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IN THE COMPETITION

Case No. : 1433/7/7/22

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 24th & Wednesday 26th November 2025

Before:

Hodge Malek KC
Derek Ridyard
Tim Sawyer
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Dr Liza Lovdahl Gormsen

Class Representative

v

Meta Platforms, Inc. and Others

Defendants

A P P E A R A N C E S

Sarah Ford KC, Sarah O'Keefe, Daniel Cashman and Ian Simester On behalf of Dr Liza Lovdahl Gormsen (Instructed by Quinn Emanuel Urquhart & Sullivan UK LLP)

Tony Singla KC, James White and Camilla Cockerill On behalf of Meta Platforms (Instructed by Herbert Smith Freehills Kramer LLP)

Monday, 24 November 2025

(11.00 am)

CMC

THE CHAIR: Some of you are joining us via livestream on our website so I must start with, therefore, the customary warning: an official recording is being made and an authorised transcript will be produced. It is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings. Breach of that provision is punishable as a contempt of court. In due course there will be a transcript of this hearing available on the CAT website and there may or may not be a written decision or ruling consequent upon this hearing.

MS FORD: Mr Chairman, members of the Tribunal, I appear for Class Representative with junior counsel Ms O'Keeffe and Mr Simester. Mr Singla KC is (inaudible) CMC in these proceedings are there are two matters on the agenda. The first is the Class Representative's RFI and the second is the Redfern schedule (Inaudible)

The Tribunal indicated that it would like to hear from junior counsel.

THE CHAIR: I do, yes.

MS FORD: In terms of our side, Mr Cashman will be

1 addressing you on matters concerning search terms, and
2 Mr Simester will be dealing with matters arising
3 regarding custodians. Obviously matters are, to certain
4 extent, in flux, so to the extent those need to be
5 addressed and the point at which they need to be
6 addressed we are retaining flexibility.

7 THE CHAIR: Mr Singla, are you going to do the same thing
8 with your team?

9 MR SINGLA: We are. It is slightly difficult because, as Ms
10 Ford says, things are moving --

11 THE CHAIR: They are moving, yes.

12 MR SINGLA: -- but Mr White is prepared to address you in
13 relation to matters so far as custodians are concerned,
14 and to the extent issues are live.

15 While I'm on my feet, can I just say we don't accept
16 that the RFI should be the first item on the agenda. I
17 can explain why, if that would assist now, or if you
18 want to hear some other housekeeping matters first?

19 THE CHAIR: I think let's just see what the shape of
20 everything is first.

21 MR SINGLA: Yes.

22 THE CHAIR: So, where we are is that we've got two things to
23 deal with. The RFI, I think, is the -- let's say the
24 simplest one because we half-heard it last time, and so
25 what I was proposing to do was to deal with that first.

1 I am very conscious, though, about Mr Singla's point
2 that it may well be that if they provide an answer now,
3 it may not be 100 per cent accurate, and if I was him I
4 wouldn't want to be bound by whatever answer he gives at
5 this stage because it may end up not being accurate once
6 you've done the disclosure exercise, so it is a bit of
7 a chicken and egg, and the way I think of doing it, and
8 maybe Mr Singla won't agree, but the way I look at it is
9 that the request is clearly relevant because it goes to
10 the issues in the case. It is also relevant to provide
11 a framework for the disclosure exercise. I accept the
12 point that some of that has been dealt with by the
13 concessions made last time by Mr Singla about the
14 timings, but there is this issue about what it is
15 reasonable to expect Meta to provide at this stage and
16 what I was inclined to do was to say they can give an
17 answer now within a certain period of time, on
18 a reasonable endeavours basis. They set up what
19 enquiries they make, and they don't need to be that
20 extensive because I don't want them to spend £100,000 or
21 whatever giving an answer to this, and that at the end
22 of the disclosure exercise they have right to either
23 withdraw it and put in a new one, or serve a revised
24 one, and that way that protects Mr Singla's clients and
25 does provide the information, but I have got no doubt

1 that there should be an answer. Mr Singla's point --
2 well, let's give an answer at the end of the phase --
3 I'm not happy with that because I do think it is fairly
4 fundamental that we should have that as a framework but
5 that is what I'm thinking at the moment.

6 MR SINGLA: That is incredibly helpful to understand at the
7 outset. Can I just say this --

8 THE CHAIR: Sit down, let's hear Mr Singla. Yes.

9 MR SINGLA: First, in relation to when this application
10 should be heard, in my submission it would be more
11 efficient to hear this at the end of the hearing for two
12 reasons. First, we've actually sent a letter recently
13 which the Tribunal won't have had a chance to read, but
14 is important in the context of some of the indications
15 you've just given. I can give you the reference, but
16 I'll take you through you that when we get to the
17 substance.

18 The second point and the more fundamental reason why
19 we say the RFI should come at the end, is because one of
20 our key points is that we are going to do a very, very
21 expansive disclosure exercise.

22 Now, that won't become apparent because we will be
23 going through the Redfern, and you will become more
24 familiar with the Redfern and the scope of the
25 disclosure we're going to provide as this hearing

1 gets -- goes through the detail, and in my submission
2 what we will be saying in relation to the substance of
3 the RFI application -- it sounds like you have this
4 point -- we say we cannot answer it until we've done the
5 disclosure. We say that they don't need an answer right
6 now, and if you take the view that it is a relevant
7 question which we can obviously debate, but the proper
8 thing to do is not to order us to answer the RFI now,
9 but to allow Meta to go and do the very expansive
10 disclosure which will then provide the CR with the
11 material --

12 THE CHAIR: Okay. I think the only -- where we're
13 different, okay, is, look, in my view, it is clearly
14 relevant (a) for the issues in the action and (b) for
15 the disclosure exercise.

16 MR SINGLA: Yes.

17 THE CHAIR: The best time to give an accurate answer is, as
18 you say in your submissions, is -- let's do the
19 disclosure exercise and then you will have the answer,
20 though I'll want the answer in a proper answer. The
21 only thing that I'm saying is it may be better to have,
22 at this stage, but let's say within 28 days, a rough and
23 ready answer, okay? It's not going to be binding
24 because, look, as I said, if I was in your position I
25 would not want to put in an answer and then complain

1 a year later saying, well, you put in this misleading
2 statement, and then you know, you get hammered for that.
3 That is why I'm suggesting -- because I do want the
4 information, and I think it would help us do that, and I
5 would be really surprised if this is going to be the
6 final guest appearance of Hodge on this case. I think
7 that probably what will happen is we will have other
8 hearings on disclosure and today is not going to be the
9 end of this, because I think this probably needs
10 relatively close management, but I don't want to have
11 interminable hearings on disclosure -- I'm trying to
12 encourage everyone to get the right idea on what to
13 do -- and at the end of these two days I think you will
14 both be in a good enough position to predict what I'm
15 likely to say in relation to any outstanding disputes,
16 but we will get through all of this.

17 So we will come back to this first issue later. As
18 you say, let's deal with the Redfern schedule. It may
19 look different later --

20 MR SINGLA: Just before I sit down. Just two things. One,
21 the reference for the letter which I think it would be
22 helpful for you to read before we have the debate is
23 E2/337.

24 THE CHAIR: Just put it up on the screen, shall we?
25 {E2/337/1}.

1 MR SINGLA: What it essentially says is let's get on with
2 the disclosure and pleadings can be looked at at the end
3 of disclosure by both sides which in my respectful
4 submission is actually completely orthodox. The
5 difference between what you've said and what we're
6 saying in this letter is you are, I think, sir,
7 provisionally saying we should provide some sort of
8 response now, but you are obviously accepting that it is
9 unsatisfactory for us to commit to any position now, and
10 in my submission --

11 THE CHAIR: That's the next page, yes?

12 MR SINGLA: Yes. The question is why do they need
13 a response ahead of the completion of the disclosure
14 exercise. That's the point [E2/337/2]

15 THE CHAIR: I think the problem is it is going to take
16 a long time to get to the end of this disclosure
17 exercise. I don't think this disclosure exercise is
18 going to take very long -- I mean, is going to take
19 a short period. There's massive information that is
20 being sought here, a huge amount --

21 MR SINGLA: Exactly.

22 THE CHAIR: -- and it may need some pruning, but I don't
23 want -- I appreciate this is a 3 to 4 billion pound
24 case. It is a big case, and it is not -- that's not
25 unusual in these types of cases.

1 MR SINGLA: No, but it is relevant to proportionality
2 because the Tribunal can ask for anything knowing that
3 proportionality doesn't cut both ways.

4 THE CHAIR: Well no, because if they lose the case, as you
5 say they will do, there is going to be a very big bill
6 that the ATE insurers will have to pick up.

7 MR SINGLA: Indeed.

8 THE CHAIR: And I've got no view as to who is right or who
9 is wrong on this, because it is one of those cases, you
10 look at the pleadings and you say "I can see that there
11 are triable issues" and that is going to have to be
12 worked out at a trial, but there's no guarantee, as you
13 say, that they won't have to pick up the bill for it.

14 MR SINGLA: Just on that point, you, sir, have said, indeed,
15 in the Trucks and other cases, just a reference to
16 something in the pleading doesn't mean that something is
17 necessary for disclosure.

18 THE CHAIR: I agree --

19 MR SINGLA: We can debate disclosure in due course. The
20 question is on the RFI why do they need an answer ahead
21 of a general pleadings wash-up at the end of disclosure.
22 The only answer to that would be to facilitate the
23 disclosure process. That's fallen away because we've
24 accepted we're going back all the way, and we're going
25 beyond the scope of the data, so the question for

1 Ms Ford is why are they insisting on an answer ahead of
2 time which, as you are saying, sir, will necessarily be
3 half-baked. Why do they need that now?

4 THE CHAIR: It is not going to be half-baked, but, I mean, I
5 want to give you the ability to revise it further down
6 the line because I know -- if you put something down and
7 then someone tries to stick you with it and say you've
8 given them a misleading answer. I do not want that to
9 happen.

10 MR SINGLA: There's a National Grid decision of Roth, J that
11 I wanted to show you on exactly this point where he took
12 the view that an RFI was relevant, and he said, "I'm not
13 going to order you to answer the RFI because you are
14 going to have to go and speak to witnesses and so on to
15 answer it". It makes no sense. That, in my submission,
16 is the proper approach. We can debate whether or not it
17 is relevant, but if you are of the view that it is, the
18 question is let's do the work rather than making us
19 answer it now.

20 THE CHAIR: No, but do you accept that you are going to have
21 to answer it at some stage?

22 MR SINGLA: Well, I --

23 THE CHAIR: If you don't then I'm going to hear it now.

24 MR SINGLA: Some of it is more relevant than other bits,
25 I think would be my short answer to that.

1 THE CHAIR: Ms Ford, let's hear it now then because it seems
2 as though we're going round in circles, but I think --
3 look, please don't think I haven't read the skeleton,
4 okay? Don't think I am not aware of the authorities on
5 this area, okay? So let's not waste much time on this.
6 So we spent -- you've got 15 minutes, Mr Singla will
7 have 15 minutes and then we go on to the other things
8 because there's a limit to how much time we can spend on
9 any one issue.

10 MS FORD: In that case, while we're on this letter perhaps
11 I can draw the Tribunal's attention to paragraph 10
12 which is, we would say, a fairly important concession on
13 Meta's part, an indication of exactly why we should be
14 getting an answer now and not in due course [E2/337/3].
15 Part-way down the paragraph they say:

16 "Meta has very recently become aware of information
17 suggesting some form of beta conversions tracking
18 mechanism may have been trialled by Meta over several
19 months in or around 2010. The details of this mechanism
20 are not presently clear, including the precise length of
21 time it was in use, whether it affected UK users, its
22 intended functionality and nature of any data Meta
23 received as a consequence. However, subject to Meta's
24 ongoing investigations of this issue, including as part
25 of the disclosure exercise that will be taken in due

1 course, Meta notes that it may need to amend its
2 defence".

3 There is a concession, essentially that the 2013
4 date that we heard a huge amount about at the last CMC
5 is potentially not correct and that they are -- further
6 information that they are aware of now --

7 THE CHAIR: Are you aware as to how far they've got on
8 actually starting the disclosure exercise? Because if
9 they haven't started, then there's a lot of work to do,
10 but I would have thought that they would have started at
11 least getting stuff together, putting things on
12 a platform, gathering all the information. That's what
13 I expect them to do because sometimes people say, well,
14 I'm not going to do that because until I know what I
15 have to disclose I'm not going to start that exercise.
16 Once I know what I have got to disclose I can then start
17 the exercise, so there are two different ways of looking
18 at it, but you don't know whether they've gone on route
19 2 or route 1 or a combination of both of them.

20 MS FORD: We have asked. I'm afraid we haven't received an
21 answer to that question.

22 THE CHAIR: Okay.

23 Submissions by MS FORD

24 MS FORD: Mindful of the Tribunal's indication that I have
25 15 minutes --

1 THE CHAIR: You do, yes.

2 MS FORD: -- I'm going to try and deal with this relatively
3 rapidly. As the Tribunal is aware, we say that we need
4 an answer on two bases. One is in order to understand
5 Meta's case and to prepare our own case and the other is
6 a disclosure. On the question of the pleaded case, the
7 question is when Meta started collecting Off-Facebook
8 Data -- I say "collecting etc" because the Tribunal
9 appreciates this formulation, collecting, processing,
10 using, when they started that exercise, feeds in at two
11 points in the analysis. The first is in relation to
12 whether there is an unfairness abuse at all, and the
13 second is in relation to quantifying the loss that we
14 say has been suffered to class members by reason of that
15 abuse.

16 In relation to the abuse case, both in terms of the
17 unfair terms limb of that case and the unfair price limb
18 of that case, the Class Representative's case has been
19 advanced on the basis of a comparison between the extent
20 of the Off-Facebook Data Meta collected before it was
21 dominant and the extent of its collection after.

22 Given the time I'm not going to take the Tribunal
23 through the pleadings again. I anticipate that you will
24 be very familiar with them.

25 THE CHAIR: Don't assume I'm very familiar with them but

1 I have read them again. I'm not saying -- I don't claim
2 anything is very familiar.

3 MS FORD: Well, perhaps if I can flip through very quickly
4 [B/11/3].

5 THE CHAIR: Are you talking about the core bundle or another
6 bundle?

7 MS FORD: It is not --

8 THE CHAIR: In the core bundle I have got all the pleadings.
9 Yes?

10 MS FORD: [B/11/3]. This is essentially making the headline
11 point that when it faced at least some competition,
12 Facebook sought to position itself --

13 THE CHAIR: Which paragraph are you looking at?

14 MS FORD: Paragraph S7 of the --

15 THE CHAIR: I have read that. I have marked it up already.

16 MS FORD: So the summary is that as it gained market power
17 it ramped up the data.

18 THE CHAIR: I've got that.

19 MS FORD: And then the Tribunal will see that it then goes
20 off into a chronological summary which starts as early
21 as 2007.

22 THE CHAIR: Yes.

23 MS FORD: The pleaded allegation of unfair terms is at S15,
24 the summary of it.

25 THE CHAIR: Just to help you, I do agree with you that it is

1 relevant.

2 MS FORD: Well, in that case it may be that I can take that
3 extremely quickly.

4 THE CHAIR: I think the only issue, really, I need your
5 assistance on is Mr Singla's point which is: do we need
6 an answer now or do we leave it until the end of
7 disclosure and then he will give an answer. Well, he is
8 hedging his bets at the moment because he is not clear
9 as to whether or not he is going to give an answer, but
10 I think in principle let's just deal with -- don't deal
11 with whether or not there should be an answer because
12 I'm satisfied you are right on that subject, on what
13 Mr Singla says, but is what I have suggested something
14 that is practical or do you think that's not good enough
15 either because you are not going to get a concrete
16 answer now?

17 MS FORD: We would be content with the way forward that the
18 Tribunal has indicated. We do say it is important that
19 Meta does give an answer now to the best of its ability
20 and one of the things that we have engaged with in the
21 series of requests and responses in relation to the RFI
22 is us saying you haven't actually put in any evidence to
23 explain what enquiries you have made before you
24 essentially express the view we are unable to answer
25 this question. That has moved, because, of course, Meta

1 now accept that they are going to go away and do a
2 disclosure exercise so there can be no suggestion that
3 it is going to be excessively disproportionate or
4 onerous for them to answer this question because they
5 should be doing this exercise anyway.

6 THE CHAIR: No, but what they are saying is that if we have
7 to do it, the best time to do it is once we've gone
8 through disclosure, and I agree with Mr Singla, that the
9 best time for a concrete answer, i.e. one that is more
10 or less cast in stone, is once they've done the
11 disclosure exercise, because things will be thrown up --
12 that is how life is -- and we're talking about things
13 a long time ago. All I'm really concerned about now is
14 what is the utility, or no utility, of my suggestion
15 that we get a rough and ready answer in 28 days.

16 MS FORD: Meta have done their very best to try and take
17 this issue off the table in order to try and make the
18 submission that there is no utility in doing so. The
19 Tribunal will recall that the 2013 date was absolutely
20 central to their position in CMC 3. What they've done
21 since then is to try and suggest that, actually, because
22 they've made concessions on things like temporal scope,
23 we don't need an answer now. In our submission that
24 isn't right. It is clear from the catalogue of points
25 that the parties have been debating about things like

1 time periods and things like proportionality, that
2 Meta's assessment of when it first started collecting
3 this data permeates its entire approach, going back to
4 its DR and EDQ and even potentially before that so it
5 will have informed Meta's judgments as to which
6 custodians it says it is best to search. It will have
7 informed Meta's judgments as to the non-custodial
8 repositories it says it is proportionate to search,
9 including the time periods they cover, and it has, we've
10 already seen, permeated the expert evidence which has
11 been given about what data is necessary for the expert's
12 process, so it has absolutely permeated every aspect of
13 this exercise, and it doesn't essentially sweep all that
14 away for Meta to say, well, we're not going to argue
15 about temporal scope in relation to a small handful of
16 issues.

17 We say that the judgments that have been made
18 informed significantly by this 2013 date, haven't been
19 materially updated since the exercise of producing the
20 DR and the EDQ, and those are judgments which have been
21 made on what appears, potentially, to be an imperfect
22 basis, and paragraph 10 of the letter that I have shown
23 the Tribunal does suggest that what has been said to
24 date may well need to be revisited. In our submission
25 it is not appropriate for this exercise of disclosure to

1 continue on what is a potentially imperfect and
2 ill-informed basis.

3 We make the point --

4 THE CHAIR: What is the date of this letter?

5 MS FORD: It is an extremely recent letter -- Saturday,
6 I think, possibly.

7 MR SINGLA: Thursday.

8 THE CHAIR: Yes, so what date is that?

9 MR SINGLA: 20 November. Sir, sorry, just to explain the
10 timing, and the reason it is important for you to read
11 it, is because the disclosure piece has continued to
12 evolve, and so this letter refers to the fact that we've
13 made more concessions in relation to disclosure. That's
14 why --

15 THE CHAIR: It is an evolving thing, I understand that.

16 MS FORD: Sir, that's very much the point that we make. It
17 is an on-going process. If, during the course of the
18 disclosure process, it becomes evident that the basis on
19 which these proposals and these judgments are being made
20 is potentially mistaken, then self-evidently that needs
21 to be taken into account, and steps need to be taken to
22 address it. Of course, once disclosure has been given,
23 there will then be a process of review and scrutiny to
24 see whether there are any gaps, and that exercise will
25 again be informed by the position as regards when Meta

1 first started collecting, etc, this data.

2 THE CHAIR: You are saying at CMC 3 I was being told, well,
3 we started collecting this data in 2013, and then you
4 look at this letter, it indicates, well, actually, maybe
5 2010.

6 MS FORD: It was the absolute core of the submissions that
7 were being advanced at that time on proportionality and
8 on time periods, and it is the core of what continues to
9 underpin all the judgments that have been made about
10 custodians, about repositories, about proportionality,
11 and taking a couple of disputes off the table doesn't
12 address that, so in our submission it is not appropriate
13 for Meta to essentially continue the juggernaut process
14 on a premise which it appears is potentially vulnerable.

15 THE CHAIR: Okay. Mr Singla?

16 MR SINGLA: Sir, this is actually quite an important point
17 because this my respectful submission, this is, as an
18 RFI application, under Part 18 type principles. This is
19 completely misguided, so let's just recall why this
20 first arose. This didn't arise through the pleadings
21 process. We put our defence in, they put a reply in.
22 They didn't suggest at that stage they needed further
23 information, so this came up at the disclosure -- just
24 to take a minute to remind you of the history -- this
25 first came up not by way of application by the CR at the

1 last hearing, but because there was a debate at the CMC
2 in relation to the Off-Facebook Data concept as pleaded
3 by the CR, and you, sir, brought up the idea of an RFI
4 in the context not of pleadings, but in relation to
5 disclosure, and not generally in relation to disclosure,
6 but in relation to temporal scope, so we were suggesting
7 2011 for various -- issues for disclosure -- they wanted
8 2005 or 2007, and, sir, you originally came up with this
9 idea to help Meta, you said, well, we can have 2011
10 subject to an RFI. That was the thinking, and that --

11 THE CHAIR: I was trying to be helpful.

12 MR SINGLA: You were, you were sir.

13 THE CHAIR: Maybe I wasn't.

14 MR SINGLA: This is quite important to understand. Some of
15 the submissions now are slightly revisionist, in my
16 submission, so we, sir, have moved quite a long way in
17 relation to disclosure. We've now accepted the early
18 time periods, and that has been a moving piece up until
19 last week, so there is now, subject to one point, there
20 is not a single temporal scope debate left. There is
21 now, sir -- we're not reserving any rights as regards
22 the proportionality of going all the way back so
23 Off-Facebook Data which is something we were reserving
24 the right to argue at the last hearing.

25 Sir, so far as disclosure is concerned, the

1 rationale has fallen away because we've broadened our
2 searches going all the way back to 2005 where they want
3 us to, that is 20 years' worth of disclosure and we've
4 broadened our approach to Off-Facebook Data in line with
5 your ruling at the last CMC, so to the extent Ms Ford is
6 saying we desperately need an answer to these questions
7 to inform the disclosure process, in my submission that
8 is misconceived, and it is telling that she wasn't able
9 to give you a single example.

10 Of course, if they want to make disclosure requests
11 once they've had the expansive disclosure that we're
12 giving, they can do that in the usual way. They can
13 review what we're going to give, 20 years' worth
14 covering all the types of data and so on, but they can
15 come back, so they do not need an answer for the
16 purposes of disclosure. That is point one.

17 Point two, is they say another basis on which they
18 need this is because they don't understand our pleading,
19 or they say there is a disconnect between the parties'
20 pleadings, and again, one just needs to actually analyse
21 those points.

22 They make this disconnect submission at paragraph 12
23 of their reply document, and they say there are two
24 disconnects. The first is that they say that we plead
25 principally in relation to what we call "Third Party

1 Activity Data", and not more broadly to Off-Facebook
2 Data.

3 Now, just pausing there --

4 THE CHAIR: Now, there was a lot of discussion about that
5 last time. I thought we resolved the answer on that.

6 MR SINGLA: Well, no. You resolved in the CR's favour that
7 their pleading covered other types of data because they
8 pleaded it non-exhaustively, but in my submission the
9 reason we've pleaded back to Third Party Activity Data
10 is because, actually, when you properly understand the
11 theory of harm it can only relate to that type of data
12 but I'm not going to re-litigate that point. The short
13 point is we have said that we understand the ruling that
14 it goes beyond Third Party Activity Data. We don't
15 understand the case so far as it does go beyond, but
16 we've said we will look at our pleadings once we've done
17 the huge disclosure exercise, and the CR will need to do
18 likewise. This is completely orthodox. We've been
19 incredibly accommodating on disclosure, both sides, in
20 the light of that disclosure will need to look again at
21 their pleadings. In my submission, if they want to go
22 beyond Third Party Activity Data they will have to plead
23 exactly what types of data, and how those types of data
24 fit in their theory of harm, so the first so-called
25 disconnect will be dealt with in the usual way as we do

1 disclosure, we will look again at the pleading, and then
2 they say "we've pleaded only in relation to personalised
3 advertising" and they want to understand what other uses
4 this data was put to, to which we say, well, you can
5 have the disclosure, so we've got requests 30, 31, 37,
6 42, they are going to get huge amounts of disclosure
7 covering uses that go beyond personalised advertising,
8 and in my submission it is completely misconceived to
9 say we need an answer now, either on the disclosure
10 footing, or on the pleadings footing, and the reason I
11 wanted to show you National Grid -- I obviously know you
12 are familiar with the authorities -- let me just show
13 you how Roth, J dealt with a very similar application.
14 We've added it at [G6/1.1/1]. It is the authorities. I
15 hope it has been updated. I can hand up copies.

16 THE CHAIR: Just read the relevant passage. I'm aware of
17 the authority.

18 MR SINGLA: I don't mean to teach you to suck eggs, sir, but
19 in my respectful submission it is quite informative
20 because we have, in this case, a request under Part 18
21 which he considered to be relevant, but he said it is
22 premature because they are going to have to go off --

23 THE CHAIR: Yes, on the timing point. I understand that.

24 MR SINGLA: Again, he wasn't saying, well, it would be
25 useful for them to have an answer within 28 days, and

1 then they can change it in due course, he is saying this
2 is a Part 18 -- let me just show you the passage. You
3 will see paragraph 61 is where -- the part of the
4 judgment concerns the request for further for
5 information. The detail of the requests don't matter
6 for present purposes.

7 THE CHAIR: No, they don't.

8 MR SINGLA: Can I just jump ahead to 71 and 72 which
9 obviously I know --

10 THE CHAIR: CPR18. Yes. [G6/1.1/22].

11 MR SINGLA: Look at 73 which is Hall v Sevalco Ltd, Lord
12 Woolf, necessity is a stringent test. It cannot be
13 necessary to interrogate to obtain information or
14 admissions which are or likely to be contained in
15 pleadings, and so on. Interrogatories should not be
16 regarded as a source of ammunition to be routinely
17 discharged as part of an interlocutory bombardment
18 preceding the main battle. Okay. That's Lord Woolf in
19 the Court of Appeal.

