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**IN THE COMPETITION**  
**APPEAL**  
**TRIBUNAL**

Case No: 1468/7/7/22

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Friday 26<sup>th</sup> June 2026

Before:

Justin Turner KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

**Mr Justin Gutmann**

**Class Representative**

V

**Apple Inc., Apple Distribution International Limited, and Apple Retail  
UK Limited**

**Defendants**

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

Philip Moser KC and Natalie Nguyen (Instructed by Charles Lyndon Limited) on behalf of  
Justin Gutmann

Daniel Piccinin KC and Gayatri Sarathy (Instructed by Covington and Burling LLP) on  
behalf of Apple Inc., Apple Distribution International Limited, and Apple Retail UK Limited

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(9.59 am)

Housekeeping

THE CHAIR: Mr Moser, good morning.

MR MOSER: Good morning. Sir, I'm leading Ms Nguyen of counsel for the class representative. For Apple, my learned friends, Mr Piccinin KC and Ms Gayatri Sarathy. We have half a day, which I think everyone agrees should be adequate. There is an agreed agenda. I don't know whether you're giving any sort of warning about the video recording first, or whether you want --

THE CHAIR: Oh, yes. Good point. Thank you very much. Yes, some people are joining us via live stream on our website, so I'm going to start with a warning. An official recording is being made and an authorised transcript will be produced. It's prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings, and breach of that provision is punishable as contempt of court. I must learn this off by heart. I should know it by now.

MR MOSER: Good. There is an agreed agenda.

THE CHAIR: Yes, that, I haven't seen. It's probably my fault, but --

MR MOSER: Not at all. It is in two places. It might be in core bundle A, page 4 and 5.

THE CHAIR: Yes, it was a placeholder in mine. 4 and 5 ... Sorry, it's a placeholder in tab 1, beg your pardon.

MR MOSER: In which case --

THE CHAIR: Yes, it is, 4 and 5. Yes. Just tell me what's on the agenda.

MR MOSER: All right. It is in another place as well, which we --

THE CHAIR: It seems fairly clear from the skeletons.

1 MR MOSER: Yes. So the first item is confidentiality.

2 THE CHAIR: Yes.

3 MR MOSER: We've got our application, so first item: sub item 1: our application for  
4 de-designation --

5 THE CHAIR: Yes.

6 MR MOSER: -- made on 4 February.

7 THE CHAIR: Yes.

8 MR MOSER: Sub item 2: our application for admission of individuals into the outer  
9 confidentiality ring. That's the funders - .

10 THE CHAIR: Yes.

11 MR MOSER: Third item -- although it's really an aspect of the first item and I also plan  
12 to address it at the same time -- is the confidentiality of the CMA letter.

13 THE CHAIR: Yes, yes.

14 MR MOSER: Specifically. The second item on the agenda is the costs of, and  
15 occasioned by, the re-re-re-amended claim form.

16 THE CHAIR: Yes.

17 MR MOSER: They have an application for their costs. The third item is a different  
18 costs topic; it is the question of an update on costs, in the sense of what is their  
19 estimate for costs to the end of this case for ATE purposes, and also what is ours.  
20 Our position is that the information is to be provided at three monthly intervals with  
21 a summary breakdown. Their position is: not at three monthly intervals, but that both  
22 sides provide this information ten days before the next CMC. It may be that the  
23 Tribunal will have a position some way in between, who can say.

24 The fourth item is directions.

25 THE CHAIR: Yes.

26 MR MOSER: It is agreed that we're going to consider directions for a further hearing

1 and any other directions. I should say that last night at 9.00 pm, two letters arrived  
2 from the other side, with two things: a suggestion for essentially a preliminary issues  
3 trial of three aspects of abuse, and --

4 THE CHAIR: We'll get on to that.

5 MR MOSER: Of course.

6 THE CHAIR: I mean, I appreciate this has been sprung on you by the Tribunal at fairly  
7 short notice, so --

8 MR MOSER: We were happy to --

9 THE CHAIR: Let's deal with what we can today.

10 MR MOSER: -- be sprung upon by the Tribunal two days ago in the sense that we are  
11 here to discuss disclosure. And in fact, on the draft order -- that until 9.00 pm last  
12 night was their position -- I was going to say, happily, we are essentially agreed,  
13 subject to some fiddling with some dates.

14 On the new suggestion that came yesterday. First of all, I haven't really read it yet,  
15 but secondly, if you're going to ask for preliminary issues, that's a whole different  
16 application with case law and evidence. As far as their revised order on directions to  
17 trial is concerned, perfectly happy to talk about that, but we're not suggesting --

18 THE CHAIR: We'll get to that at the end. We'll deal with that last, perhaps.

19 MR MOSER: Indeed, yes.

20  
21 De-Designation of Confidential Information

22 Submissions by MR MOSER

23 THE CHAIR: Obviously, I've read the skeletons, and I've read the evidence on the  
24 question of confidentiality.

25 MR MOSER: Yes.

26 THE CHAIR: Before you launch into it, can I just first of all ask why does anyone care

1 about this at the moment? I think that's probably a question for both sides. Obviously,  
2 you're bound by the obligations not to use disclosed documents for other purposes  
3 anyway.

4 MR MOSER: Yes.

5 THE CHAIR: Why, in those circumstances, there needs to be an outer confidentiality  
6 club at all is unclear, but equally, well, if there is one, why do you care whether it's in  
7 the outer confidentiality club, or just governed by the competition rules -- or CPR  
8 equivalent, for that matter -- why does any of this matter today, now?

9 MR MOSER: Well, let me say a number of things about that. The reason it matters  
10 is because, as the other side point out in another context, this case has now been  
11 going on for a long time. It is, like many of these collective actions, bedevilled by  
12 overgenerous confidentiality provisions at the early stage. That is not in accordance  
13 with either the practice direction or the confidentiality ring order.

14 One of the things the other side keeps saying is, "Oh, well, we put all of the documents  
15 in the outer confidentiality ring, pursuant to orders of the court that were made about  
16 four years ago". But they ignore, with respect, the confidentiality ring order itself. Can  
17 I just show you that?

18 THE CHAIR: Yes, show me that.

19 MR MOSER: So if we look at bundle B.

20 THE CHAIR: Give me a second. I've got one. Excellent.

21 So yes, bundle B.

22 MR MOSER: Bundle B. I'll show you first, if I may, one of the orders they rely on,  
23 which is the order of 22 November 2022, if one can believe it. That's at B2 - page 11  
24 is the relevant paragraph on disclosure.

25 THE CHAIR: Sorry, B2?

26 MR MOSER: 2 is just the tab. Bundle B, page 11 is probably easiest to find.

1 THE CHAIR: Thank you very much for preparing the bundles. It is much appreciated.  
2 Don't take this the wrong way, but it will be so helpful if the "Bundle B" was not in  
3 12-point type; if it was in 32-point type, and then an elderly gentleman like myself might  
4 be able to pick them off the shelf.

5 MR MOSER: (Overspeaking) I wrote the bundle names on mine.

6 THE CHAIR: Right.

7 MR MOSER: We have noted for next time. So page 11.

8 THE CHAIR: Page 11, yes.

9 MR MOSER: This is an order made on 22 November 2022, drawn up on  
10 19 December 2022. They rely on this, and they say:

11 "Following the establishment of the Confidentiality Ring, the Proposed Defendants  
12 shall disclose ..."

13 And this is one of the documents disclosed:

14 "The ... French language version and the English ... of the DGCCRF Report [and so  
15 on]."

16 You'll have seen that in their skeleton argument they say, so, "Well, that's why we did  
17 it". What is not mentioned is the CRO itself. If you turn to tab 3 in this bundle, you will  
18 see the order that was made, effectively on the same day -- it's made on  
19 19 December 2022, the day the first one was drawn up. If you look at page 23, you  
20 will see the designation of documents. At paragraph 6, it says:

21 "A Party providing a Document in connection with the Proceedings may designate that  
22 the Document is: (i) Inner ... (ii) Outer ... or (iii) not confidential.

23 "(2) Designation of a Document ..."

24 THE CHAIR: Sorry --

25 MR MOSER: 23.

26 THE CHAIR: Yes, sorry.

1 MR MOSER: Paragraph 6.1, 2, 3. So first, 1, you designate inner or outer or nothing.  
2 "(2) ... Inner ... or Outer ... must be made in writing to the Party receiving the  
3 Document, must provide the basis for making such a designation in accordance with  
4 paragraph 7.35 of the Guide, and must comply with paragraph 7.46 of the Guide."  
5 Paragraph 7.46 of the Guide is at bundle F, if that's handy, at tab 14.  
6 THE CHAIR: I might have a loose copy.  
7 MR MOSER: Page 385. (Pause)  
8 THE CHAIR: Sorry, bear with me. Where is it?  
9 MR MOSER: 385 in bundle F. I can just read it to you, it'll be familiar.  
10 THE CHAIR: Yes, please.  
11 MR MOSER: So 7.46 of the CAT Guide says --  
12 THE CHAIR: The CAT Guide, yes.  
13 MR MOSER: Yes.  
14 "Each document containing information in respect of which confidential treatment is  
15 sought must be marked up as follows: (i) square brackets must be inserted around the  
16 confidential information; (ii) the information itself must be highlighted in yellow or some  
17 other prominent colour [et cetera]; and (iii) each page of the document must include  
18 the header, 'CONTAINS CONFIDENTIAL INFORMATION'.  
19 However 7.47, on which we also rely, says:  
20 "A schedule listing the information in respect of which confidential treatment is  
21 requested and the reasons for the request in each instance must also be provided to  
22 the Tribunal. The schedule should contain two columns: the first giving the relevant  
23 page and paragraph [... and then line numbers]; and the second setting out the  
24 reasons for requesting confidential treatment."  
25 The question of reasons and what is and isn't confidential has been bedevilling this  
26 case for about four years now -- coming up three and a half years. They say in their

1 skeleton, very honestly, that they didn't do a detailed review of the documents that  
2 went into the outer confidentiality ring; they just dumped -- that's not their word; that's  
3 mine -- all the documents in outer, and they've been languishing there ever since.  
4 They haven't provided detailed reasons. They say, "Oh, well, if you want something  
5 out of the ring, you can give us a reason why you want it out".

