IN THE COMPETITION APPEAL TRIBUNAL

Case_No:1518/5/7/22_&_1440/7/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Friday 21st March 2025

Before:
Andrew Lenon KC
Anthony Neuberger
The Honourable Mr Justice Richards
(Sitting as a Tribunal in England and Wales)

BETWEEN:

LONDON ARRAY LIMITED & Others

Claimants

&

CLARE MARY JOAN SPOTTISWOODE CBE

Class Representative

v

NEXANS FRANCE SAS & Others

Defendants

APPEARANCES

Ben Lask KC, Gerard Rothschild & Jamie Farmer (Instructed by Scott+Scott UK LLP) on behalf of the Class Representative

Colin West KC (Instructed by Hausfeld & Co. LLP) on behalf of the London Array Claimants

Tony Singla KC & Paul Luckhurst (Instructed by White & Case LLP) on behalf of Nexans France SAS and Nexans SA

Helen Davies KC & Fiona Banks (Instructed by Macfarlanes LLP) on behalf of Prysmian Cavi E Sistemi S.r.l. and Prysmian S.p.A.

Daniel Carall-Green (Instructed by Addleshaw Goddard) on behalf of NKT

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Friday, 21 March 2025

(10.32 am)

Opening remarks

THE CHAIR: Good morning. I will just read out the usual warning about live streaming. Some of you are joining us live stream on our website, so I will start with the customary warning.

An official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings and breach of that provision is punishable as contempt of court.

Right, thank you very much. A full courtroom.

MR LASK: May it please the tribunal, I appear for the Class Representative, Ms Spottiswoode, with my learned juniors Mr Rothschild and Mr Farmer. To my right, my learned friend Mr West KC appears for the London Array claimants.

For the defendants, my learned friend Ms Davies KC appears for Prysmian with Ms Banks; my learned friend Mr Singla KC appears for Nexans with Mr Luckhurst; my learned friend Mr Carall-Green appears for NKT.

Before I go any further, may I check that the tribunal has the following bundles: a single volume PTR bundle, which I believe is available in hard copy, referred to as PTR bundle 1; secondly, there are trial bundles on Opus, which are labelled ROC A through to G. It may not be necessary to refer to those but documents in those bundles have been cited to some extent in the skeleton arguments.

There is also a PTR bundle 2, which is a London Array PTR bundle.

THE CHAIR: Yes, I think we have all of that. I am swimming against the tide somewhat and I am working electronically on the PTR bundles, PDFs. I realise that means there have been some updates I don't have. We might just have to make the best of it.

MR LASK: There is an up-to-date electronic version of the bundle. I don't know if that has made its way to you.

THE CHAIR: Now you say it, it is on the screen, so I do have access to it. I just can't write all over it. I am sure we will be able to make the best of that.

MR LASK: Obviously if we can assist in any way with hard copy, please say.

Finally, there is a single volume authorities bundle which you should also have in hard copy, but if not, in electronic.

THE CHAIR: Is a real time transcript being made? I am on Opus and I can't see a real time transcript.

MR LASK: I don't know myself, but perhaps I can take instructions.

THE CHAIR: It does not look like there is. No one is nodding. Okay. So we are using Opus for documents but not for transcript. We are using Opus for documents for the underlying trials, then we have the PTR bundles that you helpfully provided. Thank you very much.

MR LASK: This is obviously a joint PTR with the ROC issue trial on the one hand and the London Array trial on the other. There has been some discussion between myself and my colleagues about the order in which to take things. Subject to the tribunal's views, we thought it might be most efficient to deal with the ROC issue trial matters first, because with a fair wind, those of us only involved in the ROC issue trial may then be able to leave the courtroom while you deal with the London Array issues.

THE CHAIR: That sounds sensible to me. Let's do that.

MR LASK: Wonderful, thank you. So the ROC issue trial PTR.

THE CHAIR: How are we proposing to do it? Are we going to go through the agenda and everyone says their piece?

MR LASK: Entirely in your hands, sir. But that was going to be my suggestion, that we take the agenda in order and each party has an opportunity to comment on the item at the time.

THE CHAIR: Yes, I think that's what we in had in mind. I don't see any howls of outrage, so

let's do that.

MR LASK: There is obviously an overlap between different agenda items that will become quickly apparent, if not already.

THE CHAIR: Yes.

MR LASK: So there may be some jumbling up of the order but let's see how we go.

Proceedings re ROC Issue

Submissions on arrangements for expert evidence at trial

MR LASK: So the first issue on the agenda is the arrangements for expert evidence at the trial. The first issue that arises under that heading is whether the tribunal wishes to have a hot-tub at trial, and if so the appropriate split of time between hot-tub and supplementary cross-examination.

Now, we for the Class Representative have expressed a preference for conventional cross-examination in our skeleton argument. I would like to explain the reasons for that, because whilst we don't object in principle to there being some hot-tubbing, if that appeals to the tribunal, our reasons for preferring cross-examination are relevant to the appropriate split of time between any hot-tubbing and cross-examination.

Now the short point is that many of the factors that the experts consider most important to their conclusions on what the Government would have decided in the counterfactual, are matters that need to be tested by reference to the contemporaneous documents, mainly those that have been disclosed by the Government. That being so, it may well be most efficient for counsel to put the documents and associated propositions to the experts rather than for that burden to fall mainly on the tribunal as it would do with hot-tubbing.

Just to give you a flavour of this, I will show you, if I may, the joint expert memorandum, which is in the PTR bundle, PTR1 bundle, at tab 10. (Pause)

THE CHAIR: Yes.

MR LASK: If one turns to page 29 of the bundle numbering, one sees a section 3, headed "Key issues for the Tribunal". 3.1:

"The Experts agree that the most important difference between them is ... their answer to Question 2."

And in short, question 2 asks whether on the assumption of a 26 per cent overcharge, the government's banding decision would have been different in the counterfactual.

Mr Druce's answer -- Mr Druce is the expert for the Class Representative:

"... [his] answer is 'yes' and the other experts' answers are 'no'. Below we [that's the experts] identify the main underlying disagreements that lead to these different answers to Question 2.

"The disagreements that are most material to the Experts' answer to Question 2 are related to the process the government followed to reach the ... 2010 banding decision. Specifically, the experts disagree as to the weight given to different factors in the government's decision-making."

Then they say:

"By contrast, the difference between the Experts' estimates of the mechanical impact of the Cartel ... ".

So that's the calculation as to the cost elevation caused by an assumed 26 per cent overcharge, they say that those differences aren't material to their answers to question 2.

And 3.4 is really important:

"The Experts have identified that to reach a decision on Question 2, the Tribunal would need to form a view on the following areas of disagreement ..."

If the tribunal could just briefly read a) to f), then I will make my points on it. (Pause)

THE CHAIR: Yes.

MR LASK: What one can see just from looking at the issues, in my submission, is that these are issues that turn to a very large degree on the documents. That's why I say that it may be

more efficient for those documents to be put to the experts by way of conventional cross-examination rather than hot-tubbing.

That said, we can see the benefits of hot-tubbing too. One benefit is that it will help to reduce the risk of duplication in the oral evidence of those experts who are aligned. We have drawn attention to this in our skeleton argument, paragraphs 8 to 12, the issue being that the experts for the London Array claimants and the defendants all reach the same ultimate answers on these issues. There is large degree of alignment between them.

In fairness, all of the other parties here today have recognised the need to avoid duplication of the expert evidence, and that we accept is one benefit of a hot-tub. However, if there is to be a hot-tub, for the reasons I have given, it is really important that there is adequate time for supplementary cross-examination, because it's inevitable that even with the hot-tub, certainly the Class Representative will want to test parts of the expert evidence in cross-examination, including by reference to the contemporaneous documents.

Now no one disputes that there should be supplementary cross-examination; no one disputes that the Class Representative should have an adequate opportunity to carry out that cross-examination. But it is about the numbers, it's about the split. This is what I meant when I said there is an overlap between different agenda items.

But just briefly, Prysmian have proposed that the Class Representative has only half a day in total to cross-examine three experts for the other parties. Similarly, the London Array draft order says that should be two hours. In my submission, that is simply not enough. The Class Representative is faced with six expert reports from three different experts. Those reports run to some 400 pages. As I've said, many of the key issues turn on the disclosure which itself runs to several hundred pages and will take time to put to the experts.

So, if a hot-tub appeals to the tribunal, the right approach, in my submission, would be to divide the time more evenly between the hot-tub and the cross-examination. We say, that the hot-tub could take place over one and a half days, followed by half a day of cross-examination for each

of the experts, and there are four experts in total. That would be two days of supplementary cross-examination.

THE CHAIR: So one and a half days for the hot-tub and then half a day for cross-examining three witnesses?

MR LASK: Each expert.

THE CHAIR: I make that one and a half plus one and a half seems to me to add up to three.

MR LASK: There are four experts.

THE CHAIR: There are four experts?

MR LASK: I am including our own expert on the assumption that the defendants in London Array will want to cross-examine him.

THE CHAIR: But if we do one and a half days in the hot-tub and half a day for cross-examination of each of four experts, to my mind that adds up to three and a half days.

MR LASK: Correct, it does.

THE CHAIR: Doesn't the timetable envisage only two and a half days?

MR LASK: It's a very fair point, sir. There are two competing timetables. If I may show you the timetables side by side. They are helpfully appended to the Prysmian skeleton, which is in PTR bundle 1, at tab 5, page 64. You will see there "Annex A trial timetable".

The green column is the timetable proposed by London Array and the defendants. The red column is our proposed timetable. There are a few differences. The most important ones for present purposes is that the green column provides that day 1 should be a reading day; our column doesn't.

Now it's obviously a matter for the tribunal whether it requires a reading day, and if so when that reading day should be. For our part, we would hope that there could be time for reading before the start of trial, if necessary by bringing forward the deadline for skeletons by a week compared to the other proposals. If the tribunal were to accept that, then the timetable would have time for three and a half days in total for the expert evidence. So that would accommodate

my proposed split.

THE CHAIR: Yes.

MR LASK: And we say that's a sensible split for the reasons I have given.

In terms of further implications of hot-tubbing, if there is to be hot-tubbing, we would ask for an indication from the tribunal that counsel are not required to put their full case to the experts and can choose the topics on which they cross-examine. This is often now done in cases of hot-tubbing. Just to make that good, if one looks at the authorities bundle, tab 1, page 64 --

THE CHAIR: This is in Opus, is it?

MR LASK: The authorities bundle should be in front of you, I think. Tab 1, page 64.

This is the recent Stellantis case, with which Professor Neuberger will be familiar. Paragraph 166, the judgment explains that there was a hot-tub followed by supplementary cross-examination. And the penultimate sentence:

"Counsel were not required to put their case to the experts and could chose the topics upon which they cross-examined."

Of course, in my submission that's appropriate because if you have hot-tubbing, it would be highly duplicative if the parties were then required to put their full case to the experts. Because many of the issues will have been covered, hopefully, in the hot-tub.

Also, when you have a hot-tub, even on my version of the timetable, even on my proposed split, there is less time for cross-examination than there would otherwise be. So we do ask that that indication be given if there is going to be a hot-tub.

Then duplication, which I have referred to briefly already. We have highlighted it in our skeleton. There is no easy answer to this, frankly. We propose that each of the other parties nominate a lead expert -- not each of them; together they nominate a lead expert on the aligned issues to avoid duplication. London Array agree that this can be done but should be done within the hot-tub, and the defendants don't think it works.

As I say, I accept there is no easy answer. As I have said, the hot-tub may mitigate the concerns

of duplication to some extent, because then we wouldn't be obliged to duplicate in cross-examination.

Then just finally, before I sit down, expert evidence on factual matters. Again, this is something we have drawn attention to in our skeleton at paragraph 6. London Array have also raised it in their skeleton at paragraphs 65 to 68. The issue arises because the experts have to some extent opined on the content and meaning of non-technical government documents, so documents which don't obviously engage their expertise. In those circumstances, we say the experts are in no better position than the tribunal to say what the documents mean.

Now we are not saying that those parts of the expert reports should be ruled inadmissible. If nothing else, it would be a nightmare exercise to try to disentangle them. But we do say it would be helpful for the tribunal to give an indication as to how such material should be treated at trial, because we very much doubt that it would be a sensible use of time at trial for counsel to have to challenge the experts on the meaning of non-technical documents where this can be addressed perfectly well by way of submission.

I don't know if you still have Stellantis to hand, but this was also dealt with in that case, at paragraph 158. Tab 1, page 62. One sees there the judgment:

"In investigating and interpretating documentary materials, Mr Hughes [who is one of the experts] trespassed on disputes of fact which were to be resolved by this Tribunal."

He added a caveat:

"The Tribunal questioned the appropriateness of Mr Hughes addressing such factual matters at the PTR and directed that these factual matters were not matters for him and should not be the subject of cross-examination."

We are seeking a similar direction in this case.

In our skeleton we have cited a few examples from the joint expert memorandum as to how this issue arises. I would like to show you one example for present purposes, just to add some flavour to what I am saying.

So it is the joint expert memorandum, PTR bundle 1, tab 10, page 69. It is proposition 27. You see that, two-thirds of the way down page 69. The proposition is this:

"DESNZ Disclosure evidence shows that the government was concerned its State Aid Application would not receive the EC's approval, as the EC had raised concerns regarding the range of figures put forward for costs and revenues, which could lead to some offshore wind farms being overcompensated."

Then you will see in the first column -- well, firstly you see across the columns that there is disagreement between the experts on this. Mr Druce agrees, Ms Shamsi disagrees, Dr Moselle disagrees, and Dr Hesmondhalgh agrees. And Mr Druce's reasons illustrate the issue, where he says:

"As late as February 2010, the government was concerned that its ... application may be ..."

And then he quotes from the document:

"'at risk of not receiving clearance for our notification of changes to the RO Order in time for the start of the ... compliance period ...' and that 'Missing the deadline would have a number of serious implications. Perhaps the most serious would be the damage to investor confidence given the commitments we have made to introduce the changes'."

Then just going down his column, the penultimate paragraph on page 70:

"In addition, the government stated that 'there is a risk ...'"

Again, a quote from a document:

"'... that clearance isn't eventually granted and we are forced to withdraw the order, impacting investor confidence further and having huge impacts on the transition of micro and small generators'.

"Therefore ..."

This is Mr Druce's opinion:

"... the government was concerned -- not only about the possibility of delays to clearance as a result of wind farm overcompensation -- but also the possibility that it might not obtain

clearance at all. It considered both outcomes would impact investor confidence, and its ability to deliver the renewable energy investments it needed."

To give you a bit of context, what is going on here is the experts are considering the government disclosure and there was an issue that panned from the disclosure over whether the government's proposed banding for the 2010 order would be approved under the state aid rules, and there was pushback from the Commission, so the government was concerned. The disagreement here between the experts is as to the nature of those concerns. So you will see from Ms Shamsi's column, she says:

"While the government was concerned [about] ... delays to the State Aid process, in part due to the need to respond to questions from the EC, it does not follow that [it] ... would have revised the level of support downward in response to such concerns."

Similarly, under Dr Moselle's column on page 70, half-way down the page, he says:

"... I am aware of no evidence that the government was concerned that it would not get clearance because of this concern, as opposed to, for example, being confident that it would be able to respond effectively to the concerns. In fact the last part of quote above suggests the latter view."

So the experts disagree about the conclusions to be drawn from the disclosure, about the nature and extent of the government's concerns. What one sees from the quotes in the joint expert memo is that these documents don't require any particular expertise to interpret. They are written in straightforward non-technical language. So any factual dispute as to the nature and extent of the government's concerns, insofar as it turns on these documents, in my submission is better addressed through submissions rather than cross-examination.