20 Then what Roth, J goes on to say, if you look at 76,
21 in that case he thought the requests were relevant.

22 THE CHAIR: Yes.

23 MR SINGLA: But then, critically, he says in that paragraph:

24 "But that only reinforces the argument of Mr Hoskins
25 and Ms Demetriou that the defendants should not be

1 compelled to have their witness evidence ready at this
2 stage. A reply to a Part 18 request has to be verified
3 by a statement of truth and therefore there is
4 a significant burden in responding to questions such as
5 these to check the proposed answers with all accessible
6 sources".

7 Then you will see at the end he dismisses the
8 application. It is not, well, let's take this in stages
9 and have part 1 of the answer now. In that case, as in
10 this case, the claimants are unable to articulate why
11 they need an answer now, so that he's a really the main
12 submission. I do have another couple of points.

13 One is --

14 THE CHAIR: How many more minutes have you got left?

15 MR SINGLA: Two minutes.

16 THE CHAIR: Yes.

17 MR SINGLA: One point is this: on any view, we say question
18 2, which is when did you first consider, we say that is
19 plainly an improper request, and is a premature request
20 for evidence. It is so vague that it would be hopeless
21 to set that particular hare running and I do have
22 a further point on timing. If you are going to insist
23 on some mid-way response ahead of time for which no
24 useful purpose has been articulated, we don't accept
25 that could be done by 10 December, even that type of

1 answer heavily caveated and of no real utility until
2 we've done disclosure, we would need until at least the
3 end of January. I mean, these are big questions and
4 we've put in, sir, with a statement of truth, we've put
5 in a response saying "these answers are not readily
6 available". It may be superficially straightforward,
7 but when Meta is saying "verified by a statement of
8 truth" we can't do this until we've done disclosure, it
9 doesn't, in my submission, lie in the mouth of Ms Vernon
10 in her witness statement or Ms Ford in her submissions
11 to say, well, you haven't told us exactly why. They are
12 not entitled to interrogate why we say this information
13 is not readily available. This would just go on
14 forever.

15 So in my submission, sir, you should dismiss the
16 application. We will look again at the pleadings, both
17 sides will need to look again at their pleadings, once
18 we've had the disclosure, and if you are minded -- if
19 you do take the view it is all relevant, then we can
20 debate that, we can either answer it at the end of the
21 process or it may be swept up by other amendments to the
22 pleadings in any event.

23 THE CHAIR: Okay. Thank you.

24 MS FORD: So, starting with the National Grid case, can we
25 go back, please, to paragraph 73?

1 Ruling (Redacted for Approval)

2 MR SINGLA: Can I just quickly deal with timing? 28 days,
3 that runs into the Christmas period so I respectfully
4 ask for a short indulgence to 23 January. One has to be
5 slightly realistic about the availability of individuals
6 over Christmas.

7 THE CHAIR: Well --

8 MR SINGLA: I think I asked for the end of January, but if
9 it is 28 days adjusted for Christmas, I think the 23rd
10 is the Friday. Ms Ford can't suggest she really needs
11 it over Christmas. I mean, even she won't be reading
12 it. 23 January is a Friday.

13 THE CHAIR: I think it is too far away from me. What are
14 you suggesting, Ms Ford? Try and be constructive
15 because we are going to get an answer.

16 MS FORD: Sir, our position was the 10th.

17 THE CHAIR: No, that is far too short. That is not
18 realistic. So I'm inclined to stick with the 28 days
19 but to give them a bit more time because of Christmas.
20 So --

21 MS FORD: 12 January is the period sufficiently after the
22 Christmas break.

23 THE CHAIR: 12 January 2026. Yes.

24 How do you intend to deal with the disclosure
25 exercise? Let me just say what the principles are. As

1 regards disclosure, disclosure will be on the basis of
2 what disclosure is reasonably necessary and
3 proportionate. Insofar as there are more than one
4 requests asking exactly the same exercise to be done, I
5 want those to be merged. There's no point having two
6 requests covering exactly the same thing. If they are
7 really duplicative sometimes you've got a request
8 saying "do this search for this information", another
9 you say "do the same search for that information".
10 That's not two separate requests. I mean, that is two
11 separate requests.

12 On the other hand, if it is a search for the same
13 information, same search, that's duplicative, so the
14 first point is we're not going to have duplicative
15 requests on the basis of that.

16 Secondly, as said at the last CMC, the mere fact
17 that an issue is in the list of issues for disclosure
18 does not mean it is necessary or proportionate for
19 disclosure to be given or at least the extent sought by
20 the Class Representative, so those are two general
21 points I want to bear in mind as we go through this, and
22 what I would like, if we can, is if there are some broad
23 issues that populate many of the requests, we try and
24 deal with those today so that you can spend tomorrow
25 preparing a revised Redfern, so if there are more

1 detailed points then we can deal with those.

2 So what I was going to suggest is that you can pick
3 one, and we deal with whichever one you want to deal
4 with, and then Mr Singla, you pick the next one, if
5 that's easier for you, or would you prefer just to do it
6 the other way around?

7 MR SINGLA: I'm not sure I fully understand the plan. We
8 might need a bit of time to agree a list of -- because
9 we were proposing to go through it in the way that you
10 did last time, Redfern request by Redfern request.

11 THE CHAIR: I know, but it seems as though on this one --
12 look --

13 MR SINGLA: No, but obviously the first time a particular
14 issues comes up which affects other issues we're not
15 intending to reargue it five times because otherwise we
16 will just lose track.

17 THE CHAIR: What you are suggesting we just go through it in
18 the order, as and when we get an issue, and then this
19 may resolve some of the requests further down?

20 MR SINGLA: There will be some big points which arise and
21 then they are dealt with, as it were, down the batting
22 order.

23 THE CHAIR: Are you happy with that?

24 MS FORD: Sir, we're content with that.

25 THE CHAIR: I'm happy with that. That's very sensible.

1 MR SINGLA: And we also thought that it might be helpful
2 just to close out not only the wording of the Redfern
3 request as we go along but also insofar as there's
4 a dispute about custodians or repositories, in fact
5 there are no disputes about custodians live but just
6 thought that is another approach to deal with
7 repositories and so on later, that would involve coming
8 back and going through the Redfern again, so we thought
9 it would be helpful just to literally go through the
10 Redfern and close off each one as we go.

11 THE CHAIR: Yes. I thought your skeleton was very helpful
12 on that because it was useful to have your skeleton,
13 because the Redfern schedule is quite complicated in the
14 sense it is quite detailed, whereas your one, you just
15 say these are the broad issues.

16 MR SINGLA: Yes, and it may well be that if we do it like
17 that you'll give indications on various points which may
18 then have a bearing on things that we won't get through
19 today.

20 THE CHAIR: Yes, that's sensible. Thanks very much.

21 MS FORD: Sir, just before we move on to put down a mark,
22 the Class Representative will be seeking her costs of
23 the RFI application, but I apprehend that the Tribunal
24 doesn't want to get side tracked into that now so I
25 suggest that we deal with that at the end of the CMC.

1 MR SINGLA: Well, that is going to be opposed because these
2 are just two CMCs and I don't accept that there's a
3 freestanding costs order on particular issues other
4 (cross talk) but I'm suggesting --

5 MR SINGLA: I'm just explaining --

6 THE CHAIR: You both know me well enough. I don't normally
7 order adverse costs on disclosure unless I think one
8 side has acted unreasonably. I have come up with
9 a proposal which is halfway between what you are seeking
10 and halfway between what Mr Singla was seeking. The RFI
11 is not "let's go to death" point. It is not one of
12 those issues. It is an issue that is not going to make
13 a huge amount of difference to the costs of this case,
14 and so my principal starting point is given that
15 I haven't given you exactly what you've asked for, and
16 that, in part, it reflects the points said by Mr Singla,
17 which is the best time to give an answer, let's say
18 an accurate answer, is at the end of the period, I would
19 have thought that ordinarily, if you want to have the
20 debate further down the line, it is going to be washed
21 up in the costs in the case.

22 On the other hand, you are free to argue that at the
23 end of the day because it may be once we've finished the
24 whole exercise of going through the Redfern schedule, I
25 decide that, or we decide, that, actually, one of you

1 has been unreasonable and if I think that, obviously,
2 there's always an adverse costs order, everyone knows
3 that, will follow, but at the moment I don't think
4 anyone has been unreasonable. I think that, you know,
5 sometimes people -- there's too much heat on this.
6 Everyone is trying to do their best in a complicated
7 situation, and we shouldn't have been in this position
8 in the first place. If I was managing this case
9 earlier, I would have asked you to start again with the
10 list of issues for disclosure, but Mr Singla's team were
11 kind enough to say "Let's try and be practical and work
12 with what you've done" and that is what we did last
13 time, and so last time was necessitated, in part, by
14 having a list of issues for disclosure which had the
15 defects set out in my last ruling, so if we -- I think
16 it is much better that -- there are some glass houses
17 here on both sides. I think it is much easier that we
18 try and work through what we're doing, get to
19 a resolution, and probably not have any adverse costs
20 orders, because I know, with my experience on
21 disclosure, when you start making adverse costs orders
22 on disclosure you get even more entrenched positions
23 because people say, well, I'd better not concede this
24 now because that is going to be used against me on an
25 adverse costs order, so this is where -- this is what my

1 thinking is. I have said it to you a number of times
2 before, so my advice to you, as far as I can give you
3 advice, is that I wouldn't push it, but if you want to
4 push it you can.

5 MS FORD: Sir, it is helpful to have that indication and
6 I think we can reflect on that and take a view as to
7 whether it is, indeed -- to push through or not.

8 THE CHAIR: Good. Thank you very much.

9 MS FORD: Just to flag up the basis on which it would be, it
10 would be that this is an issue which essentially has
11 caused us to incur huge costs at the end of which Meta
12 has been told to provide an update.

13 MR SINGLA: That really is quite extraordinary. When we go
14 through the Redfern you will see how much time and cost
15 this side have put in.

16 THE CHAIR: This illustrates why I don't normally order
17 (cross talk).

18 MR SINGLA: Exactly.

19 THE CHAIR: No, because it is just unnecessary. (cross
20 talk). Arguing things that we don't want to argue.

21 MR SINGLA: Exactly. It is going to take us two days to
22 argue the Redfern --

23 THE CHAIR: Well hopefully not but let's see. Okay. So we
24 start from request 1, do we?

25 MS FORD: Request 1 is agreed. Request 2 concerns board of

1 director records and, in fact --

2 THE CHAIR: Let me --

3 MS FORD: -- it can be dealt with, essentially, in line

4 with the other requests. That's the --

5 THE CHAIR: So I can tick, can't I?

6 MS FORD: I is agreed, yes.

7 THE CHAIR: That's on the other schedule, yes?

8 MS FORD: Yes.

9 THE CHAIR: Let's only look at this schedule then, yes?

10 MS FORD: It should have an agreed schedule on which I

11 appears. The first issue which appears in the unagreed

12 schedule is board of director records, but the way in

13 which I would submit it is most helpful to deal with

14 that is to address them to the extent they are disputed

15 as we go through the requests. In many cases the

16 parties have agreed where a search of board of director

17 records can be conducted. I don't think there are many

18 circumstances where there is a suggestion they should go

19 away and search for direct records that isn't agreed, so

20 that is not essentially a --

21 THE CHAIR: So what is in issue between you on number 2?

22 MR SINGLA: Let me just cut through this one. It is not

23 really a Redfern request. It is actually a request for

24 a particular repository to be searched, but just leaving

25 that to one side, it is what it is. There is actually

1 no dispute in relation to whether we will search the
2 board of director reports.

3 THE CHAIR: Of course, I understand that, so what are we
4 arguing about?

5 MR SINGLA: Well, we were arguing about that, I think, at
6 one stage. There was another argument about whether we
7 were entitled to run search terms, and they want us to
8 review the documents in full. I think we can come up
9 with something pragmatic on that, so let's not take up
10 time.

11 THE CHAIR: I can half-tick --

12 MR SINGLA: It is basically agreed. We were right to
13 confirm that there won't be an issue.

14 THE CHAIR: Okay. That is 2. 3?

15 MS FORD: Sir, 3 is a request for the depositions from the
16 Klein and ongoing FTC proceedings. Klein, the Tribunal
17 may recall, is a class action which was brought in the
18 US --

19 THE CHAIR: I know about that. Yes. We dealt with that
20 last time.

21 MS FORD: We did. It is common ground that there are
22 overlaps between Klein and the present proceedings and
23 those were set out by Mr Wisking in his original
24 statement about the depositions in Klein, so to that
25 extent this is not disputed, but two points to flag up

1 that are relevant to the Klein proceedings. The first
2 is that whenever we seek Klein documents, and this is
3 going to become relevant when we come on, for example,
4 to Request 4, the response we get from Meta is to say,
5 well, we offered to give you a subset of these documents
6 previously and you said, "no". I'm referring to the
7 point that is taken about paragraph 12 of the Meta
8 skeleton and Ms Dietzel's statement paragraph 24.

9 Now, it is true that both the Class Representative
10 and the Tribunal had concerns about Meta's proposal that
11 they would receive essentially a dump of 480,000
12 documents from Klein which, Meta's representatives had
13 not reviewed for relevance, and that was the basis on
14 which that proposal was resisted, but what we are
15 proposing now is a focused search for particular
16 categories of documents from Klein which we say can
17 reasonably be expected to be relevant, so the entire
18 loop whereby they say "we offered you these and you said
19 no" is essentially, in our submission, a bit of a red
20 herring, but the second point to emphasise about Klein
21 is Meta say that they will include within the existing
22 pool of documents to be searched the subset of Klein
23 documents that they offered last time, so that subset of
24 the 480,000 documents. They are not presently offering
25 to conduct searches over all Klein documents, they are

1 circumscribing in advance the pool of the documents that
2 they are planning to search, and that is the issue that
3 is addressed in Vernon 7, paragraphs 57 to 58, and the
4 simple point we make about that is "please include the
5 full population of Klein documents in the pool to be
6 searched". We say there's no logic in only looking at
7 those documents to the extent that they become
8 rediscovered when you conduct de novo searches about --
9 over other repositories of documents and they are turned
10 up for a second time. These are already a pre-existing
11 pool of documents.

12 THE CHAIR: You've got the subset that has been done already
13 but you are saying the whole lot should be looked at.
14 Let me just find out. How are they held? Because, you
15 know, if it is on a platform and it is all searchable it
16 is going to be fairly manageable and it is amazing how
17 cheap it can be done, contrary to how it used to be done
18 10, 15 years ago, but I think I need to understand how
19 it is being held.

20 Can you sit down and let me ask Mr Singla?

21 Mr Singla, how is it held, the Klein documents?

22 MR SINGLA: Before I answer that, can I just explain
23 something, which is we -- I would like to address you on
24 requests 3 to 6 in the round, because --

25 THE CHAIR: Okay. Fair enough.

1 MR SINGLA: So it may be that you want to hear Ms Ford
2 generally on those requests because I would like to take
3 you through these points. They are all related.

4 THE CHAIR: Just tell me how --

5 MR SINGLA: I need to check the details of that point, but
6 in my submission it is not right to approach this
7 narrowly in relation to that one question. We will
8 obviously answer that question, but actually if you look
9 at 3 to 6 and when you hear the submissions on 3 to 6 in
10 the round, you will see that this is actually a timing
11 dispute relative to what they are actually asking for,
12 so she started on a particular issue, but I would like
13 to take, actually, a bit of time to address you on 3 to
14 6. This is actually a very big point, because we say
15 this is quite an extraordinary approach where they are
16 asking us to do a de novo exercise completely insistent
17 that we start from scratch -- custodian, search terms
18 and so on -- but they are also asking for things which
19 they say are existing repositories, and we say actually
20 there's no other case that we're aware of where
21 a defendant has been made to do both. It is normally
22 one or the other, so that is why I want to take,
23 actually, a bit of time to go through 3 to 6. I really
24 can't rush the submissions on those.

25 THE CHAIR: No, but by the time you speak you'll get an

1 answer to that question.

2 MR SINGLA: I'll get an answer to that direct question.

3 Yes.

4 MS FORD: So the information that we are aware of about the

5 Klein documents is in the disclosure report [D/12/24]

6 THE CHAIR: Just tell me. It is easier.

7 MS FORD: It is paragraph 4.29.3.

8 THE CHAIR: Yes.

9 MS FORD: So that identifies the 480,000. It goes on to

10 give a list of what are not included in the 480,000.

11 I don't think this explains it in any great detail, how

12 they are held.

13 THE CHAIR: Well, if it is explained somewhere I have missed

14 it because that is one of the things I wasn't sure

15 about.

16 MS FORD: I think it is fair to say the information we're

17 aware of is this.

18 THE CHAIR: Yes.

19 MS FORD: I hear Mr Singla's request that we deal with

20 Request 3 to 6 compendiously. I'm happy to take that

21 course but it does, as he has indicated, a degree of

22 more lengthy submissions rather than short, sharp points

23 but I'm very happy to take that course.

24 We've dealt with Klein. The other particular

25 repository of documents which comes up in --

1 THE CHAIR: On Klein you are saying you want a search of all
2 materials.

3 MS FORD: The pool of documents to be searched we say should
4 be all the Klein materials not simply the previous
5 subset of 408,000. The relevance of Klein comes up
6 again in relation to Request 4 which is seeking in
7 addition to depositions, various other categories of
8 document, and I'm going to address that again
9 compendiously but ...

10 THE CHAIR: Yes.

11 MS FORD: Just for the purposes of dealing first with
12 Request 3, the other proceedings that we've addressed
13 there are the FTC proceedings, and those are the
14 proceedings issued in 2021 by the Federal Trade
15 Commission alleging that Meta is engaged in
16 anti-competitive conduct in seeking to preserve
17 a monopoly position in the provision of personal social
18 networking particularly in the context of acquiring
19 Instagram, WhatsApp and access to the developer
20 platform.

21 We raise this because there is an obvious overlap
22 with the allegations in these proceedings concerning
23 dominance in the market for personal social networking.
24 Request 4, and again I'm going to come on to deal
25 with -- sorry -- Request 3, and I'll come on to deal

1 with Request 4 to 6 -- Request 3 is specifically seeking
2 the depositions in the FTC proceedings, and we make the
3 point that those are documents which ought to be easily
4 locatable, and can be expected to contain information
5 relevant to these proceedings.

6 THE CHAIR: Are these depositions not publicly available?

7 You can't find them anywhere?

8 MS FORD: Not to our knowledge, no.

9 THE CHAIR: Are they under seal or something?

10 MS FORD: We don't know the basis on which they are not
11 publicly available but their production is being
12 resisted.

13 THE CHAIR: Yes. Okay.

14 MS FORD: What is being said in response, as we understand
15 it, is that any factual matters that have been addressed
16 in these depositions will be covered in contemporaneous
17 documents, so the submission being made is not that
18 these are irrelevant documents, and on the contrary,
19 Meta has admitted in their DR and EDQ that they are at
20 least potentially relevant -- I'm referring to D12, page
21 34 [D/12/34]. Paragraph 4.41.1. Yes. Certain of these
22 deposition transcripts are of -- may be of potential
23 relevance to the pleaded issue in the proceedings.
24 These deposition materials are not relevant in their
25 entirety and require review and redaction.

1 THE CHAIR: You don't oppose redaction?

2 MS FORD: No. That's not the issue. We're saying "please
3 provide them in the first place".

4 THE CHAIR: Look, redaction quite often is the most
5 expensive exercise because, you know, it requires
6 judgment, a human being has to do it, and then it is
7 going to be reviewed again by the solicitor responsible
8 for the thing because, as you know, you can't just leave
9 it to a junior assistant to finally do a redaction
10 exercise. I would expect someone junior will do the
11 redaction exercise then it has to be reviewed by whoever
12 is responsible for the disclosure exercise, again,
13 before it is actually released, because of (Inaudible).

14 MS FORD: Sir yes, and it is, of course, Meta's choice
15 whether they choose to incur that expense.

16 THE CHAIR: Of course -- you don't have to do the redaction
17 exercise but what I'm saying is for the record that's
18 what I expect to happen, all right?

19 MS FORD: Sir, yes. An alternative would be to put these
20 things into a ring and not to bother redacting them, and
21 that would be a perfectly proportionate response. We
22 say the fact that one has to engage in that exercise
23 isn't a good reason not to provide a pool of potentially
24 relevant documents. It is not suggested that they are
25 not relevant. What it is suggested is, well, they might

1 duplicate factual matters that might be expected to be
2 dealt with in contemporaneous documents.

3 Now, we make three points in response to that. We
4 say first of all there's no reason to assume that these
5 deposition transcripts will necessarily discuss the same
6 documents that might be identified and disclosed in
7 these proceedings. The reason we say that is that Meta
8 has not told us that the same requests were made in
9 Klein or the same custodians put forward or the same
10 repository will be searched, so -- or the same search
11 terms applied -- so there's no reason to suppose that
12 there is going to be this degree of overlap between
13 contemporaneous documents and the matters dealt with in
14 the depositions.

15 THE CHAIR: You never know if any of those people are going
16 to come and give evidence, do you?

17 MS FORD: No. They are not. Well, we don't know.

18 THE CHAIR: Well, no one knows, probably, but the thing is
19 that there is some value, normally, in getting these
20 depositions in case that person doesn't come and give
21 evidence. Also, there is some value because you know in
22 advance what they are likely to say if they do, in fact,
23 give evidence, and, finally, quite often, documents,
24 they need a context for you to fully understand what
25 they actually mean, and English can be quite an

1 imprecise language, and so you have the same words but
2 have a different meaning depending on who is reading it,
3 and that's quite often useful to look at depositions.

4 MS FORD: Absolutely. That's really the key point -- is
5 that these depositions will presumably contain
6 recollections and commentary on the contemporaneous
7 documents even if there is an overlap --

8 THE CHAIR: Well, how accurate they are, there will be
9 a debate.

10 MS FORD: Well naturally, but one has to start somewhere.

11 THE CHAIR: I know.

12 MS FORD: In our submission it is not possible to say that
13 these are irrelevant. What is being said is, oh well,
14 there might be an overlap with contemporaneous documents
15 to which we say well that is no reason not to --

16 THE CHAIR: So the first point is on Klein, did they do a
17 search of all Klein materials and not just the subset,
18 then the FTC, the question is should you be having
19 disclosure at all of the depositions in the FTC
20 proceedings.

21 MS FORD: Sir, yes.

22 THE CHAIR: Okay.

23 MS FORD: The alternative that is being offered is that de
24 novo searches in response to other requests will attempt
25 to identify contemporaneous documents which conceivably

1 might be relevant, and we say why on earth would you
2 rely on de novo searches in circumstances where there is
3 this pre-existing repository of identifiable and easily
4 producible transcripts which address the point.

5 THE CHAIR: Yes. I don't accept it is easy if there's going
6 to be a redaction exercise because I'm fully conscious
7 that redaction exercises, they are relatively expensive
8 if it is done properly, and if it is going to happen in
9 this case, it has got to be done properly. There's no
10 short-cut from the person responsible for disclosure to
11 review the redaction exercises personally and not leave
12 it to some associate to have all the responsibility, but
13 as you say, they've got a choice. They may decide to
14 waive confidentiality and say, well, you know, you can
15 have the whole lot, or they may say "we will put it in
16 for now, into a ring". I understand that. Okay.

17 MS FORD: Just to add to those points, there is a limit to
18 how far one can take the points about the exercise of
19 redaction because that would, in principle, be
20 a response to the production of any cache of documents
21 whatsoever.

22 THE CHAIR: I don't know -- how many depositions are there?
23 Do you know?

24 MS FORD: We do not know, no.

25 THE CHAIR: Okay.

1 MS FORD: Sir, you have, earlier today, made the point that
2 Meta is a well-resourced defendant. In our submission,
3 these sorts of points about the necessity to review and
4 redact things ought not, in principle, to be a reason
5 why one doesn't give disclosure of a potentially
6 relevant cache of documents.

7 THE CHAIR: I'll put it in the mix. Don't worry. Yes.

8 Moving on to Request 4 --So that is Request 3.

9 MS FORD: That is Request 3. I deal with it separately
10 simply because it selects out Klein and the FTC.

11 Requests 4, 5 and 6 can be dealt with in our
12 submission together. Request 4 is the request for
13 submissions including expert and/or witness evidence,
14 reports, studies, analysis and underlying documents
15 which have been disclosed by Meta in a series of other
16 proceedings, and I'm going to go on to walk the Tribunal
17 through which those are.

18 Request 5 is essentially a counterpart to that
19 asking for submissions, responses and underlying
20 documents provided to Meta by the regulators in those
21 relevant proceedings, to the extent applicable, and then
22 Request 6 is a request for submissions, including expert
23 and/or witness evidence, reports, studies, analysis and
24 underlying documents disclosed by Meta to three of the
25 privacy regulators. So these can all be dealt with

1 essentially compendiously.

2 THE CHAIR: So we're looking at 5, are we?

3 MS FORD: We're starting with 4 and 5 and then 6 and

4 essentially -- the same category of documents --

5 THE CHAIR: 5 is the regulators; yes?

6 MS FORD: Yes.

7 THE CHAIR: And 4 is those -- quite a lot of different

8 proceedings.

9 MS FORD: Yes. So we have made an effort to narrow the

10 scope of the dispute on that. What we have done is

11 we've withdrawn our request for disclosure in relation

12 to -- and I can just tell the Tribunal for its note --

13 first of all, the CMA Facebook Marketplace investigation

14 which is --

15 THE CHAIR: If I look at the first column, are you looking

16 for all of those?

17 MS FORD: No. We have narrowed it. We have taken some out

18 of the list.

19 THE CHAIR: Which ones have you taken out?

20 MS FORD: Item B, the CMA Facebook Marketplace

21 investigation. That goes.

