Neutral citation [2025] CAT 85

IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1433/7/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

16 December 2025

Before:

HODGE MALEK KC
(Chair)
GREG OLSEN
DEREK RIDYARD

Sitting as a Tribunal in England and Wales

BETWEEN:

DR LIZA LOVDAHL GORMSEN

Class Representative

- v -

META PLATFORMS, INC.
META PLATFORMS IRELAND LIMITED
FACEBOOK UK LIMITED

Defendants

Heard at Salisbury Square House on 24 and 26 November 2025 and 16 December 2025

RULING (DISCLOSURE)

APPEARANCES

Ms Sarah Ford KC, Ms Sarah O'Keeffe, Mr Daniel Cashman and Mr Ian Simester (instructed by Quinn Emanuel Urquhart & Sullivan UK LLP) appeared on behalf of the Class Representative.

Mr Tony Singla KC, Mr James White and Ms Camilla Cockerill (instructed by Herbert Smith Freehills Kramer LLP) appeared on behalf of the Defendants.

A. INTRODUCTION

1. This is the ruling in relation to the matters considered at a case management conference ("CMC") in these proceedings which took place on 24 and 26 November 2025 and 16 December 2025 ("CMC4"), following the Tribunal's Judgment granting an application for a Collective Proceedings Order dated 15 February 2024 ([2024] CAT 11) (the "*Gormsen CPO 2*").

2. This ruling concerns outstanding issues between the parties in relation to disclosure. The formulation of the requests for disclosure as set out below is as filed with the Tribunal on 21 November 2025 and/or on 12 December 2025. On certain occasions, the parties have subsequently agreed amendments to the wording of the requests which are not reflected in the below, but which will be reflected in the final Redfern Schedule as ordered by this Tribunal.

B. BACKGROUND

3. The proceedings concern a claim by the Class Representative ("CR") against the Defendants (together, "Meta") on behalf of a class of an estimated 46.6 million UK users of the Facebook social media platform (the "Users") who accessed the Facebook platform ("Facebook") whilst in the UK at least once between 14 February 2016 and 6 October 2023, inclusive. The CR alleges that Meta have abused the dominant position of Facebook by imposing an unfair bargain on certain Users pursuant to which the Users were required, as a condition of access to Facebook, to allow Meta to collect and use their data, including sensitive data, concerning their activities on: (i) Meta products and services other than Facebook (e.g. Instagram); and (ii) third party websites and apps (together, "Off-Facebook Data"), without receiving a corresponding value transfer in return.

4. The CR contends that the abuse can be considered in two related ways that in practice amount to the same thing: that Meta imposed unfair terms and conditions, and imposed an unfair price. The CR refers to this as the "unfair bargain Meta made with Users". The CR's position is that the unfairness of the bargain imposed by Meta stems, amongst other things, from:

(1) that once it had acquired a dominant position, Meta insisted that Users grant it permission to collect and use their "Off-Facebook Data" as a condition of access to Facebook (for no value transfer in return), which Meta had not (and could not have) done when it faced effective competition;

(2) that Meta initially used privacy as a competitive differentiator for Facebook but increasingly degraded privacy protections over time (as Facebook gained market power) without adequately communicating this to Users;

(3) Meta's lack of transparency in its approach to the collection and use of Users' personal data, its related misleading representations, and its failure to comply with relevant privacy and data legislation;

(4) the value received by Meta under the unfair bargain, compared to the value received by Users; and

(5) that Meta's actions: (a) were not necessary (including because it previously profitably provided free Facebook access without requiring Users to permit the collection and use of their Off-Facebook Data); (b) did not serve a legitimate purpose; and/or (c) were not proportionate to any such purpose.

5. The CR further alleges that, under conditions of effective competition, Meta would not have been able to impose the abusive bargain and would instead have negotiated a fair bargain with Users. While, in a non-abusive counterfactual, Meta could not have forced Users to give it access to their Off-Facebook Data, the prospects of financial gain to Meta from having that input would have incentivised Meta to pay Users for it. The aggregate losses claimed in these proceedings have provisionally been estimated to be in the region of £3 billion.

6. Following the Court of Appeal's refusal of permission to appeal *Gormsen CPO 2* (see [2024] EWCA Civ 1322), the parties engaged in correspondence and

agreed on certain issues, including that an issues-based approach to disclosure should be adopted.

7. The first CMC in these proceedings took place on 16 December 2024. The Defendants were directed to file a Disclosure Report ("DR") and Electronic Documents Questionnaire ("EDQ") pursuant to Rule 60(1)(b) and (c) of the Competition Appeal Rules 2015 ("the Tribunal Rules").[1] Meta filed the DR and EDQ on 20 March 2025.

8. The second CMC in these proceedings took place on 4 April 2025 ("CMC2"), in which the Tribunal listed a trial to commence on 20 September 2027 with a time estimate of 10 weeks, to be concluded by 30 November 2027. Following CMC2, the Tribunal directed a process for the parties to engage in producing a draft List of Issues for Disclosure ("LOIFD") which they should endeavour to agree. The CR was required to identify any disputes in relation to the draft LOIFD and the parties were permitted to file short written submissions on the areas in dispute for determination by the Tribunal: see paragraphs 7-10 of the Order dated 8 May 2025.

9. A further CMC took place on 15 and 16 July 2025 ("CMC3") to consider outstanding issues between the parties in relation to the LOIFD. The Tribunal issued its ruling in relation to these matters on 21 July 2025: [2025] CAT 40. Following CMC3, the Tribunal gave directions in relation to disclosure and a process in relation to the CR's request for information: see Order dated 29 July 2025 (the "Directions Order"). The Directions Order was subsequently amended by the Tribunal's letters dated 17 September 2025 and 20 October 2025.

10. A hearing took place on 29 September 2025 to consider the CR's application to amend her Amended Claim Form to introduce a new head of damage, namely user damages. On 30 September 2025, the Tribunal issued its ruling granting the CR's application: [2025] CAT 55 (the "Amendment Ruling"). In accordance with the Tribunal's Order dated 30 September 2025, the CR filed her Re-

[1] See paragraph 3 of the Order dated 10 January 2025.

Amended Claim Form on 3 October 2025 ("RACF"), Meta filed its Amended Defence on 31 October 2025 ("Defence"), and the CR filed her Amended Reply on 7 November 2025 ("Reply"). It should be noted that Meta have applied to the Court of Appeal for permission to appeal the Amendment Ruling, following the Tribunal's Reasoned Order dated 23 October 2025 refusing permission to appeal.[2]

11. The CR made a Request for Information seeking specific further information on 18 July 2025 (the "RFI"). Meta filed an initial response to the RFI on 8 August 2025 declining to provide the information sought.

12. On 17 October 2025, the CR filed an application for an order directing Meta to answer the RFI by 10 December 2025, verified by a statement of truth (the "RFI Application"). The RFI Application was supported by the Sixth Witness Statement of Ms Katherine Alice Vernon ("Vernon 6") which set out the relevant background to the RFI and summarised the Order sought by the CR. Meta filed a response to the RFI Application on 31 October 2025, and the CR filed submissions in reply on 7 November 2025.

13. In relation to the outstanding disclosure issues, the parties filed a Redfern Schedule on 5 November 2025 which identified the areas of dispute. This revealed that there was disagreement between the parties on many of the requests for disclosure made by the CR.

14. The CR filed the following evidence in advance of CMC4:

    (1) the Seventh Witness Statement of Ms Vernon dated 7 November 2025 ("Vernon 7");

    (2) the Fourth Expert Report of Professor Fiona Scott Morton dated 7 November 2025 ("Scott Morton 4");

    (3) the First Expert Report of Mr Luke Steadman dated 7 November 2025;

[2] Permission to appeal was granted by the Court of Appeal on 16 December 2025.

(4) the First Witness Statement of Mr Gary Christoper Foster dated 7 November 2025 ("Foster 1"); and

(5) the Eighth Witness Statement of Ms Vernon dated 20 November 2025, which corrected inaccuracies which had been identified in Vernon 7.

15. Meta filed and relied on the following evidence:

(1) the First Witness Statement of Ms Kim Dietzel dated 7 November 2025 ("Dietzel 1");

(2) a Statement from Mr David Parker for the 24 and 26 November 2025 CMC dated 7 November 2025 (the "Parker Statement"); and

(3) the First Witness Statement of Mr Paul Burton dated 12 December 2025 ("Burton 1").

16. On 17 November 2025, the parties filed skeleton arguments in advance of CMC4.

17. The Tribunal directed the parties' solicitors to meet in advance of CMC4 and use best endeavours to agree any categories of disclosure not yet agreed. Following the meeting the parties were directed to file an updated Redfern Schedule containing only the matters in dispute. On 20 November 2025, the parties filed an updated Redfern Schedule identifying the matters which remained in dispute. A revised version of the updated Redfern Schedule was filed with the Tribunal on 23 November 2025. The updated Redfern Schedule has been a very helpful and workable document whereby it was clear what disclosure was being sought by reference to the issues in the proceedings and the parties' respective positions on each category. It provided a useful framework for the Tribunal in resolving any outstanding disagreements.

C. LEGAL PRINCIPLES

18. Disclosure before the Tribunal is governed by rules 60 to 65 of the Competition Appeal Tribunal Rules 2015 (the "Tribunal Rules"). Pursuant to rule 60(3), the Tribunal may at any point give directions as to how disclosure is to be given. The Tribunal shall have regard to the governing principles in rule 4 when deciding what orders to make in relation to disclosure to ensure disclosure is limited to what is necessary to deal with the case justly and at proportionate costs.

19. The Tribunal does not usually make orders for standard disclosure. The broad principles that the Tribunal applies in relation to disclosure were identified in *Ryder Limited & Another v MAN SE & Other* [2020] CAT 3 ("*Ryder*"), at [35] to [36]:

> "35. Even in cases where broad disclosure is required, it is possible to lay down some broad principles that are applied by the CAT. These are:
>
> (1) Orders for standard disclosure will not in general be made.
>
> (2) Disclosure will be confined to relevant documents. Relevance is determined by the issues in the case, derived in general by reference to the pleadings, although in appropriate cases disclosure can be in relation to matters not specifically pleaded.
>
> (3) A strong justification would be required to make any order along the lines of the 'train of enquiry' test in the classic formulation of the test for disclosure enunciated by Brett LJ in *Compagnie Financière du Pacifique v. Peruvian Guano Co.* (1882) 11 QBD 55 at 63. An example where train of enquiry disclosure may be justified is a case alleging a cartel infringement where the underlying facts are unknown to the claimants but are in the hands of the defendants.
>
> (4) Disclosure cannot be ordered in respect of a settlement submission which has not been withdrawn or a cartel leniency statement (whether or not it has been withdrawn). This does not preclude a party which made such a submission or statement providing it by way of voluntary disclosure.
>
> (5) Disclosure will not be ordered in respect of a competition authority's investigation materials before the day on which the authority closes the investigation to which those materials relate.
>
> (6) Ordinarily disclosure will be by reference to specific pleaded issues and specific categories of documents.

(7) Disclosure will only be ordered and the order will be framed to ensure that it is limited to what is reasonably necessary and proportionate bearing in mind a number of aspects, the most important of which are:

(a) the nature of the proceedings and the issues at stake;

(b) the manner in which the party bearing the burden of proof is likely to advance its case on those issues;

(c) the cost and burden of providing such disclosure;

(d) whether the information sought can be obtained by alternative means or be admitted; and

(e) the specific factors listed in r. 4(2)(c).

36. The search required will be a reasonable and proportionate search and it will be for the disclosing party to specify what search it has carried out and why it contends any particular search would be unreasonable when it complies with the order. In appropriate cases, the Tribunal may rule on what would be required by way of a reasonable search prior to disclosure being provided. The factors relevant in deciding the reasonableness of a search include (cf. CPR r.31.7):

(a) the number of documents involved;

(b) the nature and complexity of the proceedings;

(c) the costs of retrieval of any particular document which is likely to be located during the search;

(d) the significance of any document which is likely to be located during the search;

(e) the location of material, and the type and nature of databases and storage involved; and

(f) the resources available to the disclosing party."

20. In relation to the broad principles as to the Tribunal's general approach that affects disclosure, the Tribunal stated in *Ryder* at [40(5)]:

> "It is not therefore simply a question of relevance, as some of the skeleton arguments we received seemed to suggest. Disclosure will only be ordered in relation to a specific category of documents if the Tribunal is satisfied the documents sought are relevant and that disclosure would be necessary and proportionate. The Tribunal will not make an order merely because it determines that the documents are relevant to the issues." (emphasis in original)

21. In *Elizabeth Helen Coll v Alphabet Inc. & Others* [2024] CAT 25, the Tribunal stated at [54]:

> "54. Disclosure in competition case is, therefore, to a significant extent an expert-led process. It is often the provision of data or information that is of importance, rather than original documentation. That is not to say that original documentation, or evidence from those in key positions in the defendant(s) or industry, is entirely irrelevant. Expert evidence must not become elevated so as to become purely theoretical and divorced from the factual reality underpinning the context in which the claims arise. Where it is relevant and available the qualitative evidence must, of course, be reflected in the methodology put forward. However, disclosure must be proportionate. In particular, in collective proceedings cases, where the defendants are frequently substantial entities (as in this case) and the class members said to be in the millions, disclosure of every potentially relevant document is neither desirable nor realistically possible. For that reason, the parties are expected to cooperate in devising a disclosure process, and in its implementation. It is frequently an iterative exercise, with parties revisiting and honing requests and, if they are reasonable and proportionate, the recipient is expected to cooperate and provide disclosure. In the event of disputes, the Tribunal is available to resolve them."

22. In *Adnams PLC & Others v DAF Trucks Limited & Others* [2025] CAT 3 at [5], the Tribunal stated the following in relation to the expert-led disclosure process adopted in other proceedings:

> "5. It must be emphasised that such an expert-led approach is unlikely to be suitable for the majority of cases before the Tribunal. It reflects the general approach of the Tribunal that disclosure must be tailored to the specific needs of individual cases. What may be suitable for a multi-faceted case dominated by expert evidence with numerous parties and issues, may not be suitable for most cases where a more conventional approach may be more productive and hopefully less expensive. In any large-scale litigation before the Tribunal it is important for the Tribunal to have overall control of the disclosure process so that it is confined to what is necessary and proportionate. A 'no stone unturned' approach to disclosure is in no one's interest and costs should not be allowed to escalate unnecessarily in disclosure exercises. Lawyers for the parties using their experience in disclosure exercises are expected to take a major role in managing the process and to cooperate with each other."

23. In relation to the approaches to establishing or rebutting an allegation of infringement, the Tribunal stated in *Professor Barry Rodger v Alphabet Inc. & Others* [2025] CAT 58 at [32] to [33]:

> "32. The Tribunal appreciates that Google has engaged in a constructive manner in relation to the supplemental disclosure sought by Professor Rodger and has agreed to provide further various categories of disclosure. That said, the remaining categories are relatively discrete and focused. The Tribunal takes into consideration what is clearly in issue on the pleadings and what the experts have said about the

categories in issue. If disclosure is necessary for the experts to properly carry out a worthwhile exercise which will assist in them finalising their expert reports for trial, that is a significant but not conclusive factor in favour of disclosure.

33. In competition cases such as the present where a class of a significant size (approximately 2,600 app developers domiciled in the UK) are alleged to have suffered loss and damage as a result of an infringement, it is often the case that there is more than one way of establishing or rebutting infringement, and coming to an estimate of overcharge and pass-on. That does not mean that each party should, or the Tribunal will permit parties, to run every single route or permutation. Parties and their experts need to use their common sense and sense of proportion in which ways they want to prove their cases. Simply because a party or expert wants to run and get evidence on an alternative method of estimating overcharge or pass-on does not mean that will be encouraged or permitted by the Tribunal, especially at this late stage."

24. In relation to RFIs, CPR Part 18 provides:

"**Obtaining further information**

18.1

(1) The court may at any time order a party to –

(a) clarify any matter which is in dispute in the proceedings; or

(b) give additional information in relation to any such matter,

whether or not the matter is contained or referred to in a statement of case."

25. Rule 53 of the Tribunal Rules provides:

"53.—(1) The Tribunal may at any time, on the request of a party or of its own initiative, at a case management conference, pre-hearing review or otherwise, give such directions as are provided for in paragraph (2) or such other directions as it thinks fit to secure that the proceedings are dealt with justly and at proportionate cost.

(2) The Tribunal may give directions—

[…]

(d) requiring clarification of any matter in dispute or additional information in relation to any such matter…"

26. The Tribunal has broad case management powers pursuant to rule 53 and can require a party to provide information in relation to a matter in issue in the proceedings as well as information that may assist in the disclosure process, subject to the governing principles referred to above at paragraph 18. In relation

to the current application the Tribunal will only order a response if it considers that to do so is proportionate and reasonably necessary.

27. It is stated in the Tribunal's Guide to Proceedings 2015 at paragraph 5.87:

> "…The purpose of disclosure is to obtain documentary material that assists in determination of the issues raised by the pleadings and it is not to be used as a weapon in a war of attrition."

D. THE RFI APPLICATION

28. The RFI was filed on 18 July 2025 and sought further information in relation to paragraphs 138(c) and 154(a) of the Defence dated 20 January 2025, which states, as far as is relevant, as follows:

> "138(c) … Meta has received Third Party Activity Data for use in personal advertising on Facebook since around January 2013.
>
> 154(a) … As explained in §138(c) of this Defence Meta has received Third Party Activity Data for use in the provision of ads services since early 2013."

29. The RFI asks the following questions of the Defendants in relation to paragraphs 138(c) and 154(a) of the Defence:

> "1. Please specify when and for what purpose the Meta corporate group (of which Meta Platforms, Inc, is the parent company, and of which the Defendants are members) ("**Meta**") first:
>
> a. collected Off-Facebook Data; and/or
>
> b. received Off-Facebook Data; and/or
>
> c. processed Off-Facebook Data; and/or
>
> d. used Off-Facebook Data.
>
> 2. Please specify when Meta first considered doing each of the acts identified in 1(a)-(d) above."

(a) The parties' submissions

30. Meta opposed the RFI in its entirety, in summary, for the following reasons:

(1) The purpose that the RFI was originally proposed to serve has fallen away and the RFI is therefore unnecessary. The issue for which a request

for information arose at CMC3 as to when Meta began to receive Off-Facebook Data arose as a potential means of unlocking a dispute between the parties as to the temporal scope of certain issues for disclosure ("IFDs") on the LOIFD. Meta considered the temporal scope ought to commence in 2011 whereas the CR proposed a temporal scope starting in 2005/2007. The Tribunal considered that, in the LOIFD, the 2011 date could be adopted, subject to the CR producing, and Meta responding to, an RFI as to when Meta began to collect and/or receive Off-Facebook Data. On day 2 of CMC3 Meta offered to accept the CR's temporal scope of 2005/2007 (as applicable in respect of the IFDs) subject to proportionality arguments to be heard at CMC4. In those circumstances, the CR's preferred dates of 2005/2007 (as applicable) were incorporated in the final LOIFD in respect of numerous IFDs, and it is on that basis that the Redfern Schedule was produced after CMC3.

