IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1379/5/7/20

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Wednesday 17th September

Before:

The Honourable Mr Justice Butcher
Peter Anderson
Simon Holmes

(Sitting as a Tribunal in England and Wales)

BETWEEN:

KERILEE INVESTMENTS LIMITED

Claimant

v

INTERNATIONAL TIN ASSOCIATION LTD

Defendant

A P P E A R AN C E S

Brian Beckett on behalf of Kerilee Investments Limited

Laura Elizabeth John on behalf of International Tin Association Ltd

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, 17 September 2025

(4.00 pm)

Housekeeping

THE CHAIR: So this is the hearing in Kerilee v ITA.

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

Yes. Ms John, this is your original application?

MS JOHN: It is.

Sir, can I begin by just checking on a bit of housekeeping because, unfortunately, the documents are coming in in dribs and drabs, so I'd like to make sure that the panel has everything that it should do.

Yesterday afternoon, those instructing me filed an updated bundle with the tribunal, which includes our reply to the claimant's application. I hope the tribunal has received that.

There's been a further flurry of correspondence since then: three emails from Mr Beckett this morning, including a further witness statement; an email this afternoon, including a third witness statement; and this afternoon, we've sent the tribunal a copy of the pleadings, as it may be necessary to refer to those briefly.

Does the tribunal have all of those documents?

THE CHAIR: Yes.

MS JOHN: Thank you. I appreciate that.

So, in terms of order of business, we have my application today for a payment on account of costs. We also have a number of cross applications made by Mr Beckett

on behalf of the claimant.

We obviously convened today to deal with my application, but the claimant's applications, in fact, are logically prior. Mr Beckett asks the tribunal to set aside the order for security for costs and/or the order striking out the claim. So, on the basis that those are logically prior, I would be content for Mr Beckett to go first this afternoon, subject to a caveat about timing because, obviously, while I appreciate he gets a certain latitude as a litigant in person, I don't want my application to be filibustered because we have a limited amount of time available.

So, if the tribunal is content to proceed on that basis, I would suggest that Mr Beckett goes first. But I am in your hands, sir. I'm happy to do it the other way round if that's more convenient.

THE CHAIR: Right.

Mr Beckett, how long will you be in presenting your applications?

MR BECKETT: I'll try to make it as fast as I possibly can. I can't really be any more specific than that, sir, and my apologies accordingly.

THE CHAIR: Well, you've heard what Ms John says. She says she wants to make sure that there's time for her application after yours. Can she have that assurance?

MR BECKETT: I'll try my best to. Yes, sir. My apologies. I'm not obviously legally qualified, so I'll have to try and make it as snappy as I possibly can.

THE CHAIR: Yes. Right, well --

MR BECKETT: First and foremost in -- sorry, my apologies. Should I continue?

THE CHAIR: Yes, you continue.

Application by MR BECKETT

MR BECKETT: Fine.

In terms of Ms John's request for an on-account payment, it appears to have

completely missed the attention of the defendant and, therefore, defendant lawyers and counsel that the amount claimed is already actually held by the defendant and has been for between the past seven and ten years, in the form of capital and assets trapped in the scheme. That's the first point I would like to make.

Secondly, having requested that the tribunal set aside the strikeout on various grounds, the reason for my last extraordinary witness statement asking you to consider was that Ms John states in the application and submissions which I received yesterday evening -- and in terms of the length of time taken to respond, there were 228 pages and, sadly, I don't have the benefit of people capable to read them for me, so I read most of them last night and the remainder of this morning, and I came upon page 201, point 9, in which Ms John states that the claimant cannot be serious suggesting fraud. I'd like to counter on that, as I've stated in the witness statement which I gave this afternoon and which I won't repeat, beyond saying that there's clear and precedent evidence of the claimant giving fraudulent statements, both in the Ugandan High Court, in the DRC Commercial Court and again in the CAT. So that's why I felt I must make that objection because, on that basis, I just feel that we're justified in asking for a set-aside in order for the tribunal to judge the real facts, rather than just the technicality of the strikeout.

With the utmost respect to everyone, I think I could continue along the lines of that discussion, but I think it would probably be better if I were to pause now, leave those thoughts in the minds of the tribunal and the panel, and let Ms John continue again.

THE CHAIR: Well, it's a matter for you, Mr Beckett, as to whether you want to leave it there.

The allegations which you're making, of fraud, are clearly serious allegations, and if we are to consider and act on them, we need to be quite clear as to exactly what it is you're saying and on what basis.

MR BECKETT: Thank you. In that case, could I please expand somewhat and, again, I'll try to make it as brief as I possibly can.

The allegations constitute of facts that the defendant, from 2014 onwards, has deliberately trapped my company's capital and assets within the scheme, effectively disenfranchising us from operating. The witness statement gives some basic detail. The case itself, which obviously has not been heard, gives much more detail, and in my opinion -- and was the opinion of the counsel who I prior retained and who I currently can't afford to retain -- was that that evidence was vital to my case. I now find that evidence discredited by Ms John, who states quite categorically that we can't be serious in suggesting fraud.

But given that the evidence which counsel Kennelly and/or Nathan would have given if I'd been able to afford for them to do so would have included bringing all of that detail to the tribunal, I think it's only fair to say that -- well, I would say this, of course, but it's only fair to say that we do deserve the opportunity to at least have that evidence heard, and especially in view of the fact that if the tribunal were to award the costs claimed by the defendant, we would then, as claimant, rely upon those facts, being that our assets and capital, as explained on our balance sheet, cover primarily -- in fact, almost totally -- what the defendant is claiming, because the defendant, in essence, already sits upon it.

I'm sorry, have I made that clear, Justice Butcher? My apologies if I haven't.

THE CHAIR: No, I understand that, yes.

MR BECKETT: So, therefore, that's the basis on which we're applying for the set-aside; on the basis that: how can the defendant claim a costs award when they've already been sitting on those costs for the past seven to ten years?

THE CHAIR: Yes.

In the recent documents which have been sent to us, there are mentions of a number

of other features of the history. I don't know whether you want to say what your position is in relation to them.

There's been a certain amount of talk about what was said to the Ugandan High Court.

MR BECKETT: Would you like me to expand on the background to that?

THE CHAIR: Yes. I'd like you to explain what it is you say -- if you do -- was the fraud involved there.

MR BECKETT: Okay.

Well, it's framed within the background of anti-competitive activity which we allege by the defendant and the defendant's members, particularly based in Belgium and in Uganda, but also in Rwanda.

The claimant made a claim against us in the Ugandan High Court in which they stated that they wanted jurisdiction of that case, which they had brought against us, in the UK rather than in Uganda.

THE CHAIR: Sorry, surely the action was brought by you in defamation in Uganda?

MR BECKETT: No, they brought the claim against us.

THE CHAIR: I'm not sure that's right, Mr Beckett. Surely the action was brought by you for defamation in Uganda and they applied to stay it, saying that it should be brought in England.

MR BECKETT: No. I'll stand corrected, but to take it back a stage further, the reason they brought the claim against us in Uganda was because they stated that we had defamed them in respect of the anti-competition case that we'd brought against them. We'd defamed them by publishing the details of the universal correspondence which they had issued against us in respect of what we've now brought before the CAT. That's why they were the applicant and we were the respondent.

In that claim -- though, to be honest, I'm not sure if whether they're the applicant or the respondent is relevant in overall terms, but what is, I believe, highly relevant is that in

that case, when filing for it to be brought in the UK rather than in Uganda, the defendant in the CAT case, the ITA or the ITSCI scheme, their governance committee member stated categorically and on more than one occasion that that case should be heard in UK jurisdiction because they, the defendant, are based in the UK, and because we, as Kerilee, not only are we based in the UK, but we are and were also a member of the defendant scheme, and so, therefore, as a member of the defendant scheme, we were bound by the regulations of the scheme; the fact being, as I stated in my witness statement this afternoon and as Ms John states, whether that was a faux pas or a deliberate fraud, the fact of the matter is, we were not and are not a member of the defendant scheme. Then, contrarily, in the CAT, the defendant again argues, once more to the contrary, that we are not a member of their scheme.