22 THE CHAIR: Okay. Yes.

23 MS FORD: The Facebook/GIPHY merger investigation which is

24 item E. Have I said the right one? Sorry, Facebook

25 Marketplace, I may not have told you the right item that

1 it corresponds to in the list.

2 THE CHAIR: Facebook Marketplace is item B.

3 MS FORD: The confusion is arising because the version that

4 I'm looking at, at least, I hope the version the

5 Tribunal is looking at, things have been taken out of

6 the list that have now been conceded so it may not be

7 even on --

8 THE CHAIR: So, look, I'm at A to F.

9 MS FORD: We are seeking all of what is now in that version.

10 I apologise. I have been working on an earlier version.

11 THE CHAIR: The old version had lots of them.

12 MR SINGLA: They haven't fallen away. This is why it is

13 going to be quite important because they are still

14 asking for those other proceedings documents to be in

15 the search pool so it would be helpful for you, maybe

16 over the break, to have the old version because I'm

17 going to run through all 15 sets of proceedings.

18 THE CHAIR: No, I can't imagine they are asking for that.

19 MR SINGLA: They are. That is their position as of Friday

20 night.

21 THE CHAIR: It doesn't matter. Let's see how it ends up

22 because --

23 MR SINGLA: You will need to see what those other

24 proceedings are, if that is their position.

25 THE CHAIR: I have looked at that over the weekend.

1 MR SINGLA: They haven't fallen away entirely.

2 MS FORD: I need to clarify that because I think there is
3 some confusion at this side about whether that is,
4 indeed, the case.

5 MR SINGLA: It is paragraph 5 of Quinn Emanuel's letter of
6 Friday night.

7 THE CHAIR: Well, let them make up their mind because they
8 are not going to get all of that, so --

9 MR SINGLA: No, but you will just need the right document
10 which is the reason I rose because you will need to see
11 them.

12 THE CHAIR: We will have a break in a minute. Yes.

13 MS FORD: Yes. I'm told that what has been said is to the
14 extent that documents come up in the de novo searches
15 under other requests, then obviously one wouldn't then
16 refuse to disclose them because we said in the context
17 of this request we won't pursue them specifically. That
18 is, I think, the position that has been left. We're not
19 suggesting that they all need to stay in the pool
20 as such, but if they are responsive to other requests
21 then they should be disclosed.

22 THE CHAIR: Yes, but then that is going round in circles,
23 because, look, there's something like 15, maybe I have
24 got the number wrong, but there is a long list, and that
25 where I got to was it was going to be too burdensome to

1 expect them to go through every single piece of paper on
2 those -- all those other investigations, but there are
3 various ways of dealing with it, because you can say,
4 well, you just look at the key documents, you know,
5 there might be one finding, there might be one detailed
6 submission, and you forget the sort of routine
7 correspondence and emails. You just focus on looking at
8 the key executive.

9 MS FORD: Yes. This request does in the sense that it is
10 asking for submissions, reports, studies, analysis of
11 the underlying documents. It is not asking for the
12 occasional email. We have sought to narrow it down.

13 THE CHAIR: You narrow it down, but at the moment what you
14 are asking for A to F is a lot more proportionate than
15 when I was looking at it over the weekend, but if you
16 are telling me that the others still come into play, so
17 they've got to do a search of all those other
18 proceedings, we need to know that now.

19 MS FORD: No, and that is not the submission we made. The
20 only submission we make is that if in searching under
21 another request in relation to the repositories that
22 this Tribunal determines is provisionally the minimum
23 that they should search under that request, that happens
24 to turn up documents which were -- essentially would
25 have fallen within some of these points that we've

1 conceded -- Meta should not decline to provide
2 disclosure of that document merely because we made this
3 pragmatic concession. It doesn't require them to do any
4 additional searches other than those which would be
5 determined under the separate request as we go through,
6 we're simply saying don't decline to provide us things
7 that are responsive to those requests because you look
8 along the list and you say, ah well, this actually
9 happens to be in relation to the Facebook Marketplace
10 investigation which you've conceded, so if it is
11 responsive to another request you should --

12 THE CHAIR: Look, if there is a relevant document in -- and
13 that they do their search and it comes up, one document
14 in relation to some sort of market investigation, it is
15 in there, and it is relevant, it falls within one of the
16 other categories, you are saying you want that document.
17 That's a perfectly reasonable and rational approach.

18 On the other hand, if what you are saying to
19 Mr Singla is what we want under here is that you've
20 actually got to do a search of all the materials in
21 relation to the other investigations, he is right in
22 saying that is disproportionate.

23 MS FORD: No. We're not saying that. We are saying that --

24 MR SINGLA: Can I have an understanding of what the proposal
25 is? Because I think what their proposal really is, in

1 respect of the ones that are apparently conceded, is
2 that they should be treated as essentially search
3 repositories and in my submission, and I can address you
4 on this --

5 THE CHAIR: If you've got a search repository, okay, that
6 falls within what has been agreed --

7 MR SINGLA: Yes, then we will search it.

8 THE CHAIR: -- and that searched repository holds, for
9 example, the documents in relation to investigation,
10 let's say, G, because we've got A to F is agreed, but
11 let's say there's a G, and that document comes up on
12 your search of that repository, they are saying, well,
13 don't ignore the fact that -- don't just take it out of
14 consideration merely because it relates to some other
15 investigation in not A to F, and I think that's --

16 MR SINGLA: With respect, that is applying a whole --
17 entirely new layer to the search process. What we're
18 doing in this whole de novo process is going through at
19 painstaking lengths and detail what is the Redfern
20 request, what is the repository we're searching. If
21 they get something that is responsive it will be
22 disclosed. In my submission it is actually irrelevant
23 whether it happened to be disclosed in some other set of
24 proceedings, so if that is their position which I must
25 say is not clear from the letter, it is completely

1 opposed on the basis that it is essentially asking us to
2 treat all these other proceedings as repositories. It
3 is just -- it falls away entirely because that is the
4 whole point of doing 77 custodians, thousands of search
5 terms, all of these repositories which are tailored to
6 these proceedings. If it is responsive to the issues in
7 this case they will get it. If it is responsive because
8 it was disclosed -- it is just hopeless. It is trying
9 to impose another layer --

10 THE CHAIR: We will take our break and then you can speak to
11 Ms Ford to make sure that you both understand what you
12 are saying.

13 MR SINGLA: Just to manage expectations, I mean, I'm going
14 to take this one quite slowly because actually one needs
15 to work through everything --

16 THE CHAIR: These are important ones, and let's focus our
17 time on what matters, and not spend too much time on
18 ones which, you know --

19 MR SINGLA: Yes, but this is a particularly big point
20 because whereas with some of the others it's just:
21 should the request be in or out or should they --

22 THE CHAIR: But the point you are making about this is
23 pretty fundamental.

24 MR SINGLA: Yes.

25 THE CHAIR: And you both need to speak to make sure you

1 understand what you are both looking for. If you can't
2 reach an accommodation on it we're going to have to come
3 back and make a ruling on it when we come back after
4 we've heard your submissions.

5 MR SINGLA: It might be helpful if you can have access to
6 the older version of the Redfern because the 15 sets of
7 proceedings I will need to take you through --

8 THE CHAIR: I looked at that. I have got it here somewhere.

9 MS FORD: Sir, just to be clear, I haven't finished dealing
10 with these points.

11 THE CHAIR: Of course you haven't. No of course we haven't.
12 It seems as though there is some fundamental
13 misunderstanding between both of you as to what you are
14 looking for.

15 MS FORD: In relation to that particular point I would say
16 yes.

17 THE CHAIR: Yeah, but see if you can resolve that, at least
18 understand what each other is saying, but Mr Singla has
19 got a particular type of technique where he says he
20 doesn't understand it. He normally does understand it.
21 It normally means he doesn't agree.

22 MR SINGLA: I neither understand nor agree.

23 THE CHAIR: You neither understand nor agree. Well, that's
24 very helpful to say that, but can you try and at least
25 get the understanding?

1 MR SINGLA: This is why you wanted the juniors to do the
2 advocacy.

3 THE CHAIR: No, not at all. Thank you very much.
4 we will be back at five to twelve.

5 (11.43 am)

6 (A break was taken)

7 (11.55 am)

8 THE CHAIR: Thank you.

9 MS FORD: Sir, in relation to the question the Tribunal
10 asked before the shorted adjournment about how the Klein
11 documents are held, there is another reference in the
12 disclosure report that may be of relevance, which is
13 [D/12/27].

14 THE CHAIR: Can we just put that up on the screen? It is
15 easier.

16 MS FORD: It is 4.29.5.

17 THE CHAIR: This is disclosure report, yes? 4.29.5. We
18 looked at 4.29.3 a minute ago.

19 MS FORD: Yes. So this just tells us that a set of
20 custodial documents disclosed in Klein are stored on the
21 servers of Meta's e-discovery in the United States.

22 THE CHAIR: Oh, that's good news. Okay. Stored on
23 Meta's ... yes. So that is helpful because it is going
24 to be -- it won't be too difficult to do the searches,
25 because I think that does go to the relevance of -- or

1 the appropriateness -- of confining 480,000 --

2 MS FORD: Sir yes. That would be our submission. In

3 relation to other proceedings --

4 THE CHAIR: Yes, outside the six that you've identified,

5 yes?

6 MS FORD: Well, no, this does go to -- the ones that we are

7 now seeking under --

8 THE CHAIR: 1 to 6? A to F?

9 MS FORD: -- under 3 to 6, I believe that there has been

10 a reference in correspondence -- I (Inaudible) find the

11 reference for the Tribunal now to the fact that those

12 will be held by the legal team in the relevant

13 proceedings. The depositions in relation to those.

14 THE CHAIR: Well, the depositions are going to be very easy

15 to find. There's never going to be a problem on that.

16 MS FORD: Yes, and, essentially we make a similar submission

17 in relation to the categories of documents we're looking

18 for under request 4 so it's submissions, including

19 expert witness evidence to court studies, analysis and

20 underlying documents. We will make a similar submission

21 there. Those are defined categories of documents.

22 I was coming on to deal with -- oh, I should update the

23 Tribunal. In relation to the particular debate that we

24 were having before the short adjournment, Mr Singla and

25 I have had a discussion. I think we are in agreement as

1 to that.

2 THE CHAIR: You think you are?

3 MR SINGLA: Just for the transcript, so those nine sets of
4 proceedings fall away entirely. They are just
5 completely irrelevant. What I think -- what Quinn
6 Emanuel were trying to express was a point that if
7 something is responsive to the issues in the
8 proceedings, we wouldn't refuse to disclose it on the
9 basis that it had been disclosed in another set of
10 proceedings which would be a completely unsustainable
11 position. I mean, if it is responsive to the searches
12 we're running these proceedings it will be disclosed, so
13 I think, but Ms Ford will tell you if she disagrees with
14 this, those nine other proceedings, as far as I'm
15 concerned, fall away entirely.

16 THE CHAIR: I think, for the risk of opening up a wound that
17 may have healed, as I understood half an hour ago,
18 whatever it was, what they were saying is let's say you
19 hold on a repository, let's say some report that was
20 filed in relation to other proceedings, if, when you do
21 your search, that report comes up and it is looked at,
22 oh yes, it is responsive to a request, it is relevant,
23 you are not going to refuse disclosure on the basis it
24 was a report filed for other proceedings. Is that fair?

25 MR SINGLA: I think that must be right because if it's

1 responsive to the searches we're -- in relation to those
2 nine sets of proceedings, we're not going to be applying
3 our minds to the question of whether or not a document
4 was disclosed in those other proceedings, so they fall
5 away, as, in fact, they --

6 THE CHAIR: Look, they fall away in one sense, okay, but
7 what I'm saying is I expect that when you do your
8 search, and on the repository it has got an expert
9 report, for example, that you've filed in some other
10 proceedings, and that expert report is relevant, you
11 disclose that expert report, but what I'm -- you are not
12 being asked to do is to go out, look at all the
13 documents in those proceedings to see if there's
14 anything in there that might be relevant, because this
15 is a completely different exercise.

16 MR SINGLA: Yes.

17 THE CHAIR: Okay.

18 MR SINGLA: There's a particular issue with expert reports
19 in terms of an example, but just if a contemporaneous
20 document is found when we're running the searches in
21 this case, it will be disclosed.

22 THE CHAIR: No. That is not right. Look, let's break it
23 down.

24 MR SINGLA: Sorry, just to be clear, when I said things will
25 fall away I didn't mean the documents will fall away,

1 the documents will be disclosed if they are relevant to
2 the issues in these proceedings, but what will fall away
3 is any consideration of whether or not a particular
4 document was disclosed.

5 THE CHAIR: Let's go back.

6 You've added in another qualification. The other
7 qualification you've added in is contemporaneous
8 documents.

9 MR SINGLA: Right.

10 THE CHAIR: That's why I used the example of an expert
11 report. An expert report may not be a document from
12 2014. It may be from 2025, but it relates to the
13 documents and is underlying documents going back to
14 2014. If what you are saying is you will have the
15 underlying evidence from 2014, but I'm not going to give
16 you the expert report of 2025, then you've got a problem
17 because I think that Ms Ford is right about that which
18 is insofar as you -- when you do your exercise, and you
19 flag up that there is a report that you serve, let's
20 say, earlier on this year in some other proceedings
21 which is relevant to the issues in the action, you
22 should be disclosing it.

23 MR SINGLA: Can I just -- but I'm not trying to be difficult
24 because I think we have made progress but I just want
25 to -- this is quite important -- I just want to put down

1 a marker -- the reason I have alighted upon -- I'm not
2 trying to put -- building qualifications but there may
3 actually be a particular point that I would like to
4 reserve my position on is in relation to expert
5 reports --

6 THE CHAIR: Tell me what that point is.

7 MR SINGLA: -- well, because I think there is a broader
8 question about whether one should even get into
9 disclosure of expert reports from other proceedings in
10 circumstances where there will be expert evidence in
11 this case, so that is a particular point on expert
12 reports, so that is why -- in terms of the broader
13 principle, there is common ground, and I'm not -- this
14 is very helpful because what we're saying is in relation
15 to those other proceedings that have now been omitted
16 from the Redfern, they will get material, we will search
17 the repositories and the custodian that's we've agreed
18 to do in this case, we will not withhold anything that
19 is otherwise responsive simply because it was disclosed
20 in another case. I mean, how could we possibly do that?
21 It is a relevant document to these proceedings, so that
22 is why I say consideration of those other proceedings
23 has fallen away because we will just do a normal
24 disclosure exercise, is it relevant or not within the
25 parameters that the parties have agreed in this case.

1 THE CHAIR: Okay, but don't assume for one moment that the
2 Tribunal accepts your point about expert reports.

3 MR SINGLA: No, I'm not.

4 THE CHAIR: It doesn't accept it. We're not ruling on that
5 because one of the chestnuts that keeps coming --

6 MR SINGLA: But I'm actually going to address you on that
7 point when we talk about the six, so that's why, for the
8 purposes of this --

9 THE CHAIR: We will come back to that chestnut but it is
10 a chestnut which keeps coming back.

11 MR SINGLA: But for the purposes of this debate that's why
12 it is helpful just to deal with the example by way of a
13 contemporaneous document.

14 THE CHAIR: Okay. I think we've probably got back to where
15 it is something which is acceptable to the Tribunal.
16 Okay. Right. Next point.

17 MS FORD: I was proposing to take the Tribunal briefly
18 through a description of each of the proceedings which
19 we are still seeking disclosure of in respect of under
20 issues 4 to 6.

21 THE CHAIR: Do you know which ones -- you probably do know
22 which ones they accept and which ones they don't accept
23 because I think that -- let's have a look at it.

24 MS FORD: They resist, essentially, providing any of this
25 disclosure, save that there is a slightly cryptic offer

1 of providing essentially factual material, whereas our
2 offer -- our request -- relates to the defined
3 categories of documents which are spelled out in Request
4 4, so it is submissions including expert and/or witness
5 evidence reports, studies, analysis and underlying
6 documents and in our submission there is no quantitative
7 difference in relation to expert reports that means that
8 if they are otherwise relevant they shouldn't be
9 disclosed because they have the status of an expert
10 report, so those are the categories we seek.

11 The first set of proceedings in relation to which we
12 seek those categories of documents is the UK competition
13 and market authorities, online platforms, and digital
14 advertising market study, so item A in the latest
15 version of the Redfern, and that was a market study
16 where the CMA looked into the extent to which online
17 platforms that are funded by digital advertising have
18 market power in consumer-facing markets. It considered
19 whether consumers have adequate control about how data
20 about them is used and collected by online platforms --

21 THE CHAIR: We went through this last time.

22 MS FORD: It may be if the Tribunal is sufficiently familiar
23 then --

24 THE CHAIR: I'm familiar with that one because we did look
25 at that last time, but let's look at the others, though,

1 because we didn't go into the others.

2 MS FORD: Well, just to emphasise for the Tribunal's note,
3 and it may be why the Tribunal is that familiar, this
4 has been extensively pleaded in the class rep's Claim
5 Form and -- starting at paragraph 36, and many
6 subsequent paragraphs, and it is relied on for things
7 like the detail of how the advertising and data
8 collection exercise works and the profit that it
9 generates, and it also comes up in relation to privacy
10 and tools for managing privacy, so we say -- if it
11 assists the Tribunal I can take you through but there
12 are many references where we plead this and it is very
13 much on the face of the pleading.

14 Meta accepts that parts of the subject matter of the
15 CMA market study overlap and I say "parts", because that
16 is the terminology that is used in paragraph 78 of
17 Meta's evidence, in particular in relation to the
18 advertising side of Meta's business, so it is not being
19 said that this is not potentially relevant material.

20 The next item, item B on this list is the European
21 Commission's Facebook Marketplace and related legal
22 proceedings, and that is a Commission finding of
23 infringement of Article 102 in relation to the
24 advertising side of the market which, as the Tribunal is
25 well aware is one of the two sides of the market that is

1 in issue in these proceedings, the European Commission
2 found that Meta holds a dominant position in the EEA
3 wide market for personal social network services
4 including hybrid social media platforms, each national
5 market within the EEA for online display advertising or
6 social media platforms, so the Tribunal readily
7 appreciates that that is relevant to the Class
8 Representative's pleaded case on the market definition
9 and dominance. That is pleaded, for the Tribunal's
10 note, at paragraph 103(b) of the Collective Proceedings
11 Claim Form.

12 The third one is the Bundeskartellamt investigation
13 and related legal proceedings, and that is an allegation
14 of abuse of a dominant position contrary to German
15 competition law. We say that there is a clear overlap
16 with the present case because the Bundeskartellamt
17 prohibited Meta from relying on Meta's existing terms of
18 service including its data policy and cookies policy
19 which made the use of the Facebook service conditional
20 on Meta's ability to collect data from WhatsApp,
21 Instagram, Oculus and Masquerade as well as from
22 visiting third party web pages via integrated plugins.

23 We plead this investigation extensively in our Claim
24 Form. Just to pick up a few examples, [B/11/71] --

25 THE CHAIR: Just give me the paragraph number.

1 MS FORD: It is paragraph 103(c).

2 THE CHAIR: Yes.

3 MS FORD: Paragraph 151 and paragraph 153(c) were the
4 examples that I have identified to show the Tribunal,
5 and the concept of Off-Facebook Data as distinct from
6 On-Facebook Data is a concept which derives from this
7 case, so again, we would say very clearly relevant to
8 the matters in issue [B/11/7] in these proceedings.

9 Meta's position on this in paragraph 79 of its
10 evidence is that it accepts that aspects of the conduct
11 by Meta being considered do overlap with the
12 proceedings, but what it goes on to say is the alleged
13 abuses are different as the class rep has made clear
14 that she is not relying on the allegation that there has
15 been a breach of data protection law which was the
16 alleged abuse in the FCO proceedings, in these
17 proceedings.

18 Now, that's the suggestion that is made in paragraph
19 79 of Ms Dietzel's statement and I need to explain, we
20 disagree with that in two respects. We disagree with
21 that as a description of our claim, and we disagree with
22 that as a description of the significance of the
23 Bundeskartellamt findings, so in relation to our claim,
24 we say that the class rep's case doesn't depend on
25 establishing that there have been breaches of the

1 concept requirements of the GDPR, although we do say
2 that there have been such breaches, but we say that
3 those matters aren't relevant to the allegations of
4 imposition of an unfair trading condition or an unfair
5 price, and just to pick up exactly how we put it, if we
6 look at S15(c) at [B/11/6], please, subparagraph (c) on
7 this page:

8 "In the context of the GDPR (which is relevant to
9 the abuse but not necessary to prove it) the processing
10 of data from other websites and apps is not necessary
11 for the provision of social network services or for
12 Facebook's own objectives such as personalised
13 advertising or network security. Furthermore, separate,
14 and specific, consent is required for the processing of
15 Off-Facebook Data under GDPR, 4 which Facebook did not
16 obtain".

17 We then mention it in S23 on page 9, please
18 [B/11/9]. There's a heading there "Consent":

19 "The Class Representative's case on abuse is not
20 reliant on establishing that the consent requirements of
21 the GDPR were not met (albeit it does contend they were
22 not...). Rather, the Class Representative relies on the
23 consent requirements under the GDPR and Facebook's
24 'choice architecture' as relevant facts and matters in
25 demonstrating that the collection of Off-Facebook Data

1 as a condition of providing social network services
2 involves the imposition of unfair trading condition
3 and/or an unfair price".

4 Then one more reference in the Reply at [B/13/73],
5 this is 117(a)(ii)(3)(c). It is the capital C towards
6 the top of the page. I'll just highlight that we've
7 pleaded in all these respects, non-compliance with the
8 GDPR can be a vital clue in establishing an abuse of
9 dominance.

10 So in our submission this is a theme which comes
11 through from various of Meta's submissions, to seek to
12 sideline the relevance of compliance with data
13 protection and privacy regulations, to say that this is
14 in some way not relevant to the class rep's case.

15 THE CHAIR: Again, we went through this last time. Your
16 case last time was that they didn't follow the data
17 protection, but if they didn't follow it, it strengthens
18 your case on abuse, but even if they did follow it, it
19 doesn't mean you don't have a case. That's how I
20 understood it last time and I think we will probably
21 know further than last time. It is the second limb that
22 is probably more relevant.

23 MS FORD: And there is a degree to which Meta is indeed
24 seeking to re-litigate matters that we did debate last
25 time round because it is again seeking to say, well, you

1 can't have disclosure in relation to these matters
2 because privacy is somehow peripheral to your case and
3 we don't for a moment accept that that is right.

4 THE CHAIR: I was with you last time on it. I'm unlikely to
5 change today because we did spend a lot of time last
6 time.

7 MS FORD: We did, and I can leave it on that basis. That's
8 the first disagreement with the way in which matters are
9 characterised in Meta's evidence on this.

10 THE CHAIR: Yes.

11 MS FORD: The second disagreement is how they categorise the
12 relevance of what the Bundeskartellamt actually said,
13 and in relation to that our pleaded case is [B/11/99].

14 THE CHAIR: Yes.

15 MS FORD: 142(c):

16 "Most pertinently for present purposes, and as
17 discussed in more detail in para 151 below, the FSC has
18 held that Facebook's gathering of data generated from
19 Off-Facebook user activities was unfair and abusive
20 insofar as it imposed on users a service they did not
21 want (i.e. personalised user experiences or advertising)
22 in conjunction with another service which they found
23 indispensable (i.e., the social network). In so doing,
24 it made certain analogies with a tying abuse, albeit it
25 did not consider that this analogy was a necessary part

1 of its finding of an unfairness infringement".

2 The paragraph to which that cross-referred to was
3 paragraph 151 on page [B/11/105], and our pleaded case
4 is that:

5 "The starting point is that: (i) the FSC has already
6 found that conduct essentially identical to or inclusive
7 of the collection of the Off-Facebook Data is an
8 exploitative abuse of dominance by Facebook; and (ii)
9 the English courts have referred, typically with
10 approval, to this analysis in a series of cases".

11 We go on to particularise that plea, so again, we
12 don't accept the attempt to sideline this decision as
13 somehow concerned with peripheral matters of data
14 protection and therefore not relevant to the abuse that
15 we are alleging in this case.

16 THE CHAIR: Okay.

17 MS FORD: That is C.

18 Moving on to (d), this is the Klein case which we've
19 already discussed.

20 As we've heard in relation to Request 3, Meta have
21 agreed to provide the depositions this Klein. We say
22 presumably that is because they recognise that it is
23 a case which has clear and obvious overlaps with the
24 present proceedings, and in those circumstances we say
25 there's no principal basis to resist providing the other

1 defined categories of documents that we've identified in
2 relation to Klein.

3 (e) is the FTC proceedings which we've also
4 discussed. (f) is the European Commission's decision in
5 a particular DMA case. Just to explain how this has
6 changed from the original proposal, we originally
7 identified -- I think it was either six or seven DMA
8 cases. The DMA is the mechanism which enables the
9 European Commission to designate undertakings as
10 gatekeepers and that then requires them to comply with
11 various obligations under the DMA. The first five cases
12 that we originally identified in the Redfern were the
13 decisions by which the Commission designated Meta as
14 a gatekeeper, and listed Facebook, Instagram, Meta ads,
15 WhatsApp Messenger and Marketplace as platform services
16 in the sense that they were important gateways for
17 business users to reach end users, and there were then
18 decisions about compliance in relation to Messenger and
19 designation for Marketplace. Those are the ones which
20 we have now said we don't pursue our request in relation
21 to those.

22 What we do pursue is Decision 100055, which is the
23 decision which has found that Meta's subscription for no
24 ads model was noncompliant with Article 5.2 of the DMA,
25 and that's the article which contains prohibitions on

1 the way in which gatekeepers may use and process
2 personal data for end users unless the user has been
3 presented with a specific choice and given their
4 consent.

5 There is a very significant dispute between the
6 parties as to the relevance and significance of the DMA
7 generally which I propose to address now, but it comes
8 up again and again in relation to some of the subsequent
9 requests.

