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5

6 **IN THE COMPETITION** Case No. : 1746/5/7/25 (T), 1747/5/7/25 (T), 1748/5/7/25 (T)
7 **APPEAL**
8 **TRIBUNAL**
9

10 Salisbury Square House
11 8 Salisbury Square
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Tuesday 12th May

15 Before:
16 The Honourable Mr Justice Meade
17 (Sitting as a Tribunal in England and Wales)
18 **BETWEEN:**
19

20 The Secretary of State for Health and Social Care & Others

Claimant

22 v

24 Servier Laboratories Limited & Others

Defendant

27
28 **A P P E A R A N C E S**

29 Anna Edwards-Stuart KC, Phillip Woolfe KC, David Drake, Julian Gregory and Laura
30 Elizabeth John (instructed by Peters & Peters LLP, Reynolds Porter Chamberlain LLP,
31 Geldards LLP) on behalf of The Secretary of State for Health and Social Care & Others
32

33 Nicholas Saunders KC, Daniel Piccinin KC and Emma Mockford (Instructed by Sidley
34 Austin LLP) on behalf of Servier Laboratories Limited
35

36 Sarah Love KC and Robert Steele (Instructed by Simmons & Simmons LLP) on behalf of
37 Lupin
38

39 Emily MacKenzie (Instructed by Baker McKenzie LLP) on behalf of Niche Generics and
40 Unichem Laboratories

41 Jonathan D.C. Turner (Instructed by Penningtons Manches Cooper LLP) on behalf of Krka
42

43 Sarah Abram KC and Michael Quayle (Instructed by Bristows LLP) on behalf of Teva
44

45 Tim Johnston (Instructed by Skadden, Arps, Slate, Meagher & Flom (UK) LLP) on behalf of
46 Mylan Laboratories Limited and Viatris Inc.
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(2.15 pm)

(Proceedings delayed)

(2.27 pm)

Housekeeping

JUDGE MEADE: Yes.

MR WOOLFE: Sir, I don't know if you're on the live stream -- you need to give the direction, in respect of contempt of court.

JUDGE MEADE: Some of you are joining us live stream on our website, so I'm going to start, therefore, with the customary warning: an official recording is being made and an authorised transcript will be produced. It is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual. Proceedings and breach of that provision is punishable as contempt.

MR WOOLFE: I appear for the English claimants. I would hope, given the table which you asked for, sir, and we provided, I can dispense with introductions.

JUDGE MEADE: Yes.

MR WOOLFE: Otherwise it would take quite some time to do. I do appear for the English claimants, however, in practice on all issues that are common to the NHS claimants, which is most of them. I'm speaking for everybody, so I understand.

Now, just some small points of housekeeping. First of all, in terms of bundles, are you operating using the TrialView electronic platform or hard copy bundles?

JUDGE MEADE: I have got the electronic platform on my own laptop and I've got quite a few things already open in different tabs. I've got all the skeletons in hard copy and I have got the composite draft order and the very helpful chart in hard copy as well.

MR WOOLFE: Thank you, sir. In terms of the hard copy bundles, there is a hard copy

1 | update to the inter partes correspondence bundle. Will you be wanting that or -- no.
2 | I think Mr Saunders had one more point of housekeeping concerning a direction he's
3 | seeking under Rule 102 of the Tribunal rules; I would ask him to deal with that first.
4 | MR SAUNDERS: So this is the Tribunal equivalent of a pro tem 31.22, so we'd invite
5 | you to make a Rule 102, subsection 5 order over the material marked "confidential",
6 | notwithstanding, it's read by the Tribunal and referred to in court.
7 | MR WOOLFE: Then in terms of the running order for today, what I was going to
8 | propose -- to your view, sir -- is broadly follow the order of the agenda, save that, as
9 | you've seen from agenda item 1, which is the future conduct of proceedings, that
10 | names a number of different specific matters, of which the first one is the RFI.
11 | However, there's sort of an overarching question on the future conduct of proceedings,
12 | which is: should we be cracking on and making progress, notwithstanding that the
13 | European proceedings are on foot? Or should a lot of things await the EU
14 | proceedings? I would therefore propose we deal with -- grapple with that overarching
15 | question first, sir, which may well dispose of items 1.2, 1.3 and 1.4 in the same way.
16 | But it's better to deal with that first and then come to the RFI, because obviously if you
17 | take the view that everything should await the outcome of the proceedings, then you
18 | don't get into the argument on the RFI.
19 | JUDGE MEADE: Just give me one second. (Pause)
20 | Yes, so 1.4, there's nothing separate, right?
21 | MR WOOLFE: No, there isn't.
22 | JUDGE MEADE: So it's 1.1, 1.2 and 1.3. I see those as rather different one from
23 | another actually. So for example, one might decide -- I'm not saying this is the
24 | decision -- but one might decide not to do anything on the RFI or the factual evidence,
25 | but make a decision about the CMC. So I think they are not all the same.
26 | MR WOOLFE: I can see that, sir. In a sense, what I was trying to engage with is the

1 general question of the inter-relationship between the EU proceedings --

2 JUDGE MEADE: Yes.

3 MR WOOLFE: -- and the UK proceedings, because what's said on a number of these
4 points is the same thing and therefore, in a sense, hearing submissions on that may
5 be a useful starting point.

6 JUDGE MEADE: I think -- not differently from the spirit of what you said -- we will do
7 1.2 first, which is factual witness statements, and that'll give an opportunity to express
8 general views about the interplay of the proceedings.

9 MR WOOLFE: In that case, can I take you -- just on 1.2 -- to what the Claimants are
10 asking for? So that is in the composite draft order, which is at tab A6, or if you have it
11 in hard copy.

12 JUDGE MEADE: Yes.

13 MR WOOLFE: And in respect of witness evidence, the relevant directions we're
14 seeking are at paragraphs 5 and 6. This is essentially an application by the Claimants
15 and we're asking for all parties -- on both the Article 101 and 102 issues -- to serve
16 a statement of fact, first of all in October, and then reply witness statements shortly
17 thereafter in late October.

18

19 Opening submissions by MR WOOLFE

20 MR WOOLFE: Now, I was going to make some submissions in four areas: so first of
21 all, some general points about how the Tribunal should approach this as a case
22 management issue; secondly, some points of context about the length of time the
23 proceedings have been on foot and the risk of deterioration of evidence; and then
24 thirdly, I was going to address you on gathering the witness statements on the
25 Article 101 claim; and fourthly, gathering witness statements in the Article 102 claims.
26 It will be my submission, sir, that you should take the two claims -- consider them

1 | separately, but slightly different considerations apply to the two of them.

2 | JUDGE MEADE: Okay.

3 | MR WOOLFE: In terms of how the Tribunal should approach this issue, I've got five
4 | points.

5 | First of all: what is in issue is whether it makes sense to take these specific procedural
6 | steps. We are not talking about going to trial before the EU Commission -- the EU
7 | court proceedings are concluded, we're talking about the gathering of evidence and
8 | that is a case management issue.

9 | Secondly: the Tribunal's case management objectives are to deal with the case justly
10 | and at proportionate cost. The specific considerations are then set out in Rule 4(2)
11 | and include ensuring that the parties are on an equal footing and the saving of
12 | expense, dealing with the case expeditiously and fairly and proportionately. And the
13 | Tribunal has to bear all those objectives in mind, and it may involve assessing the risks
14 | and considerations and then possibly having to balance them.

15 | Third point: as regards the risks and considerations that are relevant, we say the
16 | Tribunal should have three points in mind in particular.

17 | The first -- and we would place great weight on this -- is the risk of deterioration of the
18 | evidence, given the passage of time since the relevant events.

19 | The second consideration is the need to get this case resolved expeditiously once the
20 | EU proceedings are out of the way and it is possible to do so.

21 | And thirdly, there is the possibility of wasted costs and those are all considerations
22 | that the Tribunal should consider.

23 | Fourth point, one I've already made, which is: you should consider the Article 102 and
24 | Article 101 claims separately. We shouldn't refuse to make progress in one area, even
25 | if you come to the view that it's not possible to make progress in the other.

26 | And fifthly, we're putting those points together. It's not enough simply to say -- as

1 Servier does -- that the Article 102 claim may not proceed to trial, or as the Rule 39
2 Defendants do, that the contribution issues may depend in part on whether the
3 Article 102 infringement is made out. What the Tribunal needs to consider is what the
4 evidence is that is actually going to be gathered and whether that evidence will depend
5 in any way on the outcome of the EU court proceedings, and therefore what the
6 balance of risk is between the deterioration in evidence and the risk of wasted costs.
7 To give you an indication of what I mean by that, you may have seen that Servier
8 suggests it doesn't make sense to gather evidence from the Rule 39 Defendants,
9 regarding the timing of generic entry of perindopril, because they say, depending on
10 whether the Article 102 claim is live or not, there may be multiple different
11 counterfactuals as to the timing of generic entry. We say that's all about points of
12 order, matter of argument at trial, and that will be decided at trial.

13 In terms of the actual evidence, you would expect witnesses of fact to speak to what
14 they in fact did, the barriers that they in fact encountered in seeking to bring a generic
15 perindopril to market in the period from 2004 to 2007, in circumstances where Servier
16 had filed the 947 patent. The nature of those barriers may then inform the argument
17 at trial as to those various counterfactuals that are being put forward of generic entry
18 at different times, may inform the experts' views and the parties' submissions. But the
19 mere fact that different counterfactuals may be considered at trial shouldn't affect,
20 greatly, the evidence that is actually going to be collected from the witnesses about
21 what they in fact did in the situation they in fact found themselves in.

22 So those are the broad considerations that are relevant.

23 Second area is the points of context in the passage of time. It will be amply apparent
24 to you, sir, that a great deal of time has passed since the events at issue, which is
25 highly relevant to the risk of deterioration of evidence and indeed a great deal of time
26 has passed since these proceedings were started. But to be more specific, in terms

1 of the time periods we're looking at, for the Article 101 claim, the key issue concerns
2 the prospects of generic entry in the period between 2004 and 2007. The start of that
3 period is obviously over 20 years ago and that poses a problem for the gathering of
4 witness evidence. Just to take a notional -- imagine a witness who was in the middle
5 of their career at the relevant time, somebody who, say, was in their mid-40s -- and
6 I'm saying "notional", because nobody's been put forward as potential witnesses at
7 this stage, that's one of our problems.

8 Now, somebody who was in their mid-40s at that point in time would have been born
9 around 1960. They would now be 66 and depending on the country they are operating
10 in, they may be approaching, or just post, retirement age. And so you can see this,
11 it's a notional example, but it shows you a great deal of time has passed that may
12 genuinely affect whether now people are available to give evidence. And --

13 JUDGE MEADE: Not because they're going to forget it, that much more, but because
14 they will retire and not be --

15 MR WOOLFE: And not be available to give evidence, or --

16 JUDGE MEADE: Right.

17 MR WOOLFE: -- may not be under the party's direction in the same way. In fact,
18 when we come to the Article 102 claim, we have specific examples of that,
19 with -- I point you to Servier's potential witnesses. But in fact, the Rule 39 Defendants'
20 own position is that the passage of time has already meant the personnel has changed
21 significantly and if I can take you to a passage in our skeleton argument where we pull
22 those references together, that's paragraph 11 of our skeleton argument, bundle G,
23 tab 1, page 5. (Pause)

24 And as you'll see there, the Rule 39 Defendants were making these points in the
25 context of complaining that disclosure will be difficult and expensive to do, and so forth.

26 JUDGE MEADE: Yes.

1 MR WOOLFE: But you can see what they say. So Niche had numerous personnel
2 changes. Krka referred to significant personnel changes, (inaudible) service as well.
3 Bristows simply referred to significant changes in personnel. And Mylan,
4 specifically -- we're given the information that only five Matrix employees have
5 remained since the divestiture of the Matrix API business in 2024.

6 So you can see this is not a hypothetical problem; this is genuinely -- it's quite real on
7 their own say so. And so changing personnel may affect the possibility of gathering
8 witness evidence: people leave the firm, they retire, they move abroad, it's harder to
9 persuade them to give relevant evidence.

10 Secondly, the situation is only going to get worse with the passage of time; it's not
11 going to get any better. These kinds of changes are not going to stop, simply because
12 the litigation is on foot and it's not appropriate simply to say that, because the
13 possibilities of collecting evidence have already deteriorated to some extent, nothing
14 more should be done now.

