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IN THE COMPETITION APPEAL TRIBUNAL

Case No:1595/7/7/23 & 1644/7/7/24

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Wednesday 14th October 2026

Before:
Sir Peter Roth
Charles Bankes
Keith Derbyshire
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Robert Hammond & Professor Andreas Stephan

Class Representatives

V

Amazon.com, Inc. & Others

Defendants

A P P E A R AN C E S

Philip Moser KC and Ben Rayment (Instructed by Charles Lyndon Limited & Hagens Berman EMEA LLP) on behalf of Robert Hammond

Kieron Beal KC, Daniel Carall-Green and Hannah Bernstein (Instructed by Geradin Partners Limited) on behalf of Professor Andreas Stephan

Jon Turner KC, Oscar Schonfeld, Kristina Lukacova and Alexandra Breckenridge (Instructed by Herbert Smith Freehills Kramer LLP and Covington & Burling LLP) on behalf of Amazon.com, Inc. & Others

Ben Lask KC (Instructed by Stephenson Harwood) on behalf of ACSO

Digital Transcription by Epiq Europe Ltd
Lower Ground, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: ukclient@epiqglobal.co.uk

Wednesday, 14 October 2026

(10.37 am)

Housekeeping

THE CHAIR: Good morning. These proceedings, like all proceedings in this Tribunal, are being live streamed and an official transcript of the report of the proceedings is being made. It is strictly prohibited for anyone to make any unauthorised recording or take any visual image of the proceedings, and to do so is punishable as a contempt of court. So you have been warned.

We will, as usual, take a short break mid-morning and mid-afternoon at a convenient point for the benefit of the transcribers. I'm sure for everyone's benefit as well.

We see there is some confidential information in the materials. Some of the matters that are marked as confidential, yet again, we struggle to understand how they can be confidential. We may say something about that at the appropriate time, but I should make an order in the usual way, if that can be incorporated in any order drawn up, the fact that they've been made (inaudible) by the Tribunal during these procedures does not make them publicly available without further order.

We've had a somewhat moving feast of bundles in this case. At 4.30 pm yesterday, a whole set of new bundles were delivered after the Tribunal had been working on the previous bundles. This morning we get a new set of skeleton arguments, which we haven't even looked at. It's really not very helpful. We're asked to prepare a case and make a point of preparing a case, which obviously involves work. The day before we get a whole lot of additional paperwork at that time. It's not been looked at and it's a waste of time and a waste of costs.

Right. I think as we understand it from the skeletons, we've got the other proceedings' disclosure to consider; we've got the second stage disclosure, as described, to consider; there's then the issue of potential third-party disclosure from Stephan's class; and then there are questions about directions to trial and another CMC. That's our understanding.

MR MOSER: Exactly so, and the parties are agreed, subject of course to your views when you've given them, that that is the correct order, logically prior to seeing what's actually going to be disclosed, before we talk about directions to do so.

THE CHAIR: Yes. We see also that it's been, I think now agreed -- and we think very sensible -- that there should be a further CMC on the first available date after 8 February.

MR MOSER: Yes.

THE CHAIR: We're content with that. If we start with other proceedings --

MR MOSER: Yes. Forgive me for interrupting.

THE CHAIR: Yes.

MR MOSER: Can I just say a few housekeeping matters.

THE CHAIR: Yes.

MR MOSER: I know I don't formally need to introduce everybody, but just to say that as well as myself and Mr Rayment for Mr Hammond, you've got Mr Beal KC, Mr Carall-Green, and Ms Bernstein for Professor Stephan and Mr Lask KC is here for ACSO.

THE CHAIR: Yes.

MR MOSER: The ACSO party, as I understand it, is not in the confidentiality ring. They are currently here, of course, subject to the decision made yesterday.

THE CHAIR: Yes.

MR MOSER: And my learned friend, Mr Turner KC, Mr Schonfeld, Ms Lukacova and

Ms Breckenridge for Amazon.

THE CHAIR: Yes.

MR MOSER: It's also useful -- and we entirely hear and apologise for the strangeness of the bundles. I'll say immediately, I haven't looked at today's skeletons and I haven't looked at the latest bundles.

THE CHAIR: It may be additional cross-referencing.

MR MOSER: It is additional cross-referencing.

THE CHAIR: It's still just too late.

MR MOSER: That's all it is, but yes, no point at this time.

THE CHAIR: We can't absorb it.

MR MOSER: No, I quite agree. But there is this colourful six-coloured version of the draft order and that is the one that's --

THE CHAIR: Yes. It's that we've got that as annex 1 to Amazon's supplementary skeleton; is that correct?

MR MOSER: That is as good a place as any, yes. It's also, in case anyone is watching in black and white, at D/8/74.

THE CHAIR: Yes.

MR MOSER: But that's what it is now. My learned friend Mr Beal KC will principally deal with disclosure on behalf of the Class Representatives, and then my learned friend, Mr Rayment will pick up anything on behalf of Hammond specifically.

Since that's the order, I'm going to sit down and let him speak to it.

THE CHAIR: Yes.

Disclosure - Other proceedings

Submissions by MR BEAL

MR BEAL: May it please the Tribunal, may I make four preliminary observations in

relation to disclosure?

THE CHAIR: Sorry, can you just identify yourself for purposes of --

MR BEAL: Yes, I beg your pardon. My name is Kieron Beal KC and I appear on behalf of the Stephan Class Representative. With your permission, may I just make four brief preliminary observations in relation to the disclosure process so far.

First, with the greatest respect, Amazon's approach to disclosure has been somewhat unenthusiastic. We've only had a small number of documents that have actually been produced. The speed of that disclosure has been somewhat at odds with its status as a highly sophisticated technology business with a state of the art logistics operation, and we haven't, I'm afraid, been able to assess the quality of the disclosure because the first batch, in a low number of documents, only arrived on 7 October. There was a disclosure last night with a further tranche, which was initially only accessible by reference to a link which was deactivated. That link was then reactivated, and we had the further tranche from midnight, by which point I was safely tucked up in bed.

THE CHAIR: Yes.

MR BEAL: My second point is that Amazon claims that the actual number of documents disclosed is confidential, but we fail to understand why.

THE CHAIR: Just the numbers?

MR BEAL: Just the number itself. I can't tell you ...

THE CHAIR: Why is that confidential?

MR TURNER: Sir, you're referring to the number of documents in something called the "regulatory dialogue", with the Commission. It's wrongly attributed in my friend's skeleton to the CMA; he should have referred to the regulatory dialogue.

THE CHAIR: Well, never mind. Why is simply the number of documents disclosed to a claimant in these proceedings confidential?

MR TURNER: The extent of the communications going on in that entirely private

setting --

THE CHAIR: Yes, but why is it confidential to say: in these proceedings you've disclosed 5,000, 2,000 or whatever? How can that be confidential? What commercial sensitivity does that invade?

MR TURNER: It's not so much direct commercial sensitivity, sir; it's the concern that the extent of the dialogue that's taking place between the Commission and Amazon is shown by that number of documents. I should say, that is the only issue in relation to number of documents; there is nothing else apart from that. It is part of a wider concern that this particularly private dialogue with the Commission is confidential in almost all aspects. If we are to go into that, which we may not have to do in this hearing, it may be necessary for part of that proceeding being --

THE CHAIR: Well, we have already, in the Commission decision as usual, a catalogue of the procedural steps the Commission takes, "We sent an SO, we had a response, we had this, we had that". Everyone knows that produces a lot of material. The fact that there were interchanges with the Commission before the Commission produced a decision -- of course there was. And they, indeed as usual -- and one might regard in a slightly tedious way -- set out what happened this date, "And then we got further response", and so on.

MR TURNER: Yes.

THE CHAIR: Why is it confidential?

MR TURNER: I can't take it any further, the --

THE CHAIR: The content may be confidential, but the number?

MR TURNER: The number, as I say, is regarded as confidential in that aspect because it shows the extent of the dialogue that is currently or has been happening with the Commission.

THE CHAIR: Well, it's not current; I thought this is dealing with the Commission

decision of 2022, isn't it?

MR BANKES: Or is it the Digital Markets Act?

MR TURNER: That's right. It's not that. There's a separate process under the Digital Markets Act, I'm sorry if I wasn't clear.

THE CHAIR: I see.

MR TURNER: What he refers to in the skeleton is the CMA. That was wrong. In relation to the Commission -- and I can show you the reference, it's actually paragraph 160 of the relevant document that we produced.

THE CHAIR: Yes, so you're not talking about the 2022 decision?

MR TURNER: No, we're not.

THE CHAIR: I see.

MR TURNER: I'm very sorry. It is the separate thing which is essentially focused on other things.

THE CHAIR: Yes, right. Okay.

MR BANKES: But if those documents form only part of that which has been disclosed, you can still disclose the total number of documents without saying how many of those relate to the DMA process, can't you?

MR TURNER: Yes, I think we have done that.

MR BEAL: If I may say --

MR TURNER: I think so, it's just this reference to that particular element of the dialogue. Nothing else I -- I'll be corrected -- has been regarded as --

MR BEAL: May I correct my learned friend. They've bundled together the CMA disclosure and the DMA disclosure -- I'm going to call it the DMA disclosure.

THE CHAIR: Sorry to interrupt you, but there is the CMA disclosure --

MR BEAL: Yes.

THE CHAIR: -- there is the European Commission disclosure relating to the 2022

decision.

MR BEAL: We haven't had that yet.

THE CHAIR: You haven't had it at all?

MR BEAL: No.

THE CHAIR: Right, and then there is the DMA from the Commission?

MR BEAL: Yes. What we thought that they were claiming confidentiality over -- and we have to be very careful, because we have to follow their lead --

THE CHAIR: Yes.

MR BEAL: -- was the composite aggregate number for CMA and DMA. DMA is the European Commission, but let's avoid confusion by calling it DMA. That's what they had identified in various documents as being confidential, so we marked our skeleton accordingly -- the aggregate number.

Of course, the fact that we have received x number of documents that can be broken out as referable to the DMA slice of that --

THE CHAIR: Yes.

MR BEAL: -- doesn't tell you anything about whether it's x10, x20, x1,000 that have gone to the European Commission for the purposes of the dialogue. I'm afraid we still fail to understand how it cannot be something that's in the public domain to know how many documents we've received in relation to a given aspect of the procedure; it's simply telling us the documents that they assess to be relevant for these proceedings.

THE CHAIR: Yes.

MR BEAL: It has no bearing on the interrelationship between Amazon and the EU Commission at the DMA stage at all.

Anyway, I'll sit down and let my learned friend finish because he's still on his feet.

THE CHAIR: Yes, thank you.

Submissions by MR TURNER

MR TURNER: No, that's kind. Unfortunately, this hare has been set running only in relation to that specific allegation in my friend's skeleton, which was based on a misprint. If you turn up the relevant part of the document itself, you'll see that it was referring only to -- I mean, if you go in your files, if you have them there, I think it's bundle A, tab 23, page 628.

THE CHAIR: You're going to the skeletons?

MR TURNER: Yes, in his skeleton --

THE CHAIR: We looked at them, I think, before we got bundles. What's the internal page?

MR TURNER: The internal page is 628 in bundle A.

THE CHAIR: And this is the --

MR TURNER: I'm sorry, the internal page is 41.

THE CHAIR: Of this ...

MR TURNER: This is in bundle A.

THE CHAIR: Is this a skeleton argument?

MR TURNER: This is not; this is the other proceedings' disclosure explanation document.

THE CHAIR: Oh I see, yes.

MR TURNER: In which, pursuant to your order at the last CMC, Amazon set out what it had done.

THE CHAIR: Yes.

MR TURNER: You'll see that large parts of that document at tab 23 are not confidential. The bit of it dealing with the DMA regulatory dialogue is regarded as confidential.

THE CHAIR: And that's at page --

MR TURNER: You go to page 628 of the bundle, page 41 internal.

THE CHAIR: Yes.

MR TURNER: The references here -- I'll see if I've got the right reference; this is just from memory -- paragraphs 180 and so forth; this was referring to the DMA dialogue.

THE CHAIR: Yes.

MR TURNER: It was, as I say, a limited point that in relation to this -- yes, paragraph 165 is the reference back. If you go back, you'll see it's not the CMA. Paragraph 165 on page 626 refers to: the total number of documents produced to a different body, in the context of the regulatory dialogue, was this number.

I say this and I'll perhaps make my own general observation in a moment, because first: I don't want this hearing to become essentially bogged down with sort of very minor issues, or issues that are blown out of proportion and take disproportionate time, because there's a lot to get through. Second: because on this specific issue, it really was a limited point, and I've made my submission on it; but the client's concern, Amazon's concern, relates to this separate process, the regulatory dialogue, which is of very little relevance to the issues that this Tribunal has to decide.

I would conclude by saying that we are ourselves seeking to make every effort to reduce confidentiality designations. I and the legal team are fully sensitive to the need to do that where we can. It's a large case and there is lots at stake.

THE CHAIR: Yes. We will come back to that. Yes, but I now understand what is the area that's sensitive, in any event.

Right. Mr Beal, what we really want to know is what you are seeking to get which is either not agreed or the terms not agreed, or we need to clarify something.

As I understand it, from the CMA investigation, you are getting all the documents. Is that right?

Submissions by MR BEAL

MR BEAL: If I could invite you, please, sir, to look at paragraph 90, page 610 of

bundle A, tab 23.

This is part of the explanatory memorandum, the explanation which my learned friend was just taking the Tribunal to. He took you to a number that I can't mention. The number that I can mention is 30, because that's the number of documents that have been produced as a result of the CMA investigation. What I have therefore had to redact is the aggregate figure because of the claimed confidentiality (overspeaking).

THE CHAIR: We're concerned at the moment with the CMA investigation, that they say they'll provide all documents except what they say are privileged negotiations, commitments, and they tell you that it's about 30.

MR BEAL: The way that the disclosure process has come out, if I may say so, is: they have provided an explanation; we have provided a response. There has then been a further letter of 7 October, which is in bundle D, which gives a reply to that response. What has emerged is a series of thematic points, and I'm proposing to deal with those thematic points, if I may. So rather than focusing on: what are they disclosing from the European Commission, what are they disclosing as part of the DMA inquiry, common themes emerge throughout, and the five themes are these.

The first one is the geographic scope of the disclosure offered. The second is the treatment of algorithmic codes. The third concerns certain issues about monitoring trustees and the issue of the relevance of the DMA inquiry material.

THE CHAIR: Those are really two separate points.

MR BEAL: Well, they are, but they are both brought together under European proceedings. In fact, the monitor --

THE CHAIR: (Overspeaking) monitoring trustee under the CMA, isn't it?

MR BEAL: There's a monitoring trustee under the CMA as well.

THE CHAIR: Yes.

MR BEAL: In fact, that's no longer a live issue, because as of last night, Amazon have

said that they are willing to provide monitoring trustee material as soon as possible.

THE CHAIR: On both the EU and --

MR BEAL: That's my understanding.

THE CHAIR: Yes.

MR BEAL: They've limited it in time to June 2024. I will need to address you on that.

THE CHAIR: Yes.

MR BEAL: But in principle --

THE CHAIR: Well, I would put the DMA under a separate category. Yes. Go on.

MR BEAL: Next one is the North American proceedings concerning custodians and search terms. Again, can I just emphasise, I'm going to mention that, but only to say that we recognise that further dialogue can take place between the parties, so that's not a live issue either.

Then the fifth one -- probably remains the fifth one, if you have separated out monitoring trustees and DMA, is the Canadian investigation disclosure.

THE CHAIR: Yes.

MR BEAL: That also brings into its purview the geographic scope issue.

THE CHAIR: Yes. But can I go back, please, to the CMA.

MR BEAL: Yes.

THE CHAIR: There's no issue on geographic scope, because obviously that's UK. You were told you are getting these 30 documents. You have now been told, it's now been accepted belatedly, that you'll get the monitoring trustee. Does that mean that as far as the CMA proceedings, there is no live issue on disclosure?

MR BEAL: Subject to review where there may be in due course second stage disclosure requests, as always. But yes, that -- that's brought to an end the other proceedings aspect for the CMA material.

THE CHAIR: Have you got a date by which that is going to be provided?

MR BEAL: Only the long stop date, which is 11 December 2026.

THE CHAIR: But there are only 30 documents.

MR BEAL: I'm sorry. I beg your pardon. I've misspoken. We got those on the evening of 7 October.

THE CHAIR: But you have had the 30.

MR BEAL: We have had the 30 documents.

THE CHAIR: And presumably the monitoring trustee documents will be provided. You haven't had them yet, or you got them last night.

MR BEAL: No, we haven't had those yet.

Submissions by MR TURNER

THE CHAIR: Yes. Well, that can be provided presumably within a week, can't it, Mr Turner?

MR TURNER: I'm sorry?

THE CHAIR: They can be provided. You have them on file, I think, Amazon UK -- can be provided within a week.

MR TURNER: Well, it may be a week; it may be slightly longer. The reason is that there's parts of it that deal with other elements, for example, in relation to the European Commission. You remember that their commitments dealt with having a second featured offer (overspeaking).

THE CHAIR: No, this is the CMA.

MR TURNER: I'm sorry. (Pause)

Oh, yes. The Prime special deals is one aspect.

THE CHAIR: This is the CMA monitoring trustee.

MR TURNER: Yes, that's right.

THE CHAIR: That can be provided within a week.

MR TURNER: There are parts of it -- as I say, it's the Prime special deals aspect which is not part of the issues in this case, that they are going to have a process of excluding. They will do it very quickly.

THE CHAIR: Why can't it be done in a week? Looking round the court, you're not short of instructing lawyers.

MR TURNER: I'm told a week is fine.

THE CHAIR: Yes. So you'll get that; the CMA monitoring trustee report will come by 21 October.

MR BEAL: Thank you very much. That's more progress than we've managed for a while.

