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IN THE COMPETITION

Case No: 1440/7/7/22

APPEAL

TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Tuesday 14th July 2026

Before:

The Honourable Mr Justice Richards
Anthony Neuberger
Antony Woodgate

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Clare Mary Joan Spottiswoode CBE

Class Representative

v

Nexans France S.A.S. & Others

Defendants

A P P E A R A N C E S

Gerard Rothschild and Jamie Farmer (Instructed by Scott & Scott) on behalf of Clare Mary
Joan Spottiswoode CBE

Alexander Hutton KC (Instructed by Hausfeld) on behalf of London Array Limited & Others

Tony Singla KC & Tom Watret (Instructed by White & Case) on behalf of Nexans

Helen Davies KC & Fiona Banks (Instructed by Macfarlanes) on behalf of Prysmian

Michael Armitage (Instructed by Addleshaw Goddard) on behalf of NKT

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Tuesday, 14 July 2026

(9.59 am)

Judgment (submitted to the learned judge for approval)

(10.42 am)

THE CHAIR: I think that's the end of the matters on which I'm giving.

Discussion re judgment

Submissions by MR ROTHSCCHILD

MR ROTHSCCHILD: Thank you. If I may ask a few points of clarification --

THE CHAIR: Yes.

MR ROTHSCCHILD: -- and then the topics left for consideration overnight.

THE CHAIR: Yes, thank you.

MR ROTHSCCHILD: And timetable to trial more generally.

THE CHAIR: Yes.

MR ROTHSCCHILD: Clarification: sir, you said in relation to the extension granted for the VoC Excel, it was granted to 7 October. I believe that was a slip and you may have meant the 7 September?

THE CHAIR: I think I probably did.

MR ROTHSCCHILD: I see nodding. Yes.

THE CHAIR: Thank you very much. Yes, I got that wrong. Sorry about that.

MR ROTHSCCHILD: Secondly, sir, you said that in due course the defendants will need to say which projects were not affected by the cartel in the context of disclosure requests --

THE CHAIR: Yes.

1 | MR ROTHSCHILD: -- about the impact of the cartel. Did you have in mind
2 | a timetable?

3 | THE CHAIR: I didn't. I hadn't canvassed a date because, really, the deadline for that
4 | didn't really emerge yesterday. So I was imagining I'd hear some submissions on that,
5 | or maybe even (overspeaking) agree.

6 | MR ROTHSCHILD: Plainly, that will need to be --

7 | THE CHAIR: Yes.

8 | MR ROTHSCHILD: -- at a stage allowing for time for disclosure in advance of expert
9 | reports, potentially in advance of witness statements. But perhaps the parties can
10 | discuss that.

11 | THE CHAIR: Perhaps the parties can discuss that.

12 | MR ROTHSCHILD: I suggest that a date needs to be set.

13 | THE CHAIR: I mean, I'm rather assuming -- I'm hoping -- that the answer from the
14 | defendants will be, "We're not arguing that there are bespoke reasons why any
15 | particular project was unaffected by the cartel", but ...

16 | MR ROTHSCHILD: We were hoping that too, but of course that needs to be clarified
17 | at some stage.

18 | In relation to the revised distribution plan --

19 | THE CHAIR: Yes.

20 | MR ROTHSCHILD: -- I would be grateful if the tribunal could provide a little further
21 | detail as to what it expects to see in that document, if that's possible.

22 | THE CHAIR: Yes.

23 | MR ROTHSCHILD: So that we provide a useful document.

24 | MR SINGLA: Because overnight we've worked up some directions, which include the
25 | filing of an updated distribution plan and some other materials.

1 THE CHAIR: Yes.

2 MR SINGLA: We have sent this across, but ~~we~~ only shortly before we started. But

3 I can address you on that either now or in a moment.

4 THE CHAIR: Yes. Well, let's hear from the parties on that. I mean, the request from

5 the defendants was:

6 "By 4:00 pm on 11 September 2026, the class representative shall file an updated

7 distribution plan which sets out a proposed method of distribution to the class."

8 Do you need more direction than that?

9 MR ROTHSCILD: Well, we are content to do that. We don't want to repeat the work

10 again. If there's anything in particular the tribunal wishes to see in it, it would be helpful

11 to know, but ...

12 MR SINGLA: We have refined our wording, so this may assist.

13 THE CHAIR: Yes, but what do you want?

14 MR SINGLA: Could I just quickly hand up?

15 THE CHAIR: Yes.

16 MR SINGLA: There are some other draft directions which I can come onto in

17 a moment, but just on this point, we had actually provided for 5 October, I think you

18 had said 11 October. (Handed)

19 THE CHAIR: Right.

20 MR SINGLA: We can come back to the date, but in terms of what they should file, we

21 now say they should file an updated distribution plan committing to a particular

22 distribution approach. And if top-down, that should be supported by a letter from

23 Ofgem confirming that it's capable of being successfully implemented, and outlining

24 the steps required. The idea being that it's not, as it were, good enough to have the

25 CR again telling us unilaterally, "This is all going to be fine". We actually want to hear

1 | from the horse's mouth.

2 | MR ROTHSCHILD: That is a rather prescriptive order. And of course, we will
3 | endeavour to get Ofgem's confirmation, but that's almost an order to Ofgem that they
4 | must confirm, and they're not represented here.

5 | THE CHAIR: I see that. I can't order you to produce a letter from Ofgem that confirms
6 | that something we don't know about will be successful. You've heard what the tribunal
7 | said about the importance of this. I think you need to file by -- 11 October might turn
8 | out to be a Saturday or something like that -- but I think you need to file by on or around
9 | 11 October, a document that advances the debate.

10 | I think we should stick with the defendants' original wording. I don't think I can require
11 | you to commit to anything, and I don't think I can require you to produce a letter from
12 | Ofgem confirming that it works, when Ofgem might say that it doesn't work.

13 | MR ROTHSCHILD: I'm grateful.

14 | THE CHAIR: But you need to provide something, and if it is insufficiently precise,
15 | you've heard the tribunal's concerns, and I think the defendants will no doubt have
16 | something to say about it as well.

17 | MR ROTHSCHILD: I'm grateful.

18 | MR SINGLA: May I just have one more go at --

19 | THE CHAIR: Yes.

20 | MR SINGLA: I understand the point; you can't make an order as against Ofgem, but
21 | you can make an order as against the CR, and that should be best endeavours to
22 | engage with Ofgem. Because what we don't want to happen, particularly -- as you'll
23 | see from the document as a whole -- as per your suggestion, sir, yesterday, we're
24 | building up to a hearing -- we say, the week commencing the 23 November, but we
25 | can argue about the date. But this is all designed to have a proper debate, and

1 | a meaningful debate, about a number of matters, including distribution.

