

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION Case No: 1606/7/7/23, 1720/7/7/25 & 1733/7/7/25

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Wednesday 2nd July 2025

Before:
The Honorable Mr Justice Meade
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Nikki Stopford

Class Representative

v

Alphabet Inc. and Others

Defendants

- and -

Or Brook Class Representative Limited

- and -

Mr Roger Kaye KC

Proposed Class Representatives

v

Alphabet Inc. and Others

Proposed Defendants

A P P E A R A N C E S

Ben Lask KC, Mehdi Baiou and Francis Hornyold-Strickland on behalf of Nikki Stopford (Instructed by Hausfeld)
Daniel Carall-Green on behalf of Or Brook Class Representative Limited (Instructed by Geradin Partners)
Nicholas Khan KC on behalf of Mr Roger Kaye KC (Instructed by KP Law)
Meredith Pickford KC and David Gregory on behalf of Alphabet Inc and Others (Instructed by Simmons and Simmons)

Digital Transcription by Epiq Europe Ltd
Lower Ground, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email:
ukclient@epiqglobal.co.uk

Wednesday, 2 July 2025

(10.30 am)

Case Management Conference

THE CHAIRMAN: Yes, good morning. Sorry to keep you, I had a meeting at the Royal Courts of Justice which ran on a little bit.

MR LASK: Yes. Good morning, sir. May it please the Tribunal, I appear for the class representative Ms Stopford, with my learned juniors Mr Baiou and Mr Hornyold-Strickland. My learned friend Mr Pickford KC appears for the Google defendants, with Mr Gregory. My learned friend Mr Khan KC appears for the proposed class representative Mr Kaye KC and my learned friend Mr Carall-Green appears for the proposed class representative Dr. Brook.

Before we go on, may I check that the Tribunal has the relevant bundles?

THE CHAIRMAN: Yes.

MR LASK: There's a core bundle consisting of four volumes and then there is an authorities bundle consisting of two volumes.

THE CHAIRMAN: I do not have that.

MR LASK: It's also available electronically, I don't know if --

THE CHAIRMAN: I'm not.

MR LASK: No, okay. Well perhaps we can -- (inaudible) a spare hard copy available. I'm not proposing to go to the authorities bundle any time soon.

THE CHAIRMAN: No, and I think it's -- probably only need to do it to a modest degree anyway. Yes, okay.

MR LASK: There happens to have been some updates to the core bundle. I don't propose to take you through them, (inaudible) haven't but if, when we come to them, we don't have them, I'm sure we can hand them up.

THE CHAIRMAN: Okay, all right.

1 MR LASK: The Tribunal will see there is an agreed agenda at B7. It's a short one,
2 three items, the first of which is directions on case management in the Stopford case,
3 but obviously we are in the Tribunal's hands as to the order in which it wishes to take
4 matters.

5 THE CHAIRMAN: Right. Well, I think the best thing is for you to open as you need
6 to. We need to see the whole field really.

7 MR LASK: Indeed. Procedural directions in the Stopford case. From my perspective
8 there are three topics under this heading. Firstly. Directions on disclosure; secondly,
9 Google's request for a preliminary issue concerning duration of the Android
10 infringement and thirdly, limitation. I'm going to deal with directions for disclosure first.
11 The Tribunal will have seen the proposed directions enclosed with our skeleton
12 argument last week. There has been further correspondence between the parties
13 since the skeletons were exchanged and we provided a revised set of directions
14 yesterday evening, in an effort to narrow the remaining differences --

15 THE CHAIRMAN: Yes.

16 MR LASK: -- and the draft composite order has been added to the bundle at B8.1
17 which I will be taking you to shortly. I propose to make some brief contextual points
18 before dealing with the parties' respective positions. Ms Stopford's objective for this
19 first CMC is and has always been to secure a reasonable set of directions that enable
20 concrete progress to be made on her claim over the next few months, particularly in
21 relation to disclosure. There is obviously an information asymmetry between the
22 parties which has only been underlined by the skeleton arguments and the recent
23 correspondence and which can only be redressed by beginning the disclosure
24 process. Now the only reason the Tribunal isn't being asked at this CMC to make a
25 full set of directions to trial is that the two advertiser claims have been issued which
26 overlap with Ms Stopford's claim. And Ms Stopford does not object, in principle, to any

1 certified advertiser claim being case managed jointly with her claim, however, nearly
2 two years have passed since Ms Stopford's claim was issued in September 2023 and
3 some seven months have already passed since her claim was certified in November
4 [2024] last year. So Ms Stopford is understandably anxious that her proceedings
5 should not be allowed to drift while issues of carriage and certification are being
6 resolved in the advertiser claims.

7 Google says that it agrees that Ms Stopford's claim should not be allowed to idle, while
8 carriage and certification are being resolved and it agrees in particular that significant
9 progress can be made on disclosure in the meantime. Yet in my submission, Google's
10 own proposed directions do create a very significant risk of Ms Stopford's claim being
11 allowed to drift for a period of many months, and so they are incompatible with
12 Google's stated willingness to get on with things.

13 I propose to address Google's proposed directions and then show you Ms Stopford's
14 additions to those directions.

15 THE CHAIRMAN: Okay.

16 MR LASK: Both are conveniently set out in the composite draft order which is at tab
17 B8.1 of the bundle.

18 THE CHAIRMAN: Give me a moment. (Pause)

19 MR LASK: That is in volume 1.

20 THE CHAIRMAN: My pencil case has gone missing, I'm looking around. (Pause)

21 Sorry, I just have a little method for coloured flags. Yes, sorry, go on. Yes.

22 MR LASK: Before I get into the meat of the draft order, the Tribunal will have seen
23 from our skeleton, hopefully from Hausfeld's letter of 26 June [2025], that Ms Stopford
24 has been seeking to agree directions with Google since early April [2025].

25 THE CHAIRMAN: Yes, I have looked through the correspondence from -- is it 4 April
26 [2025] onwards, anyway? I think 4 April [2025] is your directions and then 11 April

1 [2025] was the notification of the advertiser claims.

2 MR LASK: Indeed.

3 THE CHAIRMAN: I have read that in D33 or E33, wherever it is. I have the chronology
4 of the correspondence in mind.

5 MR LASK: You will have seen the original proposal was for a full set of directions.

6 THE CHAIRMAN: Yes.

7 MR LASK: Google responded to say that that was premature, in light of the advertiser
8 claims, but if one is to issue proposals for initial disclosure --

9 THE CHAIRMAN: Right.

10 MR LASK: -- so (inaudible) could be made in Ms Stopford's claim. And it promised to
11 give those initial proposals once Ms Stopford had agreed that the three categories of
12 material which Google had previously disclosed in other proceedings should be
13 automatically designated as confidential in these proceedings. That was a reference
14 to the confidentiality ring order which was then under discussion and has since been
15 made. That order --

16 THE CHAIRMAN: Yes. So I've refreshed my memory about all that since.

17 MR LASK: Yes. It provides automatic designation, group particular categories, that
18 were formulated and defined by Google, namely CMA material, EC material and US
19 productions. Ms Stopford promptly agreed the automatic designation of materials and
20 having done so, understandably expected Google's initial disclosure proposals to at
21 least address all three of those categories. Instead, as I will show you, Google's
22 proposed directions only cover its ISA with Apple and certain of the EC material but
23 none of the CMA material and none of the US material. And when it provided its
24 disclosure proposals, Google's covering letter provided no explanation whatsoever as
25 to the remaining categories. We finally received that explanation yesterday and it's
26 apparent, to put it neutrally, there has been a degree of ships passing in the night and

1 that is why we have now provided a revised set of directions in response, in which we
2 no longer seek disclosure at this stage of the US materials and the CMA material.

3 THE CHAIRMAN: Okay, so I don't think I have seen -- I don't think I've seen
4 yesterday's (inaudible words).

5 MR LASK: That's the update and it's reflected in the composite draft order which I'm
6 going to take you to.

7 THE CHAIRMAN: Okay, all right.

8 MR LASK: We mention these points now to provide a proper context for the disclosure
9 we were seeking in our skeleton last week and the refined version of the directions
10 which we are now advocating for. So turning to the composite draft order, I should
11 say Ms Stopford welcomes Google's agreement to provide the initial disclosure that is
12 provided for here. The essential problem is that save for the ISA, the disclosure is
13 limited to certain subcategories of EC material and on Google's proposal, no further
14 consideration would be given to any disclosure in Ms Stopford's claim until, at the
15 earliest, one month after determination of the carriage and certification in the
16 advertiser claims. That's the headline problem. I can show you the provisions of the
17 order. It's worth noting, firstly, at the bottom of page one of the order, there is a colour
18 coded --

19 THE CHAIRMAN: Yes, I have seen that, thank you.

20 MR LASK: Turning first then to paragraph 6 on page 5. This is Google's agreement
21 to provide the ISA with Apple and then paragraph 7 addresses Google's agreement to
22 provide disclosure of some of the EC material. And we understand this is the EC
23 material that Google produced. And Google wrote to us yesterday, explaining that it
24 doesn't consider it needs to notify the Commission before disclosing this material but
25 it must notify third parties because some of the documents contain third party material.
26 So there's a process set out here for third party objections.

1 And as you see, the text is in black, so we are broadly content with this, subject to one
2 point on timing at paragraph 10A which I will come back to. But then if one goes to
3 paragraph 11, this deals with another subcategory of EC material and this is the
4 material obtained by Google from the Commission's file rather than provided by
5 Google. And again, Google's letter of yesterday explains that it has to notify the
6 Commission before disclosing this material.

7 Although not explicitly stated here, we understand that the intention is for Google to
8 give disclosure of this material, subject to any objections from the Commission and it
9 may be helpful for that to be clarified in the wording. Pausing there, Google's letter of
10 yesterday confirms that these provisions only cover certain subcategories of the EC
11 material as defined in the CRO, so it's unclear to us what the remaining subcategories
12 are or why they aren't covered by the proposal. We would welcome clarification from
13 Google on that, so that we can understand whether it's appropriate to seek disclosure
14 in due course. I'm not asking for those other subcategories to be added to this order
15 now --

16 THE CHAIRMAN: Right.

17 MR LASK: -- but we would welcome clarification.

18 Then the next paragraph I wish to draw your attention to is paragraph 14.

19 THE CHAIRMAN: Yes.

20 MR LASK: If we skip over 13 at the moment because that is Ms Stopford's proposal
21 which I'll come to, but on Google's version, there would be a further CMC on the first
22 available date, one month following determinations of carriage and certification in the
23 advertiser claims, to determine the approach to further disclosure, timetable to trial,
24 any other issues arising. So as I outlined a moment ago, the effect of that is that
25 beyond the initial disclosure provided for in this draft, Google's proposal will be no
26 further consideration of disclosure in Ms Stopford's case until at the earliest, a month

1 after determination. That is unacceptable from Ms Stopford's perspective. We
2 understand, the other parties will be able to update you on this, from the
3 correspondence, that at present the earliest contemplated date for a certification
4 hearing in the advertiser claims is January next year [2026]. If one were to allow for
5 just, say, two months for the Tribunal to reach a decision, which is the time taken in
6 Ms Stopford's certification application, it would, on Google's proposal, be April 2026 at
7 the earliest before any further progress could be made on disclosure.

8 Now if there's emphasis, the Tribunal may ultimately decline to certify either of the
9 advertiser claims. As far as we are aware, Google hasn't revealed its position on
10 certification but it may, of course, object, as it did in Ms Stopford's case. But pressing
11 the pause button on disclosure in Ms Stopford's case, following the disclosure of
12 certain EC material, would result in a significant delay that may end up being entirely
13 unnecessary. And it's also significant that apart from the ISA itself, the initial disclosure
14 proposed by Google only covers a portion of Ms Stopford's claim because it's limited
15 to certain subcategories of the EC material. We cannot know at this stage what that
16 material consists of, consists of precisely. We anticipate that it will be focused largely
17 on the Android infringement rather than the iOS infringement or the effects of Google's
18 conduct on its ad pricing. So confining the disclosure conversation to the EC material,
19 for a period of at least nine months, does risk preventing Ms Stopford and her team
20 from making any serious progress on the iOS claim or on issues of loss and damage
21 for a very considerable period of time. And this is all work that will need to be done in
22 Ms Stopford's claim, regardless of whether or which advertiser claim may be certified.
23 And in my submission there's no good justification for preventing Ms Stopford from
24 progressing that work at all until the advertiser claim certification issue has been
25 resolved.

26 To elaborate briefly on that point, Dr Latham has explained, based on publicly

1 available material that he has seen from the US proceedings, why he expects material
2 from those proceedings to be relevant for his analysis. And I can show you some
3 extracts from his report if it would be helpful.

4 THE CHAIRMAN: Is this the same report that was available for the certification?

5 MR LASK: That's right. Certification report. Latham 2, it will be helpful to have a brief
6 look at that now. It's at C13, page 441. A handful of extracts I want to show you to
7 give you a flavour of Dr Latham's position.

8 THE CHAIRMAN: C.

9 MR LASK: Yes. C13 is the tab. And it's in volume 2, the core bundle.

10 THE CHAIRMAN: Yes, okay.

11 MR LASK: Page 441. This is in a section dealing with issues around the
12 counterfactual and Dr Latham here addresses his proposed methodology for
13 assessing the effects of Google's conduct.

14 THE CHAIRMAN: Right.

15 MR LASK: And if the Tribunal briefly read paragraphs 58 to 63, please, on page 442
16 onwards.

17 THE CHAIRMAN: Okay. As a matter of status, has this report been seen by the Or
18 Brook, the advertiser representatives, has it, or is it available for them to see or not?

19 MR LASK: No. I will have to take instructions (inaudible words). For a couple of
20 months, I am told, and then the advertiser (inaudible).

21 THE CHAIRMAN: That's fine, thank you.

22 MR LASK: You will see there that Dr Latham has identified, based on the publicly
23 available material from the US proceedings, why he thinks the evidence provided in
24 the US proceedings may help his analysis.

25 THE CHAIRMAN: Okay.

26 MR LASK: And then the next example is in the same report on page 451. Dr Latham

1 is here addressing at section 3.1 the economic mechanism through which he would
2 expect Google's conduct to have increased advertising costs.

3 THE CHAIRMAN: Right.

4 MR LASK: The mechanism's outlined, you see in bold at paragraph 97:

5 "Under softer competition,, there's less pressure on Google to show high quality
6 search results, as consumers are less likely to switch to alternate search engines." [as
7 read]

8 Then at paragraph 102, he gives an example, evidence from the US proceedings that
9 would appear to support that mechanism.

10 THE CHAIRMAN: Right, okay.

11 MR LASK: Then just finally on page 436.

12 THE CHAIRMAN: 436?

13 MR LASK: Yes, and back in the document, please, you see at the bottom of page
14 436, paragraph 38:

15 "The materials released from the DoJ proceedings indicate another way of estimating
16 harm to the class."

17 Then he explains why, the rest of paragraph 38.

18 THE CHAIRMAN: This is material released in the DoJ proceedings that's not
19 confidential, so it's been available to him?

20 MR LASK: The DoJ, as I understand it, has published certain, I think, main pleadings
21 from those pleading points (inaudible).

22 THE CHAIRMAN: Yes, that's what I mean.

23 MR LASK: So opening statements and the like.

24 THE CHAIRMAN: Yes, yes, right.

25 MR LASK: Those documents refer to (inaudible) evidence that includes screenshots.

26 THE CHAIRMAN: Yes, okay, all right. Yes.

1 MR LASK: So what one sees is that Dr Latham anticipates that the underlying
2 evidence from the US proceedings will contain relevant information for his analysis.
3 We have no reason to believe that the same evidence will be available in the EC
4 material. Yet Google's proposed directions would defer any consideration of the
5 disclosure -- not just the disclosure itself but any discussion of the disclosure of such
6 evidence for a period of many months, as I've said.

7 So that's our problem. To sum up. Google's proposal is a start but it's insufficient,
8 given the significant delay, for any further disclosure.

9 THE CHAIRMAN: Could you just show me what -- I guess it's the letter of yesterday,
10 is it?

11 MR LASK: It's a letter of yesterday which is in the bundle at E -- I think it should be
12 the bundle we have open, E33.2 -- and what that does -- I should say it (inaudible)
13 refer to Google's position, I'm referring primarily to its position as reflected in the draft
14 directions rather than the letter, which is why I haven't taken you to the letter.

15 THE CHAIRMAN: Sure. But I mean -- okay, it's quite long, isn't it? Right.

16 MR LASK: What the letter does, essentially, is explain why Google rejects the request
17 we had made in our skeleton argument for disclosure of what we call the off the shelf
18 material. Which was the US material.

19 THE CHAIRMAN: Yes.

20 MR LASK: And the (inaudible) CMA material.

21 THE CHAIRMAN: My eye has just fallen on paragraph 12 which is a point I anticipated
22 they would make which is -- okay, the CRO covered all of these off the shelf materials
23 generically but it did say "to the extent disclosable." So I think the expectation wasn't
24 that every single bit would be disclosed, it was that you were creating a confidentiality
25 ring into which to receive whatever was disclosed.

26 MR LASK: Yes. I don't put our case so high as to say Google promised the disclosure

1 material but in my submission, they created an expectation that it would at least be
2 discussed or addressed in relation to (inaudible). So for example, their initial proposal
3 which was a one sentence letter, might have actually explained why they weren't
4 proposing to disclose that material, having provided for it in the CRO. But there was
5 nothing -- and to some extent this is water under the bridge because we no longer, at
6 this stage, seek that disclosure and I'm going to show you our revised directions. We
7 can see --

8 THE CHAIRMAN: I know but I want to know because it is going to have to be managed
9 in due course, so I want to know -- I mean this letter is too long for me to just sit here
10 and read but glancing at it, it looks like the position that's being taken is the categories
11 are very large, and they include irrelevant material.

12 MR LASK: Yes.

13 THE CHAIRMAN: Just glancing at it, that seems to be the two big(?) points.

14 MR LASK: That is the crux of what this letter says and that is why we responded to it
15 yesterday evening and said we no longer, in light of what you've told us, at this stage,
16 seek disclosure of the (inaudible) materials. Instead, what we want is a process that
17 allows us to understand what's in them. And that is what I want to take you to now
18 because that's --

19 THE CHAIRMAN: Okay, fine.

20 MR LASK: -- (inaudible words) in our revised directions. This is going back to the
21 composite draft order at 8.1 -- tab 8.1. It's really paragraphs 1 to 4 on page 4 that are
22 important. These essentially represent a narrowing of the directions that we had
23 proposed previously. I ought to say that throughout the process we have been seeking
24 to take a pragmatic and flexible approach to securing sensible directions. In my
25 submission, the revised directions reflect that approach. And just looking briefly at
26 Google's letter of yesterday. In my submission, that letter perfectly highlights

1 information asymmetry between the parties, a need for a process by which that
2 asymmetry can be addressed. Put simply, only Google knows what documents it
3 holds.

