

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

5 **IN THE COMPETITION**

Case No: 1527/7/7/22

6 **APPEAL**

7 **TRIBUNAL**

8  
9 Salisbury Square House  
10 8 Salisbury Square  
11 London EC4Y 8AP

12 Thursday 12<sup>th</sup> February 2026

13  
14 Before:

15  
16 Ben Tidswell  
17 The Honourable Lord Richardson  
18 Derek Ridyard

19  
20 (Sitting as a Tribunal in England and Wales)

21  
22  
23 BETWEEN:

24 **Class Representative**

25  
26 **Alex Neill Class Representative Limited**

27  
28 **V**

29 **Defendants**

30  
31 **(1) Sony Interactive Entertainment Europe Limited; and**  
32 **(2) Sony Interactive Entertainment Network Europe**  
33 **Limited**

34  
35  
36 **A P P E A R A N C E S**

37  
38 Robert Palmer KC, Nikolaus Grubeck, Stefan Kuppen & Charlotte McLean On Behalf of  
39 Alex Neill Class Representative Limited (Instructed by Milberg London LLP)

40  
41 Daniel Beard KC, Charlotte Thomas, Gayatri Sarathy & Firdaus Mohandas On Behalf of  
42 Sony Interactive Entertainment Europe Limited and Others (Instructed by Linklaters LLP)

43  
44 Digital Transcription by Epiq Europe Ltd  
45 Lower Ground, 46 Chancery Lane, London, WC2A 1JE

46 Tel No: 020 7404 1400

47 Email:

48 [ukclient@epiqglobal.co.uk](mailto:ukclient@epiqglobal.co.uk)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

(10.30 am)

Pre-Trial Review

THE CHAIRMAN: Good morning, everybody. I am going to do the live stream warning. Some of you are joining us by live stream on our website which starts with a customary warning: an official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as a contempt of court.

Who is kicking off?

MR BEARD: I think we probably should sort out what needs covering, but I really don't mind who goes first. It seems to me that the matters that are outstanding are just a resolution of the position of Mr Dasgupta.

THE CHAIRMAN: Yes.

MR BEARD: Then we have some questions about amendments of the Re-Re-Re-Amended Claim Form.

THE CHAIRMAN: Yes.

MR BEARD: I think we then have one or two issues in relation to confidentiality, although I think we have got some updates in relation to those issues. I'm not sure that the Tribunal has the most recent correspondence on that.

THE CHAIRMAN: We were sent a letter, but I'm afraid I haven't read it. I don't know whether anybody else --

MR BEARD: No, no -- (overspeaking). I can see him, Lord Richardson.

THE CHAIRMAN: I should have said -- I'm sorry, that's my fault. I should have just started by saying that, due to circumstances, Lord Richardson is joining us virtually, but of course he is here.

1 MR BEARD: I can see him. Lord Richardson, can you hear us?

2 LORD RICHARDSON: I can hear you. I hope you can hear me too.

3 MR BEARD: Absolutely clearly. Thank you very much. I apologise.

4 THE CHAIRMAN: So we have the letter, but I'm not sure --

5 MR BEARD: We will perhaps come back to that. I was just thinking the sensible way

6 to deal with things might be to deal with Mr Dasgupta, amendments, confidentiality.

7 There's an issue about teach-in. Obviously, we have the general timetable, but I think

8 actually, in relation to that, there's a startling degree of agreement now, so I'm not sure

9 that there's an awful lot to do, but it might be sensible just to work through it at some

10 point, so that the Tribunal knows where we are with orders of witnesses, and so on.

11 THE CHAIRMAN: Yes. We have a couple of points on the timetable, so the

12 agreement is not complete, unfortunately. I know that's unhelpful.

13 MR BEARD: I'm just flagging these things (overspeaking).

14 THE CHAIRMAN: Nothing terribly significant. It might be helpful -- well, in some ways,

15 where do you want to do that? Do you want to do that at the end?

16 MR BEARD: I was thinking it might be sensible to sweep it up at the end because if

17 there are any other issues that are coming up, like teach-in, order, and so on, it might

18 be sensible to fit those into any timetabling discussion. Frankly, I'm in the Tribunal's

19 hands, in relation to this, as to how you want to do deal with things. If you do have

20 timetabling points on which it would be sensible, in the meantime, for us to be taking

21 instructions on both sides, it might be useful if the Tribunal mentions them now.

22 THE CHAIRMAN: I was going to suggest that as well. Also, we do have some views

23 on some indications of our thinking on concurrent evidence. It might be helpful to give

24 you those as well.

25 MR BEARD: Yes. I say that and then I will wait to hear --

26 THE CHAIRMAN: I don't think any of it is too controversial. As I say, this is -- well,

1 | this is -- I suppose, the question is, do you want to address us on those points before  
2 | you hear our views or would you like to have our current thinking and then you can  
3 | push back on it?

4 | MR BEARD: I think it might be useful if the Tribunal were to give its indications in  
5 | relation to those matters, because that will focus our submissions, or might focus our  
6 | submissions. Whereas, if we are dealing with these things at large and we don't really  
7 | know what your thoughts or concerns are, as you know, barristers left to their own  
8 | devices can talk at great length --

9 | THE CHAIRMAN: Yes. Why don't we do that. Very much on the basis that these are  
10 | our reactions to what you have said so far and we are open to further discussions. We  
11 | are certainly not shutting the door on this. This is very much our indicative thinking.  
12 | I should say we have started thinking about the concurrent evidence but we are by no  
13 | means finalised in our thinking on it.

14 | There are two points, I think, on the timetable that struck us, and I think we should talk  
15 | about this some more later, so this is just to warm you up, if you like.

16 | The first one, and the most significant one, is, we are concerned about the way in  
17 | which it pushes up against the week that's currently indicated for closing submissions,  
18 | so for the preparation of them by you and for the reading of them by us, and we are  
19 | concerned that there is not enough time in that timetable for things to go wrong and,  
20 | also, we are not entirely sure when you were thinking about giving us the closing  
21 | submissions, but we think we probably want them earlier than we suspect you're  
22 | planning to give them.

23 | MR BEARD: I think that's probably a sensible working assumption, yes.

24 | THE CHAIRMAN: As is normally the case.

25 | We do think, particularly when we get into the issues about the concurrent evidence  
26 | and how long hot tubs are going to take, and so on, that, actually, all of that should be

1 manageable. We don't want to micro-manage that for you, although we have some  
2 suggestions about how it might work. What we would like to do is to give you the  
3 challenge, if you like, of coming up with a timetable that finished a bit earlier and,  
4 therefore, gave us a bit more certainty about when we are going to get the closing  
5 submissions. Just to really put the cat among the pigeons, the timing we were thinking  
6 of for the closings was the Tuesday, 28 April, at 4.00 pm. We thought that was a time  
7 that would give you a decent amount of time to prepare them and give us a decent  
8 amount of time to read them. I do say -- I want to stress, in saying that, we want to  
9 read them very carefully, we want to look at the documents that you refer to, and, as  
10 you know, that takes quite a long time. We are not shying away from doing some work  
11 on the bank holiday weekend, but we weren't planning to spend every day of it reading  
12 them. So that's that bit.

13 Then the second bit was, we were just a little bit concerned about the week of  
14 30 March, although I think possibly the latest letter from Linklaters deals with this. But  
15 there did seem to be -- that's the week that's got Good Friday in it, and it did seem to  
16 have more days sitting in it than there actually are, but that may have been resolved,  
17 I think, by the latest (overspeaking).

18 MR BEARD: (Overspeaking) you're looking at. If you are looking at the one that is  
19 annexed to our skeleton, that only has three days during that week.

20 THE CHAIRMAN: Yes, I think I was relying on --

21 MR PALMER: We have three days that week.

22 THE CHAIRMAN: You have three days that week, fine. That's sort of the big picture.  
23 I think we can have a useful discussion later, once we have talked about the hot tub  
24 a bit more, because I think there probably are some ways in which the expert  
25 evidence, in particular, can be trimmed, but that's where we were with that.

26 Just in relation to the concurrent evidence, I will give you -- again, I will give you the

1 headlines. This is very much for discussion, if people want to push back on anything.  
2 I will give it in relation to the technical evidence as well.

3 Our impressions, from what we have seen and from what you have sent us in the  
4 skeletons, is we are not inclined to have witnesses doing the teach-in -- we are not  
5 inclined to have the factual witnesses doing the teach-in. We are just a little bit  
6 nervous about how that works. We appreciate they obviously have a great depth of  
7 knowledge; they are pretty close to being experts, but they are not. It seems to us we  
8 could get ourselves into a bit of a muddle with that.

9 We also thought it was probably best done to have the teach-in after the factual  
10 evidence and before the experts give evidence. The reason for that is, it just seems,  
11 as a matter of logic, that the -- if it is going to be the experts doing it, they shouldn't be  
12 doing it without knowing exactly where the factual evidence ends up.

13 I appreciate that's not where you were, Mr Beard, and you are very welcome to push  
14 back on that, but that was sort of our immediate reaction to the point.

15 MR BEARD: (Inaudible) these things, we understand. I think you have the point  
16 already, sir, that one of the issues with the teach-in that you are contemplating is  
17 exactly what you want covered. Because, of course, one of the things in relation to  
18 technical matters is, if you are talking about technical architecture, how security  
19 actually works and so on, the specialist -- the experts, the real experts, in relation to  
20 this are Messrs Norton, Smith and Wilson. To be fair to Professor Pietzuch and  
21 Mr Coyne, they're not suggesting that they know more about those issues than the  
22 witnesses. We are in that territory where I think, before the RPC, they used to be  
23 referred to as "trade witnesses", where they're partly fact but, actually, they're really  
24 experts in their field in relation to these matters, and I think what we are concerned  
25 about is ensuring the Tribunal has a proper appraisal of that in a neutral way.

26 The difficulty is, if the Tribunal wants a proper description of how the technical

1 architecture works, it is better provided by those engineers, in many ways, because  
2 they have that detailed knowledge.

3 One way we could think about, we could go away and look at, is actually almost  
4 having -- it would be a hybrid. It wouldn't be a formal examination-in-chief, but a short  
5 presentation by one of the engineers at the start of their evidence that could essentially  
6 frame these things. Then -- you know, we are not constraining Mr Palmer, in relation  
7 to his cross-examination, in relation to all those matters. We do wonder whether that  
8 would be useful. And of course, that, talking about the order you're contemplating sir,  
9 would mean that's all well covered, dealt with, cross-examined upon, well before any  
10 expert teach-in.

11 THE CHAIRMAN: Just to try and pick all that up, we do see the attraction of not going  
12 into the expert cross-examinations cold, and we certainly understand the point if we  
13 are not going to do a concurrent evidence session, and we don't want to do that.  
14 Partly, just to be clear, mainly because we are not really in the position, we think, to  
15 prepare a concurrent evidence session, given the expertise we have. Anyway, what  
16 we are looking for here is very much education, and the problem is we don't really  
17 know what we want to be educated on. So we are somewhat reliant on you to work  
18 out what we need to know in order to make sense of the evidence. But I think we are  
19 anticipating this at a reasonably high level, and obviously uncontentious or, if it is  
20 contentious, then at least an uncontentious statement of the contention.

21 MR BEARD: We understood there might be a lot of known unknowns in here for the  
22 Tribunal, which was partly the reason why we thought that actually having the people  
23 that know about the system talking about it -- and then, as I say, making sure  
24 Mr Palmer and his team have a proper opportunity to cross-examine in relation to it.  
25 That presentation would attempt to be neutral before any further evidence was  
26 provided. The benefit to the Tribunal is you then have the people who actually know

1 about these systems talking about them. It could be done by some sort of slide  
2 presentation that can be provided briefly to the Tribunal in relation to those issues.

3 THE CHAIRMAN: I suppose, firstly, Mr Coyne obviously has access to them, and in  
4 some ways I think we thought he would have the benefit -- he has already, no  
5 doubt -- of them. Hopefully, he can be -- I'm just shying away a little bit from, perhaps,  
6 the level of technicality and detail you might be suggesting. I don't think we want that.  
7 I think we just want to be able to orient ourselves and understand the big picture.

8 The second point was I don't think we would have any objection to the factual  
9 witnesses giving some evidence-in-chief, provided Mr Palmer is happy with it. The  
10 issue there, of course, is that he's not going to want anything that is new or surprising  
11 or actually could be presented as not being entirely neutral. So, if there was something  
12 you could share with him and he could agree, that might be a helpful way forward. But  
13 I think we need to leave that to you two to work out.

14 MR BEARD: The indications from the Tribunal are helpful. You understand our  
15 position. There is a funny position here because you obviously look at the joint expert  
16 reports in relation to the technical evidence and, without trying to work out what's  
17 actually going on in it, you see the first section and it's all about PlayStation,  
18 architecture and security systems, and you are just thinking, "Hang on a minute, aren't  
19 there some people who know about that already?".