Now, to be clear, that doesn't mean we might not want to put these documents to the experts in order to test their views on what would have happened in the counterfactual. But in doing so, I say we shouldn't have to debate their meaning with the experts, because their meaning is not an expert matter.

THE CHAIR: What exactly are you asking the tribunal to do today?

MR LASK: To give an indication along the lines of the indication given by the tribunal in Stellantis, that when it comes to non-technical factual matters, the experts need not be cross-examined on those matters. We can refine the wording, if the tribunal is minded to give that indication, but that's the broad thrust.

As we said in our skeleton, it may be implicit anyway, because I think we have cited a textbook that said, you know, an expert's opinion on non-expert matters doesn't really take you anywhere. So it may be implicit anyway, but we think for the avoidance of doubt so we can all prepare on the same basis, it would be helpful to have that indication. So along the lines of the Stellantis indication.

That's all I have to say in the first instance on agenda item 1, thank you.

THE CHAIR: Thank you very much.

Yes, Mr West?

MR WEST: Thank you.

One can see from this debate that a number of the agenda items are really over-linked and overlapping with one another. In relation to hot-tubbing specifically, this is really a matter for the tribunal because it does create more work for the tribunal, which directs the questioning rather than the parties doing so. But in my submission, recent cases show that this process has been of real assistance to the tribunal in other cases in resolving the expert issues. That's why we propose, subject to the tribunal, that there be concurrent evidence in this case.

One reason for that is that we do have three experts on one side against one expert on the other. So the question arises how one avoids duplication. In my submission, hot-tubbing is one way of doing that. But we, London Array, have put forward a specific proposal which you may or may not have seen. It's in the composite draft order which is at tab 10A of PTR bundle 1.

There document is a composite draft order prepared by London Array. It's intended to show what's agreed between the parties in black text, and what isn't in coloured text; and the different

colours indicate who proposed which colour text.

PROFESSOR NEUBERGER: Can I just ask which page number it is?

MR WEST: The document begins on 152.1 of PTR bundle 1.

PROFESSOR NEUBERGER: Thank you very much.

MR WEST: The document is not agreed in the sense that the parties don't all agree that this is in fact the debate between them. The other parties were given an opportunity to comment on it, but it didn't prove possible to agree. Nevertheless, I believe that it does accurately represent what is agreed and what is not.

The blue text is London Array's proposal. This particular issue is addressed at paragraph 12, where we see the proposal and how we propose to address duplication. So we will see at (i):

"The expert witnesses in the field of economics shall give evidence concurrently, starting at the beginning of the period allocated for expert evidence in the trial timetable ..."

Then this:

"The term 'the ROC Aligned Parties' as appearing in [these] sub-paragraphs refers to the London Array claimants, the Nexans Defendants and the Prysmian Defendants. By the date for exchanging skeleton arguments for the ROC trial, the ROC Aligned Parties shall inform the Tribunal which of their experts is to take the lead (as between them) in the concurrent evidence session. It shall be open to the said parties to nominate different lead experts in relation to different topics. The lead expert shall give the first answer, as between the experts for the ROC Aligned Parties, to questions posed in the concurrent evidence session, and other experts ... shall be entitled to give their own answers only if such other expert disagrees (in part or whole) with the answer given by the lead expert, or considers that the answer given by the lead expert is materially incomplete."

"After the experts have given concurrent evidence, there will be opportunity for the ROC Aligned Parties to cross-examine the expert for Ms Spottiswoode; and for Ms Spottiswoode to cross-examine the (respective) experts for the ROC Aligned Parties such cross-examination

being limited to 2 hours [for] ... Ms Spottiswoode and 2 hours in total [for] ... the ROC Aligned Parties. The ROC Aligned Parties shall liaise to ensure that duplication is avoided in their cross-examination of Ms Spottiswoode's expert. In view of the time-limit on cross-examination, no party shall be required to put its whole case to the opposing expert (or experts) in cross-examination."

So that proposal, in my submission, avoids any difficulties which would arise if Ms Spottiswoode was required to cross-examine the opposing experts in the traditional fashion. Of course, if there are elements of this which the tribunal doesn't like, it could of course be tweaked to reflect that.

THE CHAIR: What do you say about the need to put contemporaneous documents to the witnesses which would not necessarily be very easy in a hot-tub?

MR WEST: There seems to be a slight tension in my learned friend's point on this, because on the one hand he seems to be saying that cross-examination is appropriate because it's necessary to put the documents to the experts in view of the nature of their evidence; but he also seems to be saying that it isn't necessary to cross-examine the experts where they just express views on documents which anyone else can construe as well as they can.

So in my submission, he's right to say that where they are just expressing views on documents, construing them without any particular expertise being brought to bear, it's not obvious to me that that need be the subject of either cross-examination or hot-tubbing. The expert cross-examination or hot-tubbing should be limited to those matters in relation to which the experts actually engaged their expertise in giving their answers, such as the various models and statistical approaches which they advocate.

THE CHAIR: So you would see points such as that on what the contemporaneous documents mean and Mr Lask's concern about what the government was worried about at the time, you see those as being ventilated entirely in submissions.

MR WEST: Well, it may be difficult in some cases to disentangle exactly where the line is

drawn. But certainly where it is case of simply saying that this document means such-and-such and indicates the Government likely thought this or did that, those in my submission are really matters for submission.

It may be that the parties say: well, my submission is really as set out in the expert evidence on this point; so my submission is what my expert has presented in his report -- or her report, in the case of Dr Hesmondhalgh.

So, those are my submissions on that point.

In my submission, on the timetabling, it would be useful for the tribunal to have a reading day at the start of the ROC trial. It will just have come out of the London Array trial, but the issues in that trial are very different to those in the ROC trial, so it will need to get up to speed on the issues for the ROC trial in advance of the opening submissions in that trial.

MS DAVIES: Sir, there are essentially two features of the expert evidence which has led to the debate which is before the tribunal today. The first is the issue of duplication and how one best handles that in circumstances where you do have three separate reports on one side of the fence against the class representative's one report. It's important to recognise in relation to that, that although the experts on this side are aligned, in the sense that they are expressing generally the same answer to the specific questions that the tribunal has posed, they do so for different reasons.

So it's not possible simply to say, well, we are just going to test one expert's view on those questions and we don't need to worry about the others because they just can fall in line. That's not how these expert reports have come about, and we can go through the joint expert memorandum if necessary, I could show you some examples where there is a headline agreement for example but then you look at the reasoning and it is different.

The reasoning may matter in some respects, not least because, as the tribunal knows, we are testing the ROC issue on assumptions as to overcharge, an overcharge rate of 26 per cent in particular. And the third question that's being asked is the question -- in the ROC trial -- is the

question that one gets to, well, what level of change is needed to get to an answer? And because there are differences at earlier points in the reasoning of experts, ultimately the tribunal I am afraid is going to have to decide some specifics to be able to answer those questions.

So, that is why we, like the London Array claimants and the other two defendants, have proposed hot-tubbing as the sensible way forward. Because the tribunal in a hot-tub is very able to control duplication in a way that cross-examination is much more difficult, because the tribunal will be working through the agenda and will be able to identify with any given expert the questions it wants to put, and then the other two experts, do they have anything additional to add or different to say, and will be more efficient. That's our strong view.

THE CHAIR: In essence, you see hot-tubbing as a way of controlling duplication, and you effectively put that matter in the hands of the tribunal.

MS DAVIES: Of course. If the tribunal is telling us that actually given everything else on the tribunal's plate, the London Array trial first and so on, it's not feasible to hot-tub in this case, we will find a different way through. Of course we are in the hands of the tribunal in relation to that. But the reason that on this side of the courtroom it is being proposed is the view that it likely to be the most efficient if the tribunal can accommodate it. But of course we recognise, as my learned friend Mr West said, that hot-tubbing involves more work for the tribunal and if that can't be accommodated well, we will find a different way.

But in a sense, it can be tested. The reason that we have proposed it can be tested actually by my learned friend Mr Lask's proposition in relation to cross-examination, which is that there should be half a day for his expert and then half a day for each of the other experts.

Now, the reason he suggests that is that they are all expressing different reasons for getting too many of the same conclusions, which he then is suggesting he wishes to test in cross-examination. But one can see how immediately that is going to be more duplicative and take more time than addressing the issues in a hot-tub, if the tribunal is able to accommodate it.

So that's that aspect. We listened to what Mr Lask said in relation to the additional time for cross-examination. We are perplexed by that, given the point that he also makes -- and he fairly makes -- which is that all four experts have here in their reports and in the joint expert memoranda expressed views as to the meaning of documents, which are not on any view matters for the experts themselves, they are matters for the tribunal.

The way one tests that, if one is cross-examining, is going to be not to have a debate about what the document means, but to have a debate on the basis of if you change your hypothesis, if you change your assumption as to what was being thought, what impact would that have on your answer? It may be that there is going to have to be a bit of that additional cross-examination after a hot-tub, but I don't imagine that anyone is suggesting to the tribunal that the tribunal, either in a hot-tub or the parties in cross-examination, should be testing experts' views as to what documents mean because that's not a useful exercise for anyone.

THE CHAIR: So you don't resist the suggestion that the tribunal gives a pre-indication to that effect?

MS DAVIES: No, it is in effect the principle that we would all be applying in any event.

Once one takes that away, with the greatest of respect to Mr Lask, we don't really understand why you need to have two full days of cross-examination after a hot-tub. We have suggested a less detailed provision for hot-tubbing than my learned friend Mr West, which if the tribunal turns to the next page of the draft order that he helpfully produced, is shown in grey because it is agreed between us and Nexans, and it is simply a provision that the expert economists shall be heard concurrently, that there shall be a right to ask clarificatory questions at the conclusion of each topic -- that's a pretty standard approach in relation to hot-tubbing -- and then half a day to effectively each competing side for cross-examination; and that cross-examination to be limited to matters required for the parties' cases to be adequately explored or put to the experts. Again, quite standard information.

Now, we are obviously in the tribunal's hands. If the tribunal prefers my learned friend

Mr West's more prescriptive order, which is the blue one on the previous page, including requiring the parties before the hearing to liaise to try to nominate lead experts on specific topics, we will of course do that. We doubt it's necessary. The tribunal -- particularly with Professor Neuberger -- has lots of experience in conducting hot-tubs involving multiple experts and controlling it in the way they like, but we will of course do whatever the tribunal will consider to be of the most assistance to it.

In terms of the reading day, at the beginning of the trial we concur with my learned friend Mr West that given the issues appear to be different in the ROC trial, actually there is some value in the tribunal having a specified day where it can, as it were, park what's gone on in London Array and refocus on the ROC trial. We are going to come to it, but that doesn't mean that skeletons need to be as early for the ROC trial as my learned friend Mr Lask has suggested, because there is going to be plenty of time between even the date we are suggesting and the start of the London Array trial.

The one thing that all parties on the aligned side are keen to try and do is to minimise the duplication for the tribunal to the extent that we can, and that would include in the written submissions, which is why we are suggesting we would need a bit more time for that.

Thank you very much.

THE CHAIR: Thank you.

MR SINGLA: Sir, we are essentially aligned with Ms Davies and her clients on this. We agree with the grey text that has been proposed.

Just briefly to explain why: we don't, with respect, agree that it is appropriate for there to be any lead expert. As you have heard, the experts come at the same question from slightly different perspectives, so we resist the attempts, I think in Mr West's blue wording, for there to be nominated lead experts. We respectfully submit that a hot-tub will deal with the duplication concerns. Ultimately some common sense will need to be brought to bear on this duplication question.

I think the only point where --

THE CHAIR: The only way the hot-tub deals with the duplication issue is if the problem, if you like, is outsourced to the tribunal.

MR SINGLA: Well, and to the experts themselves, in the sense that one doesn't need formally to appoint a lead expert, but they can obviously cut their cloth accordingly in terms of one expert giving perhaps the first answer on a particular question, and then the other experts not needing to give their own views if they agree and have nothing else to say on the matter. It is not so much outsourcing, it is just that it is difficult to see how one can nominate lead experts where the experts have different perspectives.

To take one example, my expert on the ROC issue considers all six benchmark wind farms, so she's actually in a different place to the other experts for that question. So it's just not practical or appropriate, we submit, for there to be some formal designation of a lead expert in a hot-tub. Of course, different experts can take turns, as it were, in giving the first answer, with there being no need for supplementary answers if they are all aligned on an individual question.

So it is a matter of practicalities really. We submit that the hot-tub will deal with the duplication concern. The only point I wanted to add, really, is in relation to the Stellantis direction, we do submit that it is again common sense that experts don't need to give opinions on factual matters. But we would respectfully suggest that it may be overly prescriptive to make a Stellantis-type direction today, just because, whilst we are all agreed, I think, as to the broad principle, ultimately there may be the odd document at trial where it is actually helpful to ask the expert to bring their expertise to bear on a particular document. One is talking very loosely today about factual matters, but actually when one gets into the detail of some of the documents, some may be more technical than others. So we do respectfully submit we are all aware of the general principle, but it will be a matter for the trial itself. If questions are being asked about matters which are completely outside the scope of the expert's expertise, or it's just a straightforward question of reading a document, then the tribunal or counsel can intervene at

that point and say it is an inappropriate question.

But to make a direction today in the terms of paragraph 158 of Stellantis, I think could potentially lead to confusion down the line.

THE CHAIR: Can I just explore that? As I understand it, what is suggested in paragraph 158 of Stellantis is a direction saying you don't have to cross-examine experts on this kind of point, but if, for whatever reason, people want to put documents such as this to the expert, I don't think it is suggested that we rule today that those questions are out of bounds if you wish to.

MR SINGLA: In that case, I may have misunderstood Mr Lask. Because paragraph 158 I think envisages a direction that factual matters were not matters for the expert and should not be the subject of cross-examination.

THE CHAIR: I see.

MR SINGLA: If what, sir, you have just put to me is what you have in mind, then of course we wouldn't object to that.

MR LASK: In case it assists, Mr Singla makes a fair point on the text of 158 in Stellantis, but in our skeleton argument, the direction that we have proposed is the more permissive form that you, sir, have suggested, that we say -- we seek a direction that insofar as the experts address such factual or legal matters, they need not be the subject of cross-examination.

THE CHAIR: Yes.

MR SINGLA: That's paragraph 6 of our skelly.

THE CHAIR: That's obviously fine, but it is different to Stellantis.

MR CARALL-GREEN: Sir, I adopt the submissions of my learned friends to my left and to your right.

I have two points to raise from NKT's perspective. The first is in relation to the draft order that my learned friend Mr West has proposed. If I could take you back to that, it is at PTR bundle 1, and the page I am looking at is 152.5.

Sirs, because I am in alignment with my learned friends immediately to my left, I primarily

support the grey wording overleaf. But insofar as the tribunal does prefer the formulation that's been suggested by Mr West, just one thing to notice: in paragraph 12(ii), the term "ROC Aligned Parties" refers to the London Array claimants, the Nexans defendants and the Prysmian defendants. That doesn't include NKT.

Then at paragraph 12(iii), the direction states:

"... there will be an opportunity for the ROC Aligned Parties to cross-examine the expert for Ms Spottiswoode ..."

So the short point I make, sir, is simply that NKT would also want to reserve the rights to cross-examine the expert for Ms Spottiswoode. I can address you on the point, but I think it ought to be uncontroversial that NKT would be allowed to cross-examine an opposing expert, subject of course to the point that we will be avoiding duplication using the mechanisms that have been discussed.

THE CHAIR: How do we deal with that point, if we were minded to adopt the blue text? Do we deal with that point by adding NKT to the definition of "ROC Aligned Parties", or do we address it in 12(iii) by saying "an opportunity for the ROC aligned parties and NKT to cross-examine"?

MR CARALL-GREEN: Either would work, sir.

THE CHAIR: Okay.

