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

Case No.: 1366/4/12/20

7
8 Salisbury Square House
9 8 Salisbury Square
10 London EC4Y 8AP
11 (Remote Hearing)

Wednesday 9 September 2020

14 Before:

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16 **HODGE MALEK QC**
17 (Chairman)
18 **TIM FRAZER**
19 **TIMOTHY SAWYER CBE**
20 (Sitting as a Tribunal in England and Wales)

21
22
23 BETWEEN:

24
25 **(1) FACEBOOK, INC.**
26 **(2) FACEBOOK UK LIMITED**

Applicants

27
28
29 - and -

30
31 **COMPETITION AND MARKETS AUTHORITY**

Respondent

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33
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35
36 **A P P E A R A N C E S**

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38 Robert O'Donoghue QC, Gerard Rothschild, Tom Pascoe (On behalf of Facebook)
39 Marie Demetriou QC and Brendan McGurk (On behalf of the CMA)

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(11.30 am)

PROCEEDINGS

THE CHAIRMAN: Good morning, I am Hodge Malek. I am chairing this CMC. I am here together with Mr Frazer and Mr Sawyer both remotely.

I appreciate the parties have prepared a draft order and had asked whether or not the CMC should be dispensed with or vacated. I should point out that it is very rare in a merger case that I will vacate a CMC.

Mergers are very unlike a normal damages claim. A merger case has to be heard very quickly. There is a lot of room for misunderstandings. You need to thrash out what the issues are at the very beginning of the case. With a damages action you may have a couple of years between the application and the actual hearing, so things can be ironed out in that process. So today is the opportunity to identify any issues between the parties and get this case in order.

Thank you very much for the submissions yesterday, answering the specific points that I had raised. It is clear from the list of issues filed by both parties that there are more issues than either of you have contemplated, because when you put the two lists of issues together, there is more.

For example, the CMA issue A, on whether it is correct that there has been a *de facto* refusal to grant a carve-out derogation request, is not on the Facebook list. But it is useful, and I am very grateful for what people have filed.

The first question today is the actual hearing date. As you know, we will be hearing this as soon as possible. If the hearing is going to be fully remote, then the only window is 19 and 20 October. If it is going to be hybrid, the only window is 14th to 16th.

1 Mr O'Donoghue, can you just address me on whether you would like the hearing to be hybrid
2 or fully remote?

3 MR O'DONOGHUE: Sir, I have consulted with the Applicants. Our strong preference is to
4 have the date of the 19th, and therefore it would be fully remote.

5 THE CHAIRMAN: Thank you very much.

6 Ms Demetriou?

7 MS DEMETRIOU: Yes, we are happy with that. We are happy with a remote hearing on
8 those dates.

9 THE CHAIRMAN: We will fix it for 19 and 20 October.

10 All the representatives of the parties, including people in the US, will be able to join the
11 hearing remotely. They can contact the Registry and they will give them the relevant
12 login details, so that won't be a problem.

13 The first day, the hearing is likely to start at 2.00 pm. That will give the opportunity for me
14 to meet the Panel members and prepare the hearing that morning. The first day will
15 go on until 4.30 pm or 5.00 pm. So somewhere between 4.30 and 5.00 on the first
16 day.

17 As regards the second day, we can decide at the end of the first day whether we are going to
18 start at 10.30 or earlier in the day. So that is the hearing date.

19 The CMA were requested to provide a table of the outstanding information. That has not
20 come through yet.

21 Ms Demetriou, can you just update me as to where we are on that.

22 MS DEMETRIOU: Sir, first of all, can I apologise that it has not come through yet. The
23 difficulty is that the project director -- or one of the difficulties -- is on paternity leave,
24 so it has just taken a little bit longer to finalise than would have been the case
25 otherwise. But we will endeavour to get it to the Tribunal, and of course to Facebook,

1 to the parties, by the end of today.