20 Similarly, when you look at, for instance, Professor Pietzuch's reply report, he is not  
21 just dealing with things coming from Mr Coyne, he is seeking to engage with material  
22 from Messrs Norton, Smith and Wilson, effectively. Well, particularly Norton and  
23 Smith.

24 So, we can see it is not clean and we recognise that the Tribunal has these issues.  
25 I think the sensible thing is, taking away the Tribunal's steer that you would like the  
26 teach-in to be focused between the experts, thinking about what I have said in relation

1 to a potential early presentation, but ensuring that Mr Palmer doesn't have to flutter  
2 his handkerchief and suggest that he's been terribly surprised, I suggest we take that  
3 away and have a discussion about it.

4 THE CHAIRMAN: Mr Palmer, do you want to say anything more about that at this  
5 stage?

6 MR PALMER: Yes, sir. Our position is more or less precisely the provisional position  
7 which you articulated at the beginning. We are not supportive of the idea of having  
8 a partial teach-in by Sony's witnesses.

9 Sony have produced very long witness statements explaining how the PlayStation  
10 architecture works from three technical witnesses. Those technical witnesses have  
11 also filed second witness statements responding to Professor Pietzuch.

12 Now, we have that evidence and the Tribunal will, of course, be reading those in  
13 advance of those witnesses giving evidence. Now, I have no difficulty at all, if the  
14 Tribunal, either at the outset of their evidence or during the course of their evidence,  
15 says, "Look, I'm sorry, you're going to have to explain that a bit further. I don't  
16 understand the point you're making. Can you explain how this works?", just to  
17 understand what has been said, absolutely no difficulty with that at all. But what's  
18 being suggested is some sort of presentation which goes beyond or different or does  
19 something else beyond these very lengthy witness statements which explain it all, and  
20 it will not be guaranteed to be uncontentious, if I can put it that way. That evidence  
21 has fed into Mr Coyne's own analysis. Professor Pietzuch and Mr Coyne obviously  
22 have their joint statement together and articulated what they agree and disagree  
23 about. But we see real value in an independent expert teach-in with the benefit of that  
24 factual evidence and what has been accepted or not by the factual witnesses,  
25 identifying and explaining their uncontentious common ground before the Tribunal at  
26 the outset of the evidence, and also identifying and explaining what remains in dispute,

1 again with sufficient technical explanations as will be required for the Tribunal to  
2 understand that evidence.

3 We see that as a helpful stage in the evidence pursuant to the Tribunal's suggestion,  
4 and one whose precise contents would be best judged after we have heard all the  
5 factual evidence and have a sense of what has been said and what the Tribunal's  
6 questions have been along the way.

7 THE CHAIRMAN: Can we leave it on the basis you are at least going to have  
8 a discussion about that? Clearly, Mr Beard is keen to explore it.

9 MR BEARD: It comes as no enormous shock that Mr Palmer takes this position. We  
10 will have a chat with him and deal with it. Just one thing I think it is important to clarify,  
11 obviously, in his report, Mr Coyne has referred to the witnesses' statements from the  
12 factual witnesses. Just to be very clear, he didn't have any privileged access to those  
13 witnesses because --

14 THE CHAIRMAN: That's fair. I see --

15 MR BEARD: -- we took these issues of parity of access very seriously in relation to  
16 these matters. So, I don't think the Tribunal should just be working on the basis that  
17 there's some kind of just general --

18 THE CHAIRMAN: No, no, of course. That's entirely clear. You're quite right.

19 MR BEARD: -- (overspeaking), which is why we raised this concern that, actually, in  
20 the world of known unknowns, what actually the Tribunal is looking for is clarification  
21 of the factual background that feeds into the way in which the experts deal with it. But  
22 I'll take it away and --

23 THE CHAIRMAN: It is entirely clear, Mr Beard. I suppose a better way of putting it is  
24 one assumes that Mr Coyne and Professor Pietzuch have some idea of what actually  
25 is happening in the factual evidence, and are able to put it into --

26 MR BEARD: Of course, of course.

1 THE CHAIRMAN: But, if that is not the case, then obviously we will need to think  
2 about something else. Just the message, I think, is that we are not looking for chapter  
3 and verse on the technical stuff. We just want to have some orientation. That's the  
4 point.

5 MR BEARD: When I was talking about presentations and slides, this was not getting  
6 into the detailed nature of --

7 THE CHAIRMAN: Slides would be very helpful. We seem to have drifted into having  
8 a discussion (overspeaking).

9 MR BEARD: (Overspeaking) one of these.

10 THE CHAIRMAN: It is quite helpful because, hopefully, it is helpful in the sense that  
11 it makes some of the things easier.

12 Just on the remainder of the concurrent evidence, I think we do have a preference,  
13 quite a firm preference, for separating the economic and the valuation issues, and it  
14 looks as if the economic issues would be Mr Colley and Mr Harman, and the valuation  
15 issues would be Mr Bezant, Mr Dasgupta and Mr Harman again, subject to the points  
16 you want to talk about, and we will come back to those.

17 MR BEARD: I think that's actually agreed.

18 THE CHAIRMAN: Exactly. I understand.

19 MR BEARD: Actually, this is now agreed between the parties, that valuation should  
20 come before quantum because it feeds into those issues in relation to quantum. It  
21 also feeds into earlier issues in relation to exclusionary views in particular.

22 THE CHAIRMAN: We have just had a discussion about that, and we weren't terribly  
23 keen on it, but we are open to persuasion on it. We may not need to resolve that  
24 today. We are still probably at the stage -- well, we are at the stage where we know  
25 an awful lot less than all of you do.

26 So, just to be clear, the reason that we are concerned about that is -- well, maybe just

1 to step back a bit, we are not keen on dealing with this issue by issue. The reason for  
2 that is that there are so many threads that run through these things that are common.  
3 Just take the counterfactual as an example. If you start doing it in blocks, you end up  
4 revisiting the same thing again and again, and again. We don't want to do that. We  
5 would much rather have all the economic evidence. We would be perfectly happy, at  
6 end of the concurrent evidence, to have clarificatory questions from counsel and then  
7 we would go into cross-examination of the economists. Then we would envisage  
8 doing the same thing for the valuation experts and clarificatory questions and  
9 cross-examination after that.

10 Now, if you are going to slice a bit of the economic concurrent evidence off and try to  
11 do it again later, I think that would be quite challenging, both in timetable terms and  
12 also just messy.

13 MR BEARD: I understand, if you are going to block the economic evidence in a single  
14 entity, then it becomes harder to find --

15 THE CHAIRMAN: It becomes harder to slice it off.

16 MR BEARD: I can understand that. Why don't we take that away? It is a very useful  
17 indication for these purposes.

18 THE CHAIRMAN: I know you have a view that it would be helpful to do it issue by  
19 issue. Certainly I can see some merit in that. But I think our discussion so far has  
20 really pointed us the other way. It is not a closed view on it. We are still in the process,  
21 as I said, of trying to work out what we want to do in the hot tub, but that's the current  
22 view.

23 MR BEARD: It is obviously true there are overlapping issues that arise across different  
24 elements of the case, and that does mean, of course, that there is a risk that you're  
25 coming back to questions as you work your way through, if you do it issue by issue.

26 We had thought that there was sufficient delineation between different elements that

1 you could deal with particular blocks conveniently. To some extent, it is in order to  
2 place some sort of overall structure across the way in which the questions are being  
3 asked. It is not trying to suggest there aren't cross-cutting themes, as it were, or  
4 issues.

5 So, we had that in mind.

6 In the end, the hot tub and the hot tub's management is a decision for the Tribunal,  
7 because we recognise there is an awful lot of burden on the Tribunal in preparing for  
8 the hot tub, even if we provide suggested issues/questions, whatever. If the Tribunal  
9 decides it would much prefer to have it in two blocks, effectively, then, really, that is  
10 a matter for the Tribunal, because we were seeing this as something that was  
11 convenient and analytically useful and enabled pauses along the way. But we can  
12 see, and we are not going to suggest otherwise, that there are issues that overlap.

13 I think we do have the concern that, in relation to issues in relation to the valuation  
14 evidence, what you have are matters that go to, in particular, questions of foreclosure.  
15 So, ironically, one of the problems that we were trying to grapple with is the fact that  
16 some of these threads cross across into the other experts.

17 THE CHAIRMAN: We are very alive to that. Indeed, that's precisely the discussion  
18 we have been having, about whether it is better to slice it up and separate and have  
19 the same thing coming back again and again or whether we just have to go through  
20 the gymnastics of getting back, get it in the right place and then get it out of order.  
21 There is no perfect answer for that.

22 MR BEARD: No, this is why I'm not trying to suggest one. We obviously went through  
23 a similar sort of process trying to work out what the best way of doing these things  
24 were and then drawing on experience of trying to manage hot tubs. If they become  
25 very long, one of the problems is, when you come back to the clarificatory questions  
26 or cross-examination a week and a half in, you have kind of lost the thread of what's

1 going on and you end up looping backwards and forwards in that way. We are trying  
2 to avoid that in many ways.

3 THE CHAIRMAN: Yes, well, I think we would appreciate the clarificatory questions  
4 coming after the issue along the way. I think we would do that. Obviously,  
5 cross-examination we would be putting off until the end. Anyway, that's where we are  
6 at the moment.

7 MR RIDYARD: What's the harm of putting quantum before the valuation experts? I'm  
8 not challenging it. I just want to understand.

9 MR BEARD: Is it harm? I wouldn't put it as high as a harm.

10 MR RIDYARD: What's the downside?

11 MR BEARD: The downside is, if you are trying to assess quantum, if the valuation  
12 expertise and outputs feed into your quantum analysis, you would have thought that  
13 you would want to have gone through the interrogation of those issues before you fed  
14 it into any sort of quantum analysis.

15 That was the thinking behind those sorts of issues being positioned before quantum.  
16 Because quantum is effectively the out-turn if you had found any abuse, how you were  
17 generating the figures, and you'd want to take into account all of the expert material  
18 that is relevant to the assessment of abuses. So the valuation material that goes to,  
19 you know, possibilities of entry, and so on, will be relevant to foreclosure but it will also  
20 be relevant, potentially, to how you assess quantum in due course. So you can see it  
21 fits in in a number of places.

22 That's why we put it there, but we recognise that there isn't a perfect way of doing  
23 these things. So that's why I wouldn't go as far as to say harm. We were just trying  
24 to come up with a suggestion that made sense when you were doing issues broken  
25 down and we thought, if you are breaking it down by issues, then the logical,  
26 least-worst point, in a way, in which to interpose the valuation material, would be at

1 that stage before you reach quantum. But I'm undoubtedly dealing with a series of  
2 competing least worsts rather than there being a perfect answer here.

3 LORD RICHARDSON: Just one point before we move on in relation to the concurrent  
4 evidence. I think just to explain to counsel that one thought we had in relation  
5 to -- rather than having it as a single lump and then clarificatory questions and then  
6 cross-examination, we did see the value in dealing with it on a topic-by-topic basis,  
7 but, rather than stopping after each topic to have cross-examination, what we had in  
8 mind, as a provisional view, is, we would have a topic, there would be an opportunity  
9 for counsel to ask clarificatory questions of the witnesses, and then we would move  
10 on to the next topic. So there would be some breaks in it, as it were. Then, when we  
11 got to the end of everything the Tribunal was interested in asking, we would then move  
12 on to cross-examination.

13 So, it is a kind of possibly a slightly more -- a bit of a middle ground between just  
14 having one lump of, to use your word, Mr Beard, concurrent evidence and then  
15 cross-examination. But, again, that's something we would reflect on in light of what  
16 you have to say. I just thought that would be helpful clarification.

17 MR BEARD: That is helpful. I think that obviously makes sense to do that. Otherwise,  
18 you really do lose track of what you are trying to clarify if you ask a clarification of  
19 something that occurred seven days earlier, sort of thing. That all makes perfect  
20 sense.

21 I think the issue which obviously the Tribunal is grappling with, and we have been  
22 grappling with, is when you have evidence from, essentially, a different set of experts  
23 which feeds in at different points along the way in relation to the analysis you're talking  
24 about, how do you deal with those things together, unless you are going to have a hot  
25 tub where everyone is invited? And we are not suggesting that. We are not suggesting  
26 everyone gets their costumes on and dives in. That, I think, would a recipe for

1 a degree of chaos.

2 THE CHAIRMAN: It is difficult. It is the nature of these cases. I think it is a helpful  
3 discussion. Anyway, that's where we are at the moment.

4 I suppose the only other --

5 MR PALMER: Just to indicate our position --

6 THE CHAIRMAN: Just two other things to put on the table. One is that, at the moment,  
7 our anticipated time requirement for the economic and the valuation evidence,  
8 concurrent evidence, would be three days, which I think probably we would split into  
9 two for the economists and one for the valuation experts, more or less, but that's how  
10 we are seeing it at the moment.

11 I should say, we probably anticipate that your estimates of cross-examination might  
12 be a little bit less than they have been as a result of the time we spend there. But we  
13 can come back to that when we talk about timetabling.

