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IN THE COMPETITION
APPEAL
TRIBUNAL

Case No: 1702/5/7/25 (T)

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 12th May 2025

Before:

Hodge Malek KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Lenzing AG and Others

Claimants

v

Westlake Vinnolit GmbH & Co. KG and Others

Defendants

A P P E A R A N C E S

Michael Armitage and Hugh Whelan (Instructed by Stewarts) on behalf of Lenzing AG and Others

Josh Holmes KC and Conor McCarthy (Instructed by Wilkie Farr & Gallagher LLP) on behalf of the First to Third and Fifth and Sixth Defendants

Anneli Howard KC and Nikolaus Grubeck (Instructed by Slaughter and May) on behalf of the Seventh to Thirteenth Defendants

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(10.30 am)

Proceedings

THE PRESIDENT: Some of you are joining us via livestream on our website, so I must start therefore with the customary warning: an official recording is being made and an authorised transcript will be produced. It is strictly prohibited for anyone else to make a recording, audio and/or visual of the proceedings. Breach of that provision is punishable as contempt of court.

In any event, at the end of the day, probably, there will be a written ruling that will basically record whatever is decided today.

Yes, Mr Armitage.

MR ARMITAGE: Would it help to have introductions before I begin?

THE PRESIDENT: You can. I think most people I know. But, yes, please do.

MR ARMITAGE: I appear with Mr Whelan for the claimants who are four companies within the Lenzing Corporate Group.

THE PRESIDENT: Yes.

MR ARMITAGE: For the defendants you have Mr Holmes KC and Mr McCarthy for the Westlake defendants. And then Ms Howard KC and Mr Grubeck for the INEOS Inovyn defendants, who everybody has been calling --

THE PRESIDENT: So all regulars. Yes. Let's just see what the agenda is today.

The first, place, England and Wales, so that is disposed.

The first real issue is going to be the general disclosure process. Then we will look at the question of should we have initial or known adverse documents disclosure over and above that. Then the timing of the next CMC, and then whether or not we fix a trial date and, if so, for when and for how long.

Are there any other issues that anyone else wants to raise today? If so, I can just add

1 that to the agenda.

2 MR HOLMES: Sir, there is one small point on the list of issues, which is agreed, save
3 in one respect.

4 THE PRESIDENT: Yes. I've got that. That's just paragraph 8(iv) or something?

5 MR HOLMES: Yes, indeed.

6 THE PRESIDENT: And the issue is the extent to which there is a qualification at the
7 end of the wording that limits it?

8 MR HOLMES: That's correct, yes.

9 THE PRESIDENT: Yes. I must say, I have looked at the list of issues. I think it is
10 a pretty helpful list of issues. Given that we have such a good list of issues, I am not
11 going to order a list of issues for disclosure over and above that. I just think that's
12 unnecessary. But thank you very much, Mr Holmes, yes. So I will add that to the list.
13 Anything else? No one else wants anything added to the list?

14 MR ARMITAGE: I think there are only minor matters.

15 MS HOWARD: I think my learned friend has applied for a single joint expert. Whether
16 that comes in --

17 MR ARMITAGE: Not today.

18 THE PRESIDENT: I don't think we are going to be dealing with single or joint experts.
19 What I think the idea is that at the next CMC we will deal with experts. Prior to that,
20 the parties need to set out their pitch as to whether the defendants should have one
21 expert or more than one expert. If you want more than one expert, you need to argue
22 why.

23 MR ARMITAGE: Precisely, sir. It was agreed that applications for permission to run
24 expert evidence should be filed and served 21 days before the next CMC.

25 THE PRESIDENT: Yes.

26 MR ARMITAGE: We emphasise that ought to include points, as you say, on the

1 question of joint versus separate experts. But obviously we're not seeking any ruling
2 or direction in relation to that today.

3 THE PRESIDENT: Okay. Just take me through the proposed main disclosure
4 process.

5 As I understand it, you are going through disclosure reports, EDQs, Redfern Schedule
6 process. Carry on, what were you going to say?

7 MR ARMITAGE: Everyone agrees there should be a Redfern Schedule process
8 leading up to a second CMC in which any disputed disclosure issues can be
9 considered and resolved in the ordinary way, along with other case management
10 matters. The claimants and the INEOS defendants agree this should be preceded by
11 disclosure reports and EDQs, but the Westlake defendants say that this step is not
12 needed in this case.

13 THE PRESIDENT: We are going to have to hear that then. Certainly I feel that we do
14 need to hear it. At the end of the day, I am the trial judge. I know what works. If I have
15 those two documents in front of me when I look at a Redfern Schedule, it really assists
16 the process.

17 Up to you, Mr Holmes, whether you want to push that. But I know what I like. I know
18 what works for me.

19 MR HOLMES: Sir, you are the judge who will have to hear this and you will know what
20 is useful for the disclosure process.

21 THE PRESIDENT: I do, yes.

22 MR HOLMES: Our only concern is one of proportionality in circumstances where this
23 is currently, you will have seen from our skeleton argument, a case that rests wholly
24 on inference and without a significant pleaded value that is concrete --

25 THE PRESIDENT: The problem is, this is not a follow-on case. At the moment, it's a
26 case based on inference. We will talk about inference cases later. But, I mean, that's

1 not the be all and the end all, because often inference cases after disclosure become
2 direct evidence cases. And once we see, firstly, the submissions being made to IHS
3 and any internal communications within each defendant group and as between the
4 defendant groups, as shown, for example, in the LIBOR case. You may find that it is
5 going to convert from purely inference to something else.

6 So I can see how important disclosure is going to be in this case. That's why I have
7 a lot of things to say about disclosure on this case. By the end of today, we will have
8 thrashed out something that actually works. It may be different from what the parties
9 are proposing. But I think we are going to sort of get something that works, that's fair
10 for everyone. And what's being proposed so far is helpful. I am not saying it's not
11 helpful, and I agree with the general process of having disclosure reports -- I am going
12 to have to say something about disclosure reports in a minute -- and the EDQs
13 followed by the Redfern Schedule. I think the parties are very sensible, insofar as they
14 have agreed it, to agree that.

15 But how that operates is something that I want to hear Mr Armitage on. So you can
16 sit down for now.

17 MR HOLMES: Yes, sir.

18 THE PRESIDENT: Mr Armitage, you tell me how you envisage it, because there is
19 more than one way of doing this. You can either do it in the sort of old-fashioned way,
20 which is you say: let's do the disclosure report, the EDQs. Then we go through this
21 process of Redfern Schedule and then, before we start doing anything by way of
22 disclosure, we are going to get the Redfern Schedule either agreed between the
23 parties -- which I think in a case like this is quite often a vain hope -- or if it is not agreed
24 we will deal with it at the next CMC.

25 If that's what you are proposing, it won't work. I will explain why it doesn't work. What
26 you will have is delay. No progress at all, until you have the second CMC. Nothing is

1 going to be disclosed and, in a way, you sort of start again. You start the process.

2 Whereas what should be happening is that the parties do the disclosure reports, they
3 do the EDQs, you start the process at the Redfern Schedules, but what you will find,
4 as already I can see from the skeleton arguments of both sides, there are clear
5 categories of documents which under any basis are highly relevant and are going to
6 have to be searched for.

7 What the parties are probably going to do in a case like this, you are going to have
8 a platform, you will load the documents on to the platform as you go along. So what
9 I don't want to see is a sort of sudden-death-type disclosure arrangement where
10 everything comes at the end after everything has been ironed out in the
11 Redfern Schedule.

12 I would hope, given the firms of solicitors involved in this case, that they will be
13 cooperative; that you will identify fairly early on what are the sort of categories which
14 as a minimum you are meant to get and pull together and, as and when those
15 categories are ready, you start providing disclosure lists.

16 So I do not want to have a second CMC to be told that the cupboard is bare and
17 nothing has been disclosed. I do not want to see that.

18 I want to see, when I come to the second CMC, that there's already been substantial
19 disclosure. What I will expect to happen is each tranche of disclosure to have the
20 normal disclosure statement with it. Then, once we have finished it all, i.e. you may
21 end up having three or four tranches, you have a global disclosure statement, where
22 everything is pulled together. That's how I envisage it. It may be that's how you
23 envisage it as well.

24 But I was a bit worried when I read the skeletons that actually what people were
25 envisaging is: get the Redfern schedule all agreed or settled by the Tribunal and then
26 we start the process of giving disclosure of documents.

1 This case will never be tried in a reasonable period of time if you do that. If you can
2 start disclosing documents between yourselves and we (audio distortion) can talk
3 about what are the obvious categories, then the legal teams can start preparing the
4 case.

5 And no one should be worried in a case like this, saying: look, it is unfair, I am going
6 to be disclosing my stuff before we get all of their stuff.

7 You don't need to worry about that, because if everything is going to be disclosed at
8 the end, you are going to get it at the end. It is just a question of when do you get it
9 within the process.

10 Now, we will come back in a minute to the idea of initial disclosure and key adverse
11 documents disclosure.

12 In practice, there are sometimes problems and we have to be very flexible about that.
13 What tends to happen on a case like this, knowing what's in issue between you lot, is
14 that that can end up delaying the process that we are trying to get forward and that
15 no one is telling me now -- unless they can tell me now -- that this initial disclosure or
16 KAD disclosure is going to lead to an amendment to the pleadings now.

17 So, if it was one of those cases where you say, "Look, this is a bare bones pleading,
18 God knows what this case is about", and you need to get the disclosure to plead it
19 properly. And, "Once I have disclosure you are going to have more than a bare bones
20 pleading", then I can see that's one sort of scenario.

21 But the problem with that is the type of disclosure that you will be seeking in order to
22 plead, if you are going to, a direct evidence case, rather than an inference case, is
23 probably the type of disclosure that's going to take the defendants' teams longer to
24 pull together.

25 That's the problem. You know, the easy stuff is to get their submissions. The easy
26 stuff is to get your contracts and stuff like that. There are some really easy categories.

1 I think it is Holmes who, in his skeleton, has listed, like, six categories that he's looking
2 for. And I can see exactly why he wants those and why they are pretty obvious
3 categories.

4 So I also know what you are looking for in your KAD disclosure, but the problem with
5 your KAD disclosure is I don't think, necessarily, it involves a really simple exercise,
6 and it may take some time to do.

7 What you probably want, and certainly what I want, is for disclosure to be done
8 properly. When you are looking for things like: what are the WhatsApp messages?
9 What are the emails? What are the recordings? If there are going to be any
10 recordings. You just don't know. All that type of stuff. It does take time.

11 You know, they are going to have to identify the relevant custodians, so that will be
12 people who deal with the contracts and the pricing. It is also going to be the people
13 who deal with the submitting of information to IHS for its process. And that when you
14 look at what came out in the LIBOR case -- is that, you know, it's all fairly scattered. It
15 did take time to get together and you did find that there were recordings of calls and
16 stuff like that, and messages that no one actually thought would exist, but they did
17 exist.

18 So that's how I see, generally, that process being done on disclosure.

19 So I think the first thing we want to do is figure out amongst the three teams whether
20 everybody is happy to have a rolling disclosure basis or does anyone oppose that?

21 All I can say is -- and I think Holmes has been in cases where we have had rolling
22 disclosure -- rolling disclosure is probably the most efficient way of doing it.

23 So, Armitage, do you have any points about rolling disclosure? If not, then you sit
24 down and we will then hear from Holmes.

25 MR ARMITAGE: So far as I know, there has been no specific discussion about that
26 point with my learned friends or their legal teams.

1 THE PRESIDENT: Yes.

2 MR ARMITAGE: Speaking without instructions, I don't see that we would have any
3 objection to that point.

4 THE PRESIDENT: I wouldn't have thought so.

5 MR ARMITAGE: We have no objection in principle to the parties getting on with
6 disclosure. That's in fact the thrust of our own suggestion.

7 So although, as you say, the point may not have been specifically identified in the
8 skeletons, we certainly didn't want to get into a situation where the parties turn up at
9 CMC2 and all that has happened is that the parties have had a debate about what to
10 have a debate about at the CMC.

11 On the initial disclosure categories --

12 THE PRESIDENT: We will come to initial disclosure later.

13 MR ARMITAGE: Yes.

14 THE PRESIDENT: What we are trying to set out, first, is: what is the general
15 disclosure basis framework?

16 Once we have that, we can then decide whether initial disclosure or KADs are
17 necessary in this case.

18 MR ARMITAGE: Yes. Subject to the point that it would depend on the specific
19 categories and whether they could be collated in a reasonable time period ahead of
20 the next CMC. I think that's the only caveat.