THE CHAIR: Right. Next, we are going to talk about, well, geographics, really --

MR BEAL: Geographic scope.

THE CHAIR: And that relates to both the Commission and the North American and the Canadian proceedings.

Submissions by MR BEAL

MR BEAL: If you would be kind enough, please, to look in bundle A, tab 5, page 218. This is part of Amazon's defence in the Stephan proceedings, and paragraph 42 denies that Amazon Europe Core S.à.r.l is responsible for the management of Amazon's European operation. Amazon Europe Core S.à.r.l operates the websites for Amazon's European stores, including amazon.co.uk. So it's recognised that a single company is running the websites for European marketplaces, operated on websites including the UK website.

Paragraph 44. We see that a separate company -- that's Amazon EU S.à.r.l. -- its principal purpose is to sell consumer products and provide services through online stores. We infer that that company also provides services and supplies consumer products through online stores in the UK market. It's not said to the contrary.

Then finally at paragraph 41.2, at the top of that page, it's recognised that the first defendant, which is the US entity ... (Pause)

So I've dealt with the European side of things, and then 41.2 deals with the American global Amazon business where it's denied it imposes business policies, but nonetheless, it sets the overall strategic direction.

The point of showing you that is it's apparent from that pleading alone that there is a considerable overlay between the operation and implementation of Amazon's policies, including, no doubt, the implementation of common algorithms, common marketing policies, common business implementation policies between the European websites; and indeed, given that the strategic overview is exercised by Topco, which is a US company, also there will be strategic and policy issues that flow down from the US to the European operations.

All of that I understood to be relatively uncontroversial. If it is controversial, then with respect, we need to have a quick look at the EC commitments decision, which is in the bundle of authorities, tab E, tab 9, page 568, which confirms that Amazon has a largely centralised and common database system with common automated processes for the European marketplaces. That's the point I derive from that. Maybe we don't need to turn it up.

THE CHAIR: Which recital is that?

MR BEAL: 228, page 568.

THE CHAIR: The European ...

MR BEAL: It's the commitments decision from December 2022.

THE CHAIR: Yes, I got it. Yes.

MR BEAL: Thank you. The next observation is made by Dr Houpis in a letter that he sent on 25 September 2026, which the Tribunal will find in bundle C, tab 14, page 90. Dr Houpis, who is the expert from Frontier for Professor Stephan, and as of yesterday

now also for ACSO. One sees in page 90, third paragraph down:

"I recognise there may be some documents ... related to a non-UK store produced during the Other Proceedings that may be narrowly related to a specific issue for the non-UK store that may not be relevant to the UK case."

He notes, however:

"Amazon's policies and conducts however are typically common across multiple jurisdictions (eg global or EU-wide) - as noted ... in [the] commitments decisions ... Therefore, even if some documents (and/or data information) refer to a non-UK store, this information could, in fact, be relevant/ useful for assessing whether there was an infringement or measuring the effects of alleged conduct. This includes the review of such documents assisting with the specification of a follow-on request for documents ... in relation to the UK store."

So where they've done something, for example in Italy or in Germany, and they've, in response to the regulatory intervention in those jurisdictions, changed the policy, changed a practice, tweaked an algorithm, but the same change hasn't been made to the UK -- that can be, we say, highly relevant information and material to see: (a) what they're doing and how they're responding to other regulators; but (b), what the impact is in terms of the operation of the marketplace. Given the commonality of the databases and processes that underlie the European marketplaces, as we've seen.

THE CHAIR: Well, as I understand it, it's clear the fact that a document is relevant to Italy or Germany does not mean that it's irrelevant to the UK.

MR BEAL: Yes.

THE CHAIR: Equally, there may be some documents that really are of no relevance to the UK.

MR BEAL: Yes.

THE CHAIR: As I understand it, Amazon's proposal is to give you all the submissions

made to the Commission negotiations of the commitments, and its responses to RFI requests from the Commission.

MR BEAL: Yes.

THE CHAIR: And they say most of their documents were annexed to one or other of those. What's suggested is you look at those, see what you're getting, and then see actually that what you're not getting, as explained in those documents, is likely to be relevant.

MR BEAL: May I cut --

THE CHAIR: That, I think, is the proposal that has been made, if I've understood it correctly.

MR BEAL: The concern we've had, and it's a pragmatic one, is there's been an ambiguity in language as to what exactly is proposed. What has been described is a withholding of material on a geographic basis, because it said not to relate to the UK market. As I hope I've just demonstrated, that's putting things the wrong way round. If the data or the information relates solely to a non-UK market -- if it relates solely, for example, to Italy -- and can have no conceivable bearing on the UK market and the implementation and operation of the Amazon marketplace in the UK, so be it. But it would be the easiest thing in the world for Amazon to have said that. The only place that they've come close to giving something even approaching that sort of categorical statement is in their skeleton argument that we received on Monday.

And they don't say in terms, "It's only if something is irrelevant in its entirety to the UK market that it will not be disclosed". Now, this may seem like semantics, but can I give you an example of what we're concerned about? Say, for example, Amazon has given a justification to the AGCM in Italy for its particular fair market policy, which the Italian authority has rejected, and Amazon says, "Oh, but that relates solely to the Italian market", then we don't have access to Amazon giving different justifications, for

example, to different regulators at different stages. And we can't compare the justification they advance for the very same market policy that was operated in Italy with the justification that they've pleaded for that policy in their defence before this Tribunal. That's an example.

In circumstances where, for all intents and purposes, the same policy is applied at different European marketplaces because of the same entity exercising control over that marketplace, we say that would be relevant. We simply don't know, from the way that the matter has been put in the explanation in particular, paragraph 29(a) and elsewhere -- that's bundle A, tab 23, page 596 -- where it's phrased, with respect, too broadly, and in a way that is broader than the articulation now given in their skeleton argument. Even that does not say what we say is the proper approach, which is: if the document in its entirety is irrelevant to the UK market, then it need not be disclosed.

THE CHAIR: Going back to what's practical, the example you've given would be a submission made by Amazon to the Italian authority. It's not, as it were, an underlying original document; it's something in those proceedings. As I understand it, the particular concern is the underlying documents.

As regards the Commission proceedings which don't concern Italy but concern France, Germany and Spain, you'll get all those submissions, so that you'll get -- the arguments they put.

MR BEAL: Yes.

THE CHAIR: You'll get quite a number of underlying documents. I think what's suggested is you'll look at those submissions, at the documents, and you'll be able to identify that you think there are more that should be produced, but that will take you quite a bit longer way.

I would hope that the same will apply to the Italian proceedings. So you'll get the submissions, look at the response to presumably an equivalent of a statement of

objections or whatever that the Italian authorities served, and further submissions.

MR BEAL: The difficulty at the moment is that Amazon are offering to provide file names of the documents that they've withheld.

THE CHAIR: Yes.

MR BEAL: That will take us some of the way, but file names by themselves don't necessarily give a 100 per cent reliable indication of what's within the file. What we're actually seeking at this stage is relatively circumscribed: it's simply an explanation, one or two sentences, as to how it is said that the data or the information relates solely to the Italian market, for example, or to the German market, and therefore has no conceivable bearing on the UK market.

Obviously, we're not seeking to go behind the assertion that these documents are assessed to be irrelevant. But the difficulty we've got is that there's been a moveable feast as to where the definition of relevance was pitched in the documents leading up to Amazon's skeleton argument served on Monday.

THE CHAIR: Well, the definition of relevance must be that it should only be excluded if it is wholly irrelevant to the issues in this case.

MR BEAL: We're very happy for --

THE CHAIR: That is the definition of relevance.

MR BEAL: -- an undertaking to that effect to be given by my learned friend, and that will --

THE CHAIR: Well, I don't think we need --

MR BEAL: -- cut short my submissions.

THE CHAIR: -- an undertaking. We've made it clear that must be the principle. We don't need undertakings; I'm sure they will imbibe that.

MR BEAL: Thank you.

THE CHAIR: And as I say, you will get the exchanges with the Commission and the

Italian authority, and they will no doubt refer to a lot of documents, and you'll be able to see which of those documents you've got. And if you haven't got some of the documents that you think are relevant, then it seems to me at that point you write and say, "Well, what about this and this and this?" And at that point they give you an explanation of saying, "Well, we've not provided that because ..." rather than requiring them to provide an explanation for every document they've withheld, it seems to me that's a sensible approach, unless Mr Turner wants to push back?

Submissions by MR TURNER

MR TURNER: Sir, there isn't pushback. If I may, very briefly, because I agree with much of what you say. I need to put the record straight on a few things.

THE CHAIR: Yes.

MR TURNER: The first is: as with the first point that my learned friend made, he's going too quickly, not reading our documents and being much too aggressive. We did not say that, as he says, if the document relates to other jurisdictions, other proceedings, then it's not relevant. May I invite the Tribunal just to look at one of the series of ways that we put it -- it's always the same in this other proceedings' disclosure explanation. The complaints were made on a false basis. Go, for example, to page 605.

THE CHAIR: But Mr Turner, do we have to go into the history of the complaints? Are we really concerned with who said what and whether ...

MR TURNER: Oh, it's not really --

THE CHAIR: What I'm concerned about really is what you now have to provide and to get that clear. Whatever you may have said or not said, or whatever the Class Representative says you've said, the question is: what are you, Amazon, now going to provide?

MR TURNER: I understand that, and I absolutely --

THE CHAIR: Otherwise, again, we know how many letters are written between solicitors in these cases. We'll be chasing through complaint and counter complaint.

MR TURNER: Sir, I absolutely understand that. This is absolutely not going to be by way of taking you off track. It's merely that the submissions that are being made are fundamentally misconceived as to what is being done. We agree with what you say, I just want two minutes just to show you this.

THE CHAIR: Okay, but you agree --

MR TURNER: We do, subject to one qualification that I'm going to enter. Absolutely. First is if you would be kind enough to go to page 605. This is within the same document, the other proceedings --

THE CHAIR: 605.

MR TURNER: 605 in bundle A, it's in tab 23. It's the other proceedings explanation.

THE CHAIR: Yes.

MR TURNER: My friend says, "Well, Amazon's position is that if something belongs to the other proceedings, then it's not relevant". Just take one of many. Paragraph 71 put at page 605. You see the way it's said each time, 71(b):

"... Amazon does not propose to produce documents where it is clear on the face of the document that it relates to one or more of the non-UK Stores ... and does not relate to the UK Store."

Then over the page they say, and they keep saying:

"Where documents include Amazon worldwide data [or wider data], they will be included so as to capture documents relevant to the store."

THE CHAIR: Yes, but his point was not that, as I understood it. His point was: it might relate to the German store, but the issue that was raised regarding the German store, is that precisely the same issue is raised in this case regarding the UK store. Therefore, although the document relates only to the German store, because Amazon

sets its policy on a European-wide basis, what it says about the German store is equally relevant, and that's why they are concerned about that sentence.

MR TURNER: Well --

THE CHAIR: That's my understanding.

MR TURNER: If that is the understanding, that's also not correct. The language here, and it's replicated elsewhere -- if you go back to the bottom of the previous page and does not relate to the UK store, encompasses the meaning, sir, that you have articulated.

THE CHAIR: Well --

MR TURNER: They are well aware.

THE CHAIR: -- it might be the case, but it's not clear on its face, because it can be relevant to the issues in this case concerning the UK store although the document itself relates only to the German store. So you can read "relate" in various ways. That's why there was a reference to ambiguity. But if you accept now that -- you said there's one qualification about what I said, was my understanding, so please give me that.

MR TURNER: The qualification is what, sir, you've said in relation to relevance, giving it an extremely wide ambit in these proceedings, because there are two yardsticks: there's relevance and there's proportionality.

THE CHAIR: Yes.

MR TURNER: And Amazon is very aware of the need for proportionality because whereas this process began with the idea that there would be a cache of documents that you could draw from, and it would be efficient to do so, what has happened is that the cache turns out to be a repository of around five million documents, taking them all together, and it is simply not practicable across the board to engage in the point-by-point, exhaustive examination that my friend says, and that is why --

THE CHAIR: The five million's the totality?

MR TURNER: The five million's the totality.

THE CHAIR: That includes North America?

MR TURNER: Yes, it does.

THE CHAIR: Yes. Well, focusing on the Commission investigation leading to the 2022 decision, what is the totality of documents there?

MR TURNER: If you go, please, to the ready reckoner that we appended to our skeleton on Monday, which you have at D/7/72, and apologies because you might not have seen this. This was the at a glance summary.

THE CHAIR: No.

MR TURNER: I'm sorry.

THE CHAIR: Where is that D?

MR TURNER: It was just behind the composite draft order in the different colours, and the reference is D/7/72. What you see there is the reference in column 1 to the different sets of proceedings and what we are giving. So you can see that if you take the AGCM, or where it says, "... save for non-UK Store documents ..."

THE CHAIR: Is the 704 documents -- is that the 85 per cent, or is it 85 per cent of 704?

MR TURNER: I understand that's the 85 per cent. 704 (overspeaking).

THE CHAIR: Is the 85 per cent. Right.

So they're all together. On the one investigation, there are only a thousand documents, and on the other investigation there are -- can't do the maths, but something like 3,600.

MR TURNER: Yes.

THE CHAIR: Yes. So we're not actually talking about a huge number of documents in that case altogether.

MR TURNER: That's right.

THE CHAIR: As I say, I think, and you're giving the exchanges and submissions made; and then having looked at those documents, having looked at those submissions, if the Class Representatives want to come back and say, "Well, actually, we think in the other 15 per cent, we think there are these documents", then you can have an exchange about it. But that's what you're giving now. Yes.

MR TURNER: That's right. So it's really to illustrate, to give the correct impression -- the reasonableness of it.

If I may finally turn --

THE CHAIR: Now, what's the date? When are these being produced?

MR TURNER: Sir, the CMA, we've (overspeaking).

THE CHAIR: Done on 8 October.

MR Turner: I'm told a couple of weeks; so two weeks for that.

THE CHAIR: Two weeks. That seems to be acceptable, Mr Beal.

Yes. That will deal with those; and the same looking down to the German cartel office, I think it is important that you apply the approach to deciding what's a non-UK store document of relevance that I've indicated.

MR TURNER: Oh yes. Sir, those are the ones that were disclosed last night.

THE CHAIR: The --

MR TURNER: The German Federal Cartel Office.

THE CHAIR: They have been disclosed. That was yesterday. Right.

Yes, and we've got the Italian at the top. Yes. I think that deals with that aspect.

MR TURNER: The only point I was going to finish making is in relation to proportionality.

THE CHAIR: Yes.

MR TURNER: My friend took you to a letter from their expert Dr Houpis, which he

says in relation to the Italian proceedings, for example -- and I say this, because it will help save time if this can be sorted out now -- that Dr Houpis' proposal is: even if you have data relating, let's say, to the Italian logistics market -- just about that, and it's numerical, and it's talking about the conditions in that different geographic market -- he says in the document that you were shown, "Well, sight of that material might inform a subsequent request that I might then want to make in relation to the data for the UK logistics market".

This is going back to a sort of train of enquiry --

THE CHAIR: Yes. That's not relevant.

MR TURNER: I just wanted to, because that's (inaudible).

THE CHAIR: Yes. Well, experts don't operate, in my experience, with the sort of restraint that is --

MR TURNER: Of course not.

THE CHAIR: -- and sometimes very limited restraint, anyway, shown by the parties' lawyers. They go for absolute maximum outreach. I have to say, that applies to the experts on both sides. We'll come on to that.

So the fact that he says that doesn't mean that it's therefore relevant in a legal sense.

MR TURNER: I'm grateful, sir. The reason I mention it is because it was specifically referred to this Tribunal in submissions as being sort of --

THE CHAIR: Yes. No, I think that will give you a practical way forward on the European side.

Disclosure - European proceedings

Submissions by MR BEAL

MR BEAL: Sir, thank you very much. That deals with geographic scope. Just to confirm, I infer --

THE CHAIR: We're looking at the European proceedings.

MR BEAL: Yes.

THE CHAIR: But there may be issues also on the North American proceedings.

MR BEAL: If I may, can I deal thematically with algorithms, and then come on to a separate point about the European proceedings. The European proceedings are not done and dusted yet, because we've got the monitoring trustees and we've got the scope of the DMA inquiry.

THE CHAIR: Yes. Well, can I check: the monitoring trustee set up under the 2022 decision of the Commission; is that ...

MR BEAL: As of last night, we're being offered those documents. I've got two points to make about that, and I might as well deal with it now.

THE CHAIR: Yes.

MR BEAL: The first is that they're only being offered to the end of June 2024, and of course, what the Tribunal has recognised is that the before and after analysis can be quite useful. So if, for example, there have been modifications to the conduct in 2025 or 2026, and we can discern what differences that has made, that will necessarily form part of the before and after analysis. Yes.

THE CHAIR: How often are they -- are they six months, do you know?

MR BEAL: I don't know off the top of my head.

Sir, my first point is date range, and the second point is that apparently Amazon says it does not have confidential versions of those documents. So it is only offering non-confidential versions of those documents, and I'm afraid I'm at a loss to understand that position.

If you're happy to have, sir, the back and forth, it is actually quite useful to have Mr Turner respond immediately to these points.

THE CHAIR: Yes. Well, that's the sensible way. This is the EU monitoring trustee.

MR BEAL: Monitoring trustee. EU -- I think it applies to both the CMA and the -- I've categorised it as European proceedings, because it's -- internally, I classified it on that basis, but actually I think it also applies to the CMA commitments decisions.

Submissions by MR TURNER

THE CHAIR: Mr Turner, how often does the monitoring trustee make a report?

MR TURNER: I'm told it's every six months.

THE CHAIR: Yes. And why is it that the December 2024 and 2025 reports are not being disclosed?

