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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1701/5/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 6th July 2026

Before:

Charles Morrison

(Sitting as a Tribunal in England and Wales)

BETWEEN:

NST WORLDWIDE LIMITED

Claimant

v

(1) WORLD SNOOKER LIMITED
(2) WORLD SNOOKER HOLDING LIMITED
(3) WORLD PROFESSIONAL BILLIARDS AND SNOOKER ASSOCIATION

Defendants

A P P E A R A N C E S

Ben Quiney KC and Adam Taylor (Instructed by London Litigation Partnership) on behalf of
NST Worldwide Limited

Tim Johnson (Instructed by Livida Legal) on behalf of World Snooker Limited and World
Snooker Holding Limited

Tom Mountford and Rowan Stennett (Instructed by Bird & Bird) on behalf of World
Professional Billiards and Snooker Association

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Monday, 6 July 2026

(1.58 pm)

Housekeeping

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

Yes. Yes, Mr Quiney.

MR QUINEY: I'm grateful. If I may, I'll just explain the proposed agenda and running order, because obviously we have a relatively tight timeframe to deal with matters today --

THE CHAIR: Yes.

MR QUINEY: -- and in doing so, identify some particular points. But before that, as a matter of housekeeping, I assume the tribunal has: (a) had the opportunity to: read the skeletons from myself and my learned friends; (b) seen my short suggested reading list; and (c) also seen the attached clip of documents to that.

THE CHAIR: Yes, I have. Thank you.

MR QUINEY: I'm very, very grateful. So, you will have seen from that, that there are essentially three matters broadly, which are: first, the experts; second, what to do about Mr Hearn's call; and thirdly, if we have time, a miscellaneous matter on costs.

THE CHAIR: Yes.

MR QUINEY: We will not be troubling you today with any extensive issues regarding disclosure, although it may be that that's a subject for another hearing, if common sense can't break out.

1 So, on the economic issues, which is the first part of the experts, D1 and D2 will be
2 going first -- so that's Mr Johnston -- explaining to you why the issues for the economic
3 expert should be reduced. Obviously, we'll be saying that shouldn't be the case on
4 the basis of the pleadings and also other matters.

5 The next issue is then the industry and accountancy experts, and that's my application,
6 so I'll be going first, explaining why we consider those necessary, with then
7 Mr Mountford probably going first and then Mr Johnston following on, because as you
8 can see, the defendants have helpfully sought to divvy up the points between them.

9 Then on the Hearn call, this is really a matter between myself and Mr Johnston. It's
10 his application, so he'll go first on that, and try and explain why this transcript to the
11 court should be treated as confidential at this late stage.

12 So those are the suggested running order, and if, sir, you are happy with that, I'll be
13 handing over to Mr Johnston.

14 THE CHAIR: I am happy with that, and I'm very happy to hear Mr Johnston now.

15 MR QUINEY: Thank you.

16
17 Submissions by MR JOHNSTON

18 MR JOHNSTON: Sir, I'm very grateful. As Mr Quiney said, I appear on behalf of the
19 first and second defendants. I'm going to be addressing you in relation to the dispute
20 concerning the scope of the expert economic evidence. I propose to start with a small
21 number of background contextual facts, just to set the scene, and then hopefully
22 a limited number of fairly targeted submissions.

23 So starting with the background context, I'm mindful that you've obviously read the
24 skeletons, and so you have a good part of this in mind. Can I start by taking you to
25 page 760 of the bundle, which is a letter from both sets of -- at this point, both sets of
26 defendants' solicitors. Can I ask you, if you have it, sir, if you could have a look at

1 paragraph 3. But before you do, just for my purposes, have you had a chance to read
2 this letter and this correspondence more broadly in advance of the hearing?

3 THE CHAIR: I wouldn't say I have in any great detail, so please do take me to any
4 point that you want to make.

5 MR JOHNSTON: That's very helpful. Well, so might I first suggest that you read
6 paragraph 3, that really sets the context, and then I'll address you briefly on it.

7 THE CHAIR: I'm just opening that in another window, so why don't you carry on and
8 I'll be listening to you as it opens?

9 MR JOHNSTON: So what that paragraph in essence says is that my clients have
10 thought very carefully about the scope of the expert evidence, and what they're
11 seeking to do is to narrow the scope of the expert evidence for the purposes of
12 efficiency and saving costs, in line with the manner in which parties are expected to
13 conduct themselves in litigation.

14 Really, as that paragraph makes clear -- and I'll unpack precisely what's being
15 suggested in more detail in a moment -- what motivates the defendants, and in
16 particular, of course, D1 and D2, to whom this is particularly pertinent -- albeit this
17 letter comes from both sets of defendants' solicitors -- is saving time and money, and
18 that is what still motivates the defendants' approach to this issue. It's sort of glib, goes
19 without saying, but of course expert evidence is very expensive.

20 It's an obvious point, but an important one, that market definition and dominance are
21 two of the three critical limbs of the analysis in any case of this kind: what's the market;
22 is there dominance on the market; if those matters can be established, and in
23 particular, if there's dominance, then the question follows from that: is there abuse?

24 As you'll know, sir, resolving that issue frequently involves very dense, very detailed
25 analysis of adjacent markets, SSNIP tests, market shares, appreciable market shares
26 and market power, whether that market power is sufficient to amount to dominance by

1 a power, and so on and so forth, a very considerable part of the expert evidence.
2 Then, of course, that all has to be cross-examined on at trial, likely, if it's ordered for
3 there to be hot tubs on that point, and then obviously judgment from the tribunal.

4 So that's the context, the first part of the context for the disagreement between the
5 parties in relation to the expert economic evidence. WSL is trying to find a realistic,
6 cost-effective way to narrow the issues between the parties in everyone's best
7 interests and in the interests, as we understood it, of the parties and of the tribunal.
8 So that's part 1 of the background.

9 The second part, just to touch on this very briefly, you'll have seen from the
10 correspondence and indeed from my learned friend's skeleton argument that there has
11 been what might be described as a slightly hostile response to that proposal,
12 suggestions that there's some kind of horse trading here, seeking a forensic
13 advantage. That's not understood, and it's certainly not the spirit in which this matter
14 is before you. The reality is that my clients could not have been clearer. There is no
15 attempt on the part of WSL to horse trade or negotiate or to resile from the position
16 that it's set out in correspondence. It's not now going to deny the existence of the
17 markets that it's accepting in correspondence, nor is it going to deny that it's dominant
18 on them. So with respect, there's been a lot of heat but no light in that respect. That's
19 the second part of the background.

20 The third part is to touch on a bit more detail on precisely what's being proposed here.

21 So if I can ask you to turn up page 760, and if you have it in front of you --

22 THE CHAIR: Sorry, page 70, did you say?

23 MR JOHNSTON: 760. 7-6-0.

24 THE CHAIR: 760, just give me a second.

25 MR JOHNSTON: 760, exactly.

26 THE CHAIR: Yes.

1 MR JOHNSTON: So what you have here in paragraph 4 -- and I'll unpack this in
2 a moment. What you have here in paragraph 4 -- and I mean no disrespect at all, sir;
3 if I'm looking away from the camera, it's simply because I'm looking at my second
4 screen for the purposes --

5 THE CHAIR: Yes.

6 MR JOHNSTON: What we have here is what is being proposed as the new set of
7 issues to put to the experts. So 1.1(a), the market is defined in 142.1 of the claim
8 form, as agreed.

9 THE CHAIR: Yes.

10 MR JOHNSTON: It's further agreed that there is a market for the organisation of
11 professional snooker tournament, and that's part of paragraph 142.2. I'll take you to
12 those in a moment. But what's being accepted here -- and you'll see this in
13 a moment -- there are two paragraphs that plead market definition in the claim form
14 and --

15 THE CHAIR: Yes, 142. 142.1 and -- yes.

16 MR JOHNSTON: (Inaudible). There are effectively two markets in 142.1 and two
17 markets in 142.2. What's being said here is that it is accepted that: (a) three of those
18 markets are appropriately defined; (b) that WSL is dominant on three of those markets.
19 It's not being agreed that there is a market for marketing and exploitation of snooker
20 tournaments. That's the second half of 142.2. The thrust of the position is the final
21 sentence:

22 "Given the common ground in relation to 1.1(a), the experts should not [by which we
23 mean, frankly, don't need to] opine on the existence of this market or dominance on
24 the market." [as read]

25 So that's the core of what is being proposed here.

1 THE CHAIR: Yes.

2 MR JOHNSTON: And --

3 THE CHAIR: Yes. Forgive me, just so I'm clear, the way I understood it from your
4 skeleton and from that letter is what's not agreed is the market definition in relation to
5 marketing exploitation of tournaments or the marketing of rights relating to
6 tournaments. So two points there.

7 MR JOHNSTON: You may be right. You may be right that there's two separate points
8 that fall in there within marketing exploitation of tournaments and the rights relating to
9 those tournaments. It may be that those are disaggregated into two. That's right, sir,
10 and it may be that that's Mr Quiney's position. If I could say, if you have my skeleton
11 argument in front of you.

12 THE CHAIR: I do.

13 MR JOHNSTON: If you could turn to pages 1 and 2 of that, because that has the two
14 side by side. I'm conscious that you've seen this and you're obviously on top of it.

15 THE CHAIR: Yes, I'm looking at it.

16 MR JOHNSTON: That enables you to not have to flip between different paragraphs
17 in the bundle. So you see what was proposed before, and it just says the definition of
18 the relevant markets, and then the extent of barriers to entries. Now, of course, it's
19 important that that provision remains, 2, the extent of barriers to entry remain and then
20 the extent of market power.

21 So what's being suggested here is for the purposes of very substantially narrowing the
22 scope of the issues between the parties, we're not going to have to deal with market
23 definition, we're not going to have to deal with dominance at all, because there is going
24 to be an agreed position in respect of these.

25 Now, if you have -- just for your sake as well, it may assist that you've got the different
26 markets themselves from 142.2 on page 2 of the skeleton.

1 THE CHAIR: Yes.

2 MR JOHNSTON: So you have that there. You've seen the context.

3 So that's the proposal, and as I say, the spirit in which it has been put is the spirit in
4 which I'm putting it to you now. That leads on to the fact, as you know, that the
5 claimants have said, "No, we disagree entirely as to any amendment to the list of
6 issues. It should remain as was originally, and so we should have the experts opine
7 in full on market definition and in full on dominance". So even though WSL has
8 accepted the existence of those markets, and that it's dominant on them, the claimant's
9 position is that there still should be expert evidence on them, and furthermore, the
10 expert should then go on to opine on behalf of paragraph 142.2, that's not agreed,
11 because it is said that that is necessary for the resolution of the dispute between the
12 parties.

13 So that's the backdrop. With that said, sir, five, if I may, brief submissions to explain
14 why in my submission the approach being proposed by WSL is much the more
15 sensible approach to take and much the more proportionate approach to take, and
16 consistent with, indeed -- and I'll come on to address you on in a moment -- the
17 tribunal's own practice direction in relation to expert evidence. So maybe if I take you
18 to that to start with, you'll find that at paragraph 5 on page 3 of my skeleton argument.

19 THE CHAIR: Yes.

20 MR JOHNSTON: Do you have it there?

21 THE CHAIR: I do.

22 MR JOHNSTON: "The tribunal's practice direction expert evidence seek to manage
23 cases actively to move the provision of expert evidence forward in an effective manner
24 and to ensure that the evidence is strictly confined to the issues for which it is
25 necessary." [as read]

26 I rely on the active case management moving forward effectively and the strict

1 | confining to matters that are necessary.

2 | THE CHAIR: Yes.

3 | MR JOHNSTON: The thrust of the claimant's submission is that it is necessary to,
4 | nonetheless, despite the position taken by WSL, have expert evidence on market
5 | definition and dominance, and we say plainly that is not necessary in these
6 | circumstances. I don't want to labour the point too much, but the time and the cost
7 | savings attaching to this proposal will save the parties at a very, very conservative
8 | estimate, tens of thousands of pounds.

9 | The claimants also say it's necessary to have expert evidence in relation to this one
10 | market where, as you pointed out, there may be a market and a half or even two
11 | markets there that's not agreed. Again, we say that is not necessary. The reason for
12 | that is that the claimant doesn't need to show that WSL is dominant in four, five, six,
13 | seven different markets. It only has to show that it's dominant in one market because
14 | dominance is the gateway to the question of abuse. WSL's conduct is not going to be
15 | more abusive if it's dominant on more than one market, and in any event, in this case --

16 | THE CHAIR: Forgive me, Mr Johnston.

17 | MR JOHNSTON: Of course.

18 | THE CHAIR: Forgive me, Mr Johnston, but it will help me enormously if you can just
19 | help me with this question. What happens if the claimant failed on markets 1 and 2
20 | but felt it was able to succeed on proving dominance and abuse of dominance in
21 | relation to the exploitation of tournaments and the marketing of rights relating to
22 | tournaments? Is it not entitled to make that case?

23 | MR JOHNSTON: So, the position will be, sir, that the claimant will have established
24 | market definition and dominance in relation to the three markets that are being agreed.
25 | So it can't fail, if I can put it that way, in relation to those matters. The question then
26 | becomes --

1 THE CHAIR: So you're accepting dominance, but you're not accepting abuse?

2 MR JOHNSTON: No, of course not, sir, because otherwise, if I can put it bluntly, we'd
3 be conceding the claim apart from quantum.

4 THE CHAIR: So that's my question. That's my question, isn't it, what happens if it
5 fails on abuse on 1 and 2, but could have succeeded on 3 and 4?

6 MR JOHNSTON: That's why this expert evidence isn't necessary because -- and I'll
7 come on to address you on this in a moment -- when one looks at the structure of the
8 claimant's pleading, the structure of it is almost exclusively tied to, "In abuse of your
9 dominant position on the above markets, you did X, and that's an abuse". So the
10 claimant doesn't need to establish, for the purposes of succeeding with its claim, abuse
11 that is tied in a bespoke manner to each of these individual markets. That's the nature
12 of cases of this kind, sir, and you'll have seen many, many judgments of this kind that
13 say, "Look, we had extensive argument between the experts in relation to these five
14 markets. I don't need to make a decision about the existence or dominance on four of
15 them, because I've established that there's dominance in relation to this one, and that's
16 enough to then lead me on to the question of abuse".

