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IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1757/5/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Friday 25th September 2026

Before:

Charles Morrison

(Sitting as a Tribunal in England and Wales)

BETWEEN:

MorethanAV Ltd

Claimant

V

Bang & Olufsen A/S

Defendant

A P P E A R A N C E S

Ian Grace on behalf of MorethanAV Ltd

Ben Rayment (Instructed by Knights) on behalf of Bang & Olufsen A/S

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(10.34 am)

THE CHAIR: I'm just going to read out the usual warning, because of the fact that these proceedings will be broadcast by live stream. 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 contempt of court.

Mr Grace, I will start with you, if I may, because we have to deal, first of all, with your representation. If you would like to stand, I will now deal with that issue. As I understand it, you are a director of MorethanAV, and it's your application to me today to have the right to represent your company in these proceedings; is that right?

Representation

MR GRACE: That's correct.

THE CHAIR: Have you any legal training or legal background.

MR GRACE: Experience through the employment tribunals, but that was two decades ago and I'm currently unfortunately engrossed in family court proceedings -- not of the CAT, sir.

THE CHAIR: Yes. So you are aware that these are very technical proceedings -- competition law is quite technical and complicated. Nonetheless, the tribunal will do what it can to help those who are representing themselves, and understands and appreciates the circumstances of small businesses in particular, like yours. I am going to permit you to represent your company today, so I will make that order, but I am expressly reserving the position for future proceedings. Do not think,

1 Mr Grace, that because I have made the order today, that I will make a similar order
2 in the future. I am going to judge it on its merits at each turn.

3 What I am also going to do, and I think this has been the case at previous hearings, is
4 to encourage you strongly to seek legal advice. It's very much in your interest -- the
5 interest of your company, Mr Grace -- for you to obtain proper legal advice from
6 lawyers with an understanding of competition law and the workings of the competition
7 appeal tribunal. There is a bar Free Representation Unit for competition cases.
8 Please, take an opportunity to consider that, whether that might be a service that you
9 could avail yourself of. It will be very much in your interest and the interest of your
10 company if you do obtain sophisticated legal advice.

11 MR GRACE: Thank you. Thank you for granting the order. Firstly, I've prepared
12 a speaking note, which, hopefully will assist the tribunal. I have reached out to
13 Advocate. Unfortunately, they've said that they needed three weeks' notice, so I have
14 taken that on board, sir, and will do so again.

15 THE CHAIR: I'm very pleased to hear that. Thank you very much, Mr Grace. Also,
16 I can't see the other papers that you brought through. I can see the bundles, but I can't
17 see the other papers, unless they're under here. You wouldn't be kind enough just to
18 check the other documents? Thank you very much.

19
20 Amended claim

21 THE CHAIR: So if we turn now to the various applications that we have before us
22 today. I think the first, Mr Grace's application, for permission to amend your claim.
23 And I wondered if you might just help me with an understanding of what the position
24 is now with your amended claim. Again, if you want to stand up and help me with this.

25 MR GRACE: Yeah.

26 THE CHAIR: I saw your application, and I saw the amended pleading with your

1 application, and I have, of course, the response from Mr Rayment and Bang & Olufsen
2 to that draft, and in particular the position you adopt in relation to ground B., with the
3 introduction of ground C if I'm remembering it correctly. But then, I think I'm right in
4 understanding from your skeleton that before me today, you want to abandon
5 ground B, but nevertheless continue with ground C; is that correct?

6 MR GRACE: That's correct.

7 THE CHAIR: Yes. So am I right in thinking that the draft that I have and with your
8 application is no longer the appropriate draft, you want the opportunity to change it
9 again, this time to remove ground B?

10 MR GRACE: That is correct. I thought I had forwarded documentation without
11 ground B.

12 THE CHAIR: Yes, you may well have done, Mr Grace. It's just perhaps not been
13 picked up by me. Please forgive me. In the additions and removals and the different
14 versions, I might not have caught up with that last point, but I at least knew that was
15 the track that you were on -- was to now remove ground B.

16 So is it the case that you are now finished with the changes to your case? That the
17 case absent ground B is the one you want to make?

18 Submissions by MR GRACE

19 MR GRACE: Yes. Insofar as -- on the basis of the documentation that's been
20 provided so far. I understand there is a provision in rule 32 if, on disclosure of further
21 documentation, and an application, if appropriate, can be made to further amend the
22 grounds, because, you know, there are disclosure applications before you and some
23 documentation that hasn't been provided by the defendant that they say they have
24 provided that I may seek to rely upon.

25 But as far as I can assist the CAT, that is the basic structure where we are. I've
26 prepared notes which may give clarity to the removal of ground B; it was a clear and

1 obvious drafting error. The invoices, there's invoices stretching back 20 years where
2 I have purchased goods from B&O dealers. And they've all been in the name -- either
3 my own name, Ian Grace or MoreThanAV as a sole proprietor, or from the
4 1 April 2025, they've been in the name of MoreThanAV Limited. So I don't think it's
5 disputed at any time that it was just a clear error.

6 THE CHAIR: Yes. I don't think, Mr Grace, that you should approach these
7 proceedings on the basis of trying to make a case out of what you are able to or not
8 unearth from a disclosure exercise. You must make your case from the complaint that
9 you believe you have, and you will receive disclosure relating to that complaint. If it is
10 the case that that disclosure means you have to amend your case, then this tribunal
11 will consider that at various stages, as you rightly point out. But you ought to approach
12 the case in the way that I have just outlined. Although I say again, you must obtain
13 your own advice, and I strongly urge you again to seek that advice and then to seek
14 to persuade me in accordance with the rules and the law as that advice sees fit.

15 At any rate, you must make your case in your pleading, and it's very important that you
16 do, because it's only just and fair that Bang and Olufsen know the case that they are
17 coming to this tribunal to meet. So I think you're telling me that the case you want to
18 make is now the one that you have filed, absent ground B, but I also think I'm right in
19 understanding that you say there are further particulars to be provided -- that you
20 intend to provide further particulars; is that right?

21 MR GRACE: No, I intend the defendant to provide further particulars that they say
22 they've provided, but I have not seen -- that have not been provided to me. They're
23 listed at -- sorry, it's just from memory -- H2 to H8, where I've set out in my skeleton
24 the documentation that has not been provided and I haven't been able to rely upon or
25 consider when making my case.

26 THE CHAIR: Yes, I see. So there is nothing more you want to do to your pleading on

1 the information that is available to you at the moment; is that the case?

2 MR GRACE: I can sum it up in three sentences, sir, if I may read from my notes.

3 THE CHAIR: Well, what would help me if you is if you answered my question,

4 Mr Grace. As matters stand, are you content that the version of your pleading that

5 you have submitted to the tribunal is your case, given all the information that's

6 available to you at the moment?

7 MR GRACE: I was tentatively going to ask if C, which is second hand goods, would

8 also include ex-demonstration goods. I haven't had a chance to consider that, but

9 A and C are the grounds that I wish to proceed on.

10 THE CHAIR: So in other words, just to draw a line under it, you do not want to make

11 any further changes to your claim as matters stand today?

12 MR GRACE: That's correct.

13 THE CHAIR: Thank you very much. I'm going to just hear from Mr Rayment.

14 Mr Rayment.

15 Submissions by MR RAYMENT

16 MR RAYMENT: Sir, I'm grateful.

17 THE CHAIR: I think you see the position.

18 MR RAYMENT: That's exactly what we're driving at, and that's what we would like to

19 get to too. I mean, I don't want to cut across what Mr Grace is saying about his own

20 case, but I must say it wasn't obvious to us that, as we stand here today, there is

21 a version of the claim that is "final final", as it were. I mean, obviously it can never

22 be -- it does seem final.

23 THE CHAIR: It does seem from what he's saying, that the version that he has

24 submitted now is the final draft.

25 MR RAYMENT: I agree.

26 THE CHAIR: He's prepared to stand by that.

1 MR RAYMENT: I'm grateful for the tribunal seeking to clarify that with Mr Grace, it's
2 just that it seemed pretty clear from the amendment application that there were further
3 matters that Mr Grace was planning to put forward as part of the claim.

4 Now, I don't know whether there's any confusion arising from the fact that, on the one
5 hand, there's a claim form, and then there are exhibits to the claim form. Because it
6 did seem, in looking at his application, that at the very least he was proposing to
7 provide further particulars and/or evidence relating to particular transactions. For our
8 part, if that is going to be the case, then we would like to see all of that in one document
9 so we can consider it and react accordingly.

10 That is why we understood that, notwithstanding the rather late change of position in
11 relation to which grounds were being included and which were being abandoned, we
12 still understood Mr Grace to be asking for 14 days to be able to just put the final version
13 of the draft to bed, as it were.

14 THE CHAIR: Yes, yes, although --

15 MR RAYMENT: I can take you to the application if that would --

16 THE CHAIR: Yes. No, I have the application and I understand it. You can imagine,
17 Mr Rayment, so far as the tribunal was concerned, there is a desire to see the case
18 progressed. There is an interest in not taking up more time of the tribunal than is
19 necessary. It seems to me that there is now a case. Mr Grace tells me that that is his
20 position now. He might have a different view as to the way the proceedings work, but
21 that will play out over time, and he will either succeed or fail on any further applications
22 that he may choose to make.

23 But what's important to me is that we reach a conclusion to this process. You deserve
24 to know once and for all what the case is that your clients must meet. And I as
25 I understand it, Mr Grace is saying his flag is now on the mast; that's the case he wants
26 to bring for damages in this tribunal. So I'm minded to give him leave to amend on

1 that basis, and to give you the opportunity to respond in a time that we can discuss
2 now that is convenient to your clients and appropriate, consistent with getting on with
3 it, but also fair to your clients, and then we can discuss the costs.

4 MR RAYMENT: Could we therefore -- and this is really basic -- just now between
5 ourselves, identify which version of the reinvented claim form we are talking about?

6 THE CHAIR: Yes. That's the application.

7 MR RAYMENT: So that we can work off it.

8 THE CHAIR: Yes. Of course.

9 MR GRACE: Okay. If I can assist here, the final form is defined in 9 September draft.

10 The marked copy is at A/132 to 170, and the clean copy is A/171 to A/197, with
11 ground B, that is paragraph 12.3 and its consequential references, deleted, and with
12 the invoice correction and grounds A and C as drafted. Yes.

13 THE CHAIR: Did you say E/132?

14 MR GRACE: The marked copy is at A/132 to 170. The clean copy is at A/171 to 197.

15 THE CHAIR: Mr Grace, are you sure that's not the version that you submitted along
16 with your application?

17 MR GRACE: I don't believe so.

18 THE CHAIR: Would you have a look at it? Because I have it here and that version at
19 paragraph 12.3 still includes ground B. I'm looking at the marked version, which is
20 page 160 of the bundle you helpfully prepared and for which the tribunal is grateful.
21 I can find it in the clean as well. But I was looking at your marked version. Your
22 marked version 160, 12.3, has B.

23 MR GRACE: Well, if it does, sir, then it's an error. I'm just trying to open the file now.
24 I haven't looked at it on a computer.

25 THE CHAIR: I thought I heard you say earlier that you had just submitted a new clean
26 version of the amended claim, absent ground B?

1 MR GRACE: That's correct.

2 THE CHAIR: If you can find that for us, please, then we're making progress.

3 MR RAYMENT: I don't know if it assists Mr Grace, but I don't know if he's referring to

4 versions of the claim form that were served on the defendant, but not the tribunal, back

5 in August. I'm not sure whether we're talking about those versions.

6 THE CHAIR: Thank you. Are they in the bundle, do you know?

7 MR RAYMENT: Those are in the bundle.

8 THE CHAIR: At which page, Mr Rayment?

9 MR RAYMENT: I think B/17 and B/18.

10 THE CHAIR: Thank you.

11 MR RAYMENT: Seventeen is the clean version. Eighteen is the --

12 THE CHAIR: B/17 is different for me.

13 MR GRACE: Is that B, page 17 or --?

14 MR RAYMENT: Well, it's 571 of the --

15 THE CHAIR: 571.

16 MR RAYMENT: On the tabs, I'm not sure.

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

18 MR RAYMENT: There's a tracked version and a clean version in the same tab, I think.

19 THE CHAIR: I see. Do you have that, Mr Grace?

20 MR GRACE: Yes, I've got page 571.

21 THE CHAIR: Can you confirm is that your final version?

22 MR GRACE: It's the proposed re-amended claim form.

23 THE CHAIR: So this is your final version?

24 MR GRACE: That's correct.

25 THE CHAIR: Thank you very much. Well, there we are, Mr Rayment, we're there.

26 Mr Rayment, I can't see why I shouldn't make an order that permission be given to

1 amend in that form and that I agree with you now, a period that's convenient for your
2 clients to plead to that.