10 The DMA was brought in in 2022 to address a number
11 of problems with digital markets, some of which have
12 been found to be competition law type abuses such as
13 self-preferencing, and some of which it wasn't clear
14 whether they would fall within contemporaneous --
15 sorry -- conventional competition law, and so the DMA
16 legislated in respect of those practices in order to
17 seek to ensure that the digital markets functioned
18 better. The key provision for our purposes is Article
19 5.2, and if we could please turn it up? It's [G6/1/33].
20 Article 5 is headed "obligations for gatekeepers", and
21 then subparagraph 1, the gatekeeper shall comply with
22 all obligations set out in this article with respect to
23 each of its core platform services listed in the
24 designation, and subparagraph 2, the gatekeeper shall
25 not do any of the following: (a) process for the purpose

1 of providing online advertising services, personal data
2 of end users using services of third parties that make
3 use of core platform services of the gatekeeper; (b)
4 combine personal data from the relevant core platform
5 service with personal data from any further core
6 platform services or from any other services provided by
7 the gatekeeper or with personal data from third party
8 services -- the Tribunal will see the parallel there
9 with allegations that have been made about collecting
10 On-Facebook Data, combining it with on-Facebook data,
11 (c) cross-use personal data from the relevant core
12 platform service in other services provided separately
13 by the gatekeeper, including other core platform
14 services and vice versa, again, an obvious parallel
15 there with the allegations that are being made in this
16 case, (d):

17 "Sign in end users to other services of the
18 gatekeeper in order to combine personal data. Unless
19 the end user has been presented with a specific choice
20 and has given consent within the meaning of article 4.11
21 and Article 7 of regulation 2016/679".

22 That is the GDPR regulation.

23 Now, Meta's evidence for this hearing has stated on
24 two occasions that the DMA is not a privacy regulation.
25 That is an assertion which also comes up in Meta's

1 skeleton, paragraph 25.

2 We see here Article 5.2 is referring to obligations
3 in respect of personal data, and it is cross-referring
4 to the need for consent under the GDPR. DMA also
5 includes definitions that correspond with those in the
6 GDPR, so if we look, please, at page 29 in this tab
7 [G6/1/29], definition 25, down the bottom please:

8 "Personal data means personal data as defined in
9 Article 4.1 of regulation 2016/679".

10 So the GDPR regulation, and then 32 on page
11 [G6/1/30], consent means consent as defined under the
12 GDPR, and there are also references to GDPR concepts in
13 the recitals which underpin Article 5.2, so if we look,
14 please, on page [G6/1/9], recitals 36 and 37, the
15 Tribunal will see the subject matter of these recitals
16 is the fact that gatekeepers often directly collect
17 personal data of end users for the purpose of providing
18 online advertising services, and what, essentially, the
19 recitals reflect is that gatekeepers are required to
20 offer a less personalised but equivalent alternative,
21 and again, there are cross-references in that context to
22 the GDPR.

23 So on any view the DMA is imposing obligations on
24 gatekeepers which have significant implications for user
25 privacy and which draw heavily on concepts in the GDPR,

1 so in our submission it is really not a helpful
2 assertion to simply say it is not privacy regulation and
3 therefore we are not going to provide disclosure in
4 respect of it.

5 Meta rolled out its consent or pay model in the EU
6 in late 2023. What it did is offer users a choice to
7 essentially either consent to Off-Facebook Data
8 collection or pay a subscription fee, and that was what
9 the European Commission found to be noncompliant with
10 Article 5.2 in its decision on 23 April 2025, which is
11 the decision in respect of which we are seeking
12 disclosure. So we say that there is a clear overlap in
13 the substance of the matters that the class rep is
14 relying on in support of its allegations of abuse in
15 this claim.

16 It also feeds in at the level of the question of
17 what would be the non-abusive counterfactual because
18 Meta has itself pleaded various references to consent or
19 pay models in the context of what would be a compliant
20 counterfactual. To show the Tribunal the relevant
21 pleading references, starting in the Claim Form,
22 paragraph 101, that is page 69, please, it is [B/11/69],
23 paragraph 101 is a plea that Meta doesn't comply with
24 the GDPR by reference to the Bundeskartellamt decision,
25 and then we go over to paragraph 102, and in this

1 context the class rep pleads her understanding, although
2 it is reported that Facebook has proposed to European
3 regulators that users should be able to avoid
4 personalised advertising if they pay a monthly
5 subscription fee. No such proposal has been implemented
6 and the PCR understand that the process was intended to
7 resolve concerns about user consent pursuant to GDPR.
8 This is the reference to the subscription no ads
9 model --

10 THE CHAIR: It is still not there, is it?

11 MS FORD: Not there in what sense, sir?

12 THE CHAIR: Can you still -- do you have any option at the
13 moment?

14 MS FORD: It hasn't been implemented in the UK.

15 THE CHAIR: No. You still have no option. You either have
16 the product --

17 MS FORD: That's true but Meta is pleading that the
18 non-abusive counterfactual, in the event that we were
19 right that what they are doing now is an abuse, might
20 well be a subscription no ads model. I can show the
21 Tribunal that in their defence. It's --

22 THE CHAIR: You don't need to.

23 MS FORD: It is quite important because this is their case
24 rather than ours that brings this in by way of
25 relevance. [B/12/109]. 175(b), this is pleading to

1 paragraph 102 that I showed the Tribunal where we said
2 this is our understanding that this has been introduced,
3 and they say there:

4 "The subscription for no ads business model was
5 launched by Meta in the European Union, the EEA and
6 Switzerland, it was not launched in the UK", and then
7 175(c) (x) at [B/12/110] over the page Meta denies that
8 the subscription no ads model was intended to resolve
9 concerns about user consent pursuant to the GDPR.

10 It says it was introduced by Meta for a variety of
11 reasons, including response to evolving European
12 regulations including the Digital Markets Act, and
13 Meta's decision to use consent as a legal basis going
14 forwards.

15 They 263(b) on page [B/12/150], showing the Tribunal
16 that essentially the first subparagraph, to demonstrate
17 that this is the paragraph which is pleading to the
18 appropriate counterfactual, Meta denies the
19 infringements alleged as pleaded above. It follows that
20 the counterfactual relationship is denied, so that is
21 what this paragraph is dealing with, what is the
22 counterfactual, and then 151 sub paragraph 4, you get
23 the pleading that the pleaded counterfactual is
24 misconceived because, in fact, Meta has never negotiated
25 or bargained with its users in response to changes

1 impacting the use of what the CR terms "Off-Facebook
2 Data". It says, for example, neither Meta's response to
3 ATT nor introduction of subscription no ads involved any
4 payment, negotiated or otherwise, by Meta to use as an
5 exchange for use of what the CR terms as "Off-Facebook
6 Data". Meta notes that none of its ad-funded attention
7 platform competitors have made monetary payments to
8 their users in exchange for what the CR terms
9 "Off-Facebook Data". On the contrary, it pleads its
10 competitors, many have offered subscription-based models
11 whereby the user pays a fee to use the service without
12 being shown ads. Meta avers that there are also a
13 number of significant practical obstacles to making
14 monetary payments to users in the circumstances the
15 proposed counterfactual is contradicted by the real
16 world factual outcomes and is denied.

17 What, in my submission, is going on here is that
18 Meta has pleaded both its own subscription no ads model
19 and its competitors' subscription no ads models --
20 Mr Simester is correcting me in relation to the response
21 I gave to the Tribunal's question -- Meta has announced
22 Facebook and Instagram to offer subscription no ads in
23 the UK as of 26 September 2025.

24 THE CHAIR: When is it starting though? That was when it
25 was announced, but I thought it hadn't been implemented

1 yet but I may be wrong about that.

2 MS FORD: It may be that if Meta can assist in due course,
3 but just coming back to what their pleaded case is in
4 any event, what they have done is they've pleaded their
5 subscription no ads model and they've pleaded their
6 competitors' models in the context of their case that
7 essentially the counterfactual we plead is contradicted
8 by real world factual outcomes, and so in that context
9 in our submission it is obviously highly relevant that
10 the Commission has held that that is a model which is
11 noncompliant with article --

12 THE CHAIR: Well, different people can react to whatever the
13 model is because some people don't want the ads, but if
14 it means they are going to have to pay not to have ads
15 they may not want to pay.

16 MS FORD: Sir, that is no doubt true, but if Meta in its
17 pleaded case is saying "this is what we need to look at"
18 as what would happen if you were right on that abuse,
19 then what is going on in this European Commission
20 decision in our submission is absolutely central to the
21 matters at issue in this case and we have pleaded to it
22 in the Reply as well.

23 THE CHAIR: But all you are asking them is to search
24 materials in those proceedings for relevant material.

25 MS FORD: For the categories of documents that we've

1 specified, yes.

2 THE CHAIR: For those categories.

3 MS FORD: The ones identified before.

4 PROFESSOR RIDYARD: Do you accept that being noncompliant
5 with the DMA is not the same as being noncompliant with
6 your duties under 102 or chapter 2?

7 MS FORD: We absolutely accept that there's a difference and
8 our position is the one that -- our pleaded position is
9 the one I have showed you, which is that our case is not
10 reliant on showing a breach of it, either the DMA or
11 indeed the GDPR but we do say that these are matters
12 which are relevant to feed into the assessment of what
13 is abusive and of course it is a problem for Meta's
14 case, if Meta says, if we're abusive we will bring in
15 subscription no ads, it is a problem for their case if
16 subscription no ads is itself unlawful.

17 MR SINGLA: Can I just want to make clear -- I don't want to
18 keep interrupting but to the extent --

19 THE CHAIR: Normally your interruptions quite help the
20 Tribunal.

21 MR SINGLA: It is always a subjective opinion, but it is not
22 our pleaded case that we would have done SNA in the
23 counterfactual. It is actually a complete misreading of
24 the pleadings, so I don't want to take too long now but
25 I don't want the discussion to proceed on that basis.

1 What they say would have happened in the counterfactual
2 is that Meta should have paid users.

3 THE CHAIR: I understand that.

4 MR SINGLA: Payment in the opposite direction and we're
5 saying that's completely misconceived for a whole host
6 of reasons and the fact of SNA is actually showing
7 a payment the other way but she said it, I think, two or
8 three times, that it is our pleaded case that in
9 relation to this case, the abuse of dominance, Professor
10 Ridyard's question, what would you have done but for the
11 alleged abuse, we are not pleading positively that SNA
12 would have been the counterfactual position. I just
13 rise to make that clear because it is not what the
14 pleading says but we're taking this at some pace.

15 THE CHAIR: I don't agree with that last point.

16 MR SINGLA: About the pleading or the pace?

17 THE CHAIR: The pace.

18 MR SINGLA: Yes.

19 MS FORD: Sir, I'm content for Meta's pleading to stand as
20 it is expressed, but in my submission it would be
21 unsustainable to suggest that these matters are not
22 relevant to the parties' pleaded cases. For
23 completeness I would like to show the Tribunal what we
24 said in Reply --

25 THE CHAIR: Can I just tell you where I am on this? I'm

1 satisfied that it is relevant and that there may well be
2 useful material relating to the issues in the action
3 that come out [B/13/66] of a proper search of the
4 materials in those proceedings. That's where I am at
5 the moment subject to hearing what Mr Singla says. Your
6 original request of something like 15 sets of
7 proceedings would have been rejected. You've been quite
8 resourceful in adapting to the reality of the situation.
9 That is what is meant to happen. Don't worry. This is
10 what I want to happen. You start off with your
11 position, you listen to what Singla's side says and you
12 come back with something that is workable so I fully
13 appreciate that you've moved a long way from the
14 original Redfern schedule, and that was sensible, and
15 the question really is in relation to each of these six
16 sets of proceedings is how central are they, and is it
17 really worth -- is it a proportionate thing to do to
18 expect Singla's clients to go through, and it's not
19 all-or-nothing either, because it may be that we take
20 the view that you don't need to go through all six but
21 you may say that you do need to go through all six, but
22 we will come to that once we've heard Mr Singla, but
23 I have got no doubt that when you look at these six sets
24 of proceedings they are bound to have some interesting
25 stuff for both sides -- it may be that there's stuff in

1 there that actually assists Mr Singla's case because
2 what you will find is you probably will find submissions
3 and reports which are actually against your case,
4 showing a different position, and so I'm not sure how
5 far Mr Singla sort of is resisting everything. There is
6 bound to be stuff in there that assists his case, almost
7 by definition, but we will see what he has got to say,
8 shall we?

9 MS FORD: Sir, certainly, of course (Inaudible) the case
10 that there may be matters adverse to the --

11 THE CHAIR: I would have thought so. It will go both ways.

12 If you look at what their position is, they are bound to
13 be saying, or at least on some of the issues, things
14 which are consistent with what Mr Singla is arguing at
15 the moment in his pleaded case. Bound to be because
16 that is -- it may be that it hasn't been accepted on
17 every point, but they are bound to be relatively
18 consistent in what their approach is. Yes.

19 MS FORD: I had some submissions to make about how this
20 feeds into the expert process. I'm hearing the
21 Tribunal's indication that you are provisionally
22 persuaded that this is a relevant matter and it may be,
23 therefore, that I don't need to deal with those now. It
24 may be that I will need to come back to them in relation
25 to other requests as we go down the chain, those ones

1 which drive the expert process, so it may be more
2 efficient for me to do it now while we're on the subject
3 of the DMA than to come back to them but I'm in the
4 Tribunal's hands if you would like to move matters on.

5 THE CHAIR: I would like to move matters on because we do
6 want to have at least R3 to R6 finished by lunchtime
7 otherwise it feels as though this is a bit of a mire.

8 MS FORD: Sir, yes.

9 THE CHAIR: I want to make some progress.

10 MS FORD: I can simply leave it that I will come back in due
11 course to address the fact that the experts have engaged
12 in relation to the relevance of the DMA.

13 THE CHAIR: I have got no doubt that the DMA is relevant,
14 and I understand, hopefully, what your case is. There
15 may be an element of parties disagree being what the
16 other side's case means on this, but as you say, let's
17 just go by what's in the pleadings, and for me that's
18 the easiest thing, just to go by what I have read,
19 rather than what the gloss is that either of you put on
20 it, because clearly you don't have the same reading of
21 the same paragraphs of your pleadings. Yes.

22 MS FORD: In that case, to sweep up in relation to issues 4,
23 5 and 6, in relation to all of those we say there are
24 very obvious subject matter overlaps between each of the
25 proceedings that we are looking at and the present

1 proceedings and that includes the data regulator -- the
2 three data regulators that are identified in 6 as well
3 equally because I have addressed the relevance of
4 data -- of data protection to the class rep's case.
5 Those come under that head as well.

6 We say the submissions, the categories of documents
7 that we've identified in these requests, can be expected
8 to be relevant to a significant number of issues for
9 disclosure, and we say that they provide a pre-existing
10 and easily-locatable cache of documents and data that
11 can be provided by way of disclosure. We say that there
12 really can be no sensible objection on proportionality
13 grounds to identifying and handing over these
14 already-existing caches of documents.

15 Meta have offered to provide the depositions from
16 Klein. They've also offered to provide factual
17 narrative parts of RFI responses in the CMA market study
18 and the FCA proceedings redacted for relevance. Our
19 submission in relation to that is that there is no
20 principal reason whatsoever to identify and draw the
21 line at those particular categories of documents and not
22 provide the additional types of documents that we have
23 requested.

24 THE CHAIR: If they are relevant.

25 MS FORD: In my submission the fact that there are such

1 obvious overlaps between the subject matter of those
2 proceedings and these proceedings mean that there is
3 a very good reason to think that they will be relevant.

4 THE CHAIR: There may be, but they are only obliged to
5 produce those which are relevant.

6 MS FORD: Sir, that is absolutely right. It is a matter for
7 them whether they choose to review on that basis,
8 essentially.

9 THE CHAIR: But as long as they understand what is relevant,
10 that's quite important, because if they don't understand
11 what's relevant this whole exercise is going to be done
12 on a misconceived basis. We've had that before in other
13 cases where people have said they are going to give
14 disclosure of relevant documents and then they've
15 misunderstood what relevance is, just making it clear
16 that relevance is, in this case, what's on the face of
17 the pleadings.

18 MS FORD: Sir, yes.

19 THE CHAIR: And if -- there's many issues between you, but
20 if it is an issue on the face of the pleadings, that
21 should be covered when they do their search.

22 MS FORD: Sir, we very much agree with that and that is why
23 I take time to draw out concerns whenever it says things
24 like data protection is only peripheral to the --

25 THE CHAIR: It is not -- no, I understand that it is not

1 peripheral. What it is is it's one of those issues
2 where you say data protection is important, and if you
3 are right about the data protection points, then
4 obviously your case on abuse is significantly stronger.
5 If you are wrong about it, then you say, well, even if
6 I'm wrong about that it is still going to be the case,
7 and it is you putting your alternatives that has led to
8 this argument that, actually, it is not very important.

9 For my point, I do think it is important to get to
10 the bottom of these DMA issues and I understand exactly
11 where you are coming from. I also understand where
12 Singla is coming from, and there's a big gap between
13 both of you, and this whole area of DMA and privacy and
14 consent is central to the issues in this case, and the
15 experts will have to try and grapple with it, and on
16 some of the sub-issues on that, the answer is not
17 self-evident. Yes.

18 MS FORD: Sir yes. In that case I can deal extremely
19 quickly with the two objections that have been raised.
20 There has been a suggestion in the Redfern response that
21 these documents might be inadmissible in evidence in
22 these proceedings, and/or should be accorded no weight.
23 In relation to admissibility, in our submission that is
24 simply a non-starter and there are authorities in the
25 bundle which provide examples of these sorts of

1 documents being disclosed in other proceedings.

2 THE CHAIR: Well, on inadmissibility or admissibility, as
3 you know, the mere fact that a document is inadmissible
4 in document is not a reason, generally, for not
5 disclosing it. The question is relevance. There's
6 a big difference between, let's say, a witness summons
7 when you are seeking disclosure where it is quite
8 important that the document is admissible, and a normal
9 order for disclosure where admissibility is not the
10 guiding principle. You could say, well, if I'm going to
11 have to be required to produce lots and lots of
12 documents, which are not admissible, there's an argument
13 to say, well, is it really necessary, proportionate, to
14 produce all this stuff that is not admissible, but by
15 and large it is not a knock-out point, so ...

16 MS FORD: Sir, I absolutely agree with that and we go
17 further. We say there is no basis to suggest that they
18 are not admissible in any event.

19 THE CHAIR: Okay. On admissibility, if people want me to
20 give a ruling on admissibility I'm quite happy to, but,
21 I mean, it -- I don't think it is necessary at this
22 stage to decide what is admissible and what is not
23 admissible. People are quite often not very precise
24 about what is admissible and they allow everything in.
25 As you know, that is not my normal practice, which is if

1 there is an issue about admissibility I like to have it
2 resolved prior to the hearing. I don't think it is
3 a knock-out blow, but yes, you've got the
4 inadmissibility point. Yes.

5 MS FORD: It is then said, well, it should be accorded no
6 weight. Self-evidently weight is a matter for trial.
7 It's no reason to decline to provide disclosure, then we
8 get the suggestion that we have previously in relation
9 to Request 4 that witness evidence will duplicate
10 matters found in contemporaneous documents. I make the
11 same points in response. There really is no duplication
12 here for all the reasons I have already addressed the
13 Tribunal upon.

14 THE CHAIR: That's in relation to what, to depositions and
15 statements?

16 MS FORD: Well, in relation to each of these documents.
17 Insofar as the suggestion is being made by Meta you
18 don't -- they don't need to provide them because the
19 answer will be in the contemporaneous documents, that
20 can't be right.

21 THE CHAIR: No. It is not. Yes.

22 MS FORD: We come back to this point: there is no good
23 reason to disregard a readily-available, pre-existing
24 cache of potentially relevant documents on the basis
25 that contemporaneous documents might be picked up in

1 other separate de novo searches. We say the same
2 applies to the underlying documents and data. Why
3 reinvent the wheel when there are these pre-existing
4 caches of potentially relevant documents in relation to
5 proceedings that have obvious overlaps with this
6 proceeding.

7 Sir, those are our submissions in relation to that
8 compilation of requests.

9 THE CHAIR: Thank you very much. Mr Singla?

10 MR SINGLA: Sir, I know you said you wanted to deal with
11 this by lunchtime --

12 THE CHAIR: It is not going to be possible because --

13 MR SINGLA: It is too important and she has had an hour of
14 submissions.

15 THE CHAIR: I don't think it is an hour but it feels like an
16 hour.

17 MR SINGLA: I won't take that long but I do think, in
18 fairness, because -- some of the problems with this case
19 is that (Inaudible) very, very significant implications
20 so I just want to take this in stages if I may but I'll
21 obviously keep it as efficient as possible.

22 I want to start by just reminding you that
23 (Inaudible) any of the submissions (Inaudible) relevance
24 of the (Inaudible) are the touchstones. You've given
25 judgments which say that a mere reference in the

1 pleading or a mere reference by an expert that they
2 would like to see something, that is not sufficient.
3 One always has to ask oneself, is disclosure in this
4 particular case necessary, and is it proportionate, and
5 we say in relation to requests 3 to 6, and it is helpful
6 to take them compendiously, this is a classic example of
7 what has been described as the no stone unturned
8 approach so it really is quite important that you
9 understand what is going on here, and I should say this
10 at the outset, in my submission it would be completely
11 wrong to approach this on the footing that, well, they
12 started by asking for the underlying disclosure from 15
13 sets of proceedings, if one just thinks about that, they
14 wanted the underlying disclosure from 15 sets of
15 proceedings to be lifted wholesale into this case. That
16 was completely mad, if I may say so.

17 The fact that they've shifted from that position 48
18 hours before the hearing shouldn't, as it were,
19 encourage the Tribunal to be somewhat predisposed and
20 say, well, they must be more reasonable because it
21 depends on what the starting point was, so we say, and
22 the reason this is so important, in a way it is more
23 fundamental than anything else we're going to cover in
24 the Redfern because the rest of the Redfern is about
25 what should be disclosed in this case by reference to

1 the issues in these proceedings. What they are trying
2 to do is having insisted upon a de novo exercise, if one
3 winds back the clock, one had a choice at the start -- I
4 mean, Ms Ford says, you know, why reinvent the wheel.
5 It is quite a surprising submission because they are the
6 ones who declined some early off-the-shelf disclosure as
7 they described it, as they said no, no, no, you've got
8 to go away and find what has now turned out to be 77
9 custodians, you've got to produce hundreds of pages of
10 information and so on, to tell us exactly what
11 repositories you are going to search, tailored by
12 reference to the issues in this case, so that has been
13 going on for nearly a year now, and now they turn round
14 and say, well, thanks very much, we will bank all of
15 that material which we're going to be arguing about,
16 requests 7 to 120, but look, let's go back to these
17 repositories, we will have all of that as well, and
18 that's why I said earlier, this is actually
19 extraordinary and unprecedented because what's happened
20 in other cases, so far as we are aware, anyway, is it is
21 either a de novo exercise or it is -- there have been
22 some related proceedings, let's start with some
23 disclosure there, and top it up, which is what we
24 proposed at the outset.

25 What one doesn't see for obvious reasons is

1 a combination of both, and when we really do submit that
2 the disclosure process in this case is going to spiral
3 out of control, and requests 3 to 6 are a real problem
4 in that regard.

5 What we have done is -- will ensure that they are
6 getting disclosure tailored by reference to the issues,
7 and just to give you an indication of the volume of
8 disclosure, so leaving aside 3 to 6, we are going to
9 give millions -- well, on our last count there were
10 1.3 million email and work chat document hits, okay? So
11 1.3 million, but that is a massive underestimate because
12 that is only in relation to the custodial disclosure.
13 It doesn't include a non-custodial disclosure. It
14 doesn't include other types of custodian repositories or
15 materials, and it doesn't include some of the search
16 terms which we were constructively trying to agree with
17 the other side, okay, so 1.3 million is a massively
18 conservative estimate.

19 THE CHAIR: Let's say you've got 1.3 million hits. How do
20 you go from there? You've got your 1.3 million. How
21 are you going to search that in order to get this? What
22 is -- as you know, there's a number of approaches that
23 you can get to the final population. How are you
24 proposing to do it?

25 MR SINGLA: Well, it would be reviewed -- I'm talking about

1 the disclosure other than 3 to 6.

2 THE CHAIR: Yes.

3 MR SINGLA: Yes, so it is going to be collated, and then
4 reviewed, and relevant material will be disclosed.

5 THE CHAIR: I'm not asking that. Reviewed, but what
6 technology are you going to be using to identify which
7 ones the human being is going to look at?

8 MR SINGLA: Oh, I see. Well, that is another issue that is
9 sort of on the agenda or in the correspondence. I mean,
10 we've said some technology will be used --

11 THE CHAIR: Yes.

12 MR SINGLA: -- to speed things up but we're not, as it were,
13 in a position to give a prescriptive answer to all of
14 the oppressive questions about the use of AI. I can
15 take you to this. In my submission that is a point I
16 need to address you on separately.

17 THE CHAIR: Okay. We will come to that later, but you know
18 I have got views that I have expressed before about the
19 use of technology, which is that technology and advances
20 in technology is a curse and a blessing. You know, it
21 is a curse because it has generated so much data, but it
22 is a blessing, it can have really helpful ways of trying
23 to reduce the cost if it is done properly.

24 MR SINGLA: I understand.

25 THE CHAIR: I know that often in this Tribunal you get

1 people who do it, let's say, not necessarily right, and
2 then it just -- the costs spiral out of control but I
3 would have thought of all the parties that we see, and
4 with the team that you've got, that you are going to do
5 it in a way that insofar as you can you are going to do
6 it in a cost-effective way, and if that means it doesn't
7 mean that you -- if it means you don't get every single
8 document that is potentially relevant out there because
9 you are going to miss some because of the way you are
10 doing it, that's fine. That's part of the -- let's
11 say -- the downside of using technology. You may not
12 pick up everything, but on the other hand it is so much
13 cheaper doing it than, you know, some of the other more
14 conventional ways, but it is up to you how you do it,
15 but you've got a pretty sophisticated team -- I keep
16 saying that -- but you do. You will work out the right
17 way of doing this in a relatively cost-effective way.

