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IN THE COMPETITION

Case No. : 1433/7/7/22

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 20th April 2026

Before:

The Honourable Mrs Justice Joanna Smith
Tim Frazer
Derek Ridyard

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Dr Liza Lovdahl Gormsen

Class Representative

v

Meta Platforms, Inc. and Others

Defendant

A P P E A R A N C E S

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

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

Monday, 20 April 2026

(10.32 am)

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

Good morning, everyone.

Good morning, Ms Ford.

Can you just bear with me while I attempt to sign in?

MS FORD: Certainly.

THE CHAIR: Thank you.

(Pause).

It looks as if I'm having a problem with that because I seem to be logged in in a different browser, but, for now, we'll work on the basis that I have got it in front of me on different screens, so that is fine.

Yes.

MS FORD: Madam Chair, members of the Tribunal, I appear with Ms O'Keefe for the class representative, Mr Singla KC appears for Meta. As the Tribunal is

1 aware, this is the sixth CMC in these proceedings which
2 the Tribunal has listed to consider directions in
3 relation to factual and expert evidence.

4 Subject to anything that the Tribunal may wish to
5 raise, there are broadly two topics on the agenda, it's
6 the trial date and trial timetable and questions of
7 expert evidence.

8 THE CHAIR: Yes. Now, there is something that we would like
9 to raise as a preliminary issue, if I may, Ms Ford.

10 Thank you very much indeed to the parties for
11 the skeleton arguments. We have read those. We have
12 also read the various documents that you have invited to
13 us read.

14 Having read those documents and having had a think
15 about the proposed timetable, the view of the Tribunal
16 is that this case should go off until Michaelmas of
17 2028. We consider that the issues are complex, that
18 there is a great deal of work to be done in advance of
19 that date, not least amendments of pleadings, potential
20 for further disclosure; there is obviously an enormous
21 disclosure exercise being undertaken at the moment. We
22 also are very keen to ensure that there is no
23 possibility that the next date for the trial should be
24 vacated and therefore we think that it is sensible to
25 provide for rather more wriggle room in that regard.

1 We, of course, bear in mind that it is in
2 the interests of justice to ensure that this comes on as
3 soon as possible, but we have to balance all the various
4 interests, and doing that, we consider that it really
5 should go off until Michaelmas.

6 Now, that has some ramifications in terms of
7 the approach that will be taken then to the timetable,
8 which is why I am raising it now.

9 MS FORD: I am grateful.

10 That does most immediately impact the question of
11 the approach to the amended pleadings.

12 THE CHAIR: Yes.

13 MS FORD: There are questions of principle on the subsequent
14 issues which do not necessarily solely turn on timing.

15 THE CHAIR: Yes.

16 MS FORD: But, most immediately, the pleadings question is
17 one that is impacted by the available timing.

18 I wonder if I might briefly take instructions in
19 the light of the Tribunal's indication?

20 THE CHAIR: Yes, of course, please do. If you would like us
21 to rise briefly for -- I mean, we can certainly rise for
22 five or ten minutes if that would help. I can see
23 nodding behind you. Yes.

24 MS FORD: We would be grateful. Yes, please.

25 THE CHAIR: Yes, most certainly. All right.

1 We will rise until quarter to.

2 (10.36 am)

3 (A short break)

4 (10.49 am)

5 THE CHAIR: Ms Ford, did you have enough time to take
6 instructions?

7 MS FORD: Madam, we did. I am grateful for the Tribunal's
8 indulgence on that.

9 THE CHAIR: Not at all.

10 Discussion re timetable

11 MS FORD: We are looking at the alternative timetable to
12 trial that Meta sent Friday evening, so it should be on
13 the Opus system {E3/137}, starting at {E3/137/3},
14 please.

15 THE CHAIR: Thank you. I think we have it in paper form as
16 well, so thank you very much.

17 MS FORD: I am grateful.

18 As the Tribunal will have appreciated, the most
19 immediate difference between this and Meta's original
20 proposed timetable is that this agrees that
21 the class representative may provide its draft
22 re-amended claim form to Meta on 26 May, which was
23 the class representative's requested date, rather than
24 a month earlier.

25 THE CHAIR: Yes.

1 MS FORD: Then it proceeds from there.

2 So we are obviously content with the 26 May date for
3 the purposes of providing our re-amended claim form. We
4 are also content then for Meta to confirm which
5 amendments are agreed by 16 June, which is its proposed
6 date.

7 THE CHAIR: Yes.

8 MS FORD: The present timetable only then envisages a week
9 between Meta confirming which amendments are agreed and
10 us then filing a claim to amend and our concern with
11 that is that if we are going to engage in this process
12 that Meta has requested that we provide a draft in
13 advance and then a focused application to amend, we need
14 sufficient time to appreciate what it is that Meta's
15 actually objecting to and to address solely those
16 issues, rather than having to essentially prepare an
17 application in advance in any event.

18 THE CHAIR: Yes.

19 MS FORD: So our suggestion is that we have 21 days from
20 Meta confirming which amendments are agreed to produce
21 the application to amend.

22 THE CHAIR: So what date are you proposing?

23 MS FORD: That would take us to 7 July.

24 THE CHAIR: 7 July, yes.

25 MS FORD: Meta has suggested a week for it to respond to

1 the application to amend, so brought forward, that would
2 take us to 14 July.

3 THE CHAIR: Yes.

4 MS FORD: The penciled in hearing to consider
5 the application to amend would then have to come forward
6 to the week commencing the 19th -- 19 July.

7 THE CHAIR: Right.

8 MS FORD: In terms of what knock-on effect that has on
9 the subsequent pleading and factual evidence timetable,
10 our suggestion is that Meta's re-amended defence
11 suggested deadline should remain the same, it should be
12 25 August 2027. The rationale for that is that Meta
13 then has 13 weeks from receiving the re-amended claim
14 form on 26 May to the point when it has to produce its
15 defence, which, in our submission, is ample time. That
16 would then enable the proposed factual evidence and
17 reply factual evidence deadlines to remain as suggested,
18 so they would stay 27 October and 24 November.

19 THE CHAIR: Yes.

20 What about your reply amendments?

21 MS FORD: Our reply amendments would be --

22 THE CHAIR: Also 15 September?

23 MS FORD: The same date, yes. So the only real changes we
24 are proposing is a slight reallocation of time to enable
25 our application to amend to be more effective and

1 efficient and that time comes out of Meta's defence.
2 I can address the Tribunal on why we say in total that
3 is a sufficient period of time for Meta for its defence,
4 if that would be of assistance.

5 THE CHAIR: Well, let me hear from Mr Singla as to those
6 proposals and then we can deal with that in a moment,
7 Ms Ford. Thank you very much.

8 Mr Singla.

9 MR SINGLA: I am sorry, I obviously need a bit of time to
10 discuss with my team, because this is the first we have
11 heard of these dates.

12 THE CHAIR: Ah. Okay.

13 MR SINGLA: Because obviously we have never had from the CR
14 a timetable on the footing of a Michaelmas trial.

15 THE CHAIR: Right.

16 MR SINGLA: So, you know, I am not looking to be difficult,
17 but I would just require a couple of minutes just to
18 talk to the team about that.

19 THE CHAIR: Of course, they had some -- I had rather hoped
20 that you would be able to talk to each other in that
21 time and sort it out, but all right.

22 Okay, well, I will rise for another ten minutes and
23 give you an opportunity to discuss those.

24 If there is anything else --

25 MR SINGLA: Well, it might be helpful to know from Ms Ford

1 now what she is intending to say about the rest of
2 the timetable --

3 THE CHAIR: Yes, exactly.

4 MR SINGLA: -- so we can discuss all of the points.

5 THE CHAIR: Exactly.

6 Ms Ford, is there anything else that the other side
7 ought to be considering during this period that we are
8 going to be rising again?

9 MS FORD: Madam Chair, the remaining disputes between us are
10 largely matters of principle, so, for example,
11 sequential or --

12 THE CHAIR: Yes.

13 MS FORD: -- simultaneous exchange of expert reports, for
14 example, whether there should be any provision in
15 the timetable at all for supplemental disclosure.

16 At the present stage, given the timing, I do not
17 have any revised dates to put forward in relation to
18 those, but they are largely going to turn on where
19 the Tribunal comes out on the questions of principle
20 rather than debates about dates, so it seemed to us that
21 these were the ones that will change in the light of
22 the Tribunal's indication.

23 THE CHAIR: Okay. All right.

24 There we are, Mr Singla. We will give you until --
25 will 11 o'clock be enough, or do you want until 5 past?

1 MR SINGLA: Five past will be safer.

2 THE CHAIR: Yes.

3 MR SINGLA: But it is just this idea that they need
4 three weeks to prepare an application to amend.
5 I just --

6 THE CHAIR: Well, it may be useful if you were to have
7 a conversation with Ms Ford about why that is.

8 MR SINGLA: Yes.

9 THE CHAIR: Because obviously if that can be agreed, so much
10 the better. I do not want really want to have an
11 argument about whether they need three weeks or
12 two weeks or whatever it is. There is now more
13 flexibility in the timetable because of the Michaelmas
14 trial.

15 MR SINGLA: I follow, but what she has done is obviously
16 reduced the time that we have to plead our defence post
17 the hearing, so that is why --

18 THE CHAIR: I entirely accept that.

19 MR SINGLA: Yes.

20 THE CHAIR: But, I mean, presumably, insofar as you agree to
21 amendments, you can start on the defence in relation to
22 those --

23 MR SINGLA: That is right --

24 THE CHAIR: -- so it will only be the ones that you do not
25 agree that you would not be starting work on.

1 MR SINGLA: Yes. No, that is right. I am really not
2 looking to be difficult, I just need to take
3 instructions.

4 THE CHAIR: No, I follow that. All right.

5 Five past then. Thank you all very much.

6 (10.55 am)

7 (A short break)

8 (11.15 am)

9 THE CHAIR: How are we doing?

10 MS FORD: The parties have had an opportunity to discuss.

11 THE CHAIR: Yes.

12 MS FORD: Meta have proposed that we bring forward our
13 application to amend by a week, which has
14 the consequence that they then have a further week to
15 deal with their defence and we are content with that as
16 a proposal.

17 THE CHAIR: Yes. So what are the dates now that we are
18 looking at?

19 MS FORD: That would be our application to amend would be on
20 30 June.

21 THE CHAIR: 13th?

22 MS FORD: 30th. 3-0.

23 THE CHAIR: 30th, I am sorry, yes.

24 MS FORD: And the hearing to consider it would remain on
25 the same date, so that is the week commencing the 19th.

1 THE CHAIR: Yes, I follow. All right. That is good. Well,
2 we will make that order then. Thank you very much
3 indeed.

4 MS FORD: The next point in issue is the approach to
5 supplemental disclosure.

6 THE CHAIR: Yes.

7 MS FORD: The class representative's position, the Tribunal
8 can see from --

9 MR SINGLA: Sorry, just before we move on, can I just make
10 sure there is just no issue between us. I think we were
11 suggesting 7 July.

12 THE CHAIR: That was what was being suggested by
13 the class representative originally was 7 July.

14 MR SINGLA: Yes, I think, the hearing -- I think we were
15 going to say -- just to make sure I have got this right,
16 I thought we were saying 30 June for the application to
17 amend.

18 THE CHAIR: Yes.

19 MR SINGLA: Meta to respond on 7 July and then a hearing in
20 the week of 12 July. That was our suggestion.

21 MS FORD: It may be that we are at cross-purposes then.

22 MR SINGLA: Sorry. I mean, if we were at cross-purposes,
23 I apologise, but that was going to be our proposal on
24 the basis that --

25 THE CHAIR: So hang on, let me just be clear. So you want

1 the application to amend 30 June.

2 MR SINGLA: Yes.

3 THE CHAIR: Which I think is agreed.

4 MR SINGLA: Yes.

5 MS FORD: That is agreed, yes.

6 THE CHAIR: You want response to application to amend by

7 when, Mr Singla?

8 MR SINGLA: 7 July.

9 THE CHAIR: 7 July? So one week.

10 MR SINGLA: Yes, and then a hearing in the week of 12 July.

11 Essentially, what we are trying to do is bring forward

12 the hearing by a week so that -- because, you

13 understand, this is coming out of our time to plead --

14 THE CHAIR: I do, but this raises the very issue that

15 the class representative was concerned about when we

16 started this debate, which was that they only had one

17 week in which to respond to the --

18 MR SINGLA: No. Madam, no, because we have given them

19 two weeks now to make their application. Their concern

20 -- you will recall Ms Ford was saying --

21 THE CHAIR: Oh, I follow, yes. They now have two weeks,

22 rather than three, which was what was being proposed.