17 In fact, that is my third submission, just for your purposes and your note, the claimant's
18 case is almost, not quite, but almost exclusively pleaded by reference to dominance
19 in general. So the thrust of the claimant's case is that abuse follows from dominance
20 in any of these markets and it doesn't need to establish, nor has it pursued a case,
21 that its abuse case flows from the existence of dominance on the individual market.

22 So to take a simple example, in order to show that it's an abuse of dominance to have
23 established certain rules relating to participation in snooker tournaments organised by
24 other entities, it's not necessary to show that WSL is dominant four times over. Rather,
25 all it has to show is it's dominant in the market for the supply of professional snooker
26 player services or the purchase of snooker player services, and all the marketing and

1 organising professional snooker tournaments. Then the question becomes, in light of
2 that dominance finding, are the rules, or are the provisions, that govern the relationship
3 between WSL and the players abusive? That is something that flows from the gateway
4 question of dominance.

5 So in answer to your question, "What about the possibility that they might have won if
6 they'd established dominance on these further markets?", in my submission, if they
7 cannot establish, having established dominance on three markets, if they cannot
8 establish abuse by reference to the same facts and the same materials in relation to
9 those three markets, then they are not going to establish that there is abuse by
10 reference to a further market, because the analytical question that will be undertaken
11 will be the same question which we'll be asking about proportionality and so on and
12 so forth.

13 That's the thrust of why the proposal is being advanced, which is to say this is
14 a gateway question. In this case, the gateway has been opened once, twice, three
15 times. In those circumstances, it's not necessary, nor is it appropriate and
16 proportionate to say, nonetheless, (a), my learned friend's position, which is we're still
17 going to have opinion evidence on what these markets are, the ones that are agreed,
18 and dominance on those markets, even though it's agreed, and furthermore, (b) we
19 should have a substantial part of what would have been the dispute in respect of
20 market definition and dominance in respect of another market, where in my
21 submission, that isn't necessary to get through the gateway to address the question of
22 abuse.

23 THE CHAIR: Yes, it's quite a step for me to take for a case management stage,
24 Mr Johnston, to say: I accept that if now, on this interim application that, if you do not
25 succeed at trial in relation to your arguments on markets 1 and 2, you could not have
26 succeeded and established anything to your benefit in relation to markets 3 and 4.

1 That's quite a step, you must accept.

2 MR JOHNSTON: Sir, I don't think, with respect, it is. It may help to look at paragraph 9
3 of my skeleton argument on this question.

4 THE CHAIR: Just before I do, Mr Johnston, the second question I want to ask you is:
5 so you say that in terms of liability, the claimants cannot be helped by 3 and 4 if they
6 have not succeeded on 1 and 2, and succeeding on 1 and 2 is sufficient, you say. My
7 question there is: are you also submitting to me that the existence of 3 and 4 could
8 make no difference to quantum and liability if the claimant succeeds and is only
9 permitted to run a case on 1 and 2?

10 MR JOHNSTON: Yes. Because my submission to you is that, analytically, the way
11 one works one's way through these kinds of questions is to ask market definition
12 dominance. Once dominance is established, that brings with it the special
13 responsibility attaching to being a dominant entity on the market. Then one moves to
14 abuse, and when one is considering the question of abuse, it may be worth looking at
15 my skeleton argument at paragraph 9, which is on page 4. You'll see the number of
16 times the claimants plead in the said markets, and that's a reflection of the way in
17 which the structure intellectually and analytically works. We're saying we're dominant
18 on markets 1, 2 and 3. You may be right there may be 4 and 5. My approach to it at
19 this point was we're accepting dominance on markets 1, 2 and 3; we're not for the
20 purposes of 4.

21 But the question for the tribunal is, given that position, is it necessary to have a further
22 very substantial dispute between the parties on market definition and dominance vis
23 a vis that fourth market in circumstances where the way the analysis is going to work
24 is it's going to say, "Okay, let's look at this particular clause of the agreement between
25 WSL and players, let's say. Now, given that it's accepted that you're dominant on the
26 market for player services, let's say, is that an abuse?", and that will require analysis

1 of proportionality and so on and so forth and justification". The question is whether or
2 not the answer to that question is different or could be different, if one then said, "Okay,
3 well, taking a step back, then let's look at that through a completely separate lens by
4 reference to a completely separate market on which dominance is accepted."

5 It's my submission to you that there is no forensic analytical difference in that process.
6 That's reflected in the way matters have been pleaded, which is, "In the said markets,
7 doesn't matter once I've established dominance. Now I get on to justification". So my
8 submission to you, sir, is that there is not a gap, if I can put it that way, between the
9 abuse findings and/or the quantum findings that are going to flow from those different
10 markets, and that's why the submission is being made, and that's why the suggestion
11 is being made that the most sensible way to deal with this is to say, in light of this
12 concession -- which candidly, without waiving any privilege, our expectation was that
13 the response would be, "Wonderful. That's great. We no longer need to deal with
14 market dominance".

15 The suggestion that this was some weird form of horse trading, we didn't understand.
16 But the suggestion that "No, no, no, no, we absolutely still have to deal with all of these
17 markets that you've agreed", we have to still establish what the market is, even though
18 the market's agreed, we have to establish dominance even though dominance is
19 agreed, and we then have to go on and look at the fourth market out of the four -- or
20 maybe it's the fourth and fifth out of the five, whichever way one looks at it -- we say
21 it's simply not a proportionate way of approaching this, nor is it necessary.

22 With that said, shall I turn briefly to what one my learned friend said in his submissions,
23 and try to address them point by point?

24 THE CHAIR: Yes, please.

25 MR JOHNSTON: The first is to say, "Well, this is all very troubling because the tribunal
26 needs to know about the market dynamics in those markets in order to answer

1 questions about abuse". The answer to that is encapsulated in the point that I pointed
2 you to very briefly earlier, which is that we're still going to have questions 2 and
3 questions 4 on the list. So if I can ask you to turn to page 773 of the bundle. This is
4 the original unamended --

5 THE CHAIR: It's the list of issues?

6 MR JOHNSTON: Exactly. So this is the unamended list, if I can put it that way, or the
7 list that is in draft before you, but is the list advocated for by the claimants. So we're
8 still going to have 1.2. Whatever happens to the list of issues today, we're still going
9 to have evidence on the extent of barriers to market entry. We're still going to have
10 1.4:

11 "Whether and to what extent WSL parties face effective competitive constraints from
12 competitors in the relevant markets ..." [as read]

13 It's important to note that comes after dominance. So this is a part of the analysis that
14 the experts are going to do in any event, whatever findings they come to in respect of
15 dominance.

16 "From competitors in the relevant markets, whether and to what extent WSL parties
17 face competitive constraints in related markets such as viewership, broadcasting and
18 sponsorship." [as read]

19 So the idea that the tribunal will be left high and dry, with no evidence in relation to
20 those markets and the dynamics within them, doesn't work, in my respectful
21 submission, because the parties are agreed that these matters are still going to need
22 to be canvassed for the purposes of assessing abuse. It's no part of my submission
23 to you that the tribunal should be left without any help on those points. Our position is
24 a much more quotidian and straightforward one, in truth, which is we can cut 20, 30,
25 40, 50 pages out of the expert reports, where we're no longer dealing with market
26 definition and dominance, but you're still going to have the analysis of those markets

1 that goes to abuse.

2 My learned friend's second subpoint is that it's artificial to cut off the question of
3 dominance, where we had suggested it at 1 January 2018. So that's been our
4 suggestion and in my learned friend's skeleton argument, I think for the first time, but
5 I'll be corrected, the argument was advanced that, actually, there should be dominance
6 established all the way back to 2010, which is the point at which WSL and WPBSA
7 entered into the agreement that governs their relationship at the moment.

8 Now, with respect, that is not a sensible suggestion for a number of reasons. First,
9 that would be an extraordinarily wide window of dominance over a period of 16 years.
10 To be candid, eight years is an awful lot to start with. But the more important point,
11 what my learned friend says is, "Well, I need to go back to 2010, because that's the
12 point at which the agreement was entered into". Well, that has zero analytical force,
13 because the agreement is in force in 2018.

14 So to the extent we're talking about the matters we were just discussing about the
15 nature of this market and so on and so forth, that is a structural feature of the market,
16 and so the experts can opine on the significance of that contract, which was in place
17 and in force as between the parties in 2018. So in the circumstances, we say that it's
18 not appropriate and not necessary, and it's not offered by my client, the proposal that
19 there would be an agreement on market definition and dominance back to 2010.

20 The final point in respect of that, of course, is that none of the conduct, none of the
21 actual abusive conduct that's argued about, which is alleged to go to quantum and go
22 to loss and damage, is anywhere near 2010. So it's not the claimant's case that:
23 I suffered losses arising out of this agreement in 2011, 2012, 2013, 2014, 2015, 2016,
24 and so on and so forth. So we say there's no proper basis or sensible basis for going
25 all the way back to 2010.

26 My learned friend's third subpoint is that it's necessary to consider --

1 THE CHAIR: I'm sorry, Mr Johnston, would you be kind enough to just go back to his
2 first point, which was the point, of course, that I took you to earlier, that you are seeking
3 to prevent him running (audio distortion).

4 MR JOHNSTON: Sir, I can't -- I don't know if it's the same for anybody else. Maybe
5 one of the other counsel can assist. I can't hear the court.

6 MR QUINEY: Yes, it's the same for me.

7 MR JOHNSTON: Okay. That's helpful, it's not just me, but not helpful that we can't
8 hear the court. (Pause)

9 Sir, can you --

10 THE CHAIR: I don't know where the difficulty is coming --

11 MR JOHNSTON: Can you hear me? I can hear you again.

12 THE CHAIR: Yes, I can hear you. I lost the hearing and I don't know why.
13 (Overspeaking).

14 MR JOHNSTON: If it helps, sir, the last words I heard were, "Could you go back to
15 the first point", which was the point about if the approach is taken --

16 THE CHAIR: Yes, they're both --

17 MR JOHNSTON: -- there won't be evidence in relation to the markets where there is
18 market definition and dominance. There'll be no evidence in relation to the dynamics
19 on those markets, because we won't have --

20 THE CHAIR: No, it's more than that, isn't it? It's more than that. He makes the case
21 that you are attempting to restrict his ability to make a case that he has pleaded. He
22 takes us to the distinction and the fact that it is a separate case, with a separate
23 market. He describes that as an artificial and illegitimate attempt to reduce the scope
24 of the claimant's case. By admitting to two markets, you try to prevent him from
25 running a case in relation to another two.

26 Now, it might be that you have already dealt with this as you did at length -- or at some

1 length, at any rate -- in your answer to me. Is there anything else that you wanted to
2 say to his claim, his assertion that what you're trying to do is illegitimately close the
3 door on the claimant's case; that there are multiple abuses across a number of distinct
4 markets, which of course is the point I was taking with you?

5 MR JOHNSTON: That's very helpful. So I hope I've addressed that point in part, but
6 just to try and break it down into stages as a submission, the first point is that the
7 abuses in question are abuses that follow from "the markets", plural. So if and to the
8 extent -- and this is the way parties plead their cases in cases of this kind, which is to
9 say, "Look, there's lots and lots of different markets and dominance and lots and lots
10 of different markets ..." If I can get home on one of those, then I'm into my abuses.

11 But my learned friend doesn't need, for his purpose, for the purposes of his abuse or
12 his quantum case, to establish that we're dominant on more than three markets, the
13 three markets that we're agreeing. That was the entire premise of the proposal. So
14 it's not an illegitimate attempt to narrow his case; it's a legitimate attempt to try to
15 narrow the issues between the parties and to try to say, can we find a way of focusing
16 on the issue that's really going to be in dispute between us, which is abuse? We're
17 not going to say at trial that we're not dominant on some of these markets, at least. In
18 fact, we're conceding most of them. But we are going to say that it's not abusive, and
19 given the shape of --

20 THE CHAIR: (Overspeaking).

21 MR JOHNSTON: Sorry. Sir, I don't mean to interrupt you. I think there's a slight time
22 delay between us.

23 THE CHAIR: I was just going to say, just to draw a line under your point, the fact that
24 Mr Justice Lloyd might have pointed to a distinction between these markets to
25 demonstrate that they are discrete is not to the point. You say they may be separate
26 markets, but it's not necessary to run a case in relation to all of them. If a number of

1 | them -- indeed, you might say the majority and the important ones -- are conceded,
2 | first of all, the market definition and, secondly, dominance, there is just no need to go
3 | any further because you deal with the remedy point as well and you say the claimant
4 | can succeed on every last pound of his claim through the gateway that he has
5 | succeeded on. That's your submission.

6 | MR JOHNSTON: That's precisely the thrust of the submissions, sir.

7 | THE CHAIR: Mr Johnston, I'm clear on your arguments in relation to costs, how it
8 | might be wasteful and so on, and I don't think that would be between us (inaudible). It
9 | might be helpful if I were to hear from Mr Quiney now in relation to this point, which, if
10 | I may say so, goes to really the heart of the dispute, unless you want to continue
11 | addressing me on any particular point, in which case I'll be pleased to hear from you.

12 | MR JOHNSTON: Sir, no advocate should ever refuse an invitation from the court not
13 | to speak any further. I suppose the only other wrinkle, if I can put it this way, that's
14 | relied on by my learned friend, is the question of super-dominance. But you've seen
15 | what I say on that, and that really doesn't --

16 | THE CHAIR: Yes.

17 | MR JOHNSTON: That doesn't --

18 | THE CHAIR: I don't think that moves the dial, Mr Johnston, subject to what Mr Quiney
19 | says.

20 | MR JOHNSTON: Exactly.

21 | THE CHAIR: It's the point that we're on now that's the difficult one.

22 | MR JOHNSTON: With that said, sir, I'm very happy to pass over to Mr Quiney, and
23 | I'm grateful.

