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4 record.

5  
6 **IN THE COMPETITION**  
7 **APPEAL TRIBUNAL**

CaseNo: 1745/5/7/25

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

13 Thursday 23<sup>rd</sup> April 2026

14  
15 Before:

16  
17 The Honorable Mrs Kelyn Bacon  
18  
19 (Sitting as a Tribunal in England and Wales)

20  
21  
22 BETWEEN:

23 **Claimants**

24 **Roadget Business Pte. Ltd. and Shein Distribution**  
25 **UK Limited**

26  
27 v

28 **Defendant**

29  
30 **Whaleco UK Limited**

31  
32  
33 **A P P E A R A N C E S**

34  
35  
36  
37 Marie Demetriou KC & Tom Pascoe (instructed by Freshfields LLP) on behalf of Roadget  
38 Business Pte. Ltd. and Shein Distribution UK

39  
40  
41 Josh Holmes KC, Daniel Piccinin KC & Cliodhna Kelleher  
42 (instructed by Herbert Smith Freehills Kramer LLP) on behalf of Whaleco UK Limited

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(10.30 am)

(Proceedings delayed)

(10.33 am)

Housekeeping

MRS JUSTICE BACON: Good morning, everyone. Some of you are joining us live stream on our website, so I'll start 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 a contempt of court.

Thank you very much. Good morning, Mr Holmes.

MR HOLMES: Good morning. I appear with Mr Piccinin KC and Ms Kelleher for Whaleco. Ms Demetriou KC appears with Mr Pascoe for Shein. The updated agenda was circulated yesterday; I hope that has reached you with the draft order.

MRS JUSTICE BACON: Yes. I see there is a large measure of agreement.

MR HOLMES: Yes, and indeed there has been further movement overnight, which I can update you on immediately. If we could turn up the revised draft agenda.

MRS JUSTICE BACON: Yes.

MR HOLMES: Item three, the supplier interview attendees application has now been resolved.

MRS JUSTICE BACON: Yes. Is that the interviewers?

MR HOLMES: Identifying the attendees from Shein at the interviews. I understand that Shein will provide an indication of who each of the letters show the interview transcripts is, so we know who all the speakers are. So that's been done. We haven't yet agreed on a date, but we can discuss that matter (inaudible).

1 The other point of further request is a small one. It's on the Claimants' Further  
2 Whaleco Disclosure Application, at 5, which as you see is largely resolved. There's  
3 been some further movement. If you turn to page 5 of the order, paragraph 8. (Pause)  
4 Paragraph 10. The date of 30 April for that witness statement has now been agreed  
5 as well.

6 MRS JUSTICE BACON: The date is agreed, but is the provision of the witness  
7 statement agreed?

8 MR HOLMES: The provision of the witness statement is also agreed.

9 MRS JUSTICE BACON: All right. So is the entire paragraph now agreed?

10 MR HOLMES: It is.

11 MRS JUSTICE BACON: All right. So, if I just go through my notes I eventually  
12 reordered my notes in the order of the issues in the draft order --

13 MR HOLMES: Yes.

14 MRS JUSTICE BACON: -- which helpfully leads us to expert evidence at the end. So  
15 I have five points left in my notes, and I hope that there aren't others, but I might have  
16 gone wrong.

17 The first is the remaining issues on the supplier interviews. So I think that's now down  
18 to paragraphs 1 and 2. The internal investigations, custodians application, and I think  
19 this is the point just about the date range.

20 MR HOLMES: Yes, it is.

21 MRS JUSTICE BACON: And then there's a senior management disclosure  
22 application. So that's the first set of points.

23 The second is really a query, because it's not clear to me to what extent paragraph 8  
24 is now agreed.

25 MR HOLMES: 8 is agreed, save for the question of whether disclosure will be given  
26 on the best endeavours basis described in the blue text or on the basis set out in

1 green.

2 MRS JUSTICE BACON: All right. So we'll have --

3 MR HOLMES: Whaleco's position is in blue; Shein's is in green.

4 MRS JUSTICE BACON: All right, so we'll have to have a discussion about that.

5 Then I have paragraph 9: overlapping suppliers. Is that still an issue?

6 MR HOLMES: Yes.

7 MRS JUSTICE BACON: Right.

8 And then I have paragraph 11, which is the supplier numbers application, and there

9 also seems to be some issue about geographic locations, which we'll have to discuss.

10 MR HOLMES: Yes.

11 MRS JUSTICE BACON: That's all still an issue?

12 MR HOLMES: It is.

13 MRS JUSTICE BACON: All right.

14 And then finally expert evidence, and we've got a number of questions about the

15 framing of the issues for expert evidence. I think that that will take some time, and

16 alongside that I wanted to have a look at the specific provisions in the timetable and

17 to work out what's already been ordered in relation to things like page lengths, the

18 format of the statements and so on.

19 MR HOLMES: Yes.

20 MRS JUSTICE BACON: So that was on my list of issues. Is there anything that is still

21 an issue which hasn't been canvassed in that list?

22 MR HOLMES: I don't believe so.

23 MRS JUSTICE BACON: That's it? All right, thank you.

24 MR HOLMES: On the aspects of specific provisions on the timetable, last after the

25 expert evidence --

26 MRS JUSTICE BACON: I think so, because it all relates to the expert evidence, and

1 | it wasn't more general provisions on timetable, I just wanted to talk about the timetable  
2 | for provision of expert evidence and exactly what we're going to be expecting, in what  
3 | lengths and what formats and so on.

4 | MR HOLMES: Yes, very good.

5 | MRS JUSTICE BACON: All right.

6 | MR HOLMES: I should say that on the first two points, Ms Demetriou has suggested  
7 | that they might be taken together, given that they're inter-related. I'm very happy to  
8 | proceed in that way. That's to say the date range.

9 | MRS JUSTICE BACON: Yes.

10 | MR HOLMES: And the senior custodian.

11 | MRS JUSTICE BACON: Yes, and I had envisaged that you would be taking those  
12 | together. All right, so let's do each of the points that I've outlined in turn, but obviously  
13 | taking paragraphs 1 and 2 together.

14 | MR HOLMES: Yes. I'm grateful. So those are obviously concerned with the scope  
15 | of Shein's custodian --

16 | MRS JUSTICE BACON: Yes, just before you dive into those, was there anything else  
17 | on the housekeeping front that we need to address?

18 | MR HOLMES: Not to my knowledge.

19 | MRS JUSTICE BACON: No, all right. Yes, all right, so please do continue,  
20 | Mr Holmes.

21 |

22 | Submissions by MR HOLMES

23 | MR HOLMES: So you'll recall, madam, that Shein was ordered to give model D  
24 | custodian disclosure in relation to a group of 30 suppliers, the so-called "relevant  
25 | suppliers", and the large majority of them -- 22 out of the 30 -- are the suppliers  
26 | identified by Shein as having attended the interviews at Shein's offices late 2023,

1 | which Whaleco counterclaim across paragraphs 47A and B, (inaudible) subject to  
2 | penalty notices Shein (inaudible) Whaleco was aware.

3 | The first application concerns a date range applied by Shein custodians from its  
4 | internal investigation team. This is a specialist group in Shein, which was called in to  
5 | conduct supplier interviews. You can see the scope and date range of the model C  
6 | disclosure (inaudible) in the Shein disclosure statement. That is in the main bundle,  
7 | (inaudible).

8 | MRS JUSTICE BACON: Yes, which paragraph do you want me to look at?

9 | MR HOLMES: So starting with paragraph B on that page, that confirms that disclosure  
10 | is (inaudible) suppliers.

11 | MRS JUSTICE BACON: Sorry, paragraph 2B or 6B?

12 | MR HOLMES: Introductions on page 795.

13 | MRS JUSTICE BACON: Oh, I'm sorry, we've got a problem. I'm using pdf page  
14 | numbers.

15 | MR HOLMES: I see. That's 816.

16 | MRS JUSTICE BACON: This will be resolved following our new practice direction  
17 | when it's published, but yes. So if you could give me the PDF page numbers, that  
18 | would be helpful.

19 | MR HOLMES: But I prefer (inaudible). I think it depends what you're working on --

20 | MRS JUSTICE BACON: Adobe, or a different -- yes, that's right.

21 | MR HOLMES: So 795, just short point: model D disclosure given by reference to the  
22 | relevant suppliers.

23 | Turning on to page 798 of the -- wrong numbering, 819 of the PDF, Shein gives further  
24 | detail about that.

25 | Paragraph 5, four business functions are identified. The large majority are from the  
26 | buyers team. Seven from the internal investigations team, described as a distinct

1 team in the office of the general manager. One custodian from the supplier  
2 management team and one from the legal team.

3 Paragraph 6 gives the date ranges. At "A", you see that documents were collected for  
4 each custodian, when each custodian is responsible managing relevant suppliers.  
5 That is across the whole (inaudible).

6 Looking down at "C", supplier management team custodian, legal team custodian,  
7 documents collected for the relevant period.

8 At "B", the internal investigations team alone, documents were collected for a narrow  
9 period, November and December 2023. Those are the dates when the supplier's(?)  
10 team was able to establish when (inaudible) in paragraph 47A, the relevant suppliers  
11 were interviewed. We say that the period applies to the internal investigation team  
12 (inaudible) too short.

13 The eight-week period pleaded, which is at "A", is simply the approximate period each  
14 team has heard from particular suppliers that took place. It does not give any reliable  
15 information of the period during which the internal investigations team were involved  
16 in the preparation or conduct of interviews.

17 Shein's witness evidence explains that the internal investigations team was called in  
18 as a specialist unit, because of their experience in conducting interviews and  
19 investigations, so that the interviews could be conducted more effectively. What we  
20 don't know is precisely when that occurred, when they were recorded, or how long the  
21 involvement continued. (Pause)

22 It seems obvious that there are likely to be communications prior to the period for the  
23 interviews themselves, the immediate period. For example, the communications  
24 requesting the assistance of the internal investigations team explaining the purpose of  
25 the interviews. Following the interviews, which are described as a discrete project  
26 (inaudible), one would similarly expect a process of internal reporting outcome of that

1 project, explaining the conclusions reached and the steps to be taken.  
2 By searching only the immediate period when the interviews themselves were being  
3 conducted, that period a little over eight weeks, disclosure risks missing such relevant  
4 materials.  
5 MRS JUSTICE BACON: And what period exactly are you saying that the searches  
6 should be conducted for?  
7 MR HOLMES: The application is for searches across the relevant period --  
8 MRS JUSTICE BACON: Okay.  
9 MR HOLMES: -- but we do not know --  
10 MRS JUSTICE BACON: Which is what?  
11 MR HOLMES: That is from -- I'm sorry, I don't (inaudible).  
12 MRS JUSTICE BACON: I think it's sometime in 2022.  
13 MR HOLMES: It is 2022.  
14 MRS JUSTICE BACON: So what date? All right, so date then. (Pause)  
15 MR HOLMES: Sorry, as soon as we have it. (Pause)  
16 I'll give you the dates in just a moment, my apologies. I don't have --  
17 MRS JUSTICE BACON: But on any view, for the purposes that you've just outlined,  
18 you don't need that whole date range. If you want the communications prior to the  
19 interview, ie requesting the assistance of the team setting out the purpose of the  
20 interviews and then the internal reporting after, we're looking at some date in 2023.  
21 MR HOLMES: Yes.  
22 MRS JUSTICE BACON: You know, maybe in the autumn of 2023 at the earliest, to  
23 the spring of 2024.  
24 MR HOLMES: Let me show you, if I may, what some of the documents show about  
25 the length of this project. It is clear that a number of the interviews refer to prior  
26 contacts with suppliers, and just to show you that, if you go to page 1005 in the bundle,

1 that is 1026 of the PDF.

2 MRS JUSTICE BACON: Yes.

3 MR HOLMES: Apologies, supplemental bundle.

4 MRS JUSTICE BACON: 1026?

5 MR HOLMES: No, that's the wrong -- 1005, supplemental bundle, which is 1015 of  
6 the PDF.

7 MRS JUSTICE BACON: Oh, all right.

8 MR HOLMES: So this is a transcript of an interview with supplier 18.

9 MRS JUSTICE BACON: Yes.

10 MR HOLMES: You've got the cover sheet. And then turning on to internal page 5,  
11 which is 106.

12 MRS JUSTICE BACON: Right, just before you carry on, I understand that the counsel  
13 microphones are not working, so we might need a short break to fix that. If we do  
14 have a short break, what I will do is also fix the PDF editor that I'm using. I'll see if  
15 I can load this up in, in Adobe. It just automatically opened it in Exchange. So if I do  
16 that, then you won't have to give two sets of references.

17 MR HOLMES: Thank you.

18 Would now be a convenient time?

19 MRS JUSTICE BACON: Yes, why don't we do that. We'll fix the mics and I'll fix my  
20 PDFs.

21 MR HOLMES: Thank you very much.

22 MRS JUSTICE BACON: Thanks.

23 (10.49 am)

24 (A short break to address technical issues)

25 (10.53 am)

26 MRS JUSTICE BACON: I understand the problem has now been fixed. Sorry,

1 Mr Holmes.

2 MR HOLMES: Not at all, madam. You asked me just before we rose, first of all what  
3 the relevant period was. 1 August 2022 to the present date.

4 MRS JUSTICE BACON: Yes.

5 MR HOLMES: You also asked what shorter period might be suitable if you weren't  
6 with me on the whole relevant period. Our suggestion would be summer of 2023,  
7 June 2023 to June 2024, and I can explain the reasons for that date range by  
8 reference to what we have in the evidence.

9 MRS JUSTICE BACON: All right. Well, while you're explaining that, perhaps,  
10 Ms Demetriou, or Mr Pascoe, whoever's dealing with this point could take instructions.  
11 All right.

12 MR HOLMES: We were in supplier 18's interview.

13 MRS JUSTICE BACON: Yes.

14 MR HOLMES: The short point is it shows that there were prior contacts with the  
15 internal investigation.

16 MRS JUSTICE BACON: You'll need to give me the page number again.

17 MR HOLMES: Of course. So, 1006 of the bundle.

18 MRS JUSTICE BACON: Yes. I've got your numbers now.

19 MR HOLMES: I'm grateful. If you look at, at lines 4 to 8, the interview says:  
20 "We're from the general manager's office, which falls under the supervision  
21 department. Do you have any idea why we've contacted you, roughly speaking?"  
22 "[The supplier replies:] Well, you did contact me previously. Perhaps you could  
23 elaborate on the specifics." [as read]

24 Then, turning on to page 1007, page 6 of the transcript at lines 10 to 12, the  
25 interviewee says:  
26 "Last time I was in your department too, wasn't I? [That's to say, the internal

1 | investigations department.] There was something else then, but that matter, I've  
2 | always felt it was rather unfair on me. It's the same situation. You all know, it's the  
3 | same situation. In our case, to put it bluntly, it felt like bullying the honest folk." [as  
4 | read]

5 | Then at page 1008, page 9 of the transcript, starting at line 24, a member of the  
6 | internal investigations team conducting the interview, says:

7 | "As we discussed last time, with most suppliers, the primary reason is usually due to  
8 | some accumulated inventory." [as read]

9 | So this supplier states that he has had contact with the same department, the internal  
10 | investigations team, and has discussed the same issues previously, and the internal  
11 | investigations team interviewer states, "as we discussed last time". A number of the  
12 | other transcripts also refer to previous contacts going back to July and August 2023.  
13 | That suggests that the interview process had a gestation period, if I can call it that,  
14 | running back to the summer of the preceding year.

15 | References to the earlier meetings were set out in Whaleco's evidence. In responsive  
16 | evidence, Shein's UK in-house lawyer, Mr Democratis, accepts that earlier meetings  
17 | may have taken place going back to July or August 2023. That is in the primary bundle  
18 | on page 980, paragraph 70.

19 | You see in the final sentence on page 981 of that paragraph:

20 | "I understand that meetings may have taken place between Shein and personnel, with  
21 | certain relevant suppliers, prior to the formal interviews, in November and December."  
22 | [as read]

23 | MRS JUSTICE BACON: Well, he doesn't say specifically that the meetings were in  
24 | around July and August. What he says is that he's aware that the interview transcripts  
25 | refer to meetings.

26 | MR HOLMES: That's true.

1 MRS JUSTICE BACON: In or around July and August.

2 MR HOLMES: Yes. You see, in paragraph 16, Whaleco has challenged Shein's  
3 document collection for the internal investigations custodians on the basis that it says  
4 that certain meetings took place in July and August. So that point was put. He doesn't  
5 in his evidence -- he's not specific in rebutting those dates. He speculates instead that  
6 the earlier meetings in the transcript are likely to have been routine and informal  
7 meetings involving only the Shein buyers team, but that is, with respect, his conjecture.  
8 The transcript I showed to you suggests a meeting at Shein's headquarters with the  
9 internal investigations team, the same department.

10 Shein cannot know whether there are records of such earlier contacts held by internal  
11 investigations team members during the run up to the interview period, without looking  
12 to see.

13 There are also documents in the disclosure indicating that further interviews, including  
14 re-interviews of relevant suppliers, were planned to take place in 2024 after the  
15 November/December 2023 period covered by the custodial searches. Mr Rowan,  
16 Whaleco's solicitor, sets out the relevant references in his third witness statement, at  
17 page 1070. If I could ask you please to read paragraph 15. (Pause)

18 MRS JUSTICE BACON: "Over 29 interviews took place from late February onwards."

19 MR HOLMES: Yes. That's apparent from a chat on 21 March 2024. So we say that  
20 the internal investigations team was still involved in relation to interviews that were  
21 being scheduled into the new year, and it's not right to say that their involvement simply  
22 stopped on 31 December.

23 There's no witness evidence from Shein which specifically addresses these  
24 references. Whaleco asked Shein about the additional interviews in a letter dated  
25 30 March 2026, and no substantive response has been forthcoming from Shein. I can  
26 show you that if helpful.

1 MRS JUSTICE BACON: So you are no longer seeking August 2022 to the present  
2 date, but you are, on the basis of the evidence that you've shown me, now seeking  
3 June 2023 to June 2024? So that's a period of one year?

4 MR HOLMES: Yes. Given we simply don't know. We don't have clear evidence as  
5 to when the interviews stopped, but it's clear, in my submission, that they continued  
6 into 2024, from the documentary evidence, and searches should be undertaken.

7 MRS JUSTICE BACON: Yes, all right. So, do you then want to move on to the rest  
8 of the issues? This is the senior management disclosure.

9 MR HOLMES: Yes, madam. The short point here is that disclosure so far given  
10 suggests that several more senior managers were significantly involved in the  
11 oversight and conduct of the interviews. The first of these is the head of the internal  
12 investigations team, Mr Bingbing Hunter Zhu.

13 Shein has included more junior colleagues from his team but has omitted Mr Zhu, the  
14 team leader. Shein has now grudgingly confirmed in its reply evidence that Mr Zhu  
15 himself attended interviews. That is in Mr Democratis's 15th statement, at  
16 paragraph 24 on page 982 of the bundle. You see this is in response to the interviewer  
17 identification application. You see at the foot of the page in the final sentence, one  
18 individual has been identified to me, Bingbing (Hunter) Zhu.

19 MRS JUSTICE BACON: Yes, we probably need to see the rest of that paragraph for  
20 context.

21 MR HOLMES: Yes, of course.

22 MRS JUSTICE BACON: So these are people who are described as having briefly  
23 participated on an occasional and ad hoc basis, or were captured in the recordings  
24 and including the transcript, but didn't participate in anything of any materiality. That  
25 doesn't seem to be suggesting anything more than that Mr Zhu attended the  
26 interviews, and may have participated briefly.

