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

Case No. : 1339/7/7/20

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

Friday 19th March 2021

15 Before:
16 THE HONOURABLE MRS JUSTICE FALK
17 (Chairman)
18 DR WILLIAM BISHOP
19 MICHAEL CUTTING
20 (Sitting as a Tribunal in England and Wales)

21
22
23 BETWEEN:

24
25 **MARK MCLAREN CLASS REPRESENTATIVE LIMITED**

26
27 Applicant/
28 Proposed Class Representative

29
30 -v-

31
32 **MOL (EUROPE AFRICA) LTD AND OTHERS**

33
34 Respondents/
35 Proposed Defendants

36
37
38
39 **A P P E A R A N C E S**

40
41 Sarah Ford QC and Emma Mockford (on behalf of the Proposed Class Representative)
42 Josh Holmes QC, Tony Singla QC and David Bailey (on behalf of the Proposed Defendants)

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45 Digital Transcription by Epiq Europe Ltd
46 Lower Ground 20 Furnival Street London EC4A 1JS
47 Tel No: 020 7404 1400 Fax No: 020 7404 1424
48 Email: ukclient@epiglobal.co.uk

Friday, 19 March 2021

(10.30 am)

(Delayed start)

(10.38 am)

Case Management Conference

MRS JUSTICE FALK: Good morning.

MS FORD: Morning.

MRS JUSTICE FALK: Apologies for the slight delay for, I understand, technical reasons.

Ms Ford.

MS FORD: Members of the Tribunal, this is the first CMC in these proposed collective proceedings arising out of the European Commission's decision of 21 February 2018 in Maritime Car Carriers. That was a decision in which the Commission imposed fines on the proposed defendants of 395 million euros in respect of anti-competitive conduct in the market for deep sea carriage services for new motor vehicles on various routes to and from the EEA. By these proceedings the proposed class representative is seeking redress for the victims of anti-competitive conduct, specifically purchasers of new motor vehicles, the prices of which were unlawfully inflated by the conduct.

I am in the Tribunal's hands as to how you would like to proceed but I can work through the Tribunal's agenda if that suits.

MRS JUSTICE FALK: Yes. Thank you.

MS FORD: Madam, the first item was forum and there is no dispute between us that it should be England and Wales if the Tribunal is content.

1 **MRS JUSTICE FALK:** We are content.

2 **MS FORD:** The second item was confidentiality and the parties have reached
3 agreement on the terms of the confidentiality order and it's attached to
4 Scott+Scott's letter to the Tribunal of 17 March, and that's in the CMC bundle
5 at tab 62.

6 **MRS JUSTICE FALK:** Yes. I have certainly seen that. That's agreed as you say.
7 I think it needs to be reflected in an order but, subject to that, I don't think
8 we've got any issues with it.

9 Can I just clarify, at the moment the focus of that confidentiality is the funding
10 arrangements is it? Is that correct?

11 **MS FORD:** Madam, that's right, yes, for present purposes.

12 **MRS JUSTICE FALK:** Unless other Tribunal members want to raise anything I think
13 we can move on.

14 **MS FORD:** The next item on the Tribunal's agenda was evidence and then the
15 subheading concerning the PCR's funding arrangements. In respect of that
16 there has been an agreement between the parties concerning Woodsford
17 Litigation Funding Limited, the PCR's litigation funder, on Woodsford's offer to
18 provide an undertaking to the proposed defendants to pay their recoverable
19 costs up to a maximum of £15 million. That has now been agreed as between
20 the parties.

21 **MRS JUSTICE FALK:** Right, so there's nothing else we need to address under that
22 heading at the moment?

23 **MS FORD:** Madam, there isn't, no.

24 Under evidence, for our part the PCR has already served the evidence we proposed
25 to rely on in support of our application, and we reserve our position as to
26 whether it would be necessary to serve evidence in reply in due course.

1 **MRS JUSTICE FALK:** Yes.

2 **MS FORD:** For the respondent's part, they've indicated it may be necessary to
3 serve factual and/or expert evidence and they've indicated that would be
4 confined to the matters addressed by the PCR's evidence.

5 **MRS JUSTICE FALK:** Yes.

6 **MS FORD:** We can come to a timetable for that in due course.