21 There is no objection to the --

22 THE PRESIDENT: What we will look at, when Holmes stands on his feet, we will look
23 at what he says are the specific categories that he thinks should be quite easy to pull
24 together.

25 Then, after we've heard him, and obviously we have heard from the INEOS
26 defendants and after we've heard from them, we can come back to you. You, by then,

1 will have formulated examples of what you see as the key categories that should be
2 prioritised, and what people should just be getting on with and collating. I can think of
3 some fairly obvious ones.

4 So if you sit down now, we will hear from Mr Holmes.

5 Yes, Mr Holmes.

6 MR HOLMES: So, again, without instruction. If I have understood the proposal
7 correctly, it seems from my perspective to make very good sense. The suggestion
8 would be that instead of having broad protean categories at this stage, you would have
9 focused and specific categories to get the ball rolling ahead of the second CMC, which
10 would take the heat out of the debate and would allow us to focus on useful
11 documents. It is what we were trying to achieve by our initial disclosure categories.

12 But I see the sense of what you say, sir. That instead of just having initial disclosure
13 as a sort of broad, overarching category, you have rather the underlying categories of
14 documents that we have identified based on the pleadings, which we say we'd expect
15 to fall within initial disclosure.

16 Subject to -- yes, I see my solicitor nodding. We would be very happy with that
17 approach. The sensible course then would be for the parties, with your assistance, to
18 try to thrash out some categories that could be given in short order.

19 THE PRESIDENT: Let's look at. Probably, there is going to be, like, 50, maybe 60
20 categories of documents as between everyone; okay?

21 MR HOLMES: Yes.

22 THE PRESIDENT: You are going to have all of those in the Redfern Schedule. It's
23 not going to take you lot very long to actually formulate what those categories are
24 going to be. What's going to take time, necessarily, is to agree the scope of whatever
25 is within each category and all of that.

26 MR HOLMES: Yes.

1 THE PRESIDENT: But there will be various categories that it's going to be pretty easy
2 to agree. So it may be that Armitage sends you his half of the Redfern Schedule, and
3 that you will probably have -- hopefully on your side -- one Redfern Schedule of what
4 you are expecting them to have. And they will probably have one Redfern Schedule
5 with all the categories he expects to have from each of you.

6 I don't think we are necessarily going to need three Redfern Schedules. It is more of
7 a burden for me. But if we can have two, that seems to work.

8 But, within the Redfern Schedule, you will probably find that there are various
9 categories where it is pretty easy to agree which ones you are definitely going to do;
10 yes?

11 And those ones, once you've identified those ones, you can start the process of pulling
12 together the documents for those ones whilst you still go through the sort of next stage
13 on the Redfern Schedule for the other items which you are trying to agree.

14 But once you've agreed a category, then you start the process of pulling them together
15 and putting them in a list. But we will get to a position whereby, by the time of the
16 second CMC, you will find that there may not be a huge amount that's left. But you
17 never know.

18 And when I get to the second CMC, what I would like to see is the Redfern Schedules,
19 okay, with grey of the categories which are agreed. So I don't need to go through all
20 the categories. I just need to focus on the categories which are not agreed.

21 Now, as I've made clear in other cases, I'm willing to be flexible as to when and how
22 I resolve these disputes. Sometimes you find that you, in this process, get a logjam
23 and you just think, "God, we're not getting very far, are we, because of one point of
24 principle we can't agree."

25 Now, if any of the parties feel that they have reached that stage, you try to resolve it
26 amongst yourselves and then you write in and then say, "We have this issue that's

1 arisen", and then ask me how I would like to resolve it.

2 And sometimes I am able to look at it and get a letter sent back to you to say, "My
3 provisional view is X." If the parties are happy to live with my provisional view, then
4 just do X. If you're not happy and the parties want to really fight it out, then I may say
5 take out a formal application and let us have that and we can deal with that at
6 a hearing.

7 But we all are aware that hearings in these cases are not cheap. You know, the typical
8 amount for a half day hearing is -- Mr Holmes, you will know how much that roughly
9 will cost.

10 But you will find that the way I did it in Trucks is quite often sometimes, once or twice
11 a month, I get letters like that. I deal with it in correspondence and, by and large, we
12 didn't have to have a formal hearing. It was resolved informally.

13 But I am going to be flexible. Whatever the parties think is going to be helpful. One
14 of the ideas of having a -- let's say, an assigned chairman -- is that we can deal with
15 issues without necessarily spending too much money on it.

16 MR HOLMES: Yes. So, sir, I am pleased to say that we are fully on board with that
17 approach.

18 THE PRESIDENT: Yes.

19 MR HOLMES: It's one that has been tried and tested in other cases.

20 THE PRESIDENT: Yes. We have done it before.

21 Shall we just look at the categories that you have highlighted?

22 MR HOLMES: The categories we have supplied, yes.

23 THE PRESIDENT: I was looking at those last night. I thought that they were, subject
24 to what Armitage is going to say, I thought they were quite sensible ones.

25 MR HOLMES: Yes. I am glad to hear that, sir.

26 THE PRESIDENT: Paragraph 29, isn't it? Let's have a look.

1 MR HOLMES: Of the skeleton? Yes, indeed, sir.

2 THE PRESIDENT: It is those ones.

3 MR HOLMES: Yes.

4 THE PRESIDENT: Obviously, leave out all the pejorative stuff, when you say "vague"

5 in 29.6. But let's just have a look at it.

6 MR HOLMES: Working through them, you will have seen how their case works. They

7 allege that the IHS index went up. That caused them loss because they were required

8 under their contracts with the defendants here, and with three other undertakings in

9 particular, to accept prices and price adjustments based on the IHS index, and they

10 infer that there must have been collusion because they see no other explanation for

11 the changes in the IHS index other than some form of concerted practice or agreement

12 between the five undertakings involved.

13 Now, to test that, we say that there are some obvious categories of documents that

14 should be given and should be readily available, because they will no doubt have been

15 considered when pleading the case.

16 THE PRESIDENT: Yes, okay. But some of them are a bit of a boomerang, aren't

17 they? 29.5 and 29.6, I would expect you to have as well, so I would have thought your

18 disclosure would include all your price announcement letters, et cetera.

19 MR HOLMES: The difficulty with 29.5 is that both the defendants here today have

20 pleaded that they do not use price announcement letters.

21 THE PRESIDENT: That's easy. It's an easy category, isn't it?

22 MR HOLMES: Well, indeed. But assuming it is symmetrical, that's all because there

23 may be other --

24 THE PRESIDENT: They may be referring to something else.

25 MR HOLMES: Exactly. And until we see what it is --

26 THE PRESIDENT: You see what they have --

1 MR HOLMES: Yes.

2 THE PRESIDENT: -- then you will probably figure out quite quickly whether this is
3 stuff that you have. If it is, then you produce it, don't you? It's not going to be difficult.

4 MR HOLMES: No, indeed. Yes.

5 THE PRESIDENT: Things like your profits, that's not going to be very difficult, because
6 you will produce your accounts and stuff like that.

7 MR HOLMES: Indeed.

8 THE PRESIDENT: Yes.

9 MR HOLMES: Yes.

10 THE PRESIDENT: So I think, subject to what Armitage may say, these are all things
11 that I would expect them to produce on disclosure. Some of them, it's going to be fairly
12 easy for them to get together at a relatively early stage. So, when you have the first
13 return, i.e. the first disclosure list with a specific category, I would expect not
14 necessarily all of these, but some of these to be done, because some of them are
15 quite focused, others are a bit more amorphous. But they will know which ones -- or
16 you will be able to agree amongst yourselves which ones you are going to expect to
17 have.

18 When you look at the firms involved here, they are all sensible people. This is not,
19 hopefully, going to be a case where everyone writes really long letters, insulting letters
20 and stuff to each other.

21 When you have issues, you can have a meeting in person or through a videolink and
22 just go through some of these issues.

23 MR HOLMES: Yes.

24 THE PRESIDENT: I find that where there is an element of give and take, and when
25 people are not fighting the case on a dog-eat-dog basis, you'll find the disclosure
26 process actually works.

1 On the other hand, if everyone is at each other's throats and all of that, and writing
2 insulting letters and stuff, you find that you don't make that much progress. But I very
3 much doubt we are in that sort of scenario on this case.

4 MR HOLMES: Yes. Sir, those are very helpful indications, if I may say so. We are
5 agreed that this is a useful approach.

6 The only point we might add is: as this disclosure is given it may become clear that
7 further particulars could usefully be added.

8 We didn't understand your comments to rule out the possibility there a might be
9 pleading amendments and/or RFIs based on what's provided that could help to clarify
10 the boundaries of the case.

11 THE PRESIDENT: No. But, look, let's break it down. The first point is that sometimes
12 it's going to be appropriate that in lieu of extensive disclosure of documents, you will
13 have, let's say, a pricing statement which explains how everything worked internally
14 and that may obviate the need for extensive disclosure, or it may be like a first stage
15 and then you get a more focused thing.

16 MR HOLMES: Yes.

17 THE PRESIDENT: I always find they are quite helpful.

18 MR HOLMES: Yes.

19 THE PRESIDENT: You may find, on the facts of the case, it's not going to be helpful.
20 But I would have thought on both sides of sort of pricing statements, they could well
21 be helpful. It goes both ways, because you are going to be alleging pass-on. On
22 pass-on you will probably want a pricing statement. On their claim against you they
23 will probably want pricing statements from you.

24 MR HOLMES: Yes.

25 THE PRESIDENT: If there are any issues about that, you can write in and I can tell
26 you what type of pricing statement I had envisaged seeing in a case like this.

1 MR HOLMES: Yes.

2 THE PRESIDENT: So I can see that things are going to develop.

3 As regards RFIs, we have already had rounds of RFIs on the current pleadings and
4 I have looked at those, and they weren't hugely informative, let's be honest. It's not
5 a complaint, but they weren't; okay?

6 MR HOLMES: Yes.

7 THE PRESIDENT: We may have a position whereby you could be asking, or they
8 could be asking, for RFIs based on the material that's coming out of disclosures, which
9 is fine. Or, if you have something fundamental -- so let's say we can see direct
10 evidence of collusion -- let's say, on WhatsApp messages or something like that, or
11 Bloomberg. I don't know if you lot were using Bloomberg or whatever media people
12 were using -- and you can get direct evidence, it may be that Armitage is going to say,
13 "Well, look, I want to plead direct evidence rather than purely inferential."

14 Now, the direct evidence point could be quite important because, with these cartel
15 cases, those types of messages, or their absence, both sides can rely on it.

16 So if there are, let's say, cartel-type communications, Armitage is going to jump up
17 and say, "Look at this. We always suspected this". If there aren't any, he's going to
18 stand up and say, "They are not there. It's all so secret it has been done under the
19 table".

20 So I know the sort of arguments you are all going to come up with. But, at the end of
21 the day, if he has a good inferential case, to me, just on an evidential point of view, if
22 the strands all stand together and they can take the weight of the charge, then of
23 course it's a good case.

24 I know that you are all quite insulting about what they say you say, but this is all based
25 on inference and so the case must be, let's say, weak. I don't know about that. I can't
26 form that view now.

1 MR HOLMES: No, we appreciate that. At this stage, you can't.

2 THE PRESIDENT: You just can't take that view.

3 MR HOLMES: Yes.

4 THE PRESIDENT: Sometimes when a case is based purely on inference there is

5 nothing to it. I know that. Sometimes a case based on inference, there is a lot to it.

6 MR HOLMES: Yes.

7 THE PRESIDENT: We just don't know at this stage.

8 MR HOLMES: Indeed. I mean, just two points following on from that, if I may?

9 THE PRESIDENT: Yes.

10 MR HOLMES: The first is you will have seen that we do plead a case that strongly

11 resists the suggestion that there is no other plausible explanation --

12 THE PRESIDENT: I know, of course. One of the reasons I asked for the table --

13 MR HOLMES: Yes.

14 THE PRESIDENT: -- was to see how it all fitted in. I found the table that you

15 produced -- or someone produced -- to be quite helpful.

16 MR HOLMES: Yes. The second point we note is that it is important not to lose sight

17 of the fact that this is a claim based on joint and several liability for some person's

18 conduct who aren't present or party to these proceedings.