1 MR HOLMES: Well, let me show you, if I may, some of the documentary evidence  
2 about what Mr Zhu's role was, and also what Shein's own evidence says about this.  
3 If we could turn. So Mr Eric Qu referred to in the final line of page 982, is a custodian  
4 and has given evidence. If we could just turn up his statement, please, it's at page 970  
5 of the bundle. You see in paragraph 1, he's a member of the internal investigations  
6 team and one of Shein's custodians.

7 Paragraph 8, you see that his direct superior is Bingbing Hunter Zhu. At paragraph 9,  
8 Mr Qu explains that he led what is described as a small project team to interview  
9 a small group of suppliers. That is the relevant suppliers' interviews. Then turning on  
10 to paragraph 12 on page 972.

11 MRS JUSTICE BACON: So he led the project team, Mr Qu?

12 MR HOLMES: That's what he says. You see that he reports daily to Mr Zhu on his  
13 activities. There is then a reference to one of Mr Qu's discussions with Mr Zhu being  
14 recorded. Mr Qu says this happened because Winston, that's Tao Wang, another  
15 colleague of his, forgot to turn off the recording device. Do you see that, final  
16 sentences of 12?

17 MRS JUSTICE BACON: Yes.

18 MR HOLMES: I'll come back to that in a moment and show you what we think is that  
19 recording, to show you the nature of Mr Zhu's role. And then at paragraph 13, Mr Qu  
20 records his recollection that Mr Zhu told him and his team that the boss was paying  
21 attention to the interviewing of suppliers and that "we should take the work seriously".  
22 He says that Mr Zhu shared this information to put some pressure on the internal  
23 investigation team, but that does not, of course, mean that what Mr Zhu said was not  
24 true. There's no evidence from Mr Zhu on this point.

25 As a matter of primary fact, what Mr Qu's evidence shows is that Mr Zhu informed him  
26 that other more-senior management were paying attention to the interview process.

1 Mr Qu's evidence also shows that he was himself not privy to such communications  
2 with more senior management. Those records would lie instead with Mr Zhu.  
3 Now, if I could show you the interview transcript in which this accidental recording was  
4 captured.

5 MRS JUSTICE BACON: So when there's a reference to the boss; that's not supposed  
6 to refer to Mr Zhu, but to somebody else?

7 MR HOLMES: This is Mr Zhu. We'll see that the references, in fact, to Sky,  
8 Mr Yangtian Xu, who is the chief executive officer of Shein. I'll show you that --

9 MRS JUSTICE BACON: Sorry, my question is: when there is a reference to "the boss  
10 paying attention", who is "the boss"? Is it Mr Zhu referring in the third person to  
11 himself, or is he referring to somebody else?

12 MR HOLMES: Well, it's clearly, we say, not a reference to Mr Zhu himself. It suggests  
13 that there are other more senior people.

14 MRS JUSTICE BACON: Okay, but that's the inference you draw. Is there some  
15 evidence for that?

16 MR HOLMES: Well, let me show you the transcript, if I may, of the supplier 08  
17 interview. That's in the bundle, the core bundle, starting at 1137.

18 So you see, first of all, the cover sheet which sets out, among other things, persons  
19 included in the recording. The first person, A, the primary Shein interviewer for the  
20 purposes of this interview, is Mr Wang Tao. That's the person Mr Qu referred to as  
21 "Winston" in paragraph 13 of his statement. The second person, B, is the supplier  
22 whose name is confidential, and then two other Shein individuals are identified. C is  
23 Liang Fan and D is Liu Yunze, both members of the internal investigation team.

24 Then at the moment, we don't know the identities of E to I, and we will get them, but  
25 we haven't got them yet. Turning on to page 1138, the next page, you see that we've  
26 now jumped forward to page 242 of the internal numbering of this transcript. This was

1 one of the marathon interviews where suppliers were quizzed for a number of hours.  
2 We understand that the person speaking for the first half of the page is the supplier  
3 being interviewed. Then at line 17, the interview is interrupted by C, that is Liang Fan  
4 from the investigation team. Mr Liang asks Yunze, another Shein interviewer, to note  
5 down his instructions with the supplier, and then Mr Liang turns to the main Shein  
6 interviewer for the supplier, Mr Winston Tao, and tells him that the management  
7 wishes to see you.  
8 There is then background noise recorded, and we understand that this is Mr Tao,  
9 Winston Tao, leaving the interview room, and it appears that Mr Tao was wired with  
10 a mic for the purposes of the interview. And this is what the witness statement is  
11 referring to when it says that:  
12 "Winston forgot to turn the recording device off." [as read]  
13 So what follows is the inadvertent recording.  
14 Then a new speaker is heard. He's referred to in the transcript by the letter H and isn't  
15 identified in the transcript. Shein hasn't told us yet who he is. He says:  
16 "Mr Bao just raised a new requirement. This matter was indeed passed down from  
17 Sky ..." [as read]  
18 Sky is the English name used by Mr Yangtian Xu, the CEO of Shein. Person H then  
19 continues:  
20 "The entire group is watching us. It might be a bit -- well, progress is very satisfactory  
21 so far." [as read]  
22 It goes on to repeat that Mr Bao has raised a new requirement. Mr Bao may be  
23 a reference to Ping Bao. That is a person described by Mr Democratis responding to  
24 my solicitor's evidence as "a senior individual within the general manager's office".  
25 And then over the page, person H sets out two questions that suppliers should be  
26 asked. The first is, in short, to ask why the supplier had not become a platform

1 merchant on Shein's platform, but instead continued as an ODM supplier. The second  
2 is a request for information on Pinduoduo -- that's Temu's parent -- namely whether  
3 their business development team offered the supplier a higher purchase price for  
4 disclosing F2O procurement prices. You see that in lines 15 and 16.

5 And then in lines 18 and 19, you see the order is given to the interviewers:

6 "Ask these two questions. Is that clear?" [as read]

7 So pausing there, what we appear to have here is person H interrupting an ongoing  
8 interview to pull an internal investigations interviewer out of it and to tell him to ask two  
9 questions. Based on Mr Qu's witness statement, we infer from paragraph 12 that  
10 person H is Hunter Zhu, the head of internal investigations. We're hampered by the  
11 fact that our application for the identities of these individuals has not been accepted  
12 until now.

13 The observations in the interview that the questions were passed down from Sky, the  
14 CEO, and that the whole group was watching suggests that Hunter Zhu, the head of  
15 the team that conducted the interviews, may have relevant documents relating to his  
16 liaison with more senior individuals, which his junior colleagues will have lacked. We  
17 say that there should be targeted searches, at least of Mr Zhu's records.

18 I should say this neatly encapsulates the difficulty of decrypting these interviews.  
19 We're doing our best with transcripts that are difficult to follow and uncertain. Without  
20 the assistance of Mr Qu's witness statement, I'm not sure that we would have been  
21 able to ascertain what was happening here. So clearly that is why documentary  
22 disclosure is helpful and needed to illustrate the meaning of transcripts like this.

23 The reference to "the whole group is watching", we say, is interesting. On one reading,  
24 it would suggest that this interview was being monitored in real time on a video by  
25 a wider group. There's some derisory laughter, but how else was it that Mr Bao was  
26 able to identify -- he wasn't present at the interview -- questions --

1 MRS JUSTICE BACON: Well, all right. I mean --

2 MR HOLMES: -- to pose in relation to the interview, which was ongoing?

3 MRS JUSTICE BACON: Okay. But the nub of this is that you want searches to be

4 conducted on at least Mr Zhu's records.

5 MR HOLMES: Yes.

6 MRS JUSTICE BACON: But anyone else?

7 MR HOLMES: In respect of the focus period proposed for the internal investigations.

8 MRS JUSTICE BACON: So what -- so June 2023 to June 2024?

9 MR HOLMES: Indeed, yes.

10 MRS JUSTICE BACON: All right.

11 Anyone else?

12 MR HOLMES: Yes. A second individual is Mr Yanfeng Liu. The evidence of

13 Mr Democratis is that Mr Liu was, at the relevant time, a senior employee responsible

14 for government relations in China. Mr Democratis does not say what his current role

15 is, and we do not know.

16 Shein's disclosure suggests that he played an important role in managing the

17 campaign of interviews. We've set out the relevant documents in paragraph 20 of the

18 skeleton argument, and it may be easiest, in view of the time, to take those from that.

19 I don't know if you have the skeleton to hand, madam. It's on page 6 of the internal

20 numbering.

21 MRS JUSTICE BACON: I do. So who are we talking about, Mr Yanfeng Liu or ...?

22 MR HOLMES: Mr Yanfeng Liu is the --

23 MRS JUSTICE BACON: L-I-U?

24 MR HOLMES: -- one I'm focusing on. L-I-U, indeed, right. These documents show,

25 we say, that Mr Liu played a significant role in the interview process.

26 MRS JUSTICE BACON: You're no longer asking for anything from Mr Yang Huang?

1 MR HOLMES: No, we don't pursue that, madam.

2 MRS JUSTICE BACON: All right.

3 MR HOLMES: So we focus on these two individuals because they appear to us to  
4 be -- on the evidence available to us, they are the ones who seem to have been  
5 centrally involved.

6 MRS JUSTICE BACON: Right. So, in relation to Mr Liu, it's subparagraphs (a) ...?

7 MR HOLMES: Yes, you see that he is described as the member -- so Mr Liu informs  
8 Mr Zhu that Mr Liu has now taken over the infringement prevention and control  
9 workstream at Shein. Then at (b), Ms Lin, the legal vice president at Shein, consults  
10 Mr Liu on what points interviewees should be asked to confirm at interview that  
11 document is in the supplementary bundle.

12 MRS JUSTICE BACON: Yes, all right. So those are the main paragraphs referring to  
13 Mr Liu?

14 MR HOLMES: Yes, indeed -- no, apologies, there are more --

15 MRS JUSTICE BACON: (d) is just --

16 MR HOLMES: At (c), Ms Lin informs Mr Liu that she will send him information  
17 collected during interviews. In other words, she was reporting to him on the interview  
18 outcomes.

19 MRS JUSTICE BACON: Yes. (d) is a conversation which includes Mr Liu.

20 MR HOLMES: Yes.

21 MRS JUSTICE BACON: (e) relates to Mr Zhu. (f) relates to Mr Liu.

22 MR HOLMES: And to answer your question at December 2023: should the interviews  
23 be continued in view of the online discussion?

24 The suppliers were at this stage kicking up a fuss about what was said to be  
25 confiscation of phones and illegal detention, and Yanfeng Liu gives the order:  
26 continue.

1 MRS JUSTICE BACON: All right. I've read the relevant paragraphs.

2 MR HOLMES: Yes, so we say that Mr Hunter Zhu and Mr Liu's fingerprints are all  
3 over the supplier interviews.

4 MRS JUSTICE BACON: All right.

5 MR HOLMES: And they appear to be directing this campaign. But the only information  
6 we have about their involvement is incidental, as they are not custodians and their  
7 repositories have not been searched. So we do seek further targeted searches of  
8 those two individuals.

9 MRS JUSTICE BACON: All right. Let me have Ms Demetriou or Mr Pascoe. Who's  
10 dealing with it?

11

12 Submissions by MS DEMETRIOU

13 MS DEMETRIOU: Can I start with, a few points about proportionality and context?

14 MRS JUSTICE BACON: Yes, you can say this is all peripheral relevance because  
15 this only relates to a small part of the allegations.

16 MS DEMETRIOU: I am. I'm going to make that point. It only relates to a small part  
17 of the application of the claim. We're talking about the interviews of 22 suppliers, and,  
18 of course, that's a minor part of the overall claim.

19 One also has to ask: what's this case about just standing back and bearing in mind  
20 that the trial is next year and that we're fast coming up to the deadline for factual  
21 evidence on 5 June?

22 Standing back, what is this case about, the competition claim? Temu, Whaleco  
23 alleges that Shein has taken various actions -- of which this is a small part; we're  
24 talking about 22 suppliers -- designed to prevent Shein suppliers from selling on  
25 Temu's platform. That's their case.

26 Shein's case is that it has indeed taken action against various of its suppliers for selling

1 Shein-branded products on Temu's platform, and it's entitled to do that. That's not in  
2 dispute that enforcement action has taken place.

3 The question for the tribunal is whether it's anti-competitive. Shein says not, and Temu  
4 says it was, because it foreclosed the market, resulting in Temu selling fewer overall  
5 products. That's the dispute.

6 Now, again, standing back, we say that the idea, the allegation that any of this had  
7 any effect on competition or could have any plausible effect on competition is for the  
8 birds, because the tribunal has seen the number of suppliers used by Whaleco and  
9 the way in which that number has developed over the period of infringement. I'm not  
10 going to read out the confidential numbers, but you have them at paragraph 2 of our  
11 skeleton argument. And Shein suppliers are a small fraction. It has around 7,200  
12 suppliers.

13 So it's in that context that the interviews have to be seen. Presumably the case that  
14 Whaleco wants to put at trial is that those 22 suppliers were deterred from selling their  
15 products on Temu's platform.

16 Now, leaving aside implausibility of that having any kind of effect, it's impossible to see  
17 what purpose in terms of resolving the issues in dispute before the tribunal that further  
18 disclosure surrounding the interviews could possibly achieve. The key point here is  
19 that Whaleco already has very significant disclosure surrounding the interviews.  
20 They've got the transcripts of most of the interviews so they can see what was actually  
21 said. My clients have carried out very significant model D disclosure already in respect  
22 of the 22 suppliers who were the subject of the interviews.

23 MRS JUSTICE BACON: Yes. One thing that it could show is that there were more  
24 suppliers that were the subject of interviews, because you say it's 22; you found 22 in  
25 those months. It may be that there were, I don't know, another 50. I think the case is  
26 that there were 29 that took place from February 2024 onwards. I don't know whether

1 those 29 overlap with the original 22, but I think the case against you would be that  
2 the 22 is the number that we're aware of from those two months, and there may well  
3 be a larger number, and so the case might not turn out to be quite so peripheral as  
4 you are saying it is now.

5 MS DEMETRIOU: So I think there are two points to make in relation to that. When  
6 one goes to the part -- so if you can take it from Whaleco's skeleton argument on this  
7 point, so where they say that there may be further interviews that --

8 MRS JUSTICE BACON: Yes, is it paragraph 12?

9 MS DEMETRIOU: It is. Thank you my Lady.

10 So you can see here that even just looking at this, and if one goes back to the  
11 documents that they're referring to, what you see is a series of some loose language.  
12 So some people are saying 20 to 30, some say 50, some say over 40. It's all in that  
13 range. So it's all quite loose; so this is not a firm basis on which to conclude that there  
14 were further interviews.

15 MRS JUSTICE BACON: No, but they don't know. So if they've only received  
16 disclosure from a couple of months, they don't know how many further interviews.  
17 They're speculating as to how many there might be.

18 MS DEMETRIOU: Yes, and what Mr Democratis explains in his witness  
19 statement -- in his 15th witness statement -- is that these interviews are -- so, I think  
20 a key point to bear in mind, my Lady, is that the buyers had discussions with the  
21 suppliers all of the time and so where there are references to further discussions with  
22 suppliers, there was ongoing informal discussion with suppliers all of the time.

23 MRS JUSTICE BACON: Yes.

24 MS DEMETRIOU: So what Mr Democratis explains is that this kind of formal interview  
25 process is unusual and that's why Shein has been able on investigation to identify  
26 these transcripts, the involvement of the investigation team. So they are in a special

1 category. I think that -- so the idea that there are a whole host of further formal  
2 interviews like this, it's just not a suggestion that has any real basis in the documents.

3 MRS JUSTICE BACON: What's the model D search going to do? The paragraph in  
4 the order is drafted in somewhat broad terms. What are they going to be looking for?  
5 Is that specified somewhere?

6 MS DEMETRIOU: No. So they say -- at the moment they say model D searches --

7 MRS JUSTICE BACON: It must be referable to one of the disclosure issues.

8 MS DEMETRIOU: Disclosure issue 31.

9 MRS JUSTICE BACON: All right, so let's have a look at that.

10 MS DEMETRIOU: There are search terms in relation to issue 31. Now that is at  
11 page 705.

12 MRS JUSTICE BACON: Is that the main hearing bundle?

13 MS DEMETRIOU: The main hearing bundle.

14 MRS JUSTICE BACON: Okay. (Pause)

15 Does or did Shein detain the suppliers which do business with Temu, and Shein offices  
16 for many, many hours. So the disclosure issue relates to -- it doesn't relate to informal  
17 discussions, it relates to formal interviews.

18 MS DEMETRIOU: That's the basis on which we proceeded. But my Lady, the other  
19 important point is that of course this goes back to the way in which the tribunal -- the  
20 very premise for the tribunal's approach to disclosure in this case, bearing in mind that  
21 this is a case in which the claim is only for £4.2 million, so bearing in mind the need  
22 for proportionality.

23 MRS JUSTICE BACON: Yes.

24 MS DEMETRIOU: The tribunal laid down a particular approach for disclosure, which  
25 involved model D searches in relation to the 22 named or identified suppliers, and also  
26 model C searches, in relation to formal or informal policy or strategy documents.

1 Now, there was more than a whiff in my learned friend's submission that what he's  
2 really after are documents from on high setting out a strategy. But those would have  
3 been captured by the model C searches. So the model D searches were really looking  
4 at specific documents relating to the 22 suppliers, and the model C exercise was  
5 looking more broadly at documents. So if there were some kind of master plan, then  
6 they would be captured by the model C searches and we can see -- if we can look at  
7 if we stay on this document -- for example, if we go to issue 6, can I just briefly take  
8 you through the model C searches that were done? You see in relation to issue 6 on  
9 page --

10 MRS JUSTICE BACON: Is that earlier --

11 MS DEMETRIOU: Yes, 697. So that relates to the purpose of the supplier agreement  
12 terms.

13 You then have -- we can go on. I'm not going to go through all of them, but for  
14 example, you see that -- I'm not sure -- sorry, if we go through, we can see Issue 19,  
15 "Purpose of Supplier Attestations", Issue 22, has Shein pressured suppliers to sign  
16 attestations? Issue 28, imposition of fines and penalties issued.

17 MRS JUSTICE BACON: But if all of these questions with model C had captured what  
18 was sought by the supplier interviews, we wouldn't have needed the supplier  
19 interviews. I think the point is that there was still a need for disclosure, which was  
20 ordered on a model D basis, in relation to the specific interviews. But the reason for  
21 asking this is that it's quite a narrow point. It's about whether Shein detained suppliers  
22 in their offices for many hours, and Mr Holmes says, "Well, at the moment we've just  
23 got that for a narrow period", but the evidence suggests that those interviews might  
24 have taken place both earlier and later.

25 So, given that the principle was that there should be model D disclosure, in relation to  
26 those specific formal supplier interviews, and it's not suggested that any wider

1 disclosure is needed, simply the disclosure that was ordered, but on a slightly wider  
2 time frame. The time frame has now been narrowed to a period of a year, rather than  
3 a period of up to six years -- sorry, up to four years.

4 MS DEMETRIOU: Yes.

5 MRS JUSTICE BACON: So on the basis that we are, as you say, just looking at  
6 Issue 31, and it's not a roving search for matters that might fall outside of that, it is  
7 simply trying to get the right date range for the search that has already been ordered.

8 If there isn't anything, if there weren't any formal interviews before  
9 November/December 2023, and if there weren't any after that period, it's going to be  
10 quite a short disclosure exercise, just going to say there was nothing. But if there are,  
11 then for the same reason that you said that you were able to give disclosure of the  
12 supplier interviews that there were, because it's something unusual, you presumably  
13 will be able to find that.