24 | THE CHAIR: I'm very grateful to you, Mr Johnston.

25 | Mr Quiney, I think you can see where the battleground lies, and that's probably why
26 | you took it as your first point in your skeleton.

1
2 Submissions by MR QUINEY

3 MR QUINEY: Certainly, sir, that is exactly at the heart of this, but obviously I wouldn't
4 want to forget either the temporal points, nor indeed the super-dominance point, but
5 I will focus on this point first, if I may.

6 There are essentially three elements here. The first is fairness, and what my client's
7 case is and what was part of the agreed list of issues. That's the first point. The
8 second point is dealing with the notion of the differentiation between the markets and,
9 for example, what Mr Justice Lloyd says in Hendry. The third is the inherent lack of
10 logic to my learned friend's position, that once his client's given away a couple of
11 markets, that makes no difference to my client's case as to either what my client has
12 to prove as a matter of abuses, or what my client's claim for damages may be as well.
13 So those are the three points.

14 On the first of those and the question of fairness, if I could take you first of all to the
15 list of issues that have been agreed and approved by the tribunal. That's at 1216 in
16 the main bundle.

17 THE CHAIR: Let me just make sure I have the right one. 1216, did you say?

18 MR QUINEY: Yes. Sorry, 1215 is where it starts and I want to take you to 1216.

19 THE CHAIR: Yes, I have it. Thank you.

20 MR QUINEY: I'm grateful. So of course the argument that Mr Johnston's made is all
21 about the list of issues for the economist and seeking to cut them down. But the list
22 of agreed issues for which the list of matters for the economists is parasitic. It is very
23 clear and follows the pleading that my client has put in, that the market definition
24 should be these two matters: i.e. market for the supply and purchase of professional
25 snooker players, services and professional events and tournaments, so that's the main
26 subject of the admission; and second, the market for the organisation and marketing

1 of professional snooker tournaments and the exploitation of various rights relating to
2 those tournaments.

3 This, of course, has been the subject of agreement. The admissions have been made
4 at an incredibly late stage, and while we are grateful for the admissions, we are
5 concerned that it does shut the door to my client's case. One can see where it may
6 well go, as a matter of fairness, before we turn to the pleading, which is when one
7 looks at the remaining issues -- and this is just focusing on the chapter II prohibition
8 as opposed to chapter I, which is obviously of more interest to Mr Mountford's
9 clients -- we've got to look at the market share for the relevant markets. So that is
10 a live issue. We've got to look at the competitive constraints in the market. We've got
11 to look at -- and this is agreed -- whether WSL is dominant or super-dominant, and
12 then we come to the abuses.

13 The abuses take many forms, and yes, they can be common between the parties. But
14 just to put no fine a point on it, when one's talking about the various rights relating to
15 the tournaments, for example, broadcast rights, that's often where the money is. So it
16 is a valuable distinction. Rather than me being restricted to engage, for example, the
17 top eight players to play in a tournament just for paying customers coming to, say,
18 Alexandra Palace, if I get to then broadcast it -- and indeed, that is one of the major
19 issues here -- my client makes a lot more money. So one can immediately see why
20 we are concerned about shutting the door.

21 Looking at the way that it's put in the points of claim, if I may, and take you, sir, to
22 page 54 of the same bundle. (Pause)

23 THE CHAIR: Yes.

24 MR QUINEY: So at page 54, you see paragraph 142 where the markets are pleaded.

25 THE CHAIR: Yes.

26 MR QUINEY: So, pausing here, the effect of saying to my client, "We can't call it

1 economic expert evidence", is that we are going to be put at a massive disadvantage
2 to prove this pleaded claim, and indeed answer one of the list of agreed issues. 143,
3 the relevant parts of Hendry, are set out there, and this goes to the point where these
4 markets are real. As I said, these markets are where the money probably lies.

5 This is the fairness point: what's inappropriate is for my learned friend to invite this
6 tribunal on this application, which is an application by him to cut down the issues for
7 the experts, not an application to cut down the agreed list of issues, not an application
8 to delete or strike out parts of my client's pleading, and by the back door, without any
9 evidence to support the application, to invite the court to determine that findings of
10 dominance in these markets don't make any difference.

11 More importantly -- and this is the second point -- when one looks at the way that the
12 breaches are put in the pleading, one can see at 145 the particulars of dominance,
13 and then at 149, we get to the question of abuses. Now, there are lots and lots of
14 abuses we pleaded, but I just highlight the ones at paragraph 177. One can see here,
15 at 177, page 69, that we've pleaded out specific abuses relating to exclusive
16 agreements with the venues, broadcast and sponsors. That's in this controversial
17 market, the market my learned friend wishes to shut the door on. This is just an
18 example. There are others out there, but this is expressly dealing with them.

19 You can see that the contract and the revised contract have clauses that expressly
20 restrict this. You may recall that the sanctioning process, whereby my client has to go
21 to D1 -- to World Snooker and say, "May I use one of your players?", one of the critical
22 elements of that is whether there's a clash and whether there's a broadcast. So the
23 broadcast rights are central to this.

24 Then we see at 179 that there are also abuses of dominant position by threatening
25 broadcaster competing events. 180 is an example of that, and indeed a matter which
26 is the subject of the Hearn call we'll come on to, where it appeared that Barry Hearn

1 had been threatening Channel 5 and suggesting that they shouldn't get into business
2 with my client. So this is central --

3 THE CHAIR: Forgive me, Mr Quiney, and I apologise for cutting across you, but I don't
4 think that's Mr Johnston's point, is it? Mr Johnston doesn't say that you can't point to
5 those factors, those that you have listed, in your submission to me now, when you look
6 to quantum and remedy and loss and so on. What he says is that because of the
7 admissions that have been made in relation to market definition and dominance, there
8 is no need for the experts to go on and opine as to the existence of these two particular
9 markets or dominance in them. They are just not necessary for you to succeed on
10 your case.

11 In other words, to put it very simply, you are not going to receive £1 more of damages
12 or be more likely to secure injunctive relief, as you seek, if the experts opine on
13 dominance or existence of those two markets. That's his case.

14 MR QUINEY: This is why I was focusing on fairness before we got on to the last point,
15 which is the question of what difference it makes and the balance of prejudice.

16 So on the question of fairness, first of all, there is a simple calculus that my client might
17 succeed on these additional markets and not succeed on the other markets as
18 a matter of abuse. So for example -- which is why I brought up paragraphs 179,
19 180 -- it might be said that the evidence that I have is pretty strong on demonstrating
20 an abuse of dominant position when coming to the question of the market to sell
21 broadcast rights. I would obviously say that my evidence or my client's evidence for
22 the other issues is also strong for abuse, but nonetheless, one can see a distinction.

23 The second point is on the question of pounds and pence. While one would like to
24 think that at the end of the day my client will recover 100 per cent of everything that's
25 claimed, nonetheless, one can see a material difference between, say, lost ticket sales
26 for an event, because you weren't able to have the services of a professional snooker

1 | player come up to Alexandra Palace and perform in front of a crowd, and then the
2 | exploitation of the broadcast rights, which would be materially worth more.

3 | Now, if I'm stuck in a situation when my learned friend is upheld on this point, then
4 | obviously I will seek to argue, as best I can, that the quantum shouldn't be materially
5 | different. But what he's asking is for this tribunal to make sure that it's as hard as
6 | possible for me to do that, and that's simply not fair.

7 | Then thirdly, on the question of the remedy of injunctive relief, when one comes to the
8 | scope of any available injunctive relief, then, of course, the tribunal must take care
9 | when undertaking such a draconian remedy of granting it, and it may be that, for
10 | example, my client would be materially unable to get injunctive relief along the lines
11 | of, "Mr Hearn, don't threaten Channel 5", if indeed this market isn't there in play.
12 | Because if we're not interested in the downstream market, so to speak, broadcasters
13 | and other rights, it may be said against me that the injunctive relief I'm seeking is too
14 | wide. So those are all reasons why, in short, it does make a difference, and certainly,
15 | this isn't an appropriate way to close the door on my client.

16 | So those are the reasons I hope to explain to you why Mr Johnston's position is wrong,
17 | and indeed, unfair. I do have additional points which are the balance of prejudice, the
18 | super-dominance and the temporal points as well, if I could go on to those.

19 | THE CHAIR: Why don't I take your submissions that you've made on this primary
20 | point back to Mr Johnston for now, and it's live, I'll come back to you for the remaining
21 | points that you can make.

22 | MR QUINEY: Thank you very much.

23 | THE CHAIR: Mr Johnston, I think you can see where it's going. You see how
24 | Mr Quiney answers your point, but it does -- it could make a difference having the
25 | ability to make a case on abuse of a market that has been by experts defined, and
26 | where dominance has been ultimately established. He says that could be, and I think

1 the difficulty you face is persuading me at this stage to shut that out, isn't it?

2
3 Reply submissions by MR JOHNSTON

4 MR JOHNSTON: Well, let me at least try. I thought -- I found Mr Quiney's
5 submissions very helpful because what underpinned them was a conflation of the
6 question of market definition and dominance and damage. So the premise of the
7 submission that you've just heard is, if the tribunal doesn't make a decision about
8 dominance in respect of the market for broadcasting services, that's going to have
9 some kind of consequence for whether or not the claimant can recover damage in
10 respect of broadcasting services.

11 Of course, that is a total analytical non-sequitur, and that's for this reason, sir, which
12 is: if it's right that my client, in the example that have been given to you were -- the
13 example that was being given to you was about contracting with 12 players to bring
14 players in for an event, and the submission that was put to you was, "Well, I'll be able
15 to recover loss and damage in respect of the ticket sales in relation to those players,
16 but what about the broadcasting money?"

17 So if it's right that my client has abused its dominant position in the market for players
18 services, then Mr Quiney doesn't need to establish that my client is dominant on the
19 market in broadcasting services. He simply needs to say, "And as a consequence of
20 your abuse of dominant position, you abusively prevented my client from putting on
21 this event. My loss and damage was (a) the sale of tickets, (b) the sale of broadcasting
22 rights". There is no necessary connection between market definition and dominance
23 and quantum. He doesn't need to establish market definition dominance in order to
24 say, "And as a consequence of being unable to put on this event, I've lost (a) ticket
25 sales, (b) sales of food".

26 We don't need to have a dispute amongst the experts about whether there's a market

1 in the sales of food at snooker events, nor do we need to have a dispute about whether
2 there's a market in the sale of alcohol at snooker events, nor do we need to have
3 a dispute about whether there's a market in broadcasting of snooker events. Because
4 if it's right that abusively -- and of course my clients will be saying it's not -- but if it's
5 right that abusively my client has unlawfully prevented Mr Quiney's client from putting
6 on this event, then if the abuse is established, then what his losses are a factual
7 question that simply doesn't need to tie back to the question of market definition
8 dominance.

9 That's why my submission to you has been that market definition and dominance are
10 a gateway question. Once one gets through the gateway, then the question is: has
11 there been abuse? If there has been abuse, the question is: what loss or damage has
12 been suffered and follows from the abuse as a question of ordinary causation? So
13 one simply doesn't need to establish, "Well, (inaudible), the only reason I can claim
14 my damages in respect of broadcasting is because I established that you were
15 dominant on the market for broadcasting".

16 The tribunal could, you know, if this is what you were to decide today, hear four days
17 of evidence on that, it could decide that there isn't a market, or that my client isn't
18 dominant on that market, and Mr Quiney's client could still recover damages for the
19 fact that they say and they can -- if they can establish it on the facts that they would
20 have entered into a broadcasting arrangement, and on the facts on the balance of
21 probability they can satisfy you that the value of that would have been X, well, then
22 they recover that loss and damage.

23 So that's the analytical hinge, if I can put it this way. My learned friend is trying to
24 suggest that it is necessary for his case on abuse and loss and damage to establish
25 dominance on multiple markets. That's why so many judgments say, "Look, I had five
26 markets argued in front of me, but I'm going to decide there's dominance on this market

1 so I'm not actually going to express my final views on these other markets. There's
2 dominance on this market, there is this market, there's dominance on this market, right,
3 let's get on with abuse".

4 So that's why, in my respectful submission, the point about fairness and the point about
5 narrowing simply doesn't fight analytically. It rests on a false premise about what my
6 learned friend would need to establish. We say he doesn't need to, and that's the
7 entire spirit in which this suggestion has been made, "Look, let's cut out huge swathes
8 of this. Let's get on to the questions we really need to grapple with, which are abuse
9 and quantum. They're going to be, as you apprehend, very hotly fought over, and we
10 simply don't need, in order to talk about broadcasting associated losses, to establish
11 dominance in a market for broadcasting".

12 So that's the thrust of the approach that my client has taken, and to the extent it's been
13 misunderstood, then that's unfortunate, but that's the underpinning logic that underlies
14 the suggestion before you today. I hope that's helpful as a way of encapsulating.
15 I hope that's helpful as a way of encapsulating it.

16 THE CHAIR: Exceptionally helpful, Mr Johnston. All your submissions today have
17 been.

18 19 Ruling

20 THE CHAIR: I do not think it has been misunderstood by Mr Quiney and his team, but
21 nevertheless, what it comes down to, in essence, it seems to me, is that I have to
22 balance between the cost, the waste, as you put it, in terms of time and resources,
23 money, and dealing with the experts in addressing potentially two additional issues
24 that have been pointed to and are dealt with in the letter and in the request to restrict
25 the evidence in regard to markets, and those not agreed being the marketing, so far
26 as I read the letter, at any rate, the marketing and exploitation of tournaments and the

1 marketing of rights relating to tournaments, which follow on from the market definitions
2 which have been agreed.

3 So the request is to restrict the expert evidence in relation to those additional markets
4 so as to avoid the cost, the waste, and I am asked, really, to balance that against
5 preventing Mr Quiney from advancing a case which he has pleaded, which he argues,
6 which he argues again today, and which he submits is a necessary case that even
7 with dominance and market definition conceded in relation to the first two elements, it
8 does make a difference to him if he can succeed on the third and the fourth.