19 We have no knowledge of their dealings with the claimants.

20 THE PRESIDENT: Yes.

21 MR HOLMES: So there are blocks of disclosure that won't be purely symmetrical

22 between the claimants and the defendants and will require the claimants to explain the

23 basis for their allegations.

24 THE PRESIDENT: They are going to have the contracts, et cetera, with the other

25 caustic supplies, okay.

26 MR HOLMES: Yes.

1 THE PRESIDENT: You two -- or you two groups are going to have your contracts.
2 That's fair enough. You will also have whatever your material is on submissions with
3 IHS. But you are not the only two groups in the universe.

4 MR HOLMES: No.

5 THE PRESIDENT: One of the points we are going to come to once we have discussed
6 the disclosure process is: to what extent is Armitage thinking of going for non-party
7 disclosure?

8 Because it may well be that IHS is going to be the best source of the information.

9 Because when you look at -- is it paragraph 35 of the amended particulars of claim?

10 Let me get that before I forget.

11 It is paragraph 35. That's their understanding as to how the IHS index was compiled.

12 MR HOLMES: Yes.

13 THE PRESIDENT: But it's not a particularly complete understanding. And it's a lot
14 more complicated than -- if it is like other industries -- I don't know about this one in
15 particular -- it can be a lot more complicated and more sophisticated than most people
16 think, and you are looking at information coming from multiple sources and people
17 exercising their judgment. It may be that they are supplementing -- whoever is the
18 setter, he's supplementing all the written stuff by ringing round and making calls to
19 people to get an understanding of where different people in the market feel where the
20 price is today, for example.

21 So we will need to hear from Armitage to what extent is he going to be seeking
22 disclosure, either from IHS or from other companies in your business who are caustic
23 soda suppliers, to what extent is he seeking their records?

24 And one of the questions I will be asking him is, you know: have they been making
25 enquiries outside you two for further evidence and documents? So we can see how
26 far they have got, because if we are going to have a trial -- we don't know when yet.

1 But, if we are going to have a trial further down the line, I really don't want them to start
2 thinking of non-party disclosure for the first time, in 2026.

3 If they want non-party disclosure, they have to think about it. They are going to have
4 to, I would have thought, take out an application some time this year.

5 MR HOLMES: Yes.

6 THE PRESIDENT: I am quite happy to hear an application for non-party disclosure at
7 any time.

8 MR HOLMES: Yes.

9 THE PRESIDENT: You lot may not want to turn up anyway for a non-party disclosure.
10 But, certainly, the -- let's say the other end, IHS, they may want to make their own
11 submissions, et cetera.

12 MR HOLMES: Yes.

13 THE PRESIDENT: And they may oppose it, they may accept it. But they will need to
14 think about non-party disclosure. And that's to your advantage as well.

15 You know, your case is that there has been no manipulation, there has been no
16 collusion. And one of the best sources of that is going to be looking at IHS's records
17 and how they have done it. I don't know whether there is any practical problem about
18 getting this data from IHS. If there is any possibility of any party going for documents
19 from IHS, given how long ago these events are, they should -- someone should send
20 a "hold all documents" message or letter to them, so as part of their routine destruction
21 of records, they do not start deleting stuff which could be of assistance in this case.

22 MR HOLMES: Yes. My learned friend will no doubt have heard what you say about
23 that.

24 THE PRESIDENT: We will see what he has to say when he comes back on.

25 MR HOLMES: On the categories of documents, the low-hanging fruit, we do, with
26 respect, agree with you that in addition to the contracts -- we move now to

1 paragraph 29 of our skeleton argument.

2 THE PRESIDENT: Yes.

3 MR HOLMES: There are also important negotiating documents which will shed light
4 on the allegation that they were required --

5 THE PRESIDENT: That's 29.3.

6 MR HOLMES: Indeed.

7 THE PRESIDENT: I agree with that. That's fine. I agree with that one. Clearly, you
8 want to see that.

9 MR HOLMES: Yes.

10 THE PRESIDENT: But you are going to have to be flexible about when it is going to
11 be ready. Because it is easy enough for you to say it is all sort of low-hanging fruit. It
12 is only when they start to try to pull together all the documents you realise how
13 time-consuming some of these things are.

14 MR HOLMES: Indeed. We had in mind, though, that they pleaded a case where they
15 have made specific allegations and they presumably have asked --

16 THE PRESIDENT: Yes, your case --

17 MR HOLMES: -- for documents.

18 THE PRESIDENT: -- is that in order to plead the case, they would have had to look
19 at certain things. That may or may not be accurate in respect of everything: (a) they
20 may not have looked at all the stuff that you have; (b) they may have looked at
21 a sample of it rather than the whole lot, whereas you probably want the whole lot; (c)
22 they may have looked at other things that you haven't listed that are readily available.

23 MR HOLMES: Yes.

24 THE PRESIDENT: Whichever one it is, you want to capture all of that, at the end of
25 the day.

26 As I said before, no one should be worried about timing in the sense that, "Oh, it's

1 unfair, I have this. I have to give mine before yours," I really don't want that type of
2 argument. If everybody acts in good faith -- and when you have a category ready,
3 then you disclose it; all right?

4 MR HOLMES: Yes. That's -- so you want a cooperative approach from all of the
5 parties to try to turn as many of these rows grey as is feasible.

6 THE PRESIDENT: As is feasible by the time it comes to me.

7 MR HOLMES: Yes.

8 THE PRESIDENT: But it may be that there are some that you are just not going to be
9 able to agree and we are going to have to have a hearing.

10 MR HOLMES: Yes.

11 THE PRESIDENT: But I find with the Redfern Schedule process that quite often, even
12 within the final three days of a hearing, the solicitors are still working together.

13 MR HOLMES: Yes.

14 THE PRESIDENT: So it is really "what does the shape of the Redfern Schedule look
15 like two days before the next CMC?" that I will focus on. But, you know, we will come
16 back to that.

17 MR HOLMES: Yes.

18 THE PRESIDENT: Do you want to sit down for a second? I just want to hear from
19 Armitage on your categories.

20 MR HOLMES: I just have one final and further point, sir.

21 THE PRESIDENT: Yes.

22 MR HOLMES: It's simply to note they have indicated in correspondence they already
23 have a repository of over 1,000 documents that were collected.

24 One of their bases for resisting disclosure was the volume of material. So we are
25 hopeful, on the basis of that indication, that disclosure should flow fairly
26 straightforwardly in relation to the categories that we have identified.

1 THE PRESIDENT: It applies to you as well. So far as you have stuff that is readily
2 available, you may say you are going to give that.

3 MR HOLMES: That is fully accepted, sir.

4 THE PRESIDENT: Ms Howard, we will come back to you in a minute; okay?
5 Let's just deal with Holmes's paragraph 29 and make sure we are okay on that, before
6 we hear what you say is the key, easy, low-hanging fruit over and above paragraph 29.
7 Then we can add that to the list; okay?

8 Yes, Mr Armitage?

9 MR ARMITAGE: Thank you.

10 THE PRESIDENT: There are two things for you to deal with. The first thing is
11 paragraph 29.

12 Second, we can have a five-minute discussion about non-party disclosure, because
13 I am keen we don't forget about that.

14 MR ARMITAGE: Yes.

15 So, on the specific categories, just to make a couple of general points --

16 THE PRESIDENT: Yes.

17 MR ARMITAGE: -- we don't suggest the categories in general terms are irrelevant.
18 We never have.

19 THE PRESIDENT: You have never done that. I agree.

20 MR ARMITAGE: Yes, sir. We will, of course, want to suggest our own equivalent
21 categories for potential earlier disclosure, if you like.

22 THE PRESIDENT: Of course.

23 MR ARMITAGE: Some of the --

24 THE PRESIDENT: That's all understood.

25 MR ARMITAGE: Some of the points you made, if you identified three potential
26 categories, they sound eminently relevant and sensible.

1 THE PRESIDENT: If your junior can start drawing up the list of categories, so by the
2 time we go today we will at least all have an understanding of what we are at least
3 looking for to begin with. So people can start working on that at the same time as
4 each party is working on their first row for the Redfern Schedule.

5 Obviously, the disclosure reports need to be done and the electronic documents
6 questionnaires need to be filled out. That process shouldn't take too long.

7 Carry on.

8 MR ARMITAGE: Sir, our issue is, and has only ever been, with the question of whether
9 these are readily available prepackaged documents, because the application we were
10 facing was disclosure of documents within these categories by 20 July.

11 THE PRESIDENT: No, no, you don't need to worry about that. The issue that Holmes
12 is raising is that now we have moved on, okay, is that he's saying, "I have six
13 categories of documents which, on any view, are relevant and should be collated".

14 The position I have is: I agree with that.

15 That's why I am giving you the opportunity to say, "No, Hodge Malek, you have to start
16 again. You have that wrong". And if I have one of the categories wrong, then I can
17 take that off as one of clear categories and it goes into the Redfern schedule process
18 and it may take a bit more time to refine. But these ones all seem to me eminently
19 sensible.

20 I am not saying you have to produce them by any particular date, because I think that
21 sometimes, you know, people don't realise it is only when you start looking at it
22 properly that you realise: gosh, you know, the system which it is kept on is no longer
23 there, or I need to get some computer forensic guy to go and retrieve it all.

24 I know what it's like. I am not going to put anyone on any date deadline for any
25 tranche. But we will talk about the timings once we have figured out the general shape.

26 So, if you are saying you are quite happy that those are proper categories, that's fine.

1 MR ARMITAGE: I will turn around for ten seconds.

2 THE PRESIDENT: Turn round for ten seconds, yes.

3 MR ARMITAGE: There is one point about price announcement letters.

4 THE PRESIDENT: Yes. That's one. What Holmes is saying -- he and Ms Howard

5 are saying, is they don't have them in the form that you're probably referring to. You

6 may be referring to something else.

7 MR ARMITAGE: Yes.

8 THE PRESIDENT: Once you have identified what that other thing is, you can write to

9 the other side and say, "Look, this is the type of thing we are looking for", and then

10 that will come through.

11 MR ARMITAGE: Yes, the only point to make, just for information is: we have also

12 explained in correspondence that we don't have any documents falling within this

13 category.

14 THE PRESIDENT: You don't?

15 MR ARMITAGE: We don't. That's E28/57, that was in the context of some earlier

16 disclosure discussion.

17 THE PRESIDENT: So you're saying, 29.5, do you not have them?

18 MR ARMITAGE: We don't have them. In fact, in our particulars of claim --

19 THE PRESIDENT: On this basis, no party is saying they have them.

20 MR ARMITAGE: There is a curiosity there.

21 THE PRESIDENT: Well, curiosity killed the cat, didn't it?

22 MR ARMITAGE: Yes. In our pleading we actually refer to the possibility of seeking

23 early disclosure in relation to this specific category. We have heard what the

24 defendants have said. What we are concerned to ensure is there is not a semantic

25 point lurking here and it may be we need to consider the wording of the particular

26 request.

1 THE PRESIDENT: Both ways, you mean? You are going to have to think about --

2 MR ARMITAGE: Yes.

3 THE PRESIDENT: -- your category, how you are going to formulate it.

4 MR ARMITAGE: We are.

5 THE PRESIDENT: You are saying you don't have them. Okay. Holmes? 29.5, we

6 are going to scratch off, okay, for now?

7 MR HOLMES: Yes.

8 THE PRESIDENT: Because he's saying he doesn't have them.

9 MR HOLMES: I'm grateful, sir. We are a little puzzled about how --

10 THE PRESIDENT: We can all be puzzled. But, the thing is, they have to go back and

11 try to figure out what they really mean on this.

12 MR HOLMES: Yes.

13 THE PRESIDENT: Once they have done that, then you can add that to the

14 Redfern Schedule process. But, for now, we are taking that one off. So I have

15 scratched that one off; okay? Let me note that down.

16 Yes.

17 MR ARMITAGE: As you suggest, sir, my learned junior is already working

18 industriously on a set of categories we say ought to come --

19 THE PRESIDENT: Hopefully, we will have that whenever it is ready. We will want to

20 sort of leave today knowing where you stand on that.

21 MR ARMITAGE: Quite agreed. On that basis, sir, we don't have any additional

22 comments on those.