14 MR BEARD: I imagine, just off the top of my head, if that is going to be your concurrent  
15 evidence estimates, and even if we build in a degree of spillage, then the timetable  
16 concern that you had about getting the closings in earlier is going to resolve itself quite  
17 quickly, unless Mr Palmer tells me he wants to spend weeks cross-examining. We  
18 have already indicated that, in relation to technical evidence, we don't think we will  
19 need the full two days, and then, if we had a full hot tub on these issues, the idea that  
20 we would be cross-examining for substantial periods longer than that seems unlikely,  
21 because experience tells that, when you have those sorts of hot tub  
22 exchanges -- I mean, obviously, you can have a situation where you effectively rerun  
23 cross-examination entirely, but that is something that the Tribunal has deprecated  
24 since the earliest days of hot tubs.

25 I think the first hot tub was unduly constrained in the sense that there were some  
26 criticisms that the hot tub evidence was given and then each side was allowed sort of

1 four questions. I think we have moved beyond that. But the general approach has  
2 been no longer in cross-examination than the total in relation to concurrent evidence.

3 Now, that doesn't have to be a bright line, rigid position.

4 THE CHAIRMAN: We weren't planning to set any constraints on cross-examination,  
5 other than the point you have just made, which is we are not expecting you to  
6 cross-examine on the points we have explored fully.

7 I think, just to be clear, a lot of this is about the Tribunal's intention to roll its sleeves  
8 up, and this is a case in which the Tribunal is planning to roll its sleeves up, if that is  
9 helpful.

10 MR BEARD: That's always been the key indication.

11 THE CHAIRMAN: I appreciate it does make it more difficult for you to prepare your  
12 cross-examination without knowing what's coming.

13 MR BEARD: It gives us an indication. The timing indication is useful. We will take  
14 that away --

15 THE CHAIRMAN: We will come back on timetable. We have a couple of other  
16 thoughts -- we may not need them, but certainly some other places where we thought  
17 you could save some time.

18 Just one last point -- and we mean just to put it on your radar and not really for  
19 discussion at this stage -- we will have to make a decision, at some stage, about  
20 whether experts remain under oath from hot tub to cross-examination or how that  
21 works. I think it is probably a weekend in there as well somewhere.

22 We haven't formed a view on that. I think there are arguments both ways about  
23 keeping them in and letting them out. I don't particularly want to have the discussion  
24 today, but I think we do need to have it at some stage, probably the beginning of  
25 the trial. So you might give some thought to that.

26 MR BEARD: I think it is sensible we take it away because, normally, you don't let an

1 expert out between the concurrent evidence and the cross-examination, save when  
2 you're working it into topic chunks, effectively, where you essentially can say he can  
3 be released.

4 THE CHAIRMAN: I think there is a variety of practices which is, in a way, part of  
5 the problem. We don't have a clear position on it. But, at the moment, we are -- we  
6 have had the discussion this morning and haven't reached a clear position on it. So  
7 we are open to a proper discussion about it. But let's not have it now, because it is  
8 not something you have raised in your skeletons. It is something we know we are  
9 going to need to deal with.

10 Mr Palmer, what do you want to say?

11 MR PALMER: Just to indicate, as it were, we are largely agnostic about whether it  
12 should be topic based or all in one go. We are largely agnostic because, like Mr Beard,  
13 we view it is as a matter for the Tribunal to determine for itself.

14 If it had been chopped into issue by issue, then we saw the sense of valuation going  
15 in before quantum, logically. If it is not to be done issue by issue, then I would have  
16 concerns about interposing the valuation evidence in the middle of that, for reasons of  
17 purdah, amongst others.

18 It is not as if -- although Mr Beard rightly observes that the evidence on valuation will  
19 feed into the evidence on quantum. But it is not as if, when we get to  
20 cross-examination of experts on the issue of quantum, we will know in advance what  
21 the Tribunal's conclusions on valuation are. So there won't be actually anything new  
22 to play in at that point. The Tribunal will have all those matters in mind, and the  
23 interrelationship between them, at the time of writing a judgment. It is not as if there  
24 is a real advantage in interposing during what is otherwise unbroken  
25 cross-examination, would be our position. So, if, as indicated, the Tribunal is minded  
26 to go with solid blocks, a couple of days' concurrent evidence followed by a couple of

1 days total, save for cross-examination and half that again for valuation, we have no  
2 difficulty with that and can certainly work with that structure.

3 THE CHAIRMAN: That's helpful. Thank you very much.

4 That's the end of my list of indications. Do you want to go back -- is there anything  
5 else you want to deal with before we go back to talk about Mr Dasgupta?

6 MR BEARD: No, I don't think so. No. I'm perfectly -- I think we have actually dealt  
7 with a number of the issues. Confidentiality, as I say, I think is going to be something  
8 that we will come back to at the end. Because, obviously, I don't -- you have a copy  
9 of the letter that -- essentially, what's going on in relation to confidentiality is there is  
10 a redesignation exercise that is being undertaken in relation to it. Those matters are  
11 subject of us providing redesignated material to the Class Representative, putting it  
12 now on the Opus system which is now up and running and we are working through  
13 the material we have as quickly as we can, doing it in a rational order -- so dealing  
14 witness statements, pleadings, expert reports and then the contemporaneous  
15 documents that the Class Representative wanted up on the Opus system as part of  
16 the trial bundle. So I can go through the details of it, but I don't think those issues are  
17 necessarily ones --

18 THE CHAIRMAN: We were certainly aware that was going on and obviously aware  
19 of the tension that arises. I quite understand there are some constraints about when  
20 you can start that exercise. You need to know what's in the trial bundle but also, no  
21 doubt, there are perfectly good complaints coming from people, who don't have the  
22 documents, that they are going to be working with them.

23 So, I'm not sure, unless there is anything we can specifically deal with, in terms of  
24 either points of principle or something else that would assist that process, then we  
25 have to leave you to it, I think. Of course, with the encouragement to your instructing  
26 solicitors, who I note are working very hard on it, to keep working very hard on it.

1 MR BEARD: They are working on it. We are getting through it as fast as we can. We  
2 are hoping this redesignation exercise will be concluded by early next week. We are  
3 not holding it back until it is concluded. We are putting stuff on as and when it is done.  
4 THE CHAIRMAN: Presumably, it is important for you, as well as for Mr Palmer, to  
5 know what the documents are.  
6 MR BEARD: We know what the documents are --  
7 THE CHAIRMAN: No, I mean to have them in the form in which they are going to be  
8 available in the trial bundle.  
9 MR BEARD: Absolutely. There is a commonality of interest in relation to those issues.  
10 THE CHAIRMAN: Mr Palmer, do you want to say anything about confidentiality? Do  
11 we need to spend any more time on it?  
12 MR PALMER: One very brief moan, feeding into one proposal. The brief moan is that  
13 all this is happening very last minute. The vast bulk of these documents have been  
14 known for months. There's been some suggestion, "Oh, you only told us what  
15 documents you wanted a few weeks ago". That is, with respect, complete nonsense.  
16 THE CHAIRMAN: Isn't the reference point the finalisation of the trial bundle?  
17 MR PALMER: The factual witness statements are only now going through this  
18 process. The documents which are referred to in the factual witness statements, and  
19 in the expert reports, are all in the bundle.  
20 THE CHAIRMAN: So you say it could have been done earlier. Yes, I understand.  
21 MR PALMER: We are now at a point where we don't know what the outcome is. We  
22 did receive the first tranche of the outcome last night. We haven't had an opportunity  
23 to review that yet. So we come to the PTR not knowing if there is a dispute as to the  
24 standards which have been applied for what is or is not confidential. The last thing  
25 I want is to have to derail the start of the trial with some sort of argument about what  
26 is or is not confidential. That would be unhelpful. There needs to be a mechanism,

1 firstly, for a deadline to be imposed for this exercise to be completed and for an  
2 opportunity for concerns as to confidentiality -- and the appropriate has been  
3 taken -- to be aired, and hopefully not on a document-by-document basis, but on  
4 a steer that, "This class of document, this category of document, has been treated as  
5 confidential when, actually, either not confidential or the extent of redaction required  
6 is much, much less".

7 For example, to redact the name of a particular publisher, who in certain conversations  
8 were being had at any given time, rather than redact the whole substance of  
9 the conversation. That sort of issue. Issues around -- certainly, it's moved towards  
10 cross-play restrictions were aired very publicly at the time. We have had up to  
11 now -- I don't know what approach has been taken on review -- a very restrictive  
12 approach taken to that by Sony as well. I'm not in a position, because we only got the  
13 (overspeaking) --

14 THE CHAIRMAN: No, of course not.

15 MR PALMER: -- to say there is going to be a dispute here. But I would like, that  
16 whinge having been expressed, to have some agreement, with the Tribunal's  
17 assistance, as to where we go from here, if there is a dispute, that we have some sort  
18 of timetable for doing that and that we avoid, at all costs, using up valuable trial time  
19 on satellite disputes about confidentiality which we could do without.

20 THE CHAIRMAN: I think I heard Mr Beard to say the entire exercise would be finished  
21 at the end of next week. Is that what you said?

22 MR BEARD: In terms of the redesignation process, for all Mr Palmer's moan, actually,  
23 he has almost all of the witness statements, almost all of the pleadings already. I think  
24 he has at least one witness -- expert report.

25 In terms of the contemporaneous documents, we have explained the criteria -- the  
26 approach we are adopting in correspondence and we are following the confidentiality

1 ring order approach that was put in place.

2 The contemporaneous documents that Mr Palmer is referring to, which is the bulk of  
3 this, which, you know, tens of thousands of pages -- it is 3,000 documents -- most of  
4 those were put up by the Class Representative in the middle of January.

5 Now, in those circumstances, moaning at us for taking our time in circumstances  
6 where we are trying to get it done -- we were trying to get it done by the end of this  
7 week. We wanted to try to get it done by the PTR. It is just not feasible. Cutting to  
8 the chase, we do hope we will have it all done by the end of next week.

9 THE CHAIRMAN: I'm not really interested in sort of the moans either way, really.  
10 There was probably a learning point here, which is that, if there are documents that  
11 can be done before everybody knows they are going to be in the trial bundle, then  
12 dealing with them before the trial bundle is finalised, that's probably the only point.  
13 That's not a criticism of anybody, because both sides could have made that point and,  
14 obviously, it's happened the way it's happened. So people who are doing this, again,  
15 might register that. But we are where we are. Mr Palmer, that's what you are being  
16 offered, and I just -- I suppose the other thing to say, really, Mr Palmer, is, we are  
17 not -- I'm not particularly inclined to spend a lot of time sorting these issues out at this  
18 stage. I appreciate that's, in one sense, unhelpful. But the simple fact is, the upside  
19 of having things resolved now doesn't really justify the time that's going to be taken  
20 away from all of us for preparing for what's going to be a very substantial trial.

21 Unless there is something which is fundamentally wrong and cannot be fixed quickly,  
22 I'm not really very interested in it. If it turns out it makes the trial more cumbersome,  
23 we are going to have to live with that. Having said that, if there are things that are  
24 fundamentally wrong and you think it's just been done badly, of course you should say  
25 so, but there's no point saying so on the first day of the trial.

26 MR PALMER: I wanted to put down a marker. We got it last night --

1 THE CHAIRMAN: I completely understand. I'm not blaming anybody for where we  
2 are. I'm just making it plain that, as far as I'm concerned, there is very little upside  
3 unless you think it is going to fundamentally change a lot of documents that are going  
4 to be dealt with in a way that will change the course of the trial. I don't want to have  
5 collateral fights that takes everybody's attention away from trial preparation for no  
6 obvious purpose. Of course, you are not going to do that.

7 MR PALMER: But in case there is something.

8 THE CHAIRMAN: So, if there is, you need to write to us and we will deal with it. But  
9 we are not dealing with it on the first day of the trial. The sooner you deal with it -- if  
10 you have something you want to raise, obviously raise it with your solicitors and they  
11 will raise it with Sony's solicitors first --

12 MR PALMER: On the basis that we will have everything by the end of next week, we  
13 will do what we can. Although Mr Beard says they explained in correspondence the  
14 approach, we got last night a vague description, for example, a document which  
15 contained highly sensitive product development and pricing information regarding  
16 PlayStation consoles. We don't know how far back it goes.

17 THE CHAIRMAN: Of course. There is nothing we can do about that today, is there?  
18 The simple point is you are going to have to do the best you can. I appreciate it is not  
19 ideal. If you think it is a real problem, I'm available to deal with it and I will deal with it.  
20 I don't think we can do much more today.

21 MR PALMER: I understand.

22 THE CHAIRMAN: Thank you. I am not doing very well with our agenda. We seem  
23 to be doing it in precisely the reverse order.