6 And --

7 THE CHAIR: What's the process for de-designation? Sorry, just show me on the --

8 MR MOSER: Well, it should be the other way round.

9 THE CHAIR: I appreciate that point, and there's some force in it, but under this  
10 agreement that you were showing me, the confidentiality order, what's the process for  
11 de-designation? Is there a process?

12 MR MOSER: Let's have a look.

13 THE CHAIR: Because as I understand it, the person who's providing the documents  
14 asserts confidentiality.

15 MR MOSER: Yes.

16 THE CHAIR: And then there's a process, presumably, for --

17 MR MOSER: It is. If we go back to paragraph 6 of the order.

18 THE CHAIR: Yes.

19 MR MOSER: The process is at pages 24 and 25.

20 THE CHAIR: Yes.

21 MR MOSER: So:

22 "Failure to provide a designation for a document ..."

23 THE CHAIR: Sorry, where are you reading?

24 MR MOSER: Top of 24.

25 THE CHAIR: Yes.

26 MR MOSER: "Failure to provide a designation ... shall be deemed to be a designation

1 | that the Document in question is not Confidential ... A Party may alter the designation  
2 | of a Document to correct any erroneous [et cetera]."

3 | THE CHAIR: Yes, sure.

4 | MR MOSER: Then the receiving party may request an amendment of the designation.  
5 | That's (v). "Written request" and so on.

6 | THE CHAIR: So that does put the burden -- I'm not sure any of this matters, by the  
7 | way, but that does put the burden back on the receiving party to take a step?

8 | MR MOSER: It does, save this, that we've never got to, as it were, first base on this,  
9 | because they haven't provided us with the reasons for --

10 | THE CHAIR: You say they shouldn't have just dumped the documents on you. They  
11 | should have done a proper job, and then, once you knew it had been done, you could  
12 | then challenge it?

13 | MR MOSER: Exactly.

14 | THE CHAIR: Yes.

15 | MR MOSER: So now, in their skeleton argument, to appear reasonable, they say,  
16 | "Oh, well, we could deal with it by way of a schedule" and so on. That's something we  
17 | asked for, for instance, in a letter that we wrote --

18 | THE CHAIR: But you haven't answered my question, Mr Moser, why any of this  
19 | matters --

20 | MR MOSER: Well, so --

21 | THE CHAIR: -- here today --

22 | MR MOSER: This is --

23 | THE CHAIR: -- preparing your case?

24 | MR MOSER: This is why it matters: the reason I've taken you to what may seem like  
25 | a rather formal question of the court order and the practice direction is that it matters  
26 | because the rules matter and the orders matter. If the order and the rules say you've

1 got to do it with a schedule that gives the reason, so that we can then provide a counter  
2 schedule, then that's what you have to do.

3 THE CHAIR: Yes. Every inch the lawyer, Mr Moser. But in terms of preparing the  
4 case, to what extent are you -- between now and when we have to grapple with how  
5 we are going to conduct the public proceeding, between now and then, it doesn't make  
6 any difference to you, does it?

7 MR MOSER: Two important differences. The first is that because of the extreme form  
8 of confidentiality, it means that everything is confidential unless we reach a view with  
9 them that it isn't. We are unable, in public hearings like this, or in dealings with the  
10 funder or --

11 THE CHAIR: Well, we're going to come on to the funder, and I have some sympathy  
12 with your position. Obviously, I'll hear from both sides on that.

13 MR MOSER: We are unable to say very straightforward things. I don't propose to go  
14 at length through the disclosure and what's in there. A lot of it, about 100 documents,  
15 are in the public domain: they shouldn't be in there at all. There's internal documents  
16 that contain certain words that they are very keen should not make it into the public  
17 domain. They are --

18 THE CHAIR: There are also some technical documents?

19 MR MOSER: There are probably, and I think they've identified three that sound  
20 vaguely technical and important. There would be some documents like that, fine,  
21 where they can give a reason -- they've now given a reason -- and they will stay  
22 confidential.

23 THE CHAIR: Could you put any flesh on that submission? Can I see any documents  
24 that you say are just, "This is a joke. No one can seriously say this is confidential".

25 MR MOSER: Gladly. Let's have a look at --

26 THE CHAIR: Can you give three documents in the --

1 MR MOSER: I'll give you three. Have you got bundle G in hard copy? Well, maybe  
2 we start --

3 THE CHAIR: I can take it off the screens.

4 MR MOSER: Yes. Okay. (Pause)

5 I think the documents are spread across bundles E and G. I'm going to start with one  
6 of my favourites, which is in bundle G, at page 312. The red page number in  
7 the -- I've got that.

8 THE CHAIR: This is "Display Brightness Throttle Table"?

9 MR MOSER: Yes. But you have -- you've just said the secret word, I'm afraid.

10 MR PICCININ: I'm just reminding you that the documents in this bundle are  
11 confidential.

12 THE CHAIR: Right. But, I mean, its existence -- there's no confidential  
13 (overspeaking).

14 MR PICCININ: I'm just (overspeaking) so you don't read out.

15 THE CHAIR: No, no, no, I'm not going to read out. How would one even start reading  
16 this out? Yes.

17 MR MOSER: Well, this is exactly the point, sir. My learned friend of course leaps up,  
18 because they've put this in the confidentiality ring. The third word of the title is the  
19 word I'm not allowed to say.

20 THE CHAIR: Right. But that's because it's a bit -- you're using it in a way that -- there  
21 was an issue, I seem to recall, at an earlier hearing, where there was an appropriate  
22 word to use, you'd been using it frequently during the hearing, and I think there's some  
23 sensitivity on the way that that phrase is used.

24 MR MOSER: There is, but we say it's entirely put on.

25 THE CHAIR: Right. But I mean --

26 MR MOSER: There are --

1 THE CHAIR: Leave the word out of it. I have to say, Mr Moser, this looks like  
2 a technical document to me, and I wouldn't say it's abundantly clear that this is not  
3 technically confidential.

4 MR MOSER: I would go through them all, but there are 32 mentions of that word as  
5 a noun.

6 THE CHAIR: I understand (overspeaking).

7 MR MOSER: Over 200 mentions of it as a verb.

8 THE CHAIR: But give me a document that you say is clearly public domain.

9 MR MOSER: Gladly. If you carry on in this bundle, and look at all of tabs 3 to 15 in  
10 G.

11 THE CHAIR: Can you give me a page number?

12 MR MOSER: 274 to 294. Now, this is -- for what it -- it doesn't really matter, but this  
13 is the DGCCRF production that we saw mentioned in the order. They're all obviously  
14 publicly available documents and should not be confidential.

15 THE CHAIR: Right. So this is 274 ...

16 MR MOSER: To 294.

17 THE CHAIR: 294.

18 MR MOSER: Similarly, earlier in this bundle, at page 4 to 271 --

19 THE CHAIR: Let's look on page 76. You say it's just a document saying who the  
20 directors of Apple are?

21 MR MOSER: Yes. Moreover, it's in the public domain, which is what this particular  
22 point goes to, that it is public.

23 THE CHAIR: Well, yes, obviously it's in the bundle.

24 MR MOSER: Yes, I mean the actual document.

25 THE CHAIR: Okay. I got your submission. Did you want to show me anything else?

26 MR MOSER: Yes. Well, pages 4 to 271, so basically most of the rest of this bundle.

1 That's the CMA production. That's the evidence that Apple supplied to the CMA in  
2 response to its questions; it encloses many documents which are copies of publicly  
3 available material. There's potentially some sales data, but we don't think it's properly  
4 confidential. All of this is also more than five years old, despite the fact -- and the  
5 covering letter, I think it says it isn't, because time has passed.

6 THE CHAIR: So you're saying page 4 to?

7 MR MOSER: 271.

8 THE CHAIR: Okay.

9 MR MOSER: Then the two pages between the pages I've shown you, that's page 272  
10 to 273. These are Apple's undertakings to the CMA, and with the exception of the  
11 general counsel's signature on page 273, they are published online. If we look then  
12 at page 282, a very pertinent letter, eight years old from the Congress Committee on  
13 Energy and Commerce, Mr Tim Cook, who was then the CEO of the Defendants. It's  
14 a Senate committee letter. It discusses the very questions asked in this case.

15 THE CHAIR: Don't you say that's a public letter?

16 MR MOSER: We think it must be. It is. I'm told it is. Page 286.

17 THE CHAIR: Okay. I just wanted some examples. I'm not going to propose going  
18 through them all.

19 MR MOSER: New York Times article, 286.

20 THE CHAIR: 286, New York Times. Right.

21 MR MOSER: The problem is, sir, that once it's in the confidential dump, we can't plead  
22 it in open. I can't talk about it in open. I can't say what the Professor says in the New  
23 York Times article, because it's designated confidential, even though the rest of the  
24 world can talk about it. That is frustrating the legal process. It makes a mockery of  
25 the order, and we say it has to stop at the earliest point. We can't ramble on like this  
26 to trial.