4 So what these revised directions at paragraphs 1 to 4 seek to do is to establish a
5 process by which Google can provide proper visibility as to the material it holds,
6 including in the US and CMA categories. The parties can then begin the process of
7 identifying appropriate disclosure from within those categories. In essence, we are
8 seeking to avoid the situation which arises on Google's approach, by the process of
9 identifying that disclosure. That doesn't even begin, until after certification has been
10 resolved in the advertiser claims.

11 THE CHAIRMAN: Right.

12 MR LASK: Paragraph 1, in the blue text, this provides for the parties to agree a list of
13 core issues in dispute. And this is a necessary first step, that Google can then provide
14 an appropriately focused disclosure report, an Electronic Disclosure Questionnaire, as
15 envisaged in paragraph 2. The parties have had each other's pleadings for a number
16 of months now, so it should not be an unduly onerous task, in our submission, to
17 produce this list.

18 THE CHAIRMAN: Yes.

19 MR LASK: Paragraph 2 provides for Google to provide a disclosure report, and an
20 Electronic Disclosure Questionnaire. The Tribunal will no doubt be familiar with these
21 documents. And Rule 60(2) of the CAT Rules explicitly contemplates an order being
22 made at the first CMC for these documents to be filed. So this is recognised as,
23 potentially, an appropriate first step. We made provision for these documents to be
24 provided in the very first draft, the directions that were sent to Google in April [2025].
25 Google hasn't raised any specific objection to providing either a disclosure report or
26 an Electronic Disclosure Questionnaire, whether in the earlier correspondence or in

1 yesterday's letter and in my submission, it's hard to see how it could. Ms Stopford has
2 almost no visibility as to what relevant documents Google may hold or the work that
3 would be involved in disclosing them. Google's letter of yesterday highlights that. So
4 in my submission, the provision of these documents, the report and questionnaire, is
5 an essential step in the disclosure process that can and should be progressed now,
6 as it will enable Ms Stopford's team to get to work, with her experts identifying specific
7 categories of disclosure that are relevant to the claim and formulating targeted and
8 proportionate requests, otherwise she is left in the dark for many months.

9 And again, it ought to be a straightforward task for Google, who has known the nature
10 of Ms Stopford's case for many months, and it may in fact be a task that Google's
11 already completed, given the various other proceedings.

12 THE CHAIRMAN: So a task that Google --

13 MR LASK: The task being the (inaudible) of some form of disclosure report that
14 identifies and categorises the relevant material that Google holds.

15 THE CHAIRMAN: Well they will have whatever their e-disclosure providers did for
16 them, is that what you mean? That's totally different from the EDQ that they would do
17 in these proceedings.

18 MR LASK: The point is Google will know already what information it holds and is
19 relevant to the Android conduct, the iOS conduct, and the effects of those conducts.

20 THE CHAIRMAN: At a broad level, obviously, but they have not correlated that to the
21 core issues because they don't exist for this case.

22 MR LASK: My point is it's not starting from scratch.

23 THE CHAIRMAN: No, I agree. Obviously not, yes.

24 MR LASK: Now, whilst Google has repeatedly referred in general terms to the risk of
25 duplication, when it comes to disclosure, this is the advertiser claims, in my submission
26 that can't be an objection to the provision of a disclosure report or questionnaire,

1 because those documents could be reused, if necessary, in the advertiser claims, with
2 or without modification, because as is common ground, there is substantial overlap in
3 those claims and Ms Stopford's.

4 And it bears emphasis that Google's draft directions, as we have seen, make no
5 provision at all for Google to explain to Ms Stopford what relevant material it holds on
6 the initial EC disclosure. And you will see at the end of paragraph 2, we have provided
7 for Google to indicate where relevant material is held in one of the pre-existing
8 categories and the purpose of that is so that the next round of disclosure can focus on
9 documents that can be given more readily. And given that these categories were
10 formulated and defined by Google, we anticipate that they may be held in pre-existing
11 repositories. But in any event --

12 THE CHAIRMAN: You mean the three off the shelf material categories?

13 MR LASK: Yes, yes. That is why we are asking for those to be identified, so that we
14 can focus our initial disclosure requests. Then we have step 3 at paragraphs 3 and 4
15 actually, which provides for the parties to engage on further disclosure categories that
16 can be provided by reference to the core issues, and it provides for any matters not
17 agreed to be determined at a further CMC later this year which is further provided for
18 in paragraph 13.

19 Now as I said, Google has raised a concern in its skeleton argument over the potential
20 duplication of disclosure on Google's pricing data, given the advertiser claims and the
21 slightly different approaches so far taken by the respective experts. In my submission,
22 there are a number of answers to that. First, is precisely why disclosure from
23 pre-existing categories is a neat and obvious way forward. Google's concern, based
24 on its skeleton, relates to data that isn't readily available but would, in Google's words,
25 need to be located, interrogated and compiled and there is no reason or at least none
26 that Google has explained, why that concern should arise with off the shelf disclosure.

1 The whole point of such disclosure is that it ought to be readily available and so
2 shouldn't require extensive search and review exercises.

3 Second, and in any event, Google has legitimate concerns over duplication, but they
4 can be readily managed within the process set down in these draft directions because
5 as we see, paragraphs 3 and 4 provide for the parties to liaise on categories of
6 disclosure. If Google has a concern that a particular proposed disclosure category
7 may give rise to duplication, that concern can be raised, it can be discussed and if
8 necessary, it can be ventilated before the Tribunal at the subsequent CMC that we
9 have provided for. The directions themselves do not embed the risk of duplication.

10 THE CHAIRMAN: I understand that to the extent they give disclosure from the
11 pre-existing categories, that will be given and if that's useful to the advertiser claims,
12 assuming that those are certified in due course, then that will already be there. But
13 assuming the advertiser claims are certified and the pleadings are of a different, if
14 overlapping, scope to Ms Stopford's claim, then Google does have to do another
15 exercise, where it has to revisit the three categories and its relevant documents
16 generally and do it again.

17 So it may be that anything that's given to you from the pre-existing categories is fine
18 because that will always be in the claim but there are two sifts that have to happen,
19 aren't there, and that's the concern, I think.

20 MR LASK: Indeed, that's the concern that Google's raised but it's raised in relation to
21 a specific category of material, namely pricing data, where it draws attention to a
22 slightly different approach taken by --

23 THE CHAIRMAN: Sure. I mean that's an example, it doesn't mean it's the only one.

24 MR LASK: Well no, but what we don't know and what we can't know until we've
25 actually started the process, is whether that concern over duplication really does arise
26 in relation to any category of disclosure that might be requested in Ms Stopford's claim.

1 THE CHAIRMAN: Sure, but anticipating the possibility, I put it no higher than that, that
2 one of the advertiser claims is certified, and Ms Stopford agrees they have to be case
3 managed together and doesn't want to be tethered to the starting post because
4 disclosure hasn't happened, the time saving could turn out to be illusory, if the
5 advertiser claims have to go through a sift analysis process that doesn't begin until
6 later on. So I'm just trying to see down the road to a point in time when,, assuming
7 that an advertiser claim is certified, it has been and the two cases have been case
8 managed together.

9 MR LASK: Yes. I think there are two perspectives. One is Google's perspective
10 concerning duplication and the point I have just made is that one can really only
11 understand whether there are valid concerns over duplication once we have visibility
12 over what the material is. Once we have an opportunity to formulate disclosure
13 categories.

14 THE CHAIRMAN: Right. And the advertisers, that's the issue I'm driving at.

15 MR LASK: And the advertisers. And we have no objection to the advertisers, even at
16 this stage, being involved in the process that we've set out in the joint --

17 THE CHAIRMAN: That's what I was going to come on to. It's an unusual situation
18 because there hasn't been a carriage hearing, nor has there been a certification
19 decision. So one has to provide or at least foresee the possibility that a lot of costs
20 are run up in dealing with the advertisers and then it ends up that their claims are not
21 certified.

22 MR LASK: There is a balance to be struck, sir, and as I say, we don't object to the
23 advertisers being involved in the issues(?) process we set out here, and (inaudible
24 words) efficiency. More generally (inaudible words) Google in advance, whether the
25 time saving is illusory. And there are two answers to that. One is that the advertiser
26 claims, as I said, they may not be certified and we've lost time for no reason.

1 THE CHAIRMAN: I know but we're just in a quantum state about that. It's tempting
2 to allocate a probability to it but we can't do that, so we just have to say it might or it
3 might not happen.

4 MR LASK: But in my submission, the Tribunal does have to at least conceive of the
5 possibility that the advertiser claim won't be certified and are waiting -- pressing pause
6 on Ms Stopford's disclosure now, ends up being --

7 THE CHAIRMAN: I'm not attracted to that but I'm attracted to making sure that if/when
8 one is certified, we haven't done something at this stage which is unproductive or
9 positively bad.

10 MR LASK: Indeed. And that is really the second point (inaudible words) -- the third
11 point under this heading which is that disclosure given on the core issues that are
12 common to the advertiser claims and Ms Stopford's claim, ought to benefit those
13 claims and the management of those claims by streamlining the process for disclosure
14 in those claims. The documents that go to a core issue that is a common core issue
15 don't require Google to go and search again. They have already been provided. They
16 can just be given to the advertisers and because of that, if an advertiser claim is
17 certified, then these directions ought to shorten the time required for that advertiser
18 claim to catch up with Ms Stopford's claim, because of that streamlining of the
19 disclosure process.

20 THE CHAIRMAN: Okay.

21 MR LASK: Then the other point raised in Google's letter of yesterday is a complaint
22 that Ms Stopford didn't bring a formal application for disclosure at this CMC, and in my
23 submission, that's an unfair complaint, given --

24 THE CHAIRMAN: Don't worry about that. Don't worry about that.

25 MR LASK: But in any event, process set out in the revised directions --

26 THE CHAIRMAN: I am not interested in that.

1 MR LASK: Well it's a point of substance because it addresses that. What it enables
2 us to do is properly prepare for a later CMC, later this year.

3 THE CHAIRMAN: No, no, no, I'm not interested in an objection that you should have
4 brought an application.

5 MR LASK: That's helpful, thank you. Then paragraph 5 is the beginning of the section
6 we have already looked at which is Google's section. As I say, broadly content to
7 adopt that process but we want some clarity on those subcategories of EC material
8 that have been excluded. Obviously, we reserve the right to seek disclosure of those.
9 One change we seek -- it's a small point, it's at paragraph 10(a), you will see the blue
10 and green numbers, we think Google ought to get notifying third parties of an intention
11 to disclose.

12 THE CHAIRMAN: We can discuss that. One thing I should raise from my experience
13 in the -- very similar things came up in the FRAND cases in the patent court; ; there
14 needs to be visibility to you and to the Tribunal of the notification that they give to the
15 third parties because otherwise, you get a situation where there's a sort of notification
16 but not an encouraging one. So, you know, it's up to them to hopefully frame it. But
17 there needs to be visibility of that process.

18 MR LASK: We certainly welcome that and that ought to be straightforward to be
19 brought (inaudible).

20 THE CHAIRMAN: Yes, it's not difficult to do. All right.

21 MR LASK: Just finally on disclosure, you see at paragraph 13, the blue text that I
22 showed you earlier, which provides for a CMC to be listed on the first available date
23 on or after 14 November [2025]. And the purpose of that CMC would be to address
24 disclosure, with the benefit of the disclosure report, the Electronic Disclosure
25 Questionnaire and, hopefully, constructive discussions between the parties as to what
26 categories might be provided.

1 THE CHAIRMAN: Yes.

2 MR LASK: So to sum up, we do ask the Tribunal to grasp the nettle now and to make
3 the directions proposed by Ms Stopford. We say they enable concrete progress to be
4 made on Ms Stopford's claim, notwithstanding the advertiser claims and they enable
5 any legitimate concerns over duplication to be properly managed.

6 There is one other thing provided for in this composite draft order which is the red text
7 at paragraph 19, dealing with costs. This is a slightly different issue from disclosure
8 but I'm happy to address it now --

9 THE CHAIRMAN: No, no, that looks discrete to me. We will deal with that later.

10 MR LASK: All right. Thank you. So that is everything I wanted to say at this stage on
11 disclosure and I said there are other issues between Stopford and Google. The next
12 one is the proposed preliminary issue on follow-on claims,, but it may be that you wish
13 to hear from Mr Pickford on disclosure first, before moving on to the next topic.

14 THE CHAIRMAN: Yes, I think that's what we will do. Yes, Mr Pickford, thank you.

15 MR PICKFORD: So on the issue of disclosure, you have already been taken to the
16 latest draft order proposed by Ms Stopford and dealing first with the disclosure that
17 Google proposes to make and the couple of points that Mr Lask has raised on that, I
18 will deal with that first, then I will go on to his further requests. So in relation to the
19 access to the Commission file, there are only three points to make in relation to that.
20 Firstly, a point which is foreshadowing something I am going to come on to, they are
21 going to get over 100,000 documents from that disclosure.

22 THE CHAIRMAN: Right, yes.

23 MR PICKFORD: That's quite a lot to chew on over the next few months, in terms of
24 work that they can be getting on with. So insofar as Mr Lask and his team are impatient
25 to be getting stuck into disclosure, there's going to be plenty of that for them to assess.

26 THE CHAIRMAN: Well, okay. I mean that doesn't mean they are going to need to

1 read all 100,000. This is being given by category, not by relevance, isn't it?

2 MR PICKFORD: Yes.

3 THE CHAIRMAN: You are not warranting that any of this is relevant, you are just
4 giving --

5 MR PICKFORD: No, although I think -- some of it, almost certainly, will be given --

6 THE CHAIRMAN: I understand that --

7 MR PICKFORD: -- in the context.

8 THE CHAIRMAN: -- but this is not 100,000 documents that Google and its advisers
9 have reviewed and satisfied themselves are relevant --

10 MR PICKFORD: No.

11 THE CHAIRMAN: -- it is a category which contains relevant material. So whether
12 there is two, three, six months' work in there or less, depends on how much of it is
13 relevant and what it's useful for.

14 MR PICKFORD: Yes. Well,, my point is it is no small cache and insofar as what
15 they're saying, we need to get on with something. There is certainly something
16 material for them to be getting on with now.

17 THE CHAIRMAN: Right, right.

18 MR PICKFORD: Second point, there was a quibble raised in relation to whether we
19 could have 28 days for the process of notifying third parties rather than 14 days, as
20 they suggest. There are, I understand, in the region of 150 third parties.

21 THE CHAIRMAN: I'm not surprised this will take you 28 days, so I'm going to go with
22 28 days.

23 MR PICKFORD: Thank you.

24 THE CHAIRMAN: I was going to ask you how many there were and, you know -- but
25 you do have to be transparent about the requests you make and you have to be
26 transparent to the third parties about the position you are taking because if your

1 position is -- I anticipate your position is likely to be: we, Google, don't object. If you,
2 third party, want to object, it's up to you.

3 MR PICKFORD: Yes.

4 THE CHAIRMAN: And you have to make the objections --

5 MR PICKFORD: That's right.

6 THE CHAIRMAN: I am just drawing on my experience of patent cases where this has
7 happened and, unfortunately, the third parties have inadvertently got the impression
8 that the disclosing party in the litigation will be fighting their corner which I don't think
9 is the case,, but you have to be clear about that. Anyway, you must be transparent
10 about the terms of the notifications you give.

11 MR PICKFORD: That is well understood. I, for my part, have been involved in many
12 of those FRAND cases and it's -- these very issues -- I'm well aware of them and those
13 behind me are well aware of it too.

14 THE CHAIRMAN: All right, okay.

15 MR PICKFORD: Then the point that was raised by Mr Lask is he says: well there are
16 certain categories that we are not going to be getting, and he seemed to suggest that
17 there was something lacking in transparency there and we are holding back relevant
18 material. We are not. The categories that they won't be getting, as will be explained
19 in correspondence, are privileged documents, that is one category that they won't
20 get --

21 THE CHAIRMAN: You are talking about from the Commission?

22 MR PICKFORD: From the Commission file, yes. So they say: well there's this broad
23 thing defined as the EC documents but then there are certain things we are not going
24 to be getting. We're not sure why we're not going to be getting everything.

25 THE CHAIRMAN: Right.

26 MR PICKFORD: So I'm now going to explain why he's not getting everything.

1 THE CHAIRMAN: So privileged is one.

2 MR PICKFORD: So privileged is one. There are certain third--party documents that
3 are inaccessible, because for instance, we were able to see documents in a data room
4 but we have no control over those documents or ability to disclose them. So there are
5 documents that are not within our control, albeit they are materials that form part of
6 the Commission file that was seen in a data room.

7 THE CHAIRMAN: Right. So you could disclose them in the CPR sense of identifying
8 that they exist but you can't provide them.

9 MR PICKFORD: Yes. I think that's probably right.

10 THE CHAIRMAN: Okay.

11 MR PICKFORD: I'd have to check but in terms of -- about whether it's entirely correct
12 because in relation to data rooms, the Commission can be very exacting, in terms of
13 what you are allowed to take out of a data room, what records you are allowed to take
14 out, so whether we have a full record, I will have to check.

15 THE CHAIRMAN: Yes. But you could describe them by category, couldn't you?

16 MR PICKFORD: Yes. There are then irrelevant documents, such as purely
17 administrative documents which we weren't proposing to disclose --

18 THE CHAIRMAN: Okay.

19 MR PICKFORD: -- or provide copies of. And then there are some additional materials
20 that were submitted in the investigation, such as statements of objections and
21 responses to statements of objections which are not documents on the file.

22 THE CHAIRMAN: Right. Not document -- but you have them.

23 MR PICKFORD: We have them. But they are not the contemporaneous materials
24 that the Commission had reference to. They are administrative documents that chart
25 the course of the arguments between the Commission and Google, through the
26 administrative stage. And those are not ordinarily disclosed or, we say, disclosable

1 and we are not proposing to disclose those. They are not on the file. They are a
2 separate category of document that the Commission holds but they are not in the
3 category of the contemporaneous Android materials.

4 THE CHAIRMAN: Right. You are not submitting -- this is separate from your irrelevant
5 category.

6 MR PICKFORD: That's right.

7 THE CHAIRMAN: This is they are not on the file, but you have got them, and they are
8 not irrelevant but you don't intend to disclose them.