14 MS DEMETRIOU: My Lady, yes. The question is whether it's proportionate to require  
15 it, and can I just explain why it's not, why we say it's not? Because -- take the date  
16 range for the custodians that were part of the investigation team, as Mr Democratis  
17 explained in his statement, this wasn't their day-to-day job. So their day-to-day job  
18 was investigating cases of fraud and bribery, and one of the pieces of transcript that  
19 Mr Holmes took you to, as supporting an interview outside the claim period by  
20 a member of the investigation team, relates to a bribery investigation. So this is going  
21 to yield a lot of false positives, and can I show you another document that Mr Holmes  
22 took you to? If we go to the supplemental bundle, page 1008, can I show you that?

23 So if you have the top of the page, Mr Holmes took you to line three. He said, "I believe  
24 the business department also contacted you back in July or August", and he said,  
25 "that's why we need to go back to June". But then if you look at the next lines, which  
26 he didn't take you to, he says: "I wasn't contacted in July or August". He never got in

1 touch with you, did he?

2 And so that is an exceptionally flimsy basis. What Mr Holmes is doing is picking out  
3 references in these transcripts that refer to earlier times without any proper analysis  
4 of whether or not --

5 MRS JUSTICE BACON: Well, no --

6 MS DEMETRIOU: -- it's likely to lead to anything.

7 MRS JUSTICE BACON: Mr Holmes, to be fair, was just simply referring to the end of  
8 that page, which suggests that there was a previous contact with most suppliers and  
9 he's not saying that this particular interviewee was necessarily contacted then, but  
10 rather that there is a reference to previous contacts with some of the interviewees.  
11 And that's what he really wants to find out, whether there were.

12 MS DEMETRIOU: My Lady, let's look at -- because Mr Holmes also relied on  
13 Mr Rowan's third statement at paragraph 15. If you recall, he took you in this context  
14 to that as well. And that refers to two strings of messages which suggest that  
15 interviews took place later on. And if we look at those -- so if we go to the supplemental  
16 bundle, tab 42 -- so I'm really addressing the two points made by Mr Rowan. So if we  
17 go to -- sorry, supplemental bundle, page 185. (Pause)

18 So this is a document that Mr Rowan points to, but if we go to the bottom of the page,  
19 you see there:

20 "This week, the compliance department scheduled interviews with these three  
21 suppliers, but none of them showed up in the end. When we called suppliers to  
22 arrange interviews, they directly responded 'they have no business dealings with the  
23 general management office'." [as read]

24 So that's one of the documents relied on by Mr Rowan.

25 And the second one tells a similar story. If we go to page 181 in the same bundle --

26 MRS JUSTICE BACON: Although the rest of that says, "Could you help follow up and

1 arrange the interviews with them?" So they were obviously trying to arrange  
2 interviews. And now I think the question is: is it going to be extremely difficult for you  
3 to search and find references to these formal interviews? If, as you say, it's something  
4 quite unusual for there to be formal interviews, there won't be that many references to  
5 them, and they should be fairly obvious.

6 MS DEMETRIOU: Well, my Lady, could we instead, because we do say that this  
7 would be onerous -- so conducting more searches on a model D basis over a year's  
8 worth of documents, in circumstances where that is bound to yield false positives,  
9 because the role of the investigations team is to deal with other forms of fraud and  
10 bribery and so on. And so there may well be -- likely to be -- documents which are  
11 caught by the searches, but which don't bear on the issues in this case, because  
12 although the issue is a narrow one, relating to formalised interviews, it's difficult to  
13 construct search terms that are that narrow. So the search terms by their nature are  
14 apt to yield a whole bunch of documents -- many documents -- which will need to be  
15 reviewed, and so that is not a proportionate exercise we say in circumstances where  
16 it's difficult to see where this goes, because the key point is what was said in these  
17 interviews and did it have an impact.

18 Now, whether or not there were 22 or 24 or 25 or even 50, is really not going to bear  
19 on the resolution of the issues in this case, we say. But, my Lady, if you're concerned  
20 to bottom out how many formal interviews there are, then a more proportionate  
21 approach would be for my clients to carry out an investigation and provide a witness  
22 statement on the basis of their investigation, indicating whether or not there were more  
23 interviews of this nature in that year long period between June 2023 and 2024.

24 MRS JUSTICE BACON: If they did that, then Mr Holmes is going to come back and  
25 say, "Well, can I have them then?" So you might as well just give them now. If the  
26 key point is what was said at the interviews, we've got what was said in 22, let's

1 say -- just for the sake of argument -- that there were in fact 60 interviews, you're going  
2 to get a lot more of what was said than in the 22.

3 MS DEMETRIOU: Well, my Lady, can I put it this way: if -- let's say there were two or  
4 three more interviews, for the sake of argument.

5 MRS JUSTICE BACON: But we can't know that.

6 MS DEMETRIOU: We can't know that.

7 MRS JUSTICE BACON: It's possible that there were another 50 interviews.

8 MS DEMETRIOU: It may well be, but we think highly unlikely, given that these were  
9 unusual, formalised interviews, and Mr Democratis has explained that. So highly  
10 unlikely that there were many of these. But we say the more proportionate way forward  
11 is for my clients to investigate the matter, produce a witness statement and if they find  
12 further interviews, produce disclosure, produce the transcripts of those interviews and  
13 then that gives my learned friend what he needs.

14 The idea that it's necessary to bottom out every single piece of reporting up or internal  
15 communication about what questions are going to be asked in circumstances where  
16 we know the questions that were asked, we say is wholly disproportionate, in  
17 circumstances where this is a small part of the claim, and that we are where we are in  
18 terms of the trial timetable.

19 MRS JUSTICE BACON: So are you effectively suggesting a sort of hybrid of model C  
20 and model D? So you're going to go and investigate whether there were any further  
21 interviews, and, if so, you'll produce the transcript so that the defendants will have  
22 effectively what they've got now, but over a broader time range, if there were others.

23 MS DEMETRIOU: Yes, exactly. My Lady, just going back to the points, for example,  
24 that my learned friend made about Mr Hunter Zhu. So he has realistically narrowed  
25 his application very considerably in recognition of the disproportionality of it all.

26 But Mr Zhu appeared very briefly in two interviews, one of which he appeared at the

1 end of the interview after it had finished. So we really do say it's disproportionate to  
2 be seeking model D searches in respect of his documents in circumstances where his  
3 role appears to be peripheral. You've got the evidence, of course, from Ms Lin and  
4 Mr Li, who explained that they were the ones who selected who was going to be  
5 interviewed, and what enforcement action is going to be taken. So you have that, the  
6 tribunal has that. The tribunal has the transcripts of the vast majority of the interviews.  
7 So it can be seen what questions were asked. And of course --

8 MRS JUSTICE BACON: Again, exactly what is sought? Because the order at the  
9 moment just says, "apply required model D search terms". What are the search  
10 terms -- what are the relevant issues?

11

12 Discussion re issue 31

13 MR HOLMES: I'm sorry, I don't mean to interrupt, but I understand that for issue 31  
14 they are very narrow: Supplier name and detain or detention or confiscate or sign or  
15 penalty and Temu or Whaleco or Pinduoduo. So it's an incredibly focused search.

16 MRS JUSTICE BACON: Well, where are those?

17 MR HOLMES: Unfortunately they're not in the bundle, madam. These are the agreed  
18 search terms that were attached to the DRD.

19 MRS JUSTICE BACON: And these are the ones we're talking about for both orders,  
20 the paragraphs 1 and 2 of the order, is it?

21 MR HOLMES: So what we are proposing is that the searches that are undertaken are  
22 those that have already been agreed.

23 MRS JUSTICE BACON: Yes, all right. But is that for paragraphs 1 and 2 of the order?

24 MR HOLMES: Yes.

25 MRS JUSTICE BACON: So the agreed search terms are what; can you just read them  
26 out?

1 MR HOLMES: It is on page 833.

2 MRS JUSTICE BACON: 833.

3 MR HOLMES: I think they are slightly broader than I suggested.

4 MRS JUSTICE BACON: Much broader.

5 MR HOLMES: Well (overspeaking).

6 MRS JUSTICE BACON: Wait a minute. Let me just look at the search terms. 833 of

7 the hearing bundle?

8 MS DEMETRIOU: Yes.

9 MRS JUSTICE BACON: All right. In both paragraphs 1 and 2 of the order, are we

10 only talking about issue 31?

11 MS DEMETRIOU: That's my understanding.

12 MRS JUSTICE BACON: All right. Can I just read this then, "Detain or detention or

13 confiscate ..." (Pause)

14 They're pretty broad, including "visit boss".

15 MR HOLMES: But they are qualified by the "and".

16 MRS JUSTICE BACON: Yes, but --

17 MR HOLMES: So it's only in relation to communications in relation to which Temu or

18 Whaleco or Pinduoduo or PDD or Rival or Competit\* or Amigo.

19 MRS JUSTICE BACON: So you've got to have one of the "ands" --

20 MR HOLMES: Yes.

21 MRS JUSTICE BACON: -- and one of the "or"s?

22 MR HOLMES: Yes.

23 MS DEMETRIOU: But, my Lady, the issue here is that issue 31 is about the formal

24 interviews, and these searches, which were agreed are apt to capture much, much

25 more than formal interviews, and there may be lots of documents in which a buyer or

26 somebody informally said to a supplier, "you're selling our products on Temu's

1 platform" or asked for a meeting. So that's why we say it's disproportionate to go about  
2 it on a flimsy basis. Given the contextual factors, it is disproportionate to start ordering  
3 expensive searches. You'll have seen the amount of money that's already been spent  
4 on disclosure in this case. My clients have spent more than £3 million on disclosure  
5 in the context of a case worth £4.2 million.

6 MRS JUSTICE BACON: But if you were just to hand over the transcripts, you might  
7 capture the first part of issue 31. You're not going to get the Shein's policy bit, which  
8 is the second part of 31.

9 MS DEMETRIOU: Well, that's precisely what the subject of the model C searches  
10 were. The whole point of distinguishing between model D and model C was that the  
11 model C searches captured the policy part.

12 MR HOLMES: No.

13 MS DEMETRIOU: That's why -- my Lady, that is correct.

14 MRS JUSTICE BACON: Why is this issue here, as in issue 31, which is model D  
15 disclosure? If it was all captured by the model C searches, why is that even there?

16 MS DEMETRIOU: So it's both. So if you go back to the DRD, issue 31 has next to it  
17 model C and D.

18 Let me show you page 742. So if you go to 742 and you look next to it, you see that  
19 the agreed position, "the model C requests are agreed". Do you see that in the final  
20 column? Then the parties also agree that the claimants will provide model D  
21 disclosure in respect of the relevant suppliers. Then you see the --

22 MRS JUSTICE BACON: The model C request are, I think --

23 MS DEMETRIOU: Policies, protocols, rules, guidance.

24 MRS JUSTICE BACON: So what that won't capture is, for example, a chain of emails  
25 giving instructions in relation to what's going to be asked of a particular supplier.

26 MS DEMETRIOU: That may be so, but what we have is what was asked of the

1 particular suppliers. So, in a sense, this is a huge sledgehammer to crack a nut that  
2 doesn't matter. Because, so what if there was if there were internal communications  
3 about whether the question should be x or y, what we know is that the question was y  
4 in the end, that was what was asked.

5 So really, I think that the flaw in my learned friend's position, in terms of using the  
6 sledgehammer, is that he never actually explains why any of this matters to the case.

7 So what if the results of the interviews were reported to someone else? So what if  
8 there was discussion about the nature of the questions that was going to be asked?

9 All of that might matter if they didn't have the transcripts, and if they didn't know what  
10 was actually asked.

11 What we're offering to do now is conduct further searches and produce a witness  
12 statement to unearth any other interview that falls within the category of formal  
13 interviews in issue 31, and provide any available transcript of that.

14 MRS JUSTICE BACON: Is that on a date-unlimited basis or just on a basis of the year  
15 that's been identified by Temu?

16 MS DEMETRIOU: We can do it on the basis of the year identified by Temu.

17 My learned friend, for example, gave the example of he took you to the transcript  
18 where there was a break in the interview, and you'll recall that at page 1138, and he  
19 said, look, the interview was interrupted and the interviewer was asked to ask two  
20 more questions.

21 He said, "Well, we don't know exactly what was said". But, "So what?", is my answer,  
22 because we know what the questions were that were actually asked.

23 MRS JUSTICE BACON: All right. How are you going to go about investigating  
24 whether there were further interviews?

25 MS DEMETRIOU: Can I take brief instructions on that?

26 MRS JUSTICE BACON: Yes. (Pause)

1 MS DEMETRIOU: My clients will speak to the internal investigations team, and ask  
2 them whether or not any other formal interviews took place. We'll also speak to the  
3 decision-makers that were the relevant decision-makers here, so Ms Lin and Mr Li.

4 MRS JUSTICE BACON: What do you mean by formal interviews, because, this  
5 seems to be something of a gloss on issue 31. I mean, it would have to be formulated  
6 in terms of that issue.

7 MS DEMETRIOU: Well, I think my clients are happy to formulate it in terms of that  
8 issue. The distinction that needs to be made is a distinction between issue 31 and  
9 other informal discussions that may have taken place, albeit about Temu, because  
10 there may have been lots of those.

11 MRS JUSTICE BACON: Yes, I understand. All right. So you say rather than the  
12 disclosure formulated at paragraphs 1 and 2, to cover both the point about the date  
13 range and the custodians, you propose to speak to the relevant investigations, find out  
14 whether there were formal interviews that were of the nature referred to in issue 31,  
15 and, if so, provide the transcripts of those?

16 MS DEMETRIOU: Exactly. Then if my learned friend has any specific queries after  
17 that, they can come back with much more targeted requests.

18 MRS JUSTICE BACON: Well, I mean, the time to do so is going to be very limited.  
19 So one needs to bear that in mind given that the trial is going to be now less than  
20 a year away. All right.

21 MS DEMETRIOU: Of course the alternative spectre is wide-ranging disclosure  
22 yielding false positives --

23 MRS JUSTICE BACON: Yes, I understand.

24 MS DEMETRIOU: -- of an expensive nature.

25 MR HOLMES: What's the time frame -- given that this is a much more limited exercise  
26 of just speaking to a few people -- can you do it in?

1 MS DEMETRIOU: By 12 May.

2 MRS JUSTICE BACON: Okay. So you'll speak to them and produce any transcripts  
3 by 12 May?

4 MS DEMETRIOU: Yes.

5 MRS JUSTICE BACON: Yes. All right. Let me hear from Mr Holmes on that because  
6 we need to move on.

7 MR HOLMES: Yes. So, my Lady, witness evidence is no substitute for disclosure.  
8 The witness evidence needs to be capable of being tested. Without seeing the internal  
9 documents for a longer period than the eight weeks we have been provided with them  
10 for, we will not be able to test the evidence that we receive in relation to the interview  
11 process.

12 Issue 31 was subject to model D disclosure without limitation. That is set out in the  
13 disclosure report as well as in the DRD itself. The policy aspect of 31 is covered by  
14 model D as well as model C disclosure. That disclosure should be properly and  
15 adequately done.

16 The question for you is whether the time period of eight weeks is adequate, or whether  
17 a longer period is appropriate.

18 As regards proportionality, you have no evidence before you as to the number of hits  
19 that were produced in relation to the internal investigation team, by the search terms  
20 that were applied, search terms that were agreed between the parties and ordered by  
21 this tribunal.

22 The time is very tight, and searches should be undertaken now. My learned friend  
23 referred to the fact that the internal investigation team undertakes other unrelated  
24 activity. That cuts against the risk of false positives insofar as these search terms are  
25 formulated by reference to the issues in the case and the relevant suppliers.

26 As regards the number of suppliers and the potential for that to turn the dial, that is not

1 something that you can remotely rule upon at this stage. The 22 suppliers we know  
2 are among the largest suppliers -- or the majority of them are -- because they gave  
3 supplier attestations, 14 of the 22. We know that those that gave supplier attestations  
4 were selected on the basis of their size and importance.

5 The Temu numbers that have been cited are not comparable. Those are sellers.  
6 There is no minimum size threshold. Many of them are resellers. So you can't draw  
7 any conclusion about the potential impact on competition at this point. It would be  
8 quite inappropriate to make a decision based on the outcome of issues that will be  
9 determined at the trial.

10 What is important at the present stage is to do justice as best you can, based on the  
11 material before you. I say that there is sufficient material before you to suggest that  
12 the eight weeks is too narrow. There is a proportionate period that can be ordered by  
13 reference to agreed search terms, and I urge you to take that course.

14 MRS JUSTICE BACON: Yes.

15 (11.51 am)

16 **Ruling**

17 MRS JUSTICE BACON: I will make the order on the basis now proposed by  
18 Mr Holmes for a more limited period. In principle, the disclosure was ordered already.  
19 The question, at this point, is whether the disclosure should be carried out on a wider  
20 date range than has currently been carried out by Shein.

21 Mr Holmes has provided evidence indicating that the relevant documents may well  
22 have existed for an earlier period and also a later period than the November to  
23 December 2023 dates that were selected by Shein. Mr Holmes has narrowed his  
24 request considerably from the original application. He is no longer seeking searches  
25 to be carried out across the relevant period, but only for the period from June 2023 to  
26 June 2024, for which there is evidence indicating there will be additional relevant

1 documents. This revised period is proportionate.

2 The other question concerns custodians. There is evidence that there were several  
3 additional custodians – again narrowed by Mr Holmes at the hearing today to Mr Zhu  
4 and Mr Liu – whose involvement in the interviews is identified in relevant documents.

5 It seems not disproportionate to ask for their documents to be searched also. If  
6 Mr Holmes seeks something beyond those, then that is a matter for another day. But  
7 at this stage, I think it is appropriate to make the order for searches to be carried out  
8 across the longer date period. and to include Mr Liu and Mr Zhu.

9 I would say, however, paragraphs 1 and 2 of the draft order are somewhat opaque  
10 and they should be drafted more tightly to refer to exactly what searches are going to  
11 be carried out.

12 Thank you.

13

14 (11.53 am)

15 MR HOLMES: Thank you, madam. We will do so.

16 I'm conscious of the shorthand writer.

17 MRS JUSTICE BACON: Yes. I think we should have a five-minute break, and we're  
18 then going to go and deal with the WeChat messages.

19 MR HOLMES: Yes.

20 MRS JUSTICE BACON: Let me just look. That's paragraph 8.

21 MR HOLMES: Yes.

22 MRS JUSTICE BACON: All right. Thank you very much.

23 (11.53 am)

24 (A short break)

25 (12.02 pm)

26

1 Submissions by MS DEMETRIOU

2 MS DEMETRIOU: Excuse me, just in relation to the order that you've just made.

3 MRS JUSTICE BACON: Yes.

4 MS DEMETRIOU: Paragraphs 1 and 2, they provide that this should be done, at the  
5 moment on Mr Holmes's case, by 4.00 pm on 22 May.

6 MRS JUSTICE BACON: Yes.

7 MS DEMETRIOU: And I've spoken to my solicitors and clients over the short break.

8 That's not practicable --

9 MRS JUSTICE BACON: Yes.

10 MS DEMETRIOU: -- in terms of timing. Can I just show you, very briefly, what's  
11 involved?

12 We can see this from Mr Democratis's 15th witness statement on page 977 of the  
13 bundle, because he explains there the process, so page 977. This explains the  
14 model D disclosure process. So what happens is the WeCom documents have to be  
15 extracted from Shein's database using a bespoke technological solution. Then these  
16 have to be reconstituted into 24-hour chat logs, so there's an extraction and  
17 a processing point. Then the search terms are applied. Then the responsive  
18 documents have to be reviewed by a team that has to be set up -- that is  
19 a Mandarin-speaking team -- at Freshfields to review the documents. It's an involved  
20 process, and what we've got here are nine custodians for a year. So that's nine  
21 man years, if I can put it that way, of messages potentially. So it's a very -- and lots of  
22 these people sent lots of messages, so it is a very involved process. My solicitors say  
23 that two months will be needed in order to complete it.