MR CARALL-GREEN: My second point, sirs, is that the reading day, I agree with Ms Davies, would be helpful at the beginning of the ROC trial, although it is a matter for the tribunal. The timetabling point about the deadline for skeletons is significant from NKT's perspective, because we will be working hard to avoid any duplication with submissions made by Prysmian or Nexans, which means that our work will be back-weighted in the sense that we will be looking at what they are saying and then only adding things that don't duplicate, which means that, in general, longer deadlines are helpful in particular for NKT.

THE CHAIR: Yes. Thank you very much.

I think we should just simply move to the next topic. I think topic 2 has gone away, hasn't it?

MR LASK: Topic 2 has gone away, so I propose to go straight to topic 3.

THE CHAIR: Yes.

MR LASK: I assume the tribunal has seen the correspondence on topic 2? Topic 2 has gone away subject to the qualification in our correspondence.

THE CHAIR: I am afraid I just filed it in the box marked "gone away."

MR LASK: I can deal with it very briefly. The class representative is not pursuing her request for a direction that certain passages of Mr McNeal's evidence be struck out. That is explained in our letter of yesterday. Having explained in our letter of yesterday, we do reserve the right to make submissions on weight at trial.

THE CHAIR: Right.

MR LASK: And cross-examine Mr McNeal if so advised. That's the only point.

THE CHAIR: Okay. Topic 3 then is installation costs.

Submissions on installation costs

MR LASK: Installation costs. It's common ground between the parties to the Spottiswoode claim as to how installation costs should be dealt with. But London Array take a different position. So I will explain how the issue has arisen and then deal with what London Array say about it.

A key issue for the ROC trial is the extent to which the cost information considered by government in making its banding decision would have been different in the counterfactual. That, in turn, depends in part on which categories of costs would have been affected by the cartel, assuming a 26 per cent overcharge.

Now it is common ground between everyone, including London Array, that the costs of the cables -- both the inter-array cables and the export cables -- should be included in the value of commerce. One sees that in the joint expert memorandum proposition 42.

So in other words, it is accepted that if there was a 26 per cent overcharge arising from the cartel, it would have affected the costs of the cables purchased by the wind farms whose costs the government based its decision on.

However, Dr Hesmondhalgh, the expert for Nexans, says that installation costs should be excluded from the value of commerce because the cable installers for her relevant wind farms were not the same companies that manufactured the cables and were not identified in the Commission decision as having participated in the cartel.

So the question that that raises is whether the installation costs incurred by the relevant wind farms would have been affected by the cartel. By way of very brief summary, what Mr Druce is saying is that, well, even if Dr Hesmondhalgh is correct as a matter of fact, there are reasons why the installation costs incurred by those wind farms may well have been affected nevertheless.

Now, that question cannot be finally determined at the forthcoming ROC trial. That is common ground, at least between the parties to the Spottiswoode claim. To show you why that is so, may I please take you back to the joint expert memorandum, which is PTR bundle 1, tab 10, page 92. This is halfway down that page. Page 92, proposition 43:

"Installation costs should be included in the calculation of the VoC."

You will see Mr Druce agrees. Ms Shamsi and Dr Moselle have no opinion, but Dr Hesmondhalgh disagrees.

I want to draw your attention, please, to Mr Druce's reasoning in the first column where he says:

"The EC's Decision makes clear that the scope of the Cartel extended to the installation works sold as 'part of a project' and that the majority of power cables covered by its decision were sold as part of a project ...

"I disagree with Dr Hesmondhalgh's exclusion of installation costs from the Relevant Products because:

"1. My interpretation of the EC's Decision indicates is that she mischaracterises the EC's view on the scope of Cartel ...; and

"2 ..."

And this is the important bit for present purposes:

"While she contends that none of her [benchmark wind farms] ... had their cables installed by Cartelists, her analysis fails to consider:

"... the impact of the Cartelists' activities in the market for cables installation services affecting the prices (ie potential 'umbrella effects'); and

"... the possibility of cable installation services companies working for the cable manufacturers as subcontractors, and the fact this practice is commonplace."

Then one turns the page to page 95 of the bundle, one sees at the very end of Mr Druce's column:

"The existence and the extent of any impact that the Cartel had on the pricing of installation services can only be resolved later, [for example] ... with sufficient further disclosure to allow for an overcharge analysis at a later stage in the Spottiswoode Proceedings."

So one sees that there are both factual and economic investigations that need to be conducted in order to answer this question. For what it is worth, Ms Shamsi and Dr Moselle agree that it can't be answered at this stage.

So what the experts have done is they have provided -- when they have calculated the cost elevation, they have provided alternative figures depending on whether one includes or excludes installation costs. The parties to Ms Spottiswoode's claim have agreed that for the purpose of determining the ROC issue, in the first instance the tribunal should assume that installation costs were affected by the infringement. But insofar as it may find when determining the ROC issue that the inclusion or exclusion of installation costs would make a difference to the result in the Spottiswoode proceedings, then the tribunal should so indicate in its judgment and provide associated reasoning.

The precise wording of that agreement is set out at paragraph 22 of our skeleton. What I have just read out should be accurate, but if there is any doubt it's set out in our skeleton and that wording was agreed between the parties to the Spottiswoode case.

Now, London Array's objection is that if the tribunal concludes that whether there would have been a different banding decision in the counterfactual depends on the inclusion or exclusion of installation costs, it won't be able to give judgment on all matters in the London Array claim. So it proposes that for the purposes of the London Array claim only, the tribunal should hold, or at least proceed on the basis that Ms Spottiswoode's ROC claim fails. That's paragraph 60 of the London Array skeleton.

Now I need to be very clear on what our position is on this. Provided London Array's proposal is strictly confined to the London Array claim, then Ms Spottiswoode is neutral on it. Plainly the tribunal cannot dismiss the actual ROC claim brought by Ms Spottiswoode, it can't dismiss that claim altogether, if it turns on the inclusion or exclusion of installation costs without having determined that matter on the evidence. But we don't understand anyone to be suggesting that that would be an acceptable way forward. That's why I say that provided I have understood London Array's proposal correctly, we are neutral on it, and it seems that really it's a matter for London Array and Nexans.

Just finally, however --

THE CHAIR: Can I just make sure I have understood that? So you think what we should do is proceed on the basis that installation costs are in. If we think it makes a difference whether installation costs are in or out, we should say something in our decision and give our reasons.

MR LASK: Yes.

THE CHAIR: But you don't object in principle to us saying, if we think it matters, then for some limited purpose you don't mind us saying that Ms Spottiswoode hasn't proved the case? Sorry, just say that last bit again.

MR LASK: For the purposes of the London Array claim only, we would not object to the

tribunal proceeding on the basis that Ms Spottiswoode's ROC claim hadn't been made out. Provided of course that it is well understood that that cannot possibly have any impact on the actual resolution of Ms Spottiswoode's ROC claim. I obviously need to make that absolutely clear: if it had any impact at all, it would be unacceptable to us.

THE CHAIR: Right. Okay.

MR LASK: But as I have also said, I don't understand Mr West to be suggesting that it should or would have any impact on Ms Spottiswoode's actual claim.

THE CHAIR: Okay. I mean, I will probably ask this question to everyone who makes submissions on this issue: why do we need to make a determination or direction on this now? Because in the real world considerations of pragmatism would mean that when we are considering our decision we would inevitably approach it, if you like, on the worst-case scenario, or best-case scenario for some, that installation costs are in, because that's an obviously pragmatic way to approach the question.

If we think it matters, whether installation costs are in or out, we probably would say so in our judgment anyway. And the consequences that flow from that, it seems to me that we would have to decide in our decision anyway.

Why do we need wording now to govern this question?

MR LASK: Indeed, sir. The reason the parties to the Spottiswoode claim asked the tribunal to give this indication is because it avoids us having to argue, at the ROC issue trial, whether installation costs were or were not included. Which is very difficult to do, because the materials are very limited, and in fact, if we were arguing it and inviting the tribunal to decide it at the trial, that would be inappropriate, because the materials are incomplete, because the evidence isn't there yet.

So what we don't want is to have a half-baked debate about whether installation costs are in or out.

THE CHAIR: Yes, okay. So you would like to know -- yes, I understand.

PROFESSOR NEUBERGER: Can I just clarify? I am not sure I am fully up to speed. Is that equivalent to saying that so far as the London Array trial is concerned, installation costs are assumed to be out? Or is that a different --

MR LASK: I am not sure that's quite how Mr West puts his proposal. I will allow him to explain, but as I understand it, the proposal is that if the tribunal -- I suppose, actually, that is where you get to, ultimately. Because his proposal is that if the tribunal decides that it makes a difference whether installation costs are in or out, then for the purposes of his claim you should assume that they are out and that the class representatives' claim fails. I think that is actually the implication of his proposal.

Other people are shaking their heads, so maybe I have misunderstood.

If I might finish, one more point to make and then I will let Mr West clarify. So Mr West also says in his skeleton argument that it is unclear what further material will be available at any future Spottiswoode trial that will cast light on this issue, to which the short answer is, this really isn't a matter for today; it will be for the Spottiswoode parties, together with their experts, to identify the disclosure and analysis that is required to address this issue in due course. It will include disclosure and analysis on umbrella effects and the subcontracting of cable installation services, at least potentially.

So there can't possibly be any criticism of the Spottiswoode parties at this stage for not having yet fully investigated that matter and come forward with proposals for disclosure today. That's all I wanted to say on that issue, thank you.

THE CHAIR: Thank you.

Yes, Mr West.

MR WEST: Could I just ask the tribunal to go back to the order it made on 22 May 2024. Because this, I think, is the source of the particular dispute. That's not in the PTR bundles, but is in the electronic bundles, an order and transcript bundle J and tab 14.

THE CHAIR: J of the London Array bundles?

MR WEST: Sorry, I am told that is the London Array bundle reference. The bundle in the Spottiswoode case is G, tab 3.

THE CHAIR: Yes.

MR WEST: You will see that paragraph 1 of that order, the tribunal directed that there shall be a trial of the matters listed in the annex. If one looks at the annex to see what the matters are, the heading above paragraph~(1):

"Issues to be resolved so as to be binding in both the London Array and Spottiswoode ..."

And you will see it's essentially the question of whether the overcharge would have led to a different ROC banding decision, and if so at what level of overcharge.

Then one has (iv), "Issues to be resolved so as to be binding in London Array only", and effectively what one does there is one compares the overcharge the tribunal has found in London Array, if any, with the minimum cost elevation which would have led to a different ROC banding decision. You say, well, is the overcharge big enough to have led to a different banding decision?

That, in a sense, is rather illogical, because it's not the overcharge on London Array which would have made the difference, but this was agreed to by all parties so that we could get a final judgment in London Array at the forthcoming trial without having to wait until some subsequent trial of the balance of the issues in Spottiswoode to get a final result in our case.

My concern on this issue is that all of the other parties are happy to park it -- installation costs that is to say -- until later, but so far as London Array is concerned, there isn't a later; we need to get an answer on this now.

The proposal we have now advanced is -- going back to the composite draft order at tab 10A of PTR 1 at page 152.6 -- the wording in blue after paragraph 13:

"Insofar as the Tribunal considers that, in order to give final judgment in the London Array proceedings, it has to decide whether the value of commerce for the purposes of the Renewables Obligation Order 2010 included installation costs, it shall decide that issue on the basis of the

materials put before it at the ROC Trial, but such finding shall be made only in and for the purposes of the London Array Proceedings."

That's slightly different to the proposal in my skeleton. It's not an assumption, it's a decision based on the materials which mirrors the wording of issue 4 of the ROC issues, whereby the tribunal is mandated to decide issue 4 based on the material before it at the forthcoming trials. But in practice I anticipate the result is the same because all the parties seem to accept that no one has put before the tribunal the material it would need to decide that installation costs were affected, and so in practice any allegation that they were will fail on the burden of proof.

THE CHAIR: You see it's not clear to me whether there is much difference between you and Mr Lask on this.

MR WEST: I think that's right. I think that's right. But we will hear whether Nexans' position is different, because they are really the party who is adversely affected by this.

THE CHAIR: Right.

MR WEST: Maybe I should sit down and let them say one way or the other.

MR SINGLA: Sir, I have to say we were quite puzzled when we saw Mr West's skeleton. I am not sure that what he said just now really helps clarify the position.

Taking a step back, London Array are not claiming an overcharge in respect of installation costs, they have never claimed that; Spottiswoode is claiming there was an overcharge on both cables and installation costs. So there is a discrepancy between the two claims.

Our position is that if you take the wider case -- there was an overcharge a cables and installation costs -- we will win at the ROC trial and so none of this will ever arise. This only arises in a situation where the addition of the installation costs makes a difference in the tribunal's mind. You may want to say something about that in the ROC judgment.

Mr West then says in his skeleton, well, we are concerned there may be some suggestion that judgment in London Array should be held up. That's the point we just cannot understand. To the extent it was ever a point, we now think it is dealt with by the amendment that's been agreed

to question 4 in the ROC issue list, which is at PTR 2/4.

It is now number 6. What the tribunal has there, this has now been amended so as to make clear that essentially, as you will see, 6(a), if the answer to question 2 is yes, and then the tribunal proceeds to determine the minimum cost elevation, and at C the tribunal holds that there is --

THE CHAIR: This is issue which number?

MR SINGLA: It is now number 6, but the heading is "Question 4 in annex to ROC issue order". It's now expanded.

THE CHAIR: I don't think I have this.

MR SINGLA: You may not have received the updated version. I don't know whether your bundles --

THE CHAIR: What page is it on?

MR SINGLA: PTR 2/4. But I think it is the same numbering both for the old version and the new version.

MR LASK: Sorry, sir, we don't have PTR bundle 2 at all. We are at a little bit of a disadvantage too. We are not able to follow. It may not impact us directly but I do feel a bit uncomfortable not being able to see the document being referred to.

MR SINGLA: I am not sure I can ...

MR LASK: Just to be clear, it is because it is the PTR bundle for the London Array claim, which we don't have. We don't have any of the London Array only documents.

MR SINGLA: I do apologise. There is not a lot I can do at the moment, unless we can get hard copies if there is a transcriber's break.

THE CHAIR: Sorry, I don't have it yet either. We have a bit of a problem here, don't we?

MR SINGLA: It looks like it. It may be that if we take a break, we could try to procure some hard copies. This is an updated version of the ROC issue questions, so all parties do need to see this.

THE CHAIR: Yes.

MR WEST: I would also venture to suggest that this is really an issue now in the London Array case. If the other parties are happy about the suggestion that any assumption or decision in relation to installation costs shall only affect London Array, then we could probably park this to the London Array part.

MR SINGLA: That is a fair point. Although Mr Lask jumps to his feet, everybody is accepting that Ms Spottiswoode can advance a claim with an overcharge allegation on installation costs as well. Nothing -- either in the London Array trial or the ROC trial, nothing will cut across their ability to claim that in due course.

THE CHAIR: Let's have a break anyway. Reliance is made on this in the list of issues and I think, given the reliance that has been placed, let's just make sure everyone has a copy of the document.

It may be that if we just break for ten minutes, it might be agreed that this is something that is a London Array only point anyway, in which case we can come back to it in London Array.

MR SINGLA: The document is a joint document, so it is probably important, before parties disappear, that everyone sees the new wording. But substantively Mr West is right that the issue only arises in the London Array case.

THE CHAIR: Yes.

(11.39 am)

(A short break)

(11.53 am)

MR SINGLA: Sir, I am grateful for that time. I can endeavour to explain where we have got to on this side, which is as follows:

The Spottiswoode claimants are claiming that there was an overcharge on both cables and installation costs; London Array are not. So their claim is confined to an overcharge on the cables.