15 Now, in respect of the Article 102 claim, the situation is even more acute. The two
16 time periods that are relevant there -- well, in respect of the objective facts which we
17 say Servier should have known that it was producing alpha form perindopril -- there is
18 a relevant period around 1986 and 1987. That's obviously a very substantial period of
19 time, I think some 40 years ago. Even somebody who was very junior at the relevant
20 time, in their early 20s, would now be approaching retirement age as well.

21 So far as it concerns Servier's subjective state of knowledge at the time of filing the
22 947 patent and then defending and enforcing that patent, that would be a period
23 starting around about 2000, 2001. The patent was filed in July 2001 and it was
24 enforced up until 2008. Again, that's a similar time period to what I've said under the
25 Article 101 claim.

26 Now, we actually do have specific information regarding the difficulties of obtaining

1 witness evidence for this period in respect of Dr Sylvie Jaguelin. She was Servier's
2 Head of Patents from 1996 to 2001 -- so the period in which the patent application was
3 made -- and then was their patent director during the period during which the 947
4 patent was enforced.

5 If I can show you, please, Mr Tickner's Eighteenth Witness Statement: that's bundle I,
6 tab 2, page 11. At paragraph 31 you see his evidence. (Pause)

7 (Inaudible) this is the witness statement (inaudible).

8 JUDGE MEADE: It's on there. It's just page 6. Okay. Well, I'll look at it on here.
9 Okay.

10 MR WOOLFE: So the reason for picking on Dr Jaguelin in particular is because when
11 we served an RFI on Servier 12 years ago now -- maybe 13 years ago -- about whose
12 state of mind was relevant to its plea that Servier made that its employees acted in
13 good faith at all relevant times, she was the employee who they named.

14 JUDGE MEADE: Right.

15 MR WOOLFE: And she was the Head of Patents at the relevant period. Now, you'll
16 see what it says at paragraph 31.2. So in December 2024, the Defendants informed
17 us that she was no longer employed by them. And over the page, paragraph 31.3,
18 you can go to the correspondence and you can see what's summarised there. We
19 were asking them whether or not they agreed to provide assistance and essentially
20 they said it's entirely a matter for Dr Jaguelin; she's no longer under the Defendants'
21 control. The --

22 JUDGE MEADE: Sorry, what's your submission about that then? That she's not under
23 their control --

24 MR WOOLFE: Well. So the fact she's not an employee anymore may affect whether
25 or not she's willing to come to give evidence. It's an example of the general -- they
26 haven't identified anybody else who they say has relevant knowledge at the relevant

1 time. She's the only individual whose name we have been given of somebody whose
2 evidence may be relevant and we know that she, after many years of service, has now
3 retired from Servier. So it underlines this point: the passage of time is potentially
4 leading to the deterioration of evidence.

5 JUDGE MEADE: That doesn't stop you going and asking her if she'll give evidence.

6 MR WOOLFE: No, indeed, and we may wish to do so.

7 JUDGE MEADE: Right. Well, I had a general question to you which is, as far as any
8 witnesses you're going to call, I don't know how many there might be, but you're free
9 to get on with that if you want to. I mean, no order I make stops you doing that if you
10 want to do that as a precaution, as I see it.

11 MR WOOLFE: No, that is clearly true, sir. However, Servier may have other people
12 in mind who have relevant knowledge as to what was done at the relevant point in
13 time. If evidence is not generally collected and captured it is going to deteriorate
14 further from here. That's my essential submission, sir.

15 Now, in terms of the final point on length of time, these proceedings have been on
16 since 2011; 15 years. That does rather underline that if you wanted to put the claim
17 in a position where once the EU proceedings have been resolved, it can then proceed
18 expeditiously.

19 So then moving on to the Article 101 claim, which is the paradigm example of that,
20 because we say with the Article 101 claim, there simply is no reason not to get on with
21 this now, both in respect of disclosure, but also in respect of the preparation of witness
22 evidence. It is clear that the Article 101 claim is going to have to be prepared for trial,
23 and the timing of generic entry is going to be the key issue.

24 The essential point that's being made against us in respect to the Article 101 claim,
25 and the evidence on it, concerns the interrelationship between the Article 102 and the
26 Article 101 proceedings. What is said: either that the arguments as to contribution

1 may differ at trial, depending on whether the Article 102 claim is still live, or Servier
2 puts it that different counterfactuals will have to be considered. So I'm going to deal
3 with the Servier point up front. They make it in their skeleton argument at
4 paragraph 20(e), bundle G, tab 2, page 10. (Pause)

5 JUDGE MEADE: Yes.

6 MR WOOLFE: What is said is that if the General Court decides that Servier is not
7 dominant, as well as being dispositive of the patent abuse issue itself, the resolution
8 of this point will also determine the shape of the other main issue, namely the timing
9 of generic entry. What is said is that if Servier is liable for the patent abuse on the one
10 hand, or only for the settlement agreements it concluded with the generic companies,
11 both will affect the different counterfactuals that will have to be put to the relevant
12 witnesses. We say that it is wrong. Those are counterfactuals that may have to be
13 considered at trial, and the counterfactuals that are being considered may differ slightly
14 depending on the claims that are before the court.

15 However, there are two important points. First of all, the one I've already made, which
16 is witness evidence is evidence of fact. Witnesses should be giving evidence as to
17 what they actually did, the situation they found themselves in, and the Tribunal is not
18 likely to be assisted by very extensive evidence as to what they might have done,
19 hypothetically, in a series of different counterfactuals that are being put to them by
20 lawyers.

21 JUDGE MEADE: Witnesses in all sorts of litigation are asked, "What would you have
22 done if ..." I mean, you're not saying that's not factual evidence?

23 MR WOOLFE: I'm not saying that's not factual evidence, they may well do so. But
24 are they likely to have spent a great deal of effort -- I mean, essentially when they give
25 evidence of fact, they will trawl through chronologically saying, "We did this then", "We
26 experienced these issues with our synthesis process", "We had this correspondence

1 with whoever we had correspondence with, et cetera" and "These were the problems
2 we faced as a business". That is detailed evidence that takes quite a lot of putting
3 together and you're getting the witness's recollection.

4 Questioning them as to what they may have done in a counterfactual is not something
5 that's going to require anything like the same depth of time or paper to do, because
6 you're not trawling through what was actually done eight years previously. You're
7 asking them quite shortly what they might have done in a hypothetical situation. So
8 that's point one.

9 JUDGE MEADE: So I take your point, the evidence about what actually happened in
10 a point of historical fact is the same; that can't change. But you do accept that it would
11 be admissible for those fact witnesses to say "If the situation had been so and so, then
12 such and such"? You say it would be all right for them to do that?

13 MR WOOLFE: The fact that they say, you mention hypothesis, doesn't in itself make
14 it inadmissible.

15 JUDGE MEADE: No.

16 MR WOOLFE: There can be a bit of a grey area where you then start to shade into
17 (inaudible) --

18 JUDGE MEADE: No, of course they can; but in principle.

19 MR WOOLFE: Yes, in principle. That's right.

20 JUDGE MEADE: So the scope of the exercise of taking their evidence would be
21 different depending on the counterfactual.

22 MR WOOLFE: So, potentially, to a very limited extent. The --

23 JUDGE MEADE: Sorry, just a related question: do you accept that in principle there
24 would be witnesses who wouldn't give evidence at all in one scenario, depending on
25 the outcome of the proceedings from Europe? I mean there must be --

26 MR WOOLFE: Nobody's identified any specific witnesses for whom that is true.

1 JUDGE MEADE: No.

2 MR WOOLFE: So it's difficult to say in the abstract.

3 JUDGE MEADE: Well, there's no reason why it shouldn't be true, is there, I don't
4 think? So, patent abuse fails, then there will be witnesses who just wouldn't give
5 evidence at all. I think that must be true.

6 MR WOOLFE: So there are employees from Servier who wouldn't give evidence.

7 JUDGE MEADE: That's what I mean, yes.

8 MR WOOLFE: Witnesses as to Servier's state of knowledge as to when they applied
9 for the patent, et cetera, I agree on that. But on the Article 101 claim looking at the --

10 JUDGE MEADE: No, no, I understand your point on that.

11 MR WOOLFE: -- Rule 39 Defendants and their witnesses as to what they were doing
12 in the real world by the time the 947 patent was in place.

13 JUDGE MEADE: Yes. No, I understand.

14 MR WOOLFE: It doesn't instinctively seem to me that there would be a great deal of
15 evidence that they would give on that 101 claim that they wouldn't have to give.

16 JUDGE MEADE: Yes.

17 MR WOOLFE: In the event the 102 claim was there.

18 JUDGE MEADE: Because I appreciate you are saying that nobody specifically has
19 been pointed to -- and Servier can take that up in submissions -- but there could be
20 witnesses whose evidence would be taken and then turn out not to be needed at all
21 who wouldn't have wanted to spend their lives doing that, you know, in retirement.

22 MR WOOLFE: On the 102 claim or the 101 claim?

23 JUDGE MEADE: On the 102 claim.

24 MR WOOLFE: Well, the 102 claim, yes. I said I was going to come to you, yes.

25 JUDGE MEADE: Because this does have an actual real world impact on the witnesses
26 themselves that they have to spend their time doing this exercise. I mean, they might

1 feel obliged to do it even though they don't still work for Servier or any of the Rule 39
2 Defendants.

3 MR WOOLFE: Sir, if I may I'll come to that shortly. At the moment I'm trying to address
4 you on the 101 claim. I'm trying to say that I can see on the 102 claim there is
5 a balancing exercise to be done. But clearly there is the possibility that the 102 claim
6 may fall away in its entirety --

7 JUDGE MEADE: Yes.

8 MR WOOLFE: -- and we can't pretend that that's not the case.

9 JUDGE MEADE: No.

10 MR WOOLFE: And so stuff that is done may be wasted. We accept that as
11 a possibility, although we say other considerations should lead you to require the
12 evidence to be taken.

13 On the 101 claim, however, the most that is being said by Servier on behalf of the Rule
14 39 Defendants, effectively, is that the witnesses, who will have to give evidence
15 anyway as to what they in fact did, may be asked a few additional questions as to what
16 they would or wouldn't have done in particular circumstances.

17 Now, I have another reason for saying that, actually, not a great deal differently is
18 going to be done with the 101 witnesses, depending on whether the 102 claim is on
19 foot or not. Which is this: the Rule 39 Defendants clearly want to blame Servier.
20 I mean, that is the nature of their defence in the contribution proceedings. The nature
21 of their defence is, the situation we were in, by reason of the 947 patent and everything
22 Servier did, is such that we had little choice but to enter into these settlement
23 agreements and/or the settlement -- because of all that background, the settlement
24 agreements had very little positive impact.

25 Now, given that that is the case, they will want to say that, irrespective of whether
26 Servier's conduct in respect of the 947 patent is found to be unlawful or not.

1 JUDGE MEADE: Yes.

2 MR WOOLFE: Because you can say it is maximising Servier's causative contribution
3 and minimising theirs. Therefore, the Rule 39 Defendants' witnesses are going to
4 want to speak to the impact of the 947 patent on what they were doing, irrespective of
5 whether or not it can be said that the 947 patent was an abuse of a dominant position.
6 When you appreciate that, this point about the different counterfactuals is one that
7 Servier is making. It's not one that the Rule 39 Defendants are making in quite the
8 same way. They don't seem to want to disavow the right to serve factual evidence
9 saying that "it was the 947 patent that made our lives very difficult".
10 So when you look at it in that way, you realise there's very little difference. These
11 witnesses will need to give evidence anyway and not much is going to be different in
12 their evidence depending on whether or not the 102 claim is also in play:
13 "So far as we can tell, the Rule 39 Defendants had not identified any discrete topic for
14 evidence that arises on the Article 101 claims if Article 102 is still in play, which would
15 be entirely irrelevant if the Article 102 claim falls away." [as read]
16 So that's Servier's point. Nothing in the Rule 39 Defendants' skeletons add
17 significantly to this. Niche seek to say -- this is paragraph 11 of their skeleton --

18 JUDGE MEADE: Hold on a second.

19 MR WOOLFE: Do you want a reference for that, sir?

20 JUDGE MEADE: No, no, I can find it. Sorry, what paragraph number did you say?

21 MR WOOLFE: Paragraph 11. Page 8.

22 JUDGE MEADE: Yes, right. Which part?

23 MR WOOLFE: They seem to be saying that the issues are not sufficiently clear. We
24 find that a bit odd in circumstances where it is. We've pleaded an extensive case
25 against Servier as to the timing of generic entry. It's not at all clear to us why it is said
26 that the issues as to the timing of generic entry are not sufficiently clear for witnesses

1 to give evidence.

2 JUDGE MEADE: Well, that follows on from the argument that disclosure is not
3 completed or reviewed. I think also they're suggesting that there might be split trials
4 so you'd be taking evidence for a trial that was going to be the second trial.