2 | Now, of course, they've heard what you've said in relation to the materials on

3 | distribution that have been filed to date, but we are concerned that if, again, the CR

4 | makes no proper attempt to engage with Ofgem between now and October, then what

5 | we'll get is not particularly meaningful.

6 | THE CHAIR: Yes.

7 | MR SINGLA: So "best endeavours". In my submission, it's quite difficult for the CR

8 | to oppose a "best endeavours" obligation to engage with Ofgem.

9 | THE CHAIR: Well, why don't we do something like this: the class representative files

10 | an updated distribution plan confirming her preference as to distribution approach.

11 | And if top-down, to provide such confirmation from Ofgem as can reasonably be

12 | obtained as to the prospects of that being successfully implemented.

13 | MR SINGLA: I'm grateful, and if it hasn't been possible to obtain anything, we would

14 | obviously want an explanation as to why.

15 | THE CHAIR: And if it's not possible to obtain anything, no doubt you'll be asking very

16 | pointed questions about why.

17 | MR SINGLA: Exactly. I'm grateful.

18 | THE CHAIR: Are you happy with that, Mr Rothschild?

19 | MR ROTHSCHILD: Yes. The tribunal is aware that we've already provided a letter

20 | from Ofgem and a distribution plan, but we hear very clearly that the tribunal is

21 | expecting some refinement, and that is now clear.

22 | In relation to the matters considered overnight.

23 | THE CHAIR: Yes.

24 | MR ROTHSCHILD: We heard yesterday the tribunal's concerns about costs, but also

25 | the concerns about uncertainty, that there may one day be an application for

1 | decertification. The proposal from the class representative is as follows: that if the
2 | defendants wish to apply for either decertification or security for costs, then they
3 | should do so promptly, not leave the situation in limbo and uncertain. We were going
4 | to invite the tribunal to order that they make any such application by 1 October.

5 | THE CHAIR: That can't be the right deadline in the light of what I've said about the
6 | deadline for the Ofgem --

7 | MR ROTHSCCHILD: Well, that's why I said we were going to, but of course it needs to
8 | be tailored in light of --

9 | THE CHAIR: Yes.

10 | MR ROTHSCCHILD: But relatively promptly, so that that a cloud is not left hanging over
11 | the litigation, and that the defendants commit to making an application rather than
12 | suggesting that they might, which is currently just being kept as a general threat
13 | against the class representative.

14 | We do not consider that there is a basis for an application for decertification, or indeed
15 | security for costs, but if, as always in litigation, if a party wishes to make an application,
16 | they shouldn't just suggest it at hearings; they should formally make the application
17 | and then they bear the cost consequences of that application being unjustified. That
18 | was the first point.

19 | If I may, the other point relating to costs, generally: the class representative considers
20 | that the way forward in that regard is costs management of the defendants' costs at
21 | the very least, and then it will be clear to her, and also to the defendants, how much
22 | of the defendants' costs would potentially be recoverable should they succeed at the
23 | end.

24 | THE CHAIR: And by costs management, you mean what, a formal budgeting
25 | exercise?

1 | MR ROTHSCHILD: Yes, so the parties have already filed costs budgets, but they are
2 | not in the precedent H form that will be used in the High Court for costs management
3 | with the columns identifying hourly rates.

4 | THE CHAIR: Yes.

5 | MR ROTHSCHILD: I mean that may be driving the scale of the solicitor's fees on the
6 | defendants' side. We know from the ROC issue that some of the defendants' solicitors
7 | were charging double or more than the guideline hourly rates. But the precedent H
8 | breakdown will have columns for solicitors' hourly rates, number of hours, and more
9 | granularity than the current budgets. There's very little visibility in the current budgets.

10 | THE CHAIR: Right.

11 | MR ROTHSCHILD: And we would propose that that --

12 | THE CHAIR: And would you offer on your side as well to offer a breakdown of your
13 | incurred and budgeted costs on a precedent H basis as well?

14 | MR ROTHSCHILD: Well, plainly, the tribunal would expect some sort of comparator
15 | to understand.

16 | THE CHAIR: Right.

17 | MR ROTHSCHILD: It may be that the tribunal will wish to sit with the costs judge for
18 | a cost management hearing, given the expertise of cost judges in these matters, and
19 | the fact that the figures are sizable.

20 | THE CHAIR: Yes.

21 | MR ROTHSCHILD: We would propose that that costs management hearing be listed,
22 | depending on the tribunal's and the parties' availability, in the relatively near future,
23 | because cost management is generally prospective only, rather than
24 | retrospective -- although, of course, in the classic High Court cost management
25 | system, the court - the tribunal - can make comments on costs as have already been

1 | incurred; it tends not to manage or budget those -- but to take effect from the date that
2 | the cost budgets that are in the bundles were filed. Otherwise, the parties will continue
3 | to incur costs at this very high rate and there will be no certainty.

4 | THE CHAIR: I mean, what you're envisaging is a sort of High Court-style costs
5 | management process; does the tribunal have power to impose that on the parties?

6 | MR ROTHSCILD: The procedure in CPR 3 is not express in the tribunal rules, but
7 | I would suggest that it's, generally, within the scope of the tribunal's --

8 | THE CHAIR: Right.

9 | MR ROTHSCILD: -- case management powers.

10 | THE CHAIR: Right. So what you envisage, then --

11 | MR ROTHSCILD: I haven't researched and I'm not aware of whether there is any
12 | precedent of --

13 | THE CHAIR: Yes.

14 | MR ROTHSCILD: -- costs management, but it's relevant, amongst other things, to
15 | the defendants' suggestion that the class representative needs to increase her ATE
16 | cover.

17 | THE CHAIR: Yes.

18 | MR ROTHSCILD: So it could alternatively be looked at in that context. I think the
19 | tribunal is aware from the documents that have been filed for this hearing that the class
20 | representative's strict ATE cover is £25 million plus potentially an additional
21 | £10 million if that is not sufficient; there's some wording in the funding agreement. So,
22 | potentially £35 million, possibly £25 million, and the defendants' bill is very much
23 | higher. Therefore, the class representative is exposed.

24 | Now, the issue of the level of ATE cover of course came up in this case at the
25 | certification stage; it often comes up in class action proceedings at the certification

1 stage. I recall that indeed the level of ATE cover that was agreed, by the time of the
2 hearing, is sufficient.

