IN THE COMPETITION APPEAL TRIBUNAL

Case No: 1749/7/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Friday 12th February 2026

Before:

Sir Peter Roth (The Chair)
Charles Bankes
Keith Derbyshire

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Proposed Class Representative

The Association of Consumer Support Organisations Limited

V

Proposed Defendants

Amazon.com Inc & Others

A P P E A R AN C E S

Ben Lask KC, Luke Kelly & Jenn Lawrence on Behalf of the Association of Consumer Support Organisations Limited (Instructed by Stephenson Harwood LLP)

Daniel Piccinin KC & Kristina Lukacova on Behalf of Amazon.com & Others (Instructed by Covington & Burling LLP)

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

Thursday, 12th February 2026

(10.30 am)

SIR PETER ROTH: Good morning. These proceedings, like all proceedings in this Tribunal, are being live streamed and an official transcript of the proceedings is being made. It is strictly prohibited for anyone to make any unauthorised recording or take any visual image of the proceedings and if they do so, that is punishable as a contempt of court. So I hope anyone watching will bear in mind that warning.

We have had helpfully an agenda from the parties. If perhaps we could take the last item first. I think it is proposed by the proposed class representative, by ACSO, that these should be proceedings in England and Wales. As I understand it, Amazon is content with that and we should make that direction.

MR PICCININ: Yes, sir.

SIR PETER ROTH: I don't think there is any confidential material that's in the bundles before us.

Then I think this is Amazon's application.

Submissions by MR PICCININ

MR PICCININ: Yes, sir. In terms of appearances first I suspect the cast is all familiar to you. I appear with Ms Lukacova for Amazon. My learned friends Mr Lask KC, Mr Kelly and Ms Lawrence appear for ACSO, the PCR.

I want to say at the outset we are grateful for the Tribunal sitting with a full panel today so that the Tribunal is at least in principle able to decide our application, should the Tribunal consider that appropriate.

What I would like to do is just make my application and then the Tribunal can decide what to do with it once it has heard that, if that's acceptable as a way to proceed.

I would like to start by showing the Tribunal the applicable principles, which will not take very long, because we are really here in a unique and unprecedented situation. Necessarily the principles that I am relying on in this application are essentially first principles. This is not a case where you can reason by close analogy to what has happened in one decision to what ought to happen here. It is important to be sensitive to the procedural particularities, if I can put it that way, of these collective proceedings. After I have done that, I will explain what the factual situation is and why there is a problem with it that needs to be solved.

On the principles I think I only need to show you two authorities. The first one is the Court of Appeal's decision in Tinkler, which is in the authorities bundle at tab 21. It begins at page 591 but I only want it for the statement of the law, which we can find --

SIR PETER ROTH: Just one moment. Yes.

MR PICCININ: -- on page 598 and paragraph 26 is where I want to start. I should say it is Lord Justice Peter Jackson. He says the starting point in an abuse of process case is that everyone has a right to go to court for a determination of their civil rights. Of course, we accept that.

Over the page at paragraph 27, that right is subject to limitations and those limitations include the procedural powers that the court has under the CPR to prevent abuses of process. Of course, the Tribunal has the same powers. Lord Justice Peter Jackson tells us that the purpose of that limitation is to limit abusive and duplicative litigation.

I should say just by way of context that Tinkler was a Henderson type case. So it's dealing with a situation where there are subsequent proceedings in which someone wants to relitigate a point that's been decided in an earlier case. That's not exactly what we are dealing with here, but this statement of general principles that we find is informative nonetheless. That's the angle that the court is approaching them from.

SIR PETER ROTH: The test is the sort of general principle -- as you said, we are

looking at general principles -- at paragraph 28.

MR PICCININ: Yes. That's exactly right, sir.

SIR PETER ROTH: "... would be manifestly unfair to a party ... or would otherwise bring the administration of justice into disrepute ..."

MR PICCININ: That's right. We rely on both limbs. I would just ask you to cast your eye -- I suspect you already have -- over the points that are made in the quotation at paragraph 29 from an earlier decision. It sets out six numbered principles.

SIR PETER ROTH: Yes.

MR PICCININ: I think the only one that's really helpful to bear in mind is the third one, which is that what is called for is:

"... a close merits based analysis of the facts [which must] take into account [both] the private and the public interests involved and will focus on the crucial question: whether in all the circumstances a party is abusing or misusing the court's process."

SIR PETER ROTH: Yes.

MR PICCININ: There are, of course, as you know, many different categories of abuse that have been found in the previous cases. This case, as I say, is not really identical to any of them, but, of course, as you know, it is often said that the categories of abuse are not closed and that's just as true of abuse of process as it is of abuse of dominance. Since what is called for is a merits based assessment and what we are concerned with is, amongst other things, whether or not we are bringing the administration of justice into disrepute, it is also important for us to be conscious of what the Supreme Court has recently said in FOREX about the policy of the collective actions regime, because it is that policy of the collective action regime or the subtleties to it that will inform the assessment of what is or is not consistent with the interests of justice.

There is sometimes a bit of a flavour to the PCR submissions that anything that results in filling a lacuna, as they say, or bringing more arguable claims forward for trial is

consistent with the policy aims of the regime, because that's what it is about, expanding access to justice. While it is true that the regime is concerned with expanding access to justice, that characterisation or caricaturing of the objective is not quite right, and we will see that in what the Supreme Court has said in FOREX.

I am conscious that the Tribunal has probably all read the Supreme Court's decision but I will just identify the relevant points.

SIR PETER ROTH: It is helpful if you would.

MR PICCININ: It is in tab 35, beginning at page 1388. I will not go through the whole decision, as I say, because it is actually concerned with different points from the points that we are making today. It wasn't an abuse of process point. As I say, I am going to be focused on what it tells us about the policy of the regime.

The first point I want to make begins at paragraph 2 actually where the court says that: "The ... regime gives the Tribunal an important gatekeeper function to ensure that the new procedure is used in appropriate circumstances."

Now I acknowledge that's obviously a reference to the certification process, but I rely on it just to illustrate the court's concern about the new procedure potentially being used inappropriately, then that's something we need to guard against.

Over the page at paragraph 3, the final sentence, we are told that:

"Opt-out collective proceedings", which, of course, is what we are concerned with here, "are an especially powerful vehicle for seeking redress from alleged wrongdoers ... But they also carry the risk that defendants may be driven to settle unmeritorious claims by their sheer size and the heavy costs of defending them."

If we could go forward --

SIR PETER ROTH: Do you accept if these proceedings go ahead, they would have to be opt-out; they couldn't be opt-in?

MR PICCININ: Sorry. I don't want to take a position on that at this stage. That's for

our CPO response, but certainly I am not saying right now that it should be opt-in.

SIR PETER ROTH: It is inherent to this submission it applies if it is opt-out but not if it is opt-in.

MR PICCININ: That's right.

SIR PETER ROTH: You are seeking to strike out.

MR PICCININ: That's right.

SIR PETER ROTH: That must be on the basis that it must be opt-out.

MR PICCININ: That's the application, yes.

If we go on to page 1401, you can see at the top the particular issue that the court was dealing with there, which was "the relevance of the strength of the claims to the opt-in/opt-out issue". That's obviously not the point we are debating today. The reason for going to this is that there are important points in here that are of a more general application, beginning with paragraph 79 at the bottom, which is commenting on the Tribunal's power to strike out a claim, which obviously is in issue today.

The court makes the point that the Tribunal has jurisdiction to consider strike out of its own motion actually even if no-one is making an application. That's because:

"Collective action[s] absorb a very considerable amount of court time and resources", we are told.

So it is important that:

"The Tribunal has the power to halt claims ... early ... even if the parties [would be] prepared to spend the money required to [fight them]."

That's because of the public interest that exists in not wasting court resources. Because there are other parties that need to make use of the Tribunal as well. I know you are all very conscious of that. I highlight that, because as we have seen that is one of the public interests that informs the jurisdiction to strike out for abuse of process.

If we go on to page 1403, you can see at the bottom in paragraph 89 there is

a reference back to what the minority said in Merricks about the fact that these types of proceedings involve:

"... substantial ... burdens on defendants which are capable of being exploited opportunistically."

In the quotation you can see there was a reference to their ability to be used oppressively or unfairly, and the fact that those risks of oppression and unfairness are exacerbated by the opportunities that the regime provides for profit.

Then immediately over the page you can see that what they are saying is that although that was said in the minority, it is good law and is now endorsed by the court.

Again I am not suggesting that they had in mind the particular problem we are faced with here today, but it does show you again that from a policy perspective we should be concerned about the possibility of the administration of justice being brought into disrepute and with the kinds of risks that we are talking about here where incentives for profit create incentives for proceedings to be use in a way that becomes oppressive or unfair.

Then on this same page again, paragraph 92, towards the end we have concerns being expressed for the risk of cases not being given:

"... an appropriate share of the Tribunal's resources ... taking into account the need to allot resources to other cases ..."

That's in relation -- what they have in mind there is unmeritorious claims, but my point is just that the Supreme Court is telling us to be careful about this point for allocation of judicial resources specifically in the context of collective proceedings.

Then on page 1407 the court was moving on to deal with another issue that arose in that case, which was about the practicability criterion that is relevant to opt-in versus opt-out. That's again not the point we are here to debate today.

Over the page at paragraph 116 it begins with the statement that:

"The regime is designed to accommodate a wide spectrum of cases, with different features, to allow classes of claimants a reasonable opportunity to litigate, but not an absolute or specially privileged right to do so."

That's a phrase I will come back to when I am making my submissions: "a reasonable opportunity to litigate".

Then on page 1411, paragraph 137 there is a discussion of the general policy of the regime.

SIR PETER ROTH: Paragraph 137?

MR PICCININ: 137.

SIR PETER ROTH: Just one moment.

MR PICCININ: Are you there?

SIR PETER ROTH: Yes.

MR PICCININ: The general policy does, of course, include facilitation of vindication of rights and deterring of wrongdoers, but also:

"... competing policy aims of protecting businesses from the burden of defending unmeritorious or inflated claims."

Then the final point I wanted to draw attention to is at paragraph 140 over the page, which is what you might have hoped was an obvious point, which is that:

"... 'access to justice' ... is something to which both claimants and defendants are entitled."

Access to justice does not just mean for claimants.

So what I take from that in terms of the questions that we need to be asking ourselves on this application is that we need to ask ourselves whether even if these proceedings can or could ultimately satisfy the criteria for certification looked at in isolation, whether authorising a second representative for essentially the same class that Mr Hammond is already representing is a reasonable thing to do. Is it fair to Amazon or is it

oppressive? Is it fair from the perspective of the Tribunal's resources and other Tribunal users? Is having one representative in this sphere -- I will come back to what I mean by "in this sphere" -- already a reasonable opportunity to litigate for the class such that two might be thought to be specially privileged treatment?

Ultimately, is allowing ACSO to proceed to a certification hearing a reasonably efficient way for these claims to be aired or is it oppressive and likely to bring the administration of justice into disrepute in the minds of right-thinking people?

Those are the questions. They are all different ways of putting essentially the same two points that we saw in Tinkler.

The essential facts then are these. The Tribunal has already authorised Mr Hammond to act on behalf of an opt out class of Amazon's customers bringing a claim against Amazon alleging abuse of dominance in relation to the featured offer algorithm. In that claim Mr Hammond alleges that what he characterises as Amazon's discrimination -- that's what he alleges in the Featured Offer process, in identifying the Featured Offer, Amazon has caused, among other things -- one of the things it has caused is a reduction in competition between Amazon and other marketplaces and that that has led Amazon to charge inflated marketplace fees. It is said that those inflated marketplace fees are then passed on to Amazon's customers.

Just to give you a reference for that -- I am sure the Tribunal remembers that -- it is in paragraph 92C of the Hammond Claim Form, which is in the core bundle at tab 5, page 323. I don't think we need to turn it up. That is one of the facts, one thing that has happened so far.

The Tribunal has also authorised Professor Stephan to act on behalf of an opt out class of sellers bringing essentially the same allegations of abuse as Mr Hammond, but in addition bringing several more allegations of abuse of dominance, including one which has come to be known as abuse 5, which I am sure you will recall involves

allegations of abusive anti-discounting conduct, is one way it is described. Again Professor Stephan alleges that that conduct has reduced competition between Amazon and other marketplaces leading to inflated marketplace fees from Amazon.

What you now have before you is another application for certification, this time from ACSO seeking to represent essentially the same group of Amazon's customers that Mr Hammond currently represents, bringing a claim that alleges unlawful anti-discounting conduct that ACSO says has caused loss by reducing competition between Amazon and rivals, increasing Amazon's marketplace fees, which are then passed on to Amazon's customers.