3 MR RAYMENT: No objection in principle to that, sir. Just one observation. You know,
4 this new version of the claim does involve not only deletions, but it does involve some
5 additions, including of evidence and particulars. Those need to be investigated by my
6 client. Their impact, if anything, on the merits of the claim --

7 THE CHAIR: Yes.

8 MR RAYMENT: -- also need to be assessed. So, whilst I'm content for you to grant
9 the claimant permission to amend in the form of the draft at page 571, that would be,
10 in my respectful submission, without prejudice to our right to contest the arguability of
11 all the amendments. I'm not talking about revisiting the grant of permissions. I'm
12 simply trying to preserve my client's permission in the event that it wants to strike out
13 or seek summary judgment on a whole or part of the claim, which obviously could
14 potentially be very helpful.

15 THE CHAIR: Yes. I don't think the tribunal has any difficulty with that and sees that
16 as different from the usual course in any --

17 MR RAYMENT: Well, exactly. It's just that formally speaking amendments should
18 only be given if they're arguable. But we all know that in practice it's simpler
19 sometimes to accept that permission be granted and then they can be dealt with, with
20 a defence and --

21 THE CHAIR: Yes.

22 MR RAYMENT: -- then (inaudible) considered after that.

23 THE CHAIR: I suspect that you have already had a quite a good look at page 571
24 onwards and already have a view. If there was something that was particularly
25 offensive, then we could have considered that now. But I'm otherwise happy for you
26 to keep your powder dry on arguability.

1 MR RAYMENT: That's the only point.

2 THE CHAIR: Yes. In other words, if you return to me with an application to strike out
3 a particular passage, it's not going to be a surprise to me.

4 MR RAYMENT: I'm very grateful.

5 THE CHAIR: Yes.

6 MR RAYMENT: That's the matter I wanted to be clear about.

7 THE CHAIR: Yes.

8 MR RAYMENT: So far as --

9 THE CHAIR: Although we might pick that up, forgive me, in our discussion about
10 whether this is a matter suitable for fast track. That might have a bearing there, but
11 otherwise, I'm with you. I think it's a matter of costs and my starting point is costs must
12 follow the event in the usual way. It's the usual order and I see you ask for that. Unless
13 there's anything you want to add to that, I was going to take that up with Mr Grace
14 but --

15 MR RAYMENT: I do ask for the usual order. And just for the avoidance of doubt,
16 I don't know if you've got a copy of our draft order.

17 THE CHAIR: Yes, I do.

18 MR RAYMENT: It's paragraph 3.

19 THE CHAIR: Yes.

20 MR RAYMENT: That's the order that we're asking for in relation to the amendments.

21 THE CHAIR: Yes.

22 MR RAYMENT: You'll notice that in relation to the basis of assessment, if -- well, I'm
23 suggesting that we may be able to try and agree the costs, but it may be difficult and
24 if we can't, the order refers there to whether assessment should be on the standard or
25 the indemnity basis. Now, I don't want to make a big song and dance, but in relation
26 to indemnity, in my respectful submission, that does need to be considered in relation

1 to the history of ground B. I can explain the history of ground B in some detail because
2 the history of ground B really shows that this ground should never have been
3 advanced and the suggestion that it simply involves a correction about invoicing or
4 some way depends at any stage on disclosure from the defendant is simply
5 unsustainable.

6 Really one has to appreciate what has gone on. To go right back to the original
7 amended claim form, I wonder if you might turn that up.

8 THE CHAIR: Yes, of course.

9 MR RAYMENT: A/2 of the bundle which is at page 6.

10 THE CHAIR: Page 6. Yes.

11 MR RAYMENT: I just want to explain how, rather than simply a mere -- how Mr Grace
12 can really say this is just involving the correction of an error is quite beyond me. If we
13 look at the first sort of substantive page on page 7 and we look at paragraph 1.1, we
14 see front and centre of the claim, the way that the claim is put after the original claim
15 form was issued, in which he described himself as a "reseller", now we see in
16 paragraph 1.1, front and centre, this is the fifth line:

17 "Morethan's business has predominantly included acting as a purchasing and logistics
18 agent for identified purchasers outside of the United Kingdom. In this model, the
19 authorised dealer invoices and supplies the identified end purchaser directly. MTAV
20 does not take title to the products and does not assume resale risk." [as read]

21 So that's a pretty clear statement, right from the outset.

22 Then if we move on to paragraph 5.4, we see that the concept of a purchasing agent
23 is carefully defined there. If we move on to section 7, we see a whole section here.

24 Section 7, MTAV's procurement and logistics agency activity and the Thailand
25 approach 2024. This is being advanced as a significant defence to what
26 Bang & Olufsen say, which was this was a legitimately restricted transaction because

1 it was inconsistent with the dealer's obligations under the distribution agreement.

2 We move on to paragraph 8.4. Then we see the practical effect -- and this is dealing
3 with a central issue in the case:

4 "The practical effect of [our] alleged conduct was that authorised dealers refused or
5 had refused to supply identified purchasers once MTAV was identified, even as the
6 purchasing logistics agent ... and was not acting as a commercial reseller." [as read]

7 Particulars of that transaction are then referred to in paragraph 8. Then we go to
8 paragraph 9.2, and then we again see in the second sentence:

9 "The differential treatment is triggered by MTAV's appointment as disclosed
10 purchasing logistics agent rather than by any distinguishing feature of the end
11 purchaser." [as read]

12 THE CHAIR: Yes.

13 MR RAYMENT: And then at 12.1, again, obviously there we see ground B set out.
14 12.2.2.2, again, the purchasing agent services.

15 THE CHAIR: Yes, it's a clear case as to the position of MTAV.

16 MR RAYMENT: Yes, and at 12.3.3A, and then finally causation section refers back to
17 matters at 8.5 which rely on the purchasing agent (inaudible).

18 THE CHAIR: Yes.

19 MR RAYMENT: Mr Turner, back in December, gave the claimant an opportunity to
20 amend their claim. They were able to think about it. They lodged the claim on
21 20 February. We filed our defence at the end of March. They've had every opportunity
22 to think about this, but it was maintained throughout. Then we get to August, ground B
23 is taken out and so that's what we understood the application is at that stage. Then,
24 after the date for applications on 28 August, you know, we get served with another
25 version of the claim form, whereby ground B has been put back in, in addition to
26 ground C.

1 First of all, it is unreasonable to claim that this is simply some sort of error in relation
2 to pleading. This was a very conscious decision to plead the claimant's status as
3 a purchasing agent, precisely because acting in a capacity as a purchasing agent
4 clearly doesn't engage the restrictions that are imposed on dealers under a normal
5 selective distribution system.

6 It was very much retrofitting the case to what needed to be pleaded, rather than having
7 any regard to the facts. And to say that, "Oh, now I've just discovered that I'm not
8 a purchasing agent" is frankly, going way too far and, in my submission, is
9 unreasonable. It goes far beyond the norm to anything one could normally expect.

10 That's why, in relation to the cost of the amendments relating to ground B, costs should
11 be assessed on an indemnity basis, if we get there.

12 THE CHAIR: Yes. The anomaly is, Mr Rayment, isn't it, that you're not being asked
13 to plead to ground B now? That's the anomaly, isn't it? There was a thought to
14 introduce it, and that thought survived the months of August to September.

15 MR RAYMENT: It was introduced obviously in the pleading on 20 February; ground B
16 was included in the pleading. We pleaded a whole defence to it.

17 THE CHAIR: Yes. Forgive me.

18 MR RAYMENT: Yes. That's now been abandoned -- we thought that was abandoned.
19 Then it was put back in and now it's been taken out again.

20 THE CHAIR: (Overspeaking) the original pleadings, yes.

21 MR RAYMENT: Now it's sought to be passed off as just some sort of drafting error.
22 I mean, it's just not --

23 THE CHAIR: Yes.

24 MR RAYMENT: It can't be sustained.

25 THE CHAIR: I was looking at the period from August where there was the thought to
26 reintroduce it. And then, now, the notion is to abandon it, which we know for certain.

1 MR RAYMENT: But of course --

2 THE CHAIR: (Overspeaking) the first phase where you had actually pleaded to it, to
3 the ground B claim, which is no longer part of the case.

4 MR RAYMENT: But just to be clear, there were obviously costs in dealing with
5 the -- First of all, in August, as I think, you know, we were served with a form of
6 amendment that didn't make clear what the amendments were.

7 So having tried to work out what was going on, my solicitors contacted Mr Grace and
8 said, "Can you provide a version that actually shows the changes?" That was then
9 provided, and that was the one that appeared to suggest that ground B was being
10 taken out. So we'd, you know, had toing and froing, we'd studied that version of the
11 claim form. And then of course, knock us down with a feather, when we finally get the
12 version on 9 September, that's now saying, "Oh no, ground B is back in".

13 Then we're looking at that version, and then it's only until we receive my friend's
14 skeleton that we now realise that actually looking at that version was a waste of time,
15 because in fact, he's taking it out again.

16 There's a whole series of costs that have been incurred, correspondence, all the rest
17 of it. But I mean, this is what has to be understood in these proceedings. I mean, if
18 you start sending unnecessary amounts of letters, it's very difficult for the other side
19 not to respond and do work on it. That causes significant cost, because as we know
20 these cases, whether they're good or bad on the merits, they inevitably are complex
21 and they create very burdensome allegations for the defendant.

22 THE CHAIR: Please sit down, Mr Grace.

23 MR GRACE: Oh, sorry.

24 THE CHAIR: You will have your opportunity.

25 MR RAYMENT: So that's why we take the position we do on the basis on which costs
26 in relation to ground B should be dealt with.

1 THE CHAIR: Yes, I have the usual approach towards a litigant in person that this
2 tribunal would want to take. It's a degree of latitude, I think it's clear -- the president
3 has made it clear -- that there will be some accommodation afforded to a litigant in
4 person. This tribunal wants to make its process amenable, or wants to be accessible,
5 to small businesses, and the costs of competition cases are well known. So it wants
6 to be accessible. So there is that accommodation granted.

7 What do you say to the notion that indemnity costs would not be appropriate in this
8 case because that accommodation is being afforded, to some extent, and that's
9 a reasonable boundary to the standard basis in a situation like this, for a litigant in
10 person; what do you say to that argument?

11 MR RAYMENT: Well, sir, I understand it and have sympathy with it as far as it goes.
12 Both the bar and the bench have a common interest in ensuring that self-representing
13 parties are able to present their case properly, and it is quite correct that the tribunal
14 has sympathy for the position of small businesses and understands that.

15 But on the other hand, you also have the position, I think, that I referred to in my
16 skeleton argument, whereby that discretion -- that latitude, as it were -- it is not
17 boundless.

18 In relation to ground B, I'm perfectly prepared to accept that -- although from
19 a represented party, the conduct in relation to the other aspects of the amendments,
20 maybe that's a situation where we don't get into indemnity costs -- but in relation to
21 a situation where it is completely unexplained, how this part of the case, ground B,
22 could really be maintained when it's not dependent on disclosures from the defendant.
23 It is a straightforward case of putting something forward for which there's no factual
24 basis whatsoever. And at the end of the day, I'm sorry to say, but a statement of truth
25 bearing a contempt warning was signed in relation to that assertion. So that is
26 a serious matter.

1 But I don't have to go quite that far. It doesn't have to be -- you know, as the test for
2 indemnity is concerned, it is simply unreasonable in a high degree and beyond the
3 norm. I don't have to go further and start suggesting moral culpability or extremes of
4 that nature. So that's why I make the submission that I make.

5 It is important, because where conduct has been really unreasonable, the significance
6 of indemnity costs is that it ensures that a party who has suffered loss, or incurred
7 unnecessary costs as a result of unreasonable behaviour, has a better prospect of
8 recovering those costs. That does seem fair in the particular respect so far as we're
9 concerned with ground B.

10 THE CHAIR: I'm grateful. Thank you, sir.

11 Mr Grace.

12 MR GRACE: Thank you. I just --

13 Order

14 THE CHAIR: I'm going to make the order that you have permission to file the amended
15 version of the claim that appears at page 571 of the bundle. I'm going to make that
16 order, and I will discuss with Mr Rayment at any rate, and come back to you, the period
17 for him to file a defence to that version of your claim.