23 THE PRESIDENT: Okay. Let's deal with the non-party disclosure.

24 MR ARMITAGE: Yes. So we are thinking about it. It's under active consideration, if

25 I can put it like that.

26 THE PRESIDENT: Yes.

1 MR ARMITAGE: On the question of disclosure --

2 THE PRESIDENT: Where are they based, sorry?

3 MR ARMITAGE: IHS?

4 THE PRESIDENT: Yes.

5 MR HOLMES: In the UK, if it helps.

6 MR ARMITAGE: Yes, headquartered here.

7 MR HOLMES: United Kingdom, yes.

8 THE PRESIDENT: So they will have the records here, insofar as they have not

9 destroyed them or whatever.

10 MR ARMITAGE: Yes.

11 THE PRESIDENT: You are saying it is under active consideration. Well, I think --

12 MR ARMITAGE: It should become even more active in light of your observations.

13 THE PRESIDENT: No, I am not saying you have to. All I am saying is: when I read

14 paragraph 35 of your amended pleading, it's not as simple as that.

15 That's all I am saying.

16 You need to understand how it's all done. They will have their own internal documents

17 showing how it was done.

18 They may have changed it and the weightings and the ratings since that period. So

19 you need to have a focused request about on what basis they were doing it at the

20 relevant time. Did it change over time?

21 Then you will need to see what information they were giving and what was being

22 submitted. You will need to focus in particular on asking them what discussions they

23 were having when they were setting it: was it just purely down on written submissions?

24 Was it done on calls?

25 There is a lot to ask them. You may find that they will be quite cooperative. You may

26 find they are not going to be cooperative, in which case you have to come back here.

1 But I think you will be surprised. I would have thought they would probably be quite
2 happy.

3 Because if, at the end of the day, their index has been manipulated by cartelists, it is
4 just as much in their interests to get to the bottom of it. If it hasn't, then it is better that
5 you clear the air and, at least for them, there is no question of people worried about
6 how good the index has been. So I would have thought they would have their own
7 interest to work with you to get to the bottom of it.

8 This will be on the transcript. No doubt you can say what Malek has said in relation to
9 that to them.

10 MR ARMITAGE: Indeed.

11 THE PRESIDENT: Could I just make a note?

12 (Pause)

13 Anyone else that you might want to get non-party disclosure from?

14 MR ARMITAGE: Sir, the other obvious category or potentially obvious category, sir,
15 is the non-party alleged cartelists.

16 I should say, sir, we are very grateful for the observations in relation to IHS Markit. We
17 will continue to consider that even more actively in light of those observations.

18 THE PRESIDENT: I just think it is sensible.

19 MR ARMITAGE: We quite appreciate the point about not letting matters drift until next
20 year. I can say that point is firmly in mind on (inaudible) the Tribunal. On the --

21 THE PRESIDENT: Non-party alleged cartelists.

22 MR ARMITAGE: On the non-party alleged cartelists.

23 THE PRESIDENT: Where is that in your pleading?

24 I thought it was just one, wasn't it?

25 MR ARMITAGE: Paragraph 39 at C/3. Do you see the reference to the three other
26 corporate groups there?

1 THE PRESIDENT: Yes. But they are not alleged to be cartelists, are they?

2 MR ARMITAGE: They are. If one looks at the next paragraph. So we say at 39 we
3 observe the same pricing patterns. Then, at 40, you see the inference is drawn in
4 relation to both the defendants and then the non-defendants, who we say collectively
5 comprised the cartel.

6 THE PRESIDENT: It is not going to be so straightforward against any alleged
7 cartelists with no presence in the UK, is it?

8 MR ARMITAGE: In relation to disclosure you mean, sir?

9 THE PRESIDENT: Non-party disclosure order.

10 MR ARMITAGE: Yes. Sir, on that, the way we have been thinking about this -- in fact,
11 this is one of the reasons why we do say known adverse documents disclosure may
12 be of assistance. If I may, I will briefly advocate for that proposal a little later.

13 THE PRESIDENT: We have not reached that point.

14 MR ARMITAGE: I understand. What we envisage in relation to that sort of disclosure,
15 insofar as there are documents out there, direct-evidence-type documents concerning
16 communications between non-party alleged cartelists and the defendants, we thought
17 the first step was to see what the defendants have and to make judgments about
18 potential third party disclosure in light of that, subject to questions of timings.

19 But that's our current thinking on that category of disclosure.

20 We think that is somewhat different from the question of disclosure by IHS Markit of
21 information.

22 THE PRESIDENT: Well, I don't know. It is both, isn't it? If you have the IHS stuff and
23 you have the stuff from the defendants, you will be in a much better position to know
24 to what extent you are going to go against the non-party alleged cartelists.

25 MR ARMITAGE: Indeed.

26 THE PRESIDENT: But I would have thought you would want to see what there is at

1 IHS, first. I don't know.

2 MR ARMITAGE: Indeed.

3 THE PRESIDENT: Because if these are outside the jurisdiction, you know, we may
4 not want to sort of interfere with parties outside the jurisdiction, if in fact the material
5 you need is actually available within the jurisdiction.

6 You will be able to do a much more focused, let's say, exercise, once you have the
7 other stuff.

8 MR ARMITAGE: Yes.

9 THE PRESIDENT: But it is up to you. We will probably come back to the non-party
10 alleged cartelists at the second CMC, because hopefully by then you will have worked
11 out what you are doing with IHS.

12 But, as I said, I do expect that any application for IHS to have a 2025 date on it and
13 not a 2026 date.

14 MR ARMITAGE: Yes. We can see that third party disclosure as a topic may be on
15 the agenda, at least as regards to updates.

16 THE PRESIDENT: Yes, but let's say we are going to have the second CMC -- let's
17 say we have it in November or February, or whenever the dates that I can make and
18 everyone else can make. I don't want that to be the first time that you make an
19 application for non-party disclosure. We really want to get that up and running. It is
20 something that can easily be done as a sort of discrete application.

21 As I said, you know, I doubt that the defendants themselves are going to be, you know,
22 opposing it, because insofar as they have an interest in those documents it is their
23 own documents and they are having to disclose those documents in any event to you.
24 Insofar as they are not their documents, then they probably have no legal interest, no
25 standing, to object to documents from IHS that don't relate to something they
26 themselves have submitted. Whichever way you look at it, it is unlikely to me that they

1 are going to take, let's say, an active role on any such application.

2 But, also, I do not want to hold back the fixing of any hearing of that pending the
3 convenience of Holmes or Howard saying, "Well, we can't have it on this date because
4 one of us is not free". I am not really inclined to be that tolerant. You know, when you
5 can get a date, we deal with it on that date. But it should be prior to the second CMC.

6 MR ARMITAGE: We have heard that loud and clear, sir. Obviously, in relation to the
7 categories of potentially relevant documents held by IHS, insofar as concerns
8 communications between the defendants and IHS, that would be an obvious category
9 of disclosure by the defendants. But I can quite see that there may be other categories
10 where --

11 THE PRESIDENT: What you may find is that when you are dealing with a cartel that's
12 going back, you know, almost is it 2017 or whatever?

13 MR ARMITAGE: At least 2017 to 2021, yes.

14 THE PRESIDENT: Yes, you are going back to 2017. There is always a risk that the
15 defendants' records are not complete. So whilst you would expect to see whatever
16 communications they have (a) they may not have kept them; but (b) if it's anything like
17 LIBOR then you may find they don't have the records, in the sense that if, for example,
18 the setters have been ringing round, they may not have a record of what was done.

19 The setters will. And so if there is any sort of collusion, you want to get the setters.
20 I don't know how sophisticated these setters are. But, if they are sophisticated, then
21 they should have recordings of any calls. I don't know whether they will in fact have
22 recordings, and that's one of the things you need to find out: insofar as the setters
23 were taking rates; how was it operating? Were they calling round? Were they calling
24 round on lines that are recorded?

25 In which case, you will want them to preserve those.

26 MR ARMITAGE: Yes.

1 THE PRESIDENT: I know when you are trying to get direct evidence of a cartel,
2 sometimes you feel that you are looking for a needle in a haystack. This may not be
3 one of those cases. If you are actually going to IHS for the documents, they may
4 actually have the stuff themselves. We will see.

5 But, certainly on LIBOR, there was a lot of stuff that was held and it made a big
6 difference to that case.

7 MR ARMITAGE: Yes.

8 THE PRESIDENT: Yes, okay. Anything else, Armitage, on these categories?

9 MR ARMITAGE: Not on those, sir.

10 THE PRESIDENT: Okay. So we have dealt with Holmes's paragraph 29. We have
11 dealt with non-party disclosure; does anyone have anything else on non-party
12 disclosure?

13 MS HOWARD: I just had some general observations on the process.

14 THE PRESIDENT: No, we have not come to that yet.

15 Any other comments on non-party disclosure?

16 MR HOLMES: Only to say that on instruction I understand that we have no recordings
17 of calls with IHS.

18 THE PRESIDENT: That's good. That's very helpful. I would have been surprised if
19 you did, in fact, have them, because your operation is probably not the one where all
20 your lines are being recorded. Whereas what you find with setters, for example, on
21 LIBOR, their lines were being recorded. So, you know, they will have stuff that people
22 might not otherwise have.

23 MR HOLMES: Yes. Sir, it won't be permissible under German law, I understand.

24 THE PRESIDENT: Sorry?

25 MR HOLMES: It wouldn't be permissible under German law to record calls of staff as
26 a matter of course.

1 THE PRESIDENT: Yes, that's fine. But, if you look at the financial services industry,
2 it is basic that all the lines are recorded and can be a disciplinary offence within the
3 firm not to make calls -- not on the recorded lines. It all depends on the industry and
4 how it is structured and stuff.

5 Ms Howard, shall we just deal with your comments on general disclosure process?

6 MS HOWARD: Thank you, my Lord. We anticipated you might want to go down this
7 path from your previous cases. It is very much in line with what we proposed.

8 THE PRESIDENT: I saw your proposal, yes.

9 MS HOWARD: It is really just mechanics and making sure it is efficient and cost
10 effective.

11 THE PRESIDENT: Yes.

12 MS HOWARD: The concerns with doing it on a rolling basis is you may have repeated
13 productions of documents or having to review the same documents multiple times over
14 for privilege or for different issues.

15 So we didn't have additional categories at this stage to propose. But I am wondering
16 as part of the process, we have sort of adopted a traffic light system to prioritise the
17 categories. The parties have worked really well together cooperating.

18 THE PRESIDENT: Yes.

19 MS HOWARD: Maybe there is a phase when we can use the process of identifying
20 the categories to (a) communicate what's out there, what's relevant and what's not;
21 and (b) which ones should be prioritised, so it is done in rolling tranches to avoid this
22 repeated review, repeated reduction, which adds so much costs into the process.

23 THE PRESIDENT: I agree. The old basis with repeated reviews is not so bad
24 anymore, because what people tend to do is get all the material they can get and then
25 they put it all on a platform which should be easily searchable and to categorise stuff.

26 The cost of disclosure with a proper TAR process is actually much, much cheaper than

1 it used to be. But we will see. I understand what you say on that. It is only once you
2 start looking at it, you will know what works and what doesn't work. As long as you
3 are all talking, you will be able to do it.

4 But, certainly, there are going to be categories of documents which are going to be
5 fairly easy to identify and disclose. But, also, there will be instances where you think
6 you have finished a tranche, but then you find you have more documents in relation to
7 that tranche as you do the next tranche.

8 We are all going to be flexible. That's fine. If you have more stuff in a tranche you
9 have left out, you just disclose it when you do your next tranche.

10 But, as I said, at the end of the process there is going to be one global disclosure
11 statement that brings in all the mini-disclosure statements as you go along. Yes.

12 MS HOWARD: Thank you, my Lord. The only other comment was the use of
13 disclosure clinics, the sort of Friday morning CDP hearings, if there are issues that the
14 parties can't agree, is quite a quick intervention. If your Lordship is open that sort of
15 approach, rather than a full-blown CMC.

16 THE PRESIDENT: I am not really. I'll tell you why, because they get out of control.
17 They end up increasing the costs and it's not a very disciplined process.

18 So, if you ask me, I will not be keen to do that.

19 What I have said, I will offer you what I offered in Trucks, which is I have explained it
20 in one of the judgments, I can't remember which one it is. But it is a judgment where
21 I have said there are different ways of resolving issues of disclosure. Holmes, you
22 know the one I mean?

23 MR HOLMES: Yes.

24 THE PRESIDENT: If you could give me the reference to that one. But there are
25 different ways of doing it and we resolved them informally in that way. Let's avoid the
26 clinics. The clinics just make cases more expensive. They really do.