So either the defendant, ITA/ITSCI, whether it be in Uganda or the UK, are consistently either erring by describing us as a member when they know that we're not a member and so, therefore, not bound by their regulations, or they are deliberately -- arguably fraudulently -- misleading the Ugandan High Court, incidentally as they did the DRC Commercial Court, and now misleading the CAT.

THE CHAIR: Right. One thing --

MR BECKETT: I hope that explains things. My apologies.

THE CHAIR: Yes, I think it explains what you're saying.

One thing that seems to me clear is that it was you who had brought the proceedings in Uganda. I'm looking at the judgment of the Ugandan court, page 165. The respondent filed the action. The respondent is Kerilee. You filed the action against the applicant. The respondent, Kerilee, sought and obtained orders to serve the summons on the applicant, ITA, out of the jurisdiction, and it was then ITA which applied to set aside the service of the Ugandan proceedings on them out of the jurisdiction. So it was your action in Uganda.

MR BECKETT: Yes, but it was against their initial support of the prior anti-competition claim which had been brought by our Ugandan business partners who, unbeknownst to us, were pre-financed by an ITSCI member.

THE CHAIR: Right. So that's Uganda.

MR BECKETT: Which I think is a very key point, if I may say so.

THE CHAIR: How is it a key point for present purposes?

MR BECKETT: Well, it's a key point because, as is stated in the claim which has not been heard because of the strikeout, in order to -- sorry, let me try and simplify this. My apologies.

It's highly relevant because we had made pre-payments to the Ugandan company unwittingly, because they had chosen not to disclose that they were in serious debt to other third parties, including the ITSCI member, and they were illicitly -- again, without our knowledge; we halted it when we discovered -- they were trafficking mineral into the ITSCI scheme in Rwanda, so therefore ITSCI and ITSCI's defendant member were benefiting from that anti-competitive and fraudulent action. We halted that.

The facts of the case in Uganda can be brought to the tribunal if the tribunal deems it necessary and gives us the opportunity for the case to be heard, and that will prove quite categorically that we are not, in any way, shape or form in possession of dirty hands and have not conducted any of the illegal offences which we were accused of by the ITSCI scheme over the past ten years.

But the relevance, to answer your question -- and I'm sorry if I'm taking too much of everyone's time up -- is that the initial claim from the Ugandan company on behalf of their ITSCI defendant member had the effect of trapping all of the investment which we had made in their company, and the reason that the defendant, ITSCI, supported it is very simple: they stood to benefit by approximately US$15 million in fees which would have been generated from that time up until the time that the mineral licence

would have been up for renewal.

My apologies, Justice Butcher and panel, if you feel like falling asleep in listening to me, but I can't describe it any more accurately and concisely than the way in which I have done.

THE CHAIR: Right.

There's also a considerable amount in the recent documents about Cronimet.

MR BECKETT: Yes.

THE CHAIR: What are you complaining about there, relevant for present purposes?

MR BECKETT: Okay. If I refer back to the Ugandan incident and further to a similar DRC incident and a similar Rwandan incident; in other words, the three incidents which had the effect of trapping our capital and assets, which would have been covered in a further witness statement which I've not yet had the time to provide.

But the relevance is -- the relevance is twofold, actually. In the case of the Rwanda incident, Cronimet were a direct beneficiary of the offence which I believe the defendant scheme conducted. That was diverting (inaudible) funded mineral from our supply chain to a Cronimet subsidiary.

But more to the point, Cronimet are not -- to use the phrase beloved of the defendant -- without dirty hands, and the relevance is as follows: Cronimet are the major trader or were the major trader of 3T minerals. They were a founder member of the scheme and their executive, Ms Owens, was recommended by the defendant to sit as an OECD representative on due diligence and traceability in conflicted and high-risk areas.

However, the lady from Cronimet was also co-opted onto the defendant governance committee, which then investigates issues such as the three items that I've mentioned: DRC, Uganda, and Rwanda. Together with Ms Nimmo of the defendant, there are three members on the governance committee, and a majority of two is required to

"prove" allegations and offences.

Ms Owens was most definitely not a neutral member. She had a partisan and conflicted interest in all of those three cases, and clearly would have voted with Ms Nimmo of the defendant governance committee and the scheme governance manager, who, in essence, has brought all of these investigations; I would say fabricated them all, she would say they're justifiable. Unless the tribunal actually hears the case, no one will ever know and we will have been penalised by selectivity.

The point being, in reality, they won the strikeout because we couldn't meet the cash call. We couldn't meet the cash call because they had deliberately trapped our capital and assets for the previous seven to ten years.

That is why, in a nutshell, they refused our request for the variation, because they knew, if variation was given, that all of this evidence would have been presented to the tribunal, and I think it's safe to say we probably wouldn't have been sitting here now, debating what Ms John really would love to debate; in other words, the costs award.

Finally, I'd like to say again that the costs award is, with all due respect, already held by the defendant, as I've just explained to you.

I'm sorry, again, if you all feel like falling asleep, but I couldn't explain that any faster than I have done.

Thank you for your time.

THE CHAIR: Well, thank you, Mr Beckett.

You're sure that that's all you want to say?

MR BECKETT: That's all I want to say. It's all in the witness statements and, contrary to what has been said of me in the past, I'm not, shall we say, anger challenged, I'm not a nasty little man from South Yorkshire who's trying to invent a claim to get rich. Before this, I was a very wealthy man, 12 years ago, and I would have continued to

retain that wealth and increase it if it had not been for the malicious action that's been taken against me.

Thank you very much for your time.

THE CHAIR: Thank you, Mr Beckett.

Yes, Ms John.

Submissions by MS JOHN

MS JOHN: Thank you, sir.

Well, you'll have seen from the reply submissions that we filed yesterday that we've done our best to disentangle the threads of what Mr Beckett is saying, because certainly what he has put in writing is confused and confusing and rather difficult to navigate.

So, as far as we understand the points that he's made, much of what he says is not relevant for today's purposes. We are not here to have a mini trial on whether an individual who is no part of this claim is guilty of criminal acts ten years ago in East Africa. So, for that reason, I don't propose to address the detail of those allegations, but I do want to emphasise, for the benefit of those watching the proceedings, that it's for that reason and that reason alone that I'm not addressing those allegations.

Mr Beckett has been very free with his accusations. He has named certain individuals and certain other companies. He's repeated the accusations made in writing. I want to make clear that there are answers that all of those people would wish to give to the accusations if we were in an appropriate forum to do so.

As we understand it, for today's purposes, there are two points that seem to be relevant. The first is an allegation that the tribunal's order for security for costs, or the tribunal's order for strikeout, were obtained by fraud. So we can see that if those allegations were made out, that might be a basis for setting aside those directions.

So dealing with that allegation first, it's obviously an extremely serious allegation that has been made against the defendant and also against its professional representatives. It's a very unfortunate allegation to have been made. There is simply no evidence whatsoever to support it.

To get that application off the ground today -- we've referred the tribunal to the test that's set out in the Tinkler judgment -- what Mr Beckett would need to establish would be fraud in the sense of deliberate dishonesty, and he would need to show that that fraud was connected with the order for security or the order for strikeout, because he would need to show that the fraud in question was material to the tribunal's decisions to make those directions, and he simply can't even come close to doing that. He makes all sorts of allegations about fraud in the background, but there's nothing that was material to those directions.

The tribunal will recall, I'm sure, the circumstances in which those directions were made, but just to recap.

The order for security for costs was made following a CMC in November, in the course of which, the tribunal will recall, Mr Beckett agreed that it would be appropriate for the claimant to provide further security for costs.

Now, that CMC would have been an occasion, if he had wanted to, for Mr Beckett to make the submission that the underlying merits of the case were such that the claim should be permitted to proceed. He could have made the point that an order for security would stifle a legitimate claim. He could have made the point that it was a result of the defendant's conduct that the claimant is impecunious. If he'd made those points, we were prepared at the CMC to address them. But none of those points were made; he simply accepted that security should be provided.

So, in those circumstances, there really cannot be a serious suggestion -- I stand by the wording in the submissions -- that the defendant deceived the tribunal in any way.