5 MR WOOLFE: Can I deal with those separately? As regards the need to take
6 disclosure, obviously views differ on this as to whether or not you want witnesses
7 reciting large swathes of documents or not. But that can also be addressed by slightly
8 adjusting the timing of the witness evidence with respect to disclosure. That is not an
9 argument for saying we should wait for the European Commission proceedings to
10 conclude.

11 The point about the split trial as well --

12 JUDGE MEADE: Sorry, if you just put some actual months around that. I'm not quite
13 sure what they have in mind as being completion of disclosure but tell me when you
14 interpret disclosure as going to be complete.

15 MR WOOLFE: Well, the issue there is that obviously we're seeking further directions
16 to the disclosure at the next CMC, which we say should be in July.

17 JUDGE MEADE: Yes.

18 MR WOOLFE: We were asking for the witness evidence to be in October. It's
19 obviously got shunted somewhat by reference to the fact that this CMC had been
20 postponed. We would anticipate the disclosure can be done relatively swiftly after that
21 CMC. If we have the disclosure reports in advance of that CMC, then we have the
22 CMC directions for it to be given.

23 However, if you were minded to order witness statements to be taken without regard
24 to the EU court proceedings, but to take the view that we need slightly longer in order
25 for disclosure to be completed, then I wouldn't oppose that. But what is being put
26 against me is that witness statements should not be done until the EU proceedings

1 are finished.

2 JUDGE MEADE: Yes, but factoring in disclosure. In litigation of this kind and on this
3 scale, you would normally want to have the disclosure relevant to a witness before you
4 took their proof. It would be crazy to take their evidence without the disclosure, surely.
5 So then you've got to have the disclosure to do a sensible proof of evidence and if the
6 disclosure is not going to be until after the anticipated date of the European decision,
7 then it's going to be after the date of the European decision anyway.

8 MR WOOLFE: This is the thing about the date of the European court decision. Servier
9 say that the EU General Court decision is imminent.

10 JUDGE MEADE: Yes.

11 MR WOOLFE: We have no idea when it's actually going to be. But they published
12 the diary. At the moment it's not in the diary.

13 JUDGE MEADE: Yes.

14 MR WOOLFE: But also, when that judgment comes in, if it's in the Commission's
15 favour, Servier may appeal. If it's in Servier's favour, the Commission may appeal.
16 Either way, it's another 2 months and 10 days for that appeal to be filed and then
17 however long the ECJ takes to deal with it, which could be anything; 15 months,
18 18 months, 2 years.

19 Now, if the General Court judgment is handed down in autumn this year, that could
20 easily mean the ECJ judgment doesn't come out until late 2028, early 2029. That is
21 what we genuinely have a problem with, because we're not looking at a short delay of
22 a few months until this judgment is handed down. I mean, if Servier would stand up
23 today and say, "Come what may, once the General Court has handed down their
24 judgment, crack on and we'll go. Whatever happened with the appeals (inaudible), at
25 that point we'll drop our objections. Witness statements à go go". If they were to say
26 that, the situation might be different, but they're not going to say that.

1 JUDGE MEADE: Right.

2 MR WOOLFE: So the primary question is, do we try and make progress with the
3 witness evidence, notwithstanding the EU court proceedings or not. In that context, if
4 you were to take the view that disclosure has to be completed first and then witness
5 statements of fact, then we can shunt back the witness statements of fact by a month,
6 2 months, however long is necessary to fit disclosure in. That's not the kind of
7 adjustment to the timetable which I'm going to be opposing. What we really want to
8 urge upon you is the need for the process of taking witness statements of fact to begin,
9 notwithstanding the parallel European proceedings. (Pause)

10 Mylan, Viatrix; if I can take you to their skeleton argument at paragraph 25. That's
11 bundle G, tab 4.

12 JUDGE MEADE: Yes, got it.

13 MR WOOLFE: Page 8. You'll see there that statement of Mylan's position, it's a point
14 about causation. They say:

15 "The unlawful agreement between Servier and the Third Rule 39 Defendant made no
16 difference for the purposes of any loss or damage suffered by the Claimants. Any
17 such loss or damage was caused by Servier's abuse of its dominant position.
18 Accordingly, the parties do not yet know the scope of Servier's infringement. This
19 goes to the heart of the factual issues in dispute." [as read]

20 That argument simply doesn't work. The causative impact of Servier's conduct is an
21 entirely separate matter from whether or not it's unlawful. If, in fact, Servier's conduct
22 with the 947 patent was entirely causative of the Claimants' loss and the unlawful
23 agreements had no impact at all, then our Article 101 claim fails. That doesn't depend
24 upon whether or not the Article 102 infringement is made out or not. That is the short
25 point of our response to that.

26 Viatrix do go on to make a further point at paragraphs 26 and 27, where they say:

1 "It would be premature to formulate the precise issues." [as read]
2 Sorry, they're referring to our point that we are not yet ready to formulate the precise
3 issues for expert evidence. They go on at paragraph 27 to say that, because we also
4 say -- they somewhat mischaracterise our position that:
5 "Some of the issues for expert evidence might be resolved by way of factual evidence.
6 It highlights the extent to which the boundaries between factual and expert evidence
7 have not yet resolved in this claim" [as read], and therefore they use that as an
8 objection.
9 Now, to be clear, we're not being inconsistent. We're not saying that directions for the
10 expert evidence must await the EU court proceedings. We're simply saying we're not
11 ready to seek those directions yet at this stage. We're not being inconsistent.
12 What Mr Tickner actually says, he doesn't say simply that some issues for experts
13 might be addressed by factual evidence. What he actually says is, the Claimants may
14 need experts to address some issues, the Rule 39 Defendants may be able to address
15 through factual evidence. That's because they're in the generics business. We're not.
16 They may be able to lead evidence directly as to some stuff, but we may need to rely
17 on expert evidence. That's the limited extent of the potential overlap in the expert and
18 factual evidence. There's no reason for that to say, "Oh, well, we must wait until the
19 expert evidence boundaries are made clear before they put in their factual evidence".
20 JUDGE MEADE: Just at a slightly more structural level, when the General Court's
21 decision comes out, your clients' position is going to be that these claims should move
22 ahead to a trial, notwithstanding an appeal?
23 MR WOOLFE: No.
24 JUDGE MEADE: No? What is ...?
25 MR WOOLFE: If the General Court decision comes out and, say it is in the
26 Commission's favour --

1 JUDGE MEADE: Yes, well, let's do both scenarios.

2 MR WOOLFE: Yes, let's do both scenarios. The first one: it's in the Commission's
3 favour so the finding of dominance is upheld. Obviously, if there's no appeal we can
4 move forward to trial on all matters at that stage.

5 JUDGE MEADE: If there's no appeal.

6 MR WOOLFE: If there's no appeal.

7 JUDGE MEADE: Okay, that sounds like a big "if".

8 MR WOOLFE: That's a big "if".

9 If there is an appeal then we couldn't move forward with the trial of the 102 claim
10 because the issue of dominance is the point of overlap between the Commission
11 decision and this, and we simply can't move forward to trial.

12 In principle, you could consider a split trial, and you'll see the Rule 39 Defendants
13 made some reference to that. The difficulty is, is precisely this point that the Rule 39
14 Defendants, in a trial about Article 101 contribution claims, will want to make points
15 about the causative impact of Servier's conduct in relation to the 947 patent purely
16 factually in causation terms. Therefore, that will overlap with the findings you'd be
17 wanting to make in the later trial of 102. So there's an inevitable risk of overlap,
18 duplication of costs if you try it twice. Alternatively, inconsistent decisions if you try it
19 twice. So that's why we're not proposing a split trial.

20 JUDGE MEADE: Okay. So if the Commission wins and there's an appeal, as far as
21 you're concerned, no split trial and it has to await the appeal in the Court of Justice.

22 MR WOOLFE: Yes.

23 JUDGE MEADE: Okay. All right, yes.

24 MR WOOLFE: Then for (inaudible) the other layer, which is if Servier win.

25 JUDGE MEADE: Right.

26 MR WOOLFE: Obviously if Servier win, the Commission don't appeal, the 102 claim

1 falls away.

2 JUDGE MEADE: Yes.

3 MR WOOLFE: We can proceed to a 101 trial. Alternatively, if Servier win and the
4 Commission appeals, we're actually still in the same situation of: you can't proceed to
5 a trial of 102, unless --

6 JUDGE MEADE: Right. You're not arguing for a split trial.

7 MR WOOLFE: Not arguing for a split trial. Obviously --

8 JUDGE MEADE: So unless there's no appeal, you won't be arguing for a split trial.
9 (Inaudible) okay.

10 MR WOOLFE: That's not what we're -- because it gets messy when you actually start
11 thinking through --

12 JUDGE MEADE: Okay. No, that's fine, just to understand your position.

13 MR WOOLFE: The other suggestion that's been put forward, I think by Teva -- this is
14 paragraph 30 of their skeleton, which is relevant to the split trial point. That's bundle G,
15 tab 6, page 10. (Pause)

16 They make a different split trial point, which is to say -- well, first of all, they say, 30.1:
17 "It is premature to timetable witness evidence in the abstract...It is common ground
18 that dominance may be determined, will be determined by the ultimate outcome of
19 Servier's appeal against the Commission Decision.." [as read]

20 Then at 30.3:

21 "If the Commission's findings as to market definition, dominance and abuse are
22 upheld, it will be Teva's case that any loss suffered was caused by Servier's abuse of
23 a dominant position." [as read]

24 Just to note, that the Commission did not consider the patent abuse, so that's
25 important.

26 They go on to say:

1 "It follows that a trial of the claims against the Rule 39 Defendants may never be
2 required if the Tribunal were to find that Servier's breaches of Article 102 caused any
3 loss suffered by the Claimants." [as read]

4 There's a number of things wrong with that. First of all, that this seems to be proposing
5 a split trial where the CAT takes -- this Tribunal -- the Article 102 claims all the way to
6 trial, which nobody is proposing, and then reach a judgment on that before coming
7 back and citing Article 101 and that just would make no sense. (Pause)

8 And another point as well, it is nonsensical to say that if the patent abuse caused loss,
9 the pay for delay agreements didn't cause any loss. That simply doesn't follow.
10 Servier was causing the Claimants loss by engaging in the patent abuse. However, if
11 the Rule 39 Defendants had refused to enter into the pay for delay agreements, and
12 had instead entered the market with generic perindopril in any event, the price of
13 perindopril could still have fallen. So the fact that Servier's conduct in respect of the
14 patent is unlawful.

15 JUDGE MEADE: I've lost the -- what scenario you're positing now?

16 MR WOOLFE: What seems to be being put forward --

17 JUDGE MEADE: Patent abuse did take place.

18 MR WOOLFE: Yes.

19 JUDGE MEADE: And --

20 MR WOOLFE: Can I take a step back and then try that one again?

21 JUDGE MEADE: Yes.

22 MR WOOLFE: The Rule 39 Defendants, a number of them, and Teva are doing it
23 here, are trying to say that if Servier engaged in the patent abuse, that was wholly
24 causative of the Claimants' loss.

25 JUDGE MEADE: Right, and that's not an impossible result; what you're saying is one
26 thing that's not on the table -- you're saying -- is to try the 102 first, to determine that,

1 and park everything else.

2 MR WOOLFE: I am saying it is -- it would be a very -- it would be a very odd and
3 surprising result. But the patent abuse comes first in time.

4 JUDGE MEADE: Yes.

5 MR WOOLFE: And then you have the pay for delay agreements that come later in
6 time.

7 JUDGE MEADE: Yes.

8 MR WOOLFE: Now, it may be the case that the patent abuse may have had no
9 causative impact; that is possible.

10 JUDGE MEADE: Yes.

11 MR WOOLFE: But the mere fact that the patent abuse was unlawful doesn't and won't
12 mean that the pay for delay agreements had no causative impact.

13 JUDGE MEADE: No, I don't think that's what they're saying. I think they're saying that
14 the abuse was completely causative of all the loss that the Claimants suffered; I think
15 that's what they're saying here.

16 MR WOOLFE: Right. They're making it conditional on whether or not -- what they're
17 trying to say is if the findings are upheld, and this is the point, that the causative impact
18 of these two events does not depend in any way on the --

19 JUDGE MEADE: Yes, they're saying if the Commission wins --

20 MR WOOLFE: Yes.

21 JUDGE MEADE: -- then they will say -- Teva will say -- that the patent abuse was
22 100 per cent causative of all the loss suffered by all the Claimants, so pay for delay
23 later on didn't make any difference. They might -- I mean, it doesn't mean they're
24 going to succeed on it, but that's the argument they're sketching out here. But your
25 point to that is that the last sentence in that paragraph, which says that "Trial of the
26 claims against the Rule 39 Defendants may never be required", well, that would only

1 | happen if there was a trial first of the causative effect of the abuse and it was held that
2 | that caused all the abuse. So -- and you're saying that's not on the cards.