9 MR PICKFORD: So they are not documents that we formally get access to through
10 access to the file. So under a European Commission access to the file procedure, the
11 Commission compiles a file of the contemporaneous materials on which it relies.
12 Some of those came from Google, some of those came from third parties. We are
13 given something called access to the file which enables us to -- we (inaudible) have
14 access to those -- subject to the point I made about data rooms. There is then a
15 separate category of documents which is very limited but it's the administrative
16 documents and those fall into two. There are purely -- availability administrative
17 documents, they are not getting those and there are -- arguably, you might say they
18 are substantively relevant, in the sense that they are far more than purely
19 administrative but nonetheless, they are documents that chart the confidential
20 progress of the case as between Google and the Commission. Statements of
21 objections are not public, nor is Google's response to those statements of objections.
22 Everything crystallises if the Commission takes a decision and they've got the decision
23 and they have our appeals in relation to that decision but what they are not getting is
24 the intermediate steps.

25 THE CHAIRMAN: Because?

26 MR PICKFORD: Because that's not -- well we say it's not going to, ultimately, move

1 the litigation forwards, in terms of issues that they are going to need to demonstrate
2 through contemporaneous materials. It's argument that the Commission made and
3 argument that Google made back.

4 THE CHAIRMAN: Right. Okay, all right. I think the reason I am pausing is none of
5 those comments you've just made -- I'm sure they are all factually accurate -- none of
6 those comments you just made map to a reason for not giving disclosure under the
7 CPR. I mean it's a -- you are telling me formal things about where those documents
8 live, not substantive things about whether they are proportionate or relevant to
9 disclose.

10 MR PICKFORD: Well --

11 THE CHAIRMAN: Anyway, I will hear what Mr Lask says about those ones.

12 MR PICKFORD: I'm also instructed that the European Commission would have to let
13 us disclose those documents --

14 THE CHAIRMAN: Right.

15 MR PICKFORD: -- at the very least.

16 THE CHAIRMAN: You have to ask them for permission anyway for these directions,
17 so --

18 MR PICKFORD: Yes. So insofar as the Tribunal wants us to provide them, we will
19 have to put them in the list of the category -- I think it's in paragraph 11 of the order of
20 documents that we have to ask the Commission about.

21 THE CHAIRMAN: Yes, okay. All right.

22 MR PICKFORD: So those are the points on what we are proposing to provide.

23 THE CHAIRMAN: Okay.

24 MR PICKFORD: There's then the main application that was developed by Mr Lask in
25 relation to the further steps that he wants Google to take now. And in my respectful
26 submission, that is not a well thought through set of directions and I do need to take a

1 step back here to put this in context. It is, I'm afraid, relevant to do so very briefly.

2 So what happened so far in relation to disclosure is some days prior to skeleton
3 arguments, we provided our proposals in relation to the EC documents. Then in
4 skeleton arguments themselves, for the first time, we had the application from Ms
5 Stopford in relation to the US productions and the CMA materials. That hadn't been
6 warmed up in any correspondence. It was a disclosure request that would have
7 compelled the provision of over 5 million documents.

8 THE CHAIRMAN: Right.

9 MR PICKFORD: They didn't notify the CMA, as they are required to do under a
10 Practice Direction if they are seeking documents on the CMA file, and they didn't
11 engage in any way, shape or form with the requirements of the Tribunal's own Practice
12 Direction in relation to disclosure which makes very, very clear that it is not the norm
13 simply to seek disclosure and provision of entire files of documents that may contain
14 many, many things that are irrelevant.

15 THE CHAIRMAN: Okay.

16 MR PICKFORD: So we wrote back as soon as we could, saying that: I am afraid your
17 application is misconceived. This is the Practice Direction, you need to have a look at
18 that first, before you start asking for 5 million documents. And so that, as of last night,
19 was withdrawn. So then as of 9.00 pm last night, we have been provided with this
20 new order with the four directions that are sought in relation to disclosure. My first
21 point and I am afraid I do have to make this complaint, is that that has not given my
22 clients sufficient time to properly consider and canvass what is being sought now by
23 Ms Stopford.

24 THE CHAIRMAN: Right.

25 MR PICKFORD: That is not an appropriate and sensible and well thought through
26 means of agreeing disclosure --

1 THE CHAIRMAN: Okay.

2 MR PICKFORD: -- to present the other side with your new directions at 9.00 pm, the
3 night before the hearing. This is very, very serious litigation, it's going to cost a lot of
4 money to do this and it really needs to have been warmed up far better in
5 correspondence.

6 That's the first complaint in relation to that.

7 And so in my submission, it would be quite appropriate for the Tribunal to stop there
8 and say: well I hear that this is all very new. I suggest you, parties, go away and you
9 engage in a proper dialogue about this, before making an application to the Tribunal.

10 THE CHAIRMAN: Right.

11 MR PICKFORD: If you would like my substantive comments on it, I'm obviously happy
12 to make them.

13 THE CHAIRMAN: Yes, I would, yes, yes.

14 MR PICKFORD: But that is subject to that caveat, that I have not had a proper
15 opportunity to discuss this at any length with my client and I say that is objectionable.

16 THE CHAIRMAN: But your client must have been planning what disclosure it was
17 going to give and when and, obviously, it has because it's agreed to hand over the EC
18 material.

19 MR PICKFORD: Yes.

20 THE CHAIRMAN: I mean, what I think Mr Lask is saying is where are you coming
21 from, what thought had you given, what was your plan for disclosure, given that, you
22 know -- that Ms Stopford's claim has been certified, subject to your point about
23 preliminary issue on limitations and so on? We have pleadings, you are going to have
24 to give disclosure.

25 MR PICKFORD: Yes.

26 THE CHAIRMAN: And that was extremely unlikely to stop at the EC material. So I

1 | would have expected Google to say, you know: the critical bits of disclosure will be
2 | this, or that or, you know -- you know, the total volume of the US disclosure. I'm not
3 | surprised that you don't want to disclose all of that. But looking at it outwardly, it just
4 | looks like Google sat there passively without thinking through how it's going to give
5 | disclosure in a timely fashion to move the case forward. What was your proposal
6 | going to be? When do you see Google cracking down to the disclosure it actually has
7 | to give?

8 | MR PICKFORD: In my submission there is a sensible way of doing that, in the light of
9 | the fact that it is, at the very least, conceivable and the Tribunal might even think quite
10 | likely that one of the advertiser claims is going to be certified. So we have given
11 | thought to it. And the thought that we have given to it is that it is not an appropriate
12 | thing to set down in the form that Ms Stopford wishes to set down, at this CMC. The
13 | way that they are seeking to establish directions is going to be unhelpful rather than
14 | helpful and those are the substantive points that I was proposing to come on to make
15 | if, sir, you wanted to hear from me and you indicated you did.

16 | THE CHAIRMAN: So just tell me, so Google's attitude was in April [2025] you learned
17 | about the advertiser claims --

18 | MR PICKFORD: Yes.

19 | THE CHAIRMAN: -- and then you thought: well, that's it, okay, we will wait and see
20 | about disclosure until we know if they are certified.

21 | MR PICKFORD: No.

22 | THE CHAIRMAN: What's Google been doing -- I mean I'm a bit disorientated by the
23 | procedure here because normally, one would have come along with some evidence
24 | from both sides, somebody from Google, or a solicitor on instructions from Google,
25 | explaining what there is, where it is, why it's onerous, what can be done, what has
26 | been done --

1 MR PICKFORD: Yes.

2 THE CHAIRMAN: -- but I don't have that, I have no visibility of even what exercise
3 has been done by Google, other than get on top of the fact that there is an enormous
4 number of documents in the off the shelf stuff and that you want to wait until we know
5 about certification of the advertiser claims.

6 MR PICKFORD: But it has given it thought and the thought that it gave it led it to the
7 proposal that it's made which is there is a tranche of 100,000 documents, which it is
8 sensible to provide now. And we have thought through the structure by which we
9 would do that and we set it out in some detail. It's not the simplest of things, given the
10 need to both inform the Commission and inform third parties, et cetera, but you know,
11 we have gone through all of that. And we took the view that that is something that
12 sensibly can be done now because those are documents that, arguably, Ms Stopford
13 is always going to need and it's not dependent on interactions with the advertiser
14 claims. However, since it became clear that there was going to be an advertiser -- at
15 least one advertiser claim that was being brought and seeking certification, we took
16 the view that the broader approach of trying to engage now in EDQs and disclosure
17 reports, beyond what we were proposing to provide in terms of the EC materials, was
18 not appropriate. And what I propose to do is explain why.

19 THE CHAIRMAN: Okay.

20 MR PICKFORD: As I think, sir, you have already adverted to, there is going to be
21 quite complex interaction between the Stopford proceedings and supposing that one
22 of the advertiser claims is certified, whichever advertiser claim that is. There are at
23 least two respects in which there's going to be that interaction. So firstly, one might
24 define what are common issues to both the Stopford claim and the advertiser claim.

25 THE CHAIRMAN: Yes.

26 MR PICKFORD: And in relation to those common issues, we say that it is not

1 appropriate for us to go through a process purely with Ms Stopford, of agreeing what
2 the issues are and then seeking to give disclosure by reference to those issues, only
3 to have to come back and do the same thing, when, let's say for sake of argument, Ms
4 Brook comes along and says: hold on a minute, that is what you did for Ms Stopford
5 but if only you had asked me, I have some different views about what the true core
6 issues are. So that is the first --

7 THE CHAIRMAN: I haven't heard from the advertisers about whether they are
8 interested in participating at this stage but it sounds like a potential idea that ought to
9 be discussed if they are willing to. What is your attitude to that?

10 MR PICKFORD: It's certainly more sensible. It's certainly more sensible for the
11 advertisers to be involved than not.

12 THE CHAIRMAN: Yes.

13 MR PICKFORD: I mean we say it's simply not sensible at all for this process to be
14 bilateral between Ms Stopford and Google.

15 THE CHAIRMAN: Okay, all right.

16 MR PICKFORD: So if it's going to happen at all, it should involve both advertiser
17 claims and Ms Stopford and Google.

18 The second point I make is that that is not necessarily going to be that easy a task
19 because first you have the core issues, then you have issues that are unique to Ms
20 Stopford and then you have issues that are unique to each of the other claims. And
21 there may be overlaps in terms of what disclosure would sensibly hit a number of
22 different targets. An issue that arises in disclosure is there is category X of disclosure
23 that's sought and then there's category Y that's sought for some other issue and the
24 party that's providing disclosure comes along and says: well the proportionate thing to
25 do here, actually, given that we have X and we have Y, is we are going to go to this
26 particular set --

1 THE CHAIRMAN: Yes, I can understand that.

2 MR PICKFORD: -- of documents and provide this kind of disclosure. And until you
3 have that full picture, not just of the overlap issues but of all the issues, including ones
4 that are nominally unique to one of the three claims, it's not, in our submission,
5 sensible to try and give disclosure. What we need is to have a process whereby,
6 firstly, we close the pleadings because that's ordinarily the time at which you then
7 start --

8 THE CHAIRMAN: Remind me what the date for that is with the advertiser claims.

9 MR PICKFORD: It hasn't been determined yet. It would depend on which advertiser
10 claim is certified and then there'll be a process for us to provide a defence in relation
11 to that and then there'll be their reply.

12 THE CHAIRMAN: Okay, yes.

13 MR PICKFORD: That is when in litigation ordinarily, the issue is crystallised so that
14 the parties can then go away and say: okay, we know what the parties' stances are,
15 here is everything that's been factually said, now we can work out what the issues are.
16 So that's really --

17 THE CHAIRMAN: I understand that in a formal sense certainly. I see what you are
18 saying but does that mean that you are happy to work out a set of common issues -- or
19 appropriate issues with the advertisers and with Ms Stopford but not till the pleadings
20 close?

21 MR PICKFORD: Well that would be the most sensible time to do it, in my submission.

22 THE CHAIRMAN: Yes. Okay.

23 MR PICKFORD: We are not seeking to hold up this process, we are happy to do
24 things that will make genuine progress but not at the cost of having to revisit things in
25 a costly and confusing manner. That's the essence of our position. So if there are
26 things that can be done consistent with that, then we are very happy to (inaudible).

1 So that's the first point in terms of the process for it.

2 There is also -- and that is going to be -- I'm afraid to say, in response to Mr Lask's
3 keenness to get on with this, that is not going to be something that is going to be
4 achieved by 15 August [2025] which is what he's seeking, it's going to take a lot longer
5 than that.

6 THE CHAIRMAN: No, there's a difference between how long it would take, doing the
7 best job with the materials available if the advertisers are participating and I entirely
8 understand that you say that mid-August [2025] is too quick for that.

9 MR PICKFORD: Yes.

10 THE CHAIRMAN: That's one end of the spectrum. The other end of the spectrum is
11 don't begin this journey of identifying issues until the pleadings close in whichever, if
12 any, advertiser claim is certified. That's, you know, over a year away. So those are
13 the different ends of quite a long spectrum.

14 MR PICKFORD: That is understood. And my position is actually, the most orderly
15 way of doing it is at one end of the spectrum but I'm taking a pragmatic stance that if
16 the Tribunal isn't attracted to that, then it can potentially move further to the other end
17 of the spectrum, albeit always having regard to not creating a situation where we have
18 duplication and where we have another party coming along and saying: well actually,
19 if only you had involved me, it would look a bit different.

20 THE CHAIRMAN: Sorry to interrupt you, Mr Pickford, I don't envisage it's possible to
21 do one disclosure exercise starting now that definitely covers the advertiser claims
22 because there will be, to put it very crudely, there will be extras. I think that's inevitable.

23 MR PICKFORD: That's agreed.

24 THE CHAIRMAN: So if this sort of process is embarked on, then one needs to capture
25 identifying issues that are definitely in the Stopford claim and will require disclosure,
26 whether or not they are in the advertiser claims, and input from the advertisers to

1 identify things that are common, useful, proportionate to do and then this will inevitably
2 involve a further exercise, if and when an advertiser claim is certified. There are
3 definitely things that are extras which are not to be grappled with yet.

4 MR PICKFORD: The submission I made to you earlier is that even that comes,
5 actually, to cost. Because if we were to do this in a fully joined up way, we would be
6 able to have the advantage of being able to say: now we know what Ms Brook is
7 seeking over here and we know what Ms Stopford is seeking over here,
8 notwithstanding that that is for an allegedly unique part of Brook's claim and this is for
9 a unique part of Ms Stopford's claim, nonetheless, the best disclosure, taking account
10 of the fact we have both of those that we could give, would be X. And so even the
11 process that the Tribunal is envisaging, potentially, as a compromise which is trying to
12 boil down what the core issues are, we say is not perfect --

13 THE CHAIRMAN: No, it's not, no.

14 MR PICKFORD: -- because it comes at that cost.

15 THE CHAIRMAN: It does, yes.

16 MR PICKFORD: So there's that point in relation to the timing of all of this.

17 THE CHAIRMAN: Right.

18 MR PICKFORD: And I mean, it sounds like I don't have to make this further point
19 because I think on any end of the timetable, 15 August [2025] is too early. Also, just
20 as a minor plea for the lawyers and families involved in this, this is not hyper-urgent
21 and we really don't need to set down deadlines in this Tribunal and in this case, for
22 things in the middle of August [2025]. One only does that if that is really, really
23 necessary and that would be an unfair and inappropriate deadline in any world, in my
24 submission.

25 So that's our overall stance in relation to those directions.

26 What we would urge is that the Tribunal does this in a fully orderly manner that takes

1 account of all of those interactions. But both for the reasons of the interactions and
2 also for another point, which is the interrelationship with the application that I'm going
3 to be making for some preliminary issues and if I can just briefly develop that.

4 THE CHAIRMAN: Yes, yes. To the extent that they condition(?) what I do about
5 disclosure, certainly.

6 MR PICKFORD: Yes, exactly. So in a nutshell, so without going into any unnecessary
7 detail, in a nutshell the point that I am going to be coming on to make separately is
8 that there are two legal issues that appear to have crystallised as between the parties.
9 One, sir, you were aware of at the certification hearing which concerned limitation and
10 there was a legal issue that was being taken in relation to limitation. We were awaiting
11 what happened from the Court of Appeal in Umbrella Interchange. That's now been
12 denied permission by the Supreme Court, so we say that issue is now ripe for
13 determination in our case.

14 THE CHAIRMAN: Yes, and Ms Stopford agrees that amendments have to be made
15 but that doesn't close off the possibility for argument.

16 MR PICKFORD: Yes. Well quite, because we don't know what her amendments are
17 going to be yet. So that one I'm parking because there is something potentially there
18 and of course, it may be that that requires a hearing to determine the dispute between
19 the parties.

20 THE CHAIRMAN: Yes.

21 MR PICKFORD: And it may be that we are right about that. And if we are right about
22 that issue, that would take roughly two years out of the time span for the claim and
23 that is something that, in my submission, it would be sensible for this Tribunal to know
24 before it starts ordering disclosure. Because there may be some disclosure that's not,
25 ultimately, going to be terribly helpful, it depends what those issues are.

26 THE CHAIRMAN: Right.

1 MR PICKFORD: So that's point 1. The second point is the one that's probably more
2 concrete right now which is the issue about follow-on claims and whether you can
3 have a follow-on claim for the period, that is, you are still alleging that there was an
4 infringement after the date of the Commission decision. And we say that this is also
5 an important issue to grapple with prior to ordering disclosure, for this reason --

6 THE CHAIRMAN: Yes, if you are right, then it's not follow-on, it's stand--alone --

7 MR PICKFORD: Exactly.

8 THE CHAIRMAN: -- and we have to think about disclosure.

9 MR PICKFORD: Exactly. It will make a big difference to issues such as market
10 definition, dominance, et cetera, because if they are right, they're going to say: all of
11 that is binding, so bad luck, you are stuck. And if we are right, we're going to say:
12 sorry, it's not binding we are quite entitled to challenge those issues and we should
13 have disclosure that goes to them. So --

14 THE CHAIRMAN: You mean you should give disclosure.

15 MR PICKFORD: We should give disclosure, yes, there should be disclosure in the
16 case that is relevant to points that are not binding. Because you don't really need
17 disclosure on points that are binding but you do if they are points --

18 THE CHAIRMAN: Thank you, that's helpful. I mean I have the generality of that from
19 the skeletons.

20 MR PICKFORD: I'm just going to check there's nothing further that I missed but
21 subject to that ...

22 THE CHAIRMAN: Yes, okay, thank you. (Pause)

23 MR PICKFORD: No, there are no further submissions --

24 THE CHAIRMAN: Can I just ask you this, Mr Pickford. You have very, very
25 sophisticated clients, with ample representation in a number of jurisdictions. We've
26 talked about your engagement with the disclosure process but it does just feel to me

1 | like there must be disclosure, important categories of disclosure, that your clients just
2 | know are going to be disclosed. They just know that they are going to be in the case.
3 | And it just strikes me that the effect of not starting defining the issues until the
4 | pleadings are closed in all of the cases, is just delaying the inevitable of disclosure
5 | that your clients are absolutely certain will have to be given., being given.