1 So their suggestion is, "Oh, we can look at all of this immediately before the hearing."  
2 With respect, I say that's hopeless. We've seen that -- I mean, I cite to you, for  
3 instance, the Qualcomm case, where confidentiality was left until much closer to the  
4 hearing. It wasn't dealt with on the first day of the hearing. It wasn't dealt with by the  
5 last day of the hearing. It was still not finished by the time the case settled before  
6 judgment.

7 THE CHAIR: You say: look -- well, perhaps you don't say this -- it may be different  
8 when you're dealing with a document where there's legitimate argument as to whether  
9 it's confidential and documents that are plainly public domain.

10 MR MOSER: Well, yes. What's going to happen is we're going to get disclosure. And  
11 if --

12 THE CHAIR: You're going to get?

13 MR MOSER: Disclosure in due course.

14 THE CHAIR: Well, there's more disclosure to come?

15 MR MOSER: Oh, absolutely. We haven't had the disclosure CMC yet. If --

16 THE CHAIR: Depending on how sensible the parties are, 300 documents in disclosure.  
17 (Inaudible), I thought.

18 MR MOSER: Of course, they said they've made extensive disclosure, but that's one  
19 of the points. There's about 245 documents left to look at, and they say, "Oh, it's  
20 impossible for the solicitors to look at that". I mean, come on. They are a global law  
21 firm with over a thousand attorneys. Apple is the world's third biggest company. They  
22 can look at 240 documents.

23 But more importantly, there will be proper disclosure to come, and we don't want the  
24 same thing to carry on.

25 THE CHAIR: I understand.

26 MR MOSER: How can we discuss requests and what's already been disclosed?

1 THE CHAIR: Are there any confidential documents at the moment? They're yet to  
2 come?

3 MR MOSER: No. None so far.

4 THE CHAIR: All right. Well, I've got those points. Is there anything else you want to  
5 say on this?

6 MR MOSER: I mean, that's my submissions on the preliminary point as to why it  
7 matters.

8 THE CHAIR: Yes.

9 MR MOSER: If it helps.

10 THE CHAIR: Yes. Shall we move on to something else?

11 MR MOSER: Would you like me to move on to the confidentiality ring and the funder?

12 THE CHAIR: Yes, why not. We'll do those two topics and then we'll circle back.

13 MR MOSER: Then maybe finish off with the CMA letter.

14 THE CHAIR: I'll do the CMA letter separately.

15 MR MOSER: Separately. Okay. Yes. All right.

16 So why does the funder need someone in the ring? First of all, the application is to  
17 admit three qualified lawyers into the ring, lawyers who either work for the funder,  
18 Mr Humm and Mr Rothkopf, or they've been instructed -- or he has been instructed as  
19 external counsel, in the case of Mr Lawrence, from Brick Court Chambers, and there  
20 he is.

21 Apple say that they can't understand why the funder would need such access, but  
22 surely it's obvious. With Apple's strategy of putting everything in the confidentiality  
23 ring, the funder has to some extent been flying blind. It's not a matter, as it's being  
24 mooted, of them interfering in litigation. That's not the nature of the decisions that  
25 Mr Rothkopf says in his evidence: he needs to require visibility. They're clear in the  
26 evidence that they need to have all the relevant information before them to evaluate

1 risk for the funding choices they have to make. The same applies to what they have  
2 to say to the ATE insurers.

3 Now, I don't act for them. I don't advise them. They've instructed their own counsel  
4 to advise them on the merits of the case, to assess.

5 THE CHAIR: (Audio distortion) Mr Rothkopf. That's not in the business of making  
6 (audio distortion).

7 MR MOSER: I was going to come on to that. Absolutely. It is not --

8 THE CHAIR: Clearly there are good reasons why, from the funder's perspective they  
9 would need access to this information (audio distortion).

10 MR MOSER: Sir, yes.

11 THE CHAIR: That's evidenced (audio distortion).

12 MR MOSER: Sir, yes. Funders commit millions, tens of millions to these cases.

13 So that's all I wanted to say about that. Do you want me to deal with the CMA letter  
14 after you've heard from Mr Piccinin.

15 THE CHAIR: Yes, Mr Piccinin.

16 Submissions by MR PICCININ

17 MR PICCININ: I wanted to start, if I may, by answering --

18 THE CHAIR: No, no, no. We're going to start by --

19 MR PICCININ: Answering your question --

20 THE CHAIR: -- answering the question why it matters.

21 MR PICCININ: -- about why it matters to us. Because you're right, of course, that we  
22 have the protection of rule 102 anyway, and we're mindful of that. So that will prevent  
23 Mr Gutmann from taking these materials and putting them on a website or sharing  
24 them with the public more generally. But what it doesn't do is offer any protection  
25 against him referring to or reading them out in open court or putting them in  
26 submissions.

1 THE CHAIR: So we can tidythat up in due course. I mean, I'm saying to both of you,  
2 we can decide the fact that they're in the -- they're not in the confidentiality club now  
3 doesn't mean they won't be in the confidentiality club when it comes to trial.

4 MR PICCININ: That's true, sir, but we have hearings in between and CMCs when  
5 we're talking about disclosure and so on.

6 THE CHAIR: So --

7 MR PICCININ: That's why it matters substantively.

8 THE CHAIR: I understand. It's the same reason for both of you.

9 MR PICCININ: Yes. Well, except that it's asymmetric in that once the information is  
10 out there -- it's been read in court or it's been put in a document and other people have  
11 seen it -- it's out there.

12 THE CHAIR: Look, I have considerable sympathy with your -- having read the  
13 skeletons --

14 MR PICCININ: Yes.

15 THE CHAIR: That technical document -- doesn't read (audio distortion) it's actually  
16 not a straightforward matter (audio distortion).

17 MR PICCININ: No.

18 THE CHAIR: A preliminary view is that it's -- sorry, I beg your pardon -- better dealt  
19 with after trial or alternatively we may need to grapple with it before trial when it comes  
20 to cross-examination and so forth.

21 MR PICCININ: Yes. I should say we're happy to grapple with it before trial. We're  
22 not saying that -- this is one of the things I wanted to point out.

23 THE CHAIR: However, there seems to be considerable force being made that -- look,  
24 you're -- using a broad brush is one thing, but your brush is much too broad because  
25 you've got public documents, including who the Apple directors are in the outer  
26 confidentiality ring.

1 MR PICCININ: Yes.

2 THE CHAIR: So what do you say about that?

3 MR PICCININ: I wanted to explain how we got there, and then --

4 THE CHAIR: Well, it does matter.

5 MR PICCININ: And what we're going to do about it.

6 THE CHAIR: Tell me what we're going to do about it. Let's jump to what we're going

7 to do about it.

8 MR PICCININ: Yes. It's not the case that we're contending that any of that is actually

9 confidential. What we wanted to do at the time was get the file to Mr Gutmann as

10 quickly as possible. The way to do that -- because you'll remember that these orders

11 were made trying to ...

12 THE CHAIR: I do remember.

13 MR PICCININ: Yes. So that's why that approach was sensible.

14 As to what we want to do about it now, I mean, the first thing I would say is that, of

15 course, there is no difficulty with Mr Moser or Mr Gutmann discussing publicly

16 available information with anyone.

17 THE CHAIR: But that's not convenient that they have to go out and ...

18 MR PICCININ: Get the public versions.

19 THE CHAIR: Which they've obviously done for the purpose of this hearing --

20 MR PICCININ: Yes.

21 THE CHAIR: But they shouldn't have to do that each time.

22 MR PICCININ: Yes. But if all it is is a matter of reviewing the material from the

23 regulatory files and on our side identifying the documents that are publicly available

24 and de-designating those, that's the thing we can do.

25 THE CHAIR: Yes. Okay. That can be done promptly?

26 MR PICCININ: That can be done promptly.

1 THE CHAIR: How long do you need to do that? (Pause)

2 MR PICCININ: Two weeks is what I'm hearing.

3 THE CHAIR: Yes. Okay.

4 It's, of course, not just documents that are publicly available. It's also information

5 which is not confidential -- plainly not confidential.

6 MR PICCININ: Plainly not confidential. So what we're talking about is a review where

7 the lawyer whose conduct -- the external lawyer who's conducting the review can see

8 from the face of the document that the material is not confidential --

9 THE CHAIR: Yes.

10 MR PICCININ: -- without needing to go back and consult.

11 THE CHAIR: Obviously, if Mr Moser has to come here again and thump the table

12 about this and, again, can show that these documents are not arguably confidential.

13 We will be displeased that way.

14 MR PICCININ: Yes. Although I would hope, sir -- and the Tribunal has made this kind

15 of remark before -- that there can be dialogue between the parties about this. I think

16 one of the problems here is that this application --

17 THE CHAIR: This application can be made in the court, yes.

18 MR PICCININ: Yes, this application has been made on an equally broad-brush basis.

19 The application was for an order de-designating everything, yes.

20 THE CHAIR: Now, the documents that Mr Moser has just gone through -- just to see

21 if we're at all aligned -- the 274 to 294, 282 and 286.

22 Sorry.

23 MR PICCININ: I think the ones that are in the public domain, then it's straightforward.

24 He said --

25 THE CHAIR: What's your position on documents in 4 through to 271?

26 MR PICCININ: That's quite a large page range for me to do on my feet, I think.

1 THE CHAIR: This was correspondence with the documents relating to the CMA.

2 MR PICCININ: It's the entire CMA file, so ...

3 THE CHAIR: You need to go through that.

4 MR PICCININ: We need to go through it. But we've heard what you've said. (Pause)

5 Yes.

6 THE CHAIR: So the approach will be, you will go through in 14 days --

7 MR PICCININ: Definitely not me, personally.

8 THE CHAIR: Well, I don't know, it will do no harm for you to read the documents

9 occasionally. I do not propose grappling with questions -- with argument about

10 whether technical documents are confidential or not, certainly not until much, much

11 closer to trial after exchange of evidence.