3 | MR WOOLFE: Yes, and a wider point also that the causative effect of conduct --

4 | JUDGE MEADE: Yes.

5 | MR WOOLFE: -- doesn't depend on whether or not that conduct is unlawful.

6 | JUDGE MEADE: I don't think they're saying it does. But anyway, this is several ifs
7 | downstream of where we are.

8 | MR WOOLFE: Yes, okay. And I think Lupin, with respect, don't say anything terribly
9 | different.

10 | So on Article 101 claims -- I make one final overarching point on the Article 101
11 | evidence -- counterfactual generic entry data is the big uncertainty in the Article 101
12 | claim.

13 | JUDGE MEADE: That's the point they make themselves.

14 | MR WOOLFE: Yes, I think that's common ground. And my point is this: gathering the
15 | evidence as to the prospects of generic entry will give the parties the opportunity to
16 | come to a common valuation of what this claim is actually worth.

17 | JUDGE MEADE: Right.

18 | MR WOOLFE: And therefore, actually getting this evidence in may have the
19 | advantage of achieving settlement as well. Whereas otherwise we all labour on under
20 | a great deal of uncertainty, as to the actual causative -- or as to what the evidence is
21 | going to be on this issue, which is going to come to trial in any event, even if we don't.

22 | JUDGE MEADE: Yes. Well, I mean, at a general level, I can certainly accept your
23 | submission that both sides seeing the factual evidence can be a contributing factor to
24 | the settlement in any case.

25 | MR WOOLFE: Yes, in the context where this patent infringement has been found to
26 | exist and therefore it's going to come --

1 JUDGE MEADE: Yes, certainly. Well, I meant generally as well, but certainly in this
2 context in particular.

3 MR WOOLFE: So on the Article 101 claim, all the factors we say point in favour of
4 getting the evidence in --

5 JUDGE MEADE: Right.

6 MR WOOLFE: -- and giving directions for the service of factual witness statement
7 evidence.

8 JUDGE MEADE: Yes. I'm not sure if you're tiptoeing towards the submission that you
9 want the Article 101 factual evidence done or not.

10 MR WOOLFE: I'm asking for both --

11 JUDGE MEADE: Right.

12 MR WOOLFE: -- but I am giving different submissions -- I'm going to come to 102 in
13 just a moment.

14 JUDGE MEADE: Okay.

15 MR WOOLFE: I'm making different submissions in respect of the two --

16 JUDGE MEADE: Yes.

17 MR WOOLFE: -- because I can see that the factors are somewhat different in respect
18 of the two.

19 JUDGE MEADE: Right.

20 MR WOOLFE: So when we say -- on 101 -- absolutely all the factors point in favour
21 of witness statement evidence.

22 Turning to Article 102, we do acknowledge there is more of a balance of risks, because
23 there is the possibility the Article 102 claim may fall away entirely --

24 JUDGE MEADE: Yes.

25 MR WOOLFE: -- if the European proceedings ultimately reach the conclusion that
26 Servier was not dominant.

1 Against that, we say there's a substantial risk of deterioration of evidence as regards
2 Servier's subjective state of mind in particular. I won't take anything like as long on
3 this; four short points.

4 JUDGE MEADE: Yes.

5 MR WOOLFE: First one I've already made: Servier presents this as being a short
6 delay until the General Court judgment is handed down, but the implication of their
7 argument is that nothing should be done at all until the European proceedings are
8 resolved. And therefore that's the question of principle you should consider: should
9 we get on with gathering the factual evidence notwithstanding the European
10 proceedings are on foot.

11 JUDGE MEADE: Yes.

12 MR WOOLFE: Second point: nothing Servier has said suggests that the risk of
13 deterioration in evidence is negligible. We know what we've seen about Dr Jaguelin
14 having retired, Servier haven't identified any other witnesses to us.

15 Third point: gathering factual evidence at this stage, on the 102 case, will also enable
16 us to consider what expert evidence is required to prepare the claim expeditiously
17 once the European proceedings are concluded.

18 Fourthly: if the concern is wasted costs, well, the Tribunal can obviously deal with that
19 as appropriate through the making of cost orders, especially in circumstances where
20 a finding that Servier are not dominant would mean the dismissal of our 102 claim.

21 JUDGE MEADE: Right.

22 MR WOOLFE: Therefore, although it's a matter of balancing risks, we say
23 fundamentally the risk of deterioration of evidence is severe. The only point being
24 made against that is the risk of wasted costs that can be managed.

25 So on 1.2, we submit the Tribunal should seek to make progress on both the
26 Article 102 and the 101 claims and the appropriate way to do that is to make an order

1 | for witness statements to be provided by --

2 | JUDGE MEADE: You haven't got a fallback request that I direct that the factual
3 | evidence on 101 be prepared, but not 102.

4 | MR WOOLFE: I was hoping that was implicit.

5 | JUDGE MEADE: Right.

6 | MR WOOLFE: If you come to the conclusion that you're not with me on the 102 --

7 | JUDGE MEADE: Yes.

8 | MR WOOLFE: -- then I would still ask for you to make a direction with respect of 101.

9 | JUDGE MEADE: Okay, and is it clear that there's no witnesses who would cover
10 | both?

11 | MR WOOLFE: Um, we --

12 | JUDGE MEADE: I mean, you -- it may not be a question primarily for you, but are you
13 | aware of any --

14 | MR WOOLFE: We're not aware, no. We've been approaching this largely on the basis
15 | that on 102, the key factual evidence is Servier's internal state of knowledge, as
16 | regards its patent applications. On 101, generic entry, key evidence is really from the
17 | Rule 39 Defendants, who were the ones actually trying to get into the market.

18 | JUDGE MEADE: Right.

19 | MR WOOLFE: So it doesn't seem that -- the Rule 39 Defendants are not going to have
20 | a great deal of evidence as to Servier's knowledge and vice versa.

21 | So those were the submissions I was wanting to make about witness statements.

22 | JUDGE MEADE: Thank you very much. (Pause)

23 |

24 | Opening submissions by MR SAUNDERS

25 | MR SAUNDERS: Sir, to a certain degree, this application has come full circle. It
26 | started off as an application for certain discrete evidence on certain discrete issues. It

1 then went round to an application for full evidence on everything, which is what was
2 pursued by the Claimants before this hearing, and it now seems on his feet, my learned
3 friend is trying to narrow it to Article 101.

4 JUDGE MEADE: No, that's a fallback.

5 MR SAUNDERS: All right. Well, as a fallback --

6 JUDGE MEADE: He still wants it all done, but his fallback--

7 MR SAUNDERS: Yes, I agree, he's developed a fallback on his feet.

8 The problem with the Article 101 fallback is the overlap problem, and I'll come on to
9 develop that before my Lord in a second.

10 Just before we get to that, there are a couple of general points. This application was
11 served by my learned friends with there being an urgent need in their skeleton
12 argument, paragraph 11, where they say the need to make progress is pressing, and
13 so on.

14 The position is that this CMC was originally due to take place in July 2025. It was
15 vacated shortly before the hearing at the Claimants' request. It is my learned
16 friend -- just in his submissions a moment ago -- said that the fact there hasn't been
17 a CMC since 2024 is in some way a reason to get on with this now. We say no,
18 because where we've ended up is that the General Court judgment is imminent and it
19 is very difficult to see why waiting a few months more for that judgment -- and then
20 considering the position in the light of that -- can really afford the Claimants any
21 prejudice at all. If they want to go off and contact Dr Sylvie Jaguelin, they are free to
22 do so, and we've confirmed that to them and it's actually cited in Mr Tickner's evidence,
23 where he explains that was said. If they want to go off and make an application under
24 Hague, they can.

25 Now, stepping back from all of this, this claim relates to various matters that took place
26 over 20 years ago. The proceedings have been on foot for some 15 years. Some of

1 the matters relate to events from 1984 onwards and the question of knowledge of
2 Servier back in 1986. So this is 35 to 40 years ago now. So it is very difficult to see
3 why a few months' extra wait is really going to make much difference to anybody's
4 recollection of what happened back then. I mean, largely everybody is going to be
5 reliant on the documentary record as disclosed.

6 JUDGE MEADE: So at some point, Mr Saunders, you say a few months won't make
7 any difference. Is it a few months? Because once the General Court provides their
8 decision I rather suspect it'll be your clients' position that nothing should happen until
9 the result of any appeal. So is it a few months, or are we just --

10 MR SAUNDERS: That rather depends on the outcome of the appeal. What I'm not
11 going to do is --

12 JUDGE MEADE: Well, Mr Woolfe's position is that: unless there's no appeal -- that
13 the trial has to await because he says you can't split it -- and so he's not arguing for
14 a trial of just 101 -- so I don't know if your position is any different, I doubt if it is.

15 MR SAUNDERS: (Inaudible) and we'll have to see what the position is in the light of
16 the decision. So, obviously if we win on abuse of dominance then it's a question for
17 the Commission as to whether they still want to pursue this case.

18 JUDGE MEADE: (Inaudible) if they do.

19 MR SAUNDERS: Well, they will have to take a view on that and obviously their own
20 internal priorities may or may not support doing that at this stage and they'll have to
21 take a view, and so will Servier if we lose. But what we're not going to do now is give
22 any particular position in advance of seeing that decision. I mean, there is, as my Lord
23 I think has seen, a lot of money at stake by way of the Commission proceedings and
24 the appeals from them. You know, our clients will have to take a view on that once
25 they see the result.

26 JUDGE MEADE: It does sound like in the not improbable scenario that the loser

1 | appeals, there won't be a trial of these proceedings until after the Court of Justice.
2 | Your position then will be: no factual evidence being prepared until then, I think. So
3 | I'm just a bit cautious about your submission that it's only a few months we're talking
4 | about, because there are a lot of scenarios where it's a couple of years, I think.

5 | MR SAUNDERS: And --

6 | JUDGE MEADE: That's right isn't it?

7 | MR SAUNDERS: Well, my Lord, the position is we'll just have to review where we
8 | are. We're not saying that this debate can't happen once we've got the benefit of that
9 | judgment but --

10 | JUDGE MEADE: If there's an ongoing appeal.

11 | MR SAUNDERS: No, I mean, we can certainly have the debate. I don't want to
12 | commit my clients' position as to that. Obviously we'll have to wait and see what the
13 | judgment says. But I mean the reality is that once that judgment is received, it will
14 | determine issues of market definition and dominance and that will have a very large
15 | impact indeed on these proceedings. It may be that someone can persuade my Lord
16 | at that stage, or whoever, that actually one should crack on with it because the decision
17 | is so robust that any appeal can -- we'll take a view on the appeal. That's a question
18 | for down the track and not for today.

19 | So, my Lord, the position there is formally we reserve our position but we're certainly
20 | not saying that the argument can't happen at a future stage and we'll have to test the
21 | judicial waters at that point.

22 | JUDGE MEADE: Okay.

23 | MR SAUNDERS: Now, as you've seen, there are two different aspects: the pay for
24 | delay agreements, the 101 aspects, and there's also the abuse of dominance as
25 | a result of acquiring technology from Azad Pharma and engaging in what's alleged
26 | here to be an abuse of the patent system.

1 Now, the Commission decision found that we had abused our dominant position by
2 concluding the agreements and acquiring the Azad technology. My learned friend said
3 that the abuse of patent system misuse weren't part of the decision. The actual
4 position is they were investigated by the Commission, but not upheld. So despite
5 dawn raids and seizing lots of documentation, recital 127 of the Commission decision
6 records that there's no direct evidence Servier considered the 947 patent invalid when
7 it was filing it. I'll just note that's E 1, tab 1, page 34, and recital 159 said that:
8 "Explicit documentation denoting Servier's knowledge of invalidity has not been
9 found."
10 Now there is, as my Lord knows, no doctrine of fraud on the office under English law.
11 That isn't for today either, but we do say that's very wide reaching and potentially quite
12 a difficult claim. It's already been considered by Mr Justice Roth at an earlier stage
13 where he expressed the view that it might be challenging for the Claimants to establish.
14 The idea that competition law supervenes on fairly standard filing practice, in relation
15 to patent prosecution, is certainly a novel one. It mixes up representations of fact and
16 law, we say. But in any event, on any view, that is a claim which is dependent on
17 dominance being established and the vehicle for doing that is the EU proceedings.
18 Now, the position in the EU -- just to come back to that -- the General Court gave
19 judgment back in December 2018. So that first judgment annulled one finding of
20 Article 101 between Servier and Krka. It upheld the remainder. It annulled the
21 Commission's findings of Article 102, abuse of dominance, in their entirety, on the
22 basis that we weren't found to be dominant. That's then been appealed and then
23 remitted. So the issues that are alive in the General Court now on the remittal are,
24 firstly, whether one of the Krka agreements infringes Article 101, and secondly,
25 whether the Commission's findings of abuse of dominance are made out. Of course
26 that requires an analysis of market definition and dominance more generally.