9 So I have to balance shutting him out of that or making a decision today as to whether
10 he could or could not succeed, whether that is a real case or not, as against the
11 additional cost of the expert evidence in relation to the market definition, and the expert
12 evidence that has been suggested.

13 I find myself today unable to exercise or to give a decision on that balance in favour of
14 the suggested wasted costs. I am not prepared to prevent Mr Quiney running a case
15 that he has pleaded, and that he makes again before me today. It is a difficult balance.
16 The case has been put very well, but it is one where I do come out in favour of allowing
17 the case to proceed. I am not prepared at this interim stage, on the limited evidence
18 and argument that is put before me today, to prevent Mr Quiney making a case in
19 relation to abuse on the third and fourth argument. So there will be no restriction,
20 therefore, on the expert evidence in the manner suggested.

21 Mr Quiney, do you want to move on to the next point, please?

22 MR QUINEY: Sir, yes, please.

23 MR JOHNSTON: (Inaudible) before we move on for a moment? Can I just clarify one
24 point that I think it might be helpful for all the parties to clarify as to the consequence
25 of your finding today? I'm not seeking to go behind it at all; I'm just seeking to clarify
26 it. Is the consequence of that, that the tribunal anticipates that the parties will ask their

1 experts to give evidence on market definition and dominance in respect of the markets
2 where market definition and dominance have been accepted by WSL? Because
3 there's two separate issues that arise, if I can put it that way. The first is.
4 (overspeaking).

5 THE CHAIR: Yes, Mr Johnston, the decision I'm making is in relation to the application
6 that the expert should not opine on the existence of the two markets. That's 1.1(b)
7 and at 1.3 from that letter which is recited in your skeleton.

8 MR JOHNSTON: In my skeleton, yes.

9 THE CHAIR: Yes, at 3(c). That's the order that I'm declining to make. Now, it's
10 another matter, the consequences of the admissions, the concessions that you make,
11 and if there is a natural and sensible consequence of that, then I'm quite sure the
12 tribunal would want to ensure that the expert evidence is given consistent with that.
13 But for the moment, that's the matter that's been before me and that's the decision
14 I have made.

15 MR JOHNSTON: I'm very grateful, sir. I just wanted to clarify that that was the case.
16 The parties may correspond about it further, but I'm very grateful.

17 THE CHAIR: Yes. If you want me to give an indication, beyond the words I have just
18 used, as to what the tribunal would expect following the concession that's been made,
19 then I'm happy to look at that with you, but I would be disappointed if the claimants did
20 not take the obvious course in response to the concession. But it may be that there
21 are points in relation to it that I have not thought through, have not occurred to me,
22 that Mr Quiney may want to consider in relation to his case, so I don't want to pre-empt
23 that. But on the face of it, there is an obvious course.

24 MR JOHNSTON: I'm very grateful, sir. The parties can correspond. I just wanted to
25 make sure that we weren't ships passing in the night on that question and its possible
26 consequences.

1 THE CHAIR: I'm grateful.

2 MR JOHNSTON: I'm very grateful.

3 THE CHAIR: Don't hesitate to raise anything like that that you believe would be helpful

4 to the case management.

5 MR JOHNSTON: Thank you, sir.

6 THE CHAIR: Yes, Mr Quiney.

7

8 Submissions by MR QUINEY

9 MR QUINEY: I'm very grateful. So moving on to the second agenda item, which is

10 my application, which, as you know, is for two schools of expertise. The first is

11 permission to adduce evidence on the industry of sport and particularly the industry of

12 professional snooker. That's on the basis of Dr Plumley, who we've identified and

13 hopefully you might have seen one of his CVs.

14 THE CHAIR: Yes.

15 MR QUINEY: The second application is seeking permission to call an expert in

16 matters of forensic accountancy, who's Dr Linnell. Again, hopefully you will have seen

17 her CV as well.

18 THE CHAIR: Yes.

19 MR QUINEY: So what I propose to do is, first, just sketch out familiar territory, no

20 doubt to the tribunal, as to an appropriate starting point when dealing with these sorts

21 of questions. Secondly, dealing with the particular necessity or appeal of having an

22 industry expert, and I'm just going to use that as the shorthand for now. Thirdly, the

23 same points with respect to forensic accountancy, although the only minor difference

24 perhaps between those two points is I don't think there's any challenge for the question

25 of forensic accountancy being identified as an expert discipline. Of course that is

26 a point taken against Dr Plumley.

1 THE CHAIR: Yes.

2 MR QUINEY: So with those matters in mind, if I may say three things. The first is,
3 I would suggest that there isn't a massive amount of difference between myself and
4 my learned friend, Mr Mountford, certainly, who takes the burden on this point for the
5 defendants, as to the applicable principles. So with respect to that, and just for ease,
6 we see at paragraph 26 of my skeleton where we identify the familiar rules and
7 guidance in this tribunal. My learned friend spends some time setting out various case
8 law, which essentially boil down to matters which we would agree on, which is, first of
9 all, that the tribunal should be astute to controlling the evidence, expert evidence,
10 before it and take into consideration matters in the round, such as the issues between
11 the parties, the nature of the alleged expertise, the questions of proportionality and
12 indeed consider what would be of assistance to the tribunal in the forthcoming trial in
13 January 2027.

14 Equally, there's no dispute that there's a degree of commonality between this tribunal
15 and the other courts as to the approach to the appropriateness or otherwise of
16 particular experts or schools of expertise, and indeed those cases can be of assistance
17 here.

18 Further, as made explicit at paragraph 20 of Mr Mountford's skeleton, there are
19 essentially two elements at play. First of all, is it necessary for expert evidence to be
20 adduced in order to assist resolution of the dispute? Secondly, if not necessary, is it
21 nonetheless still of assistance, considering, for example, the value of the claim and
22 proportionality issues. We put our application firmly on the necessity part, but of
23 course, if you're not with me on that, sir, I would be suggesting it is of assistance
24 nonetheless.

25 That's against a particular background point, which is I think that there is often
26 a temptation to consider sport as something very familiar to us. I mean, not that I did,

1 but some of us might have been watching the football last night at a very late time,
2 and anyone needs to be in a pub to know that everyone's got an opinion. But that is
3 very different from assisting a tribunal on a complex matter such as this, whereby one
4 has to consider, let us say, the nuts and bolts in the dynamics of the market and just
5 boiling down how does one make money out of sport as opposed to simply enjoy it.

6 So that's why we say these areas of expertise are of assistance. We would say that
7 the most helpful starting point out of the large body of case law that's before you in the
8 authorities bundle is really the decision of this tribunal in Kent v Apple from 2023. If
9 I could take you to the bundle of authorities at 769. (Pause)

10 At 769, we see the ruling on the expert evidence before this tribunal. The reason why
11 I say this is a helpful start is because the tribunal took time to set out the legal
12 principles and then apply them to the requests for additional schools of expertise and,
13 in short, gave permission for a number of additional schools of expertise,
14 notwithstanding that there is already permission for experts in competition and an
15 expert in accounting, and already expertise in internet, mobile and internet security,
16 as we can see from paragraph 6 at page 772.

17 So paragraph 6 at 772, those agreed schools of experts, including economics -- and
18 that was two experts for those -- and accounting, we would say that's equivalent to
19 Dr Linnell in this case. The dispute that I'm focusing on is at para 8, where the class
20 representative was permitted to call expert evidence in relation to, first, the app
21 industry, because that was the subject matter of this particular claim, and the payment
22 systems industry as well. So two experts in the particular industry that was going to
23 be before the court.

24 Paragraph 10 at 772, as I said, sets out the principles. Insofar as you haven't already,
25 sir, I'd ask you to read those paragraphs 10 through to 15 and I'll make the points, if
26 I may.

1 THE CHAIR: I don't think they add anything, do you think, Mr Quiney, to the short and
2 pithy explanation you gave at the commencement of your submissions as to the
3 approach that this tribunal will take to expert evidence?

4 MR QUINEY: Well, sir, you're ahead of me. I was going to say this supports my short
5 and pithy summary, insofar as, sir, you had any concerns.

6 THE CHAIR: Yes, I thought you captured it perfectly, if I may say so, and that's the
7 approach I'm going to take. I don't think there's any disagreement at the bar in relation
8 to the principles that should be applied.

9 MR QUINEY: I anticipate that that is the case, but of course, if there are subtle
10 differences, maybe I'll deal with them by way of reply, if I may. So the reason why
11 I focus on Kent and look at paragraph 16 onwards, is it's instructive how to apply the
12 principles that we're all familiar with to give a framework as to how we say would be
13 the proper approach here.

14 So what's instructive is, at 16, the consideration of the industry experts is set out.
15 Essentially, we have two issues that were live here. First, the question of expertise,
16 which is a live issue for Dr Plumley. Secondly, the question of, let's say, necessity or
17 alternative assistance.

18 We can see at paragraphs 20 and 21, if I could ask you to read 20, 21 and 23, the
19 tribunal helpfully encapsulates, I would suggest, these points.

20 THE CHAIR: Yes, I have already read those paragraphs.

21 MR QUINEY: I'm very grateful. So taking the expertise point and now applying it to
22 Mr Plumley, you will have seen that we've set out at paragraph 24 a potted
23 summary -- it probably doesn't do him justice, so to speak -- of why we say that he is
24 an expert in a recognised field.

25 THE CHAIR: I have read all of that too.

26 MR QUINEY: I'm grateful. So one would pick out two features of this. The first is that

1 when understanding the industry of sport, one needs to think about not just questions
2 of people watching sport, but how it's organised, how it's regulated. Then secondly,
3 he has experience in comparative sports, i.e. not just snooker.

4 So as we'll see when we come to the questions of issues, if one's asking, "Is this
5 a legitimate aim? Is this an efficient way of doing things?", i.e. the defence is raised
6 by both sets of defendants, the real question in a nutshell is, is there a different way
7 of doing this if we've got to the point in reasoning that we've decided that there is
8 a dominant position or an abuse of that dominant position?

9 So while in this case we do have a sort of original position, which is the position after
10 the Hendry decision, but before the takeover, we would put it, by Mr Hearn in 2010.
11 Nonetheless, there are lots of different sports that struggle with similar issues, or at
12 least the issues raised by my learned friends in defence, as to how you preserve the
13 integrity of the sport and also make money out of it. Very often, we would say, there
14 are ways of doing it which are materially different and less abusive here, and that's
15 what Dr Plumley can tell us about. So we would say that the expertise of Dr Plumley
16 and the school of expertise is made out.

17 So now turning to the question of necessity and/or assistance. Now, we've set out at
18 paragraph 29 -- and this has been set out in correspondence as well -- a proposed set
19 of issues in our skeleton.

20 There are essentially three points to take away from this, one of which I've touched on
21 already, but I'll develop further. The first is, we've put forward these issues to do two
22 things: (a) to illustrate why we say this is relevant; and (b) to engage with the other
23 parties. Unfortunately, the engagement from the other parties has been relatively
24 minimal to date, and really, the question before you is more a question of principle,
25 which is, do we need these experts at all?

26 Now, I can understand why the engagement has just been simply a flat no, but what

1 I would hope is if the decision in principle was taken by the tribunal in the fashion I'm
2 inviting it to be taken, then we would be able to engage with these issues in a bit more
3 granularity.

4 But going to the reasons why we say these are necessary, one can see that they split
5 into, essentially, two, maybe three different categories. The first is, if I can put it this
6 way, the management of the sport. So if you remember, one of the allegations in the
7 points of claim is the way in which the sanctioning process has been structured, which
8 is: my client would have to come and seek permission of World Snooker to utilise the
9 services of "their player", and that gives the entire discretion, which would have to be
10 exercised reasonably, as to whether or not that permission is granted.

11 One of the reasons for not granting that permission is, "Well, there's a clash", and
12 a clash can be described as a clash of events in the calendar, that calendar being
13 owned, managed and run by World Snooker. We would say that that is abuse of
14 a dominant position because it gives, for the sake of argument, for want of a better
15 word, the whip hand to our competitor, from the perspective of the claimant.

16 So what we see there at issue 1, for example, and issue 2, is how one might manage
17 legitimately a set of calendar. One might say that if you had, say, a professional body
18 who manages the calendar as opposed to a private profit-making organisation, that
19 might be more attractive, and so one would need to understand (a) how one might do
20 it in snooker, and (b), look out elsewhere and see how the same problems are
21 addressed.

22 The next issue is considering, for example, how one manages the competition, so to
23 speak, and that deals with questions like at items 3, 4, and 5, which is how you actually
24 organise the events and how you distribute fairly between competitors access to those
25 players and those events, and that very much goes to the point that I made earlier,
26 which is looking at whether or not there is a defence here that is available to the

1 parties, for example, on the basis that it's objectively justified, or there's
2 a proportionality efficiency argument, which is run by both parties on both strands of
3 abuse.

4 That is something, for example, Mr Francis can't assist the court on. Just on this point,
5 it's been said against my application. "Well, of course Mr Francis or someone from
6 World Snooker will be giving evidence to the court factually about what happens on
7 the ground with respect to the claimant seeking permission and sanction and setting
8 up an event". Now, that only goes so far because, of course, those witnesses can
9 only speak to matters of fact, and it may be that matters of fact include their experience
10 or understanding or knowledge in the past and what they've seen and what they've
11 understood, but what it doesn't assist the court is give the court the opinion,
12 independent opinion and solid opinion, about (a) stepping back objectively, how does
13 the industry of snooker work, and then (b) particularly with an eye to the defences I've
14 just mentioned, how you might do things differently or not, because the justification of
15 the defendants is, "Well, this is the best way, and in fact, really, the only way of
16 managing competition issues in this sport". So that's the second category of issues
17 where we say it is necessary.

18 Then the third issue, which is a crossover between the counterfactuals and the
19 quantum issue, and indeed the counterfactuals are key here, which is the nuts and
20 bolts of how do sports like this make money, essentially, in the sense of what, does
21 one need to do setting up events and what are the competitive tensions in this sport
22 or financial tensions in this sport for actually preventing to put on an event and what
23 that involves.