12 MR PICCININ: Yes.

13 THE CHAIR: And maybe even -- Mr Moser, does that give you any comfort?

14 Reply submissions by MR MOSER

15 MR MOSER: Well, as always, when my learned friend speaks, it gives me enormous

16 comfort. (Pause)

17 He is, however, as it were, the acceptable face of the Defendants on confidentiality.

18 Because -- I just have to get this in -- that it's not that we have been somehow keeping

19 a Kremlin-esque silence on this. I was going to say we wrote, for instance, as long

20 ago as September 2025 --

21 THE CHAIR: I'm aware you have been complaining about this for some time

22 (inaudible).

23 MR MOSER: Well, not just complaining. We said, "Please revisit -- please release

24 all -- if confidentiality is maintained, narrow the scope by providing a confidentiality

25 schedule, explaining the rationale for redacted experts". It's only after that failing

26 repeatedly that we were driven to make an application which is based on the fact that,

1 "Well, you haven't given any reasons, so it must all be non-confidential as a breach of  
2 the rules".

3 So, we are very happy to be reasonable. I know better late than never, if they provide  
4 the reasons, then we're happy to engage with it.

5 Also, while we're at that, we've got you here, sir, to mediate between us. I won't have  
6 to speak directly. It would be extremely desirable not to stick to whole documents, but  
7 to specific wording within documents so that if --

8 THE CHAIR: Sorry, just say that again.

9 MR MOSER: Well, at the moment the approach appears to be that the whole  
10 document is said to be confidential. But there will be many documents, where  
11 presumably what they're objecting to is a particular word within it. So that we'd like to  
12 know what word is to be confidential.

13 THE CHAIR: Well, yes, obviously, I'm not envisaging at this stage detailed complex  
14 redactions, but I do think Mr Moser makes the point: you can't pull an entire document  
15 confidential just because it identifies single sentences.

16 MR PICCININ: Well, sir, I think what would radically change the nature of this  
17 exercise, if we were --

18 THE CHAIR: We're not looking at detailed line by line. Is that okay? Is that not okay?  
19 But if you have a document, for example, which is 99 per cent --

20 MR PICCININ: Non-confidential.

21 THE CHAIR: -- or 90 per cent of the document, and it's just got something - one  
22 paragraph in it, which is confidential, and that is apparent from this exercise that you're  
23 going through.

24 MR PICCININ: The same kind of test of obviousness.

25 THE CHAIR: The same kind of test, that would be appropriate.

26 MR PICCININ: Can I just turn around for a moment?

1 THE CHAIR: Yes. (Pause)

2 MR PICCININ: I understand that what we're talking about here is the regulatory files  
3 and not the technical documents. The technical documents where you have  
4 a presentation, which is 60pages long, and looking at it, some of it might be material.

5 THE CHAIR: I'm not expecting a paragraph-by-paragraph determination of  
6 confidentiality at this point.

7 MR PICCININ: No, it's the 90/100 factor point.

8 THE CHAIR: (Overspeaking) technical document, but if it's a -- I mean, obviously, we  
9 can argue this until the cows come home. But if it's a ten-page document with  
10 a technical paragraph in, you may feel it's appropriate to just (inaudible) highlight it.

11 MR PICCININ: Yes, I understand that. That's ...

12 THE CHAIR: Let's see how we do. If Mr Moser's not happy and wants to challenge  
13 things, he can do so. (Pause)

14 MR PICCININ: If it turns out that it's taking longer than, we'll obviously say it, but ...

15 THE CHAIR: Longer than what?

16 MR PICCININ: Longer than the two weeks --

17 THE CHAIR: Oh, yes, yes.

18 MR PICCININ: Then we'll obviously say it.

19 THE CHAIR: It shouldn't take --

20 MR PICCININ: It shouldn't.

21 THE CHAIR: I mean, it shouldn't take longer. The task is not being addressed  
22 properly, if it's taking longer than two weeks, I hope.

23 MR PICCININ: Exactly.

24 THE CHAIR: But of course you can always come back if there's a problem.

25 MR PICCININ: Yes, I think we understand each other then.

26 MR MOSER: I think so, and the documents should be extremely familiar to everyone

1 by now. I think, I probably know, I would like to say that, yes, a schedule we're  
2 provisionally happy with, and let's hope it works.

3 THE CHAIR: Yes, I know, I don't think we've set a schedule, but I'll leave it up to Apple  
4 how they do it, but ...

5 MR MOSER: Schedule a list, however they'll have to tell us somehow.

6 THE CHAIR: Anyway, I'm not making an order as to how it's done, but we've got the  
7 direction as to what should happen.

8 MR MOSER: I'm grateful.

9 Do you want to hear about the CMA letter?

10 THE CHAIR: No. I want to hear, first of all, about why we say these gentlemen --

11 MR MOSER: Oh, sorry, yes.

12 THE CHAIR: -- the funders shouldn't have access to documents.

13 Reply submissions by MR PICCININ

14 MR PICCININ: Yes. So we say this application is, to our knowledge, unprecedented.  
15 It's not an approach that's been taken in any of the many collective actions.

16 THE CHAIR: There are no authorities in your favour, you're saying?

17 MR PICCININ: Sorry?

18 THE CHAIR: There are no authorities in your favour?

19 MR PICCININ: No, we're not aware of any decisions -- no applications having been  
20 made to add the funder in.

21 THE CHAIR: Okay.

22 MR PICCININ: So what I'm saying about that is that there have now been many  
23 collective actions that have got much further than this one, including several of them  
24 that have gone all the way to trial and indeed to judgment, without there being any  
25 funders in the ring, and that hasn't caused --

26 THE CHAIR: I mean, it's not been a perfect picture so far -- the relationship between

1 funding and action. So the more information funders have -- the greater ability to make  
2 rational decisions in the interests of the litigation and the interests of their business -  
3 the better, surely?

4 MR PICCININ: What I do accept, sir, is that the funder has a legitimate interest in  
5 understanding the merits of the litigation.

6 THE CHAIR: Yes.

7 MR PICCININ: I don't accept that there have been any great problems in relationships  
8 with the funders --

9 THE CHAIR: We can discuss that.

10 MR PICCININ: -- generally, certainly that have been caused by a lack of access to  
11 confidential information. But the common ground between all of us is that we accept,  
12 of course, that the funder has a legitimate interest in understanding the merits of the  
13 litigation, to decide whether to provide more funding or indeed to terminate the funding  
14 agreement.

15 But while, of course, the funder and the class representative can make whatever  
16 agreement they like about the funder being given access to the class representatives'  
17 candid merits advice for that purpose, the funder is not entitled to demand access to  
18 the Defendants' confidential information.

19 In that context, it does bear emphasising that this is an application for the wholesale  
20 addition of these funder individuals to the ring, such that they can see everything in it.  
21 That is the application that we're objecting to, one where --

22 THE CHAIR: That would have more force if you hadn't put everything in the ring.

23 MR PICCININ: Well, we are about to change that, sir. It's also not true that  
24 everything --

25 THE CHAIR: What's the risk? What's the potential downside if they have access?  
26 They're not in the business; it's not disclosing to a competitor; you're disclosing to

1 | some funders who want to take their own view of the documents. The documents are  
2 | relevant to the action.

3 | MR PICCININ: Well, it's true that we're not in a situation of the information being  
4 | provided to a competitor. But it's also true that the more the information is  
5 | disseminated, the greater the risk there is of inadvertent disclosure, and that's --

6 | THE CHAIR: When we're dealing with an inner confidentiality document.

7 | MR PICCININ: Sorry?

8 | THE CHAIR: We're not dealing with inner --

9 | MR PICCININ: No, we're dealing with outer confidentiality. That's a point in my favour,  
10 | sir. This is not one of those cases where what's being said is, "Oh, look, my client  
11 | can't provide instructions". The client here, Mr Gutmann, is in the ring. So there is --

12 | THE CHAIR: Just remind me who's in the ring at the moment, I think. Yes, look at  
13 | that on tab 3, page 33.

14 | MR PICCININ: Let me look at the actual names.

15 | THE CHAIR: So you have one, two ...

16 | MR PICCININ: Yes, sir, I'm just catching up. Page 33. So you can see his counsel,  
17 | so there's Mr Gutmann first.

18 | THE CHAIR: 26 people.

19 | MR PICCININ: 27, I think, on that.

20 | THE CHAIR: And Mr Gutmann, yes. 27 and then we're going to add three more?

21 | MR PICCININ: That's right.

22 | THE CHAIR: I mean, in terms of your greater risk of this being disseminated, I mean --

23 | MR PICCININ: But it is a point of principle, sir, that this is my clients' confidential  
24 | information. It's one thing to say that it needs to be disclosed so that someone can  
25 | conduct litigation against my clients. We understand that. But it's another thing to say  
26 | that it needs to be disclosed to people who are not conducting the litigation, and are

1 not involved in making the decisions in the litigation. All they're concerned with is their  
2 own financial position as third parties who are not involved.

3 THE CHAIR: Okay.

4 MR PICCININ: So we do say that it's wrong in principle.

5 We also say that -- just thinking practically about what has been disclosed and what  
6 is already in public at the moment -- it's not true that all of our internal documents have  
7 been put in the ring and confidential. In fact, the vast bulk of the material that is actually  
8 pertinent, in the sense of material that anyone actually needs to review to form a view  
9 on the merits of the case, is already in the public domain: in the unredacted portions  
10 of the pleadings, which is almost all of them; in the unredacted portions of the witness  
11 statements, which are also extensive; and in the information that you, sir, have put in  
12 your judgments, which include quoting from our confidential information.