We then came to the order for strikeout. This was a subsequent hearing last March, and the tribunal will again recall the circumstances. The claimant had not paid the security that it was ordered to provide. It offered alternative security in the form of a parcel of land on an industrial estate. The defendant disputed that that was going to be adequate and we spent some time looking at the valuation report on that piece of land, and the tribunal agreed with the defendant that that was simply not going to be adequate in the circumstances.

Again, there is simply no respect here in which the defendant has deceived to the tribunal. There is no evidence of dishonesty in connection with either of those applications or directions.

Now, what Mr Beckett wants to do -- and he's expanded upon it this afternoon -- is to get the tribunal to look at the underlying merits of the claim. He wants to get into his allegations of underlying fraud in the background. He says my client is an anti-competitive organisation in the way it's been set up, and it's anti-competitive in the way that it's being run. On that basis, he said the tribunal should set aside the strikeout. He's simply not entitled to do that.

If the security had been provided, if we had then gone to a preliminary issues trial and the claimant had won, so it had established that English law was applicable to the claim, then we could move forward to a determination of all of these underlying allegations. But security wasn't provided, the preliminary issues trial hasn't been held, he hasn't established that English law applies to the claim, and he is not entitled to come to the tribunal today and ask for a determination that his allegations are good.

So we say that --

MR BECKETT: Please -- sorry, my apologies.

MS JOHN: -- aspect of the allegation falls to be dismissed.

Thank you, Mr Beckett. You'll get the opportunity to reply when I'm done.

MR BECKETT: Okay, thank you. My apologies.

MS JOHN: So the second thread that we identified as potentially relevant was the allegation regarding the conduct of proceedings in Uganda, where Mr Beckett says the way that we've behaved in Uganda means that there is an abusive process going on in the tribunal in the way that the defendant has conducted the defence.

As we understand it, the complaint that's relevant for today's purposes is that the defendant resisted the jurisdiction of the High Court of Kampala in a defamation action on the basis that the courts of England and Wales were the relevant forum. So Mr Beckett says, "You told the court in Uganda that this could be dealt with in England and Wales; it's an abuse of process now to be saying in England and Wales that the proceedings can't be dealt with here". That's it in a nutshell.

THE CHAIR: Well, I'm not sure that is it in a nutshell. I mean, that may be part of it, but one thing which I think Mr Beckett is saying is that you told the Ugandan court -- "told" is perhaps a slightly pejorative way of putting it -- you put in evidence in the Ugandan proceedings to the effect that there was an agreement, signed by Mr Beckett, to the effect that Kerilee was a party to ITSCI.

MR BECKETT: Correct, thank you.

MS JOHN: Yes. I mean, there's then a question of what the relevance of that would be for the purposes of proceedings here, but let me address it briefly.

If we turn back to the judgment of the Ugandan High Court, page 175 of the bundle, we have a neat explanation from the Ugandan High Court of this particular point.

So it commences just under line 15, towards the bottom of the page. It says, "The second point relates to". (Pause)

So what, as I understand it, the court is recording here is that when one applies to join the ITSCI scheme, a company is asked to sign the terms of the membership agreement and the company then becomes a provisional member while the

application is being processed. So during the course of a membership application, there are certain terms in the agreement that then become binding on the applicant party, and my understanding is that it's those terms that were being referred to here. So Mr Beckett is correct that the claimant never became a full member of ITSCI, the application was never approved, but it was a provisional applicant member at the time and that's what's being referred to here.

THE CHAIR: Well, when you say "at the time", what time is "the time"? Because in the next paragraph, overleaf on page 176 of the bundle, the Ugandan judge says:

"The record shows that the agreement provisional period is 1st April 2011 – 30th September 2011, after which parties would be expected to sign the full and finalized Programme Agreement. The Declaration of Accession to ITSCI Membership Programme was signed between the parties on 14/01/2014. Therefore, while the original provisional clauses may have lapsed, new undertakings were made subsequently by the parties on basis of the earlier clauses, and the Respondent became a full member by the terms of the agreement. The agreement is still binding until otherwise agreed and provided by the parties thereto."

MR BECKETT: May I respond on that?

THE CHAIR: Well, Mr Beckett, you can certainly come back when Ms John has finished.

MR BECKETT: My apologies. I apologise for not understanding the technicalities. Please carry on, Ms John. I'm sorry.

MS JOHN: If it's a point that Mr Beckett would like to clarify, I'm happy for him to interject.

My understanding of this is simply, as I have explained, that at the time when this jurisdiction application was being considered, the claimant was considered a provisional member of ITSCI, and so one of the matters that the Ugandan High Court

took into account was the terms of the agreement.

THE CHAIR: Yes.

MS JOHN: In any event, before we get bogged down in the detail of this, there is then the question of: well, what is the relevance of that for the proceedings here? Because as we've noted and as you picked up on in conversation with Mr Beckett, this was a claim in defamation. The proceedings before the tribunal concern alleged breaches of competition law.

In any event, we have not contested the tribunal's jurisdiction. It's explicit in the defence -- we do now have a copy if it's helpful to look at it. It's paragraph 9 of the defence. Explicitly accepts that the tribunal has jurisdiction over the defendant on the basis that it is a defendant domiciled in England and Wales. The point that was in dispute was what law is applicable to the claim, which I appreciate may be a slightly subtle distinction for a litigant in person to understand, but it is a distinct point. The defendant accepted jurisdiction; questioned whether English law was applicable to the claim.

So there's really no question of us having abused the tribunal's process in any way.

Now, I haven't, for my part, discerned any additional arguments, above the two that I identified in the written submissions yesterday, in Mr Beckett's submissions this afternoon. So, on that basis, my submission remains there is nothing in these applications and they should both be dismissed.

Unless I can assist the tribunal further, I'm content to leave it there.

THE CHAIR: Well, the further point which you might say you want to deal with at a different stage, I don't know, that Mr Beckett has been saying this afternoon is that the way in which matters happened was such that, in fact, his company's assets were trapped within the scheme for a period of many years, which, if he had had them, would have meant that his financial position was different or, put it the other way round,

that you have effectively already been secured or been paid these amounts of costs. I think that's what he was saying.

MS JOHN: That was the allegation, and that was my point about: it would have been relevant -- had he wanted to make that argument, it might have been one that the tribunal would have been prepared to consider at the time it was considering whether to make an order for further security. So one of the things that's relevant to consider is whether the impecuniosity of a claimant was caused by the actions of the defendant.

THE CHAIR: Yes, I understand. So you effectively answered that -- you say that that's an aspect of one of the things which could have been said as an answer to the application for security?

MS JOHN: Quite so, and it's not open to Mr Beckett now to come back and say that that's a reason for setting aside the order for the provision of further security.

THE CHAIR: Yes.

That's all you wanted to say, is it, Ms John?

MS JOHN: Unless there's any other point the tribunal would like me to address, yes, that's all I needed to say.

THE CHAIR: Peter, is there anything you would like to ask, or would you indeed like to have a word within the tribunal? That's an entirely open, neutral question.

MR ANDERSON: No, thank you very much, chair. I think I have no particular issues to raise either with Mr Beckett or with Ms John. I've made fairly full notes of what both have said and we can discuss those at some point when it is appropriate for us to be in camera session.

THE CHAIR: Yes, thank you very much.

Mr Beckett, would you like to say what you want to in reply to what Ms John has been saying?

Reply submissions by MR BECKETT

MR BECKETT: Yes, thank you for extending me that opportunity.

First and foremost, the defendant is unfortunately misleading Ms John and rather -- I think the phrase we use in South Yorkshire -- leaving egg on Ms John's face. We definitely did sign the accession agreement on 14 January, I think it was, 2014. Within a week of signing that accession agreement, we were excluded from membership after the defendant had received a whistleblower alert from none other, we understand, than the Cronimet group subsidiary company in Rwanda. The reason that we say we're pretty confident that it was that company is because we understand from our own enquiries that at that time, there was only one company within the ITSCI scheme membership in Rwanda which had a whistleblower line, and that was Mineral Supply Africa, a subsidiary company of Cronimet. That's the first point I'd like to make. The second point I'd like to make, which is included in the witness statements that I've provided, on September -- and this is the major reason for raising this. I think it was September 9, 2015, having excluded us for two years and, in the interim period, trapped our capital in Rwanda and in DRC in two separate instances, the defendant then wrote to us and instructed us that we must sign a gag agreement, stating that we would never again raise any of the incidents from 2013 onwards, and that if we didn't sign that gag agreement, we would not become a member of their scheme and they would never respond to us again. They furthermore went on to say that if we did sign the gag agreement, they would extend us membership, but again reminded us that we must at no time ever again mention what had happened between 2013 and 2015.