18
19 Costs

20 THE CHAIR: You have just heard a discussion about the costs. The usual order is
21 that the applicant must pay the costs of and occasioned by the amendment, an order
22 very much consistent with paragraph 3 of the draft order that you have seen from
23 Bang and Olufsen. Mr Rayment asks for his costs to be assessed on the indemnity
24 basis rather than the standard basis, which is a rather more generous basis for
25 assessment of his costs, if those costs are not agreed between you.

26 I have to tell you, I'm not minded to make that order. He has not persuaded me to do

1 that. I'm minded to make the order subject to hearing from you now, but I also want
2 to issue a warning to you that you are in receipt of some generous latitude from the
3 tribunal --

4 MR GRACE: I'm grateful.

5 THE CHAIR: -- by me not making that order. You should take much greater care over
6 the preparation of your claim. You cannot keep changing that claim without good
7 reason, and so far as I'm concerned, I don't see any good reason.

8 Mr Rayment must have his costs, but I am satisfied that giving him those costs on the
9 standard basis is the right order. But that generosity and latitude you are receiving
10 from the tribunal is not inexhaustible. So I'm telling you now that you must take great
11 care over the way you handle the process. It's consistent with the point I made
12 earlier -- the advice I gave earlier to you about securing legal advice. That will keep
13 you straight on these kind of issues, because the next time the tribunal may feel that
14 you've crossed the boundaries.

15 Now, if you want to try to persuade me not to make an order for costs on the
16 amendment, I'm prepared to hear you now.

17 Submissions by MR GRACE

18 MR GRACE: Thank you very much. I've read the defence and at no point whatsoever
19 is the invoice correction -- the matter I raised, the error that the invoice was in the
20 name of the end user -- there's nowhere -- I'd asked Mr Rayment to identify any
21 paragraph where his defence needs amending, and could it be dealt with just a joinder
22 in relation to that?

23 Because if I read from the notes, I've read through everything and the only treatment
24 of the correction is at paragraph 12 of A/200, and it's a description of the 20 August
25 letter rather than of the defence.

26 The defendant has never said which of its own paragraphs the invoice correction

1 touches. My skeleton argument makes the related point at paragraph 14. The invoice
2 name chronology was not the subject of an express challenge in the defence.

3 I have a duty to be full and frank with the tribunal. The only reason that it came to my
4 attention was that the CMA contacted me and said that I must submit pleadings to
5 them, and so I drew up the email, and then I noticed there's not part of any sort of
6 planned sort of late amendment or anything; it was only when a lady called Ritika Sood
7 contacted and said, "You must file with the CMA as well", that I noticed, and I drew it
8 to attention of the tribunal immediately and also of the defendant.

9 But it doesn't touch the defence. The defence isn't formed around the invoice
10 correction point. And that's why a short supplemental statement on that basis, or
11 a joinder, as I think the rules refer to it, would be preferable. There are -- Mr Rayment
12 brought up that it was a signed statement of truth and I'm not undermining a statement
13 of truth, but there have been multiple instances where the defendant has submitted
14 witness statements which has then later been withdrawn, all with a signed statement
15 of truth, or adapted from the Neil Warwick statement to the Markillie statement.

16 And, again, just in brief, which we have, Mr Warwick said the defendant don't deal in
17 secondhand products, signed with the statement of truth. Markillie said, "Well,
18 perhaps that statement is overly broad". And then we have, again, the defendant
19 saying that goods were sold outside of the designated territory, and then Markillie,
20 statement of truth "authorised resellers are -- it's possible for them to sell outside of
21 the territory -- outside of the UK, and to sell internationally".

22 So my point is, sir, I'm just trying to get everything in order. It's incredibly complex.
23 I'm grateful for the latitude that you've given me. I have tried to gain legal advice.
24 I took Justice Turner's advice in relation to a specialist competition lawyer who helped
25 me draft the amended particulars of claim. I've approached Advocate, but that was
26 too late.

1 I'm just trying to get everything properly before the tribunal in its proper form. I'm quite
2 certain Mr Rayment could make a supplemental statement. There's been an 88 page
3 witness statement, 88 page witness statement, in defence. That doesn't need
4 revision. That's untouched by the invoice correction. The invoice correction, ground B
5 has been abandoned. We have ground A, we have ground C, and I've done it in the
6 most reasonable fashion possibly. The defence doesn't need material amendment or
7 revision, which Mr Rayment suggests it does.

8 THE CHAIR: Thank you very much.

9 MR RAYMENT: I don't understand much of that.

10 THE CHAIR: Mr Rayment, you will have your costs on the standard basis.

11
12 Directions

13 THE CHAIR: Mr Rayment, the pleading, your defence, is there any reason you can't
14 file that in 21 days?

15 MR RAYMENT: I'm asking for 28 days, sir, if you please.

16 THE CHAIR: Yes, I'm happy with that. 28 is fine.

17 MR RAYMENT: I just want to put down a marker, and of course we haven't spent
18 huge amounts of time on it yet because there are still issues to be decided today, but
19 if you look at the claim form, it's not simply a question of ground B being withdrawn
20 and ground C being added, but it's also that that draft that you were taken to at
21 page 571 has large parts of it simply redrafted.

22 Of course, in our system of pleading, that means that the pleader of the defence is
23 now going to have to relook at all of the different way -- words matter, as we've just
24 been discussing -- and plead specifically back to those paragraphs. So it is not going
25 to be a small job, unfortunately.

26 THE CHAIR: Well, I think we know now where we stand; we know what Mr Grace's

1 claim is. You will plead to that, we have dealt with the consequences. We have dealt
2 with the timing. That will be the order in relation to the amendment application.

3 I want to go on to deal with the security for costs, but I do take into account the impact
4 that a fast track order could have on a security order. So Mr Rayment, I'm --

5 MR RAYMENT: Might I make a suggestion about that, please?

6 THE CHAIR: Please.

7 MR RAYMENT: I realise that the tribunal is considering seriously the appropriateness
8 of allocation of this case to the fast track. I do see, therefore, questions of resources
9 and so on factor into that decision as well.

10 THE CHAIR: Yes.

11 MR RAYMENT: The difficulty, as you know, in relation to the security application so
12 far is that since the defence was filed -- and of course, we've been criticised by
13 Mr Grace for this, by saying that our application for security was premature -- but of
14 course, what he overlooks is the fact that if you're going to raise an application for
15 security for costs, you need to be raising that in good time, so that was the reason for
16 that.

17 THE CHAIR: I don't think it's premature, Mr Rayment. I don't see that at all.

18 MR RAYMENT: As we know, the principles are set out in my skeleton, but there are
19 essentially, two aspects to the security application.

20 First of all: is there a reasonable belief that if cost orders are made, the defendant
21 won't be able to satisfy them?

22 THE CHAIR: Yes.

23 MR RAYMENT: And the second one is: is it just in all the circumstances?

24 THE CHAIR: Yes.

25 MR RAYMENT: Where we've got stuck on the security application, if you like, is the
26 fact that we were asking for clarity on the claimant's financial position, but it simply

1 hasn't been forthcoming. We get to Tuesday and we have now had an offer of the
2 provision of financial information, which starts to look rather like what we wanted in the
3 draft order.

4 THE CHAIR: Yes.

5 MR RAYMENT: But there is a but there's obviously the second aspect, which is that,
6 as the authorities cited in my skeleton make absolutely clear, the claimant also has to
7 show that there's no probable basis on which a third party would contribute to an order
8 for security. It's that side of things that we're still missing information on because.

9 THE CHAIR: Mr Rayment. Forgive me, Mr Rayment. You're straying into the security
10 application itself.

11 MR RAYMENT: (Overspeaking).

12 THE CHAIR: Mr Rayment, what I'm troubled by is whether we ought to deal with the
13 question of allocation to the fast track first because of the impact such an order would
14 have on the security application. So I'm minded to deal with that first and to hear
15 submissions from you on whether this matter is suitable for allocation to the fast track.
16 I'm well aware that the two principal issues there are whether it can be tried within
17 six months and secondly, whether the three-day time estimate is appropriate for this
18 case.

19 But at any rate, I'd be very pleased to hear your submissions on whether allocation to
20 the fast track is appropriate.

21 MR RAYMENT: I will of course address you, sir, on that. Just to finish on the security
22 point. What I wanted to seek was that Mr Grace provides the rest of the information
23 that we've been requesting about means, at this stage. The actual question of security
24 would then be dealt with at the same time as allocation to the fast track and potentially
25 cost capping, if that's going to be considered as part of allocation to the fast track.

26 But so far as allocation to the fast track itself is concerned, in my respectful submission,

1 as I've set out in my skeleton, in my respectful submission, that is still premature at
2 this stage. Because, as we've discussed, we need to finish pleading to the new
3 version of the claim. We need to have Mr Grace's reply and then after that, that is the
4 time, in my respectful submission, to make final decisions about fast track, because
5 there are other case management decisions that would also need to be considered,
6 such as summary disposal.

7 If there's going to be an application for summary disposal in relation to the whole or
8 part of the claim, then there may be no need for fast track allocation. At the moment,
9 sir, I'm in some difficulty in addressing you on the fast track because it's still unclear
10 exactly what the shape of any possible trial would be. I think that the shape of any
11 possible trial will be a lot clearer after Mr Grace has had our amended defence and
12 he's had an opportunity to reply because there are some big issues, potentially, in this
13 case, which would need looking at.

14 Obviously there are what Mr Grace says about the nature of the agreement alleged
15 but then there's also a rather significant issue about the economic effects of anything
16 that we are alleged to have done by way of agreement of such practice. If we have to
17 start getting into questions of effects, which I think has been underestimated by
18 Mr Grace, then that again is going to complicate and lengthen any hearing.

19 What I want to make absolutely clear on behalf of Bang & Olufsen is that we want to
20 co-operate with the tribunal to achieve resolution of this matter as quickly as possible,
21 but that we just are concerned that there's always the possibility that shortcuts can
22 turn into long cuts. The fast track procedure is frankly very demanding, both for the
23 tribunal and the parties in terms of, you know, the speed with which potentially
24 complicated case has to be dealt with. Therefore, I think that the final decision on
25 allocation to the fast track would, in my respectful submission, be much better taken
26 after pleadings have closed and we are able to take a final view on whether there are

1 parts of this claim that should be disposed of summarily.

2 THE CHAIR: What role do you foresee -- looking at the pleadings as you see them at
3 the moment -- what role do you see expert evidence taking?

4 MR RAYMENT: Well, it would be on any allegedly restrictive effects of the conduct
5 that Mr Grace is alleging. I mean, he is alleging a number of restrictions. A particular
6 focus is in relation to exports outside the territory. In our view, there is no effect on
7 competition in the UK as a result of restrictions of that nature. But if they're going to
8 be looked into, that is something that we may have to have expert evidence on.

9 THE CHAIR: Market? What's your --

10 MR RAYMENT: Well, the market again is absolutely another area that's to be
11 determined. It's still not entirely clear, I mean, I think that Mr Grace's case has slightly
12 shifted because originally it was very much about resellers and being a reseller, and
13 now he's introducing elements relating to being a custom trade installer, and possibly
14 alleging that he's entitled to be supplied in that capacity. If that's the relevant market,
15 that may be different to market for retail supply of these products. It's not an entirely
16 straightforward market.

17 Obviously in a bigger sense, it's consumer electronics, but whether there are, you
18 know, particular segments of that market, those are all things that may need to be
19 looked at, at this stage. Those are the sorts of things that one would want to come
20 fully informed about to the tribunal in relation to allocation to fast track.

21 I don't see, with respect, sir, that if the tribunal were to -- the tribunal made its view
22 very clear that it thinks that, you know, it's minded, other things being equal, that this
23 is a case that would be allocated to the fast track. But I would strongly submit and
24 urge the tribunal not to make a final decision on that matter today. We've heard what
25 the tribunal has said. But as I say, we would still want a proper opportunity to consider
26 the amended claim, to put in a defence which will deal in detail with the issues raised

1 and at that point, it will be much more easy to see whether fast track is the right
2 approach.

3 THE CHAIR: Yes. Because it's your case that matters that you have just touched on,
4 in particular, the unknown in relation to the expert evidence such that no one can say
5 with any certainty, reasonable certainty, at this juncture, that this is a case that can be
6 disposed of within the three days.