13 If I can just show you one of those, sir, because it's right on point. If we look in  
14 bundle B at page 79.

15 THE CHAIR: Bundle ...

16 MR PICCININ: B.

17 THE CHAIR: Yes.

18 MR PICCININ: So this was the certification judgment, the one that decided to certify.

19 THE CHAIR: Yes.

20 MR PICCININ: It's paragraph 36. This is the paragraph that is dealing with the critical  
21 question -- which actually is going to come back as one of the two preliminary issues  
22 that we were proposing -- which is what impact Apple expected the PMF to have on  
23 consumers when released. You have set out, in unredacted form in this paragraph,  
24 Apple's internal unvarnished view on that issue in public. You can see that there is  
25 a quotation and I checked this -- although this is the confidential bundle, I've checked  
26 online -- this is the public version. You name the Apple employees who are

1 communicating with each other, and you provide a quotation from their  
2 communications.

3 You can see that what the email said is that the effects were "noticeable" but "deemed  
4 liveable". And you can also see further down that you actually set out in practical  
5 terms what that referred to, including the results of testing showing that there was an  
6 increased launch time for Safari of up to 3.5 times in the most extreme cases.

7 Just pausing there, I would say that going back to your question of why any of this  
8 matters, what this is not about is suppressing the T-word, "throttled". I'm very happy  
9 to say the word "throttled". You've heard Apple's representatives say the word  
10 "throttled" before. What we've always wanted to do is explain that it has two different  
11 meanings: one of which is just to control the power usage -- that's the meaning that's  
12 being used here. The other -

13 THE CHAIR: That's what you want to do to Mr Moser.

14 MR PICCININ: Exactly. Exactly that, sir. Every time he raises this point -- and at no  
15 other times. He's a nice man.

16 So we say there is actually a lot of information that is out there. What is not out there,  
17 and will not be out there following the process that we're going through shortly, is the  
18 technical details: the precise numbers in the mitigation tables; and the technical  
19 information about the different tests that were run and all of that. That is not material  
20 that the funder needs to see in order to form a view on the merits of the case. That  
21 really isn't. We say there's plenty of material here.

22 The other point we make is that the funder, for their part, have not provided the  
23 Tribunal with any kind of indication of why they need more information than what they  
24 have in order to form a view of the merits of the case. It's not just that I'm saying they  
25 don't, it's that they've failed to explain why they do. If we just look at the evidence that  
26 they put forward. It's in bundle --

1 THE CHAIR: In fairness, they've not seen the documents yet, so it's a bit difficult to --

2 MR PICCININ: Well, that's --

3 THE CHAIR: It may be nothing more than reassurance that there's nothing in there

4 that impacts some of the statements being made, but ...

5 MR PICCININ: Well, what they do have is -- well, let's look at what they say.

6 THE CHAIR: All right.

7 MR PICCININ: What they do have, sir, is the pleadings and the witness statements.

8 They can see what's been highlighted in those and redacted. But if we go to bundle A,

9 page 404.

10 THE CHAIR: Yes. (Pause)

11 MR PICCININ: It's paragraph 23.

12 THE CHAIR: This is the evidence, yes.

13 MR PICCININ: This is the statement from Mr Rothkopf and it's really paragraph 23,

14 where he says that he can't identify what he doesn't know because he doesn't know

15 what he doesn't know.

16 THE CHAIR: Yes.

17 MR PICCININ: But as I've just said, that's not really fair, because he can see what the

18 parties have identified as being important in their pleadings and in their witness

19 statements and their skeleton arguments.

20 We have had several hearings now where Apple has applied to strike out the case, so

21 there has been quite a lot of delving into the merits. And they can see what they can't

22 see from that.

23 They can also of course be told by the class representative, which is the second point

24 that Mr Rothkopf goes on to in that paragraph. They can be told by the class

25 representative that there exists particular categories of documents which the class

26 representative could then identify to us to say, "These are documents that the funder

1 needs to see", so that you at least have some concrete examples of material that could  
2 conceivably alter the merits advice that Mr Lawrence gives to the funders. But again,  
3 that --

4 THE CHAIR: But you accept that the funder has a legitimate interest in seeing these  
5 documents?

6 MR PICCININ: In understanding the merits of the case at a high level, yes.

7 THE CHAIR: And indeed, you may have a natural concern about the confirmation  
8 bias of the legal team who are preparing a case -- which we all suffer from when we  
9 prepare cases -- and want to look at these matters independently.

10 I can't form a view as to the extent to which the funder can alight upon information in  
11 documents that makes him wrinkle its metaphorical nose at the confidence the class  
12 representative has in the action.

13 MR PICCININ: Yes. I understand that. My submission is that it's not all or nothing; it  
14 doesn't have to be all or nothing. There is enough material they can see. They can  
15 see what's been redacted. They can see what's been referred to by Apple.

16 THE CHAIR: Yes, I understand that submission.

17 MR PICCININ: That gives them enough to identify anything in particular that they  
18 would need to see. But having them wholesale in the ring -- the idea that funders  
19 should be effectively running a full red team operation, where they review all of the  
20 confidential details in every document --

21 THE CHAIR: Yes, sure.

22 MR PICCININ: -- to form a completely separate view of the merits of the case and  
23 a completely different way in which it could be run, looking at documents that nobody  
24 is referring to ... That isn't conducive to the efficient operation of these collective  
25 proceedings.

26 I should say: the submission that I've been making to you, about how they could

1 identify something narrower that they would like to see. I should say that we have  
2 made clear to them that we are prepared to do that on a document or category basis.  
3 If they can tell us what it is they need to see, we're prepared to look at that and deal  
4 with it in a way that is not blanket.

5 The fact that there's not a single example that has been put before you really does,  
6 we say, demonstrate that this is not a proportionate approach to the protection of  
7 Apple's confidential information.

8 My learned junior tells me that that is exactly how it was dealt with in Sony, for  
9 example, which recently went through a full trial in this Tribunal without incident.

10 Sir, those are my submissions.

11 THE CHAIR: Mr Moser, I don't need to hear from you further on this, unless there's  
12 something you want to say. I'm going to permit Mr Rothkopf (audio distortion) -- so  
13 apologies if not -- and Mr Lawrence into the outer confidentiality ring. I'm going to  
14 produce, because I expect you'd like, a short judgment on this. So I'm not going to  
15 give it now. I'll produce something in writing over the next few days. That's ...

16  
17 CMA Consultation Letter

18 Submissions by MR PICCININ

19 MR PICCININ: On the CMA letter, I don't know if it's helpful to hear from me, just to  
20 cut through it, because one of the misapprehensions that I detected was that there  
21 was a big argument in which we're asking you to keep the whole of the CMA letter  
22 confidential --

23 THE CHAIR: No, you're not --

24 MR PICCININ: -- which is not our position.

25 THE CHAIR: You said there's some figures you want to take out.

26 MR PICCININ: There are some figures. Before that, what we said as well is that it's

1 | actually no longer relevant, so query whether you need to look at it at all.

2 | THE CHAIR: But it's relevant because it's -- sorry, my memory may be incorrect, but

3 | as I understand, it was referred to in the annex --

4 | MR PICCININ: That's right.

5 | THE CHAIR: -- in the judgment.

6 | MR PICCININ: I understand that.

7 | THE CHAIR: And the Court of Appeal -- I've expressed concern and the

8 | Court of Appeal have expressed concern.

9 | MR PICCININ: Yes.

10 | THE CHAIR: So isn't the issue that that judgment should now be published with the

11 | CMA letter --

12 | MR PICCININ: Yes.

13 | THE CHAIR: -- open?

14 | MR PICCININ: Yes, I can understand that. So all we were going to say is that, of

15 | course, that was at a time when that type of document was admissible evidence, and

16 | it no longer is.

17 | THE CHAIR: No, but it's still necessary for understanding why it was referred to and

18 | what happened.

19 | MR PICCININ: For understanding what happened in history. So I don't press that

20 | point at all, if that's where the Tribunal is coming from.

21 | All it is is a single paragraph of the letter, which contains some numbers that we

22 | wanted to have.

23 | THE CHAIR: Yes. Well, that's fine. Are you going to take the paragraph out or just

24 | the numbers out?

25 | MR PICCININ: Just the numbers.

26 | THE CHAIR: Yes. That's fine.

1 Submissions by MR MOSER

2 MR MOSER: Well, a few points on that.

3 I'm not as grateful as my learned friend perhaps anticipates I would be. One had to  
4 read between the lines of his skeleton argument to detect that they weren't opposing  
5 release of the CMA letter, because that seemed to be the gist of their argument about  
6 Hollington v Hewthorn.

7 There is also a disagreement between the parties as to the admissibility of the letter,  
8 but not for today, but the reasoning in Evans about Hollington v Hewthorn applying in  
9 its strong form, so that it is irrelevant and inadmissible, is based on the fact that in that  
10 case the defendant had not been a party to the regulatory decision in question.

11 THE CHAIR: We don't need to get into all this to understand that.

12 MR MOSER: We don't.

13 THE CHAIR: It's now going to be -- the suggestion is that the judgment now go up  
14 onto the website amended with the further version of the --

15 MR MOSER: I'm just saying --

16 THE CHAIR: (Overspeaking)

17 MR MOSER: -- because no point is made later on, "Well, nobody said this at the time".  
18 But we say that Hollington v Hewthorn applies in its weak form, so it is not  
19 inadmissible. May be irrelevant, but it's not inadmissible.

20 In any event, we've made clear in the Reply all of that, and I'm not going to sort of try  
21 and -- I'm not trying to break down doors that are already open. Can I look, however,  
22 at the two numbers that they want to have confidential, because I say that's quite an  
23 interesting illustration of how things go.