18 MR SINGLA: No, of course, and that's very helpful, but that
19 cuts both ways in the sense that when those behind me
20 who are, if I -- I must respectfully agree with you --
21 best-placed to --

22 THE CHAIR: They are, yes.

23 MR SINGLA: Yes. I mean, they know what they are doing and
24 they are saying it is going to cost millions of dollars
25 and it is going to take months and months, and I'm just

1 talking about the Redfern and disclosure other than 3 to
2 6 because that's the starting point. The claimants
3 wanted a de novo exercise. A year later we're still
4 arguing about the fine details of it, but on any view
5 they are going to get massive disclosure going back 20
6 years, 77 custodians, so it is going to be millions of
7 documents that are being reviewed. That's the evidence
8 in front of you and its going to cost millions. That is
9 the starting point.

10 So then one has to look at 3 to 6 --

11 MR OLSEN: Sorry, can I just ask, the 1.3 million, that is a
12 raw figure, is it? That is before deduplication?

13 MR SINGLA: That's right.

14 MR OLSEN: So it would come down from that?

15 MR SINGLA: It would a little bit but in my submission the
16 coming-down would be significantly offset by all the
17 things I said that the 1.3 doesn't include.

18 MR OLSEN: Okay.

19 MR SINGLA: So just to remind you, it is -- that is not all
20 the custodian --

21 MR OLSEN: Understood. Yes.

22 MR SINGLA: -- and non-custodial disclosure features quite
23 prominently in our proposals and that is over and above
24 the 1.3.

25 MR OLSEN: Right.

1 MR SINGLA: So it is a huge exercise.

2 THE CHAIR: I have got no doubt it is a huge exercise. This
3 is an important case for everyone.

4 MR SINGLA: No, but that is an important --

5 THE CHAIR: Sometimes, doing it properly and thoroughly can
6 advantage your clients because you may come up with
7 stuff that actually assists your case, so --

8 MR SINGLA: I know but --

9 THE CHAIR: -- you know, it goes both ways. There's no
10 predisposition, certainly not on my part, as to whether
11 these documents are going to be all adverse to your
12 client. I would have thought that there would be a fair
13 amount of documents that are being sought that could be
14 potentially a boomerang that will assist your client.

15 MR SINGLA: But point one, which is not actually
16 acknowledged anywhere in Ms Ford's submissions is before
17 we get to 3 to 6, let's just think about how much they
18 are going to get through the de novo disclosure
19 exercise, and it is huge. I mean, I have just explained
20 that. It is absolutely vast. It is a big case but
21 notwithstanding that, it is a huge disclosure exercise,
22 and it is easy to say, well, there's other material out
23 there, and therefore why not add that in as well, but in
24 my submission that would actually be completely at odds
25 with the route that we've gone down.

1 Insofar as there was going to be any efficiencies
2 from pulling documents from other proceedings, that
3 would have been at Day 1, but now we're doing this huge
4 disclosure exercise by reference to the issues in this
5 case, you have to ask yourself, in relation to every set
6 of proceedings in 3 to 6, and every type of document in
7 3 to 6, is that necessary over and above the disclosure
8 they are going to get, because if it is relevant, it
9 will be caught anyway by the searches that we're doing
10 in the de novo process, so I would respectfully suggest
11 that the way to approach 3 to 6 is to ask yourself two
12 questions. First, in relation to those other
13 proceedings, which of them materially overlap with the
14 present proceedings. I mean, that has to be question
15 one, because if one of these other sets of proceedings
16 is not materially overlapping then we can just strike it
17 through, and then the second question is: out of the
18 proceedings that one decides do materially overlap, what
19 materials, in particular, should be disclosed. Again,
20 having in mind that what we're talking about is over and
21 above the disclosure that will be given by reference to
22 this case.

23 Taking those issues in turn, we -- our position is
24 that most of the other proceedings and investigations
25 are not relevant, so that's why I say if you start at 15

1 and you end at 6 that doesn't tell you anything about
2 the reasonableness of your approach. Actually start at
3 zero and work upwards to see what is actually materially
4 overlapping. Our position is we've identified three
5 sets of proceedings or investigations that materially
6 overlap, and so it is important to emphasise, we're not
7 taking a completely entrenched position where we're not
8 engaging on this at all. We've actually accepted that
9 three of these do have a material overlap.

10 THE CHAIR: Yes. Let's look at -- let me tick those.

11 MR SINGLA: Well, yes. Could I ask you to --

12 THE CHAIR: 4(a) to (f) of those, which ones do you accept
13 materially overlap?

14 MR SINGLA: We accept Klein, and Klein we've always
15 accepted.

16 THE CHAIR: That's (d). Yes. Already --

17 MR SINGLA: We accept the CMA market study.

18 THE CHAIR: That's (a). Yes.

19 MR SINGLA: And we accept the German proceedings.

20 THE CHAIR: Yes. Okay.

21 MR SINGLA: And in relation to why we say that the others
22 are not, can I just show you Ms Dietzel's witness
23 statement --

24 THE CHAIR: Well, you can in a second. Let me just make
25 a note. (Pause)

1 Yes.

2 MR SINGLA: To be clear, it is not, in my submission, enough
3 to say there may be some slight overlap, so I'm
4 talking -- and our position is about material overlaps.
5 It has to be sufficiently materially overlapping for
6 there to be some disclosure consequence. We can't have
7 a situation where, if there's any overlap at all --
8 because the problem in this case is it goes back 20
9 years and they are trying to attack the whole business
10 model, so unless one is sensible about it, you can
11 always say that something is of some tangential
12 relevance. The question is material overlap and if I
13 just show you why we say the others are not, it is
14 [C7/8/24]. Do you see paragraphs 70 to 71 which deal
15 with the EC Facebook Marketplace investigation? 71:

16 "The conduct with which the investigation and
17 decision are primarily concerned relates to the
18 advertising side ... rather than the ..." case here,
19 which is the user side. The allegations of abuse are
20 entirely different to those in the proceedings, and
21 there's also an appeal pending. Do you see that?

22 THE CHAIR: Yes. I have got that.

23 MR SINGLA: So that's the first one that was contested.

24 Then the next one is the FTC at 74, but again, just
25 before we look at 74, I mean, just look at, for example,

1 what they were asking for but they dropped, 72, the
2 Facebook/GIPHY merger. It is actually just absurd to
3 suggest that that overlaps in a material way so that's
4 gone, but it doesn't mean that their points are any
5 better on the points that remain, so the FTC, I won't
6 read it out, but you will see again why we say the
7 conditions imposed on the users are not a key issue.
8 You see the last sentence:

9 "The FTC proceedings focused on the availability of
10 the platform to app developers".

11 THE CHAIR: Yes.

12 MR SINGLA: And then the next one is the DMA but the DMA I'm
13 going to have to take a bit of time because as Ms Ford
14 rightly says, that affects other issues that will arise
15 at this hearing. I don't want to deal with that in the
16 next two or three minutes before the break, but we do
17 say the DMA is actually a fundamentally different
18 regime, and for disclosure purposes one shouldn't just,
19 as it were, look at the DMA case as a repository, but
20 again, just to highlight how and why this was all cast
21 to begin with, they were asking for disclosure from
22 seven DMA cases.

23 So, just before we break, our position -- I'll
24 address you on the DMA after lunch if I may --

25 THE CHAIR: Just give me one second. I just want to make

1 a note of something.

2 MR SINGLA: I'm sorry. (Pause).

3 THE CHAIR: So you've got the FTC you deal with at paragraph

4 74.

5 MR SINGLA: Yes.

6 THE CHAIR: Then we need to look at ...

7 MR SINGLA: 70 to 71.

8 THE CHAIR: And then the European Commission's case, the DMA

9 one.

10 MR SINGLA: Yes.

11 THE CHAIR: Which one is that?

12 MR SINGLA: The statement deals with --

13 THE CHAIR: So that is F.

14 MR SINGLA: I think the one that is remaining now is 89.

15 THE CHAIR: Let's have a look. Yes.

16 MR SINGLA: But I need to address you more holistically on

17 why we say the DMA shouldn't be some freestanding --

18 THE CHAIR: Let me just look.

19 MR SINGLA: Yes. (Pause)

20 THE CHAIR: So it is 89 to 92.

21 MR SINGLA: Well yes, but you need to also look at what we

22 say about the DMA generally which starts at 82 and I

23 want to spend a little time on that.

24 THE CHAIR: Okay.

25 MR SINGLA: I'll address you on that -- I mean, I won't take

1 a huge amount of time but it is important not only for 3
2 to 6 but later requests as well. I'm also conscious of
3 what you said on a provisional basis so I do want to
4 walk you through why we say the DMA is actually quite
5 distinct from the issues in this case, but I hope
6 that -- just before we break, to be clear, we say -- we
7 accept there is material overlap with three of these,
8 and in relation to those three, we have offered to
9 provide some materials, and again, this is all over and
10 above the huge exercise we're doing.

11 THE CHAIR: Yes. Okay. We will take our break now then.

12 But Mr Singla, you know, we are where we are and
13 insofar as there has been some movement, it is not going
14 to be taken as an adverse point for either side. I
15 agree with you, the -- they were right to drop the
16 others, and that doesn't mean keeping the ones in is
17 justified in itself, so we're going to have to look at
18 each one individually. That is why it's quite important
19 to look at that reference.

20 MR SINGLA: Yes, and it is the set of proceedings and the
21 materials. One actually has to ask oneself those two
22 questions.

23 THE CHAIR: We will look at that over the break anyway.

24 Okay. We will be back at 2 o'clock.

25 (1.00 pm)

1 (Luncheon adjournment)

2 (2.08 pm)

3 MR SINGLA: Sir, I was addressing you, as you will recall,
4 on two questions: what sets of proceedings have
5 a material overlap and then I'm going to come on to,
6 insofar as they do have an overlap, what materials
7 should be disclosed, and I said to you that all of this
8 was over and above the de novo exercise and I gave you
9 a 1.3 million figure. Just quickly to elaborate on
10 that, we have, in relation to the custodial documents,
11 actually collated already millions of documents. That
12 is emails and work chats. That is not the full
13 custodial piece, and it is certainly nothing to do with
14 non-custodial, so many millions of documents have
15 already been collated and it is with the application of
16 our own proposed search terms that one is down to 1.3.
17 I hope that is helpful just to give you an idea of the
18 scale. It is actually not right to start with 1.3 if
19 one is assessing the amount of work that is going on.

20 Now, just -- I was going to come on to why we say
21 the DMA, and this particular investigation is not
22 relevant, or sufficiently relevant to warrant this
23 disclosure request. These points will be relevant later
24 on when we come on to individual requests, although
25 there may be some discrete points that arise in any

1 event, as it were, when we get there.

2 In broad terms, I think I just -- I have asked you
3 to look at what Ms Dietzel says about the DMA but can
4 I make four key points? The first is, and this is, with
5 respect, actually the starting point, it doesn't apply
6 in the UK, whereas this claim is limited to UK users,
7 and so on no basis could it be said that the DMA governs
8 Meta's relationship with UK users. So again if one is
9 keeping in mind that all of this disclosure has to be
10 necessary for the fair disposal of the claim and
11 relevant and so on, this cannot conceivably govern the
12 relationship with the UK users, and that's what this
13 claim is all about, and only about.

14 The second point we make is the DMA is distinct from
15 competition law. You have that point already, but, for
16 example, it is said, well, Meta has been designated as a
17 gatekeeper, but that is irrelevant in terms of whether
18 there's a dominant position, and a fortiori as to
19 whether there has been any abuse.

20 If one wants to just put this point to bed, just
21 quickly to bring up the DMA itself which is at [G6/1/1],
22 if I just quickly ask you to look at Recital 5 which
23 must be on the next page, please [G6/1/2], which makes
24 the point that although Articles 101 and 102 apply to
25 the conduct of gatekeepers, the scope of those

1 provisions is limited to certain instances, so you will
2 see it is recognising on its face that that is
3 a distinct regime, and could I also ask you to look at
4 Recital as 10 and 11 which must be on the next page?
5 [G6/1/3]. So the first point, it is nothing to do with
6 UK users, second point, it is nothing to do with
7 competition law, third point, it is easy to use phrases
8 like "privacy legislation" and so on loosely, but this
9 is not, in fact, accurately described as either data
10 protection or privacy regulation. Its purpose is -- and
11 the obligations that it imposes -- are different.

12 We would accept, for example, the GDPR does apply to
13 UK users, and that comes in in some of the later Redfern
14 requests, but the DMA certainly isn't privacy or data
15 regulation as such, and the fourth point to stress is it
16 is not part of the claim, there's no pleaded claim or
17 allegation that Meta has breached the DMA. So again, if
18 one is actually applying the principles that this
19 Tribunal has emphasised on a number of occasions, it is
20 actually quite difficult, in my respectful submission,
21 for the Class Representative to contend sensibly that
22 this disclosure from this one investigation is necessary
23 for the fair disposal of the claim, and I dealt with the
24 last point -- was just to deal with the counterfactual,
25 the submission that Ms Ford was making based on our

1 pleading was misconceived and I have already dealt with
2 that, so that's what we say about the DMA but crucially,
3 because one is also having regard to proportionality,
4 we've acknowledged, Ms Dietzel says this at paragraph
5 92, to the extent there is material concerning the DMA
6 that is relevant to the issues in the dispute, in this
7 dispute, then they will be disclosed because they will
8 be responsive to the searches that we're carrying out,
9 so the question that we're actually grappling with at
10 this stage is should this DMA investigation be some
11 freestanding repository. It's not whether the CR will
12 get any DMA related material at all, and so for those
13 reasons we say it is wrong to focus on the DMA
14 investigation as being a relevant repository, and I'll
15 make more specific submissions in relation to individual
16 Redfern requests, but that's all I wanted to say on why
17 we have reasonably alighted upon three sets of
18 proceedings, so Klein, the CMA market study and the
19 German proceedings, and we say everything else should be
20 out, and the Class Representative is right to strike
21 through the nine, but also an additional three should be
22 struck out, so that's the first question, what
23 proceedings should we even be concerned with.

24 The second question is: within those proceedings
25 that we've accepted have some material overlap, what

1 materials should be disclosed.

2 THE CHAIR: And at the moment you are just looking at

3 Request 4/5, and you cover separately Request 6?

4 MR SINGLA: I'll come on to 6.

5 THE CHAIR: Because Ms Ford sort of skated over 6.

6 MR SINGLA: Exactly.

7 THE CHAIR: I think I need a bit more help on that to be
8 persuaded that it fits in.

9 MR SINGLA: I'm going to say something separately.

10 Actually, everything I have said generally about
11 proportionality and all of this being over and above the
12 de novo process would apply to 3 to 6, but in relation
13 to 6 I will say something specific.

14 So, it is the same point but ultimately you are
15 getting huge disclosure -- the idea that you are going
16 after all of the representations made to regulators --

17 THE CHAIR: No, but if, for example -- it is not wholly
18 unrelated because if, for example, I take the view that
19 R6 is, in any event, going to be duplicative of the DMA
20 disclosure, for example, then that is probably a good
21 reason not to have R6. On the other hand, if I'm going
22 to take out, or if we're going to take out the DMA then
23 I'm probably going to have to look at the R6 in a lot
24 more detail, but --

25 MR SINGLA: It is an important point but a short one. I'll

1 come on to it. We say, obviously, you should strike
2 through DMA and you should strike R6 in any event
3 because R6 is just enormous in scope, but let me just --
4 I'll carry on as I am.

5 THE CHAIR: Of course.

6 MR SINGLA: I'll say something specific about -- they are
7 all linked which is why I said at the outset we should
8 deal with them compendiously but obviously 3 to 5 cover
9 the six sets of proceedings, that -- what used to be
10 15 -- and then there's a -- Request 6 goes over and
11 above that because that deals with the -- it is all the
12 exchanges with three regulators, so that is slightly
13 different, but it is all linked, but can I just address
14 you on -- within those proceedings, leaving 6 aside for
15 the moment, we've accepted there is some material
16 overlap with those three proceedings, so again, this is
17 all part of us being as constructive as possible, but
18 just not accepting things where they are liable to
19 render the disclosure process one which spirals out of
20 control, so within those three sets of proceedings, what
21 have we agreed to do? Well, as you've heard, we've
22 agreed to disclose from Klein the depositions and in
23 relation to the CMA market study and the FCA
24 proceedings, factual narrative responses to requests for
25 information, so we will redact those for material that's

1 not relevant, but what we have proposed is, in my
2 submission, reasonable and proportionate because,
3 I think, sir, you yourself made the point which we agree
4 with that if there is some factual deposition from
5 a witness that may or may not come at this trial, it may
6 be relevant, so where the set of proceedings overlaps,
7 where we accept that, we say we also accept factual
8 material should be disclosed. We say that's reasonable
9 and proportionate, but we will obviously have to redact
10 and that generates, as you've already pointed out, work
11 in terms of redacting.

12 In addition to that, so that is across the three
13 proceedings, in addition to that we've, as you've heard,
14 agreed to add the 480,000 documents from Klein into the
15 review pool, and I just want to just explain where the
16 480,000 comes from. Can I just, perhaps, ask you to
17 look at Ms Dietzel's paragraph 24? Again, you will see
18 that -- you will see how much work and thought has gone
19 into all the proposals that we're making, so this
20 480,000 --

21 THE CHAIR: Let me get the paragraph. What paragraph was
22 it?

23 MR SINGLA: 24 on the screen. I'm going to take you to
24 another witness statement [C7/8/9].

25 THE CHAIR: You say they should have taken up that offer.

1 MR SINGLA: We certainly say that but we also say having
2 rejected it, it doesn't lie in their mouths now to seek
3 more than the 480,000 but let me just take you also,
4 because you weren't at the -- I don't think you dealt
5 with the hearing at which Wisking 1 was served and you
6 will see the cross-reference and it is actually quite
7 important for you to see what Mr Wisking was saying as
8 to how the 480,000 had been arrived at, so that's at
9 CMC -- you may not have this in hard copy -- CMC2B, tab
10 6. The relevant section -- I'm obviously not going to
11 be able to take you through all of it now but I would
12 ask you to read all of paragraphs 24 through to 45
13 [CMC2B/6/1].

14 THE CHAIR: You say you are not going to take me to it now,
15 but I'm not going to have -- you have a decision now on
16 everything.

17 MR SINGLA: Right.

18 THE CHAIR: If there's anything in there that you want me to
19 consider --

20 MR SINGLA: Okay.

21 THE CHAIR: -- just show it to me because otherwise it is
22 not going to be looked at.

23 MR SINGLA: Okay. If you are giving a decision on this this
24 afternoon then I'll have to show you this. So 24,
25 background on the client proceedings, so this was all --

1 this was the Day 1 proposal to give 480,000 to start the
2 disclosure process, so you will see here he refers to
3 Klein proceedings, and if we could just skip through the
4 next page, please? Well, sorry, actually, paragraph 26,
5 do you see it says:

6 "Extensive disclosure has been provided in the Klein
7 proceedings amounting to over 4 million documents".

8 Do you see that? So that is what the claimants are
9 asking to be added to the review pool, so that is the
10 debate that is in front of you now, whether it is
11 480,000 as we propose, or --

12 THE CHAIR: But you are saying -- the 480,000 is a subset of
13 4 million?

14 MR SINGLA: Correct, and I'll explain -- and what Mr Wisking
15 explains how they've got down to 480,000. If you just
16 bear with me, he does explain this, if we just go to the
17 next page, please [CMC2B/6/11], so you will see at 25
18 there are a number of overlapping issues between these
19 collective proceedings in the Klein proceedings, so this
20 is not some great concession as Ms Ford tried to sort of
21 portray it. We've accepted this from Day 1, and then
22 you will see another reference in paragraph 26 to the
23 4 million documents being disclosed in Klein, and then
24 there is some procedural history at 28 onwards which we
25 don't need to be concerned with, but that is when they

1 asked for Klein and they then declined it, if we then go
2 to the next page, please [CMC2B/6/13], that's still the
3 procedural history, so they made a proposal on Klein and
4 Mr O'Donoghue was asking for that, and then if we go
5 over the page, so 35, you will see our proposal for the
6 disclosure process, obviously the proposal doesn't
7 matter any more but if we then go to the next page,
8 please [CMC2B/6/17], so what we were saying is we would
9 give a Klein disclosure set, you will see it is
10 a defined term, and it is really 42 to 45 where it is
11 explained that what has happened is the 4 million has
12 been whittled down to 480,000 by excluding irrelevant
13 material, and you will see at 44 the sorts of things
14 that have been excluded.

15 You will see 44, custodial documents from the Klein
16 proceedings subject to the following exceptions, and
17 then 45, if we go over the page, please [CMC2B/6/21], so
18 that's the background to all of this. The 480,000 is
19 a subset of the 4 million from Klein, so point one, we
20 accept there's overlap in terms of the issues. Point
21 two, we accept some documents should be added to the
22 search pool in these proceedings but we say the line has
23 to be drawn for the 480,000, otherwise you are being
24 asked to add millions of documents to the search pool,
25 and that's just from Klein. I mean, they are actually

1 asking for this in relation to six sets of proceedings.

2 THE CHAIR: And have you got any estimate of the difference
3 in cost between the two approaches?

4 MR SINGLA: No, not on that specific point but I'm going to
5 address you in a moment as to why this does generate
6 huge amounts of cost. It is superficially attractive to
7 say, well, this is all held on a database so what's the
8 problem. That's, in my respectful submission, not how
9 disclosure works. It just doesn't deal with the reality
10 of collating the material, posting the material,
11 processing the material, reviewing the material, so this
12 is why this is -- I'm sorry we're taking time on this,
13 but this is why this debate will lead the whole
14 disclosure process in a particular direction.

15 THE CHAIR: I know, but to have done the process in the
16 first place it must have been hosted to have done that,
17 to get it done. I understand your point which is if you
18 are starting with a clean sheet and it is all, in the
19 olden days, you know, hard copy documents, it would be
20 a massive exercise, but what you've done -- you've done
21 it once already -- you would have gone on a platform and
22 it should be much easier to search than if you are
23 starting again, and so the question is -- and I'm not
24 sure if you've got an answer -- is what's the difference
25 in cost between the two. It is not -- a simplistic idea

1 would be to say, well, as it is almost ten times as much
2 it is going to cost ten times as much. It is not going
3 to cost ten times as much.

4 MR SINGLA: No, I'm not making that point.

5 THE CHAIR: It is going to be an increment but I don't have
6 a good enough feel for what that increment would be.

7 MR SINGLA: No, but I don't have -- I should be clear --
8 I don't have a specific cost figure. If you add -- they
9 are asking for this six times over, so six sets of
10 proceedings. This is just dealing with Klein. What we
11 do have is evidence that the 1.3 million figure that I
12 gave you, just on the de novo side, just on the
13 custodial -- with all the qualifications I have given --
14 that is US\$2 million. That is in Ms Dietzel's witness
15 statement, so one has to have a degree of common sense
16 about just how much this is exponentially going to
17 increase. I take your point that it is not starting
18 from scratch, but the submission I'm making is it's
19 wrong to think that because there is a repository
20 somewhere, that it is easy and cost-effective to go
21 there. This is why the Class Representative, having set
22 us down this particular path now needs to accept that
23 the disclosure will come from the de novo process.
24 That's the challenge for the Class Representative, why
25 do they need all of these exercises in relation to these

1 six proceedings to be carried out over and above -- I
2 mean, the disclosure, in an ordinary case, if there
3 hadn't been these other proceedings you would have the
4 de novo disclosure exercise and that would be that. In
5 other cases, there have been other proceedings, so the
6 claimants are sensible and say "we will start there".
7 In this case they are trying to have their cake and eat
8 it, but that comes at a vast cost, and it's not, in my
9 submission, satisfactory to say, well, if they lose the
10 case at the end of the day we will recover all these
11 costs, because one has to understand the amount of time
12 and cost that will go into doing this disclosure. We've
13 already said, for example, that on our own proposals,
14 disclosure is going to take ten months.

15 Now, we can argue about whether it is ten, or -- but
16 it is a huge exercise -- and ten months is actually in
17 line with what has happened in Klein, so that's the
18 figure that we've given, but what -- the Class
19 Representative is acting in a completely unreasonable
20 way. It wants the de novo disclosure, it wants all of
21 this disclosure, it is also going to ask you at some
22 point in this hearing to impose a long-stop date of
23 April, and at some point the Tribunal has to actually
24 take control of this, and we say we've approached
25 requests 3 to 6 in a reasonable and proportionate way

1 when we're considering what this is going to add to the
2 work that we're already doing, we've said yes to the
3 480,000 Klein, add to the search pool, yes to any
4 factual material from Klein or the other three
5 proceedings, but that's where things have to stop,
6 otherwise this disclosure exercise is never going to get
7 done, and it is going to create real problems in terms
8 of the trial timetable. One has to -- again, the Class
9 Representative is pushing for an early trial date to be
10 set. Well that has now been set, so they've got that,
11 they've got the de novo disclosure, what they can't also
12 do is then be oppressive in seeking more and more
13 disclosure, so that is what we say in relation to why it
14 is simply not right to say for these six sets of
15 proceedings you've got the documents --

16 THE CHAIR: And what you've agreed to disclose in the
17 Redfern schedule, what's your estimate for completing
18 the disclosure exercise at the moment?

19 MR SINGLA: Ten months on our proposals.

20 THE CHAIR: Yes.

21 MR SINGLA: Because the search terms haven't yet been agreed
22 as well so it is ten months from when the search terms
23 are agreed. Just, again, because we've dived into 3 to
24 6, we may not have the context, we've agreed to provide
25 disclosure, I think it is under 96 requests, 77

1 custodians, 20 years, and a whole host of non-custodial
2 repositories. This is one of the biggest disclosure
3 exercises, in my experience, that I have encountered.