7 MR RAYMENT: That's right. I mean, to be absolutely candid with the tribunal, I do
8 appreciate that, I think, the fast track is primarily focused on three days. I think if it
9 goes to four days that -- you know, if the tribunal forms the view that it's four days, then
10 that wouldn't preclude an allocation to the fast track. But it once one starts going
11 beyond that, then it's a (overspeaking).

12 THE CHAIR: It's a starting point.

13 MR RAYMENT: Yes.

14 THE CHAIR: It's a good starting point.

15 MR RAYMENT: You can see that the more transactions that are raised as having
16 been restricted and so on, it may be that we're going to need factual witnesses about
17 more than one transaction. That could actually require quite a number of witnesses.
18 There are all sorts of issues of that nature which need to be addressed.

19 I'm not trying to say in terrorem to the tribunal, you know, this is not a case that could
20 ever be considered for allocation to the fast track. It clearly could. But, in my respectful
21 submission that should be deferred for a short period. Deferring that decision doesn't
22 necessarily mean that there will be any significant delay in determining this case once
23 a fast track decision is taken.

24 I would just say that given, you know, the toing and froing about the claimant's case,
25 it doesn't really lie in the claimant's mouth to now say, "Oh, this is screamingly urgent"
26 given the way the claimant has taken to sort its case out.

1 THE CHAIR: Yes. Just picking that up. If I'm with you, Mr Rayment, having heard
2 Mr Grace, which of course I will do now, it could be suitable for disposal on the papers.
3 It's a matter that could come back before the tribunal on the papers once the pleadings
4 have closed.

5 MR RAYMENT: It certainly could. There could be a direction for the parties, after the
6 pleadings have closed, to submit their position on fast track in a reasonable period
7 after the close of pleadings.

8 THE CHAIR: Yes. I'm grateful. Thank you.

9 Mr Grace, you have heard that the tribunal is giving serious consideration as to
10 whether to allocate this case, list this case within the fast track procedure under the
11 Competition Appeal Tribunal rules. The usual expectation is that such a case would
12 be tried, finally disposed of, within six months. A case that is suitable for the fast track
13 ought to be one that can be tried within three days. As you have just heard, it wouldn't
14 be unusual for it to go to four days or even five. But the starting point is it's a case that
15 the expectation is it would be determined within three days.

16 The tribunal is giving thought to how long the factual evidence would take to be laid
17 before it, and a period of time for submissions from the parties on the law and on the
18 case. Time must be afforded for experts to give evidence, if the tribunal thinks that
19 expert evidence is likely to be necessary on the market, on economic evidence as to
20 the effect on competition, on the matters that could relate to the selective distribution
21 agreement and so on.

22 So that's the thought process that's going on, Mr Grace, and you've just heard the
23 debate I have had with Mr Rayment and the submissions he has made, that it would
24 be premature to make a decision now because the full nature of the case is not yet
25 known. Once it is known then the suggestion is that the parties, in writing, make their
26 position known to the tribunal as to whether they would like to see the allocation to the

1 fast track or not. I have to say that's a proposition that appeals to the tribunal. But
2 what do you say, Mr Grace? I hope that explanation helps you.

3 MR GRACE: Yes. Thank you. There is a disclosure application before the tribunal,
4 and I can't gauge the scale of things because the defendant has now admitted
5 a material breach of the SDS, by shipping goods to Nigeria outside the framework
6 agreement that are not covered by the SDS. This is part of the disclosure application.
7 The defendant has accepted that there are some unsolicited sales to Nigeria via
8 Harrods. My concern is that there's a significant and substantial amount of sales being
9 shipped by brand-owned stores, and not franchises outside of the areas specified in
10 the dealer framework and that I'm being treated in a discriminatory nature, compared
11 to other operators in the pre-owned market.

12 So this complicates the fast track agreement, whereas it's in my interest to bring these
13 proceedings to an end as quickly as possible, as quickly as possible, because of the
14 restrictions placed on a company that has traded for 20 years, openly and
15 transparently buying goods from multiple dealers, multiple sources, all in the name of
16 MorethanAV or Ian Grace or MorethanAV Limited.

17 And now the prohibition, which effectively makes my business impossible to run
18 without spares, accessories, packing, different coloured frets, different mounts for
19 goods, part exchanges or damaged goods that dealers can't deal with. I'm absolutely
20 stuck. I would favour the fast track. However, it's dependent on the results of the
21 disclosure because my whole -- once disclosure is made, I will then be able to make
22 representations on that basis because, as I raised in the skeleton argument and/or
23 elsewhere, the sales from Bang & Olufsen are being made without restriction, without
24 identifying who is an end user and who is a commercial reseller, principally to Nigeria,
25 but to other countries as well.

26 A notice was sent to the network recently identifying that Nigerian commercial resellers

1 or maybe through intermediaries are trying to source goods.

2 THE CHAIR: Yes. Mr Grace, I think you're straying into the facts here. I think I have
3 your position on the fast track. You see that it could be appropriate but I think you're
4 agreeing with the general proposition that it's premature to decide it today.

5 MR GRACE: Subject to the disclosure applications that were made because I'm full
6 and frank with what I've done, what the invoices are, who they were sent to.

7 THE CHAIR: Yes.

8 MR GRACE: The defendant is withholding substantial information.

9 THE CHAIR: Well, we'll come to that, Mr Grace. Generally, though, I think I'm not
10 hearing strong support on your part for a decision in favour of the fast track, today.
11 I know you base that principally on your interest in the outcome of the disclosure
12 application, but generally that's what I'm drawing from the submissions you've made.
13 So thank you very much, Mr Grace. Thank you.

14 MR RAYMENT: I just feel the need to say on record that Mr Grace keeps attributing
15 various things to Bang & Olufsen, which are not necessarily --

16 THE CHAIR: Yes, the tribunal is not going to put any store by that today, Mr Rayment,
17 as you would expect.

18 Yes, the parties should be aware that the possible allocation of this case to the fast
19 track holds strong appeal for this tribunal. It's strongly attracted to such a course. It
20 appears to be a case that would be suitable, but I do agree that a final view should not
21 be taken at this juncture. It's not possible to say really what this case is about until the
22 pleadings have closed. I do agree with Mr Rayment that it would be premature at this
23 stage, but I'm equally persuaded in that view by his suggestion that as soon as
24 pleadings close that the parties do file submissions as to their position on whether
25 a fast track order should be made.

26 I think those two taken together persuade me that now is not the right time to make

1 that order. The tribunal is signalling the fact that it holds strong appeal, but it will not
2 make it now; it will make an order that submissions be filed within a short time after
3 the closure of pleadings. We can agree what the appropriate time is, and that will form
4 part of the order I will make today.

5 So that is the position on fast track.

6 Mr Rayment, what suggestion would you make as to the time for the filing of those
7 submissions after closure of pleadings, either within receipt of the defence, if no reply,
8 or from the reply?

9 MR RAYMENT: I would respectfully suggest 14 days from the date of the receipt of
10 the reply, or the date on which the reply is due if no reply is --

11 THE CHAIR: Yes.

12 MR RAYMENT: -- forthcoming, although --

13 THE CHAIR: Thank you. How does that sound to you, Mr Grace? Are you content
14 with that?

15 MR GRACE: Yes, that's fine.

16 THE CHAIR: Yes, I'll make that order. Let's, let's turn to the disclosure application
17 because it does follow in my judgment, at any rate --

18 Forgive me. Yes, we are making such good progress that I had forgotten the interests
19 of the stenographer, who is typing away dutifully. It is the practice of this tribunal to
20 have a short break to allow some time off for the stenographer, so we'll do that now.
21 I will sit again at 12.00, thank you.

22 (11.45 am)

23 (A short break)

24 (11.58 am)

25
26 Amended claim (continued)

1 MR RAYMENT: Before we move to disclosure, might I just raise a matter, because
2 I don't want to be accused of taking advantage of Mr Grace. In our previous discussion
3 about which version of the claim form you were giving permission for, we've realised
4 that we've all become rather confused by the various versions that are flying around.
5 The version at page 571, for which I understand you to have given permission.

6 THE CHAIR: Yes.

7 MR RAYMENT: I've just flagged to Mr Grace just before we resumed the hearing that,
8 in fact, that version does not include the ground C.

9 THE CHAIR: Yes.

10 MR RAYMENT: Because we although we've got a version that has A, B and C in it,
11 and a version that just has A in it, we don't have one with A and C, and that's what we
12 understand Mr Grace is seeking permission for. It doesn't change our consent to what
13 you're proposing in terms of giving permission today, but it does raise the question
14 that I initially started raising: whether he needs maybe seven days to serve the
15 final final final version.

16 THE CHAIR: Thank you, sir.

17 Mr Grace, would you like to stand again, Mr Grace? Is it now your position that the
18 version that we looked at page 571 is not your final draft?

19 MR GRACE: Only on the basis of what Mr Rayment has told me. I'm checking now.
20 I'm checking now. He said ground C isn't in there, so, I'm just checking that now.

21 THE CHAIR: I think we cut through all of this in this way: Mr Grace, I will give you
22 seven days to file a final version of an amended pleading.

23 MR GRACE: Right.

24 THE CHAIR: And I will move the date for Mr Rayment to respond accordingly.

25 Mr Grace, it hardly needs me to say that you must take the greatest care over this final
26 version of your re-amended pleading. Make sure that you get it right on this occasion.

1 MR GRACE: I'm just trying to locate the version which does have grounds A and C.

2 THE CHAIR: Well, you needn't take up more time today doing that, Mr Grace. You
3 have seven days to do it and to do it carefully.

4 MR GRACE: Thank you.

5
6 Disclosure application

7 THE CHAIR: Let's now deal with your disclosure application. Mr Grace, I've seen
8 your application. I have to tell you that I am not minded to grant it. It is, in my
9 judgment, premature. It is appropriate to ventilate such an application when the
10 pleadings have closed and the parties are aware of the case that they are going to
11 meet at trial. It is appropriate at that stage to seek disclosure of documents and
12 material that are relevant to the issues that have been pleaded, and the issues that
13 will feature in the case.

14 At the moment, you don't know for certain what those issues are. I have not seen,
15 even today, a final version of your pleaded case. I do not know what your case is. If
16 I do not know, then Mr Rayment cannot know, and in those circumstances, in my
17 judgment, it's not appropriate to grant a disclosure. I'm giving you that prior
18 understanding of my position. If you want to persuade me out of it, please, you can
19 do so now, if you want to try, you can stand up and try and persuade me out of it. If
20 you are happy to wait until pleadings have closed and then launch your application for
21 disclosure, then that will be the end of the matter today and we will say no more about
22 it; what would you like to do?

23 MR GRACE: I think in light of how the proceedings are going today --

24 THE CHAIR: Would you stand up, please, Mr Grace.

25 MR GRACE: Sorry. In light of how the proceedings are going today, I'd be minded
26 to, take your generous offer to reapply at a later date. I mean, but this was simply

1 disclosure for documents that were relied upon and were referred to in witness
2 statements and in the pleadings.

3 THE CHAIR: Yes. Mr Grace, you've heard my approach to it. I'm going to dismiss
4 the application with no order as to costs, subject to hearing from Mr Rayment. If there
5 is a different position that I'm minded to take on costs, I will give you a further
6 opportunity to address me.

7 Mr Rayment, I'm fairly firmly of the view just to dismiss it with no order for costs is the
8 right approach, but if you want to persuade me otherwise, please.

9 Submissions by MR RAYMENT

10 MR RAYMENT: Well, I think I would have asked for an order for costs in ordinary
11 circumstances, because a number of these requests were misconceived. In the
12 narrowed application that was brought today, there were six. One has been dropped
13 by means of Mr Grace's letter copied to the tribunal on 22 September 2026. That's
14 the H1 request. We have consistently maintained in correspondence that it was
15 premature and that if he maintained this application, it would incur us in unnecessary
16 costs.

17 A material proportion of my yesterday afternoon was going through, one by one, these
18 very detailed minute contentions about, you know, the documents that he said were
19 mentioned in the defence or in the witness statement, and came prepared to deal with
20 them today. Maybe some of that work is not wasted, but, you know, I'm afraid the
21 state of my memory means that, frankly, it's going to have to be worked on yet again
22 if and when these are resumed.

23 So as it's not clear exactly where this application is going, I'd invite you to reserve the
24 costs for the time being.