Now I want to emphasise that this is not as simple a situation as a single claimant filing two claim forms in relation to similar subject. It is not as simple as that because of the complexities of the collective actions regime.

In fact, you can see in the authorities, and my learned friend has referred to some, that there are actually good reasons why a single claimant filing two claim forms is sometimes necessary and appropriate in ordinary civil litigation where it is actually the party who is filing its own claims. You all know that the courts and this Tribunal have lots of techniques of case management and consolidation and so on for a way of managing that situation in a way that results, when done well, in no increase in costs as compared to a situation where the claims are pursued on the same claim form.

But this is different, and what's at the root of why it is different is that Amazon's customers are not actually the ones bringing either the Hammond claim or the ACSO claim. As you know, they are not and would not even be party to either of these proceedings and they would not be clients of the law firms running the cases.

Instead what Amazon is now faced with is the prospect of two different and independent of each other representatives, supported by separate teams, whose primary duties are owed to those representatives and who will make their own

separate judgments about how best to pursue their individual claims. That's the proposal.

SIR PETER ROTH: The duties are owed to the representatives who are acting as fiduciaries for the class.

MR PICCININ: Of course, sir.

SIR PETER ROTH: The duties are of the lawyers who represent the class in that sense.

MR PICCININ: Exactly, sir, but they will be making their own separate judgments about what is in those interests. Obviously that will be informed by the particular claim that they are bringing.

SIR PETER ROTH: Yes.

MR PICCININ: The point is it is two different mouths speaking for the same customers advised by two different teams that will all have their different views on their respective cases, including in relation to matters that are common between them. Then those teams obviously want to reward themselves for their efforts from the proceeds.

SIR PETER ROTH: If I can interrupt you for a moment.

MR PICCININ: Of course.

SIR PETER ROTH: We have a lot of sympathy for the point about duplication, excessive costs and oppression to Amazon if faced with that. Those are matters that we certainly want to raise with ACSO's representatives and with Mr Lask in terms of how these cases would be managed if they go forward and to that extent you are pushing at an open door. That's a very different thing from striking out. In particular you refer to the Stephan abuse 5, which you say in your skeleton argument, and it seems to us before hearing from ACSO rightly, is effectively the same as he said in the ACSO claim. It is dressed up slightly differently, but it is the same thing.

Stephan in their claim through their expert economist recognises that there is pass

through on those damages if they succeed, which would be passed through to the consumers.

If Stephan is going ahead, subject to any appeal, if that were heard and succeeded, and we find a pass through to consumers, but the consumers have not brought that claim through Mr Hammond, so there would be a finding by the Tribunal that the class has suffered a loss, but we can't award that loss because it has not been claimed. On the other hand, if ACSO is there, they are bringing that claim.

I slightly struggle with the idea that the first situation where we find a loss to the class but we can't give the class any damages would not in itself bring the administration of justice into disrepute and that it is far better if the class has someone who is making that claim.

MR PICCININ: Yes.

SIR PETER ROTH: To say that there is someone there making that claim, if it can be managed in a way that does not cause unnecessary duplication, furthers the interests of justice and it would be very odd to shut it out.

MR PICCININ: Sir, I understand all of that. Of course, one very important aspect of the administration of justice is that the courts adjudicates abuse claims that are brought before them by parties and not other claims that are not brought. So obviously the situation where someone has suffered a loss but there is just no relief is one that arises as an ordinary incident of civil litigation which is where one party brings a claim and another one doesn't and it ultimately becomes time-barred or what have you.

SIR PETER ROTH: It is a bit different, isn't it? We have someone who wants to bring a claim.

MR PICCININ: Exactly, sir. That's exactly the point. That's what I wanted to address. I have three points about why we have a problem with what's being done here and all three of them are concerned with the same basic problem, which is having a second

representative bringing the claims. Nobody is suggesting that if Mr Hammond had brought this claim that there would have been any problem with him doing so. That's not what is being said today. Obviously the merits of the claim are a different matter. That's not what we are concerned with.

SIR PETER ROTH: I suppose he could apply to amend to bring his claim.

MR PICCININ: Of course that's right, sir. We have said in our skeleton that he has the right to bring the application and seek permission to amend. That would be an entirely different thing from what we are doing here. All of my submissions are about that difference actually, about the difference between having a second representative doing it and having Mr Hammond doing it.

I am actually going to reverse my points, because in view of what you have just said, sir, I want to focus on why it is actually wrong in principle to have someone else making that decision and not Mr Hammond. Then I'll go back and deal with my middle point, which is going to be the additional substantive complexity that arises from having a second representative instead of Mr Hammond bringing this case. Then I will deal with what was going to be my first point, which is the costs, which I know you know, but I do want to develop as well.

So beginning with the point of principle really as to why it is just not appropriate to have a second representative for the same class dealing with overlapping subject matter, and this is where I will explain the extent to which it overlaps. This really comes down to the nature and consequences of the decision that the Tribunal has already made to authorise Mr Hammond to act for this class.

What does that actually mean and what does it entail? Obviously it means that he is authorised to prosecute the particular claim that you have certified. Equally obviously that is going to require him to make all manner of tactical and strategic decisions on behalf of the class over the course of the proceedings, which will have consequences

one way or the other for his prospect of success. There will inevitably be choices to be made about where to place the emphasis, where to direct resources at all stages of the proceedings, including during the disclosure process and during trial.

It is always the case in litigation that you have stronger points and weaker points and the amount of time that the Tribunal is willing to give you is finite, and the extent to which you can reasonably ask for more disclosure is finite. So you make judgments and you make trade-offs that are in the best interests of your clients. We all do that in the advice we give to our clients. In Mr Hammond's case that's one of the things that the Tribunal has authorised him to do, to make those decisions in the interests of the class prosecuting his action.

He is also authorised to make decisions on behalf of the class as to whether he should seek to amend the Claim Form, as you rightly drew my attention to, sir, to make additional allegations or indeed to remove allegations as the evidence emerges. Again those are complex, multifactorial judgments that are informed by the merits of the arguments, by much more than the merits too, including all the tactical considerations to which I have just referred.

In the context of markets like these there are also often subtle, sometimes surprising, interactions between the different points you make. Just to take one example, one aspect that might not have leapt off the page -- perhaps it did leap off the page to you. It took a while to sink in for me, it is that if we just look at one aspect of the price parity conduct that ACSO alleges -- before we do this I just want to make clear -- I know the Tribunal knows this -- I just want to make clear that our position is that Amazon does not have any price parity agreements or policies or conduct of any description.

Obviously that's a matter for a different day, but the point I want to note, the point I do want to make now is that the allegations made by ACSO although they are called price parity allegations, actually extend to aspects of the operation of the FMA, the process

by which Amazon identifies and highlights the Featured Offer for its customers.

We can see that by going to the core bundle at tab 1 at page 61. It is paragraph 206.

You can see it is alleged that:

Amazon will disqualify an offer from winning the Buy Box, from becoming the Featured Offer, if the seller's price on Amazon is above the price offered by the seller, or indeed by anyone else, on sales channels off Amazon.

I want to be clear again that this whole section of the Claim Form describing what they call the competitive external price policy is terribly confused. Amazon does not have a policy that goes by that name at all.

What is correct, though, is that offers may be ineligible to become Featured Offers, to be selected as the Featured Offer, if they are not priced competitively compared to other retailers outside of Amazon. That is an aspect of how the Featured Offer selection works.

Of course, you will understand we say that it was good for customers. Amazon does not want to highlight for customers an offer that Amazon knows to be less attractive than an offer that another reputable retailer has for the same product. Amazon would actually rather not have a featured offer at all for a particular product than have one that risks --

SIR PETER ROTH: We are not deciding whether this is happening or not.

MR PICCININ: I know. I just wanted to make clear where we were coming from, I understand that's not what we are here to debate today.

The point that I do want to make today is this part of ACSO's case is actually about Amazon's Featured Offer. That means that the counterfactuals to both Mr Hammond's alleged abuse and ACSO's alleged abuse involves making changes to the way the Featured Offer is selected.

Now, of course they are different changes, but they both involve trying to fiddle with

the same aspect of Amazon's business. They might in these complex markets interact in surprising ways. Obviously Mr Hammond has not yet contemplated trying to strip this aspect out of the process and seeing what happens to the prices that consumers pay, but you know that he does intend to re-run the algorithm, as he puts it, stripping out what he considers to be abusive.

So if this claim goes in too, then what? Is he also supposed to strip out this aspect to make sure that the damages he calculates are consistent with?

SIR PETER ROTH: That arises, that same point, in Stephan, doesn't it?

MR PICCININ: This will be an issue in Stephan. That is exactly the point I am making, sir.

SIR PETER ROTH: We already have that issue.

MR PICCININ: The point I am making, sir, is not that he can't do it. The point that I am making is that there ought to be one person acting for any particular class, making the decision of what case they are going to present about how the FMA and the selection of Featured Offers should work in the counterfactual. This is for two reasons, Professor Stephan can obviously make his own judgment about how he wants to do that, but there are two reasons why it is important that you only have one person speaking for any particular would-be claimant.

The first reason is from Amazon's perspective and the second reason is broader from the class's perspective or from the perspective of the administration of justice.

We say that it is wrong in principle and it is oppressive and right-thinking people would regard it as bringing the administration of justice into disrepute for Amazon to have to answer multiple cases from multiple teams, each trying to advance their own individual theories about how we should run our business on behalf of the same customer. That wouldn't happen if these were individual claims. It's not fair to expose Amazon to that in the context of collective actions either.

Each person who brings a claim and says "Amazon, you have behaved unlawfully. This is what you should have done instead to have behaved lawfully". Each person should have one go at saying that, a go at saying that. We shouldn't have to face the same person speaking with different mouths saying different things about what we should have done. It is not right.

The second reason, as I said, is not so much from our perspective, but it is inconsistent with the proper administration of justice for the class to be exposed to two competing representatives making decisions about what to say about these matters that may or may not undermine each other. Again, we say right-thinking people would regard that as perverse. That's now my first point. It is a point about who should be making this argument.

The second point, which is adding substantial complexity to the case simply by virtue of having two class representatives, is that having that second class representative for the same claim adds significant and completely unnecessary complexity to the substantive task that needs to be carried out at trial. If you have a single representative seeking aggregate damages for multiple abuses, as we have in Professor Stephan's case, then the Tribunal needs to work out the aggregate damages. That's the task.

If you have two separate representatives seeking damages for two separate abuses in relation to the same class, the Tribunal also needs to work out the separate amounts that are payable in respect of each claim, if any, because quite a lot turns on that in terms of working out which teams are entitled to take their rewards from which pot. That is very far from straightforward here. This is not one of these cases -- stepping back, it is obviously the case -- we all know that it is the case that there are lots of instances of a particular defendant facing multiple claims in this Tribunal. There are lots of examples of that. We are not saying that that can never happen. That's not

our position. If they are completely unrelated claims, then no difficulty arises from having a different representative prosecuting in relation to completely different subject matter. I don't want to give examples, but I am sure you can imagine what I have in mind, but here it is far from straightforward, because both of the claims, both Mr Hammond's claim and ACSO's claim, are claiming passed on over-charges down the same causal lines. I said earlier that they are both saying that the effects of the different conduct that they allege included a reduction in the intensity of competition between Amazon and other marketplaces, other channels, with the consequence that Amazon's marketplace based fees have become inflated.

Now that raises lots of methodological questions which are not for today, but depending on how direct or indirect the methodology the Tribunal ultimately ends up using, it may be more or less difficult to ensure that the two sets of damages are accurately separated and do not involve duplication. I do not think my learned friends actually shy away from that in their skeleton. In paragraph 22(d), they acknowledge that it is possible there will be overlaps. They say there are obvious steps that the Tribunal could take to avoid double recovery, including joint case management and expert evidence aimed at isolating the effect.

Today is not the day to debate how obvious those are or how workable they are or any of that. That's for another day. The point for today is that the very fact that these claims are being pursued by separate representatives in respect of the same class creates the need for an additional analysis that wouldn't arise or might not arise if you had a single -- if you have Mr Hammond effectively bringing both claims.

Then just one more point on this, Mr Bankes. It is not just extra work. Extra work is itself a problem, but it is actually worse than that, because that extra work is one that is a task that is inherently unseemly and liable to bring the administration of justice into disrepute, because you would have the bizarre and unedifying spectacle of having two

class representatives purporting to be acting in the interests of the same Amazon customers and they would be finding themselves in conflict, each one wanting to argue that a larger share of the alleged inflation of Amazon's marketplace fees was attributable to their own claims.