In the ROC issue trial, it will be assumed that there was an overcharge on both cables and installation costs. Our expert says in fact it is pretty unlikely, or very unlikely, that installation costs were affected, but that's not a matter that the tribunal will be asked to determine in the ROC trial.

Now, when one comes to judgment in the London Array proceedings, if -- if -- the tribunal's view in the ROC trial is the inclusion or exclusion of installation costs makes a difference -- and our primary position is none of this makes a difference -- but if that's the outcome in the ROC trial, I think the concern for Mr West's clients is that judgment will be held up in London Array. That's a concern which we still don't understand, and that we think has been dealt with through the wording in the amended issue 6 in London Array, which cross-refers to question 4 in the ROC trial.

Just to explain how we see these provisions working, essentially the minimum cost elevation is the figure that will be arrived at by the tribunal on this hypothesis, assuming there is some degree of success on the part of Spottiswoode. So if there is a minimum cost elevation figure, what one cannot do is simply plug in any overcharge figure from London Array and say, "Well, is it more or is it less?", because essentially it's not apples with apples. So there would need to be an adjustment to reflect the fact that London Array have never claimed that there was an overcharge on installation costs and therefore the VoC affected will need to be adjusted accordingly.

So we are not looking to hold up a judgment in London Array, but we do respectfully submit that the additional wording in 6, if you have 6 now in the London Array proceedings -- this is what I was referring to before the break. Assume there is a degree of success in the ROC trial on the part of Spottiswoode, and a degree of success on the part of London Array in their trial, the question at the end of 6 is:

"Was the overcharge on the London Array cables at least equivalent to that minimum cost elevation?"

Now pausing there, that's my point about it's not apples with apples, because the minimum cost elevation will have been arrived at on the assumption that there was an overcharge on both cables and installation. So that's why the wording has been added in parentheses: bearing in mind any differences between the London Array assets found to have been subject to an overcharge, essentially cables, and the assets the tribunal took into account determining the value of commerce within question 1 of the said annex, ie cables plus installation costs.

So that's all we are saying, is that if this remote scenario ever comes to pass, the tribunal will need to take into account they are not claiming an overcharge on installation costs. It is all getting --

THE CHAIR: It is not at all clear to me that anyone is disagreeing on this.

MR SINGLA: No.

THE CHAIR: Can I ask you perhaps this question, Mr Singla. If we look at Mr West's blue wording --

MR SINGLA: That's where we struggle, actually. That's the last bit. We struggle to understand the blue wording. So far I believe it is all common ground what I have just said. We can't understand why the blue wording is required. I did ask him during the break and I didn't understand his answer.

THE CHAIR: Sometimes it can be debated whether things are necessary or not necessary, but do you object to the principle of the blue wording?

MR SINGLA: I don't understand the wording, which is my difficulty.

THE CHAIR: Okay.

MR SINGLA: Maybe Mr West needs to rise, because everything I have just said we are content with. What I don't understand is where that blue wording fits in to the structure or the concept that I have just outlined.

THE CHAIR: Why don't I then invite Mr West to make a pitch for the blue wording. Then we will take it from there.

MR WEST: Yes, so this really comes back to the four questions in the order from last May. So the first one is the value of commerce and the question is whether installation is in or out. Then question 2 is whatever the value of commerce is, does a 26 per cent overcharge make a difference to the ROC banding decision? If so, what is the minimum level of overcharge that would make a difference. Then question 4: is the overcharge in London Array sufficiently large to meet the level of that overcharge?

Question 6 in the new list of issues clarifies, as my learned friend rightly says, that in deciding question 4 you need to bear in mind that the overcharge on London Array may not be the same as the overcharge the tribunal has found in the value of commerce in question 1. Because we know that there is no claim for installation costs overcharge in London Array. The tribunal may or may not find an inter-array cable overcharge in London Array, and likewise on the industry at large.

So it seems to me the question really boils down to this: if the tribunal, in order to proceed to give judgment in London Array has to answer question 2, as it does, should it assume that installation costs are in or out? It needs to make one assumption or the other in order to proceed to give an answer, because everyone seems to accept that it can't actually decide the question on the basis of the evidence. My proposal is that at the point of question 2, the tribunal assumes that installation costs are out, but only for the purposes of the London Array case.

Now as I understand my friend's submission, he says, well, you don't need that, because when you get to question 4, the installation costs are stripped out anyway. That seems to me to give rise to a mathematical question, which is: are there any circumstances in which you can get a different result by having a different assumption at 2, given that the installation is then stripped out again at 4?

I have asked Mr Bell, who is here today, his views on that. He's considering it. If his answer is, there are no circumstances in which it makes a difference, then this whole debate is completely sterile; I accept that.

THE CHAIR: I'm not quite sure where that leaves us.

MR WEST: What I suggest is we park this until we get to the London Array part of the case, because it is really an issue in the London Array claim.

MR SINGLA: With respect, that's true, but parking it for half an hour is not actually going to help if Mr West is getting instructions from Mr Bell live. I think parking it more generally might be sensible.

The issue in the skeleton was they don't want judgment to be held up pending the Spottiswoode trial. I think I have made it clear, that's not our position. I think Mr West, with respect, is overcomplicating this. It is a scenario that on our side will never come to pass. I mean to take up time now with instructions being taken from an expert, it's just unsatisfactory in my respectful submission.

MR WEST: It isn't -- sorry to rise again, but if one looks at the proposed wording that has been put forward by all the other parties, it is to park the issue. We can't park the issue. We need an assumption one way or the other on question 2 to get to an answer.

MS DAVIES: I should make clear, I think my learned friend Mr West is referring to the yellow language in paragraph 13. Our position in relation to that is that's not something that the tribunal should be including in the PTR order today. We agree with that approach but we don't think it is necessary to go into the PTR order. We don't want the tribunal's hands to be tied in relation to its judgment. The parties have all agreed the tribunal cannot address the question of installation costs in the forthcoming trial because that's not being covered by the evidence. The consequences for that are ultimately going to have to be worked through in the tribunal's judgment. But one doesn't need a provision in the PTR order to deal with that. That then, I understand, would address Mr West's concern and one can move on.

THE CHAIR: Is it possible that we can leave it this way: it seems to me that everyone is agreed no party needs to come to the London Array trial or the ROC trial armed with evidence or seeking to prove whether installation costs are in or out. So it seems to me that everyone is

clear on what is going to be happening at the two trials.

If the tribunal thinks that it matters whether installation costs are in or out, we can say something in our judgment on that issue, and consequences might flow from that issue and they can be debated at the time. Everyone seems to agree that judgment in London Array should not be held up because of questions about whether it matters whether installation costs are in or out.

It does seem to me that that indication equips the parties to come to trial in April and May. What comes out of that trial seem to me at least to be a debate for another day.

MS DAVIES: Precisely, sir. We could be spending time now on a debate that is completely irrelevant. Because on the aligned parties' side, installation costs make no difference to the answer to the questions. It is only were we to get to some halfway house and the tribunal were to accept Mr Druce's approach in relation to the minimum costs elevation required, which is to put it very low, that installation costs start coming potentially into focus.

So we have quite a lot of water to go under the bridge before we get to this issue actually mattering, anyway.

THE CHAIR: Yes.

MR LASK: Sir, if I may, the approach just articulated now by yourself sounds entirely sensible, from our perspective.

One concern I do have is in relation to Ms Davies's submission just now that the tribunal need not put this in the order because the tribunal shouldn't be tying its hands. I am not quite sure what is meant by that. We are not insisting in goes in the order, the indication you have given is clear enough, but I am just a bit concerned that there may be something coming down the track that we can't see now but that is going to cause a problem in relation to installation costs.

MS DAVIES: That certainly wasn't my intention.

MR LASK: That's helpful.

THE CHAIR: It seems to me that something should go in the order. At the very least the

parties should know that the question of whether installation costs are in or out is not a matter that the tribunal is proposing to determine at either trial.

MR LASK: That is certainly our preference.

THE CHAIR: It seems to me that everyone seems to agree on that proposition. So speaking for myself at least -- I don't see howls of outrage from either side -- I think a proposition such as that going in the order deals with all we need to deal with on this issue today.

MR SINGLA: Just to be completely clear, they are out of the London Array trial. No overcharge has ever been claimed in respect of installation costs, but they are firmly out of the London Array trial, but for the purposes of the ROC trial it is assumed that any overcharge covered both cables and installation costs. I think that is agreed, but just to be completely clear.

THE CHAIR: Yes.

Are we ready to move on to the next topic?

Submissions on DESNZ confidentiality

MR LASK: Sir, the next issue on the agenda is the DESNZ confidentiality. This arises because of the large volume of disclosure that's been provided by DESNZ which initially was provided within the confidentiality ring at DESNZ's request.

As the tribunal will have seen from our skeleton argument, we have been liaising with DESNZ in an effort to secure agreement that disclosure be de-designated. Frankly, we can't see how documents can still be considered confidential when they will be over 15 years old by the time of trial. Obviously Ms Spottiswoode is very keen that the trial takes place in open court, not least so the very large class she represents can follow proceedings.

Happily, since our skeleton, DESNZ have agreed that the disclosure can be de-designated as non-confidential, so that the DESNZ documents can be referred to in open court, together with any submissions or evidence that refer to those documents. That is save for documents that attach Collective Cabinet Responsibility, which will remain in the confidentiality ring. My

understanding is that to date only one such document has been referred to by the experts. That shouldn't be a big issue.

DESNZ's agreement is, however, subject to three conditions, which the Class Representative is content with, subject to the tribunal's approval. I am not entirely sure what the other parties say, but they will obviously have an opportunity to comment. But in the first instance, if I can show you DESNZ's email of yesterday, so you can see what the conditions are, it is in PTR bundle 1, at tab 40. So it is at the back. So you will see an email headed "Dear Oscar".

I should say that if the tribunal is also content with these conditions, we suggest -- and I know Ms Davies agrees -- that these be reflected in the order so that they are publicly available.

THE CHAIR: PTR bundle 1 or 2?

MR LASK: PTR bundle 1, tab 40. Right at the back, page 201.

THE CHAIR: "Dear Oscar ..."

MR LASK: "Dear Oscar". So the first condition:

"DESNZ will be notified if any further DESNZ Disclosure documents are added to the trial bundle."

That's fine. To be clear, although only I think it is around 1 in 10 of the DESNZ documents are currently in the trial bundle, DESNZ's agreement to de-designate applies to everything, whether or not it's in the trial bundle.

So that's the first condition. The second condition:

"If any non-party requests a copy of a document which contains reference to a DESNZ Disclosure document, (such as the expert reports), the parties will redact all references to the DESNZ Disclosure document before providing the document."

As we see it, this accords with paragraph 9.66 of the Tribunal Guide, which provides that where a pleading, skeleton, witness statement or expert report is referred to in open court, the party who produced it should be prepared to make a non-confidential version of it available to a non-party on request. So we think this is consistent with that.

In practice, what that would mean is that hearing transcripts would have to be redacted as appropriate before being published on the tribunal website.

Then the parties --

THE CHAIR: The parties could arrange that during the course of the hearing.

MR LASK: Of course, yes.

THE CHAIR: Then the third condition:

"If any non-party requests a copy of a DESNZ Disclosure document, the parties will refuse the request and inform DESNZ that the request has been made; and if a non-party applies to the Tribunal to see a DESNZ Disclosure document, DESNZ will be notified and have the opportunity to make representations to the Tribunal."

Again, that seems to us to be consistent with the tribunal procedure, as stated in paragraph 7.34 of the Guide, underlying documents are not generally available for public inspection anyway. However, under rule 102, a party to these proceedings would be entitled to disclose a DESNZ document that had been read to or by the tribunal or referred to at a public hearing if requested by a non-party. That's rule 102(2)(a).

So effectively, under this condition that DESNZ has requested, the parties would be agreeing not to accede to any such request.

Then the non-party, if it really wants the document, can apply to the tribunal for disclosure. That's provided for in rule 102(2)(b) and (3).

So for our part, we are content with the DESNZ conditions. You will want to hear from the other parties as to their position. We do, of course, recognise that this is subject to the tribunal being content and, as I say, it will be helpful, we think, if it is content that it goes in the order. I think that's all I need to say on it at this stage, so I will sit down.

THE CHAIR: Thank you.

MR WEST: We are content with these proposals.

THE CHAIR: Yes.

MS DAVIES: Sir, we are also content with them.

As my learned friend Mr Lask indicated, we do consider it is important that it is recorded in the order because, contrary to the suggestion made by my learned friend, there are aspects of this which in our view modify the normal approach of the tribunal rules. My learned friend has just referred to the change on 102, but there is also the change because the transcripts will not be able to just go straight on to the tribunal's website, they are going to have to be redacted. The redactions could be quite significant, we just need to make that -- make the tribunal aware of that.

A large part of the experts' debate is driven by some of the DESNZ documents that are being de-designated but over which condition 2 will nonetheless apply. So in terms of the tribunal -- the transcripts, whilst as I understand it we are going to be free in the hearing room to ask questions, make submissions, do what we like, the skeletons and the transcripts and so on will have to be redacted to take out these documents.

THE CHAIR: What else could the tribunal realistically do at this stage? I mean, this is DESNZ's position.

MS DAVIES: Sir, we entirely agree. We just felt it was important that the tribunal was aware of the consequences of this, because it does modify what the normal process is. Once documents have been referred to in open court, normally anyone can read the transcript and see what the document says. But as I understand it, paragraph 2 is intended to prevent that. So it is just important that we are all aware, but we entirely agree. I mean, we want to be able to get on and have the hearing and if this is the conditions on which DESNZ say they will de-designate documents, unless the tribunal is going to demand that they modify their position, there's not much we can do.

THE CHAIR: It seems to me that it is -- I mean, DESNZ's position doesn't look unassailable.

MS DAVIES: No.

THE CHAIR: If someone wanted to say, "Actually, I really would like a copy of an unredacted

transcript, please".

MS DAVIES: Then they can make an application under paragraph 3. I entirely agree, but it is a modification to what normally happens, so it is just important that the tribunal understands it.

MR CARALL-GREEN: Sir, we have nothing to add on this.

MR SINGLA: Nothing to add, sir.

THE CHAIR: Thank you very much.

The next one is timelines to trial and deadlines for skeletons and authorities bundles.

Submissions on timelines to trial and deadlines for skeletons and authorities bundles

MR LASK: Yes. Sir, I think the key issue under this item is the deadline for trial skeletons which you have already heard a little bit about.

THE CHAIR: The competing dates are 22 April and 28 April; do I have that right?

MR LASK: That's right. To be clear, all else being equal, we would be content with either deadline. Our only issue is whether the later deadline allows the tribunal sufficient time for reading, which we would prefer to take place before day 1 of the ROC trial so that we can have that whole first week for submissions and evidence.

Of course, it's a matter for the tribunal. Our concern is that the time available at the ROC trial is already pretty tight, and that having Monday 19th as a reading day would make it even tighter.

THE CHAIR: Yes.

MR LASK: So that's why we have proposed 22 April to allow the tribunal more time for reading in before the London Array trial begins.

Two practical possibilities that I air for consideration, if the tribunal were minded to go for the deadline of the 28th. Firstly, whether if the skeletons were filed on the morning of 28th, that could be used as a reading day. That's Monday 28th. Or, if not -- my understanding at the

moment is that you have three days set aside for reading in the London Array trials. That's the Tuesday, Wednesday, Thursday. So my second proposal is perhaps one of those days becomes a reading day for the ROC trial.

THE CHAIR: Yes, thank you.

MR WEST: We would be happy with either of these dates.

THE CHAIR: Thank you.

MS DAVIES: Sir, we have a strong preference for 28 April. 22 April, the tribunal may appreciate, is the day after Easter Monday. The defendants have agreed to the suggestion that we have 60 pages between us. We are going to need to liaise quite considerably to, (a) make sure that page limit is met, but, (b), also to prevent duplication.