1 The evidence in relation to that is that it was heard in October 2025. Ms Manley gives
2 evidence explaining that, having looked at the timeline on previous cases, it is
3 imminent; it may be before the summer, but in any event, likely this year.

4 So, what do we do about these UK proceedings? Well, the Claimants' position
5 throughout has been rightly, and it is today, that the trial can't take place until the
6 conclusion of the EU litigation. Everybody agrees with that. Nobody is saying that the
7 court should list a trial now, not least because the question of dominance has to still
8 be determined.

9 What we have done to date, at quite a considerable cost, is progress quite a lot of
10 aspects of this case. So there have been issues about strike out of causing loss by
11 unlawful means. There was risk due to the res judicata issue; both of those went to
12 the Supreme Court. We had a five week trial about where the Claimants won on one
13 aspect of Servier's mitigation defence; the costs of that were in excess of £6 million
14 on the part of the Claimants. That was subsequently upheld by the Court of Appeal.

15 We now have the joinder following the Court of Justice decision of the Rule 39 parties.
16 So, Servier is prepared to make progress where possible, but only where it's at
17 proportionate cost and subject to the impact that the EU proceedings will have. But
18 the problem is, and one could see this to a certain extent in the Claimants'
19 submissions, that the reality of number of proportionate steps still available pending
20 that decision is really very limited.

21 What we say is that of course in circumstances where there are no directions to trial
22 generally that have been set, it's not clear whether one or more of the parties will be
23 contending for a split trial on certain issues. There's a hint of that in some of the
24 generics companies' submissions. Disclosure is not yet completed. These are all
25 reasons why, as my Lord has already observed, you might want to get your house in
26 order on those points before you work out the remit of actual evidence.

1 Why does the General Court matter? We say it's for two reasons. Firstly of course, if
2 we win on dominance then the abuse of the patent system case is out of the window.
3 So that's obviously a major change in the litigation. But also, that decision will resolve
4 the shape of a very complicated contingent issue at trial, which is when are the
5 generics companies saying that they, in the counterfactual, would have entered the
6 market.

7 There is quite a significant difference between all of these different counterfactuals. If
8 you take at one extreme -- if the abuse of the patent system claim is in, because
9 Servier was held to be dominant, then the Claimants will say generic entry will do, but
10 generic entry should have been as early as 2003 because that patent -- the blocking
11 patent -- was abusive.

12 If on the other hand we win dominance and out goes the abuse of the patent system,
13 then it's only the settlement agreements that are in and the Claimants' case on generic
14 entry is February 2005.

15 JUDGE MEADE: Yes, yes.

16 MR SAUNDERS: Real world entry was July 2007. (Overspeaking)

17 JUDGE MEADE: (Inaudible).

18 MR SAUNDERS: Yes, exactly. I mean, the one thing I should just mention just in
19 relation to July 2007 is the only exception is Apotex. Apotex was on the market July
20 to August 2006 and then it was enjoined which gave rise to the Apotex litigation.

21 Now, all of these issues are intertwined. So, the result of that judgment will
22 inform -- the General Court judgment -- what evidence is needed and how those
23 counterfactuals will work. The same as -- my learned friend has already taken you to
24 some of the arguments that the Rule 39 Defendants make about causation, and I'll
25 leave them to develop those, but they will say that they are developing a case to say
26 that actually there's a sort of swamp effect, as it were, that the abuse of dominance, if

1 | it's established, means that actually in terms of causation the effect of the agreements
2 | is neither here nor there.

3 | Now, what does that mean? Well, it could render work proposed pointless in several
4 | different ways. If we waste time now on patent abuse and we win on market definition,
5 | or if we know the position on counterfactuals it could narrow the issues considerably
6 | there.

7 | My learned friend referred to Dr Sylvie Jaguelin's evidence -- Mr Tickner's evidence in
8 | relation to her. She was the Head of Patents for the Defendants, Patent Director until
9 | her retirement, responsible for drafting prosecution and defence of the 947 application.
10 | She is an absolute paradigm example of a witness that isn't going to be needed,
11 | potentially, if the patent abuse allegations are not in because her job was to run the
12 | patent department, essentially -- there may be some nuance in that -- and also was
13 | involved in some of the EPO prosecution, as you'd expect. So, you know, quite
14 | whether she is going to be needed or not is entirely contingent on where we end up in
15 | the European litigation.

16 | Just to complete a couple of other miscellaneous points, my learned friend didn't refer
17 | in his oral submissions to *National Grid*. You would have seen a reference to that in
18 | their skeleton argument at paragraph 12. That case we say is not apposite here. The
19 | point here is that the general --

20 | JUDGE MEADE: Well, don't worry about that.

21 | MR SAUNDERS: But, my Lord, the point is that the General Court judgment defines
22 | both the legal framework and the universe of counterfactuals; that's the critical point.
23 | And my Lord, just on that point, you made the quote, there's been a bit of selective
24 | quotation, but if that's not of particular, particular importance.

25 | So we say that there is a potential for a very large sum in wasted costs. It also is
26 | important that this case is put in good order and the steps take place sequentially to

1 the extent they're supposed to. So there needs to be disclosure and then proper
2 proofing of witnesses on the issues that they need to be proofed on.

3 There's also a risk that asking for the whole lot in, or subsets of the material, actually
4 ends up being a request for interim and, as it were, sort of contingent witness
5 evidence, which is potentially not a fair way to proceed, more fundamentally, because
6 it isn't clear exactly what case Servier will need to meet. It isn't clear to the witnesses
7 what evidence, and what the full scope of the evidence is, that they should be giving.
8 It's going to be very difficult to marshal a lot of documents to them to proof them
9 properly. All of these for the witnesses themselves, it can actually be quite oppressive,
10 but it can also be prejudicial to my client to do it in that unstructured way.

11 At the end of the day, the main point which my learned friends -- the
12 Claimants -- advanced is that they say that witness recollections may fade. But given
13 the time that has passed and, at least until the next CMC, the relatively limited time,
14 plus the fact we will have a decision on dominance albeit subject to potential appeals,
15 it's difficult to see how something should be done now particularly on the extremely
16 accelerated timescales the claimants are thinking.

17 JUDGE MEADE: Okay.

18 MR SAUNDERS: But one of those is Servier's submission.

19 JUDGE MEADE: Are you going to tell me about overlap witnesses?

20 MR SAUNDERS: In terms of witnesses who may have to deal with both aspects? I've
21 addressed you on Dr Jaguelin. I'm not sure if there is --

22 JUDGE MEADE: She wasn't an overlap witness.

23 MR SAUNDERS: No, she's not. So she's someone who might actually be completely
24 out.

25 JUDGE MEADE: But earlier in your submissions you said you were going to cover
26 people who were covering both. (Pause)

1 MR SAUNDERS: Yes, my Lord, I don't have specifics by name, but anybody that's
2 dealing with generic entry will have to deal with it potentially differently depending on
3 exactly which variant of the case and the relevant dates that come in. We are talking
4 about matters over a considerable period of time. There are quite a lot of intervening
5 events. So there's obviously the litigation that took place, the settlement agreements
6 and so on, and getting some clarity on that is going to present issues. It may be that
7 certain members of staff -- I don't have evidence on this but it's easy to hypothesise
8 that certain people were there at certain periods of time and then left or went to
9 a different role in the company. So there are going to be different issues there, as
10 there will be inevitably for any large business like Servier.

11

12 Opening submissions by MS ABRAM

13 MS ABRAM: The Rule 39 Defendants have divided up between ourselves primary
14 responsibility for each of the issues --

15 JUDGE MEADE: (Inaudible) to ask you that.

16 MS ABRAM: -- subject to any additions, I'm up on the factual witness statements.

17 I just want to add three short points as to why the parties shouldn't be directed, at this
18 CMC, to file factual witness statements, and then also deal with this fallback position
19 which has developed this afternoon.

20 The first point is, frankly, it is a total recipe for chaos for factual witness statements to
21 be directed before not only disclosure is complete, but before the parties even know
22 when disclosure will be complete. As in any other case, the parties and their legal
23 representatives are going to need to read the disclosure in order to work out who the
24 most appropriate witnesses are, and to consider what evidence they need to give,
25 what the issues are that they need to cover. More than that, of course it's
26 appropriate -- as in any other case subject to PD 2/2021, which is our equivalent of

1 57AC -- for the witnesses to have their memory refreshed as to any relevant
2 documents. In order for that to happen, one needs to have given the disclosure, one
3 needs to have been able to read the disclosure. So, for that reason, even if that was
4 the only reason, we'd say that this is just too early and in the wrong context for
5 a direction to be given for witness statements.

6 Second point, as a matter of practical reality, any witness statements that are served
7 at this stage are very likely to need to be supplemented by further rounds of evidence
8 between now and the trial. That is, at a practical level, just not going to be helpful to
9 the trial judge, whether that's you or whether that's someone else, including the
10 Rule 39 Defendants, as you can see, there are seven groups of parties in this case.
11 One can well imagine that there will be a significant number of factual witnesses in
12 addition, doubtless, to many, many experts. There will be lots of witness statements.

13 As my learned friend, Mr Saunders, has pointed out, as Mr Woolf acknowledges, the
14 factual issues in the case are not just complicated but they're intertwined and
15 overlapping with one another. What the trial judge, I'd suggest, really needs is as neat
16 a package of evidence as it's possible to achieve, as opposed to a series of
17 incremental and potentially iterative witness statements that deal with the issues and
18 respond to one another. So, with a view to being of as much assistance as possible
19 to the trial judge, one shouldn't go off half-cocked and order witness statements now.

20 That issue is only exacerbated by this fallback proposal that one might have witness
21 statements now as to only the 101 issues, but not as to the 102 issues. Because that
22 already gives up, right out of the blocks, on the idea that you'll have a single go with
23 witness evidence. It builds in the idea of multiple rounds and so we say that that's not
24 helpful. By itself, again, we'd say that's a sufficient reason why this is just not
25 a sensible proposal.

26 The third point -- which is connected to the point about the general court but

1 different -- is that it doesn't make sense for directions for witness statements to be
2 given in the abstract from the actual concrete directions to trial, as to what the issues
3 for trial are going to be and as to how the case is going to be got to trial. Of course,
4 no one's seeking directions to trial at this CMC. So you've heard floated, on
5 Mr Woolfe's (inaudible) for example, ideas about what the trial might consist of. But
6 that isn't an issue that you've had the opportunity to consider properly or in detail. Of
7 course the witness statements need to be tailored to the issues that are going to be
8 before the court at the trial. One can just illustrate that by just thinking about what the
9 potential issues for trial are, depending on the outcome of the abuse appeals before
10 the General Court. Unsurprisingly, we put the emphasis here slightly differently from
11 the way that Servier put it.

12 Starting point is, obviously it's common ground that, if Servier's appeal on abuse
13 ultimately succeeds, then the abuse issue will fall away in these proceedings.

14 Now, if one actually digs down a layer, then, to think about what effect that would have
15 on the issues for factual evidence.

16 Two points. First point, the Tribunal wouldn't need to hear any evidence on whether,
17 absent the 947 patent, it would have been possible for a generic to be brought to
18 market in a way that didn't need to worry about 947, but had to get round the process
19 patent. That just wouldn't be an issue in the case.

20 You can make a parallel point on the Azad agreement. If the abuse issue is live, there
21 is a live question about whether the Azad product was actually one that could have
22 been got to market, that would have been got to market. Those are points that just
23 don't arise if abuse falls away.

24 Mr Woolfe said three things about them. The first thing he said was, "Well, witness
25 statements are just about explaining what happened and so we don't need to worry
26 too much about this". But, of course, they're only about explaining the relevant things

1 that happened. One doesn't need to deal with points if they turn out to be irrelevant,
2 and those are two examples of things that might be irrelevant.