MR TURNER: The assessment of these documents is that the reports up to June 2024 are the ones that show the implementation of the commitments and what Amazon has done in order to comply.

THE CHAIR: Yes.

MR TURNER: Subsequent reports then start to veer into Amazon saying, "We want to make a tweak to our business behaviour; is that going to be compatible in matters of that kind?"

Rarely -- or possibly not at all, but I'm not in a position to make a definitive statement -- are they actually looking at the impacts of this. What their role is is to police Amazon doing what it said it would do.

Bearing those facts in mind, we have taken the view that the reports that need to be provided are those up until the date that we have said, which is the end of the claim period, which contains that information.

THE CHAIR: The claim period, can someone remind me, is those -- it's slightly different from the (overspeaking).

MR TURNER: It's different for the two Class Representatives. The later of them goes, I think, into 2024.

THE CHAIR: And ACSO --

MR TURNER: ACSO I'm not considering for present purposes. But as I say, looking at these documents, Amazon's legal representatives have seen, when you're looking at the issue of the implementation of these commitments, what that has entailed as requiring to be done.

The first stock of reports -- and there are three from the European Commission, I believe one for the CMA -- address those matters. There are annexes which are relevant parts of Amazon's submissions to the monitoring trustee. They're going in as well, and they're what the monitoring trustee thought to be relevant.

All of that information, we say, does satisfy the requirement here without the need to go further into disclosing additional documents which do not have that feature. That's as I understand it.

THE CHAIR: Yes. Then what about -- let's deal with both aspects.

MR TURNER: The non-confidential. We have provided these documents saying that they're non-confidential because they are provided to Amazon with certain redactions where third parties fed into the monitoring trustees' process, and speculate that those third parties perhaps didn't want to be specifically identified. So there are certain exclusions for that. But there's nothing sinister about this. That's all Amazon has for that reason.

THE CHAIR: Yes, but this is what Amazon gets.

MR TURNER: Yes.

THE CHAIR: Yes.

Submissions by MR BEAL (continued)

MR BEAL: If I may say so, that second point now makes sense, that it's protecting third-party confidential information.

THE CHAIR: So that's not an issue -- the only question is --

MR TURNER: The date period.

THE CHAIR: -- have you a case for getting them beyond June 2024?

MR BEAL: Yes. Our pleaded case is at bundle A, tab 4, page 127.

The relevant period is defined as the period starting six years before the date of the original collective claim form, which is why we go back to June 2018. The Class Representative seeks to combine claims arising in the relevant period, but each of those claims will be for all losses, damages arising from the beginning of the claim period onwards, i.e. beyond the end of the relevant period. The period begins from 2018, covering six years until the date of the issue of the claim form. (Pause)

I think it was 20 June 2024.

MR BANKES: Can you give me the reference here, please?

MR BEAL: 26 June. That's bundle A, tab 4, page 127. The date is 26 June 2024. One gets that at page 208; and going back to 127, we are claiming for losses arising for the period after the relevant period.

As the Tribunal will be aware, the common practice is to apply at a convenient moment before trial, the final assessment of quantum, to amend the relevant period to bring within the scope of the collective proceedings claims that arise in the intervening period, if the conduct is ongoing.

What Amazon is seeking to do, with respect --

THE CHAIR: That is, I think -- just a moment. No. That's not --

MR BEAL: It's not said there, but it's the common practice, as one knows from other cases where it's been done.

At paragraph 22.5, my assiduous junior reminds me that we say we're going to do this on the basis of Neill v Sony jurisdiction. We flagged that we intend to do it. We obviously can't plead that we have done it, because we haven't, but the intention is there for all to see.

The effect of the submission from Amazon is that you should assume that their conduct

has stopped at the end of June 2024, and there's nothing to see after that.

THE CHAIR: No, I think it's done on the basis that your claim concerns conduct up to that point.

MR BEAL: Well, our intention is to say that the conduct is ongoing.

THE CHAIR: Yes.

MR BEAL: And that claims will be brought, see 22.5. We've pleaded that we will be claiming for loss and damage arising after that period. That brings into scope whether or not the conduct has indeed stopped. My learned friend, if I may say so, made a telling observation that they have sought with the monitoring trustee to get approval for modifications to their conduct. Now, simply because the trustee takes no objection to that doesn't mean --

THE CHAIR: We don't know if he did or didn't.

MR BEAL: Well, (a) we don't know that at the moment; and (b) that doesn't mean that it's vouched safe for competition purposes.

Submissions by MR TURNER

THE CHAIR: Well, Mr Turner, on a basic point that one can anticipate that application to extend the period and the Tribunal, as you know, have done that --

MR TURNER: Yes.

THE CHAIR: -- in a number of other cases, that will bring it up to date. Usually that's done, I think, at the PTR. The parties haven't been told that's going to happen. That's often the cut off. Without consulting my colleagues, it seems that you should continue to provide the six monthly reports. It's not a burdensome thing to do.

MR TURNER: Two short observations, sir. Essentially, we hear what the Tribunal says, and these decisions need to be made robustly. What I would say is, and I would have said this at the outset, we're now going to be going through sort of a range of different things which, cumulatively, do add up to quite a large burden.

The remark made at the outset of my friend's submissions, that on this side of the courtroom you have this organisation with infinite resources and so forth, gives a completely false picture of what needs to be done: there are bottlenecks; this does require, if you take the other proceedings, disclosure generally, liaison with many, many different people.

THE CHAIR: I understand all that.

MR TURNER: And it all adds up.

THE CHAIR: That will be relevant when one gets to second stage disclosure and so on, but as far as just concentrating on what we're dealing with, which is four reports at the moment, which no doubt are filed, self-contained, and it's not going to be burdensome, and they'll all be with someone dealing with the European proceedings where no doubt Amazon has central representation. On this point, I don't think it's a burdensome point.

MR TURNER: As I say, sir, it's a cumulative matter. Even in relation to the European proceedings, as we were discussing before --

THE CHAIR: Yes.

MR TURNER: -- part of the commitments there do not coincide with the issues in these proceedings. So there is also an exclusion process that needs to occur. All I wanted to draw attention to-- and it's not merely that one can hive off the other proceedings from the other disclosure -- it's the total burden that the legal representatives on this side of the courtroom face, which I just want the Tribunal to have in mind at the end of the day when taking stock on everything that needs to be done.

THE CHAIR: It may be why Amazon is using two law firms.

MR TURNER: It is part of the reason, but even with two law firms -- and I can say this -- there is a great strain in this, and the accusation that there's foot dragging or

sloth on Amazon's side is actually completely wrong.

THE CHAIR: Well, we're not taking any view on that. These accusations, which one gets, I'm afraid, with depressing frequency in hearings.

MR TURNER: Yes.

THE CHAIR: We're not concerned with attributing blame, deciding who's been dilatory. We just want to get a fair, reasonable, effective method going forward from today.

MR TURNER: Yes.

THE CHAIR: We're not making any criticism of Amazon, I'm just saying this particular request seems to be reasonable, not disproportionate, not burdensome, and should be done.

MR TURNER: (Overspeaking).

THE CHAIR: It should be brought up to date, and for that if you have four weeks for these four reports?

MR TURNER: Oh, for the four reports? Yes, yes.

THE CHAIR: Within four weeks?

MR TURNER: Yes. So far as any further reports are concerned, our essential point here was really a pragmatic one based on the content of the material as I described it.

THE CHAIR: Yes.

MR TURNER: That was part of the assessment that the legal team have done about, relevance to the issues in the case. That is why it's not merely a bright line at any particular--.

THE CHAIR: No, I assume you have to look through them.

Right, so that's the monitoring trustee point.

MR TURNER: Sir, just to be absolutely clear for both sides, does that mean at this stage only the four, and then we'll revisit it later? Or does the Tribunal mean that there

should be additional disclosure?

THE CHAIR: Obviously at the moment you can only disclose the four because there are no others since June 2026.

MR TURNER: There's a misunderstanding. This goes up to 2024, the four. So there is actually a period between.

THE CHAIR: But I thought you said you've agreed to disclose up to June 2024, that's agreed.

MR TURNER: Yes.

THE CHAIR: I'm talking about thereafter.

MR TURNER: Yes.

THE CHAIR: And thereafter, if they are six monthly, there's December 2024, June 2025, December 2025 and June 2026. That's it.

MR TURNER: Yes, that's right. And so --

THE CHAIR: I think that's four, isn't it?

MR TURNER: I see, so you're talking about subsequently?

THE CHAIR: Yes.

MR TURNER: Ah ... (Pause)

May I just check the timing before this --

THE CHAIR: Yes. (Pause)

MR TURNER: Yes. As we're talking about the four subsequent to the four that have been referred to in correspondence --

THE CHAIR: Yes.

MR TURNER: -- for those I'm told that there are redactions that will need to be gone into and looked at.

THE CHAIR: Yes.

MR TURNER: And for that we would say up to six weeks.

THE CHAIR: Okay, very well, six weeks. Then going forward, I think, Mr Beal, look at the recent ones, see how really relevant they are. If you want it to be ongoing, you can ask at the February CMC.

MR BEAL: Are we getting the existing ones in six weeks as well?

THE CHAIR: I thought the existing ones are coming in four weeks -- to the end of June 2024 in four weeks.

MR TURNER: That's correct.

THE CHAIR: And the subsequent ones in six weeks.

MR BEAL: May I just ponder aloud why it takes four weeks to disclose something that they already have?

THE CHAIR: Well, because they're, I think, going through the bits to be potentially redacted.

MR BEAL: I thought they'd done that exercise because they were proposing to disclose it, but I may be wrong.

THE CHAIR: Well, I'm not going to --

MR BEAL: No.

THE CHAIR: I think four weeks.

MR BEAL: Rather than --

THE CHAIR: You're getting disclosure, you've got some. I think your people will have enough to work on. Four weeks and six weeks for the future.

Right, North America, I think is the next ...

Disclosure - Algorithmic codes

Submissions by MR BEAL

MR BEAL: There's an issue about algorithmic codes, which I would like to address, albeit briefly. What we see in A, tab 23, page 591 is the part of the explanation that

deals with algorithmic codes.

THE CHAIR: A591?

MR BEAL: Page 591. What the Tribunal will see at subparagraphs (a) through to (l) are references with an explanation provided, to some extent, about those algorithms and what they do. One sees, just for your note -- I shan't read them out -- but (g) and (h) refer to two particular algorithms or algorithmic codes. Those have subsequently been queried by Amazon as to why it is said that they are relevant, which is a bit odd because of course they have in this explanation said that they are part of the relevant algorithmic codes. But putting that sort of slight moan to one side, if one looks at the detail that is provided here, an explanation of relevance is given predominantly on page 592 by reference to paragraphs 92 and paragraph 93 of Amazon's defence. We can then look at that in --.

THE CHAIR: Just a moment. Where's the reference to those paragraphs?

MR BEAL: So for example, under subparagraph (e), which is not redacted at all so it's easy for me to read, says:

"The FOEP API ... is relevant to the Stephan Proceedings -- see, by way of example, paragraph 92.2 of Amazon's Defence to Stephan's Claim."

THE CHAIR: Yes.

MR BEAL: And then that wording is repeated in open at each of the subsequent subparagraphs, but by reference to different paragraph numbers.

I'm simply taking you to 92 and 93 because those paragraphs are predominantly relied upon for this second half of the explanation of relevance. So paragraph 92 of the defence begins at page 261 of bundle A, behind tab 5. Tab 5, bundle A, page 261.

THE CHAIR: Yes.

MR BEAL: And this pleading in fact relates to the pleaded abuse that we have raised by reference to non-public seller data. The allegations made, for example, that our

pleading is vague and particularised. That then goes on over the page 268 to refer to the FMA response and the deployment of the FOEP API. That is at least one that is referred to.

Beyond that reference, one sees that in the course of 92 and 93, there is indeed very scant reference to the algorithmic codes at all. The defence that is being deployed is in relation to a defence to the allegation that the use of the NPSD was an abuse or led to foreclosure in any way. All of that is being addressed there, and there is some pleading as to the alleged popularity of Amazon's products and so on.

None of that engages with the purported relevance of the algorithmic codes. So we're left, I'm afraid, completely in the dark as to how it is said these algorithms are said to be relevant, coupled with the query that was raised as to why we were suggesting that two of the codes that they've relied upon are indeed relevant. We're concerned that the asymmetry of information here means that we can't fully understand the explanation of the algorithms that are said to be relevant and how they're being used. That was what the Tribunal envisaged would be done in the transcript of the first CMC, which for your note is bundle B, tab 9, page 303 to 304 and page 309 to 310, where essentially the idea was that we would be given a sufficiently clear explanation of the use of these algorithms to enable the disclosure process to be sensibly managed. Now, given that the only explanation of relevance is confined to a pleading that, bar one as I understand it, does not refer to the algorithms in question, we're left in the dark as to how it said these algorithms play out in the real world.

THE CHAIR: What you're asking for is a better explanation --

MR BEAL: Yes, that's exactly it. So that's paragraph 16 of our second skeleton where we seek, essentially, an answer to the question that Amazon were indeed asked but didn't answer: which is how do you say these algorithms are relevant and how do they fit in?

We're also seeking, it's fair to say, confirmation that other algorithms that haven't been identified.

THE CHAIR: This is your skeleton at --

MR BEAL: Paragraph 16.

THE CHAIR: Second one?

MR BEAL: The supplemental skeleton, paragraph 16. I anticipate, in the light of the late bundle arrivals, the Tribunal may have loose --

THE CHAIR: We do.

MR BEAL: Page internal 5 of that document.

We seek an order, "... requiring Amazon to explain how it identified the 'Algorithmic Codes' that it considers 'Relevant'".

That's the first point. That's the point I've just developed. Then:

"Specifically for each relevant 'Algorithmic Code' previously produced or explained to an authority in the Other Proceedings, Amazon should identify: (i) the Other Proceedings concerned; (ii) the nature of the material supplied; and (iii) the grounds on which Amazon contends that it is or is not 'Relevant'."

That goes beyond simply the ones that they are proposing in subparagraph (a) to (l). It also includes other algorithms, because we just don't know what the criteria for relevance were.

The fundamental problem here is not understanding how they have adjudged an algorithm to be relevant or not, because the cross-reference to the pleaded defence makes that opaque.

THE CHAIR: Well, one starts by reading their paragraph 15. Well, the first one -- is that not clear why it's relevant?

MR BEAL: (Overspeaking) explanation.

THE CHAIR: Sorry?

MR BEAL: This is back in the explanation.

MR BANKES: It's not your case that any of these are irrelevant? You're rejecting exclusions of others?

MR BEAL: No.

MR BANKES: Your challenge is: are there others?

MR BEAL: Well, our challenge is to understand the basis upon which others have been rejected, because we don't know the test that's been applied.

THE CHAIR: But do you understand why --

MR BEAL: Well, the FMA is an obvious one.

THE CHAIR: Yes, but why it's relevant? You say it's not clearly explained.

MR BEAL: Well, the FMA -- given that that's essentially the linchpin of our case and is subject to repeated observations from investigatory authorities, I don't think that need trouble us.

THE CHAIR: Yes. The FME --

MR BEAL: The FOEP has also been referred to expressly in the defence, so we can see that one. But the rest of them, to the extent that they rely on pleaded passages in the defence, when one turns up that paragraph in the defence.

THE CHAIR: Well, just a minute. Let's just look at what -- we have here a series, right? A to L.

MR BEAL: Yes.

THE CHAIR: Which of those do you say the explanation is unsatisfactory or opaque?

MR BEAL: Well, B to L is unsatisfactory.

THE CHAIR: B?

MR BEAL: B to L. I've taken you through (inaudible).

THE CHAIR: Each of B to L?

MR BEAL: Yes.

THE CHAIR: Well, B is the --

MR BEAL: It refers to paragraph (overspeaking).

THE CHAIR: Well, but never mind what they refer to. Just looking at the explanation for a moment, that's the algorithm that will determine the eligibility of the third-party seller to be the featured offer, right?

MR BEAL: Yes.

THE CHAIR: What greater explanation are you looking for as to why it's relevant?

MR BEAL: Well, because when one sees the cross-reference at 27(b), that doesn't really explain why that has been perceived to be relevant and others haven't.

THE CHAIR: But it's why this one is relevant. Surely, one of your points is the selection of sellers who can be a featured offer. So the algorithm that operates that selection is clearly relevant, isn't it? I mean, that's what they're saying it does.

MR BEAL: Yes. B and arguably C; one can see what is going on there.

THE CHAIR: Yes.

MR BEAL: (Inaudible) and FOEP subparagraph (e) I've indicated is at least expressly identified in the pleading. I think it's the ones that are subject to confidentiality claims.

THE CHAIR: Well, let's just go through those.

MR BEAL: Each of those refers to paragraph --

THE CHAIR: Just a second.

MR BEAL: I'm sorry.

THE CHAIR: Well, D was an algorithm used up to November 2023, so it's part of the relevant period, and also concerned with featured offers. So it really is supplementary to what's in B, and it relates to the same point. It seems to me clear why it's relevant as an explanation.

If, when you get it, you have a particular expert who's dealing with algorithms -- I think not Dr Houpis but a colleague of Dr Houpis -- he says, "Well, I've looked at this and

I need to understand it better", he can write through your solicitors and ask for -- but that seems to me pretty clear. I can't see what's wrong with that. E --

MR BEAL: E, I've indicated this point doesn't apply to it, and it does cross-refer to paragraph 92.2.

THE CHAIR: I think we have to go through them one by one. F. Just a second. (Pause)

One of the issues in the case is Amazon's use of non-public seller data and the impact that had on Amazon's decisions about what to sell, what to stop selling, and so on. This algorithm is a part of Amazon's decision-making process on that issue, isn't it? That's what they're explaining, and therefore helps to explain, and you're being given it to help you understand what was Amazon's decision-making process on that question.