You can imagine that even if you ultimately thought that both of the claims were well-founded, and we don't accept that, there might be a limit to how much of an effect -- you know, how different you really think Amazon's marketplace fees could have been in the counterfactual. Surely they wouldn't have been driven down to zero. There must be limits to how much lower they could be. You can see two class representatives bumping up against each other, can't you, and then saying well -- say it is X percentage points is the most you could possibly imagine being the cumulative effect of these different alleged abuses, "more of that is mine and not yours"? That is really something that is totally avoidable. It is totally unnecessary, and it does bring the administration of justice into disrepute. Thank you.

MR BANKES: One possible (inaudible) of your submissions, if we take as our counterfactual there is no consumer claimant for abuse 5, we are still going to have to do the work to strip out the value of pass through, which is hopeless, as we would if there were a claimant waiting in the gap, because you are not going to accept that that money should be paid into a void. I just want to understand why you say it is more work if there is a second claimant there than it is if there is no claimant there, because your interests in that case are going to be to argue that that money shouldn't be paid out. The work has still to be done.

MR PICCININ: Yes. Whether you do or don't depends on what pattern of results the Tribunal reaches. In any event that's why I made my second point. Of course it is possible that you have to do that work anyway, but if you do -- it is one thing to have Mr Hammond and Professor Stephan, who are representing classes who have

opposing interests on pass on, for example, it is one thing to have them arguing over a share of the pot. I think the public, a right thinking person can understand how that's not beneficial.

MR BANKES: Of course, it removes you from that argument, because as long as there is a total (inaudible), you at that stage don't care. If there is no-one there, you do care, because you will argue the pass through was higher.

MR PICCININ: That's not quite right, sir, because the classes are differently divided. The commerce is not necessarily the same as between Stephan and Hammond, because, of course, Mr Hammond is concerned with, if I can put it very simply, all UK customers whereas what Professor Stephan is interested in is all UK sellers, as in all UK domiciled sellers, and the commerce that ends up in the hands of all UK customers is not the same as the commerce that comes from all UK sellers.

MR BANKES: Is it a subset of (inaudible)?

MR PICCININ: Is it a subset? Probably just about, yes.

SIR PETER ROTH: I think there might be then some refinement needed, but isn't Mr Bankes' point nonetheless entirely sound? If Professor Stephan succeeds on abuse 5 and there is, as he recognises, pass through, one is going to have to do the stripping out.

MR PICCININ: Sir, to the extent that one does and it can certainly happen on some scenarios. I accept that. What you are not going to have is the thing that really brings the administration of justice into disrepute, which is having two class representatives standing here arguing about who gets which share of the damages in respect of the same class.

Of course, it may have all sorts of consequences. You know, winning or losing that argument may have all sorts of consequences that end up being contrary to the interests of the class, because in the event of appeals it may turn out that one finding

of abuse is overturned and another one isn't. So in a situation where you have class representatives fighting it out over which one of them is responsible for more of the spoils is deeply unattractive and I do urge on this Tribunal that that is not necessary and it is not something that should be tolerated. So that's my second point.

My first point was going to be the costs point. It is now my third point. It is that again having a second class representative bring this claim inevitably imposes significant additional burdens on Amazon and on the Tribunal and therefore also on other Tribunal users as compared to a situation in which a single class representative acting for the customer class in relation to these matters decides what claim should be brought.

The first increase in burden is the need to deal with a whole further certification process. If we just take a look at the litigation budget briefly, which is at supplementary Bundle A, tab 2, page 74 -- if you are working electronically, you may need to enlarge it to be able to see it.

SIR PETER ROTH: What page is it?

MR PICCININ: It is page 74.

SIR PETER ROTH: Bundle?

MR PICCININ: Supplemental Bundle A. This was an addition yesterday. So it is possible the additions didn't reach you.

SIR PETER ROTH: 74, yes.

MR PICCININ: Perhaps if I just tell you the points for a minute, because it is difficult to make out the numbers.

SIR PETER ROTH: I can see the numbers. We can enlarge it, but which column is it?

MR PICCININ: First I want to focus on the columns up to 5, because those are all of the ones that run up to certification, which is my first point. If you look at the bottom

row, the grand totals -- indeed, before that, just going to the first three of them, so just up to service of the Claim Form, they have spent nearly £1.5 million just getting to the point of issuing this Claim Form, £1.5 million.

Just pausing here, the impact of your decision today on this is not limited to this case. Obviously these costs have already been incurred. There's the prospect of the same thing happening again and again in other cases. I think the public would regard £1.5 million being spent on starting a whole extra claim that just didn't need to happen at all as appalling frankly.

After service from today onwards to certification, after they have written the expert report, all of that, is another three quarters of a million pounds. That's going up to column 5. That's just their costs. It goes without saying that it would cost us something very significant as well, because in everything that happens from now through to certification we are all arguing about the same things. So I am not saying it is the same as the costs that were incurred up to the Claim Form, but certainly from here on. That's why we say, and the Tribunal knows this, that when you have a certification hearing, you end up looking at seven figures in costs. That's just what it costs.

Now if Mr Hammond had brought this claim as part of his existing proceedings, much of that would have been avoided. We would not have needed two certification processes. Indeed, after certification, so looking from row 6 onwards, it only gets worse from there, as you would expect. There is many millions of pounds being spent -- many additional millions of pounds being spent on disclosure, evidence, expert reports, trial preparation. All of this we say is enormously incremental to what Mr Hammond would spend if he were pursuing this claim alongside his existing one. It comes up to at the end just shy of £20 million.

Indeed, if we just think about what would you do if you were a class representative, if you were Mr Hammond and you, wrongly of course, we say, thought this was a good

case to bring and it was not just meritorious but in the tactical interests of the class that he is representing to bring it and you wanted to do that in the most efficient way possible. What you would do is adopt Professor Stephan's case of abuse 5, including overcharge. You are already dealing with pass on. It would have added virtually nothing either to the costs of the certification hearing or to any of the later stage of the proceedings. Essentially all of the nearly £20 million of costs that you see projected here would have been avoided.

Of course, this is just the beginning. Like I said in relation to the certification process, the same goes for the rest of it. Everything they do we have to respond to and everything they do and we respond to takes up your time in hearings, not just at trial but also in the interlocutory hearings along the way. That deprives other court users, other Tribunal users, of access to these facilities being judges.

Just to illustrate that point, if you go back to the core bundle, tab 1 and go to page 50 just for example --

SIR PETER ROTH: Page?

MR PICCININ: 50.

MR BANKES: Of the bundle or the Claim Form?

MR PICCININ: Of the bundle. You see the heading "Buy Box". If you flip on, you will see there are several pages of pleadings about that. Then it goes on after that to Amazons' agreements.

The point I want to make is that this is just another version of the story being told about the way Amazon runs its business. Mr Hammond has already pleaded a case on how the buy box works, but if this claim were certified, we would now have to go away and plead another defence, including in relation to all of that background to the factual points about how the business operates. That is just a small illustration of the way the costs are multiplied unnecessarily by having an additional team, an additional class

representative acting in respect of the same class in respect of the same sphere. Conduct that has a bearing in marketplace fees, is one way of putting it. Conduct relating to the featured offer is another way of putting it. It is all of those things.

So we say a right-thinking person would be appalled by an extra £20 million being spent unnecessarily on a whole additional cast of people who then profit enormously actually whether they win or lose. If they win, the funder wants a multiple of what they have spent as well.

I don't want to be too crude about this, but when we are dealing with what right-thinking people would think and the administration of justice, it is important that we call a spade a spade. What the public would think, looking at this, is that funders, lawyers and economists are profiting from an activity that is just wasteful, and that does bring the regime into disrepute and is not fair to us and it is not fair to anyone else who needs to use this Tribunal.

We say the right approach is, having decided to authorise Mr Hammond and to certify his claim, the right approach is to leave to him the question of what claims he wants to bring, what applications he wants to make. He has seen all of this, because we brought it to his attention with permission. So we sent this to him so that he could consider it, but we are not at all suggesting he ought to make an application to amend to bring this claim obviously. We say the claim is flawed. Even beyond its merits there are all sorts of reasons why he might not want to bring a claim on behalf of customers tackling conduct that prevents sellers from charging higher prices. There are all sorts of reasons why he might not want to do that. It is not for me to know. We say it is a decision that should be made by him, given the Tribunal's decision to authorise him.

Now my learned friend's response to this at paragraph 23 of their skeleton is to say that it cannot be oppressive to Amazon and it cannot bring the administration of justice into disrepute for ACSO to come in and fill what they say is a critical lacuna in the

existing actions, namely a claim for Professor Stephan's abuse 5 but on behalf of Amazons customers, but that, with respect, entirely fails to deal with the points that I have just been making.

As I said, we are not saying that merely facing a claim on behalf customers for the same abuse alleged by Professor Stephan is ipso facto oppressive or would bring the administration of justice into disrepute. What we are saying is facing a claim of that kind from an additional class representative for the same class that is already suing us in relation to closely related matters, that is what is abusive. It is that aspect of the procedure that causes the problems, not the mere fact of the substantive claim being pursued.

There is a similar flaw in what they say in paragraph 24. There they refer to the Tribunal's decision, different constitution, in the Carriage dispute -- actually by then I think it was the same constitution -- the Carriage dispute in Stephan's case where the Tribunal deferred the application of the representative who was advancing the wider set of allegations. That might not always be the case, but that was certainly one of the factors that influenced the Tribunal in that case.

The very fact that we have Carriage disputes illustrates the policy considerations that are underpinning our application today. You could always say that having another class representative with a different team and a different methodology offers an additional chance of success as compared with just one class representative pursuing just one methodology with just one team. We don't allow that because the prospect of having multiple competing representatives, each having their own go, is an appalling one. I know that's not quite the same in that it is not the same allegation of abuse that is being pursued, but it is a similar one.

To echo the words of the Supreme Court in --

SIR PETER ROTH: It is fundamentally different, isn't it? It is clear that ACSO couldn't

come along and say "We want to run the same case, the same claims to Mr Hammond, effectively to have a second lot of people arguing the same thing". That would be, as it were, a post-certification version of a Carriage dispute.

MR PICCININ: Yes.

SIR PETER ROTH: They have limited themselves to the additional claim. If they had come in earlier, they could have before certification with claims plus this one -- there would have been a further Carriage dispute no doubt with Mr Hammond.

MR PICCININ: I want to address that possibility. Just on your first point, of course I accept what you are saying, sir. It's not the same situation at all. It is similar to this extent, in that the claim that is being brought, although it is not one that Mr Hammond is actually bringing, it is certainly one that Mr Hammond could bring in the sense that he could make an application for permission to amend or he could have made it from the beginning.

Then comes the critical point, which is relevant to the abuse of process analysis. If it were brought by Mr Hammond on behalf of this class instead of by ACSO on behalf of essentially the same class, it would be much more efficient and much fairer and would avoid all of the problems I have referred to. That's what makes it abusive. It's not that it is the same claim that is already being brought. It's a bit like Henderson v Henderson it, applies also to claims that could have been brought in the earlier proceedings.

SIR PETER ROTH: Henderson v Henderson is quite different. You have a (inaudible). As you say this is rather unique.

MR PICCININ: It is, sir. Just turning to the second --

SIR PETER ROTH: It would clearly have been more efficient. I am not sure that's enough to strike something out, just to say that there might have been a more efficient course that might have been taken.

MR PICCININ: Not just a bit more efficient, very significantly more efficient, and that

is why I showed you in the authorities before that a concern about the Tribunal resources and about the costs to which defendants are put, those are concerns that underpin the policy of this regime and also underpin the principles of abuse of process, but it is not just the costs, as I said. There are also the principled points.

SIR PETER ROTH: Yes, but I don't think striking out goes that far. Supposing you have an individual consumer of untold wealth who felt very strongly about this, Mr A. Mr A brings a claim against Amazon saying "I have been overcharged" and Mr A's claim corresponds to the abuses that Mr Hammond is bringing. You have another consumer, Miss B, also of great wealth, also feeling -- and she brings a claim which is just the price parity claim. One could say it would be much more efficient if Mr A could bring the price parity claim with one set of lawyers but we can't force him to and the court would have to hear both and would hear the two probably together in the same day and they would be entitled to do it with their own teams of lawyers.

MR PICCININ: That's right, sir. That is because each of those separate customers have a right of access to the court to bring their claims. That is why I said at the beginning what's different here is you have actually one customer or one group of customers. It is the same and you have two sets of people seeking to profit from acting in their names. That is why you end up with two mouths speaking very expensively on behalf of the same claimants is what they would be called in individual litigation, and that is not something that would be tolerated.