(2) In any event, the RFI is unjustified, unworkable, and disproportionate. The provision of an answer to the broad factual questions raised in the RFI would be far from straightforward as: (i) there is not any one person (or team of people) at Meta who are readily able to answer the RFI; and (ii) nor is there any readily identifiable repository of Meta's records to ascertain the answer to the RFI. Before Meta could respond to the RFI, it would be necessary for Meta to undertake a substantial amount of internal investigations to ascertain when Meta in fact collected and/or received each form of data that potentially falls within the CR's definition of Off-Facebook Data, being a term pleaded by the CR and not used within Meta and a term the CR has not exhaustively defined. The provision of an answer to the factual questions raised in the RFI would require a substantial amount of work to be carried out by Meta which would be tantamount to carrying out a disclosure exercise. Such an exercise would not be a proportionate or reasonable use of resources.

(3) The RFI is not necessary for the CR to understand Meta's Defence to the CR's pleaded and certified case. Meta's pleas in the Defence at paragraphs 138(c) and 154(a) are entirely clear in their response to the parts of the RACF to which they relate.

31. Meta considered that the CR does not require the information sought by the RFI in order to understand Meta's case, and the information sought by the RFI will in any event be provided to the CR through searches that Meta has agreed to run. As to the latter point, Meta confirmed that for all requests that concern Off-Facebook Data, Meta will run searches going back to 2005/2007 (as applicable) and did not contend that it would be disproportionate for any particular request concerning Off-Facebook Data to be searched back to 2005/2007 on grounds that the further back one goes the less proportionate searches and disclosure concerning Off-Facebook Data stand to be. Instead, searches back to 2005/2007 will be run, and respective material will be provided to the CR.

32. To further allay any concerns that the CR has in relation to the temporal scope of disclosure requests concerning Off-Facebook Data, where Meta has proposed non-custodial disclosure and the non-custodial disclosure would not return documents going back to 2005/2007 (e.g. because the relevant repository does not go as far back as 2005/2007), Meta will "top up" the non-custodial disclosure with custodial searches (i.e. custodial searches will be run for the period(s) that would not stand to be covered by way of non-custodial disclosure). Thus, the disclosure exercise will provide the information sought through the RFI.

33. The CR submitted that the RFI is reasonably necessary and proportionate to enable the CR to understand the case she has to meet and prepare her own case. The use of Off-Facebook Data is central to her claim and the Tribunal characterised it as a "fundamental issue" at CMC3.

34. The CR submitted that the information sought by the RFI is clearly relevant to the pleaded issues.[3] In order to properly perform the abuse analysis, including comparing the position both before and after Meta began collecting and using Off-Facebook Data, the CR needs to understand when Meta began collecting and using Off-Facebook Data, and when it first considered doing so. Furthermore, the CR pleads that, prior to acquiring dominance, Meta did not or could not collect and use Off-Facebook Data as it did after it acquired

[3] See, for example, RACF at S.7(b), S.15(a), S.19, S.22(a), 95, 96, 53(d)(v)(1) and 176(e)(i)-(ii).

dominance. It is therefore relevant for the CR and Tribunal to understand whether Meta considered collecting Off-Facebook Data pre-dominance (but decided it was unable to do so e.g. by reason of the prevailing competitive conditions).

35. The same is true in relation to quantum. As Professor Scott Morton has explained, her intention is to analyse the incremental costs and benefits that derive from Meta's collection and use of Off-Facebook Data, including taking into account the value of services that Meta provided to Users as a result. That again requires an analysis of the position prior to, and after, Meta's collection and use of Off-Facebook Data (which, in turn, requires an understanding of when that began).

36. However, in terms of understanding the case that the CR has to meet, the CR submitted that there continues to be a significant disconnect in the pleaded cases, which would be resolved by Meta answering the RFI. The CR further submitted that although Meta understands the CR's use of the term "Off-Facebook Data", it chose to plead back to the CR's allegations by reference to terminology and a description of data that is of more limited scope ("Third Party Activity Data").

37. In addition, the CR submitted that the RFI will assist the Tribunal and the parties in relation to case management issues, in particular disclosure. The information sought through the RFI would facilitate meaningful consideration being given to proportionality issues, and would allow the CR to consider whether any of the earlier disclosure, e.g. prior to 2011, would in fact be irrelevant, disproportionate or unnecessary (such that the CR could safely narrow the temporal scope of her disclosure requests).

38. At the time of making submissions for this CMC. these "temporal scope" issues continued to be relevant to the parties' disputes regarding the CR's disclosure requests ("Requests"), as contained in the Redfern Schedule directed by the Tribunal at CMC3. For a number of those Requests, Meta originally sought to restrict the temporal scope to a materially later date on grounds of proportionality, although, as noted at paragraph 31 above, by the time of CMC4

Meta had confirmed that for all requests that concern Off-Facebook Data, it would run searches going back to 2005/2007 (as applicable). The CR submitted that Meta cannot both continue to insist on unparticularised proportionality concerns as regards temporal scope, while at the same time depriving the CR and the Tribunal of central information relevant to assessing such a proportionality enquiry.

39. The CR submitted that it is proportionate for Meta to answer the RFI. If Meta intended to maintain the line of argument that responding to the RFI would be disproportionate, it would be expected that in response to the RFI application and the CR's evidence, Meta would explain in evidence what enquiries it had made as to the answers to the RFI questions, why Meta has not been able to provide the answers already, and what steps would be required to answer the RFI. Meta might have been expected to explain which aspects of the RFI (or of Meta's particular practices) were capable of being answered, which were not (yet), and to explain with particulars what the difficulties are that it has encountered. Meta has not provided any such evidence – indeed it has provided no evidence at all. The CR and the Tribunal therefore are unable to evaluate what, if any, steps Meta has taken from an evidential perspective.

40. The RFI is, on its face, confined to matters which are within Meta's knowledge and which are reasonably necessary and proportionate. If Meta wishes to convince the Tribunal that it would nevertheless be disproportionate to answer, then that is a burden it needs to satisfy. That is a burden that has not been discharged.

(b) The Tribunal's analysis

41. The RFI relates to paragraph 138(c) and 154(a) of Meta's Defence. Both parties claim they do not understand important parts of the other's case as reflected in the pleadings. The pleadings are quite lengthy and complicated. In the future, the Tribunal may require the parties to be more focused in what they plead because there is a lot of pleading of evidence and submissions in this case. That being said, the Tribunal is satisfied that the information requested clearly relates

to the issues in dispute between the parties. In addition, answers to the questions posed in the RFI will help set the parameters of the current disclosure exercise.

42. The objections to the RFI centre around the necessity for such further information, and the burden and practicalities of providing a proper answer. In addition, Mr Singla KC submitted that if an answer is to be provided, it should be at the end of the disclosure exercise, rather than before or during the exercise.

43. As regards the contention that such information is not necessary for the management of disclosure, whilst Meta has constructively agreed earlier dates for the start of the disclosure,[4] Meta providing an answer to the RFI will still assist the disclosure exercise. There will be issues regarding which repositories to look at, from which custodians and the time periods that the searches should focus on. An answer to the RFI will provide a working framework for disclosure for both parties.

44. As regards the necessity of such information in order to understand the parties' respective cases, the Tribunal is satisfied that the answers to the RFI questions will be important.

45. As to the concern expressed by Meta regarding the burden and cost to answering the RFI now, the Tribunal accepts that Meta will be in a better position to provide more concrete answers to the RFI once it has gone through the process of disclosure. However, the Tribunal considers that the burden of providing such information by such a sophisticated, well-resourced and organised business such as Meta has been somewhat exaggerated. That said, the Tribunal does consider it fair not to treat any answer at this stage as being cast in stone.

46. An example of why it is important to have an answer to the RFI now has been identified in correspondence. The letter from Meta's solicitors dated 20 November 2025 (the "HSFK Letter") at paragraph 10, refers to a change in position by Meta as to when they first started collecting Off-Facebook Data for

[4] Meta has agreed to provide disclosure back to 2011 and, for various categories of disclosure, to 2005/2007.

use in personalised advertising. At CMC3, it was suggested the practice began in 2013. However, in the HSFK Letter it is suggested that Meta may have first started collecting Off-Facebook Data for use in personalised advertising in 2010. In those circumstances, the Tribunal will order the RFI even though it does accept that the answers given in response may not be as accurate as a response following disclosure.

47. The Tribunal is aware of the decision in *National Grid Electricity v ABB Ltd* [2012] EWHC 869 (Ch) whereby Roth J found that answering the questions raised in an RFI would be relevant but considered it was not necessary or proportionate for an answer to be given at that point. Rather, in that case Roth J held that it would be better to have an answer at the end of the disclosure process.

48. In relation to the RFI in these proceedings, the Tribunal is ordering a more compromised approach. Meta shall provide answers by its proper officer verified by a statement of truth by 12 January 2026. Meta shall take reasonable endeavours to verify the accuracy of that response. The answer shall set out in general terms the steps taken to provide accurate answers to the questions, but Meta shall have liberty to file a revised or supplemental response at the conclusion of the disclosure exercise.

E. DISCLOSURE REQUESTS

49. The revised updated Redfern Schedule provided on 23 November 2025 amounted to 79 A3 pages of disputed disclosure categories as between the CR and Meta. The Tribunal considered the parties' written and oral submissions and sets out below its reasoning and decision in relation to the CR's disputed requests.

50. Below is an overview of the disclosure principles in the Tribunal relevant to the Tribunal's review of the updated Redfern Schedule:

    (1) Disclosure will be limited to that which is reasonably necessary. Disclosure will only be ordered if it is relevant and proportionate.

(2) Requests which are duplicative should be merged rather than having separate requests seeking the same information.

(3) The question of relevance is considered in relation to whether a particular matter is an issue on the face of the pleadings.

(4) The mere fact that an issue is included in the LOIFD does not mean that it is necessary or proportionate for disclosure to be given to the extent sought by the CR, if at all.

(5) Admissibility is not the guiding principle. Whether something is inadmissible as evidence does not prevent disclosure on the grounds of relevance. However, matters of proportionality will be a relevant consideration should a substantial amount of inadmissible evidence be sought by a party.

(6) Whilst Meta may redact documents to take out information which is both confidential and irrelevant on the basis of established principles, any such exercise should be properly carried out and is potentially costly. This is an aspect dealt with further at paragraphs 216-218 below.

(1) Request 3

51. Request 3 provides as follows:

> "Depositions from the *Klein* and ongoing Federal Trade Commission proceedings of Meta witnesses relevant to all IFDs."

52. Request 3 relates to the *Klein* proceedings which do have a significant overlap with the current proceedings. There is no real dispute between the parties that the *Klein* proceedings are relevant for the purpose of disclosure in these proceedings. The key dispute between the parties is whether the search should be in relation to the collation that has already been compiled of 480,000 documents, or across all of the *Klein* documents.

53. The *Klein* documents are likely to be all held on an e-discovery platform already, and therefore should be reasonably available. However, the point raised

by Mr Singla KC on behalf of Meta is that they have already gone through a review exercise, and they should not be required to do it a second time.

54. Meta had made an offer some time ago in these proceedings to provide disclosure of the 480,000 documents which was the result of that review exercise, and that was rejected by the CR. The Tribunal considers that, whilst there will be some additional burden in having the exercise done again across the whole body of *Klein* documents, it is going to be a useful exercise, given the overlapping issues and the relevance of the material. Whilst it is appreciated that Meta has in the past conducted a review which led to 480,000 documents being identified, this review was carried out at an earlier stage, before the issues had crystallised and the CR had yet to formulate the LOIFD and its disclosure requests. Therefore, the Tribunal orders disclosure of Request 3.

(2) Requests 4-6

55. Request 4-6 provide as follows:

> "**Request 4**
>
> All submissions (including expert and/or witness evidence), reports, studies, analysis and underlying documents or data disclosed by Meta in the following investigations and/or legal proceedings:
>
> a. The UK Competition and Markets Authority's *Online Platforms and Digital Advertising* Market Study;
>
> b. The European Commission's Case AT.40684 – *Facebook Marketplace* and related legal proceedings;
>
> c. The Bundeskartellamt's investigation under file number B6-22/16 and related legal proceedings;
>
> d. The Consumer Plaintiffs' Case and Advertiser Plaintiffs' Case in Case 3:20-cv-08570-JD *Maximilian Klein, et al., vs Meta Platforms Inc., et al.*; and
>
> e. Case 1:20-cv-03590-JEB *FTC v Meta Platforms, Inc.*,
>
> f. The European Commission's Case *DMA.100055*, and related legal proceedings (such as appeals).
>
> (the "**Relevant Proceedings**").
>
> **Request 5**

All submissions, responses and underlying documents provided to Meta by the Regulators in the Relevant Proceedings (where applicable).

Request 6

Submissions (including expert and/or witness evidence), reports, studies, analysis and underlying documents disclosed by Meta to the Information Commissioners Office, the Irish Data Protection Commission, and/or the European Data Protection Board (including in relation to investigations into Meta) and any correspondence (including attachments to correspondence) received by Meta from the Information Commissioners Office, the Irish Data Protection Commission and/or the European Data Protection Board in relation to the collection and/or receipt and/or use and/or processing by Meta of UK Users' data (including Off-Facebook Data).

Date range: 1 January 2005 to date, apart from:

(a) for IFDs 3(10) and 4(12)(ii): 1 December 2015 to date

(b) for IFDs 31(1)-(3): 1 January 2015 to date."

56. As regards Request 4, there are two issues that need to be addressed.

57. The first issue is what is to be the extent of the search within the proceedings listed. The CR suggested it should be all submissions, including expert and/or witness evidence, reports, studies, analysis and underlying documents or data disclosed by Meta in the six investigations and/or legal proceedings listed in the request. Meta considered the request should be confined to factual narrative statements redacted for irrelevant material contained in the responses to requests for information provided by Meta in Request 4: (a) the UK Competition and Markets Authority's *Online Platforms and Digital Advertising* Market Study; (c) the Bundeskartellamt's investigation under file number B6-22/16 and related legal proceedings; and (d) the Consumer Plaintiffs' Case and Advertiser Plaintiffs' Case in *Klein*.

58. As regards the extent of the search, the Tribunal agrees with the CR that it should cover the six proceedings sought, as they are not too wide. The Tribunal does not consider that there should be an exclusion for expert evidence. Expert evidence in other proceedings may be relevant when assessing the validity of points being made by the experts in the current proceedings. This is not a case where the expert reports in question are wholly unrelated to either of the parties in the proceedings. These are expert reports which would have been filed by

Meta in other proceedings, so the Tribunal does not accept the point made by Mr Singla KC that Request 4 should exclude expert evidence.

59. The Tribunal accepts the argument that at trial the focus should be on the real live and important issues in the case, and there is a danger, as Mr Singla KC has pointed out, that the trial in these proceedings may descend into nit-picking and going to the "nth degree". That is something which the Tribunal does not encourage. The Tribunal envisages that once disclosure has been provided, the parties and their advisors will reflect and concentrate so that only the points worth taking are pursued at trial, and in a focused manner.

60. As regards which proceedings should be covered in the request, there is some degree of common ground. It is accepted that certain of the proceedings are relevant, and it is also accepted that there is overlap, and there should be some sort of review in relation to items (a), (c) and (d) of Request 4. That is the UK Competition and Markets Authority's *Online Platforms and Digital Advertising* Market Study, the Bundeskartellamt's investigation, and the Consumer Plaintiffs' Case and Advertiser Plaintiffs' Case in *Klein*. However, there is an issue in relation to items (b), (e) and (f) of Request 4.

61. As regards Request 4(b), the European Commission's Case AT.40684 – *Facebook Marketplace* and related legal proceedings, they do not completely overlap or substantially overlap with the current proceedings, although there will be some common issues. Those proceedings have been addressed in Dietzel 1 at paragraphs 70-71, which states:

> "70. **The EC Facebook Marketplace Investigation:** The European Commission's decision (dated 14 November 2024) found that the following business practices by Meta infringed Article 102 of TFEU and of Article 54 of the EEA Agreement:
>
> 70.1 the tying of Meta's online classified advertising service Facebook Marketplace with the Facebook personal social network;
>
> 70.2 the trading conditions imposed by Meta on advertising clients that competed with Facebook Marketplace, allowing Meta to use their data to the benefit of Facebook Marketplace.
>
> 71. Again, the conduct with which the investigation and decision are primarily concerned relates to the advertising side of Meta's business,

rather than the CR's alleged user-side market, and the allegations of abuse are entirely different to those in the Proceedings (including the underlying factual issues and the conduct which is in dispute, which have no bearing on this case). Meta has appealed this decision to the General Court of the European Union and that appeal is pending."

(Footnotes omitted)

62. As regards Request 4(e), being Case 1:20-cv-03590-JEB *FTC v Meta Platforms, Inc.,* that is dealt with in Dietzel 1 at paragraph 74:

> "74. **The FTC Proceedings:** These are ongoing proceedings (issued on 13 January 2021) brought by the Federal Trade Commission in the United States pursuant to the US Federal Trade Commission Act and the Sherman Act alleging that Meta has engaged in a course of anticompetitive conduct in an effort to preserve their alleged monopoly position in the provision of personal social networking, consisting of three main elements: "acquiring Instagram, acquiring WhatsApp, and the anticompetitive conditioning of access to its [developer] platform to suppress competition". The case relies on a test for dominance that is different to the test that must be met in the UK ("monopoly power"), and the central allegation in the case involves Meta's acquisitions of other undertakings, and conditions imposed on access to its platform interconnections (i.e. on third party apps). Unlike in the Proceedings, conditions allegedly imposed on users are not a key issue in the FTC Proceedings as it is focused on the availability of the platform to app developers."
>
> (Footnotes omitted)

63. As regards Request 4(f), the Digital Markets Act ("DMA")[5] proceedings and specifically the European Commission's Case *DMA.100055*, and related legal proceedings (such as appeals), that is dealt with in Dietzel 1 at paragraphs 82-92. In particular, Dietzel 1 at paragraphs 89-92 states:

> "89. The decision in Case DMA.100055 found that offering a SNA business model is not compliant with Article 5(2). Meta has appealed this decision and the appeal is ongoing.
>
> 90. As is clear from this high-level overview, these DMA cases cover a very broad range of issues, the majority of which are not relevant at all, and limited aspects of which are at best tangentially relevant to the Proceedings. The cases to do with designation under the DMA are a mere procedural step which enables the European Commission to identify the scope of the application of the DMA. They do not involve any assessment of the market position of the entities / products caught within the DMA from a competition law perspective or consider the conduct of the entity. A number of the obligations which stem from being designated under the DMA have no bearing on the issues in

[5] The Digital Markets Act/Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.

dispute in the Proceedings (for example there are obligations relating to interoperability and self-preferencing).

91. In these competition law proceedings, the CR does not plead a breach of the DMA and the Meta Entities' compliance with the DMA is not relevant to the alleged abuse(s) pleaded in the RACF. Further and in any event, the DMA does not apply in the UK, and the CR's claim is brought on behalf of UK users. In those circumstances, the starting point must be that disclosure relating to the DMA investigations is therefore by its nature not relevant, is unnecessary, and is in any event disproportionate to dispose of the case the CR brings.

92. To the extent there are internal Meta documents responsive to the CR's request regarding the DMA that would be relevant to the Proceedings, those documents would be caught and disclosed through the de novo searches that will be carried out in any event, without the need for a *specific* reference to the DMA in a request. As such, at best providing disclosure of documents in response to these requests would result in duplication and at worst would result in a large number of irrelevant and unnecessary documents being disclosed."