6 | MR PICKFORD: There's certainly no such categories that I can advise the Tribunal
7 | of, other than the category that we have identified which is the Android file, access to
8 | the file and we have given that..

9 | THE CHAIRMAN: You can't but --

10 | MR PICKFORD: Yes, I understand your point is not about --

11 | THE CHAIRMAN: You are not all over the US disclosure. I mean, your client will know
12 | that the crucial documents in the US disclosure that go to this are such-and-such,
13 | such-and-such. And they are just -- it would be an exaggeration to call them known
14 | adverse documents but they are things that your client knows will be in the case when
15 | this process rolls through to its conclusion and I just question the sense of setting up
16 | a procedure which just keeps those back from Ms Stopford for two years or whatever
17 | it will be, a year and a half.

18 | MR PICKFORD: It may be there are such documents. I don't have instructions from
19 | those behind me in relation to that.

20 | THE CHAIRMAN: No.

21 | MR PICKFORD: But what I can say is that those -- the way in which disclosure works
22 | in the United States, as I'm sure, sir, you will be very familiar with, is somewhat different
23 | from this jurisdiction which is why one ends up with 5 million documents.

24 | THE CHAIRMAN: Which is why I would never have sanctioned an off the shelf
25 | approach to the US disclosure. I mean sometimes in the IP world, parties do agree it
26 | because they both know it equally well and they feel there's a parity of arms. That is

1 fine, that's not this case but Google is in a position to write through its solicitor, saying:
2 there's 5 million documents, that's crazy, we are not doing it. But it would also be in a
3 position to say: whilst there are 5 million documents, we know that these witness
4 statements and this deposition is bound to be important, so you can have it. But that
5 hasn't happened and it just concerns me that material that Google has that it's planning
6 its defence around are not available to Ms Stopford for such a long time, especially if
7 we are rolling back the definition of the core issues in a way that you want.

8 MR PICKFORD: That's well heard, sir. Can I just take instructions very briefly --

9 THE CHAIRMAN: Sure.

10 MR PICKFORD: -- because I would like to respond, to try to assist the Tribunal but I
11 don't want to do it now.

12 THE CHAIRMAN: Please do.

13 MR PICKFORD: I'm very happy. I can either sit down or I can take those instructions
14 whilst Mr Lask is on his feet.

15 THE CHAIRMAN: I'm going to hear from the advertisers next actually, so ... Yes.
16 Okay.

17 MR PICKFORD: I am in the Tribunal's hands. Would you prefer me to sit down now
18 and come back?

19 THE CHAIRMAN: You can take instructions while I hear from the advertisers.

20 MR PICKFORD: Yes.

21 THE CHAIRMAN: I think on disclosure, I should hear from the advertisers about their
22 attitude to participating in the definition of common issues in your timetable, Mr Lask.

23 MR LASK: Yes, indeed, sir. Before doing so, is it appropriate to take a short break?

24 THE CHAIRMAN: If you like, yes certainly, yes. Okay, we'll break till noon then.

25 (11.50 am)

26 (A short break)

1 (12.04 pm)

2 THE CHAIRMAN: Yes.

3 MR KHAN: Thank you, sir, I appear on behalf of the proposed class representative,
4 Mr Roger Kaye KC. I'm grateful for your Lordship's interest in the advertisers' position
5 on this. We had said in our skeletons that we would not say anything about the
6 directions between Stopford and Google but in this matter, every issue seems to be
7 connected to the other issues.

8 In brief, we are very happy to assist with anything that can help with the process and
9 to ensure that the timetable is not unduly delayed by the presence of the advertiser
10 claims.

11 With respect to the particular matters that were being discussed this morning, I take
12 your Lordship's point that it could be illusory in terms of time saving if Google has to
13 sift again but I would submit, sir, that as regards the categories we are talking about
14 here, it would be something of an over-statement to say that one requires to sift,
15 because if we look at what is being requested, these are the essential building blocks
16 of everybody's case and the materials in question already exist, most obviously in the
17 form of the Google Android Commission file and the subsequent documents in the
18 litigation.

19 Now Google, I understand, is proposed to give the Google Android file, although this
20 morning, my learned friend Mr Pickford appeared to be resiling to some extent from
21 that by his references to the difficulties or the impossibility of providing things such as
22 the statement of objections and the response to the statement of objections. That's a
23 little bit surprising because if I could just ask your Lordship to turn to the authorities
24 bundle, that's at section D, tab 9, page 917, then you will see there the -- this is the
25 damages directive and at page 917 we are still in the recitals to the Directive, but if
26 you could look, sir, near the top of the page, the recital 25, indeed it has something to

1 say about the statement of objections, where it says, picking it up from the second
2 sentence:

3 "Information that was prepared by a competition authority in the course of its
4 proceedings for the enforcement of Union or national competition law and sent to the
5 parties to those proceedings (such as a 'Statement of Objections') or prepared by a
6 party thereto ((such as replies to requests for information) [...] [...]) should therefore
7 be disclosable in actions for damages only after the competition authority has closed
8 its proceedings[...] [...] by adopting a decision."

9 Well that's the situation that we're in here. With respect to Google Android, the
10 decision was adopted in 2018.

11 So some of these difficulties adverted to by Google are hard to understand.

12 And in terms of identifying the documents that are common to all of the claims, as I
13 said, we are very willing to assist in that exercise, which has already -- or the
14 groundwork for which has already very substantially been done, the bundle, the
15 hearing bundle includes the Claim Forms and the litigation plans of the advertisers.
16 So in my case that's in the hearing bundle section J at tab 44. There we have the
17 litigation plan of Mr Roger Kaye KC and there -- if, for example, sir, you could turn to
18 page 1578, there you see tables of documents that Mr Kaye can already say he seeks
19 disclosure of and there on page 1578, after the first table which is about documents
20 which are anyway, already in the public domain, we then have part B, documents
21 expected to become available through disclosure and we have, essentially, the Google
22 Android documents. And then that goes through over the page to certain US
23 documents. So these very much correspond to what Ms Stopford understandably calls
24 off the shelf material.

25 THE CHAIRMAN: Well I mean they are very broad, aren't they? I mean when you
26 get to the US proceedings, it's everything, isn't it, really?

1 MR KHAN: Well, indeed. As regards the US proceedings, I take your point, sir, about
2 controlling the excesses of the American disclosure system. But if we just remain with
3 Google Android for the moment, that is a self-contained and limited set of documents
4 which Google would literally need to do no more than press a button to locate. That,
5 of course, doesn't cover all of the subtleties of the differences between the Stopford
6 case and the advertisers' case. There are some areas which are completely different.
7 For example, in the Kaye case, there is the exploitative claim which will give rise to
8 disclosure requests which are probably unique to that.

9 But as regards this initial exercise, and to give the Stopford claimant something to
10 work on now, then we entirely endorse what Mr Lask says and we are very happy to
11 assist in anything that we can do, to ensure that that happens without causing any
12 delay.

13 THE CHAIRMAN: Okay.

14 MR KHAN: Thank you, sir.

15 THE CHAIRMAN: Yes, Mr Carall-Green.

16 MR CARALL-GREEN: Thank you, sir.

17 The Brook PCR is very happy to assist with this exercise as well. I endorse what my
18 learned friends Mr Lask and Mr Khan have said. We don't think it's sensible for the
19 Stopford proceedings to spin wheels for several months, so we are happy to help to
20 accelerate the disclosure process. I would make simply two points if I may. The first
21 is about the limits on what we can do. We can certainly say what we think is relevant
22 now on the basis of our pleading and our expert report, but we can't warrant that we
23 are going to get our requests exactly right at this stage. And that applies not only to
24 what the Tribunal has called the extra bits, these are the parts of the case that might
25 belong in the advertiser claim but not the consumer claim. For example, there is a
26 Brook case about SA360 that is not covered in the Stopford proceedings; but it doesn't

1 just apply to that, it also applies to the overlapping issues. And that's because we
2 haven't had Google's defence and we won't have had Google's defence when we
3 participate in the proposed exercise. So it's possible that Google will raise some kind
4 of defence that applies as against us, that doesn't apply as against the consumers. I
5 don't know if that's true and I don't know what Google will say. But I simply raise the
6 possibility now because I can't warrant that by participating in this exercise we'll
7 effectively close down the discussion on disclosure on the common issues. So I don't
8 want it to be said a year from now that what we do over the next few months effectively
9 renders disclosure on the common issues a *fait accompli*. That is the first point I
10 wanted to make.

11 The second point I wanted to make is about the point that's been made about
12 limitation. My learned friend Mr Pickford has said that the argument about limitation
13 or the debate about limitation in the Stopford proceedings may affect what disclosure
14 is given because there may be some period or some patch within the relevant period
15 in relation to which the claims are time-barred. And I would say that in relation to this
16 exercise, we don't see that as being especially salient. We will come on to how
17 limitation ought to be dealt with, I think in due course, but if any part of the claims is
18 time-barred, then it's commonly acknowledged that what's barred is the remedy and
19 not the right. So while I can well see that there might be documents going to, for
20 example, the quantum of any claims in relation to the barred period that ought not to
21 be disclosed, it doesn't necessarily follow that documents going to liability and
22 causation would not fall to be disclosed. And in fact, we say the opposite. We say
23 that if there are claims that cover an early period and a late period, but because of the
24 way the limitation period works, there's a patch in the middle where the claims are
25 time-barred, it wouldn't make an awful lot of sense for the purposes of figuring out what
26 the causation was, what the story of this case looked like, for the documents to

1 suddenly go missing for a couple of years in 2016, or whenever it happens to be. So
2 we don't see that as being particularly likely to affect the scope of disclosure. That's
3 the second point I wanted to make, sir.

4 THE CHAIRMAN: Okay. Yes. Mr Lask.

5 MR LASK: Thank you, sir. Just some brief points in response to the submissions
6 made by Mr Pickford. Firstly, on the EC material. Mr Pickford made three points.
7 Firstly, he said that 100,000 documents were going to be disclosed already and that
8 was enough for Ms Stopford's team to chew on. I'm instructed that that isn't going to
9 occupy Ms Stopford's team for nine months or more. As you, sir, indicated, it's more
10 in the region of two to three months' work and obviously it doesn't occupy the whole
11 team. So 100,000 documents being disclosed.

12 THE CHAIRMAN: How do you know it's two to three months then?

13 MR LASK: That's the estimate that I'm instructed has been given.

14 THE CHAIRMAN: I don't really understand that, since your whole point is you don't
15 know what it's going to contain.

16 MR LASK: Just broadly speaking, 100,000 documents is not going to take nine
17 months to review, it's more likely to take in the region of two to three months. That's
18 the only point.

19 THE CHAIRMAN: Okay. All right, that's just some general paralegal hours, how many
20 can you get through an hour, sort of thing.

21 MR LASK: It's a broad estimate, sir, nothing more than that.

22 THE CHAIRMAN: Yes, okay, all right.

23 MR LASK: The second point was on the 14 versus the 28 days in the draft order. We
24 hear your impression, sir.

25 THE CHAIRMAN: It's just experience tells me it's not a trivial job.

26 MR LASK: Understood. And then the third point is in relation to the excluded

1 subcategories from the EC material and Mr Pickford gave a sort of high level
2 description of what those categories consisted of. And the short point in response is
3 that, well, we need full visibility on what those materials consist of. Obviously, we are
4 not going to be seeking disclosure of third party documents that Google doesn't have
5 access to or at least not from Google, but when it comes to the third and fourth
6 categories, what he called irrelevant administrative documents and additional
7 documents that not on the file -- it's no criticism of Mr Pickford's submissions but they
8 are high level and we don't really know what's going on under the bonnet and so the
9 simple point is we do need visibility on what is in these subcategories and so they
10 ought to be covered in the disclosure report.

11 THE CHAIRMAN: Well, subcategory of privileged and a subcategory of
12 administratively irrelevant. I don't understand that you need anything more. There's
13 obviously going to be some very humdrum correspondence which is irrelevant to the
14 issues. They are not on the file. I don't --

15 MR LASK: It's more about (inaudible words).

16 THE CHAIRMAN: You know, subject to what Mr Pickford says, now that he has
17 instructions -- I am not sure he will have -- but that's not good enough, I think, for the
18 CPR: if they are relevant, then they are relevant. If they can't be accessed, that's a
19 different thing but the mere fact that they are not on the file is an administrative -- as
20 an administrative point in itself, is not a reason to not give disclosure.

21 MR LASK: Well indeed and my point is I'm not in a position now to say those
22 documents ought to be disclosed because we don't know what they consist of. And
23 that is why we need to understand more about what Mr Pickford's claim is, is what I'm
24 talking about.

25 So that's the EC material.

26 Then Ms Stopford's draft directions. May I take you, please, to core bundle E at 18.

1 This is the letter from Hausfeld dated 4 April [2025] this year --

2 THE CHAIRMAN: E18 is the -- yes.

3 MR LASK: -- where we provided the first draft of case management directions. If you
4 turn to page 556, you will see paragraphs 1 to 4. Paragraph 1, "Defendants shall file
5 and serve a disclosure report and Electronic Disclosure Questionnaire."

6 Paragraph 2, "Parties shall agree a list of issues comprising the key issues in dispute."

7 Paragraph 3, "Parties shall agree the categories --"

8 THE CHAIRMAN: Is this in Mr Pickford's procedural point that you --

9 MR LASK: I'm sorry. Yes, I should have provided context. It's in response to his
10 complaint they haven't had sufficient time to consider the directions that we provided
11 last night. The short point is that in substance, those directions have been with Google
12 since early April [2025], so that's not a legitimate complaint.

13 And then on the meat of the issue, namely what should happen in terms of disclosure
14 directions, the crux of Mr Pickford's concern is that it wouldn't be appropriate to have
15 this process take place without the advertiser claimants being involved. We are happy
16 for them to be involved. They are happy to be involved. And it ought to be possible,
17 therefore, to manage the concerns over duplication within a process that we've set out
18 in the draft directions.

19 On dates, Mr Pickford says it isn't hyper-urgent and we don't need a mid-August [2025]
20 deadline. We have always been happy to discuss dates, we have been trying to
21 engage Google on those dates since early April [2025]. We remain happy to discuss
22 them, but what must not be allowed to happen is for the modification of the dates that
23 we've set out in the draft order to be allowed to introduce the same level of delay that
24 is already embedded in Google's draft directions. So there needs to be a reasonable
25 approach by all parties when discussing these dates and no doubt we'll have to provide
26 a draft order to the Tribunal with some new dates.

1 Then on the possibility that disclosure may be affected by potential preliminary issues
2 on limitation and the duration of the Android infringement. On limitation, I gratefully
3 adopt what my learned friend Mr Carall-Green just said but in addition, it's not yet clear
4 whether there's going to be any dispute on limitation. We've said we are going to
5 re-plead. We are going to provide draft amendments, I think it's by 30 July [2025], so
6 it would be inappropriate, in my submission, to somehow hold up the disclosure
7 process on the basis that there is a possibility that there will be a dispute on limitation
8 in relation to a very narrow time period in the overall claim.

9 THE CHAIRMAN: Right.

10 MR LASK: And similarly, you are going to hear submissions on the proposed
11 preliminary issue on the duration of the Android infringement. Actually, what we say
12 is that the factual dispute in relation to the duration of the Android infringement is a
13 relatively narrow one. On our pleaded case, it really turns on the exchanges between
14 Google and the Commission which Google has already agreed to disclose.

15 THE CHAIRMAN: Choice screen sort of thing.

16 MR LASK: Sorry?

17 THE CHAIRMAN: Choice screen issue.

18 MR LASK: Yes. Our pleaded case is that we are drawing inferences from what
19 Google did after the decision. We expect it to turn largely on the disclosure of
20 communications between the Commission and Google and that is material that Google
21 is already willing to provide. So I'm going to come on to make my submissions on the
22 application for a preliminary issue but the headline point is we don't accept that that's
23 a possibility of a preliminary issue or even if the Tribunal orders one, that's a good
24 reason to hold up the disclosure process.

25 That's all I wanted to say in response on disclosure unless I can assist you further.

26 THE CHAIRMAN: That's fine, thank you very much.

1 Mr Pickford, did you manage to get any instructions?

2 MR PICKFORD: I did get some instructions. The first point that my clients would very
3 much like me to make is that we have not been doing nothing in relation to this, we
4 have been seeking to take a constructive approach. It is true that in terms of the
5 evidence of this hearing, we were not focused on the issue of disclosure. The reason
6 for that is because there was an even bigger fish to fry between us and Ms Stopford
7 which is that she was trying to establish directions all the way through to trial. That
8 was her primary position right up until the skeleton argument and we were opposing
9 that and that was the mainstay of the argument between the parties. And disclosure
10 is kind of one tier down from that, so that is why it wasn't particularly canvassed but
11 it's not indicative that we haven't done anything in relation to it.

12 It is highly complex and it's wrong to assume that there is this easily accessible tranche
13 of 5 million documents that you can just take off the shelf. We are involved in both
14 litigation and administrative proceedings about these issues around the world and
15 there are constraints in relation to documents and what we can provide arising from
16 that. We have been looking into what we can do, subject to those constraints. But
17 that's not a straightforward, take it off the shelf task as is sometimes suggested by my
18 learned friend.

19 We are, in that context, happy to follow what was, I think, being suggested by you, sir,
20 that we engage in a process -- in a dialogue with Ms Stopford in particular, but the
21 advertiser claims insofar as relevant, to provide what are likely to be absolutely core
22 documents or identify core tranches of documents that on any view, they are likely to
23 receive. We are able to do that because we have already been working on that issue,
24 even if we haven't yet crystallised precisely what those are going to be. And we are
25 happy to engage on that, with deadlines to do that in the early part of next term, so in
26 the autumn.

1 THE CHAIRMAN: To give it or to discuss it, do you mean?

2 MR PICKFORD: To start discussing it now, in the next few weeks, but we are content
3 to -- not necessarily -- the first thing is we identify and we seek to reach an agreed
4 position with the claimants as to what those core categories are going to be. And we
5 can do that in the autumn [2025] and then if there's a dispute about that, then we can
6 have a CMC in the autumn [2025] to get to the bottom of that issue.

7 THE CHAIRMAN: Okay. That's very welcome, Mr Pickford, I'm very grateful but I
8 mean, if you are prepared to engage about core categories, why not also engage with
9 core issues, because that will provide some structure?

10 MR PICKFORD: We are happy to do that as well, as long as the advertisers are
11 involved. That was always my core point.

12 THE CHAIRMAN: Okay, all right.

13 MR PICKFORD: And yes, we don't have an objection to providing that kind of
14 structure.

15 THE CHAIRMAN: Yes. Because core categories and core issues, they are going
16 towards the same destinations but they're different things and you can do both,
17 obviously.