2 THE CHAIRMAN: That is fine.

3 Let me explain what I would like to see at least a week before the hearing. Everyone knows

4 I like schedules, so the first column will be the CMA's column as to what the
5 outstanding request is, identifying where that request is being made.

6 The second column will be the response of Facebook stating whether that information has
7 been provided in whole or in part. If it has been provided, give the cross-reference to
8 where it has been provided. If it hasn't been provided, state why. It may well be that
9 for many the answers will be the same global explanation, i.e. it is impracticable or
10 whatever, but I want that column in.

11 Then the third column will be the CMA's response to the second column.

12 So when we have the hearing, I will have that table before me, because this case may in part
13 turn on each of the individual pieces of information being sought by the CMA, how
14 reasonable those requests are, whether those requests have been answered in whole or
15 in part. So that's what I want.

16 Let's try to agree a timetable for that. Given that I want it in a schedule form, I would have
17 thought that if we can have the first column of the schedule filled in by this Friday --
18 let me get the diary. That will be the 11th.

19 The first column is 4.00 pm on the 11th.

20 The second column will be 4.00 pm on the 18th.

21 The third column will be 4.00 pm on the 25th.

22 MS DEMETRIOU: Sir, may I just clarify one point?

23 THE CHAIRMAN: Yes.

24 MS DEMETRIOU: Because it sounds to me that this is going to overtake what it was that we
25 were proposing to do.

1 THE CHAIRMAN: Yes. That's why I am giving you until 4.00 pm on Friday.

2 MS DEMETRIOU: Okay. So in the first column, it is unnecessary for us, in the first
3 column, to attempt to reach a landing as to where we are now, because that is going to
4 be the upshot of the whole process? That is going to be contrary --

5 THE CHAIRMAN: The first column will be listing the pieces of information that you say
6 that you need in order to make the decision. In respect of each item in that list, you
7 will give the Tribunal a cross-reference to where that has been requested, which item
8 of correspondence or what document.

9 MS DEMETRIOU: Yes.

10 THE CHAIRMAN: The second column, Mr O'Donoghue's team will say whether or not they
11 have provided that information in whole or in part. If they say they have provided it,
12 they will give us the reference to where that is. If they haven't provided it, they will
13 explain why on their case, they don't have to, it is unnecessary or impracticable. They
14 will give that.

15 Then the third column will be your response to that.

16 So when we have the hearing I want that table in front of me.

17 MS DEMETRIOU: All right.

18 THE CHAIRMAN: Okay?

19 Mr O'Donoghue, is it clear to you what you need to do?

20 MR O'DONOGHUE: Sir, it was always clear to us what the CMA should do.

21 It is unsatisfactory that the CMA, having indicated that information was outstanding for more
22 than two months, even today is unable to say what that information is. They have
23 never told us in precise terms.

24 But provided they hit Friday's deadline, we will respond in the manner, Sir, that you
25 indicated.

1 THE CHAIRMAN: That's brilliant.

2 The next thing, Mr O'Donoghue, you have filed an annotated IEO. Let me find my copy.

3 MR O'DONOGHUE: Sir, yes, on 2 September.

4 THE CHAIRMAN: Here it is. Thank you very much for that.

5 Can you, in due course, update it for me with cross-references to all the pleadings and

6 submissions, and provide that at the same time as the agreed list of issues? So when

7 we come to the timetable, factor that in: an updated IEO will be provided with the

8 cross-references to the pleadings and the submissions and skeleton arguments.

9 MR O'DONOGHUE: Sir, yes, we will do that.

10 THE CHAIRMAN: Thanks very much.

11 The first thing to look at in the draft order is the CMA undertaking. I need to have clarity

12 from the CMA as to exactly where we are on that. I fully understand what they are

13 saying in the undertaking. It then says:

14 "For the avoidance of doubt in the event that the application is dismissed the Respondent

15 reserves the right to take any decision to impose a penalty for breaches of the IEO

16 both before and during proceedings."