The point relevant now to the CAT, and specifically to what Ms John is doing her utmost to dismiss as being an irrelevance, is the alleged offences against us would have therefore been sat on the defendant's books and have been publicised as they were, which is why we ended up in the Ugandan court, to a variety of our client base,

the defendant's client base, and our supply chain, effectively disenfranchising our company, and if indeed we'd accepted the membership, we would have still been barred from dealing with most of the key members and non-members of the defendant organisation, because their seal of approval on mineral supply is used as part of a league table system by clients, and if you and your company have been found guilty of the offences which ITSCI found us guilty of, without giving us any opportunity whatsoever to defend against their allegations, those clients would not do business with us because we would be considered to be the supplier of tainted and conflicted minerals.

The relevance again to the tribunal is we simply brought to the attention -- and I know Ms John is going to say, "Oh, well, they're only allegations"; they're not allegations. There's lots of fact proving them in the case evidence which, unfortunately, as things stand now, the tribunal has chosen not to hear.

The fact being we again anti-competitively discriminated against by virtue of what I hope I've managed to explain; that we weren't a member, we've never been a member, a full member, and we were only a provisional member for a matter of seven days.

With that, I rest my case.

Again, I'm sorry if Sheriff Anderson, Mr Holmes and Justice Butcher feel rather tired of listening to my voice. I must apologise for my broad South Yorkshire accent.

Thank you for your time.

THE CHAIR: Right. (Pause)

MR HOLMES: May I ask you a question?

MR BECKETT: Myself, Mr Holmes? I'm sorry, I didn't hear you. I didn't hear your discussion with Justice Butcher. Of course you can.

MR HOLMES: Well, first of all, you should never apologise for being a Yorkshireman.

As a fellow Yorkshireman, I would never expect that.

But, more importantly, what you describe very graphically in terms of the situation, in terms of being a membership and the gag agreement, you explain that very clearly, but what you said to us orally just now seems to me is set out very clearly in the correspondence which you provided us with back in 2015.

So my question is: what is new in all that since the strikeout was issued?

MR BECKETT: Oh, sorry, the relevance is -- there's various relevances, but one of the key relevances is that we -- number 1, we weren't a member, so how could they, in the Ugandan High Court, request that the case be brought back to the UK to be heard by stating we were a member when they knew that we weren't a member and that we could only have become a member if we'd accepted the gag, which wouldn't have enabled us to bring the case anyway.

I'm sorry, does that confuse things?

MR HOLMES: I understand that point, but what is new in that? What is new now? Because what you have just described, as I say, is set out very clearly in the correspondence which you've provided us, which dates from 2015.

MR BECKETT: Yes. So, sorry, what is new?

MR HOLMES: Yes, what is new that should lead us to reconsider the strikeout now, given that the strikeout was in March 2025, and the events you're describing are set out in correspondence which obviously you have seen -- you are party to that correspondence -- back in 2015?

MR BECKETT: Oh, there are two reasons -- well, there is a multiple of reasons, but I'll try and précis them into two.

First and foremost, we're an SME. We had a limited amount of working capital available to us. That working capital was primarily trapped by the defendant's decisions and, obviously, then incorporated in the gag scenario, and it has continued

and has become aggravated because our working capital and assets have been trapped within the scheme for the past ten years, which brings us conveniently to the March 2025 strikeout.

Yes, Ms John is correct in one respect: yes, we could, and possibly should, have alerted the tribunal to the difficulties we faced. But, in meeting the cash call, we chose not to, and the reason we chose not to was because we anticipated that we would receive payment from the DRC case in late 2024, and the major reason that we didn't, and which again the defendant withholds, not just relevant to this case -- sorry, not just relevant to the case, but relevant to the post-strikeout independent reports criticising the defendant, which we can come to if you wish in due course, but the fact of the matter is, from November 2024 until July of this year -- and I think it may still apply -- there was, in essence, a force majeure in place in DRC, and we couldn't exercise the warrant that we held to collect the funds that were due to us.

In fact, our lawyer -- I don't want to sound dramatic on this, but our lawyer has virtually been exiled in Burundi, partly because of the case here, because he's defended us. This is what I meant by reprisals against people who go against the defendant scheme. The reason for that is because the defendant scheme audit partner in DRC is none other than a DRC parastatal who were named in our claim against the defendant's joint venture partner in DRC. So, in essence, we're a victim of circumstance.

I'm sure -- and I'm sorry, we've taken an hour on this. I'm sure Ms John can continue to present obstacles and challenges, but the facts can only be debated if you give us the opportunity for the case to be heard. I'm sorry if that presents as my continual drumbeat, but the reality is, whether the case is heard or not, the costs award that the defendant's claiming, the defendant already has the costs.

THE CHAIR: Thank you.

MR BECKETT: Thank you.

THE CHAIR: Just one other question, Mr Beckett.

You have referred, both in writing and just now, to criticisms by, I think you say, the UN -- but if I'm wrong about that, you will correct me -- but by international organisations of the ITA of recent date. What are those criticisms you're referring to?

MR BECKETT: The defendant has anti-competitively permitted trafficking of DRC 3T minerals through the defendant scheme in Rwanda and then into the open market; in other words, various of the offences that we allege in our case, which in turn the defendant alleges that we were guilty of in 2013, during the seven-week period when we actually traded in the scheme.

THE CHAIR: What body is it that has made those criticisms and when?

MR BECKETT: There are three: United States Secretary of the Treasury -- I think -- and I'm sorry, it's in the massive paper that I've sent you. I sent you a link to the report.

THE CHAIR: Yes. I have not followed links, so I --

MR BECKETT: I'm sure you haven't and my apologies for having drowned you in a tsunami of paper.

THE CHAIR: So one is the United States Secretary of the Treasury?

MR BECKETT: Yes. The second, in response and in addition to the United States Secretary for the Treasury, was a request via the EU Commissioner for Trade for further information and evidence to enable her to conduct a further investigation into the EU's agreement with Rwanda, in which Rwanda basically guarantees that it will maintain the integrity of its own supplies and, therefore, DRC supplies, by not permitting any, shall we say, contamination or blending, as the defendant has described in the past, of minerals.

The further relevance of that being that the defendant, in terms of the force majeure,

withdrew its services -- and the US Secretary of State and the EU Commissioner, as I say, have asked for information to further investigate this -- the defendant withdrew its services and officers from DRC in autumn to winter 2024, quite rightly so, because they were deemed as being unsafe and obviously in a conflict area, hence the force majeure. But what the defendant didn't do and which qualifies as an anti-competitive action, in my opinion -- and I'll leave it up to the tribunal; you're the experts -- but what the defendant didn't do, they didn't withdraw their services or their offices from Rwanda, and in both the UN report and the US Secretary of State for Treasury report, it became patently obvious that the defendant has permitted, knowingly or unwittingly, the trafficking, therefore anti-competitive trade, of 3T minerals from DRC through Rwanda during the period post-strikeout.

The most telling point which I would like to raise, and hopefully you'll permit me to raise it and not dismiss it, is that various of those companies named are the companies named in case 1379; specifically, not only defendant scheme members, but defendant members as well, especially one company which is guilty -- sorry, which we allege in our witness statement is guilty of an absolutely grotesque anti-competitive act, that being mothballing their coltan mineral resource -- which is the biggest mineral resource in the world -- in order to take advantage of the scheme formation.

I'll rest my case there. Thank you very much for listening to me.

THE CHAIR: Right, thank you.

Now, Ms John, insofar as there's anything there which you didn't have a fair opportunity of addressing when you were speaking to us, is there anything else that you would like to say?

Further submissions by MS JOHN

MS JOHN: Thank you. Two brief additional points, if I may.

The first was Mr Beckett referred to a letter that was written by the defendant's former solicitors, Sherrards, in 2015, and he repeatedly characterised that correspondence as requiring a "gagging order", as he put it. I'd like to respond quickly to that.