7 **MRS JUSTICE FALK:** Indeed.

8 **MS FORD:** The next item was further information and disclosure, and the parties
9 are agreed there is no further information or disclosure required at this stage.

10 **MRS JUSTICE FALK:** Yes.

11 **MS FORD:** So that brings us on to what's essentially, so far as we are aware,
12 largely the only thing that's in dispute between us, which is the future conduct
13 of these proceedings. It's common ground that the CPO hearing should be
14 listed for two to three days. We are grateful for the Tribunal's indication in its
15 letter yesterday concerning availability for the week commencing
16 20 September. The PCR's position as set out in our skeleton is we would like
17 the hearing to be either late September or October and so we would ask the
18 Tribunal whether it might have availability over that broader period, rather
19 than simply the 20 September week.

20 The reason that I press this is that, as the Tribunal's aware, these proceedings were
21 issued over a year ago, in February 2020, and in our submission it's clearly
22 preferable to try and avoid further delay in moving to a CPO hearing in this
23 matter. Our concern is that if the hearing only happens in November 2021,
24 then by the time judgment is handed down it will be almost two years from the
25 point when these proceedings were issued. So our strong preference is to
26 seek to proceed to a CPO hearing either late September, so it would be the

1 week commencing the 27th or indeed in October, subject to the Tribunal's
2 availability.

3 The Tribunal may have seen that there is a table setting out the parties' availability
4 over that period, and it's in the CMC bundle at tab 53. The position is that
5 there is no window before 2022 when all the proposed defendants' counsel
6 are available, so in our submission there's nothing in particular to recommend
7 delaying to a later date rather than an early date on the grounds of availability.
8 So we would respectfully request the Tribunal to consider listing this matter
9 either in the last week of September or in October.

10 The submissions I have on the actual dates for the various stages that then need to
11 take place are going to be contingent on the relevant CPO date, so it might
12 make sense, if it works for the Tribunal, for a view to be taken on the date
13 before we proceed.

14 **MRS JUSTICE FALK:** Yes.

15 **MR HOLMES:** Madam, I am sure you will appreciate I have submissions to make on
16 the timing but I imagine that to save time it might be helpful to understand
17 what the Tribunal's availability is as regards the last week of September and
18 in the course of October, because if it is in fact the case that November is the
19 first available window when the hearing could be heard, that will save time
20 and cut through this.

21 **MRS JUSTICE FALK:** Yes. I mean, the last week of September is not possible.
22 I can be clear about that. I need to check with the Registrar where we got to
23 in relation to dates in October. I think there was some possibility of the first
24 half of October. Sharon, is that right?

25 **REFERENDAIRE:** I am just double-checking now.

26 **MR HOLMES:** In that case, Madam, would it assist the Tribunal to hear --

1 **MRS JUSTICE FALK:** Sorry, yes, I think now I recall one of the difficulties we had,
2 and it may be linked to this point, is that at the moment the timetable
3 envisages a one-day hearing, a pre-CPO hearing of one day, followed by
4 a two to three-day hearing. I think one of the issues is do we actually need
5 that one-day hearing, because I think from my perspective at least when
6 dates were checked they were checked on the basis that we would require
7 that hearing and therefore, as I recall, I was asking for dates to be checked for
8 a one-day hearing in the first half of October, which then took us into
9 November. I may have mis-recalled that. There have been so many dates
10 flying round I'm afraid.

11 So I do not know for sure whether there would be availability in the first half of
12 October. There might be but, as far as I can recall, and Sharon may well
13 correct me, I am not sure that a three-day hearing has been checked first half
14 of October. If we were to go that route, I think it would be difficult to
15 accommodate any one-day hearing, and we were in any event going to ask
16 whether such a hearing is actually needed.

17 **MR HOLMES:** That --

18 **MS FORD:** Yes, the pre-hearing review was proposed on the basis it could come
19 out of the diary in the event it wasn't needed. Certainly from our perspective
20 we are not currently aware of a reason why such a hearing will be needed and
21 so it was proposed we put it in out of prudence rather than anything else. We
22 were envisaging it might be able to be accommodated either in the week
23 commencing 19 July or week commencing 26 July rather than in the
24 September period, if one should be needed, but certainly for present purposes
25 we are not aware of matters that would necessarily need to be determined at
26 a pre-hearing review.