24 MRS JUSTICE BACON: That takes us to, where are we today, end of June.

25 MS DEMETRIOU: Yes.

26 MRS JUSTICE BACON: How does that align with the timetable for the --

1 MS DEMETRIOU: That's after (inaudible) statements. I think there would have to be  
2 some consequential provision enabling factual evidence or further factual evidence, if  
3 necessary, to be filed at a later stage.

4 MRS JUSTICE BACON: So the factual witness statements are coming in on 5 June?

5 MS DEMETRIOU: Yes.

6 MRS JUSTICE BACON: So there would then, as you say, need to be potential  
7 supplementary factual witness statements, because of course, the disclosure will still  
8 have to be then be reviewed by Temu.

9 MS DEMETRIOU: Yes. Of course, on our side too, we may need supplementary  
10 factual witness statements.

11 MRS JUSTICE BACON: Is there any possibility of doing this in tranches? For  
12 example, doing the main custodians first, the seven, or if Temu identifies who should  
13 be done first.

14 MS DEMETRIOU: I'm going to take instructions.

15 My Lady, I'm told it doesn't work like that because they all have to be removed once;  
16 they're processed once; you've got the team set up to review them, and so it doesn't  
17 work in that way.

18 MRS JUSTICE BACON: I can see they have to be removed once. But in terms of  
19 whose data is being reviewed, is there any reason why Temu can't identify who should  
20 be reviewed first and then the results of that given in-tranches? And that if you're  
21 asking for two months, then presumably some of the data are going to be reviewed  
22 earlier than others, otherwise you wouldn't be asking for that period. So the question  
23 is just disrupting that so that they get something by the end of May.

24 MS DEMETRIOU: I'm going to take instructions on that.

25 So I'm told it's doable but inefficient, so it raises inefficiencies.

26 MRS JUSTICE BACON: But what's inefficient about just, I mean, identifying data

1 coming from certain custodians to be reviewed first?

2 I can understand that you have to extract it all in one go, but reviewing is, as described,  
3 somebody sitting down. I can see that, if I look at this explanation, the initial exercise  
4 of extracting it does need to be done once. Ditto the search terms.

5 MS DEMETRIOU: Yes, I'm told we can do it in tranches. It's just what we can't do at  
6 the moment is guarantee a first date, but we can do it in tranches so that it's all done  
7 by the end date and that there are tranches that are done -- as each tranche is done,  
8 it can be handed over.

9 I mean, just to be clear, what I'm talking about doing in tranches is the last two  
10 sentences on page 977, 9(a)(i) it's the review by the team at Freshfields and then  
11 disclosure. But the tranches won't work unless the tranche dates are set in stone  
12 because otherwise things will be held over. So is it not possible --

13 MRS JUSTICE BACON: How many have you got? Is it nine custodians?

14 MS DEMETRIOU: My Lady, we don't know how many documents this is going to  
15 produce at the moment.

16 MRS JUSTICE BACON: Yes, all right. But all I'm suggesting is that you structure the  
17 actual review process, which is what requires a human to sit down and actually go  
18 through sequentially a set of documents.

19 MS DEMETRIOU: Yes.

20 MRS JUSTICE BACON: Is there any reason why the actual review process shouldn't  
21 be structured so that the first, let's say five custodians are reviewed -- identified by  
22 Temu are reviewed first and disclosure of those is given within one month, and then  
23 you have until the next month, say to review the next four custodians?

24 MS DEMETRIOU: My Lady, I'm not able to give that confirmation. I think my solicitors  
25 can't give it because they don't know how many documents -- but may I propose  
26 this -- and I'm speaking now on my feet, so Mr Robinson will tell me if this is a bad

1 idea -- but that once the documents are extracted and processed, then we'll know how  
2 many documents there are, and then we can seek to agree with the other side, in short  
3 order, a timetable for review and production.

4 If Mr Holmes has any difficulty with that -- we are on our side trying our best here;  
5 we've been trying our best to assist --then it can, if necessary, come back before the  
6 tribunal on the papers, but I would hope that that wouldn't be necessary. It's just  
7 impossible now for my solicitors to definitively commit to a date in circumstances  
8 where they don't know the size of the task.

9 MRS JUSTICE BACON: How long does it take to extract the documents?

10 MS DEMETRIOU: One week to extract and one week to process. So two weeks: one  
11 week to extract and one week to process.

12 MRS JUSTICE BACON: One week to extract?

13 MS DEMETRIOU: Yes.

14 MRS JUSTICE BACON: But I mean, you've got the system already.

15 MS DEMETRIOU: Well, that's what I'm told: it's not a simple matter. It's not something  
16 that you can do by pressing a button. There's a complex technical process, and it will  
17 take one week to extract and one week to process.

18 MRS JUSTICE BACON: Process meaning what? Applying the search terms?

19 MS DEMETRIOU: To reconstitute the documents into 24-hour chat logs.

20 MRS JUSTICE BACON: So you're saying it takes you two weeks to get to the end of  
21 the process that you described in (i) -- well, not to the end, but to the end of the  
22 sentence, which ends, "24-hour chat logs". All of that takes you two weeks, you say?

23 MS DEMETRIOU: Yes, exactly. That's really what lay behind my proposal.  
24 I appreciate this is water under the bridge --

25 MRS JUSTICE BACON: Yes, all right. So if I were to say by the latest, 8 May, you  
26 need to have had the discussion with Temu has to what is going to be handed over

1 when?

2 MS DEMETRIOU: Yes, that works.

3 MRS JUSTICE BACON: And you will have, by then, extracted and processed.

4 MS DEMETRIOU: Yes.

5 MRS JUSTICE BACON: And then if you haven't agreed by then what's going to be  
6 handed over, then you will come back to the tribunal in short order.

7 MS DEMETRIOU: Exactly.

8 MRS JUSTICE BACON: Just let me have Mr Holmes's submissions on that point, and  
9 what I'm envisaging is that then there should be tranches that should start to be  
10 disclosed, with the first tranche no later than 22 May, further tranches thereafter  
11 leading to a long stop of 19 June.

12 MR HOLMES: Yes, we're content with that.

13 MRS JUSTICE BACON: Mr Demetriou, do you have anything to say about those  
14 particular dates? (Pause)

15 MS DEMETRIOU: Yes, my Lady. Subject to, of course, the overall caveat that my  
16 solicitors don't know how many documents and how many hits --

17 MRS JUSTICE BACON: Yes.

18 MS DEMETRIOU: -- then yes. But obviously there's the usual liberty to apply if those  
19 dates are simply not feasible.

20 MRS JUSTICE BACON: Yes, and I think, as part of that discussion, you will need to  
21 tell Temu how many hits there are, because if it turns out that there is only a small  
22 number of hits, then I would expect that you could disclose much earlier than 19 June.

23 MS DEMETRIOU: My Lady, we agree.

24 MRS JUSTICE BACON: Right.

25 All right, so does that then dispose of that part of the order and we can then go on to  
26 the WeChat?

1 MS DEMETRIOU: Yes. I think that the order can usefully clarify that the search is in  
2 relation to issue 31, because that was not --

3 MRS JUSTICE BACON: Absolutely, I think the order needs to specify that because  
4 at the moment it's too vague.

5 MS DEMETRIOU: My Lady, I'm grateful.

6 MRS JUSTICE BACON: All right, so then we're on to WeChat.

7 MR PASCOE: WeChat (inaudible).

8 MRS JUSTICE BACON: Yes. Mr Pascoe, so --

9

10 Submissions by MR PASCOE

11 MR PASCOE: (inaudible) paragraphs 8 and 10 of the draft order. There's only one  
12 point we formally dispute, which is whether certain documents that Whaleco has  
13 agreed to produce certain additional documents are within its control or not. Until  
14 yesterday evening, there was a dispute as to whether a witness statement would be  
15 provided. That now is going to be provided. But if I may, I'd just like to pick up on  
16 a few points as to what we'd like it to include to flush out any disagreement between  
17 us. It won't take very long.

18 MRS JUSTICE BACON: But are you asking me to modify the effect of the -- so the  
19 witness statement is as described at paragraph 10.

20 MR PASCOE: Yes.

21 MRS JUSTICE BACON: But is that not sufficient for your purposes, because are you  
22 saying you want further specificity in that?

23 MR PASCOE: No we want a witness statement explaining how the WeChats were  
24 searched for and identified and everything else in that paragraph. I just wanted to  
25 flesh out what we meant by how they were searched for and identified. What we don't  
26 want is to copy and paste of what's already in the correspondence, and I wanted to

1 explain that.

2 MRS JUSTICE BACON: All right, but if you want me to make an order as to something  
3 that's not in paragraph 10, the problem is that if you just simply say something and  
4 then there's a dispute and we come back and you say, "Well, I said it's on the  
5 transcript", but I didn't order it, then we're going to have a disagreement as to whether  
6 I did order exactly what you said you wanted. So have you got some suggested  
7 wording as to what isn't there that you think needs to be there to clarify? For the  
8 avoidance of doubt.

9 MR PASCOE: I'm not sure what I'm going to propose is going to be at all controversial,  
10 my Lady. Can I discuss this idea with the control point, which is the point of  
11 controversy first?

12 MRS JUSTICE BACON: Yes, all right.

13 MR PASCOE: Back to the witness statement. I'm not proposing to change the  
14 wording of the draft order we're asking for.

15 So, can I just start with an example, so we know what we're talking about, for the  
16 purposes of control at page 1619 of the bundle. (Pause)

17 This is one example, which is typical of the others, in the sense that it's an exchange  
18 between a Temu employee and a merchant over WeChat, which is an instant  
19 messaging platform. And the tribunal will see in this one example, the relevant  
20 message in the middle of the page, it says: "The company found out and asked us to  
21 take it down", and so that must be a reference back to some sort of prior and  
22 surrounding conversation and one infers it's a reference to Shein, that's why it's being  
23 disclosed. And this example is typical in that sense; we've been given  
24 snippets -- 77 snippets to be precise -- of WeChats that have been sliced and spliced  
25 from wider conversations, and they've been picked, as far as we can tell, as messages  
26 that purportedly support Whaleco's case on effects.

1 But as you can see, madam, from the example, these are not the original  
2 conversations between Shein and the supplier. They are hearsay evidence about an  
3 original conversation between Shein and supplier. They're reporting to Temu what's  
4 happened and that makes it important that we can understand exactly what these  
5 messages are and what their context is.

6 And so we asked for an account of how these snippets and nothing else made their  
7 way into Whaleco's disclosure. And in light of our exchange just now, I don't think  
8 I need to take the tribunal through that. Suffice to say, they were found through an  
9 unorthodox process where somebody asked somebody else whether they knew of any  
10 relevant evidence, who asked somebody else.

11 MRS JUSTICE BACON: Yes.

12 MR PASCOE: And it's the employees ultimately who came up with these messages.  
13 And can we go then please to Whaleco's letter of 2 April, page 1920 of the bundle,  
14 which crystallises the control issue.

15 MRS JUSTICE BACON: Sorry, bundle page --

16 MR PASCOE: 1920. (Pause)

17 I apologise, it's 1921. (Pause)

18 And at paragraph 15, Herbert Smith take the point for the first time:

19 "Furthermore, as our client confirms that the WeChat conversations in question are  
20 held in the personal accounts of Temu's seller development team members on their  
21 personal devices, rather than work accounts, Temu does not have control over such  
22 personal accounts." [as read]

23 And there's then a reference to a judgment of my Lady, which I'll come back to if I need  
24 to.

25 Now, what are we asking the tribunal to do in light of that position? We asked for  
26 Whaleco to disclose not just these snippets, but the full 24 hour thread of which the

1 snippets formed part, and they've agreed to do that now, but they've only agreed to do  
2 it on a best endeavours basis, and the genesis of that, of course, is that they take the  
3 position that these messages are not in their control, because they're held on personal  
4 devices.

5 Now, we're not able to accept the proposition that these messages are not within  
6 Whaleco's control and therefore we do not agree that Whaleco's obligation should be  
7 watered down on a best endeavours basis. And the problem with the position is that  
8 its premise, that a communication is not in a company's control if it's held on an  
9 employee's personal device or in a personal account, rather than being held on a work  
10 issued device, is just wrong, it's wrong as a matter of law. So can I show you that, in  
11 the Phones4U case, in the authorities bundle please. Tab 3. It starts at page 31 of  
12 the electronic bundle. (Pause)

13 And the tribunal may recall that this was an appeal about whether the judge,  
14 Mr Justice Roth, had had the power to order that the entirety of a personal device of  
15 an employee, or an ex-employee, could be handed over to -- essentially -- an  
16 intermediary to search for relevant messages. So that was obviously a more complex  
17 issue than the one that's before the tribunal today.

18 But one can see from the judgment -- this is the point I take from it -- that there was  
19 really no doubt at all that purely work related messages held on a personal device are  
20 in the control of the employer, as a matter of English law. One can see that from  
21 several paragraphs. Can we start, please, at paragraph 4 of the judgment? (Pause)

22 That sets out the common ground between the parties:

23 "One piece of common ground was that Phones4U were ultimately seeking to obtain  
24 disclosure only of work related emails, and importantly (b) that such emails and  
25 messages, if they exist, are to be regarded in English law as being in the relevant  
26 defendant's control for CPR purposes." [as read]

1 And one then sees that agreed position in more detail at paragraph 19, by reference  
2 to the submissions made by Mr Hoskins, and one can see in particular at (i) of  
3 paragraph 19, Mr Hoskins's submission, that:

4 "Whilst an employer has a right to production of documents from an employee relating  
5 to its business, it has no right to demand personal documents." [as read]

6 We agree with that.

7 That's then followed through at paragraph 20, where Mr Hoskins accepted that the  
8 judge in that case could have made an order for specific disclosure of documents  
9 within the company's control in that sense, even though they were on personal  
10 devices.

11 And that's then endorsed by the Court of Appeal at paragraph 42. The  
12 Court of Appeal said:

13 "It is true that the judge could initially have made an order requiring disclosure by the  
14 defendants of specific categories of documents held on the custodian's devices." [as  
15 read]

16 Now, of course that's not what the judge had done in that case; he'd ordered  
17 a wholesale delivery of the device to an intermediary and that's what was controversial  
18 in the appeal. But what really wasn't controversial was that messages relating to an  
19 employee's work in the course of his or her employment are within the employer's  
20 control, even if they're held on a personal device, such that a company can simply be  
21 ordered to disclose them. That's what the Court of Appeal was saying in  
22 paragraph 42.

23 Now, the very nature of the messages that we're talking about in this case are such  
24 that they are within Whaleco's control, in that sense. They are conversations between  
25 an employee of Temu and a merchant of Temu, carried out in the course of the  
26 employee's employment. That's why the employee is talking to the merchant. They're

1 all work related messages that fall within Temu's control, and in our submission it really  
2 is as simple as that.

3 Now, if we needed to go there, which we don't, Whaleco also has control on the basis  
4 that the employees have shown themselves perfectly ready to hand over these  
5 messages on demand, unsurprisingly, given that they're work related messages, such  
6 that Temu also has practical control. But in my submission, one really doesn't need  
7 to go that far. It's the simple, principled point that where a message relates to work  
8 rather than personal affairs, it's in the employer's control.

9 So where does that go to? Well, quite simply this: Temu's offer to obtain the 24 hour  
10 chats, in the same way as Shein has, should be accepted, of course, but without the  
11 best endeavours qualifier.

12 MRS JUSTICE BACON: What are you saying that they should do that goes beyond  
13 best endeavours?

14 MR PASCOE: Well, they should be ordered to disclose the documents in the same  
15 way that we can be ordered to disclose --

16 MRS JUSTICE BACON: But what can they do that goes beyond their best  
17 endeavours? I mean, I think they just want the best endeavours in there, but in  
18 practical terms, what are you saying that they could do if they did use their best  
19 endeavours? How could they not have complied with the order?

20 MR PASCOE: Well, they would be the ones that have to come and explain why they  
21 haven't produced the documents that they've been ordered to produce. The problem  
22 with the best endeavours qualifiers is it's pregnant within that, that these documents  
23 are not within Whaleco's control. One doesn't ordinarily frame disclosure orders by  
24 way of best endeavours. One could make the point that my Lady has just made in  
25 respect of any disclosure order.

26 MRS JUSTICE BACON: Yes.

1 MR PASCOE: But the reason they want this best endeavours qualifier is specifically  
2 in this paragraph of the draft order. It doesn't appear anywhere else, it's because  
3 they've taken a point of principle that these documents are not within their control and  
4 we can't accept that; it's wrong as a matter of law.

5 And so, quite simply, we invite your Ladyship to -- we invite the tribunal to use our  
6 wording.

7 MRS JUSTICE BACON: All right, thank you. Who's dealing with this, Mr Holmes?

8

9 Submissions by MR HOLMES

10 MR HOLMES: So the difference in the form of order saw reflects a practical difficulty  
11 faced by my client. The WeChat messages were provided by 21 individual members  
12 of Temu's seller development team. They were provided from personal WeChat  
13 accounts and private devices. One of the individuals is no longer employed by Temu.  
14 For the rest, there will need to be discussion with the relevant employees to obtain the  
15 24 hour threads from them. This will take some time and it's also not guaranteed to  
16 be successful. We've proposed best endeavours to reflect those practical difficulties  
17 and we've proposed the date of 15 May 2026, in view both of the need for the  
18 discussions with the relevant employees and the Labour Day holiday period in China  
19 from the 1st to 5th May.

20 We will, of course, explain any practical difficulties that are encountered when we  
21 come to give the disclosure, so there's no question about where the burden lies, if  
22 I can put it like that. We will explain the position.

23 But the best endeavours is simply intended to capture that practical reality; we don't  
24 currently have access to the documents. They're on private devices in personal  
25 accounts and we will need to get the individuals concerned to hand them over.

26 MRS JUSTICE BACON: Do you dispute the point about control that Mr Pascoe --

1 MR HOLMES: No, we don't take a point about control. (Pause)

2 MRS JUSTICE BACON: So apart from the best endeavours, there's a dispute about  
3 the date. They're asking for 30 April, you're asking for the 15 May.

4 MR HOLMES: Yes.

5 MRS JUSTICE BACON: Because there are 21 individuals.

6 MR HOLMES: Yes, there will need to be discussions with them.

7 MRS JUSTICE BACON: Is that date opposed?

8 MR PASCOE: I agree with that.

9 MRS JUSTICE BACON: You can live with the date? All right.

10 (12.28 pm)

11 **Ruling**

12 MRS JUSTICE BACON: I am going to make the order in the form of Mr Pascoe's draft,  
13 but with the date of 15 May as proposed by Temu. Of course, if there are practical  
14 difficulties in the normal way, Temu will just have to explain that when the disclosure  
15 is given. I do not want there to be any suggestion that the obligation is watered down  
16 with a best endeavours phrase, which is not anywhere else in the order, when it is no  
17 longer disputed that, as a matter of principle, Temu does have control over the relevant  
18 documents.

19

20 (12.29 pm)

21

22 Submissions by MR PASCOE

23 MR PASCOE: My Lady, thank you. I think in light of our exchange earlier, I probably  
24 don't need to go through the witness statement. In a nutshell, the point I was going to  
25 make is we really want to know what the employees were asked, the people at the  
26 very end of the chain, what messages they were asked to search for. That's the

1 information that we don't have and I hope it won't be controversial that that's what the  
2 order, as currently drafted, requires.

3 MRS JUSTICE BACON: If there's any doubt, it needs to be in the order. As I said,  
4 I don't want a satellite dispute, on the basis of something that was said on the  
5 transcript. So, if there is a concern about the degree of specificity of the order, let's  
6 look at the order and the drafting of that.