3 Obviously, the defendants are now saying it's not or may not be sufficient. That would
4 involve looking at what the defendants' reasonable costs are. So, through that well-
5 established process in the collective proceedings regime, the tribunal is accustomed
6 to looking at the defendant's cost bills and what would be reasonably recoverable from
7 a class representative, and therefore an appropriate level of ATE cover. So in that
8 context, although it might not be labelled costs management or costs budgeting, within
9 collective proceedings this tribunal is familiar with assessing an appropriate
10 recoverable level of costs for defendants.

11 THE CHAIR: So the request, it seems to me, is not necessarily for High Court-style
12 cost budgeting where the court says in advance that defendants, or either side, cannot
13 recover more than this on a prospective basis without good reason.

14 I think you're envisaging that if the defendants want to say that matters should be
15 decertified, for example because your ATE cover is inadequate or your costs budget
16 is inadequate, they will need to turn up at that hearing with a full explanation of their
17 own costs so that the court can get under the proposition of whether your ATE cover
18 is indeed excessive; or is it more than that?

19 MR ROTHCHILD: The class representative would appreciate some certainty as to
20 her exposure for obvious reasons; she's a private individual and a classic High Court
21 costs management would give her that comfort and it would give some certainty to all
22 concerns and resolve the concern that you raised yesterday.

23 THE CHAIR: Right. But how can I order today High Court-style costs management
24 when there is at least a question about whether it's within the tribunal's power to do
25 that?

1 | MR ROTHSCHILD: Well, it may be that we need to think about it overnight. Maybe
2 | we need to do a little more research and make a formal application having done that
3 | research.

4 | THE CHAIR: Yes, well, I think --

5 | MR ROTHSCHILD: Sorry, may I just take instructions (inaudible)? (Pause)
6 | We believe that there may be some authority or discussion and some judgments of
7 | the tribunal, but I'm afraid I don't have them at my fingertips.

8 | THE CHAIR: Okay. Thank you. I think I understand the request.

9 | Submissions by MR SINGLA

10 | MR SINGLA: Sir, there's actually a large degree of common ground in terms of what
11 | should happen; it's really how we get there. In my submission, our directions are
12 | appropriate and much more efficient. So, Mr Rothschild says if there's going to be
13 | a decertification application that should be made. Well, plainly that's right. But our
14 | point is various hoops need to have been gone through in order for us to be in
15 | a position to make that application. He says it should be reasonably prompt. Again,
16 | we completely agree and our hearing is suggested to be at the end of November.

17 | I think it may be helpful if I just take you through what we propose because it really
18 | meets his concerns. But just before I go through the detail, there are really three
19 | matters. There's the distribution plan; we've dealt with that, our date was a few days
20 | out, although 11 October is a Sunday. So the distribution plan, that's been dealt with.

21 | The two other aspects. (1) just to remind you, we say that their budget is completely
22 | unrealistic. It just doesn't deal with the changes of circumstances that have occurred
23 | and that in and of itself would be an area of attack, because we would say the CR
24 | doesn't have sufficient funds to take her case all the way to trial.

25 | THE CHAIR: And that's a decertification point as well, that's not your altruism, that's ...

1 | MR SINGLA: Exactly. I mean, I won't take you to it, but there's in fact a judgment of
2 | the tribunal yesterday in the Sciallis case. I don't want to take up time but you may be
3 | interested to read it. The president has made clear that the class representative has
4 | a duty to the tribunal -- a duty of transparency -- and it has a duty to ensure: (a) it has
5 | sufficient costs themselves to take the costs of the case to trial; but (b), to have
6 | sufficient -- so they are separate matters. So that's the second issue.

7 | Then the third issue is about adverse costs coverage.

8 | THE CHAIR: That's a decertification point as well.

9 | MR SINGLA: Exactly. But it's only that third limb which requires more detail about our
10 | costs and this precedent H process which we say is unnecessary. So that's the
11 | context.

12 | What we've suggested therefore, if we work through the draft directions, on
13 | 27 July -- again, just perhaps come back to the dates -- but the CR should send
14 | comments --

15 | THE CHAIR: Where are you reading from?

16 | MR SINGLA: The document I handed up, I'm so sorry. These are the directions we've
17 | worked up overnight, culminating in a hearing in November. So 27 July we suggest
18 | that two things should happen: the CR should send comments on the defendants' cost
19 | budgets -- sir, you'll recall my point yesterday was they've only said at a very high level
20 | their disproportionate costs, but they need to actually particularise the bits of the
21 | budgets that they say are disproportionate.

22 | So they should do that, but they should also respond to the points that we have raised
23 | in correspondence about her budget, because we have particularised the issues that
24 | we say arise. So that's what should happen --

25 | THE CHAIR: Sorry, just thinking on my feet, as it were: how can the class

1 | representative send comments on your cost budget when it's not clear what rates
2 | you're using in that budget? Don't you need to give a precedent H style (inaudible)?

3 | MR SINGLA: Well, we suggest, sir, that that should come at the next stage because
4 | she's made some points already.

5 | THE CHAIR: Right.

6 | MR SINGLA: And what we've offered to do by 7 September, in light of the comments
7 | that will have been exchanged by that point, all parties should then file updated costs
8 | budgets using the same template and addressing those comments, including hourly
9 | rates and various details; so number of hours assumed and incurred costs.

10 | So we're suggesting instead of a precedent H -- and I suggest it's unwise for the
11 | tribunal to make an order in relation to precedent H without any research having been
12 | carried out -- but we suggest that this actually meets the concern because what they're
13 | concerned about is a lack of granularity. We say it would be disproportionate to then
14 | send us off into the precedent H world; we suggest that it would be sufficient for us to
15 | particularise in the budgets things like hourly rates, fee earners, number of hours, and
16 | that would then allow if the class representative wants to take a point that our budget
17 | is disproportionate.

18 | THE CHAIR: What's so bad about precedent H? I mean, I appreciate that there's
19 | a question about whether the tribunal can impose cost budgeting, but what would be
20 | so bad about saying provide it in a form similar to precedent H?

21 | MR SINGLA: Well, it's just a level of granularity that we suggest is disproportionate;
22 | it's a very involved process. You may know that it generates a lot of time and cost to
23 | produce a budget that is compliant with precedent H. What
24 | Mr Rothschild -- effectively, he's saying that the defendants are complaining about the
25 | lack of adverse costs coverage, so we should make a security for costs application.

1 | One doesn't always have a precedent H budget as the basis for a security for costs
2 | application. So what you'd actually be doing is sending the parties off to conduct
3 | a rather involved precedent H process for the purposes of assessing whether or not
4 | their adverse costs coverage is sufficient. We say that's a step too far.