4 That may say something about my experience, but --

5 THE CHAIR: It doesn't help me, but yes.

6 MR SINGLA: No, but it is vast. It is really very
7 significant, so we're coming here today saying on our
8 proposals it is ten months and millions of dollars
9 and millions of documents, and, sir, you've given many
10 judgments in this Tribunal stressing the need for
11 claimants to show necessity and proportionality and it
12 shouldn't be no stone unturned and we say if this is not
13 a no stone unturned situation then what, frankly, is.

14 So, we say, actually, that when you think about
15 having to collate all these documents and put them on
16 the database and host them on these servers, and so on,
17 six times over, what is that adding to the overall trial
18 process? I mean, how much of this is actually going to
19 be necessary for the fair disposal of their case?
20 Because they will be getting all this disclosure under
21 the other Redferns, so that's why we say we're not
22 prepared to add anything else to the review pool beyond
23 the 480,000, and then I have got a separate point to
24 make in relation to expert submissions and -- sorry --
25 expert reports and submissions and analysis and so on.

1 We make a different point there. We say that in
2 relation to -- let's just take an expert report, we
3 started to discuss expert reports earlier -- if one
4 thinks about an expert report in the Klein proceedings,
5 that has been prepared by reference to US procedure, by
6 experts who won't be giving evidence in these
7 proceedings, and by reference to materials that may or
8 may not match the materials in these proceedings, so
9 what probative value will the expert reports from the
10 Klein proceedings have? And one of the critical points
11 is that there will be expert reports in these
12 proceedings, and so by allowing this sort of disclosure
13 request, what you are actually doing is opening the door
14 to a satellite debate about, well, why did expert X say
15 something in those proceedings, where the focus should
16 obviously be what are the experts saying in these
17 proceedings?

18 There will be satellite disputes about, well, we've
19 now had this expert report, we would like to have
20 follow-up material, what data did that expert have when
21 providing this opinion, so you are just setting off this
22 huge train of enquiry, and the rhetorical question we
23 pose is to what useful end? Why not focus on the expert
24 evidence that each party will be adducing in this case?
25 There's the redactions process as well, so we're not

1 just going to provide expert reports wholesale from
2 these other proceedings, we will be entitled to redact
3 material that is irrelevant, so why, again, are we being
4 put to that burden?

5 So we do say in relation to things like submissions
6 and expert reports and so on, all of which will take
7 place within the confines of these proceedings, there's
8 a particular proportionality point that arises in that
9 respect, and then the final point, really, on this, is
10 simply to say -- well, two things. One is we don't
11 accept -- we touched on this -- we don't accept that AI
12 is the answer to all of this. I want to come on to AI
13 when, perhaps, we discuss the long-stop date later in
14 the hearing, but just to put that marker down, I don't
15 accept for a moment that the answer is, well, all of
16 this can be done through AI because AI doesn't actually
17 operate as a substitute for review, human review, so
18 that is not an answer to all of this. One has to
19 address proportionality, as it were, not on the
20 assumption that AI suddenly changed the landscape to
21 such an extent that one can throw proportionality
22 considerations out of the window. Just to take an
23 example you said earlier that senior people would need
24 to review to do the redactions exercise. Well, AI is
25 not going to help on that front.

1 THE CHAIR: No, I wanted to stress that, because (Inaudible)
2 point.

3 MR SINGLA: Exactly.

4 THE CHAIR: Redaction is quite often (Inaudible) mistakes
5 are made, and then later on there is an issue, why was
6 this redacted, why wasn't this redacted, and so I just
7 wanted to make sure that if you are going to go through
8 a redaction exercise it is clear to your team that
9 whoever is in charge of disclosure has to review the
10 redactions before the material is served. That's all.

11 MR SINGLA: I understand. You are putting that marker down,
12 but the flip side of that -- I'm not, as it were, not
13 pushing back on that, I clearly accept that, but the
14 flip side is that is just a very good example of the
15 amount of work that is potentially generated by just
16 allowing any one of these requests, because it is sort
17 of superficially attractive to say, well, everyone is
18 agreed that there is just overlap with Klein so let's
19 just have the expert reports. We're sitting here at a
20 disclosure hearing, it's easy just to have that debate
21 at that level.

22 When you actually drill into that, it is going to be
23 a number of expert reports just on that one example, it
24 will be a number of expert reports from Klein, all of
25 which will need to be reviewed and redacted and then

1 there will be no doubt, given the CR's behaviour, all
2 sorts of disputes.

3 THE CHAIR: Well, no, because let's say that there are four
4 expert reports in the Klein case. Three may be wholly
5 irrelevant, so you don't need to worry about redacting
6 them. You are only going to have to redact such expert
7 reports that are relevant to the issues in the action.

8 MR SINGLA: Well that's right, but --

9 THE CHAIR: But, you know, I understand with all these sets
10 of proceedings, there's no 100 per cent overlap --

11 MR SINGLA: Exactly.

12 THE CHAIR: -- and there will be some issues in respect of
13 each of them where there is a certain degree of overlap
14 but there will be a lot where there is no overlap at
15 all.

16 MR SINGLA: Yes, there is a whole raft of material. It is
17 not even focused on -- I just use that as one example
18 but they are actually asking for essentially every
19 document from those proceedings. Look at the way it is
20 cast: submissions, analysis, reports. It is actually
21 asking this Tribunal to re-litigate, as it were, each of
22 these other sets of proceedings.

23 THE CHAIR: Well, I hope not because I'm only envisaging
24 that you will be giving disclosure of what is relevant
25 to the issues in this action. I understand at

1 a theoretical level -- there's a whole mass of stuff --
2 but I don't expect, necessarily, you are going to
3 disclose 100 per cent of the documents in the Klein
4 proceedings. That is never going to be on the cards.
5 It is not going to assist anyone.

6 MR SINGLA: But our point is, why is this going to assist at
7 all when you are getting disclosure in this case?

8 THE CHAIR: Let's look at a simple example. There have been
9 cases where you have got expert reports in other cases
10 filed by a party which say something different from the
11 expert report that is being put before this Tribunal,
12 and if that is so then you need to look at it, and here
13 these are six sets of proceedings where you've got the
14 same party, ie Meta is a party. There are cases where
15 you've got expert reports in wholly unrelated
16 proceedings, not involving the same parties, that said,
17 well, you are calling Mr X in these proceedings, we know
18 he has filed an expert report in other proceedings
19 involving different parties, then you can have an
20 argument as to whether or not that should be disclosed,
21 but this is the situation where you've got expert
22 reports filled by the same party in other litigation,
23 and where there are things said in that expert report
24 which are relevant and potentially inconsistent with
25 what their expert is going to be saying in these

1 proceedings, I think you are going to find that if you
2 want me to give a ruling on it, it is going to be
3 against you, but I think -- Mr Singla, let's try and be
4 realistic. We've got a huge amount of stuff to go
5 through. There has been a fair amount of pre-reading by
6 the Tribunal. What you are doing is very helpful but
7 you've got to realise, we've got to give some sort of
8 ruling on something and some points you've made some
9 ground, other points they haven't made some ground and I
10 need to sort of shake the tree at the end of this and
11 say this is what the position is, right or wrongly, I'm
12 going to have to say some position within the next 15
13 minutes on all of this.

14 MR SINGLA: Two final points. I was actually about to
15 finish.

16 THE CHAIR: No, I want to hear you on R6.

17 MR SINGLA: Exactly. That's the last point, but just before
18 I come to that, just to respond to the example that
19 you've given, we do accept that analysis in relation to
20 factual material, because we do accept, if someone wants
21 to say Witness X is either at both trials or isn't at
22 the second trial, that's a valid point, so we've
23 accepted factual material, but where we do urge the
24 Tribunal to be much more cautious is expert evidence,
25 and as I say it's not just expert evidence, it is also

1 submissions, because otherwise this trial is going to
2 balloon in terms of the scope of the trial. I mean, you
3 are going to have a situation at trial where they are
4 saying, well, look at these submissions in some other
5 set of proceedings. Look at this expert report. This
6 is a huge case, and it is going to be a very intense
7 trial, as things stand.

8 THE CHAIR: How many weeks is it?

9 MR SINGLA: I think it is ten weeks, is currently the
10 listing. It is clearly -- you will understand there are
11 a lot of issues and a lot of material within these
12 proceedings, and so the reason we do regard expert
13 evidence and submission and analysis and studies and
14 reports -- it is actually quite hard to know even what
15 they are referring to but let's just focus on the
16 example of expert reports -- so if you have an expert
17 report produced in line with US procedure which is not
18 Part 35, for example, or similar in the Tribunal, one
19 can't have a situation where there are arguments about,
20 well, why wasn't this said and that -- I mean, this is
21 why --

22 THE CHAIR: Let's see how these things work. You start off
23 with the pleadings. You have the disclosure. It is
24 a big exercise. That is analysed, and then that is
25 distilled into what points are worth taking and what is

1 not worth taking at trial, and one would hope even if
2 there is a voluminous disclosure exercise, that only
3 a relatively small proportion of those documents will be
4 referred to at trial, and that if a party starts
5 going -- nit-picking about what was said, precise
6 wordings in previous ones, on non-main issues, they are
7 not going to get very far depending on how this case is
8 managed at trial.

9 MR SINGLA: But in my submission that is why you should
10 grasp the nettle now and not open the door to that sort
11 of enquiry. That's the difficulty, you see, by allowing
12 the disclosure requests today -- I do stress, it is all
13 this material, not just expert reports, and it is all
14 six sets of proceedings, that is what they are asking
15 you to do. You open the door by way of disclosure, (a)
16 you are setting a huge amount of work and putting Meta
17 to a huge amount of time and cost (b) for very little
18 gain ultimately at the end of the day. What you've just
19 said, ultimately none of this is likely to be very
20 probative, I would submit, is why you shouldn't open the
21 door now.

22 THE CHAIR: It may or may not be. I'm not saying none of
23 it. I think what you will find is that within it there
24 will be some material that is highly probative for both
25 sides, that there will be a lot of material which won't

1 be highly probative for both sides.

2 MR SINGLA: On the highly probative, I'll just break that
3 down. It needs to be a set of proceedings that does
4 overlap, you have my submissions on the six, and (b) it
5 needs to be highly probative over and above what this
6 Tribunal will be getting by way of witness statements
7 and expert reports, so normally the Tribunal is very
8 keen for understandable reasons, very keen to impose
9 discipline on the scope of expert evidence -- what
10 fields, how many reports, how it should be served, etc.
11 The Tribunal controls that rigorously for obvious
12 reasons in cases like this, and that is why we are very
13 concerned that you open the door to what looks like
14 a superficially attractive submission on a disclosure
15 basis, you are actually undermining the control that the
16 Tribunal otherwise has on disclosure. We get the point
17 on factual material. We do get that point, which is why
18 we've made the proposal that we've made, but expert
19 evidence, and any related analyses and reports, is, in
20 my submission, a different kettle of fish.

21 Then the final point is just to deal with Request 6,
22 because that is incredibly broad. So many of the points
23 I have made on proportionality apply to Request 6
24 because, again, one has to ask the question: is it
25 necessary, is it proportionate over and above the

1 de novo exercise --

2 THE CHAIR: Okay, well look, if I'm against you on 6,
3 provisionally against you, I'll give you another
4 opportunity to deal with that.

5 MR SINGLA: I'm grateful.

6 THE CHAIR: Ms Ford, let's deal with R6 first.

7 MS FORD: It is asking for submissions to be made to three
8 data protection regulators, so it is the same category
9 of documents that we are asking for in relation to
10 Request 5, expert and/or witness evidence, reports,
11 studies, analysis, underlying documents. Just pausing
12 at "underlying documents" there may be a misconception
13 on the part of Meta that what we're asking for there is
14 every single document ever, what we're seeking is the
15 documents which underlie the categories of documents
16 we've already sought, and so if, for example, you have
17 a witness statement that refers to particular documents,
18 then the contemporaneous documents that are referred to
19 in that witness statement will be underlying documents.
20 It is not, possibly, as broad as those on the other side
21 may have perceived.

22 This request is asking for those submissions insofar
23 as they have been either disclosed by Meta to these
24 three regulators or received by Meta from the relevant
25 regulators.

1 The basis for that request is, first of all, the
2 submission that I made earlier, which is that concerns
3 about data protection and privacy obviously are a thread
4 which run throughout the Class Representative's case on
5 this, and they underpin, albeit not reliant on, they
6 underpin the allegations of abuse that are being made,
7 and so we know that there is this pre-existing
8 repository of documents which have been provided to
9 these three regulators in respect of those issues, and
10 we say that there can be no sensible proportionality
11 challenge to providing those documents. That is
12 essentially the basis for the request.

13 It is actually quite surprising that these requests
14 as a group are so vehemently opposed because they are
15 these separately-identified caches of documents in
16 relation to underlying relevant proceedings, so in many
17 respects --

18 THE CHAIR: But these ones here, for example, the
19 Information Commissioner's Office, and the Irish Data
20 Protection Commissioner and the European Data Protection
21 Board, are these specifically dealt with in the
22 pleadings?

23 MS FORD: No. They've been dealt with in the evidence.

24 THE CHAIR: I understand that. My recollection is I don't
25 remember seeing these in the body of the pleadings, and

1 as I understand it, the offer on page 5 of the Redfern
2 schedule, that relates, effectively, to the proceedings
3 which are referred to in paragraph 103 of the Amended
4 Claim Form, and that offer doesn't apply to the
5 documents in category 6. Is that right, Mr Singla?

6 MR SINGLA: It is half right. These are (Inaudible)
7 struggling to find the references. We have made the
8 proposals in relation to the three which are pleaded.

9 THE CHAIR: I understand that.

10 MR SINGLA: But to be clear, we don't accept --

11 THE CHAIR: When you talk about -- if we look at page 5, and
12 it says "your disclosed contemporaneous document
13 provided", etc, in proceedings, in paragraph 103, that
14 offer does not relate to the documents in Request 6,
15 does it?

16 MR SINGLA: Sorry, I can't find where you are reading from.
17 The Meta entities (Inaudible) to the extent those
18 documents -- so what we're saying --

19 THE CHAIR: I have got R6.

20 MR SINGLA: Yes, I am looking at that paragraph.

21 THE CHAIR: The last paragraph of R6 in your column.

22 MR SINGLA: What we're saying is we're not going to give any
23 disclosure in relation to R6 to the extent the stuff
24 with regulators is relevant they will be responsive to
25 the de novo searches. That's the point being made in

1 that paragraph. We're not doing a wholesale search of
2 these exchanges with regulators.

3 THE CHAIR: I may be being a bit slow. The point I'm making
4 is that offer relates to paragraph 103 of the Amended
5 Claim Form. Paragraph 103 of the Amended Claim Form
6 does not refer to any of these proceedings in Request 6,
7 so my only question of you was: is this offer actually
8 in relation to Request 6? I think it probably isn't.

9 MR SINGLA: That may be right but that's the extent of our
10 general position.

11 THE CHAIR: No, your general position I understand, but you
12 are not making that offer in relation to these --

13 MR SINGLA: It is not really an offer. It is a statement of
14 the position which is -- if Request 6 -- you are right
15 on the pleading point, so if that's was the straight
16 question, you are right that these ones aren't
17 pleaded --

18 THE CHAIR: No, they are not.

19 MR SINGLA: -- but what that paragraph does encapsulate is
20 what we're saying on all of this, to the extent we're
21 pushing back on 3 to 6, they will get material through
22 the de novo searches.

23 THE CHAIR: Okay.

24 MS FORD: So, just while we're looking at paragraph 103,
25 there is a relevant reference in subparagraph (j) which

1 is on page [B/11/79].

2 THE CHAIR: Oh yes. That's the Canadian, Norwegian and the
3 Irish Data Protection Commission.

4 MS FORD: So the Irish Data Protection Commission is one of
5 the ones identified here. We've obviously gone for the
6 UK Information Commissioner as well, and then the
7 European one, of course, for a material proportion of
8 the relevant period, the UK was part of the European
9 Union and so that's the -- we would say -- potential
10 relevance.

11 THE CHAIR: Okay. All right.

12 MS FORD: May I make some very brief responsive submissions
13 to some of the other points that Mr Singla covered?

14 THE CHAIR: You can.

15 MS FORD: First of all, the Tribunal was given a great deal
16 of information about the 1.3 million documents
17 statistic. It is true that we have been provided with
18 various hit count figures at various junctures and so
19 the 24 June version of DR and EDQ gave a figure of 7.8
20 million hits across custodial searches, and then on 8
21 August that was amended to 13.6 million hits across
22 custodial searches, and then on 3 October in the cover
23 letter to the Redfern response, we were given
24 a 10 million figure, and it is Ms Dietzel's statement
25 that now gives you the 1.3 million figure. It is fair

1 to say that these figures seem to fluctuate on a fairly
2 regular basis.

3 The 1.3 million figure is as emerged in submissions
4 prior to global deduplication and email threading and
5 culling. If one takes those into account we were told
6 in Ms Dietzel's statement you come down to a figure of
7 750,000.

8 We have repeatedly sought explanation as to how
9 these particular figures, or the variations of them,
10 have been arrived at, and in our submission we haven't
11 been provided with a satisfactory explanation for any of
12 the incarnations of them.

13 In our submission, it really isn't enough to point
14 to a global figure which is somewhat opaquely arrived at
15 and say that means that the Tribunal should reject any
16 particular request. In our submission, if one wants to
17 rely on hit counts in that way, they need to be broken
18 down by period, by custodian, and by dispute as between
19 the parties to give the Tribunal something concrete to
20 say, well, if you order Meta's version you get this, if
21 you order the class rep's version you get that. We
22 haven't been given that degree of granular information,
23 so in our submission simply saying 1.3 million is
24 a fairly large number doesn't, in our submission, really
25 grapple with questions of proportionality that would

1 assist the Tribunal.

2 The second point concerns the relevance of the DMA
3 to these proceedings. The Tribunal has the vast
4 majority of my submissions on this. I would just pick
5 up the point that was made that the DMA doesn't apply
6 into the UK which is obviously incontrovertibly the
7 case, but of course Klein is proceedings that the --
8 that Meta accept are potentially relevant, and that was
9 US proceedings, and the German Bundeskartellamt
10 investigation is proceedings that Meta concedes are
11 relevant and that is under German competition law. It
12 is not by any means dispositive to say, ah well, the DMA
13 doesn't apply in this jurisdiction.

14 The third point concerns what we've been told about
15 factual materials, and can I ask the Tribunal, please,
16 to look at the green writing which is what we are being
17 offered -- this is in Request 4, the green version is
18 Meta's formulation.

19 What we're being told is factual narrative
20 statements redacted for irrelevant material, contained
21 within the responses to requests for information
22 provided by Meta in those three proceedings. That is,
23 in our submission, extraordinarily unclear language as
24 to what actually is being offered.

25 What is actually meant by "factual narrative

1 statements", certainly in our submission doesn't seem to
2 be particularly broad, and I reiterate the submission we
3 made earlier that there is no principled reason to
4 select factual narrative statements as meriting
5 disclosure and to disregard various other types of
6 documents which are also within these readily accessible
7 categories of documents, and say, well, those are
8 disclosable and these are not.

9 In relation to Klein, the submission was made, as
10 anticipated, that because we said we didn't want an
11 unsearched --

12 THE CHAIR: There's no issue about what needs to be
13 disclosed. It is the pool, isn't it?

14 MS FORD: That is true, although there is still this
15 suggestion that somehow because we rejected the 480,000
16 being piled upon us that we are not entitled --

17 THE CHAIR: I'm far too practical to worry about that. We
18 had this argument last time. I really don't like going
19 over ground we had last time. I was in your favour last
20 time. I'm unlikely to change that this time round. Yes.
21 Okay.

22 MS FORD: There is some evidence about composition of the
23 pool and why we suggest it should be the broader
24 version. That is Ms Vernon's statement [C7/4/27]. It
25 is 58. 58 is the paragraph which is dealing with Klein,

1 but actually the relevant subparagraph is 58.3 over the
2 page [C7/4/28].

3 THE CHAIR: Okay. Thanks very much. You can sit down now.
4 Thank you.

5 Ruling (Requests 3 to 6) (Redacted for Approval)

6 So, Ms Ford, what's the next topic you would like to
7 go through?

8 MS FORD: The next request was Request 7 and I think it
9 is -- it does work to work through these in order.

10 THE CHAIR: I think that is what we're going to do, yes.

11 MS FORD: It will provide the Tribunal with a degree of
12 reassurance, I think these things do get quicker as we
13 work through them.

14 THE CHAIR: They normally do but you have to appreciate
15 that, you know, if you are going to get rulings today it
16 is going to -- they may not be the -- something that
17 Shakespeare would have written in the beginning of the
18 17th century but it is something that you can all work
19 with.

20 MS FORD: So Request 7, there's a considerable amount of
21 writing which is simply in black meaning that the
22 formulation is agreed, so it is asking for one copy of
23 final non-draft versions of each of the terms of
24 service, statement of rights and responsibilities, etc,
25 in each case, to the extent applicable to UK users, in

1 relation to their access to and use of the user side of
2 Facebook and data generated as a result, their activity
3 on the user side of Facebook, Meta's collection and/or
4 receipt and/or processing and/or use of Off-Facebook
5 Data and then we come to the point where there is
6 slightly more dispute, one copy of final non-draft
7 versions of the equivalent to each of (a) and (e) above
8 in relation to Instagram, WhatsApp, Oculus and Onavo.

9 Just to explain where the areas of dispute are,
10 there is a dispute concerning the extent to which Meta
11 should provide terms and policies which are applicable
12 to other Meta products. Now, this arises for the first
13 time under this Request 7 but it reads through to at
14 least Request 8 to 16.

15 Meta originally suggested that in response to this
16 request they were only prepared to provide copies of the
17 terms and policies in respect of Facebook itself. They
18 then indicated that they were prepared to agree to
19 include Instagram and WhatsApp. Now, there are two
20 areas of dispute. I'll explain them and then address
21 them.

22 The first is slightly extraordinarily, the
23 concession that was made under Request 7 that they will
24 provide terms for Instagram and WhatsApp, we were told
25 very recently that request doesn't read through to the

1 subsequent requests which refer back to Request 7, so
2 the way in which --

3 THE CHAIR: We will come to those later but let's just deal
4 with 7, shall we?

5 MS FORD: We can certainly deal with 7 in isolation, but the
6 very short point, and I may not be able to make it
7 better when we come on to subsequent requests, is
8 insofar as you have a request which refers to the terms
9 in Request 7, and a concession has been made that that
10 includes Instagram and WhatsApp, we don't see the logic
11 of saying, actually, it doesn't, in relation to
12 subsequent requests.

13 THE CHAIR: Well, it may be that in subsequent requests
14 there will be particular reasons why it's not
15 appropriate but I think that -- let's try and deal with
16 7 first, and then we will just work through when we come
17 to it because whatever ruling we give on this may help.

18 MS FORD: The dispute specifically on 7 is that we have also
19 sought two additional Meta products, terms in respect of
20 two additional Meta products and those are Oculus and
21 Onavo. The class rep's pleaded case on this is that
22 Off-Facebook Data about Facebook users is collected from
23 products and services that are owned by Meta other than
24 the Facebook service, and the reference to the other
25 products and services from which this Off-Facebook Data

1 is collected is non-exhaustive, so, for example, if we
2 look at [B/11/36], paragraph 61, there's this headline
3 plea under "Off-Facebook Data collection":

4 "Throughout the Claim Period, the data that Facebook
5 has collected from its Users has included detailed User
6 data concerning their activities off Facebook's social
7 media site including in particular data on User activity
8 from: (i) other Meta products and services (e.g.,
9 Instagram)..." and then third party websites and apps,
10 so this is the headline plea about where this concept of
11 Off-Facebook Data comes from. It comes from, amongst
12 other things --

13 THE CHAIR: So what are we looking at? Your claim, is it?

14 MS FORD: This is our Claim Form, yes.

15 THE CHAIR: So Claim Form, paragraph 61, yes?

16 MS FORD: 61. One of the sources of Off-Facebook Data is
17 services owned by Meta other than Facebook itself and
18 then if we go to 81 on page 47 please --

19 THE CHAIR: And you say Off-Facebook Data includes Oculus
20 and Onavo.

21 MS FORD: Yes, and I can show you the specific references to
22 that, but the point that I make even before we get to
23 that is that this is essentially a non-exhaustive
24 pleading, paragraph 81, Off-Facebook Data is also
25 collected from products and services owned and operated

1 by Meta other than the Facebook service. Such products
2 and services include, amongst other things, Instagram,
3 Messenger and Marketplace, so the concept of
4 Off-Facebook Data which underlies this pleading is one
5 which comes from other Meta products and services other
6 than Facebook, and the allegation is that those being
7 the sources of Off-Facebook Data meant Meta then uses
8 them to target Facebook users on Facebook and so it is
9 relevant to see the terms and conditions that govern the
10 collection of that data from other Meta services which
11 is then used to target users on the Facebook service.

12 Now, our position is that that strictly is
13 a pleading which is capable of covering all other Meta
14 services. It is certainly not restricted. What we have
15 done is suggest Oculus and Onavo because those are two
16 which are expressly mentioned in the pleadings, so, for
17 example, Onavo is mentioned at 103G on [B/11/77].

18 THE CHAIR: Let's have a look. [B/11/77].

19 MS FORD: It is referring to proceedings in the Australian
20 Competition and Consumer Commission in the Federal Court
21 of Australia against Facebook. The ACCC alleged that
22 Facebook, and its wholly owned subsidiaries -- together
23 with Onavo -- made false, misleading or deceptive
24 representations that Onavo Protect, software application
25 provided by Onavo, would keep users' personal

1 information private, protected and secret and that such
2 data would not be used for any purposes other than to
3 provide the Onavo Protect services, and it goes on to --

4 THE CHAIR: So you are saying, for example, on Onavo that
5 they may have been using data from Onavo to help target
6 on Facebook their advertising, or advertising?