23 MR SINGLA: Exactly, which is why that is agreed.

24 THE CHAIR: All right.

25 MR SINGLA: Then the question is: what happens after

1 30 June?

2 THE CHAIR: Yes.

3 MR SINGLA: We are saying we have got to get on with it,
4 essentially.

5 THE CHAIR: You say by 7 July -- well, I think under your
6 original proposals, Ms Ford, there would only have been
7 a week between those and the next one --

8 MR SINGLA: Exactly, that is why I did not think we were at
9 cross-purposes --

10 MS FORD: Madam, yes.

11 MR SINGLA: Exactly.

12 MS FORD: It has been a helpful exchange. I think maybe --

13 THE CHAIR: Okay.

14 MS FORD: -- we had failed to appreciate that
15 the consequence would be the hearing would come forward,
16 but I think that is --

17 THE CHAIR: Right, okay.

18 MS FORD: Yes.

19 THE CHAIR: So we are now looking at 30 June for
20 the application to amend, 7 July for the response to
21 the application to amend, and the week commencing
22 12 July for the hearing.

23 MS FORD: Yes.

24 THE CHAIR: Yes? Is everyone happy with that?

25 Right, thank you for that clarification, Mr Singla.

1 That is the order we will make then.

2 Yes. The question of whether to include provision
3 for specific disclosure application.

4 MS FORD: Yes.

5 THE CHAIR: Yes.

6 MS FORD: The class representative has proposed that it be
7 included. Meta's proposition is that it is premature to
8 make any provision in respect of it.

9 THE CHAIR: Yes.

10 MS FORD: Our proposal is that the relevant dates would
11 remain the same as those that we had initially proposed,
12 so the Tribunal can see those on this table {E3/137/3}.
13 It would be an application by the class representative
14 in respect of any specific disclosure by 7 June, and
15 then the hearing would be -- in our submission, it would
16 be efficient if it were the same hearing and so that
17 would now be --

18 THE CHAIR: In the week commencing 12 July.

19 MS FORD: -- 12 July.

20 THE CHAIR: Yes.

21 MS FORD: That has the benefit that it gives an additional
22 gap between the period of our application and
23 the hearing to enable Meta to respond, which was one of
24 the points that they took in respect of our timetable.

25 The reason why we say it is prudent to make

1 provision on this basis is that, in any case, there is
2 clearly always a possibility that there might be
3 specific disclosure applications, but in this case in
4 particular, the Tribunal has already alluded to
5 the possibility there might be, as a way of addressing
6 the position as it came out of disclosure. If I could
7 just show the Tribunal the relevant passages from
8 the Tribunal's ruling on that. It is {A/43/34}, please.

9 THE CHAIR: Yes.

10 MS FORD: We are here dealing with the Tribunal's ruling on
11 "Requests 19-26", which were concerned with "Business
12 Tools Terms".

13 THE CHAIR: Yes.

14 MS FORD: The relevant observation is in paragraph 98.

15 Starting towards the bottom of the page, we see
16 the Tribunal saying:

17 "... Requests 19-26 will be by reference to
18 the 'Business Tools Terms'. If the initial disclosure
19 to these requests results in too narrow an amount of
20 material being provided, then there is liberty to apply
21 to the Tribunal in correspondence."

22 At paragraph 99 {A/43/35}, the Tribunal says:

23 "... it is not foreclosing the possibility of future
24 disclosure being ordered in relation to Requests
25 19-26 ..."

1 THE CHAIR: Yes.

2 MS FORD: The Tribunal will note what is said at 100. It is
3 the Tribunal then was expressing the hope that this
4 would not be left until the end of the exercise, but we
5 have had no concrete assurances from Meta that that will
6 not be the case, and in fact the only body of documents
7 where Meta have said positively they will provide it
8 prior to the longstop date is the pre-existing Klein
9 disclosure --

10 THE CHAIR: Yes.

11 MS FORD: So we have to work on the basis that this may be
12 a possibility.

13 Then in relation to request 27 on {A/43/39},
14 please --

15 THE CHAIR: I do not think -- well, they will correct me if
16 I am wrong, but I did not understand Meta to be saying
17 it was not a possibility, just that it was premature to
18 make the order at the moment.

19 MS FORD: The Tribunal is quite right. Paragraph 9,
20 I think, of Meta's skeleton {F12/2/5}, they acknowledge
21 that there is a possibility, and they do is a the same
22 in 12 {F12/22/6}.

23 THE CHAIR: Yes.

24 MS FORD: We say they are quite right to do so, and
25 the Tribunal has also acknowledged that is

1 a possibility.

2 THE CHAIR: Yes.

3 MS FORD: In those circumstances, we make a very simple
4 point, which is that it is better to make provision in
5 respect of that possibility than simply to essentially
6 hope that it does not happen and make no provision
7 whatsoever.

8 THE CHAIR: Yes, well, I follow that, Ms Ford.

9 MS FORD: As it happens, the corrections, although
10 the adjustments that have been made to the timetable do
11 make it more practical to accommodate these
12 circumstances, the other objection that Meta potentially
13 raised was how long they will be then given to comply
14 with any specific disclosure requests, and the fact that
15 the Tribunal has given the indication that this will now
16 be a Michaelmas trial also has the benefit that there
17 may be additional time in the timetable, should they
18 require it, beyond the six weeks that we had originally
19 penciled in for them to actually comply with those
20 requests.

21 THE CHAIR: Well, I am not sure the extent to which one
22 could easily identify how long a party should comply
23 with requests that haven't yet been made, may never be
24 made and where the ability to comply with them will be
25 dependent upon the nature of the request. So that is

1 really something that the Tribunal will be looking at at
2 the time the application is being made, rather than
3 trying to set provision for it now. I mean, it does
4 rather seem to me that the real question is whether
5 provision should be made for applications in this
6 timetable.

7 MS FORD: Madam, we absolutely accept that that is
8 a potential difficulty. We had originally put in
9 a six-week window in order to essentially fit in
10 specific disclosure applications before the current
11 provision for witness evidence, because obviously it is
12 preferable for the disclosure to come before the witness
13 evidence. As it happens, because the witness evidence
14 deadlines have gone back, there is more time to play
15 with, so there is that benefit.

16 THE CHAIR: Yes. Yes, all right. Thank you. I will hear
17 from Mr Singla. Thank you, Ms Ford.

18 MR SINGLA: So, Madam, we do not, as it were, completely
19 oppose the idea of some provision being made for
20 a disclosure application, but what we feel very strongly
21 about are really two things: one, the point you have
22 just mentioned, which is there is no way in which we can
23 be committed now to a six-week deadline for the --

24 THE CHAIR: We are not going to make an order in those
25 terms.

1 MR SINGLA: I am grateful.

2 The other point which is still live is really when
3 this application should be made. The CR is giving
4 herself 16 and a half weeks in which to make this
5 disclosure application following the disclosure
6 longstop date, and that --

7 THE CHAIR: The longstop date is 10 February?

8 MR SINGLA: 10 February, exactly.

9 THE CHAIR: Yes.

10 MR SINGLA: Whilst there may be some superficial attraction
11 in the idea of a hearing in July to deal with amendments
12 and disclosure, we would respectfully push back on that,
13 because we would say they are in fact separate matters.
14 They do not need 16 and a half weeks to make
15 a disclosure application is the first point. Of course,
16 the later that any disclosure hearing comes on, what is
17 going to be at risk, or potentially jeopardised are all
18 of the steps which then flow from that.

19 So we would say, one should actually put disclosure
20 on a separate track to pleading amendments. I do accept
21 that that leads to the possibility of two separate
22 hearings in this tribunal. I do not dismiss that. But
23 one has to look at what is going to be orderly at
24 the back end of the trial timetable. By which I mean,
25 beyond disclosure, one has factual evidence and all of

1 the expert evidence which we will come on to discuss,
2 and so we say actually if there is going to be this
3 disclosure application, it needs to be resolved earlier
4 than the CR envisages.

5 So our suggested timetable is that they should have
6 12 weeks, which is three months -- very generous
7 actually -- from the disclosure longstop date. That
8 would take them to 5 May to make their application. We
9 would then have three weeks to respond, which is 26 May,
10 and a disclosure hearing, if required, could come on in
11 early June, and that is really my submission. There is
12 no inherent need to put disclosure and amendments on
13 the same track, and in fact, if one takes a step back,
14 they are completely unrelated.

15 THE CHAIR: Yes, I follow that. I mean, there may be
16 a point about resourcing in terms of the work that is
17 being done at the same time, but ...

18 MR SINGLA: Exactly. I mean, no doubt Ms Ford will say
19 there are resources issues on her side.

20 THE CHAIR: Yes.

21 MR SINGLA: There is lot to deal with, and actually,
22 particularly when it comes to disclosure, I mean, one
23 has actually already seen through the attempt to say it
24 has got to be six weeks, you can see the games that are
25 going to be played around the timing for the provision

1 of any disclosure. We want this hearing to come on so
2 the disclosure is finalised -- the parameters of
3 disclosure are finalised at the earliest opportunity.

4 THE CHAIR: Yes.

5 MR SINGLA: That is the fairest way, in my submission, to
6 deal with this.

7 THE CHAIR: All right. I follow that. Thank you,
8 Mr Singla.

9 Ms Ford.

10 MS FORD: We have specified 7 June because that is
11 realistically the earliest date that we take the view we
12 could sensibly make specific disclosure applications.
13 The Tribunal --

14 THE CHAIR: Why?

15 MS FORD: The Tribunal will have seen from Meta's skeleton
16 argument that it has been at pains to emphasise
17 the volume of disclosure that is going to be produced.
18 So if the Tribunal looks, for example, at paragraph 6
19 {F12/2/4}, it says it has been:

20 "... required to give disclosure in respect of 106
21 disclosure requests, covering a period of more than
22 20 years, sourced from 77 custodians ... a significant
23 number of ... custodial repositories ..."

24 It says an estimated document review pool,
25 admittedly not the final product, but the document

1 review pool of between 1.858 million to 2.03 million.
2 The class representative then has to review all those
3 documents which are then provided by way of disclosure,
4 whereas Meta's team will be familiar with those
5 documents which are its own internal documents. They
6 are going to be new material from the perspective of
7 the class representative, and whereas Meta's legal team
8 will have been able to review and familiarise themselves
9 with the contents of those documents over the 12-month
10 period during which they will have been performing
11 the disclosure exercise, we will have to familiarise
12 ourselves with the product of that exercise over a much
13 shorter period and at the same time assimilate
14 the information and plead an amended case to the extent
15 that is necessary.

16 Now, the Tribunal will have seen that there has been
17 an indication that ideally there would be disclosure on
18 a rolling basis. I touched on this point already.
19 Mr Corrie's evidence for Meta is that, notwithstanding
20 that indication that has been given, it is likely to be
21 necessary for much of the custodial disclosure to be
22 given on or near the longstop date. So the consequence
23 in terms of the class representative is that on
24 10 February, we get a large volume of material that we
25 have to review, both from the perspective of pleading

1 and from the perspective of applications for specific
2 disclosure. In those circumstances, in our submission,
3 it is simply not practical to ask us to do it any
4 earlier and there is a real risk in terms of efficiency
5 if we were to be obliged to rush that process.

6 So we have -- in the light of the changes, we have
7 simply maintained the original date because nothing has
8 changed in terms of the volume of the work we anticipate
9 having to do.

10 THE CHAIR: Right, so we are looking at a difference between
11 7 June, which is the date you want, and 5 May, which is
12 the date that Mr Singla --

13 MR SINGLA: Can I just make a couple of points in response?

14 The first is, as regards the scope and volume of
15 disclosure, it was of course the CR's own choice to make
16 these unbelievably wide requests. Now, having asked for
17 the world, it is not actually that unfair, as it were,
18 to ask them to review it quickly and get on -- if they
19 want to make an application, to get on with that. There
20 has to be an element of --

21 THE CHAIR: Well, I follow that up to a point, but one has
22 to be realistic about what is achievable, Mr Singla.

23 MR SINGLA: But she has no -- that is my point. She has no
24 idea, standing here today, whether or not there will be
25 an application, still less the scope of any application.

1 So to say to the Tribunal it is possible to do it by
2 X date is actually not a submission that she can make
3 putting it that high.

4 One has to recall, if one takes a step back, in
5 terms of resources across this timetable as a whole, we
6 are the party doing all the disclosure, we are the party
7 producing all of the witness statements and we are
8 the party that is going to have to do any supplemental
9 disclosure arising out of any hearing. So, in terms of
10 protecting the timetable as a whole and trying to be
11 even-handed about it, at this stage where one is talking
12 about an application in the abstract, to say that they
13 have to make the application within three months of
14 the longstop disclosure date, in my submission, is not
15 unreasonable.