MR BEAL: I think the concern we have is really this, in a nutshell.

Yes, this explanation has been provided and it goes as far as it goes, but it's not a fulsome explanation, and when the question comes to relevance, there is a reference to generic pleading, which doesn't actually say how it fits into the case or how it's being relied upon. It's quite right that we don't challenge the designation of these as relevant, and we're happy to have them disclosed to us, although there is a subsequent question I need to come on to about disclosure.

But the difficulty we have, really, is where these algorithms have been said to be relevant, but other algorithms have been disclosed to regulatory authorities but are said not to be relevant, the test for relevance remains opaque. That is my fundamental complaint.

THE CHAIR: Yes. Just a moment. (Pause)

You were going to get the documents from the other proceedings where you say other algorithms were disclosed or referred to.

MR BEAL: Or explanations may well have been given.

THE CHAIR: So you'll see what is said there when you get that material?

MR BEAL: No, I don't think we will, because --

THE CHAIR: Well, why not?

MR BEAL: Well, I assume that they would redact anything that was related to an algorithm they weren't going to give an explanation for.

THE CHAIR: Well, apparently not, and I think -- let's see what you get. It's coming in pretty short order now, because we fixed (inaudible).

If that identifies something that you think you ought to have disclosed, you can ask for it. Quite apart from that, if having got this material it's not clear to those who are assisting you how, for example, Amazon made its decisions of what product it should start selling itself, and what was its process, I think it's much more satisfactory then to ask -- or an explanation be provided, a statement setting out how Amazon went about its decision-making on what to stock and what to stop selling, in addition to just disclosure of pre-existing documents.

It's quite open to us to make an order that Amazon should provide such an explanation, and often that's more helpful than a lot of documents which are not) readily comprehensible to those outside Amazon. That will get you, I think, much further along the way, and that explanation will say, "We use this algorithm that (inaudible), and then it was a matter of judgment", or whatever, and proceed in that way, rather than asking at this point for a lot of other algorithms. You're going to get these, and you're going to get submissions to various authorities, which no doubt refer to them and explain what they do.

MR BEAL: That may be a convenient moment for the break. There is one further point I just need to mention on algorithms; if you're content to take the break now, when I return, or I can deal with it --

THE CHAIR: We're not proposing to make any order that Amazon should say why all its other algorithms are not relevant, or algorithm by algorithm.

MR BEAL: Understood, sir.

THE CHAIR: Yes. We'll take a ten-minute break now and back at 12.05.

(11.59 am)

(A short break)

(12.13 pm)

THE CHAIR: Yes, Mr Beal.

MR BEAL: Thank you, sir.

Would you be kind enough, please, to turn in bundle A, tab 29 to page 718. Bundle A, page 718.

THE CHAIR: Which topic are we on?

MR BEAL: This is the EDQ that was submitted by Amazon.

THE CHAIR: Yes, but on your 5 or 6?

MR BEAL: This is an observation I'd like to make in relation to algorithms.

THE CHAIR: We're still on algorithms.

MR BEAL: This is the final point I wanted to raise on algorithms. Let me essentially give the Tribunal the point, and then I'll make it good.

Amazon is proposing not to search for or to disclose the code that constitutes the algorithms. I've inferred --

THE CHAIR: You're on 718.

MR BEAL: 718, under (iv), there is some information that is highlighted as confidential. But the text that is not highlighted says:

"It will not be practical or feasible to re-run algorithms, so it would not be reasonable or proportionate for Amazon to search for or extract algorithmic code from this database."

But the essential thrust of that, as we understand it -- and there was a letter the 6th of October which disclosed this that seemed to imply the same; page 703, behind tab 27, for your note -- is we understand Amazon is proposing not to disclose any of the code that lies behind the algorithms.

Of course, you'll recall from the CMC1 hearing that we emphasised, pages 303 to 304, bundle B, and at 313 a warning was given by this Tribunal that it was hoped that Amazon could co-operate in the disclosure process and would not, wouldn't come to this CMC on the understanding that we had somehow run into the sand as a result of difficulties. A stark warning was given, page 313 of bundle B.

But we're now in a position where in the EDQ, something that has been identified as being central to our presentation of the case is purportedly to be withheld from us. Again, the Tribunal will recall the evidence of Mr Dorrell, which is at bundle D, tab 12, page 479. That was a very detailed exposition of how either historical data or synthetic data could be used to test the algorithms, but you needed the code, and a suggestion that it was impractical to rerun the code was rebutted by reference to various investigatory (overspeaking).

THE CHAIR: He was proposing to re-run, wasn't he?

MR BEAL: He was proposing to re-run, and he was saying an investigatory authority has re-run these algorithms.

THE CHAIR: Yes, I remember that.

MR BEAL: Dr Houpis, also, his proposed methodology -- bundle D, tab 10 page 469 -- proposes rerunning the FOSP.

THE CHAIR: No, I understand.

MR BEAL: Dr Pike does as well, I'm reminded by Mr Rayment.

This has been, it's fair to say, a key plank in the presentation of our case, and we infer from this that Amazon is proposing not to give any disclosure of those codes at all.

I'm drawing it to your attention now, not because it's on the agenda or because we can deal with it, but because it's a startling proposition, and it will need to be resolved through the disclosure process if they stand by that.

THE CHAIR: Yes.

MR BEAL: May I then please move on to --

Submissions by MR TURNER

THE CHAIR: Could I hear from Mr Turner on that. First of all, Mr Turner, why are the two words at (iv) on the left-hand column confidential?

MR TURNER: The name of it?

THE CHAIR: Well, there are --

MR TURNER: Beginning with "c" and "r"?

THE CHAIR: Yes.

MR TURNER: That I'll need to check. I see, sir, your point in relation to that. I'm not sure that the name itself is --

THE CHAIR: I say consistently there is overclaiming by your client. I don't even know why the second -- I mean, it seems to me quite extraordinary to suggest that can be confidential. I don't even know why the second column is confidential. The idea that's some terrible business secret.

MR TURNER: Sir, we, take to heart what you say, yes, I understand.

THE CHAIR: It just makes this sort of hearing that much more difficult, and as I say, we'll be coming back to that. But it comes up again and again; we had this equally at the decertification hearing where we complained about your client's approach to confidentiality, and fairly quickly, certain claims for confidentiality were dropped. It seems to be a theme on the part of your clients, and they really need to understand and be told that we operate on the principle of open justice. It's only exceptionally when something is commercially very sensitive and would prejudice them that it can

be put into, this quasi-redacted form.

MR TURNER: Right --

THE CHAIR: Well, I've said that, so --

MR TURNER: I'll underline that in black.

THE CHAIR: Anyway, now on the basic point -- I don't think this is something being sought now, but it will no doubt come up in the second stage disclosure -- but Amazon takes the view that it's not feasible to re-run the algorithms, but we had expert evidence on the certification hearing, including from an expert in computer technology systems, that that is precisely what he believes he can do and is seeking to do. So this may be Amazon's view, but clearly it's not only relevant, it's pretty fundamental to the exercise that he said he's intending to carry out.

MR TURNER: Sir, I understand we agree that this is a fundamental question. Therefore, I do want to just have one minute on it, because it's not satisfactory to say, "Amazon's not doing its job, now, let's move on".

If I may show you what Amazon's position is, as it has been explained in the letter that my friend did not take you to.

THE CHAIR: Yes.

MR TURNER: It's at page 701 in bundle A. Relevant part in that to the foot of page 704. I apologise that some of this is highlighted too, but if you would read to yourself, please, paragraphs 14, foot of 704, through to 17, the top of 706. Then I'll just make some points about it because you need to see what Amazon's position is, and what has been --

THE CHAIR: Starting charging at paragraph 14.

MR TURNER: 14 at the foot of 704, and from, "The work that's been carried out to date".

THE CHAIR: Yes. (Pause)

Well, I seem to remember -- I'm reaching into my memory, which may be at fault -- that prior to the certification hearing there was an exchange between Mr Dorrell, not the economic expert as described here, but the, if I can put it that way, technical expert, for Professor Stephan, and someone on your side also, a technical expert, on precisely this question, of whether it's feasible to re-run the codes and someone on your side made the point that it isn't for some of these reasons. I don't think it was then confidential explaining why it wouldn't work, and Mr Dorrell responded --

MR TURNER: I'm so sorry, it was the carriage dispute hearing and it was a representative for BIRA, who I think was put forward. And that's --

THE CHAIR: Ah, it wasn't Amazon.

MR TURNER: It wasn't Amazon.

THE CHAIR: Right, I misspoke. Well, I shouldn't rely on my memory. No, it's not been then canvased by Amazon at the time of the certification hearing, but there was a challenge to the method before. I think Mr Dorrell's evidence was in for the certification hearing, wasn't it?

MR TURNER: I can't remember whether it was resubmitted for the certification process.

THE CHAIR: Yes, well, I think it is something -- this came on the 6 October -- which is a technical question that Mr Dorrell has to consider and respond on, and to determine whether and in what way he says he thinks he can do it. I think we've just park it for now.

All I think we can say is if the Class Representatives' technical expert can say, "We think we have this way of doing it", and you say, "Well, that won't work", that is, I think, a very difficult matter for us to decide.

MR TURNER: Of course.

THE CHAIR: Without a lot of explanation and understanding, and rather than having

a hearing on that, which would be disproportionate, it would then be more satisfactory I think to disclose at least some of the codes, so that he can see what can be done, and then take it from there. That's a quite different question from whether: if it is re-run, the result is robust and meaningful for the issues in the case, which seems to be a rather separate point --

MR TURNER: Well, there are two aspects --

THE CHAIR: -- in paragraph 15.

MR TURNER: Yes, there are two aspects. There's the code itself and then there's the data, historically, to which it needs to be applied.

THE CHAIR: Yes.

MR TURNER: And points you see are made about that, that as well. So may I say only --

THE CHAIR: Again, I don't understand why 14 and 15 are confidential.

MR TURNER: So I understand that, and there will be --

THE CHAIR: If this does come back, one wants to have an open discussion about it.

MR TURNER: Yes, there will be renewed efforts to ensure that confidentiality markings are minimised.

THE CHAIR: Yes.

MR TURNER: May I make one final point about this? At paragraph 17 which you've just read, you see the position there about the use of this algorithm in any of the other proceedings.

THE CHAIR: Yes.

MR TURNER: And I draw attention to that. At the foot of page 705, you see that the workarounds which have been used in other proceedings, and I'm just going to give you one reference to look at now for a moment, which is on page 596. This is Italy. It's not confidential, I'm glad to say.

THE CHAIR: 596 of this bundle?

MR TURNER: Of this bundle. It's back in that long other proceedings disclosure explanation, I believe.

If you look at paragraphs 27 to 28, this is in the Italy section, AGCM. That gives you an example of how things were done there. (Pause)

We agree with further technical explanation being provided in the circumstances that the Tribunal's described.

THE CHAIR: Yes.

MR TURNER: We'll need to be cautious that this doesn't mean simply disclosing masses of code if there are concerns, and if it can be dealt with more efficiently.

THE CHAIR: Well, and Amazon will see that explanation, because it's in the RFI responses which you're disclosing?

MR TURNER: That's right; they will see all of this.

THE CHAIR: Yes. Well, as I say, I don't think there's any application regarding disclosure of codes at the moment. I think it was highlighted by Mr Beal because of concerns going forward. So they will now get that and they'll be able to consider it.

Equally, Mr Dorrell will be able to consider this and if necessary, this is something that will be raised at the next CMC.

MR TURNER: Yes.

MR BEAL: Mr Dorrell's evidence was provided to Amazon because they were at least monitoring the carriage dispute.

THE CHAIR: Yes, but I can't remember whether this was an issue at the certification hearing where there was, of course, quite a strong challenge to Dr Houpis's methodology. And I simply don't recall, but --

MR BEAL: I think there was a general complaint that we were being unduly optimistic as to what we could do with the code if we were given.

THE CHAIR: Right.

Disclosure - DMA enquiry

Submissions by MR BEAL

MR BEAL: The next issue is the DMA inquiry. I'm going to have to do the vast majority of it by reference to inviting you to read passages, because I don't think, with respect, it's going to be terribly efficient to ask the room to clear and have a private session.

THE CHAIR: Yes.

MR BEAL: Could you please, within bundle A, tab 23, turn to page 623. (Pause)

Starting position happily is in open. Article 6(5) of the DMA provides:

"The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking."

That's the starting point, that this is an overarching regulatory obligation imposed on somebody who has been designated as a gatekeeper to abide by these non-discriminatory principles, and not to engage, effectively, in self-preferencing.

THE CHAIR: Yes.

MR BEAL: All of that, of course, has a strong echo with a core component of the abuse claim that is brought by Professor Stephan.

THE CHAIR: Yes.

MR BEAL: Understandably, we had sought disclosure of material that was related to very similar allegations being made by Professor Stephan from the DMA material.

Could I please invite you to read paragraphs 157 through to 160? (Pause)

THE CHAIR: How far do you want us to read?

MR BEAL: To the top of page 625, please.

THE CHAIR: Top of page ...

MR BEAL: Paragraph 161 then makes an assertion, which I think I'm --

THE CHAIR: Entirely my fault, I've been in the wrong section.

MR BEAL: Paragraph 161 at page 625 is an assertion that essentially goes to explain why it's being said that this material is not going to be disclosed. (Pause)

THE CHAIR: Yes.

MR BEAL: At the bottom of page 625, we have paragraph 164 which sets out certain matters. And at paragraph 165, a number is given to those relevant matters. It's fair to say that the material at 164 and 165 is dealt with at page 628, paragraph 180. But I don't at the moment understand how it's being said that what's being proposed at 180 is confidential, because as and when --

THE CHAIR: 164 and 165 is being produced to you; is that right?

MR BEAL: Well, I wasn't using those words because they've redacted 180, which tells us what they're proposing to do.

THE CHAIR: I'm looking at 168.

MR BEAL: Which I don't understand, because my learned friend earlier --

THE CHAIR: Which is redacted.

MR BEAL: Yes, everything's redacted.

THE CHAIR: Everything's redacted, but ...

MR BEAL: Could we then --

THE CHAIR: 164 and 165 do not appear to be in issue.

MR BEAL: No.

THE CHAIR: No, right.

MR BEAL: One can infer that in due course, the public hearing will know quite a lot about that. Similarly, 180 echoes a point that had been made earlier by my learned friend.

THE CHAIR: 180 says that --

MR BEAL: I sense that has already --

THE CHAIR: -- repeats the same thing.

MR BEAL: Yes.

THE CHAIR: I understood that 177 is being provided, at least that is said ... I assume -- 178 has a cross reference to itself, which seems to be a mistake, isn't it?

MR BEAL: No, I think what they're saying is they're not going to provide anything from 177 and 178 because 178 then says --

THE CHAIR: Well, 178 says --

MR BEAL: Look at 181.

THE CHAIR: -- something we can't say. But it must be 177.

MR BEAL: Yes, I'm sorry. Yes, that point, but --

THE CHAIR: That must be a typo for 177.

MR BEAL: Yes.

THE CHAIR: And it says it's included in something else, but actually it's not.

MR BEAL: No, because 181 says --

THE CHAIR: One says what we're not going to do.

MR BEAL: Yes.

THE CHAIR: So this is appallingly worded.

MR BEAL: Yes.

THE CHAIR: Mr Turner, can you clear this up? It's a complete jumble. And again, absurd redactions for purported confidentiality. Is the material in 177, as would appear from 178 corrected, going to be provided?

MR TURNER: Yes.

THE CHAIR: So that will be provided. And that is --

MR TURNER: Right. 181 should be to 180.

THE CHAIR: I think it should be to 180, yes. That's right.

MR BEAL: That's very helpful.

THE CHAIR: Yes.

MR BEAL: There is a second point in any event, which involves the material contained at paragraph 171 to 173. (Pause)

THE CHAIR: Just a second. (Pause)

This individual --

MR BEAL: Yes.

THE CHAIR: -- it seems to be accepted is a relevant individual?

MR BEAL: Yes.

THE CHAIR: I take that from 171.

MR BEAL: Yes.

THE CHAIR: Then they explain the process of collection and review, and as a result, some materials were adduced to someone.

MR BEAL: Yes, but you've seen the role of said individual. In the light of that, the assertion 181(b), page 628, and the assertion of 174 is, with respect, difficult to understand.

MR BANKES: What exactly does 175 mean, in any event?

MR BEAL: Well, if one reads 181(b), it looks as though certain searches are not going to be conducted.

THE CHAIR: Well, it's not about a search because they've produced those documents. The search has been done using this search method, I think, and they've got the documents.

MR BEAL: I think the inference from 175 is that anything that is relevant should be popping up through that. Our concern is that it's not apparent that they're actually conducting the underlying search of the material that is otherwise addressed.

So they're not conducting a separate search, as we understood it, of potential information sources, if I can put it that way, that have otherwise been identified. They're simply going to rely on material popping up in a separate search process.

THE CHAIR: Yes, this individual, he doesn't coincide with one of the custodians, North American?

MR BEAL: He's identified at page 646, item 5, ironically not redacted. Consistency is an overrated virtue.

THE CHAIR: So he is a custodian?

MR BEAL: Yes.

THE CHAIR: So the documents that he produced in the North American proceedings are going to be searched, as he's one of the 33 custodians; is that right?

MR BEAL: No, because he's within this list, as I understand it, of 200 or so --

THE CHAIR: Have you had the names of the 33?

MR BEAL: I think we have, yes.

THE CHAIR: Is he one of them?

MR BEAL: He is proposed, I'm sorry. Yes.

THE CHAIR: He is. So whatever's said there, they are going to do a search of the documents he disclosed in the North American proceedings.

MR BEAL: That's true, but they're not going to disclose his documents from this particular aspect of the proceedings, which is different from --

THE CHAIR: Yes, the European one, which is about the self-preferencing at the moment.