5 | It would take a lot of time in a world where we're all agreed that we'd like to get to the
6 | decertification hearing, if there is to be one, pretty quickly. Obviously, we're happy to
7 | discuss any further details that need to be built into paragraph 3(a), but we have
8 | sought to engage with the concern about hourly rates and so on. We can see the
9 | sense of identifying the number of hours. But in my respectful submission, a budget
10 | of this sort would then put the parties and the tribunal in a position to assess whether
11 | or not they are in fact disproportionate costs.

12 | THE CHAIR: I mean, it seems that what you're describing in paragraph (a) is
13 | precedent H, because precedent H --

14 | MR SINGLA: No, it's much less prescriptive.

15 | THE CHAIR: Tell me why.

16 | MR SINGLA: Well, I would need to bring my White Book and perhaps provide you
17 | with a template of precedent H, but it does involve considerably more detail. I'm
18 | grateful. Yes, well, perhaps it's actually probably more helpful if you have a copy to
19 | hand as well.

20 | THE CHAIR: Yes. (Pause)

21 | MR SINGLA: I mean, I don't know if we can take a break and try and find a way of
22 | getting a copy, or giving you a page reference because --

23 | THE CHAIR: Yes. Well, why don't we do --

24 | MR SINGLA: But, I'm not sure it's controversial that precedent H is considerably more
25 | detailed than what we've set out.

1 THE CHAIR: Right. Okay.

2 MR SINGLA: Those behind me are obviously very experienced in dealing with cost
3 budgeting and they are aware that it's a very involved process, which in and of itself
4 generates a lot of cost and time. As you know, the reason it's such a detailed process
5 is because, as you alluded to, the consequence of having a budget that's approved by
6 the court is that it therefore has a consequence for recoverability at the end of the day.
7 It is a significantly more detailed exercise and it's not one -- I stress this point -- it's not
8 an exercise that one normally has to go through in order to make a security for costs
9 application.

10 THE CHAIR: Can I suggest we do -- I mean, I would like to finish by lunchtime. Has
11 there been any discussion between the parties on these proposed directions?

12 MR SINGLA: No. As I said, we only sent them across very shortly before we started.

13 THE CHAIR: Can I suggest that rather than hearing from you sequentially on this,
14 why don't I just rise for 15 minutes and maybe you could just see if there is anything
15 that can be agreed on this and if it is indeed common ground that what you're
16 proposing is much less than precedent H, that would be helpful, too.

17 MR SINGLA: Great.

18 THE CHAIR: So we'll come back, please, at 11.25.
19 (11.06 am)
20 (A short break)
21 (11.28 am)
22
23 Cost budgeting management
24 Submissions by MR ROTHSCHILD
25 THE CHAIR: Right. Where have we got to?

1 | MR ROTHSCHILD: Well, there's been some discussion over the break and also we've
2 | identified an example of the tribunal ordering costs budgeting management in the
3 | Vattenfall litigation.

4 | THE CHAIR: Yes, I think we've identified a similar article.

5 | MR ROTHSCHILD: If it's useful, I can hand up the order that Mr Justice Trower made
6 | in 2021 and a ruling -- it's 2021 CAT 3 -- identifying the CAT's jurisdiction under
7 | rule 53.2(m) in conjunction with CPR 3.12 to deal with cost management. It may be
8 | that I don't need to persuade you, sir, further?

9 | THE CHAIR: I think I'm perhaps more on board with the idea. I mean, look, I'm
10 | conscious that there's been no application for cost budgeting today, so I'm not today
11 | going to order cost budgeting. If cost budgeting is requested, there needs to be
12 | a proper application for it.

13 | MR ROTHSCHILD: I understand.

14 | THE CHAIR: And if it's opposed, then that will need to play out. I see that the tribunal
15 | might have power to do it; whether it should exercise that power obviously may or may
16 | not be accepted. So I'm not going to order cost budgeting today, simply because it
17 | hasn't really been applied for and I don't want to leap in two-footed.

18 | MR ROTHSCHILD: The defendants' proposal, which we've been discussing over the
19 | break -- and is similar to the structure that was handed up by my learned friend
20 | Mr Singla earlier -- would involve the parties exchanging a precedent H form of budget
21 | with some tinkering by 7 September and I believe the parties are agreed that that
22 | would be an appropriate form and an appropriate date, save that the defendants have
23 | suggested that it would be difficult to provide granular detail of incurred costs, but that
24 | it would be possible to have some -- but instead just high level detail of the incurred
25 | costs. So rather than break the incurred costs down as between phases, they would

1 | only be broken down as between the categories of solicitor's counsel and
2 | disbursements and we would be content with that. So the parties seem to be agreed
3 | on that as a first step.

4 | THE CHAIR: So you do that by 7 September.

5 | MR ROTHSCHILD: Yes.

6 | Submissions by MR SINGLA

7 | MR SINGLA: So incurred costs will not be precedent H. But just two qualifications.

8 | One: from the CR's perspective, it would be helpful to have it split between pre-CPO
9 | and post-CPO costs, because we have at the moment the global figures for pre and
10 | post. So the itemisation that we've just discussed.

11 | THE CHAIR: On incurred, presumably.

12 | MR SINGLA: Exactly.

13 | THE CHAIR: Yes.

14 | MR SINGLA: And also it would be helpful to have a broken-down figure for the ROC
15 | preliminary issues trial as well. So there's going to be a total incurred cost figure --

16 | THE CHAIR: Yes.

17 | MR SINGLA: -- broken down between experts, counsel and solicitors. But they should
18 | also provide that detail in relation to pre and post-CPO --

19 | THE CHAIR: Yes.

20 | MR SINGLA: -- and in relation to the ROC preliminary issues trial and the
21 | reason -- I can address you on why we say that's relevant if it's opposed, but in
22 | a nutshell, one of the points that we make is it's completely absurd to think that they
23 | will only incur £800,000 on expert evidence for the main trial and in order to make
24 | good that submission, we want to be able to point to how much they incurred. So
25 | that's why we seek that additional detail.

1 | MR ROTHSCCHILD: Well, it must be reciprocal, if we're providing that detail, so that
2 | the defendants can understand the history of the class representative's position, then
3 | the defendants should also be providing similar detail so we can understand the history
4 | of how they've come to incur.

5 | MR SINGLA: That's not controversial. Indeed, I think we've already provided it,
6 | because you made a cost order on the ROC trial.

