday next week, which was the date Mr Peretz did offer the
14 Tribunal, subject -- he said, "Obviously we will do our best". If such
15 an order was made and given Allsports fine track record of compliance
16 so far, we feel that if the matter was put to Wednesday it would act as
17 an incentive for them to do so. We would say that there is no real
18 reason why Mr Hughes's statement cannot be prepared and served in any
19 event. If one takes on board the dribs and drabs point, in our
20 submission, there is no real reason, if they were dealing with distinct
21 matters, for all of them to be cross-referred for consistency. Plainly,
22 the evidence of Mr Hughes can be carefully obtained and carefully
23 drafted, which I am sure is an important matter, but there is no real
24 reason why Mr Hughes's evidence should not be available by next
25 Wednesday at the latest, or indeed the others'.

26 We would urge the Tribunal to make a final date for Wednesday.
27 This is a point that has been around for quite a long time.

28 THE PRESIDENT: I think the Tribunal can see the practical difficulties
29 that have arisen in relation to Mr Guest and to some extent Mrs
30 Charnock. What is the situation regarding Mr Hughes, Mr Peretz? Would
31 you be in a position to serve Mr Hughes by the 18th?

32 MR PERETZ: I think the point is simply this, that we have not yet taken
33 a view as to what extent he may need to comment on other people, but the
34 chances are quite likely -- well, comment on what the other witness that
35 we are producing may say. It depends to some extent on what they say.

1 | If one of the other witnesses whose statements we wish to put forward
2 | says something slightly surprising, it would be right for Mr Hughes to
3 | comment on that.

4 | I think what I can say is if it is appropriate to serve Mr
5 | Hughes in isolation, and by "appropriate" I mean we can be pretty
6 | confident he is not going to need to say anything else, then we will do
7 | it early.

8 | THE PRESIDENT: I would have thought by the 18th you must know what Mr
9 | Hughes is going to say and what the outline of Mrs Charnock's and Mr
10 | Guest's evidence is.

11 | MR PERETZ: It is a question of putting it together, which exercise,
12 | because we have only just spoken to the other two witnesses, is frankly
13 | not yet done in seeing what he needs to deal with. The only objection
14 | to having something ready by Wednesday in the case of Mr Hughes is if he
15 | needs to deal with something which is in a sense hanging in the air from
16 | one of the other witnesses whose evidence we also wish to serve. But it
17 | is subject only to that reservation.

18 | I may also comment I am not sure what help it is going to be
19 | to the Office of Fair Trading having just one statement if there are
20 | others forthcoming. There is obviously a difficulty with their skeleton
21 | argument and we recognise that. But we have no wish to tie them to the
22 | Monday deadline insofar as dealing with points that we wish to make late
23 | next week is concerned. If the Office of Fair Trading reasonably feels
24 | the need to have a little bit more time to respond to witness evidence
25 | that we manage to produce only late next week, then we have no
26 | absolutely no objection to them having that extra time. The penalty for
27 | that falls squarely on us because it gives us much less time to deal
28 | with what they say by return skeleton argument. That is a burden we are
29 | entirely prepared to bear.

30 | THE PRESIDENT: Yes. (**Tribunal confer**)

31 | I think for these witness statements by Allsports we will say
32 | best endeavours by the 18th, but a final deadline of the 20th. I know,
33 | Mr Morris, you may not be able to deal with those final statements in
34 | your skeleton argument and you have leave to serve supplementary
35 | observations on them if the need arises.

1 So, Mr Peretz, I think from your point of view is there any
2 other matter that arises?

3 MR PERETZ: Yes. There is one other matter which is the recurring
4 question of Mr Ronnie's diary. If I can update the Tribunal on that.
5 We have now been in contact with Mr Ronnie's solicitors, Messrs
6 Stephenson Harwood. The current position is that they wrote a letter to
7 us at the beginning of this week stating -- I am looking to see where I
8 put the letter. It is a letter dated 9th February in which they say Mr
9 Ronnie no longer has his 2000 diary and does not believe that he took it
10 with him when he left Umbro in February 2003. It promises he will make
11 inquiries of his former secretary, who has also left Umbro, as to
12 whether she has any knowledge of its whereabouts. However, this former
13 secretary is currently on leave and our client has been unable to
14 contact her since they received our letter.

15 "We understand that she returns at the end of this week, at
16 which time we will ensure that the necessary enquires are made and we
17 will return to you."

18 The only point I wish to make is that we will await receipt of
19 the letter with interest and if there is any application we wish make to
20 the Tribunal we will do. The point at the moment is awaiting
21 development.

22 THE PRESIDENT: Yes. Very well, are there any other applications or
23 comments anybody wants to make? **(No reply)**

24 I think, in that event, what we will do now, if we may, is
25 rise for five minutes or so and then we would like to go into camera, if
26 we may, to ventilate one or two matters that arise on the question of
27 confidentiality and the outstanding issues. If you from Sportsworld
28 International would stay for that I would be very grateful. Thank you
29 very much indeed. We will rise for a few minutes.

30 **(Short Adjournment)**

31 **(There followed a short discussion in camera.)**