1 **MRS JUSTICE FALK:** Okay. It certainly might be easier to accommodate if -- sorry
2 I am just looking at messages. It might be easier to accommodate if we don't
3 have that but I am not sure we can give an immediate answer on availability in
4 October. There is a possibility.

5 **MR HOLMES:** Thank you.

6 **MRS JUSTICE FALK:** I don't know if other Tribunal members want to comment on
7 that.

8 **DR BISHOP:** I have no difficulty, I can meet any of those dates.

9 **MRS JUSTICE FALK:** You are on mute, Mr Cutting.

10 **MR CUTTING:** Can you hear me now? I have a five-day trial pencilled in for
11 11 October. I don't know whether that is still going ahead, but Sharon may
12 know. That clearly makes that week a bit difficult.

13 **MRS JUSTICE FALK:** Okay. Ms Ford, was it particular dates in October you
14 were -- I know we haven't heard from the proposed defendants yet on this but
15 just to understand your position, what are you proposing in October, any
16 particular dates?

17 **MS FORD:** Madam, no, we can accommodate any dates in October. I wonder
18 whether if it would suit the Tribunal, the Tribunal could perhaps rise to confirm
19 whether or not any dates in October are viable and we could then address
20 you on that, depending on what the outcome is.

21 **MRS JUSTICE FALK:** I will want to hear from the defendant. It's not an
22 instantaneous thing for me to check unfortunately. I need to go to Chancery
23 listing and I may not get an instant answer.

24 **MS FORD:** Certainly.

25 **MRS JUSTICE FALK:** Sharon, could I just ask, could you email my clerk now and
26 ask if she can possibly find out whether there are specific periods in October

1 when I couldn't do a three-day hearing.

2 **REFERENDAIRE:** Okay.

3 **MRS JUSTICE FALK:** Thank you.

4 Ms Ford, sorry you are on mute.

5 **MS FORD:** Madam, the Tribunal has my submissions about why, in our submission,
6 it would be optimal if this matter can now progress given it started back in
7 February 2020, so our clear preference would be if the Tribunal can
8 accommodate a hearing at the beginning of October, indeed any point in
9 October, that would be preferable.

10 I understand Mr Holmes has submissions on dates that he may wish to make before
11 we proceed to the concrete elements of the directions.

12 **MRS JUSTICE FALK:** Yes. I mean, the other element, just to understand the
13 scope, is it fair to summarise that really the only issue as far as you know
14 that's really between you is the date of the hearing and then, working back
15 from that, the precise dates for serving evidence and any reply evidence?

16 **MS FORD:** Madam, yes, that's the position. I should add there are two very small
17 points we will come to afterwards about a direction to avoid duplication and
18 our amended claim form, but those are minor points.

19 **MRS JUSTICE FALK:** Yes. Just dealing with the second of those now, the
20 amended claim form I think has been agreed.

21 **MS FORD:** It has.

22 **MRS JUSTICE FALK:** I think the Tribunal has already indicated or may have
23 already indicated approval to service by email, which I understand is
24 consented to.

25 **MS FORD:** It is. I am grateful in that case.

26 **MRS JUSTICE FALK:** I am not sure you need to come back on that point.

1 **MS FORD:** I am grateful, that disposes of that then, thank you.

2 **MRS JUSTICE FALK:** Mr Holmes.

3 **MR HOLMES:** Thank you, Madam. I hope that our supplemental note for today's
4 hearing has reached you. It's in the core bundle, or the CMC bundle rather, at
5 tab 65 at page 412. Do you have that?

6 **MRS JUSTICE FALK:** No, I don't think I do.

7 **MR HOLMES:** I am sorry to hear that. The position that we explained there was
8 that our preference would be for a hearing in the week commencing
9 29 November.

10 **MRS JUSTICE FALK:** I am sorry, I think I have got that but not at that page
11 number.

12 **MR HOLMES:** You may have it loose. Is that possible?

13 **MRS JUSTICE FALK:** Yes. Let me just go back into the ... what date was that
14 submitted to the Tribunal?

15 **MR HOLMES:** It was on 18 March, Madam.