24 So what that includes, for example, is a consideration of (a) how it's done in snooker,
25 and (b) how it's done in other sports too. So again, this degree of expertise and
26 objectivity is incredibly helpful here, and you might recall when there was an argument

1 about disclosure, one of the categories of disclosure that my client sought from the
2 defendants, particularly World Snooker, was evidence of comparative events set up
3 at the same time and run at the same time as the events that my client sought to put
4 on. That was hard fought and indeed refused by the tribunal.

5 So, is that going to now be a matter of fact? It seems unlikely if that was refused. So
6 where's the tribunal left? The tribunal is left by looking for a safe harbour in the form
7 of experts on these matters. So those are the reasons why we say that, first, these
8 experts are necessary and of assistance to the court, and second, they fulfil the criteria
9 that are set down by the rules and indeed set out in Kent. Third, the attempt to fill the
10 holes with Mr Francis, so to speak, would not be either appropriate, because he has
11 to give evidence of fact, nor indeed fair, nor indeed a full picture, which is what I would
12 suggest that the tribunal needs at the end of the day, when dealing with these
13 questions.

14 So those are my submissions on the question of the expert of industry. On the
15 questions of the accountancy evidence --

16 THE CHAIR: Forgive me, Mr Quiney. It's typical for this tribunal to give a short break
17 at this point for the transcribers, and I have been invited to do so again today, five,
18 ten minutes or so. I'm thinking that that's a convenient moment for you, before you
19 move on to the sports expert. So I think the answer is that if we all dial back on, I'd
20 like to think at 3.25 pm, should give sufficient time, it being 17 now.

21 So we will dial back on -- I will rise now, and we will dial back on at 3.25 pm. Thank
22 you very much everyone.

23 MR QUINEY: Yes. Thank you.

24 (3.17 pm)

25 (A short break)

26 (3.25 pm)

1 THE CHAIR: Good. I think we're all here. Yes, Mr Quiney.

2 MR QUINEY: I'm grateful. So, I was just going to move on to the forensic accountant,
3 which was the next issue, and then at the end of my submissions, sir, I'll look at some
4 of the other additional matters that go across both sets of experts.

5 Just dealing with the forensic accountancy, as I've said, there is no dispute that
6 Dr Linnell is an expert; the only dispute is whether her assistance is necessary or
7 helpful to the tribunal. Now, what I've sought to do at paragraph 35 of our skeleton is
8 reproduce the suggested list of issues. Again, we haven't had engagement, really,
9 from these list of issues, save broad assertions from Mr Mountford in his skeleton that
10 they're vague or unhelpful or such like. But what, here, is the question of principle: do
11 we need a forensic accountant, and if so, what for?

12 Again, the issues go to essentially the quantum. What we have, of course, is
13 Mr Francis, as the director of the claimant, who will be in a position to give evidence
14 as to what he had done and what he was planning to do. But there are two matters
15 that, of course, he can't speak to. This case, in part, proceeds on a counterfactual, so
16 assisting the court independently as a matter of expert opinion as to what is
17 a reasonable counterfactual based on the facts.

18 Secondly, what he can't do is assist the tribunal on more forensic questions such as,
19 for example, how one deals with specific turnover, how one deals with the calculation
20 of likely gross profit and net profit, how one considers the tax treatment of these
21 particular items and the specific financial items that you would typically see in events
22 of these natures, such as venue hard costs, prize money, marketing costs, all of those,
23 and more importantly, the projections arising from what we say is the barrier to entry
24 in the prevention of my client seeking to commercially exploit these points.

25 That is indeed what we sought to encapsulate at para 35 with issues 1 through to 7.

26 Because you'll remember that there are three heads of loss, essentially, presently,

1 | which is the October event, what's been described as the alleged events and then the
2 | proposed 2025 events, and the alleged events predate the 2025 ones. So you're
3 | immediately dealing with questions such as, what profit would be made, what costs
4 | exist and how would you account and calculate that.

5 | What we'll have from Mr Francis is: this is what I've done before, this is my business
6 | plan and how I budget it for, and this is what it would have involved if I'd been allowed
7 | to put on the events, and comparative costs. But we say that's materially different
8 | from the assistance this tribunal needs as to be able to, on sure ground, approach the
9 | questions of quantification.

10 | My learned friend, Mr Mountford, of course, properly raises the broad axe principle.
11 | Indeed, that's a principle no doubt we'll be appealing to, which is the suggestion that
12 | one has to take a common sense rather than overly technical approach to the
13 | quantification of damages. That's all true, but one has to start from somewhere. What
14 | we would say is that the expert accountants is the sure ground for this tribunal to start
15 | that process, to calculate a fair and proper remedy for my client.

16 | I'm now just going to move on to the general points that cut across both, and then
17 | complete my submissions, if I may. The first is, when it comes to the question of the
18 | previous approach by the defendants, we summarise this at paragraph 39. It
19 | essentially boils down to this: that what we've seen is a hardening of position when it
20 | comes to the question of expertise. The quote that we extract from the
21 | 12 September 2025 letter there is an example of a previously more open-minded
22 | approach. But the reason why that's of interest is, of course, it appeared that the
23 | defendants did understand there to be a particular discipline or expertise when it
24 | comes to industry matters, and that there was indeed an argument at the very least
25 | for that to be utilised here. So we would say that that is quite illustrative of the general
26 | points that we're making.

1 The second point that we would suggest is a matter of fairness, and this comes to the
2 third point, which is a question of crossover in a minute. What we would urge the
3 tribunal to understand is the make-up of the current expert teams. So according to the
4 confidentiality ring, we understand that a total of eight members or economists of
5 AlixPartners are involved or instructed to consider the issues here. But you'll know
6 that AlixPartners are the economists that have been engaged by the defendants jointly
7 in order to provide the expert evidence here.

8 Our expert is Dr Cento Veljanovski, a singular expert without a team of seven behind
9 him, and indeed having to deal with these matters on his own. So we have an equality
10 of arms issue here, but also a question of proportionality and costs, which is, as we
11 understand it -- according to the internet, anyway -- none of the AlixPartners' named
12 persons, or the senior people, are avowed experts in sport. That's not unusual for
13 economists, but the economists have got to work with something when considering
14 the markets and considering the issues that are presently ordered.

15 There is a clear saving, we would suggest, in having an industry expert each, because
16 the economists have something to work with. They don't have to start from scratch,
17 and certainly, a team of eight of them don't have to scrabble around trying to build
18 a corpus of understanding of the industry, when the experts in the industry can give
19 them a good leg up and a good start.

20 The final point is crossover, related to that. We've got the economic issues. They've
21 got to consider things like legitimate or proportionate or effective aims and defences.
22 Got to consider the abuses, got to consider how the sport is structured. But that's from
23 a particular perspective of trying to identify, for example, market abuses. The industry
24 expert is a more generalised comparative approach that will, as I've said, be the sure
25 ground upon which those economists can then present their view. So they may be
26 speaking to similar issues and similar topics, but they'll be answering questions in

1 different ways, and different ways that we say that would assist the tribunal.

2 That's the reasons why I say we should be given the permission that we seek.

3 THE CHAIR: Thank you, Mr Quiney.

4 Yes, Mr Mountford.

5
6 Submissions by MR MOUNTFORD

7 MR MOUNTFORD: Sir, good afternoon, Tom Mountford here. As you know, I act on
8 behalf of the third defendant, although I seem to be appearing as
9 Blackstone Chambers today on my descriptor.

10 Sir, can I deal, first of all, with just the question of applicable principles. I don't think
11 I need to spend long on this because of the discussion that's already taken place
12 between yourself and my learned friend, Mr Quiney. But reliance is placed on the
13 case of Kent, and I just observe in relation to that, that that was a £1.5 billion dispute.
14 In terms of multiplicity of experts, that was, if I can give an analogy in expert evidence
15 feeding frenzy terms, as if a blue whale had washed up on the shore; we are closer to
16 a porpoise. So when one looks at what has to be weighed --

17 THE CHAIR: You don't need to trouble the tribunal with this, Mr Mountford; I'm with
18 you on it and the extent of the relevance. We're concerned with the application of the
19 principles to the facts in this case.

20 MR MOUNTFORD: Yes. Sir, of course, what we had originally anticipated when we
21 were back before you, sir, at CMC 2, when you fixed the order which led to the listing
22 of this hearing, was a timetable which would have seen the parties' complete
23 disclosure and have provided fact evidence, and then for any remaining expert
24 evidence, issues to crystallise at the CMC. So it was originally anticipated at the point
25 of this CMC that you would be in possession of the witness evidence of fact from the
26 parties, and so any consideration of any expert evidence could be informed by that.

1 Now, we say that's relevant, sir, because, this application, this dual-limbed application
2 to adduce additional disciplines of expert evidence, we say deals with matters which
3 we would expect to be dealt with in fact evidence or in submissions, or by the existing
4 economic experts for whom the tribunal has already given permission.

5 Now, obviously I can't make those points by reference to the actual fact evidence
6 before you, because the procedural timetable has ended up being delayed, such that
7 evidence of fact has yet to be filed with the tribunal. But we do say that that is an
8 important point. It is, of course, double-edged in a way. In some ways, it's helpful,
9 because if the tribunal gives the indication which I invite the tribunal to make today,
10 that it's not appropriate to have permission in relation to these expert disciplines
11 because, in part, these matters should be dealt with in fact evidence, it helps make
12 sure that that fact evidence is appropriately directed, and that the proper vehicle for
13 dealing with these points deals with those points.

14 So with that introduction, can I just deal, first of all, with the sports industry expert
15 application, and then I'll come on and deal secondly with the forensic accountancy
16 application.

17 My learned friend today said, effectively, that he's seeking an in-principle decision from
18 you, sir, in relation to both of these heads of application. Now, I say that that's the
19 wrong way to look at matters. The application that has been made is for permission
20 to adduce expert evidence in two disciplines to answer the specified questions that
21 have been identified. Now, of course, if the tribunal felt in some cases that certain
22 wordsmithing or further work needs to be done on a particular issue, that can of course
23 be done without prejudice to the in-principle decision. But in this case, the level of
24 abstraction, I say, is very telling of the fact that, actually, my learned friend has failed
25 in his submissions to you to justify, at the level of principle, what it is that this expert
26 evidence is said to be needed to address. That can only be done by looking in some

1 detail at the proposed issues which the tribunal has asked to sanction as the issues to
2 which expert evidence will be given.

3 THE CHAIR: Would it help you, Mr Mountford, if I told you that I see some merit in the
4 suggestion that the sports expert could go to the objective justification issue and
5 whether restrictions and event organisation, the manner of restrictions or how events
6 are organised, were necessary, and answering those questions in light of how other
7 sports are organised? I see some merit in that, Mr Mountford; what do you say?

8 MR MOUNTFORD: Well, what I say in relation to that is that we already have, in this
9 case, permission for economic experts who are going to be looking at questions such
10 as objective justification. We can see that in the economic issues that have already
11 been approved by this tribunal. We also have in this case a dispute between existing
12 market participants who are themselves extremely knowledgeable about this market.
13 So can I just, for example, show you in the points of claim at page 32 of the bundle
14 what's said about Mr Francis and Mr O'Sullivan?

15 THE CHAIR: Yes, I accept that they are experienced in the sport, in the game. They
16 have been involved in it for a significant period and they can be expected to have
17 a deal of knowledge.

18 MR MOUNTFORD: Yes.

19 THE CHAIR: But that's a different thing from the court hearing independent opinion
20 evidence from someone who has studied and made an academic study of these
21 things, as this expert appears to have done, who is able to give an objective opinion
22 on how the sport has been organised and how it could have been organised,
23 particularly where objective justification is being considered.

24 (3.37 pm)

25 (Transcript delayed due to technical issues)

26 (3.39 pm)

1 MR MOUNTFORD: My learned friend has suggested that Dr Plumley is an expert in
2 snooker but it's notable that he has identified no relevant experience in snooker or in
3 any other cue sports. Looking at snooker and the family of cue sports, all the relevant
4 expertise sits between the individuals sat before the Tribunal. It is not a Class
5 Representative type of case, where this is a Class Representative who would be
6 unable to assist the tribunal. We say that the individuals in our case will be best placed
7 to talk about what has happened, what was considered and what could have been
8 pursued in snooker. Looking at Dr Plumley's CV, he has an academic practice which
9 involves him looking at different sports. Those sports are extremely different in their
10 structure. His principal expertise appears to be in team sports. Team sports operate
11 very differently, as will be readily obvious to the tribunal, to individual participant sports.
12 When one looks at the type of questions -- I'll come on to deal with this in a moment
13 in more detail -- but the kind of questions that are proposed to be asked, it is essentially
14 an attempt to turn this case into a grand enquiry into sport in general.

15 THE CHAIR: Forgive me, Mr Mountford. I see the experience of working on major
16 contracted events, projects, regarding the economic impact and so on of the Virgin(?)
17 London marathon. That's not a team sport, so as far as I'm aware. Then the World
18 Tour Tennis finals, the British Open Golf, European badminton, that's ...

19 MR MOUNTFORD: It's true that he has experience in a range of different sports, I'm
20 not saying it is exclusively team sports. But when you look at his academic papers
21 they mostly focus on football.

22 (3.41 pm)

23 (Transcript delayed due to technical issues)

24 (3.42 pm)

25 MR MOUNTFORD: We are unclear from his CV or my learned friend's skeleton
26 argument what he is a lecturer or an academic in, what is the discipline. I think he's

1 currently a lecturer at the School of Sport, Exercise and Health Sciences at
2 Loughborough University.

3 So I do say that this is the type of body of knowledge which is not that kind of focused
4 knowledge, where in other cases they talk about access to particular data sets,
5 invariable practices. It is the type of engagement with a broad range of issues in
6 relation to all different types of sports, many of which will be wholly irrelevant to this
7 case, some of which he may have some academic interest in points that do have some
8 relevance to this case.