Submissions by MR TURNER

MR TURNER: Sir, can I cut through this? There's just a lot to get through.

THE CHAIR: Yes.

MR TURNER: Paragraph 171, this individual. In the DMA regulatory dialogue, the

focus was on collecting documents from him. You have to trace back what this TAR model 2 was for a different purpose.

What we have said to my friend is that they're going to get this individual's documents which are relevant to these proceedings, because he is a custodian, as you've just noted, in the North American proceedings. If you go in bundle D to page 503, you see the letter in which we told them, paragraph 44, which I'm afraid is also in yellow.

THE CHAIR: Just a section D/503.

MR TURNER: D/503, paragraph 44. We told them that he was a custodian also, you'll see, for the European proceedings there --

THE CHAIR: This is paragraph 44.

MR TURNER: 44, yes.

THE CHAIR: Just a minute.

MR TURNER: Just read 44 for yourself.

MR BANKES: Do you know what size the underlying document collection is in review?

MR TURNER: In relation to that particular individual?

MR BANKES: Yes.

MR TURNER: That I'll have to --

MR BANKES: Is it very onerous to re-review?

THE CHAIR: When it says here -- and that can't be breaking any confidentiality -- the "EC proceedings"; is that a reference to the proceedings leading to the 2022 decision?

MR TURNER: Yes, it's the buy box.

THE CHAIR: Yes. So that doesn't deal with the DMA. The final sentence, what was the focus of the DMA enquiry?

MR TURNER: Well, so now we get into an area where I'm --

THE CHAIR: I understood its article 6(5). That was stated openly.

MR TURNER: Yes.

THE CHAIR: Why is article 6(5), which is about self-preferencing, so different as a substantive issue?

MR TURNER: Perhaps if I take you to page 624, there's a specific -- bundle A, same document.

THE CHAIR: Page 624.

MR TURNER: Sorry, it's that document that we were looking at before. You need to look at the -- we were talking about something ending with the words "model 2". But if you look at 160(b) at the foot of that page, which is in yellow, you'll see what it was looking into and what the focus was for him. It is not something which is in issue in these proceedings. (Pause)

THE CHAIR: Yes, I think I understand. It's a particular practice which is not in issue in these proceedings.

MR TURNER: That's right.

THE CHAIR: Yes.

Well, I think, Mr Beal, you should wait and see what you get regarding this individual from the North American and EC proceedings, and see where one goes from there. I don't think it's appropriate to make any further order.

Submissions by MR BEAL (continued)

MR BEAL: A request which I didn't get to because my friend jumped up, which has traditionally been helpful but wasn't on this occasion.

Our request is a relatively confined one, which is at page 60 of bundle D, paragraphs 24 and 25.

THE CHAIR: Page 60.

MR BEAL: Behind tab 5.

THE CHAIR: Yes.

MR BEAL: The request that we make is at paragraph 25, particularly the last

three sentences. What we've objected to is not conducting any search whatsoever. Given the broad ambit of article 6(5) as the Tribunal has observed, and its close connection with self-preferencing, and bearing in mind that the FTC proceedings isn't concerned with that; it's concerned with abuse 5, all we're asking for is confirmation that they can be separately searched.

THE CHAIR: Yes.

MR TURNER: Sorry, sir --

THE CHAIR: In the schedule that you helpfully directed us to earlier.

MR TURNER: Yes.

THE CHAIR: Under the DMA dialogue, which is the last line of the first page.

MR TURNER: I think it's the summary.

THE CHAIR: In the right-hand column you have stated, confidentially, the number of documents you propose to disclose; do you see that?

MR TURNER: Well, which has been disclosed.

THE CHAIR: Well, under proposals for disclosure.

MR TURNER: Yes.

THE CHAIR: With regard to those proceedings, unlike all the others above, you don't indicate what proportion of the total that is. Can you help on that? What proportion is that of the totality? And if you give us a percentage, that percentage won't be confidential, because one won't know either figure.

MR TURNER: Yes.

THE CHAIR: I just want to get some sense of what is the scale one's looking at.

MR TURNER: No, absolutely. That's a figure, unless it's readily available, I'll need to get for you after the short adjournment.

Our essential point is that although my friend says, "All we want is a search of this repository"--

THE CHAIR: Yes.

MR TURNER: In those words, there is concealed a potentially very, very large exercise again. And that's what you're driving at.

THE CHAIR: I mean, I don't know if we're talking about 200 or ... I think we'll come back to it after lunch.

MR TURNER: Yes. I'm sorry, sir, there's just one final point, which is if you go to page 611 in bundle A.

THE CHAIR: This is the --

MR TURNER: The US. You see the references in paragraph 92 to what the FTC proceedings cover. Those are not only limited to abuse 5.

THE CHAIR: Yes, it's also self-preferencing.

MR TURNER: Absolutely. So what you have there is an overview.

THE CHAIR: Yes, I think we noted that, in memory, in the judgment. But there may be different things produced in Europe to some extent. Anyway, we'll revisit that. Right. Mr Beal.

MR BEAL: Yes, the last two items can be dealt with, I hope speedily. They're both North American. One is FTC and one is Canadian. The North American question concerns custodians and search terms, but we've recognised in our skeleton that further dialogue may resolve this, so we're not proposing to address you specifically on that at this CMC.

THE CHAIR: Yes.

MR BEAL: So the answer is let's see how we go.

Mr Rayment may, however, have some submissions he wants to make to you on behalf of his client separately.

THE CHAIR: Yes.

MR BEAL: In relation to Canada, you will recall from CMC 1, it was the Tribunal's

suggestion that this be included because it was perceived that there were some investigations from the Canadian competition bureau, CCP into price parity policies in Canada that may be of relevance.

THE CHAIR: Yes.

MR BEAL: Now here, you've already got my point that where one's dealing with a generic policy, that is rolled out either on a pan-European basis or globally, that can indeed be relevant and raise issues even if the relevant underlying material is dealing with that common theme through a Canadian lens. So all we're essentially seeking is a form of confirmation, in the light of the helpful observation earlier about relevance, that the same test for relevance that the Tribunal adumbrated earlier has been applied, in fact, to the Canadian documents.

Obviously, if material solely relates to Canadian matters that have no bearing on the pan-European or global position, then the problem goes away. But until this morning, we didn't have that ambiguity removed.

There's also a separate point about custodians. If you'd be kind enough please to look in bundle D, tab 15, page 520. (Pause)

THE CHAIR: Yes.

MR BEAL: There are a list of custodians here. If you'd cast an eye over item number 4.

THE CHAIR: Just one minute. How many are there altogether?

MR BEAL: 60. It's really the job description that is given in column 3 for person number 4 that we say is relevant. Ditto person number 18 on page 521, and by way of example, page 523, number 34. These are people whose job roles you can see and --

THE CHAIR: Which is the third one?

MR BEAL: Third one is item number 34, page 523. (Pause)

It's unclear to us why these people wouldn't have relevant information, and therefore investigations by reference to their material ought to be conducted not through any geographical constraint, if I can put it that way. They're exactly the sort of people who are likely to have the global or pan-European or general generic commonplace policy initiatives flowing through their inboxes and so on.

THE CHAIR: Are any of those three included in the 33 custodians?

MR BEAL: I'm afraid I don't off the top of my head know the answer to that.

THE CHAIR: But if they are, then they're covered already.

MR TURNER: Two of them are FTC custodians.

THE CHAIR: Yes, so it's only one. Which number is the odd one out?

MR TURNER: 4.

THE CHAIR: Number 4. Well, I think ... (Pause)

MR BEAL: The --

THE CHAIR: Just a minute. (Pause)

Well, Mr Turner, could those instructing you write with an explanation of why the disclosure from number 4 in the Canadian proceedings is not relevant to these proceedings?

MR TURNER: Yes, we can do that. I'm in a position to give you a brief explanation now.

THE CHAIR: Yes, if you are, that's fine, but I don't want to put you on the spot.

MR TURNER: In that case, they were identified because their role in line reporting up from another individual in Canada in relation to Canada-specific issues, as I understand it.

I do need to qualify what I said earlier: the other two of the three, they are FTC custodians, that's right -- there are about 207 or so for the FTC proceedings. The group that we are focusing on, looking at their information for these proceedings within

the 207 is about 33.

THE CHAIR: Yes.

MR TURNER: I think only one of those, if I remember right, is within that group of 33.

THE CHAIR: Yes, and which one is that?

MR TURNER: Number 34. (Pause)

THE CHAIR: Again, I think it would be appropriate if Amazon's solicitors write to explain why number 4, number 18 are not relevant in a letter to these issues in these proceedings.

MR TURNER: We'll do that.

THE CHAIR: And then that can be pursued if necessary.

I think you are providing for the 33, extracts from their witness depositions; is that right?

MR TURNER: Yes.

THE CHAIR: Yes, so does that -- I know Mr Rayment's about to stand up.

MR BEAL: As long as the confirmation of the definition of relevance applies equally here, and no doubt --

THE CHAIR: Well, it's a general approach. I mean, there may be obviously a difference in that there may be European policy; there may be different North American policies which may make some of the North American stuff less relevant; there'll be worldwide policies.

MR BEAL: Yes.

THE CHAIR: So you see that some things in Europe are more relevant, perhaps, than some things in the US. But that will emerge.

MR TURNER: On this one, to avoid any confusion, there may be an issue. Again, we wanted as a search, with that being the metric applied as to relevance, our position is that we're not proposing to search the Canadian proceedings material. The amount

of that material is extremely large. I'll just give you the reference in bundle A at 631.

(Pause)

Paragraph 192, the bottom of that page, if you read (a) and (b).

THE CHAIR: Yes.

MR TURNER: You will see from (b), fourth line down, the sentence beginning "approximately", what we are talking about. From (a), a very large number of the other documents are already produced in the FTC litigation.

THE CHAIR: Well, I think we're not going to make any order about the Canadian disclosure. You say quite a bit of it is already in the FTC disclosure?

MR TURNER: That's right, absolutely.

THE CHAIR: Let the Class Representatives digest that, and we'll deal with these two people who are custodians in the US, who are custodians in Canada -- relevant to both of those proceedings -- but it's said not relevant to present proceedings. So that will be explained in the letter.

MR TURNER: Yes.

THE CHAIR: And then I think, subject to what Mr Rayment is going to say, the Class Representative was getting a great deal of disclosure, I think.

MR BEAL: Yes, obviously, depending on how the explanation comes out, we may need to revisit, but let's not waste breath on that now.

THE CHAIR: Mr Turner referred to proportionality. You're not going to get everything in this case, and we're not exploring for some secret cartel here that there might be some silver bullet. There's going to be a limit to -- and there may be other marginally relevant documents that you won't get, but it should be quite enough to emerge with a picture of what's happening and what the strategies are. It's at that level, I think, that is going to be decided.

Right, would it be sensible to hear Mr Rayment if he's on the point of other proceedings

disclosure?

Submissions by MR RAYMENT

MR RAYMENT: Sir, it is about other proceedings disclosure, it is about North America and it is about the FTC custodians. It's just a small point.

THE CHAIR: And you appear for Mr Hammond?

MR RAYMENT: Mr Hammond, yes. It's just a small point really about the FTC custodians and seeking clarity about exactly how we've gone from 207 to 33. I should stress that this is not an exercise in trying to increase the number of custodians for the sake of it. It's just to ensure that we fully understand and that it is transparent exactly how the 33 have been selected from the pool of 207. Have you seen the FTC custodians' letter?

THE CHAIR: No.

MR RAYMENT: Perhaps we could just turn it up.

THE CHAIR: My colleagues may have, it's much more --

MR RAYMENT: It's at A/24, page 643. This is a letter dated 4 September 2026 from Covington to the Tribunal, in fact.

Attached to the letter, starting at 646, is an annex; do you have that, sir? (Pause)

THE CHAIR: Yes.

MR RAYMENT: This is the list of custodians.

THE CHAIR: Is this the list of the 33 or ...

MR RAYMENT: Well, it serves a combined function because it actually sets out all 207 I think. But as you'll see on the first page, you can see whether or not a person is proposed as a custodian, because you see in the second column in from the right, "Yes", if they're proposed.

THE CHAIR: Yes, I see.

MR RAYMENT: There's also identified the time period that they are potentially

relevant to.

THE CHAIR: Yes.

MR RAYMENT: The difficulty, in a sense it's something that Mr Beal has slightly touched on already, is that you can see that the job roles are given. They are frankly pretty high level.

THE CHAIR: Yes.

MR RAYMENT: Given the points that have been made about the international nature of Amazon's business, it is quite difficult for the Class Representatives to identify whether or not people who are not "yeses" in this list are relevant or not.

In our letter responding to the Amazon explanatory note, we did ask for some further clarification about the basis of the triage of the FTC custodians. I think possibly the quickest way just to deal with this, if we could just turn up Amazon's response to that letter, which is at D/15. 497. (Pause)

You can see in paragraph 2(iv), it's responding to Geradin Partners Limited's letter dated 25 September 2026. That's the Class Representatives' response to the explanatory note.

THE CHAIR: At paragraph?

MR RAYMENT: Paragraph 2 on page 497. I'm just simply making good that this is a response to that letter.

THE CHAIR: What does it say on the particular point?

MR RAYMENT: If we could go on to the FTC custodian's point, which we find on page 505 of this letter. Paragraph 51 is just setting out the scale of the custodians. (Pause)

If you could read 52 as well. (Pause)

Now, that's helpful as far as it goes, but what it doesn't do is really help us relate these explanations to the actual list in terms of whether x or y was excluded on one of these

bases.

THE CHAIR: Why does that matter?

MR RAYMENT: Well, so that we can compare and understand the job descriptions with what's actually been --

THE CHAIR: Well, job descriptions are pretty meaningless. They've explained the basis on which -- and the result of what's emerged about Canada: it's being probed further on two of them. In those criteria that were applied, which is not exclusive. I mean, those criteria appear reasonable and appropriate.

MR RAYMENT: We'd just like to understand, and it can be done very shortly -- and obviously Amazon has done the work -- very simply, can be a sentence, on which ground particular custodians have been excluded from the 33.

THE CHAIR: Where does that get you? So you're told Mr Smith comes within (b); Mr Jones comes within (a); and Ms White comes within both (a) and (b).

MR RAYMENT: That would be helpful --

THE CHAIR: Well, why?

MR RAYMENT: -- when looking at the documents that we receive, but also if we could look at (c) for a moment.

THE CHAIR: Yes.

MR RAYMENT: This is about de-duplication. Now, I understand how de-duplication of documents works, but I'm not sure how it works in relation to people, and it would be helpful to understand who within the 207 are overlapping potentially relevant custodians. We think we're entitled to see that.

THE CHAIR: Yes, just a moment.

Mr Turner, I'm not, I have to say, persuaded that you should be required to do that. But we have a slightly broader concern. In paragraph 52, it sets out three criteria that we used in the selection process, but that is prefaced by the words "This included, for

example". I think you should explain the criteria that were applied in making the selection, and if there are other criteria as well as (a), (b), and (c) -- it may be that's just a form of words, but the way it's written suggests there are other individuals who are excluded for other reasons.

MR TURNER: Yes.

THE CHAIR: I think you should clarify whether this was the exclusive basis on which the selection was made or if there are other criteria applied. You should explain that.

MR TURNER: We'll do that.

THE CHAIR: And if you can do that within a week?

MR TURNER: Yes.

MR RAYMENT: Very helpful, sir.

THE CHAIR: Beyond that, custodian by custodian I don't think is proportionate or necessary.

MR RAYMENT: Well, I'm sorry you thought it was disproportionate. It's just that the work must have been done and --

THE CHAIR: Well, it may be, but nonetheless. We'll come back at 2.10 pm.

Sorry, Mr Lask, were you wanting to say something?

MR LASK: I just wanted to know what Amazon's intentions were as regards ACSO's participation (overspeaking).

THE CHAIR: Yes.

MR LASK: Before leaving the other proceedings disclosure topic, I wanted to raise the fact that ACSO does have a short and largely agreed application based on that topic.

THE CHAIR: Well, if it can be agreed, that's fine.

MR LASK: Well, it's been largely agreed, and to the extent that it is agreed, we'd like to have it (inaudible) Tribunal.

THE CHAIR: Yes.

MR LASK: I can certainly seek to discuss it with my learned friend.

THE CHAIR: The other thing, if that assists you; although we've got proposed directions up to trial, subject to hearing from counsel, we were not proposing, in fact, to make time directions beyond next summer at this CMC, but are proposing that the further directions into the autumn of 2027 and then up to trial would be determined at the February CMC; because by that point, ACSO's position would be clear to its participation in the trial and certification, because (inaudible) respond.

MR LASK: Yes. The only points I was going to make today relate to steps taken before next autumn.

THE CHAIR: Yes. Well, then you may have to remain, but -- yes. We can hear your application, then, at 2.10.

(1.14 pm)

(The short adjournment)

(2.16 pm)

Submissions by MR LASK

THE CHAIR: Yes, Mr Lask.

MR LASK: Thank you, sir.

I was proposing to deal only with ACSO's position on the other proceedings disclosure, so the topic you have been addressed on so far today. I should be able to take it quite shortly, because I've had a constructive discussion with my friends from Amazon over the break.

In September, ACSO made an application for Amazon to provide an updated version of its other proceedings disclosure explanation that takes account of the ACSO claim. Amazon has agreed to do that, and the only question is really one of timing.

Amazon says that the time frame for it to provide its updated explanation should run

from the date on which ACSO confirms that it intends to pursue its CPO application in light of yesterday's ruling. ACSO is content with that, subject to this point.

ACSO expects to be able to confirm in short order that it will pursue its CPO application, but it may take longer to amend its litigation budget as required by the Tribunal in paragraph 8 of its ruling, because that depends on discussions with stakeholders and the other Class Representatives.