24 MR BEARD: I think we are doing very well with the agenda; it is just not in the order  
25 we initially started off. But I don't think that really matters. I think we have covered  
26 confidentiality and teach-in. We will come back to the timetable, albeit I think we have

1 covered an awful lot of it. I think some of it we are going to have to take away anyway.  
2 On my list of things to cover there are two issues. One is the status of Mr Dasgupta's  
3 report and the other is the amendments to the Claim Form.  
4 THE CHAIRMAN: Which do you want to do first?  
5 MR BEARD: Let's do Mr Dasgupta first because I'm not sure it is going to take vast  
6 amounts of time, depending on where the Tribunal is on these things.  
7 THE CHAIRMAN: Certainly, given where you have got to, I wouldn't encourage you  
8 to give us too much of a history. Obviously, we are aware of that.  
9 MR BEARD: I'm going to give you a little bit.  
10 THE CHAIRMAN: I'm going to encourage you to give as little as you can get away  
11 with.  
12 MR BEARD: I will give you as little as I --  
13 THE CHAIRMAN: We have read the skeletons and looked back at the documents.  
14 MR BEARD: Actually, the thing I want to go back to is a letter of 7 February 2024,  
15 which is actually from the Tribunal, which I think has been added to the bundles. I take  
16 it back. I shall hand up copies.  
17 THE CHAIRMAN: It is not in the supplemental bundle?  
18 MR PALMER: Bundle B, tab 1.  
19 MR BEARD: Mr Palmer, thank you. This was the letter that the Tribunal sent just  
20 before -- in the run-up to the CMC, which explained what you wanted doing in relation  
21 to (interference) is that the expert process you wanted carefully regulated.  
22 THE CHAIRMAN: Yes.  
23 MR BEARD: You wanted methodology outlining a careful approach to how these  
24 matters were going to be dealt with so that we all knew where we were going with the  
25 various issues from the outset, so there were not, as they say, surprises along the  
26 way.

1 That was then made manifest in the 14 June 2024 order, which is in bundle C at  
2 pages 3 to 6.

3 What had preceded that were obviously methodology statements from -- sorry, in  
4 particular, Mr Colley, Mr Harman, but also Mr Bezant had been required to provide --

5 THE CHAIRMAN: Yes, I think he turned up and said, we want to get into valuation  
6 evidence and we had said, yes, but we'd like to see what he's going to say.

7 MR BEARD: You will also see there, on page 5, the consideration of what would be  
8 required in relation to Professor Pietzuch, which also came subsequently.

9 Strangely, notwithstanding this very specific process attached to specific expert  
10 witnesses, it appears that the Class Representative considered that paragraph 11 of  
11 the order, which is on page 6, which says:

12 "To the extent not already covered by the permission granted in respect of Mr Harman,  
13 the Class Representative is permitted to adduce expert evidence in the field of  
14 valuation."

15 Now, that was, of course, the product of a discussion about what Mr Harman's  
16 evidence was going to be. Strangely, the Class Representative seemed to think that  
17 that meant at any point they could substitute in any expert to deal with this sort of  
18 valuation matter.

19 Now, we do not read the Tribunal's order in that way. We read that as being an Order  
20 pertaining to particular experts to cover these various matters.

21 The next stage in the story then is that bundle B, page 59 --

22 THE CHAIRMAN: Just to be fair, I don't think any of us really had thought about how  
23 that evidence was going to be delivered. I mean, I don't read paragraph 11 as either  
24 giving permission for another expert or excluding that. It seems to me what it's saying  
25 is that, if Mr Bezant is going to produce something, then obviously that's a subject  
26 which the Class Representative is going to be permitted to reply to and it leaves it

1 open. It doesn't preclude it. It doesn't include it. I'm not sure paragraph 11 really  
2 takes us very much further.

3 I think there may well be a point which is, no doubt, the point you're about to go onto,  
4 which is, if there is going to be a new expert produced, then permission needs to be  
5 granted, and that is coming very late and that is obviously not ideal. If that is the point  
6 you're going to make, I think we are there already.

7 MR BEARD: You have my point entirely.

8 THE CHAIRMAN: Then the question was, as you have, I think, quite rightly and  
9 properly conceded, if that is where we are and it is evidence that looks, on the face of  
10 it, that it is reply evidence to Mr Bezant, then it is probably going to end up going in.

11 MR BEARD: Well, it purports to reply to Mr Bezant; we can argue about the extent to  
12 which it actually does in due course, assuming permission were to be granted. The  
13 two points I make are --

14 THE CHAIRMAN: But you're not resisting permission, are you? Your points are about  
15 conditions, really, aren't they?

16 MR BEARD: Let's take it in stages. We think that, in circumstances where this  
17 Tribunal has laid down a methodology process where you're supposed to outline  
18 methodologies, then to interpose a second expert witness is a surprising course, even  
19 if the Tribunal reads that paragraph 11 generously.

20 THE CHAIRMAN: I'm not so sure about that. I think the methodology point was about  
21 getting the boundaries of the evidence clear. Once we have Mr Bezant giving the  
22 evidence, then the boundaries are clear. Mr Dasgupta, as I think was made clear in  
23 the letter that came before Christmas, whatever he was going to do, he was going to  
24 do nothing but reply evidence. So there is not much point putting a methodology  
25 statement in for somebody who is giving reply evidence to somebody else who has  
26 already served their statement. I'm not sure the methodology gets you terribly far. I

1 think your permission point may be perfectly good, but I'm not sure the methodology  
2 does.

3 MR BEARD: I think, in these circumstances, you definitely do need permission, and  
4 the way it was introduced in the course of proceedings wasn't satisfactory. It's at B/59  
5 where, on 3 December, we were simply told, actually, there is someone else coming  
6 along.

7 THE CHAIRMAN: That's page 59. That's the first time you heard about Mr Dasgupta.

8 MR BEARD: (Overspeaking) and if you are going to do these sorts of things then  
9 plainly it is appropriate to have (a) sought the permission of the Tribunal and (b) alerted  
10 us in relation to these matters before we are in the process of replies. And, in relation  
11 to that, one of the things that is important is providing people with an opportunity to  
12 structure how any further evidence is to be dealt with in relation to these matters.

13 But if the Tribunal is minded to grant permission to Mr Dasgupta to provide his  
14 evidence insofar as it replies to Mr Bezzant's material, we didn't recognise that  
15 Mr Bezzant is responding in part to Mr Harman's material and Mr Dasgupta is  
16 responding, he says, in part to -- says he's responding to Mr Bezzant's material.

17 Now, when we read the JES, we end up in a very strange situation where there's a  
18 little bit of, "To you, to me, to me, to you", sort of Chuckle Brothers' transition between  
19 the two of them with respect to who is covering what. That, with respect, is not really  
20 a satisfactory course when we are heading into a potential concurrent evidence  
21 process.

22 What we think is, if the Tribunal is minded to give permission, and we are going to  
23 have concurrent evidence in relation to valuation issues, then, as we have said, we  
24 need to have conditions attached in relation to how this is sensibly dealt with.

25 We have discussed this with the other side, assuming that the Tribunal might grant  
26 permission in relation to these matters.

1 THE CHAIRMAN: I think you more or less conceded that point in your skeleton. But  
2 maybe I misread it.

3 MR BEARD: I'm not sure we went quite that far. In those circumstances, the sensible  
4 course would be that it's one of Mr Harman or Mr Dasgupta that's responding in  
5 relation to any particular question. It is not a choral process, effectively. Separating  
6 the two of them out into two distinct, concurrent evidence processes wouldn't be  
7 efficient. We have obviously discussed this also with Mr Bezant. Therefore, the idea  
8 that they --

9 THE CHAIRMAN: You mean, do you, you have to have Mr Harman, Mr Bezant and  
10 Mr Dasgupta together? That's the conclusion?

11 MR BEARD: Yes, this is our conclusion, because of the mix-up between what's  
12 covered where. We think, for the discipline of the concurrent evidence, if you are  
13 having all three of them within that hot tub, one needs to be designated as, effectively,  
14 the person answering the particular question. Unless there are very good reasons  
15 why the second of them needs to try and embellish, it should be limited to a particular  
16 exchange in relation to a particular question that is bilateral, effectively. And obviously,  
17 in relation to how we deal with cross-examination subsequently, we will have to think  
18 about that depending on how that process actually plays out.

19 Obviously, what there shouldn't be is a sort of conferral mechanism before each  
20 question is being answered. To be fair to Mr Palmer, if the Tribunal is going to grant  
21 permission and he's going to have a joint hot tub, I think these potential conditions are  
22 actually ones that Mr Palmer and the Class Representative accept. So, I have set out  
23 our position in relation to these matters in relation to where we are now. I think those  
24 conditions can mean that this process can go forward without prejudice as to whether  
25 or not what Mr Dasgupta is saying really adds anything.

26 THE CHAIRMAN: In relation to the conditions, one of them I think is really very easy.

1 The point about adverse inferences, I assume, is not controversial and, frankly, this is  
2 the point you make about cross-examination, I don't see that as being a problem.

3 MR BEARD: We thought it was sensible to set it out in the skeleton argument. But,  
4 again, I don't think there is any difference between the Class Representative --

5 THE CHAIRMAN: Of course, you will do what counsel normally do and make it clear  
6 you're cross-examining on that basis. But just in relation to the conditions, I suppose,  
7 in practice, assuming that we grant permission and assuming that we are alive to the  
8 points you make -- we recognise the points you make -- in some ways that is really  
9 about the design and management of the hot tub. So it is quite difficult, if you like, to  
10 set those conditions now down other than to say we are aware of the point and, when  
11 we prepare the hot tub, we are going to have in mind the importance of making sure it  
12 is done fairly. Are you asking for anything more than that?

13 MR BEARD: No. I can immediately see, as soon as one tries to play this out in some  
14 kind of structured order, we can spend hours and hours arguing about the answers to  
15 these things, placing all sorts of caveats, and I'm not sure that's a productive way of  
16 dealing with these matters.

17 But what we did want to do was set down these as basic principles as to how we think  
18 this is a way of improving the fairness of a process where we're ending up with two  
19 witnesses on one side and one on the other, which is an unusual situation. I think we  
20 put it at its lowest. It can happen, where there is a distinct difference between the  
21 particular topics that are being dealt with, have been split by one side differently from  
22 the other, and we have seen this in other proceedings. But here you have a funny  
23 situation where Mr Harman, who is put forward on his website as the valuation  
24 expert -- Mr Dasgupta doesn't mention valuation -- is actually not the person that's  
25 leading on this. So there's just a huge overlap between the material they're covering.  
26 They are both essentially covering competition economics issues.

1 THE CHAIRMAN: We have been told, haven't we, that Mr Harman didn't feel he could  
2 cover the issues, for whatever reason, and you may want to say more things to that. I  
3 think the key points you're making, just to make sure I have this, you're firstly saying,  
4 just as the rules of thumb, just to call them that, firstly, you're pushing back on the idea  
5 that there could be any -- or you're trying to set a line that there should be no conferring  
6 between them. I don't think we would anticipate that anything (overspeaking).

7 MR BEARD: (Overspeaking).

8 THE CHAIRMAN: To be fair, that's pretty easy, I think.

9 Then there is the point about only one answering the question by reference to that  
10 subject matter and, again, I don't think that's terribly controversial; although there may  
11 be circumstances in which it might be desirable to ask for both because of the more  
12 conceptual nature of the question.

13 The way I'm thinking about this, unless I have this wrong, and Mr Harman takes one  
14 approach to counterfactual pricing, for example, charges, however you describe it, and  
15 then Mr Bezzant comes along and says, "Well, actually, I'm going to do something  
16 different", and then Mr Dasgupta comes along and talks about how  
17 Mr Bezzant -- I appreciate there may well be some subtleties in there. But, broadly  
18 speaking, the difference between Mr Harman and Mr Dasgupta is quite significant  
19 because, actually, they are approaching it from different angles. But I can see there  
20 may well be places -- if I'm talking conceptually about the counterfactual and about  
21 what one is trying to achieve, it is possible, and it might be sensible, to be asking both  
22 Mr Harman and Mr Dasgupta, if you see what I mean, which is why I think a rule is not  
23 necessarily appropriate.

24 MR BEARD: I think, at that point, you would be asking Mr Colley (inaudible) perhaps  
25 where he might have his (inaudible), so --

26 THE CHAIRMAN: Hopefully, you asked him that already. So you see what I mean?

1 I'm not pushing back on what you're saying, I'm just saying I think that's the one  
2 where --

3 MR BEARD: That's why I'm not pressing you for some kind of rule on it because, as  
4 soon as you work through this, you can see there will be circumstances where it might  
5 be appropriate. But we think the rule of thumb should be you don't get a choral  
6 response.

7 THE CHAIRMAN: Yes. But they are the two key points? I haven't missed anything,  
8 have I? Is there something else?

9 MR BEARD: In workability terms, I think that is the sensible way forward. We protest  
10 about the way in which this has ended up but, just to be clear, we have been playing  
11 nicely and ensuring that the JES process rolls through. We haven't withdrawn our  
12 expert (overspeaking) --

13 THE CHAIRMAN: No, no (overspeaking).

14 MR BEARD: We have had Mr Bezant in with both Mr Harman and Mr Dasgupta. You  
15 have seen the product of that.

16 THE CHAIRMAN: That's all understood and appreciated. I can see that.

17 I should say I think we do think that Mr Dasgupta's evidence is broadly helpful. I'm not  
18 saying we agree with it, but, actually, in terms of framing the issues with Mr Bezant, it  
19 seems a useful reply evidence to have in front of us. So that's certainly where we are  
20 at the moment.