7 | THE CHAIR: Okay, so just to be sure where we've got then. So by 7 September you
8 | exchange precedent H style information for budgeted estimated future costs. You give
9 | some information on incurred costs, but you don't have to follow the structure of
10 | precedent H on incurred costs. Both of you split your incurred costs as between pre-
11 | CPO and post-CPO and both sides split their identifying incurred costs on the ROC
12 | preliminary issue as well.

13 | Okay, so you do that all by 7 September.

14 | Submissions by MR ROTHSCCHILD

15 | MR ROTHSCCHILD: Now, the suggestion is there should be a hearing. The date on
16 | Mr Singla's sheet is week commencing 23 November; flexibility may be required, as
17 | we're not certain of counsel and others' availability, the tribunal's availability included.
18 | But around then -- or perhaps the first available date from the middle of
19 | November -- would be appropriate for the hearing and now I should come on to what
20 | should be heard. Any applications for that hearing would need to be filed by the end
21 | of October -- 28 October -- and we request that if the defendants are to be making
22 | a decertification application, then they must make it by that deadline.

23 | THE CHAIR: End of October.

24 | MR ROTHSCCHILD: Yes. So any applications for that hearing. So decertification, cost
25 | management, security for costs. Must be made by, by, by that deadline.

1 THE CHAIR: And what about your application? If you're saying you'd like High Court
2 style cost management, when do you do that by?

3 MR ROTHSCCHILD: We would wish the costs management hearing to take place in
4 that slot at the end of November.

5 THE CHAIR: But that gives rise to something of a difficulty, doesn't it? Because
6 suppose you say you'd like High Court style costs management where their cost
7 recovery is limited and the tribunal says in advance, "This is how much you're going
8 to be able to recover on the standard basis", they oppose that, and say "It's not
9 appropriate", or "It shouldn't be done", or "the Tribunal hasn't got power", then how do
10 we resolve the question of whether we should be cost managing in time for a hearing
11 in December?

12 MR ROTHSCCHILD: I'd be surprised if they dispute that the tribunal has power, given
13 the authority just referred to. We would discourage the tribunal from listing multiple
14 hearings --

15 THE CHAIR: Yes.

16 MR ROTHSCCHILD: -- and it could all be dealt with at one hearing, I'd suggest. It
17 depends how controversial it is. It may be that they are not minded to contest cost
18 management, but I'd suggest it could all be wrapped up at one hearing.

19 MR SINGLA: The way we see this is that if they want to make an application on the
20 question of whether there should be cost management going forwards, that application
21 could come on in the late November hearing. But no costs management itself should
22 take place obviously until you've ruled on that, because if, for example, we are going
23 to apply for decertification, they may say, "Well, in the event that we lose that, there
24 should be cost management going forward", so all of that can be determined at this
25 hearing in late November. But no process should start ahead of a potential

1 | decertification application; in my submission, that's obvious. It's completely inefficient
2 | to start any process that might involve looking in detail at these budgets.

3 | THE CHAIR: Do you oppose costs management?

4 | MR SINGLA: We may well do. I mean, it may be completely unnecessary if in fact
5 | we've got good grounds.

6 | MR ROTHSCCHILD: But if there is to be costs management, it plainly should be
7 | engaged with at the earliest possible date, if it is the case that costs can only be
8 | managed prospectively and not retrospectively. Otherwise costs continue to be
9 | incurred.

10 | Submissions by MS DAVIES

11 | MS DAVIES: I don't know if you have any direct experience of doing costs
12 | management.

13 | THE CHAIR: I've done one.

14 | MS DAVIES: As you know, therefore, they are very detailed granular exercises poring
15 | through precedent H.

16 | THE CHAIR: Yes.

17 | MS DAVIES: The scheme in the CPR is that the first question for the court is: should
18 | I make a costs management order as a matter of discretion?

19 | THE CHAIR: Yes.

20 | MS DAVIES: Which it doesn't have to do, even if precedent H budgets have been
21 | exchanged, and then subsequently you have the costs management hearing. The
22 | reason for that is a good one: that the granular detail that you need to do in the costs
23 | management -- and the cost that is incurred in doing that -- should only be incurred if
24 | the tribunal has decided.

25 | THE CHAIR: Yes.

1 | MS DAVIES: I don't have any instructions either on whether we would agree to it or
2 | not, because no application has been made.

3 | For example, if we end up in a position where the budgets that are exchanged on the
4 | 7 September are, in high level terms, equivalent on certain points and so on, again,
5 | that will affect the discretion question. So we would submit there's no shortcut here.

6 | MR ROTHSCHILD: There is just a risk of postponing this process well into 2027 with
7 | costs being incurred, meanwhile, and it goes back to the concern that you, sir,
8 | expressed yesterday about costs.

9 | THE CHAIR: It does seem to me that you need to do it properly and it does seem to
10 | me that maybe what needs to happen is the parties exchange their -- they've agreed
11 | to exchange this costs information by 7 September. The class representative will -- by
12 | some date in early October -- be providing her updated distribution plan.

13 | In reasonable time after that, it seems to me that the parties should tell the tribunal two
14 | things: first of all, the defendants should say if they're going to be applying for
15 | decertification and the class representative should be saying if she wants to apply for
16 | formal cost management.

17 | If there is a debate about whether formal costs management should take place, it does
18 | seem to me the tribunal needs to rule on that debate before we require the parties to
19 | engage in the work that's involved in producing the granular information. So it does
20 | seem to me there needs to be a process in November to resolve any threshold
21 | question about whether there is to be costs management at all.

22 | Having resolved that, we're then in the position to fix a further hearing. Perhaps it has
23 | to be pushed out until January/February 2027, but at least we'll know the agenda for
24 | that hearing. We'll know whether formal cost budgeting is on the agenda and we'll be
25 | considering all costs, because the question of costs and decertification are going to

1 | be wrapped up. The reasonableness or otherwise of each side's -- well particularly
2 | the defendants' estimate is going to be an aspect of any decertification application if
3 | they're suggesting that the ATE coverage is not sufficient.

4 | So it does seem to me we need to do it properly and we need to have it in the two-stage
5 | process that I've identified, leading to a longer hearing, perhaps in January or
6 | February, to deal with decertification, if that application is made, and to deal with
7 | security for costs, if that application is made, and to deal with cost management, if that
8 | application is made.

9 | Anyone disagree with that?

10 | MR SINGLA: Can I just take instructions for a moment?

11 | (11.40 am)

12 | (A short break)

13 | (11.42 am)

14 | Submissions by MR SINGLA

15 | MR SINGLA: Just a short point. I think as I understood what you just said, you
16 | envisaged effectively two stages, whereas we had envisaged one big hearing at the
17 | end of November. I think you see this as being a two-stage process.