What we would propose is that ACSO provides its confirmation first, hopefully in very short order, and then follows up with the amended litigation budget and LFA, as required by the Tribunal’sruling. On that basis, Amazon requires -- and we agree -- that it should have five weeks from the date of ACSO's confirmation in which to provide its updated disclosure explanation. ACSO would then have three weeks to respond, including with any further alternative proposals. I'm not drafting the order. We have a draft order, but it's going to need some amendment, and I can hand up the existing draft if that's helpful, or you can leave it to the parties to agree the wording.

Then Amazon would have six weeks from the date of ACSO's response to provide disclosure and inspection, in accordance with any agreed proposals, and that would be disclosure and inspection in addition to what it's already providing, pursuant to the process that's currently underway between Amazon and the other Class Representatives.

THE CHAIR: Yes.

MR LASK: I don't know if my learned friend --

THE CHAIR: Is that agreed, or that's your proposal.

MR LASK: My understanding is that's agreed, but I'll allow my learned friend to respond.

MS LUKACOVA: This is Kristina Lukacova acting for Amazon. That is all agreed.

THE CHAIR: Yes. Well, that's very helpful. If that order can be drawn up.

MR LASK: Thank you, sir.

THE CHAIR: Thank you for the constructive discussions on that.

Yes. Very good. Have we then concluded the proceedings disclosure?

MR BEAL: There's a newsflash from my learned friend Mr Turner on the DMA inquiry documents and the percentage figure.

THE CHAIR: Oh, yes.

MR BEAL: The redacted figure that you saw is a percentage of a larger figure.

THE CHAIR: Yes.

Submissions by MR TURNER

MR TURNER: We have a letter. I don't know if this has reached the Tribunal independently. If not, I'll provide copies.

THE CHAIR: Thank you.

MR TURNER: The reason for it being in letter form is, for the reasons I've given, these figures are considered to be confidential at this stage. But the first point, (i) responds to, sir, your request and you see the number there. That goes to the issue of proportionality that we were considering before the short adjournment.

The second response to Mr Bankes' question relates to that particular custodian. You see the number there. In relation to that, there's just one point that I ought to add, which is: you see the number that were custodial documents from that individual. A larger number than that, significantly larger, has been disclosed by Amazon from this custodian into the FTC proceedings, as to which there will be disclosure.

Based on that, we --

THE CHAIR: (Inaudible) Remind me, is he one of the 33?

MR TURNER: He is one of the 33.

THE CHAIR: Custodians in the --

MR TURNER: Yes. In that process, where the issues overlap with these proceedings,

a larger number of documents from him is being produced.

MR BANKES: (Inaudible) includes smaller number (inaudible).

MR TURNER: That I do not know, but on the basis of the argument so far, that may well not be the case precisely because this number related to the different focus of the DMA -- that was the essential point -- whereas that relates to the focus of our proceedings.

MR CARALL-GREEN: Yes. If I may say, sir, that's exactly the point. The figure in B that you have is a searchable number, in our respectful submission. It is going to go to the issue of self-preferencing on European platforms, because that's what the DMA investigation would have been looking at by reference to the open citation of article 6(5), and that isn't going to be the focus of the FTC enquiry, because that will be looking at principally the US position, but also the global position.

So when the key individual in question has had seemingly -- well, the search hasn't been carried out for that key individual yet, on the basis it was considered not to be proportionate. The number of documents that has been disclosed on this issue is one per cent of the number of documents in B, but the number of documents in B is not a large number, especially if it's electronic disclosure that's held in electronic forms that can be subject to electronic search terms.

In our respectful submission, there is at the very least a case for a search being conducted against the material in B by reference to the issues in the Hammond and Stephan proceedings.

THE CHAIR: Yes.

MR TURNER: Sir, I've made my points about the different focus. The relevant paragraph is at 160(b), which is at the foot of page 624 of bundle A, because what was said just now is not accurate about the point to which these documents go. It's a different point which is not in issue in these proceedings.

THE CHAIR: Did you say --

MR TURNER: Page 624 of bundle A. (Pause)

If you remember, the documents that were drawn from that individual related to a particular exercise, and it's referred to at 160(b) at the foot of page 624, and it is not the issue in these proceedings.

THE CHAIR: Well, Mr Turner, we appreciate that some of the x number of documents of this individual will not be relevant, and we appreciate also that some of those that are relevant will be produced through the FTC disclosure. But that disclosure is based on only what was produced in the FTC proceedings, and these are ongoing proceedings. I mean, they are ongoing, investigating, specifically in Europe.

We think the number that's in the letter at subparagraph 2(2) is not so great. We assume they would have been downloaded onto an electronic system. We don't know how quickly it could be ascertained. We don't think the exercise of a search is disproportionate. We think Amazon should conduct a search of this individual's documents as collected there, to see what is relevant to the present proceedings, and they should be disclosed even if the result will be some of them duplicate what comes through the US proceedings.

MR TURNER: We shall comply.

THE CHAIR: The time for that should be what? Say six weeks? Is that reasonable?

MR TURNER: The proposal on our side is 11 December is the long stop date. That should not cause difficulty.

THE CHAIR: Yes. Mr Beal, is that all right by 11 December?

MR BEAL: Yes. I mean, the difference between that and six weeks is not great.

THE CHAIR: Very well; by 11 December. Does that now conclude --

Submissions by MR BEAL

MR BEAL: That's other proceedings done; tick.

Can I please move on to second-stage disclosure, and I hope it will be welcome news that I'm proposing that this will take much less time.

THE CHAIR: Yes.

MR BEAL: It will take much less time, because there are, in our respectful submission, three points of principle that need to be determined, or rather two-and-a-half points of principle.

The first point of principle is the procedural mechanism by which second-stage disclosure should be given. The second point of principle is the long stop date for the production of the material, and the third, well, 2.5 point of principle is the need for a revised and updated disclosure report from Amazon, which is a point on a specific factual document, but in my respectful submission is likely to be tied into whichever procedural mechanism is chosen for second-stage disclosure.

On the first issue, my submission can be made shortly. This Tribunal has adopted a Redfern process, I think in the Spottiswoode case, I think in the Ennis case. It certainly adopted it in the Umbrella Interchange proceedings.

THE CHAIR: (Inaudible) quite often, actually.

MR BEAL: Yes. It has the merit of --

THE CHAIR: Is that resisted, the Redfern process?

MR BEAL: Yes. Amazon would like us to make individual applications for specific disclosure.

THE CHAIR: Mr Turner, why is that resisted? It's much the most efficient, user-friendly way of doing these things.

Submissions by MR TURNER

MR TURNER: Sir, if I may explain; in the circumstances of this case, it certainly is

not. Predicate of what is proposed, you see, if you go to the letter in which this was announced, which came very recently in bundle D, 579, it's replicated in their skeletons.

THE CHAIR: Yes.

MR TURNER: There you will see -- I'm sorry. You have to begin at page 578 in that letter, paragraph 3. What they are saying is that they want (overspeaking).

THE CHAIR: Is this the letter from Geradin? Yes.

MR TURNER: This is the letter that came from them on Friday last week, and you will see from paragraph 3, they say that the DR/EDQ are useless because they contain no list of documents. That means it's of little value to progressing disclosure. That's the starting point. They want a list of documents.

If you go to paragraph 7, the starting point of this Redfern at 7(a) is that we produce this revised DR with this big list of documents, and then there's this rat-a-tat procedure of ten days, ten days, ten days.

THE CHAIR: Yes.

MR TURNER: Now, the material here does not allow this. At the very starting point -- perhaps if I can just explain -- it's not suitable for it. What we have proposed is suitable, is appropriate and is much better for this case.

THE CHAIR: Yes.

MR TURNER: I will just show you why.

THE CHAIR: Your proposal is in your skeleton argument. Is that right?

MR TURNER: I need to check there. May I take it in this way, sir? (Pause)

Oh, yes, I see. What's happened, sir, is this. We served our skeleton -- this is the Friday -- at 4.00.

THE CHAIR: Yes.

MR TURNER: This letter with this announcement about the Redfern process, so forth,

came just before we served our skeleton. I think we've explained to the Tribunal we couldn't take this into account. This is a new thing. Then the Monday skeleton was dealing with the other proceedings disclosure that we've dealt with.

THE CHAIR: It didn't address this at all.

MR TURNER: So we haven't had the chance to address this, but I can deal with it very quickly now, because we have put forward our proposals on what should be done. If you go in bundle A to Covington's letter of 6 October, which is in bundle A at page 27. Sorry, page 702. It's tab 27.

THE CHAIR: Sorry, which page?

MR TURNER: It's page 702. We explained the predicament or the circumstances that confront Amazon's legal representatives and this case as a whole, which is an important starting point. Its paragraphs 6 and 7, which we ask you just to run your eye over.

THE CHAIR: Yes, should we read that to ourselves?

MR TURNER: Yes.

THE CHAIR: Yes.

MR TURNER: Point is that when you're taking this starting point, if some vast list of documents, the material that we're talking about here is simply not suitable for this exercise, and we clarify what we say should be done in the EDQ, which is criticised. If you go forward to page 710. This was the letter accompanying the EDQ. To explain the EDQ --

THE CHAIR: This is a letter of the ...

MR TURNER: 6 October. What the EDQ that accompanied that tells us, for clarity, is that there are two buckets of information with which we are concerned. The first is the data held by individuals, employees, within Amazon -- custodians -- who've got job functions relevant to the issues in this case. If you go to the back, page 730, you will

see that Amazon has identified, in yellow again --

THE CHAIR: Yes.

MR TURNER: -- 23 custodians. It's not other proceedings, but it's the material, the EDQ. 23 people potentially holding material relevant to the issues in this case in the period 2021 to 2024. We have identified those 23. Then if you go back to pages 715 to 717, you'll see at the top of page 715 a heading, "Custodial data sources". What we've done is we've identified the six databases or data sources, and you can see what they are -- some of these would be readily familiar to members of the Tribunal -- where the material from these 23 custodians falls to be found.

THE CHAIR: Again, one's puzzled why the names are confidential.

MR TURNER: Sir, the point --

THE CHAIR: I don't expect you to comment on that. It just hits one again and again and again.

Anyway, yes, so you're saying those are the sources.

MR TURNER: This first bucket is that here are the repositories, got the 23 custodians, and what do we say should be done? If you go to page 723. At the top of that page you have box 6. You'll see that what we propose should be done now we have these repositories is we search them. We gave keyword searches that we think are adequate to the class representatives at the end of last month. This is set out in the appendix.

What we've said is the way forward is that we will apply these data sources for those custodians; we'll have feedback from them; we'll collaborate with them; we'll test what comes back; then we'll get something which is going to work. We are extremely willing, conscious of our responsibilities under governing principles, just to be cooperative about this. But this is the way in which we will get to the answer with these repositories. We cannot set out -- this is the first bucket -- some large list and then have a ten-day,

ten-day, ten-day process. You can in other cases, not the case here.

THE CHAIR: You wouldn't set out the list, would you? The Class Representative would specify what categories of documents they say are relevant.

MR TURNER: Well --

THE CHAIR: And you would say, "We agree", or, "We don't agree", or, "We think it should be narrowed to this".

MR TURNER: Well, I showed you the letter where they set that up, which came on the Friday when the skeletons were filed.

THE CHAIR: Yes.

MR TURNER: The starting point is that they say, "Your document here is useless, we should have a long list". They saw that list as point (a) in their process. This is why we say that this is really wrong headed for this type of case. I'll develop, because there's one more bucket to look at, but the point is that what we're saying, which is, "Here are these repositories, here's how we're going to search them, please get involved" -- that's going to yield, most efficiently, material for use in this case, for the custodial data sources.

It seems to us, frankly, eminent common sense. We can't produce a vast list of documents in six overlapping databases as the first step. It is their proposed process. That's the first.

The second bucket is that in this document, the EDQ, we've identified 18 potential databases which are not related to the documents from these custodians. So if you go back to page 717, just after the six that we've looked at, you see a heading, "Non-custodial data sources".

THE CHAIR: Yes.

MR TURNER: We looked at this briefly before. What follows that is 18 databases not related to the custodians. That then engages the point I made at the outset, which is:

Amazon systems are not some super streamlined, immediately accessible single entity. There's fragmentation, there's overlap; it's extremely difficult to put all of this together.

What we have done is we've identified a mass of very large repositories, most of which, potentially we say, have relevant material for the purpose of this case. We propose a practical way forward for this bucket as well, which has not been taken up, and it's not, in any of the submissions, been acknowledged.

If you go to page 724 in our document, the bottom of the page saying what it is, it's the EDQ. Box 10. The first paragraph in box 10, we say what we've done.

THE CHAIR: Yes.

MR TURNER: We explain in the second paragraph we'll engage with them to agree targeted requests for data. Now, at that point, yes, they come forward and say, "This is what we want", and we can engage with it. That's what we expect would just be a sensible way forward. Our hope is that they will proceed collaboratively on their side, so you don't have, "Here's a Stephan list, 25 pages, now here's a Hammond list". But they consolidate on their side and they give us their requests. In the way that we describe here, I think over the page, we will work with them.

THE CHAIR: Well, I can understand the mechanism. I'm just looking at question 12 on page 725.

MR TURNER: Yes.

THE CHAIR: "...given the nature and extent of Amazon's ... It will be necessary for the parties to agree appropriately targeted ... proportionate requests for information."

MR TURNER: Yes.

THE CHAIR: Well, I've always understood the Redfern schedule to be the process by which that is done, because very often the parties partially agree but partially disagree. It's one thing to say where you're going to do it and look for it, and where it's

proportionate to look for it -- and I can well see from what you say this may be the proportionate, sensible way of doing it; these particular databases, these particular custodians and so on. That's how you're going to search and to go beyond that will be disproportionately expensive, time consuming and cumbersome.

But the process of: what are the appropriate requests, as you say, it would be necessary for the parties to agree. The Redfern process is one process to try and achieve agreement, identify where there's disagreement, and then put the points of disagreement to the Tribunal to resolve, because they set out, "We think these are the requests that are appropriate". You respond saying, "Well, requests 1 and 3, yes. Request 4 no, and request 2 only for one year", whatever.

That's how you get agreement. So it's to assist that process. I don't think it's in any way inconsistent with what you've described, which is the sort of search for the answers to those requests that should be done, through key words and a limited number of custodians. That's why at the moment, and maybe I missed something, but it's almost as though there are ships passing in the night here.

MR TURNER: There are ships passing in the night. But if I may just raise a couple of things. The first is, as I showed you from that letter, the starting point according to them in their skeleton and in that letter, is that we produce some vast list of documents.

THE CHAIR: Yes.

MR TURNER: If we put that to one side, we then have two buckets. For the custodians, which we've gone through, it seems to us that the process of agreeing the searches (inaudible) these databases which we will then implement collaboratively, that's the right way to go.

Then for this exercise, the non-custodial database, I do see, sir, your point, which is that here we're expecting them to come up with their list as the starting point. And then there's engagement and that it could be orderly for that to be done in a structured

way for this particular bucket.

THE CHAIR: Is your answer to question 12 only dealing with the other databases, or was it a general point?

MR TURNER: I believe this is the non-custodial, this is the second bucket.

THE CHAIR: I see.

MR TURNER: But I think, sir, the point is really just a practical one. What we're concerned with is how most efficiently to do this; to minimise friction and simply get this done. For the first bucket, I've made my submissions; I think that has to be the most sensible approach.

Here, our proposal is: they get together -- and sir, you're right, they begin by giving us their list of requests. Either there can be an informal process or we can have this structured: they say this; here's our response; there's their reply; let's see where we are. We are neutral on that score. We are trying to find a way that's going to simply minimise costs and work on all sides.

One point that is important is this, which is otherwise going to be lost: if you're considering this process for this second bucket Redfern approach, the start date when this begins is important. Here, there is one point of disagreement. You will have seen from our composite draft order that at least until very recently, we'd understood that they on their side were going to produce their list of requests for further disclosure. This is paragraph 2 in orange:

"We shall make any initial requests for any further disclosures in respect of the issues."

That was originally in black text, because they agreed to it for 23 October. But that went on Friday night, because it got swept up in this new way for the Redfern process, whereby you look at their paragraph 6 in its document.

THE CHAIR: Yes.

MR TURNER: Now they say it's on 11 November, and it appears to be that that is

following what you have in paragraph 4, "produce the revised document", which is the list happening earlier.

I think the disagreement between the parties comes down to this: we say this point about some vast list is not workable or suitable here; first point. We can live with a structured approach if that's considered to be most appropriate. They were originally saying 23 October for a consolidated list. I think that they should stay with that, unless there are reasons why it needs to be pushed back by three weeks. But then, this collaborative process, whether it's in a structured Redfern protocol or not, is the way to go.

Then I think the only remaining point -- my friend will tell me if I'm missing something from what I've said -- is paragraph 9 in the composite draft. They envisage that any agreed disclosure following from this Redfern approach comes no later than 19 February 2027, is their new ask. We will provide the material as soon as possible. We simply can't take that date as anything more than a target, let alone binding, but then allegations of --

THE CHAIR: No, I can completely understand that.

MR BEAL: May I briefly come back on --

THE CHAIR: Just one moment. I'm sorry. (Pause)

Yes, Mr Beal.

Submissions by MR BEAL

MR BEAL: I'm going to deal, if I may, with the Redfern in principle point, and then my learned friend Mr Moser will cover the timing issues.

The submission has proceeded, I'm afraid, on the basis of a definitional error. This is in bundle D, tab 29, page 579.

My learned friend took you to paragraph 7 of the letter dated 9 October 2026. He said it all begins with a criticism of the EDQ and the need for a long list. In fact, what we

say in subparagraph (a) is the defendant should be also required to provide a revised DR. The definition for DR is given on the previous page, 578. In subparagraph (d) of paragraph 2, DR is defined as "disclosure report". EDQ is described as the "electronic document questionnaire". So what we're asking for is a revised disclosure report, not a revised EDQ or anything else.