17 CMA derogations are generally not retrospective. If a party does not comply with an IEO, it

18 can be sanctioned for breach even if the derogation is granted subsequently to the

19 conduct that is being complained off. The best example of that is the Nicholls/DCC

20 case, which was I think July of last year, where they were fined for not complying

21 with the IEO, even though in respect of matters where a derogation was subsequently

22 granted.

23 Facebook's compliance statements, they do follow the standard form but they are subject to

24 accompanying letters from Latham & Watkins.

25 It seems to me -- correct me if I am wrong, Ms Demetriou -- that your position is that these

1 compliance statement do not comply with the IEO; is that right?

2 MS DEMETRIOU: That's correct. Yes.

3 THE CHAIRMAN: Yes.

4 When we give our decision this case, if we agree with Facebook that the CMA acted
5 unlawfully -- I don't mean in a general sense but in a Wednesbury sense -- then there
6 is the question of a remedy. Usually, in judicial review matters, that goes back to the
7 decision-maker to reconsider the initial decision in the light of the ruling of
8 the Tribunal.

9 If that happens, it is quite possible -- I am not saying it is likely -- but it is quite possible that
10 the CMA could still come up with the same decision, i.e. a decision saying refuse the
11 derogation request; or they will only grant part of the carve-out derogation request
12 and not all of it.

13 The undertaking you are offering does not really cater for all these different scenarios,
14 because there may be one scenario where even if we do grant -- let's say even if we
15 don't dismiss the application, the CMA may want to consider whether or not it is
16 appropriate to go for some sort of penalty.

17 I am not saying you should, I am not saying you shouldn't. But I think the current
18 undertaking with the last proviso at the end, I am not sure if that last proviso is
19 necessarily the right thing to do.

20 I think, Ms Demetriou, if you can consider that and perhaps come back to me at the end of
21 CMC as to what undertaking you are actually offering. Because, hidden within all of
22 this, is we are in an unsatisfactory situation, because Facebook are saying, "Look,
23 what you are asking us to do in the IEO is impracticable. You know, we just can't do
24 it and we want this derogation request".

25 You are saying, CMA, "Well, we need information in order to resolve that, so until that

1 information arrives, we are not in a position to give you that".

2 Meanwhile, Facebook is under an obligation to comply with the IEO and provide compliance
3 statements.

4 There is a lot more at stake in this than necessarily meets the eye, and everyone needs to be
5 particularly clear as to what their position is as to where this is going, what the
6 consequences of this are, and what the potential consequences of an order might be.
7 I don't think that the undertaking at the moment -- the last proviso -- is necessarily
8 covering all the different possibilities of a result in this case.

9 But come back to me at the end of this, at the end of the hearing.

10 MS DEMETRIOU: Sir, I will, thank you.

11 THE CHAIRMAN: Yes.

12 I want to be very direct with both parties and put the question to both of you. I will hear the
13 CMA first on this. The two questions are: is it the case that the CMA is not actively
14 considering the carve-out derogation request in the absence of further information by
15 Facebook? That's a question for the CMA.

16 The question for Facebook is: does Facebook intend to provide further information to the
17 CMA at this stage, or is it simply awaiting the result of these proceedings?

18 If the CMA can answer first, then I will hear from Mr O'Donoghue.

19 MS DEMETRIOU: Sir, the position is that the CMA is unable to progress consideration of
20 the carve-out derogation request until it has received further information. If that
21 information is provided, then absolutely, it will go on to consider it, despite this
22 appeal pending. The CMA is certainly not sitting on its hands, but at present it
23 doesn't have the information that it requires to progress the request.

24 THE CHAIRMAN: The problem we have, though, is that the last Latham & Watkins letter
25 I saw -- which I think was the letter before action -- was basically saying, "You do

1 have enough information, we are not going to provide any further information, and we
2 will go to the Tribunal".