18 | THE CHAIR: Picking up on the point that we can't do cost budgeting unless we decide
19 | first whether to do cost budgeting.

20 | MR SINGLA: And I think you have in mind that the decertification question should be
21 | considered only once you've decided the question of whether costs management is
22 | required. You want to determine that, as it were, as a preliminary question.

23 | THE CHAIR: Yes, because I have in mind the point that if there is an application for
24 | cost management which is opposed, then the tribunal needs to decide whether to cost
25 | manage and all of the arguments that are made on the reasonableness or otherwise

1 | of each other's costs are arguments that will resonate both on costs management and
2 | on decertification, because if the court does decide to do cost budgeting and your
3 | estimated costs are unreasonable, that takes some of the force out of your application
4 | to decertify based on the alleged insufficiency of their ATE coverage. So it does seem
5 | to me that costs management and decertification are potentially interlinked and
6 | appropriately considered at a single hearing.

7 | MR SINGLA: I see that. I mean, there is a scenario in which it may not be necessary
8 | to have formal cost management for the purposes of having the argument on
9 | decertification, but potentially cost management thereafter. So there may be different
10 | permutations.

11 | THE CHAIR: There may be, but --

12 | MR SINGLA: But on the basis that you've outlined, I think the only point I'd make is
13 | that we would suggest that the second hearing should ideally be listed in December,
14 | because obviously delay of the decertification question means that we're continuing to
15 | incur considerable costs.

16 | THE CHAIR: I think you need to consume your fair share of tribunal resource and my
17 | resource.

18 | MR SINGLA: Yes.

19 | THE CHAIR: And I think getting a hearing in November, and then probably
20 | two days -- maybe more of my time, if it's both costs management and decertification.
21 | (Inaudible) I struggle to be persuaded that you should have all of that at the expense
22 | of other people competing for that resource.

23 | MR SINGLA: I understand. So for this late November hearing, the agenda would be
24 | the distribution plan. Would that still be something you'd be looking to determine at
25 | that hearing?

1 THE CHAIR: Well, I mean, that's a thought, isn't it, that the November hearing could
2 be two questions: one, should I decertify by reason of an alleged insufficient
3 distribution plan; and if not, whether there should be cost budgeting going forward. If
4 there's an application to decertify because of an alleged insufficient distribution plan,
5 then that probably can be heard in November. Then if cost budgeting is on the agenda,
6 it could be the second thing.

7 MR SINGLA: Could I just take instructions on that? I'm grateful.

8 THE CHAIR: I'll hear from you, I just want to make sure that Mr Singla can hear as
9 well.

10 MR SINGLA: So at the risk of -- we are about to finish, but at the risk of testing your
11 patience, the only other suggestion I'd make is -- so we'd be grateful for that to happen,
12 so decertification on the basis of an inadequate distribution plan. In my respectful
13 submission, what you could also determine at that hearing is decertification based on
14 the CR's budget being too low, because we are not the ones pushing for costs
15 management in respect of the CR's costs in order to make that point. They want
16 potentially costs management in order to say that the adverse costs coverage point is
17 a bad one.

18 THE CHAIR: Yes.

19 MR SINGLA: We say, on the basis that we've currently seen, there's just no way that
20 budget is realistic. So at least two of the three prongs of attack could actually be
21 determined at the earliest opportunity. But you'll have a view as to what the most --

22 THE CHAIR: Well, let's hear from Mr Rothschild on that.

23 Submissions by MR ROTHSCCHILD

24 MR ROTHSCCHILD: Hearings themselves are expensive, and we prefer to reduce the
25 number of hearings. Whether there should be costs management could perhaps be

1 | dealt with on the papers.

2 | THE CHAIR: The problem with the papers and these litigants is the volume of
3 | paperwork just becomes unmanageable. You never have the opportunity to test the
4 | other side's arguments on a contested issue. I'm reluctant to decide seriously
5 | contested matters like this. I'm very reluctant.

6 | MR ROTHSCILD: I hear that. We have a concern about multiple hearings
7 | generating additional costs and distracting -- in an important way, but nevertheless
8 | distracting -- from trial preparation and the other steps going on in the background. So
9 | I would urge on the tribunal the listing of one rather than two or more hearings.

10 | THE CHAIR: I don't think we can get away with fewer than two. I think this is what I'd
11 | like to do: I think that you exchange your information on 7 September as we've
12 | discussed; the class representative sends her revised distribution plan in October as
13 | discussed; after that, the class representative is to apply to say if she wants cost
14 | budgeting; the defendants to say if they're applying for decertification, or security for
15 | costs. Then if there is an application for cost budgeting, which is opposed, I think we
16 | have the first stage hearing, which considers: one, a contested application for cost
17 | budgeting if there is one; and two, whether the claim should be decertified on the basis
18 | that the distribution plan isn't good enough.

19 | Those are, I think, two self-contained issues that can just be bitten off and dealt with
20 | quickly. If there is then to be cost budgeting, I think I would like a further hearing to
21 | deal with any cost budgeting and to consider any decertification points that are made
22 | by reference to cost. Because while I hear Mr Singla's point that in theory, you could
23 | consider an application for decertification because of alleged insufficiency of the class
24 | representative's cost budget, the class representative is always going to be saying
25 | that her budget is reasonable having regard to your budget. And there's going to,

1 | I think, be interplay between both sides' cost budgets. So I think costs issues and cost
2 | budgeting issues should be considered at a further hearing in January.

3 | MS DAVIES: Just one thought in relation to that.

4 | THE CHAIR: Yes.

5 | MS DAVIES: If the class representative doesn't apply for cost budgeting, then the
6 | decertification hearing in November could be one hearing, as Mr --

7 | THE CHAIR: I suppose that is right, that's a good point. And we could probably -- yes,
8 | I think that's right. Is that reasonably clear, what we're going to do?

9 | MR ROTHSCCHILD: Yes, of course, the defendants might not apply for decertification.

10 | THE CHAIR: (Overspeaking).

11 | MR ROTHSCCHILD: In which case all the matters can be brought forward. But as
12 | regarding a date for that first hearing, presumably the parties should liaise with the
13 | tribunal?

14 | THE CHAIR: Yes, please. And obviously -- look, applying for decertification would be
15 | a big step and it shouldn't be done speculatively. I mean if the Ofgem letter -- the
16 | material provided by the class representative -- shows there are still some i's to be
17 | dotted and t's to be crossed and that kind of thing, then maybe the defendants will
18 | want to keep their powder dry until later. But I'm not encouraging speculative
19 | applications.

20 | Right.