24 THE CHAIR: Okay. So the judgment -- they don't need to go in the judgment, do they,  
25 these numbers?

26 MR MOSER: They don't particularly need to go in the judgment, but we don't want

1 | them to be --

2 | THE CHAIR: So why do we need to get into anything -- let's have a look at them

3 | anyway. It'll be quicker to look at them.

4 | MR MOSER: (Overspeaking) confidential forever. Can we just look at them?

5 | THE CHAIR: Yes.

6 | MR MOSER: Then you can take a view as to whether it matters. If we look at the

7 | statement of Ms McLaughlin at paragraph 10. That's core bundle A, tab 14, page 411.

8 | THE CHAIR: Yes.

9 | MR MOSER: "Apple has carefully reviewed the CMA Consultation Letter in light of

10 | this correspondence. I am informed by Apple that there are certain limited figures in

11 | the letter [and then redacted, being that number and that number] which are

12 | confidential and commercially sensitive."

13 | So that's the argument: confidential and commercially sensitive. The evidence for their

14 | confidentiality and commercial sensitivity is that the lawyer has been informed of that

15 | fact by Apple.

16 | Now, if we look at those figures, they are at bundle A, 15, 425, paragraph 22 of the

17 | CMA letter.

18 | THE CHAIR: I beg your pardon, Mr Moser. 22, did you say?

19 | MR MOSER: 22. So page 425, the last two sentences:

20 | "Further information provided to the CMA by Apple shows that it received [mmm] about

21 | batteries ... over the period ..."

22 | Then the last sentence says that the number of service requests was "mmm".

23 | THE CHAIR: Yes.

24 | MR MOSER: I submit that no reason has been given for the alleged commercial

25 | sensitivity, apart from a bare assertion.

26 | THE CHAIR: Well, I mean, on its face it's --

1 MR MOSER: It's embarrassing. It's bad --

2 THE CHAIR: Well, I don't know if it's necessarily embarrassing. It may be very  
3 impressive. I don't know, maybe other companies have much larger numbers, but  
4 I can see, on its face, that's commercially sensitive.

5 MR MOSER: Is it? Well, I mean --

6 THE CHAIR: I'm certainly not prepared to rule in the absence of evidence that it's not.

7 MR MOSER: You have my position.

8 THE CHAIR: Yes.

9 MR MOSER: This is the day on which they were going to come and give us the  
10 evidence as to why -- they've served a witness statement, but they haven't produced  
11 any evidence.

12 THE CHAIR: That's not to say that at a future hearing you can have an -- attack that  
13 again with evidence.

14 MR MOSER: I'll take that.

15 THE CHAIR: I'm not going to rule on that today.

16 MR MOSER: I'll take that. I think once we've got into the swing of what really is and  
17 isn't commercially sensitive in this matter, then that may fall into place.

18 But I do put down a marker, because it's going to become relevant again when we talk  
19 about their preliminary issue suggestion of late last night, that there is a pattern of  
20 trying to minimise disclosure of embarrassing things that are not in fact commercially  
21 sensitive.

22 THE CHAIR: Yes. Well, that is why we're here.

23 MR MOSER: Yes.

24 THE CHAIR: To resolve it.

25 MR MOSER: Open justice.

26 THE CHAIR: Indeed. Right. Right. So we've done ...?

1 MR MOSER: We've done number 1 on the agreed agenda. Number 2 on the agreed  
2 agenda is the costs of and occasioned by the re-re-re-amended claim form.

3 THE CHAIR: Yes.

4 MR MOSER: You remember that this was raised before, I think at the last hearing,  
5 and then you said we'll deal with it later.

6 THE CHAIR: Yes.

7 MR MOSER: Now the pleadings, as it were, have closed.

8 THE CHAIR: Yes.

9 MR MOSER: They say, not unreasonably, for their side -- I would say the same  
10 thing -- "Well, you know, the usual rule is that the amending party pays".

11 THE CHAIR: One might say a fortiori in circumstances where you've been rapped  
12 over the knuckles for a lengthy and inappropriate pleading.

13 MR MOSER: What we say is, that this is not a usual situation, as you find in general  
14 High Court litigation, for instance. Collective actions are an iterative process.

15 THE CHAIR: Yes.

16 MR MOSER: It very often happens that the Tribunal says, "Well, we'll give you this.  
17 We won't give you that". A little bit like a sort of PhD vibe: we'll pass you, but with  
18 amendments, sometimes minor and sometimes major.

19 The appropriate order, in our view, is to be costs in the case, or as an absolute fallback,  
20 the Defendants' costs in the case. Because until this is over, we don't know to what  
21 extent this mattered. Of course they'll say, well, they've been put to the costs now and  
22 all the rest of it. I've read their arguments, and I say that this is a different jurisdiction  
23 and the fact that we have put in a replacement pleading, to make it more legible  
24 generally, make everyone's life less painful, is nothing to the point.

25 THE CHAIR: They should be paying you, shouldn't they, Mr Moser? That's  
26 an improvement. Making their lives easier.

1 MR MOSER: Only if they win is what we say, and thereby, you know, hangs  
2 a question.

3 So that's my submission. That's why I say the usual rule doesn't apply, even in  
4 a situation where we've been told we were too long originally. We are now shorter.  
5 Yes, they had to produce a shorter defence, but it's not that everything that's in the  
6 new claim form is somehow new. It sticks as closely as we could make it to your  
7 judgment. So that's my submission on costs.

8 THE CHAIR: No. I'm against you, I'm afraid, Mr Moser. You'll have to pay the costs  
9 of and occasioned by the amendments.

10 MR MOSER: What's next is a different costs point --

11 THE CHAIR: Yes.

12 MR MOSER: -- which is what I'll call the "Gutmann-Stagecoach" point.

13 THE CHAIR: This is getting -- you want -- yes -- when you have your ...

14 MR MOSER: Yes. So what happened in that case is that --

15 THE CHAIR: Well, I'm with you in principle, we need to keep this up to date. Yes.  
16 When did you last get updated cost positions?

17 MR MOSER: So in August 2025, we were told their costs do not yet exceed 12 million.  
18 I don't know whether that meant that their costs were 11.5 or 2 million. So that's fine  
19 as far as it goes.

20 THE CHAIR: You need this for your insurance?

21 MR MOSER: We've got ATE insurance of up to, I think, 15. If this runs on -- so what  
22 happened in Stagecoach, of course, was that they refused to say precisely what their  
23 costs were, and then, when it was all over, they said, "Ah, our costs are in fact much  
24 higher than your estimate".

25 THE CHAIR: Yes. No, I understand the problem. Is there any reason you suggested  
26 ten days? Was that your opening position, or is there something happening on day

1 11?

2 MR MOSER: I think they suggested ten days before the next CMC.

3 THE CHAIR: Oh, sorry. I beg your pardon. You wanted it three-monthly. Sorry, my

4 notes.

5 MR MOSER: Yes, we want it three-monthly. But there's some room between those

6 two positions. We want it as soon as it's convenient. They must know what --

7 THE CHAIR: What about the end of July?

8 MR MOSER: I'd be happy with the end of July. But the point is that we don't want to

9 get this so late that we can't look into further ATE insurance if necessary.

10 THE CHAIR: That's fine.

11 MR MOSER: So, yes, end of July would be acceptable.

12 MS SARATHY: I'm dealing with this aspect of the directions, we don't obviously object

13 to providing a breakdown of our costs, but that's, I think subject to two things. One

14 that it's mutual. The last indication that we had of their costs was their litigation budget

15 in 2022.

16 THE CHAIR: I'm yes.

17 MS SARATHY: And I think.

18 THE CHAIR: Beneficial if both sides did it.

19 MS SARATHY: Yes.

20 THE CHAIR: So then we just question when you both want to do it?

21 MS SARATHY: We are content with the end of July.

22 MR MOSER: I agree entirely with Ms Sarathy.

23 THE CHAIR: Sure.

24 MS SARATHY: Thank you.

25 Costs

26 THE CHAIR: Where are we next? We've got directions until the end. What about

1 costs of today? Is there any argument on costs of today?

2 MR MOSER: Well. The costs of today -- before we come to directions, I think the  
3 costs of today -- there's a mixed picture. Obviously, we have been successful, in  
4 essence, in what we asked for today. We've been blocked endlessly on the provision  
5 of a schedule on confidentiality. We've now essentially got that, whether you call it  
6 a schedule, a list or a letter. We have succeeded on the application.

7 Yes, we started high with de-designation. But in the end, it comes to the same thing  
8 that we're going to get what is properly confidential, and what is and isn't. We've  
9 succeeded on the class representative's application for admission of individuals into  
10 the ring. We succeeded on the confidentiality of the CMA consultation letter.  
11 Whatever my learned friend says, this has been fiercely opposed since the beginning.  
12 It didn't take us very long to deal with the costs of the Re-Re-Re-Amended Claim  
13 Form -- I don't suggest that that falls into the scales for today.

14 They have been resisting giving us an update -- recently said, well, we can have it  
15 ten days at some point in the last term of the year. We've essentially succeeded on  
16 that point also.