3 Second point is, Mr Woolfe says that "Well, the Rule 39 Defendants would have to
4 address the same questions in relation to the impact of the 947 patent anyway,
5 regardless of what happens on abuse". But not so, sir, because if the 947 patent -- just
6 ex hypothesi -- if it wasn't an abuse for Servier to get it, if we're all operating in a world
7 where Servier have a completely legitimate, completely pukka patent, then one
8 doesn't need to get into those issues of what would have happened absent it.

9 The third point was, "Well, to the extent that this is dealing with hypotheticals, they're
10 all very simple issues. It's not quite like recounting the past. It's all very straightforward
11 and simple". I hope that by identifying some of the issues I've illustrated how
12 complicated they are and both the granular nature and the extent of the evidence that
13 would be needed to deal with them. So that's the world if the abuse findings are
14 quashed and so abuse of dominance falls away.

15 What happens, on the other hand, if the Commission's decision that Servier did abuse
16 its dominant position is upheld, so the Claimants are in business on their abuse of
17 dominance claim? Well, in that case, the Rule 39 Defendants say the abuse issues
18 become central to the whole case because the essential difference is that the dates of
19 counterfactual entry, based on the abuse scenarios, based on no 947 patents, based
20 on no Azad agreement, are earlier than the dates of counterfactual entry.

21 JUDGE MEADE: Yes, no, I understand that.

22 MS ABRAM: I see you've got the points then. So the point that was made by my
23 learned friend was, "Well, that doesn't make any difference to the issues of the case
24 because even if there was an abuse, then it doesn't follow that the pay for delay
25 agreements had no causative effect". Well, we say hang on, there's no reason why
26 there would have been any settlement agreements in a world where the 947 patent

1 was an abuse, for example, where you're looking at a counterfactual where the 947
2 patent was never granted, was never obtained. Generic entry would have happened
3 in the early 2000s, perhaps, and there would have been no bargaining power that
4 Servier could have applied to induce us to enter into the settlement agreements. So
5 the Article 102 issues, on that basis, are the key to the whole case. So we say that
6 just misses the point.

7 If one then tries to pull that together and look at the practical upshot for the kind of
8 shape of the trial and the shape of the issues for witness evidence, no one knows at
9 the minute whether -- one extreme there's no issue on abuse at all. The other extreme,
10 the only issue that really matters is abuse because that is potentially dispositive of the
11 entire case, because of the earlier counterfactual market entry. Or middle ground, you
12 decide that we should have a trial of all issues altogether so all of the counterfactuals
13 are potentially in play. So everything should be looked at in witness statements.

14 I hope that illuminates why we say that it just doesn't make sense to consider whether
15 there should be witness statements before looking at what the issues are that are
16 actually going to be tried. We say that the Tribunal effectively isn't able to make an
17 informed decision on the question that underlies the application.

18 That's also an answer on the fallback question that was developed a little bit earlier.
19 The fallback --

20 JUDGE MEADE: The 101, 102?

21 MS ABRAM: Exactly, yes. So the fallback idea is kind of premised on the idea, "Okay,
22 well you just go ahead with 101 now and you perhaps leave 102 on ice" and we say,
23 well, that's not appropriate. Because before deciding whether or not that is an
24 acceptable option, the Tribunal needs to consider whether actually we're right that, if
25 abuse remains live, then that should be the priority instead of 101. And you haven't --

26 JUDGE MEADE: What do you mean the priority?

1 MS ABRAM: Well, in the sense that it's potentially dispositive and so one could have
2 a split trial with abuse first, for example.

3 JUDGE MEADE: Right.

4 MS ABRAM: Because of this point of the earlier counterfactual entry, if there is an
5 abuse claim.

6 JUDGE MEADE: Yes. I don't think this -- I thought I don't think the fallback was to do
7 with the split trial. It was just to do with: there are some witnesses who are definitely
8 going to give evidence anyway, so their evidence should be gotten. I don't think it was
9 to do with the split trial.

10 MS ABRAM: That's the way that it was presented.

11 JUDGE MEADE: Yes.

12 MS ABRAM: But imagine that at a CMC in the future, we persuade the Tribunal that
13 actually we shouldn't be having a trial of the 101 issues at all until we've had a trial of
14 102.

15 JUDGE MEADE: Right.

16 MS ABRAM: All that money spent on preparing witness statements only on 101 would
17 be wasted in that scenario.

18 JUDGE MEADE: If 101 was never going to happen for some reason.

19 MS ABRAM: That's it, if it may never happen.

20 JUDGE MEADE: How is it never going to happen?

21 MS ABRAM: If the abuse allegation remains in business and if the Claimants succeed
22 in showing, for example, that obtaining the 947 patent was abusive and there would
23 have been counterfactual market entry by generics -- one or more generics -- in, say,
24 2003/2004, in which case you never get the pay for delay agreements at all.

25 JUDGE MEADE: Okay.

26 MS ABRAM: And that's just a way of illustrating the really important link between the

1 | issues for trial and the issues for witness statements.

2 | JUDGE MEADE: Okay.

3 | MS ABRAM: The final point that you asked about is the extent of overlap between
4 | witnesses on 101 and 102. We didn't know about the fallback option, so we didn't
5 | come prepared to make submissions or to answer that question. What I will say is --

6 | JUDGE MEADE: Well, I only go so far in accepting that. I mean, nobody's really
7 | mapped out for me who the possible witnesses are. I mean, apart from Dr Jaguelin,
8 | this is all being talked about in the extremely abstract terms.

9 | MS ABRAM: It is.

10 | JUDGE MEADE: Can't really blame the Claimants for that, because the factual
11 | evidence is really going to come from Servier and the Rule 39 Defendants. But I've
12 | got actually no map of possible witnesses at all, have I? Really not much.

13 | MS ABRAM: Yes, and of course even the Claimants haven't finished reading the
14 | disclosure that we've produced yet, and that's one of the things that will be informative
15 | to everyone.

16 | JUDGE MEADE: Well, that's deflecting a little bit, with all due respect. I mean,
17 | I don't -- nobody has put me in the picture of who we're actually talking about in terms
18 | of these witnesses.

19 | MS ABRAM: It's a fair point, sir. What one can say -- looking at it in the abstract -- at
20 | a high level, if you think about who within a generic business is likely to have relevant
21 | evidence, for example as to whether you could -- absent the patent abuse -- have got
22 | around the process patents and produced a generic competitor, whether the Azad
23 | product -- the Teva Azad product -- would have worked, and then which of the other
24 | products faced what impediments to generic entry in the later period, one can well
25 | imagine they may be the same people, and I can't advance the point any further than
26 | that, on the specifics.

1 I'm grateful, sir.

2 JUDGE MEADE: Yes, so I should say I appreciate your taking the lead, Ms Abram,
3 but if we get some of the other issues, if people have something to add, they should
4 feel free to do that.

5 Yes.

6

7 Opening submissions by MS MACKENZIE

8 MS MACKENZIE: Sir, I've just got one short practical point to make on behalf of Niche
9 and Unichem, which is simply that, in relation to the point raised by Mr Woolfe as to
10 whether some further delay would cause issues, for example with people coming up
11 to retirement age -- for example -- I do have instructions to say that we're not aware
12 that that is a particular issue in our case, so the additional passage of, say, a further
13 six months or so, we don't understand that that would make any difference, further to
14 the delay that's already been caused, in the case of --

15 JUDGE MEADE: You don't know of anybody who's going to retire in the next
16 six months.

17 MS MACKENZIE: No, exactly, sir.

18 JUDGE MEADE: Okay. I mean, that's a -- that's of somewhat limited use, I think, but
19 thank you anyway.

20 Okay, yes. Mr Woolfe -- oh, sorry, Ms Love.

21

22 Opening submissions by MS LOVE

23 MS LOVE: Sir, Mr Woolfe said that he wasn't aware that our skeleton added anything.
24 In fact, the main point that we were referring to in paragraph 13.1 of our skeleton
25 argument was about the pleaded case against Lupin not being properly particularised,
26 and if I could invite you, sir, just to glance very briefly to -- I think it's bundle B1, tab 1,

1 | page 131 of your TrialView electronic bundles. (Pause)

2 | You should see in front of you, sir, paragraph 46 in annex 5 of the -- page 131.

3 | JUDGE MEADE: Sorry, yes.

4 | MS LOVE: And if you have a look at paragraph 46, which refers to some decision
5 | recitals about a view that Lupin estimated in November, it could have launched in April.

6 | Apparently, absent the settlement agreements, we would probably have entered soon
7 | after. And then there's "not material for loss", and obviously this is on the Article 101
8 | counterfactual; we're not even looking at Azad or 102.

9 | A couple of brief points.

10 | Firstly -- Mr Woolfe has referred to it -- the governing principle in Rule 4(2) is to deal
11 | with cases in a way that's proportionate to the amounts of money at stake, sir. I fully
12 | appreciate that the amount of money involved in the proceedings may not be
13 | insignificant, but this pleading makes it very clear that the amount of money that's
14 | referable to the breach of Article 101 -- in which my client is involved -- is likely to be
15 | very, very small indeed. So when you're considering what it's appropriate to order
16 | Lupin to do, that's something I'll ask you to bear in mind.

17 | The other thing --

18 | JUDGE MEADE: I don't know how many witnesses you actually might have. It might
19 | be zero, for all I know.

20 | MS LOVE: Well, sir, the other point I would say is that it's actually very difficult for
21 | us -- on the basis of what is in that paragraph -- to know what a witness statement
22 | would have to contain at all. On the face of it, they say they're not going to give any
23 | further particulars. Now, Mr Woolfe says "No, you just talk about what happened", but
24 | the difficulty is, sir, that there is actually -- this is addressed in the decision -- the fact
25 | we didn't get our marketing authorisation until July 2008 and the obstacles to that are
26 | discussed in the decision and there is absolutely no articulation of what the Claimants

1 say would have been different or why.

2 JUDGE MEADE: Okay.

3 MS LOVE: And so those are just particular obstacles above and beyond what
4 Ms Abram has said, that apply to my client.

5 Thank you, sir.

6 JUDGE MEADE: Thank you.

7

8 Opening submissions by MR TURNER

9 MR TURNER: Sir, if I may say something very briefly on behalf of Krka. We believe
10 that Krka's responsibility is relatively minor, if anything, and would wish to keep the
11 costs down and avoid getting involved in exercises that may be completely irrelevant
12 to what needs to be decided at the trial, and that that is a major concern on our part.

13 I'd also like to pick up a point made by Mr Woolfe. He said that, illegality -- ie abuse
14 of dominant position -- would have no effect on the causation points. In my submission
15 that's not correct, because one's talking about effective causation and issues of
16 responsibility are part of the assessment that's made. We're not talking about "but for"
17 causation, when one considers who ought to bear legal liability. One's talking about
18 the effective cause, to put it bluntly.

19 If you say to someone, "Well, it wouldn't have happened if you hadn't signed the
20 agreement", and the person who signs the agreement says, "Yes, but you were
21 holding my arm, you put the pen in my fingers and you were holding a gun to my head",
22 the effective cause is not the person who actually signed. Obviously that's an extreme
23 example, one might say, but if there is an abuse of dominant position, that does speak
24 in favour of the view that people like Krka, who were injuncted and couldn't enter the
25 market, really had very little alternative but to reach some kind of settlement with
26 Servier, and that is of course our position in this case.

1 JUDGE MEADE: Thank you.

2 MR TURNER: Thank you.

3 JUDGE MEADE: Mr Woolfe.

4

5 Reply submissions by MR WOOLFE

6 MR WOOLFE: Sir, I won't be long.

7 JUDGE MEADE: No use looking at that clock, by the way.

8 MR WOOLFE: No, I've realised that.

9 I think I've got five points.

10 First of all, partly by correction to something I said on my (inaudible), you put to me,

11 "Can we go off and approach Sylvie Jaguelin?"

12 JUDGE MEADE: Yes.

13 MR WOOLFE: Yes. Subject to this point, as the -- Servier is very explicit about this:

14 the French blocking statute means that we can't simply go and approach Sylvie

15 Jaguelin freely; we have to go via the Hague Convention route, and they very much

16 insisted on that. And they've also been very clear that in a sense, this is a matter for

17 her, whether she responds or not.

18 Secondly, in response to the points that my learned friend Ms Abram makes: she said

19 it would be a total recipe for chaos to direct witness statements before disclosure. I'll

20 make two points in response to that.

21 First of all, that's not a reason to await the European proceedings; that's a reason to

22 crack on with doing disclosure.

23 JUDGE MEADE: Right, and --

24 MR WOOLFE: And to my second point, which is that in terms of what witnesses have

25 to review before they give their witness statement, parties can comment on their own

26 disclosure, when can they sensibly be given documents arising from their own

1 business.