64. The Tribunal, having considered all those proceedings, does consider that they will, and are likely to have, a significant number of documents which are relevant to the issues in the proceedings, given the overlapping issues. The Tribunal appreciates that there may be different legal provisions under consideration in those other proceedings. Thus for example one may be looking at EU law as opposed to UK law when one is looking at the DMA, but the Tribunal accepts in broad terms the submissions made by Ms Ford KC on behalf of the CR.

65. Therefore, the Tribunal orders that this disclosure be carried out in relation to all of six sets of proceedings specified in Request 4 at (a) to (f), also to the extent sought in Request 5 in relation to the documents that are to be provided.

66. As regards Request 6, not all of those proceedings are referred to in the pleadings. Having made the order in relation to Requests 4 and 5, the Tribunal considers that they are unlikely to have anything more that is of significant assistance over and above what is being provided under the proceedings at Request 4 (a) to (f), particularly given that the Tribunal has ordered disclosure in respect of the DMA case. Therefore, Request 6 is refused.

67. The Tribunal accepts in requiring disclosure in respect of Requests 3 to 5 that there will be a significant exercise for Meta to carry out. It does appreciate that

Meta is offering *de novo* disclosure across a substantial number of requests, however that does not detract from the likely importance of conducting a proper search in relation to the six sets of proceedings specified in Request 4, which all involve Meta.

(3) Request 7

68. Request 7 seeks the following:

> "One copy of final (non-draft) versions of each of the:
>
> a) Terms of Service
> b) Statement of Rights and Responsibilities
> c) Privacy Policy
> d) Data Policy / Data Use Policy
> e) Cookies Policy
>
> in each case to the extent applicable to UK Users in relation to: (a) their access to and/or use of the user-side of Facebook; (b) data generated as a result of their activity on the user-side of Facebook; and/or (c) Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data.
>
> One copy of final (non-draft) versions of the equivalent to each of (a)-(e) above (if applicable) for (i) Instagram; (ii) WhatsApp; (iii) Oculus; and (iv) Onavo, in each case to the extent applicable to users of those platforms located in the UK in relation to Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data.
>
> Date range: 1 January 2005 to date."

69. The dispute between the parties is whether or not Meta should be required to give disclosure of the relevant terms in relation to Oculus and Onavo. The CR initially sought disclosure across all Meta products, but have now confined it to Facebook, Instagram, WhatsApp, Oculus and Onavo, based on the alleged infringement that Meta was using data acquired on other products for the purposes of marketing and advertising on Facebook. There may be an issue as to whether or not data from Oculus and Onavo was fed back to Facebook and so used, but for today's purposes that is not an issue that the Tribunal is asked to resolve.

70. Meta submit that the number of users in relation to Oculus and Onavo are small relative to, for example, Instagram and WhatsApp, where the number of users is many times those of Oculus and Onavo.

71. The Tribunal agrees with Mr Singla KC that simply making a reference to an entity in paragraph 103(g) of the RACF is not enough to make this material relevant. However, the Tribunal is satisfied that this disclosure does fall within the broad thrust of the claim of using Off-Facebook Data, therefore it is inclined, at least in relation to Request 7, to make the order for disclosure in the terms sought by the CR.

72. The Tribunal caveats this ruling by noting that when other requests are considered which overlap with the issues in Request 7, this ruling does not necessarily mean that it will be granting disclosure in relation to Oculus and Onavo. The Tribunal is just making an order for the relatively narrow scope of documents under Request 7 which will not be burdensome for Meta to provide.

(4) Request 8

73. Request 8 is as follows:

> "Custodial documents, screenshots/other images, and non-custodial documents which concern how and for what purposes Meta introduced, designed, displayed and implemented the UK User terms of service (and equivalents) identified in Request 7, and why they were communicated in the way that they were.
>
> Date range: 1 January 2005 to date."

The Class Representative's rationale for Request 8 states that:

> "Disclosure is sought by reference to both custodial search and non-custodial repositories, in order sufficiently to capture Meta's internal considerations and deliberations (including communications thereof); relevant practices; privacy review processes or documents; their design development; and relevant reports or equivalent."

74. There are two separate disputes between the parties:

(1) first, the extent to which the search should be limited to UK User terms of service (and equivalents) for Facebook only, or that it should be looking at the other Meta entities referred to under Request 7; and

(2) secondly, the extent to which there should be a search of non-custodial repositories in addition to custodial repositories.

75. Subject to any further submissions by the parties, the Tribunal does not consider it is necessary or proportionate to order disclosure in respect of Oculus and Onavo, given they do not represent a significant proportion of the services provided by Meta generally. However, Instagram and WhatsApp should be included.

76. In relation to the second dispute regarding custodial and non-custodial searches, the Tribunal agrees with Mr Singla KC that initially searches should be done on a custodial basis. That is likely to get the vast majority of documents being sought. The aim is to ensure that, subject to the overriding reasonableness and proportionality standard, all the relevant responsive documents are disclosed, and the identification of their likely location is really a judgmental exercise which is going to have to be conducted by Meta's solicitors, Herbert Smith Freehills Kramer LLP ("HSFK"), as they go along. Insofar as any gaps are identified that need to be filled in order to comply with the disclosure requirement under this particular category and other categories of documents, they should be looking at the repositories.

77. As to which repository is appropriate in each individual case, it is down to HSFK to figure out which repositories are relevant for the specific gaps identified. The Tribunal does not think it is going to be particularly constructive to impose anything more stringent on Meta at this stage. It has to rely on the good judgement of HSFK, but the objective is (subject to the overriding reasonableness and proportionality standard) to give disclosure of all the relevant responsive documents. It is down to them to exercise their judgment to the extent to which they are going to get documents by the searches they are going to do. The starting point of looking at custodial repositories is a sensible one. However, if gaps are identified, they should look at the non-custodial repositories to fill in those gaps.

(5) Request 9

78. Request 9 provides as follows:

> "Analysis, summaries, studies, reports, research, modelling and/or similar documents relating to the "testing" of the suitability of the terms of service (and equivalents) identified in Request 7 (including alternatives).
>
> Date range: 1 January 2005 to date"

79. There is a live issue between the parties as to the extent to which this request should include "alternatives". In respect of other requests, it is agreed that alternatives should be included, however Mr Singla KC on behalf of Meta opposes it on reasonableness and proportionality grounds for Request 9. Mr Singla KC submits that as the CR will be getting some of this information under other requests, it is not necessary to have such a broad request here.

80. The rationale for seeking this information is set out in Scott Morton 4 at paragraphs 7-9 which provides as follows:

> "7. I understand the Defendants oppose disclosure relating to 'testing' of alternatives to the terms of service referred to in Request 7 (i.e. alternatives to those terms of service that were actually implemented). I explained in FSM1, Section 4.4.1, my preliminary view that there is a lack of transparency in Meta's implemented terms of services which has limited users' ability to make an informed decision regarding the use of their data and their data privacy. Whether the terms of service were transparent (or not) will inform my economic assessment of whether Meta's conduct was unfair in and of itself (i.e. *United Brands* Limb 2).
>
> 8. Meta does not dispute the relevance of the *implemented* terms of services to this request (i.e. those referred to in Request 7). However, understanding what alternative terms of service Meta considered and tested but did not *implement* is relevant to the question of transparency of the terms that were *implemented* and the unfairness of those terms. This is because I consider it is plausible that Meta will have considered transparency as one of the factors it evaluated when testing the suitability of the various alternative options for the terms of service (and equivalents); and relatedly, that the reasons why the implemented terms were chosen over alternatives terms will likely shed light on the extent (if any) to which the implemented terms were considered by Meta to be opaque and misleading compared to alternatives.
>
> 9. I set out the relevance of the analysis of such alternatives in the Joint Expert Grid, (see 7.1.3). Specifically, I noted the relevance of "*Internal documents and internal data regarding Meta's design considerations and choice architecture of Facebook's T&C's and Privacy Policy, and tools to help users understand Meta's data collection/processing, including information on alternative designs*." (emphasis added)."

81. The Tribunal considers that the request is reasonable and proportionate and that it should not be burdensome for Meta to respond to it. It can be easily seen why

such material could be of assistance, as when you look at the actual terms employed, it is sensible to look also at what alternatives were considered and not followed up, for one reason or another. Therefore, the Tribunal accepts the CR's formulation of Request 9.

(6) Request 11

82. Request 11 provides as follows:

> "Non-custodial documents (including screenshots/other images) that show each element of the choice architectures (including prompts to accept options) presented to UK Users in respect of the terms of service (and equivalents) identified in Request 7 for Facebook, Instagram and WhatsApp (and any significant/material changes thereto) insofar as they relate to Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data.
>
> Date range: 1 January 2005 to date"

83. There is a dispute between the CR and Meta on various aspects of Request 11. The first issue is whether or not the request should be confined to screenshots/other images as suggested by Meta, or whether it should be put more extensively. The Tribunal accepts the CR's wider formulation as the disclosure in *Klein* indicates that such information covered by Request 11 will not be confined to screenshots and images.

84. As regards the second dispute over "choice architecture", it is clear that within this dispute there are some fundamental issues which could be concealed by loose wording. The CR through Quinn Emanuel's letter dated 11 November 2025 sought clarification of whether or not there was any real significance in the difference in wording. Paragraph 15 of that letter provides as follows:

> "15. The CR does not agree that Requests 11 and 13 fall into Category 3, given the issues raised by the CR in her Redfern Reply as regards choice architecture. The CR's concerns with the Defendants' language is that it is unclear whether the Defendants consider that the scope of the ordered definition of choice architecture is changed by replacing it in the Redfern Schedule with "user flows or user-facing prompts or notifications (including prompts to accept options)". In particular, it is not clear if this would address the wider context of what is shown to users, including:
>
> a. what triggers the presentation of any prompts / user facing flows / notifications;

b. how often, and in what circumstances, any prompts / flows / notifications are presented;

c. what the default settings are for any matters addressed by these prompts / user facing flows / notifications;

d. what users need to do to navigate to any terms of service or policies (i.e. addressing visibility and discoverability); and

e. whether there are any elements of personalisation in how the terms and policies, any changes thereto, or the prompts / flows / notifications are presented."

85. Mr Singla KC, on behalf of Meta did not accept that the CR was entitled to (a), (b) or (e) of the above, and said that under Meta's wording those will not be provided. The Tribunal considers that they should be provided and, in the round, prefers the wording of the CR.

86. The Tribunal is, at this stage, reluctant to revisit the issue of "choice architecture" which was dealt with at CMC3 when the Tribunal finalised the definitions in the LOIFD. It is much easier to stick with what is already understood and then when it comes to the team working through the disclosure exercise, they will, of course, have the LOIFD and the definitions provided therein at hand. It is fraught with problems to be amending definitions at this stage of the disclosure process. Although the Tribunal has sympathy for some of Mr Singla KC's points, it is eager to avoid unnecessary complication.

(7) Request 12

87. Request 12 provides as follows:

> "Custodial and, to the extent reasonably necessary, non-custodial documents, in relation to why Meta presented the choice architectures that it did to UK users in relation to the terms of service (and equivalents) identified in Request 7 for Facebook, Instagram and WhatsApp.
>
> Date range: 1 January 2005 to date"

88. The central dispute between the parties is the extent to which the search should be specifically related to UK users. HSFK, in its letter of 21 November 2025 at paragraph 26 proposed as follows:

> "**UK Users**

26. It is the Meta Entities' position that, in order for a document to be responsive to a request which relates to UK Users (UK Users having the meaning given in the List of Issues for Disclosure dated 29 July 2025), it must explicitly, but not only by express reference to "UK", relate to UK Users. Take for example four documents which are identical and potentially relevant, save that:

    a. document (a) refers to "*global users*" or "*users*";

    b. document (b) refers to "*UK Users*" only;

    c. document (c) refers to "*EMEA users*" only; and

    d. document (d) refers to "*APAC users*" only.

27. The Meta Entities consider that documents (a), (b) and (c) may fall to be disclosed, but document (d) does not. This is because whereas documents (a), (b) and (c) may relate to UK Users (and also other users, in the case of (a) and (c)), document (d) does not relate to UK Users: it relates specifically to users in APAC." (emphasis in original)

89. The Tribunal considers HSFK's proposal is workable and practicable, therefore it is content with Request 12, subject to the qualification set out at paragraph 26 of HSFK's letter extracted above.

(8) Request 18

90. Request 18 provides as follows:

> "Copies of final (i.e., non-draft):
>
> a) standard form terms, policies, and/or arrangements with third parties; and
>
> b) terms, policies, and/or arrangements with each of the largest 50 providers of Off-Facebook Data as measured by volume of Off-Facebook Data collected/received/processed/used by Meta in relation to UK Users,
>
> insofar as they relate to: (i) Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data of UK Users for personalised advertising on Facebook; and/or (ii) the means by which those third parties collected, and/or received and/or transferred UK Users' Off-Facebook Data.
>
> Date range: 1 January 2005 to date"

91. The dispute currently centres around whether or not Request 18(a) should be confined to Meta's "Business Tools Terms", and as regards Request 18(b), whether the top "providers of Off-Facebook Data" should be assessed by value

or volume, and the number of sample "providers of Off-Facebook Data" that should be looked at.

92. The debate over "Business Tools Terms" was discussed at CMC3 and flows from paragraph 10(b) of the Defence, which provides as follows:

> "10. In fact, the CR's categorisation of data from other Meta products and services as "Off-Facebook" fails to reflect the way that Meta operates. The following two broad categories of data are relevant to the Claim and have been used by Meta to (*inter alia*) provide personalised services on the Facebook Service during the Claim Period:
>
> […]
>
> (b) **Third Party Activity Data**: user activity data on websites or apps of third parties (such as advertisers) that those third parties choose to share with Meta. Meta requires those third parties to have a lawful basis for the transmission of Third Party Activity Data to Meta (including obtaining any requisite consents from users) prior to doing so (see further below). This data is shared by third parties because they consider it relevant to further their advertising objectives on Facebook, including more efficient advertising and better metrics/analytics to measure the effectiveness of those ads. Third Party Activity Data shared with Meta includes, for example, how users interact with third party websites and apps (known as "**events**" – e.g., a user viewing a particular product or placing it in their basket on an online shop). Third party advertisers can choose to share this data in the form of "events" related to users' interactions with those third parties, which they can do by integrating one or more of Meta's advertising products on their own website/app ("**Meta's Business Tools**"). The terms that govern the third-party advertisers' use of such products ("**Meta's Business Tools Terms**") require that third-party advertisers (i) make the necessary disclosures to its website or app visitors, and (ii) establish a legal basis for the transmission of Third Party Activity Data to Meta in compliance with all applicable laws, regulations and industry guidelines before collecting, processing or sharing any Third Party Activity Data with Meta. For these purposes, such laws and regulations included but were not limited to the General Data Protection Regulation ("**GDPR**"), the "UK GDPR" and the national laws implementing the EU ePrivacy Directive (for the relevant parts of the Claim Period that each of these were applicable). The CR ignores this and erroneously focusses solely on the terms and conditions between Meta and Facebook users."

93. As regards Request 18(a), HSFK have offered to provide disclosure in relation to four sets of terms as set out in the letter dated 21 November 2025 at paragraph 14, and supplemented by the letter dated 25 November 2025 at paragraphs 2-3:

HSFK letter dated 21 November 2025

"14. The Meta Entities have considered the Class Representative's position in Vernon 7 paragraph 52.2 and are prepared, in the spirit of cooperation, to agree not to limit searches conducted under R18(a) to Meta's Business Tool Terms alone. Instead, the Meta Entities will include within the scope of the searches conducted under R18(a) the "*standard form terms, policies, and or arrangements with third parties*" that are hyperlinked in the Business Tool Terms, insofar as they relate to (i) and (ii) of the language of R18(a) (as above in paragraph 13). The Meta Entities consider the following standard form terms and policies with third parties partly relevant to R18(a):

a. Platform Terms (previously Facebook Platform Policy);

b. Data Security Terms;

c. Self-Serve Ad Terms; and

d. Data Processing Terms."

HSFK letter dated 25 November 2025

"2. As to **R18(a)**, paragraph 9 of Your 23 November Letter states that "*it is not appropriate to limit disclosure to documents hyperlinked in the Business Tools Terms*" on the basis that such an approach might exclude (i) "*predecessors to the Business Tools Terms and thus any documents hyperlinked in such predecessors*"; or (ii) "*any terms or policies Meta elected not to hyperlink*."

3. This position does not engage with the reasonable and proportionate approach proposed at paragraph 14 of Our Letter to provide four additional sets of other standard form terms and policies under R18(a) which the Meta Entities have indicated are partly relevant to Meta's collection and/or receipt and/or processing and/or use of "Off-Facebook Data" for use on Facebook, namely: (a) Platform Terms (previously Facebook Platform Policy); (b) Data Security Terms; (c) Self-Serve Ad Terms; and (d) Data Processing Terms. That they are linked in the Business Tools Terms – which to the best of their current awareness the Meta Entities confirm are the standard form terms and policies which govern the sharing of "Off-Facebook Data" with Meta by third parties, including advertisers – serves to demonstrate this point. The Class Representative does not identify which other specific "*standard form terms, policies, and/or standard form arrangements with third parties*" are said to be missing."

94. As regards Request 18(a), the Tribunal agrees with the CR's position as it is concerned that certain important data may be missed by having an unduly restrictive definition. Further, the Tribunal has already ruled, effectively, on this point at CMC3.

95. As regards Request 18(b), the Tribunal agrees with Meta that a sample of 50 "providers of Off-Facebook Data" is too wide, and it is likely more workable for those carrying out the exercise to conduct it by value, rather than volume. Therefore, the Tribunal propose that documents in relation to the top 25 "providers of Off-Facebook Data" by value be disclosed, and insofar as the top five by volume are not included within that, they, too, are added, so the potential maximum number is 30 rather than 50.

(9) Requests 19-26

96. The issue between the parties in relation to Requests 19-26 is whether or not it's reasonable and proportionate to go beyond the "Business Tools Terms" in relation to the ancillary matters contained in Requests 19-26. For example, Request 19 provides as follows:

> "Custodial documents and, to the extent reasonably necessary, non-custodial documents, in relation to how and for what purposes Meta designed and implemented the third party terms, policies and arrangements identified in Request 18 insofar as relates to Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data.
>
> Date range: 1 January 2005 to date"

97. In HSFK's letter dated 21 November 2025 at paragraph 14 (see extract at paragraph 93 above) Meta stated it was willing to provide, in addition to the "Business Tools Terms", four sets of terms in relation to Request 18. However, Mr Singla KC has drawn to the Tribunal's attention that if that approach were to be applied to Request 19, the volume of disclosure would be increased from 98,000 hits to 500,000 hits.[6]

98. The Tribunal considers that the burden which Meta describes may be somewhat exaggerated, given the ability to use technology assisted review ("TAR") to reduce the amount of material that has to be subject to human review. However, in view of ordering a reasonably proportionate disclosure exercise, the Tribunal orders that, in the first instance, Requests 19-26 will be by reference to the "Business Tools Terms". If the initial disclosure to these requests results in too

[6] The Defendants clarified after the hearing that this number was an estimate only, and not an actual reflection of hits generated.

narrow an amount of material being provided, then there is liberty to apply to the Tribunal in correspondence.

99. The Tribunal's ruling on these issues reflects its desire to achieve a practical disclosure process in these proceedings. The Tribunal appreciates that there is a limit to how much can be expected to be done in the limited time available and at a reasonable and proportionate cost. Therefore, it is not foreclosing the possibility of future disclosure being ordered in relation to Requests 19-26, rather the Tribunal is simply indicating that initially disclosure should be by reference to the "Business Tools Terms".