16 THE CHAIR: I think the view of the Tribunal, if there was
17 genuinely going to be rolling disclosure, three months
18 might well be adequate, but where there is clearly
19 a danger that a large amount of the disclosure is going
20 to be provided on the end date, on 10 February, or very
21 shortly before that date, the class representative must
22 be given appropriate time in which to review that
23 material.

24 However, we would say this. We will fix the date of
25 the 7 June 2027, but what we say is that that is not to

1 be regarded as the only date on which an application can
2 be made. In other words, we will expect an application,
3 if it can be made before then, to be made before then.
4 So if disclosure, for example, is obtained -- is in fact
5 obtained on a rolling basis and there is a much earlier
6 point at which it is clear to the class representative
7 that specific disclosure is required, we will expect an
8 application to be made in relation to that, and that may
9 be much sooner if rolling disclosure is given as it is
10 hoped that it will be.

11 So we -- the class representative should not
12 consider that it is sort of hide bound by a timetable
13 that requires them now to make an application on 7 June.
14 That is not what I am saying. What we will be saying
15 is, that is the last date on which an application for
16 specific disclosure should be made, and if a much
17 earlier application is made, it may very well be that
18 there will need to be a separate hearing at which that
19 is determined. If, however, it turns out that an
20 application is made shortly before or on that date, then
21 that will be heard at the hearing in the week commencing
22 12 July.

23 Is that clear?

24 MS FORD: Madam, yes.

25 THE CHAIR: Yes.

1 If something could be included in the recitals to
2 the order to reflect what I have just said, so that
3 everybody remembers that we are expecting common sense
4 to break out in terms of the making of that application
5 if it is possible at a much earlier date, that would be
6 appreciated.

7 Submission re expert reports by MS FORD

8 MS FORD: Madam, we are moving on to expert reports.

9 THE CHAIR: Yes.

10 MS FORD: There are two strands to the disputes between
11 the parties on the expert reports. The first is whether
12 they should be simultaneous or sequential, and
13 the second is what should be the interrelationship
14 between the accountants' reports on the one hand and
15 the economists' on the other.

16 THE CHAIR: Yes.

17 MS FORD: The class representative's position is that there
18 should be simultaneous exchange of expert evidence, and
19 since the accounting evidence is intended to be an input
20 into the economic evidence, we have proposed that they
21 should go first.

22 Meta's position is that they would like sequential
23 exchange of expert evidence and they suggest accounting
24 and economists' evidence at the same time.

25 The rationale, as we understand it, of Meta's

1 proposal for sequential exchange is to avoid
2 the supposed ships passing in the night problem. In our
3 submission, that really is not a realistic concern in
4 these proceedings. Meta has had the benefit of
5 Professor Scott Morton's report outlining her proposed
6 methodology since certification.

7 THE CHAIR: But that is a preliminary report. It is
8 accepted that that may change.

9 MS FORD: It is absolutely a preliminary report and, in my
10 submission, she would have been subject to criticism had
11 she not expressed herself in those terms.

12 THE CHAIR: Yes.

13 MS FORD: But that does not mean, in my submission, that
14 the methodology is in some sort of unpredictable flux or
15 that Meta cannot possibly anticipate what is
16 the class representative's proposed approach. In our
17 submission, the position that is taken in Meta's
18 skeleton -- I am looking in particular at paragraph 20.1
19 {F12/2/10}, where they suggest that Meta's experts might
20 inadvertently mis-target their evidence in some way,
21 that, in our submission, is materially overstated as
22 a risk in the circumstances of the present case.

23 It is also slightly odd in this sense, that it seems
24 to assume that Meta's experts will be confining
25 themselves to a purely reactive and responsive approach

1 to the class representative's methodology, rather than
2 advancing their own positive evidence in support of
3 Meta's defence. Again, in our submission, that seems
4 improbable, and we say that is improbable particularly
5 in the circumstances where Meta is at the same time
6 making an application to adduce industry expert evidence
7 apparently in support of a positive case.

8 What, in our submission, is a greater concern in
9 these proceedings is a risk of injustice to
10 the class representative and I say that arises
11 potentially in two respects.

12 The first is that where the defendants have had
13 sight of the class representative's proposed approach,
14 albeit provisional, but proposed approach from
15 the outset of the proceedings, on Meta's proposal,
16 the class representative does not even get sight of
17 the contents of Meta's evidence or Meta's position at
18 the same time as she provides her own. She only gets to
19 see what is the defendants' position for the first time
20 some time later than her own evidence. In our
21 submission, that really is not an even-handed approach.

22 THE CHAIR: Why not, if she is being given an opportunity to
23 reply to that evidence?

24 MS FORD: Because, in our submission, it is simply not
25 even-handed for Meta to have known essentially the case

1 that it is taking shots at from the outset of these
2 proceedings and we do not get to find out what
3 the response is until even after we have then gone ahead
4 and put in our expert reports. In our submission that
5 cannot be even-handed. We do not know now in relation
6 to important issues, for example, what Meta says
7 positively is the relevant lawful counterfactual, we
8 simply do not know what position they are taking, and we
9 say that ought to be rectified, fairly, by requiring
10 the parties to exchange their expert evidence. It
11 perpetrates that unfairness if we have to wait until
12 even after we have produced our trial expert reports to
13 find out for the first time what it is that Meta says.

14 THE CHAIR: All right.

15 MS FORD: There is a related point which is timing.

16 The original proposal from Meta was that we see their
17 experts' approach for the first time on 2 June and then
18 we would have a single month to reply to it.

19 The revised suggestion, as I understand it, from
20 the alternative timetable that we received on Friday,
21 gives us two months to respond to it. That really, in
22 my submission, again underlines the unfairness, because
23 they have known our provisional provision [sic] for
24 a matter of years and we have a matter of two months to
25 respond having first seen what they say. In our

1 submission, our proposal is materially more fair. It
2 means that each party sees the other party's positive
3 case at the same time and each party has the same period
4 of time to respond to that positive case.

5 THE CHAIR: Yes.

6 MS FORD: The other issue, as I have indicated, on which
7 the parties differ is the sequence of the reports from
8 the accountants and the reports from the economists. We
9 understand it to be common ground that the accountants'
10 evidence is to be treated as an input into
11 the economists' expert evidence. In those circumstances
12 we make the very simple point that it makes sense for
13 the accountants then to go first, so they can be taken
14 into account by the economists in their reports.

15 THE CHAIR: Yes.

16 MS FORD: There was a practical concern expressed about
17 that, which was that our original timetable suggested
18 two weeks between the provision of the accountants'
19 reports and the economists' reports and it was said,
20 well, that may not be enough time to take into account
21 the implications, particularly of the other side's
22 report. Of course, that depends and it remains to be
23 seen to what extent the expert accountants are actually
24 disagreeing with each other, or not, but as it happens,
25 given that we are now working to the Michaelmas date, in

1 our submission, that is a practical issue which can be
2 accommodated in the directions that the Tribunal gives.
3 It is not a reason, in our submission, to essentially
4 accede to Meta's position, which is: well, two weeks is
5 not enough and therefore let's simply exchange them all
6 at the same time.

7 THE CHAIR: So you would be proposing a longer period of
8 time. What would you propose for that?

9 MS FORD: Given that we have been changing the dates, I'm
10 afraid I am not in a position to address the actual
11 concrete dates of when this would happen --

12 THE CHAIR: No, but how many weeks, in theory, would you
13 want then, if you are making this proposal?

14 MS FORD: I think what I was proposing to suggest is, if
15 the Tribunal could give a ruling in principle on whether
16 or not we are looking at sequential or simultaneous and
17 whether we're looking at accountants together with
18 economists or staggered, then it may be the parties can
19 then come up with a suitable proposal in terms of dates
20 in the light of where we have come out on the timetable.

21 THE CHAIR: Thank you, Ms Ford.

22 Mr Singla.

23 Submissions re expert reports by MR SINGLA

24 MR SINGLA: Just picking up that last point, it would
25 actually be helpful to have a proposal, because these

1 things tend to depend on what the dates are and so on.

2 So I think it is not really satisfactory to say can you
3 rule in principle on something.

4 THE CHAIR: Well, it might help to see whether you can agree
5 it or not --

6 MR SINGLA: Well, we would like to know --

7 THE CHAIR: -- to a proposal.

8 MR SINGLA: -- what they are suggesting.

9 THE CHAIR: I mean, it has been --

10 MR SINGLA: That is just on the --

11 THE CHAIR: Two weeks had been suggested.

12 MR SINGLA: Yes. We actually -- we do oppose staggering all
13 together, but in a sense --

14 THE CHAIR: I follow that.

15 MR SINGLA: -- we do want to understand what their position
16 is.

17 But can I just address you on simultaneous versus
18 sequential?

19 THE CHAIR: Yes.

20 MR SINGLA: Because we do regard this as rather important.

21 Again, I am leaving aside dates, although we do say that
22 the provided proposals do give them sufficient time, but
23 we can come back to the precise dates.

24 On the principle, first of all, we do say there is
25 now enough time with the trial in Michaelmas.

1 THE CHAIR: Yes.

2 MR SINGLA: There is no question this cannot be
3 accommodated.

4 Secondly --

5 THE CHAIR: I do not think it is being suggested it cannot
6 be accommodated.

7 MR SINGLA: No.

8 Secondly, some of the points that are being made
9 lose sight of the fact this is the CR's case and it is
10 the CR's case to formulate, both in terms of pleadings
11 and evidence, and it is for us to respond to that case.
12 Some of the points they make could be said in any case
13 when they identify the vices of sequential expert
14 evidence. But I want to take a bit of time to explain
15 why in this particular case it is vital that the expert
16 evidence is exchanged on a sequential basis, because
17 what one needs to recall is that this is actually a very
18 complicated case and a novel set of allegations and
19 I just want to show you some references to assist with
20 this.

21 So, first of all, can I take you back to what this
22 Tribunal said at certification. If we could bring up
23 the judgment at {A/15/23}. At paragraphs 31 and 33, so
24 this is the conclusion to the certification judgment,
25 you see at 31:

1 "... satisfied ... the case is arguable ... That is
2 not to say ... the issues arising are not going to be
3 exceedingly complex and difficult to try: they obviously
4 will be."

5 But that wasn't a certification point.

6 Then, 33:

7 "... we consider the trial management of these
8 claims to be relatively straightforward, even though
9 the claims obviously give rise to issues of massive
10 substantive complexity ..."

11 THE CHAIR: Yes.

12 MR SINGLA: So that is what the Tribunal was saying.

13 What we have set out, if one now brings up
14 Ms Dietzel's statement {C10/1/18}, so that is
15 the judgment, but there was a discussion about case
16 management in the hearing, and the Tribunal, you will
17 see this in the witness statement at paragraph 43:

18 "... Mr Justice Marcus Smith observed during ...
19 the hearing ..."

20 So this is from the transcript:

21 "... 'real virtue in the Class Representative
22 putting their cards completely on the table first ..."

23 If I could just ask the operator to go over the page
24 {C10/1/19}:

25 "... something which [the Tribunal could see]

1 operating in a sequential way'."

2 Now, of course, I am not saying any of that is
3 binding, but this was the Tribunal's reaction to
4 the case when it was looking at certification, and it
5 was envisaging that it was going to be exceedingly
6 complex and it should operate in a sequential way.

7 Ms Dietzel explains, if we go back to {C10/1/13},
8 the case has got much more complicated since
9 certification because of the way the CR has conducted
10 herself. So if you look at paragraph 34, you will see,
11 halfway down:

12 "This is against the background of increased
13 complexity ... highlighted by the developments relating
14 to the scope of 'Off-Facebook Data', the expansive
15 disclosure sought ..."

16 Now a claim for user damages, and now, apparently, a
17 claim for GDPR. So all of that has happened since
18 the Tribunal said what it said about this being
19 exceedingly complicated.

20 You will also have seen -- can I just ask you to go
21 back to our skeleton, paragraph 20.1 {F12/2/10-11} --
22 the Court of Appeal, at a permission hearing that we had
23 post-certification, referred to the fact that there are
24 new legal issues generated by this case and describing
25 it as an area of law which is "new and evolving" and

1 noting the "novelty in the issues arising". So it is
2 not just my word. Also, we have set out footnote 22,
3 the CMA has also identified the novelty of this case.