7 MR PASCOE: Yes, it's paragraph 10.

8 MRS JUSTICE BACON: Yes.

9 MR PASCOE: She was served a witness statement explaining how the WeChat  
10 messages disclosed by the defendant were searched for and identified, including how  
11 many accounts and conversations were searched and the basis on which they were  
12 selected.

13 MRS JUSTICE BACON: Yes.

14 MR PASCOE: So, I mean, it may be prudent. I think what I'm asking for is captured  
15 within the words "were searched and identified", and this is why I wanted to flesh it  
16 out. But I suppose what might be prudent is some wording to capture what requests  
17 were made of the employees who provided the messages.

18 MRS JUSTICE BACON: So I suppose you could insert after the word "identified",  
19 a parenthesis which said "including for the avoidance of doubt the requests made of  
20 the relevant employees". Would there be any objection to that?

21 MR HOLMES: No objection to that.

22 MRS JUSTICE BACON: All right. Okay. Thank you.

23 Anything else, Mr Pascoe, on that order?

24 MR PASCOE: No.

25 MRS JUSTICE BACON: All right. Good. So that deals with WeChat. Overlapping  
26 suppliers?

1 MR PASCOE: That's mine too. This has become for present purposes essentially  
2 a timetabling issue.

3 MRS JUSTICE BACON: Well, I'm not sure. There is a query that we had regarding  
4 the substance. Is there still a dispute about geographic locations? Oh, I'm sorry, that's  
5 the supplier numbers. Have I skipped one? Okay. Sorry.  
6 We're at paragraph 9.

7 MR PASCOE: That's right.

8 MRS JUSTICE BACON: So you've got a debate about dates?

9 MR PASCOE: Yes. So, just to put this in context, the overlapping suppliers are those  
10 suppliers on our list of 450 who signed attestations that also supply Temu.

11 MRS JUSTICE BACON: Yes.

12 MR PASCOE: And the process of matching, those two data sets up is less  
13 straightforward than one might think, and so could be in itself contentious.  
14 Now, Whaleco has always said they will give some disclosure in relation to these  
15 overlapping suppliers, but until last night, they haven't committed to a date or to  
16 a specification of what disclosure they would give. We got a letter last night -- I don't  
17 think we need to turn it up -- to say that they can --

18 MRS JUSTICE BACON: I'm not even sure I've got it. Is it in the supplemental bundle?

19 MR PASCOE: I think it came after the supplemental bundle. We can find a copy.

20 MRS JUSTICE BACON: It's all right. If the point is that it's agreed and you've just got  
21 a dispute about a date, I can deal with that without having to see the correspondence.

22 MR PASCOE: Yes, I think so. So we're told that the list will come to 105 suppliers.

23 MRS JUSTICE BACON: All right.

24 MR PASCOE: Subject to some final checks. And Whaleco has offered to provide it  
25 by next Friday, which is 1 May. The offer is then that they will disclose monthly sales  
26 data for those 105 suppliers by 29 May.

1 MRS JUSTICE BACON: So what's coming by 1 May; just the list?

2 MR PASCOE: The list.

3 MRS JUSTICE BACON: Then the monthly sales data, by 29 May. All right.

4 MR PASCOE: That's my understanding.

5 MRS JUSTICE BACON: So, is there a dispute about that?

6 MR PASCOE: Yes. So there is as to the timing. So I should first of all say, that's the  
7 first we've heard that we're getting monthly sales data. We're not in a position today  
8 to debate whether that's adequate or not. We just have to reserve our position.

9 As to the timing. Yes, of course, they should provide the list of suppliers, the 105  
10 suppliers, sooner rather than later. They already know that there are 105 of them, so  
11 that list must be just about ready to go.

12 As I've explained, it has the potential -- we obviously don't know -- to be contentious,  
13 and it also has the potential to be something that calls for comment in our factual  
14 evidence, which is due on 5 June. So time is of the essence.

15 MRS JUSTICE BACON: When are you asking for the list by?

16 MR PASCOE: We would ask for the list by next Monday, 27 April.

17 MRS JUSTICE BACON: Then the monthly sales data by 29 May?

18 MR PASCOE: We say that they're quite long in the tooth on this issue now. They've  
19 had our list for almost three months. Time is running short both against the factual  
20 and the expert evidence. We'd ask for 15 May.

21 MRS JUSTICE BACON: All right. Let me hear what Mr Piccinin has to say about it.

22

23 Submissions by MR PICCININ

24 MR PICCININ: Yes. Madam President, it's right that the issue here is one of dates,  
25 but underlying the issue of dates there is an issue of fairness, actually; fairness to my  
26 clients.

1 So, Mr Pascoe is right that this issue relates to the 450 suppliers that Shein compelled  
2 to sign the attestations, and that essentially the idea is that we want to match those  
3 suppliers with sellers on Temu, and then disclose monthly sales data in relation to  
4 them.

5 But Mr Pascoe is wrong that we've had several months to carry out that task, because,  
6 of course, the background to this is that Shein chose to fight the redesignation of that  
7 list of 450 tooth and nail, taking it to the Court of Appeal. While it was entitled to do  
8 that, it must have understood that the consequence of taking that approach was that  
9 the people instructing us on my side, as in Whaleco, would not get access to the  
10 names until that was resolved. That was a matter of weeks ago; it was in March.

11 MRS JUSTICE BACON: All right. But you now know that there are 105.

12 MR PICCININ: I'm afraid that's not right either. So the process of identifying how  
13 many there are is a complicated process that involves both matching, with our  
14 assistance, but then also going off and trying to find other ones through the PRC  
15 corporate registry. So there may well be significantly more than 105. We don't know  
16 that. We're doing the painstaking manual work of trying to find out how many there  
17 are from that list, and it takes time. That's why we say we need until the end of May  
18 for it.

19 MRS JUSTICE BACON: Do you really need another six working days to do that?  
20 I understand that someone's got to go through and match some stuff, but how many  
21 person days does that take?

22 MR PICCININ: We're actually asking until 29 May. That's the time period that we're  
23 asking for.

24 MRS JUSTICE BACON: I thought the offer was to provide a list by 1 May?

25 MR PICCININ: I don't think so. I think that is their proposal in the draft order  
26 (overspeaking).

1 MR PASCOE: I may have misunderstood.

2 MRS JUSTICE BACON: All right, so you're not actually proposing to do anything by  
3 next Friday?

4 MR PICCININ: No. That wasn't our proposal. The other thing to bear in mind, madam  
5 President, I don't know if you picked this up from some of the other items that have  
6 been debated, but there is then a public holiday in China that runs for five days from  
7 1 May. So unfortunately, all of the various items, you know, there are several others  
8 where we've agreed to give disclosure. So there's quite a lot of work that is going to  
9 be going on, not just on this point. And it is a difficult exercise.

10 Now, set against that, we do really wonder what it is exactly that Shein wants to do  
11 with this, for the purposes of factual evidence. This is really going to be a data  
12 disclosure exercise, the main point of which is to provide some data to the economists  
13 to work with for their expert evidence, which comes much later.

14 We do struggle to understand what it is Shein will do with even a list of names in  
15 circumstances where that's obviously going to be subject to the outer ring of the  
16 confidentiality order in exactly the same way as Shein's 450 is.

17 There certainly shouldn't be, for example, any process of going off and investigating  
18 more deeply within Shein's business, or talking to any of these suppliers about any of  
19 this because it's all within the confidentiality ring.

20 If it transpires, if -- it seems unlikely -- but if it transpires that Shein has something to  
21 say about the matching process and that that technically needs to be done by way of  
22 factual evidence rather than by way of documents or expert evidence, then, of course,  
23 if they only get the list on 29 May, and they need more time to put in a witness  
24 statement on that, they can ask for an extension just on that specific issue.

25 MRS JUSTICE BACON: Why can't you give the list earlier than 29 May? Because in  
26 order to get the data, you'll have to know who you're looking at.

1 MR PICCININ: That's true.

2 MRS JUSTICE BACON: So when can you give a list?

3 MR PICCININ: Well, a complete list, I don't know. What I could propose, madam, is  
4 that we have made some progress already, so I could propose that what we do is  
5 before that five-day holiday that I mentioned, so on 30 April, we provide them with a list  
6 of what we've got at that point. Then the rest of it and the data comes at the end of  
7 May.

8 MRS JUSTICE BACON: But in order to obtain the data, you will have had to have  
9 finalised your list. Because the point is that you're going to be looking for the monthly  
10 sales data for each of the suppliers. So the premise is that you will have identified the  
11 suppliers. If you provide a list of the suppliers that you have identified by 30 April,  
12 what about -- so how long is the public holiday. From 1 May until when?

13 MR PICCININ: Until the 5th.

14 MRS JUSTICE BACON: Until the fifth. So what about then by 8 May, providing any  
15 update to that list, which should then be a final list of the suppliers that you've  
16 identified?

17 MR PICCININ: Madam President, there's not going to be much more that's achieved  
18 between 30 April and 8 May. Like I said, this is a difficult job. But perhaps if we could  
19 pick another date that is in between.

20 MRS JUSTICE BACON: The 11th?

21 MR PICCININ: I think the 12th is a date that has appeared in quite a lot of these  
22 requests because it's a week after the end.

23 MRS JUSTICE BACON: So you say 12 May for a final list?

24 MR PICCININ: Well, for an updated list, madam President. If we find more of them  
25 that are matched, it does seem unfair to my clients to be shut out from telling the  
26 tribunal that actually it's not just -- I don't know.

1 MRS JUSTICE BACON: No. All right. So you'll provide the updated list.

2 MR PICCININ: On the 12th, and then a final list with the data on the 29th.

3 MRS JUSTICE BACON: Is there any reason why you can't provide the data on the  
4 22nd?

5 MR PICCININ: Sorry, the data on the 22nd?

6 MRS JUSTICE BACON: Yes, by bringing the last date forward by a week?

7 MR HOLMES: The issue is just that -- we accept that we may never get to the final  
8 truth because it's a difficult task of trying to match suppliers with one name with  
9 different names (overspeaking).

10 MRS JUSTICE BACON: Yes, but you'll have identified most of the suppliers.

11 MR PICCININ: That we're going to.

12 MRS JUSTICE BACON: That you're going to, by the 12th. Then it's a question of  
13 extracting their sales data. Is there any evidence that the extracting of the sales data  
14 requires more than eight working days from the last of the ones you've identified. In  
15 fact, you'll have already identified a number of them already now, and certainly by  
16 30 April.

17 So is there any reason why you are not able to provide the sales data for those by  
18 22 May?

19 MR PICCININ: All it is, is that if you bring the longstop date forward, you will just have  
20 the effect of precluding us from finding additional names and additional data just  
21 because everything will have to start a week earlier. That's the point.

22 I don't detect that my friend is actually concerned about the date for the data, because  
23 his concern is about the time for putting in fact evidence, and the data is for the experts.

24 MRS JUSTICE BACON: I see. All right. Thank you, Mr Piccinin. I'll just hear  
25 Mr Pascoe on this, the longstop date.

26

1 Submissions by MR PASCOE

2 MR PASCOE: Yes, my Lady, the overall objective is to impose some discipline on this  
3 process. It can't be a never ending rolling process. There are two sticks in the ground.  
4 One is the provision of the list and one is the provision of the data. On the list, we  
5 don't see any reason at all why they shouldn't give us what they currently have, and  
6 we'd then be prepared to accept an updated list by the date your Ladyship proposed.

7 MRS JUSTICE BACON: 12 May, and then the data ...?

8 MR PASCOE: And the data -- I mean, what we say is they have had the list of 450  
9 since 5 March.

10 MRS JUSTICE BACON: It's all right. But we are where we are, and where we are is  
11 15 minutes before the lunch break. So in the name of imposing some discipline on  
12 this hearing, do you have a real problem in terms of the trial timetable if the data are  
13 provided on 29 May, rather than at the earlier date that you've suggested?

14 MR PASCOE: I don't want to suggest (inaudible) in between this tribunal. It's --

15 MRS JUSTICE BACON: All right. Okay, so what I'm going to do is I will order that the  
16 list, so far as is available by 30 April, shall be provided, so that will be hopefully a fairly  
17 complete list. Any update by 12 May and the monthly sales data to be provided by  
18 29 May.

19 Right.

20 MR PASCOE: The (inaudible) May is the monthly sales data. We understand that to  
21 be for the relevant period, capital R, capital P. I don't know if that's -- (Pause)  
22 I'm seeing you nodding --

23 MR PICCININ: That's right.

24 MRS JUSTICE BACON: All right. So you probably want to put that in the order as  
25 well. (Pause)

26 Or for the relevant period, all right.

1 So then perhaps we can just make some progress on the last of the issues I have  
2 other than the expert evidence. How long is the debate about the supplier numbers  
3 going to take?

4 MR PASCOE: I think the actual debate that is covered in the applications can probably  
5 be done before lunch, but then some odds and ends about geographical location and  
6 local suppliers that have been raised ex-post-facto, if I can put it that way, by Whaleco.  
7 I think if we're going to debate those, that will probably be over lunch.

8 MRS JUSTICE BACON: Right. Okay, maybe we should just flag the geographical  
9 data point so that we can just see what the compass of the dispute is, because I think  
10 Mr Davies might have some points on that. Certainly we want to understand what is  
11 required and what is needed, and then maybe also it would be useful for us to indicate  
12 some of our concerns about the expert evidence, because maybe that would enable  
13 you to use the lunch adjournment fruitfully, if that means that we don't get to the  
14 supplier numbers application until after lunch, especially if we're not going to finish it  
15 off anyway. If you'd said five minutes, I would have dealt with that now. So can you  
16 just explain firstly what the dispute is as to the geographical data?

17 MR PASCOE: My Lady, it's not our dispute. I think it's Whaleco's dispute that they  
18 say that we should have provided a breakdown of our suppliers by reference to regions  
19 within individual countries. So you provide the country sub-region --

20 MRS JUSTICE BACON: Yes.

21 MR PASCOE: -- as we have provided the global region in the country, much of that  
22 (inaudible) granularity.

23 MRS JUSTICE BACON: All right, so that's what they've asked for?

24 MR PASCOE: Well, there's no application to that effect.

25 MRS JUSTICE BACON: All right.

26 MR PASCOE: They've raised it as a quasi responsive point to our application on

1 something quite different.

2 MRS JUSTICE BACON: Is this still pursued?

3

4 Discussion re market definition

5 MR PICCININ: Madam, yes, it is. I mean, this is a bit of an odd one in that the  
6 application that is being pursued by Shein actually bears no relation to what was  
7 ordered under the DRD. What was ordered would actually concern both parties, not  
8 just Temu, and it's actually Shein who has not complied with what was ordered, not  
9 Temu.

10 What we say, you know, ultimately what we're interested in is something practical,  
11 which is identifying a common basis on which data on these suppliers and their  
12 locations can be formulated so that the tribunal is presented with something useful,  
13 which is the same kind of data about suppliers for Shein and sellers on Temu. We do  
14 say that that will descend down to the level of provinces, at least in China. That was  
15 actually the whole point of where we started on this.

16 But our practical suggestion is that if the experts get together -- because at the moment  
17 there is no expert evidence on this in front of you -- if the experts get together and try  
18 and discuss what would be a useful common basis across the two companies, we  
19 suspect that they could agree that in a very short period of time, and then each of the  
20 parties can go about providing it on that consistent basis.

21 MR DAVIES: So I mean, I don't want to say anything about what was previously  
22 ordered. Obviously that's for her Ladyship, but I just say that we are a bit sceptical  
23 about effects on competition on Temu's UK platform depending upon the distribution  
24 of delisted suppliers between different regions in China.

25 I mean, I can just about see that you could argue that it makes a difference whether  
26 they're in Tokyo or China, for example. But we've not seen a theory of harm properly

1 set out, if you like, as to why that would matter for Temu's UK platform.

2 MR PICCININ: Yes. The short answer to that is that our case is that the suppliers  
3 who are able to supply in what we call the UFF market, the ultra fast fashion market,  
4 are a special bunch. They're people with their businesses with very particular  
5 characteristics and capabilities.

6 What we're seeing in the evidence, certainly on our side, is that there seems to be  
7 a cluster of them, particularly in Guangdong in China, and so we're particularly  
8 interested in the concentration of those suppliers and sellers in that region. Because  
9 what seems to be the position is that the limited group of people who can really do  
10 this, who are capable of turning around a new design into a product very quickly, with  
11 little or no by way of commitments as to what the inventory is going to be, at very low  
12 cost, and then constantly cycling through different designs that then get shipped very  
13 quickly at low cost, it's a very particular group of people.

14 China, as you know, sir, is a very large place, 9.6 million square kilometres, so just  
15 being told, "Look, all of our suppliers" -- effectively this is what Shein says -- "All of our  
16 suppliers are somewhere in that zone". They don't know whether they're in  
17 Guangdong or Shandong, but they're somewhere in China. It doesn't really tell us  
18 very much and doesn't give us what we need to address that.

19 MR DAVIES: In the first half of what you just said there, it sounds like -- am I right in  
20 this -- you are using region as the geographic market, as a proxy for what is actually  
21 a product market, that there are certain producers who produce something -- whose  
22 way of producing it is different and that you need to identify just that category of  
23 suppliers, and you, for some reason, cannot identify who those suppliers actually are,  
24 but you happen to know they're concentrated in this province. So if you can get the  
25 share of delisted suppliers from that province, that's in some way a proxy for that.

26 MR PICCININ: Yes.

1 MR DAVIES: Which is a narrower market than the market of all suppliers from China.

2 MR PICCININ: Yes. I don't want to get too far into market definition. Obviously, there

3 are two aspects to it. One is the consumer facing side, and then there's the question

4 of who's actually supplying the products that are going to end up on these platforms.

5 Both are going to be of interest at trial, which is why when we get on to the expert

6 evidence, you're going to see that it's common ground that there should be expert

7 evidence on the suppliers.

8 As to that question of -- perhaps if I could just show you in our pleading what we've

9 said about this already. Our defence and counterclaim is at tab 19. It begins on

10 page 234 (sic) and it's paragraph 38.

11 MR DAVIES: Sorry, did you say 234?

12 MR PICCININ: Sorry, that's just the beginning, that paragraph 38 is at page 264. Of

13 course, all of this, it says at the beginning of paragraph 38, is going to be subject to

14 the development of --

15 MR DAVIES: I'm sorry, I don't think I'm on the right page.

16 MR PICCININ: I'm sorry, it's page 264.

17 MRS JUSTICE BACON: Does that delineate the product market by reference to the

18 suppliers in a particular province? You just say reliance on limited number of

19 suppliers, but at that moment that's not geographically delimited.

20 MR PICCININ: That's right. Because at the moment we haven't developed the case

21 beyond this, but we are pointing to the limited number of suppliers capable of

22 manufacturing new designs. What seems to us is that they are heavily concentrated

23 in one place. This is just going to be one way in which we tackle: the identification of

24 who it is we're really talking about. It's not the whole of China. It's these parts of China

25 where you get these clusters.

26 MR DAVIES: Okay. We're not necessarily pushing back against disclosure of any

1 geographic information, but that sounds like a more targeted question than, as it were,  
2 necessarily for every supplier needing to know where they were. There is this  
3 particular question whether they are part of this group of suppliers, and you're not at  
4 the moment able to set a criterion that defines that group of suppliers, but you think  
5 they're associated with a particular province, and therefore you are interested in that  
6 one province; is that correct?

7 MR PICCININ: Yes. Our proposal was going to be that when we're talking about  
8 provinces, it's only China that we need to know for.