16 **MRS JUSTICE FALK:** That's yesterday.

17 **MR HOLMES:** Yes.

18 **MR CUTTING:** Can you just give us the page reference again?

19 **MR HOLMES:** Of course. It's page 412 of the CMC bundle.

20 **MRS JUSTICE FALK:** I don't have it at 412.

21 **MR HOLMES:** That's odd. It may be --

22 **MRS JUSTICE FALK:** I was sent an updated version of the bundle which I believe
23 I am using.

24 **MR HOLMES:** It may be I am working from an outdated version -- my junior has it at
25 page 412 and he's much less fallible than I am so that gives me some
26 confidence.

1 **MR CUTTING:** I have it at 412.

2 **MRS JUSTICE FALK:** That's because the electronic numbers are very different --

3 **MR HOLMES:** Ah.

4 **MRS JUSTICE FALK:** -- on my version.

5 Okay, I have it now. I actually had seen it, thank you.

6 **MR HOLMES:** It was just to update our position because of a change in availability
7 since the time of our original skeleton argument.

8 **MRS JUSTICE FALK:** Yes.

9 **MR HOLMES:** At page 413 the position is explained that there is now no longer
10 availability in early November and that in the light of that, we explain at
11 paragraph 4, the respondents' primary position is that the CPO application
12 should be listed for a hearing commencing 29 November, and there is
13 a fallback in the week commencing 22 November. The reason for that is
14 simple: the 29 November date would allow at least one member of every
15 party's currently instructed counsel team to attend the hearing of the CPO
16 application. Just to show you that --

17 **MRS JUSTICE FALK:** Yes.

18 **MR HOLMES:** Ms Ford took you to one of the charts of counsel availability, which
19 are a bit of a moving feast. I think the most recent one is at page 379, using
20 the rolling numbering. That's tab 60 of the bundle. Page 411 of the PDF I am
21 told. I am grateful to Mr Bailey.

22 **MRS JUSTICE FALK:** Yes.

23 **MR HOLMES:** Looking at that table, you will see that along the left-hand side in the
24 grey are the dates of each week between September and December. Along
25 the top you see the different parties' availability arranged by, first of all,
26 McLaren the PCR, and then the defendants are divided into their groups

1 because although there are a number of corporate entities sued, there are in
2 fact five defendant groups and for each of those you will see that their counsel
3 teams are identified at the top. All except CSAV have a leader and a junior
4 instructed.

5 Then looking down the table you will see that the green cells indicate availability, and
6 the first week in which at least one counsel is available for each of the parties
7 is 29 November. There, the only unavailability is NYK's junior counsel and
8 WWL's junior counsel for some of the week. There is therefore good
9 availability across the board.

10 In the week of 22 November, the position is less ideal because one of the defendant
11 groups, NYK, does not have either member of its preferred counsel teams
12 available, but all of the other parties do. But that position is at least preferable
13 to any of the preceding weeks when the hearing could be listed in November
14 or in October when a number of the parties would not have their counsel
15 teams available. So for that reason we do submit that the 29th of
16 November would be the preferable date.

17 Now, of course we are conscious the Tribunal cannot always list for counsels'
18 availability, particularly in a multi-party case, but in my submission there are
19 a number of considerations in this case why counsels' availability would be an
20 appropriate consideration for listing. The first is that each of the parties have
21 instructed specialist counsel who have now begun work on the case, they are
22 ready and they are hard at work in preparing submissions for the Tribunal and
23 in preparing a case to present at the application hearing.

24 Moreover, this is a slightly unusual case in that this is the latest chapter of litigation in
25 this sector concerning the Commission decision. There have been a number
26 of other cases brought by direct purchasers in the UK courts against the

1 defendants. So those claims of course were in tension with the one that's
2 now being advanced against us in that they claim that losses were not passed
3 on (inaudible due to audio distortion), the overcharge was not passed through
4 to customers downstream, but caused loss to the direct purchasers. In
5 relation to those actions, the same counsel teams have been instructed, with
6 the consequence that the currently instructed counsel are familiar now with
7 the decision and with the sector, with the industry and the economic context.
8 That's another reason, in my submission, why it would not be appropriate if it
9 could be avoided to require new counsel to be instructed.