So just to tweak your example, sir, if we took customer A, who brought the first claim, which corresponds to Mr Hammond's claim, and then customer A also thinks "There is also this anti-discounting point" and files another claim in relation to that, the court would not allow them to proceed entirely separately with different teams or any of that. They would be consolidated, of course. Then there would be only one mouth speaking in relation to both claims. That is what's different about what's being proposed here

and what takes it out of that situation. That is what causes the three sets of problems I have identified, all of them stem from what's special, what's different and what should make you cautious about the collective action regime.

If ACSO had turned up at the Carriage hearing involving Ms Hunter and Mr Hammond rather than waiting a very significant period to bring this claim, any number of things might have happened. It would obviously have been open to Ms Hunter and Mr Hammond to add this alleged abuse to their claim, which would then take off that point of difference between them, or they could have explained to the Tribunal why they didn't want to do that and why it was actually better to have a more tightly focused claim in their view than to bring the anti-discounting allegations. That whole question is likely to have been of quite significant interest to the Tribunal in deciding what to do with that tripartite hypothetical Carriage dispute.

In either case, whatever the Tribunal made of it, in our submission the only bare outcome, the only sensible outcome, would have been the same. It would have been one representative pursuing whatever allegations that representative considered to be in the best interests of the class. There's no good reason why a tripartite Carriage dispute of that would end up with two representatives duplicating costs in the same broad substantive arena.

The only other point I want to make about the main application is just to respond to a point that has been raised in correspondence concerning Amazon's applications to the Court of Appeal for permission to appeal from this Tribunal's decisions on certification.

There was a suggestion I think that somehow we were hiding that fact from ACSO and that is certainly not the position. I don't know if the three of you sitting there happen to know this, but the fact of the application for permission to appeal, including renewed to the Court of Appeal, is actually on the Tribunal's website on the case page reflecting

the approach to transparency that this Tribunal has, and it is also there on the face of the case tracker website in the Court of Appeal. It didn't occur to us that they wouldn't have known about it.

SIR PETER ROTH: I understand it's been heard but not decided.

MR PICCININ: That's right. It is also just not relevant we say, because our application for permission in Hammond, which is the most important one for the purposes of the submissions I have just been making, only relates to the terms of funding. Amazon did not pursue the other point that you may remember addressing in the Tribunal's decision. Amazon's application for permission in Stephan only relates to the conflicts point, which is not relevant to abuse 5.

So we say it is just not relevant and in any event obviously if the outcome of the application for permission to appeal is that permission is granted and the appeals are granted and something happens that changes the matters that are relevant to your decision today, then it can be revisited.

SIR PETER ROTH: Yes.

MR PICCININ: But it certainly wouldn't have been right for us just to wait for however long it takes for the appeals to go forward without bringing this application in the circumstances where the very thing we are trying to avoid is incurring the costs of going through this process.

SIR PETER ROTH: Quite so.

MR PICCININ: Sir, that is my application. There is then the alternative position, which I could deal with now or we could take a break.

SIR PETER ROTH: I think it is probably sensible to take a break. I will talk to my colleagues. It may be we will want to hear from Mr Lask on the strike-out application before we come to the alternative application.

MR PICCININ: I can understand that too although -- yes, that is fine, sir.

SIR PETER ROTH: So we will come back about 11.45.

(Short break)

MR PICCININ: I am only standing in case you wanted to hear from me.

SIR PETER ROTH: No. I think you have made your submissions very clearly, Mr Piccinin.

MR PICCININ: So you want to move on to the respondents.

SIR PETER ROTH: To Mr Lask, yes.

Reply by MR LASK

MR LASK: Good morning. Amazon's application seeks to have the ACSO claim struck out as an abuse of process in light of the overlap between ACSO's claim, the Hammond claim and Stephan claim. ACSO's position in summary is that the overlap does not render its claim an abuse of process and as such the strike-out application must fail.

I propose to address the extent and nature of the overlap and then make five broad responsive points to my learned friend's submissions.

ACSO has from the very outset acknowledged that there is overlap with the Stephan and Hammond claims. One sees that in the Claim Form paragraphs 82 to 90 in core bundle, tab 1, page 28. I don't need to take you to it, but it is common ground that ACSO's claim does not replicate either of the other claims. I propose to address the overlap and importantly the differences relatively briefly, because they are essentially common ground. I was not proposing to take you through ACSO's claim form in any detail, but can obviously do so if it will assist.

Firstly, the Stephan claim. ACSO's claim on infringement targets in broad terms the same conduct as Stephan's abuse 5, namely the policies by which we say Amazon prevents or strongly discourages third party sellers from offering lower prices on other

platforms. ACSO describes these as price parity policies or wide retail parity obligations, WPROs. Stephan calls them anti-discounting prices. The key difference, of course, is that the ACSO and Stephan claims are brought on behalf of different groups of claimants at different levels of the supply chain. The Stephan claim is brought on behalf of third party sellers whereas ACSO's claim is brought on behalf of consumers. Indeed, the ACSO class specifically excludes legal persons in an effort to avoid including any third party sellers within the class. One sees that from the Claim Form, paragraphs 42 to 44, core bundle, tab 1, page 18.

So it is very hard, and to be fair my learned friend did not push this point, but it is very hard to see how the existence of the Stephan claim could on its own provide any grounds for Amazon to seek strike out. Obviously not unusual for a defendant to face claims from both upstream and downstream claimants in respect of the same infringement.

SIR PETER ROTH: I don't think that was put.

MR LASK: The point was not put, so I don't propose to dwell on it. That is the Stephan claim.

Dealing then with the Hammond claim, which is the focus of my learned friend's case, the Hammond claim is, like ACSO's claim, brought on behalf of consumers who purchased products from Amazon's UK marketplace, but crucially the two claims allege different infringements by Amazon.

Hammond claims an abuse arising in summary from Amazon's preferencing of products sold by Amazon Retail or fulfilled by Amazon over products sold using -- fulfilled by merchants. There is, as the Tribunal acknowledged in the CPO judgment in Stephan and Hammond, nothing in the Hammond claim corresponding to the abuse alleged by ACSO.

Furthermore, the overlap between the ACSO and Hammond classes is incomplete,

most importantly because they concern different claim periods. If I could just ask the Tribunal, please, to take up the core bundle at tab 5, page 323, one sees paragraph 97 of the Hammond Claim Form "Class definition". The class definition is:

"All natural consumers who purchased at least one product from Amazon's UK based e-commerce marketplace at Amazon.co.uk between at least 1st October 2015" -- and it has been amended -- "and 7th June 2023."

That is the relevant period. Then if one turns to tab 1 in this bundle, page 14, one sees ACSO's proposed class definition:

"All natural persons aged 18 or over ... other than Excluded Persons, who purchased at least one product from a third-party seller on Amazon's UK based e-commerce platform within the Relevant Period."

Then if one turns over the page to page 16, one sees:

"'Relevant period' means the period starting six years (or five years to the extent the Claims are governed by Scots law) before the date of this Claim Form and ending on the date of this Claim Form."

Then one sees:

"ACSO reserves the right to apply to admit claims to these ... proceedings that do not exist as at the date of this Claim Form, but which have arisen by the date of any such application" based on the Neill v Sony case.

So the date of the Claim Form is 14th August 2025, so the claim period for the ACSO class is 14th August 2019 to 14th August 2025. There is overlap, but it's clearly incomplete.

What this means is that there will be consumers who are part of the ACSO class but are not part of the Hammond class, specifically those who first made a purchase from the Amazon marketplace as an adult after 7th June 2023. At the moment there is just over a two year period between June 2023 and the end of the ACSO claim period

August 2025, but because ACSO says that Amazon's infringement is ongoing and because ACSO has reserved the right to extend that time period, that delta between the two classes could become much bigger. I am going to come back to explain why this is important.

Turning then to the implications of the differences between the two claims, these differences have very important implications. ACSO's claim is for the losses suffered by the consumers as a result of Amazon's WRPOs, its price parity policies. There's no such claim before the Tribunal in the Stephan claim or the Hammond claim. So absent ACSO's claim, if it were struck out, if Hammond's case were to fail on liability the consumers he represents would be unable to recover any damages. That would be the case even if Stephan succeeded in establishing Amazon's liability for abuse 5 and even if it were established that a proportion of the resulting overcharge on marketplace fees had been passed on to consumers.

I emphasise this would entail a pure windfall for Amazon. Professor Stephan accepts that some of the alleged overcharge will have been passed on, but in this scenario, in the scenario that Amazon is contending for, Amazon would never have to pay that money out to anyone.

The Tribunal has made a similar point this morning. It also did in the CPO judgment at paragraph 133. I don't think I need to take you to it. It also made the point about a windfall for Amazon in its permission to appeal ruling in Hammond and Stephan at paragraph 13.

So, just pausing there, in my submission, even taking the most broad, merits-based approach to abuse of process it, cannot possibly be unfair, oppressive or detrimental to the good administration of justice for a PCR to bring a claim on behalf of consumers that has not and will not otherwise be adjudicated on.

SIR PETER ROTH: It can't be right, though, that the PCR for the same -- I appreciate

the temporal difference, but substantially the same time to be arguing exactly the same point as another PCR for the same class.

MR LASK: We would be in great difficulty if we were here today seeking to defend a strike out claim in circumstances where our Claim Form was the same as Hammond's.

SIR PETER ROTH: I raise that because you have helpfully in the Claim Form set out the main issues that have to be considered in paragraph 73 on page 25:

MR LASK: Yes, common issues.

SIR PETER ROTH: Yes, common issues, and in paragraph 73 you list the main issues:

"1. Definition of the relevant market.

2. Whether Amazon held and holds a dominant position in the relevant market."

Then to some extent apart from the temporal difference:

"6. Value of commerce of affected products."

I am sure your expert has a whole section of their report on market definition and dominance. I mean, that is a point where you are simply duplicating what Mr Hammond is saying for the same claimants with a slight temporal difference and indeed putting forward expert evidence on the same point. That cannot be right, can it?

MR LASK: Some of the same claims and on some of the points the case will be the same, but, of course, in order to bring our claim for abuse of dominance we need to have a market definition and we need to establish dominance.

SIR PETER ROTH: You say you. You are the same people. It is no different -- if anything, it would certainly be no weaker in the later years than in the earlier years. If that is being put forward for the class, it should only be put forward by one class representative, not just counsel dividing up their submissions as happens when you

have several claimants, but here it is the same claimant. They should through one piece of evidence and one lot of submissions.

MR LASK: The first point, sir, is in order for ACSO or a consumer to bring a claim for an infringement that Hammond is not bringing, that class representative or that consumer needs to plead the essential elements of the infringement.

SIR PETER ROTH: We are not talking about the pleading.

MR LASK: It needs to be put forward. I think the point that's being put to me is if ACSO's claim is certified, how does one deal with those parts of the case where Hammond and ACSO are saying the same thing? My response to that is those are matters of case management. They will need to be dealt with and there will need to be a very high degree of coordination between the two claims.

SIR PETER ROTH: It goes beyond coordination. It is the same claimant coming along with another lawyer wanting to argue the same thing. You can't have the same claimant having two lawyers. That's a matter that -- you say we acknowledge the overlap -- of not saying we will agree with Mr Hammond who is going to make the case on market definition, who is going to make the case on dominance, not case management by the Tribunal, but actually you with your duty to the class and Mr Hammond with his duty to the same people saying "We will use the same expert and we will adopt either Hammond, or they have agreed to adopt yours, on the way in which the identical issue is going to be put forward.

MR LASK: Sir, I accept that may be the kind of direction the Tribunal wishes to make if our claim is certified, but --

SIR PETER ROTH: Well, I think it is for you to consider, because you are coming here wanting to put it forward, the same point for the same people with a different expert.

MR LASK: I am obviously going to come on to deal with the application.

SIR PETER ROTH: It goes beyond case management: it is saying why should we allow that in the first place and certify a case brought on that basis. I know that was not the focus of Mr Piccinin's submissions but that has an element of abuse to say the same class comes to the Tribunal with another expert, with a whole section of her report saying the same thing for which an expert is already before the Tribunal with a report dealing with those issues.

MR LASK: So the essential answer is what else was ACSO supposed to do? It has to be -- it is bringing a claim for an infringement on behalf of consumers that's not currently before the Tribunal. As I say it, has to make out the essential elements of that claim. If it hadn't, Amazon would be applying to strike it out on that basis for the claim being incomplete. What it hasn't done yet is sought to coordinate with Hammond or indeed Stephan and strip out parts of the claim or parts of the evidence that we need to submit in order to get over the certification barrier at this stage, because it's premature. He might not be certified --

SIR PETER ROTH: I don't know why you need to submit evidence on market definition when we already have evidence from your clients on market definition.