9 MR DAVIES: Yes.

10 MR PICCININ: That's where all of Shein's suppliers --

11 MR DAVIES: Yes, (inaudible) are within Turkey, where they are.

12 MR PICCININ: Exactly. And then what we were going to say is that they should take  
13 the top five, as in the five provinces in which they have the most. Then after that, just  
14 give us an aggregated figure for the rest, and that we would do the same.

15 MRS JUSTICE BACON: So take the top five provinces and then do what?

16 MR PICCININ: The top five provinces in China and give us the percentage of their  
17 suppliers that are in each of those provinces.

18 MR DAVIES: But that sounds like a broader point from the one you were talking about  
19 earlier. That sounds, again, like you're trying to obtain geographic data in a much  
20 more general sense, rather than just trying to understand where this, I'll say, cluster of  
21 suitable suppliers is located. We're just trying to keep things proportionate to the likely  
22 use that's going to be made of this. If there is an argument that there is a particular  
23 type of supplier and they're particularly concentrated in that region, then all you really  
24 need (inaudible) province rather, then all you need is information on that province.

25 MRS JUSTICE BACON: Perhaps, Mr Piccinin, having had this debate, you can just  
26 take this away for lunch and then come back with a perhaps more developed proposal,

1 | which meets our objective of trying to ensure that we don't get disproportionate amount  
2 | of information requests or indeed that we sort of set a hare running that actually isn't  
3 | relevant to the final issues at the trial. Why don't we just park that there?

4 | I just wanted to then, in the remaining few minutes before the lunch adjournment, just  
5 | identify a couple of the problems we had with the expert evidence proposal as  
6 | currently formulated. Again, this is just me letting you know some of our concerns that  
7 | you then may be able to address after lunch.

8 | First of all, at the moment I'm not sure if any experts have been identified. If they  
9 | haven't, we'll need a date for identification of experts, bearing in mind, of course, the  
10 | points in the experts practice direction. I'm flushing this out early so that if anyone has  
11 | any problems with the experts in their prior involvement -- first of all, any indications of  
12 | prior involvement are dealt with early on by disclosure -- and then there's sufficient  
13 | time in the process for any objections to be taken, so we don't end up dealing with this  
14 | too late in the expert process.

15 | Secondly, at the moment, there aren't any page lengths specified, as far as I'm aware.  
16 | This may have been addressed at a previous CMC. It was? So you can just let me  
17 | know where you got to. It probably needs to be put somewhere on the directions to  
18 | trial. I've got it in my annex 1; I haven't got page length in there, so maybe you can  
19 | just tell me what --

20 | MR PICCININ: It was the 8 October order from Mr Lykiardopoulos.

21 | MRS JUSTICE BACON: Yes, all right.

22 | MR PICCININ: So tab 11, page 146.

23 | MRS JUSTICE BACON: So hearing bundle, page 146.

24 | MR PICCININ: And it's paragraph 12.

25 | MRS JUSTICE BACON: Okay, I'll have a look at that. Has there been any discussion  
26 | of the format of the agree/disagree statements?

1 MR PICCININ: No, is the answer to that.

2 MRS JUSTICE BACON: No? Okay, so then we just like to have a discussion of that.

3 Probably the expert list of issues needs to refer to the pleaded case, just noting the  
4 comments of the tribunal in the bulk mail case. That's [2025] CAT 84, paragraph 73.

5 It doesn't say anything particularly extraordinary other than that it's important to have  
6 reference to the pleaded case, but I'm just giving you the reference. But mostly, that's  
7 some sort of nuts and bolts, but then the substance of our concern is that, at the  
8 moment, the issues as set out in the list seem largely too vague, especially, for  
9 example, issues 5 to 7 on the economic issues. I think we need to understand exactly  
10 what it is proposed that the economists should address, because we don't want the  
11 economists going off and dealing with matters of fact or legal submission.

12 So I think that what we will need -- and this may not be for this afternoon -- maybe we  
13 just need to set out a process by which this is bottomed out at some later date soon.  
14 But we want to know exactly what analysis the economists are going to do. That is,  
15 properly speaking, economic analysis. For example, is it proposed that some kind of  
16 quantitative analysis should be done? If so, exactly what is that? Because what I don't  
17 want is a very discursive expert report which basically pleads the whole case. What  
18 I'd really like to do is for the case on these points to be set out by lawyers, and you're  
19 all very experienced and you can do that and I don't want that to be done via sort of  
20 a proxy of having the economists opining on things which are really legal or factual  
21 issues.

22 Similarly, in relation to, for example, issues 8 or 9, is economic evidence necessary at  
23 all? Are these really legal/factual points? We have some concerns about whether  
24 there is anything in there that the economists really need to be doing.

25 Supply market issue. Issue 10B seems extremely vague. Again, this will need to be  
26 specified much more clearly to explain exactly what analysis is being carried out and

1 the same for issues 11 through to 14 on the consumer and retail issues. These  
2 questions are enormously broad and one can go in lots of different directions that are  
3 not relevant to the pleaded case. So, at the very least, some refinement of these is  
4 going to be necessary, and as I said, I'm not saying that you should go away and refine  
5 it all over lunch, and --

6 MR DAVIES: My Lady, just to add to your homework over lunch, I think we're also  
7 concerned about possible overlap between the subject matter of the economist  
8 evidence that you've suggested and the industry experts in the other two expert  
9 categories. I think if you're talking about something like how consumers choose on  
10 a marketplace, we want to see that discussed in one place and not in several different  
11 expert reports from different disciplines.

12 MRS JUSTICE BACON: Yes, and an example of that is number 11, as well as 10B.  
13 There are various issues which seem to be addressed, potentially, by several different  
14 experts. And I think, as Mr Davis has said, it's important that we don't have sort of  
15 very discursive treatment of this across multiple different expert statements and that  
16 what we are getting is closely confined and is really expert evidence, rather than  
17 discussion of the facts or law.

18 So perhaps with that food for thought, I can just leave those comments there, and we'll  
19 return to this after the lunch adjournment. 2.00.

20 (1.01 pm)

21 (The short adjournment)

22 (2.01 pm)

23 MRS JUSTICE BACON: Yes, Mr Piccinin.

24 MR PICCININ: Madam President, I just wanted to continue where we left off on the  
25 supplier numbers and geographic location point. It will really only take a few minutes.  
26 But if I can just position this by showing you where it comes from and then what's been

1 done and then get down to our concrete proposal, that might help.

2 So in the hearing bundle, it's page 730, tab 54. This is the DRD, just to show you what  
3 was actually ordered. And this is the basis for all of the discussion that we're having  
4 on this topic, both for what Mr Pascoe wants and for what I'm asking for, and it's on  
5 the right-hand side, what was ordered. It's that a witness statement should be  
6 provided by relevant persons at both parties. Then regarding the geographic location  
7 of the respective parties, suppliers by country and region and the proportion by number  
8 for each country region. So that's what was ordered.

9 MRS JUSTICE BACON: I think I'm on the wrong page. Can you give me the page  
10 number again?

11 MR PICCININ: 730.

12 MRS JUSTICE BACON: Oh, right, that's better.

13 MR PICCININ: Yes?

14 MRS JUSTICE BACON: Yes.

15 MR PICCININ: It wasn't actually an order for a witness statement about what the  
16 supplier numbers -- the total numbers -- were at all. It was an order that was about  
17 the geographic location by country and region, so not just the country but also the  
18 region. And then the proportion, which was by number as opposed to by value, and  
19 the reason for that was that Shein said that they couldn't do by value. So that's the  
20 origin of it.

21 And then just to provide a little bit further context, we set out in a letter that the  
22 paragraph of the witness statement from Mr Parker, our economist, that was the basis  
23 for this order, and that's at page 1930 of the bundle. (Pause)

24 MR DAVIES: Yes.

25 MR PICCININ: And you can see there in the indent under paragraph 6, that what  
26 Mr Parker said was that from an economic perspective, the information on the location

1 of suppliers is essential for the definition of the geographic scope of the relevant  
2 market, because the suppliers used are likely to affect the products that the parties  
3 are able to offer to consumers. The location of the suppliers may also affect each  
4 party's ability to create a network of relationships with multiple suppliers that can  
5 ensure the quality, speed and broad availability of products that are at the heart of the  
6 party's business models, and to monitor their performance against these and other  
7 relevant characteristics.

8 So that that's where it came from, and that's why the order that was made.

9 If I can then just show you very briefly what has been done pursuant to that order. If  
10 I start with what we've done, it's actually spread out across two witness statements of  
11 Ms Xie, because we provided one, and then she didn't like it, so we gave them more  
12 information to fill that in.

13 So if we go to page 1062 of the bundle. (Pause)

14 And you can see in paragraph 6 that Ms Xie actually begins by providing more than  
15 what was asked for in the order at all, which didn't say anything about supplier  
16 numbers.

17 MR DAVIES: Sorry, 1062?

18 MR PICCININ: 1062, and you can see paragraph 6.

19 MR DAVIES: Starting, "I understand from document".

20 MR PICCININ: Exactly. So she actually gives numbers of suppliers of fashion  
21 products that offered for sale on Temu UK's platform. I won't read them out. That  
22 went further actually than what was asked for.

23 Then she goes on to give the percentage of the stores on Temu UK's platform which  
24 were affected by the takedown notices that were operated by sellers in a particular  
25 province and then from that same sample sets out the top five provinces down to the  
26 percentage point, and then what's left for other regions of China.

1 And then she says in paragraph 8 that that sample is effectively a reasonable proxy  
2 for what was being asked for, which is the geographic distribution of the whole set that  
3 are selling on Temu UK.

4 But then just to complete the picture, if we go to page 1098, this is from the second  
5 witness statement of Ms Xie. So we've moved beyond now -- so you're just looking at  
6 paragraph 36 -- we've moved beyond looking at that sample of the suppliers that were  
7 affected by the takedown notices; now we're looking at the whole set of active sellers,  
8 of fashion products on Temu UK's platform, except for those with a local tag, and I'll  
9 come back to that. And then what she does is she gives the percentages, this time,  
10 in each of December 2022 -- 2023, 2024 and 2025, that are located in Guangdong  
11 and that the local tags explain the paragraph 35. Essentially there's a small number  
12 of suppliers who technically have warehouses here that are able to ship from here as  
13 well.

14 MRS JUSTICE BACON: And this is how this debate came about, but the question is:  
15 really, what needs to be provided going forward --

16 MR PICCININ: Yes.

17 MRS JUSTICE BACON: -- with a mind to proportionality and what is actually relevant  
18 to the case.

19 MR PICCININ: Yes, I except that. It was just by way of background. And our proposal  
20 is that if they provide the same as what we see here, so the percentage of their  
21 suppliers in each of those years who are located in Guangdong province, then that's  
22 (inaudible). That's not what was initially ordered, it's much less than what was initially  
23 ordered. But that's (inaudible).

24 MRS JUSTICE BACON: So all you need is the equivalent information to that, set out  
25 at paragraph 36.

26 MR PICCININ: Yes.

1 MRS JUSTICE BACON: But that's a different -- that's quite different to the basis on  
2 which this was initially put before the break, which was about trying to have consistent  
3 data sets, which seems to have nothing to do with actually knowing the percentage of  
4 sellers located in a particular province.

5 MR PICCININ: Well, no, that's not quite right. I'm asking for the same thing across  
6 the two parties. So that in both cases we will have that information on the  
7 concentration of suppliers in Guangdong. I would have preferred to have what we  
8 provided in the first witness statement, which was exactly what I asked for before the  
9 break, five provinces, but hearing what the tribunal has said about five being too many,  
10 I'll come back (inaudible).

11 MRS JUSTICE BACON: But I just don't understand; this is just a number,  
12 a percentage, of suppliers. What's this got to do with having harmonised data sets?

13 MR PICCININ: Well, what I meant by harmonised is the same information being  
14 provided by both parties about their supplier (inaudible).

15 MRS JUSTICE BACON: So it's not about a data set, it's just that you want the  
16 percentage that you've given at A, B and C, you just want those three percentages  
17 given. All right. Is that what you meant by data set?

18 MR PICCININ: What I meant was that the full set of data, that you've asked me to cut  
19 down.

20 MRS JUSTICE BACON: All right. (Pause)

21 MR DAVIES: Yes, I think so, and this is because the percentages in Guangdong  
22 province, the economists -- or at least Parker thinks -- that that could be treated as  
23 a kind of proxy for these particular sellers who are particularly quick to respond and so  
24 on.

25 MR PICCININ: Yes, it provides us with another angle, more information about that.

26 MRS JUSTICE BACON: Is there any problem with providing those numbers?

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Submissions by MR PASCOE

MR PASCOE: So this is, I think, the tribunal's (inaudible) discussion. It's our application, (inaudible), which is why it's such a wide-ranging discussion. But Temu's new case that appears to be emerging from Mr Piccinin on his feet is what he calls a "special bunch of suppliers" who can meet Temu's needs. They're the only ones who can meet Temu's needs, and they are all based in a single province in China. Now, that case, if it is their case, is completely unpleaded. There's no trace of it whatsoever in the pleading. And of course, as I've said, it's not been heralded by any sort of application at which we could have commented on such a case.

Now, if Mr Piccinin and his clients want to run a case that there is an extraordinarily specific market for suppliers which has been foreclosed, limited to suppliers in a specific region of China, that should be pleaded, and that's not just a point of form, it's because we would then be entitled to probe that case, in particular through disclosure from Temu. In our submission, it's a wholly improbable case, including when one looks at the existing figures which the tribunal has just seen as to how many suppliers Temu already has that are capable of meeting its needs.

But the fact that it's improbable, obviously the tribunal isn't going to decide that today, but it does mean we would be entitled to probe such an improbable case, through disclosure.

Now, what in my submission, is not permissible is for Mr Piccinin to get on his feet today, run a case that hasn't been heralded by any pleading or application, and just ask for a bit more data on the basis that this is the direction of travel of their own experts' thinking. That's not the right way to go about it. If Mr Piccinin wants to run this case and ask for more data, he should be directed to re-plead.

MRS JUSTICE BACON: Do you have a problem? Leaving aside the pleading.

1 MR PASCOE: Three numbers, right?

2 MRS JUSTICE BACON: Yes.

3 MR PASCOE: These are three numbers, I think, is that right?

4 MRS JUSTICE BACON: Yes. Leaving aside the pleading point which I'll come on to,  
5 do you have in principle a problem with giving these three numbers?

6 MR PASCOE: Well, we do in practice in the sense that these numbers are not at our  
7 fingertips, and apparently it's a manual process. So it would be putting us to work.

8 MRS JUSTICE BACON: To what degree of work, if you were to go away and just.

9 MR PASCOE: Can I just take some instructions?

10 MRS JUSTICE BACON: Yes.

11 MR PASCOE: I'm having some difficulty answering your ladyship's question. Of  
12 course, the reason for that is because there hasn't been an application, so we haven't  
13 put evidence in to explain how it would be difficult. All I can say is we don't have it at  
14 our fingertips. It's not the case of pressing a button and we pull all of our suppliers  
15 from this particular province. I'm afraid that's all I can say on my feet.

16 MRS JUSTICE BACON: All right. So basically your position is that this relates to  
17 a point that hasn't been pleaded. You just don't know how difficult it would be to obtain  
18 this; that you say there wasn't an application for it. But the draft order refers to data  
19 on supply numbers and their geographic locations. Are you saying that that wasn't the  
20 subject of any application?

21 MR PASCOE: No, that's what's already been ordered.

22 MRS JUSTICE BACON: No, sorry. I mean the draft order in the defendant's proposed  
23 wording does relate to data on supply numbers and their geographic locations.

24 MR PASCOE: So both parties have provided that. What's now being asked for is  
25 something very specific, which is the number of suppliers in a single province in China.  
26 That's what I'm resisting.

1 MRS JUSTICE BACON: Yes.

2 MR PASCOE: That's not applied for; that's why it's not in the draft order. That's come  
3 up today, essentially, in the course of fencing about my application, which I still need  
4 to make on supply numbers.

5 MRS JUSTICE BACON: Yes. It's not clear to me why it would be very difficult to get  
6 these three numbers, but your point is that you just don't know because that's not the  
7 application that's been advanced?

8 MR PASCOE: Yes, and we would have put it in evidence if we'd had notice.

9 MRS JUSTICE BACON: Yes. But there's a more general point, which we have  
10 traversed to a certain extent with Mr Piccinin, which was, where is this in the pleaded  
11 case? It does seem to me that if this is the direction of travel, it's important that that  
12 should be set out clearly so that everyone knows where they're standing.

13 What Mr Piccinin is saying is he seems to be narrowing his case in some way, but at  
14 the moment exactly what is being said is not clear to me.

15 MR PASCOE: No. That's not going to be conducive to the expert process going  
16 forwards either.

17 MRS JUSTICE BACON: All right. Well, I think I just need to hear from Mr Piccinin as  
18 to how he proposes that we can deal with this going forward.

19 We'll obviously come back to your application, Mr Pascoe.

20 But, Mr Piccinin, I do have some sympathy for the point. It's not clear at all how this  
21 comes out of the pleadings. So, I'm not sure that we can properly deal with this today.

22 We've got other issues to deal with at this CMC. How do you propose that we could  
23 take this forward, because I'm reluctant to make to order provision of data unless  
24 everyone understands why it's being provided.

25

26 Submissions by MR PICCININ

1 MR PICCININ: Madam, my answer to that is that the reason there's no application  
2 here is that this is actually a debate that has happened and resulted in an order that  
3 was made in September last year. Shein accepted that they needed to give disclosure  
4 pursuant to the other two. We just looked at that before. It was on page 730.  
5 I don't know what they thought that meant if it didn't mean providing information on not  
6 just the countries in which their suppliers are located, but the proportions of countries  
7 and regions.

8 MRS JUSTICE BACON: Well, let me just look. Let's go back to the DRD.

9 MR PICCININ: Page 730. Perhaps we should show you what they've actually done,  
10 because it is it's actually quite extraordinary.

11 MRS JUSTICE BACON: But is there an application for further disclosure that is before  
12 us today that sets this point out?

13 MR PICCININ: No.

14 MRS JUSTICE BACON: So Mr Pascoe is saying there isn't any application for this.

15 MR PASCOE: No.

16 MR PICCININ: Our response to their application was to say that the practical  
17 way -- and perhaps this is still the (inaudible) the practical way to deal with this is that  
18 the economists (inaudible) and discuss what (inaudible), what would be useful for them  
19 as a format for the data to be provided under this DRD issue.

20 MRS JUSTICE BACON: Right. So you are accepting that there is no application for  
21 what you want? You want --

22 MR PICCININ: No. There was an order that provided significantly more than what I'm  
23 now asking for. This is a narrowing.

24 MRS JUSTICE BACON: So let's go back to the order. 730.

25 MR PICCININ: 730. So there's the geographic location of Shein's suppliers by  
26 country.

1 MRS JUSTICE BACON: 730 of the hearing bundle.

2 MR PICCININ: It's on the right-hand side.

3 MRS JUSTICE BACON: All right. So you say you've set that out and they haven't?

4 MR PICCININ: Yes. I will show you what they've done. It's on page 861. If you go  
5 back to 860, you'll see what this is (inaudible). At the bottom of 861, paragraph  
6 geographic scope of Shein suppliers. Paragraph 7. So unlike Shein, they don't give  
7 us any numbers at all under DRD 2. Then they go onto paragraph 8, and just refer to  
8 what's in their public sustainability and social impact report, which says their suppliers  
9 are in China, Turkey and Brazil in 2024.