Of course, we are in the tribunal's hands, but our understanding is if we were to get the skeletons in on 28 April, which is already three weeks before we are starting the ROC trial, the tribunal would have time before it starts the evidence in London Array to read that week and of course we are in the tribunal's hands as to whether it would welcome an additional reading day before we start the ROC trial proper, on 19 May.

But it's just a practicality question, bearing in mind where we are and the need that is recognised by all parties on this side to avoid duplication and to come in at one sensible page length.

THE CHAIR: Yes.

MR SINGLA: Sir, we agree with all of that.

THE CHAIR: Thank you.

MR CARALL-GREEN: Yes, sir, I adopt Ms Davies' submissions.

THE CHAIR: Thank you very much.

Length of skeletons, I think it has been agreed, hasn't it, it is 35 on one side and 60 all in on the other side?

MR LASK: That's right, sir. There is nothing more to be said, unless the tribunal has any concerns or questions.

THE CHAIR: List of issues for the ROC issue trial. I think that's been agreed, hasn't it?

Submissions on the list of issues for the ROC trial

MR LASK: I think that's almost completely agreed. There is a list of issues before you. It is in PTR bundle 1, at tab 8.

You will see --

THE CHAIR: Do you have page number, perhaps?

MR LASK: PTR 1. I think the page number is 6.1. It is one of the new documents. If you don't have it electronic, it may be we can have some hard copies.

THE CHAIR: 6.1, we will try it. Yes.

MR LASK: It is there?

THE CHAIR: It is there.

MR LASK: Fantastic, thank you.

You will see there is, on the first page, a key to the contested wording. I should make clear that this reflects -- this version -- the position of at least Ms Spottiswoode, London Array and Prysmian. Nexans provided input on an earlier iteration, but as I understand it hasn't yet confirmed their position on this version. So they may have something to add.

My understanding of NKT's position is that they would expect to be adopting Prysmian's position. But they may also have something to add.

More generally, before I get into the meat of it, London Array say that the list of issues is unnecessary and duplicative of the joint expert memorandum. For what it is worth, we think it's a handy introduction to the case and it is a useful complement to what is a rather long joint expert memorandum, but of course it is a matter for the tribunal whether it finds this useful.

There are two passages in dispute. Our position is that it's not necessary for the tribunal to resolve those passages in dispute. They are self-contained -- I am going to show you them -- they are self-contained, they don't have a knock-on effect on the rest of the document,

and frankly we would have no objection to this document remaining in its current form as a partially agreed list of issues. But if the tribunal would find it helpful, I am very happy to address you on the passages in dispute and explain our position.

THE CHAIR: Is this important? What would be so bad if the document went in as a partially agreed list of issues and some parties said, "Hang on, there are other issues as well"? Would that be so bad?

MR LASK: That wouldn't be so bad. I think it's almost the opposite side of the coin: the passages we take issue with, we take issue with them because we don't accept the premise of those issues. So the answer is probably the same, provided it is understood that we don't accept that those issues aren't common ground, we don't accept them, it's no problem from our perspective.

THE CHAIR: Okay. I don't think we need to have any debate on this, unless you are burning to say something?

MS DAVIES: I am only going to say this. We are somewhat puzzled by my learned friend's position.

There are only two passages that fall into this category. The first one is at page 6.5. We are puzzled by his resistance to it, because it quotes directly from his own expert report.

THE CHAIR: Okay.

MS DAVIES: That's why we are puzzled by it. But if he wants to argue against what his own expert has said at trial, then of course I can't prevent him now from doing that.

THE CHAIR: Let's leave it on that on the list of issues.

MR LASK: It won't surprise you to hear that our position is that these things are more nuanced than they might appear, but I don't need to say anything more than that.

THE CHAIR: Trial timetable I think we have discussed quite a lot already.

Submissions re deadline for written closings

MR LASK: We have. I think there is only one additional issue that we have not touched on yet. We have addressed you on reading day. You have heard about the parties' positions on the way in which expert evidence should be dealt with and how much time is available for expert evidence.

So that leaves the deadline for written closings. It would be helpful to turn up the side by side trial timetable, Prysmian's skeleton PTR bundle 1, tab 5 page 64. You will see there are two proposals for the deadline for written closings: the green column is London Array and the defendants; they say that written closings should go in on the morning of Tuesday, 3 June. In the red column, you will see our proposal is that they go in on 30 May, which is the previous Friday.

It's common ground, as you will see from this, that oral closing submissions should start from Wednesday, 4 June. But if I may, I will address you very briefly on why we say that the written closings should be exchanged on Friday, 30 May.

Firstly, it allows the whole week for their preparation following the close of evidence. It gives the parties and the tribunal two working days to digest them before oral submissions begin.

The alternative proposal of 10 am on Tuesday 3 June is impossibly late in my submission. It would give our team -- Ms Spottiswoode's team -- roughly 24 hours to digest four sets of closing submissions: that's London Array's submissions and the three defendants. Even worse for the tribunal, because the tribunal has to digest our closing submissions as well, so it has to digest five sets of closing submissions in 24 hours. So that's just not feasible and the balance clearly favours the earlier deadline of Friday, 30 May.

I should say, notwithstanding the green column suggesting that all the other parties agree with that, my understanding is that Nexans considers both proposals workable, and London Array may favour our proposal too. But I will let the others address you on that.

MR WEST: We have no strong preference between the two dates.

MS DAVIES: Sir, we are obviously in the tribunal's hands. Our understanding was that

Monday 2 June, being a non-sitting day, was not a day where the tribunal would be reading submissions in any event. If we are wrong about that and the tribunal would prefer to have two days before we start the closings, we are entirely in the tribunal's hands.

Although at that point we would say can we deliver them at 10 am on the Monday morning. The reason for this, again, is the point about avoiding duplication between the aligned parties on this side. It's not a problem that my learned friend has in producing his written submissions but we do have. The additional weekend would be useful from our perspective, but we are really in the tribunal's hands as to when it's going to be doing its reading prior to the closing submissions and when it would find it useful, therefore, to have the written closing submissions.

I am sure that my learned friend Mr Lask, by the point we get to this stage, will understand what points we are taking and won't be in any way affected by whatever is more useful for the tribunal.

THE CHAIR: Thank you.

MR SINGLA: Sir, we will be guided by you.

MR CARALL-GREEN: I adopt Ms Davies's submissions, sir.

THE CHAIR: Thank you very much.

We will rise to consider this aspect of the --

Submissions re giving notice of documents to witnesses before the trial

MR WEST: One point before you rise which has not been addressed -- it is a very short point; it is in, again, the composite draft order at page 10A of the bundle, page 4 at paragraph 11 -- the question is simply whether any factual witness should be given notice of the documents he's going to be asked about --

THE CHAIR: Yes.

MR WEST: -- to the extent that they are not already pleaded or in the expert reports.

That was an order which was made in the recent Stellantis case. It has the advantage that if a witness -- this is really just for Mr McNeal, he's the only factual witness in the ROC issue trial -- if he's going to be asked about documents, he should have a chance to familiarise himself with them beforehand.

THE CHAIR: I had filed this away in the London Array, but it is common to both, is it?

MR WEST: It is common to both.

MR SINGLA: Can I go first on this? Because in London Array we actually do resist this. Not particularly strongly, but it is pretty unorthodox.

Mr West points to Stellantis. We are actually not aware that this goes on -- it certainly doesn't go on in the High Court and we are not aware that it goes on more widely in the tribunal. So we do just put down that marker.

Ultimately the tribunal will take a view, but it does seem slightly odd to require parties to give advance notice of all the documents they want to put to a witness in cross-examination.

THE CHAIR: It's not all, is it? It is only ones that are not in pleadings, not referred to in the witness's own statement and not in expert reports.

MR SINGLA: That's right. But in a sense if one wants to hear the witness's evidence in a fair way, we would suggest in a sense giving them notice and the ability to prepare for all of the documents that will be put to them is a slightly curious way to proceed.

So we don't feel particularly strongly, but just because it was directed in Stellantis, we would say that's actually an outlier rather than the usual practice.

MR LASK: Sir, if I may, we do share those concerns. I am not aware that submissions were made on this provision in Mr West's skeleton argument, at least in the ROC issue section of the skeleton argument. But we do share Mr Singla's concerns. We don't accept that this is common practice.

We can see practical problems with it. You know, if within the three days leading up to Mr McNeal giving evidence, documents come to light that we would like to put to Mr McNeal,

we should be allowed to do that without having to apply.

THE CHAIR: But there are shades of grey here, aren't there? At one extreme there is the document that has just come to light or something you have discovered; the other extreme is the counsel team prepares a schedule that distils various items of evidence and lays them side by side and puts that to the witnesses and says "Well, what do you think about this?" And the witness says, "I have only just seen this document, I don't know what I ..." It seems to me that pragmatism suggests that something in the latter case, advance notice might not be objectionable; and something in the former case, advance notice might not be practicable.

Is it a principled objection or is it --

MR LASK: It's not a principled objection. I don't make it any more forcefully than Mr Singla does. But I can see practical problems with it.

THE CHAIR: Yes, okay.

MR LASK: And I don't think it's necessary. Because any document that has been referred to in the expert reports will already be in the trial bundle. So the chances are that, you know, all sorts of additional documents might be added to the trial bundle between now and trial. Actually I am not sure those are captured by Mr West's formulation -- maybe I have misread it -- but either way, in practice it seems entirely possible that when we are really focused on the scope of Mr McNeal's cross-examination, it's entirely possible that things will come up. It just doesn't seem necessary that we should have to apply to the tribunal for permission to put them to Mr McNeal.

THE CHAIR: Yes, thank you.

MR LASK: Sorry, before you rise, I do have one short area, an AOB point, but I am happy to deal with that after you have risen and come back in.

THE CHAIR: We probably ought to hear it now, just in case it is controversial.

Submissions re access to documents in the London Array proceedings

MR LASK: We did raise this in our skeleton argument. I am not seeking a direction, I raise it really to put a marker down as we did in our skeleton argument.

It concerns documents in the London Array proceedings. There is a general point and a specific point. The general point which I wish to emphasise for the tribunal is we do not have access to any of the material that is particular to the London Array proceedings. That ought not to be a problem, but as we saw a few moments ago when Mr Singla was referring to the list of issues in the London Array proceedings, difficulties can arise. We are also conscious that by the time you get to the ROC trial, you will have been hearing the London Array trial for a number of weeks.

So in principle, it seems at least possible that there may be evidence or submissions in the London Array trial that bleed into the issues in the ROC trial. I don't put it any higher than that. I do no more than ask that the tribunal and the parties be aware of that, be alive to that possibility, and keep us in mind. That's the general point.

The specific point is, again as you will have seen from the skeleton argument, we have asked London Array's solicitors for a copy of Mr Bell's expert report in the London Array proceedings. In correspondence in February they said no, but they said that once the expert process in the London Array proceedings was complete, they would consider providing us with a non-confidential version of Mr Bell's report, in accordance with paragraph 9.66 of the tribunal's guide.

So I just flag that up really to remind them and say that we look forward to hearing from them.

THE CHAIR: Okay. Thank you very much. In that case, we will rise for 20 minutes. We will come back at 10 to and see if we can just give an indication of the ROC issues.

(12.33 pm)

(A short break)

(12.55 pm)

THE CHAIR: Thank you for everyone's submissions. I will just give a short ruling by

reference to the various topics on the agenda.

(12.55 pm)

(Ruling given)

THE CHAIR: Starting with the arrangements for economic evidence at the ROC trial. We are not persuaded that there is a need for hot-tubbing in the particular circumstances of this trial, given the nature of the expert evidence that is being advanced and the nature of the dispute on which the experts are expressing their opinions, so we would like the evidence of the experts to be tested, please, entirely by way of cross-examination.

We recognise that there is an issue of overlap between the evidence of three experts on one side. It seems to us that we can't make any ruling at this stage to require a lead expert to be identified, since what's being said in essence is that the different experts are reaching essentially the same conclusion, but each for potentially very different reasons.

So we are not going to make any direction at all about identification of lead experts. We hope that there will be a degree of discussion between the parties as to the way the evidence is tendered but, ultimately, we think the claimant needs to find a way of putting its case to the various experts in an economic way, and since we haven't taken up any time by imposing or by suggesting a hot-tub, it means there will be two and a half days for cross-examination of the experts which we consider to be adequate.

On the question of installation costs, I don't think we have anything more to say on the topic other than what was said during the helpful discussion with counsel during oral submissions. We think that that discussion gives the parties everything they need to get to trial at least, which is the function of today's PTR.

On confidentiality issues, we propose to adopt DESNZ's proposals as set out, if I can put it this way, in the "Dear Oscar" email. We recognise that the proposals that DESNZ articulates are not unassailable. It might be that someone objects to them and seeks documents that would be

redacted in accordance with the DESNZ proposals, but we don't see we can do anything more today to resolve this issue, since to do otherwise would necessitate hearing from DESNZ. So at this stage we will adopt the proposals in the "Dear Oscar" email. We will put those into the order, and if anyone does want to challenge them, it will be an issue for another day which will require DESNZ's input.

In terms of the deadline for skeleton arguments, we think 28 April is adequate for the purpose. Closing submissions. We would like these please by 30 May.

We are going to adopt Mr West's suggestion that advance notice should be given of new documents to be put to witnesses, as set out in paragraph 11 of his blue wording in the composite draft order. We recognise this may not be a usual direction but it seems to us that there are plenty of documents floating around here relating to decisions made several years ago. If a document is not on the list -- in the sense of being included in pleadings, expert reports or witness statements -- then in the circumstances of this case we do see some merit in witnesses being given advance notice of that so that cross-examination can proceed efficiently.

On the list of issues of the ROC trial, we have nothing to add to the discussion that we had with counsel during the trial.

The reading day. We would like the first day to be a reading day, please. But that still accommodates two and a half days for cross-examination of the four expert witnesses.

(1.00 pm)

MR SINGLA: Sir, that takes us to the London Array specific matters.

THE CHAIR: Yes.

MR SINGLA: Given the time, it may be --

THE CHAIR: Yes, I think we propose to break there and then come back after lunch for London Array.

MR SINGLA: I am grateful.

(1.01 pm)

(The luncheon adjournment)

(2.00 pm)

Proceedings re London Array

THE CHAIR: Yes, Mr West.

Submissions on the London Array PTR Agenda

MR WEST: Sir, we now turn to the London Array PTR. There is an agenda here, in tab 6 of bundle one. I propose we just work through that.

There is a further item arising on the agenda, which concerns a new witness statement which the claimants in London Array wish to serve. I propose to address that, unless my friend objects. This is from a Mr Döring. The statement itself is in the bundle without prejudice to admissibility, as it hasn't yet been admitted, at tab 2A of bundle 2.

If I can just explain how this point arises --

THE CHAIR: Would you be kind enough to give me a page number? Ideally electronic page number. I am sorry to be an outlier.

MR WEST: 72.62.

THE CHAIR: 72.62, yes, thank you.

MR WEST: The background to this is that the experts state in a number of places in the joint expert statement -- this is now the overcharge experts we are addressing -- that certain of the issues between them are really issues of fact concerning the cable industry, rather than matters of economics within their expertise.

The points concern, for example, the interchangeability of different cable types, and lead times -- that is to say how long it would take a cable supplier who began supplying a new type of cable to start winning business. The experts say, well, the issues between us really turn on points like that, but they aren't really matters of economics, they are matters of fact to do with

the cable industry.

London Array is of course owned by a number of major energy companies, who are in a large extent of business in purchasing cables. So it occurred to us that there may be individuals within those companies who are in a position to assist the tribunal on those factual issues. We have now identified Mr Döring, who gives the witness statement I have taken you to. He's willing to come along and assist the tribunal on those points.