MR LASK: We needed to put forward a methodology to provide a blueprint for methodology.

SIR PETER ROTH: We have a methodology on that point for your clients. You don't need to come here and ask us to look at another one. How can that be right?

MR LASK: In my submission it is a matter for certification. It doesn't render it abusive, because the only alternative would have been -- let me deal with the pleadings first. We had to plead the essential elements of the infringement.

SIR PETER ROTH: No, I understand the pleading.

MR LASK: So if the complaint is well, we put forward evidence or we are proposing to put forward evidence that will already be before the Tribunal in the Hammond case,

then in my submission that doesn't render the claim abusive. What it suggests is that steps need to be taken to consolidate the evidence. We have not sought to do that yet, because we are focused on our claim and we are focused on getting certification.

SIR PETER ROTH: Do you accept that it cannot be right for the Tribunal for the consumer class to have two lots of evidence and two lots of experts on market definition and dominance?

MR LASK: So far as -- I would have to go back to see the way that the two cases on market definition and dominance are pleaded.

SIR PETER ROTH: They are pretty much the same.

MR LASK: Insofar as they are identical I don't think we would have any problem in having to use a single expert with Hammond if we are certified and if Hammond survives the current allegation for permission to appeal.

SIR PETER ROTH: Obviously if you are not certified it doesn't arise, but the certification should not involve looking at another methodology for something that's already been approved.

MR LASK: I hear that, sir.

SIR PETER ROTH: It is a complete waste of money subject to what might happen on appeal to have a whole lot of expert evidence directed to something which your clients have already put in expert evidence on.

MR LASK: I hear those concerns, but we have not got a response from Amazon to our application for certification. Our answer to these applications has been that they need to be dealt with as part and parcel of the CPO hearing. That was what we said ought to have happened, but instead what we are facing is an early attempt to strike us out on the basis of the overlap between the two claims. My answer to that is whatever else one might say about the overlap, and whatever the Tribunal might require the parties to do about it, if we are certified, bringing the claim in the way we

have isn't an abuse of process.

SIR PETER ROTH: Well, you say "If we are certified". Certification involves looking at your methodology.

MR LASK: It does.

SIR PETER ROTH: How can it be right that we look at another methodology for something when we have already looked at a methodology for the same claimants and approved it? You are going to ask us on certification to go through and consider whether Dr Bagci passes the test on that aspect. We have already had evidence for the same people.

MR LASK: No. The focus of the dispute between the parties on the scope of the expert evidence is the respective methodologies for assessing the effects of the alleged infringement, there really hasn't been much said at all about what the experts say about market definition and dominance, but I accept that if the experts are saying the same thing or dealing with the same issue in the same way, then as the Tribunal said in its CPO judgment, as a matter of case management it may be appropriate to have a single exercise, but right now I am dealing with --

SIR PETER ROTH: That's not quite grappling with my point, which is it is not case management: it is not right for a claimant to come back and put forward another expert on the same point. That's what you are doing. You are not saying as regards market definition "We need to plead it". That is set out ready for this class. There is no discernible difference or if there is, you deal with it over the additional two years. The market definition we don't suggest has changed. The dominance you may say if it is based on market share, you can look at it over those two years only. Has it changed significantly such that it might be a different answer? That is the way in which you seek certification, not by putting forward a whole lot of different evidence on the same point.

It is a pre-certification point, not something for case management after certification.

MR LASK: I hear that point. One does have to be a bit careful about suggesting that the expert evidence is necessarily the same. It might be the same on market definition and dominance, and if that is the case, I doubt my client would have any objection to bringing forward an application for certification that sought to rely for those aspects on the expert evidence that the Tribunal has already approved, but when one gets on to the methodology proposed by ACSO's expert for assessing the effects of Amazon's conduct.

SIR PETER ROTH: Then it is different conduct.

MR LASK: It is a different issue. I accept the first part of that.

SIR PETER ROTH: You accept that and you will need to coordinate with Mr Hammond and his representatives, because obviously it is a question of how costs are shared and so on, which will have to be considered. You accept we can't for the same -- effectively the same class on issues of the same,-- have duplication of evidence just from a different team.

MR LASK: There may be some nuances around the detail, and I will be told by those behind me if I have this wrong, I don't expect my client would object to being told to do that.

SIR PETER ROTH: It is something you would need to think about before certification.

MR LASK: Yes. Sir, I was dealing with the implications of the differences --

SIR PETER ROTH: Yes.

MR LASK: -- between our case and Hammond's case. I think the last point I made was that when one is thinking about abuse of process, it cannot be oppressive, unfair or detrimental to the administration of justice for a PCR to bring forward a claim on behalf of consumers that has not and will not otherwise be adjudicated on.

I am going to come on to deal with the specific complaints made by my learned friend,

but the headline point is that none of his points on cost and complexity provide an adequate answer to that point.

There are two further points in terms of the implications. First, it is right that both ACSO and Hammond are claiming in respect of overcharges on the marketplace fees they say have been passed on to consumers, but it cannot be assumed -- I understand this to be common ground -- that they are claiming for the same overcharge.

To put it another way, the overcharge in a scenario where both ACSO and Hammond establish their alleged infringements may well be higher than the overcharge in a scenario where only one of them succeeds.

So even if Hammond succeeded on liability and causation, there could well be, absent ACSO's claim, additional loss that was attributable to Amazon's price parity policies that could not be recovered by consumers.

Mr Piccinin referred to a passage in our skeleton on how double recovery could be avoided. Obviously that is something that would need to be addressed at trial. I would only mention at this stage -- I am going to come on to deal with the expert evidence later -- that Dr Bagci's model is specifically designed to assess the retail price effects of Amazon's price parity policies. So it seeks to isolate those effects, which ought to make any exercise of disentangling the effects of different infringements more straightforward.

The second point is, as Amazon recognises, and as I have already mentioned, the Hammond class excludes consumers who became members of the class after June 2023. So even if Hammond succeeded on liability and causation, there would in the absence of ACSO's claim, be no basis on which those consumers could recover any damages. There is another pure windfall for Amazon.

I then want to come on to my five responsive points. The first one I can take very quickly, because it has somewhat fallen away. Amazon's skeleton in dealing with

abuse of process relies primarily on the principle in Henderson v Henderson, but, as the Tribunal has pointed out, that does not apply in a case like this where the earlier proceedings have not been concluded.

SIR PETER ROTH: Yes, and I think, to be fair, although it is in the skeleton, Mr Piccinin in his oral advocacy recognised that.

MR LASK: I think Mr Piccinin fairly accepts that this would be an unprecedented use of the abuse of process doctrine in terms of the established categories. That does not mean there can't be an abuse of process, but it does in my submission mean he has a much higher hill to climb.

SIR PETER ROTH: A different hill anyway.

MR LASK: A different hill. Just for the Tribunal's note in case it is helpful, the point that I have just made that Mr Piccinin does not pursue is dealt with head on in your judgment, sir, in Deutsche Bahn v Mastercard, which is in authorities bundle 1, tab 16, paragraphs 24 to 35.

My second responsive point concerns the recent Supreme Court decision in Evans, the effects case. Amazon relies on that decision for the proposition as put in its skeleton that the Tribunal must consider whether it is in the interests of justice to require Amazon to answer separate claims on behalf of a similar class in related matters.

My short answer to that is Evans is not about abuse of process at all. It certainly does not purport to expand the established categories of abuse of process. Evans was a case where, following a CPO hearing, the Tribunal refused certification on an opt out basis, would have been willing to certify on an opt in basis, because the PCR's pleaded case on causation was deficient. Of course, at this stage there is no challenge to the adequacy of any part of ACSO's pleaded case.

So the Supreme Court's observations on which Mr Piccinin placed some emphasis on

the purpose of the collective proceedings regime and the importance of being mindful of costs implications, they may be relevant in due course at certification, most obviously on the question of opt out versus opt in, but they do not in my submission lend any support for the proposition that this claim is an abuse of process.

My third responsive point concerns Amazon's concerns about the additional costs of multiple proceedings. I entirely accept, as I think I have already indicated, that if ACSO's claim is certified, the implications in terms of cost and the impact on the Tribunal's resources will need to be carefully managed, but those implications do not render ACSO's claim abusive, nor do they justify what is a draconian remedy of striking out an otherwise meritorious claim.

MR BANKES: Mr Lask, can I ask you, Mr Piccinin drew our attention to your litigation budget.

MR LASK: Yes.

MR BANKES: To what extent has that budget been adjusted to reflect these efficiencies which we say are inevitably going to follow certification or is that budget drawn --

MR LASK: My understanding is that it hasn't been adjusted for that purpose because it's being prepared at a time before Hammond and Stephan were certified and we had to prepare our case for certification on an independent basis. It is similar to the points I was making about pleadings. It would have been premature in my submission for us to prepare a cost budget that assumed they would be certified. I appreciate we issued our claims a week or two after the certification in the end, but you can appreciate the work that had gone into it, but it would have been premature in my submission to seek to prepare a costs budget that somehow sought to reflect the coordination and the efficiencies that we would hope to achieve if certified and if jointly case managed with those claims. Sorry. It is a long winded answer to a simple question, which is it doesn't

seek to reflect those deficiencies.

Obviously it is not unusual for defendants who are alleged to have engaged in anti-competitive conduct to face multiple claims. The Tribunal is well accustomed to dealing with such issues through active case management and it has experience in various proceeding, such as Trucks and Interchange and the Salmon cases that are currently before the Tribunal. But a defendant cannot simply avoid having to face an otherwise legitimate claim on the basis that it will increase costs. There is no get out of jail free card.

I would add that ACSO has, as set out in its Claim Form, it has ATE insurance of up to £25 million. The policy is in place, and whilst we don't seek to dismiss the need to manage proceedings at a proportion of cost, Amazon, of course, will have protection if ACSO's claim proved to be unfounded, either at the certification stage or thereafter.

My fourth responsive point concerns Mr Piccinin's submissions on the complexity of distribution if there are two consumer class representatives. Again it is perfectly fair for Amazon to identify this as something that would need to be addressed if ACSO's claim was certified, if both claims were successful at trial, but again the need to work out the division of any distribution between ACSO and Hammond is not a matter for now. It is a matter for at best case management but more likely the end of trial.

It doesn't render ACSO's claim an abuse of process. Indeed, the complexity, concern only arises if both ACSO and Hammond succeed in their claims. It is rather odd, in my submission, for Amazon to be seeking to strike out ACSO's claim based on a complexity that might arise if the claim succeeds. It would be a perverse outcome to deny consumers damages which they are otherwise entitled to simply because of the complexity in distributing them.

Amazon's position here seems to be that it's a better outcome in the interests of justice for consumers to recover nothing for the losses caused by Amazon's price parity

policies than for there to be a discussion about distribution of damages at the end of a successful trial. In my submission that obviously can't be right.

Two further points for completeness. I think I have made the first one already. Dr Bagci's proposed methodology seeks to identify the loss specifically attributable to Amazon's price parity policy, so again that is calculated to assist in simplifying distribution.

Secondly, albeit this is a matter for certification, Mr Maxwell-Scott on behalf of ACSO has filed a witness statement setting out ACSO's distribution plans as required. So the foundations are there if and when distribution needs to be tackled.

The fifth responsive point concerns Mr Hammond's role as the class representative in his case. Mr Piccinin placed a lot of emphasis on this in his submissions. Amazon's essential submission is having been authorised to act as class representative in his own proceedings, it is for Mr Hammond alone to decide whether any other related claim should be brought against Amazon on behalf of consumers. He is the gatekeeper on Amazon's case. Amazon says that because he hasn't sought to pursue a claim for the losses caused by its price parity polices, it is an abuse for ACSO to do so.

There are two points I wish to make in response to that. The first is that there is no authority for that proposition and it would, if correct, have troubling consequences, because it would mean that a decision to authorise a class representative in one claim would effectively shield the defendant against any other claims on behalf of a similar class, even in respect of distinct infringements, unless the first class representative sought to amend.

Now, as Mr Piccinin recognised there are various reasons why a class representative may pursue one type of claim but not another. It could be a funding issue. We don't know, but it will be quite wrong in my submission for a defendant to be shielded from

an otherwise meritorious claim for unknown and potentially arbitrary reasons.

As my learned friend noted, Mr Hammond has been aware of Professor Stephan's abuse 5 for many months. He has been aware of ACSO's proposed claim for many months, but he hasn't sought to amend or indicated any intention to do so and obviously he can't be forced to amend. Amazon's case is in those circumstances it should be immune from any claim on behalf of consumers for the damages caused by the price parity policies. It should be entitled they say to a windfall. That can't be right, and it is telling Mr Piccinin in emphasising he was not inviting Hammond to amend. Of course he isn't, because Amazon would rather not face this claim. It would rather have the windfall.