10 The third point is that we are not arguing here over a substantial additional delay.

11 This is not a matter of many weeks or months in which the hearing would be
12 postponed. It would be a matter only of a few weeks (inaudible due to audio
13 distortion), at most six weeks, six to seven weeks, depending on when in
14 October this could come on. In those circumstances, I would submit that it is
15 appropriate to list with an eye to counsels' availability. If we fix a date in
16 November, we can ensure everyone has at least one counsel member who is
17 able to attend.

18 The fourth point is that the Tribunal may be aware there are a number of other CPO
19 applications which are currently proceeding before the Tribunal. Like this one,
20 they were held up pending the Supreme Court's judgment in Merricks, and a
21 number of them raise issues that will, we apprehend, be of relevance to this
22 CPO application as well. They raise questions concerning the scope of the
23 Merricks judgment and how it applies in relation to methodological difficulties
24 which arise independently of difficulties of data availability, and they also raise
25 questions regarding the opt-in/opt-out issue, which will be one of those that
26 the proposed defendants will be raising in this case.

1 Now, that, in my submission, does provide an additional reason why it would be
2 sensible to allow slightly more time than might otherwise be the case,
3 because it might increase the prospects of having judgments in a couple of
4 the other CPO cases, in particular the Gutmann trains case, which has just
5 been heard, and also the Trucks CPO applications, which I understand are to
6 be heard (inaudible due to audio distortion).

7 **MRS JUSTICE FALK:** Mr Holmes, I did not catch that, when did you say Trucks
8 was?

9 **MR HOLMES:** It's listed for mid-April. There's therefore a good prospect of the
10 parties receiving judgments that will inform and shape the case and will also
11 be of assistance to the Tribunal. There's a real prospect that that may indeed
12 reduce the areas of difference and certainly allow the parties to formulate their
13 cases in the light of a more considered position at the hearing. So that's
14 another reason, given we are only discussing a few weeks of difference, to err
15 in favour of the later date.

16 Those, Madam, are my submissions.

17 **MRS JUSTICE FALK:** Thank you.

18 Ms Ford, do you want to respond on that?

19 **(The stenographer requested that people mute if they are not speaking)**

20 **MRS JUSTICE FALK:** I think people are muting, but if they can mute if they are not
21 speaking it's helpful.

22 **MR HOLMES:** Madam, with apologies, I have just been reminded of one further
23 point. This is obviously complex and high value litigation in which the
24 defendants are being sued for a potentially substantial amount on the alleged
25 value of the claims and that's further consideration, in my submission, in
26 favour of allowing their preferred counsel teams to attend.

1 **MRS JUSTICE FALK:** Thank you.

2 **MS FORD:** Madam, I have two brief points in response. The first is that the Tribunal
3 fairly often lists hearings without reference to the availability of counsel and, in
4 my submission, this is one case where that would be an appropriate course of
5 action to take given the time that has passed since this claim was issued and
6 the need to get it on with reasonable expediency rather than allowing further
7 delay to take place.

8 Madam, the second point is that nor in this case in particular is it appropriate to
9 adopt a position of essentially staying the case behind other cases that are
10 taking place now in order to find out what they say on certain issues on which
11 there may be a degree of overlap. That would be a course of action that
12 would mean you are essentially delaying for ever to try and find out what the
13 answers are from other cases. In my submission, it's appropriate to progress
14 this claim and determine issues in this claim with appropriate expediency.

15 So for that reason we do maintain our position it would be appropriate to hear this
16 ideally at the beginning of October.

17 **MRS JUSTICE FALK:** Right. Thank you. I think we will retire briefly to discuss this
18 and see if we can reach a position in the next few minutes.

19 Can I suggest that we reconvene at 20 past. I think if it takes any longer you will be
20 told, but provisionally 20 past. Thank you.

21 **(11.08 am)**

22 **(A short break)**

23 **(11.20 am)**

24 **MRS JUSTICE FALK:** I am just waiting for the livestream to start.

25

26 **Decision re hearing date**

1 **MRS JUSTICE FALK:** Thank you for your submissions.

2 We have concluded that the CPO hearing should be listed for the week commencing
3 29 November. We recognise that the Tribunal does often list without
4 reference to counsel availability. It is also not the case that there is any need
5 or indeed that it would be appropriate somehow to stay this case, as Ms Ford
6 suggests, behind others. We are not doing that. It is important that the case
7 is progressed.