100. Further, as disclosure is going to be provided on a rolling basis, if this debate does come up again, the Tribunal does not want it to be left to the end of the disclosure exercise. One would hope that when it comes to prioritising what comes first, these requests will be prioritised, which will thereby allow the position in relation to these requests to be crystalised. Therefore, the Tribunal recognises that this argument may be returned to. Before that can occur, it needs to see what comes from the initial disclosure discussed above.

(10) Request 20

101. Request 20 provides as follows:

> "Non-custodial documents relating to the "testing" of the suitability of the third party terms, policies and arrangements identified in Request 18 (including alternatives) insofar as they relate to Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data.
>
> Date range: 1 January 2005 to date"

102. The issue between the parties is whether or not the disclosure already ordered in Request 9 in relation to "alternatives" for user terms of service should be extended to terms with third parties. As in previous requests, Meta take issue with the inclusion of "alternatives" and therefore propose that the Request be formulated as follows: "Non-custodial documents relating to the "testing" of the suitability of the documents identified in Request 18 insofar as they relate to Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data."

103. The Tribunal already accepted at CMC3 that both sides of the coin are relevant, however the second side, which is the dealing with third parties, is not as central to the issues as the first, being Users. The disclosure already directed should provide sufficient information in relation to dealings with third parties, therefore the Tribunal agrees with Mr Singla KC in refusing the element of this request relating to "alternatives" at this stage on reasonableness and proportionality grounds.

104. The Tribunal accepts that the CR's request is relevant, but again, if a problem is discovered when the exercise is being done, the CR can come back with liberty to apply. All the Tribunal is doing at this time is not accepting the CR's formulation *for now* – if later, in light of disclosure provided by Meta as part of the exercise, it appears that additional disclosure is in fact necessary and proportionate, which the Tribunal currently does not think it is, then the CR may apply to seek additional disclosure on these issues.

(11) Request 27

105. Request 27 provides as follows:

> "The Best Available Evidence[3] of:
>
> a) the total number of unique UK Users provided as the total aggregate figures across 14 February 2016 and 6 October 2023;
>
> b) […][4] […][5] […];
>
> c) the number of daily active UK Users[6] (and underlying data associated with that evidence) (1 January 2005 to date);
>
> d) […][7] […];
>
> e) the number of monthly active UK Users[8] (and underlying data associated with that evidence) (1 January 2005 to date);
>
> f) […]
>
> g) the time spent by UK Users on the user-side of Facebook: (i) over a year; (ii) over a day; and (iii) over a month[9] (and underlying data associated with that evidence) (Claim Period);
>
> h) the proportion of UK Users' time spent on at least the top five most commonly used of the user-side of Facebook's features and functionalities:[10] (i) by year; (ii) by month, and (ii) by day (and

underlying data associated with that evidence) (1 January 2005 to date);[11]

i) the number of unique UK User Facebook accounts used for trade, profession and/or commercial purposes (Claim Period);

j) how and when Facebook's key user-facing features, functionalities, characteristics and/or improvements on the user-side of Facebook launched and/or changed (1 January 2005 to date);

k) how the user- and advertiser-side of Facebook has been used by UK Users for purposes related to their trade, profession or for any commercial purpose (Claim Period);

l) the number of unique users in the UK of: (i) Instagram from 1 April 2012 to date; and (ii) WhatsApp from 1 February 2014 to date, (x) in total, (y) by daily active users and (z) by monthly active users (and underlying data associated with that evidence);[12]

m) the time spent by users in the UK on each of (a) Instagram from 1 April 2012 to date and (b) WhatsApp from 1 February 2014 to date, (i) over a year, (ii) over a day and (iii) over a month (and underlying data associated with that evidence);[13]

n) the proportion of time of users in the UK spent on each of Instagram's (from 1 April 2012 to date) and WhatsApp's (from 1 February 2014 to date) respective at least the top five most commonly used features and functionalities:[14] (i) in total, (ii) by day, and (iii) by month[15] (and underlying data associated with that evidence);

o) the number of unique UK Users who used products that compete with the user-side of Facebook (1 January 2005 to date);

p) the number of unique UK Users who single home or multi home (1 January 2005 to date); and

q) the extent to which UK Users have used products that compete with the user-side of Facebook either as a complement to or as a substitute for the user-side of Facebook (1 January 2005 to date).

FN 3: It is the Class Representative's position that the Defendants should also confirm in respect of the information provided pursuant to this request as a whole: (i) whether Meta has de-duplicated any accounts or removed any accounts (and if so, on what basis); and (ii) how the definition of "accessed" has been determined in the application of the request to the IFD and the definition of UK Users. It is also the Class Representative's position that such figures will include business users on the basis that they fall within the definition of UK Users. In accordance with the definition of UK Users in the LOIFD, where the temporal scope of the IFD is broader than the Claim Period, the definition of UK User should be expanded accordingly so that it covers all users of Facebook who had a Facebook account at any time during the relevant period and accessed their account at least once during the relevant period while located in the UK.

FN 6: Total daily active users (“DAUs”) on a daily basis, plus average DAUs on a monthly basis, i.e. the average of the total daily DAUs across each month.

FN 8: To include Total MAUs on a monthly basis.

FN 9: To include the total aggregate time spent across all UK Users, on a daily, monthly and annual basis; and the average time spent per user per day, on a daily, monthly and annual basis and how the underlying data is distributed.

FN 10: Including but not limited to newsfeed, timeline, stories, photo albums, reels, messages (via the Facebook app/site), audio/video call (via the Facebook app/site), games, groups, pages, events, Marketplace, Facebook live and Facebook Dating.

FN 11: Including the average proportion of time spent on each feature per user, per day (daily data), per month (monthly data), or per year (annual data).

FN 12: Including the total number of unique users, regardless of whether or not they have accessed the Facebook platform, on a monthly basis, the total MAUs on a monthly basis, the total WAUs on a weekly basis, plus average WAUs on a monthly basis i.e. the average of the total daily DAUs across each month/proceeding 4 week period; and the total DAUs on a daily basis, plus average DAUs on a monthly basis, i.e. the average of the total daily DAUs across each month.

FN 13: Including the total aggregate time spent across all UK Users, on a daily, monthly and annual basis; and the average time spent per user per day, on a daily, monthly on annual basis and how the underlying data is distributed.

FN 14: Including but not limited to profiles, feed, stories, reels, direct messages, audio/video calls, live, explore page on Instagram; and group chats, individual chats, audio/video calls, communities, updates on WhatsApp.

FN 15: Including the average proportion of time spend on each feature per user, per day (daily data), per month (monthly data), or per year (annual data)."

106. The main dispute between the parties is in relation to "underlying data". The rationale for the request is set out in Scott Morton 4 at paragraphs 14-16:

> "14. Request 27 seeks the Defendants' best available evidence of different measures of user numbers and time spent, including on different activities, on Facebook, Instagram and/or WhatsApp (see 27 (a), (c), (e), (g), (h), (i), (l), (m), and (n)). It also seeks best available evidence on:
>
> - how and when Facebook's key user-facing features, functionalities, characteristics and/or improvements on the user-side of Facebook launched and/or changed (1 January 2005 to date) (see 27 (j));
>
> - how the user- and advertiser-side of Facebook has been used by UK Users for purposes related to their trade, profession or for any commercial purpose (Claim Period) (see 27 (k));
>
> - the number of unique UK Users who used products that compete with the user-side of Facebook (1 January 2005 to date) (see 27 (o));

- the number of unique UK Users who single- or multi-home (1 January 2005 to date) (see 27 (p)); and

- the extent to which UK Users have used products that compete with the user-side of Facebook either as a complement to or as a substitute for the user-side of Facebook (1 January 2005 to date) (see 27 (q)).

15. I understand that Meta agrees with the general relevance of this request, but resists the provision of "*any underlying data*" for certain sub-requests, specifically for (c), (e), (g), (h), (l), (m), and (n) (all of which are sub-requests concerning user numbers and time spent by those users on different features/services).

16. To be clear, in relation to these requests, to the extent that Meta has run analyses and generated metrics referred to in this Request, I only seek *processable* versions of the metrics reported in the documents that are disclosed; I do not consider it necessary to receive the raw user-level data that was used to compile the metrics or give effect to the methodology. This is because I anticipate needing to conduct analysis on such metrics (e.g. to chart the data or electronically compare to other similar metrics received). Receiving the metrics in a processable form will allow me to conduct my analysis far more efficiently than, for example, only receiving reports or representations of the data in a format from which the data is not automatically extractable in to a processable form (in which case I would need to seek to extract it manually, if it is even feasible to do so, which would be an extremely inefficient use of time and may result in me constructing less accurate datasets than those that Meta could provide 'off-the-shelf')."

(Footnotes omitted)

107. Meta is prepared to give "underlying data" to the extent it is processible data, but they are not prepared to, in effect, carry out the exercise themselves as per the requests in the relevant footnotes. The Tribunal agrees with Meta's position on this issue.

108. Clearly if there is a problem further down the line there would be liberty to apply but what is on offer today by Meta appears to the Tribunal to be entirely proportionate, at least at this stage. However, if upon the CR receiving Meta's disclosure pursuant to this request, the CR realises that the data is unworkable, the CR may return to the Tribunal and seek additional disclosure or clarification or further information. That being said, the Tribunal is of the view that the CR should be able to work with the material to be provided under this category.

(12) Request 28

109. As at the second day of this hearing, Request 28 provided as follows:

> "A/B tests, or any other experiments, research, surveys, studies, impact analysis, modelling and/or option analysis (presented in whatever form) related to the impact or outcomes associated with different options related to:
>
> a) The design and implementation of the terms of service (and equivalents) identified in Request 7;
>
> b) The communication of the terms of service (and equivalents) identified in Request 7 to UK Users;
>
> c) The choice architecture of the terms of service (and equivalents) identified in Request 7;
>
> d) The prompting of UK Users to accept and/or become aware of the terms of service (and equivalents) identified in Request 7;
>
> e) The design and implementation of the third party terms, policies and arrangements identified in Request 18;
>
> f) The communication of the third party terms, policies and arrangements identified in Request 18 to third parties and UK Users;
>
> g) The prompting of third parties to accept the third party terms, policies and arrangements identified in Request 18;
>
> h) The design and implementation of the tools, methods and/or measures used to collect, and/or receive and/or process (and/or aggregate) and/or use Off-Facebook Data referred to in Request 43;
>
> i) The communications to UK Users of the tools, methods and/or measures used to collect, and/or received and/or process (and/or aggregate) and/or use Off-Facebook Data referred to in Request 43;
>
> j) The design and implementation of the options, tools, controls, features, and resources referred to in Request 58 that UK Users had to understand Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data and/or to limit or prevent the same;
>
> k) The communications to UK Users of the options, tools, controls, features, and resources referred to in Request 58 that UK Users had to understand Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data and/or to limit or prevent the same to UK Users;
>
> l) The choice architecture of the options, tools, controls, features, and resources referred to in Request 58 that UK Users had to understand Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data and/or to limit or prevent the same;
>
> m) The design, implementation and communication of the options referred to in Request 64 that third parties had which limited Meta's

collection and/or receipt and/or processing and/or use of UK User's Off-Facebook Data;

n) The design and implementation of the tools referred to in Request 66 for UK Users to access their online data held by Meta;

o) The different approaches to advertising, including ad personalisation (insofar as this affects the behaviour of UK Users);

p) Strategies to respond to and/or mitigate the impact of ad blockers and ATT;

q) Strategies to respond to and/or mitigate the impact of the GDPR and/or the Digital Markets Act (in so far as they relate to Off-Facebook Data);

r) Prices or other compensation that UK Users would need to be paid to share their data, including but not limited to Off-Facebook Data;

s) Value transfers to UK Users in connection with the collection and/or receipt and/or processing and/or use of data.

References to "Off-Facebook Data" in this request reflect the fact that Meta Entities will search for documents that relate to and/or capture Off-Facebook Data, although for the avoidance of doubt a document which is reviewed and which would otherwise be responsive to this request does not fall outside of the scope of disclosure solely on the basis that it refers to data which includes, but expands beyond, Off-Facebook Data.

Date range: 1 January 2005 to date, apart from (n), which is 1 January 2010 to date; (o), which is 1 January 2007 to date; (p), which is 1 June 2020 to date, and (q), which is 1 January 2015 to date"

110. As at the second day of this hearing, being 26 November 2025, there is an on-going discussion between the solicitors as to the particular sub-categories being sought. The Tribunal does not want to cut across that, and it thinks that the solicitors should have more time to try and finalise an agreement on the specific sub-categories of Request 28.

111. The Tribunal agrees with Meta that there is an element of duplication across the sub-categories, and insofar as there is, the parties should endeavour to avoid that so far as it is true duplication – if it is not true duplication then they can be left.

112. Aside from duplication issues, there is a specific dispute between the parties regarding Request 28(q) which seeks disclosure relating to Meta's strategies to respond to and/or mitigate the impact of the GDPR and DMA in so far as they relate to "Off-Facebook Data". Meta submit that it is not necessary to provide disclosure in relation to the GDPR and DMA for various reasons. First, Meta

say that Request 28(q) seeks material which will be provided under other requests – certainly as regards the DMA. Secondly, Meta say that the DMA is neither a competition regulation nor is it privacy regulation and therefore is not in itself relevant to the CR's case.

113. The Tribunal ruled on the DMA issue at paragraph 63-64 above. The Tribunal considers that Request 28(q) should be narrowed in relation to the DMA to specify Article 5.2 of the DMA.

114. Following the Tribunal's comments on Request 28 on the second day of this hearing, the CR refined the request. As at the third day of this hearing, Request 28 provides as follows:

> "A/B tests, or any other experiments, research, surveys, studies, impact analysis, modelling and/or option analysis (presented in whatever form) related to the impact or outcomes associated with different options related to:
>
> a) The design and implementation of the terms of service (and equivalents) identified in Request 7 for Facebook, Instagram and WhatsApp;
>
> b) The design and implementation of Meta's Business Tools Terms (including predecessors) identified in Request 18;
>
> c) The design and implementation of the options, tools, controls, features, and/or resources referred to in Request 58 that UK Users had to understand Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data and/or to limit or prevent the same;
>
> d) The design and implementation of the tools referred to in Request 66 for UK Users to access their online data held by Meta;
>
> e) Strategies to respond to and/or mitigate the impact of ad blockers and ATT which relate to Meta's collection and/or receipt and/or processing and/or use of UK Users' Off-Facebook Data;
>
> f) Value transfers to UK Users in connection with the collection and/or receipt and/or processing and/or use of data;
>
> g) Strategies to respond to and/or mitigate the impact of the GDPR and/or Article 5(2) of the Digital Markets Act (in so far as they relate to Off-Facebook Data); and
>
> h) Prices or other compensation that UK Users would need to be paid to share their data, including but not limited to Off-Facebook Data.
>
> Date range: 1 January 2005 to date, apart from (d), which is 1 January 2010 to date; (e), which is 1 June 2020 to date; and (g), which is 1 January 2015 to date for GDPR and 1 January 2020 to date for DMA.

Non-custodial documents containing Meta's testing, analyses and studies (including as to alternatives) related to:

i) The communication of the terms of service (and equivalents) identified in Request 7 to UK Users;

j) The communication of Meta's Business Tools Terms (including predecessors) identified in Request 18 to third parties and UK Users;

k) The communications to UK Users of the options, tools, controls, features, and/or resources referred to in Request 58 that UK Users had to understand Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data and/or to limit or prevent the same to UK Users;

l) The impact on UK Users' behaviour of advertising on the user-side of Facebook, including to personalised advertising; and

m) The choice architecture of the options, tools, controls, features, and resources referred to in Request 58 that UK Users had to understand Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data and/or to limit or prevent the same.

References to "Off-Facebook Data" in this request reflect the fact that Meta Entities will search for documents that relate to and/or capture Off-Facebook Data, although for the avoidance of doubt a document which is reviewed and which would otherwise be responsive to this request does not fall outside of the scope of disclosure solely on the basis that it refers to data which includes, but expands beyond, Off-Facebook Data.

Date range: 1 January 2005 to date, apart from (l), which is 1 January 2007 to date."

115. There is a dispute as to whether or not Meta should be searching for third party analyses and reports, or simply search for its own. However, both parties are in agreement that if Meta identifies in the course of its review a relevant third party report or analysis then it will provide disclosure.

116. In the Tribunal's view, irrespective of whether the analyses and reports are undertaken by Meta, or by a third party on behalf of Meta, but is actually available to Meta in its records, it should be disclosed.

117. The second point in relation to Request 28 is whether categories (f), (h) and (l) should be confined to Off-Facebook Data or not. The Tribunal considers that the CR has sufficiently distinguished those where it is appropriate to confine requests to Off-Facebook Data and those where it is not appropriate to have such a qualification. The Tribunal is satisfied that in relation to (f), (h) and (l) the CR

has correctly not limited the disclosure to Off-Facebook Data and there should be disclosure of those categories.

(13) Request 35

118. Request 35 provides as follows:

> "Custodial and, to the extent reasonably necessary, non-custodial documents in relation to Meta's assessment of the role of: (i) network effects; and/or (ii) addiction effects in:
>
> a) Users' use and/or value of the user side of Facebook; or
>
> b) switching costs for users.
>
> Date range:
>
> For (i): 1 January 2005 to date
>
> For (ii): 1 January 2009 to date"

119. The key dispute between the parties in relation to Request 35 is whether or not the request should include reference to "addiction effects" in addition to reference to "network effects". It is said on behalf of Meta that "addiction effects" is not an issue that has been pleaded in the RACF. This is correct as a matter of fact, but that is not conclusive in itself if, in fact, it does become an issue by virtue of the way that Meta has pleaded its Defence.

120. "Addiction effects" is referred to in the First Expert Report of Professor Scott Morton dated 8 October 2023 ("Scott Morton 1") at paragraphs 257-259:

> "257. It is indeed the case that various studies (e.g., Alcott and Gentzkow) have shown that consumers value Facebook significantly. [148] However, I do not think that a comparison between this value and the cost of giving up the Off- Facebook Data is the right way to assess the fairness of Facebook's conduct.
>
> 258. First, much of consumers' willingness to pay for Facebook is likely to result from the network effect and the lack of alternatives. I would expect these valuations to be much lower if Facebook faced effective competition.
>
> 259. Second, the research of Alcott and Gentzkow found that some of the willingness to pay for Facebook reflected addiction effects. In particular, the study found that users' willingness to pay for Facebook was lower after they had given up using it for a period than it was at the start of the experiment.[149]

FN 148: Allcott et al (2020) found that deactivating Facebook for the four weeks before the 2018 US midterm election (i) reduced online activity, while increasing offline activities such as watching TV alone and socializing with family and friends; (ii) reduced both factual news knowledge and political polarization; (iii) increased subjective well-being; and (iv) caused a large persistent reduction in post-experiment Facebook use. Deactivation reduced post-experiment valuations of Facebook, suggesting that traditional metrics may overstate consumer surplus. See Allcott, H. et al. (2020) 'The welfare effects of social media', *American Economic Review*.

FN 149: A further issue is that a body of literature indicates that use of Facebook also leads to important measurable negative side effects for users e.g., in the form of addiction and reduced subjective well-being. In principle, this could also be assessed empirically using an empirical model of platform demand and supply, see e.g., Lee, R.S. (2013) 'Vertical integration and exclusivity in platform and two-sided markets', *American Economic Review*."