21 |

22 | Timetable to trial and trial date

23 | Submissions by MR ROTHSCCHILD

24 | MR ROTHSCCHILD: The remaining issues, I believe, are just timetable to trial and trial
25 | date.

1 THE CHAIR: Yes.

2 MR ROTHSCILD: There are rival proposals in the consolidated draft order. We
3 considered, for the class representative's part, that it was feasible to list to trial on
4 10 January 2028 or the first available date thereafter, and set out the steps leading up
5 to that.

6 THE CHAIR: Yes.

7 MR ROTHSCILD: Now, those steps will need to be tinkered with slightly in light of
8 the tribunal's ruling that there should be sequential exchange of expert reports and
9 dates for trial expert reports.

10 THE CHAIR: Yes.

11 MR ROTHSCILD: It may be best for the parties to liaise as to the precise date, but
12 a ruling on the point of principle as to the target date for the trial would be of assistance.

13 THE CHAIR: And 10 January 2028 or 30 May 2028 are the competing proposals?

14 MR ROTHSCILD: Indeed --

15 MR ARMITAGE: Sorry.

16 MR ROTHSCILD: -- this goes back a long way.

17 THE CHAIR: There were --

18 Submissions by MR ARMITAGE

19 MR ARMITAGE: If I may, I was going to address you on why we say, in fact, in light
20 of the rulings you've made today and some of the other indications, we think a trial
21 date somewhat later -- not many, many months later, but a couple of months later -- is
22 likely to be sensible. I can develop that as necessary, but I think the goalposts have
23 slightly shifted and I could obviously explain why that is.

24 THE CHAIR: Well, why don't you explain why that is, but will this be a new point for
25 the class representative?

1 MR ARMITAGE: When I explain it, I hope not, because it's implicit in our timetabling
2 proposals. It might be helpful actually to look at core bundle 24, page 260, which is
3 an extract from Ms Haigh's second statement, where the two proposals are set out
4 side by side.

5 THE CHAIR: Core bundle 24?

6 MR ARMITAGE: Core 24, page 260. (Pause)

7 THE CHAIR: Yes.

8 MR ARMITAGE: As you'll see actually from just over the page, you have the two rival
9 proposals as they then stood. So the difference was around four and a half months
10 between the two proposals; around 12 weeks of that was actually attributable to the
11 point about sequential versus simultaneous exchange of expert reports.

12 But as I say, in light of the rulings you've given today, we think that if the trial is to be
13 listed today, it should be listed somewhat later than May. That's for two reasons: first,
14 where we ended up on third-party disclosure and certain other disclosure related
15 points; and secondly, the direction in relation to trial expert reports.

16 THE CHAIR: Yes.

17 MR ARMITAGE: So on third-party disclosure, if you turn back to page 260, you'll see,
18 if you look in the defendants' date column, that our proposal was premised on
19 completion of third-party disclosure happening by 11 December 2026, and also on the
20 tribunal not acceding to the CR's more expansive disclosure request, although happily,
21 for the defendants, you haven't done that.

22 But in relation to non-party disclosure, you'll see that we had proposed a long stop
23 deadline of 10 August for the class representative, and then a follow-up deadline for
24 the defendants, 21 September. Now, you've, of course, given a different ruling on that,
25 and if my calculations are right, I think you'd said that the class representative should

1 | have an extra ten weeks, which takes one from 10 August to, I think, 19 October.

2 | Then I think you said, sir, another six weeks for the defendants which gets you to
3 | 30 November. So even with the best will in the world, sir, from any non-parties -- be
4 | that the big six electricity suppliers, the CMA, other cable suppliers, whatever it may
5 | be, and experience suggests you cannot rely on cooperation -- it's looking like non-
6 | party disclosure's going to stretch into next year.

7 | There are still some uncertainties around inter partes disclosure. As I understood your
8 | ruling, sir, you left open the possibility of further targeted disclosure requests from
9 | Mr Druce, whenever he makes more progress with his review of the OTS disclosure,
10 | and looks at the completed VoC Excels, potentially targeted disclosure requests on
11 | communications in relation to particular projects.

12 | There's one further point mentioned in Ms Haigh's evidence, arising actually from the
13 | class representative's evidence, which is the point about whether there needs to be
14 | a process for deciding whether particular recitals in the commission decision are
15 | binding. It's a point that's been raised by Mr Hain-Cole, I think for the first time in his
16 | witness statement in advance of this CMC. We're told that they're going to write to us
17 | shortly in relation to that. The short point I make in relation to that is that process can
18 | be a taxing one. Anyone who's had involvement in the Trucks litigation will know that
19 | debate over whether particular recitals in a commission decision are of binding effect
20 | is a complex and fact-sensitive one. In that case, there was a three-day hearing; it
21 | went up to the Court of Appeal; it was a very intensive process.

22 | I think it's common ground that any debate of that kind -- and as I say, we haven't seen
23 | exactly what is being proposed in that regard -- would have to be resolved in advance
24 | of factual witness statements.

25 | So for those various reasons, in my submission, if one looks at the timetable as it

1 | stands, we had been proposing that factual witness statements should be exchanged
2 | by 5 March 2027, but in order to allow for further time in relation to non-party
3 | disclosure, in light of the direction you've given and some of the other uncertainties
4 | I've just identified, we would respectfully suggest that that date should move back by,
5 | say, a month to allow for some slippage.

6 | THE CHAIR: Let me tell you this problem: if we move it back a month, then we move
7 | it into July, and you want a seven or eight-week hearing, which means that then it
8 | stretches into the long vacation.

9 | MR ARMITAGE: Yes, so that's the first point.

10 | The second point, if I may -- perhaps we'll see where we end up in relation to the
11 | vacation after I've made the point -- is that, as I understand it, if one looks at page 261,
12 | I think you directed that expert joint statements would need to be filed in advance of
13 | the PTR, which actually is already reflected in both parties' proposals.

14 | On the defendants' proposed timetable -- so the PCR would be at the end of
15 | March 2028. Then my understanding is what you'd envisage is that the trial expert
16 | reports would follow thereafter. I understand that you've envisaged that each expert
17 | would go away and produce a report distilling their primary expert evidence into
18 | a report with a strict page limit.

19 | Now, happening to be involved in a case in which pursuant to a direction given by the
20 | president of this tribunal where this same process is going on at this very moment,
21 | that is not an insignificant exercise for an expert to reduce a primary expert report into
22 | a shorter report and we say that does also need to be factored into the timetable.

23 | Among other things, skeleton arguments would obviously need to refer to the trial
24 | expert reports in circumstances where the whole point of that direction is to ensure
25 | that the parties are principally making their submissions, planning their

1 | cross-examination, and so on, by reference to those reports.