In terms of why are we asking for that; well, one needs to see the document itself, because you weren't taken to that. That's at tab 28, page 708 of bundle A.

When one reads the DR properly, and it's referred to as the disclosure report, one sees at page 708 of bundle A what Amazon has done. To call it a disclosure report, I'm afraid, would annoy the trade descriptions people. Because when we see what they say in box 2, for example:

"Amazon is not in a position to provide an estimate of costs involved in standard disclosure until Keyword Searches and custodians have been agreed upon and the volume of documents is known."

There's then a second paragraph up from the bottom. It says:

"For the reasons set out in Amazon's [EDQ] it is premature at this stage to set out any further directions as to disclosure. The parties should as a next step agree appropriately targeted, reasonable and proportionate requests in respect of supplemental disclosure."

It's suggesting, in essence, that we set about a process of making requests for specific disclosure as part of the disclosure process. What we're saying -- and frankly, in my view, it's two paths up the same mountain -- is let's do this through a Redfern process, which has a proper structure in place, where the Tribunal will be able to see in due course how it's said that categories of disclosure and elements of specific disclosure fit in with the issues in the case and what is being sought. You'll be able to see Amazon's response in the next column, and so on, and then --

THE CHAIR: Why do you need a revised disclosure report to set that process in motion?

MR BEAL: Well, because at the moment it simply refuses to engage with what disclosure is going to be given. It says, "We're not in a position ..."

THE CHAIR: But you don't need an offer from the defendants to start a Redfern process.

MR BEAL: No, but I mean, ordinarily one would have expected them to say we will be disclosing documents from our central management information database, which deals with our policies and our implementation.

THE CHAIR: Well, they have in the EDQ told you how they propose to search through custodians, keywords and so on, and they've got a lot -- but, I mean --

MR BEAL: I'm not going to be hidebound on a procedural point.

THE CHAIR: You know what are the issues in the case. You know what specific categories or descriptions of documents you are seeking to deal with those issues, and to be told that there are -- you know, they won't know the number of documents as such.

MR BEAL: Sir, if I can short-circuit things. Speaking for myself, I can see the force in the fact that what actually matters is what we get, and the process by which we get there is best handled, in our respectful submission, through a Redfern process, because it brings order into what can otherwise descend into chaos.

THE CHAIR: And they may say in response to your request for this category, "It's proportionate for us to do so by searching these custodians with keywords to be agreed", or "This category is too broad; we propose narrowing it to that, and this is the way we propose to do it", and then you can say whatever you want to in response.

MR BEAL: Yes.

THE CHAIR: The advantage of doing that in a rolling schedule, rather than in

correspondence, is it's just much more convenient for everyone to see the position on each request, and if you don't reach complete agreement -- and one's instinctive suspicion is that the agreement may not be complete -- then on 8 February, it's much easier for the Tribunal to have in one document, as opposed to jumping between letters, a clear view of where everybody is. I would have thought you can start the process fairly soon, and in doing that -- yes.

MR BEAL: Mr Moser is going to deal with timetabling, unless I can assist further.

THE CHAIR: Yes. This disclosure report doesn't add anything to the EDQ, but the EDQ does tell you the method they're proposing to use to get documents, subject to the other databases.

MR BEAL: I don't know whether Mr Moser wants to say something about the disclosure report.

Submissions by MR MOSER

MR MOSER: I'll say something about the disclosure report, just because I know that my clients would want me to, and also the Tribunal might be surprised by some of the things that they've heard.

It is, in my respectful submission, a mistake to say that somehow we only reacted on the 9th, and there's been a lot of complaint about lateness and so forth. I will recall that there was an order made on 1 July where it was agreed between the parties that Amazon would provide a disclosure report by 6 October. In my respectful submission, that must have meant something. What we thought that meant is that on 6 October, we would get some indication of a category list or a list of documents.

THE CHAIR: It was actually by 28 August.

MR MOSER: It was, and then Amazon wanted more time. It was agreed it was going to be later. In fact, now that is a matter for regret, because it meant that two working days before the exchange of skeletons for this CMC, we were served with the

disclosure report that my learned friend Mr Beal has just taken you to. I know you don't want to make rulings on who is in the fault or point fingers, but the disclosure report is objectively parsimonious in its contents; and my learned friend holds up this sort of in terrorem concept of a vast list. I don't know what vast list --

THE CHAIR: (Inaudible) 25 September.

MR MOSER: It was an earlier date (inaudible).

The point is that when the disclosure report arrived on the 6th, I think not in the morning of the 6th, there was nothing in it. So when my learned friend says, "Oh, we have resiled, resiled from what is given, in its own orange category, in the draft order from the words that say 'Shall make any initial requests for any further disclosure in respect of the first trial issues'", I have to explain this background, because we agreed to that wording before we saw the disclosure report, which is blank. We thought we would look at the disclosure report and then we would make our requests a couple of weeks later.

In fact, all we've got is the 33 documents my learned friend has mentioned, and the confidential number of further documents that was also discussed this morning; it is not sufficient to make a sensible request at this stage, or indeed by 23 October.

So, because Amazon made a disclosure report that was, in our respectful view, entirely unfit for purpose, we can't make the request. So, nobody has resiled. Constructively, we came back with a different suggestion, "All right. You haven't told us anything. Tell us something". We've put it in terms of, "Serve a fresh disclosure report", and that's what we've put in the draft order at paragraph 4. "Give us a revised disclosure report by 4 November 2026, and then we will have a Redfern schedule process". It doesn't have to be a revised disclosure report. They have to give us what they say is in relation to their second bucket at box 12 of their EDQ, and I ask rhetorically, "Why can't they do that for the first bucket as well?", which I think is

custodians. Give us something. We can enquire.

Because of the vagueness, I'm afraid, I cannot comment on the accusation that it would be a list that would be vast, or indeed what "vast" means in this context. But also, the purpose of the Redfern schedule -- and I agree entirely with what, sir, you say about the Redfern schedule, not just because it suits me, but it's well known that these schedules are very useful. They arose out of arbitration and they've been deployed in a number of these collective actions to great effect, especially, for instance, in *Bulk Mail*.

What that will do is it will force the parties -- both the parties, but particularly Amazon -- to engage with the process of disclosure with particularity, and to do so by certain dates. It's not a big ask to say, within ten days you shall provide your response. It doesn't mean they have to provide documents.

THE CHAIR: Yes. Well, we'll get to the timing in a moment.

MR MOSER: What is the alternative? Because the alternative is a wholly vague suggestion that Amazon shall provide "rolling disclosure" no later than 7 May 2027. We find that in paragraph 12 of the draft order. If you read the draft order, Amazon's version of it -- and it's a little bit difficult because you have to negotiate the blue and for some reason also purple -- does not commit to any earlier date. So the real risk is that we would be at the next CMC with no further disclosure; we may have no disclosure by May. Something has to be done to get the rolling disclosure rolling, because rolling disclosure was already being promised last time, and in the transcript -- I needn't go to it now -- you, sir, said something along the lines of, "I'll be extremely disappointed if we get to the next CMC and nothing's been disclosed". It perhaps explains the very much last-minute announcements or disclosures that came last night from Amazon, so that they're able to say, "Oh, well, something is rolling". But not a lot has rolled. We are in the category of X documents, that I'm not allowed

to say, that have rolled in before last night, and a few more last night.

So, on the Redfern schedule: it is important that they produce a revised list of categories of documents that we can interrogate, and that they do so by no later than 4 November, as we say. It must be meaningful, not just a sort of high-level thing, and preferably documents. We can then set up the Redfern schedule.

THE CHAIR: By "preferably documents", you mean what?

MR MOSER: A list. Preferably a list of documents.

THE CHAIR: A full list of documents?

MR MOSER: Where possible; but a proper disclosure report where proper effort is made to give us documents where there are documents, and where there aren't, explain why not, and broadly what categories they are, beyond simply saying, well, it's data or complicated.

We are then able to make our initial disclosure requests for the second stage by 11 November 2026, and set off the rolling basis, we say, to be concluded by no later than 19 February.

THE CHAIR: Yes.

MR MOSER: That's the proposal, and the background has to be understood to know that we haven't somehow changed our minds. The thing that we were promised didn't eventuate, and this is how we propose to deal with it, to avoid the same thing happening when we come back for the next CMC.

THE CHAIR: Yes.

MR TURNER: Sir, I think it's only timetabling (overspeaking).

THE CHAIR: Well, just give me a moment. (Pause)

Well, before hearing from Mr Turner on dates, but before we get to dates, we really don't see that a revised disclosure report is going to be of great value in this case, and it's only going to hold things up. We think the Redfern process can start without that.

You are seeking certain categories and kinds of documents. You can specify those over certain periods, and indeed your expert, Dr Pike and Dr Houpis have already indicated that, and you say what are the documents dealing with this, and Amazon will say either they agree in principle or they don't, on relevance. If they agree on relevance they say, "Well, the proportionate way to find documents on that is by searching these custodians", and then you can come back and say, "No, there's a better way", or whatever, or "There should be more custodians". Then one gets to a process. I don't think an amended disclosure report is really going to assist, given the potentially vast number of documents in different places that Amazon has.

MR MOSER: Well, sir --

THE CHAIR: I do think we should just get on with them, get on with the process.

MR MOSER: I hear you and really, that is perhaps simply another way of getting it rolling. We proposed a disclosure report. This would be the same thing, but the other way around.

THE CHAIR: Well, I'm not sure it would be, because it has to be a sort of complete statement of what they've got, which is a different thing. We do think, unless you want to push back strongly on that, that's the way to go. We would say that we did look briefly at Dr Houpis, but it did seem to us as, I mentioned earlier, economists tend to be quite disproportionate in some of the things he's saying he'd like to have. I think when you come to prepare your column in the Redfern schedule, you need to think much more carefully of what really is proportionate for the exercise for Trial 1, there's always more that one can ask for.

Economists are keen to do as robust and thorough a job as they can, but we’re only seeking to get to a fair -- rather than a precise -- result in these cases. So there has to be a little bit of judgment about really what's reasonable to request. That's in your own interests, because you're driving up the cost, you're delaying the production, and

that doesn't help anyone. That's just a cautionary word of warning as to the way you approach the request you make, particularly when you're dealing with a very large international company, which will have mountains of documents.

If we could go down that route, when you prepare your column, as it were, of the Redfern schedule.

MR MOSER: Well, I'll say two sentences, if I may, and then I'll take instructions. The first is: it's always useful to have these words of warning in advance, and they're taken on board. I'm not going to comment on Dr Houpis, my learned friend's expert.

The second is that if we are to go first, I give, as it were, some warning -- not to you, but to them -- of my own, which is that the specificity of the request will be proportionate or appropriate to the amount of detail that we have in relation to the different categories of documents, or documents. There's only so much that we can initiate at this stage where we have no information. So we would do the best we can.

THE CHAIR: You can say you've heard about the MFPP, I think, the pricing policy; that you want strategy documents prior to the introduction and reviewing the operation of the MFPP, for example. I mean, you can specify things in that way.

MR MOSER: A request at that level can certainly be done, and I would take instructions as to by when. I suppose this affects both CRs, Dr Houpis and Pike and us.

THE CHAIR: Yes.

MR MOSER: Excuse me for a moment. (Pause)

As an initial date, we would propose 4 November.

THE CHAIR: Yes.

MR MOSER: There is a further point to this that: we're going first; at the same time the other proceedings disclosure will start rolling in two weeks, four weeks, six weeks time. There has to be in my respectful submission to make this work an element of

rolling of the request basis. That is our initial request for the second stage on 4 November, but as other proceedings disclosure and information rolls in, and as we evaluate what comes, there has to be a possibility, whether by application or by automaticity in the order, for us to make further requests, further to the initial request, as it becomes clear what is lacking or what we are not getting.

THE CHAIR: From the other proceedings disclosure?

MR MOSER: Yes.

THE CHAIR: Well, I think that may be a separate process, that you'll get that and then, as we said, on certain matters, if you see that the documents you're getting, tested against the submission or the RFI response, suggest there are certain gaps, you can go back and ask for that. I think that's separate from the Redfern process.

MR MOSER: I just foresee that if we're making our initial request --

THE CHAIR: Yes.

MR MOSER: -- unsighted, then there may be things that are produced by the rolling disclosure under the Redfern process that will lead us to make further requests. They will probably come anyway, it's just a question of whether we make some provision for that in the order, or whether I simply announce that that is likely to happen and we'll have to deal with it in due course. I would suggest that some provision for further requests would be prudent if we're to go first.

THE CHAIR: I don't think you're precluded from your list of requests in Redfern schedule, from adding further requests once you get disclosure, whether it's through a separate process or through the Redfern process.

MR MOSER: As long as everyone here --

THE CHAIR: Further requests, one would expect, will be more for specific disclosure, rather than a new category.

MR MOSER: Specific disclosure requests, exactly.

THE CHAIR: So that should not be a problem.

MR MOSER: I'm grateful. I just --

THE CHAIR: When you say 4 November, it's clear it does not preclude you from making specific further requests once you receive the other proceedings disclosure.

MR MOSER: I'm grateful, or the second stage disclosure.

THE CHAIR: Indeed, sometimes the answers given by Amazon on the Redfern schedule could be agreed to be provided through the disclosure from the FTC file.

MR MOSER: Yes.

THE CHAIR: So 4 November and then for Amazon to respond with its column. Of course, they don't know at the moment quite how long it may be, how many requests you might make -- that's always the case. What would be an appropriate time for Amazon to respond? 4 November is a Wednesday, is it?

MR MOSER: Well, if they're going to follow the Redfern process, you would expect within ten days to receive a response, and then within ten days we reply.

THE CHAIR: The initial response might take a bit longer.

MR MOSER: I'll take that point.

THE CHAIR: I would have thought they should have a bit more – we will hear from Mr Turner as to how long. But then thereafter things can speed up a bit.

MR MOSER: It would be neat if we still reached the end point on or about 19 February.

THE CHAIR: Yes. Well, we'll come back to that.

On the Redfern schedule, how long, Mr Turner, for response?

Submissions by MR TURNER

MR TURNER: Sir, we are happy to go with this process. In terms of how, there are two things to bear in mind. The first is, and the Tribunal has now got a clear picture of it: if we get a tsunami of very general requests aimed at this vast mass of material, the ability to turn this round is, sir, as you've just indicated, going to be very difficult. I've

had an indication on our side that ten days for what might be a -- despite this Tribunal's pronouncement -- a very substantial exercise is very hard.

The other metric, and this is extremely important, is just for the Tribunal and the parties to step back, and see how this fits into the case as a whole. Because our conception is we've got the trial in April 2028. We've explained why we think that in order for that to work, the disclosure part, before you get on to the witness statements and so forth, has to really end in May next year, close it down. This is a proportionality point of great importance.

THE CHAIR: Yes.

MR TURNER: We have said, to be clear if you look at our draft order, 7 May is not for agreed disclosure. That's the final date for disclosure --

THE CHAIR: Yes.

MR TURNER: -- agreed or ordered, so we have that in mind. We also think that this process that we're now considering, therefore, should be an exchange between the parties, given this difficult situation, with a view to, if there is disagreement, it being sorted out at the CMC on 8 February.

THE CHAIR: Yes.

MR TURNER: Because that then leaves time to --

THE CHAIR: That's exactly what we're --

MR TURNER: If you're going to do that, then we have proposed, again in our consolidated draft order, applications on all sides because you've reached an impasse. It was paragraph 5 of our draft on both sides, 7 December, before Christmas essentially, because it could be large.

Now, therefore, this process that we're now discussing has to fit between where we are, currently 14 October, and really the end of the year just before Christmas. We are very happy to make this as efficient as we possibly can, but on my side, hearing

the understandable points about a potential large exercise being asked to be done in relation to 24 databases with multiple teams all over the world, in ten days or whatever, it's really not necessarily going to be practical. It almost comes to a question of wellbeing for the legal teams, but practicability certainly. So our proposal --

THE CHAIR: But there are two points. One is: do you agree that the request, which is a sort of qualitative request of this kind, whether documents of this category -- qualitative but possibly with dates attached -- is relevant at all would be one thing which doesn't involve searching databases as such.

Then there is: if it is relevant, what do you suggest is a proportionate way of producing documents for it which may not be searching everything worldwide. It may be it follows in your EDQ this can best be achieved by these custodians and these search terms. That's the way we will propose to do it. There are two aspects of it.

MR TURNER: Yes.

THE CHAIR: And it doesn't involve actually at that point carrying out the exercise; it's just explaining whether you agree on relevance and what's your proportionate proposal of doing it.

MR TURNER: Yes.

THE CHAIR: That's why it shouldn't involve a vast exercise, because there'll be people in-house or the different lawyers Amazon used for the different aspects of its business who will be able to assess that.

MR TURNER: Let me give a crude caricature of what may happen, sir. We're with you on relevance because we can --

THE CHAIR: Yes.

MR TURNER: -- say: well, that is relevant and it, potentially, is going to help the adjudication of the issues in the case.

The key problem is proportionality, because we've got these databases, as I say,

fragmented, to some extent overlapping, different teams all over the place. Once you have decided that something is relevant, you've then got to work out how best to get it on this mass of material. Now, that will need to be done, and our proposal was to work on it collaboratively with the Class Representatives and to explain the difficulties we're having.

THE CHAIR: Yes.

MR TURNER: If we're going to have to take this list of requests and then for all of them go back and just try to work out what is proportionate, that is going to require, in the circumstances, a significant period of time. I'm not sure whether I'm able to say what --

THE CHAIR: What sort of period?

MR TURNER: Well, the period that was mentioned was a month.