21 Mr Palmer?

22 MR PALMER: Nothing else to add, sir, in light of the discussion. The way my friend  
23 has (inaudible) the discussion is exactly how we invite the Tribunal to approach it.

24 The issue of permission. We did view that as being granted by paragraph 11, but if it  
25 is not, as you have indicated, sir, then we do ask for permission formally to be given  
26 for that witness.

1 THE CHAIRMAN: I think, probably, it may well be just a function of the wording of  
2 paragraph 11. I think my best reading of it, if one can put it that way, is it was  
3 contemplated you would be giving reply evidence, but no-one thought really about who  
4 was going to be giving it. I think, technically, if you are introducing a new witness, an  
5 expert witness, you do need formal permission, but I don't think I put it any higher than  
6 that. I thought, probably -- I think Mr Beard says the proper thing to do would have  
7 been to have done that earlier. But I'm not sure the course of history would have  
8 changed very much if you had, if I can put it that way.

9 MR PALMER: (Microphone off) The arrangement was very specific -- the Tribunal  
10 understands that. The sensible answer is to deal with it, deal with it now. But there is  
11 nothing really between us as to (inaudible).

12 THE CHAIRMAN: So you're not pushing back on any of the points that Mr Beard  
13 makes on the conduct of the concurrent evidence.

14 MR PALMER: The suggestions are made in the skeleton argument (inaudible) at 1.2,  
15 and indeed 3, which is the substance of what you have been discussing with Mr Beard.  
16 But we broadly support -- we caveat, as, indeed, both Mr Beard did himself in putting  
17 it to you and, indeed, as you did in response to Mr Beard, that there may be occasions  
18 when it would be helpful to have both experts on one topic. But, broadly, we do see  
19 them as covering different areas. The evidence upon which we rely, the methodology  
20 upon which we rely, which was, of course, cut from the methodology statements, is  
21 Mr Harman's. The purpose of Mr Dasgupta, who has particular expertise in IP  
22 valuation and licensing disputes is to explain why, in his view, he doesn't think  
23 Mr Bezzant's approach is a viable one. That is a debate which the Tribunal will have to  
24 resolve and that's the purpose of the evidence statement.

25 THE CHAIRMAN: Mr Beard, is there anything you want to say further about that?

26 MR BEARD: No. We agree that permission should have been --

1 THE CHAIRMAN: In that case, we will formally give permission for Mr Dasgupta's  
2 reply evidence. We do see a potential for difficulty in determining the line between  
3 Mr Harman and Mr Dasgupta in relation to some things. So it will be important to make  
4 sure that Sony is not put at an unfair disadvantage as a consequence of that. And  
5 there is no real dispute about the adverse inferences in the conduct of  
6 cross-examination. Really, it is about management of the concurrent evidence, and  
7 everybody seems to be agreed that we need to bear that in mind. Obviously, we are  
8 still finalising our preparation of that, but we will be very conscious of the position as  
9 we do so. And, of course, if Sony wants to raise the issue again, if they think that's  
10 necessary, then they are entitled to do. It is probably not helpful to do it in the middle  
11 of the concurrent evidence, but it might not be unhelpful to remind us of the point at  
12 some stage prior to that.

13 MR BEARD: I'm grateful. That's very useful. For our part, I think, apart from  
14 timetabling issues, that takes us to some of the proposed amendments that have been  
15 put forward in relation to the Re-Re-Re-Amended Claim Form.

16 THE CHAIRMAN: Shall we do that now? We will need to take a short break. I don't  
17 think we are going to get finished without taking a break.

18 MR BEARD: I'm not sure how long --

19 THE CHAIRMAN: Do you think we can finish it off?

20 MR BEARD: I imagine it can be done in 20 minutes or so.

21 THE CHAIRMAN: I think probably, in fairness to the transcriber, if you don't mind, we  
22 might give them ten minutes. Let's do that now and come back in ten minutes' time.

23 (11.40 am)

24 (A short break)

25 (11.54 am)

26 MR BEARD: So, amendments.

1 THE CHAIRMAN: Yes.

2 MR BEARD: If we pick them up -- I'm going to deal with them in two chunks,  
3 effectively. There is one which is about the class size and the other is about  
4 a methodological point, effectively. I will deal with the class one first.  
5 One can see that at paragraph 12, which is page 49 in the core bundle. This is the  
6 yellow text. This is the attempt to --

7 THE CHAIRMAN: "Based on ..."  
8 This is the paragraph, yes, "Based on ..."  
9 Yes. The (inaudible) is confidential, isn't it?

10 MR BEARD: No, I don't think so. We are on the fourth re-amended --

11 THE CHAIRMAN: No, I know, I know, I know. It's okay, I just want to (overspeaking).

12 MR BEARD: (Overspeaking) turn yellow.

13 THE CHAIRMAN: Yes, let me just -- I wasn't sure --

14 MR BEARD: (Overspeaking) check it. Green is inner confidentiality. Actually, I think  
15 green may be the third one, normally, but it's not, for these purposes, because it's  
16 being used as the inner confidentiality. Anyway, here it is yellow.  
17 But the key point here is that -- these amendments were sent to us on 5 February.  
18 They are significant because you can see, from the parts that are struck through, that  
19 what paragraph 12 is seeking to do is add around 3 million more people to the class  
20 and, indeed, extend the duration by about 60 per cent.

21 THE CHAIRMAN: Is that just a function of the updating of the class --

22 MR BEARD: That's what they say, yes.

23 THE CHAIRMAN: It's only been done once, hasn't it? This is the first update, isn't it?  
24 Because it was -- is that right?

25 MR BEARD: I think that's right.

26 THE CHAIRMAN: We did it at the certification hearing --

1 MR BEARD: Yes, at the certification hearing --

2 THE CHAIRMAN: -- obviously, and had the discussion about it (overspeaking).

3 MR BEARD: Yes, we had the discussion about it. That's one of the points, really. At  
4 the certification hearing, you said, "Look, there may be ways and means to revisit the  
5 class size", and you referred to it as the procedural gymnastics that might well be  
6 involved at paragraph 70. But what we have is a situation where -- we are not saying  
7 that at no point could the Class Representative come along and sought to potentially  
8 engage in those gymnastics, but when you're thinking about which gymnastics you're  
9 engaging in, you do have to be conscious of the regime we are dealing with. One of  
10 the key elements of the regime, which -- we haven't provided you with the authority,  
11 but -- well, we have *Kent*, for example, the recent *Kent* judgment, which has  
12 emphasised the importance in this scheme of providing a meaningful opportunity for  
13 opt-in and opt-out processes to work.

14 Of course, at the time of the certification process, what this Tribunal did was put in  
15 place a scheme for people to be notified and to be able to opt-out within a four-month  
16 period, effectively. It was a mid-January Order and it ran until the end of April, the  
17 relevant period.

18 Now, what you have here is something very different. You have got the inclusion of 3  
19 million people, which, in a way, is almost like a claim in and of itself, but the provision  
20 in relation to opt-out so that the relevant period of opt-out is closed before the start of  
21 the trial and the class is defined, which is what *Kent* emphasises in the recent  
22 judgment -- I mean, we can go to it, but I imagine you're cryingly familiar with it, so  
23 I won't take you to it. You have two weeks, effectively.

24 THE CHAIRMAN: Possibly three, if you take the first sitting day --

25 MR BEARD: Correct.

26 THE CHAIRMAN: I think the point is, once the trial starts, as we all know, you start to

1 learn lots of things that you don't know before and they're all in the public domain and  
2 so on. So, actually, at that point, it starts to be potentially unfair to the defendant  
3 because people can make decisions based on -- not that they probably sensibly could  
4 on Day 1 of the trial, but you have to have a marker somewhere to say that's the point  
5 at which you have to stop --

6 MR BEARD: That's the rationale.

7 THE CHAIRMAN: So we have three weeks, which is not ideal. If that is the  
8 submission, that's right.

9 MR BEARD: Our submission is, essentially, coming along at this stage, when you  
10 have known about this and known about the procedural gymnastics, and essentially,  
11 to turn up before the Tribunal and say, "Well, we haven't done this before, this is our  
12 first time, and we are going to give these 3 million people two or three weeks in which  
13 to decide to opt-out", is just inappropriate. It is not a proper exercise of the collective  
14 action scheme. It is not consistent with what *Kent* said about providing a meaningful  
15 opportunity for opting out.

16 THE CHAIRMAN: "Meaningful" might not mean what you say either. I think the thrust  
17 of *Kent* is meaningful -- it wasn't possible to be meaningful after the trial because of all  
18 the points we just talked about. It was a completely different possibility of a different  
19 risk analysis. So "meaningful" is not so much about -- I don't think in *Kent* "meaningful"  
20 was directed at the number of days in which people had to do it; it was directed at the  
21 timing and the knowledge of the parties at the time. Now, you might well say that  
22 there's not much difference between the two of them --

23 MR BEARD: That's exactly what --

24 THE CHAIRMAN: But they are slightly different things.

25 MR BEARD: The context of *Kent* is different, the sentiment of *Kent* is not, because  
26 what *Kent* is properly saying is, in those circumstances, what you have to test is

1 whether or not these processes worked meaningfully and effectively.

2 There is a reason why this Tribunal set a form-up deadline at the outset. There isn't  
3 a good reason why, in relation to this cohort of claimants, somehow you should be  
4 down at two or three weeks rather than four months. Even in relation to other  
5 cases -- we haven't gone through and pulled out every order, but for instance, in  
6 relation to the interchange CICC situation, where there was modification going on,  
7 a three-month period was put in place. These are much more substantial periods.

8 We know that the way in which some of these issues have been dealt with has worked  
9 on a basis of people having their rights vindicated, it is fine to turn up, it is fine to have  
10 this sort of looseness. We are saying that is not right here. It is not appropriate. It is  
11 in no way an appropriate use of this process to turn up at this stage and say, "We want  
12 to add 3 million people right up until this date". We understand procedural gymnastics  
13 could be explored, but leaving it this late was not right in these circumstances.

14 THE CHAIRMAN: Are you opposing?

15 MR BEARD: We don't see a good basis. It is obviously for the Tribunal to make the  
16 assessment, as we said in our skeleton, but we do not understand how this Tribunal  
17 could find that that was a meaningful and effective period for opt-out. This was  
18 a matter of the Class Representative's choice to leave it until now. They have done  
19 so. But we say a two or three-week period for opt-out is not the proper execution of  
20 this scheme and, in those circumstances, we do find it hard to see how the Tribunal  
21 could reach a conclusion that this is meaningful and effective. This is leaving aside,  
22 obviously, the issue that does with this which, obviously, if you are bringing these  
23 matters right up to date, we do end up with these sorts of problems in relation to  
24 evidence as well because, of course, a lot of the evidence and disclosure, and so on,  
25 has been focused on particular periods. Obviously, that is now being brought up to  
26 date. So there are collateral issues. But I do focus on the regime and the

1 effectiveness of this regime.

2 THE CHAIRMAN: I'm going to ask you again: are you opposing it or not? You have  
3 to go one way or the other, Mr Beard. Either you're resisting the application --

4 MR BEARD: (Overspeaking) we don't see the basis on which the Tribunal should  
5 reach a conclusion that it is meaningful and effective. But I'm not going to --

6 THE CHAIRMAN: You're resisting the application to amend?

7 MR BEARD: In particular in relation to this, yes.

8 THE CHAIRMAN: The answer is yes.

9 MR BEARD: I will deal with the other amendments in a moment, but I think that it is  
10 an important issue for this Tribunal. Obviously, the Tribunal is looking carefully at how  
11 this regime properly should operate. Obviously, we have had admonitions from the  
12 Supreme Court about various issues relating to the operation of the regime relatively  
13 recently and we say this is not operating the regime properly, to turn up at this late  
14 date and say, "No, no, it is absolutely fine for these 3 million people, two or three  
15 weeks' opt-out is plenty". We say it is not. It is not meaningful and it is not effective.

16 MR PALMER: I will respond to that point. My learned friend makes an assumption  
17 that there's 3 million people brought in by virtue of this amendment. My friend is  
18 mistaken about that. The original figure, so the 9 million, or around 9 million, was  
19 based on the estimate in Harman 1, right at the outset of the application for a CPO.  
20 Since then, we have had disclosure from Sony and that's reported on in Harman 5.  
21 Can I take you to that? It is in volume A of the PTR bundle at page 1032. Perhaps,  
22 for context, you can pick it up at the bottom of 1031, in fact.

23 THE CHAIRMAN: "Class size".

24 MR PALMER: Yes, "Class size", and you can see that he's calculated a number of  
25 unique accounts that purchased digital content during the relevant period. And the  
26 table, at the top of 1032, breaks down the number of accounts, the precise number

1 being confidential, it's said, but per year. You will see the total figure up to 2024 on  
2 the right, which is the same figure as we have in the amended pleading, in fact.