8 Whilst it is the case that the Tribunal will list without reference to counsel availability,
9 it will do so in appropriate cases, and in principle the starting point is to take
10 account of availability where that can sensibly be done, particularly where
11 counsel have, as in this case, some familiarity with the cases and indeed are
12 involved in other litigation relating to the same subject matter.

13 The key point for the Tribunal is that as between the earliest date that the Tribunal
14 could do in October, which we have not been able to confirm in fact but
15 assuming we could do one in October, we are only talking about a six or
16 seven week delay between then and the end of November and, in the context
17 of the case, taking account of all the circumstances, which include when the
18 claim was brought, and we understand Ms Ford's submission the claim was
19 brought in February 2020, but also that the infringement decision was some
20 two years before that in February 2018, we've concluded that a delay of some
21 six or seven weeks is not sufficiently significant in the context of the case to
22 outweigh the preference, albeit not very strong preference, but preference to
23 accommodate counsels' availability where they are already familiar with the
24 case and where there may at least be cost savings in that respect.

25 So solely on the basis that further delay involved is not substantial, we have
26 determined that the week of 29 November is the best available date.

1 **MS FORD:** I am grateful, Madam.

2 In that case, there is a degree of common ground between us as to what should be

3 the appropriate dates.

4 **MRS JUSTICE FALK:** Right.

5 **MS FORD:** In particular for the defendants' responses I think parties are agreed it

6 should be 30 June and then the PCR's reply on 1 October.

7 **MRS JUSTICE FALK:** Okay. Are those the only dates we need to fix now? We

8 talked earlier about the possible one-day hearing. Does that need to be

9 provided for?

10 **MS FORD:** Certainly it seemed to us to be prudent to have a hearing in the diary in

11 case it was needed and then it could be vacated if necessary, and the

12 proposal we had would it would be either the week commencing 4 October or

13 the week commencing 11 October.

14 **MRS JUSTICE FALK:** I think from our perspective those can probably be

15 accommodated, certainly the first of those weeks if I understand, but maybe

16 that can be clarified before the order is finalised. I am not sure we need to fix

17 a firm date now.

18 **MS FORD:** There's then a question of the PCR's publicity notice and our proposal

19 for that date, which I don't understand to be in issue, was 29 March.

20 **MRS JUSTICE FALK:** Yes. I didn't understand there to be any dispute about that.

21 **MS FORD:** Then persons with interest wishing to raise objections, 22 September.

22 **MRS JUSTICE FALK:** I think that was also not in dispute, was it?

23 **MS FORD:** Certainly that's my understanding.

24 **MR HOLMES:** That's fine from our perspective, yes, Madam.

25 **MS FORD:** We then propose 1 October for the hearing bundle. I am not quite sure

26 whether that's in any way contentious.

1 **MR HOLMES:** It may be sensible to push it back by just a few days if the reply is
2 only landing on the 1st. I doubt whether very much additional time will be
3 needed now with the miracles of modern technology but perhaps 4 October?

4 **MRS JUSTICE FALK:** Sorry what was happening on the 1st?

5 **MR HOLMES:** The proposed class representative's reply is due on that date.

6 **MRS JUSTICE FALK:** Yes, of course. Yes, it should be slightly after that, I agree.
7 You are suggesting the 4th?

8 **MS FORD:** I suppose the only question is whether it would be preferable to have the
9 hearing bundle in time for the pre-hearing review, which we were talking about
10 being in the week commencing the 4th.

11 **MR HOLMES:** With that in mind it also occurred to me, given the reply will only have
12 landed on the 1st and the parties need a little time to digest that in case it
13 throws up any issues of relevance for the pre-hearing review, it might be
14 preferable to list pre-hearing review to the end of that week or in the following
15 week, subject to the Tribunal's availability. I appreciate, Madam, you said the
16 Tribunal might not be available.

17 **MRS JUSTICE FALK:** Subject to my availability, which I haven't been able to check
18 properly in the time available, I think the Tribunal could accommodate dates
19 between 6 and 8 October, which may fit --

20 **MR HOLMES:** Yes, Madam.