As I will show new a second, Nexans have done something similar to this, because if you look at their expert reply report, their expert, Dr Davis, has various factual issues he raises and he simply asks Nexans what the answer is. Rather than putting that in a further statement, it is simply annexed to Dr Davis's reply report.

We say there is still time for this material to be fairly addressed. If Nexans don't agree with Mr Döring's statement, then we would propose that they serve any further reply statement within a week or two weeks, which would still leave several weeks before the start of the trial.

So that's the point in a nutshell. If I can take it a bit more slowly by reference to the documents, the joint expert statement is at tab 2 of PTR bundle 2.

Just to show you an example of this, if you look at page 44, you will see there on the column at the far left a numbered proposition starting EO33, about halfway down. "EO", I should say, stands for export cable overcharge. So these are the propositions in the joint expert statement addressing the experts' overcharge evidence relating to the export cables, and this is the 33rd such proposition or question. You will see the question:

"Should the following dimensions of submarine cable project heterogeneity be used to reflect a sample on which a comparator based analysis of the possible London Array overcharge is based."

There are a number there of different criteria. MI vs XLPE -- I'll explain this in a second -- AC v DC, Turnkey vs Supply, Low Voltage, medium-voltage, high voltage cables, Project application (grid interconnectors, oil & gas ...)

So the background to this is that the experts are agreed as to the overall methodology of determining overcharge in this case, which is to compare prices or margins during the cartel period with prices or margins after the end of the cartel period. That's either in relation to all comparator projects during the cartel, or, on one variation of the model, just London Array itself.

In referring to this as a during and after comparison, that's the terminology used, I should highlight that there is a debate between the experts about whether London Array is a during cartel project at all. So I am not proposing to prejudice that issue. That's just the terminology which is used.

The comparator projects which are used to look at the during and after margins are all Nexans projects, because we have disclosure from Nexans. It is the only cable maker in the London Array proceedings. The comparator projects are a variety of different types of projects which are in some respects different from London Array. For example, the London Array cables are what is known as XLPE cables, which stands for cross-linked polyethylene, which is a type of insulation. Effectively the metal core of the cable is wrapped in plastic. But some of the other projects involve a different type of cable, known as a mass-impregnated cable, or MI cable, and there the insulation is paper and fluid. MI was an older technology but was regarded at the time as being more suitable for high voltage applications.

Another difference is the type of current. London Array was an alternating current or AC project, but some of the comparators are direct current, DC, projects. DC projects, if you use DC offshore cables, you need to buy transformers to convert the DC to AC because the National Grid operates on AC. That adds an additional cost, but for very long projects involving very long lengths of cable, there is a countervailing benefit which is a lower level of power loss. So at a certain point in the length of the cable it becomes better to use MI cables. So that's projects like interconnectors between different countries or to offshore islands.

Again some of the projects' comparators in issue are DC and some are AC. So the question

arises which of these projects should be used in the sample? Should it just be XLPE AC projects like London Array, or should it also be, for example, projects using MI or DC cables? This is what the experts are opining on here in proposition 33.

THE CHAIR: We can't use just what Nexans actually used because the whole point is we are producing a construct.

MR WEST: Yes. There is a trade-off, as the experts agree, between the similarity of the projects -- how similar they are to London Array -- and the number of data points you end up with. The closer the similarity required, the fewer data points you end up with.

As I mentioned a second ago, Dr Davis in his reply report simply asked Nexans about this. We see that extracted here actually in the second column which is Mr Bell's answer, but he extracts -- you will see at the top of page 45 -- part of Dr Davis's reply report. So the text in black is Dr Davis asking a question:

"Citing findings by the European Commission, Mr Bell states that XLPE and MI technologies are not substitutable from a supplier perspective because the equipment used for the production of each cable type was specific to the type. Do you agree? If not, please explain."

And then we have here "Krister G comment". We think that is Krister Granlie, one of Nexans witnesses in the case:

"Yes, the manufacturing equipment is -- especially related to the installation process -- different between XLPE and MI cables."

So there we have, in effect, further factual evidence but simply in the form of instructions to Dr Davis.

You will see if you look in the right-hand column which is Dr Davis's answer, he starts off by saying:

"In my view, this is at least in part a question of fact which is not for an economic expert, I am not an expert in the submarine cables business. In case it is helpful, I ... [provide] my current understanding ..."

If one goes to the next page, page 45, there is a number of lettered paragraphs and "a" deals with "MI vs XLPE vs LPOF". LPOF is another different type of cable. That means low pressure oil-filled cables. He has two little Roman numeral points under that. Then he says: "This is further supported by my correspondence with Nexans where they explain that 'the manufacturing equipment is -- especially related to the insulation process -- different between XLPE and MI cables'."

That is, I think, what Mr Bell was referring to in his column.

"While Mr Bell recognises the limited substitutability from the supply-side in his report ... he does not consider the existence (or extent) of demand-side substitutability between the ... cables ..."

So Dr Davis is there saying that there is a lack of evidence about demand side substitutability. That's one group of issues where the experts say: well, these are really factual issues and I am not an expert in cables.

Another is to do with lead times, the time it would take a company which began supplying a new type of cables to be able to enter the market. This is relevant, because a number of new entrants began supplying cables in Europe in the years following the cartel. The question arises: was it the cartel which kept them out during the cartel period, or was there some other reason why they only began supplying cables after the end of the cartel period?

In the case of some of the suppliers there is the additional feature of this debate that some of them were not in the cartel for the whole of its duration. There is a company called LS Cable, which is I believe a Korean supplier which was only in the cartel until 2005, and it began supplying cables in Europe I think successfully beginning in 2013. So again the question arises: is that because it took that period of time for it to move to supplying these types of cables in Europe?

This addressed at EO35, which is over at page 49. EO, again, expert overcharge propositions. One sees the proposition:

"Following the infringement, there is there has been entry of additional European and Asian cable supplies that were addressees of the EC Decision for the supply of high voltage SM XLPE cables to European customers of the time procured by London Array."

If one looks again at Dr Davis's column, he says:

"In my view, this is a question of fact which is not for an economic expert. I am not an expert in the submarine cables business."

One sees there two indents further down, the line beginning "However":

"However, I note that [this is some of these new suppliers] supplied cables of much shorter length than the cables required for ... London Array ..."

So there is another question there about whether if you supply short lengths of cable, there are technical or other reasons why it would be difficult to supply longer lengths of cable.

So following the service of this joint expert statement which was on Wednesday of last week, 12 March, the position we found ourselves in was that the experts had identified certain key factual disputes on which the issues between them turn, which are said not to be matters of economic expert evidence.

THE CHAIR: You discovered this when you get the report on 12 March, you say.

MR WEST: That's where we have a lot of these statements I have been taking you to from Dr Davis saying these are really factual matters.

MR SINGLA: Just to be clear, those are extracts from Dr Davis's reply report. They are reproduced in the joint memo. Just to be clear about the chronology.

MR WEST: The reply report was, I think, on 10 February. Clearly then the next stage was for the experts to get together and draw up their joint expert report, identifying the differences between them and the materiality of those differences and so on.

Now these factual differences, or disputes, are not addressed by the current factual witnesses, whose statements went in in April, and reply statements in June of last year. The factual witnesses addressed the pleaded disputes, and the pleaded disputes concern matters like

pass-on -- although that has now fallen away -- and pass back, although that's also now fallen away, and procurement.

These factual issues identified in the JES are issues which have only emerged by virtue of the expert evidence process. In our submission, it is rather unfortunate if the tribunal is left in the position where these factual issues have been identified but not addressed in the evidence, and that's why we have made enquiries and secured the statement from Mr Döring.

He is a cable engineer with many years involvement in the industry. If we can just go through it again without reference to admissibility, to see what he says, tab 2A, 72.62. He begins with his role, starting on page 64. Then moving on to page 66, at paragraph 20, he addresses the issue concerning the length of cables. He explains, beginning four lines down:

"The manufacturing process to produce longer cables is to add factory joints to the standard length cable in order to produce the required length: for instance, in order to produce 100km long cable, a cable manufacturer adds four factory joints between 20km long individual sections."

So that addresses the issue about whether there are technical impediments in the way of producing longer cables.

Then at 24 he discusses the question of cable voltage and whether supplies can switch from producing lower to higher voltages of cable. At 27, AC versus DC, a similar debate about that. At 31 he specifically addresses the interchangeability from a customer perspective of AC and DC cables. As I showed you, one of the specific points Dr Davis made is that demand-side substitutability had not been addressed in relation to these different cable types.

He then does the same on page 70 with XLPE versus MI cables. He then goes on to address lead times for cable suppliers to switch to producing different types of cables. For example at 37, he talks about there being a five-year period from an investment decision to begin producing submarine cables. At paragraph 40 he discusses LS Cables specifically. That's the Korean supplier I mentioned.

Then he goes on to discuss customer relationships beginning at page 74, because that is obviously an element in how quickly new suppliers can win business of a different type.

So just to summarise, I say following the joint expert statement process the experts have identified a missing piece of the factual jigsaw puzzle, which was not apparent at an earlier stage, concerning matters such as the interchangeability of different types of cable and how long it would take for companies to penetrate new markets. In my submission it is much better for the tribunal, and generally, to have Mr Döring's statement admitted and to have the tribunal be able to look at that statement and ask Mr Döring any questions it may have for him, and he will then be able to address those specific factual matters at the hearing.

As I say, Nexans can't really complain about this, because they did much the same thing at the stage of their reply reports when Dr Davis simply asked Mr Granlie for answers to factual questions, which were then incorporated into his instructions.

I say this can fairly be done because if Nexans takes issue with what Mr Döring says, it can put in its own responsive witness statement. It is of course itself a cable company, it is active in this industry, and would be expected to know about the matters that Mr Döring addresses.

There is sufficient time for this to be done prior to the start of the trial, which is still more than a month away. We managed to put Mr Döring's statement together within, I think, a week and a day of service of the joint expert statements. So we would propose that this be admitted and that Nexans be given the opportunity to respond to it, if they don't agree with it, within a week or two weeks. That would take us to 4 April, if it is two weeks, which is still more than three weeks before the start of the trial on the 29th. I say the topics are relatively self-contained and any disputes can likewise be expected to be quite narrow.

In fact, Mr Granlie's view was that the types of cables which he was asked about were not, in fact, interchangeable from a demand-side perspective -- sorry, from a supply-side perspective, which supports the view that London Array takes and its expert takes. So that suggests there may in fact be a degree of common ground about all of this.

In terms of where Mr Döring's evidence would sit in the trial timetable, he's based in Germany and 1 May is a public holiday in Germany, so like the Scandinavian witnesses he's only available the following week. My suggestion is that he should be pencilled in to give his evidence on 6 May, with the claimant's other factual witness, of which there is currently only one, Mr Bonefeld. There is provision in the timetable for the factual evidence to go over into the morning of the following day if needed.

So for these reasons, I ask the tribunal to rule that Mr Döring's statement be admitted.

THE CHAIR: Thank you, Mr West.

MR SINGLA: Sir, we oppose this application. I am going to do my best to explain why. But as a fallback, I would ask the tribunal that we have an opportunity to address you actually in writing. We were only provided with a copy of this witness statement less than 24 hours ago. So we have done our best to put together some submissions but this is actually quite an important matter and we respectfully submit that we need a proper opportunity to deal with this application.

But let me try now to persuade you why this statement ought not to come in. Because we do respectfully say the whole way in which this has been dealt with is very, very unsatisfactory. Now I will make four main points.

The first is in relation to timing. We say this is very late indeed. Witness statements were exchanged 11 months ago, in April last year. The first round of expert reports were exchanged three months ago, in December last year; the second round of expert reports, on 10 February.

Now the possibility of further evidence, of a new factual witness statement from an entirely new witness was only mentioned for the very first time in the skeleton on Tuesday of this week. I would like to remind the tribunal of what Mr West was saying on Tuesday. It is paragraph 33 of the skeleton, if you could take that up, please.

This was completely new to us. There was no suggestion in any of the correspondence. It's said at 33 that:

"... it appears from the [joint statement] ... certain disputes between the experts do not turn on economics as such ..."

But it is the next sentence I would like to draw your attention to:

"London Array is investigating whether there are individuals within the energy companies which own the London Array windfarm with knowledge on these points. If there is, London Array would propose submitting a short further witness statement addressing them."

So that was their position on Tuesday. 48 hours later, we were supplied with a 15-page factual witness statement. So just pausing there, we do respectfully question how Mr West could be saying on Tuesday that they were still investigating whether there are individuals with knowledge on these points, when in fact one can reasonably infer that this 15-page witness statement was underway. The witness had been identified and the statement must have been -- the drafting of the statement must already have commenced, indeed probably almost been complete.

Now, the statement itself didn't come until yesterday. Just to be clear, that means that what they have done is they have kept completely silent about this. They have allowed the parties to agree a trial timetable and then they have served a witness statement less than 24 hours before the PTR. As I say, not merely additional evidence from an existing witness, but an entirely new witness. And it's not being said that none of this couldn't have happened earlier. It's not new evidence, as it were, that wasn't available earlier.

So we do respectfully submit the first point is they have delayed to an unreasonable extent. That's been compounded with the fact that having provided us with this statement yesterday they say, "Well, we will address this at the PTR." That's why I say we have done our best but we do actually say we have been prejudiced having to deal with this application at very, very short notice.

Now the second point is Mr West's attempt to justify the timing of this late evidence on the basis that it was only in light of the joint expert statement that the need for factual evidence

became apparent. Now we simply don't accept that.

The witness statement addresses two points. As Mr West has explained, differences in cable characteristics and the ability of alternative suppliers to compete, and in particular the ability of the Asian manufacturers to manufacture long length submarine cables.

Contrary to what Mr West has said today, those issues have been in play since at least the factual evidence. And certainly since the expert reports. I am going to show you a witness statement on our side -- Mr Granlie's statement -- which was served in April of last year and dealt with both of those points. So could I ask you to look at the Opus bundle. First of all, it is LAL-E1, tab 3, page 5.

THE CHAIR: I am going to have to log in again.

MR SINGLA: One of the difficulties is because of the way this application has been brought on, we don't even have the documents that we need, really, in hard copies --

THE CHAIR: I can log in, that's fine. I just need to log into Opus again. I have been thrown out.

MR SINGLA: It is Mr Granlie's statement. If we could go to paragraph 18 on page 5, please.

THE CHAIR: Would you be kind enough to give me the reference to the Opus bundle again?

MR SINGLA: LAL-E1, tab 3, I hope.

THE CHAIR: Yes.

MR SINGLA: You will see, actually, it starts at paragraph 17, but you will see the heading "Export cables". I don't expect that the tribunal can read all of this now, but if one just perhaps skims paragraphs 17 through to 39, there is actually quite detailed evidence from Mr Granlie about cable characteristics, so length, voltage, the AC versus DC and the XLPE versus MI issues. If I could just ask you to cast an eye over that whole section, please. (Pause)

THE CHAIR: Yes, this canvasses the AC/DC issue, the different types of insulation and all that sort of thing.

MR SINGLA: Exactly. All of the points are dealt with by Mr Granlie over 11 months ago,

and the Asian manufacturers' point is dealt with by Mr Granlie at 72, page 19. You will see paragraph 72.

So these issues, the two points that Mr West draws attention to, those were fairly and squarely dealt with in our factual evidence in April last year. Then the experts on both sides spent considerable time in their first reports in December addressing both of these points as well: cable characteristics and the ability of Asian competitors to enter into the market.