10 Then they say, well, it's more than 90, so somewhere between 90 and 100 per cent in  
11 China; and each of Brazil and Turkey are less than 5 per cent, so somewhere between  
12 zero and (overspeaking) --

13 MRS JUSTICE BACON: Yes, all right. So are you saying --

14 MR PICCININ: Then they go on and they tell us that China is a country on the  
15 continent of Asia, Brazil is a country on the continent of South America --

16 MR DAVIES: So it's a difference on how to interpret the word "region"?

17 MR PICCININ: Yes.

18 MR DAVIES: You're taking it to mean smaller than a country; they're taking it to mean  
19 bigger than a country?

20 MR PICCININ: Because if it's bigger, it's not country (inaudible).

21 MRS JUSTICE BACON: All right. But the point is that there was an order; you say  
22 that they haven't complied; you haven't made an application; you're trying to get  
23 something else by an order regarding what the economist should agree, but you  
24 haven't made an application for these data to be provided, to be determined at this  
25 CMC.

26 MR PASCOE: Absolutely.

1 MRS JUSTICE BACON: Right. So, with that context in mind, let's turn to the  
2 application that Mr Pascoe wants to make.

3

4 Submissions by MR PASCOE

5 MR PASCOE: Yes. My Lady, it starts at paragraph 11 of the draft order. The critical  
6 point between us is whether the numbers and geographical breakdown that Temu has  
7 supplied should be limited to those suppliers who in fact supplied the UK website at  
8 the time that the snapshot was taken, as opposed to the suppliers that supplied Temu,  
9 being a much bigger global enterprise at the time the snapshot was taken. That's the  
10 point between us on the application.

11 MRS JUSTICE BACON: Yes.

12 MR PASCOE: You've seen, if we could just go back to it, please, at page 1062 of the  
13 bundle. Ms Xie's first statement. She's given a series of confidential figures, three  
14 confidential figures. They are a snapshot. So they're taken in December of each of  
15 the three years, 2023, 2024, 2025. The tribunal will obviously see the number of  
16 suppliers, and will compare that to the number of Shein suppliers, and also the  
17 trajectory over the period when the market is alleged to have been foreclosed.

18 Just by way of background, these figures are something of a puzzle because Temu,  
19 in its public filing, said that it had a merchant base of around 15.8 million. That's what's  
20 said in its public filing. Now, of course, that's an issue that may need to be unpicked  
21 at trial. But for today's purposes, we're concerned by the fact that Ms Xie has limited  
22 her statement to sellers which sold on Temu's UK website.

23 One can see that from the wording of paragraph 6 of her statement, it's the number of  
24 ultra fast fashion active sellers that offered for sale products on Temu's UK platform.

25 Now, the reason we say that won't do is that the issue for trial is whether Temu's  
26 access to suppliers has been foreclosed, such that it can't compete on the merits.

1 That's its case.

2 Now, true it is, of course, that the claim is for loss of profits on the UK sites. No dispute  
3 about that. But the question for trial is the total pool of suppliers which were capable  
4 of supplying on that website. I understand that to have been a premise of the case  
5 theory that Mr Piccinin began to develop this morning.

6 In other words, the issue is not how many suppliers actually happen to have been  
7 selling a product on the UK website at the time of the snapshot; it's how many suppliers  
8 are available to sell on the UK website, which are of course two different things.

9 Now, the tribunal can see from the next paragraph of Ms Xie's statement over the  
10 page, where these sellers are based. In our submission, it can't make the blindest bit  
11 of difference in that respect whether a seller is in fact selling, at the time of the  
12 snapshot, on the French or the Dutch or the Italian Temu website. The point is that  
13 this is a total pool of suppliers from which Temu can draw.

14 Now, of course, Temu's expert can make whatever points they want about whether  
15 particular types of suppliers are able to supply the UK website, subject to that being  
16 properly pleaded, but that would be Temu's case to make.

17 At the disclosure stage, we're entitled to the figures for the whole pool. So we see,  
18 quite simply, an order that Ms Xie gets rid of her qualification in paragraph 6, as to  
19 suppliers that supplied only on the UK platform, and include the total number of  
20 suppliers that offer products on the Temu website globally, just as Shein has done.

21 MRS JUSTICE BACON: Yes. And you don't introduce any issue as to geographic  
22 locations of suppliers? It's no part of your application?

23 MR PASCOE: No, that's not part of our application.

24 MRS JUSTICE BACON: Right. All right, thank you.

25 Let's hear Mr Piccinin on Mr Pascoe's application.

26

1 Submissions by MR PICCININ

2 MR PICCININ: Yes. Four points. The first thing is Mr Pascoe repeated a number that  
3 appears in Shein's skeleton argument, which was that Temu actually has 15.8 million  
4 versions. That's in their skeleton at paragraph 22. I just want to correct that. That's  
5 completely wrong.

6 On a cursory glance at the report, you will see that that is the total figure for the parent  
7 company, and is not related to Temu's platform. (Inaudible), the parent company's  
8 other platform, and it's also not limited to fashion. That is just a complete irrelevance.  
9 The second point is that it's quite extraordinary, and this is where I was starting. If you  
10 go back to page 730 of the bundle, which is the basis for this application (inaudible)  
11 comply with what was ordered on page 730. That's all about the geographic location  
12 of the suppliers, not about the number of suppliers at all.

13 I cannot understand, Mr Pascoe says that he's got no interest in -- there's no part of  
14 his application that anything is to do with geographic location, but that is the entire  
15 subject matter. But DRD 2, this was additional information that Temu provided in the  
16 course of answering that question, but it's not what was ordered at all initially. As  
17 we've seen, that's not what (audio distortion). He just gave us the 1990 plus, and then  
18 suppliers and suppliers. So this whole application is just disconnected from its  
19 supposed basis.

20 The third point is what it's now come down to is that Shein wants to know, not just  
21 about the number of studies themselves on Temu's platform in the UK, but he also  
22 wants to know about sellers who, in that relevant period of time, have not sold anything  
23 at all. He wants to add those sellers to the total to make some kind of point, which  
24 hasn't yet been elaborated. We don't agree that those of any particular interest in the  
25 case if there are people who haven't sold anything at all in the UK. This whole case  
26 is about competition to supplying customers in the UK. Then we don't see what the

1 purpose is in providing those numbers.

2 But finally, I hope the tribunal has appreciated from my posture in asking for the  
3 experts to get together and meet, we don't actually have any objection to providing  
4 that information in the interim then, provided that both parties are being treated equally  
5 and both providing data on their supplier basis. So that's why we do maintain that that  
6 is the proper approach.

7 We have already provided data on analysis via numbers focused on the UK platform.

8 You can, of course, cut these numbers in lots of different ways. That's why it will be  
9 useful for the economists to get together and agree which ways are cutting the  
10 numbers --

11 MRS JUSTICE BACON: All right. You are suggesting that the economist should do  
12 that on the basis of a particular case that you're advancing that hasn't been pleaded.  
13 I don't see how the economist can meaningfully go and try and look for this, without  
14 understanding exactly what your pleaded case is.

15 MR PICCININ: Yes. Perhaps if we could go back to the pleadings. (Pause)

16 Page 264. What we have pleaded at the relevant (inaudible) already, at 38.1.4, is that  
17 it involves reliance on a limited number of suppliers capable of manufacturing or  
18 procuring designs quickly and reducing or procuring a large number of small orders at  
19 the requisite speed and low price. So we have pleaded.

20 MRS JUSTICE BACON: Sorry, what page again?

21 MR PICCININ: Page 264. (Pause)

22 MRS JUSTICE BACON: All right, but that does not make any point about geography.

23 MR PICCININ: So we have pleaded that there is a limited supplier base that has  
24 particular skills. We haven't gone further, I accept, and figured how that correlates to  
25 geography or the contribution of geography makes. But -- and this is the important  
26 point -- there is a significant asymmetry of information in this case, because my clients

1 are in the marketplace, and that means that they're in an open door to sellers. You  
2 don't need to meet any minimum threshold. You can all come on and offer their  
3 products for sale in the whatever country's platform they want to do that.

4 It's a very different sort of business that Shein's in, where they're identifying particular  
5 suppliers who sell products to them, so that's why it's possible for us to have situation  
6 where there might be a very large number of sellers who are offering products for sale  
7 on our platform, but they may not all fit into the category where they're really capable  
8 of delivering large numbers of new designs for inventory (audio distortion) price and  
9 (audio distortion). We don't have the information -- we've got very little information on  
10 the narrow set of suppliers that are really capable of doing that. We suspect (inaudible)  
11 that Shein suppliers. That's the nub of our case. What they're doing is they're tying  
12 up their people who are the ones that are capable of delivering.

13 MRS JUSTICE BACON: All right. But one way or the other, this is not a pleaded  
14 point. So it seems to me that if you were saying that you're willing to provide this, but  
15 the experts need to get together, the experts cannot do so without having a properly  
16 pleaded issue, it's just no point -- it's going to result in confusion and incoherence for  
17 the experts to go away and figure out what the case is. That's not the way that litigation  
18 is conducted. The experts need to, if they are going to agree or attempt to agree on  
19 relevant data sets, that needs to be against a backdrop of a pleaded case and  
20 just -- (Pause)

21 We have considerable sympathy with the idea that the experts should get together  
22 and that they should agree what they need. That may well be something on  
23 geography, and that may well also be something on supply numbers. At the moment,  
24 though, the pleaded basis for that isn't clear, and I'm reluctant to order that the experts  
25 go off and do something in a pleading vacuum.

26 I think the way forward to fix this is to agree a timetable by which the pleading position

1 is bottomed out on both sides, and then the experts can then agree, in a consistent  
2 way, what is necessary against the backdrop of a properly pleaded case on both sides  
3 which sets up why this information is necessary.

4 MR PICCININ: On that, we're very much open to that. We welcome that suggestion  
5 and that direction. If we just look at page 321 of the bundle. This is from Shein's team.  
6 Paragraph 30 is the entirety of their pleading on market definition. Effectively, the  
7 position they're taking is that it's a matter of factual and expert evidence, which is  
8 sometimes the position parties take in litigation that they'll say nothing at all about the  
9 case on market definition until it pops up in the expert reports.

10 I take from what you've just said that that's not a helpful way to proceed, and that if  
11 we're going to seek further updates on (inaudible), then unless Shein wants to run  
12 a purely negative case at trial -- if they want to advance a positive case at trial, then  
13 they need to (inaudible).

14 MRS JUSTICE BACON: What about --

15 MR DAVIES: I understand that, but what Shein is asking for in terms of additional  
16 information, ie the supplier numbers that are not limited to what's available on the UK  
17 platform, has nothing really to do with market definition, whereas your request for the  
18 number of suppliers in Guangdong relates to what, to my mind, is a fairly clear theory  
19 of harm, but one that, as I understand, it has not been pleaded. So I think it's really  
20 only your pleadings that need to deal with market definition and that sort of supplier  
21 side geographic market definition within China point, because your side's market  
22 definition is the only one that aims to justify these requests.

23 MR PICCININ: (Inaudible) unfortunately, that's not fair. Either market definition is  
24 treated as a matter in the pleadings, in which case the normal rules should apply and  
25 counterbalance the positive case of trial (inaudible) on a pleaded case, or it's not.

26 MRS JUSTICE BACON: All right.

1 MR PICCININ: I think the point there is that what we're asking for relates to market  
2 definition, whereas what they are asking for doesn't. But equally it's true that what  
3 we're asking for has already been ordered, and what they're asking for, supposedly  
4 on the basis of non-compliance with DRD 2, that's the sole basis on which is good.  
5 It's actually not within the scope of DRD 2 at all.

6 MRS JUSTICE BACON: So, what about this? I think we need to just try and work out  
7 a coherent way forward that enables the pleadings to be regularised before any debate  
8 is had as to whether further numbers are needed, and if so, in what format, because  
9 in a way, although your point specifically does relate to market definition, the two  
10 issues seem to be related.

11 So without repeating the original particulars of claim and defence, is one way forward  
12 for each side to set out a statement of its case on the market definition to start off with,  
13 and then for the experts to have a discussion, as to what data are necessary regarding  
14 supplier numbers and geographic locations, rather than having two separate  
15 discussions? Yes, and then if that's not agreed as between the experts as to what is  
16 necessary and proportionate -- emphasis on the word "proportionate", given the  
17 figures at issue in this part of the case -- then a further application can be made and  
18 hopefully determined by the tribunal on papers with very short submissions, would that  
19 be an appropriate way forward that would enable that the point to be regularised and  
20 there to be no suggestion that this request comes out of a point that's not pleaded?

21 MR PICCININ: Yes.

22 MRS JUSTICE BACON: You agree.

23 Mr Pascoe?

24 MR PASCOE: My Lady, we have no objection at all to that as a process. In a sense,  
25 that's what you're asking for. Can I have a go at suggesting consistently with what  
26 Mr Davies said?

1 Our request for basically the entire pool of suppliers doesn't really turn on how the  
2 market's definition is pleaded. It's the base from which we're going to chip away if you  
3 have market definition issues.

4 I didn't hear any submission from Mr Piccinin that it would be difficult or  
5 disproportionate to provide those numbers. We've already provided those numbers.

6 MRS JUSTICE BACON: But what's the basis for you asking for that? Is it in the  
7 existing order or is it just because you provided the figure?

8 MR PASCOE: Can I deal with that point? I mean, in one sense, it's because the  
9 figures have been provided, and now that they've been provided, they should be  
10 provided on a proper basis. But it is in the order.

11 So if one looks at page 730 of the bundle, which we've spent some time on now, it's  
12 true, it's completely true that the wording of the order relates to the geographic location  
13 of the parties' suppliers. But the reason both parties -- and we have put our supplier  
14 numbers in, it's just in an earlier witness statement -- have given their total supplier  
15 numbers is because you have to start from the total supplier numbers to then specify  
16 the proportions of those suppliers based in the particular regions. So the supplier  
17 numbers is the starting point. That's why Shein gave the numbers.

18 MRS JUSTICE BACON: Yes, but is this -- what I don't want to do is to have piecemeal  
19 provision of a bit here and a bit there. I can see that this may well be relevant. I don't  
20 think that it would be right to order something now and then for the experts to go away  
21 and then decide that they want something slightly different.

22 It's not apparent that this is exactly what was ordered to be provided previously, in the  
23 same way that it's not really apparent that what Mr Piccinin wants comes out of the  
24 order. Both of you are wanting things that are slightly different or slightly more specific  
25 from what was ordered.

26 You are saying, and as I've said, I have some sympathy with your comment that

1 Mr Piccinin's request comes out of something that's not pleaded. Rather than making  
2 some order now, which is for part of the total scope of what's in dispute, I think it would  
3 be better to regularise the pleaded position as quickly as possible so that the experts  
4 can have a meeting and then make an application on the basis that this is what is  
5 absolutely needed for the purposes of the geographic market analysis or other  
6 purposes.

7 So can I -- and I'm not saying that, at the end of the day, the tribunal might not order,  
8 if there's a dispute, the provision of this information, but I think we need to do it in  
9 a proper way. So let's start out with some dates for a statement of case.

10 MR PASCOE: Just to be clear, presumably that will include the request that it be  
11 ten minutes total supplier numbers in addition to the already supplied.

12 MRS JUSTICE BACON: Yes, exactly.

13 MR PASCOE: Numbers on their platform, and it seems to me that both are actually  
14 potentially.

15 MRS JUSTICE BACON: They're both potentially relevant issues, but I think the  
16 experts need to have that discussion, because there may be slight modification of what  
17 you're asking for and they might want something more than what you're asking for.  
18 Who knows?

19 So who would have to go first? Mr Piccinin, you probably need to go first.

20 MR PICCININ: (Overspeaking) it matters but (inaudible).

21 MRS JUSTICE BACON: But are these pleadings not going to be sequential rather  
22 than simultaneous?

23 MR PICCININ: Yes, that makes sense. If we provide (inaudible) for the  
24 aforementioned --

25 MRS JUSTICE BACON: That seems quite a long way away, because we've got to try  
26 and get all this going. I mean, let me just work back from when the experts are going

1 to be --

2 MR PICCININ: Yes.

3 MRS JUSTICE BACON: -- providing their evidence. (Pause)

4 Are you able to set out your developed statement of case on market definition by, say,

5 two weeks today? Is that possible?

6 MR PICCININ: The problem with it is that my client's will be unavailable, and obviously

7 it's their case that needs to be (inaudible). Perhaps if we say the 8th.

8 MRS JUSTICE BACON: The 8th, okay. All right.

9 MR PICCININ: And to apologise to my client.

10 MRS JUSTICE BACON: Yes. So the 8th, and then the Shein response by 22nd.

11 (Pause)

12 Experts then to meet by 29th. Let's look at what you proposed. (Pause)

13 Experts said to meet by 29 May. Is that possible? That gives them a week.

14 MR PICCININ: Obviously we don't have them yet, so we'll need to ask them.

15 MRS JUSTICE BACON: No.

16 MR PICCININ: Subject to any --

17 MRS JUSTICE BACON: I think that what you're asking for is not really the format for

18 the provision of data, it's to agree what data are required.

19 MR PICCININ: Yes.

20 MRS JUSTICE BACON: To agree what data are required in relation to supplier

21 numbers and geographic locations, for the purposes of what? For the purposes of

22 market definition and -- goes beyond that, I think.

23 MR PASCOE: Yes, the market definition and foreclosure as well.

24 MRS JUSTICE BACON: All right, so for the purposes of both market definition and

25 the effects analysis. All right. (Pause)

26 Then if there is any dispute as to what is required for that to be put before the tribunal

1 for the parties' positions on that to be set out by -- when? Some point in early June?

2 MR PASCOE: Yes.

3 MRS JUSTICE BACON: So if not, agreed application to tribunal by 8 June to be  
4 determined on the papers, in principle. (Pause)

5 (2.46 pm)

6 **Ruling**

7 MRS JUSTICE BACON: An order will be made requiring Temu to provide an expanded  
8 statement of case on market definition by 8 May 2026. Shein is to respond by 22 May  
9 2026. The economic experts are then to meet by 29 May 2026 to discuss what data  
10 regarding supplier numbers and geographic location is necessary and proportionate  
11 for defining the relevant market and conducting an effects analysis. If an agreement is  
12 not reached between the parties following this, then an application to the Tribunal is  
13 to be made by 8 June 2026 to be determined on the papers, if possible.

14

15 (2.47 pm)

16 MRS JUSTICE BACON: Does that resolve this application and the points being made  
17 on both sides?

18 MR PASCOE: My Lady, can I just check two points of clarification?

19 MRS JUSTICE BACON: Yes.

20 MR PASCOE: First, we don't understand this process to be supplanting any of the  
21 effects disclosure that Temu has already agreed to.

22 MRS JUSTICE BACON: No.

23 MR PASCOE: So in that sense, it will be a narrower discussion than reopening that  
24 entire debate.

25 MRS JUSTICE BACON: Yes. I think it's just to resolve whether there is anything  
26 further that's required, both on your side for the effects analysis and on Mr Piccinin's

1 side for whatever he wants to say, not yet said, about geographic locations.

2 MR PASCOE: The second point is really just a reservation. If we're faced with  
3 a substantially new case on market definition, we may feel like we need to apply for  
4 factual documentary disclosure on that, as a matter of fact.

5 MRS JUSTICE BACON: Yes, well then that will --

6 MR PASCOE: Then make the application --

7 MRS JUSTICE BACON: Yes, absolutely. All right. (Pause)

8 I think then, as Mr Davis rightly points out, does this then supersede issue -- well, the  
9 disclosure has been ordered, hitherto in relation to issue 2. This is what is ordered on  
10 page 730.

11 MR PASCOE: Well, what (several inaudible words) witness statements in lieu of  
12 disclosure.

13 MRS JUSTICE BACON: Yes.

14 MR PASCOE: Parties are purported to give those witness statements.

15 MRS JUSTICE BACON: Yes.

16 MR PASCOE: I think we have now come up with a new process that I'm not sure  
17 supersedes, but practically speaking, any further --

18 MRS JUSTICE BACON: Takes further any requests that are necessary in relation to  
19 this point. All right, okay. (Pause)

20 Can we then get to expert evidence?

21 MR PASCOE: Yes.

22

23 Discussion re expert evidence

24 MRS JUSTICE BACON: Right. Can I start with some basic questions? Identification  
25 of experts: has that happened, and if not, when will it happen?