The second problem with this submission that Mr Hammond is now the gatekeeper for all claims against Amazon or at least all related claims against Amazon on behalf of consumers, whatever "related" might mean -- it is a vague term on which to hang such a draconian application -- the second problem with it is that it is inconsistent with the collective proceedings regime. The regime set out in the Competition Act and the Tribunal Rules makes the Tribunal the gatekeeper for deciding whether collective proceedings should succeed, not a previously authorised class representative. The existence of claims of same or similar nature is a relevant consideration of certification but it is not a knock-out blow, as Amazon would contend.

If I could just take the Tribunal to the rules, please. They are in the authorities bundle, authorities bundle 2, tab 36C towards the back.

SIR PETER ROTH: Which rule is it? We have the rules loose.

MR LASK: 77, please.

SIR PETER ROTH: Rule 77. Thank you.

MR LASK: The Tribunal will be familiar with these rules, but rule 77 obviously makes the granting of a collective proceedings order subject to two broad conditions,

authorisation and eligibility.

Rule 78 then sets out the considerations relevant to authorisation of the class representative.

Rule 79 sets out the considerations relevant to eligibility. One sees rule 79(2):

"In determining whether the claims are suitable to be brought in collective proceedings for the purposes of paragraph 1(c), the Tribunal shall take into account all matters it thinks fit, including."

Then you have a non-exhaustive list of relevant factors that the Tribunal has to consider:

"(c) whether any proceedings making claims of the same or similar nature have already been commenced by members of the class."

So that is one of several relevant factors the Tribunal must take into account when determining whether the proposed claim is eligible, but what Amazon is attempting to do is elevate that into a knock-out blow.

SIR PETER ROTH: I think this is dealing with individual claims by class members, not collective proceedings. In other words, say in Trucks if some 100 hauliers have already brought individual claims, that is a relevant consideration as to whether there should be collective claims or not.

MR LASK: In my submission, sir, it includes both actually, but even if it doesn't, it would be an odd proposition to say that the existence of a similar claim by an individual claimant was relevant to eligibility, but the existence of a similar claim by a similar class wasn't relevant.

What rule 79(2) tells us is that it is relevant. It is relevant as one of several factors that goes to eligibility. What it does not do is stand as a knock-out blow for any claim against the same defendant on behalf of a similar class that is broadly related in terms of subject matter.

I mean, the broad point here is that the legislator has entrusted the Tribunal to decide whether a proposed collective proceedings should proceed. It has identified the factors by reference to which the Tribunal should make that decision. If Amazon's case is correct, it will take the decision out of the Tribunal's hands, place it in the hands of the first authorised class representative, Mr Hammond in this case, and it would mean that the decision was taken by reference to whatever factors the class representative chose to take account of, not the factors identified in the rules. So for that reason, in my submission, the application is inconsistent with the collective proceedings regime.

Sir, subject to any questions from the Tribunal, that was all I wanted to say in response to the strike-out application.

SIR PETER ROTH: Thank you, Mr Lask. Yes, Mr Piccinin.

Reply by MR PICCININ

MR PICCININ: I can be quite brief in reply. There are only two points I need to make. Of course, as you will appreciate, we endorse the observations from the Tribunal in relation to market definition and dominance, we are going to come to that in our alternative application as well, but we absolutely agree that those are the same issues. Occasionally my learned friend seemed to qualify his response to the suggestion that was put by saying "Oh, we need to check if market definition and dominance are pleaded in the same way or maybe there are some different points that we are taking". Of course, the burden of my submissions to you in relation to abuse of process is that that's not right. It is substantially the same class. The differences don't matter for these purposes. They are not entitled to a second bite of the cherry at all. It doesn't matter if they have a different way of putting it. Unless there are issues raised that are different, then they certainly shouldn't be advancing a different case on --

SIR PETER ROTH: I suppose they might be able to say in those last two years the dominance increased or something.

MR PICCININ: As to that, of course, if it is concerned with a different time period and to the extent that it is, then that may be --

MR BANKES: So, Mr Piccinin, does that take us to the following, that when we come to certification, we have already certified Hammond's methodology for market definition and abuse. Does that then give them a free pass to certification that they can simply say "You have already certified this class market definition and abuse and therefore you don't need to think about it any further. It is already done."

MR PICCININ: I can't really see what I could say about market definition and dominance at that stage. Obviously if they had put forward a different methodology, which -- and they have put forward a very expensive expert report dealing with all of this, then we would have been forced to respond to that, but if you take that off the table now, which is really the burden of my second, my alternative, application, then we would not need to say anything about that at all.

MR BANKES: It would be certified on the basis of the Hammond certification.

MR PICCININ: Yes, in relation to market definition and dominance.

MR BANKES: So, as I understand it, you are appealing against our finding on Pike -- on the way we treated Pike's second (inaudible), because we adopted Stephan in its place. Does that not run against your appeal on that ground?

MR PICCININ: We are not appealing on that point.

MR BANKES: That has gone, has it?

MR PICCININ: That's what I was saying earlier. The only point we have appealed on Hammond is funding.

MR BANKES: Thank you.

MR PICCININ: That's what I wanted to say about the first point. The only other point

I wanted to make was really to address the central issue I think that is between us, which is my learned friend's characterisation of what we are seeking here is a pure windfall, or he occasionally put it as a get out of jail free card. That is the wrong way of looking at it we say. The right way to look at it is an application that is about who should be making the relevant decision about what claims should be brought in this sphere on behalf of this class.

Really it is worth just thinking through the possibilities here and where these possibilities are going to be dealt with. One possibility is that Mr Hammond has thought about it or will continue to think about it and will decide that it is not in the interests of the class to pursue these allegations. That is at least a possibility. That could be because it is unmeritorious. It could be because it interacts with the other points that he is bringing in ways that are unhelpful. It could be because sometimes turning up with a smorgasbord of arguments is less effective and reduces your prospects of success than focusing on your best points. There are all sorts of reasons why bringing a claim, even an arguable claim, can actually be against your own interests and so --

SIR PETER ROTH: Can be. We just don't know.

MR PICCININ: That's right. I am going through the possibilities.

SIR PETER ROTH: Another possibility is that Mr Hammond's legal advice is that this claim has a 55% chance of success and the funder he has says "We don't fund on a 55% chance, our risk profile" and that ACSO's advice is it is a 55% chance of success but they have a funder who says "Well, we are ready to go with that". We just don't know.

MR PICCININ: That's right, sir. There are two things. The first is that it is important not to let go of the point that one possibility is that Mr Hammond decides that it is actually not in the interests of the class. That is something that needs to feed into the

mix. Otherwise what you are doing is you authorise someone who is only looking at one thing and can't be taken into account and is not close to the tactical considerations or whatever other considerations relate to the claim that is being brought by Mr Hammond. So with their single -- this is the only claim they concede to bring and so they bring it. Then you actually end up undermining the process -- undermining the authorisation that you have given to Mr Hammond to run the case in the way --

SIR PETER ROTH: (Inaudible), but Mr Hammond would then have the opportunity to say that at certification.

MR PICCININ: Yes, sir.

SIR PETER ROTH: Rather than striking it out on speculation.

MR PICCININ: That is true. Two other points on that. One is on funding, although in principle in another case you could imagine how that could be a concern, in this case it is a little bit difficult to see in circumstances where Professor Stephan's claim is there. All they needed to do was piggy-back on Professor Stephan and the work that he is already doing in relation to abuse and overcharge and then the work they're already doing in relation to pass on. It is very difficult to imagine how it would be impossible for Mr Hammond to get funding to do that and yet it is possible for ACSO to go and get £20 million worth of funding to run the whole claim from scratch, which is what they have gone out and done. That is difficult to see.

But the other point, sir, is, of course, the class is not really my concern. Although I do press those points on the Tribunal it is important to think about this from a regime perspective and how it works and what Mr Hammond is authorised to do. It is just not right that a defendant should have to face second guessings, two guesses on behalf of the same class as to what the right way is to bring the proceedings. It is reasonable in this regime to, you know, expose defendants to claims that are brought and are certifiable by one representative on behalf of the class, but we say it is just wrong in

principle actually to expose a defendant to second guessings.

It may be that Mr Hammond thinks it is not a good point. It may be that ACSO thinks it is a good point. That's another possibility. That is just not something that it is fair to throw in this regime.

So those are my submissions.

SIR PETER ROTH: Thank you very much. I think what we'll -- let me just consult my colleagues. I think we'll rise early and come back at 1.45 rather than launching into anything else now.

(12.42 pm)

(Lunch break)

(1.45 pm)

RULING

SIR PETER ROTH: For reasons we shall set out in writing, the application by Amazon to strike out the ACSO claim is dismissed.

We are conscious that there is the alternative application now by Amazon, but, Mr Lask, we wanted to first raise various matters with you in considering how to deal with this.

You accepted I think perhaps under some pressure from the tribunal that we will not entertain an application for certification, and by that I mean it would be refused, if on issues that are identical with issues that have already been put forward for the same class, the class has legal representation and an expert and the methodology has been accepted and that is in particular market definition and dominance.

That covers, as I say, the expert, because the same lot of claimants can't have two different lots of experts, particularly if they are effectively using the same method, but also the lawyers, because if there is, as there may well be, separate disclosure on market definition from Amazon and how it sees its competitors and so on, there should

be one lot of lawyers that look at it, and it is not just a case as in ordinary litigation of saying Amazon should not have to pay the costs if it loses two lots of lawyers.

Concern is for the class because if another lot of lawyers does work they charge. They get paid by the funders and at the end of the day if there's an award or a settlement, then the funders seek to get reimbursed out of the sum at the expense of the class. So that can't be right.

So that needs to be reconsidered by your clients basically on the basis that you use the same methodology and a single group of lawyers on those parts of your case. Therefore, you will need to reconsider those parts of the claim form which rely on Dr Bagci. At the moment I think that is in particular section 6.3.1, which is market definition, which in our core bundle is page 72, and section 6.4.2, which is to do with dominance.

If you wish to put in some additional expert evidence to deal with the final two years which are not covered by the Hammond analysis, that is fine, but it has to be confined to that where there isn't the overlap in the class. That is a matter for you to consider with your expert.

Then one comes to the distinct head of abuse where there is no overlap as such with the Hammond class as a matter of claim but there is, of course, the overlap with the Stephan claim, but that is not for the same class. That's a rather different situation.

There it is more a matter of case management, but that is something that we made clear in the judgment, as you saw, in the CPO hearing for Stephan and Hammond that as a matter of case management we won't want the same abuse to be analysed by two experts.

We don't think, and I, of course, haven't heard from Mr Piccinin yet, but we think it is not appropriate to address that now by way of requiring any amendment, but that the appropriate course is to allow your clients to liaise with Professor Stephan and your

respective lawyers, and more particularly for there to be discussions between Dr Bagci and Dr Houpis, so you can then put forward for certification proposals as to how this will be treated in the most appropriate and cost effective way.

It may be that Dr Houpis on looking at Dr Bagci's report wants to revise his methodology, and as the Court of Appeal made clear in the McLaren case the methodology certification is not set in stone, because that is right at the beginning and experts may want to revise their view, but it seems to us the sensible course is that they should meet and discuss between them and see if they can agree on a common methodology going forward and how it will be done, bearing in mind that I think in a number of cases Dr Houpis also has a back-up methodology and we see that Dr Bagci's back-up methodology, although she slightly equivocates on that in the supplementary report, but certainly in the original report seems to be effectively the same sort of regression analysis that Dr Houpis is using. I mean, she pretty much says so in her main report.

So it seems to us there is significant scope for that and that it is at the certification hearing that it will decide, having considered any revised proposals, whether there's then a method that satisfies the criteria for certification and is appropriate going forward, and that will be the occasion where Amazon can make submissions about whether we should certify on that method or not rather than requiring an amendment as is sought now.

That it seems to us is the right approach. The same applies on pass through as between Dr Bagci and Dr Pike. We will again want to see proposals of how that can be done in the most appropriate and cost effective manner. We are not shutting out Amazon from objecting the way you propose to do it, but we do feel that it is more appropriate to consider that on certification, having given you a clear steer of the way you should take that forward.

So that's the view we have come to. I ought to give Mr Piccinin a chance to push back against that if he wanted and urge us to adopt your draconian solution now, if I may put it that way.