If I can ask the tribunal to turn to the pleadings, if you have them available. Page 26 of the claim, paragraph 52. If I can ask the tribunal just quickly to read that to itself.

THE CHAIR: Paragraph?

MS JOHN: 52 on page 26.

THE CHAIR: Page 27?

MS JOHN: It's page 26 in the copy I'm looking at. Apologies, I might have different pagination on my electronic version. (Pause)

THE CHAIR: Yes. That's that allegation, effectively.

MS JOHN: That's the allegation.

If we then turn to the defence, page 63. There should be some pagination in the bottom right-hand corner. Paragraph --

THE CHAIR: Defence, page?

MS JOHN: 63, I hope. Again, I'm using my electronic copy.

THE CHAIR: Yes.

MS JOHN: Paragraph 63A.9. Again, if I can just ask the tribunal to read to the end of subparagraph (1). (Pause)

THE CHAIR: Yes.

MS JOHN: So the point here is simply that that characterisation of the correspondence is itself a part of the underlying complaints made in the claim. It's not accepted by the defendant that that is what the correspondence meant, and I would not want the description of us having required a "gagging order" to be left to stand without being responded to.

The second point is Mr Beckett was asked specifically about the international

criticisms that have been levelled at my client recently, and the tribunal has heard what Mr Beckett has said about those. Essentially, they are matters that the claimant would have wanted to say are evidence supporting the underlying merits of the claim.

If the claimant had provided security, if it had won the preliminary issues trial and established that English law was applicable to the claim, then we could have a fight about whether those matters were admissible as evidence, about what their relevance was, and about what weight should be attached to them. As things stand, they're not relevant for today's purposes. They don't go to establish any abuse of process by the defendant or any fraud on the tribunal when the order for security or for strikeout were made.

Then I have one final point. I apologise, I've been sent a message by my client asking if I can address one point that I didn't respond to earlier, but probably should have done. That's the point about Cronimet.

I'm asked to clarify that they do not sit on the ITSCI governance committee. The position as stated in our defence is accurate. We think perhaps Mr Beckett is confusing our governance committee with an OECD multi-stakeholder group.

THE CHAIR: That's in your defence, is it?

MS JOHN: So in our defence -- the defence doesn't go into the named individuals because that's not relevant on the face of the claim, but what is stated in the defence is that there are -- let me see if I can find it, or if someone will ping me or message me.

THE CHAIR: I'm afraid to say that the contents of your defence are not all absolutely present at the forefront of my mind, so you need to --

MS JOHN: No, that's quite understandable. They're not entirely at the forefront of mine either. It's sometime since they were prepared. Perhaps someone can help me with the reference. It may take a moment. (Pause)

I have 30A.12 in my notes, which is -- on my copy, it's page 22.

THE CHAIR: Yes. For some reason, it's 23 of mine, but ...

MS JOHN: 30A.12. So:

"The defendant has one seat on the governance committee. The second is occupied by the TIC [that's a tantalum organisation]. The third and fourth are vacant, but are available for an organisation representing the tungsten market and for an internationally recognised independent expert body." [as read]

Et cetera.

So Cronimet is not a member of our governance committee. We think perhaps Mr Beckett is confusing an OECD multi-stakeholder group, where we do sit alongside. That's speculation. I can say it's not our governance committee.

MR BECKETT: Please can I intersperse, Justice Butcher?

THE CHAIR: Yes.

Further submissions by MR BECKETT

MR BECKETT: I'll make it very clear. I think the case was in 1963, Profumo versus, I think, Regina. Mandy Rice-Davies quoted as a witness: "Well, they would say that, my Lord". I'm sure no one else on the tribunal is old enough to remember that. Maybe I'm the only person in the room.

THE CHAIR: Well, I have heard Mandy Rice-Davies's -- I think what she said was, "He would say that, wouldn't he?"

MR BECKETT: Well, in the case of Ms John and Ms Nimmo of the defendant, she would say that and they would say that, wouldn't they? And let me add my, in Yorkshire terms, two penn'orth as to why.

In the case of the Alex Stewart dossier, which again is within the case and which again the defendant is desperate not to be heard, the two so-called members of the governance committee from the TIC and from the International Tin Association, when

presented with the Alex Stewart dossier, which has a multiple of offences, some of which are without any shadow of a doubt criminal, in order to get an industry expert to validate or invalidate the information in that dossier, would Ms John like to advise the tribunal who the TIC and ITRI defence -- sorry, governance committee members employed? Do you know who that was, Ms John?

MS JOHN: Off the top of my head, Mr Beckett, it was a Mr Roland Chavasse, but I may need my clients to correct me on that.

MR BECKETT: Oh, no, Mr Chavasse, you are sadly mistaken. I'll just correct you, and try not to chortle as I'm correcting you.

Mr Chavasse was the gentleman originally contacted by Alex Stewart and Mr Chavasse was the TIC governance committee member. Mr Chavasse reported the alleged offences to Ms Nimmo, who is the ITRI or ITA governance committee member, and who also is the scheme manager.

Ms Nimmo and Mr Chavasse between them decided to focus on and to disclose that information to none other than Ms Candida Owens of Cronimet through Mineral Supply Africa, and the relevance to the tribunal is the Alex Stewart dossier concerned the alleged offences of one company and one company alone; that being Cronimet Central Africa via its subsidiary, Mineral Supply Africa.

THE CHAIR: Thank you.

Right, now, I think that probably concludes the argument in relation to that, and what we want to do -- without this meaning that we have decided in relation to those applications, Mr Beckett, one way or the other -- is we want to hear what Ms John has to say in relation to her application, and then we want Mr Beckett to say anything further that he has to say in relation to it.

MR BECKETT: Can I please intersperse yet again, if you don't mind?

THE CHAIR: Yes, if you want to.

MR BECKETT: I'll make it very brief. I'll make it very brief.

I'm not qualified as a financial expert. I'm not an accountant. I'm not an auditor. I have no reason to dispute the figures which Ms John, as counsel, and which the defendant's solicitors and the defendant have allocated, and I wouldn't object in any way, shape or form at this stage to what Ms John might want to summarise. If that saves the tribunal time, then so be it.

Thank you.

THE CHAIR: All right. Thank you very much, Mr Beckett. I mean, that probably does shorten what Ms John needs to say, but we'll see what she still thinks she does need to say.

Application re costs by MS JOHN

MS JOHN: Well, I'm very grateful. I think it's appropriate that I do take the tribunal at least briefly through the figures in order to justify the sums that are being asked for, but I'll bear in mind the indication that I don't need to go into too much detail. Thank you.

So our application is in tab 1 of the bundle and the draft order in tab 4.

The tribunal will recall that we are asking for a payment on account of costs of £2.1 million. That represents approximately 60 per cent of our unassessed costs. We're also seeking the release of the £400,000 that is currently being held in the tribunal as security, and for that amount to be offset against the £2.1 million.

So let me show you where the numbers come from. If we start in the exhibit to Mr Henderson's witness statement. It's page 52 of the bundle. Here we have a summary of the total costs of the claim that are unassessed, followed by a breakdown.

So let me start, first of all, with the solicitors' fees; so that's Sherrards, who were initially

instructed; CMS who have been acting more recently.

What the tribunal has here is a breakdown of the number of hours that have been done as against particular tasks. It commences with Sherrards in March 2021. If we look a little down the page, there's a heading, "Unassessed CMS fees", followed by an asterisk.

If we flick ahead to page 54, we can see what that asterisk means. It indicates that all hours that have previously been claimed for have been excluded. That is whether the tribunal has allowed us to recover for those hours or not. So everything that has previously been looked at by the tribunal has been stripped away, irrespective and whether we've been awarded it or not.

If we move ahead to page 57, there is a more detailed breakdown by reference to activity of how those hours have been spent and by reference to the grade of the individual fee earners. There are a couple of points to make here.

The first is if the tribunal casts its eye through these tables, it will see that the work that's been done has been done at an appropriate level of seniority. So for most of the activities, most hours have been done by an associate. The involvement of grade A and B fee earners has been much more limited.