121. As stated above, "addition effects" is not reflected in the RACF itself, therefore the Scott Morton 1 reference to "addiction effects" doesn't take you very far. However, there are passages in the Reply which clearly bring in issue the potential, and the consequences of, "addiction effects", in particular at 3(a)(ii)1-2, 38 and 117(a)(ii)4 of the Reply:

> "3.(a) ii. Further and in any event:
>
> (1) To the extent that Meta alleges that Users derive value from the Facebook Service insofar as they are active on or unwilling to switch away from it, the CR avers that Users' attachment to the Facebook Service is largely or wholly attributable to network effects (as to which paragraph 117(b)(iii) of the Claim Form is repeated) rather than any economic value created by Meta (and, as such, such "value" cannot properly be ascribed to Meta and/or any innovations or investments it has made).
>
> (2) Further or alternatively, the time or activity of Users on the Facebook Service may result from Users' addiction effects. The CR will refer in this respect to: (a) research which shows that many Users experience an increase in well-being after being incentivised temporarily to deactivate social media;[4] and (b) Meta's objective to maximise engagement with the Facebook Service through development of its algorithms and other tools or features, notwithstanding the harms (such as polarisation, radicalisation and mental health issues, including among vulnerable groups such as teenage girls) that can result.[5]
>
> **FN 4**: Pending disclosure from Meta, the CR will rely at trial on the literature, for example: Allcott, Hunt, Matthew Gentzkow, and Lena Song "*Digital addiction*." American Economic Review 112.7 (2022): 2424-2463.
>
> **FN 5**: Pending disclosure from Meta, the CR relies in this regard on the evidence of Frances Haugen (former Meta employee and whistleblower) before the US Senate and UK Parliament in October 2021.

38. As to paragraph 67:

a. The second and third sentences are denied. Paragraph 13(e) above is repeated in relation to Meta's Terms and Policies.

b. The final sentence is too simplistic and is accordingly denied. In particular, Meta ignores: (i) the powerful network effects that rendered Users unable or unwilling to switch away from Facebook to other platforms (as to which paragraph 117(b)(iii) of the Claim Form is repeated); (ii) its dominant (indeed, super-dominant) position in the Personal Social Network Market; and (iii) the effects of addiction and negative value spillovers (as to which, paragraph 3(a)(ii) above is repeated).

117.(a)(ii) […]

(4) The CR further relies on the circumstances that: (a) Meta's dominant position in the Personal Social Network Market is liable to affect Users' freedom of choice, since they may be unable to refuse or withdraw consent without detriment; (b) powerful network effects render Users unable or unwilling to switch away from Facebook to other platforms (as to which paragraph 117(b)(iii) of the Claim Form is repeated); and (c) the effects of addiction and negative value spillovers had a distortive effect on Users' freedom of choice (see paragraph 3(a) above). In practice, the overwhelming bulk of Users had no choice but to accede to Meta's Off-Facebook Data demands."

(Footnotes omitted from paragraph 117)

122. The Tribunal considers that the pleadings and evidence referred to above does make "addiction effects" an issue in the proceedings. Further, it does not consider the disclosure being sought, if it is to include "addiction effects", is going to expand unduly the amount of disclosure provided under Request 35. Therefore, the Tribunal does not consider that it would be burdensome or disproportionate to order disclosure in relation to "addiction effects", even though it accepts it may well not end up being a central issue to be determined at trial – although it may.

(14) Request 44

123. Request 44 provides as follows:

> "Non-custodial and, to the extent reasonably necessary, custodial documents in relation to the steps and/or consideration (if any) taken by Meta relating to all relevant privacy legislation (including the DPA 1998, the DMA and the GDPR), and compliance therewith, before designing the tools, methods and measures referred to in Request 43.

Date range: 1 January 2005 to date"

124. The dispute centres around the extent to which Request 44 should specify pieces of legislation, and whether or not the legislation should include the DMA.

125. First, the Tribunal agrees with Meta that to simply point to "all relevant privacy legislation" is too vague and too broad for those conducting the disclosure exercise to implement. Request 44 does need to specify precisely which legislation will be used as a reference point.

126. Secondly, the Tribunal considers the DMA should be included as long as Request 44 specifically refers to Article 5.2 of the DMA, for the reasons it gave under what was then Request 28(q), and is now Request 28(g).

127. It is also asserted on behalf of Meta that Request 44 is duplicative and unnecessary, given the ruling made on Request 28(q). The Tribunal reject this assertion, as it does not think Request 44 is duplicative and it is necessary and proportionate to have the disclosure ordered under Request 44, as modified.

(15) Request 47

128. Request 47 provides as follows:

> "Non-custodial and, to the extent reasonably necessary, custodial documents in relation to the sharing or transmission of Off-Facebook Data between the Defendants or the Meta-owned platforms and services for use in relation to Facebook, and in particular for each type / category / format / other delineation of Off- Facebook Data, (a) when (b) from what sources (c) how and (d) why that sharing / transmission took place.
>
> Date range: 1 January 2005 to date
>
> Disclosure is sought by reference to both custodial search and non-custodial repositories, in order sufficiently to capture Meta's internal considerations and deliberations (including communications thereof); and also relevant reports or equivalent; and privacy review processes or documents."

129. The dispute between the parties in relation to Request 47 centres around whether or not disclosure in relation to "the sharing or transmission of Off-Facebook Data between the Defendants" should cover all other Meta owned platforms and services, as the CR requests, or simply Instagram, as Meta propose.

130. The Tribunal considers that there are various Meta owned platforms of differing sizes and relevance to this case. It considers the key Meta owned platforms are WhatsApp and Instagram, and therefore on proportionality grounds, direct that Request 47 be as worded above, but deleting "or the Meta owned platforms and services" and instead referring to both WhatsApp and Instagram. Consequentially, any dispute regarding the applicable date range for Request 47 should be easily resolved.

(16) Request 49

131. Request 49 provides as follows:

> "Agreements, arrangements, terms, policies, memoranda of understanding or similar documents between (i) Facebook and (ii) WhatsApp, and/or Instagram and/or Oculus and/or Onavo, relating to the collection, receipt, transfer and/or sharing of UK Users' data for use in relation to Facebook, including provision of personalised advertising on Facebook.
>
> Date range: 1 January 2005 to date"

132. The issue between the parties is whether or not Request 49 should include Oculus and Onavo. Given the Tribunal's ruling on Request 7 which granted disclosure in relation to, *inter alia,* Oculus and Onavo as regards the terms and policies between UK users and certain Meta-owned platforms, it makes sense to order disclosure for what is effectively the other side of the coin – being terms and policies as between certain Meta-owned platforms. Therefore, the Tribunal agrees with the CR's proposed wording which includes Oculus and Onavo in Request 49. This request should not be burdensome or costly to respond to.

(17) Request 54

133. The CR's formulation of Request 54 provides as follows:

> "Non-custodial documents that set out what steps are involved (and/or what types of auctions are used) in Meta's ad delivery and ads auction processes and when and how Meta has made changes to these steps.
>
> Date range: 1 January 2005 to date"

Meta's formulation of Request 54 provides as follows:

"Non-custodial documents that set out what steps are involved (and/or what types of auctions are used) in Meta's ad delivery and ads auction processes.

Date range: 1 January 2005 to date"

134. The issue between the parties boils down to how deep one digs in relation to the advertising delivery and advertising auction processes, and changes made to those processes. The parties' experts appear to disagree on the scope of the request. The CR's view is set out in Scott Morton 4 at paragraphs 43-48 and Meta's view is set out in the Parker Statement at paragraphs 33-37:

Scott Morton 4

"43. I understand that Meta does not consider "*a detailed understanding of the Meta Entities' ad delivery and ads auction processes*" to be necessary or proportionate to assess "*the alleged abuses or the appropriate market definition on the advertiser-side of Facebook*." I disagree.

44. A key issue in this case is the value of Off-Facebook Data. Identifying and measuring the incremental value of users' Off-Facebook Data to Meta is central to this case for both liability and quantum. I understand Meta principally extracts value from Off-Facebook Data via Facebook through selling personalised advertising, and that Meta extracts value by offering advertisers the functionality to target ads to reach the most suitable user profiles based on personal user data, including Off-Facebook Data.

45. To my current understanding, the way in which Meta sells ad space to advertisers (i.e. the digital locations or placements on Facebook where advertisements are shown to individual users), and determines the resulting advertising prices, is via an advertising auction system. I understand that, in such a system, advertisers bid for the opportunity to have their ads displayed, and that various characteristics, including the bidding behaviour of different advertisers, determine the resulting advertising prices. Moreover, I understand that bids are likely to depend on the extent to which Off-Facebook Data is available – data enhances the precision and effectiveness of audience targeting, which helps with evaluating how valuable an ad shown to an individual user would be.

46. However, it is not clear to me exactly how the auction provides for the availability of Off- Facebook Data to translate into higher price bids and eventually higher advertising prices or revenues for Meta. It is therefore necessary for me to understand the steps of the auction in order to understand the mechanism via which Off-Facebook Data becomes relevant and how it might (or does) translate into higher profitability. This will provide me the context for understanding the significance of such data and its value to Meta. My preliminary understanding is that Meta's Ads Manager system largely automates the bidding process for advertisers based on goals and budgets set by advertisers to decide where to place bids, while also learning from past results. However, it is not yet clear to me how this automated bidding

process translates advertiser goals into bids, how winning bids are selected, and crucially how the availability of Off-Facebook Data (as opposed to and/or in combination with other sources of data) feeds in to this process and leads to different levels of profitability. Overall, understanding the auction system Meta uses, how advertiser bidding takes place within this auction, and how the auction determines who wins and what they pay, is essential to explaining how the availability of Off-Facebook Data translates into prices and revenues.

47. Understanding when and how Meta's auction system has changed over time is important because if changes to the auction system have altered the way Off-Facebook Data drives revenues or profitability, this will have significant bearing on my expert methodology. For example, if the use of AI algorithms has changed the importance of Off-Facebook Data (e.g. because more datapoints can be inferred without it), or if the effectiveness of Off- Facebook Data for targeting has decreased, I will need to factor this into my analysis (although I would also need to consider how much such AI algorithms were trained on Off- Facebook Data in the first place).

48. Understanding the auction mechanism and related changes over time is also relevant for ensuring that I properly interpret any internal analysis Meta has done on the value of Off- Facebook Data, and that my own analysis and estimates are robust. I have explained the usefulness of auction data for my empirical analyses (see Request 56), and it is important that these analyses should be rooted in an understanding of how the auction operates. I highlight the importance of this topic in FSM1, where I made clear that I expect to learn more about the auction mechanism following disclosure. I further refer to my views on the relevance of documents related to ad auctions in rows 4.2 and 4.3 of the Joint Expert Statement with Mr Parker. Given the importance of the request for understanding how Off- Facebook Data delivers value to Meta, it is not clear to me why disclosure of existing documents should be considered disproportionate."

Parker Statement

"33. I consider that the experts will need to gain some broad understanding of how Meta sets ad prices and the role of Off-Facebook Data in that process. This can be relevant to some degree in the assessment of market definition and market power, and to the assessment of the alleged abuses. However, in my view Request 54 goes significantly beyond what is necessary for the expert analysis, and the relevant aspects appear to be already sufficiently covered by other requests.

34. With respect to the assessment of market definition and market power, only a high level description of how ads prices are set is sufficient, as it is the resulting price and advertisers' responses to prices that ultimately matter in the standard market definition analytical framework. An understanding of how Facebook's advertising products evolved over time – again at a high level – may also be relevant to the extent that this is informative as to the competitive environment that Meta was operating in on the advertising side throughout the Claim Period and potentially some pre-period going back to 2011 (see my comments in Section 3). However, such information is already captured in Request 89, which asks for documents in relation to

changes to Meta's advertising products and why they were implemented, as well as Request 55(a) (which I have commented on above). In my view, these requests already cover more than the required level of detail on Meta's auctions. I do not consider that detailed information on the individual steps in the *underlying auction process*, and the changes to these steps, as specified in Request 54, would provide any information necessary to the market definition and market power analysis.

35. With respect to experts' analysis of the role and value of Off-Facebook Data in Facebook's advertising operations, I understand from the CR's Reply in the Redfern schedule that Request 54 may be intended to collect information that Professor Scott Morton "*needs to understand how the ad auction mechanism worked throughout the period over which she will assess the value of Off- Facebook Data*". Professor Scott Morton mentions this in the JES, agenda item 4.2 "*How data [on UK users] is collected, received, stored, processed and aggregated and/or used*," where she commented that:

    35.1. A "*narrative witness statement would be useful" covering "How Facebook's ad manager and auction mechanism works and how the data to which the claim relates is used alongside other data*"; and

    35.2. She would additionally require "*Internal documents and internal data relating to how Facebook's auction mechanism changed in response to (i) the data to which the CR's claim relates; and (ii) any privacy prompts/settings/controls/tools which limit/prevent Facebook's collection and/or receipt, processing and/or use of their data*".

36. In my view, Request 54 goes significantly beyond what was described by Professor Scott Morton in the JES, which in itself I consider to be overly detailed for the purposes of analysing the role and value of Off-Facebook Data. I note that the CR is already making a number of other detailed requests for documents that will describe Off-Facebook Data and its role in delivering advertising, such as Redfern Request 55(a) (discussed above), Request 41 (documents "*in relation to how Meta used Off-Facebook Data together with UK Users' data generated on the user-side of Facebook*"), Request 42 (relating to documents on how and why Meta used various categories of Off-Facebook Data), Request 53 (relating to documents on "*commercial benefits and/or economic value to Meta of collecting / receiving Off-Facebook Data, and how any such commercial benefits / economic value were created*").

37. In light of these other significant requests, it is not clear to me how detailed information on auction processes would benefit the experts' analysis of the role and value of Off-Facebook Data. In particular, the information requested is likely to generate a significant volume of information on technical aspects of Facebook's auction mechanism that have no bearing on the economic relationship between Off-Facebook Data and ad prices that is of interest here."

135. Merely because a disclosure item is requested by an expert, that does not mean it will necessarily be provided. It is a matter for the Tribunal to use its judgment to determine whether or not the disclosure sought is really necessary.

136. The Tribunal agrees that there should be some disclosure as to when and how Meta has made changes to the advertising delivery and advertising auction processes. However, it is not completely persuaded by the CR's arguments regarding the scope of the request. The Tribunal is not minded to order overly expansive disclosure on this request. Therefore, the Tribunal considers that there will need to be some degree of selection in determining what is going to be provided, as masses of documents are unlikely to assist the parties' experts, and for that matter the Tribunal. A selection of documents should be provided, so one can understand the general processes and how they have developed over time.

137. The Tribunal does not expect within the contested part of Request 54 a huge volume of documents, otherwise it risks losing a sense of proportion in this case.

(18) Request 55

138. Request 55 provides as follows:

> "Non-custodial documents (and the underlying data for sub-paragraph (b)) considering:
>
> a) what factors, including the extent of use of Off-Facebook Data, affect bidding behaviour, winning probability, the price paid by advertisers and the profitability of Meta's advertising auctions;
>
> b) the commercial benefits and/or the economic value to Meta in collecting and/or receiving and/or using and/or processing Users' data, in particular but not limited to Off-Facebook Data, including those considering the impact on commercial benefits/economic value when Meta's ability to collect and/or receive and/or use and/or process data changed.
>
> Date range: 1 January 2007 to date."

139. There are three specific aspects of the request in dispute between the parties:

(1) In relation to subparagraph (b), whether the underlying data should be provided, though to a certain extent this dispute was resolved in correspondence.

(2) In relation to subparagraph (a), whether the factors should specifically refer to bidding behaviour, winning probability and the price paid by advertisers.

(3) In relation to subparagraph (b), whether the Users' data should be limited to Off-Facebook Data.

140. The rationale for the CR's formulation of Request 55 is explained in paragraphs 51-55 of Scott Morton 4. Professor Scott Morton explains why she requires the "underlying data" in relation to subparagraph (b) at paragraphs 56 to 57:

> "56. Finally, I understand that the Defendants do not agree to provide "underlying data" for this request. I again disagree. For my expert work I will need to isolate as accurately as possible the value of Off-Facebook Data, which will necessitate understanding how Meta has conducted its analyses and on what data that is based. Depending upon the scope of any analyses undertaken by Meta, it may also necessitate: (i) isolating the value of Off-Facebook Data from an overall valuation of aggregated data (i.e., On-Facebook plus Off-Facebook Data), which would require access the to the underlying data; and/or (ii) inferring a value of Off-Facebook Data from Meta's internal analyses for overlapping cohorts of data to which the CR's claim relates – if they exist – for which access to the data underlying such analyses will be crucial.
>
> 57. For the avoidance of doubt, "underlying data" in the context of this Request extends beyond just the datasets that have been used to generate any summary metrics (e.g. tables or graphs) that Meta may have prepared, to the raw data and associated data files that underpin and implement any datasets constructed or methodologies used to derive those results. In essence, I require the underlying data necessary to properly understand the methodology deployed by Meta, and to be able to apply variations on that methodology with different assumptions/sensitivities in order to produce my own analysis to a sufficient degree of robustness."

141. As regards the "underlying data" in respect of subparagraph (b), that is the subject of agreement between the parties as reflected in the HSFK letter dated 15 December 2025 at paragraphs 19 and 20, which provide:

> "19. To move matters forward, the Meta Entities agree to give disclosure of underlying data relating to documents disclosed under Request 55(b) to the extent that relevant datasets are readily identifiable and available. In particular, they agree to disclose underlying data to the extent that: (1) it is held together in the same location as documents disclosable under Request 55(b); (2) it would not require fresh extractions from Hive or other non-custodial repositories; and (3) it is in a form that appears to have been extracted and analysed for the purpose of the disclosable documents under Request 55(b), and it is readily identifiable as such.
>
> 20. Otherwise, should it become apparent from either the Class Representative's or the Meta Entities' experts' review of the disclosure given under Request 55(b) that any underlying data exists which are necessary for their analysis, notwithstanding the disclosure already provided, they could request them and the Meta Entities would consider whether it is reasonable and proportionate to provide them."

142. As regards Request 55 subparagraph (a), Ms Ford KC, on behalf of the CR, stated that this was an issue that did arise when the LOIFD was considered by the Tribunal and that it was decided that this was relevant and justified.

143. Mr Singla KC responded by stating that whether or not an item is in the LOIFD is not conclusive, as the Tribunal has to consider the issue of proportionality and necessity. He contended that the additional material sought in the contested wording in (a) and (b) was too broad. In addition, he stated that 2.4 million custodial documents have already been identified in these collective proceedings, prior to a review.

144. The Tribunal is not so troubled by the number of documents, given the ability of modern technology to review very large amounts of data at much less cost than would have been the case in the past. The Tribunal is satisfied that the CR is entitled to have the material that it seeks in Request 55 and that it is proportionate for that disclosure to be provided. However, this is subject to the same caveat as for Request 54 (see paragraphs 136 and 137 above) and the Tribunal does not want a vast amount of money to be spent in relation to this request.