3 From my perspective -- I am a practical guy -- I just want things to be resolved satisfactorily
4 in a way that is fair to both sides. That's not necessarily a satisfactory situation and
5 that is in part behind the reason why I am asking for the outstanding information to be
6 really clarified, and where the true issues are between them.

7 Mr O'Donoghue, could you answer my question for me, please?

8 MR O'DONOGHUE: Sir, we are in an unsatisfactory position that as of today --

9 THE CHAIRMAN: Yes.

10 MR O'DONOGHUE: -- we do not know what information the CMA says it needs, because it
11 refuses to tell us and we won't find that out until Friday.

12 We will, of course, look at this in good faith on Friday and react accordingly. But, Sir, you
13 will have apprehended both from the letter and from the application itself that the way
14 in which the grounds are put is primarily on the basis that the information -- insofar as
15 one can ascertain it -- is simply not relevant to the legal issues we have raised.

16 Just to take an example, Sir, one of the things I suspect the CMA will say is, "Well, we need
17 lots of information on overlaps between the businesses". Our response to that is
18 two-fold.

19 First of all, the statutory test only relates to the risk of pre-emptive action, and in
20 circumstances where the target business is being held separate, including under a hold
21 separate manager recently imposed, then the entirety of the target side is fully
22 preserved for remedial purposes.

23 In that context, the information -- these details -- are neither here nor there, because if there
24 are overlaps and a remedy is needed, the nuclear option of the divestiture of the entire
25 target business remains on the table.

1 That is the primary way in which we approach this, but we are in the very unsatisfactory
2 position that they won't tell us what they want. They have been banging on about
3 information for more than two months, in particular in the 2 July letter and 7 August
4 letters they don't actually tell us, certainly with precision, what they need. I am in
5 a difficult position of effectively arguing against nothing today.

6 We will look at that on Friday with an open mind and in good faith, but I don't want the CMA
7 to be under any misapprehension as to how we put our case.

8 THE CHAIRMAN: No, that is very helpful.

9 You are both going to say, "we have made it clear what we want and what our positions are",
10 and the CMA will say, "Well, we have already told you what we want". I just want to
11 have it in a table form that I can understand it and we can see clearly on one piece of
12 paper where issues lie on this information point, because I think the information point
13 is the stumbling block, if that's what you want to call it, to the resolution of the
14 underlying derogation request.

15 It seems to me that we are now in a situation whereby you are saying you are not providing
16 anything else at this stage, because you say what you have just said, and the CMA are
17 saying, "We are not progressing with the derogation request in the absence of further
18 information".

19 Let's get the schedule on Friday. We will go from there.

20 Let's go back to the order. So we are still on the first page.

21 Moving over to the next page, I would like not just an electronic bundle for the hearing by
22 4.00 pm on 16 October, but six copies of an agreed bundle. We want both electronic
23 and hard copies, six copies, of the agreed bundle.

24 As regards the bundle of authorities, I would like three copies of an agreed bundle of
25 authorities, plus an agreed electronic bundle of authorities.

1 As regards the other timetable, let's look at the rest. We get the Defence and supporting
2 evidence by 4.00 pm on 24 September. Applicants' skeleton argument evidence by
3 4.00 pm on the 8th. Respondent's skeleton argument by 15th.

4 We have the agreed bundle I have just dealt with, bundle of authorities I have just dealt with.

5 I would like the parties to file and serve an updated version of their skeleton arguments to
6 contain cross-references to the hearing and authorities bundle by -- can we have it by,
7 what, 2.00 pm on the 16th?

8 Ideally I would like it even earlier. If I can have it at 12.00 pm on 16 October? That is the
9 updated version of the skeleton arguments, with all the cross-referencing to the
10 hearing and the authorities bundle. Then I can mark up that version.