18 MR PICKFORD: Yes.

19 THE CHAIRMAN: You can agree to give some core category of documents without
20 having some issues, you could agree some issues without having categories of
21 documents, so you can do both, can't you?

22 MR PICKFORD: Indeed. To be clear about what I think we are envisaging in terms
23 of the core categories, and perhaps we need different vocabulary here for different
24 types of core, there will be some documents which to use, I think the language, sir,
25 that you were suggesting to me, may be obvious that are going to be disclosable. You
26 don't need to get into a fine grained analysis of the issues.

1 THE CHAIRMAN: No, you are right, "core" is not quite the right word but they are --

2 MR PICKFORD: Primary.

3 THE CHAIRMAN: -- proportionate, identified and known to be relevant and

4 proportionate to give, is whatever that rolls up into.

5 MR PICKFORD: So that's a kind of high level category but that wouldn't rule out and

6 we wouldn't say that is all you are necessarily getting. Obviously, once one's gone

7 through the core issues analysis, there might well then be further categories that meet

8 those further core issues.

9 THE CHAIRMAN: Yes, right.

10 MR PICKFORD: And so what I don't want to give the impression is that what I was

11 offering to do, to try to respond to what the Tribunal was suggesting, was going to be

12 fully meeting the core issues in a very compressed timetable. That's not what we were

13 proposing. That is going to need us to engage properly in defining core issues.

14 THE CHAIRMAN: Okay.

15 MR PICKFORD: And I think that will probably take some time, realistically, because

16 these are complex cases.

17 THE CHAIRMAN: Yes.

18 MR PICKFORD: So that's the essence of our position in relation to that. I don't think

19 you probably need me to respond on the question of what was or wasn't in the order

20 but --

21 THE CHAIRMAN: You are not really objecting to my giving directions of the sort given,

22 now that it's clear what the advertisers are saying, so I don't think we need to worry

23 about the procedural (inaudible).

24 MR PICKFORD: I'm grateful. Thank you, sir.

25 THE CHAIRMAN: Okay. Yes, Mr Lask.

26 MR LASK: We obviously welcome the indication given by Mr Pickford.

1 What is not immediately clear is whether the process envisaged will involve what we
2 have asked for which is a disclosure report and Electronic Disclosure Questionnaire.
3 What I wouldn't want is for us to go away, seek to agree a draft order and then have a
4 big fight over what was and wasn't being envisaged.

5 THE CHAIRMAN: Yes.

6 MR PICKFORD: So to be clear, in terms of the initial disclosure, I was not proposing
7 that that was going to be by reference to a full EDQ and disclosure report. We are not
8 saying that there shouldn't be such a thing. But that comes logically, once we have
9 properly determined all of the issues that we are going to need to give disclosures by
10 reference to. What I have been seeking to emphasise is that we were seeking to
11 provide some kind of stopgap of proportionate, obviously identifiable materials that it's
12 sensible to give now because on any view, they are going to be documents of interest
13 to the claimants. That was seeking to respond to what we understood to be a concern
14 of the Tribunal.

15 What that means is that there is going to be that stage and then simultaneously, we
16 can be working on the core issues document and then once that is complete, there
17 would then be a fuller, more comprehensive exercise.

18 THE CHAIRMAN: I don't think -- I think from your earlier submissions, I inferred that
19 you don't need a settled list of core issues to do what we are calling the core
20 categories, you know what those will be.

21 MR PICKFORD: We think we can do that.

22 THE CHAIRMAN: You can provide a lot of useful stuff that's known to you and you
23 don't need a settled list of core issues to do that, was what I was getting from your
24 submissions earlier.

25 MR PICKFORD: Presently instructed, that is what we think we can do, because
26 obviously we are seeking to pragmatically respond to the concerns raised by you, sir.

1 If it turns out that that is problematic, because actually we say do we give this, or don't
2 give that, we might have to come back to the Tribunal and say, "We tried this approach
3 but actually there's a problem."problem."

4 But as presently advised my instructions is that we can seek to do what the Tribunal
5 suggested we might wish to do. But that is not the same thing as a comprehensively
6 agreed set of issues by which we then provide a disclosure report and an EDQ. That
7 is separate from that exercise. So to be very clear, in response to Mr Lask, we were
8 not proposing and accepting that we would be doing that. It is a very compressed
9 timetable.

10 THE CHAIRMAN: I still have to rule on that then I think.

11 MR PICKFORD: Yes. That's not to say we are not prepared to do it --

12 THE CHAIRMAN: You are not negotiating with me, Mr Pickford, in saying that you are
13 only willing to give core categories if I let you off on the EDQ. You are going to give
14 some core categories and then I am going to decide if you give the EDQ. Right. Okay.
15 Thank you.

16 Can I just understand from Ms Stopford's and the advertisers' representatives, the
17 core issues, it's going to be quite important -- well, first of all that's a vitally important
18 stage in the management of this litigation, really, really important, and I think it's far
19 more important to do it right than to do it quickly, but the process by which it's arrived
20 at I think is important as well. I would have thought, and I just put this out for
21 discussion, that the sensible way forward is for Ms Stopford and the advertisers
22 together to make the first pass at it. I think a four-way meeting is not going to work.
23 So I think the first stage is for you to put your heads together and come up with
24 something for presentation to Google.

25 MR LASK: Yes. I'll take instructions, sir. Certainly sounds sensible.

26 THE CHAIRMAN: I think the first question then is how long do you want to do that?

1 So in a sense that holds your feet to the fire a little bit because if you say 14 August
2 [2025] is too ambitious, then that will be an acid test of the timetable.

3 MR LASK: Sir, I'm told on this side of the room it would be possible to provide Google
4 with a composite draft by the end of July [2025].

5 THE CHAIRMAN: That's agreed with the advertisers?

6 MR LASK: That's agreed with the advertisers, yes.

7 THE CHAIRMAN: Fine. Okay. All right.

8 Does that make sense to you, Mr Pickford? It's much much more efficient for the
9 claimants, or potential claimants, to provide something together for your consideration,
10 isn't it, than for you to be involved?

11 MR PICKFORD: Yes, sir.

12 THE CHAIRMAN: All right. And then how long do you think you would need to
13 respond?

14 MR PICKFORD: We would ask for the end of September [2025]. The reason for that
15 is because one of those months is August.

16 THE CHAIRMAN: Okay. Sorry, and given that timetable, Mr Pickford, that is very
17 good, to bring this down to concrete, what would you see the date being of your
18 providing what we are inaccurately calling "core categories of documents"? So if I
19 approve your route, end of July/end of September [2025], when would you be thinking
20 of providing the core categories of documents?

21 MR PICKFORD: The core documents, i.e.. the tranche pre-EDQ and disclosure
22 report, I think within four weeks of that date; so the end of October [2025].

23 THE CHAIRMAN: Right. Okay. And what we have not built in there is finalisation of
24 the list of issues following your comments back because I don't think this going to get
25 agreed in one round.

26 MR PICKFORD: I think that's likely to be right.

1 THE CHAIRMAN: So I think I have to build in probably another month for the parties
2 to thrash out their differences on the core issues.

3 MR PICKFORD: Yes. Given that we are taking this in two stages, those two things
4 could happen simultaneously or it might be more sensible -- this is not seeking to delay
5 it, it's just the disclosure could be more focused then, if the disclosure took place after
6 the agreement -- after the (inaudible), but I mean --

7 THE CHAIRMAN: I'm not with you on that. That would be down to details but
8 extremely important details and I can't believe it will condition the categories of
9 documents that you will be giving.

10 MR PICKFORD: That's understood.

11 THE CHAIRMAN: Okay. Any further comments from the claimant's side?

12 MR LASK: Only to clarify that our primary ask is still for the disclosure report --

13 THE CHAIRMAN: I haven't forgotten that.

14 MR LASK: -- and EDQ. As a fall-back we would accept what Google are proposing,
15 subject to the point you just made, sir, which is that the identification of core documents
16 needs to take place in parallel with the agreement of the core issues.

17 Also, sir, we do need to, I think, look a bit further ahead and think about what then
18 happens next, you know, the timetable for actually giving the disclosure -- or
19 formulating requests for those core documents and then potentially giving disclosure
20 of them.

21 THE CHAIRMAN: Yes. Well I think I'm right in thinking, aren't I, that your directions
22 for this hearing have another CMC in November [2025]?

23 MR LASK: First available date after 14 November [2025], yes.

24 THE CHAIRMAN: Anyway, paragraph 13, I think, in your directions. Right. Okay,
25 thank you. Anything else from the advertisers?

26 MR PICKFORD: It may just be helpful to say we are content in the light of the

1 exchange that I had with you, sir, to provide the statement of objections and response
2 to statement of objections, subject to ensuring that the Commission --

3 THE CHAIRMAN: The Commission's consent. I had forgotten that one. Right. Okay.

4 RULING

5 I do not think I really need to give a judgment because, helpfully, a great deal of
6 agreement has emerged. Ms Stopford and the two advertiser proposed class
7 representatives together will provide their first pass of the draft list of issues by the end
8 of July [2025]. I accede to Mr Pickford's request that Google's response will come at
9 the end of September [2025], primarily for the reason that he gives, that August will be
10 in between. I think it is also helpful to give that time because, in parallel, Mr Pickford's
11 clients, Google, will be working on what we have conveniently, if not entirely
12 accurately, called "the core categories of documents" as we have discussed in the
13 course of the hearing and I accept the contention that that should be at the end of
14 October [2025].

15 I think that in the light of the overall way that things have developed, and for the future
16 management of the case, Google does have to provide an EDQ and a disclosure
17 report as sought by the class representative in its draft order for directions.

18 We can discuss a precise time for that but it can be some reasonable time after the
19 core categories of documents have been identified. The reason for that, in short, is
20 that the issue of disclosure, going forwards, is not going to go away after the steps
21 that I have directed. I think the steps I have directed will enable very substantial
22 progress to be made in a reasonable timeframe in all of the claims but especially for
23 Ms Stopford. But the scope of Google's disclosure is going to have to be carefully
24 managed and it is inevitable that there is going to be the need, I think, for an EDQ and
25 so on at some stage. The reason for giving Google an opportunity not to put that in
26 until the core issues and core categories of documents have been provided is so that

1 that exercise can be simplified and reduced for Google if it has been able to be
2 engaged and helpful in the process up to then. For example, if generous, sensible
3 and useful categories of core documents are provided which the Tribunal can be
4 satisfied covers a lot of the territory needed for disclosure in a proportionate way then
5 the EDQ will be a much easier job to do and can probably be much simpler; whereas
6 on the other hand if the core categories of documents provided are disappointingly
7 narrow and not as helpful as one might expect then a greater degree of management
8 going forward will be appropriate. Then there will be -- I direct a further CMC to focus
9 most critically on disclosure in an appropriate time after that last step, i.e.. the step of
10 provision of an EDQ and a disclosure report by Google.

11 Case Management Conference (continued)

12 THE CHAIRMAN: The last question, Mr Pickford, is how long at the end of that
13 exercise you need to do your EDQ and disclosure report.

14 MR PICKFORD: I'm just going to turn around and take instructions on that, if I may.

15 THE CHAIRMAN: Yes. (Pause)

16 MR PICKFORD: I do apologise, this is going to be slightly tricky. We obviously want
17 to give a date that we can actually do without having to come back to the Tribunal.

18 THE CHAIRMAN: I sympathise. We will come back to that -- that's just filling in a
19 crucial date. I understand why you want to take instructions but it is just filling in a
20 date in the directions so we will come back to that later in the day. I don't think we are
21 going to finish by lunchtime --

22 MR PICKFORD: I think that's correct.

23 THE CHAIRMAN: -- so we can come back to that date, you can take instructions until
24 then. Right.

25 MR LASK: I have one request for clarification in relation to the end of October [2025]
26 deadline for Google to provide core categories of documents, and the question is

1 whether that means a list of core categories, or the disclosure of actual documents.

2 MR PICKFORD: What we had understood that would be the list.

3 THE CHAIRMAN: Right.

4 MR PICKFORD: Obviously depending on how many documents that is, we seek to
5 provide copies for inspection as soon as possible afterwards but I don't know how
6 many documents that's going to be.

7 THE CHAIRMAN: Okay. I think you must expect that because -- for the very reason
8 that they are core, Mr Lask is going to want to see all of them.

9 MR PICKFORD: Yes.

10 THE CHAIRMAN: And because they are coming from electronic repositories I don't
11 think you are going to suddenly turn up with a whole load of paper from somewhere in
12 California, that will be a short time, so ...

13 MR PICKFORD: That is understood. Obviously we can work on this issue in the
14 interim. It's not that everything that we identify as something we have to disclose, we
15 can then provide a copy of, because there are issues of privilege, which is always
16 going to be the key thing, which may take some time for us to assess.

17 THE CHAIRMAN: To assess privilege? I don't understand sorry. I would anticipate
18 that when you provide the categories you will say, "Item 9 from this repository, except
19 insofar as it's privileged", and I hope you are not saying that you will say "Item 9, and
20 now we are going to start reviewing it for privilege and we'll be coming back to you in
21 January [2026]."

22 MR PICKFORD: No.

23 THE CHAIRMAN: I think it needs to be in a state that it is disclosable when you provide
24 it at the end of October [2025]. That's what I had in mind. There might be some
25 mechanics to sort out but because these are -- I didn't have in mind that there would
26 be the further round of -- not for a significant time anyway.

1 MR PICKFORD: That's what I understood. There may obviously also of course be
2 third party confidentiality issues on some documents where we would, in accordance
3 with the process that we've adopted for the EC documents, have to do the same thing
4 as we're doing. That wouldn't delay, obviously, Ms Stopford getting documents to
5 which that doesn't apply, but it might mean that there are some documents insofar as
6 they contain third party materials where we have to allow those third parties a proper
7 opportunity to come before the Tribunal, which is -- it slows these issues down but in
8 my submission inherent in the process.

9 THE CHAIRMAN: Right. Okay.

10 Yes, Mr Lask.

11 MR LASK: What we would ask is that in relation to those documents within the core
12 categories over which there is no reason to delay a deadline be laid down now, some
13 time after the end of October [2025], by which those documents should be disclosed,
14 if they are not simply provided with the list in October [2025].

15 THE CHAIRMAN: Mr Pickford, I think you should disclose them at the same time as
16 you identify them, unless there is a privilege or confidentiality or other issue, because
17 these are just electronic documents. If there's no problem with them, I can't see why
18 you don't provide them at the same time as your --

19 MR PICKFORD: We will provide them at the same time.

20 THE CHAIRMAN: And if there is something, I'll just have to leave it to your good
21 sense,, and there will be transparency about this after the event, but I have to leave it
22 to you and your clients' good sense that if you identify in August [2025] that these
23 documents are key, but they are subject to third party confidentiality, then there's no
24 reason why you can't start -- if you don't identify it till later or you are in doubt about it,
25 obviously you don't start asking third parties when you don't know if you are going to
26 disclose them or not. But if you know that it's going to be disclosable and it's core then

1 | you start asking them then.

2 | MR PICKFORD: That is where I --

3 | THE CHAIRMAN: If you have been able to deal with third party confidentiality in the
4 | advance of October [2025] then kindly do. But anything over which there's no
5 | problem/objection you will disclose at the end of October [2025], as well as identifying
6 | it.

7 | MR PICKFORD: That's understood.

8 | THE CHAIRMAN: Yes.

9 | MR LASK: Sir, the next big item is Google's application for a preliminary issue. But
10 | before dealing with that item,, it may be efficient to deal with our proposed direction at
11 | paragraphs 19 and 20 in relation to costs.

12 | THE CHAIRMAN: Yes.

13 | MR LASK: This is back in tab 8.1 -- B8.1.

14 | THE CHAIRMAN: Give me a second. Yes.

15 | MR LASK: You will see here we have proposed that essentially the parties provide
16 | periodic updates on their costs. And the reason that we propose this is that Google
17 | already has Ms Stopford's litigation budget and ATE cover, and the purpose of this
18 | direction is to enable Ms Stopford to have a similar level of visibility over Google's
19 | costs so that she can make sure that her adverse costs cover remains adequate. And
20 | we've explained this in correspondence. Google's letter of yesterday rejected the
21 | proposal and the reason it rejected the proposal is because it said, well, it's
22 | unnecessary, given that the Tribunal will only ever allow the parties to recover such
23 | costs as are reasonable.

24 | But, with respect, that misses the point because Ms Stopford's concern is to ensure
25 | that she has adequate cover to meet any costs order that entitles Google to cover its
26 | reasonably incurred costs. That's the purpose of the provision. And she has no

1 reason at present to believe that the existing cover is inadequate. But Google hasn't
2 made any comment on its inadequacy and Ms Stopford is keen to ensure that any
3 issues are flagged up before it's too late. That's why we seek paragraphs 19 and 20.

4 THE CHAIRMAN: Yes. Mr Pickford.

5 MR PICKFORD: Thank you, sir. We don't agree to the provision of our costs as
6 sought by paragraphs 19 and 20 of the order. This is not the norm in collective
7 proceedings. There's no evidence as to why there's something particularly exceptional
8 about this case that Ms Stopford needs further steps that are not required in other
9 such collective proceedings and in our submission it's not necessary and so we don't
10 agree to provide it.

11 THE CHAIRMAN: Right. Okay. The costs picture for you I think is going to be
12 substantially updated now that we know what's happening with disclosure, isn't it?

13 MR PICKFORD: Yes.

14 THE CHAIRMAN: Would you object to giving them an update in November [2025], in
15 the light of what's happening with disclosure? Because that's just, you know, a better
16 view of matters at an important stage of the proceedings. I'm not particularly attracted
17 to a rolling obligation on you to update but it is important, isn't it?

18 MR PICKFORD: I'm happy to take instructions on that. I will see whether there's an
19 easy-to-give-now or in terms of response or whether I'd ask to come back after lunch.

20 THE CHAIRMAN: Don't feel obliged to do it now, we will come back after lunch.

21 Mr Lask, I think it's quite heavy-handed to tell them they have to do it every six months
22 and it doesn't seem to me to be absolutely necessary, but we will be at an important
23 turning point at the turn of the year.

24 MR LASK: It may be that at key staging posts in the proceedings, updates can be
25 provided. And we would certainly be grateful to receive an indication of what the costs
26 picture looks like in November of this year [2025]. But there will be a long way to go

1 after that.

2 THE CHAIRMAN: There will, I'm sure. I'm asking Mr Pickford to take instructions on
3 doing these two steps once, for the moment, at an important time in the proceedings
4 when things would have clarified.