2 JUDGE MEADE: Yes.

3 MR WOOLFE: It doesn't require that there be wholesale review of the other side's
4 disclosure and put all these other documents to the witnesses, as well as a general
5 rule.

6 JUDGE MEADE: Well, it can depend, can't it?

7 MR WOOLFE: It can, I agree.

8 JUDGE MEADE: Obviously you don't show every witness in the case every document,
9 but there might be documents from some correspondence or --

10 MR WOOLFE: Yes, that's not impossible. But the general trajectory since (inaudible)
11 57A.

12 JUDGE MEADE: Yes, but --

13 MR WOOLFE: Just to deploy --

14 JUDGE MEADE: I understand that, but just to go back to your point one: what are you
15 saying -- in terms of actual months and years -- is the difference between the
16 completion of disclosure and the likely giving of the General Court decision?

17 MR WOOLFE: Well, we are simply in the dark as to when the General Court decision
18 will come out.

19 JUDGE MEADE: Okay.

20 MR WOOLFE: We just don't know.

21 JUDGE MEADE: I understand that.

22 MR WOOLFE: One thing we do know is that completion of disclosure is not going to
23 take us up to the end of any appeals.

24 JUDGE MEADE: No, of course not, no. But I'm talking about the General Court's
25 decision.

26 MR WOOLFE: I'm afraid we simply don't know.

1 JUDGE MEADE: Well, okay, when's the completion of disclosure? For the purposes
2 of this submission, when are you saying is the completion of disclosure?

3 MR WOOLFE: Well, we want to get the Rule 39 Defendants to serve the disclosure
4 reports and EDQs imminently for there to be a further CMC in July. Then there would
5 have to be an argument at that point about the exact length of time needed for
6 disclosure, but we'd suggest in the course of a few months, so perhaps something like
7 October. So it could be roughly -- it involves bumping the witness statements.

8 JUDGE MEADE: That sounds broadly correct.

9 MR WOOLFE: So be it.

10 JUDGE MEADE: Yes.

11 MR WOOLFE: Third point: my learned friend said that it would be nice to present the
12 trial judge with as neat a package of evidence as is possible, and similarly said that
13 you don't want to direct witness evidence separately from direction to trial generally.
14 This is all true: in a general sense, it would be nice to present the --

15 JUDGE MEADE: Well, it seems to me if you're right --

16 MR WOOLFE: We're not in a perfect world.

17 JUDGE MEADE: Sorry, excuse me, sorry to interrupt. If you're right about the
18 pressing need to preserve people's recollection, then these other points would need
19 to fall in behind that, it seems to me.

20 MR WOOLFE: That's my submission, yes.

21 Fourthly, this submission was made again, that the -- and this is -- the point seems to
22 be being put by the Rule 39 Defendants that if Servier is found to have abused
23 a dominant position with respect to the 947 patent, everything changes, because if the
24 947 patent had not been obtained, the pay for delay agreements would never have
25 been entered into and therefore the Rule 39 Defendants bear no responsibility.

26 JUDGE MEADE: Yes.

1 MR WOOLFE: With respect, that is a nonsense submission, and I'm going to explain
2 to you why it's a nonsense submission. If I -- leaving court today, I'm knocked over by
3 a negligent driver, that's tort number 1. I go to the hospital, and then I get a negligent
4 doctor, who also causes me harm as a result. The doctor cannot say, "Oh, well,
5 I would never have had to have been treating you, if it wasn't for that first tortfeasor,
6 therefore I'm not responsible for any of my own negligence".

7 It may, of course, be the case that the negligent doctor had no causative role, but that's
8 a different submission, but you cannot say that I would never have been put in the
9 position of committing a tort if it wasn't for the other tortfeasor. That doesn't absolve
10 you of responsibility, and this is the fundamental error that's underlying a lot of the
11 Rule 39 Defendants' submissions, that they may be somehow able to point to Servier
12 and say, "But for what you did, we would never have done anything wrong either", and
13 that is a fundamentally mistaken submission. We suggest you should reject it out of
14 hand.

15 JUDGE MEADE: Reminiscent of the book by H.L.A Hart, isn't it?

16 MR WOOLFE: Yes, exactly.

17 JUDGE MEADE: All right.

18 MR WOOLFE: It does seem to be suggested again there could be a split trial with
19 abuse going first. We say that is not a sensible suggestion -- involve the 101 matters
20 waiting for an awful long time. It would be -- get done in Europe.

21 JUDGE MEADE: Well, that's one of those: who's the most important person in the
22 litigation sort of arguments. Right.

23 MR WOOLFE: Final point, just in response to Lupin, it said that some of the pleading
24 is unclear. So I'll just take you to that pleading. That's B 1, tab 1, page 131.

25 JUDGE MEADE: Yes, I'm there.

26 MR WOOLFE: Paragraph 46.2:

1 "It is the Claimants' case that absent settlement agreements, Lupin would probably
2 have entered the UK market soon after April 2007." [as read]
3 That's a perfectly clear statement of case. They may disagree with it. They may say
4 they're not responsible for very much loss off the back of it, but there's no lack of clarity
5 as to what we say the situation would have been. So those are the points I wanted to
6 make.

7

8 Ruling

9 JUDGE MEADE: The first issue I have to decide at this CMC in these long standing
10 and extremely complicated proceedings is whether, as the claimants submit, factual
11 evidence should be prepared in the immediate future or not. I have heard from:
12 Mr Woolfe, KC for the claimants, for these purposes speaking for all of them; from
13 Mr Saunders, KC for Servier; from Ms Abram KC taking the lead for all of the rule 39
14 defendants, and submissions on matters of detail from the respective counsel for
15 a number of the rule 39 defendants. But I need to say no more about their specific
16 points because those are not decisive of the result.

17 The two key factors put forward in support of the request for factual evidence to be
18 done now are: first the relationship with the European proceedings, and second, and
19 more importantly, the need to preserve the recollection of fact witnesses, given the
20 very long time since the events to which these proceedings relate. They can broadly
21 be grouped into events in the mid to late 1980s concerning Servier's alleged conduct
22 in relation to the 947 patent and the early mid-2000s in relation to the generic entry
23 related claims. In other words, about 40 years ago and about 20 years ago,
24 respectively.

25 The two key responses to that from Servier in particular, but also from the rule 39
26 defendants, is that there is no such urgency, not least because this CMC was due to

1 take place almost a year ago and was vacated at the claimants' request, and more
2 generally that the events are now so long ago that recollections will have faded greatly
3 anyway, and that another few months or even a year or two would not make any
4 difference.

5 I accept that last key submission. I think the likelihood that recollections will fade
6 materially in the short period of time under discussion now, whether that is a couple of
7 months or through to the General Court's decision or through to a subsequent CMC,
8 is low and thus such a short additional period will make no appreciable additional
9 difference to witnesses' recollection. Those two factors, in themselves, I think are
10 sufficient for me to decline the application of the claimants in this respect.

11 But, furthermore, I accept the submissions, which are to some extent more minor and
12 contingent on the points I have already covered, that it is bad policy and likely to lead
13 to a great deal of confusion down the line for witness statements to be prepared before
14 disclosure has been completed and reviewed. Especially in a case concerning events
15 a long time ago where it is to be expected that there is a considerable paper trail, it is
16 in my view critical that the right documents are put to the right witness(es), and
17 a complete set of documents at that, to help them refresh their memory, so far as is
18 permitted under the rules. I think it would be folly in the extreme to set about preparing
19 witness statements without disclosure in hand in that way. Disclosure being complete
20 and then reviewed is quite a few months away, on any view. This whole matter is best
21 revisited no sooner than a CMC consequent on the General Court's decision.

22 I would also finally say that I think the position of the witnesses themselves should not
23 be forgotten. It is easy for litigators to do that, but there may well be witnesses who
24 no longer work for any of the parties involved, but who would feel obliged to help their
25 former employers in their retirement. I think it would be a great shame if their time and
26 emotional energy was used up, only for it later to turn out that they need not have been

1 involved at all because of a result in the European proceedings, where I would say
2 that the future scenarios are multiple and somewhat unpredictable, although my
3 general sense is that the chance of there not being an appeal from the General Court's
4 decision is quite low. But in any event, for all those reasons, I am not going to direct
5 the preparation of witness statements at this stage.

6
7
8 MR WOOLFE: Perhaps beyond one matter consequent on that, you say that
9 (inaudible) the matter no sooner than a CMC consequent to the General Court
10 decision. This is a fairly minor point but can I show you paragraph 7 of the composite
11 order. There's a slight dispute about the timing of that CMC that may just be worth -- or
12 has that fallen away now? It may have fallen away. So paragraph 7 of that order,
13 you'll see there's some wording that was put forward at 7(b) that the CMC should not
14 be less than two months and ten days after that General Court decision is handed
15 down. I understand the logic of that from the Defendants' side is that's the appeal
16 period. So that's the period within which an appeal may be lodged.

17 JUDGE MEADE: Sorry, what is the --

18 MR WOOLFE: The two months and ten days following on --

19 JUDGE MEADE: Yes, I haven't ruled on whether it's two months and ten days or
20 something else.

21 MR WOOLFE: No, I was bringing up the agenda in a sense if you wanted to --

22 JUDGE MEADE: No, no, I'm going to deal with that later on.

23 MR WOOLFE: Okay. Thank you, sir. In which case, may we -- which item would you
24 want to turn to then? Because 1.3, the timing of a further CMC is the next item.

25 JUDGE MEADE: I think that comes later. I think the next logical one to do is probably
26 the RFI actually. That's what I had down next. Unless there's something that can

1 usefully be fitted into the short time that we have, I think the RFI might take a little time.

2 MR WOOLFE: No, the only issues that are a bit more discrete and short are the PPRS
3 and MHRA issues. (Overspeaking) if Anna Edwards-Stuart wants to get on with the
4 RFI issue.

5 JUDGE MEADE: Okay, well let's begin the RFI. I thought I'd picked up that the MHRA
6 had gone away. I've written down paragraph 44 of the --

7 MR WOOLFE: No orders need to be sought in respect of it.

8 JUDGE MEADE: Yes. That's what I had in mind.

9 MR WOOLFE: Servier cover it in their skeleton argument. Not seeking an order,
10 I don't think it needs dealing with. But then if they put in the skeleton argument they
11 may want to be saying something.

12 MS ABRAM: Yes.

13 MR PICCININ: (Inaudible) we're not seeking orders on the issue of the MHRA
14 disclosure. We did just want to bring it to your attention so that --

15 JUDGE MEADE: Okay, well, I've read your skeleton, but your paragraph 44 says "No
16 orders being sought". So I have read your skeleton, but we don't need anything else.
17 Okay.

18 MR WOOLFE: In that case we'll return to the RFI issue in --

19 JUDGE MEADE: Okay. I think it's going to be unlikely that we'll finish that today then,
20 but we can make a start. Yes. (Pause)

21

22 Opening submissions by MS EDWARDS-STUART

23 MS EDWARDS-STUART: Sorry. The Claimants request that the Defendants serve
24 a response to the Claimants' request for further information, which you can find at B 3,
25 tab 5. Now, this is a request for further information that is directed to Annex 1 to the
26 Defendants' Consolidated Defence which is responsive to Annex 4 of the Claimants'

1 Consolidated Particulars of Claim and relates to the matters which were collectively
2 referring to as the patent abuse, and namely it's further particulars in respect of the
3 Claimants' Article 102 claim in respect of alleged abuse of the patent system in the
4 course of obtaining, enforcing and defending EP1296947 patent.

5 Just to give you a bit of context, the patents concern perindopril and perindopril
6 erbumine the salt. That the perindopril was initially protected by EP0049658, which
7 was the compound patent, and that was subsequently extended by an SPC, and
8 protection was subsequently provided again by EP0308341, which was directed to an
9 industrial process for the manufacture of that compound.

10 JUDGE MEADE: Yes.

11 MS EDWARDS-STUART: That expired I think in 2003.

12 JUDGE MEADE: Yes.

13 MS EDWARDS-STUART: Now, in 2001 Servier sought protection for the alpha
14 crystalline form of perindopril and that's what we're referring to as the 947 patent
15 claiming priority from 6 July 2000.