Submissions by MR PICCININ

MR PICCININ: I do just briefly. The first response I can give to what has just been said, is obviously we agree with most of it. We also agree that we are now moving into the case management questions, which are plainly a question of discretion as to what the best way forward is, but just in relation to pass on briefly before I get to the main event. In relation to pass on, the position is really the same as between the two customer classes as it is in relation to market definition and dominance, because it is the same person effectively coming in front of you alleging that there has been pass on. It is pass on of the same thing, of the marketplace fees, and there is no reason at all why you should hear two sets of anything really from the customer side in relation to pass on.

SIR PETER ROTH: We see that up to a point, but it is possible that the marketplace fees are, say, inflated -- that is assuming, of course, the claimants succeed -- in two levels, as it were, that there is inversion through logistics and also inflation through the effect of the price parity. So there are different degrees. There may not be different degrees of pass through, but on one assessment of Dr Bagci's method -- we were a little confused because there seems to be a change of at least exposition between the original report and the supplementary report. The supplementary report suggests the simulation model would actually capture pass through in one go. The earlier report, as I read it, suggested that she does an overcharge and then a separate pass through. I am not quite sure and she's not here and certainly we don't want to hear, even if she is, evidence on that now.

That's why we have certainly reserved our view on pass through. We understand what you say. It is the same class. We think there ought to be the same sort of pass through rate on both.

MR PICCININ: Yes.

SIR PETER ROTH: But we think it is better to hold that over to --

MR PICCININ: I don't think I need to push back on that particular point, but perhaps just to say by way of clarification of the more strident position I took a moment ago is just this. Insofar as ACSO needs to say anything about a pass on rate for marketplace fees, there is no need for there to be any evidence or argument from the ACSO side in relation to that, because that is the same question that arises in Hammond.

Of course, if they can identify some different question in some way by-passing a pass on rate, or if it is different in a different period or whatever, or if it's different because the extent of the overcharge is different, then, of course, those are points they would be entitled to make because they are different points, but insofar as it is the same question, it goes in the same box as market definition and dominance.

Sir, I think really where I am now is moving on to the main event which is in relation to abuse and overcharge, we do urge you to deal with it now rather than at certification. The reason for dealing with it now rather than at certification is essentially to save us the trouble and costs and save you the trouble of dealing with Microsoft points in relation to methodology that might end up being irrelevant because you decide the same thing as you decided in the first case.

I just want to have a look at that one paragraph from your first judgment, which is in the authorities bundle at page 1331. I think that is tab 33.

SIR PETER ROTH: Paragraph number?

MR PICCININ: 134. I am conscious it is your judgment. Of course you know what it says. What it says is:

"Where there was a common analytical issue across the two actions, it could be put forward for both classes on the basis of a single method."

You went further and said:

"In those circumstances", which is just where there is a common analytical issue, "it should be put forward by a single method, or at least by a single expert who may wish to rely on alternative methods, where there is no conflict on the issue as between the two classes."

There are really two points that I want to make about that. One is that in exactly the same way as in this case in that case you were talking about a situation where you had different representatives representing different classes. That was Stephan and Hammond. So in that sense it is exactly the same as dealing with Stephan and ACSO now in relation to abuse.

The second point is that distinction that you drew, rightly in my submission, between the question of how many methodologies you have and the question of how many experts you have, you have floated already, sir, the possibility that Dr Houpis may look at the materials from this case and decide that an additional methodology for this abuse is called for. Of course, if it does that then no one is suggesting that the methodology is set in stone. It will need to be looked at by the Tribunal in due course and case managed appropriately. You can't just spring it out at trial. If he does that, he can see where it takes him, but that is a different question from having two experts forming their own separate views about how many methodologies and which methodologies they should bring.

Essentially the submission that I am making to you is that on the reasoning that you gave in that passage in that judgment actually you can already tell now what the answer is going to be, which is that there should only be one expert, because there is only one issue and there is no distinction between the interests of the parties. Then

that will save us all quite a lot of time and money at the certification hearing.

Just to expand on why I say that slightly, in this case the position in relation to the common issue is really stark. The position is that both ACSO and Professor Stephan want to measure the same thing, which is the link, if there is one, between what they characterise as anti-discounting policies and Amazon's marketplace fees. They just have different views or at least they are presenting different views about the best way to do that. There is no difference in their perspective. It has nothing to do with the fact that ACSO is representing a customer class while Professor Stephan is representing a seller class. That's completely irrelevant to the issues of abuse and the issue of overcharge.

Dr Bagci says that -- her view is that a theoretical simulation model, mathematic at least, is the best way to go with the yardstick approach in support and one econometric approach as a fall-back. Dr Houpis has presented a different view, which is the best way to go is with a different econometric approach as the methodology. ACSO says the very fact that they are putting forward different methodologies is a reason to justify putting forward a different expert simply because it might prove to be better, but the fact that they are different is actually the reason why they should not be permitted to have an additional expert. That is the very thing that in my submission your paragraph 134, but then also now the practice direction, also the Court of Appeal's judgment in Stellantis are dealing with, where you have one thing everyone is trying to measure, it doesn't make sense to have multiple experts for the same side of the argument setting out their theory as to how best to capture that.

SIR PETER ROTH: I can see that, but do you think that paragraph, which is dealing with the sort of experts operating in isolation just because the parties are differently situated, one being merchants, the other being the consumers down the purchasing chain, that should not be allowed, but if the parties think, "Well, the expert" -- this is

a difficult question -- they think one should look at two alternative methodologies, as Dr Bagci does, as Dr Houpis often does, and say, "Well, the way we would like to put that forward is that we will have two people and one will address you on one and one will address you on the other" in just the same way that you may say at trial, "There are the following issues in this case and I will address you on issues 1 to 3 and Ms Mackersie will address you on issues 4 and 5" and you share out the work, but you have been cooperating and collaborating, so it is a coherent presentation. I don't see anything wrong with that from an expert. What we don't want is, as it were, two competing experts in that way sort of challenging each other. If it turns out that that is something that Dr Houpis and Dr Bagci think is a sensible way forward, that is a possibility.

What we don't want to do right now is to take a hard and fast decision. We think it is better visited at the certification hearing, at which we would therefore invite Stephan to be represented and that will be heard after Dr Bagci and Dr Houpis have had a chance to have discussions. If they absolutely can't agree and they don't want to cooperate and each class insists on having their own, then we would indeed have to decide and say "No, you can only have one and if necessary" -- I hope that's not the position -- "the Tribunal will decide which it should be".

That is not so far removed from what you are saying but I don't think it is right when Dr Houpis has not had a chance to consider Dr Bagci's report, at least not in any interchange with the Tribunal, and whether, having looked at that, he sees merit in adjusting his approach accordingly and on that basis ACSO and Stephan can agree "This is the way we will go forward". So we want a common way forward, but quite what it will be we think should be kept open until the certification.

MR PICCININ: I understand that, sir. I was certainly not intending to ask you to shut out at this hearing the methodology that Dr Bagci was putting forward or to prevent

Dr Houpis from considering it. Indeed, again we actually asked for all this material to be sent to Dr Stephan precisely so that could happen before today. It hasn't happened, so there you go.

What I want to just dwell on for another moment, if I may, is that the point you made very fairly about the situation where you have two experts and one is dealing with one issue and another is dealing with another. We see that a lot, of course, and it doesn't have to give rise to any problems or any increase in costs, because one can deal, for example, with market definition and dominance and another could deal with abuse or quantification. We see all sorts of combinations of that in practice.

But what is different is when you have two experts on the same side of the fence who are opining on the same issue with a different methodology, because where that leads, sir, is exactly where it has already led, which is the supplemental Bagci report, which starts to criticise what Dr Houpis is doing and explain why what she's doing is better. Of course, if this keeps going, if you do grant permission in case management terms, the two experts on the same side to opine on the same issues, then what it leads to is a multiplication of reports because suddenly inevitably Dr Bagci has to comment on what Dr Houpis is saying, because they are addressing the same question.

Similarly our experts then need to comment on not just what Dr Houpis is doing, not just the additional methodology, but also on what Dr Bagci says about Dr Houpis' work and also what Dr Houpis says about Dr Bagci's work. Then the two of them need to comment on what Mr Holt say is commenting on in relation to each of their work. It is similar to compound interest, if I can put it that way in the way that it develops.

That is why, if I may say so, there really was quite a lot of wisdom packed into that sentence in that paragraph of your judgment. I mean, we can come back to it at certification., of course we can, but it is going to involve us putting forward expert evidence and making submissions on something that may turn out to have no purpose

at all.

SIR PETER ROTH: To some extent they are saying the same thing, which is that we don't want competition between the experts. We want cooperation between the experts on this one issue. So it is not a case of them criticising each other's method, but even if we were to stick, say, with Dr Bagci where she says the primary method would be the simulation methodology but as an alternative a multi-variant linear regression. What we don't want her to do and will not accept that she does a linear regression if Dr Houpis is doing a linear regression. There is only going to be one. That is a point we will deal with at certification.

Secondly, we want one method -- not one method -- one approach to the evidence, but it may involve, as you know -- it is often the case -- an expert using two alternatives and saying -- as a cross check and in this case saying "We think there are these two alternatives. I will be dealing with this one and my colleague putting this case", working with another practice "will be dealing with the second one".

MR PICCININ: As I say, sir, that is exactly where the difficulty comes. If they don't have a difficulty with two methodologies but have a difficulty with two experts putting forward two distinct methodologies that are substitutes, because that inevitably leads to a situation of the kind I was describing, where Dr Bagci says "No, no, the econometric approach is the wrong approach for these reasons. The right approach is the simulation model". And Dr Houpis is saying "No, no, no, the simulation model is flawed this is exactly why you need the econometric approach".

If you have two methodologies being presented by the same expert, you don't have that problem, because all they do is they put their methodologies forward. They can give you a single view of the strengths and weaknesses. You don't have the compounding. You don't have the multiplication. That is why --

SIR PETER ROTH: But they would both be acting -- from what we envisage they are

both instructed for Stephan and ACSO so they won't be in competition, they will both owe a duty to the Tribunal and the Tribunal will then --

MR PICCININ: That is exactly the problem, sir. As you say, their duty is to the Tribunal. It is their duty to give their complete and true professional opinions, which may be different from each other. If you have one expert, ultimately they only have one complete opinion about the two methodologies. If you have two experts, you have two and then it compounds, because everyone else has their own complete and true opinions about the opinions, about the opinions, about the opinions. It is just unavoidable. So that's --

SIR PETER ROTH: Just a moment. (Pause).

Yes. We hear what you say, but we don't think this is actually so different from two economists in -- is it Frontier Economics where Dr Houpis was putting forward the two alternatives. They won't be competing. It is not that they are saying "Mine is better". If that is where they end up, they are saying "There are these two ways of doing it. Each has strengths and weaknesses. One of us has done it this way. The other was done it that way", but not that they are trying to say that "You must adopt mine because the other one ..." and start criticising each other. It is to be a coherent presentation on behalf of both classes of the single abuse and to be done in an appropriate and cost effective way.

MR PICCININ: That would be the direction from the Tribunal?

SIR PETER ROTH: That would be the direction from the Tribunal.

MR PICCININ: I see. I understand.

SIR PETER ROTH: It may be that we don't get there because Dr Houpis says, "Well, I have now read the report of Dr Bagci and I actually think that's a very good idea and I will take that on board", in which case we only have one, but there are various ways this could play out, and our view is that we don't feel in a position to decide that now,

particularly when Stephan and Dr Houpis have not had a chance to comment on this and are not present.

MR PICCININ: I understand that, sir, and I don't need to press it further. We've had a --

SIR PETER ROTH: Yes, but we have very much in mind that we are going to be resistant to any suggestion that we will have a plethora of expert reports from different experts on the same point, which then Amazon has to respond to, not only because it is a burden on Amazon, but it is a burden on the Tribunal. We are very alert to that, as you can imagine.

MR PICCININ: I will do my very best not to say "I told you so" if that is where we end up, sir.

SIR PETER ROTH: But it is something we will address and that's why we have raised this now and not at certification, and it is indeed why, although there was the suggestion -- strike-out we thought had to be dealt with now, because if it is successful, that is an end of it, but why we thought it's important to ventilate this now and not at the certification hearing, because we want ACSO to be under no misapprehension on that point and we want them, as we have said, to go away and open discussions with Mr Hammond's representatives and between the experts and indeed with Dr Pike on the issue of pass-on.

It will, as I say, require amendment to the Claim Form. We are not going to say exactly how, but I have indicated certainly on dominance and market definition, and it is a question really of, when we look at timing, what sort of time that is needed.

MR PICCININ: Just before we do that can I just make two further observations that lead into that discussion, one of which is you have already mentioned the desirability of having Professor Stephan at the certification hearing. It may actually be worthwhile having Mr Hammond at the certification hearing as well for much the same sorts of

reasons.