(19) Request 56

145. Request 56 provides as follows:

"Data to elicit the value of Off-Facebook Data to Meta by facilitating an analysis of the extent to which users, ad campaigns and/or ad auctions generate higher prices and/or more economic value to Meta when there is access to a higher volume of Off-Facebook Data, namely:

a) A representative sample of ad auctions, and for each auction: i) information on the auction, advertiser, and user characteristics including a user identified and information on the extent of data available to Facebook on the user, and if available, tracking a consistent set of users over time; ii) measures of auction outcomes and advertiser performance including ad spend, Facebook revenue, user engagement, and financial performance (e.g. ROAS, LTV).

b) A representative sample of UK Users, and for each user: i) background information on the user (e.g. user ID, user demographics, tenure on Facebook, geographic information); ii) a daily time series of the users' usage of Facebook over time (e.g. number of logins, time spent, volume of clicks); iii) a daily time series of the extent of Off-Facebook Data gathered on the user (e.g. whether they were opted into ATT or shared third party data, the amount of Off-Facebook Data available for personalisation); and iv) daily information on the ads shown and revenue generated by the user.

c) Data on a representative sample of advertisers including data on each of their ad campaigns, and for each ad campaign: i) characteristics of the advertiser; ii) characteristics of the advertising campaign; iii) monthly data on the user engagement with the ad campaign and iv) monthly data on the ad campaigns financial performance. Each of these measures of performance should be broken out across the UK Users subject to the ad campaign in accordance with relevant user characteristics including the extent of Off-Facebook Data held on these users.

Given the high level of information asymmetry between the Class Representative and the Defendants, the above data specifications will need to be refined in light of the way Meta stores data and which fields are available. To facilitate this refinement, the Defendants are requested to provide the Best Available Evidence setting out the relevant fields held to provide user, auction, and ad campaign datasets along the lines set out above.

Date range: 1 January 2005 to date."

(Footnotes omitted)

146. The parties are still in the process of trying to negotiate a compromise between what is sought by the CR and what Meta is willing to provide. The Tribunal appreciates that what, in effect, is being requested is that they go out and create specific datasets, which could involve both time and expense.

147. By HSFK's letter dated 15 December 2025, Meta states that it will set out its proposals in relation to Request 56 by 19 January 2026. The Tribunal considers that Meta has been flexible and willing to engage in relation to Request 56 and should have a further opportunity to consider this request. Meta has indicated it

is willing to provide datasets and what needs to be considered is the datasets and the level of granularity to be provided.

148. To the extent there remains any dispute following receipt of Meta's proposals, the parties should file any submissions on this, together with the parties' respective positions on the proposals, by 9 February 2026. If the parties are unable to resolve the issue, then the Tribunal will make a decision on the papers.

(20) Request 60

149. Request 60 provides as follows:

> "Custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to the tools, controls, features and resources that Meta considered introducing to allow UK Users to understand or limit Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data, but did not introduce; and why.
>
> Date range: 1 January 2005 to date."

150. Meta's principal objection to Request 60 was that it should not be required to give disclosure of tools considered but not ultimately adopted. There was a similar argument in relation to Request 9, on which the Tribunal decided it is appropriate to give the disclosure for the reasons given in paragraph 81 above.

151. Meta also objected to Request 60 by arguing that it would be duplicative of other requests, in particular Requests 58, 59 and 66. In relation to Request 59, Meta stated that there are 277,000 responsive documents, just in relation to email and Workchats. As regards Request 66 there are more than 90,000 responsive documents. Therefore, Meta argued, it would be disproportionate to review documents in relation to tools which were ultimately not adopted.

152. The Tribunal considers Request 60 is not truly duplicative, as the other requests raised by Meta relate to the actual tools adopted. Request 60 relates to tools which were ultimately not adopted, which will indicate Meta's considerations at the time and the reasons why certain options were not adopted.

153. Request 60 is explained in some detail in Scott Morton 4 at paragraphs 71 to 73, which provides as follows:

> "71. I consider this Request important for my qualitative analysis about the extent to which Meta's conduct was unfair in and of itself: see FSM1 paragraphs 100-101 and 223.
>
> 72. I understand that Meta opposes this Request on the basis that they contend it is not necessary or proportionate for the CR to receive disclosure regarding tools, controls, features and resources which were not introduced. As already discussed above in relation to Requests 9 and 20, alternatives that Meta has considered but not implemented are likely to provide significant evidence regarding the choice architecture and degrees of transparency ultimately chosen by Meta, as well as the reasons for their preferences in those regards. I consider it plausible that Meta will have evaluated the transparency of the various alternative options for these tools/controls (etc), and relatedly that the reasons why the implemented tools, controls, features and resources were chosen over alternatives may shed light on the extent (if any) to which the implemented tools, controls, features and resources were considered by Meta to be opaque and misleading compared with alternatives.
>
> 73. I highlight the relevance of Meta's consideration of *"different options"* at 7.2.1 of the Joint Expert Grid, where I identify in particular *"Internal documents and internal data, discussing, analysing, or considering different options in relation to the choice architecture Facebook presents to users in relation to its various privacy prompts/settings/controls/tools specifically but not limited to The Off-Facebook Activity Setting; GDPR prompts; ATT prompts; Any other privacy toggles and settings"* (emphasis added)."

154. The Tribunal does consider that disclosure in relation to tools not ultimately adopted is necessary and proportionate in this case.

(21) Request 62

155. In relation to Request 62, there are two alternative formulations. The CR's formulation is as follows:

> "Annual data for each year of the request on the total number of active users and share of active users that "opt-in" or "opt-out" from the options, tools, controls or features referred to in Request 58 (including but not limited to the Off-Facebook Activity setting; GDPR prompts; ATT prompts) when accessing Facebook from any device, split by operating system (including iOS, Android, and Windows) and the revenue shares associated with those different operating systems."

156. Meta's formulation of Request 62 is as follows:

> "Annual data on UK Users' take-up rates / usage rates of the tools referred to in Request 58."

157. There are notable drafting differences between the parties. For example, Meta has proposed "UK Users" rather than "active users" The Tribunal understands that "UK Users" is potentially wider than "active users". Therefore, the Tribunal orders the wording proposed by Meta, specifically "UK users" as opposed to "active users".

158. The parties disagree as to whether Meta should be required to provide this information by reference to specific operating systems. The rationale for the request is explained in Scott Morton 4 at paragraphs 79 to 81, which provide as follows:

> "79. Request 62 seeks disclosure of data concerning user 'opt-ins' and 'opt-outs' to various data-related options and tools, broken out by operating system. I understand that Meta objects to the request that this data be "split by operating system (including iOS, Android, and Windows)" as disproportionate.
>
> 80. I disagree with Meta's assessment. A split by operating system is not a background detail, but rather a key element of my proposed methodology based on the ATT natural experiment. As explained in FSM1, paragraph 382, ATT only impacted iOS users, and so, once I have estimated the value of Off-Facebook Data by reference to iOS users, I will need to extrapolate my estimates to the full population of Facebook UK Users. This requires assumptions about the opt-in/opt-out rates of users on other operating systems relative to users on iOS.
>
> 81. In the context of the ATT analysis that I conducted in FSM1, I assumed that the share of UK non-iOS users that are not tracked is identical to the share on iOS, but explained that this was "*a very conservative assumption, as many operating systems for a long time did not give users an easy option to opt-out of ad tracking.*" Equating the share of non-tracked users for iOS and non-iOS operating systems, based only on iOS figures, is likely to lead to a materially less precise estimate for the value of tracking Off-Facebook Data."
>
> (Footnotes omitted)

159. Therefore, the CR argues that this breakdown by way of operating systems is key to the exercise that Professor Scott Morton wishes to carry out.

160. Meta oppose this disclosure for various reasons as summarised at paragraph 11 of the HSFK letter dated 10 December 2025, which provides as follows:

> "11. As to paragraph 14 of your 8 December Letter regarding Request 62, the Meta Entities repeat that the Class Representative's formulation of the Request seeks to be overly prescriptive in circumstances where such a breakdown is not necessary for the disposal of the claim. Requiring the Meta Entities to incur the time and costs necessary to provide a breakdown at such a granular level is disproportionate. The Meta Entities repeat that this is not an expert-led disclosure process, and indications as to what experts consider would be of assistance must be set against questions of reasonableness, bearing in mind the practicality and costs of such a disclosure exercise. In the circumstances, the Meta Entities consider that their formulation of Request 62 is the appropriate one."

161. As the Tribunal understands, the "ATT" (Apple's App Tracking Transparency) only applied to iOS. Mr White on behalf of Meta stated that this additional disclosure split by operating system is unnecessary and disproportionate, particularly as data is going to be provided in relation to both ATT and revenues under Requests 61 and 107, and as to revenue data under Requests 113, 116 and 119.

162. The Tribunal considers it is necessary and proportionate to provide this breakdown because it will provide a degree of specificity and certainty to Professor Scott Morton's analysis, which was not possible in Scott Morton 1.

163. Although the Tribunal does appreciate that it will require some work by Meta to split the material out, it is something that is going to be worthwhile. The Tribunal does not consider it is going to entail a significant degree of cost over and above the formulation that Meta have already agreed to.

(22) Requests 68-69

164. Requests 68 and 69 provide as follows:

> **Request 68**
>
> "Custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to: (a) whether the Off-Facebook Data collected and/or received and/or processed and/or used by Meta contained sensitive data of UK Users, and/or allowed sensitive data to be inferred by Meta, and if so, how such information could be inferred by Meta and whether Meta made or attempted such inferences; and (b) what if any measures were taken by Meta to separate out any sensitive data on UK Users from non-sensitive data prior to, and following receipt of it by (i) third parties, or (ii) Meta.

Date range: 1 January 2005 to date."

Request 69

"Custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to the consents given by UK Users regarding Off-Facebook Data that is sensitive data.

Date range: 1 January 2005 to date."

165. The issue between the parties is whether or not Meta should have to separate out this sensitive data, given that Meta is already giving disclosure which should cover the material sought in this request.

166. It is said that the question of sensitive data is somewhat tangential in this case. The question of sensitive data was considered in the Tribunal's ruling in these collective proceedings in relation to the LOIFD at [60] to [62] ([2025] CAT 40), and the Tribunal did accept the formulation of issues 15(2) to 15(4).

167. The CR avers that the relevance of sensitive data is pleaded and intertwined with the core question of the value of Off-Facebook Data to Meta, and the cost to Users of giving up their Off-Facebook Data. Sensitive data is referred to in the RACF in the following paragraphs: S.28, 39, 49(a), 91, 92 and 94.

168. It is clear that the CR is seeking to draw a link between sensitivity and value. Meta denies relevance of this data at paragraph 58(b)(i) and (ii) of its Defence.

169. The CR addresses paragraph 58 of the Defence at paragraph 28(a)(ii) of her Reply, which provides as follows:

> "As to paragraph 58(b)(ii), the CR avers that the potential sensitivity of Off-Facebook Data is relevant to the fairness of the bargain struck by Meta insofar as: (1) sensitive Off-Facebook Data is likely to be of greater value to Users and/or Users are likely to incur higher costs in giving permission for such data to be collected or used; (2) Meta's lack of transparency in relation to its collection and use of Off-Facebook Data is more egregious insofar as such data may be sensitive; and (3) Meta's unlawful processing of sensitive data is a more egregious breach of the GDPR which is per se relevant to the (un)fairness of Meta's actions for the purposes of the Chapter II Prohibition and/or Article 102 TFEU. Paragraph 20(b) above is repeated in relation to the meaning of "sensitive data"."

170. Mr Singla KC submitted that sensitive data is in reality a subset of Off-Facebook Data. He referred to the Tribunal's certification judgment in these Collective Proceedings ([2024] CAT 11) where the Tribunal stated at [17(1)]:

> "To what extent does it matter, for the purposes of the claim, that the data includes "highly sensitive personal data"? As we understand it, the data providing the basis for the claim (Off-Facebook Data) is not characterised by its personal sensitivity, but by the fact that it is Off-Facebook Data. It may be that the sensitivity of the data goes to its value and the question of loss, but that is a point not articulated in this part of the pleading at least."

171. Mr Singla KC stated that very little is stated in Scott Morton 1 in relation to sensitive data. There are references to sensitive data in Scott Morton 1 at paragraphs 81 and 349(b) which provides as follows:

> "81. Based on public materials it appears that Facebook gathers more user data than other social media platforms. In terms of the volume of personal data that a social media website can collect on users, Facebook collects about 79.49% of data available on an individual, according to analysis by Clario.co, a cybersecurity software provider. On a comparative basis, social media sites like X (formerly Twitter) do not list "sensitive information" as one of the disclosed categories of data collection, whereas Facebook both collects this data and lists it under the category of data linked to an individual user.
>
> […]
>
> 349.b. If agreement is reached. Facebook can engage in Off-Facebook Tracking and gathers additional data which it can use to monetize users more effectively. Users give up data on their activity Off-Facebook (which will be costly to them if they consider this data sensitive and value their privacy) and (potentially) receive a value transfer from Facebook. As I have set out above, this value transfer could consist of a financial payment, a payment in kind (e.g., a rewards program giving users points for sharing their data, which could be then redeemed in shops) or some other additional content or investment (e.g., access to additional premium content such as in-Facebook apps that those who don't share their data cannot access). Facebook might incur some additional costs (e.g., because it needs to build analytic However, in Scott Morton 4, prepared for the purpose of this hearing, there is no reference to it."
>
> (Footnotes omitted)

172. The Tribunal refuses Requests 68 and 69 as it appears that the information actually being sought is covered by other requests. Following disclosure, should it be found that the information sought has not been provided pursuant to other requests, the CR has liberty to apply for such disclosure.

(23) Request 82

173. Request 82 provides as follows:

> "Custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to Meta's assessment of the impact of its collection, and/or receipt, and/or processing and/or use of Off-Facebook Data on its ability to compete on each of the user-side and advertiser-side of the market.
>
> Date range: 1 January 2005 to date."

174. The dispute between the parties regarding Request 82 centres on whether or not the request is truly duplicative of other requests. The Tribunal accepts that there is an element of duplication. Request 50 relates to the "efficiencies" between the user and advertising side of Off-Facebook Data. Meta submitted that there were approximately 83,000 documents responsive to Request 50, just in respect of email and Workchats.

175. Requests 72 and 73 deal with the user side of the market and Meta further submit that Request 72 alone has approximately 72,000 responsive documents. Request 95 deals with the advertiser side of the market and has approximately 60,000 responsive documents.

176. Professor Scott Morton considered that there was not a complete overlap with other requests, as set out in paragraphs 84 to 90 of Scott Morton 4 which provide as follows:

> "84. Request 82 seeks disclosure relating to Meta's assessment of how the collection, and/or receipt, and/or processing and/or use of Off-Facebook Data impacted its ability to compete on each side of the market.
>
> 85. I understand that Meta considers that this is ultimately a matter for expert evidence and not disclosure. I agree that this is an area where I will provide an expert assessment. However, to the extent that documents which will aid and inform my assessment exist, I consider it important that I am able to review these. As stated by the Tribunal at CMC3, "*the mere fact you are going to have expert evidence is not conclusive because it can be material that the experts can feed into*." (see CMC3 Day 2, page 162). I consider Meta's (contemporaneous and subsequent) analyses of these matters likely to provide useful insight for my expert analysis, and to test whether Meta and its experts' contentions align with the organisation's internal views.

86. I also understand that Meta opposes Request 82 on the basis that they say it is overlaps with Requests 50 and 72(b), 74(a) and 95(d).

87. As to that, Request 50 concerns "*Custodial documents and non-custodial documents in relation to the efficiencies (if any) in relation to providing the user- and advertiser-side of Facebook to UK users Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data*" (emphasis added). I do not consider that Request 82 is duplicative of Request 50. The concept of efficiencies is not synonymous with "the ability to compete". Whilst efficiencies may be one channel through which the collection, and/or receipt, and/or processing and/or use of Off-Facebook Data impacts Meta's ability to compete, there may also be other channels, for example through increased market power. Therefore, I consider these Request are sufficiently different such as to warrant inclusion of both.

88. Request 72(b) concerns "*Non-custodial documents (in so far as they relate to UK users) in relation to Meta's views and/or assessment of competitor platforms and their evolution, including the competition and competitive constraint on the user-side of Facebook exerted by these competitors, and Meta's consideration and/or response thereto*" (emphasis added). I consider that this Request relates more generally to Meta's assessment regarding competition and competitive constraints. I consider it likely that that disclosure under Request 72(b) would focus more on constraint provided by specific competitors rather than the particular question of how Off-Facebook Data affected Meta's ability to compete. Indeed it is plausible that such disclosure may not consider data related issues at all, and therefore I consider it important to include both Requests.

89. Request 74(a) (now 73(c)) concerns "*Custodial documents in relation to the user-side market and Meta's competitors in that market relevant to Meta's assessment of barriers to entry and expansion that its competitors faced*" (emphasis added). I do not consider this Request to be duplicative of 82. Again, whilst Meta's collection, and/or receipt, and/or processing and/or use of Off-Facebook Data may impact upon its ability to compete via an impact on barriers to entry and expansion, this may not be the only impact it has, and I would not want to unduly curtail the disclosure by making this assumption. Conversely, there will likely be relevant disclosure concerning barriers to entry and expansion that do not engage the data-related materials sought in Request 82.

90. Request 95(d) concerns "*Non-custodial documents in relation to Meta's assessment of the barriers to entry and expansion that such competitors faced*", relating to the advertiser- side of the market. For the same reasons as set out with respect to Request 74(a) (now 73(c)) above, I do not consider that Request 95(d) is duplicative of Request 82." (emphasis in original)

(Footnotes omitted)

177. The Tribunal appreciates that there is an element of duplication between Request 82 and earlier requests, albeit not complete duplication. However, this is an important request in relation to what is required for Professor Scott

Morton's analysis and disclosure is necessary for the fair conduct of the proceedings.

(24) Request 101

178. Request 101 provides as follows:

> "Non-custodial documents (and, to the extent reasonably necessary, custodial documents) in relation to Meta's approach to User privacy and data protection in the UK/EU in relation to Off-Facebook Data and whether it has changed, and if so, when, how and why.
>
> Date range: 1 January 2005 to date"

179. The key issue between the parties is whether Request 101 should be confined to the UK. As regards data protection and privacy, the Tribunal is satisfied from the pleadings that they are relevant and important issues, in particular paragraph 102 of the RACF and paragraphs 175(c)(iii) and 263(b)(iv) of the Defence, which provide as follows:

> **RACF**
>
> "102. Although it is reported that Facebook has proposed to European regulators that Users should be able to avoid personalised advertising if they pay a monthly subscription fee, (i) no such proposal has been implemented and (ii) the PCR understands that the proposal is intended to resolve concerns about User consent pursuant to the GDPR and denies that it would resolve the unfair bargain struck by Facebook with Users as a matter of competition law, or that compliance with the GDPR would amount to a defence to a claim for abuse of dominance, for the reasons discussed at Section V below. The precise details of the proposal are in any event unclear prior to disclosure."
>
> (Footnotes omitted)
>
> **Defence**
>
> "175.(c)(iii) Meta denies that SNA "intended to resolve concerns about User consent pursuant to the GDPR". SNA was introduced by Meta for a variety of reasons, including in response to evolving European regulations including the Digital Markets Act (the "DMA"), and Meta's decision to use "consent" as the GDPR legal basis for the purpose of processing data collected on its platforms for advertising purposes for users in the European Region going forwards."
>
> "263.(b) The appropriate counterfactual(s) and the methodology for calculation and amount of aggregate damages (if any) will be the subject of factual and expert evidence in due course. Meta is not required to plead to Scott Morton 1 and repeats §29(k) of this Amended Defence. Without prejudice to the foregoing:

[…]

(iv) For the avoidance of doubt, the pleaded counterfactual is misconceived because in fact Meta has never negotiated or bargained with its users, in response to changes impacting the use of what the CR terms "Off-Facebook Data". For example, neither Meta's response to ATT nor introduction of SNA involved any payment (negotiated or otherwise) by Meta to users in exchange for use of what the CR terms "Off-Facebook Data" associated with them. Meta also notes that none of its ad-funded attention platform competitors have made monetary payments to their users in exchange for what the CR terms "Off-Facebook Data"; on the contrary, many have offered subscription-based models whereby the user pays a fee to use the service without being shown ads. Meta avers that there are also a number of significant practical obstacles to making monetary payments to users. In the circumstances, the proposed counterfactual is contradicted by the real world factual outcomes and is denied."