3 THE CHAIRMAN: So, how does that work then?

4 MR PALMER: It is not a total.

5 THE CHAIRMAN: So Mr Harman -- and then he gives his estimate at 8.6.2, which is  
6 not in green. So, how does this work if -- so this is at the end of -- this is October 2024.

7 MR PALMER: That was the data he had at that point.

8 THE CHAIRMAN: So does that --

9 MR PALMER: He took extrapolations and said that it hasn't changed that number.

10 THE CHAIRMAN: Right. There is my question, really. So, even though he's now -- or  
11 somebody has addressed the question of what is the class size as at -- I suppose it  
12 has to be today's date, doesn't it?

13 MR PALMER: Today. The extrapolation hasn't actually moved --

14 THE CHAIRMAN: When you say "extrapolation", is that somebody estimating it rather  
15 than -- this is based on data at Harman 5?

16 MR PALMER: As I understand it, yes.

17 THE CHAIRMAN: No-one has obviously done that because you can't do that because  
18 it hasn't happened yet.

19 MR PALMER: If you read the green confidential text -- I can't read it out -- in the  
20 footnote to that table, beginning with the words "This figure", and the last sentence.

21 THE CHAIRMAN: Yes, I see.

22 MR PALMER: It is not simply a case of always adding more.

23 THE CHAIRMAN: I see. Basically, the amendment in 12, to make sure I understand  
24 what you are saying, reflects the output of --

25 MR PALMER: It is approximate, but that figure is not marked as confidential, I think it  
26 is a figure in Harman -- I won't read it out loud again -- not much turns on the precise

1 number for present purposes --

2 THE CHAIRMAN: Just to be clear, I just want to understand this. You're saying that  
3 the number, as at today's date, is reflected in paragraph 12 or not? Does  
4 paragraph 12 take account of the extrapolation?

5 MR PALMER: Yes.

6 THE CHAIRMAN: Actually, there is no difference between 8.6.2 and paragraph 12,  
7 even though, at paragraph 8.6.2, there's a reference date four months ago, five  
8 months ago?

9 MR PALMER: Yes.

10 THE CHAIRMAN: What we don't have, presumably, is -- do we have anywhere in  
11 Harman 5 what the number was as at the date of the --

12 MR PALMER: We don't --

13 THE CHAIRMAN: -- CPO hearing?

14 MR PALMER: The Harman 1 figure was based on estimated publicly available data  
15 of console purchases by a --

16 THE CHAIRMAN: He's not done the exercise based on the data, so we don't know  
17 how much greater the class is now than it was --

18 MR PALMER: It can't be said, "Oh, look, it's 3 million".

19 THE CHAIRMAN: I understand the point.

20 MR PALMER: That is a gross overestimate.

21 LORD RICHARDSON: Mr Palmer, just to check, paragraph 8.6.2, there's reference  
22 to October 2024, so that's not just five months ago, that's 17 months ago.

23 THE CHAIRMAN: I'm sorry, that's my mistake, of course.

24 MR PALMER: That's right.

25 LORD RICHARDSON: The figures are not confidential, but am I right to understand  
26 that the claimant's position is there has been no change in the size of the class in that

1 17-month period? Is that right?

2 MR PALMER: That's the extrapolation. We don't have the underlying disclosure for  
3 that. We are still saying approximately that number.

4 THE CHAIRMAN: The extrapolation is considerable. It is quite a long period. What  
5 was the date of the CPO hearing? '23, was it?

6 MR PALMER: It was January 2024, I think. I'll be reminded.

7 THE CHAIRMAN: June '23, we think. We have a number, whatever it was, in June  
8 '23, which may or may not correspond with the redacted -- the corrected number  
9 because that was on a different basis.

10 MR PALMER: That was based on publicly available --

11 THE CHAIRMAN: Then we have a number as at October 2024 which is, you think,  
12 still reflective of the position as at today's date?

13 MR PALMER: That's the best we've got.

14 THE CHAIRMAN: That's the best you have got. So your extrapolation doesn't lead  
15 you to believe it is any different?

16 MR PALMER: It's not going to make a difference. That's the first --

17 THE CHAIRMAN: I'm just struggling slightly with that. Isn't the point about this to deal  
18 with -- anybody -- isn't the number always going to go up because people who are in  
19 the class remain in the class, even if they stop being users?

20 MR PALMER: Yes.

21 THE CHAIRMAN: There are, presumably, always new people joining the class.

22 MR PALMER: You would expect most people to come with the release of a new  
23 console, which is as long ago as 2020 and so forth, and the increase to tail off. But  
24 on the consoles, yes, you get new accounts for people who were not previously  
25 customers.

26 THE CHAIRMAN: It is quite curious, isn't it? As Lord Richardson points out, it's not

1 five months, it's 17 months, or whatever it is. It is quite curious that your class size  
2 hasn't moved in 17 months. I appreciate you're doing it approximately.

3 MR PALMER: It is approximate. Mr Beard said it is apples and pears, which  
4 isn't -- quite a wide initial estimate based on the console -- popular console purchases  
5 with the post disclosure.

6 THE CHAIRMAN: Yes. We don't actually know what the correct --

7 MR BEARD: We do.

8 THE CHAIRMAN: Is that a number you can share with us?

9 MR BEARD: I think I can. The number of PlayStation UK accounts, August 2016  
10 to August 2022, was [Redacted for Confidentiality]. We go to August 2022 because,  
11 although Mr Palmer is referring to 2024, the pleading is to 2022, so our point is about  
12 who is being added as compared with the previous pleading. The number of  
13 PlayStation accounts, August 2016 to 31 December 2025 --

14 THE CHAIRMAN: I'm just going to stop you. Are you sure you're supposed to be  
15 reading those numbers out?

16 MR BEARD: I've just checked behind me.

17 THE CHAIRMAN: They are highlighted as confidential in Mr Harman's report. It is  
18 a point that Mr Palmer receives with gratitude on a different subject.

19 MR BEARD: What I was going to say is we do have the numbers. The numbers of  
20 accounts are significantly higher. So Mr Palmer's first point is a bad one --

21 THE CHAIRMAN: Just to be clear, are you saying you think you have a different  
22 number for October 2024 than the number Mr Harman has given?

23 MR BEARD: This is actually a number to December 2025.

24 THE CHAIRMAN: Just tell me what the number was. I stopped you from saying it. If  
25 you would prefer not to, it's fine.

26 MR BEARD: It is many millions more.

1 THE CHAIRMAN: Than the first number?

2 MR BEARD: Yes.

3 THE CHAIRMAN: How different from the number we have on the pleading?

4 MR BEARD: It's actually lower. Mr Palmer's point is not a good one because  
5 what -- our point is, have you got any -- between August 2022, when you define the  
6 class, are you increasing the class size by any material amount in that period? On the  
7 face of it, he's saying, actually, the class is 12.2. He's saying, "Oh, no, but I mis-  
8 estimated that, and now I've got disclosure", but, of course, his re-estimation is to  
9 2024, not 2022 at all. Actually, your point, sir, that the numbers were growing is correct  
10 from the point in 2022.

11 Even if you weren't talking about 3 million, you were talking about 2 million or 1 million,  
12 the point is still valid.

13 THE CHAIRMAN: It is probably not something for today. You're saying it remains  
14 a larger point and Mr Palmer is saying it might not be as large as you say. I think,  
15 Mr Palmer, you were going to make a second point?

16 MR PALMER: Again, this is the point, because the publicity given to this was  
17 in February to April 2024. The CPO notice went out in February -- it was a two-month  
18 period that was allowed for opt-in and opt-out. That generated a significant amount of  
19 publicity and, indeed, 400,000 people registered their interest on the Class  
20 Representative's site, which is significantly higher than many other claims. It  
21 generated a lot of coverage in the press. Indeed, over 7,000 people opted in at that  
22 point. Only 1,500 or so opted out.

23 Now, that publicity and period reflected the fact that this was a new claim, it was news,  
24 the concept was news, word spread. We are in a different position now, where the  
25 existence of the CPO proceedings are known and well understood and you don't need  
26 the same level of publicity for an extension to say, "Good news, we can include some

1 subsequent claims as well".

2 In terms of the period, we say, in those circumstances, two weeks is ample. But, if it  
3 were necessary, we can add ten days to that to take it up to 9 March, the day before  
4 the trial begins on 10 March, and close the position at that point, if the Tribunal thinks  
5 it helpful.

6 THE CHAIRMAN: Just to be careful, I think the point about the period is not so that  
7 people become aware of it and decide they want to join it. The point is -- well, they  
8 are joined in it. The point is they can opt out. So the real question is, does three  
9 weeks represent a period proper?

10 MR PALMER: We say it does, in circumstances where the existence of the basis of  
11 the claim is already known, it doesn't have to be explained, it's been well publicised,  
12 we can be in touch with all those who are registered as well, we can publicise it in all  
13 the normal ways. There is a real opportunity for anyone who then says, "I want to opt  
14 in or opt out", to say, "Oh, well, now that the date has been extended, I'd like to do that  
15 too". We don't need to go back to the original period which might have been needed  
16 for word to get out and be understood. In those circumstances, we say it is a perfectly  
17 meaningful opportunity to do it in two weeks or, if necessary, 24 days.

18 THE CHAIRMAN: We are talking about people who have, since August '22 or June  
19 '23 -- it doesn't matter which, quite a long time ago -- become potential class members  
20 because they have opened an account and you're saying that, during that period,  
21 there's been significant publicity, so they might have become aware of the issues  
22 already?

23 MR PALMER: Those numbers which I understand are significantly higher than any  
24 other claims and that is a clear indication of the level of public engagement, both  
25 interest and understanding and knowledge of these proceedings. Against that  
26 background, to send out the word there's an additional period if you want to opt out,

1 | here is a further chance, 24 days, then the position -- the Class Representative is  
2 | ready, in your words, to make an order today to that effect to send that out tomorrow  
3 | and the revised class notice --

4 | THE CHAIRMAN: Has the notice been agreed on that basis? They have to be agreed,  
5 | don't they? They have been shared?

6 | MR PALMER: They have been shared.

7 | THE CHAIRMAN: Presumably, they're the last notice with some dates changed, are  
8 | they?

9 | MR PALMER: Yes, essentially, with an explanation --

10 | THE CHAIRMAN: Yes, of why (overspeaking).

11 | MR PALMER: An explanation that the hearing has been extended and there is  
12 | a further opportunity. It is obviously in that context.

13 | THE CHAIRMAN: I don't remember assessing any indication that anybody has opted  
14 | out of the proceedings or, indeed, opted in. Are you aware of any opt-ins or opt-outs  
15 | to date?

16 | MR PALMER: Yes, in response to the initial advertisement, over 7,000 people opted  
17 | in, and only (overspeaking).

18 | THE CHAIRMAN: So there's a non-UK --

19 | MR PALMER: A non-UK, and I'm told 1,506 people opted out.

20 | THE CHAIRMAN: Okay.

21 | MR PALMER: Out of a class, at that point, of about 9 million.

22 | THE CHAIRMAN: 9 million.

23 | LORD RICHARDSON: Mr Palmer, I didn't pick up the number of opt-outs?

24 | MR PALMER: 1,506 out of a class of around 9 million.

25 | MR BEARD: I think the position is almost getting worse for Mr Palmer. His notice in  
26 | 2024 said, if you are a PlayStation user who between August 2016 and August 2022

1 made any purchase, you could benefit from this and you have a right to opt out.  
2 So, it is not -- even though the publicity was in 2024, it was about the class definition  
3 in the previous claim. So, if you were someone that had bought a PlayStation in 2023  
4 and you saw the 2024 publicity, you wouldn't think about it at all because you know  
5 you're not -- you're not in this either way.  
6 So the question then is, if you are talking about people that acquired PlayStations  
7 from August 2022, is there a material number? Yes, there plainly is. If you now  
8 publicise this in relation to those people, are you giving them a meaningful and  
9 effective opportunity to opt out in the next two, or, as Mr Palmer puts it, three weeks,  
10 and we simply say no. This has not been properly thought through by the Class  
11 Representative in relation to these issues.  
12 Now, it may well be that the total numbers that opt out are low. We understand that.  
13 But that is not the question for this Tribunal. The question is, has a meaningful and  
14 effective opportunity been provided? And I don't repeat the submissions I have made  
15 already. So his numbers points do not take him further forward, his publicity points do  
16 not take him further forward and, in the circumstances, we say this Tribunal shouldn't  
17 find that a two to three-week opt-out period in those circumstances is meaningful and  
18 effective.  
19 THE CHAIRMAN: Thank you. This is a matter on which we will want to confer, and  
20 that is slightly complicated by one of our panel members being virtual.  
21 I think what we might do is -- we are not going to spend much time on the timetable,  
22 are we?  
23 MR BEARD: Nor on the other amendments, I'm guessing.  
24 THE CHAIRMAN: You have some points on the other amendments?  
25 MR BEARD: I just need to pick up some points.  
26 THE CHAIRMAN: Let's do that now.