5 MR LASK: And we can perhaps, subject to what --

6 THE CHAIRMAN: I'm not saying you can't come back later but the rolling scrutiny I
7 think is not justified at the moment.

8 MR LASK: Okay. Thank you, sir.

9 THE CHAIRMAN: Also, let's face it, that's important information for any settlement
10 discussions that happens so it's not bad to have it out there.

11 MR LASK: Understood. Thank you sir.

12 THE CHAIRMAN: It's 10 to 1 now.

13 Is it useful just to use those ten minutes talking about timing in the advertisers'
14 proceedings, or at least I can update you on my position so that you can think about it
15 over the adjournment.?

16 Excuse me while I get my phone out because I have my calendar on it. I would be
17 able to sit in the week of 22 September [2025]. I think it's two days plus one day in
18 reserve; is that right? Yes. It's vacation in the High Court sense but I'm prepared to
19 do that and I can arrange some time to provide a decision reasonably shortly
20 afterwards I expect. So that's what I can do. I definitely can't do the week of the 15th
21 because I have some non-sitting but judicial obligations.

22 Why don't we break for lunch and we will start again at 2.00 and you can factor that
23 into submissions you want to make about timing then and Mr Pickford can take
24 instructions on those other matters.

25 So we will resume at 2.00

26 (12.55 pm)

1 (The short adjournment)

2 (2.00 pm)

3 THE CHAIRMAN: Yes. What's next?

4 MR PICKFORD: It may be me. So I make a bid. So there were a couple of points I
5 was going to come back on, having taken instructions. In relation to a disclosure report
6 and EDQ, we have considered that -- we think the very earliest we can sensibly offer
7 on that is two months after the production of the final common issues document that
8 we are contemplating providing by the end of October [2025]. So that will be the end
9 of the year.

10 THE CHAIRMAN: Right, okay.

11 MR PICKFORD: In relation to the costs question, what information we could provide
12 on our costs, we are content to provide as at the date suggested by the Tribunal, our
13 costs to date, and we are also content to tell the class representative if and when we
14 hit a figure of 12 million in incurred costs, that being 3 million short of their ATE cover
15 at 15 million. We consider that that --

16 THE CHAIRMAN: Sorry, just tell me that again, Mr Pickford, sorry. Start again, sorry,
17 I --

18 MR PICKFORD: So two things are being sought from us. One is to give our costs to
19 date and the other is to give an estimate of costs. So we are happy to give the costs
20 to date in -- I think it was a date in November [2025] that was suggested by the
21 Tribunal, once we'd got to --

22 THE CHAIRMAN: Yes.

23 MR PICKFORD: -- post that --

24 THE CHAIRMAN: At the end of this --

25 MR PICKFORD: We are not proposing to give an estimate of costs because what it
26 is said by Ms Stopford is: well I need to know what your costs are because I'm

1 concerned whether my ATE insurance is going to be adequate.

2 THE CHAIRMAN: Right.

3 MR PICKFORD: We say the proportionate means of meeting that concern is that if
4 we get to £12 million in costs, that giving a cushion of 3 million before her ATE runs
5 out, we will tell her. If we don't ever get there, then she doesn't have anything to worry
6 about and if we do get there, then we can give her that information then and we can
7 deal with what further information, if any, is necessary at that point in time. That's our
8 proposal as to the proportionate response to what's being requested of us, given the
9 apparent motivation for it.

10 THE CHAIRMAN: Okay. Yes, okay.

11 MR PICKFORD: Would you like to deal with that --

12 THE CHAIRMAN: Yes, we can tidy those points away. Yes, Mr Lask, we --

13 MR LASK: I think what is being proposed is an indication of costs to date, as at
14 November this year [2025] and then a warning.

15 THE CHAIRMAN: Yes.

16 MR LASK: If (inaudible) hit 12 and in principle, that sounds fine. I would only reserve
17 Ms Stopford's position to come back at some point in the interim and say in light of
18 developments in the trial, we would actually like an update and we can have a
19 discussion about it then.

20 THE CHAIRMAN: Okay.

21 MR LASK: But I simply reserve the position at this stage.

22 THE CHAIRMAN: Yes, okay. And what about the date for the EDQ?

23 MR LASK: End of this year?

24 THE CHAIRMAN: Yes.

25 MR LASK: We can live with that, yes.

26 THE CHAIRMAN: Okay, but we will still have a CMC about disclosure. That means

1 we will be doing the CMC without the EDQ but I don't see -- I think that is still a
2 worthwhile --

3 MR LASK: It's a concern; still worthwhile from our perspective, not least because that
4 seems to be likely to be focused on the core issue process that we were discussing
5 this morning.

6 THE CHAIRMAN: Okay. All right, thank you. So those are both agreed then, Mr
7 Pickford. So your EDQ will be end of the year.

8 MR PICKFORD: Thank you, sir.

9 THE CHAIRMAN: I think that does make it important that there is no slippage. Okay.

10 MR PICKFORD: Next issue is preliminary issues which I've already opened to some
11 degree, so I think I will be very brief. The core point here is -- there are two issues.
12 One is about follow-on claims, one is about limitation. Starting with follow-on claims,
13 the Android element of Ms Stopford's claim is expressly a follow-on claim only. The
14 Commission's decision is dated 18 July 2018. She seeks to pursue her follow-on claim
15 for an infringement which she says carried on after that date.

16 THE CHAIRMAN: Yes.

17 MR PICKFORD: And that raises two issues. It raises a dispute of law about whether
18 that is ever possible; that is whether you can ever claim for an ongoing follow-on
19 infringement on a date after the date that the Commission took its decision.

20 THE CHAIRMAN: Right.

21 MR PICKFORD: And it also raises a dispute of fact, question of fact, about if the
22 answer to that first question is yes, you can, when in fact did the conduct constituting
23 the infringing behaviour, as found by the Commission, in fact end. So those are two
24 discrete issues. One is purely legal, the other is factual.

25 THE CHAIRMAN: Yes.

26 MR PICKFORD: What Mr Lask says is: ah well, this is just a small point, there's a

1 factual point between us. We are not seeking to have the factual point determined as
2 a preliminary issue, we are seeking to have the legal point determined as a preliminary
3 issue. Because it appears to us -- it has become clear but only through
4 correspondence, that it is a point between us. So what happened, very briefly, in terms
5 of how this point has crystallised, is that in Ms Stopford's reply, she pleaded points
6 about how long the infringement, the follow-on infringement supposedly -- well the
7 infringement lasted till and she said it lasted till 2021. We said: oh, you seem to be
8 pursuing a stand--alone claim now. She said: no, no, no, I'm not pursuing a stand--
9 alone claim, I'm entitled to do this because this is part of my follow-on claim. And we
10 say no, as matter of law, that's wrong. You can't pursue as a follow-on claim, a claim
11 that the infringement itself continued after the date of the decision. To give one
12 example of why we say that that can't be right, what that would imply is that Google is,
13 on a binding basis, said to be dominant in the market after the period for which the
14 Commission analysed that factual economic issue.

15 THE CHAIRMAN: Right some.

16 MR PICKFORD: We say that doesn't make sense but anyway, I'm not seeking to have
17 the argument now, I'm just giving an illustration of why we say it's a point we --

18 THE CHAIRMAN: Just to test -- just to understand it a tiny bit more, if there was no
19 reason to think that anything had changed.

20 MR PICKFORD: Yes.

21 THE CHAIRMAN: And it was just simply the same behaviour continuing in the same
22 context, even then you say you can't do it.

23 MR PICKFORD: Strictly speaking, as a follow-on claim, that is correct. We say that
24 is not, strictly speaking, a follow--on claim. It might be that you could pursue a
25 stand-alone claim which was trivially easy to win. Because if nothing changed at all
26 and it was agreed by both sides nothing changed at all, then you might say: well I've

1 got a stand-alone claim here and the reason why I win on my stand-alone claim is it's
2 just like the situation that prevailed in relation to follow-on. But it is not a follow-on --

3 THE CHAIRMAN: Unless there's some res judicata effect so you can't refight what
4 the Commission's found -- how does that work?

5 MR PICKFORD: Sorry?

6 THE CHAIRMAN: If it's black and white matter of law, could not the party in Google's
7 position say: well you just have to prove it all over again. What stops you requiring it
8 to be proved all over again?

9 MR PICKFORD: We are saying that if they want to pursue a claim post the date of
10 the Commission's decision, they do have to prove it. There may be a practical
11 pragmatic question about whether -- this is hypothetical because -- sir, you are asking
12 me a hypothetical question.

13 THE CHAIRMAN: It is a hypothetical question, yes.

14 MR PICKFORD: So in response to the hypothetical question, there might be some
15 circumstances where there was no issue on the facts about whether anything changed
16 and so I'm taking that as an extreme example. I'm saying in that extreme example,
17 even then it is not a follow-on claim. In that extreme example, it's a stand-alone claim.
18 There might be a question about how difficult it would be to prove that stand-alone
19 claim.

20 THE CHAIRMAN: Well in the stand-alone claim, they can't rely on the Commission
21 decision as having conclusive effect.

22 MR PICKFORD: Yes.

23 THE CHAIRMAN: So the party in your client's position in this hypothetical could say:
24 prove it all again or we'll start from scratch -- literally from scratch. We could. Nothing
25 legally to stop you doing that.

26 MR PICKFORD: That is correct. That is correct. And so as far as you are testing my

1 proposition, sir, it is put at that high level which is that even in those circumstances,
2 that is not a follow-on claim. And this is a point, evidently, between ourselves and Ms
3 Stopford. Notably, it's not a point between us and Dr. Brook because Dr. Brook takes
4 what we consider to be the orthodox position which is their continuing claim for
5 infringement in relation to Android is put on a stand-alone basis. Kaye, by contrast,
6 has gone down the Stopford route and say no, their claim for a continuing infringement
7 in relation to Android is also a follow-on. And as you've heard, what we say is that
8 both Kaye and Stopford are pursuing claims that are impermissible in that respect.
9 So this is a point on which we have clearly joined issue with Ms Stopford. It's a pure
10 point of law and it should be determined prior to matters such as ultimate disclosure.
11 That is the disclosure that we are going to have to give post an EDQ and disclosure
12 report. Because it matters what the timeframe of the claim is. If their claim remains
13 that it is just a follow-on claim and we are right that they are not permitted to pursue
14 for an infringement post October 2018, then that will, we say, affect disclosure. It was
15 said by counsel for Dr. Brook: oh no, that doesn't work that way because it would only
16 potentially go to issues such as remedy,, but we are still entitled to disclosure for the
17 purposes of infringement. I think he actually said that in relation to limitation, to be
18 fair.

19 THE CHAIRMAN: It was because he was talking about the slot --

20 MR PICKFORD: I beg your pardon, I merged --

21 THE CHAIRMAN: But I think the same question arises.

22 MR PICKFORD: Quite possibly. Actually, I think it's probably -- it is fair on him,
23 actually, if I address that in relation to limitation because I think that -- that was the
24 point that was made. So sorry, I conflated the two. So in relation to this point, we
25 haven't actually -- we don't know what Stopford's response is on this. They haven't
26 written us any correspondence to say: no, you are wrong about this, here's what we

1 say. They just -- at the moment -- I'll obviously hear what Mr Lask has to say about
2 that but I will have to respond on my feet.

3 THE CHAIRMAN: Okay, okay. Right.

4 MR PICKFORD: So that, we say, definitely is going to arise between us and Stopford.
5 There is a question then about: well given that it also might arise with regards Kaye,
6 how is this case managed?

7 THE CHAIRMAN: Yes, that was why I was just -- you know, thinking ...

8 MR PICKFORD: On that, we are pretty neutral. Our key point is it needs to be
9 addressed prior -- at a relatively early stage in the proceedings, and we are happy to
10 do it now, in Stopford alone. We are not trying to push anything --

11 THE CHAIRMAN: You mean to do it, you mean to actually have the preliminary --

12 MR PICKFORD: To have the preliminary issue now. If Kaye wishes to participate and
13 intervene and make legal submissions on that issue, then they could.

14 THE CHAIRMAN: You say you are willing to do it now,, but you are not insisting on
15 doing it now.

16 MR PICKFORD: No, but we do say that it should be determined once, as a matter of
17 law, by this Tribunal. And it will be very odd -- what we say should not be permitted to
18 happen is that we have a determination of this issue as between ourselves and Ms
19 Stopford.

20 THE CHAIRMAN: Yes. What, that is not binding on Kaye?

21 MR PICKFORD: Not binding on Kaye. So we say they should have a choice. They
22 can either sit it out because it's a pure question of law and they can be content that
23 Ms Stopford will pursue the point adequately, or if they want to participate, we are not
24 objecting to them participating either. Indeed, if they really want to, we can have this
25 point as a preliminary issue, once and if Kaye is certified -- if Kaye were certified, then
26 Kaye would join in; and if Kaye weren't certified, then presumably Brook would be on

1 our side on this. We don't particularly care which course is adopted, save for the fact
2 we want to make sure that it is determined as a preliminary issue because we say it's
3 important to questions such as the temporal scope of disclosure.

4 THE CHAIRMAN: Yes. I understand your position and your reasons for it. Obviously,
5 it's a matter for the Tribunal whether to have a preliminary issue because one response
6 is it will be determined at trial, you know. So one has to decide -- it's not a given that
7 you have a preliminary issue, there are a lot of downsides with preliminary issues
8 sometimes, so that question has to be addressed.

9 MR PICKFORD: Yes. Well you have heard my reasons why I say it would be sensible
10 to do it now. It may be that it could also be combined with a preliminary issue in
11 relation to limitation at the certification hearing of Stopford, or rather, in particular, sir,
12 in the Tribunal's ruling, you indicated that grappling with that limitation issue pre-trial
13 would be a good idea. And we say it would indeed be a good idea if and insofar as it
14 still remains in issue between the parties and we haven't seen what the amendments
15 are going to be yet, so we can't really take that any further.

16 THE CHAIRMAN: So another scenario is that the carriage dispute takes place, Brook
17 prevails.

18 MR PICKFORD: Yes.

19 THE CHAIRMAN: Then the question of the post -- got this right, haven't I -- 2018
20 situation will be out for determination in the conventional sense anyway.

21 MR PICKFORD: Yes.

22 THE CHAIRMAN: And that's a different scenario from where it's being run as a pure
23 point of: oh, it's just continuing in the way that Ms Stopford advances it?

24 MR PICKFORD: Yes. So that's quite -- right.

25 THE CHAIRMAN: Just give us a moment.

26 MR PICKFORD: That's quite right. So that's why I say -- that's one of the reasons

1 | why I say I don't have a particularly strong preference between any of the earlier
2 | determinations, i.e.. determining this as a preliminary issue. If the Tribunal would
3 | prefer, we can come back to this question, once we know which, if either, of the
4 | advertiser claims has been certified. It might be slightly easier to grapple with it at that
5 | point but I'm raising it right now because we are willing to deal with it earlier and
6 | because we say should it be grappled with later, I don't want it to be said: there was a
7 | CMC and you didn't even put this thing on the table. So we --

8 | THE CHAIRMAN: And just help me with this, I know it may be premature but if you
9 | win your argument that there should be a preliminary issue, are you going to be saying
10 | that everything goes on hold while that gets resolved and then appealed?

11 | MR PICKFORD: It depends, I suppose, on whether someone appeals it or not.

12 | THE CHAIRMAN: I get the impression that you would appeal it if you lost. I'm pretty
13 | confident about that. Since it's a pure point of law that makes a big difference for you.
14 | But I think I had better assume that there could be an appeal.

15 | MR PICKFORD: It would certainly, I think, make sense to assume that there might be
16 | an appeal.

17 | THE CHAIRMAN: Yes, so one needs to think about -- these are classic considerations
18 | that arise in the preliminary issue. Is it going to put the whole litigation on hold while
19 | there's an appeal?

20 | MR PICKFORD: Yes. And as you say, we might have a better idea as to the likely
21 | ramifications of the point, depending on who -- if either party wins the certification
22 | argument.

23 | THE CHAIRMAN: Right.

24 | MR PICKFORD: So I can see the argument there for revisiting it at that point. But as
25 | I say --

26 | THE CHAIRMAN: You are raising that -- but when one is dealing with a preliminary

1 issue, one must have in mind the impact on the proceedings as a whole, especially if
2 there's an appeal and how much time and effort you are going to save if the preliminary
3 issue succeeds.

4 MR PICKFORD: Yes.

5 THE CHAIRMAN: Or fails and at the moment, we don't really know that because the
6 pleadings remain to be done in the advertisers' claims which also bears on this.

7 MR PICKFORD: Yes, that is a fair point. One point I would, however, make in
8 addition, is there's been an unspoken assumption throughout the hearing so far which
9 I haven't particularly taken issue with, which is that we want to make progress if we
10 can, in relation to Ms Stopford's claim and, obviously, we've been seeking to offer what
11 we can to do that. Insofar as one makes the assumption that one of the advertiser
12 claims does get certified, inevitably in that scenario, joint case management of these
13 proceedings means a joint trial of both the advertiser claim and the Stopford claim.

14 THE CHAIRMAN: Yes. I understand that is your position primarily although there is
15 more to it than this, primarily because of the pass through question really. There are
16 other factors too but that's the standout point.

17 MR PICKFORD: That stands out all on its own and would justify all on its own and of
18 course, one wants to have consistent findings in relation to --

19 THE CHAIRMAN: I fully understand that is your position and I understand the reasons
20 why you say that.

21 MR PICKFORD: So the implication of that for my submission here is that we shouldn't
22 lose sight of the fact that for all that Ms Stopford is understandably keen to progress
23 her claim, given that we now have the advertiser claims, insofar as an advertiser claim
24 is certified, the reality is that the timetable for these proceedings is ultimately going to
25 be determined by the claim that needs to catch up. We can take some steps to try
26 and catch them up quicker but there isn't this earlier hearing date that Stopford's going

1 to lose out on because she wants to get her claim in quickly. She's always going to
2 have her claim heard at the same time as the later claim and so in my submission,
3 that does have a bearing on these types of case management issues as to whether
4 you think that there's going to be enough slack in the timetable to make it worth
5 grappling with these pure legal points early on.

6 THE CHAIRMAN: Yes. In turn, that depends on whether you are going to say
7 everything has to stop till the preliminary issue is determined in the Court of Appeal
8 so --

9 MR PICKFORD: I'm not sure we are ever going to say everything has to stop. As you
10 will have seen this morning, we are always happy to see what, pragmatically, can be
11 progressed. I'm not committing either way on that yet.

12 THE CHAIRMAN: No, no, I understand that. Okay, right.

13 MR PICKFORD: It might be that we reached a stage where there wasn't much more
14 that we could do or it might be that there were certain things that we could sensibly do
15 and it's premature, I think, for me to commit to that.