17 So I say that we should have our costs of today to be assessed, if not agreed.

18 THE CHAIR: Yes. No costs schedules have been provided.

19 MR MOSER: No costs schedules.

20 THE CHAIR: That's fine. I wasn't expecting it. I just ...

21  
22 Submissions by MR PICCININ

23 MR PICCININ: So we say this is a CMC and a normal CMC, and the appropriate order  
24 is costs in the case.

25 Running through the topics, on the CMA letter, we weren't resisting the de-designation  
26 of it, except for one point. On that point, we were successful, and my learned friend

1 was unsuccessful. He argued against the redaction of those materials and he lost.  
2 In relation to the de-designation exercise, their application was for the wholesale  
3 de-designation of everything that we had disclosed into the confidentiality ring, and  
4 that was unsuccessful.  
5 Then where we landed was essentially what I offered, which was that we would do  
6 a review and de-designate only the documents that were obviously not confidential.  
7 That was the position.  
8 On the funder admission to the ring application, I accept that we were unsuccessful.  
9 On the costs of and occasioned by the repleading, we were successful.  
10 On the issue of whether there should be further costs updates -- and I can't believe  
11 I'm making submissions about the costs of this -- but, again, our position was mutual.  
12 That's where we've ended up. I mean, so this is just one of those hearings.  
13 We're about to come on as well and spend time talking about directions that come  
14 next, which is, again, a classic cost in the case. Useful to have us all here. Nice short  
15 morning in the cool. It's not a situation where you need to be troubled by a costs order,  
16 sir.  
17 Submissions by MR MOSER  
18 MR MOSER: Yes. I mean, I essentially made my submissions. Yes, they offered it  
19 today, in part in their skeleton argument two days ago. They haven't offered it before  
20 which is why we are where we are.  
21 MR PICCININ: That's not true. That was in Ms McLaughlin's witness statement.  
22 THE CHAIR: Well, can we just have a look at that then. Can you show me when you  
23 first bang the drum about this, Mr Moser, in your correspondence? Do you happen to  
24 have or ...?  
25 MR MOSER: I'm comfortable to show you the bit that I mentioned already. We've  
26 probably said it long before, but if you look again at our letter of 15 September 2025.

1 THE CHAIR: Sorry, just remind me.

2 MR MOSER: Bundle C, tab 15, page 53. Then at page 61.

3 THE CHAIR: Sorry. I beg your pardon?

4 MR MOSER: Yes, bundle C, tab 15, page 61.

5 "Apple is asked to revisit its position on its designation of disclosure ... release the ...

6 materials ..." (Pause)

7 See paragraph 30 and 31?

8 THE CHAIR: What response did you get to that?

9 MR MOSER: Well, essentially: no.

10 64:

11 "You have raised various 'concerns' ...

12 "Apple's designation of documents ... has at all times been in accordance with: (a) the

13 relevant orders of the Tribunal [et cetera, et cetera]."

14 It should all be designated as outer, entirely appropriate, and so on. It goes on at

15 some length. Of course, the correspondence goes on at some length, but I summarise

16 it as: no.

17 For the sake of completeness, if we look for an even earlier banging of the drum, our

18 letter of 10 September 2023, almost three years ago, is at page 29 of this, which

19 essentially makes all of the same points.

20 THE CHAIR: Right.

21 MR MOSER: Including public domain, page 32. We talk about the five-year rule, and

22 so on.

23 As far as the CMA letter is concerned, you have, of course, witnessed live quite a lot

24 of the resistance of the CMA letter, which led to the confidential part of the judgment.

25 Even after the Court of Appeal making its points about the CMA letter, it's still being

26 told the CMA letter has to remain confidential.

1 So whatever reasonable things you hear today from the other side saying, "Oh, well,  
2 we've offered all of this". They didn't offer all of this before -- certainly not before this  
3 application and not in the form that it's been ordered ever; I say that with emphasis.

4 A lot of this should have been avoided if they'd -- sorry to give a lawyerly point. If they  
5 had, stuck to the practice direction from the beginning, we've seen what they were  
6 saying and we'd have responded to it, and we could have done all of that over a year  
7 ago at the very latest.

8 THE CHAIR: Did you want to add something?

9 Reply submissions by MR PICCININ

10 MR PICCININ: Sir, the key point is that the request that they were making was  
11 a request for us to re-review the confidentiality of everything, including the technical  
12 documents. If we had acceded to that request --

13 THE CHAIR: I think you've made that point.

14 MR PICCININ: I've made that point.

15 In relation to the publicly available documents, can I just show you our letter from  
16 December 2025? So it's bundle C, page 80.

17 Sir, it's very much offered in the Christmas spirit. (Pause)

18 THE CHAIR: Page 80.

19 MR PICCININ: Page 80, 8-0. It's the letter of 23 December 2025, and it's  
20 paragraph 6. We said, if you tell us which publicly available documents you found,  
21 we'll give you versions outside the ring. They had identified four of them, and we gave  
22 them to them.

23 So they've told us that they've found a hundred of them, if they had told us -- if they'd  
24 given us the references, all of that would have been done already. Sir, frankly, they've  
25 not been co-operative on that.

26 As for the suggestion that our position on the CMA consultation letter is new --

1 THE CHAIR: I don't trouble that consultation letter.

2 MR PICCININ: Okay.

3 (11.10 am)

4  
5 THE CHAIR: I am going to order the class representative 50 per cent of its costs today.  
6 The reason is that Apple took an inappropriate position by failing to do an initial perusal  
7 of documents which are public and identifying documents which are likely to be  
8 confidential.

9 Moreover, there has been success on the question of admitting the funders to the  
10 confidentiality club. So I think, taking matters in the round and having expected more  
11 proactive acts from Apple in relation to their confidential documents, I say 50 per cent  
12 of the costs.

13  
14 Directions

15 Submissions by MR MOSER

16 THE CHAIR: Then directions.

17 MR MOSER: Directions, yes.

18 So as things stood until I came into chambers this morning, there was a draft order  
19 proposed by the other side, which is at bundle E.

20 You might have it loose, I don't know. I think it was attached to their skeleton  
21 argument. It's E, tab 4, page 44. (Pause)

22 THE CHAIR: Yes, I think this is the one.

23 MR MOSER: Yes. On that --

24 THE CHAIR: I've got two here. I've got one says four-week trial, and one says  
25 two weeks.

26 MR MOSER: Oh. So what you're looking at there is what was annexed to the 9.00 pm

1 letter. That's -- so that the first one.

2 THE CHAIR: Can we --

3 MR MOSER: Yes.

4 THE CHAIR: Sorry, I don't want any -- I don't intend any criticism of either party for  
5 this, we only raised this two days ago, so that's why we have these kinds of materials  
6 coming in at the last minute, and it's nobody's fault.

7 So in terms of -- before we get into any details about the shape of the case, without  
8 committing yourself (audio distortion), what do you say about the suggestion from  
9 Covington as to the issues that should be heard at a first trial?

10 MR MOSER: I say that they are highly amusing in the sense that they have picked  
11 out three issues which they find convenient. I say blatantly with the intention of  
12 minimising disclosure on things that are going to be embarrassing.

13 THE CHAIR: Okay, well, leave aside that, that's fine. But you agree in principle it  
14 should be a liability trial first?

15 MR MOSER: Oh, absolutely. So what was ordered, sir --

16 THE CHAIR: That's already been ordered.

17 MR MOSER: Well, not ordered, what was decided in the judgment, in the CPO  
18 judgment, was -- wherever it is -- that there would be a trial of the issues on abuse in  
19 trial 1, and then there would be a trial of dominance and quantum in trial 2.

20 THE CHAIR: Okay, fine. So we've got that already.

21 MR MOSER: At paragraph 71, I think.

22 THE CHAIR: When can we be ready for trial, that's the ...

23 MR MOSER: Is the crucial question. So what they have said is, well, if you only look  
24 at these issues that we want to be --

25 THE CHAIR: Well, no, let's assume it's -- let's not get into the sub-class of issues that  
26 arise. But it's going to be the question of abuse.

1 MR MOSER: We think that the question of abuse can be heard in four weeks, if we  
2 have a week in reserve, and we think --

3 THE CHAIR: That seems a long time. What do you think is going to be ...?

4 MR MOSER: Well, it's going to be all of the issues. Let's go to the -- not only the  
5 release of iOS 10.2.1 that they want to talk about, but all of the issues that go to the  
6 adequacy and timing of the information provided, all of the issues on how widely  
7 publicised it was and disseminated and, of course, the counterfactual.

8 THE CHAIR: I mean, you're not at this stage -- you haven't seen the disclosure yet.

9 MR MOSER: No.

10 THE CHAIR: But you don't know whether you'll be disputing the reason for the  
11 measures that were taken?

12 MR MOSER: We don't. We haven't.

13 THE CHAIR: You may or may not (overspeaking).

14 MR MOSER: We have a fair idea. There would be expert evidence. We would call,  
15 obviously, the usual experts. There may also be behavioural expert evidence. That's  
16 yet to be determined.

17 Because, of course, what we say is the consumers would have done X. We also say,  
18 what was done -- not so much at release, but later -- in relation to non-transparent  
19 activities, would have been designed to make consumers not seek redress. All of  
20 those things.

21 THE CHAIR: So I understand. So you say, well, let's say four weeks, rather  
22 than -- I think five weeks is excessive at the moment.

23 MR MOSER: Well, the week in reserve just gives us more flexibility. The four weeks  
24 is, as I understand it, agreed, because they said four weeks, and we are responding  
25 to that proposal.

26 THE CHAIR: I say four weeks for the time being. We can look at that again

1 (overspeaking).

2 MR MOSER: Yes, I'm happy with that.

3 THE CHAIR: When can this be ready for trial?

4 MR MOSER: We think it can be available at the first date in Trinity term 2028.

5 THE CHAIR: (Inaudible).

6 MR MOSER: That's --

7 THE CHAIR: Probably today, I don't want to go a lot further than that.

8 MR MOSER: That's fine.

9 THE CHAIR: I think we ought to have another CMC soon to come up with directions  
10 for trial, and then to look at issues. It may be we can't pin down.