9 But I say that the tribunal has to be very careful in sanctioning expert evidence from
10 an academic of this kind, when what is proposed to be asked of him are not tightly
11 focused questions which are clearly relevant to what is before the tribunal at the
12 moment, but a much broader-ranging enquiry. What I understand from my learned
13 friend's -- I only understood it from my learned friend's oral submissions -- is that his
14 proposal appears to be that this sports industry expert evidence would be adduced
15 prior to the economic expert evidence for which the tribunal has already given
16 permission. Indeed, in his submission, he suggested that it might be of some utility to
17 the economic experts.

18 So what he's talking about is not a different discipline of expert evidence running on
19 a different procedural timetable, but interposing that in the current timetable for the
20 production of expert evidence, which I'll be reminded of the specific date, but the first
21 round reports of the economic experts are due in September. So we're talking now,
22 at the beginning of July, about sanctioning an additional species of expert evidence
23 which is proposed to be interposed and supposed to be an input to what the economic
24 experts are looking at.

25 MR QUINEY: I'm sorry to interrupt, Mr Mountford. That's not what I'm suggesting.

26 MR MOUNTFORD: Well, I had understood from my learned friend that he was

1 suggesting that this would help to inform the economic experts' consideration of the
2 issues. If they haven't given their evidence until after the expert economic evidence
3 has been provided, then it's hard to see how they could help inform the economic
4 expert evidence. Obviously, if my learned friend's position is that that gets factored in
5 at some other stage, fine, but this is the very issue that the multiplicity of different
6 disciplines of expert evidence can create great procedural complexity in a case like
7 this, which has already been set down for a final hearing at the start of the next
8 calendar year.

9 THE CHAIR: Yes. Forgive me, Mr Mountford. The case that Mr Quiney KC makes is
10 that here is a man who is an academic in the field of sports governance and global
11 sports governance finance regulation, and that's his day-to-day business, that's his
12 academic life. He will come to the tribunal and explain how he sees the organisation
13 of the events and the sport of snooker in the context of his understanding of how other
14 similar sports are organised and give his opinion evidence as to the objective
15 justification of the structure, the restrictions, what might be said to be impediments to
16 entry or the way the calendar operates, does it operate in a different way in world
17 tennis, and what are the problems with fixing a calendar, taking into account different
18 countries and the weather and so on and so on. What might be relevant to tennis
19 won't be so relevant to snooker, obviously, but there will be factors relevant to
20 individual states, to arranging the events in different states, which he would be able to
21 give evidence on that.

22 His case is that that could be useful to the tribunal. What do you say to that?

23 MR MOUNTFORD: Well, I think his case, first of all, is that it's necessary. He says
24 that it's necessary. Now, it may be that you, sir, are not persuaded in relation to that,
25 and I certainly submit that that's the right position. It's impossible to look at that type
26 of evidence and say that it's necessary for the determination.

1 But on the question of whether it could be of assistance, one has to weigh the question
2 of assistance with the broader landscape of what evidence the tribunal will hear, both
3 factual evidence, expert evidence has already been permitted, and submissions that
4 will be made. Now, as I say, one will have chapter and verse about this industry, which
5 obviously the people who are in it are not eyes closed to what's happening in other
6 contexts in other sports, so we'll anticipate having that type of evidence from the fact
7 witnesses.

8 One also has the economic experts, and one expects in this case economic experts
9 to engage in detail with the industry in which they are being asked to look at. If the
10 economic experts consider it's necessary to test propositions as to whether or not
11 alleged restrictions or agreements, concerted practices, or alleged abusive behaviour,
12 does or doesn't have particular effects, or whether it serves legitimate purposes which
13 are objectively justified, or surface efficiencies in the market, one would expect the
14 competition economists to consider that issue by reference to analogues in other
15 industries. Is this the kind of technical -- other sports -- is that is this the kind of
16 technical area in which when one looks at the fact evidence one will have, and the
17 competition economist expert evidence has already been sanctioned, there will be
18 some kind of technical gap? I say no. This isn't the kind of technical case where one
19 says, you know, this is a very complicated issue of payment system provision, which
20 they won't be able to get on board with. One would expect the type of (audio
21 distortion).

22 THE CHAIR: Yes, I see. So the expert economist you feel can deal with all of those
23 objective justification issues, even the one where -- I probably possibly corrected
24 myself too quickly -- one could see that it might be unwise to schedule an event in
25 Dubai during their summer on weather grounds, because of the lack of attendance.
26 So there are a range of issues that a properly qualified expert would be able to give

1 opinion evidence to the tribunal.

2 The points made by Mr Quiney on the management of the sport, the point I've just
3 touched on, independent opinion on how snooker works, how that might be done
4 differently in other sports, so evidence from someone who's not just an economist, but
5 understands how other sports are structured and arranged/organised, and how other
6 sports make their money, those were the three principal points that he drove home. Is
7 it your submission that the economic expert can deal with all of those points?

8 MR MOUNTFORD: Yes, yes it is. I mean, if one looks at page 773, one can see the
9 economic expert issues, and one sees there that that includes questions in relation
10 to -- looking at the chapter 1 prohibition, that the economic --

11 THE CHAIR: Which paragraph number is that, Mr Mountford?

12 MR MOUNTFORD: It's page 773, and it's paragraph 1.6 I'm looking at now.

13 THE CHAIR: The version that's on the -- presents differently. Again, if you explain it
14 to me, please.

15 MR MOUNTFORD: Yes. Sorry, I think the line slightly broke up there. Do you have,
16 sir, page 773?

17 THE CHAIR: If you explain that to me, I'd have to go on to another -- I'd like to listen
18 to you rather than read it on the screen, if I may.

19 MR MOUNTFORD: So this is the agreed list of economic expert issues, and it
20 includes, in relation -- I'm just looking at the chapter 1 prohibition to it to illustrate this.
21 It includes the economic context of the alleged agreements, decisions or concerted
22 practices pleaded, whether any of those may affect trade, whether any alleged
23 agreements, decisions or concerted practices have the effect of preventing, restricting
24 or distorting competition, including consideration of competitive constraints, matters
25 relevant to the assessment of necessity and proportionality of any legitimate objectives
26 relied upon, whether they contribute to improving production or distribution, the

1 efficiencies point.

2 So, in answering those questions, one has to look at what is being done in the
3 industry -- in the sport at the moment, how could it be done differently, what would
4 those impacts be, and one can do that by looking at possibilities that exist within the
5 sport that have been considered. One can also do it by illustrating the position by
6 reference to other sports.

7 Can we look at the proposed list of issues, because I think that it's helpful to look at
8 the specific formulation of the eight issues that have been put forward. They're at
9 page 1232, and I group them as follows, which appeared to me to be a helpful way of
10 addressing it.

11 Some of them are about the sport of snooker alone. So issue 1 is a question of fact
12 about how events are organised in snooker now and in the past. We say that's pre-
13 eminently a question for the fact witnesses will be before the tribunal. At issue 8,
14 asked Dr Plumley, who, as I say, seems to have no experience of snooker, to
15 speculate again on an unclear basis on the timeframe that may have been required
16 for the claimant to reach a position of being able to organise the events which it claims
17 were stymied. So those are snooker-only questions.

18 Then there are others which are sort of broad questions, inviting speculative
19 comparisons between snooker and other sports. So issue 2 is a very broad question,
20 asking about any similarities or differences between how events are organised or
21 calendar-managed in professional snooker compared to global sports, so no
22 geographic limitation, and temporarily, both now and in recent history.

23 Issue 3, another very broad question, asking for a comparison between the rights and
24 restrictions on access to events and competitions by players in snooker compared to
25 global sports, again, now or in recent history.

26 Now, it's perfectly fine that the competition economists may want to entertain certain

1 thought experiments or certain comparisons to illustrate points if they consider they're
2 relevant. But in doing that, they will first of all rigorously assess whether or not that's
3 a comparison which actually exists, or whether different practices in different sports
4 simply reflect different structural features in those sports, different ways in which they
5 operate, et cetera.

6 So asking questions at this extremely broad level at a global all sports comparative
7 level is opening up a huge exercise. It's effectively not an article or a book for
8 Dr Plumley, it's a compendium of books on how everything works in all sports.

9 Similarly, issues 5 and issue 6, speculation about what revenues, costs and profits
10 might be earned from organising professional sports of a similar size or similar nature.
11 Again, what does that mean, "a similar nature"? Or what extent any organiser or
12 prospective organiser is competing with other snooker sports events for the attention
13 of, you know, people. So it seems to be a substitutability question, that one would
14 expect to be considered by competition economists.

15 So that's the sort of broad speculative second category. Then the third, some of them
16 are not about snooker at all. So we have issue 4, for example, "What advantages or
17 disadvantages are created in any professional global sports where a different
18 approach is taken to event organisation, calendar management or rights and
19 restrictions?" What does that mean, advantages or disadvantages? It's extremely
20 woolly in the way that it's formulated. If what it really means is competitive impact,
21 then we say that's what the competition economists are already looking at. Issue 6
22 just asks baldly how profits are generally generated by professional sports, event
23 organisers.

24 So when one looks at -- and I don't, in the time we have, because I do need to deal
25 with the forensic accountancy as well, have time to go back through all of them -- but
26 when one looks at the issues in the main list of issues which these are all said to relate

1 to, what one sees is not the type of focus questions which are necessary to answer
2 issues that are already there in the list of issues that have been approved by the
3 tribunal, but a massive expansion of the type of issues that would be expected to be
4 dealt with in order to answer what's currently within the scope of the dispute.

5 So one doesn't in this scenario understand, even if the tribunal were minded to allow
6 this expert evidence to be given, how the expert would go about answering these.

7 How is the expert supposed to ascertain profitability in all other global sports? Or
8 advantages or benefits, well, what data sources are they supposed to look at? It's
9 really taking the tribunal very far away from the sort of classic, recognised body of
10 expertise, into broad and speculative exercise where the likelihood is that they're
11 drawing on a heterogeneous mix of sports and examples. It's quite difficult to
12 disaggregate that and say, you know, this expert is looking at this, this expert is looking
13 at a whole another series of different things; how do they mesh up?

14 So we just don't say that it's required or proportionate. There are other justifications
15 that have been given. I think I've dealt with most of them already. This suggestion
16 that there's a sort of hard boundary in terms of what the witnesses of fact can say
17 I don't accept is well founded in this case.

18 If it is relevant to the claimant's case to say, "We think that X should be done in this
19 particular way, and a reason why we say that that should be done in that way and it
20 wouldn't create relevant harms, et cetera, because it's done that way in another sport
21 and that's an analogue for the following reasons", there's no reason why that can't be
22 given as fact evidence. These are the very people who are operating events in this
23 sport, or want to operate events in this sport, of the nature claimed. So if they want to
24 bring those out, they can, and as I say, to the extent they're relevant comparisons,
25 they will be dealt with by the expert evidence.

26 What I say is that when one looks at the list of industry expert evidence issues as

1 formulated, the tribunal simply can't permit this in general. If the tribunal is of the view
2 that there might be some potential assistance to the tribunal in hearing some focused
3 evidence from an industry expert on certain points, the appropriate thing, in my
4 submission, to do would be to decline this permission at this stage, wait to see what
5 the fact evidence covers, wait to see what's covered in the first round economic expert
6 evidence which is to be adduced in September, and then if the tribunal feels that there
7 is some kind of gap in terms of the evidence it's receiving, revisit it at that stage on
8 a much more focused basis in the autumn as to any further industry expertise that
9 might arguably be required.

10 I say that the tribunal doesn't need to be overly concerned with that; it can form a clear
11 view at this stage that this isn't necessary. But if it was against me on that, I say that
12 would be the appropriate way of managing it. Otherwise, one is asking,
13 effectively -- I understand my learned friend to be effectively asking for permission for
14 some kind of sports expert, industry expert. He doesn't press very hard his current list
15 of issues, and so it would be totally up in the air as to what the formulation of those
16 issues look like.

17 Can I then move on to deal with the forensic accountancy expert? Obviously, there is
18 no issue in relation to admissibility, except that it is a recognised form of expertise.
19 But this is concerned with the loss case, and the loss case is really a case which is to
20 be substantiated primarily by the witnesses of fact and then in legal submissions. Can
21 I just take the tribunal, because I think it is important to do so, to look at how the loss
22 case is articulated in the pleadings?

23 THE CHAIR: Mr Mountford, it might help you if I tell you that I'm with Mr Quiney, King's
24 Counsel, to the extent he makes a case which goes to the calculation and assessment
25 of profit, and the technical aspects of that in the context of a corporation, a company.
26 I can see a value in that. I can see that being helpful, not necessary, and I'm minded,

1 subject to the submissions that you care to make to me, on the grounds of
2 proportionality, to restrict a statement to 15 pages. That's what I have in mind at the
3 moment. If that's sufficient for you, then that might draw this particular part of the case
4 to an early conclusion. But if it's not, I'm very happy to continue to hear you and you
5 could persuade me out of that preliminary view.

6 MR MOUNTFORD: Thank you, sir. That's very helpful. I will take the invitation to try
7 to persuade you, but it's extremely helpful to understand where the tribunal currently
8 is.

9 THE CHAIR: That's what you're shooting at.

10 MR MOUNTFORD: So, sir, the current -- I don't know if it is possible to show you
11 things in the pleadings. I can summarise them for you if it's easier.

12 THE CHAIR: No, no, I have them here. You can take me to any point you want.

13 MR MOUNTFORD: So if we start at page 32 of the bundle, first of all.

14 THE CHAIR: Yes.

15 MR MOUNTFORD: One sees there, at paragraph 100 at the bottom of the page, the
16 sort of encapsulation of the loss cases once one goes beyond the actual October event
17 dealt with in paragraph 99. So we have 99, the event in October. Then
18 paragraph 100:

19 "It was planned there would be a similar event at the end of December 2023 and four
20 further events for 2024. The claimant anticipated a profit of £100,000 for the first
21 event, then £150,000 for the second event and thereafter £450,000 per event into
22 2024, rising to £530,000 per event in 2025." [as read]

23 If we then skip forward to page 80, one can see a little bit more detail in relation to how
24 those projections are made, but effectively, it's similar to what I've just showed you in
25 that paragraph. So I'm looking at paragraphs, 202.1 and 202.2.