The second point is about the overall number of hours. They are high, but it's important to remind the tribunal that what is covered here is all of the preparations for the preliminary issues trial from the filing of the claim to its strikeout, insofar as those have not been assessed already. So that's a long period of time; some four or five years.

I would remind the tribunal about the nature of the case that we've been dealing with here. This is a case where the market definition that the claimant chose to plead was very wide, and that has made the claim unusually complex. So according to the claimant's case, just to recap, the relevant market included cassiterite sitting in a mine in the DRC, it included a baked bean tin sitting on the shelf of Sainsbury's in Slough,

and everything in between and across the whole world. So I think at one point I suggested rhetorically that if kitchen sinks were made of tin, they would have been within the market as defined by the claimant.

Now, we had to respond to that. That meant that we had to look at every level of the supply chain across three different metals -- tin, tantalum and tungsten -- and across the entire world. So that has consumed a lot of time and resources, both in terms of the disclosure exercise that had to be done and also the expert fees that were incurred. I'll come to those in a moment.

The tribunal will also recall that this is a case where the defendant says the claimant has conducted itself in a way that has increased our costs. So the example that I've given at several CMCs is that the claimant had a habit of not responding to our letters, and so we would have to write on multiple occasions rather than just once.

So, overall, in my submission, although the number of hours does look high, when we recall the context, actually it's quite proportionate, given the length of time the proceedings have been running and the level of complexity that was involved.

Now, the third point that I need to address is: how does this translate into pounds, shillings and pence? What are the hourly rates that have been applied? That is not in the exhibit, I apologise. That was an oversight. It was sent separately to the tribunal yesterday and it is in this bundle. It's at page 203.

Now, what we haven't given you is a breakdown of the number of hours spent on each activity at each of the applicable rates, and the reason is it would be a huge amount of work to prepare that, and that would entail a great deal of additional cost. It's also not necessarily particularly helpful for today's purposes.

But what we've done here is we have a table here showing the rates that have applied at different points in time. We've compared them to the guideline rates that were applicable at that time. There's also a final column here which shows the guideline

rates uplifted by 30 per cent, so the tribunal can see how the rates compared with that. Now, there's a reason for that 30 per cent, if the tribunal is not familiar with this. I'll show you briefly the tribunal's recent judgment in the Riefa case. I apologise if it's familiar territory, but just in case it isn't, it's page 215 of the bundle. This was a judgment handed down by the president in June of this year. This was a case where the tribunal had rejected an application for a collective proceedings order, and it was considering, among other things, an application for an interim payment.

If we turn to page 219, at paragraph 13, the president summarises the general principles that can be discerned from a number of recent tribunal decisions. If we scroll ahead to paragraph (f) on page 220 -- we highlighted it for Mr Beckett's ease of reference in particular -- the president indicates, fairly standard, the tribunal should take a cautious approach, make a broad estimate of the reasonable and proportionate costs.

If we turn ahead to page 224, paragraph 25, the president indicates it's the usual practice of the tribunal to order an interim payment following the approach of the CPR. Paragraph 29, the tribunal indicates that in Merricks, an uplift of 30 per cent on the guideline rates was deemed acceptable, and the tribunal considered that, in that particular case, that was also appropriate for the purposes of an interim payment assessment.

If we turn to page 226, paragraph 33. The tribunal then goes on in that case to order an interim payment at 65 per cent of the adjusted values. So what the tribunal did here was ask for the costs to be reframed using guideline rates uplifted by 30 per cent, and it then allowed 65 per cent of those costs. So that's the approach that was taken there.

Now, we haven't followed that approach here because this is not a case where there's a discrete application and it's easy for us to go back and do that over the thousands

of hours that have been spent over the four-year period, but what we've done instead is twofold.

First of all, we've given you that table which shows you that most of our fee earners, most of the time have been charging below the guideline rates, uplifted by 30 per cent. So if we go back to page 203, if the tribunal casts an eye down those tables and looks at the second column and the fourth column, we can see that it's the grade C associates who are above the guideline rates uplifted; the A, B and D fee earners are below.

THE CHAIR: The magnitude of the Riefa case and -- the magnitude of the Merricks case, at least in the amounts claimed -- I don't know about the Riefa case, but certainly Merricks -- by comparison with the magnitude of this case.

MS JOHN: Well, I'm not sure, with respect, how helpful that exercise is, because we're dealing with very different beasts in terms of what those costs related to.

THE CHAIR: Indeed, and if I'm being asked to assess costs, one of the things which I look to is the overall amount at stake, plus the complexity of the litigation.

MS JOHN: Yes.

THE CHAIR: I'm wanting to see whether what might have been accepted as a reasonable uplift in those cases --

MS JOHN: Yes, I see.

THE CHAIR: -- is also a reasonable uplift in this case.

MS JOHN: Yes, I see. Well, I don't have the benefit of the submissions that were made to justify or dispute the particular uplifts that were made on those occasions, so I'm speculating to some extent --

THE CHAIR: The Court of Appeal -- and I know that this has come in for quite a lot of at least pushback in some quarters, but the Court of Appeal says that in the ordinary case, even heavy commercial cases, one should stick to the hourly rates, which are

the guideline rates. Now, the CAT has said in those two cases 30 per cent more is justified, but that might depend on the nature of the case, I don't know.

MS JOHN: Well, as I say, I'm in the territory of speculating slightly, but my speculation would be that what the tribunal would have taken into account in those cases, which is similar with this case, was the technical complexity, so the level of expert engagement that was required. So Merricks was a trial on quantum. Riefa was a CPO application where they were looking certainly in some detail at the cost arrangements, I believe, between the proposed class representative and the funders. So it required a level of technical expertise that warranted using specialist counsel, specialist solicitors, who necessarily charge more than some of the more generalist practitioners. Similarly here, although we never got to our preliminary issues trial, this is a case where we were dealing with a high level of technical complexity, both in terms of the industrial evidence that was required and the economic evidence that was required, such that even those who were doing the disclosure exercise, reviewing the documents to see whether they might be relevant, necessarily required a certain level of technical understanding and expertise in order to perform that exercise properly.

So, in my submission, the uplifts are entirely justified in this case, and there's no material distinction for these purposes between Merricks and Riefa, albeit it's certainly right that the costs relate to very different proceedings, very different steps being taken in those proceedings.

But let me come to my second point, which may also give the tribunal some comfort, which is that, unlike the position in Merricks and Riefa, we've only applied for 60 per cent of our costs as a payment on account, not the full 65 per cent. So rather than start making adjustments to our costs and then applying for a high percentage of them, what we've tried to do is present them in their unvarnished form and simply recognise that it's appropriate to ask for a lower percentage of them today.

Now, some very back-of-the-envelope calculations suggest that that's an approach that's slightly favourable to the claimant. We haven't crunched the numbers in any detail because, as I say, we have been very mindful of trying to keep this exercise proportionate in terms of the costs that we incurred in performing it.

So those are the solicitors' costs.

There are also costs of counsel. If we turn back to page 52 of the bundle with the summary, we can see the total counsel's fees there. At page 55, there is a slightly more broken down account of those fees.

They represent the fees of myself, of Mr Williams, who was my junior earlier in the case, and Ms Lukacova, who is my current junior. They're both 2015 call. The point that's been made repeatedly in costs applications is that, notwithstanding the complexity of this case, my client has chosen to use junior counsel throughout. Even though the claimant has consistently been represented by silks, they've been content to retain the services of my good self and not incur additional fees in using someone more senior.

So, on that account, my submission is the costs are entirely reasonable and proportionate for four years of advice and support on a complex and specialist case.

If we turn back to page 52, we come to the final chunk of costs, which is the expert fees. Again, we have a slightly more broken down account of that on page 55.

Now, I accept that these fees do look quite large for a preliminary issues hearing. Oxera are our economists. Wood Mackenzie were our industry experts. On this, I come back again to the point I made earlier that this was a case where the claimant had chosen to plead its market definition in the widest possible terms, and we had to respond to that. What it meant was that, across three different minerals -- tin, tantalum and tungsten -- our experts had to address the entire supply chain from mine to ... (Audio feed interrupted due to a technical error) ... given the nature of the case and

the fact that, actually, that covers the preparation of seven different reports, that was, in fact, reasonable.