16 THE CHAIRMAN: Okay. Right. All right, okay. Thank you, yes.

17 MR LASK: Thank you, sir.

18 We don't agree that there should be a preliminary issue. Ms Stopford's position is that
19 insofar as this point of law is of any consequence, it can and should be decided at trial.
20 In order to develop that point, I'd like to start by showing you a relevant authority,
21 please. It's in the authorities bundle tab 1 and it's a recent case in the Tribunal, *Allianz*
22 *v Deutsche Bank*. And I need only take you to it briefly. It's tab 1 of the authorities
23 bundle, page 15. You will see paragraph 43 at the bottom. The Tribunal cites the
24 case of *Wentworth* in the Chancery Division, where Mr Justice Hildyard referred in turn
25 to the *Steele* framework. And if you wouldn't mind, sir, casting your eyes over the
26 passages that follow, in particular the ten --

1 THE CHAIRMAN: *Steele*, I have looked at many, many times, so --

2 MR LASK: So what I'd like to do is explain our opposition to a preliminary issue by
3 reference to those ten principles. I will take them in turn, although some of them can
4 be addressed quite quickly.

5 THE CHAIRMAN: Right.

6 MR LASK: The first question is would the determination of the preliminary issue
7 dispose of the case or at least one aspect of the case? Now this proposed preliminary
8 issue obviously wouldn't dispose of the Android case in its entirety and it's, at best,
9 unclear whether, in practice, it would dispose of any part of it. The reason for that is
10 as follows. Ms Stopford's case is that whenever the Android infringement itself ended,
11 the effects of the infringement continued beyond the date of the decision.

12 THE CHAIRMAN: Right.

13 MR LASK: And I can show you that by reference to the Claim Form if that will be
14 helpful. It's at bundle C9, page 46. This is in a section of the Claim Form dealing with
15 loss and damage. Paragraph 135, at the bottom of page 46:

16 "The *Android* Decision did not specify any particular remedy,, but left it to Google to
17 decide how to comply ((i.e.. how to bring the infringement to an end)). Initially,,
18 Google introduced a Choice Screen by which the device owner selected between
19 various search engines...[...] Google initially allocated slots on the Choice Screen by
20 means of an auction. That remedy was widely regarded as unsatisfactory and was
21 amended in June 2021 to remove the auction mechanism, following pressure from
22 rival search engines." [as read]

23 Then 136:

24 "This Choice Screen remedy introduced by Google in the EEA has had relatively
25 limited effects in practice for several reasons. [First, by][] the time the Commission's
26 remedy was introduced, Google had already secured a position of dominance in

1 mobile search and had been able, in practice, to prevent the emergence of effective
2 competition. That is likely in itself to have affected the outcome of the choice
3 consumers were asked to make between Google and rival search engines upon the
4 introduction of the Choice Screen.

5 "(b). The application of the remedy is itself limited. In particular, it only applies to new
6 devices. No Choice Screen was introduced on devices already in circulation in the
7 EU/EEA and so devices sold prior to the introduction of the remedy are unaffected by
8 that remedy. The effects of the infringement found in the *Android* Decision therefore
9 continued to apply."

10 Then (c):

11 "As noted above, the remedy initially introduced by Google was widely regarded as
12 unsatisfactory and was substantially amended as recently as June 2021." [as read]

13 Now Google has never contested Ms Stopford's right to advance that case, so it must
14 follow that Ms Stopford is entitled to claim damages. It must follow that it's common
15 ground that Ms Stopford is entitled to claim damages in respect of purchases made
16 by members of the class after the date of the decision. In other words, purchases
17 made after that date form part of the relevant value of commerce. And the reason I
18 emphasise that is because even if a preliminary issue were heard and decided in
19 Google's favour, it wouldn't affect the period for which Ms Stopford is entitled to claim
20 damages.

21 And to put it another way, whether the Android infringement is taken to have ended in
22 July 2018 or is held to have continued until September 2021, it may not actually matter
23 for the purposes of the Tribunal's assessment of causation and quantum at trial.

24 Whether it does matter may become clearer once the expert evidence has been
25 prepared. But as things stand, this could be a storm in a teacup. We raised it in our
26 reply, in response to a specific pleading in the defence but we haven't said it matters

1 because we just don't know yet. And neither has Google. And that is obviously a key
2 consideration in deciding whether there should be a preliminary issue. Will it affect
3 any substantive findings at trial? Mr Pickford said a moment ago that it could affect
4 whether the Commission's finding of dominance applies to the post decision period.
5 But of course, dominance is merely an ingredient of the infringement. The question is
6 whether it matters whether the infringement continued after the date of the decision.
7 And my point is that because we say and we are entitled to say that the effects
8 continued after the date of the decision, it may not actually matter whether the
9 infringement itself continued --

10 THE CHAIRMAN: I understand what you are saying, Mr Lask, that you have a pleaded
11 case that the effects of the infringement carried on after 2018. But that won't
12 necessarily have the same -- that does remove the black and white, drop dead, nothing
13 to think about after 2018 point, but it's not the same as a continuing abuse through
14 2019, 2021. So they will be different, albeit the continuing effect of an abuse during
15 the period the finding does relate to.

16 MR LASK: I accept that the analysis that enables you to reach a conclusion on each
17 of those two issues will be different. My point is,, no one has yet identified why it
18 matters whether the infringement continued after the date of the decision.

19 THE CHAIRMAN: Well because even if you are right about this point, it would be
20 worse, to use a loose term, if the infringement was continuing for three years, than if
21 one was looking at the effect of an infringement which has to be considered to have
22 stopped at the date of the Commission's decision. So that's why.

23 MR LASK: It might be -- well when you say worse, I assume you mean worse in terms
24 of its effect --

25 THE CHAIRMAN: I do, I do.

26 MR LASK: -- on pricing and effect on consumers.

1 THE CHAIRMAN: And which consumers it affects and how much and so on.

2 MR LASK: My point is,, there is no way of knowing whether that is right, whether it

3 would have that effect and the reason there's no way of knowing is because we are

4 quite early on in the process.

5 THE CHAIRMAN: Yes. I mean if what you are saying is that this isn't the right time to

6 decide whether to have a preliminary issue, then I agree with you. Because partly for

7 reasons you are advancing and partly because it does seem to me that it depends on

8 what happens with the advertisers' claims because if, as I said to Mr Pickford, if

9 Brook -- I apologise for just using the surname and nothing else -- if Brook wins the

10 carriage dispute and is then certified, then there will be a question of fact about

11 whether it's -- there won't be a follow-on claim post-2018 (inaudible).

12 MR LASK: Yes, the Tribunal will have to decide whether there's a stand-alone

13 infringement (inaudible).

14 THE CHAIRMAN: Yes, exactly, exactly.

15 MR LASK: That's another reason why.

16 THE CHAIRMAN: Quite so. And then, you know, Ms Stopford might say: well, okay,

17 then let's find out if it's a stand-alone claim anyway and if so, then I'm going to win --

18 MR LASK: Equally, if we are back here in six months' time, following certification of,

19 let's say, Mr Kaye's claim, instead of Dr. Brook's claim, I will still be submitting that

20 there shouldn't be a preliminary issue, for the reason I have just given and for a number

21 of other reasons I'd like to give but the reason I have just given is that in order for a

22 preliminary issue to be heard, the Tribunal does have to be satisfied that it's going to

23 have a substantive impact on the outcome at trial. And by that, I mean --

24 THE CHAIRMAN: Sure, sure.

25 MR LASK: -- causation and quantum.

26 THE CHAIRMAN: Yes, yes.

1 MR LASK: And if the Tribunal isn't satisfied that it's likely to have that impact, then it's
2 not appropriate to contemplate (inaudible).

3 THE CHAIRMAN: You only got to number 1 in *Steele*. I mean, you know, there are
4 other -- you know, this is bread and butter stuff. I mean, you know, there are other
5 ones. 8:

6 "The Court should ask itself to what extent their determination of the preliminary issue
7 may turn out to be irrelevant."

8 That is one that could happen here. I think, actually, you and Mr Pickford aren't very
9 far apart on the question of whether I have got the information I need to make a
10 decision about a preliminary issue as of now.

11 MR LASK: Well -- so I anticipate you might be envisaging a decision that the decision
12 should wait --

13 THE CHAIRMAN: Yes.

14 MR LASK: -- on a preliminary issue. If that's the decision, then fine but I --

15 THE CHAIRMAN: I mean Mr Pickford's not vehemently opposed to that. He's raising
16 it for consideration,, but I think it's fairly obvious that I would be balancing something I
17 don't know against something else I don't know,, and you really have to get these right.
18 That's one of the lessons of *Steele v Steele* and all the other cases where preliminary
19 issues go wrong, that you --

20 You know, it sounds so easy, doesn't it?

21 MR LASK: Yes.

22 THE CHAIRMAN: You know, people who are new to practice, they come up with
23 preliminary issue ideas all the time and they either get rebuffed or they get their way
24 and then they regret it. It's a very big decision and you have to get it right.

25 MR LASK: Indeed. If you are minded to defer the decision on whether there ought to
26 be a preliminary issue --

1 THE CHAIRMAN: I am. No, I am. Unless anybody is going to press me very hard
2 that I should decide it today, I think it definitely is premature.

3 MR LASK: I don't want to try your patience on the issue, I have seven// nine more
4 *Stee/e* principles to cover but perhaps I'll leave that --

5 THE CHAIRMAN: -- (Overspeaking) -- but there's only ten in total but --

6 MR LASK: All right. I will leave it there for now.

7 THE CHAIRMAN: Counsel for the advertisers might have something to say but I think
8 it's only fair that I show my hand.

9 MR CARALL-GREEN: I do have something brief to add, which relates to this point
10 that's been raised a couple of times about there being a difference between the way
11 that Brook PCR puts its case and the way that Ms Stopford is running her case. It's
12 right to say that we pleaded a stand-alone abuse from 2018 onwards. But if the
13 Tribunal is going to decide whether it is in fact bound, as a matter, effectively, of public
14 law by the decision beyond that date, then clearly we have an interest in that. So we
15 don't want to be left out of that.

16 THE CHAIRMAN: No, you shouldn't be left out of that, I don't remotely think you
17 should.

18 MR CARALL-GREEN: That is all I wanted to make -- (Overspeaking) -- the decision
19 is made.

20 THE CHAIRMAN: No, no.

21 MR CARALL-GREEN: We would want to participate in that so that we are also playing
22 on the same pitch.

23 THE CHAIRMAN: Mr Pickford didn't say you couldn't, he said you can choose. I think,
24 broadly speaking, you could choose.

25 MR CARALL-GREEN: He didn't try to shut me out, I accept that, but I just wanted it
26 to be clear that it's not an issue that I accept is irrelevant to the case --

1 THE CHAIRMAN: Oh no, not at all. No, no.

2 MR CARALL-GREEN: Thanks.

3 THE CHAIRMAN: Yes, Mr Khan.

4 MR KHAN: Thank you, sir. We are not being shut out by Mr Pickford from his
5 proposition for a preliminary issue but it's not without its problems. I think I can be
6 very brief because if I understand correctly, the Tribunal is not inclined to take what
7 has sometimes been described in the case law as a treacherous shortcut and it may
8 therefore be that it's not necessary to say very much.

9 THE CHAIRMAN: I'm going to assess -- what you have been saying is I am going to
10 assess the shortcut when the fog is clear.

11 MR KHAN: Yes. To aid you in peering through the fog, one very important practical
12 fact is how could the Kaye case take up Google's generous invitation, because this is
13 put in Google's skeleton argument, it's paragraph 36 of Google's skeleton argument,
14 where in relation to this, as you say, follow-on claim -- sorry, paragraph 32, the tale
15 begins, "Google is content to proceed to a hearing on this matter against *Stopford*"
16 and then as has been emphasised, without insisting on the point, they are also
17 perfectly content that Mr Kaye be involved. That's just over the page on paragraph 32
18 in Google's skeleton.

19 The same position is taken in relation to limitation, where I assume the same thinking
20 applies, where it's set out in a limit more detail at paragraph 36, where again it's
21 emphasised as a pure point of law and Google is content to proceed to a hearing, pre-
22 -certification of any advertiser claim, with the participation of other parties. The
23 advertisers. Well bearing in mind the likely timetable for, first of all, the carriage
24 hearing dispute, if necessary, and then the certification proceedings, it's very difficult
25 to identify when the time available would be there in the process for one of the
26 advertisers, pre--certification, to participate in such a hearing. Furthermore, since at

1 | this stage, neither advertiser has been certified, there's a question mark over their
2 | status in the proceedings. So this is not without its practical difficulties, even leaving
3 | aside the 10 points of *Steele v Steele*.

4 | On that matter, I don't know, sir, if it's a convenient moment for me to come back to
5 | your very helpful indication given earlier about the date of a carriage dispute hearing.

6 | THE CHAIRMAN: Yes, certainly if it relates to this, then please do.

7 | MR KHAN: It's all connected.

8 | THE CHAIRMAN: Yes, it is, yes.

9 | MR KHAN: And -- first of all, we are very grateful for having had that indication, with
10 | time to think about it. Now as is emphasised in Dr Professor Brook's skeleton
11 | argument, this is paragraph 8 of her skeleton argument, she asks the Tribunal to note
12 | that“ discussions are ongoing between the *Brook* and *Kaye* PCRs about the possibility
13 | of amalgamating the cases”. That is correct. There is not very much I can say about
14 | it but we would insist that both the Brook and Kaye PCRs are earnestly engaged in
15 | this process at the moment but given the nature of the proceedings, we are not
16 | necessarily entirely the masters of the timetable on this because the case involves
17 | economic experts and we have to draw on them in pursuit of these discussions.

18 | That means that we can't entirely control the discussions and --

19 | THE CHAIRMAN: The discussions about the possibility of amalgamating?

20 | MR KHAN: Indeed.

21 | THE CHAIRMAN: Right, yes, yes.

22 | MR KHAN: And we don't want to jeopardise that possibility by the rush to take up
23 | adversarial positions in a carriage dispute. Now if we take your proposal, sir, to sit in
24 | the week commencing 22 September [2025], we were trying to work out where that
25 | leaves us in the timetable for all the preliminary steps. You presently have in the core
26 | bundle -- this is in -- it's the draft carriage order which is section B, tab 8 of the hearing

1 bundle.

2 THE CHAIRMAN: Yes, I think I have a copy loose actually. No, I have misplaced it.

3 So I will go to your one. Yes. Yes, okay.

4 MR KHAN: Page 6 is where the timetable begins. You will see these dates are
5 indicated to be somewhat provisional because they are highlighted in yellow,, but
6 everything needs to begin with the first round of submissions on the carriage dispute
7 on 17 July [2025]. So very soon. Now because of the discussions that are going on,
8 the later state of play between the Brook and the Kaye parties was that we should
9 seek to postpone the joining of battle through those submissions, in order to allow
10 sufficient time for discussions to take place which aren't -- without them being
11 overshadowed by the carriage dispute. And we were thinking in terms of putting off,
12 therefore, the written submissions, until the beginning of September [2025] for the first
13 round.

14 Now in view of your indication, sir, that there could be a hearing in the week beginning
15 22 September [2025], that would considerably compress the timetable. Indeed, we
16 were wondering if it would even be possible to have the two rounds of submissions
17 that are contemplated if we were looking at a hearing as from 22 September [2025].
18 With respect to 22 and 23 September [2025], which would be, I think, the minimum
19 time necessary if it did begin on the 22nd [September 2025], I am informed that Mr
20 Kaye, our class representative, is unfortunately, not available on the 22nd or the 23rd
21 [September 2025], although he would very much like to be present for the hearing. So
22 that is one consideration. So if we were to have the two rounds of written submissions
23 as anticipated, then skeleton arguments, as I say, it would be very difficult to fit that in,
24 in view of a hearing starting, let us say, on the 22nd [September 2025] or indeed, in
25 that week. One way around that might be to allow, in effect, the skeleton arguments
26 to be the second round of submissions and thereby to include the possibility that

1 evidence might be served with the skeleton arguments, so that the skeleton arguments
2 would roll up those two stages. That is one possibility.

3 The other possibility is a later hearing date and I don't know, sir, if there's availability
4 later than the week of the 22nd [September 2025], at the beginning of October [2025]
5 for example. We were trying to work out possible timetables. And one possibility, if it
6 were to be held early in October [2025], then we could, on the one hand, allow time
7 for the discussions over the summer and for battle, if it is to be joined, only to be joined
8 as from the beginning of September [2025], and then there would be sufficient time to
9 have the two rounds of submissions, the skeleton arguments and the hearing. But, of
10 course, we are very much in your hands, sir, as to what the Tribunal wants to do.

11 THE CHAIRMAN: Okay. All right. Okay. Mr Carall-Green, why don't you respond to
12 that now, add whatever you want to. I think we have slightly moved into a parallel
13 stream from preliminary issue. I know it does all tie together but let me hear from you
14 whilst Mr Khan's submissions are fresh in my mind.

15 MR CARALL-GREEN: We are very happy to work with that timetable (inaudible).
16 There is some logic in allowing the parties to engage in discussions, without being
17 distracted by having to make submissions. What I'm hearing is that Mr Kaye is not
18 available on the dates that have been proposed, and I don't know what the Tribunal
19 will make of that but I'm certainly not going to stand here and insist the hearing goes
20 ahead in his absence. So if that's the position, then it sounds like the hearing will have
21 to be the following week or the week after that and if it is, then it ought to be possible
22 to accommodate all of the rounds of submissions and skeleton arguments from the
23 beginning of September [2025] onwards.

24 THE CHAIRMAN: Right. Okay. We will come back to that timing. It's helpful to have
25 it in mind in relation to the preliminary issues. So just going back to that, where we
26 got to was Mr Pickford had explained his position and Mr Lask had explained his

1 position. I have made my position pretty clear which is that I think there are crucial
2 elements to the balancing exercise that I cannot have a grasp of at the moment, so if
3 either of the advertiser representatives want to say that I should make a decision today
4 about the preliminary issue, now is the time to do it. No? Okay.

5 Mr Pickford, you've heard what I said. I'm very grateful for you raising it. It's very
6 important to have it in mind in the overall procedural context but I think the balancing
7 exercise is impossible with the information we have at the moment, so it doesn't stop
8 you applying for it and I think when you apply for it, if you decide you should, will
9 depend on events that are yet to happen. So it's not like I am telling you,, you should
10 apply in October [2025] or November [2025] or any time, you just need to use your
11 best judgment about when's the right time to do it, if you feel that it's appropriate.