7 MS FORD: Sir, yes, but that is -- it is an example. It is
8 important to emphasise that the allegation being made is
9 that data is being collected from products and services
10 other than Facebook and then bought in and used to
11 target users on Facebook, and so the criticism that is
12 made of us is, well, you've pointed to this particular
13 piece of information about Onavo but it is peripheral.
14 You are simply citing a particular decision that has
15 been found in respect of that, and that really is
16 missing the point, because the alleged abuse -- we're
17 not alleging an abuse which is specifically concerned
18 with Onavo specifically concerned with Oculus we are
19 alleging an abuse which is specifically concerned with
20 Off-Facebook Data. Off-Facebook Data comes from,
21 amongst other things, other Meta products and service
22 and these are two such examples. We've narrowed it down
23 to those that have been specifically identified in the
24 pleadings, but it is not being suggested that this is an
25 abuse which is specifically concerned with Onavo, an

1 abuse which is specifically concerned with Oculus, it is
2 an abuse which is concerned with Off-Facebook Data and
3 we need the terms and conditions which govern the
4 collection of that data.

5 The Tribunal will appreciate that we face the
6 classic asymmetry information when we're advancing that
7 sort of case, because pending disclosure, we don't know
8 exactly what exhaustively are the sources from which
9 Meta collects its Off-Facebook Data, and so in our
10 submission it would be very unfair for Meta to say "the
11 mentions you have made of Oculus", or "the mentions you
12 have made of Onavo", aren't sufficiently forceful that
13 it justifies providing disclosure in relation to those
14 particular sources in advance. We say we've pleaded the
15 headline point that Off-Facebook Data comes from
16 services other than Facebook, amongst other places, and
17 that's what this disclosure goes to.

18 So a new argument in relation to this point was
19 advanced for the first time in a letter we received on
20 21 November at around about midnight, and that is at
21 [E2/340/1]. In fact, it is over the page, paragraph 7
22 of this letter [E2/340/2].

23 Now, what is being suggested here in correspondence
24 rather than in evidence, is that the Oculus and Onavo
25 user base is too small to have made a material

1 difference to the volume of Off-Facebook Data which is
2 collected by Meta. We have responded to that in our
3 letter of 23 November which is at [E2/344/1]. If we can
4 go, please, to paragraph 5 within this letter [E2/344/2]

5 We've made the points in response, paragraph 5(a),
6 we've made the point that I have just made, that this is
7 essentially an assertion, it's not supported by
8 evidence, and we draw attention to the fact that there
9 are at least 20 million Oculus Quest units sold as of
10 2023 and as of 2018 Onavo had over 33 million installs.
11 That's what we've managed to ascertain on the basis of
12 publicly-available information. We make the point that
13 it is not just the volume of data received from these
14 platforms that is relevant but the value of that data
15 and we've drawn attention to another publicly available
16 source which has made observations about the nature of
17 the data that was obtained from Onavo, and then over the
18 page on (c), we've addressed the suggestion that was
19 made that data was not shared between Oculus and Onavo
20 and Facebook and we say well, if that's the case, why
21 has no evidence been put in on this particular point.

22 It is worth emphasising that we haven't, in this
23 request, even sought terms in respect of all the
24 Facebook products or all the Meta products that have
25 been mentioned in the particulars. We've mentioned

1 Masquerade but we haven't pursued that --

2 THE CHAIR: How are we going to get to the bottom of their
3 point at (c), though? They are saying data wasn't
4 shared.

5 MS FORD: Mr Simester reminds me that the class rep's
6 pleaded case in the paragraph that I showed the Tribunal
7 has made a finding to the effect that this data was
8 shared.

9 THE CHAIR: No, your case is it was shared. Is it their
10 case that it wasn't shared?

11 MS FORD: Well, that appears to be a suggestion that has
12 been made very late in the day in correspondence. Of
13 course, the reality is that if the parties are joining
14 issue on that as a dispute, that can't be resolved now
15 and it certainly can't be the basis on which to decline
16 disclosure.

17 THE CHAIR: Yes.

18 MS FORD: Of course, what we're seeking here are the terms
19 and conditions which govern the transfer of Off-Facebook
20 Data from these other Meta products and services. They
21 may well cast light on that point. The very disclosure
22 we're asking for here is to seek to ascertain the extent
23 to which such data was collected from other terms of
24 services and then used on the Facebook service, so we
25 maintain our request for disclosure in respect of Oculus

1 and Onavo and that, to be clear, is something which we
2 say will then continue to apply in relation to
3 subsequent requests as well, because they refer back to
4 the terms and conditions that we are seeking under
5 Request 7.

6 THE CHAIR: Well, it is fairly fundamental as to whether or
7 not the data was shared.

8 MS FORD: If there were a good reason to imagine that it
9 wasn't, one might have hoped that that would have been
10 addressed in Meta's evidence in relation to the CMC and
11 not in a letter which was received at midnight a couple
12 of days ago.

13 THE CHAIR: Let's not worry about the time of night.

14 MS FORD: In my submission it does enable the Tribunal to
15 infer that there is not a good case to suggest that no
16 disclosure be given on that basis.

17 MR SINGLA: In fairness I'm not taking this point today. I
18 have to reserve my position and so I do oppose this but
19 not on that basis.

20 THE CHAIR: Yes. Shall I scrap that for now?

21 MR SINGLA: For now you can but I do reserve my position on
22 that.

23 THE CHAIR: Yes.

24 MS FORD: Sir, those are our submissions.

25 THE CHAIR: That's fine. Thank you very much.

1 Mr Singla?

2 MR SINGLA: Sir, our position on this is that one has to
3 remember that it is not sufficient for this there be
4 a mere pleading reference, and so this disclosure has to
5 be necessary for the fair disposal of the claim, and
6 this is actually quite a good example -- again, there
7 are some general points that arise which actually will
8 keep coming up as we go along -- but we do, we've
9 referred to the authorities in our skeleton. It's quite
10 important in my submission that you yourself have said
11 in other cases, mere relevance is not enough. Is it
12 actually going to be necessary? That is really the
13 test.

14 THE CHAIR: Yes.

15 MR SINGLA: So the dispute now has become as to whether to
16 add Oculus and Onavo, but previously the CR was seeking
17 all Meta products, and we say it is no good pointing to
18 the way in which this pleading described by the Tribunal
19 in rather critical terms -- one can find anything in
20 that pleading.

21 THE CHAIR: You can.

22 MR SINGLA: So one actually has to analyse, is this
23 necessary in the context of this case as a whole.

24 What's telling is that the way in which it is
25 pleaded, Ms Ford has shown you where Oculus and Onavo

1 come in. If I just take you back to the reference to
2 Onavo, so it is [B11/77/1], this is in paragraph 103,
3 and it is actually worth just looking at what 103 is
4 doing, because this is actually not in any way advancing
5 the case. It's just a completely prejudicial type of
6 plea which is going to be used and has already been used
7 as a hook for disclosure, and in my submission unless
8 one draws a line, what one is actually doing is
9 endorsing an approach whereby one can produce a pleading
10 which is this long, cast as wide as this, and then say,
11 well look at (g), so (g), so Facebook -- under 103, the
12 plea is Facebook's conduct and its use of personal data
13 are the subject of regulatory and legal proceeding,
14 right? That is what 103 is doing, and then you look at
15 (g), there's an Australian set of proceedings which even
16 the CR wasn't trying to include in 3 to 6, so this is
17 really very tangential, and they say that Onavo --
18 there's the allegation that there was some false
19 misleading or deceptive representations, so that has got
20 nothing to do -- just pausing there, those Australian
21 proceedings have got absolutely nothing to do with the
22 allegations in this case. One has to remember, this is
23 all about the value arrangement between Facebook users
24 and Meta, so they've pleaded, 103(g) -- actually, it is
25 the sort of plea that should be struck through -- and

1 now they turn up, and they say well, no, no, no, that's
2 a hook to include Onavo in Request 7, and so what is
3 striking and what I would ask you just to contrast that
4 sort of plea, which is completely gratuitous, with the
5 way they've pleaded Instagram, and I know she did show
6 you a couple of these references, but if one starts --
7 go back to page 2 of this document, so you might think
8 that the central allegations would be found in the
9 summary of their case, if you go back to page [B/11/2],
10 this was the summary that they were ordered to provide
11 by the Tribunal because the main pleading is so long,
12 S5, yes, it's true that the claim as pleaded is relating
13 to Off-Facebook Data but one can actually see from S.5
14 what the central allegation is. You see (i), other Meta
15 products and services, e.g. Instagram, and I think
16 Ms Ford took you to one reference in the main Claim
17 Form, which is paragraph 61, but if you just quickly
18 look at page -- if you go to page 28, [B/11/28], just
19 another example, 48(b), other services owned by Facebook
20 such as Instagram, and if you look at paragraph 51,
21 which is page 33, throughout the claim period Facebook
22 obtained extensive personal data from other Meta
23 products and services such as Instagram, so I obviously
24 accept that the sort of way -- that the language that is
25 being used, such as, one could say, well, it is all

1 non-exhaustive as they try to do with Off-Facebook Data,
2 but really one has to ask oneself is this central to the
3 case, and we say Instagram is clearly pleaded in
4 a fashion that is central and that's why we've agreed
5 today to include Instagram and also WhatsApp in Request
6 7. They are not pursuing all Meta products because they
7 have realised that that would be too expansive, so it
8 can't be said that their pleading is non-exhaustive,
9 therefore they get everything. They accept a line has
10 to be drawn because they've dropped things like
11 Masquerade which is also -- features in paragraph,
12 I think, 151, so it is common ground that one has got to
13 be sensible about this, and the question is where do you
14 draw the line, and we say that reference to Onavo really
15 is a hopeless basis to ask for disclosure, and then on
16 top of that, so that is just the pleading point, and
17 then you've seen the letter that we sent, and I don't
18 accept that just because it is not in a witness
19 statement it doesn't have weight with the Tribunal, and
20 what they say about that, so we make the point in
21 correspondence that in contrast with Instagram and
22 WhatsApp, this is all likely to be de minimis, and if we
23 just go back to the Quinn Emanuel letter, we can just
24 bring up their letter because you will see that the
25 figures that -- I'm very grateful, that is up on the

1 screen [E2/344/3]. You will see that the figures that
2 they give -- do you see at 5(a) where they try to say --
3 THE CHAIR: I saw their figures, yes.

4 MR SINGLA: Yes, but, I mean, one has to contrast those
5 figures with Instagram and WhatsApp. Talking about
6 billions of users, so this is trivial stuff, not central
7 to the pleading and a line has to be drawn somewhere, so
8 that is what we say about these two products.

9 THE CHAIR: Okay. Thanks very much.

10 Ruling (Request 7) (Redacted for Approval)

11 With that we will have our break but then can you --
12 can you just tell me where we are for the rest of the
13 day?

14 MS FORD: We're going to move on to Request 8. That -- the
15 first request where I anticipate the Tribunal will be
16 addressed on the disputes as to whether something should
17 be custodial searches or non-custodial searches.

18 THE CHAIR: Okay. That's not your bag, is it? That is for
19 someone else to argue?

20 MS FORD: Well, I will be addressing that as a question of
21 principle, but Mr Simester is going to address the
22 particular disputes on custodial repositories, if the
23 Tribunal looks at the different-coloured wording under
24 custodial repositories, there are disputes between the
25 parties. If one is looking at custodial search, what

1 does that entail, and he is addressing that particular
2 point, and there is a preliminary issue which arises in
3 relation to the cross-referencing to terms, because
4 this -- presently as formulated -- refers to the terms
5 of service or equivalent identified in Request 7, and --

6 THE CHAIR: Okay. If we resolve 8 today, is that being to
7 give the teams something to work on tomorrow, so when we
8 come back on Wednesday we will have a revised Redfern
9 schedule that the parties can work on tomorrow? Is that
10 just being too optimistic?

11 MS FORD: It would certainly be indicative of the result --
12 of the outcome we might expect if similar issues were to
13 then be debated before the Tribunal in relation to
14 similar repositories. For our part, the approach we've
15 taken to the distinction between custodian and
16 non-custodian disclosure does broadly read through to
17 subsequent requests.

18 THE CHAIR: Sometimes what happens is -- and maybe I'm a bit
19 optimistic about using other examples -- but when you
20 have a long Redfern schedule you go through what you go
21 through, the parties understand the direction of travel
22 and the solicitors, amongst themselves, have
23 a constructive meeting and say, well, look, we think
24 Malek is going to do this so we might as well agree
25 this, or whatever, but that doesn't always happen, and

1 I'm not saying this will happen here. It all depends on
2 whether or not you've got enough feed from us to give
3 you an indication of the direction of travel for both of
4 you, and the direction of travel at the moment is it is
5 not 100 per cent in favour of either of you, but I'm not
6 saying there -- at least the judgments are solvent --
7 but I'm saying that we are happy to look at each one of
8 these carefully in order to get it right, but on the
9 other hand we will probably -- maybe asking too much to
10 see if you could make another effort tomorrow to see if
11 everyone working constructively -- and I do want to make
12 a point, you have, on a number of occasions, been saying
13 that the other side haven't been that constructive.
14 I think they have been constructive. They are trying,
15 just as you are, to work through what can be quite
16 difficult issues to resolve, and when you've got two
17 sets of good firms like you have, often what you get is
18 a good result. You know, you do find a lot of, let's
19 say, pragmatism on both sides. I do hope that whatever
20 happens today something better will happen tomorrow, so
21 when we come back on Wednesday we're not going to have
22 to resolve 80 requests, we're going to have to resolve
23 whatever ones you both feel we need to resolve on, and
24 if it means that we're not able to resolve everything,
25 and there's still some that are outstanding, then we can

1 probably have just a short remote hearing to work
2 through whatever is left, so the idea is we finish 8
3 today, people work on it insofar as they can tomorrow,
4 come back on Wednesday, we will do whatever we can on
5 Wednesday and there is probably going to be another
6 effort between the two solicitors to try and finalise
7 it, and if there are bits at the end of the day they
8 can't agree then we will have a remote hearing before
9 Christmas to resolve whatever is left, and I suggest it
10 is just me sitting alone because I don't really think
11 that the other two will need to be here, but hopefully
12 what will be a tidying-up exercise rather than anything
13 more fundamental, so that is how I propose to deal with
14 it.

15 Mr Singla, are you happy with that?

16 MR SINGLA: Yes. I mean, I --

17 THE CHAIR: I'm not saying you have to be happy but are you
18 content with that?

19 MR SINGLA: I think there is a degree to which some
20 decisions will affect requests later on but equally
21 there are some nuances, and so --

22 THE CHAIR: Yes, I think there are, yes. We just have to do
23 what we can in the time available.

24 MR SINGLA: I'm very grateful for the offer of some
25 additional time to argue the points because they are

1 important and if one rushes through them some important
2 points get dealt with at some speed. I think it is
3 helpful to carry on as we are because then we can take
4 on board --

5 THE CHAIR: We will see where we are at close of business on
6 Wednesday, but I don't intend to reserve anything. As
7 soon as we hear a request we will have a ruling, right
8 or wrong, we just keep going, and so by the end of
9 Wednesday you will have a ruling on a few things which
10 could help encourage people to come to an accommodation
11 on whatever is left.

12 MR SINGLA: Certainly when we get to whether the right
13 repositories are being searched that may well have
14 a bearing later on, because we've -- I think you've
15 probably picked this up, in many places we say we're
16 going to do non-custodial or custodial and they are
17 pushing for both, and that sort of point definitely will
18 have implications.

19 THE CHAIR: Yes, further down the line. Yes. Thank you. We
20 will come back at twenty two.

21 (3.30 pm)

22 (A break was taken)

23 (3.47 pm)

24 THE CHAIR: Ms Ford, can we just deal with redaction again?

25 The conventional position is if you've got a document

1 that has got one paragraph that is relevant, that is
2 a relevant document and it should be disclosed.

3 MS FORD: Yes.

4 THE CHAIR: Then you look at the cases on redaction for
5 privilege. If you've got a document that contains a
6 section which is -- contains privileged advice, you are
7 entitled to redact that paragraph and give disclosure,
8 so that is the second scenario. If you have a document
9 that has passages which are irrelevant, the general
10 position is you've got to give disclosure of the whole
11 document, unless the passages you want to redact are
12 irrelevant and confidential, so you've got that
13 additional piece.

14 Now, I'm not sure what is being proposed here on
15 redaction, because there are references in the Redfern
16 schedule to redacting irrelevant material. Is it
17 contemplated that what is going to be done is something
18 beyond the normal scope, i.e. you go through a document
19 and you say, well, this paragraph is irrelevant so we
20 blank that, or is it going to be the conventional
21 approach which is, ah, there's a -- there is this
22 section which relates to something else, it is
23 irrelevant and it is confidential so we're blanking it
24 out. How do you envisage to working?

25 MS FORD: I would have to seek instructions as to whether

1 this has been canvassed in the correspondence between
2 the parties. On my feet now I'm not aware that this is
3 a point that has been aired between them in the terms
4 that you've just said.

5 THE CHAIR: We will come back to this on Wednesday then.

6 Mr Singla, we will come back to this on Wednesday.

7 MR SINGLA: That would be --

8 THE CHAIR: That's fine, as long as we know what the ground
9 rules are, but we can work it out on Wednesday.

10 MR SINGLA: I mean, I have to say, I'll just reserve my
11 position on whether, in fact, that is the normal
12 approach or whether it is simply enough that something
13 is irrelevant -- there's obviously the point about you
14 can't redact things if it makes the document unreadable,
15 not sure I would necessarily --

16 THE CHAIR: Well, if you can show me an authority which --

17 MR SINGLA: GE Capital is the starting point, isn't it?

18 That just seems to be an entitlement to redact
19 irrelevant material.

20 THE CHAIR: Yes, but the assumption in that was that it is
21 confidential but you can take a relatively broad
22 approach to what is confidential in saying that you are
23 going to be redacting but I'm not sure if the
24 authorities are in your favour if you can redact merely
25 for irrelevance, because if that is right, it would mean

1 almost every case, you are going to have substantial
2 redactions which no one really wants, but look at it --
3 we will come back to it on Wednesday. I just want to
4 make sure that whatever the ground rules are, we work
5 them out between us before we leave on Wednesday.

6 MR SINGLA: That's understood.

7 THE CHAIR: Thanks very much. Okay.

8 MS FORD: Request 8.

9 THE CHAIR: And you will remind me on Wednesday, we will
10 come back to this.

11 MS FORD: Sir, yes.

12 THE CHAIR: Thank you. Request 8.

13 MS FORD: Just taking, first of all, this threshold question
14 about requests which read across to each other, and this
15 is a good example. This is a request which is concerned
16 with how and for what purposes Meta introduced,
17 designed, displayed and implemented the UK user terms of
18 service and equivalents, identified in Request 7, and
19 why they were communicated in the way that they were.

20 The basis on which this has been proposed is that
21 insofar as Request 7 covers Instagram, WhatsApp, Oculus
22 and Onavo, the scope of Request 7 in which the relevant
23 terms of service has been identified would then read
24 across into subsequent requests, and so having
25 identified the terms on which Off-Facebook Data is

1 transferred, one then gets disclosure on subsequent
2 questions such as, in this case, how were those terms of
3 service introduced, designed, displayed, implemented,
4 and why, essentially, and there are a whole series of
5 requests which essentially follow on, which are asking
6 slightly more granular questions about seeking
7 disclosure, I should put it that way, seeking disclosure
8 in respect of matters which are then relevant to the
9 terms of service which have been disclosed under Request
10 7.

11 We had not, until very recently, appreciated that
12 this was even in dispute, because it would seem
13 self-evident and obvious from the wording of the
14 requests that the scope of Request 7 then defines
15 subsequent requests. However, we understand that Meta
16 has taken the view that although it has conceded it will
17 offer Instagram and WhatsApp in relation to Request 7,
18 that offer doesn't then read across into subsequent
19 requests, notwithstanding that they --

20 THE CHAIR: So you are saying in R8, for example, they are
21 not going to -- they don't want to give it in relation
22 to Instagram and WhatsApp? Is that what you are saying?

23 MS FORD: That's what they've told us.

24 THE CHAIR: Is that right, Mr Singla, just to make sure
25 I have got that one right? Okay.

1 MS FORD: We simply don't follow the logic of it. The way
2 these requests have been formulated is to seek further
3 disclosure in relation to particular aspects of the
4 terms and conditions which are disclosed under Request
5 7, and so we do not see that there is any principled
6 basis to say that any of the subsequent requests are
7 narrower.

8 THE CHAIR: So really under this they are only offering in
9 relation to Facebook itself.

10 MS FORD: On this and subsequent requests that crosses back
11 to Request 7, yes, and we say there is simply no logic
12 to that as a position.

13 THE CHAIR: Yes.

14 MS FORD: The next question concerns custodial versus
15 non-custodial disclosure, and the dispute in relation to
16 this particular request is whether it should include
17 non-custodial searches in addition to custodial
18 searches.

19 THE CHAIR: They are not mutually exclusive, are they?

20 MS FORD: Absolutely not, no. That is the dispute that is
21 reflected in the orange writing which is the class rep's
22 proposal and the green writing which is Meta's proposal.

23 The terms "custodial" and "non-custodial" have --
24 the way in which they have been used as between the
25 parties have been taken from Meta's DR and EDQ and they

1 have used it to mean custodial documents referring to
2 categories of documents originally created or held by
3 particular Meta individuals, and includes, for example,
4 emails and electronic messages, that's what they used to
5 refer to custodial, and then non-custodial repositories
6 and categories of documents which were typically held as
7 an organisational level, those are the references that
8 we've taken -- the DR at 4.20 and 4.30.

9 So, in broad terms, the approach that the class rep
10 has taken is that we've asked for custodial disclosure
11 in two circumstances. We've asked for it where the
12 requests are seeking disclosure in respect of Meta's
13 internal considerations and deliberations, and we've
14 asked for it where the requests are concerned with
15 internal and external communications that we expect
16 would be captured by custodian-specific sections.

17 On the other hand, we've asked for non-custodial
18 requests, and identified potential non-custodial
19 repositories, where it appeared on the basis of the
20 information that has been provided, that there might be
21 pre-existing repositories of documents that would
22 provide essentially off-the-shelf information in
23 relation to the subject matter of the request, and that
24 would include where it appeared that material might be
25 more readily located on a company's general servers,

1 rather than looking at individual custodians.

2 THE CHAIR: Also, what you can find is that someone deletes
3 stuff on their own email, for example, but it is still
4 held on the main server, and so there are cases where,
5 actually, doing it on the sort of traditional custodial
6 approach doesn't really get what you need, and then when
7 you look at the main server it has got a lot of stuff
8 that is actually helpful, but on the custodial, it's not
9 visible.

10 MS FORD: Sir, yes. That must be right, and what we've done
11 is look at the way in which the non-custodial
12 repositories are described and what they are said to
13 contain and identified where we think those
14 non-custodial repositories would be a useful place to
15 search in relation to particular requests.

16 THE CHAIR: Normally these things are dealt with by just
17 sort of common sense in the disclosure exercise. Let's
18 say you are looking at Mr X, you look at Mr X and say,
19 well, there's a lot of stuff missing, he hasn't given
20 any -- there's nothing on there for a -- beyond, let's
21 say, two years ago, and then you say, well, let's check
22 on the main server because that may have a whole lot
23 going much further back.

24 MS FORD: Sir, yes. We would absolutely expect Meta to do
25 that iterative process of saying, well, we recognise

1 that we've identified a gap for a particular period or
2 we've identified a gap in respect of a custodian that we
3 thought would be a sensible place to look but actually
4 it hasn't given the response that we think it ought to
5 have done and therefore we will widen our search and
6 look elsewhere. That is obviously a usual approach.

7 What this dispute relates to is that there are
8 particular repositories -- there's a certain amount of
9 agreement between the parties as to what repositories at
10 a minimum Meta will go away and search and it is always
11 non-exhaustive for the reasons that you canvassed, sir,
12 which is that they may well find that there are other
13 repositories which, on reflection, may well need to be
14 looked at, or there are gaps or whatever, but there are
15 particular disputes between the parties where we've
16 said, well, you've told us you've got this group of
17 documents, why aren't you looking at that group of
18 documents for this request, and so the
19 custodial/non-custodial disputes in part come down to us
20 saying there appears to be a group of custodial --
21 sorry -- a group of non-custodial repositories which are
22 potentially responsive to this request and you are
23 essentially telling us you are only going to look at
24 custodial repositories. We think you should be looking
25 at non-custodial for this as well. That's the broad

1 shape of the dispute as it comes out in relation to
2 quite a few of these requests as we go through.

3 So, by way of --

4 THE CHAIR: What we don't want to do is, to be too
5 prescriptive as to what Herbert Smith are going to do,
6 because they know what their responsibilities are as
7 officers of the court carrying out disclosure. I have
8 got no doubt, if they have the sort of scenarios that
9 we're talking about, where you look at the custodian and
10 there's a gap where it only goes up to a certain date or
11 from a certain date, that they will do what one would
12 normally expect for them to follow, and look to see,
13 well, how is this gap being filled. I can't imagine
14 what they would do is to say, well, we're looking at
15 this custodial thing, it doesn't have anything beyond
16 two years, well, let's forget about that, that is the
17 end of it. That is not how they are likely to do it,
18 and to a certain extent, the Tribunal places a lot of
19 trust in the solicitors for both parties to do it
20 properly, and I have got no reason at all to think that
21 Herbert Smith aren't going to do it in the normal way.

22 MS FORD: Absolutely. That is absolutely what is to be
23 expected.

24 Perhaps we can look at the Meta's response column in
25 this request, and it illustrates part of the problem.

1 THE CHAIR: Yes.

2 MS FORD: So we have a statement here, this is the second
3 paragraph in their response column:

4 "As set out in Annex 4 of the Meta entity's
5 disclosure report, the Meta entities consider that this
6 issue is most suitable for disclosure from custodial
7 sources", full stop. If one were to go back to the
8 relevant column of the disclosure report you would find
9 a similar statement that this is most suitable for
10 disclosure from custodial sources, but what you don't
11 get in relation to each request, either in the Redfern
12 itself or in the disclosure report is any explanation or
13 rationale for this statement that we will look at
14 custodial sources, but we will not look at non-custodial
15 sources, and so --

16 THE CHAIR: They are not actually saying that, are they?
17 They are saying "we will look at the starting point --
18 is we look up custodial, and insofar as there's sort of
19 gaps and stuff like that, we will look at non-custodial"
20 and that's what one would normally expect. Is there
21 something subtle that I'm missing, Mr Singla, or not?