I would like to show you what Mr Bell says, if I take Mr Bell first in relation to the Asian manufacturers. So this is only in the confidential bundle, I believe, in Opus. So one needs to turn up LAL-F-IC, tab 1. If I could ask you to turn to page 53, please, you should see a section beginning at paragraph 2.80 which is headed:

"The impact of cartel on the number of competitors for UK projects."

Could I again just ask you to skim the next 15 pages that Mr Bell devotes to this topic, through to paragraph 2.92, please. (Pause)

The basic thesis being advanced by Mr Bell is that in the counterfactual world, additional Asian suppliers could have entered into the market. That's the basic point.

THE CHAIR: And the date of this? This is February, is it?

MR SINGLA: No, this is December, the first report. As I say, it's about 15 pages in his first report on that topic.

Then if one looks at what he says about cable characteristics, if you type in page 113 into Opus, you should see a section headed "Non-comparable projects", and it runs from 5.50 to 5.58. Again if I could just ask you to look at what he says about cable characteristics. (Pause)

THE CHAIR: Yes.

MR SINGLA: I should have pointed out that in fact in both of those sections that I just asked you to look at, Mr Bell addresses directly what Mr Granlie was saying in his factual witness statement.

For your note -- I mean I am not going to take up too much time -- Dr Davis also deals with

these points, but essentially the battle lines are drawn between the experts on the basis that Mr Bell says "Look at all of these Asian suppliers that could have entered into the market", Dr Davis says in fact the position is not like that at all, the entry by Asian suppliers into the market was several years after the infringement. One sees that for example at Davis 1, paragraph 300. There is a debate about whether to include or exclude the MI projects as part of the sample sets.

So that's the first round of expert reports in December. Then in that second round of reports, these matters are dealt with again. What Mr West was taking you to were extracts of Dr Davis's second report, but reproduced in the joint memo which I explained. Just to give you again a couple of references, Dr Davis's second report, paragraphs 117 to 130, he corrects what Mr Bell says about the Asian suppliers' ability to enter, and the MI projects issue is referred to in Mr Bell's second report, paragraph 5.28. He says that's the major difference between the two experts on the sample selection.

Now, those matters, therefore, have been in play for a very long time in this case. We do respectfully submit it is completely wrong to suggest that the need for this evidence only became apparent when the joint expert statement was recently filed. It's factual evidence. This 15-page witness statement from Mr Döring is factual evidence that the claimants want to rely upon to support Mr Bell's opinions. There is absolutely no reason why they couldn't have served it earlier. It is no good, with respect, to say "Well, it only dawned upon us in light of the expert statement that it would be nice to have Mr Döring cover these issues." That's not how procedure works. They had the ability to serve factual evidence on this at the very outset. At the very latest, they could have put in a responsive witness statement to Mr Granlie, and they did in fact have permission -- importantly, the tribunal should note they had permission to file witness evidence in reply to Mr Granlie on 7 June last year, and they chose for their own reasons not to -- they could have produced Mr Döring's statement in December, when Mr Bell produced his report covering these topics in great detail and responding to Mr Granlie himself.

They could have said: "Well, here's another witness statement from a new witness, we would like permission to put that in." But they waited until the day before the PTR.

So we say it is far, far too late, first point; the second point is it is wrong to say that the joint statement is the trigger. They could have put this in right at the outset.

THE CHAIR: I hear that point. Tell me how are you prejudiced?

MR SINGLA: That's my next point. My next point is that it is prejudicial to us because we are not going to have a fair opportunity to deal with it. The expert reports have already gone in. There may be short supplementals on discrete points, but the experts have not had an opportunity to consider this new evidence from Mr Döring, at the same time as all of the other factual evidence and the documents.

That's the net result of what's being pressed upon you. We say it is simply too late. As I say, the trial timetable, yes, of course, one can point to additional days here or there, but until yesterday the trial timetable had actually been agreed. And supplemental expert reports were only being canvassed at Mr Bell's instigation, and we have said we will be willing to accommodate that.

We do respectfully submit that it is prejudicial to us, because if one winds the clock back to when they ought to have put this statement in, we would have had an ability to consider this with proper time, to consider putting responsive factual evidence in, to allow Dr Davis, the expert, to consider this material, in his first report, his second report, the joint memorandum -- all of that now has taken place without reference to this evidence, and we say therefore it is prejudicial.

The fourth point I would like to make is to say there is a difference between what Dr Davis has done by asking questions of Mr Granlie and what is now being sought by Mr West.

Mr Granlie, first of all, is an existing witness. Secondly, no objection was actually taken by the claimants to the course which Dr Davis adopted. It was never said that that was somehow improper or the introduction of new factual evidence for which there was no permission. There

was absolute silence about that. The third point is that was all done on 10 February, so we have now actually lost a month, and there is no explanation -- again, I do emphasise, there is no explanation. It's not even being suggested that this Döring evidence was not available earlier; it is simply that they have sat on their hands and only decided now to bring it upon you. The final point I would make is at the very most, if Mr West is saying, well, look what's happened with Dr Davis and the answers to the questions from Mr Granlie, at the very most they should be confined at this very, very late stage to responsive evidence to those points. That would be cable characteristics only. There is no justification at all for Mr Döring's evidence about the ability of Asian suppliers to enter into the market. That has no bearing at all upon the exercise that Dr Davis was doing.

In relation to cable characteristics, Mr West finished by saying, well, actually, some of that seems to be common ground. If that's the case, one asks rhetorically why do they need permission to call this additional witness.

We do respectfully submit, Mr West says in various places in his skeleton "the tribunal doesn't have ordinary rules of evidence" and so on. We do actually ask the tribunal to impose some rigour on this process. It is actually pretty remarkable that a party should wait until the day before the PTR. In his view of the world, opening submissions would be going in on 9 April. That's his position. To have stayed completely silent all this time and simply say "Here is a new witness, and of course everything can be accommodated," we say that is actually looking at things the wrong way round.

The first question, the most important question, is why have they left it so late? It's not an answer, in my submission, to say: "Look at the joint memorandum. We have now gone away and contacted a witness". The question is: why was this not put in 11 months ago with the other factual evidence. Unless they have an explanation for that, the tribunal should have no truck with the application.

He has not even endeavoured to provide an answer to that question.

It's one thing, if they said "This witness wasn't available to us until yesterday." That's not this case. In fact, as I said at the outset, the way this is put in the skeleton it is actually, in my submission, disingenuous to tell the tribunal and Nexans that they are still trying to identify a witness, and then to serve the statement 48 hours later. We do ask the tribunal to take that into account as part of your discretion. It's simply not the way these sorts of proceedings should be conducted.

Unless I can assist further, those are my submissions.

THE CHAIR: Thank you, Mr Singla.

MR WEST: My friend places some emphasis on the fact that this is a different witness and not an existing witness. He has to do that, because that differentiates the case from Mr Granlie simply giving more evidence to Dr Davis. But in my submission, it doesn't make any difference whether it happens to be the same witness who is able to give both procurement evidence and evidence about the cable industry. It doesn't add to the time taken at trial, apart from perhaps a few minutes, if it is a different witness as opposed to the same witness.

As to the suggestion that my skeleton was disingenuous, well, I really do object to that. There is only so far one can trespass on privilege in explaining how far one is towards finalising a statement, but the statement was served as soon as it was signed. So there can really be no suggestion that we have delayed in explaining to Nexans what the position is.

My friend then says, well, this is all addressed in Mr Granlie's witness statement. He explains about XLPE cables and MI cables, AC and DC. But there is no dispute between the parties that these different types of projects and different types of cables exist. The question is: what are the implications for the expert models, and in particular what are the implications for the sample selection of the comparator projects that go into the model?

He also says Mr Granlie addresses Asian entry, but again the point is what are the implications of that for the experts modelling? Where we have reached on that is now that the experts agree certain elements of that are not matters for expert evidence from the current economic experts

because they are matters of fact.

That is also the answer to my friend's point about prejudice. He says the experts haven't had an opportunity to consider Mr Döring's statement. But the whole point is Dr Davis says, "This is not a matter for me, this is a matter of fact." So it is difficult to see what he could say in response to Mr Döring's statement. (Pause)

It was only in Dr Davis's reply report that the question of the length of cables was raised, and the issue of demand-side substitution I showed you when I was doing my opening submissions on this point, was specifically raised in the joint expert statement.

THE CHAIR: What do you say about the point that there are two categories of evidence that Mr Döring's witness statement seeks so address: there's cable characteristics and Asian entrance into the market.

What do you say about the point that any permission you have should be limited to cable characteristics. I appreciate there is a forceful objection to the whole witness statement going on. But what do you say about the point it should be limited to cable characteristics because the rest doesn't really feature heavily in Dr Davis's report? I think that was a point made against you.

MR WEST: I think I showed you in the joint expert statement, these are the two categories of issue where Dr Davis says these are really factual issues not for me: one is cable characteristics and the other is what one might call counterfactual lead times.

Unless I can assist further?

THE CHAIR: Thank you very much.

Shall we move on to the next topic? We will do like we did last and give a ruling on everything all in one go.

Expert oral evidence at trial. You heard what we said on the ROC trial. On our side we at least at this stage think that the London Array proceedings are different and that hot-tubbing is much more likely to be useful in the London Array proceedings. So if it is common ground that

hot-tubbing should happen, then you won't get any push back from us on that. So don't feel you need to persuade us of hot-tubbing.

MR WEST: There is just one other point before we get to the experts, about the factual witness evidence. That relates to Mr Jacobsen, who is one of Nexans' witnesses.

THE CHAIR: Yes.

MR WEST: The position in relation to Mr Jacobsen was explained in a letter which is at tab 21 of PTR 2, page 114.

In particular it is at paragraph 4 which says.

"... Mr Jacobsen has retired since he submitted his witness statement and is no longer employed by Nexans Norway. We understand that he is currently travelling as part of his retirement plans. We have emailed him twice (including again yesterday) requesting his availability for trial and not ... heard back. Given he is outside of the jurisdiction you will appreciate we are unable to compel him to attend ... Whilst we accept that the Claimants have the right to cross-examine Mr Jacobsen, we are currently unsure of his availability (and how that may impact the trial timetable). Should Mr Jacobsen respond to our emails we will update you on his availability."

So perhaps a bit surprising, but how do we deal with this now? What we have proposed -- we claimants that is -- is to give Nexans until 11 April to seek to reach a landing on this issue, and decide whether to put Mr Jacobsen's evidence in under a hearsay notice. So that's the deadline that we suggest in the draft order. If so, he can be removed from the witness list, or failing that, if he is available then the current list will stand.

THE CHAIR: Yes, I understand that. Thank you.

MR SINGLA: That's not opposed.

THE CHAIR: Okay, thank you very much.

MR WEST: The same point then arises about the notification to the factual witnesses of documents for cross-examination.

THE CHAIR: I don't think we would be minded to do any differently on London Array from what we did on the ROC issue. (Pause)

MR WEST: Just before we leave the expert evidence, in my skeleton argument I adverted to the fact that there is a caveat from both experts in the joint statement saying that they may wish to provide a further response. You can see that at page 7 of the bundle, tab 2, joint note to joint experts statement. They say:

"The position of experts has evolved during the [JES] ... process such that both experts have needed to respond and consider each other's revisions and commentary within a short time window ahead of the agreed deadline. These include proposed revisions made by both experts yesterday and today. The timing constraints leave some concern on the part of the experts that they have been limited in their ability to consider fully all of the points that have arisen. That notwithstanding, both experts have done their best to assist the Tribunal within the time available. However, both experts would wish to consider whether supplemental responses may be needed to assist the Tribunal in due course if material omissions or errors are identified ..."

So far as Mr Bell is concerned, the principal new evidence of this kind from Dr Davis with which he was confronted is Dr Davis's statistical annex which begins at page 72.1. This is an entirely new 60-page long analysis put in by Dr Davis as part of the joint expert statement. It forms no part of his original report or his reply report. If you just flick through it, for example page 72.38, just by way of example, you will see the kind of material this is.

It is pages and pages of complex algebraic equations. Mr Bell's position is that he didn't have a proper opportunity to respond to this as part of the joint expert statement process. Our proposal as to what we do about this, given where we are, is set out in the composite draft order bundle 1, tab 10A, at paragraph 5, where we say if:

"... either party's expert ... wishes to file a further response to any matters raised in the JES, [they are to] ... provide a copy of the draft response ... by 28 March ..."

That's a week today. And by 2 April the opposing party shall say whether it consents. If it

does, the response will be filed; if it doesn't, the party seeking to introduce the evidence shall apply by letter to the tribunal, and the tribunal shall resolve the position on the paper if it thinks it can fairly do so.

THE CHAIR: Why do we need to go as far as paragraph 5? I thought what you were going to say, when I was reading your skeleton argument, is that given Dr Davis has given further statistical analysis, you just want an opportunity to respond to that, which is an understandable position to take.

But paragraph 5 seems to go further and provides more open-ended permission for additional expert evidence to come in.

MR WEST: Let me be clear, we are not trying to smuggle in anything else from Mr Bell apart from the response to the statistical annex. But what we are hoping to do is also to flush out the position of Dr Davis. Because if he wishes to put in anything further by way of response, we think there should be a deadline for that.

MR SINGLA: If I can perhaps address that. We are content with the idea of supplementals. We would ask for 2 April instead 28 March, just to give Dr Davis a bit more time. I would also suggest a page limit be set to ensure this process doesn't go completely out of hand. So we would suggest 30 pages. We do agree with the tribunal's indication that in a sense leaving over the question of permission seems a bit heavy-handed. We are now at the PTR. Parties need to know where they stand so they can get on with preparing the opening submissions and so on. So we would respectfully submit we should just give permission to both sides to cover any matters arising out of the joint statement, subject to a 30-page limit.

THE CHAIR: But you say by the deadline 2 April.

MR SINGLA: Yes.

THE CHAIR: 30-page, page limit, 2 April. (Pause)

MR WEST: I am grateful. I am not going to push back on the date. But given that Mr Bell is responding to 60 pages, we would ask that he be given the same page length. We would hope

he would not need that or anything like it, but he hasn't finished the drafting yet.

MR SINGLA: Before we leave the topic of expert evidence, can I perhaps raise an issue we floated in our skeleton which is entirely a matter for the tribunal as to whether a brief teach-in would be helpful.

THE CHAIR: What we thought on this, when we discussed this before, and my colleagues will tell me if I paraphrase our discussion wrongly -- what we thought we might do is rather than say we want a teach-in or not want a teach-in at this stage, unburdened, certainly on my part, with a detailed understanding of the expert evidence, what we would do is contact you while we are in the course of doing our pre-reading and notify you what we see as the applicable protocol for the hot-tubbing of experts. That might include a teach-in, it might include an opening statement. We will obviously give you proper notice if we want an opening statement from the experts, as we appreciate that will take time to prepare. But that was what we had in mind, rather than baking something in now.

MR SINGLA: I am grateful. It is entirely a matter for you.

Submissions on confidentiality

MR WEST: On confidentiality, there is no need for an order, there is nothing to decide here. Just to bring the tribunal up to speed on where we are, the main category of data remaining, where confidentiality claims remain on the papers concerns Nexans' margins on the comparator projects. So at the trial we will need to be careful not to read those out, but it is accepted that generalised margin data is not confidential, and that includes averages and I believe it also includes the margin on the London Array project itself. But comparator margins remain confidential and we accept that.

THE CHAIR: Thank you.

List of issues for trial. I am not sure if this one was as controversial as the other one. Even if it is, I think the approach we adopted on the other list of issues would apply here. I think this

one was agreed, wasn't it.

Submissions on the list of issues for trial

MR WEST: This one is agreed. There is just one other point arising on it, which again if you go back to the composite draft order, this relates to how the tribunal should determine the new issue you were taken to this morning. That's issue 6 on the list of issues.