26 THE CHAIR: Yes.

1 MR MOUNTFORD: Then at paragraph 203, there's reference to the losses dealt with
2 in the preliminary schedule. Now, that preliminary schedule starts at paragraph 132
3 of the bundle. Can I just look, first of all, at the one in relation to the -- well, so we start
4 with the 20 October 2023 event; that's on page 132. Can we just look down at 134,
5 for example. So this is the projections for the 2024 events.

6 THE CHAIR: Yes.

7 MR MOUNTFORD: So you see there in the first part of the table, one has income.
8 These are projections. So the projected income from tickets is projected to be
9 £341,000. One sees there in the note that the way that's arrived at is to say 100 VIP
10 tickets at £147, 700 standard at £40, is £28,000, and then multiply that by the eight
11 sessions. So you get all of the line items for their projected income. These are all the
12 things we think will get us income, all of the projected costs. From that, you get the
13 figure of what they say they anticipated they would have earned for these future events
14 which they say have been stifled.

15 THE CHAIR: Yes.

16 MR MOUNTFORD: So this is not an exercise, first of all, of looking at, for the most
17 part, costs that have been incurred and profits that have been made; it is looking at
18 projections of what they thought they would be able to make. So we say that the
19 primary locus for dealing with this loss case is in the fact evidence of the claimants.
20 It's for Mr Francis and Mr Karia and Mr O'Sullivan as the owners of the claimant, or
21 anybody else involved in operating that business for them, to say: these are the
22 projections we made of the costs we anticipated incurring, and these are the profits
23 we anticipated making. We think that these are well-founded estimates of profits and
24 losses for the following reasons, because, you know, we ascertained that the venue
25 would be this much to hire, et cetera.

26 So they can set that out. Meanwhile, our witnesses of fact, including on D1 and D2's

1 side, the current operators of the World Snooker Tour, are looking at these same
2 figures with their commercial expertise to interrogate what are claimed as projections
3 here.

4 THE CHAIR: Yes. In short, it's all fact.

5 MR MOUNTFORD: Yes, it's all fact. There's been no identification of anything
6 technical here, which witnesses of fact who are existing operators and, of course, the
7 existing operators on both the claimant and the defendants' side, and intended
8 operators of further events on the claimant's side, are unable to deal with. There's
9 nothing (inaudible) technical.

10 THE CHAIR: Yes.

11 MR MOUNTFORD: So my learned friend talks about taxation treatment, et cetera.
12 So we say it simply wouldn't be --

13 THE CHAIR: So there's no need to understand the calculation and assessment on
14 meaning of profit from an accounting standards perspective, from a financial
15 statements perspective.

16 MR MOUNTFORD: No.

17 THE CHAIR: This isn't an argument about what is profit or what is not profit, the
18 treatment of it, the assessment of it. This is a controversy over what money would
19 have been paid or not and what expenses would have been incurred or not, and that
20 can be established by factual evidence that's (inaudible) response.

21 MR MOUNTFORD: Exactly, and if one looks at the list of issues which are set out
22 perhaps most helpfully at paragraph 35 of Mr Quiney's skeleton argument.

23 THE CHAIR: Yes.

24 MR MOUNTFORD: So if we look at those issues. Again, they break down into slightly
25 different species. Some of them we say are those principal -- issues principally for
26 fact evidence or indeed for legal argument. So issue 1:

1 "What relevant information has been considered as to the question of whether the
2 claimant has suffered any loss or profit?" [as read]

3 Issue 2:

4 "What calculations or approaches are relevant to the question of whether the claimant
5 has suffered any loss or profit?" [as read]

6 Issue 6:

7 "What is shown by comparison of the claimant's financial projections?" [as read]

8 So what I would take from issue 6 is they effectively say: if this is what we projected
9 for an event which took place, can we extrapolate from that to say anything about the
10 projections for other events?

11 Those are the kind of things that we would expect Mr Francis and the witnesses on
12 the claimant's side to come along and say, "We projected these on this basis. This is
13 why they are reasonable assumptions to make". We can challenge those; the tribunal
14 can consider them. So they're fact issues, and then they're issues for legal argument.

15 Then there are other issues in relation to the suggested list here, which appear to us
16 to be completely speculative or tangential. So issue 3:

17 "What, if any, profits have any comparable snooker events made that were organised
18 or approved or sanctioned or not prevented by any of the defendants?" [as read]

19 Well, it's totally unclear what the forensic accountant is supposed to be looking at,
20 what data source they're supposed to be looking at there to assess so-called
21 comparable snooker events.

22 Similarly, issue 4:

23 "From any information made available, what, if any, profits have likely been made from
24 any comparable events in other sports?" [as read]

25 Well, it begs the question: "information made available", what information made
26 available? About what sports? How is any of that going to assist?

1 Then one looks at question 5, a pre-eminently factual question:

2 "What, if any, profits was the claimant and/or Mr Francis able to generate from any
3 other events that it was in fact able to organise or ought to organise?" [as read]

4 We say we don't anticipate that these are problems that will be of any difficulty to the
5 fact witnesses and then to my colleagues in dealing with in legal argument. Of course,
6 if it transpires, once we see the fact evidence, that there is some issue, some very
7 narrow issue which does require some additional input, then of course we can revisit
8 the question at that stage. But I say that to sanction forensic accountancy evidence
9 at this stage, and indeed especially in these broad terms, would be inappropriate and
10 would risk procedural chaos in asking the forensic accountants to range over a huge
11 number of speculative points which are not necessarily or reasonably anticipated to
12 be of assistance to the tribunal.

13 Can I deal, finally, with a point that was made in relation to equality of arms. My
14 learned friend said that because we are using AlixPartners, and Mr Holt, who is the
15 expert at AlixPartners, is being assisted by others at AlixPartners, some kind of
16 inequality of arms issue arose. I don't accept that. If the claimant has chosen to
17 instruct a single competition economist who doesn't have a team who's supporting
18 him, that's their choice; (inaudible) granting permission is not limited to instructing him
19 and if they require additional assistance (overspeaking) --

20 THE CHAIR: Mr Mountford, that's how I saw it too. You don't need to trouble me on
21 that particular point. That has not influenced me.

22 MR MOUNTFORD: Thank you. Thank you, sir. I think that probably deals with
23 everything that I need to say in relation to these two applications, unless there's
24 anything further than I can assist with.

25 THE CHAIR: That's been very helpful indeed, Mr Johnston.

26 Mr Johnston, am I hearing from you at all on this, or was everything dealt with by

1 Mr Mountford?

2 MR JOHNSTON: No, Mr Mountford couldn't possibly be added to. I'm very grateful,
3 sir.

4 THE CHAIR: Thank you very much.

5
6 Ruling on expert evidence

7 THE CHAIR: Mr Quiney, I am with you on Dr Plumley, but I regret to say Mr Mountford
8 has persuaded me in relation to the extent to which I was with you on Dr Linnell. I'm
9 with you on Dr Plumley. I think he does, on what you have put forward, appear to me
10 to have sufficient expertise. This tribunal would be content to hear opinion evidence
11 on the organisation and governance of sports. I think it would be helpful to hear from
12 him on issues relating to the objective justification points that you have made argument
13 upon, and which are relevant to the pleaded issues.

14 I am not persuaded that the economic experts will deal adequately or comprehensively
15 with those justification issues. I do not believe that the tribunal will be assisted in the
16 way that it could be by the sports industry expert of a type and with the expertise that
17 you have put forward.

18 For those reasons, I am prepared to order that there shall be expert evidence from
19 such an expert. However, I do take your point as to the value of the issues that you
20 put forward. I think they have served their purpose. They have helped to focus the
21 attention of the parties, and certainly assisted this tribunal, but I think they need to be
22 recast. I am not prepared to order them as they currently are. I think they need to be
23 carefully recrafted, working together with Mr Mountford, and I am quite sure that you
24 will reach agreement on them, having heard the argument today. If not, then it can be
25 returned to this tribunal and I will make an order as the questions that this tribunal will
26 benefit from having addressed by that particular expert.

1 It is those objective justification issues that are particularly valuable, it seems to me.
2 The evidence as to the arrangement in other sports, that, it seems to me, does have
3 a relevance, will be helpful, and if the questions are carefully crafted, I think that
4 addresses the proportionality point.

5 I am not with you on the accounting expert. I am persuaded by Mr Mountford, having
6 looked at the pleading, and having rethought about the argument on the profit, that
7 this is not a case where the technical assessment of profit, understanding how it is
8 calculated, understanding the application of relevant accounting standards to profit, is
9 relevant. I was not persuaded by your argument regarding the relevance of specific
10 turnover overheads, profit and loss accounts, and other company accounting
11 information. That does not persuade me.

12 I began to think that there was a case that could be made on establishing the profit
13 and having someone who understands how that is calculated could be of assistance,
14 but having looked at the case, it seems to me to be an orthodox one, a factual evidence
15 establishing what should have been paid and what expenses would have to be
16 deducted. I think Mr Mountford is right in his submission on that point.

17 But I also think he is right when he says that this is something that could and, in my
18 judgment, should be looked at again once the fact evidence has been considered.

19 Whilst I am not in any way preventing you making submissions in response in relation
20 to the accounting evidence, and I am prepared to hear you now for so long as you
21 reasonably want to occupy the time of the tribunal to persuade me out of the position
22 I have arrived at, it seems to me, for the moment, that the right course is to look at that
23 question again once the fact evidence has been disclosed, and I will make it quite
24 clear that I will be delighted to hear from you, if you do want to restore this application.

25
26 Submissions by MR QUINEY

1 MR QUINEY: Well, first of all, I'm very grateful for all of those indications, sir, and the
2 time you spent listening to the arguments.

3 On the question of the industry expert, we understand the directions you're making,
4 we'll seek to engage with the other parties, and hopefully we'll be able to focus on, for
5 example, the defences raised by the defendants and the comparative nature of those
6 issues, and we'll come back to you if we need.

7 On the question of the accountancy evidence, I'm not going to seek to persuade you
8 further, to change your mind on those issues. The reason I won't be doing that is
9 because, for our side, we see the sense in, sir, your invitation to reconsider this after
10 the exchange of witness evidence. The only caveat I would put down is, I think there
11 is a degree of optimism on Mr Mountford's side as to the defendants' charitable
12 approach that might be taken to the questions of the distinction between factual
13 evidence and opinion evidence, and I hope that he remembers those statements when
14 it comes to trial and whether there are any arguments in admissibility or otherwise of
15 what Mr Francis's evidence says. But we'll revisit it, if we may, as you say, sir, at that
16 point in the future.

17 But on that -- I'm aware that we've already been, lucky to have even more than the
18 two hours as originally assigned for this -- we do have one particular knotty question,
19 which is, the Hearn call, if I can put it that way, and secondly, a very simple question
20 of the costs of the abandoned application. So I'm in your hands as to how you want
21 to deal with matters, but for my part, I would anticipate my submissions won't be more
22 than 20, 30 minutes on the Hearn call.

23 THE CHAIR: Yes, yes. I had foreseen that and I have had a discussion with the
24 tribunal staff. I did have their indulgence to sit until 4.45 pm, and no doubt pushing
25 them to 5.00 pm, that's not going to be sufficient to do justice to the Hearn call
26 application.

1 I am willing to sit again at the first available opportunity convenient to counsel. As it
2 happens, in the next week or two, I do have time, so if that can be listed at any time,
3 then I'm quite sure the tribunal can bring that on. That seems to me the obvious
4 course. What do you say, Mr Quiney, before I go to the others?

5 MR QUINEY: We would be happy with that course, sir.

6 THE CHAIR: Yes, Mr Mountford.

7
8 Submissions by MR MOUNTFORD

9 MR MOUNTFORD: Yes. Thank you, sir.

10 Can I deal with just two points. So, first of all, in relation to your direction on sports
11 industry expert, I wonder if we should at least canvass, in broad terms, a timeline to
12 try to agree those matters and bring them back to the tribunal? I say that because I'm
13 not sure what your movements are over the summer, sir, and I'm conscious that once
14 we start having things happen in the autumn, if we haven't settled those issues before
15 the summer, it's useful to --

16 THE CHAIR: Yes. Well, I can't myself see any reason why you can't draft the
17 questions before the Hearn call comes on for hearing, and if it hasn't been dealt with
18 by then, we will address it at that opportunity, or otherwise I'll take it upon myself to
19 make the necessary order.

20 MR MOUNTFORD: Yes, it may be, depending upon the -- what I was going to suggest
21 is because the Hearn call, I'm not a party to that application, and obviously, my client,
22 as a member organisation, is keen to not incur unnecessary costs, is that whether that
23 be listed simply between D1 and D2 and the claimant, albeit it may be one of my
24 solicitors would attend to watch?

25 THE CHAIR: Yes. Perfectly fair. Yes, yes.

26 MR MOUNTFORD: Then what I suggest is that separately, Mr Quiney and myself and

1 my learned friend, Mr Johnston, we liaise in relation to those expert issues. What
2 I was proposing was that we try over the next week or so to see if we can resolve
3 them. If we aren't able to, then perhaps we have another week to put in any further
4 comments on differences before the end of term, and then at that stage, if you feel
5 that you're able to settle any differences on the papers, you can. If you feel you need
6 to hear from us, then we can obviously schedule something further at that stage, but
7 obviously, we'll try to see if we can agree matters in the first instance.

8 THE CHAIR: Well, can we be more ambitious? Can you try to do that before the
9 Hearn call is listed, and I'm hoping that that can be listed in the coming days, and if it's
10 not resolved and you feel it's in your client's interests, then you're welcome to attend
11 and address me on such issues that are outstanding.

12 MR MOUNTFORD: The only issue I anticipate in putting two quicker timetable to it is
13 that on our side, we will wish to identify -- now that permission in principle has been
14 granted for this type of expert, we will wish to identify a potential expert and then to be
15 able to canvass the scope of the issues with them, to understand that it falls within the
16 scope of their expertise, which is might militate in it being done in a period of, you
17 know, over the next couple of weeks rather than the next few days.