25 Order

26 THE CHAIR: Yes, I'm afraid, Mr Rayment, that you have come up against the very

1 last reserves of latitude that Mr Grace has in store with the tribunal. For that reason,
2 giving some understanding to his position as a litigant in person -- and I have looked
3 at the application, I appreciate that the defendant will have spent with its solicitors
4 some time looking at the disclosure application in readiness for today. But it was
5 always premature, as was rightly explained in the defendant's skeleton argument.
6 For those reasons, I'm going to say no order for costs today. This matter may come
7 back and the work may, as Mr Rayment, you have accepted, may well be useful in the
8 future. That's the disposal of the disclosure application, which leaves the security for
9 costs application.

10
11 Security for costs application

12 THE CHAIR: Mr Rayment, I'm troubled by the fact that this application was made
13 some time ago by your solicitors in proper form -- good notice to Mr Grace, and for
14 good reason -- the appropriate rule is engaged -- we have here a company that, so far
15 as I understand the evidence, has not filed financial statements, is a new
16 company -- perhaps carrying on an historic business, but a new undertaking
17 nevertheless -- represented otherwise than by solicitors and counsel, in respect of
18 whom a stifling argument would be possible but hasn't been made, in relation to whom
19 a possible support from third parties could be made, but hasn't, in all of the time since
20 the application was properly filed by your solicitors.

21 In those circumstances, I'm troubled by why it's not possible for you to simply make
22 your case today.

23 MR RAYMENT: Well, I certainly can, but it's --

24 THE CHAIR: But the order you ask for is that the claimant be given time to file
25 evidence as to its financial position, and more. And I'm interested as to why you feel,
26 on the authorities, that time is needed, and why that is a concession you need to make.

1 I would understand a concession you would need to make if a stifling argument had
2 been made on the evidence, but in the time available -- and it has been quite some
3 time since the application was lodged -- no such evidence has been put before the
4 tribunal.

5 MR RAYMENT: Well, sir, I think my application is put on two bases, really: one is that
6 you should make an order for security, but you may need some more information from
7 Mr Grace in relation to what the appropriate amount of that order for security is; or
8 alternatively, the information is sought from Mr Grace and then the question of the
9 order and the amount is dealt with wrapped up in one go.

10 THE CHAIR: Please help me, Mr Rayment, why do I need further information? Why
11 should any order that I make be contingent upon receipt of further information from
12 Mr Grace?

13 MR RAYMENT: Well, it seems perfectly clear that given the closeness of the
14 relationship between Mr Grace and the company, the company could therefore be
15 expected to obtain resources in which to meet an order for security for costs. The
16 question is whether the -- and this is perhaps where we were anticipating the tribunal
17 might have some questions as to exactly what the appropriate amount of the security
18 would be.

19 THE CHAIR: Indeed. As the quantum, yes, but that's a matter for the evidence that
20 you have put before the tribunal as to the costs you're incurring, whether those costs
21 are reasonable, what costs you foresee. If Mr Grace is to provide support to the
22 company, then that's a question of evidence, isn't it? And I haven't seen any.

23 MR RAYMENT: That is a matter of evidence that he needs to produce and, in my
24 respectful submission, hasn't, but, as I say, I was just anticipating that the tribunal
25 might wish to understand more about Mr Grace's resources, but nevertheless, just to
26 be clear, we have always said that an order for security is appropriate.

1 THE CHAIR: Yes. The tribunal would be interested in that evidence or those
2 circumstances if there was evidence before it. But none has been submitted in all of
3 the time since the application was made.

4 MR RAYMENT: Well, as I say, in those -- and it is fair to say that there has been
5 constant resistance to providing full and frank evidence of both the company's means
6 and its other potential resources available to it from third parties.

7 THE CHAIR: Yes, but at any rate, the order you invite me to make is that the claimant
8 shall provide security for the defendant's costs in an amount to be determined, if not
9 agreed, following the provision of the information in A and B below to the defendant
10 within 14 days. You asked for management accounts and evidence of sources of
11 financial support available.

12 MR RAYMENT: That's correct.

13 THE CHAIR: Once that information is forthcoming --

14 MR RAYMENT: We would put the figure to the claimant, but obviously it's alter ego is
15 Mr Grace, and if he disputes that amount, we would raise it with the tribunal.

16 THE CHAIR: Thank you, Mr Rayment.

17 MR RAYMENT: That's the proposal.

18 THE CHAIR: Yes. Given that that's the case -- it's your application, do you want to
19 take the opportunity to address me at greater length on why I should make the order
20 or is it as straightforward as the points that we have already touched on? And really
21 for Mr Grace to respond. I'm happy. I'm in your hands, Mr Rayment.

22 MR RAYMENT: Well, I'd be grateful for the opportunity just to make a few points on
23 the security issue.

24 THE CHAIR: Yes, please.

25 Submissions by MR RAYMENT

26 MR RAYMENT: Obviously, just a few overarching points, if I may, just to start with.

1 I mean, the security application arises from the fact that the claimant has started, as
2 we know, complex proceedings that are notoriously burdensome, as the former
3 president of the tribunal, Mr Justice Roth, has pointed out in the Sel-Imperial case,
4 which I've cited in paragraph 25 of my skeleton argument.

5 Indeed, it's striking that Mr Turner KC, on the first hearing of this case, made very
6 similar points about the burdensome nature of these cases, how easy it is to get into
7 them, and how difficult to get out of them. He also very clearly warned the claimant
8 about the risk and the size of the costs in these types of cases.

9 In these cases, the defendant has no choice but to defend the proceedings, and that
10 puts it in a potentially very unfair situation of imbalance in the litigation if it has to rack
11 up, inevitably, what are very significant costs, as we've already had to do, with no real
12 prospect of being able to recover any of them from the claimant, if the claimant is
13 ordered to pay the defendant's costs.

14 This is not, I emphasise a follow-on case where the tribunal can conclude that the
15 claimant will sweep all before it. On the contrary, it's a case where a significant part
16 of the claimant's case has already been abandoned and orders have been made,
17 orders for costs in the defendant's favour have already been made. And without
18 needing to get too deeply into the merits, further orders are a distinct possibility.
19 Therefore, the question of security is significantly engaged.

20 You've already indicated that you can consider that the jurisdictional basis, effectively,
21 unlocks the tribunal's discretion to make a security application already exists. Then
22 it's a question of whether it would be just to make such an order, in all the
23 circumstances.

24 The main, apart from the financial position risks that the circumstances of the claimant
25 create, the other relevant factors are referred to in my skeleton at paragraph 44. First
26 of all is the way that the claimant has conducted its case to date. I mean it has been

1 unreasonable. It has already caused the defendant to incur substantial unnecessary
2 costs and indeed, you have already made at least one order for costs today. We think
3 that there is still a very significant risk of unnecessary costs being incurred as long as
4 the company is not legally represented. We've already seen various issues today
5 which call into question how effectively the company can prosecute this case.

6 Secondly, the merits of the claim. Now, the merits of the claim are not something,
7 I appreciate -- and I hope Mr Grace appreciates, too -- that the tribunal is not going to
8 determine the merits of the case, but nevertheless, the merits of the case are part of
9 the background.

10 For present purposes, I think, all that one needs to say about the merits is one has to
11 ask oneself the question: is this the sort of case that is present in a number of the
12 authorities where the claimant is bringing a case based on the decision of
13 a competition authority or a regulator, in which case there are very substantial grounds
14 for thinking that they will succeed and the question of substantial costs orders in favour
15 of the defendant are unlikely to arise.

16 But this is at the very other end of the spectrum from those sorts of cases. I think, in
17 particular, I'd like to draw attention in relation to the merits in relation to paragraph 2
18 of the claimant's skeleton argument, because there -- do you have that, sir?

19 THE CHAIR: Yes.

20 MR RAYMENT: And there, in paragraph 2, Mr Grace is helpfully setting out what his
21 central complaint is, which is basically the way in which he alleges that Bang & Olufsen
22 is restricting his business. Then in the second sentence, he goes on to say that -- the
23 claimant's case is that the restriction reaches across the dealer network and covers:
24 "... new goods, ex-display and ex-demonstration shop stock, used goods,
25 part-exchange, trade-ins, obsolete equipment mounts, speaker frets, accessories,
26 spares and packing." [as read]

1 What you'll see immediately is that the dealer network covers new goods, ex-display
2 and ex-demonstration stock. Obviously, at the heart of this case is the ability of
3 a supplier to maintain a selective distribution service, the core of which is a restriction
4 on sale by its distributors to unauthorised distributors. Therefore, in a sense, Mr Grace
5 is complaining, to a large extent, about the enforcement of what normally is considered
6 to be a perfectly normal and legitimate restriction in a selective distribution scheme.
7 In my submission, right from the start, there's something slightly odd about the way
8 that he puts the claim, certainly in relation to new products, which is really the high
9 value end of his business.

10 The second point is that, obviously -- and this is the point made in 45(a) of my
11 skeleton -- it's often said that, well, security can be wrong in a case where it's the
12 defendant's alleged conduct that is the cause of the claimant's financial ills. But, in my
13 respectful submission, quite apart from the questionable merits of the case, it can't be
14 the case that the defendant's selected distribution arrangements completely restrict
15 this business from trading because, as Mr Grace says, he's traded for many,
16 many years in all kinds of products, even B&O products. That doesn't necessarily
17 entail him even dealing with dealers. I mean, he must source second-hand goods
18 from all over the place.

19 In my submission, there is very little evidence -- apart from one specific dealer in
20 Newcastle, which he's made central to his complaint -- it's not clear that he's unable
21 to source other kinds of products from other dealers. I mean there's very little about
22 all of that. So, in my respectful submission, again, one has to be slightly sceptical
23 about the fact that whatever Bang & Olufsen is alleged to have done is really having
24 the complete stranglehold that he appears to be suggesting.

25 I've already mentioned the fact that what was a key part of the case has already been
26 discontinued and abandoned today. I took you through the original amended claim

1 and showed you all the different places where the so-called purchasing agent case
2 was run. As you saw, it wasn't just a minor part of the case; it ran right the way through
3 that pleading and that's now been abandoned. Costs orders have been made, which
4 are going to have to be satisfied.

5 So we say, given the level of doubt over the claimant's ability to even advance one of
6 its supposed key examples evidencing supposedly discriminatory restrictions on
7 supply, that plainly undermines its more general claims of discrimination against it.

8 Finally, the point that I briefly touched on earlier is about the whole alleged restrictive
9 effects of the conduct and especially supposedly in relation to exports. Clearly those
10 raise quite significant issues in terms of effects and whether there's any effect at all in
11 relation to exports, in relation to competition within the UK or trade within the UK. By
12 definition, those products are not being supplied into the UK, they're being supplied
13 elsewhere. That again raises just one of many questions about this claim, such that
14 the tribunal simply can't be satisfied that this isn't one of those cases where, at the end
15 of the day, there really could be quite a serious reckoning in costs. In my respectful
16 submission, the defendant is entitled to at least a degree of protection in relation to
17 that.

18 Those are essentially the key issues why security is appropriate in this case. There is
19 a very high risk or certainly a substantial risk that this case won't succeed. There have
20 already been costs orders made, and it is, again, a distinct possibility that costs orders
21 will be made in the future. As I say, the defendant is entitled to some protection in all
22 circumstances of this case.

23 THE CHAIR: Yes. You say that in the context of a corporation which has not filed
24 accounts.

25 MR RAYMENT: Correct.

26 THE CHAIR: The fact that it is a corporation engages the rule, but it's a corporation

1 that is newly incorporated and it's not filed accounts, and no evidence has been put
2 before the tribunal as to the management accounts or the extent of its trading.

3 MR RAYMENT: That's absolutely correct. It's clear that, you know, this was
4 a business that not so long ago was being conducted by Mr Grace in his own personal
5 capacity, which would have obviously exposed him to a similar argument. Since,
6 I think, 20 March 2025, incorporation has taken place and, of course, that has radically
7 changed the position so far as the defendant is concerned in relation to security. But
8 in my submission, that shouldn't really be allowed to change the position to this extent,
9 given the close association between Mr Grace as the sole shareholder and owner of
10 the claimant. The fact that he's, essentially, its alter ego.

11 THE CHAIR: Yes.

12 MR RAYMENT: But it is very striking the impact of incorporation suddenly has in this
13 case.

14 THE CHAIR: Yes, which is why it would be one thing if Mr Grace was to put his own
15 personal covenant, as it were, behind the costs liability, but that has not happened.