11 MR MOSER: We may be able to agree.

12 THE CHAIR: I agree, yes.

13 MR MOSER: Looking at the Annex 3, there's a lot in Annex 3 with which we would  
14 agree. It's largely based on the 7 August directions of last year, which was then thrown  
15 out because -- I mean thrown out in the sense of made impossible -- they made their  
16 strike out application. So a lot of Annex 3 is similar. It's then from --

17 THE CHAIR: You'll bear in mind that this Tribunal doesn't respect the terms. We're  
18 not going to say the start of Trinity term after the summer holidays.

19 MR MOSER: Yes.

20 THE CHAIR: So we have to rule out September.

21 MR MOSER: Yes, Michaelmas is after the summer holidays. Trinity is after Easter.

22 THE CHAIR: Oh, I'm sorry. I beg your pardon.

23 MR MOSER: You're quite right, we should --

24 THE CHAIR: So you're saying after Easter 2028. Okay, nearly two years.

25 MR MOSER: The next thing we've got is our disclosure application outstanding.  
26 There'll have to be disclosure. They suggest six months for disclosure. We think that

1 can be squeezed a bit, because surely this is now well-trodden documentation.

2 THE CHAIR: I mean, this case has been going on for a very long time.

3 MR MOSER: It has.

4 THE CHAIR: And you want another nearly two years?

5 MR MOSER: Well, nearly two years. So, you know, we'll have a disclosure CMC as  
6 soon as convenient. Disclosure will then have to start. On their view, that's going to  
7 take six months, maybe it could take four months.

8 THE CHAIR: Right.

9 MR MOSER: Then we're into 2027. Then there has to be evidence, and the experts  
10 have to be given a bit of time. They've suggested four months for experts. We think  
11 that's tight, in our experience of how long experts take. So then --

12 THE CHAIR: Let me hear from Apple on whether they think that's an appropriate trial  
13 date.

14 Submissions by MR PICCININ

15 MR PICCININ: Yes, sir. If we're working on the basis of a long trial, the full abuse  
16 trial, four weeks is what we said, and we said June 2028. That was really on the basis.  
17 I don't think there's very much between my learned friend and --

18 THE CHAIR: Well, we'll say Trinity term -- not that we have a Trinity term -- 2028.

19 MR PICCININ: Yes, it's just --

20 THE CHAIR: Then we would have a CMC fairly soon, I think, to discuss directions  
21 through to trial.

22 MR PICCININ: Yes. I think it's --

23 MR MOSER: That's not agreed.

24 MR PICCININ: I think the proposal that we had was that there would be a CMC in  
25 mid-October that would decide what disclosure needs to be ordered, and at the same  
26 time we'd set the other dates, because they need to follow on from disclosure. And

1 | then you can see --

2 | THE CHAIR: Ah, then I think the Tribunal should review the costs budgets at that

3 | stage.

4 | MR PICCININ: At that same time.

5 | MR MOSER: We're happy with that.

6 | THE CHAIR: So it's not something that can be agreed, because we'll need to

7 | discuss -- I mean, it can be agreed, but we'll need to have a short hearing to discuss

8 | the costs budgets.

9 | MR MOSER: Indeed. I mean, I personally am only available, I think, at the very

10 | beginning of October, but there's other people.

11 | THE CHAIR: I'm sure, yes.

12 | MR MOSER: That's not the issue. For efficiency's sake -- sorry, am I talking over

13 | you?

14 | MR PICCININ: Well, I was just going to say what I had to say about the alternative

15 | proposal, which is not something that you have to decide today.

16 | THE CHAIR: Yes.

17 | MR PICCININ: Which was one of the points I wanted to make about it. Essentially,

18 | we were very grateful to the Tribunal for raising the issue of the trial date and trial

19 | length and all of that, because we'd been thinking about that ourselves. Frankly, our

20 | concern is that this case has drifted in a way that the class representative has been

21 | grasping to find different ways of putting its case, and is constantly trying to add little

22 | things on, is still trying to bring back the idea that the UPOs themselves form part of

23 | the abuse, the problems with battery specification -- you will have seen that in the back

24 | end of our skeleton, where we criticise their new pleading as being still inconsistent

25 | with the rulings that the Tribunal has made. So that will be another issue to be dealt

26 | with at the October hearing.

1 | It seems to us that just allowing this to continue now onto a full trial of abuse risks  
2 | making this quite a long and slow and expensive process, where we're going to need  
3 | to be giving disclosure that covers quite a long period of time. You know, not limited  
4 | to the period of time in which the PMF was introduced at the beginning of 2017. And  
5 | that having this drift on into mid-2028 is undesirable if it can be avoided. That's why  
6 | we then gave some thought to: is there a way that it could be avoided?

7 | THE CHAIR: Yes.

8 | MR PICCININ: And it did seem --

9 | THE CHAIR: I'll hear further argument about that in October, but at the moment I don't  
10 | find it attractive.

11 | MR PICCININ: Okay.

12 | THE CHAIR: On first glance, it just seems --

13 | MR PICCININ: Yes.

14 | THE CHAIR: It's more often than not a poisoned chalice to be trying to cut corners on  
15 | these things.

16 | So let's get you a date --

17 | MR PICCININ: In ...

18 | THE CHAIR: -- then. That doesn't preclude you from coming back on the sub-issues  
19 | argument in the next hearing.

20 | MR PICCININ: Yes. What we would ask is just that the Tribunal keep an open mind  
21 | to it. And it doesn't have to be these issues either. If there is a way of doing this more  
22 | quickly --

23 | THE CHAIR: Yes, of course.

24 | MR PICCININ: -- so that we bring the case to a conclusion in 2027, that would be  
25 | better.

26 | THE CHAIR: Yes, yes.

1 MR PICCININ: That's really the point.

2 THE CHAIR: But you have had a bash at striking this out?

3 MR PICCININ: That's true, but really what we tried to do was identify the points that  
4 the Tribunal has identified in those attempts at striking it out as requiring evidence in  
5 a trial, and that's what we've distilled in our proposals --

6 THE CHAIR: Well, we'll certainly very much keep an open mind if there is a way of  
7 doing that.

8 Reply submissions by MR MOSER

9 MR MOSER: Just so that we can air this as it's arisen, and then that will shape the  
10 discussions in correspondence: we don't accept that there's an easy shortcut, where  
11 you say, "Oh, let's only give disclosure until the release of the PMF".

12 We do not allege abuse that terminates once the PMF is released; we have  
13 a continuous abuse that includes the failure to explain and everything else that the  
14 Tribunal has certified. So to have a preliminary issue only up to the release of 10.2.1.

15 THE CHAIR: So you have to look at the entirety --

16 MR MOSER: You have to look at the whole thing. It would be completely a huge  
17 waste to have two weeks on, "Oh, what happened around 10.2.1", because it's not  
18 going to give you the answer on the abuse. I can't resist, I'm afraid, saying that there  
19 is an element of -- there's a Yiddish word called "chutzpah" -- there's an element of  
20 that in being told that this has dragged on, if you look at what we've had to face. The  
21 most recent attempt at strike out was again unsuccessful; there was a different order  
22 made by the Tribunal, it was nothing to do with their application.

23 So there we are. But now perhaps it's all sweetness and light, and perhaps we'll be  
24 able to agree. The next CMC, we very much hope, will deal both with directions and  
25 disclosure in October.

26 THE CHAIR: Yes.

1 MR MOSER: And then that's essentially that done.

2 THE CHAIR: And why can't it be -- you said you're only available early October.

3 You're up on something else?

4 MR MOSER: That's what it means, but I'll look again at my dates.

5 THE CHAIR: I'm not going to say when in October it should be.

6 MR MOSER: We'll try and find a mutually agreeable date. And if it's not me, it'll be

7 my learned friend and maybe Mr Sutterwalla KC.

8 On -- forgive me, what was the other point?

9 THE CHAIR: I did want to --

10 MR MOSER: Yes. Go on.

11 THE CHAIR: I do want to raise one other thing. I've seen the Waterside judgment

12 (inaudible) tribunal when we talk about distribution. I'm not sure we really grappled

13 with distribution in this case. Do you think that's a matter you should address the

14 Tribunal on at the next CMC? Maybe it's much less complicated in this case than it

15 was in the Waterside case. I just think it's something we want to --

16 MR MOSER: Indeed. In this case, we have a much more captive group.

17 THE CHAIR: I understand.

18 MR MOSER: I'm sorry. The other point -- actually, principally, why I rose at the

19 beginning before I got carried away -- was this point about, "Well, you know, the

20 pleading is still making allegations of abuse regarding the UPOs". There is maybe

21 a misunderstanding between the parties on this. They say that any mention of

22 something that is not actually now a cause of action, such as the UPOs -- a long time

23 ago, the stone age of this case, the UPOs formed part of the abuse. I think that fell

24 out of favour at the very first hearing, and hasn't been certified.

25 We're not saying that the UPOs were an abuse, but of course we have to plead all of

26 the facts and the evidence of the abuse. You have to plead the UPOs to explain the

1 PMF, to explain what happened or didn't happen in relation to transparency, to explain  
2 why there wasn't redress. So that's why it's there. I hope that's of assistance. That's  
3 all I have to say really.

4 MR PICCININ: Just on that, sir. I mean, we can have a fuller discussion of this later,  
5 but it just --

6 THE CHAIR: Do I really need to spend any more time on this now? I'm not -- you're  
7 not asking me to make a decision.

8 MR PICCININ: That's true, sir.

9 THE CHAIR: I won't remember this conversation in October, anyway.

10 MR PICCININ: Sir, that's fine. I won't take any more of your time. Is where we're  
11 leaving it on the October date that the parties should get in touch with you?

12 THE CHAIR: Yes, just with the Tribunal and we'll find a date that, obviously, suits.

13 (11.27 am)

14 (The court adjourned)

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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?                                                                                                                              |