4 So that ought to be uncontroversial.

5 We do have their pleading, but it is quite
6 interesting how much of the pleading refers to
7 the expert evidence. So just to show you this,
8 the pleading is at {CMC2A/4}. Just show you some
9 references because this demonstrates why it is not
10 enough, as it were, to be on notice of their case
11 through the pleading, because what they do is they
12 cross-refer to the expert evidence. So if one starts,
13 for example, at paragraph 4 {CMC2A/4/13}. I just ask
14 you to read paragraph 4 and the reference to "full
15 factual and expert evidence".

16 THE CHAIR: Yes.

17 MR SINGLA: Then at 106, so {CMC2A/4/79}, please -- I know
18 you have read the claim form, but it is just important
19 to ... so this is on market definition:

20 "The precise definition of the ... markets will be
21 a matter for factual and further expert evidence."

22 So it is all provisional in the pleading.

23 THE CHAIR: Yes.

24 MR SINGLA: And then {CMC2A/4/82}, please, paragraph 115.

25 So you will see here, they are actually pleading by

1 reference to the expert evidence, the preliminary report
2 of Professor Scott Morton. So they are pleading by
3 reference to her report and they are pleading her
4 provisional conclusion. You will see:

5 "She provisionally sets out three potential
6 definitions ..."

7 THE CHAIR: Yes.

8 MR SINGLA: This goes on, but if you just bear with me.

9 {CMC2A/4/87}, at 123, "Advertiser-side geographic
10 market", her "preliminary assessment". Again, this is
11 not a proper pleading in the usual sense, it is all by
12 reference to the expert evidence.

13 {CMC2A/4/116}, please, which is now in the abuse
14 section, so you will see this is all about the unfair
15 pricing abuse. Do you see, at the very bottom of
16 the page:

17 "Under Limb 1 of United Brands ..."

18 Then, two lines up [sic]:

19 "... [Professor] Scott Morton ... explains ... her
20 preliminary assessment ..."

21 So the abuse allegations equally are pleaded by
22 reference to her report.

23 Then {CMC2A/4/127}, this is paragraph 164:

24 "It will be a matter for expert evidence to
25 establish the economic position the Proposed Class

1 Members would have been in ..."

2 So this is counterfactual.

3 Then at {CMC2A/4/129}, please. Again, you will see

4 170(c):

5 "Absence of disclosure. The methodology ..."

6 That is Professor Scott Morton:

7 "... is assessed prior to disclosure and is thereby

8 necessarily provisional and might, properly, identify

9 refinements and further work ..."

10 That is -- if we go over the page {CMC2A/4/130},

11 please, that is the certification. So what they are

12 saying at the certification stage is: do not worry,

13 because all of this will be refined in due course.

14 THE CHAIR: Yes.

15 MR SINGLA: Do you see at the top of that?:

16 "... it might be possible ..."

17 THE CHAIR: Yes.

18 MR SINGLA: Then the last reference I wanted to show you in

19 the claim form is at {CMC2A/4/132}, which is all about

20 causation, paragraphs 176 to 177 . The detail does not

21 matter, but you will see the reference halfway through

22 176 to "Scott Morton 1".

23 THE CHAIR: Yes.

24 MR SINGLA: Again at (a), two references to "Scott Morton"?

25 THE CHAIR: Yes.

1 MR SINGLA: Then if we just go over the page {CMC2A/4/133},
2 please. You see again the same thing again in (b), and
3 at the very bottom of the page in (c), "Scott Morton 1".

4 So there are -- I will not take up time, but
5 the whole pleading, from market definition, which
6 obviously feeds into dominance, to the abuse to the
7 causation pleas, it is all by reference to the expert
8 preliminary report.

9 THE CHAIR: Yes.

10 MR SINGLA: Then I want to show you now what
11 Professor Scott Morton says in her first report about
12 how provisional and preliminary her conclusions are. So
13 if we could bring that up now, please, at {C1/1},
14 because what this class representative has done has said
15 at certification: do not worry about it, the case will
16 be developed in due course. That is why we need to see
17 what the case actually is before we get to trial and
18 before we do our expert evidence. So if we go to
19 paragraph 5, page {C1/1/10}, please:

20 "I note the analysis in this report is necessarily
21 preliminary ... I will refine my analysis
22 post-certification, in particular to reflect evidence
23 received through disclosure."

24 Page {C1/1/28}, please. I am just going to show you
25 about ten references, if I may. I mean, there are more,

1 but it is just to emphasise how many times she says
2 things will look different post-disclosure. So
3 paragraph 70 -- actually, if we just perhaps start on
4 the previous page so we can see the context {C1/1/27}.
5 So:

6 "It is my preliminary view that for the purposes of
7 these proceedings ... advertisers are likely to
8 benefit ..."

9 Over the page, please, {C1/1/28}, the final
10 sentence:

11 "In due course I will need to analyse this in more
12 detail by reference to disclosure from Facebook ..."

13 To be clear, I am not criticising her for saying
14 this.

15 THE CHAIR: No, I follow.

16 MR SINGLA: But it does have ramifications.

17 If we go to {C1/1/38}, please, paragraph 108:

18 "In due course I will need to understand, following
19 disclosure from Facebook ... obtain comprehensive
20 information ... I will need to understand ..."

21 Yes.

22 Then {C1/1/56}, paragraph 180, just the same point
23 over and over again.

24 {C1/1/64}, paragraph 217:

25 "Post-disclosure I will be able to analyse

1 the profitability ..."

2 THE CHAIR: Yes, I think you have made the point, Mr Singla.

3 MR SINGLA: Yes.

4 Then -- well, just so show you the end of
5 the report, so if we go to {C12/1/165}, she actually had
6 a wish list of disclosure, this is in her first report,
7 appendix C.

8 THE CHAIR: Yes.

9 MR SINGLA: Then, when we got to the disclosure hearings,
10 the CR's position was supported expressly by
11 Professor Scott Morton, just to bring up her fourth
12 report so you just see it {C7/5}. So the huge
13 disclosure scope was at the behest of
14 Professor Scott Morton, and if we just maybe go to
15 the next page so you can see {C7/5/2}. Yes, just keep
16 going to the first paragraph, so you can just see
17 {C7/5/3} -- you will nto have seen this before, but
18 essentially it was a report made for the disclosure
19 hearings.

20 THE CHAIR: Yes.

21 MR SINGLA: That is the point I am trying to make.

22 So we know that all of her views were preliminary,
23 she was going to refine them post-disclosure. We now
24 know they have sought huge amounts of disclosure. So
25 our simple point is the first time we are going to get

1 a proper articulation of their case is going to be in
2 her expert report and sequential exchange is something
3 that happens in many cases in this tribunal so there is
4 nothing unorthodox about what we are suggesting.

5 Then if I just perhaps respond to what Ms Ford has
6 said in her skeleton, because we respectfully submit
7 they make a series of thoroughly bad points. If you
8 just go to paragraph 37 {F12/1/17}.

9 THE CHAIR: Yes.

10 MR SINGLA: Then they have three points. So {F12/1/18}:

11 "This is not a case where Meta lacks information ...
12 It has the benefit of [the first] report ..."

13 So I have already made my points about the first
14 report.

15 THE CHAIR: You have.

16 MR SINGLA: They refer to the fact that there was an expert
17 meeting. But the fact that the expert --

18 THE CHAIR: Related to disclosure.

19 MR SINGLA: Exactly, and they only met once.

20 THE CHAIR: Yes.

21 MR SINGLA: That is hardly a substitute for getting their
22 report first.

23 THE CHAIR: Yes.

24 MR SINGLA: Then they say at (b):

25 "It is the CR who does not know Meta's position."

1 That is my point about them forgetting that they are
2 the claimant and our case, responsive case, depends on
3 knowing what their case is. It is no good saying Meta
4 may have a hybrid of a negative and a positive case, we
5 need to know what is the case that we are meeting, and
6 in my respectful submission, it is actually hopeless to
7 say on counterfactual they do not understand our
8 position, because it is for them to prove their case.
9 They are the ones advancing the counterfactual to which
10 we will then respond.

11 Then this point that featured in her oral
12 submissions is the a (c), she says it is not
13 even-handed, and I do, respectfully, struggle to follow
14 that point, because (a) it could be said in any case
15 where there is sequential change, (b) it is their case
16 to prove, and (c), even if there is simultaneous
17 exchange, they are not going to have the benefit of our
18 expert report, so the logic actually just completely
19 breaks down.

20 So in my respectful submission, this is plainly
21 a case where there ought to be sequential exchange.

22 Then that takes me to the staggering point and our
23 key concern is that two weeks is insufficient. We will
24 see what they say in concrete terms if they can provide
25 us with a proposal. But the more fundamental problem,

1 we respectfully suggest, is our expert does not actually
2 need their accounting evidence to produce what Meta's
3 expert evidence will look like. So it is true that, at
4 a very high level, the accounting evidence will be an
5 input into the economists' evidence, but our expert
6 report will be producing evidence based on what our
7 accounting expert is saying. So one does not actually
8 need to know the other side's position on accounting in
9 order to produce the economists' report. That is
10 the point that we really make. But of course --

11 THE CHAIR: Well, is that right? I mean, is it not for
12 the expert to say -- because it is not for the expert to
13 decide which accountant is right. If they disagree with
14 each other, the right approach for the expert is to say,
15 well, this accountant says X, and if that is right,
16 then --

17 MR SINGLA: Of course.

18 THE CHAIR: -- this is the position; the other accountant
19 says Y and if that is right, then this is the position.

20 MR SINGLA: I follow that, and that certainly should be
21 the case by the end of the process, but the question
22 is: what do the economists need to do in their first
23 round of reports? In my respectful submission, at that
24 stage, it is sufficient for them to be relying on what
25 Meta's accounting expert says about accounting issues.

1 I completely follow by the end of the trial, they need
2 to be open-minded as to the accounting evidence, but the
3 question is: on day one, do they actually need to know
4 what the CR is saying on accounting? If you are going
5 to say that they should do that in their first report --

6 THE CHAIR: They need more time to do it.

7 MR SINGLA: -- much more time would be needed --

8 THE CHAIR: Yes.

9 MR SINGLA: -- and we do not actually have a huge amount of
10 time to play with. It is not as though we have got all
11 the time in the world, the timetable, as we have set it
12 out, does actually --

13 THE CHAIR: What time period is there then for a reply that
14 they would then be taking account of any evidence they
15 had seen when they exchanged their reports, on your
16 analysis? If they are exchanging at the same time, how
17 long would they then have to provide their reply
18 reports?

19 MR SINGLA: Find the dates that we proposed. So we have
20 built in, if you are looking at the letter we sent on
21 Friday {E3/137/3} --

22 THE CHAIR: Yes.

23 MR SINGLA: -- our expert evidence would be 15 March, and
24 then two months for the CR to reply.

25 THE CHAIR: Yes.

1 MR SINGLA: Then we are into the joint statement process.
2 So there would only be reply reports from the CR, on our
3 view.
4 THE CHAIR: But that means that insofar as your economist
5 needs to provide evidence about what the position might
6 be if their accountant is right, there is not anything
7 built into the timetable on your timetable to address
8 that.
9 MR SINGLA: That -- yes -- no --
10 THE CHAIR: Is there?
11 MR SINGLA: No, so our expert -- if one is talking about
12 sequential exchange, our expert evidence is on 15 March,
13 but that would be after --
14 THE CHAIR: Oh, I see, so you would already have seen
15 theirs; on your case, you would have sequential
16 exchange.
17 MR SINGLA: Exactly.
18 THE CHAIR: Yes, okay.
19 MR SINGLA: Exactly so.
20 THE CHAIR: Yes, okay.
21 MR SINGLA: But as I say, on this point, this latter point,
22 it really would be helpful to understand precisely what
23 a dates the CR has in mind. Because it is all well and
24 good saying two weeks we recognise is insufficient, but
25 one actually needs to look at this timetable in

1 the round. You cannot just say can we have a decision
2 in principle on something like that.

3 THE CHAIR: But the staggering point falls away if your
4 approach of sequential exchange is the one that
5 the Tribunal goes for, does it?

6 MR SINGLA: Yes, well, that is our -- yes, I mean, that
7 is --

8 THE CHAIR: I think.

9 MR SINGLA: That is the primary position, yes.

10 THE CHAIR: Yes, okay.

11 Ms Ford?

12 Reply submissions by MS FORD

13 MS FORD: Mr Singla has made reference to various
14 observations from the Tribunal about this being
15 a complex matter and issues -- novel issues. We do not
16 dissent from that, but we say that that does not
17 necessarily go to this point, which is: is Meta
18 seriously in a position where it cannot produce its
19 expert evidence at the same time as ours? In our
20 submission, it does not necessarily mean that Meta is in
21 the dark as to our case.