So, for all of those reasons, in my submission, it would be appropriate to make an order in the terms sought today. I understand that Mr Beckett doesn't have any particular points to make on the numbers, so there's nothing in particular I need to respond to.

If I may, I'm just going to take a moment this time to check my emails and make sure that I haven't missed anything.

MR BECKETT: While you're doing that, Ms John, might I intersperse to Justice Butcher?

THE CHAIR: Yes, please do.

MS JOHN: Of course.

Submissions by MR BECKETT

MR BECKETT: Thank you very much.

I specifically said that I wouldn't argue with any of the points which I assumed Ms John was going to make but, unfortunately, I don't have any choice, in view of the fact that Ms John appears to have had something of a memory lapse, and I think it's absolutely necessary from our perspective to correct that memory lapse.

May I please beg of the tribunal the opportunity to comment?

THE CHAIR: Well, of course.

MR BECKETT: Point number 1. According to Ms John, we widened the market dramatically. The opposite was the case; Ms John widened the market dramatically by her infamous quote about the baked bean tin. I'd just like to comment because neither Oxera nor Wood Mackenzie chose to.

There's no such thing as a baked bean tin. The container of baked beans is made

from steel, and it has roughly 0.002 of a per cent of tin as a plating medium. It's 99.9 per cent iron by metallic content.

Point number 2. We simply brought the case to the tribunal, describing our business model and how our business model was in the 3T minerals. Again, I'd like to correct Ms John's omission. She states that the 3T minerals are tantalum, tungsten and tin. She conveniently forgets that the defendant has, both in the DRC court case and separately in pleadings, firstly in the DRC court case stated that niobium has a value -- or supported the DRC court case -- that niobium has a value of $65,000 a tonne, whereas contrarily arguing in the presence of the CAT and in front of the CAT that niobium has no value at all in 3T minerals. So, therefore, the contrariness, someone might say the fraud, someone might use another adjective, is patently obvious.

To carry on, we didn't widen the market definition. The defendant did. To be fair to the tribunal, the tribunal therefore set a series of preliminary issue tests and challenges which necessitated the expert witnesses being involved.

Now, the expert witnesses employed by the defendant I'm sure must have referred to the defendant, particularly the defendant for tin and the defendant for tantalum/niobium, because the two primary defendants being the TIC for tantalum/niobium and the International Tin Association for tin, collate annually a very, very comprehensive series of expert statistics, which Oxera and Wood Mackenzie should have used as the basis for their reports and, by the way, we would have had no issue at all in accepting those.

However, the point which needs to be made is that the tantalum and niobium report conveniently, possibly by accident, excluded the fact that the world's largest tantalum resource, owned by a defendant, European Union headquartered member, who also part-owns, has a substantial ownership in, the world's third biggest tantalum and

niobium refinery, that they chose to mothball that resource in order to take advantage of 3T tantalum/niobium.

I'm making the point for the tribunal, not simply from a perspective of the earlier request that I've made, but the point being: what are we expected to be funding here in terms of costs?

I would like to first and foremost say: please can the tribunal now insist, or can we ask that the tribunal insist, on an independent assessment of all the costs, and that that independent assessment not be at our expense, especially given the example I've just raised of the tantalum resource having been mothballed in order for the defendant scheme member and founder member, who knowingly lobbied the US, the UN -- sorry, the US, the EU and the UK governments in order for the scheme to be formed, to take advantage commercially and arguably anti-competitively of the fact that they knowingly were mothballing that resource, in order not only to take advantage of the scheme's tantalum resource, but knowing that the scheme's tantalum resource had approximately 15 per cent niobium pentoxide content, which they would then be in a position to evaluate via their business model at prices varying from $30,000 a tonne to $100,000 a tonne.

A final -- actually, I don't want to bore anyone any further. I think I hopefully have made my point clearly, fairly and equitably. Thank you.

THE CHAIR: Right.

Ms John, had you finished?

Reply submissions by MS JOHN

MS JOHN: I had. There was nothing further from my clients that I needed to raise, but since Mr Beckett has disputed that the claimant pleaded a wide market definition, perhaps it's useful if I just very quickly show the tribunal the relevant aspects of the

pleadings, just to make that point good.

If we go to the claimant's claim. On my copy, it's page 18, at paragraph 27.

MR BECKETT: What was the page number, Ms John, please?

MS JOHN: On my copy, it's page 17.

So:

"The first relevant market is the international market for responsibly produced and supplied Minerals [defined term] and their derivatives." [as read]

MR BECKETT: Can I please intersperse immediately? It's very important, this. Do you know what that market is, Ms John?

MS JOHN: Mr Beckett, with respect, I'm not here to answer your questions. May I be permitted to finish my point, and then you'll have your opportunity, if appropriate.

MR BECKETT: Okay, sorry. My apologies, Justice Butcher, Mr Holmes and Mr Anderson.

MS JOHN: So the relevant market includes minerals in the form of concentrates and their derivatives, the first sentence.

Second sentence:

"It extends to countries where buyers and sellers of those minerals and derivatives are located." [as read]

Now, if we turn to, on my copy, page 5, paragraph 7(4), we have a definition of the derivatives, and we can see that that is:

"Metals and other products derived from or containing the minerals." [as read]

So products derived from or containing tin, tantalum cassiterite.

MR BECKETT: No, tantalum, tin, tungsten and niobium, if you don't mind me correcting you.

MS JOHN: That's the aspect that extends to the entire supply chain.

If we turn back to the defence, I can take it from page 43. Paragraph 41, "Summary

of the defendant's definition of the relevant markets". That was the defendant's position, that you need look no further than the export market, which covered the people exporting the minerals and the smelters receiving them, essentially. So the very top of the supply chain.

But because of the way the claimant had chosen to plead the claim, we had to go further than that in order to make good our contention, essentially that you could apply the guillotine there in terms of the relevant market definition.

MR BECKETT: Please may I respond, Justice Butcher?

MS JOHN: Thank you, I've now finished.

THE CHAIR: Yes, if there's anything you want to say.

Further submissions by MR BECKETT

MR BECKETT: Thank you. I'd like to try and make it very brief.

The tribunal set challenges as to the impact on the UK and EU markets, not just the UK market, because the claim was made at the time that the UK was still within the EU. So, therefore, what we set out to do and what everyone set out to do in our case -- well, everything revolves around UK and EU impact. That's the first point I'd like to make.

The second point I'd like to make is Ms John talks about the relevant market. There are two relevant markets which have both been admitted, firstly being the due diligence and traceability services provided by the defendant, and secondly the minerals that are provided from the defendant scheme. The point I'd like to make very simply is that those services and those minerals are only referred to as "3T minerals" for the purpose of the scheme and its EU/UK markets. It doesn't refer to similar minerals which are generated elsewhere in the world.

So, therefore -- and I'm sure Ms John will want to comment on this -- in the expert

witness reports, it was particularly incumbent upon the defendant to ensure that the tribunal was given a very clear definition of what was available in the world marketplace, and so therefore, by excluding the mothballed tantalum resource which I've mentioned, that seriously prejudices not only the case in essence, but also the costs and everything else that's relevant to the discussion that we're having now.

I'm sorry if I appear to be flustered and confused; I'm not. I'd like to think I know exactly what I'm saying. I really would like to make those points because I think they're highly relevant.

THE CHAIR: Yes.

I think it is the case, isn't it, that if we are making an order for costs, and subject to any order for an interim payment, it's common ground, is it not, that there would be an assessment of the costs, which would be done by a costs judge in the absence of agreement?

Further submissions by MS JOHN

MS JOHN: I think I'm right in saying that the tribunal's existing order provides for there to be detailed assessment in the absence of agreement. As matters stand, detailed assessment has not yet been initiated, and I am not in a position to tell the tribunal that it definitely will be. That's a matter that my clients are still considering because, as yet, we are not clear whether the costs of that process are ever going to be recoverable, given the claimant's situation.

So it may be that the tribunal's order today is then used as part of insolvency proceedings and we try to recover what we can in that way, rather than incurring further costs on a detailed assessment, which are simply going to worsen our position in terms of an ultimate insolvency proceeding.

As I say, I'm not in a position to say one way or the other today.

THE CHAIR: Right. Understood.