22 MR SINGLA: Well yes and no.

23 THE CHAIR: Oh. Okay. I don't mind.

24 MR SINGLA: Well no --

25 THE CHAIR: You are here to educate me.

1 MR SINGLA: Our general position is that doing either
2 custodial or non-custodial is a very substantial
3 exercise --

4 THE CHAIR: Well, I understand that, yes.

5 MR SINGLA: -- and so in the same spirit that I think you
6 are indicating both parties should adopt, they should
7 trust us to choose -- well, we say to do both, which is
8 often what they are asking us to do, would be
9 disproportionate. We've taken a lot of time and
10 expended a lot of effort to work out which would be the
11 most productive route, and in some cases but not all
12 we've expressly said we will top up if there are gaps,
13 so, I mean, one has to take this in a slightly staged
14 way. What they are trying to do is essentially ask for
15 both types of disclosure now, and we say that is going
16 to run into a proportionality concern. I mean, this is
17 covered in the evidence. Ms Dietzel says in terms,
18 either way non-custodial or custodial is very
19 substantial, and you will appreciate that because we're
20 doing 77 custodians, and they are mapped across hundreds
21 of different -- Redfern requests, and then there's
22 a whole bunch of repositories, non-custodial
23 repositories, so there's a danger in just making these
24 swingeing orders now, essentially we're going to have to
25 do two exercises. I've got, obviously, some submissions

1 to make on the scope of this request as well, and the
2 particular repositories that they've alighted upon but
3 what we've said -- so the broad approach, and this is
4 a point that you need to have on board for the other
5 requests as well, the broad approach is we've said one
6 or the other subject to some requests where we had
7 expressly said we will top up, if necessary, and we say
8 both is inappropriate.

9 THE CHAIR: But the problem is sometimes it is not until
10 you've stripped the paint back that you know what's
11 under the paint.

12 MR SINGLA: Yes.

13 THE CHAIR: And that whichever is the right route may depend
14 on what you find when you've stripped it back. Now, it
15 doesn't seem to me that you've done a huge amount of
16 work on ascertaining what there is there, I understand
17 why, but it is sometimes only once you get into the
18 detail that you start thinking, well, actually, we
19 need -- let's say you go down the custodial route, you
20 may be saying, well, actually, this is not very good, it
21 is not giving us what we need, there's just too many
22 gaps, and so we will go from custodial to non-custodial
23 just to make sure that we're doing it properly, but --

24 MR SINGLA: But we have actually -- the thing is we have
25 actually said in terms that we -- given this issue --

1 detailed consideration. We're not just turning up at
2 the Tribunal and saying "well, how about custodial for
3 this and non-custodial for that". Those behind me have
4 spent literally months considering this, and we say they
5 need to be trusted to get on with it. If there's
6 a problem, then we will encounter that in due course,
7 but at this stage, where a party with these solicitors
8 is saying they've considered these in detail and they've
9 chosen non-custodial for certain issues, where there's
10 an issue such as this which relates to why Meta acted in
11 a certain way, we've chosen custodial because that is
12 likely to be the most productive route, but, I mean,
13 taking the point that you've just made to its logical
14 conclusion, you would just be making custodial and
15 non-custodial orders on Day 1 which, in my submission,
16 would be disproportionate. If there are targeted issues
17 that arise later those can be dealt with, but at this
18 stage my side having spent months considering this,
19 we've got to be trusted to do it properly.

20 THE CHAIR: Yes, but let's break it down.

21 The olden days you would simply say: give disclosure
22 of all relevant documents of this category. You then go
23 back, you do your disclosure exercise, a list of
24 documents will appear, and that's done. These days,
25 people like to argue in advance as to what searches you

1 are going to do, but at the end of the day, what is the
2 most appropriate search is a developing feature, because
3 you say, well, we're going to do custodial, we're going
4 to look at these custodians, and then that may show you
5 some other avenue, and you say, actually, we had better
6 look at the repository because that indicates
7 a repository has got relevant documents which could be
8 worth disclosing, but I'm not saying -- even if you've
9 done some research it doesn't mean that when you get
10 down to it there's going to be no need to look at
11 repositories.

12 MR SINGLA: The difficulty with that is there is no clarity
13 on Day 1 as to what --

14 THE CHAIR: I know -- no, but the thing is that may be
15 inherent in the process of getting it done properly,
16 that all you can do at this stage is say, in principle,
17 this is what we're going to do, but if, when you start
18 looking at the detail on a custodian level it indicates
19 that there are documents in the repository which are not
20 on the custodian level, you ordinarily would look.
21 That's what I would expect you to do.

22 MR SINGLA: Yes. Well, as I say, in certain places we have
23 made an express offer that we will top up if there are
24 gaps, but what the CR is actually saying on a request by
25 request basis is they want both, and we say, actually,

1 let's just take this in stages, trust Meta and
2 Herbert Smith with their detailed assessment of which is
3 the best route to go at this stage, if there's a problem
4 later that can be addressed on a more focused basis,
5 otherwise you are just going to have to -- on this
6 basis -- you are going to have to make an order for
7 custodial and non-custodial on every request which --
8 that just wouldn't work.

9 THE CHAIR: Okay. Let's go back.

10 MS FORD: So we haven't asked for custodial and
11 non-custodial on every request. We have made a proposal
12 that relates to the subject matter of the request, and
13 we can go through each one and we can explain why it is
14 that we've made certain proposals, but the real concern
15 is, if the Tribunal looks at this contested wording,
16 Meta is seeking a direction that it will look at
17 custodial documents and/or screen shots/other images, so
18 it is seeking a direction which cuts out from the outset
19 the prospect of looking at non-custodial documents. Now
20 that -- in relation to this particular request -- seems
21 to us to be problematic because we have identified
22 repositories that we think would be responsive to these
23 enquiries. The ones that we are inviting Meta to look
24 at are Structured Document Repository -- they are the
25 ones in blue next to the comments. Structured document

1 Repository, Launch Manager and Research Library and
2 I can show the Tribunal the information that we've been
3 provided about what those contained.

4 Structured Document Repository and Launch Manager
5 are, we are told, repositories which contain what Meta
6 has described as "privacy documentation", and --

7 THE CHAIR: For the moment where we've got to on this one is
8 there's two issues. One is what is the general scope,
9 do you include non-Facebook -- yes? That's the first
10 issue.

11 MS FORD: Yes.

12 THE CHAIR: And two is: is it going to be custodial only --

13 MS FORD: Yes.

14 THE CHAIR: -- and on that, I'm against, at the moment,
15 Facebook that you are going to -- I'm going to do
16 a direction that they don't do any non-custodial. The
17 real issue is whether or not they should be doing
18 custodial and non-custodial at the same time as the sort
19 of global thing, or is it that the focus should be on
20 custodial, but insofar as it -- therein it indicates
21 that there are gaps that should be filled to give
22 a complete disclosure, they should also be looking at
23 non-custodial repositories, and to me that's fairly
24 conventional, but it seems as though I'm getting
25 come-back from both of you at different angles on what

1 should be done, because you are asking for custodial and
2 non-custodial all up front, he's saying custodial but
3 he's a bit unclear as to what extent he is offering
4 non-custodial but he's not offering non-custodial up
5 front, he's saying that insofar as we can see there's
6 a gap, we can have a top-up.

7 MS FORD: Yes. In our submission it is going to be deeply
8 unsatisfactory if Meta go away and do what they say is
9 going to take ten months, that is obviously something on
10 which the Tribunal needs to hear separate submissions,
11 but they go away and do that exercise, then we come back
12 before the Tribunal and only at that stage does one get
13 into the debate of, well, there are gaps here, actually
14 you should go back and do something else. That, in our
15 submission, is just dragging the matter out completely
16 unacceptably. The basis on which we have sought
17 non-custodial in relation to this particular request is
18 not just in the abstract, it is not the general
19 principle that ought to look at, ideally, everything
20 potentially relevant, it is that we have identified
21 particular repositories on the basis on which it appears
22 that there may well be documents that are responsive to
23 this request, so the way this has developed, and it is
24 worth emphasising, we originally said in relation to
25 this request and various others, we originally sought

1 narrower defined document requests, so we said, for
2 example, we would like privacy documentation, or we
3 would like reports and analyses or we would like -- we
4 sought to specify the sorts of documents that we thought
5 would be responsive to this request, and Meta's response
6 in their response column to every single time we did
7 that was -- it is premature for you to seek to specify
8 the particular types of documents. You should just
9 specify non-custodial generally, and leave it at that,
10 what's actually responsive to this request, but the
11 reason why we sought to narrow it down was to keep the
12 exercise proportionate, and because the types of
13 documents we were seeking were tied to the repositories
14 that we had identified that we thought were responsive
15 to the particular request, and so in relation to privacy
16 documentation we were suggesting a search of two
17 repositories which Meta described as containing privacy
18 materials and I can show the Tribunal what they've said
19 about it in their DR, and then in relation to reports
20 and analyses, we're told that there is such a thing as
21 Research Library which contains such documents and so in
22 relation to a request where it makes sense to look for
23 those sorts of documents, we say, well, you've got
24 a repository which contains those sorts of documents,
25 please conduct searches across that repository.

1 THE CHAIR: Okay.

2 MS FORD: I can deal with those particular three
3 repositories if that assists, to show the Tribunal the
4 sort of material -- the sort of information that we are
5 basing this assessment on.

6 THE CHAIR: No, I have got no doubt that there will be
7 relevant documents in both custodial and non-custodial
8 repositories. That is pretty obvious from the evidence
9 and the submissions. The only question is: is there
10 going to be a requirement from the very beginning to
11 search both at the same time. To me, I would have
12 thought the sensible way of doing it would be you start
13 off with the custodial ones, because that is what you
14 normally do. For this particular category in
15 particular, but if there are gaps, then, of course, you
16 look at the repositories. It is fairly basic. I do not
17 think it is going to be acceptable, though, if we end up
18 with some sort of wording, that it is only at the end of
19 ten months and we get the list that they starting
20 looking at other repositories, because then that is
21 problematic, but I don't know how far Mr Singla is away
22 from the way I'm thinking at the moment, because it
23 does -- (Inaudible). When I look at the way you put it
24 in the Redfern schedule, subject to playing about with
25 the wording a bit, I don't expect you, on this one,

1 anyway, to look at non-custodial in the first instance,
2 the expectation is you do custodial. As you do that
3 process, if you can see that there are gaps, then you
4 look at the non-custodial repositories that they've
5 indicated, but that is what I expect you to do, but
6 I don't expect you to do both at the same time.

7 MR SINGLA: That is very helpful, if which case can I take
8 instructions on --

9 THE CHAIR: Take instructions on that.

10 MR SINGLA: -- well, not now, but I may need time to
11 discuss this -- in terms of what that wording would look
12 like, because this obviously has ramifications not --

13 THE CHAIR: I'll indicate, because it is 4.15. We're going
14 to sort this out today before you go, okay, because this
15 is a fundamental issue. I will tell you what I think we
16 should be doing. Then you can take instructions and we
17 will come back at 4.30 and we will work this one out.

18 MR SINGLA: Okay. Just to explain, on Request 7, it is
19 actually multi-layered, so the first point is whether it
20 should be Facebook only, the second point is the one
21 we've just discussed, but then the third point is if you
22 are going to make any order for non-custodial, what
23 repository -- so actually this is all quite
24 multi-layered. So, for example, Research Library that
25 she has just mentioned, one of the big points that you

1 need to understand is, actually, going into these
2 non-custodial repositories, for some of them, at least,
3 is a massive undertaking in and of itself because some
4 of them are not very easy to search. That's all in the
5 evidence, so that's another reason why we say it would
6 be disproportionate to order us to do both now, so
7 you'll need to hear submissions on the individual
8 repositories as well.

9 MS FORD: I don't disagree with Mr Singla that it is
10 necessary to look at the information on the individual
11 repositories both because it indicates how very relevant
12 the contents are likely to be and secondly because the
13 evidence as to the difficulty in searching them is
14 actually relatively -- in my submission -- unconvincing
15 in the sense that these are repositories that Meta
16 itself has produced to hold documents in a way that one
17 would expect Meta employees can actually then reaccess
18 them again so the notion that they've been put in there
19 into a black hole and can't be got out again without
20 onerous and successive efforts seem a little bit
21 unconvincing.

22 Ruling (Request 8) (Redacted for Approval)

23 So that's our ruling in principle, and what we will
24 do is we will have a break for five minutes, people can
25 take instructions, and then we will finalise what we're

1 going to do in relation to Request 8.

2 MS FORD: Sir, I should point out that I omitted to mention
3 a point that arises on this request. It is hopefully
4 a short one but it relates to the significance of draft
5 terms. I wouldn't want the Tribunal to think that -- it
6 is my omission not to have flagged it up as a potential
7 dispute but it does need to be addressed. I hope it is
8 a short one.

9 THE CHAIR: Is it a dispute between you or not?

10 MS FORD: Yes.

11 THE CHAIR: Okay. Let's quickly deal with that, then.

12 MS FORD: So, it arises because we have indicated that we
13 anticipate that disclosure under this issue will include
14 disclosure in respect of draft terms. To be clear, we
15 are not suggesting that disclosure needs to be given in
16 relation to drafts of terms that were never actually
17 implemented. That's not this point. What we are saying
18 is that if matters which are responsive to this request
19 were discussed at the point when the terms were in draft
20 form rather than when they were finalised, we don't want
21 disclosure essentially to begin from the point where the
22 drafts were finalised, and thereby cut out the relevant
23 discussions about how they should be presented.

24 THE CHAIR: Of course. That goes without saying. I can
25 see. That's fine.

1 MS FORD: That is a point which, for the Tribunal's note,
2 arises in relation to Requests 8, 9, 12, 14, 16 and 23
3 as well but exactly the same point.

4 THE CHAIR: No, but seriously, if you are going to take that
5 point it really won't be very constructive because you
6 would just be looking at a too late point. You need to
7 look to see how the draft develops. That is obvious.

8 MS FORD: Sir, I'm grateful. There is a point -- there is
9 the point in relation to the approach to custodial
10 repositories which Mr Simester is proposing to address,
11 obviously, again, we're in your hands as to whether that
12 is something that you can deal with today or ...

13 THE CHAIR: Anything to do with Request 8 I want to deal
14 with today. Do you want to deal with that -- is that
15 something you want to deal with now?

16 MS FORD: It is a point which I think is -- it is fair to
17 say -- goes across many requests rather than simply this
18 request, if the Tribunal is planning to rise -- it is
19 possibly not something that can be dealt with
20 particularly quickly.

21 THE CHAIR: Oh, it can't be dealt with quickly. Okay.
22 Insofar as what we've done so far, we will have a break
23 for five minutes. The two teams can talk, and then come
24 back and say, look, we've resolved this one now in the
25 light of your ruling, or there's still something that

1 people want to argue, and then we will sort this out,
2 but I'm keen that we -- let's bank what we've done so
3 far and then this additional bit on Request 8 we can
4 start off on Wednesday.

5 MR SINGLA: Sorry sir, but I haven't actually addressed you
6 on the first question of whether it should go beyond
7 Facebook. I know you said it was subject to submissions
8 but I do have submissions to make.

9 THE CHAIR: Okay. You can make that after our five-minute
10 break.

11 MR SINGLA: Yes.

12 THE CHAIR: That's perfectly fine.

13 MR SINGLA: I'll be very quick.

14 THE CHAIR: At the moment, as you see, I'm with you on the
15 other two, it's on whether or not we include WhatsApp or
16 Instagram, and my inclination was to include those.

17 MR SINGLA: I understand but there is a point I would like
18 to make.

19 THE CHAIR: Of course you can make that when we come back.

20 MR SINGLA: I come back on three points. So it's Facebook
21 only, drafts, and then the custodial versus
22 non-custodial.

23 THE CHAIR: Oh, so you want to open up custodial against
24 non-custodial? So, you don't agree --

25 MR SINGLA: I think we're just going to discuss -- yeah --

1 those are the three points that are still outstanding.

2 THE CHAIR: They are still outstanding but I would hope that
3 we have sorted out three.

4 MR SINGLA: Those are the three points that I'm going to --

5 THE CHAIR: That's absolutely fine, so we can have -- so
6 non-Facebook, yes --

7 MR SINGLA: Drafts, and what you suggest on custodial which
8 is, obviously, in my direction, but it is not exactly on
9 all fours with what we were saying so I'll just need to
10 take instructions.

11 THE CHAIR: Okay. That's fine.

12 (4.24 pm)

13 (A break was taken)

14 (4.37 pm)

15 THE CHAIR: Let's see where we are. Yes.

16 MS FORD: Sir, we have a proposal as a form of wording which
17 we think may reflect where the Tribunal has come out,
18 and it would be that in relation to a request where Meta
19 has proposed a particular either custodial or
20 non-custodial, and the Class Representative is asking
21 for both to be looked at, the form of wording would be,
22 for example, custodial and, to the extent reasonably
23 necessary, non-custodial, and what we envisage is that
24 conveys the iterative process that the Tribunal has
25 articulated, that they look first at custodial and to

1 the extent that that is not sufficient, to discharge
2 their disclosure obligations then they proceed to look
3 at non-custodial.

4 THE CHAIR: So the disclosure obligation is to provide the
5 relevant documents in the specific category, and that is
6 the overriding obligation, and how you comply with that
7 obligation, the Tribunal is not going to create
8 a straitjacket because the straitjacket route leads to
9 missing documents, so what you proposed is acceptable to
10 the Tribunal, so that's very -- Mr Singla, thank you
11 very much. Very constructive way of dealing with it --

12 MS FORD: I should make clear that that is a proposal that
13 we've advanced, Mr Singla may have submissions to make
14 on it.

15 THE CHAIR: He may not agree.

16 MR SINGLA: I can tell when to accept things from the
17 Tribunal so we're grateful for the indication --

18 THE CHAIR: I thought you had agreed. Whatever it is, that's
19 fine.

20 MR SINGLA: We have agreed. They're trying to encapsulate
21 what you said earlier with their wording and we're
22 content with that.

23 THE CHAIR: That's brilliant. Okay.

24 MR SINGLA: Subject to just one point which I believe won't
25 be controversial but I should just raise it. I think

1 you've mentioned on a couple of occasions that the duty
2 is to provide all relevant documents and just now you
3 mentioned the relevant documents. Just to be completely
4 clear, this is all subject to the overriding
5 reasonableness and proportionality standard. Obviously
6 it can't be right that we need to chase down every
7 single last document.

8 THE CHAIR: No, of course not. Look, basically, if you've
9 got four documents covering the same thing, you don't
10 necessarily have to give all four documents. It may do,
11 depending on the context, but that is the same --

12 MR SINGLA: I think it's a bit broader than that. What
13 we're saying is the overarching duty on disclosure is to
14 conduct reasonable and proportionate searches.

15 THE CHAIR: I understand that.

16 MR SINGLA: I don't think you are taking that away from us.

17 THE CHAIR: I'm not taking that away from you. Let's try and
18 not qualify it too much otherwise we will have another
19 argument.

20 MR SINGLA: Okay. On drafts I can agree the drafts point in
21 relation to Request 8 which is the one we're concerned
22 with.

23 THE CHAIR: We will come to other ones later.

24 MR SINGLA: I just need to take instructions on other drafts
25 points but that deals with 8 and then the last point on

1 8 which we can hopefully dispose of quickly is we do
2 resist the inclusion of WhatsApp and Instagram.
3 Obviously we're grateful that you've kept out that Onavo
4 and Oculus but just to explained why this is in a
5 different category to request, so Request 7 was about
6 other Meta products from which it is said data must have
7 been used on Facebook.

8 THE CHAIR: Correct. Yes.

9 MR SINGLA: This request, and some other requests, 8 to 16,
10 in fact, all of 8 to 16, are about the design of the
11 terms, and that can only be relevant on the pleaded
12 case, because what is said is there was an unfair
13 trading condition and there are some complaints about
14 transparency and so on, but actually when one properly
15 analyses what terms the claim is concerned with, it is
16 different to the sharing of data from other Meta
17 products. This is an attack on the Facebook terms and
18 the way in which the Facebook terms were designed, so it
19 would be, in my respectful submission,
20 a misunderstanding of the claim to think that there is
21 any enquiry into what is said to be the choice
22 architecture, is the claimant's phrase, in relation to
23 Instagram and WhatsApp. That is actually not what this
24 case is about. Those other products come into this
25 because that is where it is said data comes from, but

1 the attack on terms is on Facebook terms, so this is
2 actually quite an important -- this is not
3 a proportionality point. It is all proportionality but
4 actually it is a bit more fundamental than that. It is
5 just completely misunderstanding her own case to say
6 that there is an enquiry in relation to the terms of
7 these other products. That's why -- so we do resist the
8 inclusion of Instagram and WhatsApp. This should be
9 confined to Facebook and so should 8 to 16 or 9 to 16.

10 THE CHAIR: Is it 8 to 16?

11 MR SINGLA: On this point. Because it is all about the
12 design of terms.

13 THE CHAIR: Okay. So let's hear what Ms Ford says.

14 MS FORD: Sir, if we can go back to the terms in Request 7,
15 they are terms which are governing, essentially, under
16 (c), Meta's collection and/or receipt and/or processing
17 and/or use of Off-Facebook Data. Now we know and we've
18 shown the Tribunal the pleaded case that Off-Facebook
19 Data comes from, amongst other things, other Meta
20 products and insofar as it does so, there will be terms
21 in relation to the use of those other Meta products that
22 govern the extent to which Facebook is allowed to
23 collect data and use it to target Facebook users, so in
24 our submission it is a completely false submission to
25 say that subsequent requests are only concerned with

1 Facebook terms. Subsequent requests are concerned with
2 the terms that govern the circumstances in which Meta
3 may collect this Off-Facebook Data and use it on
4 Facebook and that would include the terms which govern
5 its collection of Off-Facebook Data on the other Meta
6 products. The distinction Mr Singla is drawing in our
7 submission is simply incorrect on the basis of the case.

8 MR SINGLA: Can I just make a brief reply submission because
9 she is not addressing her pleaded case? It is no good
10 saying, well, look Tribunal, look at the requests, one
11 has to go back to what is the alleged abuse, and it is
12 an unfair price and/or an unfair trading term in respect
13 of Facebook and Facebook only, so one -- one has to be
14 sensible and start with the pleaded case, not just look
15 at the request. The request is supposed to reflect the
16 issues for disclosure which are supposed to reflect the
17 pleading.

18 MS FORD: Sir, I have shown the Tribunal two of the relevant
19 paragraphs from the pleaded case, and they relate to the
20 collection of Off-Facebook Data and so the terms which
21 govern the collection of off-Facebook are those which
22 are relevant to seek disclosure in respect of. Those
23 include the terms of other Meta products from which
24 Off-Facebook Data is collected.

25 MR SINGLA: I'm sorry to keep sort of playing tennis but

1 under 7, the effect of your decision on 7 is they are
2 going to get disclosure in relation to terms of WhatsApp
3 and Instagram, and indeed Oculus and Onavo. 8 to 16 is
4 a sweeping set of requests to do with how these terms
5 were implemented and designed.

6 THE CHAIR: I understand that.

7 MR SINGLA: But the design of terms has got nothing to do
8 with where the data is coming from. The design of
9 terms, what Meta was doing to design the terms for users
10 can only be relevant in relation to Facebook because the
11 attack is on Facebook.

12 MS FORD: The design of terms goes to the question of the
13 transparency of Meta's approach to collecting
14 Off-Facebook Data which it does via other Meta products
15 and the Tribunal heard a lot about transparency as
16 a pleaded issue at the last CMC and I do have, somewhere
17 in my speaking note, a reference to the transcript where
18 the Tribunal have said yes, we accept that transparency
19 is an issue between the parties. Each of the requests
20 which refer back to Request 7 are asking questions about
21 the approach to the terms which govern the collection of
22 Off-Facebook Data. It would be, in our submission,
23 completely illogical for those to be limited to Facebook
24 terms in circumstances where Off-Facebook Data will
25 derives, amongst other things, from other Meta products.

1 THE CHAIR: Thank you.

2 MR OLSEN: Our inclination on this is to go with the Class
3 Representative's case in that we do see there is a need
4 to consider these terms together in the context of the
5 case.

6 NEW SPEAKER: (Inaudible).

7 THE CHAIR: Not really. We can hear you on Wednesday and we
8 will see where we go, but as I said before, let's hope
9 we can have another Redfern schedule to start with where
10 some of the issues that we've done today is reflected in
11 the draft and hopefully we will be able to go quicker on
12 Wednesday. I do expect the parties to work hard between
13 now and Wednesday, as they have been doing up until now.
14 You know, obviously we're not blind to all the work that
15 has been done, but more progress can be done tomorrow,
16 hopefully. We can only hope, can't we, Mr Singla,
17 that --

18 MR SINGLA: I could certainly agree with the amount of work
19 that has been going on.

20 THE CHAIR: There's a lot of work that has been going on. I
21 do know that both sides have been moving in the sense
22 that we're not going to have a kitchen sink disclosure
23 because that will never -- it is never going to work,
24 but a lot of thought needs to be done and a lot of
25 thought has already been given by both sides as to what

1 is really necessary and proportionate.

2 MR SINGLA: I mean, we've managed 8 out of 120, so that's
3 not bad.

4 THE CHAIR: Please don't be too discouraging. Okay. Thank
5 you very much everyone.

6 (4.48 pm)

7 (The hearing adjourned to 10.30 am on Wednesday, 26 November
8 2025)

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