16 MR RAYMENT: That is correct. One of the reasons why it is just is clearly that what
17 must be clear to the tribunal, from both the documents and from the hearing this
18 morning, is that Mr Grace has a very firm belief in the merits of this case and he's
19 clearly going to benefit from it if it's successful and therefore it is just that he should
20 underwrite the risks of that not eventuating.

21 What one also notice is that, I think, Mr Grace may be clutching at an observation that
22 Mr Malek made in, I think, the Commercial Buyers Group case, which was actually
23 a follow-on case, where he declined to take into account real property assets of the
24 directors, of the claimant, in that case. But I think what you see in that case is that
25 one of his reasons for that -- of course, every case turns on its own circumstances and
26 the circumstances of that case were very different, not only because it was a follow-on,

1 not only because it was a case where the defendants had deliberately targeted, the
2 business that was claiming in that case.

3 But also, as I say, it was a case where it looked like it was their domestic property.
4 I mean, that's not expressly spelled out, but it looked like it was that their own
5 residential property should necessarily be in the pot. It wasn't a case as here, where
6 there are commercial properties owned by the director and shareholder of the
7 claimant. What seems likely -- although of course we haven't had confirmation of
8 this -- is that those commercial properties are being used by the business that is
9 bringing this claim.

10 THE CHAIR: Yes, but you --

11 MR RAYMENT: So it's unclear why those shouldn't be available.

12 THE CHAIR: Well, you go slightly too far there don't you, Mr Rayment? It's a matter
13 for Mr Grace as to whether he wants to underwrite the costs. But if he doesn't, then it
14 exposes the company to the argument that security needs to be provided.

15 MR RAYMENT: That's correct.

16 THE CHAIR: That's the analysis, isn't it?

17 MR RAYMENT: Yes.

18 THE CHAIR: Yeah. Thank you. I'm grateful, Mr Rayment.

19 Mr Grace. Would you like to stand up again, Mr Grace? Mr Grace, the application
20 that's being made is that the company, MoreThanAV Limited, provides security for the
21 costs to be incurred in this case by the defendant. On the basis that it would be just
22 to make such an order, the tribunal has the jurisdiction to make such an order because
23 it is a corporation.

24 It is said that it would be just to make the order because this is a new company, newly
25 incorporated; it has not filed financial statements, so it is not possible to see that it has
26 the wealth -- the balance sheet strength -- to meet any costs order. No evidence has

1 | been put before the tribunal as to the trading position of the company that might allay
2 | any concerns, that the defendant has as to payment of costs orders. It is also said
3 | that the conduct of the case has been such that it would also be just to make the order,
4 | and I am invited to take into account what is said to be the weakened, speculative
5 | nature of the company's case. You have just heard the submissions of Mr Rayment
6 | in that respect.

7 | First, you heard me make the observation to Mr Rayment that, since the application
8 | was lodged, you have not taken the opportunity, as you might have done, to file
9 | evidence to show the financial strength of your company and its ability to meet any
10 | costs order, so as to persuade me that there is no reason to be concerned, and not to
11 | make an order -- or indeed evidence that might show that you personally will stand
12 | behind any court order and give support to the company, or indeed the alternative,
13 | that the company is not able to secure any support from any third party, and that
14 | making such an order would indeed stifle a very good claim that you have to bring.

15 | But it seems you did not want to take the opportunity to file that evidence; since the
16 | application was made, nothing has come before the tribunal. Those are the
17 | circumstances, Mr Grace, as they appear to the tribunal. You have heard the
18 | application that has been made, what would you like to say about it?

19 | Submissions by MR GRACE

20 | MR GRACE: Okay. Before I go on to that, sir, the pleading at page 171 dated
21 | 9 September asked for permission for it with paragraph 12.3, ground B deleted.
22 | Ground A is at page 188, ground C is at 191. A confirmed copy would follow under
23 | paragraph 2 of the defendant's own draft order. So there is an amended pleading in
24 | there.

25 | In relation to the security for costs, I would like to read from my speaking note. The
26 | defendant relies on the condition in rule 59.5(b) at D/25 that the claimant is a company

1 and there is reason to believe that it will be unable to pay the defendant's costs if
2 ordered to do so.

3 The defendant's skeleton at paragraph 35 puts the case on recent incorporation and
4 the absence of filed accounts. The company was incorporated on the 20 March 2025,
5 its first accounts are made up to 31 March 2026 and are not due for filing until the
6 20 December 2026. This is at paragraph 4 of my first statement, at A/113 and in the
7 claimant's response at 107. This is what the Companies House register showed when
8 it was checked yesterday.

9 A company that is not required to file accounts has not failed to file them. Recent
10 incorporation and accounts not yet due don't, by themselves, supply reason to believe
11 that a company cannot pay. What is needed is evidence about its actual position, and
12 that's where the tribunal should look.

13 The claimant does not rely on the account's date as a reason for withholding current
14 information. It has offered verified information about the company's current position
15 on the terms I described under the security application, and does not ask the tribunal
16 to wait for the statutory accounts. The evidence is in my first statement of 10 July at
17 paragraphs 24 to 29, at A/117 to A/118.

18 THE CHAIR: Shall we have a look at that, Mr Grace?

19 MR GRACE: Yeah.

20 THE CHAIR: A/117, did you say? Page 11 --

21 MR GRACE: A/117 to 118.

22 THE CHAIR: Thank you. Let me look at that.

23 MR GRACE: Paragraph 24 to 29.

24 THE CHAIR: Thank you. Let me read those. (Pause)

25 Yes, thank you. I've read that, Mr Grace.

26 MR RAYMENT: Just say in Mr Grace's interest, because I'm not sure that he's actually

1 got those passages in front of him. Paragraph 25 contains an error on his case,
2 because it refers there to a further commercial property -- in fact, I understand it's
3 a residential property under that land registry title number.

4 MR GRACE: Which title register is it? I haven't --

5 THE CHAIR: Yes --

6 MR RAYMENT: (Inaudible) residential.

7 MR GRACE: Yeah, that's correct, yeah.

8 THE CHAIR: Thank you, Mr Rayment.

9 So what's the correct position there, Mr Grace?

10 MR GRACE: I own two commercial properties, the residential property, which I still
11 own, has been -- I agreed to transfer it to my wife four and a half years ago. However,
12 the final order of the court is not in accordance with the title register; it can't be
13 transferred. These matters are all before the family court.

14 THE CHAIR: Before me, Mr Grace, is it the case that you, as you say at paragraph 24,
15 own two commercial properties?

16 MR GRACE: That's correct. I own two commercial properties. I am willing, if
17 necessary, to realise one or more of them in order to make funds available to
18 MoreThanAV to meet any adverse costs order made against it in these proceedings.

19 THE CHAIR: And what's the position with 25, when it says, "I also want a further
20 commercial property"?

21 MR GRACE: That's incorrect; that's a residential house.

22 Paragraph -- shall I continue, sir?

23 THE CHAIR: 26:

24 "The realisable value of the assets described above substantially exceeds the sum of
25 £116,961." [as read]

26 Yes, I see. Yes, carry on, please.

1 MR GRACE: Paragraph 27 says:

2 "What neither MorethanAV nor I hold is £116,961.50 available today." [as read]

3 Identifying credible means is not the same thing as having that sum available
4 immediately. Property is not liquidity and realisation of property takes months, not
5 weeks. The correction of 24 July withdrew paragraph 25 and all reliance on the
6 property described in it, and maintain paragraphs 24, 26, 27, and 28.

7 I want to be straightforward with the tribunal about what that evidence does and does
8 not show. It does not show that the company itself holds funds to meet the costs order.

9 Paragraph 24 records my willingness, if necessary, to realise property to make funds
10 available to the company to meet any adverse costs order. That is a statement about
11 the end of the case, when any liability for costs would arise. It does not establish what
12 net funds could be made available for security now, by what day, or what the effect of
13 diverting them would be on the company's ability to trade and to pursue the claim.

14 Paragraph 27 says that neither the company nor I hold the sums sought in cash, and
15 that realising property take months. The defendant's skeleton at paragraph 40
16 describes that evidence as a statement that:

17 "Mr Grace cannot provide security by way of a payment into court." [as read]

18 Paragraph 24 does not say that, and it does not say that funds for security are
19 available now. The question in Goldtrail at paragraph 23 and 24 at D/57 to 59, is
20 whether the company is established, on the balance of probabilities, that no such funds
21 would be made available to it, whether by its owner or by some other closely
22 associated person.

23 The claimant maintains its opposition to security and asks that the practical effect of
24 any order be assessed on verified current evidence of the company's position, rather
25 than on inference from the date of incorporation.

26 If the tribunal needs that evidence before it decides, the claimant asks for a short time

1 table for it, which is the request at paragraph 52 of the skeleton. If the defendant relies
2 on *Hearst v AVELA* at paragraphs 25 and 26, at pages 119 to 120 of its bundle, the
3 answer is that the case does not describe this one. There, the company had, in the
4 court's words:

5 "Certainly asserted that security would stifle its appeal, but had made no efforts to
6 show it." [as read]

7 And no evidence was given about the individuals behind it. Here, the position of the
8 person behind the company is in evidence. My first statement, verified by a statement
9 of truth, describes the property I hold and my willingness to realise it to meet an
10 adverse cost order at A/117, paragraph 24, and the time that realising property takes
11 at paragraph 27. The claimant has offered verified information about the company's
12 current position.

13 The claimant's opposition to security rests on rule 59.4 and the factors in para 5.158
14 of the guide, which I come to next. If the tribunal is against the claimant on principle,
15 its case is then on the amount, the manner and the time which rule 59.3 requires the
16 tribunal to determine. Under rule 59.4, the tribunal may make an order only if it is
17 satisfied, having regard to all the circumstances, that it is just to do so. The
18 circumstances are listed at paragraph 5.158 of the guide at D/187, whether the
19 application would stifle a genuine claim, the stage of the proceedings and the costs
20 incurred to date.

21 The claimant's financial position and why it is impecunious, and whether that can be
22 attributed to the defendant's infringement. The likely outcome, if it can be discerned
23 without prolonged examination, any admissions or open offers, and the tribunal rules
24 on costs. Paragraph 5.159 adds that:

25 "Security is unlikely to be ordered in a case subject to the fast track procedure." [as
26 read]

1 The two authorities the defendant relies upon both refuse security. In
2 Commercial Buyers Group at paragraph 13 at D/147, the tribunal said that contested
3 applications for security are not a regular feature of hearings before it, and that it's
4 rarely ordered, while adding in the same paragraph that it is not in itself a good reason
5 for refusing a properly founded application.

6 The claimant relies on it only as the context for the discretion. At paragraph 25, at
7 D/154, it's said it did not think it reasonable to expect the directors to realise or borrow
8 against their family homes or other property to fund security.

9 At paragraph 18 at D/150, it described the balancing exercise between the injustice to
10 a claimant prevented from pursuing a proper claim, and the injustice to a defendant
11 unable to recover costs. And at paragraph 31 at D/156, it dismissed the applications.
12 In OT Computers at paragraph 8 at D/74, the tribunal applied Goldtrail at
13 paragraphs 12 and 25 to the effect that it would be wrong in principle to impose
14 a condition which has the effect of preventing a party from pursuing a valid claim. And
15 in its disposition at paragraph 21 at D/82, it refused security in the amount requested
16 and directed the claimant to provide further information about its financial position,
17 after which the defendant could renew its application.

18 Applying those factors here, the application is made at the first case management
19 conference, before pleadings are closed and before general disclosure. The only
20 production so far have been the documents the defendants supplied under rule 61 on
21 24 August at B/433. The company's reduced trading since December 2025 is, on its
22 case, a consequence of the conduct complained of, which is a factor the guide
23 expressly lists at 5.158(c).

24 The fast track question is before the tribunal today, or at least was, and the amount
25 sought, for argument's sake, 117,000, is calculated to the stage of a strike out or
26 summary judgment application at B/301, which the defendant has not made. The

1 claimant asks that the application be dismissed with costs reserved or in the case.

2 If the defendant relies on the weakness of the merits as a factor for security,
3 paragraph 5.158(d) of the guide makes the likely outcome relevant only if it can be
4 discerned without prolonged examination of voluminous evidence. It cannot be
5 discerned here.

6 The defendant's own documents state the basis of the refusal in three different ways,
7 which I have set out in the amendment application, and the defendant's two authorities
8 on security both declined to treat the merits as decisive.

9 Commercial Buyers Group, at paragraph 28 at D/155, took the alleged cause of
10 impecuniosity into account as a factor, but not as an overriding or conclusive factor.