1 You know, at the end of the day, I am going to have to trust the good sense of the
2 solicitors involved. The three firms involved are all really good, highly respected firms.
3 They are regulars at the CAT. They know what is expected. And they know that, with
4 me, if anyone has a disclosure application in relation to this, and it's a reasonable
5 disclosure application, I am not going to penalise anyone in costs. So don't be
6 frightened of raising things.

7 I tend only to make adverse costs orders on disclosure where I think a party has been
8 unreasonable. It may be different from how other people do it, but that's how it is going
9 to be dealt with in this case, because once you start making adverse costs orders, you
10 find people get a lot more defensive. It is a lot more antagonistic. It raises the costs
11 and temperature. It's just not worth it. Thank you very much.

12 Now, the next topic is going to be early disclosure. So we are at 11.40, so we will
13 have our break now. Then we will talk about the two forms of early disclosure. Once
14 we have done that, then we have probably cracked the main issues.

15 Once we have done early disclosure, I think we can deal with the list of issues. Then,
16 once I have done all that, I will be in a position to give some sort of ruling.

17 Holmes, if you can get that reference -- if you can print it out or get staff to print it out
18 for me, then I will have that in mind. I can give my ruling and refer to that as we go
19 along.

20 MR HOLMES: We will aim to do so.

21 THE PRESIDENT: Thanks very much. Then we will only have things like precise
22 timings for CMC2 and then for the trial.

23 Yes, I think that's probably sensible.

24 Can we just take it out of order? Let's deal next -- because it is a pretty short
25 topic -- with the list of issues; okay? Let's deal with that next.

26 So we will have the list of issues. We will then go back to disclosure, hear any further

1 submissions that people want to make on disclosure, like categories of documents,
2 and then I will give a ruling on disclosure and the list of issues at the same time.

3 Then the rest is just a question of timings and whether or not we are going to fix a trial
4 date now. If I can say: can the parties discuss amongst themselves how long they
5 think this trial is going to last?

6 It may depend on whether we sit five days or four days. So I would probably, on a case
7 like this, prefer to sit on four days because I can get on and do other things on Fridays
8 and deal with applications and other cases, in which case, an estimate of four weeks,
9 if you make it five weeks, is probably within the realms of what's reasonable.

10 But please all discuss amongst yourselves while we have a break as to how long you
11 think this trial is going to last. Obviously, no one can be sure about how long it is going
12 to last: you just have to use your judgment and see what you make of it, having
13 discussed it amongst yourselves as to what you think the range is going to be.

14 Okay, so we will rise until 11.50. Thank you.

15 (11.40 am)

16 (A short break)

17 (12.08 pm)

18 THE PRESIDENT: It's not the one you sent me. That's already in the bundle, at tab 3.
19 It is the one where I set out the different ways in which issues as to disclosure can be
20 resolved, where I say, "We can deal with it informally". I explained it earlier.

21 MR HOLMES: Yes.

22 THE PRESIDENT: But we don't need an authority for that. You understand how I do
23 it.

24 MR HOLMES: I am sorry we drew a blank. It maybe it was on a transcript rather than
25 in a recorded --

26 THE PRESIDENT: I think there was -- I normally give a ruling at the end of it.

1 MR HOLMES: Yes.

2 THE PRESIDENT: Okay, thanks very much.

3 So shall we look at this issue on the pleadings? Tell me where the list of issues is.

4 Bundle B, isn't it?

5 MR ARMITAGE: Bundle B, tab 18. The relevant issue is page 90. The very last bit.

6 So, really, this is the central issue concerning: was there unlawful collusion?

7 In the course of discussion of those issues we can find this at particular points --

8 THE PRESIDENT: What page in the bundle?

9 MR ARMITAGE: B90, tab 18.

10 THE PRESIDENT: B90, yes.

11 MR ARMITAGE: Yes, B90.

12 THE PRESIDENT: So I look at paragraph 8?

13 MR ARMITAGE: Yes, the black text is all agreed.

14 THE PRESIDENT: When you look at that, you say that what they are trying to do is

15 to cut your legs off, because the reality is that you want to be able to look at text

16 messages within each defendant --

17 MR ARMITAGE: Yes.

18 THE PRESIDENT: -- you want to see the communications as between the

19 defendants, and you want to see the communications with the benchmark setter; yes?

20 MR ARMITAGE: Yes, exactly right.

21 THE PRESIDENT: If you add this in, you are going to lose, potentially, a lot of

22 disclosure, and that this list of issues -- I have already ruled -- is going to be the list of

23 issues which is going to be a substitute for a list of issues for disclosure.

24 So, when I was looking at your pleading, I can see why they put that in there, because

25 I think they are going back to paragraph 40 of your pleading.

26 So, when you look at paragraph 41(i), I can see this is where that's come from. But

1 then they say: you go back to paragraph 40 and that's the paragraph that leads you
2 into paragraph 41(i).

3 I think that's -- when I looked at it last night, that's what struck me. I can see why they
4 are doing it. But I can't see how this wording, with the extra green words, helps us
5 when it comes to disclosure. And this is a list of issues for disclosure, as well as a list
6 of issues for trial.

7 I would expect that this document will be updated anyway by the time we get to the
8 second CMC. So whoever is doing the CMC order, please add in that this is to be
9 updated for the second CMC. The chronology is going to be updated for the second
10 CMC as well. I would also like a dramatis personae for the second CMC, which will
11 deal with who are the relevant individuals within each of the parties. So put the name
12 of the guy or the lady and say what their role was, because that may make it more
13 helpful if we are going to have to resolve any particular issues.

14 So, look, I have your point. You just sit down, Mr Armitage. Don't worry.

15 Mr Holmes.

16 MR HOLMES: Sir, you rightly apprehend the concern on the pleadings.

17 THE PRESIDENT: I understand what the concern is.

18 MR HOLMES: You see the specific reference in 41(i), which are the various grounds --

19 THE PRESIDENT: 41(i), yes.

20 MR HOLMES: -- back to 40.

21 THE PRESIDENT: It goes back to 40. I can see why you put it there. But the problem
22 is I really don't want these words in because this is going to be used for disclosure.

23 So I can see it's a list of issues. You can say, "Well, you have your pleaded case."

24 And when you look at 41(i) it is symbiotic on going back to paragraph 40 and that's
25 how you get these wordings at the end.

26 But, when it comes to disclosure, I don't want this to be used as an excuse for

1 disclosure, to give narrow disclosure and say, "I am not going to give you disclosure
2 on anything to do with pricing".

3 MR HOLMES: We are really not trying to cut off anyone's legs, to be clear. Our
4 concern is just to try to focus things on what is a very broadly defined and nebulous
5 field. But we hear what you say.

6 THE PRESIDENT: Yes.

7 MR HOLMES: We are also mindful of your point that this will be updated at the CMC.

8 THE PRESIDENT: Yes, I want it updated at the next CMC, because it may look
9 slightly different. As part of the Redfern Schedule process you may get a bit more
10 precise. I did want to say something about the disclosure reports as well.

11 Have you finished on this?

12 MR HOLMES: Only one further point, if I may, sir, which is to say that to some extent
13 this is dissolved by the approach you are now proposing, isn't it? Because realistically
14 we are going to move to categories and the real dispute will lie, if there is one, in how
15 the categories are defined, which is discrete and separate from this.

16 THE PRESIDENT: Exactly.

17 MR HOLMES: Yes.

18 THE PRESIDENT: Okay. Ms Howard, I don't think you have a position on this, do
19 you, really?

20 MS HOWARD: We did have a position that --

21 THE PRESIDENT: But no different from his.

22 MS HOWARD: -- But now we've heard your views we hear what you are saying.
23 Thank you.

24 THE PRESIDENT: I have things to say about other things on disclosure, but we can
25 perhaps come back to that.

26 Let's just deal with this whole idea of initial disclosure or KADs. It may be the parties

1 will say that given what we are doing, it's fairly academic. On the other hand, if
2 someone wants to have a go, they are welcome to have a go.

3 Is this fixed for half a day or a whole day?

4 MR HOLMES: I think for the whole day. But we are optimistic on our side that it can
5 be done in somewhat less.

6 THE PRESIDENT: When we look at what's going to happen, we will deal with the rest
7 of disclosure. I will give a ruling. That will take us to lunchtime. Then the parties can
8 all be discussing amongst themselves about the timing for CMC2 and whether or not
9 we should be fixing a date for trial, and if so how long.

10 So the good thing is we will have a lunch break where the parties can all chat amongst
11 each other. So when we get to the wording of the order and the timetable, we will be
12 in a better position.

13 Also, hopefully by 2.00 the parties would have formulated the sort of Holmes-type
14 categories, the equivalent of your paragraph 29 that they are seeking against each
15 other. So we can leave the day knowing that at least certain things are fairly concrete,
16 in terms of: these are categories that are basically agreed, that is going to be searched
17 for, and you start putting those together. Yes.

18 MR ARMITAGE: That's very helpful. So I don't forget, we have found the Trucks
19 judgment, it's [2021] CAT 13.

20 THE PRESIDENT: That's it, that's the one. Do you have a copy of it?

21 MR ARMITAGE: We have just found it online.

22 THE PRESIDENT: Just give it -- what is the reference?

23 MR ARMITAGE: [2021], CAT 13, paragraphs 5 to 11, we think.

24 THE PRESIDENT: What is the case called?

25 MR ARMITAGE: Dawsongroup Plc v DAF Trucks and others.

26 THE PRESIDENT: Well done.

1 MR ARMITAGE: 100 per cent credit to Mr Whelan rather than me.

2 THE PRESIDENT: I take that back then. Can we look at this concept of early
3 disclosure?

4 MR ARMITAGE: Yes.

5 THE PRESIDENT: There are two suggestions out there. One is KAD disclosure. The
6 problem with that is the number of pages we are probably talking about is way in
7 excess of what you would normally get under KAD disclosure. That's one of the
8 problems.

9 Given that the documents that would otherwise fall within KAD disclosure are going to
10 be covered by the rolling disclosure process, it is probably unnecessary to have.

11 That's the issue on that.

12 But I appreciate your skeleton argument, paragraph 9. You are asking for it.

13 I know that the defendants aren't keen for various reasons. And they say it's not as
14 simple -- like many things in life, it's not as simple as it looks like on the top of the tin.

15 MR ARMITAGE: It may be I can cut through this, to an extent at least. We have been
16 discussing over the short adjournment. We think, in light of the very helpful progress
17 this morning in relation to how the process is going to work going forward from today,
18 that rolling process is likely to give us essentially what we were seeking to achieve
19 with our KAD application.

20 Obviously, we will come back to the categories. We do say we would benefit from
21 a bit more time to think about the sorts of categories we would like to propose pursuant
22 to that rolling process, which I hope we can deal with after lunch.

23 The only remnant of our application, which I would still suggest, if I may, is that we
24 would ask that if there are existing documents that are adverse, that can already be
25 identified without further checks with relevant personnel, we would respectfully submit
26 that they can and should be provided in short order after this CMC. But we don't press

1 the broader application. We see the ...

2 THE PRESIDENT: Yes, but ...

3 Okay. Still when you look at the category, it is actually quite a broad category. It
4 encompasses a lot.

5 MR ARMITAGE: I understand that, sir. What we are really concerned with, as I am
6 sure you apprehend, is documents concerning the internal operation of the cartel. Not
7 documents that might be used by an economist to support an economic --

8 THE PRESIDENT: I think we all know what you are looking for. It is sort of what
9 pejoratively I called earlier the needle-in-the-haystack-type document.

10 MR ARMITAGE: Yes.

11 THE PRESIDENT: Which may or may not exist. Clearly, if they found documents like
12 that, they are going to disclose it anyway. The question is whether they have to carry
13 on and do quite a deep, deep dive to see, you know, what there is.

14 I am not going to tell them exactly how they are going to do the process. But they are
15 all fairly experienced solicitors on this. They will know what you are looking for. They
16 probably know which is the most efficient way of finding those documents, because
17 they will know their own documents pretty well and their own systems.

18 But you can be sure that the defendants are going to be required to carry out the
19 search for those type of documents. You may say that probably is going to be more
20 like a Peruvian Guano -- which is a sort of chain of enquiry -- because if you find, for
21 example, internal communication saying about the pricing and discussing between the
22 cartelists pricing levels that is part of a whole picture whereby people are submitting,
23 let's say, high-balling in relation to the price setting with IHS.