11 Then, an agreed electronic chronology by 4.00 pm on 16 October 2020.

12 Can we also have a proposed hearing timetable by the same time. I know this is no big deal
13 and this is fairly straightforward, but I would like to know how you both intend to
14 split your time between you. Normally I like the parties to have more or less the same
15 amount of time, but with maybe half an hour extra for the Applicants to reflect the
16 fact that the Applicants are opening.

17 As regards the electronic chronology, I have seen the various chronologies in the bundle. Not
18 necessarily directed to the same thing. It will be quite helpful to have a detailed
19 chronology as to how this whole thing has developed, and can it be hyperlinked? If
20 I can have a chronology that's hyperlinked, so all I have to do is just to click on the
21 entry, and then I have the document up on my screen.

22 That's been done in other cases, so I think it shouldn't be too difficult.

23 As regards the agreed list of issues, that's 4.00 pm on 16 October. I would like that to include
24 cross-referencing to the corresponding paragraphs of the Applicants' notice of
25 application, the Respondent's Defence and the skeleton arguments.

1 Are there any other directions that the parties would like?

2 MR O'DONOGHUE: Sir, no, not from the Applicants.

3 MS DEMETRIOU: No, not from us.

4 THE CHAIRMAN: Okay.

5 Ms Demetriou, can you come back to the undertaking point now, if that is possible?

6 MS DEMETRIOU: Sir, I have been trying to take instructions via WhatsApp, because I am
7 not in the same room as my clients.

8 THE CHAIRMAN: Okay.

9 MS DEMETRIOU: I think we are going to need a little bit more time, just because of the
10 constraints of everybody not being in the same room and able to communicate whilst
11 the hearing is going on.

12 THE CHAIRMAN: Yes.

13 MS DEMETRIOU: The point you have raised, as I understand it, is that what we have
14 envisaged in the undertaking is rather black and white in the sense that we accept
15 that -- we want to reserve the right, if we succeed on the appeal, to impose fines for
16 this period.

17 But the question arises what happens if we lose but we don't lose in a way which requires the
18 CMA to grant precisely the derogation which has been asked for by Facebook. So it
19 is remitted and the matter goes back before the CMA, which then may for the sake of
20 argument grant a more limited derogation. What is the status of the undertaking in
21 those circumstances?

22 I think I understood the point correctly. If I have not, could you tell me?

23 THE CHAIRMAN: Yes.

24 There are different things you need to consider.

25 One is the point you just raised, which is what happens if in fact the decision is in favour of

1 Facebook, we don't grant the derogation ourselves, but we remit it back to you to
2 consider what derogation if any you should be granting in the light of our judgment.
3 And you either don't grant the derogation request or you only grant it in part, and that
4 you may want to say that as regards the derogation that hasn't been granted, you may
5 want to go ahead and fine.

6 The other aspect of it is whether you are going to take -- or even leave open -- the possibility
7 that even if the derogation request is granted some time further down the line, you are
8 going to reserve the right to impose penalties against Facebook for not submitting
9 compliant statements, because of the Latham & Watkins letters.

10 I am not suggesting that that's something you should do, but I am suggesting just looking at
11 all the logical possibilities, that's a logical possibility. And that it may well be that
12 when it comes to after the hearing, we may have a further hearing to debate where we
13 all go from here.

14 MS DEMETRIOU: Sir, I understand. I am grateful for that. I see those points.

15 THE CHAIRMAN: Yes.

16 MS DEMETRIOU: May I just ask for a little bit of time after this hearing to consult with the
17 CMA and take instructions and submit, if so advised, a revised undertaking in light of
18 those observations?

19 THE CHAIRMAN: All I am saying is as long as it is not an absurd undertaking, it is a matter
20 for the CMA what undertaking it is prepared to give and in what terms and what
21 caveats.

22 MS DEMETRIOU: Yes.

23 THE CHAIRMAN: The undertaking is clear, save that I think the last sentence of the
24 undertaking is probably not sufficiently thought through and needs to be resolved.