16 Simultaneously, Servier applied for protection in respect of the beta and gamma
17 crystal forms, which at the time were the only crystal forms known to Servier. The
18 essence of the patent abuse claim is that Servier abused its dominant position by
19 withholding information and/or providing misleading information to patent authorities
20 and courts in the context of applying for, defending and enforcing the 947 patent steps
21 that the Claimants contend were taken by Servier as part of a strategy to prevent,
22 hinder and delay market entry by its competitors. Claim 1 of the 947 patent is directed
23 to crystals of perindopril erbumine, which conform to a particular XRD pattern, namely
24 that which defines the crystal form of the alpha form. It's the Claimants' case that
25 Servier knew that the patent was invalid when it was applied for because it knew that
26 (1) the inevitable result of the method of manufacture that was described in the

1 industrial process patent, the 341 patent alternatively -- the inevitable result of an
2 obvious implementation of that process was the alpha crystal form.

3 Secondly, Servier's own Coversyl tablets -- that is the commercial perindopril tablets
4 that were available to the public by being on the market before the priority date of the
5 patent -- were themselves containing API of the alpha form.

6 Now, whilst the Defendants' annex contains general denials, such as a denial that
7 Servier must have known at the time it applied for that the patent was invalid, and
8 et cetera, the defence doesn't make clear what the actual positive cases that is being
9 advanced by the Defendants in respect of those denials. Less still, the particular facts
10 that Servier rely on in support of those positive cases. We say, furthermore, the annex
11 doesn't address many of the specific factual allegations that have been advanced by
12 the Claimants. Therefore, we the Claimants don't know what Servier's position is in
13 respect of many of the factual and technical issues that are raised by that claim. The
14 purpose of the RFI was to elucidate Servier's position on those issues.

15 Now, no doubt you've seen the two annexes and a summary of --

16 JUDGE MEADE: I've actually found it fairly easy to proceed from the request itself,
17 actually. To see, you know --

18 MS EDWARDS-STUART: As I said --

19 JUDGE MEADE: I can tell what the questions are and I can understand
20 (overspeaking) in general.

21 MS EDWARDS-STUART: So what I was proposing to do is, rather than take you
22 through the annexes or indeed Mr Tickner's summary, I was just going to go straight
23 to the relevant bits where -- the relevant facts that we've relied on and the allegations
24 that we've made, the responses that we've given and, therefore, why we say the
25 responses would be helpful and indeed necessary in order for us to understand the
26 position.

1 So the requests fall into three groups. Firstly, requests 1 to 7.

2 JUDGE MEADE: Yes.

3 MS EDWARDS-STUART: Then requests 8 and 9, and then the final requests 10 to
4 17.

5 Requests 1 to 7 relate to the extent to which infrared spectroscopy analysis can be
6 used to distinguish between the different crystal morphs of the perindopril erbumine
7 salt and the extent to which, as a matter of fact, the Defendants were indeed using
8 infrared analysis for the purpose of distinguishing between those crystal forms. If you
9 can please go to our annex at paragraph 9, which is B1, tab 1, page 70, paragraph 9.
10 Is that right? Paragraph 9 doesn't look like it -- oh, it's 70, sorry. The annex is at the
11 very end of the pleading.

12 JUDGE MEADE: Yes.

13 MS EDWARDS-STUART: Tab 1, page 70.

14 JUDGE MEADE: All right, I've got it here. Yes.

15 MS EDWARDS-STUART: You got it. What we plead there is that the three crystal
16 forms -- that's the alpha, beta, gamma and, we say, the beta hydrate crystal form -- can
17 and could, during the relevant period, be distinguished by both XRD and IR
18 spectroscopy. That's because each of those forms produces a distinctive profile when
19 analysed by either of those methods.

20 At paragraph 14, we go on to say that:

21 "From at least 1987, Servier were in fact using infrared analysis to distinguish between
22 those various crystal forms of perindopril that it was manufacturing, whether for
23 development or commercial purposes". [as read]

24 JUDGE MEADE: Right.

25 MS EDWARDS-STUART: We go on to set out the basis for those allegations in the
26 body of the annex. If we can pick it up again at paragraphs 35 to 36. This is on

1 | page 79. If you can just read those paragraphs briefly to yourself. (Pause)

2 | So we say that's the basis on which we allege that Servier had in fact established,

3 | through IR spectroscopy, that these crystal forms could be distinguished from each

4 | other.

5 | At paragraph 37, which is at the bottom of page 80, we go on to say that by 1987,

6 | Servier had indeed established a particular reference sample, number 23758, which

7 | was being used as the comparison for alpha form of perindopril and that was the

8 | Defendants' reference sample against which subsequent batches were compared by

9 | IR testing.

10 | Further, we also rely on the fact that, to secure marketing authorisations for its various

11 | medicines containing perindopril erbumine, Servier repeatedly stated to the relevant

12 | authorities that its processes for producing the drug always produced the alpha form

13 | and that routine IR testing carried out on manufactured batches for quality control

14 | purposes confirm that all of those batches were indeed in the alpha form.

15 | The relevant statements that we rely on in particular are those that we've identified at

16 | paragraphs 28 and 29. I'm not going to read those out because there's a potential

17 | dispute as to whether or not they contain confidential information. So perhaps I can

18 | just direct you to the relevant parts of those passages that I rely on in particular. They

19 | are paragraph 28(2)(i) on page 74, 28(2)(iii) on page 75, 29(2) and in particular the bit

20 | in bold which bridges the pages from 75 to 76. 294 at the bottom of 26. (Pause)

21 | JUDGE MEADE: I've got that. Jumping ahead, Ms Edwards-Stuart, slightly. I can

22 | see the potential importance of this but, at this hearing, are you asking me to get

23 | sufficiently on top of the technical issues to rule, "Yes or no, they have got to answer

24 | every single request or not". Or are you just asking me to order that they provide

25 | a response? Because at the moment they haven't provided a response.

26 | MS EDWARDS-STUART: They haven't provided a response.

1 JUDGE MEADE: Right, which one do you want me to do?

2 MS EDWARDS-STUART: I want you to order that they provide a response. I don't --

3 JUDGE MEADE: But that could include them providing a response which says, "We
4 do admit this, but that request is really for evidence", or whatever. This is like the sort
5 of discussions we used to have in the master's corridor in the old days. Have you got
6 to answer it or have you got to give the information that's required? Because, if it's the
7 latter, "I don't have the (inaudible)", that's going to take a very long time and I don't
8 feel particularly on top of it enough to do that.

9 MS EDWARDS-STUART: Well, my Lord, in essence, in many cases, the request that
10 we're asking for is confirmation as to whether or not the position is yes or no.

11 JUDGE MEADE: Yes, well, that's fine. So then --

12 MS EDWARDS-STUART: X or Y. In that case, it's not really necessary for you to
13 have a complete understanding of the nature of the technical issues. What's really
14 necessary is an understanding of the case as currently pleaded, doesn't actually
15 indicate whether or not the answer is yes or no and that is a question to which we
16 ought to be entitled to have an answer. So --

17 JUDGE MEADE: Sorry you haven't ... (Pause)

18 MS EDWARDS-STUART: Would it help if I just started with request 1?

19 JUDGE MEADE: Well, no, because I want to understand the nature of what you're
20 asking me to do. If you've got three or four where you're going to say, "These are
21 absolutely clear, it's just yes or no. Do you admit it or don't you admit it?" That's fine.
22 But your own submission really implies that some of them are not like that. So I just
23 want to know what I'm being asked to do.

24 MS EDWARDS-STUART: We are asking for a substantive response to all of the
25 requests that we have asked for.

26 JUDGE MEADE: Sorry, in terms of an order, as I say, I can order them to respond to

1 it. That might include them saying, "No, this is a request for expert evidence". Okay.
2 Or I can order them to give the information sought, which is totally different ball game.
3 Or, on some of them I can say you've got to give that information and other ones I can
4 just say they should respond.

5 MS EDWARDS-STUART: I see.

6 JUDGE MEADE: Your skeleton doesn't break it down that way; right?

7 MS EDWARDS-STUART: I see, I'm sorry. Just so I understand the question that
8 you're asking me because perhaps I'm being a little bit dim. For example, where we've
9 said --

10 JUDGE MEADE: Okay, so let's look at request 1(a):

11 "Do the Defendants admit that IR analysis could distinguish the forms one from
12 another?" [as read]

13 MS EDWARDS-STUART: Yes.

14 JUDGE MEADE: Okay. On the other hand, number (6):

15 "Please provide all documents relevant." [as read].

16 Or (5):

17 "If the Defendants did identify such a material risk, please provide details ..." [as read]
18 That wants a narrative and lots of information.

19 MS EDWARDS-STUART: Yes. Well, what I would ask is that they provide
20 a response. My primary position is they should provide a response to both forms of
21 requests. One where it's merely a confirmation and secondly, where we've asked for
22 the further information. But only insofar as the further information sets out the
23 necessary details of any positive case that they're intending to advance.

24 JUDGE MEADE: Well, I mean, look at number 5:

25 "If the Defendants did identify such a material risk, please provide details of the
26 Defendants' assessment materials they identified, the steps taken ..." [as read]

1 That's a lot of factual (inaudible).

2 MS EDWARDS-STUART: Well, yes. But let's say that request is itself conditional on
3 a positive response being provided to the preceding request form.

4 JUDGE MEADE: Yes, sure. But if request 4 goes one way, then you want all of that
5 information.

6 MS EDWARDS-STUART: Well, yes. My Lord, a compromise might be that in the first
7 instance they just provide answers to the yes/no requests. And we can come back at
8 the next CMC and I can, insofar as we think it's necessary and appropriate, develop
9 the further requests. But we do think it is necessary at this stage to at least get to the
10 nuts and bolts of what it is they're actually saying.

11 JUDGE MEADE: Right.

12 MS EDWARDS-STUART: Even if they're reluctant to tell us why it is that they're
13 saying what they're saying.

14 JUDGE MEADE: Right, okay. So what I'm going to do -- we will draw stumps now.
15 Who's dealing with this one?

16 Right. Mr Saunders, some of these seem like very, very sensible yes/no requests
17 where you ought to be able to say yes or no. I'm going to invite you to consider, this
18 evening, which ones fall in that category. But I'm not going to do a full trawl of all of
19 the possible downstream effects of that. Some of these look perfectly sensible and
20 will give them an understanding of your case quickly without great expense.

21 This goes to both of you. I'm not going to roll this into, "It's a terrible request, it's
22 a brilliant request". There are some that, obviously, you ought to be able to answer
23 pretty easily. "Have you got a positive case that ..." You ought to be able to say, yes,
24 you are going to or no, you don't. Or you can tell me tomorrow why you haven't.

25 MR SAUNDERS: Yes. Could I suggest one way forward is that my learned friend,
26 Ms Edwards-Stuart, identify which ones she says are the yes, no --

1 JUDGE MEADE: You can both have a think about it and then you can compare your
2 lists. But, you know, I read this quite closely and it jumped out at me that some of
3 them -- "Do you admit or not that the spectra are sufficiently different from each
4 other" -- maybe you can come back tomorrow and tell me that, in fact, despite
5 outwards appearance, it's not a yes/no question.

6 MR SAUNDERS: Some of them are pseudo experts, that's the --

7 JUDGE MEADE: Maybe (overspeaking). But, you know, there's -- I don't know how
8 many people in the room -- 100 people in the room listening to an incredibly detailed
9 argument over giving further information where it's obvious, I think, that progress could
10 be made. I'm extremely reluctant to order them to answer all of them,
11 Ms Edwards-Stuart, without understanding whether it's really going to be useful or not.
12 But we can definitely constrain the scope of any argument at a later hearing.

13 MR SAUNDERS: My Lord, I should also just make it clear, I mean, obviously you've
14 seen our skeleton argument. Our primary position in relation to this is that we shouldn't
15 have to do it at this stage.

16 JUDGE MEADE: No, I understand that.

17 MR SAUNDERS: I can address you on that and you can --

18 JUDGE MEADE: I understand that, but there may be things that you know like, does
19 the IR analysis discriminate or not, which would help them understand your case in
20 a way that could be very material at low cost. So I do understand you've got that all
21 encompassing, but this is a request for information about a pleading you've already
22 put in. If your pleading conceals whether or not you admit something, then that's
23 a deficiency of a pleading you've already put in.

24 MR SAUNDERS: My Lord, let me take that away (overspeaking).

25 JUDGE MEADE: Yes. I think you both can put your heads together and make some
26 useful progress and we'll come back to this one first thing tomorrow. But I think it's

1 | just disproportionate and unfair on everybody for everybody to sit through what could
2 | be quite a long time if you were explaining this to me. Because I've read the pleadings
3 | and I do sort of generally understand the science, but not well. So if you both would
4 | think about it with your teams and then put your heads together, we will resume with
5 | this issue at the beginning of the hearing tomorrow.

6 | (4.30 pm)

7 | (The court adjourned until 10:30 am on Wednesday, 13 May 2026)

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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?