24 But I don't think you need to worry that these particular defendants, with the teams
25 that they have, that they are going to play games. You know, life is too short. If you
26 find an adverse document like that, you are going to disclose it. You are taking a hell

1 of a risk professionally if you don't disclose it.

2 One of the great things about the people in this Tribunal, so often they disclose

3 documents which would never have seen the light of day, because basically you are

4 dealing with people who know what they are doing and they are real professionals.

5 Mr Holmes, do you have anything on this section?

6 MR HOLMES: No, sir. We agree with your observations.

7 THE PRESIDENT: Okay. Then there is this question of initial disclosure, which was

8 your proposal, Mr Holmes.

9 MR HOLMES: Sir, that falls by the wayside for the same reasons.

10 THE PRESIDENT: Okay, that's fine. Right. I think we have reached a landing now.

11 Let me get my head together.

12 (12.22 pm)

13

14 (Ruling given)

15 (1.00 pm)

16

17 Proceedings (continued)

18 THE PRESIDENT: So that's the end of my ruling. Unless I have missed anything out,

19 gentlemen, Ms Howard?

20 Okay. So the next issue we have is -- can we deal with the trial date first? Then we

21 will get back to the question of CMC2. Then once we have the CMC2 date, we will

22 then go through the dates for the process for the general disclosure exercise. So

23 where are we on trial estimate?

24 MR ARMITAGE: So we had given a provision, obviously an estimate, of four weeks.

25 That had not been based, I should say, on the Tribunal not sitting on Fridays --

26 THE PRESIDENT: Exactly.

1 MR ARMITAGE: I can see that may well be a sensible and desirable approach. So,
2 on that basis, we would suggest a five-week estimate, assuming four-day sitting
3 weeks.

4 THE PRESIDENT: Look, what will happen is that we will start the case, we will see
5 what progress we are making, and then we will decide whether we are going to sit on
6 each Friday as we go along. So it may be some Fridays will have things like disclosure
7 applications or whatever to deal with. We're not hearing witnesses or whatever, we
8 can constructively use that. Or it may be you are going to have a heavy day with
9 experts on the Monday, in which case I would be very happy to read the expert reports
10 again on the Friday, so I will be ready on the Monday.

11 So, my estimate from what I can see is, worst case basis six weeks. Best case basis,
12 probably four weeks on a four-day week. But, at the moment, you are at about five
13 weeks?

14 MR ARMITAGE: Yes.

15 THE PRESIDENT: Mr Holmes.

16 MR HOLMES: Sir --

17 THE PRESIDENT: Obviously, it is never going to be cast in stone, because we are
18 going to have to revisit the estimate when we have CMC2.

19 MR HOLMES: That's what I am saying. So our starting point is it is better to go long
20 now rather than short, because we don't want to split the hearing.

21 THE PRESIDENT: We do not want that.

22 MR HOLMES: Exactly. Two considerations struck us when we were looking at this.
23 First of all, we are expecting, perhaps, three or four factual witnesses. That is our best
24 estimate for now. They are likely to be German speakers, given the focus of this
25 business.

26 THE PRESIDENT: Yes, of course.

1 MR HOLMES: So they are likely to require translation, which may slow things down
2 a bit.

3 Second point, we expect there could be up to three expert fields. Now, I appreciate
4 that sounds like a lot. But we are mindful not only of the competition economists, but
5 also of accountants, given there is going to be a dispute, potentially, about profitability
6 on the pleaded case and also questions about quantum arising from that.

7 THE PRESIDENT: I could see that, yes.

8 MR HOLMES: Also potentially industry experts, given the production process,
9 capacity, those types of considerations, may well require some industry expertise.

10 So for all those reasons, and aiming long, we think your estimate of six weeks is closer
11 to the money. We would even be inclined, perhaps, to allow an additional week with
12 the expectation that that may well be capable of being refined down subsequently.

13 THE PRESIDENT: I am not going to fix it now.

14 MR HOLMES: No.

15 THE PRESIDENT: Because we will hear from Ms Howard quickly. We will also then
16 have our adjournment and come back at 2.00.

17 MR HOLMES: Okay.

18 THE PRESIDENT: Because what all you lot need to do -- I don't mean that
19 unkindly -- what you need to do is try to work out the precise timing for each stage in
20 relation to disclosure. I think we are going to have to hear from Armitage's side a bit
21 more on the specific categories of documents -- the categories you were hoping to get
22 early. And then we have to fix a date for CMC2.

23 I will want an indicative date for when you take out your application for pre-action
24 disclosure. Again -- because I may want to put in the order: applications for pre-action
25 disclosure should be made by a particular date.

26 Just to get that in the order, give a bit of discipline. You can show it to IHS as well,

1 saying this is what I have directed. So that may encourage them to move along. But
2 I know it is not a quick process. You will have to write to them first, explain what you
3 are looking for. See if they react positively. If they act positively, you may not need to
4 get an order. You are going to need to offer them confidentiality and it may be it is
5 going to be needed to put the stuff into a CRO, just to respect the confidentiality of the
6 process. I know that CROs take a long time to agree. Just to hear you on the
7 estimate --

8 MS HOWARD: Our estimate -- we don't know exactly how many witnesses. Our
9 estimate was six weeks.

10 THE PRESIDENT: That seems sensible.

11 MS HOWARD: And we know the capacity constraints of the Tribunal and the Rolls
12 Building as well and how hard it is to get a hearing room, so we would rather go long
13 and, if your Lordship needed a short reading in at the beginning, it is not going to be
14 a waste of time to allocate it.

15 THE PRESIDENT: I think that's sensible. So I will agree with that.

16 So we will have our break. We will come back at 2.00. We will then get the date for
17 CMC2 and then we will go -- then we will hear from Armitage about the categories of
18 documents he wants to be prioritised.

19 Then, when it comes to typing up the ruling when I get the transcript back, insofar as
20 I agree with them, I will get those written back into the relevant part of the ruling, so it
21 is all in the ruling.

22 If there is anything that you want prioritised, can you think about that over the lunch
23 time?

24 MS HOWARD: Yes. Some of the quantum issues we may need our experts --

25 THE PRESIDENT: Don't worry about that now. The thing is, whatever you can get
26 by 2 o'clock over and above Holmes's five -- it was six, but it is only five now -- then

1 we can get that sort of ironed out. So at least you will leave today knowing that any
2 priority or clear focus category is going to be looked at.

3 MS HOWARD: My Lord, at the end of our skeleton we have an annex with a kind of
4 milestone chart; would it help if the parties try to revise that over the lunch adjournment
5 and see if there is a route map we can hand up to you with those dates?

6 THE PRESIDENT: I am very flexible. I have seen what you have produced. If you
7 are going to have a revised road map, can you get it amended and printed out and
8 handed to Leanne before we come back at 2.00?

9 If you think you may need a bit more time, I am happy to come back at 2.15. Shall we
10 say 2.15? Then everyone can formulate a bit more.

11 Can you, on a piece of paper, formulate your five, which were six?

12 MR HOLMES: Yes.

13 THE PRESIDENT: Just so I can have it on a piece of paper.

14 MR HOLMES: We will do that. If we can have advance notice of Mr Armitage's
15 categories that might be helpful too, because they may be capable of agreement.

16 THE PRESIDENT: Of course it is. Otherwise, we will rule on them at 2.15. All I want
17 is to get this case in order, so that we are not going to have a farce and we are not
18 going to have too many hearings unnecessarily and increase costs. We will give a lot
19 more detailed orders on experts next time round. We are going to discuss experts
20 a bit this afternoon as well, as to how we envisage that process.

21 So, by and large, we have more or less dealt with disclosure, subject to Howard and
22 Armitage coming up with specific categories. Then we will move on to trial date,
23 estimate of trial. I have indicated it is probably going to be six weeks. Then we will
24 get a date for CMC2. Try to be sensible, Mr Armitage, about when you want CMC2,
25 because remember I want the pre-action disclosure from IHS done by the time you
26 have CMC2; okay?

1 | So factor that in when you ask for your date.

2 | Okay. Otherwise I will be back at 2.15. Thanks very much.

3 | (1.09 pm)

4 | (The luncheon adjournment)

5 | (2.32 pm)

6 | THE PRESIDENT: Let's sort out, before we get to the categories, the two remaining

7 | things. Then we will go back, look at the categories and look at the timings on the

8 | draft order.

9 | So, on the listing of the trial, unless anyone objects, it is going to be six weeks,

10 | commencing 3 May 2027.

11 | Does anyone object to that?

12 | As regards the second CMC, Armitage, can you just indicate to me when you think

13 | that you would have received the non-party disclosure and a significant enough, let's

14 | say, tranche of the documents and that the Redfern Schedule process would have

15 | completed.

16 | So, when I get to the second CMC, I will want you to be able to tell me: "Look, Malek,

17 | we have these documents already. We have had three exchanges of tranches. Here

18 | is the Redfern Schedule. These are the items which are not in grey. Can you sort

19 | those out if we can't agree it?"

20 | And that you have at least the disclosure in hand from IHS, because all that will drive

21 | the framework for where we go. So when do you think that's a realistic date?

22 | MR ARMITAGE: We think to maximise the effectiveness of the process while still

23 | getting on with things, something like February next year sounds more workable.

24 | THE PRESIDENT: Okay. Holmes?

25 | MR HOLMES: I would be happy with that.

26 | THE PRESIDENT: Okay. So we will have -- then can you give me a date? And try

1 not to make it in half term.

2 MR ARMITAGE: Sir, yes.

3 THE PRESIDENT: Okay. Can we make it the third Friday, or maybe the fourth Friday?

4 The fourth Friday in February, whatever that is.

5 MR ARMITAGE: Yes. Unless it is thought a day is not enough.

6 THE PRESIDENT: No, a day will be enough, don't worry. I am not going to put up

7 with a CMC lasting more than a day on a case like this.

8 MS HOWARD: I am sitting in the admin court that week.

9 THE PRESIDENT: Are you? The whole week? Should we then make it -- the whole

10 week? Okay. What about the week before, on the Friday? How is that looking? Tell

11 me what date that is.

12 MS HOWARD: That's the 20th. And I think that may be half term.

13 THE PRESIDENT: We don't want that.

14 So what about the first Friday in March? Can everyone make that?

15 MS HOWARD: I think I am in trial on Dieselgate again.

16 THE PRESIDENT: You have Dieselgate? The whole week?

17 MS HOWARD: I have a phase 2 of Dieselgate starting at the beginning of March. So

18 if there was something at the beginning of February, that would be the first two Fridays

19 of February, that would be better for me. But obviously I don't want to dictate --

20 THE PRESIDENT: If we have it the first Friday of February, I think that won't be half

21 term.

22 MR ARMITAGE: 6 February?

23 THE PRESIDENT: All right, 6 February. So I am going to write that in my book. So

24 the listing for trial is 3 May 2027. The second CMC is 6 February 2026. We will now

25 look at the list of categories and then we will look at the precise timings on the order.

26 Okay, categories, any problems? Does anyone have any dispute about any of this?

1 MR HOLMES: Well, sir, there is going need to be some tidying, first of all. Because
2 I am afraid some of the pejorative language, as you referred to it, has crept in here. It
3 has been cut and pasted.

4 THE PRESIDENT: I told you to take out "vague" and all --

5 MR HOLMES: That will go, sir.

6 THE PRESIDENT: Take all that out.

7 MR HOLMES: Yes, sir. I think the substance of those categories are agreed. We
8 were not focusing on quantum when we were drafting the skeleton because of the
9 focus of discussion between the parties. But we have identified some data categories
10 of relevance to quantum and we had hoped they might be given priority, also. Just
11 monthly purchases by the claimants by supplier --

12 THE PRESIDENT: This is quantitative?

13 MR HOLMES: Yes.

14 THE PRESIDENT: Yes. But this is precisely the sort of stuff that having the equivalent
15 of pricing statement or an information statement; a lot of that will be done.

16 MR HOLMES: Sir, I think it will affect the economic analysis to determine -- so I think
17 it will be data that will be the subject of economists' analysis. It also goes just to the
18 volume of commerce, to working out the extent of their loss. So I think it would be
19 quantitative rather than simply a statement of how things worked within their business.