1 MR BEARD: Yes. The other amendments, it is probably easiest to pick them up at  
2 the amended paragraph 105, page 88. This is in the section on exclusionary abuse  
3 allegations, relevant counterfactual, which starts on page 85. I'm just positioning it in  
4 the pleading for you.

5 What you will see there is the situation that what is now being contended is that,  
6 whereas, when we were looking at methodology statements, and so on, back in the  
7 day, we were looking at an allegation that the publisher commissions were pushed up  
8 and that fed into retail prices being higher, such that, if they came down, retail prices  
9 would be lower.

10 What's being said now is, in essence, that because Mr Harman says physical and  
11 digital provision of PlayStation games is both separate and at materially different  
12 prices, what you would see in the counterfactual world was digital prices coming to  
13 physical prices, effectively.

14 Now, there are a whole range of things that we say are just fundamental problems with  
15 that approach, but that is what has occurred here, in terms of the change.

16 Now, Mr Harman, in various of his earlier reports, did refer to the possibility of  
17 comparing against physical games, but, overall, this is a radically different story, we  
18 say, that's being put forward in relation to these issues.

19 Now, if this was something that had been done right at the outset, we might have had  
20 quite a fight about this approach more generally.

21 We are conscious of the great judicial dictum that "we are where we are". This is not  
22 something that we are unaware of and it is something that has been being dealt with  
23 in the course of the experts' process.

24 We are content to deal with these amendments and, on that basis, if the Tribunal is  
25 minded to permit them, what we would suggest is that we provide a brief Amended  
26 Defence at the same time as our skeleton argument that deals with these amendments

1 and the similar amendments at paragraph 122 and 133. So those are the ones that  
2 go to excessive pricing and also quantum. They're very similar allegations in each  
3 case.

4 So, in these circumstances, we are not seeking to oppose the amendments. We think  
5 they're -- as long as the Tribunal is not taking it that, by that, we are suggesting that  
6 there's any plausible case in relation to it, because we strongly oppose the way in  
7 which this is being done by Mr Harman.

8 THE CHAIRMAN: Presumably, it is all set out in this report, is it? This is how he  
9 approaches it in Harman 5.

10 MR BEARD: Yes. I'm not turning up before the Tribunal and pretending we haven't  
11 seen this.

12 THE CHAIRMAN: This simply reflects what he says?

13 MR BEARD: This is reflective, broadly speaking, of what he says. But the point is we  
14 can deal with it by way of a Defence and our skeleton argument. We are content to  
15 do it on that basis, so long as, of course, the Tribunal is not taking it that we, in any  
16 way, accept the arguability of these sorts of points. But it seemed to us that, rather  
17 than having a fight about that sort of thing at this stage, close to a trial, it was much  
18 more sensible for us just to deal with them in the course of the skeleton and Defence  
19 process.

20 THE CHAIRMAN: Mr Palmer, do you have any objection to that course of action?

21 MR PALMER: I have no objection at all. It is exactly what Harman 5 says. It just  
22 brings it into line with where the experts landed following disclosure, and in particular  
23 the basis upon which a margin was earned by Sony, so it brings that into line.  
24 Assuming that the Defence brings the Defendants' position into line with what is being  
25 said back to Harman 5 by Sony's experts and just reflects their case as now quoted in  
26 Colley 3 in particular, then we have no basis to object to that either.

1 THE CHAIRMAN: I think, then, we can go ahead and give permission for these  
2 amendments, on that basis, that you are entitled to respond with an Amended  
3 Defence --

4 MR BEARD: We leave all cost issues in relation to this, and there's a list of dates that  
5 we need to (overspeaking) --

6 THE CHAIRMAN: Yes, the cost of the amendments.

7 MR BEARD: -- because, obviously (overspeaking) --

8 THE CHAIRMAN: Costing in those, exactly.

9 MR BEARD: -- comes after. Rather than having an extensive fight about that, we put  
10 down a marker that it is a separate issue for another time.

11 THE CHAIRMAN: Okay, fine. And that will come with your skeleton?

12 MR BEARD: Yes, and we will just amend the Defence to deal with these. I'm sure, if  
13 it doesn't mirror what we are saying in the skeleton, Mr Palmer will be quick to highlight  
14 these issues. So we will deal with it in due course. I just wanted to pick those up  
15 because I think, on those, there isn't a substantial issue to be dealt with. There are  
16 substantive issues to be dealt with, but that's a different question for another day.

17 THE CHAIRMAN: So, what I think we will do, unless anybody objects to that, is, why  
18 don't we finish the list of things and then I think maybe what we might do -- I appreciate  
19 it is an inconvenience -- is make you come back at 2 o'clock and we will give you  
20 a ruling on the amendment point. That will allow us to confer with Lord Richardson.  
21 I think that's probably the most efficient way to deal with it. Either way, we are going  
22 to end up coming back after 2 o'clock.

23 MR BEARD: You probably don't need it for the purposes of your ruling because I think  
24 you have our point, but if you needed the more detailed PlayStation subscription list,  
25 obviously we can provide the source for that.

26 THE CHAIRMAN: I think we can make do with what we have.

1 MR BEARD: You have the principles; arguing about 3 million or some other number,  
2 it still a large number. Thank you, is there anything else on timetabling that we  
3 should --

4 THE CHAIRMAN: A couple of things, all quite small things.

5 The first thing is, it would be helpful to have a further draft of the timetable, hopefully  
6 a final draft, and on an agreed basis, to the extent at all possible. It might be quite  
7 helpful to have that with the skeletons on the 23rd, if that is something you think you  
8 could do.

9 MR BEARD: I'm sure that's something we can do, yes, subject to agreement. But,  
10 actually, we are not very far apart. I would be stunned if that wasn't --

11 THE CHAIRMAN: No, I would be too, but if you need any assistance with it, obviously  
12 we can resolve any issues.

13 MR BEARD: We can sort this out.

14 THE CHAIRMAN: In relation to the concurrent evidence, it would be helpful, I think,  
15 as you have suggested -- I can't remember what Mr Palmer said about it -- to have  
16 some suggestions as to areas of questioning. We thought that if we asked you to  
17 provide those by the first sitting day, so I think that's the 9th, that would be sufficient  
18 for your purposes -- it is actually the 10th, Tuesday. Just to reassure you, we are not  
19 waiting for those to get on with some work on the hot tub, we will be working on them  
20 anyway, but they will be helpful to put into that process.

21 The only other thing is, I suppose, just a couple of observations. The first one is, in  
22 relation -- this is really to -- I think we have rather taken the view you will sort the  
23 timetable out. We have told you what really matters to us, which is the length of  
24 the concurrent evidence, how we want the teach-in to fit in and where we want closing  
25 submissions, so you will work around that. If it is any assistance and you need extra  
26 time, we think you probably didn't need two days for openings. We are perfectly happy

1 | to have them if that's where you end up, but, actually, you could probably save a day  
2 | by making them one and a half.

3 | MR BEARD: Okay.

4 | THE CHAIRMAN: It would be a matter for you. It is just something we observed.

5 | The other thing, of course, is -- I think we have covered this, but I do think our  
6 | expectation of how much time you will cross-examine, given that we are going to spend  
7 | three days with the concurrent evidence, should be tempered. I don't think you need  
8 | as much time as you're suggesting. We thought you could probably trim that back.  
9 | We were thinking in the region of one and a half days for each of the economic experts  
10 | and one day for the valuation experts. But we are not dictating that. We are leaving  
11 | that to you to work out. If you want to do something different and it fits within the  
12 | timetable, we are comfortable with that.

13 | MR BEARD: That's helpful. Can I just say, in relation to -- on the teach-in issue, as  
14 | per the discussion earlier, I don't want to re-open it, we will go away and look at what  
15 | can be sliced off and liaise with Mr Palmer, but it did cross our minds that, if what is  
16 | actually of concern to the Tribunal is sort of not quite sure -- you don't know what you  
17 | don't know in relation to technical structures and so on, it did cross our minds that,  
18 | even if it were to be the experts that presented the teach-in, it might be useful to have  
19 | that before you had the factual witness cross-examination because there may be  
20 | a benefit to the Tribunal actually understanding, from whatever source, some of  
21 | the basic points that relate to the operation of these systems, so that, when there's  
22 | cross-examination going on of these specialists, you've had that background.

23 | Because what was crossing our mind was, you can quickly get into a situation where  
24 | Mr Palmer or his colleagues are asking some quite detailed questions of the factual  
25 | witnesses who are specialists in this area, and, actually, it might be useful for the  
26 | Tribunal just to have had some of that background beforehand. So we will think about

1 the engineering witnesses' position, but even if it were not to be them, we do wonder  
2 whether or not that teach-in should come earlier.

3 THE CHAIRMAN: Why don't we leave that with you, and you might like to think about  
4 the context of your suggestion, which you were going to pursue with Mr Palmer, about  
5 extending (overspeaking).

6 MR BEARD: Absolutely.

7 THE CHAIRMAN: I understand the point you're making. Why don't we leave it to you  
8 to come up with what you think works? And, if we don't like it, we will tell you.  
9 Hopefully, that shouldn't cause too much trouble because, if it is just moving half a day,  
10 we can accommodate that.

11 MR BEARD: Yes. No, no -- I mean, subject to availability, I can't see that's going to  
12 create trouble in the timetable. I just thought it was worth mentioning, given the  
13 Tribunal's indication of what you actually want from the teach-in.

14 THE CHAIRMAN: Thank you. That's helpful. The last point is just about the factual  
15 witnesses, and really an observation, which is pretty obvious, which is you're going to  
16 have to be pretty clear, Mr Palmer, about how much time you want because, if you  
17 don't get it done within time, the timetable doesn't really allow for extra. You may have  
18 some that run short and some that run long, but at the end of the day --

19 MR PALMER: We have given individual time estimates for each witness. We have  
20 erred on the conservative side for the reason you give. It may be some of them go  
21 shorter. But, if I was going to go wrong, I'd prefer --

22 THE CHAIRMAN: I think that's absolutely right.

23 MR PALMER: I have asked Sony's witnesses to have some flexibility, so we can make  
24 best use of the Tribunal's time. I understand there are natural limits to that, because  
25 some people will be flying out of the country and need to make arrangements. But, to  
26 the extent we can be flexible and box and cox, we will. For that reason, if in doubt, we

1 have erred on the slightly longer side.

2 THE CHAIRMAN: That's helpful. I think the simple reality is you're not going to have  
3 the luxury of having extra time. The timetable won't bear it and we will be in a muddle.  
4 With the lack of extra time, anyway, in the timetable, it is just not going to work. That's  
5 really helpful. And, of course, I'm sure Sony will do their best to make the witnesses  
6 available whenever --

7 MR BEARD: We have given our best indication. There are some that have  
8 difficulties --

9 THE CHAIRMAN: Yes, of course. Of course we understand that. That, I think, is all  
10 the timetable issues.

11 LORD RICHARDSON: May I just add a couple of points, Mr Chairman? One just on  
12 the timetable, just to be clear what we are expecting. We are expecting a day-by-day  
13 timetable, as opposed to a broad week timetable. That will make it much more helpful  
14 and easier for us to use to prepare. I'm sure that will be much more useful for counsel  
15 and everyone involved.

16 The other point, I was going to say, as a kind of indication, just speaking purely for  
17 myself, picking up on your suggestion, Mr Beard, I think it seems to me that your initial  
18 suggestion of, as it were, there being some examination-in-chief of one, or some, of  
19 your technical witnesses, who are clearly experts in their field, I would require little  
20 persuasion that that might be of great assistance to the Tribunal. I'm much less  
21 attracted by either expert witnesses coming and giving evidence before the factual  
22 witnesses or, as it were, moving into potentially more controversial evidence from  
23 witnesses of fact which is not foreshadowed in their witness statements, and so on  
24 and so forth. No doubt you will reflect on that and consider matters with Mr Palmer  
25 and come back to us with your thoughts.

26 MR BEARD: I'm most grateful for the indication. Just to be clear, when I was talking

1 about some sort of examination-in-chief or short presentation, the whole idea would  
2 be that it wasn't controversial. We are obviously conscious that in litigation everything  
3 is almost seen as controversial, but we are very much of the view that we are trying to  
4 avoid that. We genuinely want to have these things explained and it's helpful to have  
5 my Lord's indication in relation to that.

6 LORD RICHARDSON: Thank you.

7 THE CHAIRMAN: Does that deal with the timetable then?

8 MR BEARD: From our point of view, I think so, yes.

9 THE CHAIRMAN: There are two other things I want to say. The first is just to ask you  
10 about -- I think that deals with the timetable -- with the agenda generally, doesn't it?

11 MR BEARD: I think so, yes. I think that covers everything we have got.

12 THE CHAIRMAN: Two things from me. One is just to check, the transcription and  
13 document service, is that Opus for everything?