11 And OT Computers, at paragraph 21 at D/82, refused security in the amount sought,
12 notwithstanding that the case was not an entirely straightforward one.

13 The defendant's own evidence has been corrected once already. At B/227 to 228 and
14 its pleading, and its second witness statement, described the position of the outlets
15 differently at A/36 and A/87. The claimant does not say that the tribunal cannot assess
16 whether the amended grounds are legally sufficient. That is exactly what it asked the
17 tribunal to do under rule 32. The point under paragraph 5.158(d) is narrower. The
18 likely outcome of the claim turns on facts that are in dispute and that is not something
19 that can be discerned without prolonged examination of voluminous evidence, which
20 is the only basis on which paragraph 5.158(d) allows the merits to count.

21 If the tribunal is minded to make some order, the claimant's first request on security is
22 dismissal. If the tribunal is not with the claimant on that, its next request is the question
23 whether security should be reserved until the verified current information I describe in
24 a moment has been provided and considered.

25 If the tribunal decides the principle today, the claimant asks that the amount, the
26 manner and the time, which rule 59.3 at D/25 requires the tribunal to determine when

1 it makes an order, be fixed only on verified current evidence of the company's position,
2 which the claimant heard on the amount, and that no sanction for noncompliance
3 attach until the amount has been determined and the time for providing it has run.

4 Paragraph 4 of the defendant's draft order asks for security in an amount to be
5 determined if not agreed after the provision of information.

6 If the tribunal takes that course, the claimant asks that the amount be determined on
7 the evidence then provided, and not by reference to the figure of 117,000, which is
8 calculated at the stage of an application, the defendant has not made.

9 The defendant's own skeleton at paragraph 48 offers a second option: that the
10 claimant be ordered to provide evidence of its means and the question of security be
11 determined after that. That is the course the tribunal took in OT Computers, and the
12 claimant accepts that in principle, with the scope defined proportionately.

13 The claimant proposes, as is set out in its email of 22 September, copied to the
14 registry, and one change I will identify: management accounts for the company from
15 incorporation on 20 March to 30 September 2026, or a director's statement of its profit
16 and loss, assets and liabilities for the period verified by a statement of truth, which is
17 the information the defendant's own draft asked for at paragraph 4(a), provided within
18 21 days -- I would prefer 28, personally -- at the tribunal's direction under rule 102 at
19 D/29, which confines its use to these proceedings with the security application then to
20 be renewed on the papers if the defendant wishes.

21 The claimant asks for one additional protection only and identifies it precisely as
22 paragraph 14 of practice direction 2/2026 requires: the identities of the company's
23 suppliers and customers in any supporting document to be redacted. The specific
24 reason is on the record. The defendant's brand protection team corresponded with
25 the company's dealer about the company between 22 October and 3 December 2025,
26 at B/435 to 439, and stated an intention to issue a communication to the dealer

1 network regarding MorethanAV, at B/436. Those identities are third party information
2 of the kind paragraph 16 of the practice direction recognises.

3 If the defendant requires the unredacted identities, the claimant asks that access to
4 them be restricted to the defendant's external legal representatives under rule 101(3)
5 on terms the tribunal settles.

6 The claimant no longer asks that a confidentiality ring be settled before the information
7 is provided. What the claimant does not accept is paragraph 4(b) of the defendant's
8 draft, which reaches back to 1 January 2024, before the company existed, and asked
9 for the accounts of any business that has supported it.

10 Paragraph 24 of my statement also records my willingness to support the company
11 against an adverse costs order. What the tribunal needs, if it is to fix the amount, is
12 the company's current position, and this is what the offer provides.

13 Just one last comment in relation to Mr Rayment's assertion that MorethanAV is
14 restricted from -- B & O will not supply second-hand accessories, spares, replacement
15 mounts, where a customer wants to change a floor stand for a table stand or
16 a different colour of a speaker fret, which I've been doing for over 20 years.

17 This is my livelihood. I'm not here because I want to be. I'm here because my
18 livelihood is at risk. I'm in severe difficulty in my personal life and my business life at
19 the moment.

20 Dealers have always supported across the board with purchasing goods and it's now,
21 after 20 years, that B & O has issued this restriction against MorethanAV only and not
22 any other pre-owned and nearly-new reseller who trades in exactly the same way as
23 I do, with a close relationship with dealers to facilitate part-exchanges, to facilitate
24 deals, to assist one another, as we do across the whole industry. But now
25 Bang & Olufsen has said any B & O products. That's a blanket restriction, which
26 almost -- it's like a BMW dealer, a specialist in BMW cars, being able to buy BMW

1 spares and software, to get advice from dealers and so forth. That is why I'm led to
2 represent myself here, although I take on board your comment about legal
3 representation.

4 Thank you.

5 THE CHAIR: That was enormously helpful, Mr Grace. Thank you very much.

6 Mr Rayment, I'm mindful of the time, but it also seems to me that the evidence is there
7 in this statement from July. Two points emerge from that. One is that paragraph 29
8 confirms the impecuniosity of the undertaking, but also makes out a case on stifling.
9 However, paragraph 24 conveys an open offer, which has been repeated before me
10 today. That's something, as you will know from the guide, paragraph 5.158, is
11 something that I am going to take into account.

12 It seems to me that a way to cut through this is to take advantage of that open offer,
13 to fix an amount, and to be satisfied that that open offer is good for the money, if I can
14 put it in those terms. What do you say, Mr Rayment?

15 Submissions by MR RAYMENT

16 MR RAYMENT: Well, I respectfully agree, sir. I don't really see how Mr Grace can
17 rely on reduced trading by itself in relation to B & O goods when he just hasn't provided
18 the full and frank evidence that's required. I mean, let's not forget that the activities of
19 this company are not said to be exclusively confined to B & O products. There are
20 other activities it engages in.

21 THE CHAIR: That may well be the case but there is, at the very least, a basis for
22 a stifling argument at 29. I think you have to accept that. But I cannot ignore, and
23 I should not ignore, the open offer made at 24. That open offer is something that I am
24 going to take into account and if that can be translated into an effective order, I don't
25 see any reason, for the moment, why that is not the solution to your client's concern.

26 MR RAYMENT: No, I mean, I agree.

1 THE CHAIR: So it's a question of making that effective.

2 I can now see the sense in your draft order, to a large extent. I think a proposal that
3 I have in mind is to give you an opportunity to agree on an amount with Mr Grace and
4 to discuss with him how to make the open offer at 24 effective -- and as I say, it's been
5 repeated today, in clear terms, by Mr Grace -- and to revert to the tribunal with the
6 order that should be made for a reasonable amount to be agreed and the open offer
7 to be effective in a way that the tribunal would accept.

8 It seems to me that you ought to be given 14 days to discuss that with Mr Grace and
9 agree that. If that doesn't bear fruit, then the matter can come back before me, and
10 I will hear you as to whether that should be a further hearing or whether you feel I can
11 deal with that on the papers. But that's my proposal. What do you say, Mr Rayment?
12 You probably need time to take instruction, and that would be perfectly reasonable.
13 I notice the time. Is that something that you feel you could do if you turn your back or
14 would you rather do that if we return after the short adjournment?

15 MR RAYMENT: Let me just -- (Pause)

16 If the tribunal is still available at 2.00 pm, we'd prefer to come back at 2.00 pm, if that's
17 acceptable.

18 THE CHAIR: That's perfectly reasonable. Perfectly reasonable, Mr Rayment. Let me
19 just explain that to Mr Grace.

20 Mr Grace, if you could stand up again. I now have the benefit of your very helpful
21 submission. Let me thank you again for that, and the care you took over the speaking
22 notes.

23 Order

24 As a result of the way that you have put the case, you can see that there is now
25 a solution. I am minded to make an order that you have an opportunity to agree an
26 amount of security with the defendants and the way in which that would take effect,

1 given your open offer at paragraph 24 that you have repeated before me again today.
2 As long as you can come to some agreement with Mr Rayment, that will be the order
3 the tribunal will make. If you do not reach an agreement, then I will give you the
4 opportunity to make submissions to me. I will hear you as to whether you want to
5 come back before me and do so orally before the tribunal, or whether you feel that that
6 is something that can quite sensibly be done on the papers.

7 Mr Rayment wants an opportunity to take instructions with his solicitors on that
8 suggestion, which is perfectly reasonable and for us to return at 2.00 pm to complete
9 that particular part of the order.

10 So that's what we'll do. We'll come back at 2.00 so you can have a think. Anything
11 else you want to say to me, you can say to me at 2.00.

12 MR RAYMENT: Thank you.

13 (1.01 pm)

14 (The short adjournment)

15 (2.01 pm)

16 THE CHAIR: Yes.

17 Submissions by MR RAYMENT

18 MR RAYMENT: (Inaudible) in suggestion of the chairman. In principle, the defendant
19 thinks that that presents a way forward. I've had a go at just trying to draft, only in
20 rough terms at the moment and it would need polishing, what an order might look
21 like -- what I understand the tribunal is potentially suggesting. I think the order would
22 look something like -- it would have a recital which records the owner and director of
23 the claimant, Mr Grace's, undertaking -- this is based on his open offer -- to realise
24 assets in his name for the purposes of the claimant providing security for the
25 defendant's costs.

26 That would be sort of by way of an introductory recital, then the order itself would be

1 along the lines of ordering the claimant to pay security for the defendant's costs in an
2 amount to be agreed between the parties within 14 days -- I think the period you
3 mentioned. If the parties are unable to agree the amount payable by way of security
4 for costs, then the amount shall be determined by the tribunal. In the event that the
5 parties don't agree, the parties shall, within seven days, file and serve their
6 submissions on the appropriate amount of security. And then we take it from there.

7 THE CHAIR: Thank you.

8 MR RAYMENT: Yes, so that's the basic position.

9 Submissions by MR GRACE

10 THE CHAIR: I'm grateful. That's very helpful.

11 Well, Mr Grace, I'd like to stand again. Your open offer has, as it were, done the trick.
12 Your paragraph 24 has been accepted. The defendant wants to accept that offer that's
13 been put forward, so the order will be crafted around the terms of that offer in the way
14 that you just heard. But, I think that's, so as far as the tribunal is concerned, a very
15 constructive approach to accept that offer as it has been put, and simply now to agree
16 the amount. You are going to be given an opportunity to agree that with Mr Rayment
17 over the next 14 days. If you cannot agree a sum that's acceptable to you, then you
18 have an opportunity to file submissions with the tribunal within a further seven days
19 explaining your view of what the appropriate order is that should be made, and the
20 tribunal will then make its decision.

21 MR GRACE: And that's payable on sale of a property?

22 THE CHAIR: That would be payable -- first of all, there has to be a costs order that
23 has not been paid. There is already one costs order -- there may be more. But it
24 would only really have substantial effect, putting those orders to one side, if you lose
25 the case. You win the case, it will be a different matter. But if you lose then there is
26 a strong likelihood that you would have to pay the costs of the action, and in those

1 | circumstances, if the costs were not paid, then the defendants would look to the
2 | security that you have provided in order to satisfy any costs order that they may have,
3 | but that would be at the end of the case.

4 | MR GRACE: Does that mean the cost of the amendment will be payable at the end
5 | of the case?

6 | THE CHAIR: The costs of the amendment are payable in any event, so now, you have
7 | to agree those costs. If they are not agreed, there will be a process to have those
8 | costs fixed and you will have to pay them.

9 | MR GRACE: You gave me the opportunity, sir, to address you on points after lunch,
10 | may I read --

11 | THE CHAIR: Not on that point, that decision has been made. That has already been
12 | dealt with. If you aren't just if you're unhappy with the order that I have arrived at, that
13 | will be --

14 | MR GRACE: I'm asking for clarity --

15 | THE CHAIR: -- for another place.

16 | MR GRACE: I'm asking for clarity because I don't know how much that order is for.

17 | THE CHAIR: So let me help you with that, Mr Grace. Mr Rayment and his solicitors
18 | will seek to agree the reasonable costs with you assessed on the standard basis. That
19 | was the order that I made. If they cannot agree with you that order, then there will
20 | have to be an assessment of those costs, and that's something that will be carried
21 | out -- forgive me, Mr Rayment, that goes from here to a master, doesn't it? Does it go
22 | to a cost judge, I'm sorry, for assessment?

23 | MR RAYMENT: If it goes to detailed assessment, yes.

24 | THE CHAIR: To a cost judge for detailed assessment, yes. So that will go to
25 | a specialist judge who deals with costs matters, and that judge will assess the correct
26 | amount for you to pay.