20 THE PRESIDENT: Okay. But you probably need both for it to work.

21 MR HOLMES: Yes.

22 THE PRESIDENT: I don't envisage this is going to be the quickest stuff to do.

23 MR HOLMES: No. Maybe it can go in the second wave then, as part of the Redfern.

24 THE PRESIDENT: I would have thought that is going to be second wave stuff.

25 Look, your first five items is first wave stuff. Six, I expect that at the earliest to be
26 second wave. My experience of these, sometimes it is a lot more expensive than you

1 think and it is only once the party disclosing realises how expensive it is -- so I can see
2 why you are asking for it. We need to see what their response is to that category.
3 Because if they say, "Look, it is going to cost us £1 million to give you that", then we
4 are going to have to have a rethink in the context of this case.

5 MR HOLMES: I can quite see it is business for another day.

6 THE PRESIDENT: Business for another day. But it is helpful for you to just outline
7 those are the sort of things you're looking at. It is certainly the sort of thing you need
8 to debate amongst yourselves, and I would expect it to form a sort of, let's say, quasi-
9 contentious category. And if any party wants to object to any category of documents
10 on cost grounds, they need in their schedule, or somewhere, to explain why it is so
11 expensive and what the estimated cost is. Because so often I have had these
12 hearings, where people come up to me and say, "We object because it is costly ..."
13 and no one has a clue what they are talking about in pounds, shillings and pence
14 terms.

15 But I am sure Armitage has heard what I said about this, so there may be some ability
16 to cover this by pricing statements. He may need to find out where all this data is held,
17 so he can give an explanation of where it is held, and then we go from there.

18 So I am not putting it on the schedule for now.

19 MR HOLMES: That's fine.

20 Then as regards claimants' requests, over the page.

21 THE PRESIDENT: Yes.

22 MR HOLMES: In the form they are set out here, they are agreed, save for one point,
23 which is simply that 2 seems to us otiose to the extent that it would be caught by wider
24 category 1. But, subject to that, we are content with these categories.

25 THE PRESIDENT: What you could do is you could -- can you just, Armitage, merge
26 it at the end of 1? Including, "But without prejudice to the generality that" and then we

1 put those together. So that's absolutely fine.

2 MR ARMITAGE: Yes.

3 THE PRESIDENT: Of all the entities on the defendants' side; can we have the audited
4 accounts? In some countries they are not publicly available. So let's have the audited
5 accounts for the relevant years, i.e. whichever accounts cover the relevant period; can
6 we add that to the list?

7 MR HOLMES: Yes.

8 THE PRESIDENT: Armitage, we will add that to your list.

9 MR HOLMES: If it perhaps fits under 4, audited accounts.

10 THE PRESIDENT: Yes. I noticed it just refers to "management accounting" and
11 I would like to see that.

12 MR HOLMES: Audited as well.

13 THE PRESIDENT: Audited as well. Okay. Yes, okay, that's sensible.

14 MS HOWARD: I am just going to say, my Lord, from the INEOS defendants, we don't
15 provisionally at this stage have objections to these categories by the claimants. But
16 obviously the devil in the detail will be in the scope of the searches, so there might
17 be --

18 THE PRESIDENT: I agree. This is all stuff that you should be all getting on with now;
19 okay?

20 If you have problems coming up when you are doing the process -- because that is
21 quite often the case, you only find out once you start looking -- then obviously explain
22 it and it may be the explanation will lead to people saying, "Don't rush that, that can
23 come a bit later", or it comes when it comes. But you are pretty well resourced on your
24 side, and you should be able to have more than one group of people working on this.
25 One would hope that someone is now working on the disclosure reports, electronic
26 document questionnaires. That's fine. That's okay.

1 I will understand that anything anyone does in any of these categories is subject to
2 what is under the carpet, okay.

3 MS HOWARD: You asked us for additional categories, over and above.

4 THE PRESIDENT: If you have any, that would be great.

5 MS HOWARD: We were discussing it over the breaks, but we would rather have time
6 to get input from our experts and do it in the second phase.

7 THE PRESIDENT: That's absolutely fine. We will do it in the second phase. But, if
8 I can have an updated version of the composite disclosure categories for, let's say,
9 phase 1, if you have anything to add to it and make sure Armitage is happy with it,
10 then you just add that. So see where you are by Wednesday at 2.00, then submit
11 another version of this which is agreed. Anything that's not agreed, then we will leave
12 out for now. Everyone can be flexible. This, at the moment, is just about agreed,
13 subject to taking out item 6 on the first page, yes.

14 MR ARMITAGE: I have been about to stand to say that insofar as anything else occurs
15 to us in that very short time period, we can --

16 THE PRESIDENT: Yes, just try to do it. Once I have the transcript back from the
17 transcribers, I will want to put in a ruling and then the ruling will need to refer to these
18 categories, yes. Thank you very much.

19 Okay. Timings for the various steps, like disclosure reports, questionnaires and stuff
20 like that. Do you have a draft order now that reflects where we are? Does anyone
21 have a draft order --

22 MS HOWARD: We have the rainbow version that was in -- which had alternative
23 dates. Some of the dates are similar to the ones that we have been discussing over
24 the short adjournment --

25 THE PRESIDENT: The rainbow version? Okay. That doesn't help me.

26 MS HOWARD: It is the composite version, which I think is at B25. I will just check my

1 notes, the latest version.

2 THE PRESIDENT: It's not the one that arrived on my desk this morning then? It is
3 a different one, is it?

4 MR ARMITAGE: I think it is that one.

5 MS HOWARD: It may be that one. It has been updated. The last version I saw was
6 Friday evening, so it may ...

7 THE PRESIDENT: I am just going through the order now. Let's have a look at it.

8 Mr Armitage, do you want to take us through, or someone take me --

9 MS HOWARD: Certainly, Westlake and the INEOS defendants, we have discussed it
10 over the break. I think we are largely agreed. We raised them also with the claimants.
11 Maybe if I go first --

12 THE PRESIDENT: You go first. We now have CMC2 on 6 February 2026.

13 MS HOWARD: That's right.

14 THE PRESIDENT: We all understand that by that date we will want the
15 Redfern Schedule process completed, substantial disclosure has been given by every
16 party, non-party disclosure at least vis-à-vis IHS is all sorted out and we have the
17 results of that process, and so we can go by whatever fits in.

18 MS HOWARD: On this draft, I think we just draw a line through paragraphs 2, 3, 4
19 and 5.

20 THE PRESIDENT: Let's just delete those, yes.

21 MS HOWARD: That's the preliminary disclosure, which has gone.

22 If we start at 6, we are assuming there are no amendments. We have proposed that
23 for the EDQs and the disclosure reports that they be completed by 12 August 2025.
24 So it is the first set of orange wording that was proposed by the Westlake defendants.
25 We have moved forwards to agree with them, to 12 August 2025. We think that
26 process -- we will need that time to finalise it.

1 THE PRESIDENT: You two both stand up and we will do it.

2 MR ARMITAGE: I can save time. I think we are fine with all the dates that Ms Howard

3 set out.

4 THE PRESIDENT: Let's just go through it one by one and you can say yes or no.

5 MS HOWARD: So 12 August 2025 in paragraph 6. Paragraph 7 --

6 THE PRESIDENT: So I tick 12 August 2025?

7 MS HOWARD: Yes.

8 THE PRESIDENT: Then I delete --

9 MS HOWARD: Paragraph 7 is the Redfern Schedules, and we do think we might need

10 some expert input here. Given this is over the August holiday period, we are just

11 proposing that is moved to 5 September 2025 to allow time for the experts to feed into

12 the Redfern Schedule.

13 THE PRESIDENT: Yes. So 7 is 5 September 2025.

14 MS HOWARD: Paragraph 8 is 19 September 2025.

15 THE PRESIDENT: Is that agreed? Yes.

16 MS HOWARD: And paragraph 9 is 10 October 2025.

17 THE PRESIDENT: Okay, yes.

18 MS HOWARD: Then we propose we have a rolling disclosure basis in general terms,

19 because it will all depend on coordination between the parties, so we just have -- the

20 parties are to give disclosure --

21 THE PRESIDENT: Let's just go back. On 7, that's the request and we are going to

22 have two Redfern Schedules, aren't we?

23 MS HOWARD: Yes.

24 THE PRESIDENT: We will have your Redfern Schedules, which you are doing with

25 Mr Holmes, and we will have Armitage's Redfern Schedule.

26 So that's the first stage. So that's column one which sets out the category and

1 rationale and whatever, the extent of search and what type of search they want.

2 Column 2 is going to be your response and Mr Holmes' response. So column 2 will
3 probably have two halves to it. Your half dealing with one of you, and the other half of
4 that column dealing with the other one, okay.

5 So we get to column 2, you are saying, on 19 September 2025.

6 MS HOWARD: Yes.

7 THE PRESIDENT: If that is going to work, it may well be that if Armitage -- both sides
8 were able to give an earlier indication of what they are looking for, that will help.

9 Because it seems to me it can be quite a tight thing to get that second column done.

10 But, if you are happy to do it that I way, that's fine.

11 That's the second column.

12 The third column, you are saying on 10 October 2025, which will be the replies. Then,
13 at that point, it's going to be ready for the Tribunal.

14 Once you have reached the third column, what --

15 MS HOWARD: We were mindful of you saying you didn't want the parties to waste
16 time trying to agree the Redfern Schedule, that often creates further delay. So, at this
17 point, we were going to have a general provision for rolling disclosure, which obviously
18 starts immediately.

19 THE PRESIDENT: Yes, yes.

20 MS HOWARD: As and when categories are agreed.

21 THE PRESIDENT: When you give the agreed categories, it will go on the Redfern
22 Schedule as an agreed category. So that will be on the schedule in grey.

23 MS HOWARD: Yes.

24 THE PRESIDENT: That's fine.

25 MS HOWARD: So far as you are concerned, we thought the best thing would just be
26 to give you the latest working draft of the Redfern Schedule before the second CMC.

1 THE PRESIDENT: Yes.

2 MS HOWARD: So we would amend the current wording of paragraph 10. So it is not
3 an agreed completed schedule. It's just the latest version so far as agreed --

4 THE PRESIDENT: What I am going to suggest is that the parties meet after the reply
5 column, i.e. the one that's for 10 October 2025, in order to see what extent it can be
6 agreed. Then, if you put that, you know, some time in November, then let's put
7 that -- so meeting parties to attempt to agree.

8 Can you give me a date in November?

9 MS HOWARD: If it is 10 October 2025, then we can just do it first week of November.
10 That is half term -- if we did the 7th or something? By 7 November 2025.

11 THE PRESIDENT: By the 7th, yes. Then the schedule to be served on the CAT, we
12 can have those schedules -- can we have a date in December for that? You already
13 have -- we need to have a date in December.

14 MS HOWARD: We have the 21st, which was the last --

15 THE PRESIDENT: For your current number 10, the completed Redfern Schedules,
16 that's after you have tried to negotiate the final versions with the grey bit. Give me
17 a date in December, probably the second week of December.

18 MS HOWARD: Is the 19th too close to Christmas for you? Do you want the 12th?

19 THE PRESIDENT: 12 December 2025 is easiest for me, because I can read it before
20 Christmas and all that. If there are any directions that need to be given to the parties,
21 I can do that before Christmas. So 12 December 2025, yes.

22 Okay, the agenda for the further case management, we don't need that until the
23 beginning of January.

24 MS HOWARD: That's right. Then, at the same time on the same date, we were
25 proposing that there be a direction for the updated chronology, the updated list of
26 issues and dramatis personae.

1 THE PRESIDENT: Updated chronology, dramatis personae and list of issues.

2 MS HOWARD: Sir, we could do that on 9 January 2026. That should be sufficient.

3 THE PRESIDENT: Yes. Yes. And we will have expert evidence a bit later, won't we?

4 MS HOWARD: Yes.

5 THE PRESIDENT: About directions for that. Okay.

6 MS HOWARD: I am not dealing with the timetable for the third-party disclosure,

7 because we are not involved in that. Presumably that will go on for the rest of this

8 term. But I do think we need a direction for the actual kind of rolling disclosure of these

9 various categories. We were just going to propose a general direction that the parties

10 are to give disclosure on a rolling basis on the categories as they are agreed.

11 THE PRESIDENT: Where is that?

12 MS HOWARD: We don't have that in this version.

13 THE PRESIDENT: The wording you have given me is perfect, yes. Put that in the

14 order.

15 MS HOWARD: And keep it fluid, so the parties can have an ability to agree and

16 coordinate.