18 THE CHAIR: Yes.

19 MR MOUNTFORD: That's why I'm not wholly confident that we can get all of that done
20 and crystallised before the matters come back before you for the Hearn call, but maybe
21 we can see where we get to.

22 THE CHAIR: Yes. Well, if you can, fantastic. But if you can't, then I'm perfectly
23 prepared to deal with it in the manner you suggested, and if it comes to me as a paper
24 exercise before the end of term, I will undertake to ensure that I deal with it before the
25 end of term. As long as sufficient time is given to me, to allow me to deal with it, I will
26 deal with it before the end of term.

1 MR MOUNTFORD: If we aim to put any matters before you --

2 THE CHAIR: We're only on 6 July, so that ought to be possible.

3 MR MOUNTFORD: If we perhaps treat -- we'll try to do it as quickly as possible. If we
4 perhaps treat 24 July as a long stop date, that leaves the last week of term for you to
5 settle in, I think, if it's live at that point.

6 THE CHAIR: That sounds a good idea to me.

7 MR MOUNTFORD: I'm very grateful.

8
9 Housekeeping

10 MR JOHNSTON: Sir, if I may, as regards the Hearn call, I think you'll anticipate what
11 I'm going to say, which is that, obviously, this is a matter of considerable concern to
12 my client. We're very grateful for the tribunal's indication that it's willing to list it as
13 urgently as possible, mindful that it could very readily have been the first matter dealt
14 with today, it just so happened that it wasn't.

15 Might it be sensible in those circumstances to take the slightly unusual step of seeking
16 to identify a window in which we could hear it now, simply because by the time we go
17 away, emails are sent and so on and so forth, there'll be time lost there? If Mr Quiney
18 has his diary available, then I wonder whether that's the most effective use of our time
19 now, and might mean that we can find a date that might otherwise be lost.

20 So, for my purposes alone, I have another hearing next Thursday, I have another
21 commitment next Monday at 10.00~am, which won't take very long, but otherwise,
22 I am at least in principle available at any point over the next two weeks, which is not
23 to say that there aren't many other things that I'm doing, but they can all be moved,
24 and all of my conferences can be moved. So I'm wiping my conferences out of my
25 diary for these purposes. I'm mindful of how keen my clients are to have this heard.

26 In terms of your availability, sir, what are your windows over the remainder of this week

1 or next?

2 THE CHAIR: Wednesday or Thursday mornings would be particularly convenient.

3 MR JOHNSTON: Is that in both weeks that Wednesday and Thursday mornings would

4 be particularly convenient?

5 THE CHAIR: No, next Thursday and Friday, I'm in difficulty. Wednesday, I could do

6 all day, and Tuesday, I could do all afternoon.

7 MR JOHNSTON: Is that Tuesday of this week and next week, or just next week?

8 THE CHAIR: Certainly next week and tomorrow. As it happens, I could fit in tomorrow.

9 So over to you, Mr Quiney.

10 MR QUINEY: This week is going to be a material difficulty for me. I've got Tuesday,

11 the 14th available and Wednesday, the 15th available at your convenience.

12 THE CHAIR: How does Wednesday morning, the 15th sound, Mr Johnston?

13 MR JOHNSTON: Wednesday, the 15th. Let me just, if I may, check with my

14 instructing solicitor.

15 THE CHAIR: Please.

16 MR JOHNSTON: Who is typing? I think there's a --

17 MR QUINEY: So while my learned friends take instructions, can I just address

18 Mr Mountford's suggestions regarding the industry expert, just to bottom that out.

19 The short point is, I agree with Mr Mountford on all points, and we'll do our best to try

20 and agree matters within a time period that: (a) gives Mr Mountford a reasonable

21 period of time to find an expert; and (b) allows us to engage prior to the end of term.

22 With that in mind, we'll seek to revisit the issues as set out in my skeleton this week

23 and provide an updated version to the defendants by the end of this week, if that will

24 be convenient for everyone.

25 THE CHAIR: That's very helpful indeed, Mr Quiney. Thank you.

26 MR JOHNSTON: So, sir, the position is that both my client and, as it so happens, my

1 | lead instructing solicitor are away from Thursday of this week. However, unless they
2 | start shouting at me by WhatsApp, the indication is that given the importance of this,
3 | they're content for it to go ahead on the 15th, even though two of the critical individuals
4 | won't be able to be there. There will be others who can.

5 | So I think Wednesday, the 15th in the morning is the date that we're looking at landing
6 | on. Mr Quiney said he had 20 minutes or half an hour. I think I'm pretty similarly
7 | positioned. Perhaps given I'm going to have to go first and introduce it, I might be half
8 | an hour rather than 20 minutes, but we're in a similar ballpark. So presumably, of
9 | course, again we're conducted remotely, 10.30 am on the 15th or -- I mean, actually,
10 | I could do 10.00 am or I could do 11.00 am if that made a difference to you, sir.

11 | THE CHAIR: I must say, I was thinking at 10.30 am live at the CAT. I think this is an
12 | important application, and I think I would like to hear it with you present, given the
13 | issues that it gives rise to. My preference would be to hear it at the tribunal and I'm
14 | going to assume that the tribunal has space that date, the 15th, but if not, I'm quite
15 | sure we could get space at the Rolls building. But my preference would be to hear
16 | you in person. Do you have a difficulty with that, Mr Johnston?

17 | MR JOHNSTON: No, not at all. I would have been doing it from an office that's
18 | five minutes' walk from the CAT, in any event. I'm being told two things by my
19 | instructing solicitor. Firstly, that later in the day would be very considerably preferable
20 | for them because they are five hours behind. So does the afternoon work, then
21 | becomes the question. I think the indication was that it does, and if it doesn't make
22 | a difference to anybody else, I think my instructing solicitor would be very grateful for
23 | the afternoon.

24 | She's also telling me that she would like, if it's at all possible, to get final client
25 | instructions on the Wednesday afternoon. But I think what really we should say by
26 | reference to that is, if and to the extent that the afternoon of Wednesday, the 15th is

1 impractical or impossible for some reason, then we'll come back very, very quickly to
2 the tribunal. Certainly, it will work for me, and I think our position is that, absent
3 instructions saying that it's a problem, we'd expect it to work for others too, albeit my
4 solicitor will have to dial into the CAT live stream -- or CAT TV, as it's sometimes
5 referred to -- remotely. The practicalities of it --

6 THE CHAIR: I am more than happy to accommodate your instructing solicitor's
7 request and to sit at 2.00 pm, subject to Mr Quiney.

8 MR QUINEY: Absolutely fine by me.

9 MR JOHNSTON: I'm very grateful. The point I'm being told is important to just clarify,
10 is how my client is going to react, and we'd need to have that conversation with them,
11 to the possibility that it would be heard in person without her there. That's the point
12 that she'll want to canvass. If there's an issue there, we'll come back very quickly on
13 it to the tribunal. It may be that after my instructing solicitor returns, we could find
14 a date in the week after, but we'll hope that that isn't an issue and we'll go on that
15 basis, sir. But I'm being asked just to hold off, or at least to put down a marker that
16 there might be a question that arises. But for now, if we work on the basis that it's
17 2.00 pm on the 15th in person, that's very helpful.

18 THE CHAIR: Yes, and please assume it will be at the CAT, unless you hear otherwise.

19 MR JOHNSTON: I'm very grateful.

20 MR MOUNTFORD: Sir, may I deal with one other final housekeeping matter. In
21 relation to this hearing, I assume that all parties are going to take the position that the
22 costs of today should be costs in the case? I don't see any of my learned friends
23 saying anything differently.

24 I don't propose to take a lot of time in relation to this, but we did have correspondence
25 between my instructing solicitors and my learned friend, Mr Quiney's instructing
26 solicitors, which picks up on an observation that you, sir, made at the last CMC, which

1 was an observation that the likely outcome at CMC 2 was costs in the case. You said,
2 sir, that you think that three counsel on the claimant's side is not necessarily right for
3 this hearing. You weren't going to take a position on it at that stage, but you wanted
4 to pass on the observation and said that on future occasions, you doubted that it would
5 just be an observation and wished to leave that with the claimant.

6 We did, when we saw the three counsel settling my learned friend, Mr Quiney's
7 skeleton argument write to him, to his instructing solicitors to make that point, and to
8 say that, of course, while it is up to any party, they're entitled to litigate at whatever
9 expense they want, they aren't entitled to then visit those costs, even contingently, on
10 the other party. Of course, for my client, that is a particularly acute concern because,
11 as I say, we are a member organisation and we have to be diligent to make sure that
12 we are safeguarding the financial position of the governing body.

13 I understand from the response from my learned friend's solicitors that they say that
14 although three counsel were named on the skeleton argument, not all three have
15 attended today. I don't know if that has ended up being the case today, because of
16 course I only have the pleasure of seeing my learned friend, Mr Quiney. I think the
17 issue is this: it's the number of counsel, but it's also the seniority of counsel, because
18 my learned friend, Mr Quiney, is assisted by, in this instance, a senior junior and
19 a junior junior. We do say that these type of interlocutory hearings are the kind of
20 hearings which are proportionately dealt with by junior counsel.

21 My learned friend, Mr Johnston's leader hasn't been before you on either of the last
22 two, today's CMC or the last one. So we do say that it's appropriate that where
23 a decision is made to instruct leading counsel for these type of hearings, that
24 nevertheless, the provision of costs in the case should reflect that that's subject to
25 those costs being at the level of junior counsel, not leading counsel.

26 THE CHAIR: What do you say, Mr Quiney?

1 MR QUINEY: Well, a particularly unhelpful hand grenade at the end of a hearing,
2 which was entirely unnecessary. The short point is, this has been addressed in
3 correspondence and explained, and now, I'm afraid, I have to address this orally.
4 Because the position we say, and as we've explained in correspondence, is
5 misrepresenting the position entirely.

6 (a) We have structured our lawyer team so there's one solicitor and three counsel.
7 The team, for example, for the first and second defendants, they field five solicitors
8 and three counsel; that's for D1 and D2. D3 fields seven solicitors and two counsel,
9 according to the confidentiality ring order. The fact that we've taken the decision
10 to -- and we would say, the efficiency -- to utilise counsel rather than solicitors in these
11 instances is not a matter for criticism generally, but certainly not a matter for criticism
12 at a point like this, to try and leverage some sort of tactical advantage that
13 Mr Mountford's clients can then seek to rely on at some point in the future.

14 Further, in any event, Mr Fraser, who's the junior counsel, is not in attendance, as my
15 learned friend could have checked on the participants if he'd had chosen to read them.
16 Secondly, I was in an arbitration all week, which is why Mr Fraser had to take the
17 burden of writing the skeleton with Mr Taylor. So to suggest, without any insight as to
18 the way that we structured our legal team, that somehow something is illegitimate or
19 disproportionate here, frankly beggars belief. So I would refute everything that
20 Mr Mountford has been suggesting, and certainly not invite you, sir, to take the
21 opportunity at the end of this long application to provide what Mr Mountford's asking
22 you to provide him, if that is, in fact, the point of this intervention.

23 MR MOUNTFORD: Sir, can I --

24 THE CHAIR: Just before you do, Mr Mountford. I think, Mr Quiney, the point is taken,
25 because this tribunal has taken it upon itself to question the number of counsel making
26 up a counsel team attending interim hearings. The reason for that is directions issued

1 by the president, the position taken by the senior members of this tribunal, all in an
2 effort to limit costs and to keep costs under control.

3 But as you have just very carefully explained, there is more to this point than just the
4 number of counsel whose names one sees on a skeleton argument. But the reason
5 that Mr Mountford took this point is because of the observation I made on the last
6 occasion, and because the point starts with -- though it does not end with -- but it starts
7 with the number of counsel whose names one sees on a skeleton argument and who
8 might be attending a hearing. But as I say, it doesn't end there; there is more to it.
9 I think there is, on the face of it, at any rate, a great deal of substance in the points
10 that you make in response. I am not going to say anything further about it today.
11 There is not the time to deal with the argument properly. This might need proper time,
12 proper argument and a substantive decision. If that's necessary and justified on the
13 costs, we will list it to allow for that. But I think so far as today is concerned,
14 Mr Mountford, we're going to leave it as costs in the case.

15 MR MOUNTFORD: Thank you, sir. I didn't wish to ask anything to be put forward to
16 a further hearing. We wish to put down a marker that every time a hearing comes, it's
17 not just a question of the number of counsel, it's also the seniority of the counsel that's
18 instructed.

19 THE CHAIR: Yes.

20 MR MOUNTFORD: As you know, sir, the parties are encouraged to consider that
21 question anyway, and it's no personal reflection on my learned friend, Mr Quiney, who
22 is always a pleasure to see and who is acting collaboratively to try to help us cut
23 through some of these issues. But it's whether or not my client contingently has to
24 pay for the luxury of Mr Quiney appearing at every hearing. So it's just a marker.

25 THE CHAIR: As you've heard -- and I accept on the face of it. Let me make that clear;
26 I accept on the face of it. This might be a rather deeper issue. There might be more

1 to it than just how many names are on the skeleton argument and how many members
2 of the bar do I see in front of me. I do see that there is something in that point, and it
3 might require further argument before a concluded view is arrived at, but let's leave it
4 there for today. I think we have taken up the time of the tribunal enough today and
5 the indulgence of the tribunal team.

6 So I think we're set, aren't we, for a hearing in person next Wednesday? We know
7 that there is going to be effort made on the questions in relation to the sports industry
8 expert. You have my directions or orders in relation to the other points. I'm sure that
9 you can be preparing a draft order that we can complete, following the hearing next
10 Wednesday. But if you want me to look at anything in the interim, please do submit it
11 through the tribunal in the usual way.

12 Unless there's anything else, I will rise now.

13 MR QUINEY: Very grateful.

14 THE CHAIR: Thank you very much.

15 MR MOUNTFORD: We're grateful.

16 MR JOHNSTON: Thank you.

17 (4.38 pm)

18 (The court adjourned until 2.00 pm on Wednesday, 15 July 2026)

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Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?