21 **MRS JUSTICE FALK:** -- with that. Yes, any pre-hearing hearing will need to be
22 slightly after the hearing bundle.

23 **MR HOLMES:** It's just I think we all hope it can be dispensed with in any event.

24 **MRS JUSTICE FALK:** Yes, it could be potentially between 6 and 8 October, subject
25 to confirming my availability.

26 **MS FORD:** That's the Wednesday to Friday of the second week, yes, Wednesday to

1 Friday of ...

2 **MRS JUSTICE FALK:** I think it's Wednesday to Friday of the week beginning the
3 4th, yes.

4 **MS FORD:** If we could have until the 6th to do the bundle I think that would give us
5 time after having lodged the reply.

6 **MRS JUSTICE FALK:** Right, so 6 October for the hearing bundle. Pre-hearing, any
7 pre-hearing hearing or pre-hearing review has to be probably in that week, but
8 we can confirm that date I think before we finalise the order.

9 **MS FORD:** Then skeleton arguments, our proposal was ten days before the
10 hearing, which I haven't worked back to see where that would land in terms of
11 29 November. Monday, 15th I think would be two weeks before, ten working
12 days.

13 **MRS JUSTICE FALK:** That should be feasible I would have thought.

14 **MS FORD:** We have suggested authorities four days before, so that will probably
15 make it Tuesday, 23rd.

16 **MRS JUSTICE FALK:** Yes, Mr Holmes, I assume that you are content with these
17 dates?

18 **MR HOLMES:** Yes, Madam.

19 **MS FORD:** I think that covers all the relevant directions to the CPO hearing.

20 **MRS JUSTICE FALK:** Right. There was this point about duplication which is also
21 reflected in the directions. We are going to come back to that I think.

22 **MS FORD:** Madam, yes. It's a short point. We seek a direction on the face of the
23 order that the proposed defendants avoid duplication in their responses to the
24 CPO application and their submissions for the CPO hearing. As the Tribunal
25 is aware, there are five groups of proposed defendants and in our submission
26 it ought to be uncontentious that as between those defendant groups they

1 ought to cooperate with each other in the conduct of the litigation and that
2 points taken by more than one of the defendant groups ought to be taken only
3 once and not repeated. Clearly it would be unsatisfactory and it would be
4 wasteful of time and costs if the Tribunal and the PCR were to be faced with
5 multiple overlapping submissions. We raise this point because it's not entirely
6 academic. We have had cause in the run up to the CMC to put into
7 correspondence our concern, in particular because we were receiving
8 overlapping letters on matters concerning funding and so we did find it
9 necessary to put into correspondence concerns about duplication. So we
10 would invite the Tribunal to make a direction to the effect that the proposed
11 defendants should avoid duplication in their responses and in their
12 submissions.

13 **MR HOLMES:** Madam, we made clear in our skeleton argument we will be taking all
14 reasonable steps to avoid duplication. We don't object to the language that
15 Ms Ford proposes for inclusion in the order. It makes clear that any
16 duplication is to be avoided only insofar as is practicable. We are, of course,
17 separate defendant groups and it may be the parties won't be entirely aligned
18 and it may therefore be necessary for them to make points separately. But
19 insofar as they are making the same points, we will liaise and we will avoid
20 duplication.

21 The correspondence has been conducted in that way. We can consider the bundle if
22 you like, but we have been very careful and responsible to ensure that our
23 position is set out in combination in the correspondence.

24 **MRS JUSTICE FALK:** Right. So just to be clear, Mr Holmes, you are not objecting
25 to the proposed wording of the order?

26 **MR HOLMES:** No.

1 **MRS JUSTICE FALK:** If you are not, then I don't think it's going to be productive to
2 get into the details of the correspondence.

3 **MR HOLMES:** No, quite, Madam.

4 **MRS JUSTICE FALK:** Ms Ford, is there anything else?

5 **MS FORD:** Madam, no. That is it from our perspective.

6 **MRS JUSTICE FALK:** Thank you very much. I think that completes matters for
7 today. Good morning.

8 **MR HOLMES:** Thank you.

9 **MS FORD:** Thank you. Good morning.

10 **(11.37 am)**

11 **(The hearing concluded)**

12