25 This is what happens in merger cases, you know. Things are moving so quickly and

1 everyone is working so hard at it that there are things that, you know, people aren't
2 really necessarily focusing on what the implications of all this are.

3 I appreciate we have entered into a situation which is an unusual situation, whereby there is
4 a derogation request, compliance statements have to be filed, and there is an argument
5 that the compliance statements don't comply with the order for the very reason that
6 the derogation request is being made. Part of it is all fairly circular, but this
7 application is an important application for Facebook, and it is important that whatever
8 the result is (a) we get it right, and (b) that everyone understands where we go from
9 here, or what the possible scenarios are, depending on what our ruling is.

10 MS DEMETRIOU: I understand, yes.

11 THE CHAIRMAN: We will, from this end, draft the order with all the points that I have
12 raised today, and the changes I have made. That can be circulated to the parties by
13 the end of today.

14 At that point, if we can have your position on the undertaking clarified by 2.00 pm tomorrow,
15 so we will be in a position to issue the order hopefully by Friday at the latest. But
16 I think everyone knows what they need to do, so please go ahead with all the tasks
17 that you have been given on the expectation the order is going to be as I have
18 indicated today.

19 MS DEMETRIOU: Sir, thank you.

20 Can I just clarify one point, which is you didn't refer specifically to the confidentiality ring.

21 Can we take it that that will also be ordered?

22 THE CHAIRMAN: Exactly. That's going to be ordered. I have the separate order, I think
23 we just put it on our template and format. That will be issued today.

24 MS DEMETRIOU: Thank you.

25 THE CHAIRMAN: Mr O'Donoghue, are there any further things that --

1 MR O'DONOGHUE: Sir, three short points.

2 First of all, Sir, you will have seen from the original undertaking that was offered on

3 a without prejudice basis to Facebook --

4 THE CHAIRMAN: Yes.

5 MR O'DONOGHUE: -- and as a result we would welcome, with respect, the opportunity to,

6 if so advised, put in something further in writing on the undertaking as revised by the

7 CMA.

8 THE CHAIRMAN: The ideal is that the undertaking is going to be agreed between you two.

9 If there is a problem on it, you will come back to me and I will deal with it by email.

10 We will get this resolved certainly by the end of this week.

11 MR O'DONOGHUE: Sir, I am grateful.

12 THE CHAIRMAN: The ideal is that you two should resolve it if possible. I am hoping that

13 by, you know, 12 o'clock tomorrow, you will have an undertaking that both sides are

14 happy with. But if there is an issue, then I'll deal with the issue.

15 MR O'DONOGHUE: We will endeavour to do that.

16 THE CHAIRMAN: Yes.

17 MS DEMETRIOU: Sir --

18 MR O'DONOGHUE: Sorry, Marie.

19 MS DEMETRIOU: So sorry, I just wanted to say on that point, of course we hope to agree it.

20 In circumstances where it is not agreed, Sir, we have heard what you said, but it may

21 well be that final resolution of what should happen post-judgment might have to await

22 that stage, once we know what the judgment is.

23 THE CHAIRMAN: I agree. Yes, I agree with that. I think that's what it may do. The

24 undertaking may just be for the avoidance of doubt the Respondent reserves its right

25 to take any decision to impose a penalty for the breaches of the IEO both before and

1 during the proceedings, without referring to if it is dismissed or not. You just say you
2 are reserving that right.

3 Obviously the position of Facebook will be at the end of the day that you can't, for the
4 reasons they have already explained, but neither party is prejudiced by you simply
5 saying that for the avoidance of doubt you reserve the right to take any decision to
6 impose a penalty for the breaches of the IEO both before and during the proceedings,
7 because I just think that there are just too many permutations as to how this case
8 might go, as regards resolving the application for judicial review.