SIR PETER ROTH: We will do that.

MR PICCININ: The one other point is that it emerged from Mr Bankes' helpful question to my learned friend that the litigation budget has not been updated for the current state of the proceedings. Obviously that's something that is to be considered in a CPO response and then debated at the certification hearing. So that will need to be updated as well.

Just more generally I think it would be helpful -- I mean, it is essential that the document that we are served with -- that we are then given time to respond to is the document that my friend intends to defend at the certification hearing. It would be a colossal waste of time and money for us to start shooting at points that disappear as soon as we shoot at them.

SIR PETER ROTH: I think that's right, that the litigation budget will need updating, as Mr Lask effectively accepted.

MR PICCININ: Perhaps then I should yield the floor to allow my learned friend to say how much time would be required for that.

Reply by MR LASK

MR LASK: I'm grateful. Just before we get on to timing, we have obviously heard and understood what the Tribunal requires in terms of market definition and dominance and the need to replead a claim in respect of those issues. We will obviously need to work through the implications of relying on what is currently another party's expert for those matters. So, for example, we will need to establish arrangements to ensure that ACSO is not left in the lurch if Stephan and Hammond settle, but that's something --

SIR PETER ROTH: Yes, or if the appeal --

MR LASK: Exactly. If the appeal succeeds.

SIR PETER ROTH: Permission is granted and the appeal is pending. That is clearly right.

MR LASK: So we do need to think that all through. As regards expert evidence on the effects of the alleged abuse, we are content with what the Tribunal has proposed and will obviously take that forward in advance of the certification hearing.

I wanted to just flag up one issue, which may not be a problem, but is sort of a marker I would like to lay down in relation to the Boik and Corts method that Dr Bagci proposes, and I understand the Tribunal's request that Dr Bagci and Dr Houpis get together and consider that method, among others. This also relates to my learned friend's submission that you should just have one expert doing both.

The wrinkle there is, as you pointed out, sir, the Boik and Corts model is not looking at quite the same thing as Dr Houpis' regression model, because Dr Houpis' regression model is designed to address the overcharge on marketplace fees whereas the Boik and Corts model is designed to assess directly the effects of the price parity policies on retail prices. So in that sense pass-on is sort of baked into the Boik and Corts matter.

The reason that may matter is when it comes to the ultimate effect on retail prices, the Stephan and ACSO classes have different interests. So it may not be straightforward to have one expert conduct a Boik and Corts analysis on behalf of both a seller class and a consumer class.

SIR PETER ROTH: No. We understand.

MR LASK: I just wanted to put down that marker.

SIR PETER ROTH: That is one reason why we have decided to reserve the whole matter to certification. As I said, I was -- it may be my failing, but I was a little confused on where pass-on comes in as between the main report, which did seem to suggest that it is simulation just to the overcharge and then you move to pass-on, and the

supplementary report seemed to say it is all in one.

MR LASK: I can assist in one minute without taking you to the report, if it would help.

SIR PETER ROTH: Yes.

MR LASK: What Dr Bagci proposes as her primary method is the Boik and Corts model, which, as I say, assesses the effects on (inaudible) price. She then has a cross-check method, which she calls the yardstick method, on which she has relied to produce her preliminary estimate, but the yardstick method only looks at the effect on marketplace fees, so the upstream effect. So in order to complete the picture with her yardstick cross-check method she needs a pass-on analysis.

Equally if she -- this is what she deals with in her first and second report -- she says that if a Boik and Corts model proves to be infeasible, then as her alternative -- this is not a cross-check -- as her alternative she would want to perform a regression on marketplace fees. That too would require a pass-on analysis to complete the picture.

Having said that, we, of course, have heard what the Tribunal has said about not wanting duplication between the expert methods. We will, of course, take it on board.

SIR PETER ROTH: Thank you.

MR PICCININ: Can I just get some clarification -- I'm not sure I understood those submissions -- as to what exactly is being proposed? What we were asking for was that we are presented with the blueprint to trial and the Claim Form and the litigation budget and all of that that ACSO intends to take forward to the certification hearing, which should include any proposals as to which expert is going to be dealing with what, using what methodology, and to what extent it is shared with Stephan or not. All of that needs to be set out in the Claim Form and application for certification so that we can then respond to it.

MR LASK: I was not intending to suggest otherwise.

MR PICCININ: Sir, I think now it is timing, but I still yield the floor to my learned friend

to tell us how long.

MR LASK: Sir, it might be helpful, if the Tribunal is amenable, just to rise for a short period so I can take instructions on how much time we need.

SIR PETER ROTH: There is the big unknown, of course, of what happens if permission to appeal is granted, because it may be in that event everything is put on hold, because I don't know when an appeal would be heard, but I imagine that should be clarified within the next couple of weeks. PTA applications are normally not delayed.

MR LASK: One would hope so. Obviously from ACSO's perspective any delay to the determination of certification would be most regrettable and we wouldn't want that. It is all a bit hypothetical.

SIR PETER ROTH: Well, I am sure both Mr Hammond and Professor Stephan would echo that sentiment.

Yes. We will rise. If we come back at 2.45, would that give you enough time?

MR LASK: Yes, that should be ample.

(Short break)

SIR PETER ROTH: Yes, Mr Lask.

MR LASK: Thank you, sir. We have put our heads together and also had a discussion with Amazon's team. Our proposal is as follows: that ACSO has ten weeks from today to make the necessary amendments; Amazon then has ten weeks from the date of those amendments to put in its CPO response; ACSO then has six weeks from the date of the CPO response to put in its reply; and we will hopefully have a CPO hearing listed in the Michaelmas term. I think it is still agreed that it is one day plus one day in reserve. That was the agreement in principle.

What happens in the event of permission being granted to Amazon on its appeals is a bit difficult to model, because there are different permutations. As I said before the

break, ACSO would be very keen to press ahead with its CPO application in any event, but perhaps the most we can say or agree at this stage is that if and when permission is granted, representations -- there can be correspondence between the parties and representations made to the Tribunal, if necessary.

SIR PETER ROTH: Yes. Well, it depends not just on permission, if it is granted, but if it is, then when the appeal is heard. Sometimes the Court of Appeal can hear appeals relatively quickly, but I have no idea whether that will happen. You are both agreed on that as a timetable that works?

MR PICCININ: Yes, sir. For once peace has broken out.

SIR PETER ROTH: Yes. Let me just -- just a moment. (Pause.)

Yes. One day and one day in reserve sounds sensible. Very well.

MR PICCININ: There is just one other thing, sir, I did just want to put down a marker for -- sometimes when one gets amendments to a claim form, there's something that is objectionable that is not just a matter for a response but you object to the fact of the amendment. If that arises, then we will deal with it when it arises.

SIR PETER ROTH: Yes. You have ten weeks.

MR PICCININ: Exactly.

SIR PETER ROTH: So that can be built into that. The other thing we would say is for the CPO hearing we would want if there's any revised report, as there probably will be or may be from Dr Bagci, a summary report, as we had from both Dr Houpis and Mr Pike -- it was very helpful for the main CPO hearing -- and insofar as that relates to the price parity abuse it could be in the form of a joint summary with Dr Houpis. We can't obviously order that at this point, but just make that suggestion, but we would want in any event a 25 page summary.

MR LASK: Well understood.

SIR PETER ROTH: We will not put that in the order.

MR PICCININ: Is that summary -- I am just slightly lost. I can't recall where it comes in the process. Does it come with the amended package or does it come afterwards?

SIR PETER ROTH: I think it came last time we ordered it sufficiently in advance of the hearing so that everyone could work off it, but it wasn't part of the responses or anything. It was just a separate thing.

MR PICCININ: So it is after all of that?

SIR PETER ROTH: It is after all of that, yes.

I think, Mr Lask, if you could draw up an order and submit it in the usual way and we will, through the Registrar, contact parties and Mr Hammond's representatives and Professor Stephan's representatives in trying to find a date, but you may want to engage with them more immediately.

MR LASK: Sir, the only other issue I wanted to raise was costs. We do seek an order for our costs of responding to the strike-out application, which the Tribunal has dismissed. It was first raised in correspondence at the back end of last year. We said from the outset it was an unfounded application and so it has proven to be. So we seek our costs of dealing with that application.

SIR PETER ROTH: Have you got a schedule?

MR LASK: No. Our proposal was, as we said in our draft order, that it would be dealt with by -- to be agreed -- to be assessed if not agreed.

SIR PETER ROTH: Order an assessment for less than a day?

MR LASK: We will seek to agree it.

SIR PETER ROTH: You can always seek to agree it, but if you don't agree it, send it off, any costs, for detailed assessment.

MR LASK: Sorry, sir. That's not what I intended. Summary assessment if not agreed.

SIR PETER ROTH: Oh, summary assessment. Then you would submit a --

MR LASK: Yes.

SIR PETER ROTH: Right. Let me -- Mr Piccinin, what do you say about that?

MR PICCININ: Sir, we say this was a CMC that needed to be heard in any event and that the Tribunal, rightly in our submission, asked for submissions on the overlap between the different claims that are before the Tribunal and that was the spirit in which our strike-out application was given. Although the particular solution to that issue that we were advancing did not find favour with the Tribunal, it is also not the case that the Claim Form as it was put in front of us and to which we were responding is allowed to go through to certification either, and the Tribunal made very clear that in the form it was put it would not have been certifiable. So we submit that the appropriate course is just costs in the case or perhaps costs reserved.

SIR PETER ROTH: Yes. Mr Lask.

MR LASK: Well, sir, the amendments that have been required to the Claim Form are really amendments relating to the expert evidence aspect of today's hearing and I am not seeking our costs in relation to that aspect of the hearing. I am seeking our costs only in relation to the strike-out application, which was put on a different basis and was simply refused.

SIR PETER ROTH: Yes. Thank you.

RULING

SIR PETER ROTH: Well, Mr Lask, we think you should get your costs purely related to the strike-out application. We are frankly disappointed that there isn't a schedule of costs, because the last thing one wants is then submissions on costs, which just run up more costs.

We will say that insofar as Amazon seeks to put in submissions in response, as it is entitled to do, on the level of costs being sought, those costs of Amazon putting in submissions, reasonable costs, will have to be paid by ACSO, because if you had produced a schedule, Mr Piccinin would have addressed it now, and that would have

been saved. Whether that encourages you to agree the level of costs I don't know.
So that is the order we will make. So it's costs of the strike-out application only on the standard basis to be summarily assessed, if not agreed.
We would like a schedule -- today is Thursday -- certainly by the end of -- when can you put in -- if you haven't reached agreement, how soon can you put in a schedule?
MR PICCININ: Sir, just before we go down that line, the order that was actually sought -- it is in the draft order, paragraph 3 -- was only an order that the costs to be paid to be assessed if not agreed. There was no application for summary assessment and that is why there is no costs schedule here. It is something they are asking for. It could just be wrapped up in any detailed assessment at the end of the proceedings in the usual way. There is no need for a summary assessment in these circumstances.
SIR PETER ROTH: It is just to delay that to a cost judge in three years' time, who knows nothing about what was involved in this, is not really satisfactory. For hearings that last less than a day we summarily assess costs. In fact, it was not asked for, but that is our practice. That should be widely known.
Schedule of costs let's say just limited to the strike-out, can you do that by 4.00 pm on Monday?
MR LASK: Yes.
SIR PETER ROTH: Then any observations by -- on behalf of Amazon by 4.00 pm when, Mr Piccinin? You will receive it by 4.00 pm on Monday.
MR PICCININ: Yes. Both of the counsel before you are away next week.
SIR PETER ROTH: Yes. It is half term, isn't it?
MR PICCININ: Yes, it is half term. End of the month, so it is essentially the end of the following week?
SIR PETER ROTH: Yes.
MR LASK: Sir, in those circumstances might we have a bit longer to --

SIR PETER ROTH: Yes. You can have a bit longer. By 4.00 pm on Wednesday of next week.

MR LASK: Thank you.

SIR PETER ROTH: Then 4.00 pm by the following Friday.

MR PICCININ: 27th.

SIR PETER ROTH: Friday, 27th.

MR PICCININ: I am very grateful. Sorry. Just one last thing on the directions, going back to when we had peace. The practice direction we take it should apply to any further reports?

SIR PETER ROTH: The practice direction on expert witnesses?

MR PICCININ: Yes.

SIR PETER ROTH: Yes, it does.

MR PICCININ: Including page limits?

SIR PETER ROTH: On the expert reports, yes.

MR LASK: That sounds acceptable.

SIR PETER ROTH: Absolutely, yes. Thank you.

Is there anything else from either side? Well, thank you both very much.

(3.03 pm)

(Hearing concluded)

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Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
…	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?