22 It has also been suggested that the case has somehow
23 become more complex. That is a suggestion which was
24 made orally, it has been made in the skeleton and it has
25 been made in Meta's evidence for the purposes of this

1 CMC, and it is a suggestion with which we fundamentally
2 disagree.

3 There has been a reference to developments regarding
4 the scope of off-Facebook data as one supposed example
5 of additional complexity. Our position as to
6 off-Facebook data has not changed; the pleaded
7 definition is the same as it was from the outset.
8 The only thing that has changed is Meta attempted to
9 reformulate the class representative's pleaded case to
10 refer to its own preferred terminology on Meta data and
11 third party activity data, and what has changed is that
12 attempt was unsuccessful and the Tribunal rejected it.

13 Meta has also referred to a supposedly expansive
14 disclosure exercise, but that disclosure exercise merely
15 reflects the scope of the already pleaded issues.
16 Again, nothing has particularly changed, save that,
17 again, Meta's attempts to limit the scope of disclosure
18 that it should be directed to provide have been
19 dismissed by the Tribunal.

20 It is correct that the class representative has been
21 given permission to amend to plead a claim for user
22 damages, but that does not alter either the scope of
23 the factual allegations that are in issue in this case
24 or the scope of the expert issues.

25 There has also, in the context of this submission,

1 been a reference to the class representative's response
2 to Meta's RFI on the GDPR. The Tribunal may or may not
3 have had an opportunity to have a look at that, but it
4 is extensively footnoted to the existing proceedings,
5 because what it does is it essentially draws together
6 the threads of the class representative's existing
7 pleaded case on the status of the GDPR, and I can take
8 the Tribunal through that very briefly if it would be of
9 assistance.

10 THE CHAIR: No, I do not think so.

11 MS FORD: We simply make the point, again, this is not in
12 any way a new development. We do not accept
13 the suggestion that the scale and complexity of these
14 proceedings have materially increased.

15 The third point by way of reply is concerned with
16 the submissions that were made about the position on our
17 pleaded case and the cross-references to
18 Professor Scott Morton's report. As the Tribunal will
19 be aware, it is absolutely standard practice to
20 cross-refer to an expert report in the context of
21 collective proceedings and the reason for that is that
22 we have to satisfy the test for certification and we
23 have to show that we have got over the hurdle of
24 the process test for showing an appropriate methodology,
25 and that is why in collective proceedings it is

1 completely standard to cross-refer to the expert report
2 that sets out --

3 THE CHAIR: No criticism is being made of your client for
4 doing that, Ms Ford. The point is being made that it is
5 clear from the way in which it has been dealt with in
6 the pleading and in the preliminary report that that
7 analysis is going to be refined in due course.

8 MS FORD: It is certainly, again, absolutely standard that
9 Professor Scott Morton has indicated that she will
10 refine her analysis in the light of evidence of
11 disclosure, and it would be inappropriate not to
12 indicate that one would be prepared to revisit one's
13 initial preliminary views in the light of way
14 the disclosure comes out and in the light of way
15 the evidence comes out. In my submission, that is not
16 a reason why one should conclude that it is necessary
17 for Meta to see the final product before having an idea
18 of the case that it has to meet.

19 Of course, in comparison with the usual situation
20 in, for example, High Court pleading, where, if one were
21 referring to expert reports, that is something that
22 would only then be coming further down the line, Meta
23 has had the benefit of the preliminary report. It is
24 not as though there is a cross-reference to something
25 that had not been crystallised at that point in time.

1 It was also suggested, in relation to the wording of
2 Professor Scott Morton's report, that
3 the class representative has essentially batted it all
4 off until after disclosure. That, in my submission, is
5 not a fair characterisation of the approach that had
6 been taken, and if that had been the case, then
7 the Tribunal would not have certified the claim because
8 there would have been insufficient basis and
9 insufficient methodology to certify.

10 So in our submission, nothing that was referred to
11 actually establishes a good reason to prefer sequential
12 rather than simultaneous exchange.

13 In relation to the question of staggering, which, in
14 our submission, it is not necessary -- these are to
15 separate points. One could conclude in favour of -- if
16 one were in favour of Meta that there should be
17 sequential exchange, one could still then see the merits
18 of staggering. It is a somewhat surprising submission
19 to make that Meta's expert does not need to see our
20 accountancy evidence. It is somewhat surprising because
21 it would appear that Meta's expert is shutting their
22 mind to the position of the other side's expert.

23 THE CHAIR: Well, that was really the point I was making,
24 Ms Ford.

25 MS FORD: Indeed, Madam. The Tribunal has the point.

1 circumstances, it is plainly in everyone's interests
2 that there should be no question of ships passing in
3 the night in the context of the provision of expert
4 evidence.

5 We note and agree with the submissions that have
6 been made by Mr Singla as to the content of
7 the class representative's pleading, which very properly
8 relies on expert evidence but makes clear that that is
9 a preliminary assessment with the methodology to be
10 assessed further following disclosure. We note
11 the expert report as well making it clear that there
12 will be a need to refine her analysis following
13 disclosure and that her views are of a preliminary
14 nature. Again, that is not a surprise in a case of this
15 type, but it does mean that there is likely to be
16 a degree of refinement which the defendant is entitled
17 to understand before it provides its expert report.

18 We reject the submission that it would not be
19 even-handed to take this approach in all
20 the circumstances that I have outlined.

21 So the exchange of expert reports will be
22 sequential. However, they must be staggered.

23 Now, we are going to need to identify dates to
24 provide for that, and, Ms Ford, I am afraid that does
25 mean that you are going to have to give me an indication

1 as to what you are proposing.

2 MS FORD: My Lady, yes. Might it be possible to go on to
3 deal with some of the other issues and take time over
4 the short adjournment --

5 THE CHAIR: Well, I am rather hoping we will complete this
6 hearing before the short adjournment --

7 MS FORD: Ah, okay.

8 THE CHAIR: -- but I am very happy to deal with the other
9 issues, and then, if necessary, to rise for ten minutes
10 so that you can discuss that.

11 MS FORD: That would be very helpful.

12 One question which arises in that context is, when
13 the Tribunal indicates a Michaelmas start date, does
14 the Tribunal have in mind, for example, September or
15 October?

16 THE CHAIR: Well, I am happy to discuss that with
17 the parties, but my present view is it is obviously very
18 important that it is completed within the Michaelmas
19 term.

20 MS FORD: Yes.

21 THE CHAIR: So one does not want to start too late so that
22 we are bang up against Christmas and find that we have
23 some difficulties. So I would have thought that
24 starting in mid-to late September would ensure that
25 there is no difficulty with any potential for overrun.

1 I am assuming that the parties' view is that this is
2 still a ten-week trial. There is no suggestion in
3 the skeleton arguments that we need to reconsider
4 the time estimate.

5 MS FORD: Yes, that is our present view, yes.

6 THE CHAIR: Right. So --

7 MR SINGLA: Can I just say on that, I think we have
8 agreed -- with the idea that there should be
9 simultaneous exchange of skeletons for trial, I think
10 the CR was pushing for three weeks before trial, we were
11 saying two in our skeleton. Three is fine, but if we
12 start in early October, that would actually make things
13 a little bit more manageable. If they want skeletons to
14 be exchanged three weeks out from trial.

15 THE CHAIR: Well, we could start the hearing right at
16 the beginning of October. We could have a reading week
17 for the Tribunal, or two weeks, whatever you think is
18 appropriate --

19 MR SINGLA: Yes.

20 THE CHAIR: -- in the last two weeks of September on
21 the basis that skeletons are served, say, mid-September.

22 MR SINGLA: Yes. I am sure we can work out the date.

23 THE CHAIR: If that would work.

24 MR SINGLA: Yes.

25 THE CHAIR: That certainly sits quite well the vacation, but

1 also means there is enough time before the Christmas
2 vacation.

3 MR SINGLA: I am told the ten weeks does not include reading
4 time, so it would be an additional week on top of that.

5 THE CHAIR: Right. Which would have to take place in
6 September then.

7 MR SINGLA: On that basis, yes.

8 THE CHAIR: Yes, all right.

9 All right, Ms Ford, do you want to carry on with
10 the remaining issues and we will come back to that?

11 MS FORD: Yes, I think that would be helpful. I think, in
12 the light of Mr Singla's observations, we are agreed on
13 the three-week simultaneous exchange of trial skeletons
14 so I do not need to do that.

15 MR SINGLA: Well, it is subject to just working through
16 the precise dates in terms of when the trial starts and
17 when does three weeks before trial -- when does that
18 land.

19 THE CHAIR: Right, but there should be no dispute around
20 simultaneous exchange now.

21 MR SINGLA: No, there is not --

22 THE CHAIR: No.

23 MR SINGLA: There definitely is not a debate about that.

24 THE CHAIR: Very well.

25 MR SINGLA: (Overspeaking - inaudible) -- debates either two

1 or three weeks depending --

2 THE CHAIR: Thank you.

3 So as far as I can see, the only remaining issues
4 between the parties -- well, there is a request for
5 approval of the list of issues in relation to
6 the accounting issues, and I can indicate that we have
7 looked at those and we are content with those issues.
8 We note the reservation in relation to one additional
9 issue from the defendant and that is something that may
10 need to be mentioned in due course, but for the time
11 being we approve those issues.

12 That just simply, as far as I can see, it leaves
13 the industry expert evidence.

14 MR SINGLA: Yes, and in my submission, it might be helpful
15 to hear from me first on that.

16 THE CHAIR: Yes.

17 MR SINGLA: Because our position --

18 THE CHAIR: Well, just before you go on that, Mr Singla, and
19 in the hope it might shortcut matters.

20 Ms Ford, I do not see any opposition in your
21 skeleton argument to this. I understand entirely that
22 what you are saying is: we have not had enough time to
23 consider the scope of such evidence. I am certainly not
24 going to put you on the spot in terms of trying to
25 address the scope.

1 But if the position is that you are not opposing it,
2 that you can see the sense that it does go to certain
3 issues, my inclination at the moment -- and we have all
4 discussed this and agree -- would be to make a similar
5 order to the one that we made in relation to
6 the accounting experts, to the effect that in principle
7 permission is given for such an expert, subject to
8 issues being agreed, which would give you then time to
9 consider what issues this should go to.

10 I would have expected, if you had genuinely been
11 putting forward to the Tribunal that this was an
12 inappropriate expert to have, I would have expected you
13 to be able to say that at this point, but I do not see
14 that in your skeleton.

15 MS FORD: The Tribunal is correct up to a point. We say
16 this is an important issue. We have not had
17 the opportunity to reach a landing on it. We have not
18 had an opportunity to reach a landing either on
19 the question of principle as to whether or not this form
20 of evidence should be directed or on the scope of such
21 evidence. The reason I say that is that although there
22 were previous statements in the evidence on behalf of
23 Meta at CMC 1 and CMC 2 which said we may also seek to
24 rely on evidence from an industry expert, something to
25 that effect, it was common ground at that time that it

1 could be deferred to a later date and, until very
2 recently, that is where it had been left.

3 The first indication we received that Meta was
4 proposing to pursue an application at this CMC was
5 Meta's letter of 2 April, which is {E3/123/1}. That, as
6 I said, was received on 2 April. Evidence for this CMC
7 was due to be provided on 10 April, so it gave us one
8 week before evidence was due, including the Easter
9 weekend, in order to reach a position on this, and
10 the situation is that we are simply not in a position to
11 express a view either on the principle of whether such
12 evidence should be directed or on the scope of it.

13 THE CHAIR: Well, forgive me, Ms Ford, I find it difficult.
14 You have had two weeks in which to at least take a view
15 as to whether you are going to oppose this or not, and
16 I would have expected you to be in a position, given
17 your knowledge of the underlying proceedings, to be in
18 a position to be able to say, "Yes, this is a case in
19 which we can see that industry evidence is required",
20 or, "No, it is not". I just do not understand why you
21 have not been able to put yourselves in that position.
22 This is an incredibly straightforward case management
23 conference. It is being attended by silks and juniors
24 on both sides -- completely unnecessary, by the way,
25 because we are really dealing with dates -- unnecessary

1 costs are being spent on it, but at the very least,
2 I would have expected you to be in a position to say,
3 "Yes", or, "No, we think this is an appropriate
4 application".

5 Submissions on industry expert evidence by MS FORD

6 MS FORD: Yes. To try and put some flesh on the bones of
7 why we are not in that position, if the Tribunal looks
8 at paragraph 8 of this letter {E3/123/2}, this is
9 the paragraph where we are told:

10 "The Meta Entities encloses at Appendix 1 a draft
11 list of expert issues relating to industry expert
12 evidence ... which have been prepared with input from
13 ... Meta Entities' proposed expert[s]."