(Emphasis omitted)

180. The issue of whether or not EU data protection is relevant to these collective proceedings was considered at the time of finalising the LOIFD, and the Tribunal was satisfied that it was at that stage. Further, the Tribunal has considered EU data protection in relation to earlier requests.

181. What Meta did in relation to the EU specifically may well inform what it did, or should have done, in relation to the UK. Therefore, the Tribunal is quite satisfied that Request 101 is properly formed and that disclosure should be provided.

(25) Request 102

182. Request 102 provides as follows:

"As regards Meta's approach to privacy and data protection in the UK and EU in relation to Off-Facebook Data, custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to:

a) Meta's assessment and understanding of the importance to Users of their privacy including but not limited to its assessment of the cost or burden to Users of sharing their data, and/or price they would need to be paid to share their data, including but not limited to Off-Facebook Data; and

b) if Meta's assessment and/or understanding changed, when, how and why.

References to "Off-Facebook Data" in this request reflect the fact that Meta Entities will search for documents that relate to and/or capture Off-Facebook Data, although for the avoidance of doubt a document which is reviewed and which would otherwise be responsive to this request does not fall outside of

> the scope of disclosure solely on the basis that it refers to data which includes, but expands beyond, Off-Facebook Data.
>
> Date range: 1 January 2005 to date"

183. The parties were in dispute regarding whether Request 102 should be ordered in relation to the EU. That issue has been resolved by the Tribunal's ruling on Request 101 above.

184. There remains an issue regarding whether or not Request 102 should be limited to Off-Facebook Data. Meta does not agree to the CR's formulation, which seeks to broaden the scope of the request beyond Off-Facebook Data, by way of the words "including but not limited to" in the phrase "including but not limited to Off-Facebook Data" in Request 102(a).

185. The formulation of Request 102 more or less aligns with IFD 30(2) of the LOIFD, which states as follows:

> "As regards Meta's approach to privacy and data protection in the UK/EU in relation to Off-Facebook Data:
>
> (a) What is Meta's assessment and understanding of the importance to Users' of their privacy, including but not limited to its assessment of the cost or burden to Users of sharing their data, and/or price they would need to be paid to share their data, including but not limited to Off-Facebook Data?
>
> (b) If Meta's assessment and / or understanding has changed, when, how and why?"

186. Therefore, the Tribunal considers that Request 102 should not be limited as suggested by Meta, and the formulation put forward by the CR reflects the language of the LOIFD. Further, in any event, the cost to Users of sharing data other than Off-Facebook Data, or the price that they would need to be paid to share the same, may be relevant by inference to the issues in these proceedings, insofar as it provides evidence as to the cost of Users sharing, or the price that they would have paid to share, their Off-Facebook Data.

(26) Requests 103-104

187. Request 103 provides as follows:

> "Material representations issued by Meta to UK Users and regulators relating to privacy, data protection, and Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data.
>
> Date range: 1 January 2005 to date"

188. Meta makes two primary points in opposition to Request 103. First, that it is duplicative of Requests 17, 26, 44, 59, 64, 67, 101 and 102. It is argued that in effect, the CR is trying to have another bite at the cherry in relation to issues that were determined in relation to Requests 4 to 6. The Tribunal is satisfied that what is being sought under Request 103 is reasonable and proportionate, and is not unduly duplicative, hence there should be disclosure.

189. Secondly, Meta say that the current formulation of Request 103 is too open-ended. The Tribunal agrees. Therefore, Request 103 as finally formulated must be narrowed to list the regulators referred to insofar as there are any specific investigations in relation to the representations to regulators.

190. Request 104 provides as follows:

> "Custodial documents in relation to why there were changes (if any) to the material/significant representations Meta has made to UK Users and regulators as to privacy, data protection, and Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data.
>
> Date range: 1 January 2005 to date"

191. Consistent with the Tribunal's ruling regarding Request 103, the Tribunal is content to order disclosure as regards Request 104 subject to the modifications made under Request 103.

(27) Request 105

192. Request 105 provides as follows:

> "Custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to:
>
> a) Meta's commercial, strategic, and/or other business assessment of, or strategy in relation to, the effects of each of the GDPR and Article 5(2) of the Digital Markets Act as regards Off-Facebook Data;

b) Meta's assessment as regards the predicted and actual effect, including the financial effect, of these developments, in relation to Meta's collection and/or receipt and/or processing and/or use of Off-Facebook Data; and/or

c) the strategy Meta considered and/or adopted, and what steps it took, to respond to or mitigate the impact of the same as regards the collection and/or receipt and/or processing and/or use of Off-Facebook Data.

Date range: 1 January 2015 to date (GDPR).
Date range: 1 January 2020 to date (DMA)."

193. Meta's main objection to Request 105 is that it is duplicative of other requests, in particular that Requests 105(a) and (c) have a significant amount of overlap with Request 28(g), which provides as follows:

> "A/B tests, or any other experiments, research, surveys, studies, impact analysis, modelling and/or option analysis (presented in whatever form) related to the impact or outcomes associated with different options related to:
>
> […]
>
> g. Strategies to respond to and/or mitigate the impact of the GDPR and/or Article 5(2) of the Digital Markets Act (in so far as they relate to Off-Facebook Data); and …"

194. The CR avers that Request 105 is not wholly duplicative. For example, Request 105(a) is *inter alia* directed at Meta's "business assessment" and it is not limited to "strategy".

195. The Tribunal does consider there is an element of duplication in Requests 28 and 105. However, given the importance of the issues these requests go towards, the Tribunal is eager to avoid documents "falling between two stools" and not being disclosed. Although the Tribunal's ruling in favour of the CR on this request may appear to depart from some of the Tribunal's prior rulings regarding duplication, Request 105 is distinguishable on account of its importance to the core issues in the case.

196. It would have been preferable if Request 105 was aligned with Request 28(g) to avoid the duplication apparent in the two requests. However, the Tribunal considers the requests not to be entirely duplicative and therefore orders Request 105.

(28) Request 106

197. Request 106 provides as follows:

> "Custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to Meta's rationale for and the impact on Meta of the introduction of the "subscription for no ads", "less personalised ads" and default (personalised ads) options, in the EU, as regards Off-Facebook Data.
>
> Date range: 1 January 2015 to date."

198. The Tribunal considers that Request 106 encompasses an important category of documents which goes to the heart of the dispute between the parties and will be a live issue at trial covered by expert evidence.

199. The primary issue to be decided is whether or not this request is purely duplicative of Request 120, which has been agreed between the parties. Request 120 provides as follows:

> "Custodial documents (and, to the extent reasonably necessary, non-custodial documents) in relation to whether Meta ever made or considered making a value transfer to UK Users in connection with the collection and/or receipt and/or processing and/or use of data (including UK Users' online and/or device activity), and in relation to any such proposals, if they were not enacted, why not.
>
> Date range: from 1 January 2005 to date"

200. One can see that Request 120 is confined to "value transfers" to UK Users. Request 106 is specific and deals with a "subscription for no ads", "less personalised ads" and "default (personalised ads)" options as regards Off-Facebook Data.

201. Accordingly, the Tribunal does not accept Meta's view that Request 106 is completely covered by Request 120. The Tribunal recognises that there may be some element of duplication or overlap, but clearly Request 106 is a relevant and important issue for disclosure, and disclosure should therefore be provided.

F. GENERAL GUIDANCE ON DISCLOSURE IN THESE PROCEEDINGS

202. The disclosure exercise to be carried out in these proceedings is going to be an important, massive and complex exercise. Where there is information asymmetry between the parties, as in this case, disclosure will be important in ascertaining where the truth lies in resolving the many issues in the case. Experience tells the Tribunal that the larger and more complex the disclosure exercise, and the larger the team working on disclosure, the more likely that errors will be made and inconsistencies in searches arise. As long as there is a proper and documented process, such problems will be minimised so far as possible. Therein this Ruling the Tribunal provides guidance as to how it envisages the disclosure exercise should be carried out, which may be of assistance in this and similar cases.

203. It is in everyone's interest that disclosure is done properly. In these proceedings, it is likely there will be documents held by Meta that both support and go against its case. Even though a large amount of disclosure will be provided, it is likely that only a small proportion will actually be referred to at trial. It is likely that a large number of documents are going to be examined by experts and feed into their reports and inform their analysis without the vast majority of those underlying documents necessarily being produced before the Tribunal at trial. Therefore, it envisages that there will be a lot of documents disclosed, the experts will review what they want to review and get what they can get out of those documents.

204. By the time it gets to trial, it is only those documents which are really important and necessary for the Tribunal to resolve the case that will be included in the trial bundle. It does not want to have a situation where there is a massive trial bundle which contains numerous documents in the case which do not end up being referred to during the trial or in the parties' submissions. The parties will have to work together to decide what documents are relevant for trial. In some cases, the Tribunal has noticed that the electronic trial bundles contain a vast number of documents and then few are actually adduced into evidence.

205. There is no expectation by the Tribunal of a no stone unturned approach, as that would lead to delay, unnecessary expense, and would be ultimately self-defeating. At this and earlier CMCs, the Tribunal has been willing to circumscribe the CR's requests where it considers what was being sought was not necessary or proportionate. An exercise such as the present requires a combination of dedication and professionalism from the top down. Given the size of the exercise, it is necessary to designate a solicitor in charge at HSFK (Meta's solicitors) who, as an officer of the court, will have the ultimate responsibility that the exercise is properly carried out (the "Designated Solicitor"). That does not mean that person has to personally carry out all the tasks covered by disclosure, as long as that person guides, controls and oversees the project.

206. The Designated Solicitor should ensure that the client is advised as to the need to preserve potentially relevant documents. No doubt this has already been done, and any necessary notices have been sent to the potential custodians and persons maintaining or overseeing relevant repositories: Matthews and Malek, *Disclosure* (6th ed., 2024), paragraphs 7.22, 18.03-18.05.

207. In other cases, it has been found to be efficient and give the best outcome if the Designated Solicitor is not working as part of the case team but is simply concentrating on the disclosure exercise. It has the advantage of giving a degree of independence and ability to push back on what members of the case team are saying – it is desirable to have someone who is going to exercise independent judgement and with the strength and ability to contest that certain disclosure should not be provided.

208. There needs to be guidance, an audit trail and quality control for the disclosure exercise. There will be a sizeable team and all of them will need to be aware and understand the issues and what is required in relation to each of them. This will require an appreciation of the issues in the proceedings, and the practical issues that may arise. In the Tribunal's experience it is often useful to have a detailed protocol drawn up as a practical framework so everyone coming in and out of the exercise understands the required procedures ("the Disclosure Protocol"). The Disclosure Protocol can explain the procedure to be followed if

for example adverse documents are located or if when searching one custodian for specific categories of documents, documents relating to other relevant categories are identified. The Tribunal is not requiring Meta at this stage to disclose the Disclosure Protocol, but if further down the line the Tribunal considers that it requires sight of it, then Meta should be ready to disclose it as part of the Tribunal's case management of disclosure.

209. Each member of the team should be provided with an induction pack which can be a source of reference throughout the process. This will include the essential materials such as the pleadings, the DR, the EDQ, the LOIFD, the finalised disclosure schedule, any rulings by this Tribunal and, of course, the Disclosure Protocol.

210. There should be a disclosure log for each team member as well as a consolidated disclosure log for the Designated Solicitor. These logs will record what has been reviewed, by whom, and when, any problems and gaps found, lines for follow-up and why certain steps should be or should not be taken. One example of this is going through the documents of a particular custodian. The Designated Solicitor can identify any significant group of documents which are missing, or a specific time period that is missing, and then make a decision as to what action needs to be taken. Such issues could include consideration as to whether non-custodial disclosure is appropriate or whether disclosure from a different custodian is required. These are all judgment decisions for the Designated Solicitor, and the Tribunal is reluctant to impose a straitjacket on the Designated Solicitor, or HSFK, as to how it is to be done. An element of common sense needs to be applied, and that can only be done once it is appreciated what is out there.

211. There should be quality control. When different people review a particular batch of documents for relevance, they should usually be able to identify the relevant key documents if they have sufficient guidance and carry out the process diligently. However, this is not necessarily a scientific exercise, and results may vary from person to person.

212. A significant divergence in selection between different reviewers over the same batch with one individual omitting too many documents which ought to be disclosed may indicate that at least one member of the team needs further guidance or training. This is the sort of practical problem that arises in these large exercises. The logs should be monitored by the Designated Solicitor to the extent that person considers it to be required. It may be sensible to have catch-up team sessions for the team to discuss progress, uncertainty, practical problems and trends. It is a significant responsibility to be the Designated Solicitor in a case like this. The personal duty to the Tribunal is to get the exercise done properly, and that any order is complied with to the extent reasonably practicable.

213. The Tribunal requires that when it comes to providing the statements of truth verifying disclosure, that is given both by the Designated Solicitor and an appropriate person from Meta.

214. The Tribunal is here to assist and provide guidance as and when needed. If guidance is sought, it is better to seek it as one goes along rather than leaving it all to the end of the disclosure exercise when it may be too late.

215. The Tribunal now turns to a number of specific points which have arisen during the course of this hearing.

(1) Redactions and confidentiality

216. As regards documents which refer to more than one issue, and only one issue relates to the issues in the proceedings, Meta is entitled to redact material which is both irrelevant and confidential. However, merely because a passage in an otherwise relevant document is irrelevant is not a ground for redacting a document. If there is a passage dealing with a different topic, and it is not a relevant topic and it is confidential, then it can be redacted. The Tribunal is prepared to accept that a broad definition of confidentiality can be adopted for this purpose on this specific case.

217. Just because a document contains passages which are irrelevant and confidential does not mean that it has to be redacted. Rather than redact passages, the Designated Solicitor may decide it is more appropriate to provide the document pursuant to a confidentiality ring order ("CRO"). If a document is provided pursuant to the CRO then, of course, the confidentiality will be maintained. It may well be a practical and cost/benefit analysis as to which route Meta wishes to adopt. In accordance with *Myers v Elman* [1940] AC 282, it will be the duty of the Designated Solicitor to review any redactions which have been compiled: Matthews and Malek, *Disclosure* (6th ed., 2024), paragraph 18.18.

218. It was suggested at one point by the CR that explanations for the redactions on specific documents should be provided. That is not the normal practice, and that is not going to be required, at least in the first instance. It is enough to explain by category the general basis for redactions, without going into individual documents. If the other party raises a specific issue as to the particular redactions, then the Tribunal may at that stage consider whether a specific explanation should be provided. If redactions are done properly, it is unlikely that the Tribunal will need to go behind the assessment of the Designated Solicitor on relevance and confidentiality. If there is an issue, this can be raised with the Tribunal.

(2) Admissibility and disclosure

219. Another issue that has arisen in the submissions but not pressed at the hearing is whether admissibility is a touchstone for disclosure. There is a distinction between disclosure and witness summonses for this purpose. For a witness summons, it is a requirement that a person produce evidence for trial and the documents or the information needs to be admissible for that purpose.

220. Disclosure is not tied to admissibility. A requirement for disclosure applies to documents which are both admissible and inadmissible at trial. Of course, if a document is inadmissible, that may be a factor in determining whether or not disclosure is necessary and proportionate.

(3) Technology assisted review

221. As regards the use of technology in the proceedings, technology is both a curse and a cure. It is a curse in that it has led to an explosion of documents and data which may need to be disclosed in cases like this, but it does provide a cure in the sense that technology, if used appropriately, can speed up and reduce the cost of the disclosure process. In some cases, technology has been of great assistance, and in other cases it has been somewhat of a hindrance, but one has to trust the judgement of the Designated Solicitor as to what technology to explore and use, and what works and does not work.

(a) The CR's proposed use of technology

222. On 7 November 2025, Mr Foster, Managing Director at Alvarez & Marsal Disputes and Investigations LLP ("A&M"), filed Foster 1 in these proceedings on behalf of the CR. Mr Foster's role at A&M involves overseeing the forensic technology team at A&M, providing expert services in relation to forensic technology engagements and providing expertise in relation to the interrogation of data sets. A&M has been advising the CR about eDiscovery services, including how artificial intelligence ("AI") tools may be utilised in the proceedings. Mr Foster's statement addressed the use of AI tools in disclosure, and in particular the use of AI in initial document review.

223. Mr Foster described the suite of AI disclosure tools utilised by A&M, specifically "Relativity aiR for Review" ("aiR"). Foster 1 at paragraph 9 quoted from the "Relativity One aiR for Review Guide", which summarised aiR as follows:

> "aiR for Review harnesses the power of large language models (LLM) to review documents extracted text. It uses generative artificial intelligence (AI) to simulate and accelerate the actions of a human reviewer by finding and describing relevant documents according to the review instructions (prompt criteria) that you provide. It identifies the documents, describes why they are relevant using natural language, and demonstrates relevance using citations from the document".

224. Mr Foster's experience has been that aiR's "Relevance and Key Document analysis functionality" ("aiR Analysis") can significantly reduce the human

resources required for disclosure first-level review. Mr Foster explained that aiR Analysis involves a multi-step process, which the Tribunal summarises below:

(1) First, as with traditional human review, the process begins with the creation of a review pool of documents, which is assembled and uploaded to a review platform after documents are identified for inclusion within the disclosure process through the use of custodial and non-custodial searches, utilising *inter alia* date and search term parameters. The documents can be grouped into one, or multiple review pools. The creation of multiple review pools can be beneficial in complex cases, as each review pool can be subject to a bespoke approach specific to the characteristics of that particular review pool.

(2) Secondly, once the review pools have been created, a "prompt" document is drafted which describes the case and defines the different criteria the AI should apply to identify relevant documents and key documents within the review pool. The prompt document is akin to a review protocol which would be prepared to guide human reviewers in traditional document review. Different review pools can have different prompts tailored to them.

(3) Thirdly, the prompt document is refined through an iterative process which involves running the prompt over a small sample of documents from the review pool which have been reviewed by human reviewers for relevance. Thereby, this process allows the case team to test the results produced by aiR Analysis and the prompt document against their own coding decision. The prompt document is then refined accordingly until it produces results which demonstrate that it is effective at identifying relevant and non-relevant documents.

(4) Fourthly, the finalised prompt document is then run over the review pool, or pools. Documents will be assigned a score under both a "relevance" and "key document" criteria, and aiR Analysis will also produce a short summary explaining why the document was assigned its scores. The options for the relevance scoring are: 4 (very relevant), 3

(relevant), 2 (borderline), 1 (not relevant) and 0 (not reviewed / error). Mr Foster summarised the first-level human review process following the AI assigning relevance scores as follows:

(i) Documents given a score of 0 (not reviewed / error) are all subject to first-level human review.

(ii) Documents given a score of 1 (not relevant) are subject to a "limited quality control process" similar to what would usually be conducted at second-level human review in respect of documents coded as not relevant by first-level human reviewers in traditional human document review.