26 MR PICCININ: No, it has happened.

1 MRS JUSTICE BACON: All right.

2 MR PICCININ: And I was going to propose there's nothing to discuss (inaudible).

3 MRS JUSTICE BACON: Right, dates: what do you propose?

4 MR PICCININ: End of May.

5 MRS JUSTICE BACON: End of May. (Pause)

6 And not only the identification of the experts, but the provision of any information

7 regarding previous involvement.

8 MR PICCININ: Yes.

9 MRS JUSTICE BACON: As envisaged by the experts practice direction.

10 MR PICCININ: Yes.

11 MRS JUSTICE BACON: All right. So just let me look at a date. 29 May.

12 MR PICCININ: Yes.

13

14 Discussion re expert report page lengths

15 MRS JUSTICE BACON: All right. Next thing I had, I know you won't like this, but

16 I want to revisit the page length. I'll have to look at this. I'm not sure -- it's not --

17 MR PICCININ: Just that those page lengths weren't the subject of any submissions,

18 as I understand. So that came into the order after the hearing and so this would be

19 the first discussion.

20 MRS JUSTICE BACON: Okay, all right, so that makes me feel better; I'm not revisiting

21 a discussion that's already been had.

22 I think the page lengths at the moment, they're too general. If you really provided all

23 of your expert reports on those page lengths, we could have about a thousand pages

24 at trial and I don't think, because there are potentially three experts on each side --

25 MR PICCININ: Yes.

26 MRS JUSTICE BACON: -- and the page lengths currently set are 100 for initial

1 evidence and 15 reply, which I think adds up to 900, and then there's some joint expert  
2 reports. So unless my maths is very wrong, no. So I think that's too much. So I think  
3 we need --

4 MR PICCININ: (Inaudible) said at that stage there was --

5 MRS JUSTICE BACON: No, and you also said it wasn't the subject of any  
6 submissions. So let's just revisit this. Do you have any suggestions to make as to  
7 what page lengths are needed for the different sets of experts now envisaged?

8 MR PICCININ: (Several inaudible words) perhaps do that without having the experts  
9 in place for the industry.

10 MRS JUSTICE BACON: Right.

11 MR PICCININ: (Several inaudible words) for the economists. But perhaps the best  
12 way to do this is to take away and in those -- in the document that we provide to the  
13 tribunal --

14 MRS JUSTICE BACON: Yes.

15 MR PICCININ: -- at the end of May and make proposals and then you can consider  
16 that --

17 MRS JUSTICE BACON: Yes, I propose that.

18 (2.52 pm)

19 **Ruling**

20 MRS JUSTICE BACON: The parties have permission to rely upon the evidence of one  
21 expert each, in each of the fields of economics, the fashion supply market, and the UK  
22 retail market. A process will be ordered by which the experts are identified, and a  
23 revised list of issues with proposed page lengths filed with the Tribunal. This is to be  
24 done by the end of June.

25 It may be that once the parties narrow down the issues for the economists and the  
26 industry experts, it is then agreed that the experts do not need the number of pages

1 originally specified for their reports.

2 Looking at the thrust of the evidence that is likely to be given, which is likely to focus  
3 on the market definition with perhaps some analysis on the allegedly abusive conduct,  
4 I think 100 pages is rather generous for the economists. I had in mind something  
5 rather shorter and something considerably below 50 pages for each of the other  
6 two experts. I am happy that that should not be set in stone now, with the order simply  
7 reflecting that the page lengths set out in the previous order will be revisited in due  
8 course.

9

10 (2.53 pm)

11

12 Discussion re expert evidence (cont)

13 MR PICCININ: The one other point you made, or one of the other points that you  
14 made, was that you anticipated that -- I think you said you wanted to be told precisely  
15 what analysis it was that the expert would conduct.

16 MRS JUSTICE BACON: Yes.

17 MR PICCININ: Not the way I've seen it done before, but that's not to suggest it's not  
18 a good idea. But I wonder if that's the direction we're going down, whether it might be  
19 helpful for the experts to discuss that, because even more convenient for all of us, if  
20 they could align on the same types of analysis, that they happen to agree.

21 MRS JUSTICE BACON: Yes. Well, I don't think it needs to be specified in granular  
22 detail, but for example, a question that simply says: "did the alleged infringing conduct  
23 fall outside of competition on the merits?" doesn't tell me what the expert is going to  
24 contribute on that. If you had a much more specific question about, I don't know, some  
25 quantitative question that the expert was going to address, I could then probably  
26 determine -- we could probably determine -- whether we think that that's actually an

1 expert issue or not, but I think just framing it in terms of the highest level issues in the  
2 case and saying we'd like an economist to deal with that is not likely to be helpful and  
3 runs the risk, as I said, of experts going off and doing something that isn't really  
4 properly expert evidence at all.

5 MR PICCININ: Yes, absolutely.

6 MRS JUSTICE BACON: So you're going to identify the experts by 29 May. At some  
7 point after that, you are proposing that the experts get together, and that you then  
8 come back to the tribunal with a much more closely specified list of expert issues for  
9 determination.

10 MR PICCININ: Yes.

11 MRS JUSTICE BACON: That's following discussion between them as to what they're  
12 likely to do. And that then circumscribes at an early stage the analysis that they're  
13 going to do. But of course all that needs to be done well ahead of the dates for the  
14 expert report.

15 So, I mean, if everyone's happy by the 29 May, what dates are you proposing for you  
16 to come back with a much more tightly specified list of issues?

17 MR PICCININ: If we say end of June. Again, it's not something I've discussed.

18 MRS JUSTICE BACON: Well, I'm just being reminded that everyone's agreed to the  
19 economists meeting by 29 May to consider market definition. So presumably, you  
20 know who your economists --

21 MR PICCININ: That -- we have both names that you mentioned.

22 MRS JUSTICE BACON: Well, how about the economist's identification has to  
23 considerably precede that? Is there any reason why you can't set out the dates of  
24 your economists by the end of next week?

25 MR PICCININ: No.

26 MRS JUSTICE BACON: All right, so the economist by 1 May. Other experts by

1 29 May. So then the economists can presumably, at their meeting on or before  
2 29 May, deal at the same time with the economic issues.

3 MR PICCININ: Yes. (Pause)

4 (Several inaudible words) reporting back on that pass at the same time as we  
5 (inaudible).

6 MRS JUSTICE BACON: Well, yes, and also then we're going to have a piecemeal  
7 specification. I think I'd really want one date by which you're going to send a proper  
8 list of issues. So --

9 MR PICCININ: Go back then to end of June.

10 MRS JUSTICE BACON: Yes, so end of June, for a more detailed specification of list  
11 of issues, for all of the experts, together with proposed page lengths.

12 Does that then give enough -- and then I'll need to have a look at that together with  
13 the other members of the panel. So just let me look at what we are -- okay, all right.  
14 When do you need to -- when do you -- from your end, need to have bottomed out,  
15 whether the tribunal is happy with all of this, for the purposes of getting on with the  
16 expert reports?

17 MR PICCININ: Well, then I'm afraid as soon as possible after that, because the  
18 deadline for the expert reports is mid-September.

19 MRS JUSTICE BACON: Yes, all right. So if we disagree, we're going to need to,  
20 potentially, list a short hearing, could be a remote hearing, to sort that out. (Pause)  
21 Yes, I mean, I'm being reminded that the issues really need to be specified in as  
22 narrow as possible a way, with no overlap between the different experts. So you'll  
23 then report back by the end of June. I think that's 30 June.

24 MR PICCININ: Yes.

25 MRS JUSTICE BACON: Please put in the order as specified as narrowly as possible  
26 and avoiding any overlaps between the different experts, and also identifying any

1 areas of dispute as to the issues, because they may not be -- I mean, one would hope  
2 that they could be agreed because you'll be guided by the experts.

3 MR PICCININ: Yes. We didn't have any difficulty in agreeing this, I learnt this.

4 MRS JUSTICE BACON: Yes. All right.

5

6 Discussion re scheduling

7 MRS JUSTICE BACON: All right. So then we will then address that as quickly as we  
8 can. I think we have got reasonably good availability to do so at the start of July to  
9 enable everyone then to get on with the process of preparing the expert reports. Just  
10 to say that it would be helpful if also the list of issues was referenced back to the  
11 pleaded case.

12 MR PICCININ: Yes.

13 MRS JUSTICE BACON: By that time you will also have the expanded statement of  
14 case on market definition if you need to refer back to that.

15 MR PICCININ: Yes.

16 MRS JUSTICE BACON: So that sets out, I think, an appropriate process.

17 Is there anything else that needs to be said? For example --

18 Yes.

19 MR PICCININ: One thing. You mentioned the possibility of a hearing to discuss the  
20 issues if the tribunal is not happy.

21 MRS JUSTICE BACON: Yes.

22 MR PICCININ: Could I ask that we get on the listing now? Because he's trying to do  
23 it on short notice. In July, it'll be very difficult, whereas you can do it now. (Pause)

24 MRS JUSTICE BACON: Yes. Are you asking us to list that here and now as in have  
25 you come equipped with your available dates already?

26 What about the week beginning 6 July?

1 MS DEMETRIOU: Mr Pascoe is not available then, and I don't have my diary. I think  
2 I'm not available that week, but can we, please, liaise and sort this out after this hearing  
3 when I've got ...?

4 MRS JUSTICE BACON: Yes.

5 MS DEMETRIOU: Unfortunately I don't have my diary.

6 MRS JUSTICE BACON: No. All right. Well, let's do it in the normal way and perhaps  
7 when you send in the draft order, could you just send in availability dates for the entire  
8 counsel team?

9 To be honest, I'm not sure if we necessarily need leading counsel for that hearing. It  
10 could be that we could do it with junior counsel, Mr Karim, for example could come  
11 along, and Ms Kelleher could come along. I'm not saying that you must do it that way,  
12 but if there are potentially difficulties with the more senior members of the counsel  
13 team, and if we are not very far apart on that, that might be a possibility.

14 But let's just wait to see who is available. So if you just send a cover letter with the  
15 availability dates of your whole team.

16 Let me just sort of say when we could do it. The only possible weeks that could be  
17 accommodated from my diary would be the week beginning the 6th and the week  
18 beginning the 13th, and you're not going to want it to be after that anyway. (Pause)

19 MR PASCOE: One point that we thought it prudent to raise is, in light of the number  
20 of expert disciplines, we think it would be sensible to revisit the trial length, which is  
21 currently listed for only three weeks in the tribunal's diary.

22 In our submission, that's very, very tight given the number of experts. We don't yet  
23 know how many witnesses there will be. My Lady might recall that last outing in  
24 January. We agreed to keep that under review, and we made some specific provision  
25 in the order about additional days being listed after the Easter vacation, should they  
26 be needed. Our concern is really, at the moment, just to make sure they're not booked

1 up in the tribunal's diary on something else, such that we're stuck with an  
2 inappropriately short length of trial.

3 MRS JUSTICE BACON: What dates? Can you just take me to the order to indicate  
4 what dates have been suggested for reserve dates after the Easter vacation?

5 MR HOLMES: Yes.

6 MRS JUSTICE BACON: Because I do also have in mind that, once you actually get  
7 to it, there may not be much between some of the experts on some of the points,  
8 having not so far away done a trial where we ended up not having any  
9 cross-examination of the industry experts. So I know that there might, at this moment,  
10 look like there's going to be a lot of evidence from three different sets of experts, but  
11 that may not come down to material disputes for the purposes of trial.

12 MR HOLMES: Of course, certainly, at the moment, it would be prudent not to let that  
13 room get booked out and essentially shut us out of our trial window.

14 MRS JUSTICE BACON: Right.

15 MR HOLMES: My Lady asked for the reference to the current date. I think it's at  
16 page 209 of the bundle.

17 MRS JUSTICE BACON: Well, thank you for drawing my attention to that, because  
18 I certainly didn't have any other dates after Easter reserved in my own diary. So 209  
19 of the main bundle.

20 MR HOLMES: Yes. So paragraph 2 of the order, the trial is listed to commence on  
21 3 March with a time estimate of three weeks plus three days of pre-reading. And then  
22 paragraph 3:

23 "The party shall keep the time estimate of three weeks under review. If either or both  
24 parties consider that the time is insufficient, they will notify the tribunal. And if any  
25 further days are necessary, they shall be listed on a date after 24 March." [as read]

26 Which I think is after the Easter vacation period.

1 MRS JUSTICE BACON: All right. Well, if we were to reserve some time immediately  
2 after the Easter vacation period, it would be starting on, say, 5 April.  
3 Is everyone even able to do that week?  
4 MR PASCOE: I think the reason we put that very specific provision in paragraph 3 of  
5 the order was because everybody could do it.  
6 MRS JUSTICE BACON: Mr Holmes is shaking his head. Well, first of all, let  
7 me -- what's the availability on your side for the week beginning 5 April?  
8 All right.  
9 What about Temu's side?  
10 MR HOLMES: Sorry, madam, I have a preparatory period for another trial. Can we  
11 perhaps come back to you in short order? I don't have exact dates at my fingertips,  
12 and I'm not quite sure what will be possible on my side.  
13 MRS JUSTICE BACON: Right. I'm not going to, hold this over by any significant  
14 period.  
15 MR HOLMES: That's understood.  
16 MRS JUSTICE BACON: So if we are going to have any overspill days, I think it really  
17 has to be in that week.  
18 MR HOLMES: Yes, understood.  
19 MRS JUSTICE BACON: So you can also indicate your availability for the week  
20 commencing 5 April when you come back, but I don't think you can really expect that  
21 this should go part heard to some date any later than that, because we'll have to get  
22 on with writing up the judgment.  
23 All right. So if it turns out that enough individuals on each counsel team can be  
24 available for the week commencing 5 April, then I'm not in principle averse to putting  
25 those as potential overspill days, subject to checking with the availability of the tribunal  
26 itself in terms of hearing rooms and the availability of other panel members. So I can

1 finalise that in the order, but I just do want to take that away.

2 Could I have comments from the Temu side as to whether you think it's necessary to  
3 have any overspill dates reserved? Because I don't want to make a decision on that.  
4 I don't want to reserve a date to become, in effect, what is an excess, another week,  
5 because I'm not sure that another week is required at this point.

6 MR PICCININ: It's just difficult to say for the reason that you gave, which is that, if it  
7 turns out that the additional industry experts largely agree or entirely agree, (several  
8 inaudible words). There's a large area of history in trying to fit three experts for each  
9 side into three days. It's (inaudible) taking up to page 213 (inaudible) properly  
10 ambitious.

11 MRS JUSTICE BACON: Yes, particularly because I imagine that there would be  
12 concurrent evidence in relation to at least the economists. Then the question is: how  
13 much else is needed? And let's say, I would imagine that probably at least a day,  
14 maybe going into a second day, for concurrent evidence for the economists. If you  
15 were then to allow a short amount of time for some further questions from counsel and  
16 then cross-examination of a total of four remaining experts, I can see that that might  
17 be rather tight.

18 MR PASCOE: I think there is probably one day spare just hanging there, Wednesday,  
19 the trial (inaudible) on a Tuesday.

20 MRS JUSTICE BACON: The Wednesday is hanging there because I'm unlikely to be  
21 available on that day, so that was deliberate.

22 Yes. All right. It may be that I turn out to be available on that day, but at the moment  
23 I probably won't be.

24 All right. Well, I think the best we can do is to say that you should give your dates for  
25 after the Easter vacation. If it's agreed that there would need to be two days of oral  
26 closings, it could be that we could just move the oral closings to after Easter, if we

1 could then find two days in that week, which it wouldn't necessarily have to start on  
2 the 5th. Then there would just be a slightly extended period for reading closings.  
3 Everyone else would have a just a bit more time over Easter. I think that the written  
4 closings would have to be delivered before Easter though.

5 What about potentially putting in two overspill days? Ideally, in the first half of the  
6 week beginning 5 April, depending on availability.

7 Mr Holmes, you just have to report back.

8 MR HOLMES: Yes.

9 MRS JUSTICE BACON: If it turns out that you just have a block period for preparing  
10 for another case, it wouldn't seem to make much difference whether this is listed at  
11 the start of the week, beginning the 5th or the end of the week, but I'll leave you to  
12 report back. All right.

13 MR HOLMES: My Lady, that sounds sensible from the perspective of expert evidence.  
14 The other major unknown, of course, is factual evidence. There are currently  
15 five days, I think, in the timetable to cross-examine the factual witnesses.

16 Being transparent, we haven't yet settled on how many witnesses we're going to  
17 produce evidence from. I don't know if Mr Piccinin's clients have. If there's an awful  
18 lot of them, that's going to be obviously extremely tired.

19 MRS JUSTICE BACON: Just everyone might just have to curtail their  
20 cross-examination of those witnesses.

21 MR HOLMES: I suppose I was suggesting it might be prudent to reserve the first week  
22 after Easter, and then if we need less than that, then so be it.

23 MRS JUSTICE BACON: I'm reluctant to do that because I think that probably the  
24 issues of the cross-examination will just expand to fit the time available and won't  
25 necessarily be proportionate. I do have an eye to the value of this case.

26 All right. I'll potentially reserve two days after the Easter vacation in the week

1 beginning 5 April, subject to hearing of other's availability on that.

2 All right, is there anything else by way of housekeeping on expert evidence or  
3 otherwise?

4 MR HOLMES: No.

5 MRS JUSTICE BACON: No, all right.

6 Can I just say this? It seems to me that this case is appropriate for resolving out of  
7 court, if that can be achieved. I'm aware that we've got a hearing date coming up on  
8 the IP trial. I'm not going to order any further stays for mediation. I know that that's  
9 already been tried and that hasn't been successful. But I would exhort everyone to  
10 make renewed efforts because I'm concerned about what's been said about the costs  
11 of the ongoing litigation. I've heard what Ms Demetriou said about disclosure and the  
12 disclosure costs of Shein. I'm sure that those costs are -- you know, there are very  
13 significant costs being incurred on both sides for what is in the terms of the cases that  
14 we get in this tribunal, a relatively small claim overall. So, just to say that I think that  
15 it would be helpful if everyone made continued efforts to resolve this.

16 MR PASCOE: One piece of the jigsaw on that that was agreed before the hearing  
17 is that Temu is going to specify what form of injunction it's seeking through  
18 these proceedings, which people thought would be a helpful step to continue to  
19 discuss things.

20 There's not much money in the claim. Temu have always said, "Well, the claim's about  
21 the injunction". We've asked for an RFI to specify what injunctive relief do you actually  
22 want.

23 MRS JUSTICE BACON: Isn't that now agreed?

24 MR HOLMES: That's agreed, yes.

25 MRS JUSTICE BACON: It is agreed.

26 MR PASCOE: Yes. I'm just saying --

1 MRS JUSTICE BACON: All right. If there is anything else that the tribunal can do to  
2 facilitate the process of an amicable resolution, please don't hold back. Make  
3 appropriate applications to the tribunal. Because if there's some dispute between the  
4 parties, such as the issue about the RFI that can be resolved, which would enable  
5 better information to be given on both sides that could help the settlement process.  
6 Then that would be sensible all round, because obviously it's a lot of tribunal time to  
7 deal with this case and time in the Chancery Division too.

8 All right. Is there anything else that I can help you with? No?

9 All right. Thank you very much, everyone.

10 (3.16 pm)

11 (The hearing concluded)

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### Key to punctuation used in transcript

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