It might just help to refresh the tribunal's memory as to what that is. The list of issues -- or revised list of issues -- is at tab 1 of bundle 2. The new question 6 which corresponds to question 4 in the ROC issue order simply records that it is an issue in the London Array trial whether the minimum cost elevation, if the tribunal finds one for a different ROC decision, was met or not by the overcharge on London Array. So the parties are agreed that that is an issue the tribunal will have to decide. The question then arises how is that to be decided.

That is provided for at paragraph 9 of the composite draft order, which is PTR bundle 1, page 152.4. The difficulty about this is that in order to apply the minimum cost elevation to the overcharge in London Array, the experts need to know what the tribunal has found those figures to be. So just reading it out: in the event that this issue arises the experts shall seek to agree the answer to it following the hand-down of the judgment from London Array and ROC issue trials; if they can't agree the answer, they can submit short further papers limited to five pages setting out their views and the tribunal shall resolve the difference between them and provide its answer by no later than the date on which it makes any order on consequential issues.

So rather than have them grapple with it in the abstract, the proposal is they look at the judgment on both the minimum cost elevation and the London Array overcharge; they try agree the answer to issue 6 and if they cannot do so the tribunal will resolve it as a consequential issue.

MR SINGLA: We agree with that. That's why I was saying this morning that it was

unproductive to debate it in the abstract, because there will be an opportunity to debate it in the concrete, if it ever arises.

THE CHAIR: Yes. Perhaps I might make this suggestion on behalf of the tribunal: I see the wisdom of the short further paper setting out the views on the same within 14 days of hand-down. The tying the tribunal's hands as to whether and how it resolves the issue might be just a little bit premature at this stage. So I might suggest that we just stop with the experts giving their further opinion within 14 days of the hand-down and the tribunal will do with it what the tribunal sees fit, if that is all right.

MR SINGLA: Just before we move on from there, as far as the agenda, I believe Mr West skipped over timelines to trial. There is a dispute the date of the opening submissions.

THE CHAIR: Yes, I have disputes here about when the skeleton arguments are due.

MR SINGLA: Exactly.

THE CHAIR: 9 April versus 25 April; and page limit: 35 pages versus 50 pages --

MR SINGLA: Whilst I'm on my feet, if I might just address you on those points?

THE CHAIR: By all means.

MR SINGLA: We say the first day in court is going to be 2 May. It is actually very difficult to understand why opening submissions need to be done by 9 April.

THE CHAIR: Yes.

MR SINGLA: And frankly, given that there is now going to be supplemental expert reports, that's just not going to be achievable, and we need to consider the witness statement if that comes in. We have just not been proceeding on the basis the tribunal would require something that far out of trial.

On page limit, we said 50. We may not need all of that. But if we have a 60-page supplemental report coming from Mr Bell then it seems prudent to be budgeting for 50 pages rather than 35. If Mr West is more concise than us, then obviously that's -- we ask for 50 pages (inaudible) in the case.

THE CHAIR: Thank you.

Mr West?

MR WEST: The thinking behind 9 April was simply to enable the skeleton to be filed before the Easter vacation. But I accept that if Mr Döring's statement is allowed in, that will not allow enough time, particularly if there is to be a response to that.

THE CHAIR: Yes.

MR WEST: 50 pages versus 35 is really a matter for the tribunal. We are in the tribunal's hands on that.

THE CHAIR: Thank you. So is the last matter, before any other business, the pleaded allegations on dawn raids?

MR WEST: Yes.

THE CHAIR: I confess I didn't quite understand this one.

Submissions re pleaded allegations on dawn raids

MR WEST: I will do my best to explain it.

In the pleadings, Nexans runs a positive case that there would be no overcharge because the final round of tenders post-dated the dawn raids. That's paragraph 3.5 of their defence, but it is extracted in my skeleton argument, page 40. It may be easier to find it there, since that's in paper bundle. Paragraphs 40 and 41, I'm sorry. 39, page 31. So Nexans plea:

"On 28 January 2009 the Commission initiated unannounced inspections at the premises of Nexans and Prysmian ... There was widespread public reporting of the Dawn Raids having taken place, particularly in the ... press ..."

They then give some examples of that. They say:

"In the premises it is inferred that there was widespread contemporaneous knowledge of the Dawn Raids amongst market participant and the Claimants (or some of them) had such contemporaneous knowledge. Nexans reserves the right to plead further in this regard ..."

We served a request for further information in relation to that. The answer to that follows. At (d) you will see again they reserve the right to plead further. But in my submission what they didn't do was actually provide any particulars of this plea. And in particular, any details of who is supposed to have known and how, if at all, it is said that this issue was raised in the context of the negotiations for the procurement of the London Array export cables.

Now, none of Nexans' witnesses gave any evidence to the effect that there were discussions with London Array's representatives as part of the negotiations. The evidence of London Array's procurement witness Mr Bonefeld is he did not know about them. Despite having reserved the right to give further particulars following disclosure, disclosure is now complete but no such particulars have materialised.

In my submission, the plea as it stands is not properly particularised and doesn't give London Array proper and fair notice of the case it has to meet. In particular we say, if a detailed case on this is going to be put to Mr Bonefeld, then it is only fair that we should be given proper notice of what it is. In the first place, out of fairness to him, but also so that we can prepare to cross-examine Nexans' witnesses to see whether they support the case which is being put, if indeed there is a detailed case being put.

For example, if it is being said that the dawn raids were raised in a particular meeting, or that an email suggests that it may have been discussed on a particular occasion, then we may wish to ask Nexans' witnesses about that, if they were involved in those exchanges. But at the moment, we don't know what it is that is being said.

So the proposal, which we have advanced, is in paragraph 10 of the composite draft order, which requires Nexans to provide proper particulars of its allegation of knowledge relating to the dawn raids, "and of any case whereby such knowledge is alleged to have affected the negotiations concerning the tender ... The Nexans Defendants shall not be permitted to put a particularised case on such points to London Array's factual witness at the trial unless such case has been properly particularised ..."

THE CHAIR: What are proper particulars? Let's understand that. What do you think you need that you don't have?

MR WEST: Who is it that is supposed to have known? When is it that those individuals are alleged to have raised the dawn raids in the context of the negotiations? And what difference is it said to have made to the outcome of the negotiations? That's really the nub of it.

THE CHAIR: Thank you.

Mr Singla.

MR SINGLA: Sir, we don't accept that the pleading is inadequate. What we have pleaded -- you will see the response to the request for further information -- is that the claimants would have known there was a distinct probability of a finding of the cartel infringement. You will see at 1.1(a), based on the publicly available material. The point being that these dawn raids were very widely referred to in the press and so on. The case therefore is that the claimants, given their sophistication and the business which they conducted, would have known about the dawn raids. We say that would have therefore been a relevant point in their minds when negotiating the price of the tender.

That's the case which we say is fairly pleaded in the response. This has been a point in play from the very outset in our defence and also in that RFI response which is now actually two years ago.

No application has ever been made for further particulars or to strike out the plea. In fact, both sides' witnesses have dealt with the point. So if I could just show you, our witness deals with this at LAL-E1, tab 2, page 11. This is Ms Aukner. You will see, hopefully, paragraph 41.

THE CHAIR: Would you just give me that reference again?

MR SINGLA: Of course. It is LAL-E1, tab 2, page 11, Ms Aukner. At paragraph 41, she says her approach at the time is that everybody in the industry knew about the dawn raids.

Perhaps more importantly for present purposes, Mr Bonefeld, one of London Array's witnesses, also deals with knowledge of the dawn raids, because it had been pleaded with adequate

particularity. If you could look at D1, tab 3, page 10, please.

THE CHAIR: Say that again.

MR SINGLA: D1, tab 3, page 10.

I should say Mr Bonefeld is the only procurement witness that's being called. There is no explanation as to why no other employees that were involved in the negotiations have not been called as witnesses. So this is all we have from Mr Bonefeld.

At paragraphs 41 to 42, you will see that he denies that he was personally aware of the dawn raids. Then he goes on, I think, to give some hearsay evidence about what others may or may not have known.

Now, pausing there, we are obviously entitled to test that evidence at trial. If the tribunal concludes that he or anyone else on the procurement team did know about the dawn raids, that would be a relevant matter so far as causation is concerned.

The first that we have heard of the need for further particulars, as it were, was in the skeleton for the PTR. We just don't accept that our pleading is deficient in any way. What's more, Mr West says, well, you said you would plead further post disclosure and now you have had disclosure and you haven't pleaded further; what he doesn't tell the tribunal but I can tell you is that, according to the claimant's own disclosure statement, of the 20 custodians there has been no data retained at all for eight custodians, and for three custodians some data has only been retained. And in particular there is no data -- part of the mailbox of one of the key project directors -- been retained.

So we respectfully submit it doesn't lie in the claimant's mouth to say, "You have not pleaded anything by reference to the disclosure", when the disclosure is obviously deficient on the terms of their own disclosure statement.

We also just don't understand the sanction that it is being said that the tribunal should impose. You were right to ask the question. We didn't understand what "proper particularisation" meant. He's explained that now but it should be clear what our case is: the claimants must have

known about these dawn raids.

He says, well, there should be a sanction in terms of what we can or can't ask Mr Bonefeld. We just don't actually understand how that is supposed to operate: Mr Bonefeld has dealt with this point in his witness statement and we are entitled to ask questions in the usual way.

THE CHAIR: Yes. But without getting sneak preview of cross-examination, one way you might test Mr Bonefeld's evidence is by putting to him a list of individuals who you say did know about the dawn raids. Conceptually, that's one way you might wish to test it.

MR SINGLA: Yes.

THE CHAIR: But if that's the way the case is going to be run at trial, aren't they entitled to know now which individuals you say did know at the relevant time?

MR SINGLA: What I do accept is that when we get to trial and we get to cross-examining Mr Bonefeld, Mr West will be able to jump up and down if I am asking a question that's not squarely pleaded. But what I don't accept is that the tribunal should be doing anything about this today, as it were.

We have pleaded our case to the best of our ability, subject to what I have said about the deficiencies in the disclosure. We do struggle to see that there is any value in the tribunal now requiring us to put forward further particulars.

I will be entitled to ask questions of Mr Bonefeld. If it is said at that stage, well, you have not pleaded that point, then that's a point that can be made then. Again, with a number of the points that have been made by Mr West today, it is just overly prescriptive. These are genuine trial management points that one has to deal with as and when they arise in the evidence.

THE CHAIR: Thank you.

Mr West?

MR WEST: My friend pointed they have given particulars of the media reports, and if that's going to be the basis of the cross-examination "you must have known about it, it was reported in the newspapers", then he is, of course, entitled to put that. He didn't seem to suggest that

they have any case that this was discussed at any meetings between London Array and Nexans, "in which case I assume you will not be putting any such case".

He then talked about disclosure, saying that some of our custodians have no documents. He didn't say whether the position was any different in relation to his own custodians. I am instructed that specific key word searches were run with a view to identifying documents relating to this point specifically -- for example key words to do with dawn raids and cartels -- across the documents of the whole executive committee. As we have seen, no further particulars have emerged. Whether it is necessary to make an order, again I have at least put a marker down and my friend, I think, understands that I will be objecting if he seeks to go beyond, with Mr Bonefeld, the case that he has so far particularised. If he doesn't wish to particularise it further, in a sense that is a matter for him.

THE CHAIR: Yes, I understand that.

Thank you. Is there any other business? Shall we rise for ten minutes and we will come back at 20 past by that clock.

(3.09 pm)

(A short break)

(3.23 pm)

(Ruling given)

THE CHAIR: This is what we propose to do on the various case management issues that are before us today.

Mr Döring's witness statement. We don't think we need any further written submissions on this matter. We feel it is proportionate for everyone to leave the pre-trial review today knowing what's going to be happening at trial.

We acknowledge the witness statement is late. It could perhaps have been served earlier. However, we think we are where we are. The additional factual evidence will help to shed

a light on the expert evidence and in that sense it will be valuable to the tribunal. We think it can proportionately be accommodated within the trial timetable. As it currently stands, there is no suggestion that the trial would need to be lost because of Mr Döring's additional witness statement. While noting the lateness and recording our view that something better could have been done in that regard, our ruling is that we are going to let that statement in.

The next issue is notice of new documents -- as I have described them during today's PTR -- put to witnesses in cross-examination. The position will be as for the ROC trial.

Mr Jacobsen's hearsay notice. There should be a hearsay notice, if one is to be served, by 11 April. I think that was agreed between the parties.

On the question of additional responsive expert evidence, we adopt paragraph 5 of Mr West's blue wording in the composite document, except that the time limit should be 2 April. We are not going to impose a page limit, but we are going to express the hope that it can be dealt with proportionately. The reason we are not going to impose a page limit is because no page limit was imposed when the additional statistical evidence came in, so we think it would be not right to impose a page limit as a matter of principle. But we do express our view that it can be dealt with in a lot less than 60 pages.

On hot-tub protocol, we said that we would send a protocol through during our first or second pre-reading day, so that the experts know where they stand in terms of an opening statement or a teach-in.

We would like skeleton arguments, please, by 25 April. We would like the page limit of 50 pages, settling that element of disagreement between the parties.

As to the procedure for dealing with additional issue 6: again we adopt Mr West's blue wording in the composite draft order, with my suggested drafting amendment to deal with the role of the tribunal and how the tribunal will respond to any additional material that is provided.

We have listened carefully to the argument about particularisation of the case on dawn raids. Our conclusion is that nothing further needs to be said at this stage. If Nexans stray outside

the ambit of the case that they have pleaded something will doubtless be said at trial, but we don't feel the need to say anything about the issue by way of direction now.

I think that deals with the issues that were before us.

(3.27 pm)

MR SINGLA: Yes. Can I just ask you, in relation to Mr Döring's statement, I think Mr West accepted that if it comes in, we should have a right to respond to it.

THE CHAIR: Yes, you should have a right to respond to it.

MR SINGLA: I am grateful. So we would ask for until 11 April, which is three weeks from today. Given the background on their side, we respectfully submit three weeks is not an unreasonable period of time.

THE CHAIR: What do you say, Mr West?

MR WEST: As I said in my submissions, we managed to put together Mr Döring's statement within just over week. So my proposal was two weeks, but it is a matter for the tribunal.

THE CHAIR: 11 April.

MR SINGLA: I am grateful.

THE CHAIR: One issue we discussed between ourselves that the parties didn't bring to us, and we will throw out for some views, is given that there is additional expert evidence coming in, is there anything to be said for the experts, having reviewed that material, to review or augment, maybe even decrease, the supplemental joint expert statement? I mean, the statement where the experts say what they agree on and what they don't agree -- sorry, joint expert statement.

The parts of the evidence where the experts say what they don't agree on and what they do agree on are potentially really valuable to the tribunal. We don't want to impose additional work on the parties that is unnecessary, but we do see some potential value in this and would welcome some submissions on that.

Mr West?

MR WEST: Yes. The slight concern we have is just that there is very little time to enable this to be done. But following this further evidence which is to come in, we are very happy for the experts to speak and see if they can sensibly in the time available draw up further a document that would be of assistance to the tribunal.

MR SINGLA: We were going to suggest that we take your suggestion away and discuss it with the experts and then obviously with the other side.

I think one of the problems with the current joint statement is it is just littered with equations. Everyone is trying to get a short summary of what the key issues are and one doesn't actually get that from the current document. We can certainly see some sense in there being a more user-friendly document being produced, particularly for those having to conduct the hot-tub. But can we take that one away?

THE CHAIR: Yes. I think that's probably the most progress we can make on that today.

MR SINGLA: I am grateful.

THE CHAIR: Thank you. Is there anything else we need to deal with today?

Can I then invite the parties, please, to send a draft order through for approval and we will have a look at it and issue it in the usual way.

Thank you very much for the submissions today.

(3.31 pm)

(The hearing concluded)