12 MR PICKFORD: Thank you, sir.

13 THE CHAIRMAN: Right, okay. So I'm not going to determine whether we should have
14 a preliminary issue today.

15 So shall we come back to the advertiser timetable then? Is that logical, as far as you
16 are concerned, Mr Pickford, and you, Mr Lask, if we now come back to the --

17 MR PICKFORD: Yes.

18 THE CHAIRMAN: Right. So I went and researched my availability in those two weeks
19 in September [2025] because I thought it was common ground that it was desirable to
20 do it quickly,, which it is in a global sense, but the paragraph in Dr. Brook's skeleton
21 that my attention was drawn to just now, about discussions between the advertisers,
22 obviously caught my eye. It would be very desirable, to say the least, if it was possible
23 to agree amalgamation. I mean we are heading towards a very time-consuming and
24 expensive carriage dispute, at a time when it's possible to engage with the substantive
25 issues in the context of the key issues on disclosure and so on and so forth. The
26 carriage dispute is significant litigation overhead and I haven't heard anything about

1 the merits yet,, but my intuition is this is going to be one of those cases where both
2 sides put forward a very competent way of managing the claim and it's going to be a
3 finely judged call. So I very much welcome the discussions and I hope they come to
4 fruition and I'm certainly not going to set a timetable which gets in their way. So I think
5 it's really between the advertisers to agree your preferred date, and timetable and I
6 am definitely not going to veto it if you think it will promote the chances of your reaching
7 an agreement. I haven't looked into the possibility of having a hearing later than that
8 week, purely because I have checked that I can prepare a judgment in the beginning
9 of October [2025] if we have a hearing in September [2025],, but I haven't looked at
10 rolling the whole thing back a few weeks, so I will need to do that.

11 In the context of that indication, what would you both like to do, is my question?

12 MR CARALL-GREEN: Could we confer briefly?

13 THE CHAIRMAN: Yes. Yes. I mean, it's another thing that's really important to get
14 right because it would be -- you've got your commercial imperatives, your funders to
15 consider and so on. I appreciate the large number of moving parts but for the health
16 of the litigation as a whole, it would be a very good thing if there wasn't a carriage
17 dispute. So I absolutely don't want to get in the way of an agreement, if one can be
18 reached. But it can't rumble on forever because as we have established today, it has
19 a knock-on consequence to the Stopford litigation, so there has to be an end to how
20 much time can be given.

21 MR CARALL-GREEN: Of course. I think what is being contemplated is only a
22 movement by a couple of weeks from the hearing that you had suggested --

23 THE CHAIRMAN: Right.

24 MR CARALL-GREEN: -- earlier today.

25 THE CHAIRMAN: Right, okay. All right.

26 MR CARALL-GREEN: If we can have a moment to confer, then we might be able to

1 put that in writing for you to --

2 THE CHAIRMAN: I will rise for five or ten minutes while you think about that. I have
3 one other question for all the parties which is I saw in one of the timetables that
4 mediation is planned or provisionally scheduled for January or February 2027, I think
5 I'm right in saying? Yes. That's right, isn't it, somebody has proposed that. Yes,
6 there's nodding at the back. I would encourage -- if there's going to be a mediation
7 and if it's going to be provided for in the timetable in any sense, that's a crazy amount
8 of time away from now. Do we -- Mr Pickford doesn't look at all attracted to it ever
9 happening -- -- but I do encourage the parties to think about that because if it ever
10 does happen, it won't be a one-day, you know, one and done, it will be a process and
11 the idea that it won't even start till 2027, if it's going to happen, I find pretty appalling.
12 If it's hopeless and the parties don't want to embark on it, that's a different thing
13 but -- anyway, have a think about that if you are able to say anything about it now and
14 I will rise till 3.00 and we will try and tidy up the advertiser timetable.

15 (2.52 pm)

16 (A short break)

17 (3.00 pm)

18 THE CHAIRMAN: Yes.

19 MR CARALL-GREEN: Sir, we would like to propose the two-week extension I referred
20 to earlier. So that would put our first round of submissions on something like 5
21 September [2025], the second round on something like 19 September [2025], skeleton
22 arguments on something like 1 October [2025] and then a hearing we will propose for
23 6 October [2025], where we can agree(?) the first three days there. And as backups,
24 I think I can offer the week of the 13th any time.

25 THE CHAIRMAN: Of October [2025]?

26 MR CARALL-GREEN: 13 October [2025], any date in that week.

1 THE CHAIRMAN: Just give me one second. (Pause)

2 Yes. That's not going to fit with my availability. What I'm going to have to do is try

3 and -- I will go and find out about 6 October [2025].

4 MR CARALL-GREEN: I'm grateful.

5 THE CHAIRMAN: I have various commitments. Right. That's fine, because assuming

6 I can also find time for some decision-writing then this will still be squared away in time

7 for the CMC on disclosure or other steps down the road.

8 MR CARALL-GREEN: Which will be some time in November [2025], if I have

9 understood --

10 THE CHAIRMAN: Yes.

11 MR CARALL-GREEN: Yes, sir. There is of course the related question of directions

12 (inaudible) certification, but perhaps we are not dealing with that right now so we can

13 perhaps park that for the time being and revisit it later this afternoon.

14 THE CHAIRMAN: Okay.

15 MR CARALL-GREEN: I think Mr Pickford wants to say something.

16 MR PICKFORD: I was wondering when until later this afternoon, because I thought

17 we --

18 MR CARALL-GREEN: We could do it now.

19 THE CHAIRMAN: Mr Khan, that is agreed as far as you are concerned, 6 October

20 [2025]?

21 MR KHAN: Can I just say yes, I am informed Mr Kaye is available the whole of that

22 week of 6 October. We apologise again for seeking a change but the pressure of time

23 on discussions about amalgamation would be extremely difficult otherwise. So if that

24 alternative date just proposed by Mr Carall-Green,, 6 October [2025],, in that week is

25 a possibility we would be extremely grateful.

26 THE CHAIRMAN: We will have to think benefits if it's not.

1 MR CARALL-GREEN: Indeed.

2 MR KHAN: I should in that respect just flag to you, sir, that a further complication is
3 that I am awaiting on news from the Court of Appeal about the fixing of a hearing which
4 is to take place some time perhaps in late October; that is the best guesstimate that
5 my clerks can offer as the likely date that the Court of Appeal will land on. But that is
6 a case where we are waiting to hear -- it's a two-day hearing in the Court of Appeal
7 and it is an appeal from a judgment of the Tribunal. It also involves work in September
8 [2025], and indeed it is no respecter of the month of August, but as regards September
9 [2025] there is an intervention by the Competition and Markets Authority in the case
10 and one very important submission to be filed is that of the principal parties to the
11 intervention by the CMA on 12 September [2025]. That would be workable in line with
12 the timetable just suggested to you by Mr Carall-Green. Of course,, if the 6 October
13 [2025] is not possible and the hearing of a carriage dispute, if it takes place, has to be
14 later than 6 October [2025], then that should not be a problem, as long as it's not
15 significantly later than 6 October [2025], in which case I'm at risk of finding myself
16 double-booked.

17 THE CHAIRMAN: Right. Okay. I'm fairly confident that if it's not 6 October [2025]
18 then I won't be able to do it that term and that's not acceptable. So if it's not 6 October
19 [2025] then we are going to have to revert to the September [2025] plan, I think is
20 my -- it's where I'm pretty sure things are going to end up for me.

21 MR KHAN: Yes. I think we all understand. If, as you have just said, it could not be
22 this term, then we will entirely understand --

23 THE CHAIRMAN: We will be back to September [2025] then. Then can you adjust
24 the timetable for September as you please, but I think it's going to be 6 October [2025]
25 or back to plan A, in which case this is only contingent -- we will try to avoid the first
26 two days of the week so that Mr Kaye can be here but what will be will be. It's desirable

1 that he should be here but not essential.

2 MR CARALL-GREEN: I should clarify that under plan A we have indicated that we
3 are not available after the Wednesday.

4 THE CHAIRMAN: Of?

5 MR CARALL-GREEN: So the current plan, this is onto 22, 23, 24 September [2025]
6 is fine for us. But if it were to be deferred by a day or two we would be in difficulties.

7 THE CHAIRMAN: Because?

8 MR CARALL-GREEN: Because our leading counsel is not available.

9 THE CHAIRMAN: Okay.

10 MR CARALL-GREEN: And I should also make clear that our plan B is for 6 October
11 [2025], again not for later in the week but for 6 October [2025]. So if you are unable
12 to start the hearing at the beginning of that week that will cause us difficulties and we
13 would ask to revert to plan A.

14 THE CHAIRMAN: Okay. That's fine, actually, because it's going to get more difficult
15 with each passing day rather than easier. So if the beginning of October [2025] is
16 possible then the 6th will be better. Is the 6th the first day of term, is the only thing? I
17 will have to check that.

18 MR CARALL-GREEN: My guess is it's a Monday,, but I couldn't say for sure.

19 THE CHAIRMAN: In that case it won't be the 6th because that's the first day of term
20 and there'll be all the judicial meetings so it will be the 7th; it'll be the 7th and the 8th
21 in that case, I'm afraid. One's allowed to skip the start of term meetings but it's not at
22 all desirable, so if that is the first day of term then I will ... (Pause)

23 Oh, the first day of term is 1 October, so that's all right. Okay, fine, thank you very
24 much. I should have known that, sorry. All right.

25 So the final decision on that will await my checking my availability. Thank you very
26 much.

1 Okay. So carriage directions next.

2 MR CARALL-GREEN: Certification. Certification directions. For that we have
3 a -- there is a draft order I don't think, sir, you will have, because --

4 THE CHAIRMAN: I think I have a directions one and a carriage one.

5 MR CARALL-GREEN: The draft order to certification I think was updated as of last
6 night and we have some hard copies.

7 THE CHAIRMAN: Okay.

8 (Pause) (Handed)

9 MR CARALL-GREEN: Thank you for your patience. This shows a proposal from the
10 PCR side to Google and Google's mark-up of that, and you will see that it's almost
11 completely agreed. Almost all of the changes are drafting changes. There are just
12 two outstanding points, one is about disclosure and the other one is about timing. The
13 point about disclosure is, you can see at paragraph 2 of the draft order, on the PCR
14 side we've asked Google to provide non-confidential pleadings from Stopford.

15 THE CHAIRMAN: Right.

16 MR CARALL-GREEN: And Google has consented to provide the defence and said,
17 "Gog and ask Ms Stopford for the other pleadings." I think what I want to say is we
18 would just love to see them,, and we don't really mind who gives them. We are not in
19 proceedings against Ms Stopford. If she is going to give them to us, then we would
20 be grateful but otherwise we would like an order, one way or another, "so that we can
21 know what's going on, Ms Stopford."

22 MR LASK: We are happy to share.

23 THE CHAIRMAN: That one's solved, thank you.

24 MR CARALL-GREEN: I am very grateful.

25 The only other point is about timing and you will see that at paragraph 4 of the draft
26 order. At the moment this is keyed to -- or the clock starts, if you like, as at the

1 Tribunal's carriage decision. Now obviously that will have to change if there is an
2 amalgamation because the parties will apply for the carriage directions to be varied
3 and will seek a different kind of order. But that ought not to cause any difficulties
4 because the timetable will presumably just run from whatever appropriate order that
5 the Tribunal makes on amalgamation if that is the Tribunal's decision.

6 That, I don't think, ought to concern us, but of course people will say if there are any
7 complexities arising out of that and perhaps we can address them in due course. But
8 on this timetable Google has asked for eight weeks from the carriage decision: we had
9 proposed five. I am not going to press the point sir, the only thing I would say is that
10 we try to adopt the moderately accelerated timetable in order not to cause undue delay
11 in Stopford, acknowledging that whatever case emerges from the carriage discussions
12 or dispute will probably want to be jointly case managed alongside Stopford. So if
13 Google and Ms Stopford consider this timetable does not lead to undue delay then we
14 would be content with it. Equally, if we are going to be told that we need to move
15 faster,, then we would be happy to do so.

16 THE CHAIRMAN: Okay.

17 MR CARALL-GREEN: That's all I wanted to say.

18 THE CHAIRMAN: Yes. Mr Khan, you --

19 MR KHAN: Thank you, sir. We are content with that. Just to echo what Mr
20 Carall-Green said, we would be content to move faster on the steps to certification if
21 the Tribunal judges that to be necessary.

22 THE CHAIRMAN: Right.

23 Sorry, Mr Carall-Green, I meant to ask you: in your skeleton you said that there was a
24 problem with Google's timetable because it contemplated waiting for any possible
25 appeal to be resolved.

26 MR CARALL-GREEN: I think that has been clarified, that's been resolved by

1 agreement. So this draft starts the clock as at the first instance decision. So if a party
2 then wants to say there's an appeal and there should be a stay, that application would
3 obviously be open to any party to make but the default position is that just get on with
4 things.

5 THE CHAIRMAN: Yes. Yes, Mr Pickford.

6 MR PICKFORD: Thank you, sir. Very simply, we say eight weeks is an appropriate
7 amount of time. We are obviously going to do some work, anticipating that either claim
8 might be certified, or potentially none, obviously it will depend -- sorry, the -- I beg your
9 pardon, I'll start again. We are going to do some work ahead of certification on the
10 basis of one claim or the other winning carriage, assuming of course that they don't
11 join their claims. But there is a lot of work that it would not be sensible for us to
12 undertake until we know which we are facing, if we are only going to be facing one of
13 them. And we say eight weeks is a sensible amount of time to leave to actually
14 produce a full response to whoever wins the carriage dispute, if there is one. And it
15 doesn't need to be accelerated to five weeks. We say that is unnecessarily tight.

16 THE CHAIRMAN: Yes. Just help me, when does the -- so the total elapsed time from
17 the judgment on the carriage issue is 11 weeks per paragraph 11 of this draft but that
18 would be 15, would it, if they get the time estimate --?

19 MR CARALL-GREEN: I suspect that what has happened here is that the black text
20 was our proposal, which would have five weeks for a response, four weeks to reply,
21 taking you to nine weeks, and then 11 weeks for the hearing. I think what may have
22 happened is that Google may have -- just a clerical error -- omitted to extend paragraph
23 11 by the corresponding three weeks (inaudible) to the 14th, I think.

24 THE CHAIRMAN: That means that the certification would not be until February [2026],
25 on Google's timetabling, whereas it could be January [2026] in yours, and if --

26 MR CARALL-GREEN: Of course depending on when the judgment can be handed

1 down. We are in the Tribunal's hands on that.

2 THE CHAIRMAN: All right.

3 MR PICKFORD: Our key concern is how long we get for our response. We are less
4 concerned about how long there is between our response and the hearing. But if the
5 winner, whoever that might be, of the carriage dispute, wants there to be a longer gap
6 between our response and the hearing then obviously we are going to accommodate
7 that. All we want is eight weeks for our response.

8 THE CHAIRMAN: Okay. Thank you very much.

9 Mr Lask, it doesn't directly affect you,, but it might indirectly affect you.

10 MR LASK: It's difficult for me to object to the timetable that Google and the PCRs
11 have agreed. I suppose I would only flag up the point that the case management CMC
12 that is provided for in the composite draft order I took you to earlier depends on the
13 date of judgment in the certification hearing. So this all has a knock-on effect on the
14 timing for the CMC at which directions for trial can be considered in the Stopford claim,
15 and indeed any certified advertiser claim. So that's a long-winded way of saying the
16 sooner this can all happen the better for Ms Stopford.

17 THE CHAIRMAN: It's at that general level.

18 MR LASK: Yes.

19 THE CHAIRMAN: I think that there is a lot that Google can do prior to the decision on
20 the carriage issue but at the same time I think the preparation of evidence is going to
21 be a very heavy job, and so I think I will give Google the eight weeks and that will need
22 to be adjusted into the later paragraphs of the draft order.

23 I should say that I have not yet managed to -- because there are so many
24 uncertainties -- look at my own availability for February [2026], and because of the
25 way patent trials are listed it's perfectly possible that I already have a trial in there. So
26 I don't want the parties to think that I'm necessarily going to be available as soon as

1 the timetable allowed for in here comes to an end. And subject to any observations
2 from the parties, I think it would be very unfortunate if a different chairman had to do
3 the certification hearing, given that I did the Stopford one and this case management.
4 So I don't want to give people the impression that my availability is such that we'll
5 instantly move to doing that hearing. Okay. Yes.

6 MR LASK: Sir, you raised a point on mediation before the break.

7 THE CHAIRMAN: I did, yes.

8 MR LASK: I think the provision that you were thinking of was contained in the draft
9 order we provided in early April [2025] which provided a full set of directions for trial.
10 And the reason that that order provided for mediation by 5 February 2027, was that it
11 was after the exchange of expert reports on that proposal and we thought it appropriate
12 that mediation to await the expert reports. It's not in the composite draft order you
13 have been shown today because that is only really focused on disclosure. So I think
14 the question to be addressed, following your question, sir, is whether any mediation
15 should be before or after the exchange of expert reports. And given that the timing for
16 that can't be considered at this time, we would suggest that that be revisited at the
17 case management CMC that will follow certification in the advertisers' claims because
18 that is when we will be discussing a full set of --

19 THE CHAIRMAN: Sorry, which CMC?

20 MR LASK: There are two CMCs envisaged in the composite draft order.

21 THE CHAIRMAN: Yes.

22 MR LASK: One is what I will call the disclosure CMC in November [2025], and then
23 another is a case management CMC, which will follow certification.

24 THE CHAIRMAN: Yes.

25 MR LASK: What I'm suggesting is that the issue of mediation be revisited at the case
26 management CMC because that will be the time when the Tribunal will be invited to

1 (inaudible words).

2 THE CHAIRMAN: Yes, thank you. I will be interested to hear observations from any
3 of the other parties as well. I wasn't planning to make an order today,, but it caught
4 my eye and, you know, it's topical, and it's increasingly important and it ought to get
5 the Tribunal's interest at an early stage. That was why I raised it.

6 MR LASK: We agree. And we are obviously in favour of some sort of provision, that
7 is why we included it in the draft order.

8 THE CHAIRMAN: Yes, okay. All right. Does anybody else want to make any
9 observations about that? No. For myself, I don't -- we will revisit it,, but I think
10 experience shows you don't need the experts' reports to conduct an effective
11 mediation. You have very, very detailed pleadings and lots of evidence already on the
12 certification and, you know, February 2027 is a year and a half away and many millions
13 of pounds as well. I will invite the parties to come along with some really concrete
14 proposals and reasons to that CMC but that will have to be the second CMC, as you
15 say, Mr Lask.

16 Okay. Is there anything else?

17 MR LASK: No, sir.

18 THE CHAIRMAN: Thank you very much to all the representatives. And you'll draw
19 up the order, will you?

20 MR LASK: Yes.

21 THE CHAIRMAN: Okay. Thank you.

22 (3.25 pm)

23 (The hearing concluded)

24

25

26