(iii) Documents given a score of 2 (borderline) are in part subject to first-level human review using Technology Assisted Review ("TAR") and Continuous Active Learning ("CAL"). Human reviewers review the pool of borderline documents until the TAR/CAL system predicts that there are a "negligible number of potentially relevant documents" remaining in the pool of unreviewed borderline documents. Therefore, under this process human reviewers do not review all borderline documents, however borderline documents that are not reviewed by a human will have been subject to analysis by both aiR Analysis and TAR/CAL.

(iv) Documents given a score of 3 or 4 (relevant or very relevant, respectively) are all subject to first-level human review. These documents will at a minimum be reviewed by human reviewers for privilege, but also normally to confirm that the review team agree that the documents are relevant.

225. Mr Foster's view was that the best two eDiscovery platforms available are Relativity aiR and Everlaw, which broadly have the same AI functionality and benefits. It was Mr Foster's evidence that although AI discovery tools are

relatively new, they are already being used regularly by both disclosing parties and receiving parties in disclosure exercises – both in the UK and abroad.

226. Mr Foster stated at paragraph 20 of his witness statement that "using AI tools during a first-level review can achieve more accurate results while significantly speeding up the review and dramatically reducing overall costs". Ms Vernon reiterated these points at paragraph 73 of Vernon 7, stating that using AI in disclosure can result in "substantial savings in the volume of documents to be reviewed, the costs of said review, and thus the time that would be taken to conduct such a review".

227. The CR relies on Foster 1 and Vernon 7 *inter alia* to support their position that the use of AI technology in document review is neither experimental nor inappropriate to use in Proceedings such as these. Materially, the CR avers that utilising AI technology in document review will substantially alleviate Meta's concerns regarding the proportionality of the CR's disclosure requests. Therefore, the CR posits that Meta's arguments about the overall proportionality of the CR's requests should be viewed subject to the understanding that there is scope for Meta to significantly reduce the time and cost of review by deploying AI in their review systems and procedures, should they consider it necessary to do so in light of the disclosure ordered by the Tribunal.

(b) Meta's proposed use of technology

228. On 12 December 2025, Mr Burton, Director of Advanced Technology at Epiq, filed Burton 1 in these proceedings on behalf of Meta. Mr Burton's statement addressed: (i) what AI is capable of in a disclosure exercise of the size and complexity envisaged in these proceedings; and (ii) why he considers TAR and CAL, particularly via Relativity's Active Learning tool ("RAL"),[7] to be the most appropriate tools to facilitate the disclosure review in these proceedings.

229. Meta proposes to use TAR 2.0 (known as CAL) in the form of a single RAL review (known as a "queue"), following initial narrowing of the documents for

[7] RAL is a form of TAR.

review by agreed search terms, global family-level deduplication, and email threading. Mr Burton stated the following at paragraph 12 of Burton 1:

> "12. RAL is an AI tool that predicts, based on human tagging decisions, which documents undergoing disclosure review are most likely to be relevant to the case. RAL maintains a single dynamic queue across the full document universe. As human reviewers tag documents for relevance, RAL learns from those decisions and re-orders the remaining documents so that those most similar to the documents tagged as relevant appear earlier. Accordingly, the more the review team tags, the better the relevancy predictions become. This means more relevant material surfaces sooner, and the team spends progressively less time reviewing documents projected not to be relevant. As explained in more detail below, where there is a point of diminishing returns the review then ceases. This is intended to save time and costs on a review, compared with a traditional manual review."

230. Mr Burton explained that the RAL review generally involves a staged process. The first stage involves a human review whereby documents are tagged as "relevant" or "not relevant" with these decisions feeding back into the algorithm, improving predictions for the remaining documents. The accuracy of the system's predictions are reviewed by humans conducting sample checks to confirm how many relevant documents likely remain in the unreviewed set. The checking process lasts several days and requires the pausing of the "queue". Therefore, the timing of testing is important as cutting-off the process too early can require repeated testing and lost time. Transparent metrics is one of the key benefits of RAL.

231. The second stage is a linear review, conducted by human reviewers, where all of the documents initially tagged by the Stage 1 review as relevant undergo a review for privilege, confidentiality, personal data, and redaction where appropriate. A third review pool runs in tandem for certain document types that are not amenable to RAL and require linear, manual review (e.g. excel spreadsheets, photos/pictures and handwritten documents).

232. Mr Burton emphasised that RAL cannot, by itself, eliminate human review of all documents in a disclosure exercise and it is generally still necessary for human reviewers to review large portions of documents. He states at paragraph 15 of Burton 1:

> "15. … Without effective pre-processing (such as narrowing by search terms, date ranges, deduplication, and email threading) and a proportionate scope, the review set may contain too few relevant documents compared to the overall volume. This makes it hard for the RAL algorithm to learn effectively because it does not see enough examples of relevant material. In that situation, RAL alone cannot deliver a timely cut-off across millions of documents."

233. Mr Burton stated that aiR is used for much smaller and simpler matters. One key limitation of aiR is it can only process approximately 250,000 documents per run, and a maximum of 600,000 documents queued per instance at any one time which, in these proceedings, would require splitting the data into multiple projects and multiple runs. This would add significant time and costs. Further, aiR does not continually reprioritise a single queue based on ongoing human coding decisions, as RAL does, and any learning comes from testing and refining prompts within a single "project", as opposed to live reviewer decisions flowing back to the model, which occurs in RAL.

234. In addition, aiR is not scalable for a first-level relevance review of the size and complexity proposed in these proceedings, due to objective technical constraints. Mr Burton considered that any review of large volumes of documents on a rolling basis, as envisaged in these proceedings, creates significant inefficiencies in the use of RAL. He states at paragraph 31 of Burton 1:

> "31. RAL is designed to operate as one dynamic learning system across the entire document universe, continuously improving predictions as the review and coding progresses. Splitting the review into subsets undermines this global learning and creates inefficiencies, extra cost, as well as creating a risk of adversely impacting the quality of disclosure."

235. The process evolves as reviewers encounter new document types or raise queries. Documents seen later in the review process may require a revised approach to documents reviewed earlier in the process. If documents are produced on a rolling basis, before such guidance crystallises, they may create inconsistencies across the disclosure.

236. In addition, there are economies of scale in running consistency checks over a single pool. Replicating the required steps across multiple queues would multiply time and cost. In addition, Mr Burton states at paragraph 48:

> "48. Moreover, documents can be topically overlapping; the same document may be pulled into different queues, leading to duplication of review and conflicting relevance or privilege calls. Reconciling these conflicts requires additional quality control sweeps and re-review, introducing delay and increased risk of errors while undermining the efficiency RAL is designed to deliver."

237. Finally, early production of certain documents would need to be excluded from RAL and reviewed manually in a linear stream, which would further increase time and costs.

238. Ms Dietzel echoes Mr Burton's evidence in her evidence, stating at paragraph 189 of Dietzel 1 that Meta "propose to use AI in the form of [TAR], including [CAL], in the proposed disclosure exercise, in line with current industry best practice". However, Ms Dietzel notes that proper use of AI is not a complete answer to Meta's proportionality concerns regarding the scope of the disclosure exercise sought by the CR in these proceedings, due to: (i) the scale and complexity of the disclosure process sought; (ii) the limitations of TAR and CAL review, which still require human review of all – or at the least many – disclosed documents; and (iii) the fact that many documents, such as non-custodial repositories, may not be amenable to CAL review.

239. Finally, paragraph 192 of Dietzel 1 states as follows:

> "192. As a final point, while I am aware that generative AI tools have been developed which are able to assist in the conduct of reviews, including for relevance and privilege, I understand their quality is untested in English court proceedings. In particular, I am not aware of any case in which generative AI-powered tools have been used to replace human first-level relevance reviewers in English court proceedings. Given the complexity of the issues, and the large scale of the proposed disclosure exercise, I do not consider that this is a suitable case in which to test an experimental generative AI-led approach, or that it would be an efficient way to proceed in light of the need to prepare and train such tools in a manner that would be acceptable to the CR."

(4) The Tribunal's analysis

240. The Tribunal has considered the CR and Meta's proposed use of technology as part of the disclosure exercise in these proceedings. The Tribunal is satisfied that the approach articulated by Meta is both workable and capable of achieving a balance between efficiency and accuracy. However, the Tribunal is not willing to be prescriptive and require the use of any particular TAR tools or AI for that matter. These are matters which the Designated Solicitor should ultimately decide upon after considering what is appropriate in all the circumstances. Further, the Designated Solicitor should monitor and review the use of technology and be willing to adapt or modify the approach.

241. Mr Foster's evidence regarding more AI intensive document review tools, such as aiR Analysis, do not strike the Tribunal as generally inappropriate, as there appear to be adequate procedures imposing stringent human tests and checks on the approach. However, the Tribunal recognises the concerns raised by Meta regarding the scale of the disclosure exercise in these proceedings and whether tools such as aiR are scalable for a first-level review of the size and complexity proposed in these proceedings.

242. The Tribunal does not consider the use of AI technology in document review to be "experimental" when used to supplement and assist human review, as described in Foster 1 and above. There are likely to be many cases in which utilising AI technology in document review will achieve significant reductions in time and cost of review.

243. Finally, it is clear to the Tribunal that recent advances in TAR, including innovations such as CAL, have reduced the cost of conducting disclosure review exercises. Evidently, this alters what disclosure may be "reasonably necessary and proportionate" as it reduces "the cost and burden of providing such disclosure": see e.g. *Ryder* at [35] and [36], as discussed at paragraph 19 above. As always, the Tribunal will have these fundamental principles of disclosure in mind when considering disclosure requests both individually, and in the round. However, technological advances in disclosure and document review do not provide parties requesting disclosure a complete answer to opposing parties'

proportionality concerns, as: (i) not all documents are amenable to AI led review; and (ii) AI led review still requires the expenditure of significant financial and human resources.

(5) Search terms

244. Search terms are often a matter of controversy between parties in the disclosure process. In the Tribunal's experience it is absolutely critical to get the search terms right at the beginning. Sometimes it is suggested that one just goes for the search terms proposed by the disclosing party, and then the other party can come back later after the task has been done to propose additional search terms. In the experience of the Tribunal, that can lead to real difficulties and duplication of work.

245. In this case, the Tribunal is going to order a structured approach. Meta, through HSFK by letter dated 15 December 2025, has proposed some detailed search terms and a detailed analysis by reference to the various requests for the search terms. That has been done after testing the keywords, therefore it is at a relatively advanced stage.

246. There are additional search terms Meta may need to consider in the light of the further disclosure that has been ordered since HSFK's letter of 15 December 2025. Insofar as the additional disclosure ordered as a result of this hearing leads to more search terms, those search terms should be set out by way of a letter by 3 January 2026.

247. As regards the CR's response to the search terms, including any suggestions as to any additional search terms, that should be set out by 9 January 2026. To the extent that there is any dispute regarding search terms, Meta should file a response to that by 23 January 2026. The CR has liberty to file a further reply in response to the Meta response by 30 January 2026.

248. The Tribunal will consider any remaining disputes between the parties regarding search terms on 9 February 2026. Therefore, by 10:00am on 9 February 2026, at the absolute latest, the parties shall file both in hard copy and

electronically any submissions on disputed search terms. The Tribunal will either rule on these disputed issues on the papers, or if either party requests a hearing, there may be a hearing at 10:30am on 9 February 2026, subject to court availability and the Chair's discretion.

249. When it comes to the disclosure exercise, there has got to be an element of common sense exercised by the Designated Solicitor, as when one starts conducting an exercise of this size, it will sometimes be found that the search terms do not pick up the material that is being sought, or that it has too many hits which are not responsive. Therefore, the Designated Solicitor has to consider the search terms as the process goes along, and consider whether or not additional, or modified, search terms should be adopted.

250. The CR does have the right as part of this process to suggest further search terms as the process proceeds, insofar as gaps are being identified. Therefore, neither party is going to be precluded from amending or adding to the search terms as the exercise proceeds.

251. The Tribunal recognises there must be an element of flexibility in the use of search terms in disclosure exercises. However, the Tribunal is eager to avoid a situation where the parties complete the disclosure exercise and then the CR proposes a mass of additional search terms which should have been proposed at an earlier stage. Therefore, flexibility throughout the process will be utilised as required, but ideally the Tribunal hopes that there is a relatively concrete list of search terms at the time the disclosure process commences.

252. As stated in Matthews and Malek, *Disclosure* (6th ed., 2024) at paragraph 7.25:

> "7.25 Keyword searches may still produce far too many false negatives and documents to review manually. Thus particularly where there is a large volume of data, technology assisted review or predictive coding may be adopted. Predictive coding is the use of specialist computer software to assess the likely relevance of documents. Lawyers review samples of documents and pick out what is relevant by reference to the issues in the action, and thereby train the computer to do the same. The larger the sample and more times it is done, the better trained the computer. Once the computer is sufficiently well trained, the computer is programmed to apply the logic to the entire set or sub-set of documents and to suggest the likely relevance of each document, based on its understanding. This too has its potential drawbacks and some

> relevant material may be omitted or not identified. Further, the training process is expensive and hence may be more costly than other methods. On the other hand, it can be more practical and lead to a saving of costs, especially where the volume of data to be reviewed is vast. In addition to predictive coding, various other technologies fall under the general topic of technology-assisted review. Tools are available which assist with specific tasks such as email threading, near de-duplication, concept searching and clustering. Disputes may arise between the parties as to the role of keyword searches (if any) in a technology assisted review, such as a continuous active learning review. If the party giving disclosure has already started what appears to be a sensible and workable process, the court may be reluctant to impose a different methodology at the request of the other party. A disclosure protocol agreed between the parties can be very useful in providing a framework for electronic disclosure, even if points still need to be resolved by the court on particular aspects and methodologies."
>
> (Footnotes omitted)

(6) Conduct of the parties

253. As regards the relationship between the two sides, being the CR and Meta (and their respective lawyers), the Tribunal does consider that there has been a great deal of collaboration on both sides. The Tribunal has heard some jury points over the course of this CMC about whether someone has been constructive or not. It is the Tribunal's view that both parties have endeavoured to be constructive, and it would hope that this collaboration can continue, and that the process can run smoothly.

(7) Rolling disclosure

254. Disclosure in this case will be on a rolling basis. There will also be a long-stop date by which all the disclosure should be provided.

255. In the course of this ruling, the Tribunal has indicated that there are certain categories of documents which should be prioritised upfront so that if there is any follow-on disclosure in relation to those categories, that can be done in reasonable time.

256. The Tribunal understands that there has been correspondence between the parties as to what priority should be given on rolling disclosure to other categories of documents. The Tribunal is not inclined at this stage to direct the

Designated Solicitor to prioritise any other specific tasks. Rather, it is for the Designated Solicitor to take a view, looking at the available resources, on what can be done discretely in advance of everything else at a relatively early stage and what is important. The Tribunal is not going to micromanage the disclosure exercise. However, the Tribunal does not want the vast bulk of the disclosure to be given on the last day, as that is clearly undesirable. Disclosure exercises work best when disclosure is provided on an ongoing basis. As and when a particular task has been finished, disclosure is given, and then the CR will have something to work on, so no time is wasted.

257. The long-stop date will be set as 16 October 2026. There is liberty to apply to vary the long-stop date by 9 February 2026. At the long-stop date, there will be a disclosure statement signed both by the Designated Solicitor and by a representative of Meta.

(8) Pleadings issues

258. As regards an issue that Mr Singla KC has raised about the meaning and clarity in the pleadings, the Tribunal does not accept that on all the points raised there is necessarily a lack of clarity as to the CR's case. On the other hand, there are elements where he is correct, and where there is a genuine concern by the Designated Solicitor that due to a lack of clarity it is not clear what is required for the disclosure exercise, that person should have the ability to write to the solicitors for the CR seeking clarification. Any clarification of the pleaded case is going to be required to the extent it is necessary for the efficient progress of the current disclosure exercise. The Tribunal does not envisage this to be an invitation to serve a detailed RFI on everything. It is a question of whether there are discrete points which factor into the disclosure exercise, where an answer is needed so the Designated Solicitor can know what should be looked for. That is something that should be provided for.

(9) Costs

259. On costs, the Tribunal thinks it is important to reiterate the approach taken on costs where the Tribunal is going through a Redfern Schedule process, as in the

present case. Sometimes the view is taken that one can look at how many requests have been agreed, and how many have been disputed, and then consider whether an adverse costs order is appropriate. The Tribunal does not consider this approach to be appropriate in these proceedings.

260. The Tribunal does not want either party to feel that if they agree disputed categories and make concessions, that is going to be somehow used against them when it comes to costs. The Tribunal wants to encourage an atmosphere where parties can concede points, where appropriate, without any risk of adverse costs orders: see *Professor Barry Rodger v Alphabet Inc. & Others* [2025] CAT 58; [2025] 9 WLUK 594 at [182] to [185] and *Lenzig AG & Others v Westlake Vinnolit GmbH & Co. KG & Others* [2025] CAT 31; [2025] 5 WLUK 566 at [29].

261. The final point on costs relates to the size of the parties' respective teams in court for CMC4. In *Clare Mary Joan Spottiswoode CBE v Airwave Solutions Limited, Motorola Solutions UK Limited & Motorola Solutions, Inc* [2025] CAT 76 at [15] to [25] the Tribunal made it clear that, when it comes to assessing recoverable costs, consideration will be given as to the proportionality and reasonableness of instructing multiple counsel and attendance of large teams in court for certain hearings. In relation to CMC4 the Tribunal notes that many people attended this hearing in person. The Tribunal appreciates this hearing is expensive, but as this is a hearing looking at the fundamentals of this exercise and how it is going to be put together, it is appropriate that at least some of the team members implementing this are present so they can see the direction of travel and understand what is required.

262. Meta should provide a disclosure costs report together with the composite disclosure list at the conclusion of the disclosure exercise (the "Disclosure Costs Report"). The Disclosure Costs Report should provide a breakdown of the costs of disclosure separating out the costs of: (i) the LOIFD exercise, including the hearing which was held to finalise the same; (ii) the costs of the process thereafter up to and including the current Redfern Schedule exercise; and (iii) the costs of disclosure itself up to the filing of the final composite disclosure list. In addition to information on costs, the Disclosure Costs Report should also

address what has been done by way of disclosure, the difficulties that have been encountered throughout the process and any lessons learned for this and any future substantial disclosure exercise.

263. It is appreciated that not all the work in disclosure is a response to the CR's requests, and the Tribunal's order as to disclosure having gone through the Redfern schedule exercise. Meta will have their own categories of documents to search for which may assist their case.

264. Persons working on this case should separate the costs and times for disclosure in their time and expense records, as this will assist when it comes to finalising the Disclosure Costs Report. This report will be useful for the Tribunal to understand the actual costs of the disclosure exercise and may be considered in the event that further disclosure is sought. Furthermore, the level of costs will go to whether the level of ATE insurance cover remains adequate – which is, of course, an important issue.

265. The Tribunal has been prepared to go through the Redfern Schedule item by item over a three-day period. This is significantly longer than usually necessary. However given the number of disputed requests, the size and complexity of the exercise, the very significant costs that will be incurred in carrying out the disclosure sought, and the amounts at stake in the proceedings, the Tribunal considers that this has been a worthwhile exercise.

266. This ruling is unanimous.

Hodge Malek KC
Chair

Greg Olsen

Derek Ridyard

Charles Dhanowa, CBE, KC (Hon)
Registrar

Date: 16 December 2025