I had one other question in relation to the draft order. You seek in relation to sums where there has already been a -- or any amount where there is an order for costs, interest at 8 per cent in your draft order.

MS JOHN: Yes. That is a separate application.

I beg your pardon, I have just been sent a message.

THE CHAIR: Is that not something you're pursuing today then?

MS JOHN: So that has been put there because there are a number of costs orders that the tribunal has made previously, none of them have been paid, and it was unfortunately an oversight at the time that none of those orders provided for interest to be payable. I don't think that anyone on our side of the fence had anticipated that they would not be paid at the time they were made once ordered. So that is there in the hope that it might provide the claimant with some incentive now to pay those orders. But that's a separate application from the payment on account --

THE CHAIR: So you're not applying for that today; is that right?

MS JOHN: No, no, we are today. I'm sorry. I was proposing to come on to that separately. I was just addressing at the moment the application for a payment on account.

THE CHAIR: Oh, I see, okay. So that you are now coming on to?

MS JOHN: Well, I think I've now said all I was intending to say, which was simply that it's something that wasn't provided for in the earlier orders, and the hope is that if it were now to be paid, it may provide the claimant with an additional incentive now to pay on those orders.

THE CHAIR: Yes.

Now, I mean, the rate of 8 per cent, that is justified on what basis?

MS JOHN: I believe that's on the basis that it's the commercial debt rate, but I will be

corrected on that by those instructing me.

THE CHAIR: Well, I'm certainly surprised to hear you say that.

MS JOHN: I apologise. In that case, I may have misspoken. Someone will correct me in a moment. (Pause)

Apologies, I'm told that that's the judgment rate. I have misspoken. I'm sorry.

THE CHAIR: Yes. The basis of that is to say that you are entitled to Judgment Act rate after an order for costs, so I then had two short questions which I should ask you for due diligence purposes.

First of all, is it right that one gets Judgment Act rate on costs orders? And that is an open question. The other is: is there any guidance in relation to what the CAT does, as opposed to what any other court might do in relation to such orders?

MS JOHN: That is a good question. I'm not aware of anything in the tribunal on that point.

Again, I'm sorry, I'm going to have to wait and see if my very learned junior or those instructing me are able to provide any further guidance on that. Excuse me while I wait a moment. (Pause)

THE CHAIR: Of course.

MS JOHN: So the note that I have been passed indicates that we believe 8 per cent is applied to costs orders in the High Court, and I'm also told that there have been cost orders made in the tribunal at 8 per cent. I have to say I've not personally seen them. But we assume that that is to mirror the High Court.

It perhaps may be sensible if we attempt to dig out the tribunal orders that are being referred to and send it to the tribunal after we've risen today, if that's not inconvenient.

THE CHAIR: Yes. I don't want any commentary, though.

MS JOHN: No. Completely understood. But a simple reference to the tribunal orders that are being referred to. I can provide those references after the hearing.

THE CHAIR: Right. Yes.

Mr Beckett, is there anything you want to say about all of that?

Further submissions by MR BECKETT

MR BECKETT: Yes. Couple of points.

First and foremost, Ms John talks about insolvency proceedings and so on and so forth, and the fact that we've ignored costs. We've not ignored the costs at all. We've made crystal clear -- or at least we thought we had -- that, far from being insolvent, our assets are trapped in the defendant scheme, and we will be seriously challenging in the UK, in the DRC and in Uganda and in Rwanda any award that's made against us.

It's therefore incumbent upon me to say that the sums that have been knowingly held by the defendant for between the last seven and ten years, if we were to apply interest to those, they would become far, far in excess of what the defendant is claiming from us.

In addition to that, the fact that the defendant has withheld from the tribunal, and still continues to withhold from the tribunal, why they chose, for example, in 2015 to issue the gag order against us, because they didn't want the facts of those cases to be revealed anywhere, whether it be the DRC, Rwanda, the UK, EU or elsewhere.

I therefore think it's incumbent upon me to say, without repeating everything else that took up the first hour of this hearing, it would be unfair of the tribunal, I think, to make any award against us without investigating in great detail what those costs that are prepaid and are being held by the defendant actually refer to, and if indeed they are valid. We are sure they are but, in the same way that we've not particularly argued anything that Ms John has claimed in terms of expert costs and so on and so forth, I think it would be only too reasonable to ask the tribunal to take into account what I've

just stated.

THE CHAIR: Right. Thank you.

So that probably concludes what we need to hear from the parties.

Can I just check whether my fellow members of the panel have any questions?

MR ANDERSON: No, thank you, sir, I have nothing more.

MS JOHN: If I may, sir, I'm afraid I do have one more point to --

MR BECKETT: Sorry --

MS JOHN: Oh, sorry, Mr Beckett as well.

MR BECKETT: I'm sorry, I lost the last two minutes. I don't know why. I'm back on now. I lost you, Justice Butcher, when you said -- actually, I can't quite remember where you'd got up to. You'd just started summing up and then you disappeared.

THE CHAIR: No, I don't think you did lose anything. I was just checking whether my fellow members of the panel had any questions. They don't.

MR BECKETT: Okay, thank you.

THE CHAIR: So I was about to say we're at the end, but Ms John tells me that that's not quite right.

MS JOHN: I'm sorry, there is one more item of business, which is that we have also asked for our costs of today. I will be two minutes addressing that, if I may.

Application re costs of the hearing by MS JOHN

MS JOHN: There are statements of costs in the bundle. There are separate for the costs of our applications and the costs of responding to the claimant's cross applications. The headline totals are approximately 71,000 for our application and 10,000 approximately for the claimant's applications.

Most of the points that I have already made today apply equally in respect of our costs of today. I don't need to repeat myself. There are just two points that I would like to

add.

The first is that the defendant did take steps before launching this application to try and reach agreement with the claimant on an interim payment, as explained in Mr Henderson's witness statement. He sets out -- I won't go to it, but I'll give you the references -- he explains in paragraph 27 that we invited the claimant's proposals, and in paragraph 28, the claimant didn't respond to that letter. So, in those circumstances, we were left with no choice but to bring this to the tribunal today.

The second point that I would make is if the tribunal looks at the statement of costs, you will see that the bulk of those costs were incurred in preparing the summary of our own assessed costs. So it was preparing those tables that I showed to the tribunal of where the money has gone. Now, as I've been at pains to explain, we really did try to keep that task proportionate. We didn't prepare a full breakdown. But for the purposes of the application, we did need to do enough to make sure that we'd identified all of the costs, to make sure that we had properly stripped out anything that had been considered by the tribunal previously, and then what remained, we had to provide enough detail to the tribunal to allow it to understand broadly where the money has gone, and that was a substantial task going back over an almost five-year period.

So although I appreciate that that particular chunk of costs does look high, the task that it relates to was actually, in itself, quite a substantial exercise. We tried to keep it proportionate, but that's why it's ended up slightly larger than one might ordinarily expect to see if you were asking for a payment on account of costs that just related to an application, for example.

Thank you, that was all I wanted to say about those.

THE CHAIR: Right.

Mr Beckett, did you want to say anything about that?

Submissions by MR BECKETT

MR BECKETT: Yes, just very briefly.

I think Mr Henderson is suffering from a memory block. We made several attempts to make a settlement with the defendant pre-strikeout, and then post-strikeout we brought to the attention of the claimant(sic) certain other issues which we believe are highly relevant and where we believe it would be a serious miscarriage of justice if the tribunal decided against us, and I just wanted to make that point that we've at all times been fair and equitable, and I have to reject in total what Mr Henderson's recollections are.

I can't remember if it was the queen who said "Recollections may vary" or if it was my wife, but either way, someone said it.

Thank you very much for your time.

THE CHAIR: Right. Thank you, Mr Beckett.

Well, I think that does conclude the business. We are going to reserve our decision so that we can put it in writing. We will let you have it in as short a timeframe as practicable. I'm afraid we have literally run out of time now that we can be here, so we will have to deal with it in that way. In any event, we need to consider what has been told to us in relation to all these matters this afternoon.

Thank you.

MR BECKETT: Thank you very much for your time, everyone.

MS JOHN: Thank you.

MR BECKETT: Bye for now.

(6.01 pm)

(The hearing concluded)