14 So we can see that Meta have been giving this matter
15 consideration for some period of time and they have had
16 the opportunity to both identify and instruct an expert
17 and to discuss the question with them. In our
18 submission, it would only be fair for
19 the class representative to have a similar opportunity
20 to consider potential experts and to discuss with them,
21 and a single week before the evidence deadline for the
22 CMC was simply not sufficient time for that exercise to
23 be carried out.

24 THE CHAIR: That is different. That is entirely different.

25 I am saying to you that of course it is fair that you

1 should be able to go away and identify your expert and
2 identify what the issues should be and what should be
3 added, if anything, to the list that has been proposed.

4 The point I am making is that, at the very least,
5 you could have identified whether industry expert
6 evidence was required.

7 MS FORD: Yes, well, in our submission there is not
8 necessarily such a clear delineation between
9 the question of principle, is the test satisfied, is it
10 reasonably required or not, and the question of
11 the scope of that evidence. It is a point that we have
12 started to explore in correspondence, but it is not, in
13 our submission, completely straightforward.

14 Perhaps I can take you through some of the reasons
15 why we say that?

16 THE CHAIR: Certainly.

17 MS FORD: The first is the question of where the line falls
18 between what is properly to be addressed by means of
19 factual evidence and what might sensibly be addressed by
20 means of industry expert evidence. I understand from
21 Meta's skeleton that they appear to contemplate that
22 industry expert evidence go to the way in which Meta
23 competes with other platforms on the merits, in broad
24 terms. If we look at, please, the examples that they
25 have given in their skeleton, so {F12/2/19}, they have

1 given some examples in paragraph 36 of their skeleton.

2 THE CHAIR: Yes.

3 MS FORD: 36.1 is envisaging a comparison with the terms and
4 conditions of other competing platforms. It is not
5 clear to us what the proposed industry expert is going
6 to be contributing to that exercise because that appears
7 to comprise potentially a factual question as to what
8 are the terms of other competing platforms, which
9 presumably are going to be publicly available, and then
10 a matter for submission as to how they compare or relate
11 to what Meta does.

12 There is then 36.2, which refers to Meta's pleaded
13 case that receiving and using off-Facebook data is
14 a practice which is engaged in across ad-funded
15 platforms. Again, we simply are not clear at this stage
16 what is the role of the industry expert in that
17 exercise. There are, again, factual questions about
18 what are the practices of other platforms. Ordinarily,
19 those sorts of factual questions might be proven by
20 reference to either third-party disclosure or a third
21 party witness.

22 There is then 36.3 -- this is Meta's pleaded case
23 that:

24 "... its receipt and use of 'Off-Facebook Data'
25 results in users obtaining significant value from

1 the personalisation of ... [ad] content ..."

2 This is a slightly different question. This is
3 a question about what users' perceptions of value are,
4 and again, in our submission, it has not been
5 sufficiently bottomed out. What is the role of an
6 industry expert in opining on that issue? The immediate
7 source of that sort of information might well be
8 evidence from users themselves.

9 36.4 {F12/2/20} is concerned with the tools and
10 controls offered by Meta to control use of users' data
11 and how they might compare to the tools offered by other
12 platforms. Insofar as it relates to Meta's own tools,
13 that would seem to be a factual question for Meta and
14 Meta's witnesses. Insofar as it relates to third party
15 tools, again, we simply ask: what is the industry expert
16 offering that cannot be achieved by means of third party
17 disclosure and/or third party evidence?

18 The same sorts of points arise in relation to
19 the points at 37 in Meta's skeleton argument.

20 The point we make is simply it is far from clear
21 to us that Meta have identified a concrete role for
22 industry expert evidence that extends beyond matters
23 that could be addressed by means of factual evidence.

24 That then feeds into the second concern that we
25 have, which is that it is not clear to us, on the basis

1 of these initial observations, whether all the potential
2 issues that Meta has identified are capable of being
3 addressed by a single expert. So if we look, please, at
4 the latest version of the list of issues, at {E3/135/6},
5 please. Now, in this list, there appear to us to be,
6 first of all, proposed issues about platforms and, for
7 example, how competing platforms obtain, aggregate and
8 use users' data. That is issue 4 in this list.

9 Then if we go over the page to issue 7 {E3/135/7},
10 there is another platform-related issue, what digital
11 tools platforms offer to allow users to control their
12 use of their data.

13 So a group of potential issues relating to
14 platforms.

15 There are then issues about advertisers. So, for
16 example {E3/135/6}:

17 "How advertisers engage with, evaluate and choose
18 between advertising services ..."

19 That is issue 2.

20 Then there are issues about users; the benefits they
21 receive from the use of their data and the expectations
22 and awareness that users might have. That is issues 5
23 and 6 {E3/135/6-7}.

24 We are not clear that this list of issues forms
25 a single identifiable and recognisable area of expertise

1 or that it is clear that these issues are all
2 necessarily capable of being addressed by a single
3 expert. That has obvious implications in terms of
4 the potential costs of this exercise, if it might entail
5 not one but multiple expert disciplines, query how they
6 would even be defined. But it also impacts the order
7 the Tribunal is being asked to make, even on a question
8 of principle, because is it directing an expert in
9 a particular discipline and, if so, what, what is that
10 discipline, or is it properly multiple expert evidence
11 in different disciplines?

12 That issue arises even before we get to the third
13 concern, which is that Meta's list of issues is not
14 a neutral document. We say it is not in neutral
15 language. Meta have corrected two initial examples we
16 offered in correspondence of that concern because they
17 have corrected the reference to attention services,
18 which was Meta's preferred terminology in terms of
19 market definition, and they have corrected the reference
20 to third party activity data, which was again Meta's
21 preferred terminology. But we are concerned that it
22 does not necessarily resolve all the imbalances, it does
23 not necessarily encompass all pleaded issues, and we
24 require time to consider which pleaded issues can
25 properly be said to reasonably require industry expert

1 evidence and, if such evidence is indeed required, how
2 it should be formulated on a more balanced and
3 even-handed basis.

4 To be clear, we do not consider this to be a second
5 order exercise whereby one can say direct this type of
6 evidence in principle and then get to the bottom of
7 actual list of issues in due course. In our submission,
8 it is only in the context of a full understanding of
9 which issues are likely to be involved that we can have
10 a sensible discussion about what the expert disciplines
11 are and whether the test is properly satisfied.

12 Finally, Meta has made submissions in their skeleton
13 about the particular qualifications and expertise of
14 their proposed expert. That, of course, is all, first
15 of all, contingent on prior questions about what are
16 the relevant disciplines and what are the issues once
17 properly defined.

18 THE CHAIR: Yes.

19 MS FORD: But we have raised one initial query in

20 correspondence. I am hoping it has been put on Opus.

21 It is {E3/136/1}. The Tribunal will be -- yes, perhaps

22 if we could go over to the following page, please

23 {E3/136/2}. Yes, so the Tribunal will be familiar with

24 the recent practice direction on expert evidence. It is

25 in the authorities bundle as well, we can turn it up,

1 but this letter cites the relevant paragraph, which is
2 paragraph 8, which says {E3/136/1-2}:

3 "... '[a]ny prior involvement of the expert with
4 either the instructing client or the case in question
5 must be declared either at the stage at which
6 the Tribunal grants permission for the provision of
7 expert evidence (if the identity of the proposed expert
8 is known at that point), or as soon as possible
9 thereafter, so that it may be considered by the Tribunal
10 and the opposing parties'."

11 The Tribunal will see from this letter that that
12 reflects dicta from this Tribunal and also from
13 the Court of Appeal in Royal Mail and we have extracted
14 the relevant passages in this letter. So the Tribunal
15 said {E3/136/2}:

16 "... 'it is particularly important for experts, who
17 have an overriding duty to assist the court or tribunal,
18 for them not only to be independent but also to be seen
19 to be independent ... [f]ull disclosure of potential
20 conflicts or other matters that may affect an expert's
21 independence goes a long way to allaying any concerns
22 that a court or tribunal may have in [this] respect'."

23 Then, when that matter went on appeal,
24 Lord Justice Green said:

25 "... 'CAT is entitled to be assured that experts

1 will give full and frank disclosure of anything,
2 including prior relations with a client, impacting upon
3 the objectivity and independence of their opinion'."

4 That was the case in which the fact that
5 the defendants' expert had not set out transparently his
6 long-standing professional relationship with his client
7 led the CAT to treat his opinion with circumspection and
8 caution.

9 Now, the reason we raise these issues is because
10 Ms Dietzel's witness statement contains a footnote in
11 which she has set out the various entities on behalf of
12 which Meta's proposed expert has previously given expert
13 evidence and Meta appears in the middle of that list.
14 From the initial research that we have done in the time
15 available, we have identified at least five proceedings
16 for which Meta's proposed expert appears to have acted
17 for Meta and so we have asked Meta to provide
18 a declaration, consistent with the indications in
19 the practice direction, of all the prior matters in
20 which the proposed expert has acted for Meta. We have
21 not yet received a response to that enquiry, but
22 the practice direction indicates that this is an
23 important point which needs to be grappled with at the
24 permission stage if the identity of the expert is known
25 by that point, and of course in this case Meta has

1 identified their proposed expert.

2 So for all those reasons, what we would respectfully
3 invite the Tribunal to do is not to determine this
4 application one way or the other at this hearing. In
5 our respectful submission, there's no great urgency in
6 relation to this particular issue. We would request
7 the opportunity properly to consider it, and it may be
8 that the parties continue to give it further
9 consideration. Alternatively, we would invite
10 the Tribunal to adjudicate the application at a later
11 date.

12 THE CHAIR: Thank you, Ms Ford.

13 Mr Singla.

14 Submissions on industry expert evidence by MR SINGLA

15 MR SINGLA: Madam, with respect, there are four different
16 issues which arise and the class representative is
17 actually confusing and conflating them. So the first
18 is: is industry expert evidence going to be required for
19 these proceedings? All we are seeking is
20 a determination in principle. So that is the only issue
21 that we are asking you --

22 THE CHAIR: Well, that presupposes one can identify

23 the nature of the expertise that one is relying on.

24 MR SINGLA: Yes, it does, but we say we have done that, and
25 I'll come on to this.

1 But the other issues which have been raised are,
2 secondly, the list of issues. Obviously that is
3 something that needs to be either agreed or ordered by
4 the Tribunal, and we are not asking you now to do
5 anything about the list of issues, we are asking for
6 a similar regime to the accounting process.

7 The third point is her point that there may need to
8 be two experts, and again that does not, as it were,
9 alter whether or not this evidence is going to be
10 required. If she wants to call two individuals, that is
11 a point that we can deal with in due course, it should
12 not stop the issue of principle being dealt with.

13 Then the fourth point is the letter we received late
14 on Friday night about the qualifications of Ms Tucker,
15 as to which we say (a) there is no issue in terms of
16 the practice direction, but (b), again, that does not
17 change the position in terms of whether evidence of this
18 sort will be required, and indeed the fact they are
19 asking about her qualifications would rather indicate
20 that they do agree that in principle this sort of
21 evidence is going to be required.

22 Now, we do say it is completely unsatisfactory. We
23 are at CMC 6 in these proceedings and what they are
24 asking the Tribunal to do is to kick this can down
25 the road yet further. We say this is the CMC, it was

1 always going to be the CMC to consider directions to
2 trial, including, importantly, expert evidence. We are
3 looking now at mapping out the rest of this timetable so
4 we really should grasp the nettle on whether this sort
5 of evidence is going to be required. They have had --
6 our initial letter was 2 April, so that's actually
7 almost three weeks, and for them to say they cannot
8 articulate one way or another, at a level of principle,
9 whether this evidence is going to be required, we do say
10 that is very, very surprising and unsatisfactory,
11 because all it is going to lead to is further cost and
12 time being spent on these points post this hearing.

13 We see a much more streamlined process in which you
14 give an indication in principle today, and then we go
15 off and try and agree the details, the list of issues
16 and so on.

17 To be clear, Ms Ford -- I will come on to why we say
18 this is plainly necessary evidence on the pleadings, but
19 you will have heard her refer a number of times
20 to "third party evidence". So what that actually means
21 is industry evidence, because, as I will come on to show
22 you, we have pleaded throughout our defence references
23 to how competitors and other platforms were operating
24 over this very long period of time and either she is
25 saying we have to call factual witnesses from all of

1 these other platforms over the 20-year period that
2 the claim concerns or, as we say, there is going to need
3 to be industry evidence. So, even in her oral
4 submissions, she is actually accepting that these are
5 matters which Meta's own witnesses will not be able to
6 deal with, there will need to be, as she describes it,
7 third party evidence.