14 MR BEARD: Yes.

15 THE CHAIRMAN: And that's in their usual form, so we'll have the live transcript and  
16 document links?

17 MR BEARD: Obviously, we are going to have the fun of going in and out of  
18 public -- I don't want to send any signal that a redesignation process --

19 THE CHAIRMAN: No, we understand that.

20 MR BEARD: Vast amounts are not going to --

21 THE CHAIRMAN: Clearly, we will expect the parties to co-ordinate on that and, if it is  
22 necessary to be in closed, we will have to be in closed. That's understood.

23 MR BEARD: I think Mr Palmer is alive to this, and we have discussed it. I just don't  
24 want there to be any misimpression --

25 THE CHAIRMAN: No, no. And, equally, we certainly expect both of you, whoever is  
26 on their feet, to do their best to avoid going into a closed session and to plan your

1 cross-examination so that you do that in as convenient a way as possible. We don't  
2 want to be dipping in and out of it for no -- when it can be dealt with in other ways. We  
3 appreciate there are some practical consequences --

4 MR BEARD: (Overspeaking) are practical because the designation process applies  
5 not in relation to the pleadings and so on, but in relation to the documents; it is  
6 documents that are designated. And then trying to filter out what's in it that is  
7 confidential and not is --

8 THE CHAIRMAN: You have done this before, we have done it before. I think we all  
9 just have to make the best of it and try our best to make as much as possible work --

10 MR BEARD: I think this is one of these cases, where, particularly in relation to the  
11 factual witnesses, but unfortunately also in relation to much of the expert testimony,  
12 as soon as people start straying into anything that is particular, it becomes  
13 problematic.

14 THE CHAIRMAN: We will have to see how we go, but I think we are all clear about  
15 the principles.

16 MR BEARD: The message is well understood and it is the basis on which we have  
17 been operating.

18 THE CHAIRMAN: The only other thing to say is actually to thank all the parties  
19 because it is clear to us that there's been a lot of progress made. One either gets  
20 PTRs where things are very, very messy or one gets them where they're generally in  
21 good shape, and this one actually is in very good shape, and that's a tribute, I think, to  
22 you and to those behind you for working through the issues. I know there are some  
23 things that aren't sorted out and there are all sorts of niggles and problems, I'm sure,  
24 but, relatively speaking, it seems that we are in pretty good shape. So that's really  
25 helpful and much appreciated by us.

26 Of course, we are available if there are things that need to be dealt with between now

1 and the 10th.

2 We will rise. What we might do is come back at 1.45 pm and we will give you  
3 a decision on the amendment, because I think you need that today.

4 MR BEARD: Yes, one way or another.

5 THE CHAIRMAN: I'm just conscious there are a lot of people here who may not feel  
6 they need to come back at 1.45 pm. We don't take it amiss if there is a smaller room  
7 at that stage. Thank you. Until 1.45 pm.

8 (12.40 pm)

9 (The short adjournment)

10 (1.54 pm)

11 THE CHAIRMAN: I'll just check we have Lord Richardson back. I can't see.

12 MR BEARD: I can see him.

13 (1.57 pm)

14 (Ruling extracted for approval)

15 (2.01 pm)

16 THE CHAIRMAN: So, that's our ruling. I have a couple of practical questions, but you  
17 go ahead.

18 MR BEARD: Can I just follow up?

19 THE CHAIRMAN: Yes.

20 MR BEARD: We are most grateful for the ruling and for the indication. Can I just, as  
21 a matter of formality, ask for the Tribunal to make an order under its general powers  
22 that we do not need to lodge any appeal in the timeframe under rule 107 and that time  
23 for any potential appeal in relation to this issue is deferred (overspeaking) --

24 THE CHAIRMAN: Should be swept up.

25 MR BEARD: -- three weeks after any final judgment or something --

26 THE CHAIRMAN: Swept up so it coincides with the appeal rights for the judgment?

1 MR BEARD: Exactly.

2 THE CHAIRMAN: Mr Palmer, do you have any concerns about that?

3 MR PALMER: No concern about that.

4 MR BEARD: It is only a formality because, otherwise, we think (inaudible) bias, and  
5 that would be mad.

6 THE CHAIRMAN: I can't see Lord Richardson, but he will tell me whether he has any  
7 concerns about that.

8 LORD RICHARDSON: No, I can see the sense in that.

9 THE CHAIRMAN: Thank you. In that case, we will make that order.

10 MR BEARD: Thank you. I'm sorry to interrupt.

11 THE CHAIRMAN: No, that's helpful, thank you.

12 We do have a couple of points about the notice, so I think this is really for  
13 Mr Palmer -- well, I suppose, Mr Beard, there is an invitation there. It is actually  
14 probably you first. There is an invitation there. It doesn't seem to us to make a huge  
15 amount of difference if the notice said a period that closes on the 10th or 17th or even,  
16 possibly, the 24th.

17 Frankly, the point about the commencement of the trial is you avoid having to have  
18 this sort of discussion, which is really pretty academic, because who is really going to  
19 be in a better position after one week or three weeks or five? It is not really  
20 a discussion one really wants to be having, which is why *Kent* sets the beginning of  
21 the trial as the place to do that.

22 If you are concerned that three weeks is too tight, we don't think that allowing another  
23 week, or even two weeks, actually materially changes the perspective that any  
24 potential class member would have, either in relation to opting in or opting out,  
25 because that's what this is all about, it's the balance between the fairness to your client  
26 that these decisions are not being made by people who have a different risk

1 | evaluation, if one can put it that way, and making sure that they have proper time  
2 | to -- so the class is maximised.

3 | So, if you want to suggest a later date -- obviously, we will hear what Mr Palmer says  
4 | about that -- you are more than welcome to do so.

5 | MR BEARD: I might need to take instructions in relation to that. I'm not sure whether  
6 | or not that is something -- I think that is something we should come back to the  
7 | Tribunal on rather than necessarily --

8 | THE CHAIRMAN: I don't think we can do that because the notice has to go out  
9 | tomorrow. Maybe we will see whether Mr Palmer is open to that. In a way, I think I'm  
10 | probably suggesting that you have a bit of an option here and, if you were to tell  
11 | Mr Palmer -- if your solicitors told his solicitors that you preferred the 17th or even the  
12 | 24th, that could be the date that went on the notice. If you don't want to do that, that's  
13 | fine.

14 | MR BEARD: My concern, the instructions I need to take are in relation to the proper  
15 | interpretation of the *Kent* limitation on when the period should close prior to a trial.  
16 | I just want to look at that with those instructing me.

17 | THE CHAIRMAN: So the point about -- you want to look more closely at the point  
18 | about why the beginning of the trial is the reference point?

19 | MR BEARD: Exactly. That's really the issue.

20 | THE CHAIRMAN: I think it is probably a time-limited option, so I don't know --

21 | MR BEARD: (Overspeaking).

22 | THE CHAIRMAN: The position, I think, is we are expecting Mr Palmer's client to issue  
23 | these notices tomorrow. If you needed even overnight, I'm sure that is possible. If all  
24 | you're doing is coming back and saying, "It is the 8th, the 10th, the 17th, the 24th".  
25 | That's all that's on offer. But if you wanted to have that time, we will see what  
26 | Mr Palmer says --

1 MR BEARD: I think that would be the sensible way of dealing with these matters, if  
2 the Tribunal is amenable to it.

3 THE CHAIRMAN: Let's see what Mr Palmer says.

4 MR PALMER: Sir, we are entirely open to that. We seek 10 March, but if, for any  
5 reason, longer is sought, we have no objection.

6 THE CHAIRMAN: If we leave it on the basis that Mr Beard has his option. If we can  
7 let you know by 10 am tomorrow morning if he wants to exercise it. If he doesn't, then  
8 you will press the button.

9 MR PALMER: I think that's apt.

10 THE CHAIRMAN: Can I just pick up a couple of points, unless there is anything else  
11 you wanted to raise?

12 MR PALMER: No.

13 THE CHAIRMAN: Actually, it is with you, Mr Palmer. A couple of points about this  
14 notice. I don't know if you have it in front of you.

15 MR PALMER: Page 5 of the supplementary bundle.

16 THE CHAIRMAN: I'm actually looking at it somewhere else, but that's fine, it doesn't  
17 matter. I'm looking at page 2, internal page, of section 3. The first thing is, we do  
18 think, given the shortening of time, there should be a much clearer, more noticeable  
19 statement about the timing and about having to get it done. Obviously, it is in there.  
20 At the moment, it's got 27 February, and that will become whatever date it is.  
21 But I think it would be really helpful if there was something right at the front of  
22 the section saying, "If you want to exercise rights on this, you must do so by ...", and  
23 put that in big bold letters so it is immediately drawn to the attention of the recipient.  
24 Indeed, you might even think about putting something at the beginning saying, "There  
25 is a deadline. If you want to opt in and out, see section 3". That's the first point.  
26 The second point is, I have to say, we were all somewhat surprised to see that the

1 primary means of opting in or out is by letter and, much as we love correspondence,  
2 we did wonder whether, actually, email wasn't the most --

3 MR PALMER: The email is there, it is (overspeaking) --

4 THE CHAIRMAN: Yes, well, exactly.

5 MR PALMER: It's been promoted up.

6 THE CHAIRMAN: It did seem a bit more intuitive. Maybe there is a reason why --

7 MR PALMER: I'm happy to adopt both suggestions made.

8 THE CHAIRMAN: Who knows whether PlayStation users write more letters than they  
9 send emails, but I suspect not.

10 What is the position about this notice in terms of agreement? Has it been agreed?

11 MR BEARD: We haven't been shown a modified notice at all. We have got this notice.  
12 That notice was --

13 THE CHAIRMAN: This is the modified notice, isn't it?

14 MR PALMER: It is the one in the bundle. It is modelled, to be frank, on the  
15 *Kent v Apple* (inaudible) notice. That was used as precedent.

16 THE CHAIRMAN: So (inaudible) as well. Somebody did write a letter, actually. I do  
17 remember seeing --

18 MR PALMER: To promote written communication as the first option.

19 THE CHAIRMAN: I do remember seeing an opt-out letter in *Kent*. Someone actually  
20 did. Okay, that's helpful. So the position in relation to it is ...?

21 MR BEARD: We received it at the same time as you. I don't think we have any  
22 particular comments in relation to it. I think it is the concerns about the highlighting  
23 time limit and how it is actually going to be delivered, which you have already picked  
24 up. Because passivity of it or limited attention being drawn is obviously problematic in  
25 the circumstances.

26 THE CHAIRMAN: I think it does need to be agreed, and obviously you need to have

1 | proper time to do that, but I think, given --

2 | MR BEARD: Given the Tribunal's indications, if this version is sent to us shortly with  
3 | the highlighting and so on, we will review it briefly.

4 | THE CHAIRMAN: Yes.

5 | MR PALMER: We will update the date, 10 March initially, make the two changes which  
6 | have been suggested and circulate it. We can do that in very short order.

7 | THE CHAIRMAN: Yes, good. I think we need to have the answer in short order as  
8 | well.

9 | MR BEARD: The working assumption should be that this needs to be closed by the  
10 | start of trial.

11 | THE CHAIRMAN: This needs to go tomorrow.

12 | MR BEARD: The time --

13 | THE CHAIRMAN: Oh, I see, the 10th. You're likely to come back -- I can't think that  
14 | matters to you because that's going to go in square brackets. There are two points.  
15 | One is, I understand this is a document you have already approved largely in  
16 | substance --

17 | MR BEARD: Back in the day.

18 | THE CHAIRMAN: Back in the day. The second is, there are going to be some  
19 | changes made to it which may well benefit from your scrutiny.

20 | MR BEARD: It would be sensible for us to see what's actually done.

21 | THE CHAIRMAN: Of course. I'm not anticipating you need an awful lot of time to look  
22 | at it.

23 | MR BEARD: No, I wasn't anticipating we would.

24 | MR PALMER: Sir, accompanying that draft, there was also a draft Order which  
25 | (inaudible). Otherwise, unless the Tribunal had any other points, we will submit that  
26 | in its current form.

1 THE CHAIRMAN: Yes. I haven't looked at it in detail, but if you just do that, then we  
2 will obviously have a good look at it. I'm not sure there is anything much else we have  
3 ordered. What else is in there?  
4 MR PALMER: The updated CPO, a conversation about the dates.  
5 THE CHAIRMAN: Permission for Mr Dasgupta.  
6 MR PALMER: (Overspeaking) hearing notice (inaudible). It is relatively  
7 straightforward.  
8 THE CHAIRMAN: The order presumably has permission for Mr Dasgupta in it?  
9 MR PALMER: It will be added to reflect it.  
10 THE CHAIRMAN: I'm sorry, it is my fault. I'm muddling things up. That's fine. Is there  
11 anything else?  
12 MR BEARD: No, most grateful.  
13 THE CHAIRMAN: Thank you very much, all. Again, thank you for your hard work and  
14 for making this relatively painless. We will see you all, I hope not before, but on  
15 10 March. Thank you.  
16 (2.08 pm)  
17 (The hearing concluded)  
18  
19  
20  
21  
22  
23  
24  
25  
26