17 THE PRESIDENT: Exactly. Let's keep it fluid.

18 On the non-party disclosure against IHS Markit Limited or whatever; can we have

19 a date by which you are to take out any application?

20 MR ARMITAGE: Yes. We hoped for some flexibility there. Just to make one point

21 about that, we do say there is a degree of contingency in relation to what we get from

22 the defendants on the first proposed category from the claimants, i.e. their

23 communications with IHS.

24 THE PRESIDENT: Because that will help you target --

25 MR ARMITAGE: That's the thinking. Because we are conscious that we completely

26 see and agree with the observations the Tribunal made on the potential criticality of

1 the IHS disclosure -- and we will certainly prosecute that expeditiously -- but we are
2 also mindful of potential costs involved in that process, and we think if it is possible to
3 see some disclosure from the defendants before we make the approach and start -- so
4 we can write to IHS almost immediately with the outlines of the proposal.

5 THE PRESIDENT: Yes.

6 MR ARMITAGE: But it is in terms --

7 THE PRESIDENT: I think you need to write to them as soon as you can.

8 MR ARMITAGE: Yes.

9 THE PRESIDENT: A "hold all mail" effectively. That they don't start destroying stuff
10 in the relevant period.

11 MR ARMITAGE: We have heard and fully taken on board what the Tribunal have said
12 about needing to make an application and ideally have an application resolved by the
13 date of the second CMC. We are perhaps just urging you not to make a long stop
14 date for make the application. But if the Tribunal finds that helpful, we can of course
15 agree to something.

16 THE PRESIDENT: Well, it ties in with your category 1.

17 MR ARMITAGE: Yes, exactly.

18 THE PRESIDENT: But we don't know when category 1 is going to be done. But
19 obviously it is a prioritised category. One would hope you would have it by the end of
20 the summer. Yes.

21 MR ARMITAGE: One option, the date is --

22 THE PRESIDENT: What I will say is --

23 MR ARMITAGE: Tied in to the provision of that.

24 THE PRESIDENT: Exactly. You will take out your application as soon as reasonably
25 practicable after that disclosure has been provided by the defendants. That is a signal
26 both to IHS and to you that we want it to be done promptly. And where you are dealing

1 with IHS, you can share the order and say, "This is what the judge has said." Yes,
2 and that application will be heard by way of hearing. Then we will obviously fix a date
3 for that once the application been taken out. Okay.

4 MR ARMITAGE: So only really --

5 THE PRESIDENT: Yes, that's fine, okay.

6 Let us go back to the order.

7 MR ARMITAGE: I think we can move on to 21.

8 THE PRESIDENT: Yes.

9 MR ARMITAGE: Under further case management -- now there are some
10 amendments as discussed to 21.

11 THE PRESIDENT: So that's six weeks, yes.

12 MR ARMITAGE: Then further case management conference, we now have the date
13 in February 2026.

14 THE PRESIDENT: Yes.

15 MR ARMITAGE: I think the final words "and trial" can come out, because we already
16 have the provisional list. Then 23 is the agreed position on --

17 THE PRESIDENT: We are not having two days.

18 MR ARMITAGE: I am so sorry. Yes, agreed.

19 Yes, then at 23 --

20 THE PRESIDENT: As soon as I tell you it is two days, it is going to last two days.

21 MR ARMITAGE: No, we see that. We are very happy with that. We are not pushing
22 back on that at all.

23 THE PRESIDENT: Okay.

24 MR ARMITAGE: So 22 is the list of evidence --

25 THE PRESIDENT: On 23, can you make it sure that the application for permission
26 should name the expert, the speciality or whatever, the expertise of the expert in

1 question, and the issues on which they are going to be providing expert evidence?
2 Ideally, it should be supported by short witness statements from each of the proposed
3 experts setting out their proposed methodology. Otherwise we are wasting our time.
4 Sometimes you turn up at the hearing and both parties are talking about something
5 completely different. So at least this way we will all know what we are talking about.
6 So amend 23 to reflect that.

7 Now, on this question of whether they are going on have more than one expert,
8 submitted by defendants, don't we need to have a provision that says insofar as they
9 are going to have separate experts, they need to explain why they need to have
10 separate experts?

11 MR ARMITAGE: We would support that and had in fact proposed that. Then we had
12 a discussion in which the Westlake defendants were resistant to that wording being
13 included in the order, but we would welcome that.

14 THE PRESIDENT: Let's just see what Mr Holmes says.

15 I think it is sensible, Mr Holmes, because then it gives the framework for just making
16 a decision. I am not saying I am going to say you have to have the same expert, of
17 course not.

18 MR HOLMES: No.

19 THE PRESIDENT: I need to hear that and think about it and, at the moment, I have
20 no view at all.

21 MR HOLMES: It is clearly going to be a contentious point.

22 THE PRESIDENT: But address it and -- put it in the order and address it, so we all
23 know it's on the agenda, whether it's going to be a joint expert or not.

24 You may find that what we would have is effectively a process of having a lead expert
25 on the defence side on, let's say, a particular topic, and the supplemental expert,
26 i.e. the second expert, only dealing with things over and above that. So you don't end

1 up having two separate experts on the defence side covering the same thing. It is just
2 a complete waste of money to do it that way.

3 MR HOLMES: Sir, just two points arising on that. The first is in relation to the
4 methodology. We only wish to flag that at that stage we would obviously still be at
5 quite an early stage of the process.

6 THE PRESIDENT: Yes. It may be.

7 MR HOLMES: So it will be a fairly high level of generality.

8 THE PRESIDENT: That's fine. That is probably all I can cope with anyway. That's
9 absolutely fine.

10 MR HOLMES: The second point is we hear what you say and we will explain why we
11 prefer separate experts.

12 THE PRESIDENT: And also explain to the extent to which the experts are
13 not -- i.e. that you avoid the problem of overlap, two sets of people covering exactly
14 the same ground.

15 MR HOLMES: That way we avoid duplication --

16 THE PRESIDENT: So the proposal, if you are going to have one expert: how are you
17 going to avoid duplication?

18 If you are going to have three experts, if may be one of you has the lead expert on one
19 thing and one of the others has the lead expert on the other thing. I am sure you will
20 work it all out amongst yourselves as to what works.

21 MR HOLMES: Yes.

22 THE PRESIDENT: I am always very conscious about how expensive these cases are.

23 MR HOLMES: Yes.

24 THE PRESIDENT: The last thing you want to do is waste money unnecessarily.

25 MR HOLMES: That's understood, sir. Once we have set out our stalls, we proceed
26 on the basis that it will then be for Mr Armitage, if he opposes it, to make an application

1 to prevent us from using the expert of our choice.

2 THE PRESIDENT: I don't think it is going to work like that. I made it clear there is no
3 presumption either way. No one has the burden of proof on this. I will do whatever
4 I think is the right way of doing it, irrespective of who is proposing and whose opposing
5 it. We will just try to get the right answer. So it's not a question of whether there is
6 a presumption either way. There is no presumption that it is just going to be one expert
7 per discipline between you, and no presumption it isn't, if you see what I mean. So
8 don't worry about that.

9 MR HOLMES: Thank you. Mr Armitage will set out his proposition.

10 MR ARMITAGE: Yes.

11 THE PRESIDENT: Both sides will set out their propositions. You will say whatever
12 you want to do, and he's going come back and say, "I agree" or "I don't agree". He
13 will have to explain why he doesn't agree. By the time we have the hearing there will
14 be a skeleton argument where both parties know where the dispute lies, and you can
15 give me submissions on it.

16 MR ARMITAGE: In terms of the practicalities of us coming back, as we almost
17 certainly will if that proposal is made; were you envisaging that happening before
18 skeletons?

19 In other words, should there be a deadline built in for us to respond in that way before
20 skeletons?

21 THE PRESIDENT: Not really. Because I think as long as they say what their pitch is,
22 you can cover it in your skeleton argument on the day.

23 MR ARMITAGE: Yes.

24 THE PRESIDENT: The main thing is understanding what their proposal is. Clearly, if
25 you agree with their proposal, you should write in and say, "We agree with their
26 proposal"; if you don't agree, you say you don't agree, but "We will cover it in our

1 skeleton argument".

2 Okay, thank you.

3 MR ARMITAGE: There is one point, at 24, about agreed variations.
4 I think -- I think -- in the sort of timely and (inaudible) lawyer's tradition we have agreed
5 to split the difference and say 21 days, subject, of course, to your view, sir.

6 THE PRESIDENT: I am not keen for that. I will tell you why. This is fairly hands on.
7 If you want more time or whatever, you write in. I will look at it. The correspondence
8 is -- Leanne will send me the correspondence fairly quickly. Let's just leave 14 days.
9 I don't really like these long extensions and submissions done by the parties without
10 reference to the Tribunal, sometimes there are knock-on effects and stuff like that. So
11 we will have that - 14 days. If anyone wants an extension, they write in and we will
12 deal with it in the ordinary way.

13 As regards amendments and stuff like that, I don't think we need to have anything in
14 the order. But, if you find that you are going to apply to amend, you are going to have
15 to make a decision as to whether or not a sensible time is to hold back all the
16 amendments to the next CMC, or to do it perhaps earlier, if it is.

17 But, if you have any application to amend, obviously that has to be filed before the
18 hearing. So do we have a timetable for any applications for the second CMC?

19 MR ARMITAGE: Only in relation to expert evidence, at 23.

20 THE PRESIDENT: Okay. So we are going to have to have a timetable for any
21 applications. I can't tell you what the applications will be, because it all depends. But
22 one obvious example is, for example, further information. Another example might be
23 related to contested issues, like pricing statements, or it could be amendment of
24 pleadings.

25 So any application the parties want to be considered at the next CMC, I would have
26 thought we need to have a date on which that is going to be filed. What I would

1 propose is we will have that on 9 January 2026. So other applications filed -- including
2 evidence in support.

3 MS HOWARD: Do you then want deadlines for any responsive evidence?

4 THE PRESIDENT: I am just writing that down now. So that's 9 January 2026, and
5 then response two weeks after that, whatever that is: the 23rd. That gives us enough
6 time for the next CMC.

7 As regards the next CMC, the bundle for the next CMC, together with the skeleton
8 arguments cross-referenced to the bundle, I will want those before -- let me just think.
9 What day of the week have we agreed? Is it a Friday we have agreed?

10 MS HOWARD: Yes, Friday 6th.

11 THE PRESIDENT: So if I can have those by 12 pm on the Monday, the bundle with
12 the cross-referenced skeleton arguments, that would be great. Then you can sort it
13 all out amongst yourselves as to, you know, when you are going to agree things.
14 I will want a hard copy bundle as well. So an electronic copy, a hard copy. By then,
15 hopefully, we will have the Tribunal; but Leanne will check how many hard copies we
16 need, but certainly we will want an electronic copy and at least three hard copies. If
17 the other members of the Tribunal want hard copies as well, then it is going to increase
18 by another two, so between three and five. We will check before the date. So assume
19 it is a minimum of three hard copies but possibly it's going to be more.

20 MR ARMITAGE: Sorry, sir. I am sure it is me: the provision for expert evidence
21 application -- so we currently have 21 calendar days. I don't know if it is sensible to
22 replace that with a date --

23 THE PRESIDENT: We have a date now, 9 January 2026. Any applications, including
24 expert evidence, is 9 January 2026.

25 MR ARMITAGE: Yes, sir.

26 THE PRESIDENT: Obviously everyone has liberty to apply in relation to disclosure in

1 the way I have indicated in the ruling. So, if there are issues you think I could usefully
2 give a view on in correspondence that's not going to take me more than an hour or so
3 to figure out, I am happy to do it by way of correspondence. But you don't need to put
4 that in the order.

5 Yes. Okay?

6 MR ARMITAGE: Then costs in the case.

7 THE PRESIDENT: Costs in the case. That's absolutely fine.

8 We will need to have timings for when I get the order for my approval. So let's get the
9 draft order delivered to me at the same time as the categories. Didn't I say that's going
10 to be on Wednesday or something?

11 Anything else?

12 MR ARMITAGE: Not from us, we are very grateful.

13 THE PRESIDENT: Okay, Holmes?

14 Thanks very much whoever has prepared the bundles. They are really well done.

15 It makes a difference, you know, when you are working, that you don't have a bundle
16 that looks as though someone has dropped it and put it back together in a random
17 order.

18 Okay, I will rise now. Thank you very much.

19 (3.09 pm)

20 (The hearing concluded)

21

22

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24