8 So what we submit is it is actually plain from
9 everything we are seeing and hearing that they do agree
10 with the concept of this sort of evidence and they just
11 want more time to iron out the details, and we are
12 accepting of that approach, but what we do not want is
13 for there to be another dispute and further uncertainty
14 beyond today, because this is the CMC to sort these
15 sorts of points out.

16 THE CHAIR: But what you are accepting that you really want
17 in that context is therefore industry expertise, but an
18 industry expert who will also give evidence of fact
19 about what actually happens in the market. I mean, this
20 sort of expert evidence is a bit of a hybrid, isn't it,
21 in that context?

22 MR SINGLA: It is, but to give you comfort, we are not doing
23 anything which is, as it were, novel in this regard. So
24 industry evidence is a hybrid, as you have rightly
25 identified.

1 THE CHAIR: Yes.

2 MR SINGLA: But industry evidence has been adduced in
3 a whole manner of -- a whole host of other cases --

4 THE CHAIR: Yes, well, I mean, I had exactly the same
5 situation in a FRAND case that I did in the Chancery
6 Division, where we had industry expertise and we had
7 partially factual evidence and partially expert evidence
8 and that appeared to be accepted as the most pragmatic
9 way in which to address the evidence that was required.

10 MR SINGLA: Exactly, and in our skeleton we gave you
11 references to a number of cases, both in this Tribunal
12 and indeed the Cabo case in the Chancery Division,
13 a competition case, where industry evidence was adduced.
14 So there is nothing particularly objectionable about
15 the hybrid nature of it, it is evidence about
16 the industry, and what we have particularly emphasised
17 is that we are talking here about how other platforms
18 conducted themselves, it is all about competition on
19 the merits over a period of time, and so that is why
20 this cannot be dealt with adequately by Meta's own
21 witnesses.

22 But can I perhaps show you the references to
23 the defence, just to give you --

24 THE CHAIR: Certainly.

25 MR SINGLA: -- comfort that on any view -- well, can I --

1 just take a step back, we say there are two points that
2 arise. One, on the question of principle, you need to
3 be satisfied that there is a recognised area of
4 expertise, and as to that, we say, just picking up
5 the discussion we have just had, industry evidence -- we
6 have described it as "digital advertising", but we say
7 industry evidence is commonly adduced and there has been
8 no objection to the idea that this is in fact
9 a recognised field of expertise such that evidence would
10 be admissible. So that is stage one, and I can show you
11 all the cases like Kent and Google and so on, where this
12 tribunal has recognised that industry evidence is
13 admissible. So that is the first --

14 THE CHAIR: What about the point that this may need more
15 than one expert? I suppose that does not matter --

16 MR SINGLA: No.

17 THE CHAIR: -- if it is recognised as industry expert
18 evidence and that is required --

19 MR SINGLA: Exactly.

20 THE CHAIR: -- the fact it may have to be split into two or
21 more --

22 MR SINGLA: Exactly. We do not agree with that, but that is
23 why I say that is a detail to be ironed out.

24 THE CHAIR: All right.

25 MR SINGLA: If that is the position we will have to grapple

1 with that later, but that does not alter the point of
2 principle.

3 So the first stage is: is this admissible by its
4 nature? Is it genuine expert evidence? As to which,
5 they have not raised any objection to that, nor could
6 they, in light of the authorities in the competition and
7 FRAND cases.

8 So then the question becomes: is this evidence
9 necessary on the basis of the pleaded issues? To which,
10 again, it is very surprising and, in my submission,
11 revealing that they cannot identify a problem on
12 the pleadings, and Ms Ford's references to third party
13 evidence give the game away.

14 But let me just actually show you the pleading,
15 because you have seen our letter, if we just bring
16 the letter back up, it is {E3/135}, and although we have
17 cross-referred to the pleading, I will actually show you
18 the pleading in a moment, but just to remind you, if you
19 look at paragraph 12 {E3/135/2}.

20 THE CHAIR: Yes.

21 MR SINGLA: So I will just call out the propositions and
22 then I will take you TO the pleading itself. But as an
23 overarching point, we have pleaded:

24 "... [the] business model is not unique and ...
25 along with a range of other online platforms and

1 services, [Meta] competes vigorously ..."

2 Then you will see what we say.

3 Then if we go over the page {E3/135/3}, please, and
4 go to the top, please, so 13:

5 "As regards the specific unfair trading
6 condition ..."

7 This is our summary of our pleading, 13.1, 13.2 and
8 13.3:

9 "... use of user data ... is ubiquitous across
10 ad-funded platforms ..."

11 So that our use of the data enables us to compete
12 for advertising.

13 Subparagraph 2, when considering whether it is fair,
14 it needs to be assessed against a relevant benchmark.
15 So that is other platforms.

16 3, we say:

17 "Users obtain a significant value ..."

18 Because they get this service free and they get
19 the personalisation of ads.

20 Then 14:

21 "... standards terms and conditions is a method of
22 normal competition ..."

23 So you have to look at what other platforms are
24 doing over this period of time.

25 15 is unfair price -- if we could just scroll down,

1 please:

2 "... [we] have pleaded that the use of user data ...
3 is pervasive across the advertising industry ... and ...
4 have pleaded that users derive benefits ..."

5 So in our submission, there can be no argument, and
6 if there is going to be an argument, we should have been
7 having it today, as to whether, if you look at Meta's
8 pleading, there's going to be a need for this kind of
9 evidence.

10 Now let me just actually show you those references
11 in the pleading, because, again, it is -- this is
12 the time for the Tribunal to be satisfied. If we look
13 at the defence at {B/12/3}, so the defence, paragraph 7.
14 This is the summary of our defence, but it is
15 cross-referred to later. So if you just read 7 and 8.
16 So 7 is about the personalisation of the ad service.

17 Then 8, over the page, please {B/12/4}:

18 "... Meta to provide the ... Service ... free of
19 charge ..."

20 So this is explaining Meta's own business model.

21 Then when you get to paragraph 11, you will see what
22 is said about -- sorry, it is {B/12/6}. Thank you. So:

23 "Meta's business model is not unique."

24 So having explained Meta's business model, this is
25 then the pleading. It is not unique:

1 "... along with a range of other platforms and
2 services ... compete vigorously for ..."

3 These are the points you saw in the letter.

4 Then 12:

5 "Crucially, [they disregard] ... the fact ... Meta
6 competes with other ... platforms ... an important
7 dimension of competition."

8 Its ability to provide this service free of charge
9 depends on its ability to deliver. So it is all about
10 competition on the merits:

11 "... use of user data ... is ubiquitous across
12 ad-funded platforms ... Indeed the sharing of data ...
13 have been a ubiquitous and integral part of everyday
14 internet use and function for well over fifteen years.
15 Consequently, if Meta was unable to receive or impeded
16 ... rival ad-funded platforms would continue to receive
17 the very same data ... and ... It would ... undermine
18 Meta's ability ..."

19 And so on.

20 This is right upfront in our defence. It is
21 actually a pretty central plank of our defence. Just
22 quickly take you to paragraph 19, which is on {B/12/8},
23 please. Yes, so this is about the unfair trading
24 condition by way of example. So:

25 "... does serve a legitimate purpose and is

1 proportionate ..."

2 That is just picking up the legal test.

3 Then:

4 "... in particular because:

5 "... central to the Facebook Service ..."

6 If we go over the page {B/12/9}, please:

7 "... significant value to users ..."

8 So that is one of the points.

9 Then (b):

10 "... use of user data ... enables it to compete for

11 advertising ..."

12 Cross-reference back to 12:

13 "(c) ... use of user data ... is also fair when

14 assessed against a relevant benchmark ..."

15 Then if we --

16 THE CHAIR: "... terms offered by completing platforms ..."

17 Yes, I see.

18 MR SINGLA: Exactly, this just goes on. I mean, I'll just

19 show you some more references, but at (e)

20 If we look at (a), on page 9, please, (e) (i)

21 {B/12/10}:

22 "... standard terms and conditions ...

23 method ..." --

24 THE CHAIR: "... normal competition ..."

25 MR SINGLA: -- "... for the provision of many consumer

1 services, including but not limited."

2 Then if I show you 22, which is on {B/12/14}. So
3 this is, again, quite a long summary of our case at
4 the front of the pleading, because we then cross-refer
5 to it, so this is on unfair price. Just read (i), (ii)
6 and (iii). So:

7 "... Facebook Service as a whole provides a wide
8 plethora of services ... significant value to users ..."

9 In other words, they get the thing free of charge
10 and it is funded through the ads, that is the point.

11 Paragraph (ii):

12 "... pervasive across the advertising industry ..."

13 Paragraph (iii):

14 "... also notes ... its business model has many
15 comparators."

16 It is just absolutely central.

17 Let me just give you two more references. Page 57
18 {B/12/57}. So this is paragraph 85(c)(iv). You will
19 see -- this is in the body of defence:

20 "... it is alleged that any data that might have
21 been used ... only for advertising purposes ... Meta
22 repeats 5-12 and 19 ... Personalised advertising is ...
23 a fundamental part of the ... Service."

24 This then gets -- it is really cross-referring back
25 to what we have said.

1 Finally, at {B/12/133}, please. So this is
2 223(d) (iii). I think we might need to go over the page
3 {B/12/134}. I have not got time to take you to all of
4 this, but if we just go over the page, this is the final
5 reference. Yes:

6 "... Meta repeats that the use data equivalent to
7 third party activity data by ad-funded platforms ... is
8 pervasive in the industry."

9 So -- then let me just -- just to close this off,
10 because it is quite interesting what the CR itself has
11 pleaded about this, go to their reply at {B/13}, because
12 essentially what they said in the reply is, "Well, you
13 have got to prove all these points", which is why we
14 need the evidence. I mean, it is all a bit surreal,
15 actually, that we are arguing about this. So if we go
16 to page 13 {B/13/13}, this is their reply, paragraph 8.
17 Do you see at the top?:

18 "... the precise extent to which all other ad-funded
19 platforms collect and use user data ... is not within
20 the CR's knowledge, and it will be necessary for Meta to
21 provide proper particulars and disclosure in relation to
22 any alleged comparator."

23 They are putting the onus on us.

24 Then if you scroll down to (d), please {B/13/14}:

25 "The fifth sentence is vague ..."

1 This is all responding to the summary that I have
2 shown you:

3 "... raises matter for disclosure and evidence in
4 due course. No admissions are made ..."

5 Then (e). You will see at (e)(i):

6 "... it does not assist Meta to say that other firms
7 either do not have such obligations or may also be
8 abusing ..."

9 (e)(ii):

10 "... denied that Meta competes or is materially
11 constrained by the majority of the platforms to which it
12 refers ..."

13 (iii):

14 "Meta ignores the fact that the platforms to which
15 it refers ..."

16 So there is all this pleading back to what we say
17 about the other platforms.

18 Then final reference, I promise, in paragraph 9 of
19 the reply, page 14 {B/13/15} -- it is the same
20 paragraph, actually -- page. So 9(a):

21 "The allegation that the receipt and use of data ...
22 for advertising purposes is 'ubiquitous' across
23 ad-platforms is not admitted ... 8 and 9 above are
24 repeated ... "

25 So that is repeating the point that we have to prove

1 all of this.

2 THE CHAIR: Yes.

3 MR SINGLA: Then the last one is actually at 9(c), over
4 the page {B/13/16}. Scroll up, please. Go up to
5 the top of the page, please. 9(c), yes.

6 So the "ubiquitous" point. They say:

7 "... it is denied ... [it] justifies Meta's
8 conduct~..."

9 So all of that is going to be debated at trial. We
10 say everyone is doing it; they say you have got to prove
11 that everyone is doing it --

12 THE CHAIR: Yes.

13 MR SINGLA: -- and even if they are, it does not ...

14 So we say, if one is actually asking the questions
15 that go to the principle: is this a recognised field of
16 expertise? Yes, the Tribunal has recognised it many
17 times. Is it necessary on the pleadings? Yes, I have
18 just shown you the pleadings, including the CR's own
19 pleading. We say this is the CMC to debate matters
20 precisely like this, and we want the certainty, moving
21 forward -- given that we are considering the trial
22 timetable and preparing the case, we want the answer to
23 be determined now. In the absence of any articulation
24 as to why evidence of this sort will not be required, we
25 say you should give the decision in principle and then

1 all of the other points which go to the list of issues,
2 precisely how one draws the line and so on, that will be
3 the second stage. But we do not want to store up a big
4 debate on the principle, which will just generate lots
5 of costs and time.