1 MR GRACE: So my submissions in relation to the very limited consequence to
2 amending the defendant's response. And if I can quote Mr Jessop, I want to raise
3 what the amendments actually cause, because the defence served on 27 March, and
4 they put the claimant to strict proof of the identity of the counterparties at paragraph 18
5 of A/35. And they pleaded at paragraph 60 of A/44 that:

6 "Irrespective of the claimant's intended role and basis of remuneration, the goods went
7 to an unauthorised reseller." [as read]

8 It pleads nothing about what the dealer's own records show, because those records
9 only came from Wakefield's in June and August, after the defence had been filed. And
10 the correction was made from those disclosures or provision by Wakefield's in June
11 and August. On the defendant's own case, the correction changes nothing in its
12 position, nothing at all.

13 THE CHAIR: Mr Grace, as I've said, you have made your submissions on that part of
14 the proceedings today. I've made my order. That's my decision. If you are unhappy
15 with it, you can take advice as to what options are open to you.

16 What we are concerned with now is the order I propose to make on security for costs.
17 You have heard the position, I have invited submissions from you. Is there anything
18 else that you would like to say about the order I propose to make?

19 MR GRACE: In relation, I mean, I've already said there was no requirement. You
20 know, you've been even handed, you've looked at my submissions and I've said that
21 always, I would have sold -- I've got a property, and I will sell the property if an adverse
22 costs order is made against me.

23 THE CHAIR: Yes, and you made that point very well, if I may say so, in your
24 submission, you took me to the paragraph in your July statement, and that open offer
25 has been accepted. So now we are giving effect to it by the order I am making.

26 You will have the opportunity to agree the amount of security. If you cannot agree,

1 then I am suggesting to you -- but I will hear your submission, if you want to make
2 one -- that you have an opportunity to file submissions with the tribunal within
3 seven days, following the expiry of the 14 in which you have to reach agreement, as
4 to what the proper amount should be.

5 Whatever the proper amount is that is ultimately fixed by the tribunal will stand as the
6 amount to be paid from your properties that you've made the offer in relation to, if there
7 is ultimately a costs order made in favour of the defendants at the end of the case.

8 MR GRACE: Sir, as you're well aware, I'm a litigant in person, preparing
9 documentation on my own and doing my very best. I cannot assess this case moving
10 forwards without the documentation that the defendant has relied upon in their
11 pleadings and witness statements, which they have not provided me with, nor the
12 scale and depth of the documentation that I've sought in relation, sir, to the hybrid
13 invoice from Bang & Olufsen of Islington, that you've probably seen issued to a hybrid
14 address in Greys in Essex and Nigeria, a VAT exempt, and also the Harrods
15 transactions that the defendant has admitted that unsolicited sales have been actioned
16 by B & O Harrods to Nigeria.

17 THE CHAIR: Yes, Mr Grace. I have explained to you that your opportunity to obtain
18 disclosure and inspection of the documents that are held to be relevant to the
19 case -- and that you say are relevant, the tribunal finds relevant, or the defendant
20 agrees are relevant to the issues in the case -- that time will come.

21 MR GRACE: Right.

22 THE CHAIR: At this stage of the process, you are not being disadvantaged. You are
23 not being prejudiced because you are in person. This would be the position for anyone
24 at this stage of the case. There are rules or provision for pre-action discovery and
25 early disclosure of documents in certain limited circumstances -- special
26 circumstances. It's a matter for you, and advice that you might get, as to whether any

1 of those special circumstances apply. But so far as the tribunal can see, for the
2 moment, this is a case which needs to progress to the closure of pleadings.

3 The normal way these actions proceed is that the parties set out their case, and once
4 the parties know the case that they have to face, they can then set about inquiring as
5 to the documents they need that are in the possession of the other party to help them
6 make that case.

7 That stage is to come. You will have that opportunity, Mr Grace. Once pleadings are
8 closed, you will be able to give full consideration to what documents you need, and
9 you will be able to point directly to the issues on the pleadings that determine that the
10 documents that you want are relevant in the case. If they are, then you can be
11 reasonably sure that this tribunal will assist you in any disclosure application that you
12 may need to make, but that will all be judged on the circumstances and on the papers
13 at the time. But that time is still to come.

14 For now, give careful consideration to your pleading. Get it right this time so that there
15 are no more withdrawals or changes. Get it right this time. If, in due course, you need
16 to amend it because of something that comes to light that you could not have known
17 about before, and emerges from the documents, then the costs position might be
18 different -- if you make an application to amend your pleading in the future -- the cost
19 position might be very different.

20 But I have made my decision as to the costs that must be paid following the latitude
21 and opportunity that's been given to you to change your case again, not for the first
22 time. That's a decision that, unfortunately, Mr Grace, you're just going to have to
23 accept. I am taking the opportunity to give you as full and fulsome an explanation as
24 I can as to the process and the position that you're in, because this tribunal does
25 understand that you are a litigant in person. This tribunal tries to give as much
26 assistance as possible, reasonably possible, to a party in your position, but we have

1 to also balance the interests of the defendant; they are entitled to fair treatment at the
2 hands of this tribunal as well.

3 That is the position. Is there anything else you want to say to me about the suggested
4 order on security?

5 MR GRACE: Not presently, but could I say, in light of your advice to take legal advice,
6 I've already been advised that there will be a three week buffer, via the bar pro bono.
7 So if I was to take advice on amending the pleading, and getting it right and exactly
8 watertight, and I need legal assistance, could some provision be made in the time
9 allowable, for that? Else ... I'm doing it on my own.

10 THE CHAIR: Yes. Mr Grace, we're back to the point that I need to balance the
11 interests of the defendant as well. Here, I have to take into account the fact that you
12 have had ample opportunity, since my learned colleague, Mr Turner, King's Counsel,
13 first advised you to seek legal advice, you have had ample opportunity to seek the
14 assistance of the bar's Free Representation Unit. You haven't taken it. You are
15 strongly counselled to do that now. If someone makes an application to me for more
16 time, I will consider it, but I'm not going to give you more time now. You must get on
17 with the case in the way that has been ordered today. If I hear from someone, I will
18 determine it on the basis of the application I receive.

19 MR GRACE: Okay, thank you.

20 THE CHAIR: Thank you, Mr Grace.

21 Yes, Mr Rayment, I think you can see the way the case is going, so I will make that
22 order in line with the suggested course. I think that is fair for both parties, so the
23 14 days and then the seven, and yes, I will deal with it on the papers if that's what you
24 consider appropriate.

25 MR RAYMENT: I think maybe we should just leave that just to see how the issues
26 stack up, but yes, if Mr Grace is happy and we're happy for it to be dealt with on the

1 | papers, then yes.

2 | THE CHAIR: If you decide that a hearing's helpful, then --

3 | MR RAYMENT: Yes, unless the parties indicate.

4 | THE CHAIR: You can let the tribunal know.

5 |
6 | Costs of the application

7 | MR RAYMENT: And just on a matter of housekeeping, just to assist, Mr Grace, in
8 | terms of what happens now, I mean, ordinarily, it's often the claimant that takes the
9 | first stab at drafting the order, but I suspect it probably falls on our side to do that.

10 | THE CHAIR: I will be grateful, Mr Rayment.

11 | MR RAYMENT: We would basically draw up an order to give effect to your rulings,
12 | and then we would share it with Mr Grace. And if we agree, we send it in as an agreed
13 | version, and if we don't agree, then we would try to send in a version that sets out the
14 | competing contentions on the wording of the order.

15 | THE CHAIR: That's the usual course, Mr Rayment.

16 | Submissions by MR RAYMENT

17 | MR RAYMENT: And I just said that for Mr Grace's benefit. Finally, obviously, that
18 | leaves the costs of the security application itself. I mean, you, sir did mention that your
19 | patience had previously reached its limit. I mean, on the previous applications,
20 | I mean, the fact is that we've had to battle hard to get anywhere on this security
21 | application and costs have been incurred as a result. So therefore, I'd apply for my
22 | costs on this security application. I think we're clearly the winner in those terms.

23 | THE CHAIR: I'm not minded to give you your costs, Mr Rayment. Two reasons. One,
24 | the open offer was made fairly promptly following the application. Paragraph 24 was
25 | available. You have accepted it today. So the application has, yes, proved successful,
26 | but in quite a straightforward way. Mr Grace has not been difficult about it.

1 Secondly, you do appreciate the impact of paragraph 29 of his statement, which could
2 come back the other way, as you're well aware. So, I think, in all the circumstances,
3 I will not make an order for your costs. I think it's a sensible course that we are
4 embarking upon now, to see the amount agreed and the security given in the manner
5 that was offered, sensibly by -- and fairly accepted, I must add, by
6 Bang & Olufsen -- and the tribunal recognises the fact that that open offer has been
7 accepted. It did not need to be in the form that it is, but you have, and that is very
8 much understood and appreciated by this tribunal.

9 So, I won't give you your cost for those reasons, Mr Rayment.

10 MR RAYMENT: Thank you, sir.

11 THE CHAIR: I don't need to hear you on that, Mr Grace, because you have heard the
12 decision I've made in your favour on those costs.

13 Mr Rayment, is there anything else that you need from me today?

14 MR RAYMENT: One second. I think that's everything. Thank you very much.

15 THE CHAIR: I'm very grateful to you.

16 Mr Grace, is there anything else that you need from me today or that you think
17 I should --

18 MR GRACE: I just need clarity. You're saying that Mr Rayment and the defendant
19 have been successful in their applications, but they haven't been awarded costs; is
20 that correct?

21 THE CHAIR: Correct.

22 MR GRACE: Right. So there's no cost payable to me at all?

23 THE CHAIR: Not in respect of the security for costs, no.

24 MR GRACE: Right. Okay. Thank you.

25 THE CHAIR: Is there anything else that you would like me to do today? Are you
26 happy that I've completed all the business for today? Is there anything else you need

1 me to address?

2 MR GRACE: I'm totally at a loss how we proceed; how things go on to the next stage.

3 THE CHAIR: Let me tell you. Let me tell you, Mr Grace.

4 MR GRACE: All right.

5 THE CHAIR: Let me help you with that. What will happen now is that Mr Rayment,
6 or his solicitors, will contact you with a draft order to set out the orders I have made
7 today. It's usual for the parties to draft that order and submit it to me for approval and
8 I then sign it.

9 If there is anything you disagree with in the draft, say so. Explain why. Mr Rayment
10 and his solicitors may well accept that and change the draft so that it, ultimately, comes
11 to a form that you are content with. If, however, you simply cannot reach agreement,
12 then the draft order will be submitted with the reasons; the reasons why you disagree
13 with the point and what you would like to see in the draft order instead. Mr Rayment
14 will set out what he thinks should be in the draft order, and I will make the decision
15 and then the tribunal will send out the order to the parties. That will be the order on
16 this case management conference. That's what happens next.

17 You must follow the timetable of the various steps set out in the case management
18 conference order. You have heard that there are steps to be taken by you within
19 seven days in relation to the pleadings.

20 MR GRACE: Seven days from today?

21 THE CHAIR: From today. You must now get on with it. It's your case. I'm quite sure
22 you want to proceed with it and get on with it. You have told me of the trouble that you
23 have been put to by the behaviour, you say, of Bang & Olufsen. So it's in your interests
24 to be getting on with it.

25 There are steps that you must take, and there are steps that Bang & Olufsen must
26 take, and they will contact you in respect of those steps.

1 Then the case will proceed in accordance with the usual timetable under the
2 Competition Appeal Tribunal rules. That is where you will be greatly assisted by
3 having legal advice. You have mentioned to me that you have had a competition
4 lawyer give you some assistance. You are also talking to the bar's free representation
5 unit. I can only express the tribunal's view that I hope that that comes to a conclusion
6 in a positive manner and that the next time we see you, you have legal representation.
7 If not, then I will consider again the question of your representation of your company.
8 All clear, Mr Grace?

9 MR GRACE: Does that mean if I'm not able to secure legal representation, the case
10 will be dismissed?

11 THE CHAIR: No, it does not mean that at all.

12 MR GRACE: Okay.

13 THE CHAIR: It does not mean that.

14 MR GRACE: Right.

15 THE CHAIR: I will see you on the next occasion.

16 MR GRACE: Okay. Thank you.

17 THE CHAIR: Thank you both very much.

18 MR RAYMENT: Thank you.

19 (2.26 pm)

20 (The court adjourned)

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Key to punctuation used in transcript

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