2 | So we say that does also push out the timetable even with the best will in the world.

3 | It may be that we are looking at a trial date, as I say, later than we had envisaged
4 | based on the developments that have happened in this hearing. We're saying we're
5 | not trying to delay things at all, we're just trying to focus on what timetable is realistic
6 | and workable for complex proceedings as these.

7 | Submissions by MR ROTHSCCHILD

8 | MR ROTHSCCHILD: Third-party disclosure applications will be made, if my learned
9 | friend's calculations are correct, by all parties by 30 November. Now, of course we
10 | don't know whether there will be such applications or how the third parties will respond,
11 | but we can be fairly confident that third-party disclosure will be of limited relevance to
12 | factual witness statements and primarily of relevance to expert reports, and there is
13 | a long gap in any version of the timetable before expert reports. So I'd suggest that
14 | the date of the end of February or early March 2027 is still feasible for witness
15 | statements of fact. Then beyond that, somewhere between the class representative's
16 | timetable and the defendants' timetable, is still workable.

17 | One needs to bear in mind that these proceedings were commenced in May 2022.

18 | We're talking of a trial -- any time beyond May 2028 is a very slow process.

19 | THE CHAIR: Yes.

20 | MR ROTHSCCHILD: The submissions yesterday emphasised how far back in time the
21 | facts go. It's not clear what factual witnesses the defendants will be calling, but their
22 | memories will already be very distant and they'll be dealing with a cartel that started
23 | in 1999 and finished in 2009. There is a real danger in letting the trial of this case be
24 | pushed too far into the future. From that perspective: the evidence, the reliability of
25 | the evidence at trial.

1 | But also bearing in mind the fact that postponing a trial potentially increases the cost.
2 | The point that was made yesterday in relation to the class representative's cost budget
3 | was "Why hasn't it increased?" so the defendants said, given that this case is taking
4 | longer to get to trial than was originally anticipated. Now the defendants are trying to
5 | push it further into the future. It's a real concern.

6 | THE CHAIR: I mean, I think that the trial date is somewhere between the parties
7 | competing proposals. I hear the points that Mr Armitage makes. I think we should
8 | shoot for a trial date in June 2028. So I think I prefer the defendants' proposals. I think
9 | actually that probably does incorporate a bit of slack sufficient to accommodate the
10 | points that Mr Armitage is making.

11 | I'm going to ask the parties to agree case management milestones by reference to
12 | a trial date commencing on or around 30 May 2028. I think our own researchers
13 | suggest that there's a slot beginning 5 June. That's the trial date I think we should be
14 | targeting. It allows the parties to try to agree the case management milestones before
15 | that.

16 | I mean, I do understand the point that trial expert reports might take some time to
17 | produce. It might be that we just need to tweak the timescales for the preparation of
18 | the expert reports so that they can be available in good time for the trial. I mean,
19 | obviously experts won't be proceeding from a standing start, they can be working on
20 | this as they go along and after they have their meeting. Let's go for a trial date
21 | beginning 5 June 2028, please, and work back from that. (Pause)

22 | MR ROTHSCCHILD: Regarding the trial time estimate it seems to be somewhere
23 | between seven and eight weeks and I'd suggest that it's recorded as such in the order.

24 | THE CHAIR: Do we need to nail our colours to the mast now whether it's seven or
25 | eight?

1 | MR ROTHSCILD: I'm not suggesting it -- it's very difficult to tell. We don't even know
2 | how many witnesses there'll be.

3 | MR ARMITAGE: The only point we've made is that the class representative's budget
4 | budgets for a seven-week trial, which we thought was adequate, and that's the only
5 | point we've made.

6 | THE CHAIR: Well, let's say seven to eight weeks and we'll finesse that as we get
7 | closer to the date. Thank you.

8 | Anything else I need to deal with today?
9 |

10 | Costs of the hearing

11 | Submissions by MS DAVIES

12 | MS DAVIES: Well, there's only a question about costs of this hearing. Now, I of
13 | course appreciate that this is a case management conference, but we did spend an
14 | awful lot of time on disclosure applications which, save in one limited respect, have
15 | been unsuccessful.

16 | Those disclosure applications involve the defendants having to put evidence into the
17 | tribunal explaining the position in circumstances where, as we understand your ruling,
18 | sir, essentially you're saying that the class representative hasn't justified those
19 | applications, and for those reasons they were rejected.

20 | There are a number of different ways of dealing with that: one of them would be to
21 | make a costs order in relation to the disclosure applications; another would be to
22 | prevent the class representative recovering costs of at least part of the hearing, if not
23 | all of it. Because it is in those circumstances, in our submission, it's inappropriate that
24 | the defendants should be visited with the class representative's costs.

25 | I'm sort of floating ideas to see with you, sir, which ones might be more appropriate

1 | than others, because we do recognise that there is some element of case
2 | management that has also happened in this. But the hearing would have been an
3 | hour or two if we were just focused on real case management issues and we weren't
4 | directed to all these disclosure applications which haven't succeeded.

5 | THE CHAIR: What do you say?

6 | Submissions by MR ROTHSCCHILD

7 | MR ROTHSCCHILD: Well, the appropriate cost order is costs in the case. This has
8 | been a case management conference with multiple issues. Disclosure was a part,
9 | I recognise, but some of that disclosure was for the benefit of the defendants; the
10 | tender evaluation documents and witness statements, for example -- very difficult to
11 | dissect and all relevant to the timetable for trial.

12 | Some of those applications may come back to the tribunal again at a later date. Some
13 | of the evidence that the defendants have filed is really disclosure statements
14 | explaining that they did not have materials that may be relied on again at trial.

15 | There were multiple issues before the tribunal, extremely difficult to dissect; winners
16 | and losers in various parts, and I would suggest costs in the case is the correct
17 | order -- being the normal order -- for a case management conference and the order
18 | that I believe is in the template draft consolidated order. There were no cost schedules
19 | filed or suggestions. Paragraph 29 of the consolidated draft order suggests that costs
20 | in the case is the agreed order.

21 | THE CHAIR: Well, I think that's right. I think it's going to be costs in the case. That
22 | was the agreed position that was set out in the order. Ultimately today the task has
23 | been to set this case on a course towards trial. That's involved working out what
24 | disclosure should be given and what should not be given. But in view of the fact that
25 | costs in the case is in black in the order, I think costs in the case is the right order to

1	make today.
2	Right, anything else?
3	MR ROTHSCHILD: Thank you very much.
4	THE CHAIR: Thank you.
5	(12.07 pm)
6	(The court adjourned)
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