6 THE CHAIR: Thank you, Mr Singla.

7 Ms Ford.

8 MS FORD: Madam, the Tribunal has my submissions about why
9 I am not in a position to take this any further at this
10 stage. I would simply make the point that we are in
11 April 2026 and we know the trial is not going to take
12 place until Michaelmas 2028, so there is time to deal
13 with this in a more ordered fashion, in our submission.

14 THE CHAIR: Thank you.

15 Decision

16 The Tribunal is in no doubt that the application to
17 rely on industry evidence should be permitted. Now, we
18 consider that the two conditions that must be met for
19 permission to rely on expert evidence are met:
20 the evidence is admissible, it is a recognised field of
21 expertise, even if in due course it may be necessary to
22 consider whether more than one expert is required to
23 address the issues that have been identified, and
24 secondly, the evidence is reasonably required to resolve
25 of proceedings. We are convinced of that on the basis

1 of the analysis of the pleadings that we have just been
2 taken through by Mr Singla.

3 It is striking, in our view, that the CR has not
4 addressed the question of whether in principle it was
5 necessary to have expert evidence notwithstanding that
6 they were notified on 2 April that this application
7 would be made at the hearing today and that this hearing
8 was fixed specifically to address questions of expert
9 evidence, amongst other things. We consider that it
10 should have been given more thought than it has been,
11 and we have heard nothing by way of proper opposition to
12 the decision to make an order for expert evidence in
13 relation to this particular field of expertise.

14 We entirely accept that the CR is entitled to have
15 time in which to identify her own expert, or experts,
16 and to consider the issues that should be included or
17 not in the list of issues and that is a matter for
18 another day. It is to be hoped, however, that the list
19 of issues can be agreed so that this does not create
20 further dispute down the line. However, in the event
21 that there is a dispute on this by the parties, it may
22 be necessary to have another hearing at some point, or
23 alternatively to deal with the matter on the papers.

24 However, one of the things that the Tribunal has
25 been discussing is whether in this case, given its

1 complexities, another hearing should be put into
2 the diary in any event against the potential that there
3 will be issues that need to be addressed in due course.
4 Now, we had not formed any clear view as to when one
5 might put that hearing in, but certainly this is an
6 issue, in terms of the list of issues, that could be
7 resolved at any such hearing in due course. For now, we
8 will make an order in principle.

9 MR SINGLA: I am grateful. Could I just take instructions
10 on one point very quickly?

11 THE CHAIR: Most certainly.

12 (Pause)

13 MR SINGLA: I am grateful. I have not anything else to
14 raise.

15 THE CHAIR: Thank you.

16 Ms Ford?

17 MS FORD: Those behind me have been trying to work out some
18 proposed dates in relation to the staggering of expert
19 evidence.

20 THE CHAIR: Yes.

21 MS FORD: The suggested position is -- might it make sense
22 if I simply read them out?

23 THE CHAIR: Yes, of course.

24 MS FORD: The class --

25 THE CHAIR: Unless you want us to rise for ten minutes, and

1 THE CHAIR: Yes.

2 MS FORD: The class representative's proposed dates: they
3 would start with the class representative's accountant
4 report on 22 December 2027.

5 THE CHAIR: Yes.

6 MS FORD: Meta's accountant on 12 January 2028.

7 Then the class representative's economist on
8 23 February 2028, so that enables the economists to then
9 take into account each of the accountants' reports that
10 have gone before.

11 THE CHAIR: Yes.

12 MS FORD: Meta's economist then on 19 April 2028.

13 Then the class representative's expert reports in
14 reply, both of them, accountant and economist, on
15 14 June.

16 THE CHAIR: 14th?

17 MS FORD: 14th.

18 THE CHAIR: Yes.

19 MS FORD: Then experts' meetings the week commencing
20 26 June 2028. Expert statements, 14 July 2028.

21 Then the PTR in the week commencing 24 July 2028.

22 THE CHAIR: Yes.

23 MS FORD: I can either summarise what we understand to be
24 Meta's position, or Mr Singla can do it.

25 THE CHAIR: Well, I am very happy for you to do it, as he

1 will correct you, no doubt, if you get it wrong,
2 Ms Ford.

3 MS FORD: Absolutely.

4 THE CHAIR: Yes.

5 MS FORD: So the counter-proposal is: simultaneous exchange
6 of the initial accounting reports on 13 December 2027.

7 MR SINGLA: I think the Friday is the 15th.

8 MS FORD: Oh, okay. On 15 December 2027.

9 THE CHAIR: 15 December?

10 MS FORD: Yes.

11 THE CHAIR: Yes.

12 MS FORD: The class representative's economist's report,
13 plus the class representative's reply on accounting, on
14 9 February 2028.

15 Then Meta's economist's report and its reply on
16 accounting on 5 April 2028. Then
17 the class representative's reply economist report on
18 31 May 2028.

19 Expert meetings on 21 June 2028, the joint statement
20 on 14 July 2028, then PTR on 24 July 2028.

21 THE CHAIR: The last two are the same, of course.

22 MS FORD: Yes.

23 THE CHAIR: So the big difference between you is where?

24 MS FORD: Well, the initial -- Meta's proposal was initial
25 simultaneous exchange of accounting evidence rather than

1 sequential exchange. Plus that then involves --

2 THE CHAIR: Sorry, I thought we had made a decision about
3 sequential exchange?

4 MS FORD: Well, Meta had been seeking sequential exchange,
5 but I understand their counter-proposal now to be
6 simultaneous exchange of accountancy evidence.

7 MR SINGLA: Well, just to be clear before we go any further,
8 in my submissions on sequential and simultaneous I made
9 the point that if the economists were sequential then we
10 would have had -- our economists would have had their
11 accounting already. This whole staggering question, we
12 said, did not actually arise.

13 THE CHAIR: Yes, I recall.

14 MR SINGLA: But I think where the Tribunal ended up was
15 simultaneous and sequential, as I understood it, on
16 the economists' expert evidence, with there to be some
17 staggering, and I am not actually sure that -- I did not
18 understand you -- and I apologise -- to be deciding that
19 in relation to accounting there also needed to be
20 sequential.

21 THE CHAIR: Yes, I follow.

22 MR SINGLA: I am sorry.

23 THE CHAIR: We need to clarify that, do we not?

24 MR SINGLA: Yes, because -- as I say, because on our
25 proposal we did not actually think there needed to be.

1 THE CHAIR: No, well, I did not think there needed to be
2 when I had the debate with you.

3 MR SINGLA: No.

4 Our difficulty with what the class representative
5 has proposed, just to explain a couple of things, sort
6 of high-level concerns we have, one, they were only
7 giving us between 20 December and 12 January to respond
8 on accounting, which is completely unworkable.

9 THE CHAIR: Yes.

10 MR SINGLA: Two, they were then going to sit on our
11 accounting report until 14 June, six months.

12 Three, on their proposal I do not think we were
13 going to have an accounting reply, and one does tend to
14 have -- well, probably, on the basis of what you said
15 earlier, we would need a reply on accounting so
16 the economists could look at everything.

17 We were also concerned about the back end. I think
18 they envisage, I think, the expert meetings leading to
19 joint statements within a fortnight, which we say is not
20 fair on the experts.

21 Those are, in high-level terms, the reasons we have
22 come up with something slightly different.

23 THE CHAIR: Right.

24 MR SINGLA: It is also fair to say that, as regards
25 the start date, their start date, I think, was

1 22 December, which is three weeks after the reply
2 factual evidence, and we say actually they do not need
3 to leave that much gap for their accounting report, so
4 we have tried to pull things forward for that.

5 THE CHAIR: Right, Mr Singla.

6 I have to be aware that there are staff in court who
7 need lunch and we are now 20 minutes into the short
8 adjournment. There is no way that this should have gone
9 beyond the short adjournment, but because the parties
10 are still not agreed on the simple issue of dates, I am
11 now going to rise until 2. I expect the parties to have
12 agreed as much as possible by 2 o'clock in relation to
13 dates, and in respect of any dates you cannot agree, we
14 will make a decision.

15 But I am very concerned about the lack of
16 cooperation between the parties here. If what I am
17 seeing in court is anything to go on in terms of the way
18 in which the parties approach each other outside court,
19 then it is not appropriate. There should be
20 a substantial degree more cooperation. These are minor
21 issues about dates, which may very well change in due
22 course in any event, and I expect the parties to have
23 a proper and pragmatic approach towards what is being
24 suggested by the other side, and where genuine issues
25 are being raised, I expect the parties to take those

1 into account and recognise them and look to find ways of
2 accommodating those.

3 Right, we will rise until 2 o'clock and we will deal
4 with the rest then.

5 Mr Singla, in terms of that staggering, I tend to
6 agree with you. I mean, I had thought that the question
7 of staggering in fact -- and you are quite right, it is
8 my fault -- does not arise on your proposal for
9 sequential exchange. If it does arise in some way,
10 perhaps you could discuss how it arises, but at
11 the moment I cannot really see that it does arise.

12 MR SINGLA: I am grateful. That may well simplify things.

13 THE CHAIR: So it might help.

14 MR SINGLA: Yes. I am sorry.

15 THE CHAIR: No, it is my fault. Thank you very much.

16 (1.22 pm)

17 (The short adjournment)

18 (2.01 pm)

19 THE CHAIR: Ms Ford.

20 MS FORD: Madam, I am pleased to report the parties have
21 reached agreement on the outstanding matters.

22 THE CHAIR: Excellent.

23 MS FORD: In the light of -- having heard what the Tribunal
24 has said, we have agreed the timetable for exchange of
25 expert evidence that is set out by Meta in its third

1 column in this letter.

2 THE CHAIR: Yes.

3 MS FORD: That then feeds through into -- all the subsequent
4 dates are also agreed. So that then means a deadline
5 for skeletons of 11 September, which is three weeks
6 before.

7 THE CHAIR: Yes.

8 MS FORD: There will be two weeks of reading for
9 the Tribunal commencing 18 September, and then the trial
10 would commence on 2 October.

11 THE CHAIR: Perfect. Thank you.

12 MS FORD: Then in relation to the Tribunal's question about
13 the possibility of a further hearing, what the parties
14 would suggest is that that takes place in early October
15 of this year.

16 THE CHAIR: So October 2026.

17 MS FORD: Yes.

18 THE CHAIR: Do you want to fix a date for that now, or are
19 you happy to liaise with the Tribunal? I mean, I am
20 sure liaising with the Tribunal would be fine by letter
21 to find an appropriate date.

22 MS FORD: Yes, I think we are content to liaise and get that
23 put in the diary.

24 THE CHAIR: Yes, all right. That is great. Thank you.

25 Anything else? Mr Singla?

1 MR SINGLA: Nothing to add. I mean, we obviously hope that
2 the list of issues on the industry evidence will be
3 resolved long before October, but we will obviously see
4 how we go.

5 THE CHAIR: Yes, and obviously if there is a difficulty
6 around that -- I hope there will not be, but if there
7 is, that is something that then can be addressed at that
8 October hearing. Of course, do not feel that you have
9 to have that hearing. It is there in case it is needed,
10 but if there is no issue to be determined, then you
11 should write to the Tribunal and let it know and that
12 will be vacated.

13 MR SINGLA: Yes, well, maybe disclosure-related because of
14 the update coming --

15 THE CHAIR: Yes, exactly. Very well.

16 The only other thing I wanted to raise with you,
17 Mr Singla, was, an issue was raised about a letter
18 having been written in respect of your expert's position
19 in terms of her acting previously --

20 MR SINGLA: Yes.

21 THE CHAIR: -- for Meta.

22 MR SINGLA: Yes.

23 THE CHAIR: What is it proposed that you are going to do
24 about that?

25 MR SINGLA: Well, the letter from Quinn Emanuel was Friday

1 night.

2 THE CHAIR: Yes, I follow that. I am not expecting that you
3 would necessarily have addressed it already, but I am
4 just raising it because it has been raised.

5 MR SINGLA: No, of course, but we are still considering it.

6 THE CHAIR: Right.

7 MR SINGLA: As I said in my submissions earlier, in one
8 sense it is a premature question because the principle
9 was still being debated.

10 THE CHAIR: Yes, and we are not making provision for a named
11 expert here, we are just making an order that in
12 principle an expert in this field should be permitted.

13 MR SINGLA: Yes. So can I suggest that we deal with that in
14 correspondence?

15 THE CHAIR: Yes, that is fine. Thank you.

16 All right. Thank you all very much indeed for your
17 help today.

18 (2.04 pm)

19 (The hearing concluded)

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