9 MS DEMETRIOU: Sir, understood.

10 THE CHAIRMAN: I am not telling the CMA what undertaking to give, but I think that it is
11 sensible to reserve your right to take any decision to impose a penalty irrespective of
12 what the decision is at this stage, given you don't know what the decision is going to
13 be. It doesn't prejudice Facebook, because Facebook's position is quite clear that if
14 we decide the derogation request should or might need to be granted, or it goes back
15 to you and that you in fact grant it. Their position is going to be, "There is no way
16 you should be able to fine us for that, that would be unreasonable".

17 We all understand that that is where Facebook is coming from.

18 MS DEMETRIOU: Sir, yes. The reason I raised the point is because, Sir, you are right that
19 it is a unilateral undertaking by the CMA. I was just slightly concerned by
20 Mr O'Donoghue wanting to make submissions on it. Because whilst I agree in
21 an ideal world it will be good to agree it, it may be that it can't be agreed.

22 I am just keen that we don't have lengthy submissions on the form of undertaking now, given
23 that it is a voluntary undertaking by the CMA and ultimately what the CMA can and
24 can't do post-judgment is a question that will depend on the judgment. It may not be
25 very fruitful to have lengthy debate with Facebook at this stage about the nature of the

1 voluntary undertaking.

2 MR O'DONOGHUE: The point I was making was simply that in fact, as the 2 September
3 letter shows, an undertaking has been agreed. If that can be done again, then all the
4 better. That is all.

5 MS DEMETRIOU: We agree with that.

6 THE CHAIRMAN: Yes.

7 Ms Demetriou, all I am saying is that so far as the Tribunal is concerned, if it simply says:
8 "For the avoidance of doubt, the Respondent reserves the right to take any decision to impose
9 a penalty for breach of the IEO both before and during proceedings."

10 That's okay with the Panel. All right?

11 It doesn't prejudice Facebook. It is just laying down a marker. That's what your position is.
12 We all fully understand that Facebook's position will be, depending on how this
13 hearing comes out and what our ruling is, that you can't do that because you are trying
14 to get us to do something which we just can't do.

15 I think it is just a question of you reserving that general right.

16 MS DEMETRIOU: Sir, I see that, and I am grateful for that indication that sounds sensible.
17 I just need to take final instructions but we will certainly revert by 2.00 pm tomorrow
18 at the latest on that point.

19 THE CHAIRMAN: If I could just ask my Panel members, do they have any further things
20 that they would like to add or that need to be clarified?

21 MR SAWYER: Not from me, thank you.

22 MR FRAZER: No, I am content, thank you.

23 MR O'DONOGHUE: Sir, a couple of final points.

24 THE CHAIRMAN: Yes, please.

25 MR O'DONOGHUE: I assume the Tribunal is content for costs to be in the case?

1 THE CHAIRMAN: Yes, that is fine.

2 MR O'DONOGHUE: From a personal perspective on behalf of Facebook, can I record my
3 gratitude for the Tribunal rescheduling today. Sir, you will know from practice that
4 hearings are often like London buses.

5 THE CHAIRMAN: I know.

6 One of the good things about the Competition Appeal Tribunal is that the Chairman is
7 responsible for that case from beginning to end, so it is easy to move dates if I need to
8 or times to suit the convenience of the parties. I know in the Commercial Court it is
9 the opposite. The convenience of counsel is not really a consideration.

10 Certainly when it comes to me -- I am not talking about the other Chairmen -- I am always
11 willing to hear matters at short notice and rearrange things to adjust, particularly in a
12 case as important as this, so that both sides have their leading counsel of choice
13 conducting the case.

14 MR O'DONOGHUE: Sir, we are extremely grateful.

15 THE CHAIRMAN: Okay. Thank you very much. I will see you on the 19th.

16 MR O'DONOGHUE: Thank you.

17 MS DEMETRIOU: Thank you.

18 (12.10 pm)

19 (The hearing concluded)

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