THE CHAIR: Yes, so that's 4 December. (Pause)

MR TURNER: Sorry, sir, can you give me just one moment?

THE CHAIR: Yes. (Pause)

MR TURNER: Sir, the proposal, as best we can judge it now that should work, is this: first, they make these requests on 4 November.

Pausing there. What we envisage is it's being consolidated, not a Houpis list and a Pike list, possibly an ACSO list; it's consolidated between all of them on that side.

THE CHAIR: Yes, I think that's --

MR TURNER: And as per the usual Redfern schedule approach, they say, "This is what we want and this is why we want it".

THE CHAIR: Yes.

MR TURNER: It's consolidated 4 November. We propose that we then work on it in the way that I have described; responses come by 2 December; they give their replies 14 December.

THE CHAIR: Yes.

MR TURNER: And then in substitution for what we had in our draft composite order, which was applications to the Tribunal on the 7th, those replies are going to crystallise what's not agreed and really will stand as the matters on which the Tribunal will need to make a decision in early February next year.

THE CHAIR: Well, sometimes you consider the replies and there's some movement and some agreement. That can happen when people come back between the 14th and then early January, and then it's clear where parties have dug in. I don't think that should stand as their application. I think they then make an application saying, "We want to pursue these items in the schedule". They may not pursue everything, or you may, having considered their replies -- there's often a bit of movement and fall away.

MR TURNER: Sir, you're absolutely right. It's just that there will need to be a point in which they say, "Well, these are the ones that we're persisting with". Even after that date, of course, the parties continue to speak with each other and some of those fall away. But just for clarity, we know -- and the legal teams know -- what potentially is going to be the order of business for this Tribunal, and the size of it, early February. Then we can work to narrow it.

THE CHAIR: Yes. No, I understand that. That makes sense. Of course, insofar as there's agreement on the schedule, you can start the process of seeking the documents.

MR TURNER: Yes.

THE CHAIR: Then one needs an end stop. Yes. That's very helpful.

So Mr Moser, is it?

MR MOSER: Yes.

THE CHAIR: First of all, first point: I think it is right that it should be a consolidated schedule from both Mr Hammond and Professor Stephan.

MR MOSER: Straw man, sir. I never said it wouldn't be consolidated. I know my friend keeps saying consolidated, but we haven't said --

THE CHAIR: 4 November, and ACSO if they are involved, can seek to join it. 4 November.

Response by 2 December. I think there is some force in what's said about the scale of the exercise. If you are then able to respond, you suggested ten days. I think Mr Turner's offering you 12 -- 14 December. Then you will be able to take stock and make any applications for disclosure by, say, 14 January, which people can then consider before the CMC, which is not fixed for 8 February; it's the first available date after 8 February depending on availability and so on.

Will that work as a scheme? In the meantime, of course, the other proceedings disclosure is going on.

MR MOSER: My learned friend prefaced his remarks by pointing to their two dates that he said were important, to step back and look generally at the case. He pointed at 7 December, where he says 7 December ought to be the last day on which we can make any requests, and --

THE CHAIR: I'm suggesting it isn't; I said 14 January will be, for any applications based on the schedule and where you are not in agreement and want to pursue.

MR MOSER: I just wanted to make that clear. He also pointed to his 7 May date as being the --

THE CHAIR: We haven't got there yet.

MR MOSER: We haven't got there yet. I just want to make clear. I just want to raise two things: 14 December is in principle I think, not an impossible date; it is a Monday, which is a bit awkward. I was wondering whether Wednesday the 16th would be --

THE CHAIR: Yes, I'm sure that's all right.

MR MOSER: I'm grateful.

THE CHAIR: That gives you two weeks then.

MR MOSER: Yes, it's two weeks. Since everything my learned friend said about the vastness of what they're going to give us, no doubt the points he makes are to some extent justified. But then I do come back to the inequality in funding and size. Amazon, by revenue, is in fact the largest company in the world.

THE CHAIR: Yes. Well, but it is a big job.

MR MOSER: It's a big job.

THE CHAIR: And there have to be people doing it.

MR MOSER: Yes, but if anyone can do it, it's Amazon. They're literally in the business of analysing data.

THE CHAIR: Well, Mr Moser, they are doing it by 2 December, so let's move on from there.

MR MOSER: Yes.

THE CHAIR: 16 December for your response.

Applications: I haven't put this to Mr Turner, but I'm putting it first to you. 14 January?

MR MOSER: Yes, 14 January.

THE CHAIR: That will leave at least three weeks before the next CMC. That's assuming it is on the 8th, and it may well be the 8th but a few days later.

MR TURNER: There is just one point to pick up, which I perhaps should have raised earlier.

THE CHAIR: Yes.

Submissions by MR TURNER

MR TURNER: There is this idea within this process of sort of rolling disclosure, because we can give the documents that we can see are necessary as we go along. But if there is a sort of general freewheeling, rolling process, the ability on our side to

assess proportionality of the exercise and being, as it were, pounded by consistent requests for this and that is very difficult. We're happy to engage with the structured approach; we embrace it.

THE CHAIR: Yes.

MR TURNER: But as the experience of this hearing so far shows, there is a danger that essentially things can become confusing in a mass of detail and overwhelming. We would propose to stick with this structured process, and not to have some general freewheeling exercise within it.

THE CHAIR: Yes. Well, I'm not envisaging that; that's not what we're thinking about. Mr Moser only made a caution that sometimes you get documents and that when you start reading them, realise there's something else that we ought to have, reasonably. They're not precluded from asking for that, but that's more a specific request rather than adding another new category. That's always the case that you can do that, and generally people are pretty sensible about it.

Equally, I'm conscious of the fact you don't want to sort of go back and re-search, search again the source of documents that you've already been through because that's duplicative, so you may need clarity of quite what you've got to do before you start the search. I can see that on some of them, your response will be very much related to the proposed mechanism that's in the EDQ you took us to.

MR TURNER: Yes.

THE CHAIR: These documents should be with the following custodians, and you will search for them in this way.

MR TURNER: Yes.

THE CHAIR: Then that (inaudible) just get the Class Representatives' response to that.

MR TURNER: And indeed, if they say, "Well, the way in which you propose to search

with these search terms should be refined in this way".

THE CHAIR: Yes.

MR TURNER: That can be (overspeaking).

THE CHAIR: And there's nothing to stop the Class Representatives looking at search terms in the meantime, because that's likely to be the way forward. So you can while this is going on, you can correspond about what are appropriate search terms that might be helpful to advance the process.

We are then left with the long stop.

Submissions by MR MOSER

MR MOSER: Before we come to the long stop, forgive me.

THE CHAIR: I'm sorry?

MR MOSER: Having listened to my learned friend on the topic of freewheeling, in order to ensure that there's no doubt about what happens to the agreed disclosure. So in the process of this Redfern schedule, our original 9 said -- of course, this is all changed. Any agreed disclosure will arrive by the latest, the long stop, once the process is at an end.

But in the rolling way of this, so that it doesn't all free wheel, may I ask that we have a date for any disclosure that's agreed in the first round? So if the Redfern schedule is vastly successful, then we have disclosure by, say, 19 February of everything that's been agreed between the parties?

THE CHAIR: Just a moment. (Pause)

What we thought might be sensible is to make the date for agreed disclosure 12 March, and direct now that the long stop date is 23 April. Then it will be open to the parties at the next CMC if there are problems. Then it will be much clearer what is the scope of the non-agreed disclosure to vary the long stop date if necessary. Because that will really depend on how far apart you are and what is the scale of the

exercise that will be directed.

But to say 12 March for agreed disclosure, which should emerge by 14 December, when you get the responses on the schedule.

MR MOSER: And the backstop on 23 April?

THE CHAIR: And backstop on 23 April, yes.

MR MOSER: But the reason that we said March, just because I haven't addressed it yet, is again one of those reasons where, as my learned friend Mr Turner says, you step back and you look at the situation holistically, and it's largely to do with the experts. It's a question of: what are we going to do with the disclosure when we get it.

The most important part of that is going to be we're going to give it to Dr Houpis and Dr Pike and they will have to turn it around, use it for all the purposes that have been described -- if possible, rerunning algorithms, analysing documents -- and drafting a report.

THE CHAIR: Well, they'll have six months under this arrangement, if one takes your agreed date.

MR MOSER: Well, they've got six months for the agreed documents. As I stand here, I don't know what that category is going to be. If it's going to be 1 per cent of disclosable documents, again, that may not be helpful.

THE CHAIR: Well, they'll have five months for the disagreed documents, and it may be that the experts reports, that September date has to be pushed into October.

MR MOSER: You may have seen or you may recall or not the letter from at least Dr Pike -- there's probably a similar opinion from Dr Houpis -- at page 493. We needn't go to it, but he basically says that the proposed period between 7 May and September, of what would be four months instead of six months, is going to be too short --

THE CHAIR: Yes.

MR MOSER: -- for his report.

THE CHAIR: Well, we've gone back a bit to April -- only a couple of weeks, it's true. It may be that the report will be in October and there's some pushing back of the expert timetable.

MR MOSER: That may have to happen.

THE CHAIR: But I think that will be much clearer at the next CMC. In fact, as I indicated earlier, we weren't proposing to direct a timetable for expert reports at this CMC at all.

MR MOSER: No.

THE CHAIR: That should be looked at at the next CMC. Obviously, it'll have to be worked back from the trial date.

MR MOSER: Of course we won't have had -- unless they really start rolling, which so far hasn't happened -- even the agreed documents by the next CMC. So we may not be much further forward in knowing --

THE CHAIR: No, but you will know what is agreed, and the scope of any disagreement.

MR MOSER: Absolutely. I'll say it now because when we say it in correspondence it will vanish into thin air, but when they say "rolling", we will take them at their word that these dates are backstops. So the agreed documents "by no later than" 12 March. Absolutely no question that they will be welcome as soon as possible once they're agreed.

THE CHAIR: Yes. (Pause)

Well, if we say to be provided on a rolling basis as appropriate and in any event by 12 March.

MR MOSER: Yes, sir.

THE CHAIR: That gives a degree of flexibility.

Would that be satisfactory, Mr Turner? If you can do it earlier, for some of them you will.

Submissions by MR TURNER

MR TURNER: Sir, yes. On our side, we're content with the practical targets and deadlines that this Tribunal has laid down. The important point that I must underline again is what, sir, you referred to as the "re-search", because that is not efficient.

If this process turns into, over the coming period, a series or stream of these requests saying, "You've looked at that database, now go back to it and look for this; now go back and look for this again", we can't do it. It's a major proportionality issue as well. That's why dealing with this in the clear way, saying, "Here's the request, there may be a specific run off from it, but by and large, you're not going to open it up again and say, 'Now go back and do another major search on the same database'". That's very important on Amazon's side.

We can work on that basis to agreed disclosure on the time scale, sir, that you say, and I'll be told now if there's any immediate concerns about that. But otherwise, we can correspond cooperatively.

As to the long stop, 23 April, I observe only that there are two things: there's a tension on the Class Representative's side between this appetite for huge numbers of documents on the one hand, and also for the provision of this material in extremely short time frames. We're content to work to that as the long stop; we do apprehend that this may be difficult, but we will deal with that as matters develop.

Final point that I wish to make is that the Class Representatives should also, we say -- and this is something that's been trailed as well; it was part of the debate before this hearing -- they should also say to us, at the same time as they produce their consolidated requests on 4 November, what they were going to do by 30 October,

which is the allocation between them of the work, and what methodologies they're proposing to follow.

If the Tribunal has seen that there was a late proposal by them that this should be done by 30 October with response by Amazon at some point in mid-November. Given the process that you've now articulated --

THE CHAIR: This is not to do with disclosure as such, is it?

MR TURNER: It affects disclosure -- part of it doesn't, I mean, one wants to know how the expert allocations are going to be arranged.

THE CHAIR: Yes.

MR TURNER: But also the visibility of what they're proposing to do itself is important, because if we know what they're proposing to do, that can sharpen what we're going to give them; what they will need for the exercises, because we can see what it is.

If their experts are going to do a particular kind of exercise, which is going to require particular kind of information, we can focus on that. (Pause)

THE CHAIR: Yes.

MR TURNER: The reference to the letter where they confirmed that they were happy for the proposed allocation to happen by 30 October. It's in bundle C at page 285 - paragraph 6(c), if you want the reference.

At any rate, it's in the interests of practicality -- this is not a point of attrition, it's simply that it will be useful -- for the disclosure to have this clarified.

Submissions by MR MOSER

MR MOSER: If it does assist, sir, our proposal is Bundle C, tab 5, a letter of 30 September.

THE CHAIR: Is it in a consolidated order?

MR MOSER: Yes, yes.

THE CHAIR: Well, it is an Amazon proposal, I think. (Several inaudible words). But

I don't think there's an agreed --

What do you say about this point about --

MR MOSER: Well, my learned friend has moved on to this rather obscure topic. May I just say something first about the rolling disclosure? I said that we expressed our view deliberately openly that rolling disclosure must mean what it says. I listened carefully to what my learned friend says. It's always worth listening carefully because he means what he says.

He talked of targets and deadlines in relation to the two end dates, 23 April and the 7 May. I didn't hear any reference to "rolling", but the order that the Tribunal is going to make is for rolling disclosure. If it all comes on the deadline or the target date at the end, then the word "rolling" is devoid of meaning. So if the word "rolling" means anything in the order of the Tribunal which is to be obeyed, then matters that can be disclosed ought to be disclosed when they are available.

THE CHAIR: Well, the order, as I've said, is going to be on a rolling basis where appropriate, and in any event by the terminal date.

MR MOSER: Indeed.

THE CHAIR: Equally, I can see the force of what was said that going back to trawling the same database again, going back with a new search term when you're already done it with all the search terms, is not an efficient way of conducting --

MR MOSER: But that's a separate point.

THE CHAIR: Yes.

MR MOSER: This is stuff that has already been searched and found.

THE CHAIR: No, I think it's not quite a separate point, because if there's something that's not agreed and still has to be sorted out --

MR MOSER: That's the rolling the other way. That's when we say, "All right, we've seen this, what about that ..."

THE CHAIR: Yes, all right. I think we've dealt with that enough. Before we go on to the experts point about confirming which expert and what methodology, I think we should take a break, because I probably should have done that earlier. So we'll take ten minutes and return at 4.00 pm.

(3.52 pm)

(A short break)

(4.05 pm)

THE CHAIR: Yes. Then there's this additional point about the experts, and I think it's just right they're asked to confirm which expert will deal with which issues.

MR MOSER: Yes, in advance of disclosure. I mean, it's a nonpoint because we've agreed to give that information by 30 October, which will be before we make our disclosure request.

THE CHAIR: Yes.

MR MOSER: I could leave it there. I have to say I'm slightly perplexed as to why it really matters. I don't understand how it will change or focus their disclosure by knowing whether it's Dr Houpis or Dr Pike who has asked for a particular thing.

THE CHAIR: Yes.

MR MOSER: What does it matter? Anyway, we'll tell them what we can by 30 October and then we'll see what they say.

THE CHAIR: That's in --

MR MOSER: Whether that needs an order or not, I don't know. My learned friend took you to that letter in bundle C at page 283. We wrote on 30 September -- well, Hagens Berman wrote on behalf of the Class Representatives --

THE CHAIR: I think they're asking you to go further and say by which methodology. I don't see why that's relevant to disclosure. Indeed, as I recall, the experts said they will review their method depending on what is produced by disclosure.

MR MOSER: Yes, exactly so.

THE CHAIR: You'll confirm who does what of the two experts.

Mr Turner, are you pursuing that? That you want to know which method they're going to use, that they should tell you this before they get the document?

Submissions by MR TURNER

MR TURNER: Well, this was paragraph 24 of our first skeleton. We do say that they should indicate what it is they're proposing to do.

THE CHAIR: Well, they have in their lengthy reports.

MR TURNER: Well, they've set out this menu of things, but if they're going to be asking for documents--

THE CHAIR: No, but they did lengthy reports for certification on their methodology. They said there that they may have to refine it or reconsider it based on what they receive on disclosure. But that, in principle, was their proposed methodology. We've been all over that.

MR TURNER: Sir, this is not a tool of attrition. The idea was to gain insight into what was proposed to help sharpen the disclosure exercise. But it may well be that when they make their requests, and they say why they're making their requests, it will come out.

THE CHAIR: I think so. They've offered to tell you on 30 October, between Dr Houpis and Dr Pike, who's going to do what. I think that's sufficient.

MR MOSER: And in the Redfern schedule of course, we'll say why we're making the request.

THE CHAIR: Yes, "It's Dr Houpis who wants this because it's relevant to ..."

MR MOSER: Yes.

THE CHAIR: Exactly. Does that then conclude the second stage disclosure?

MR MOSER: Can I just take instructions?

THE CHAIR: Yes, Mr Lask wants to say something.

Submissions by MR LASK

MR LASK: Yes. Well, my answer was going to be nearly, but not quite. Because I'd like to, if I may, address you briefly on second stage disclosure from an ACSO perspective.

Before I do so, may I just react briefly to some of the observations that were being made on rolling other proceedings disclosure. We have been assuming that disclosure provided to the other Class Representatives under the other proceedings disclosure process will also be provided to ACSO once it has confirmed that it's proceeding with its application. That's separate to the supplemental ACSO process that I addressed you on earlier. Now, this may all be uncontroversial, but I didn't want us to leave this hearing under any misapprehensions.

THE CHAIR: Yes.

MR LASK: There is, of course, the issue that the disclosure being provided to the other Class Representatives from the other proceedings will be broader, in terms of the issues it covers, than the ACSO claim. So there may need to be a discussion between the parties as to how non-relevant material is filtered out before it reaches ACSO. We're happy to have that discussion, but hopefully the principle that ACSO needs to be provided with that disclosure is uncontroversial. That's all I wanted to say on that.

Then on second stage disclosure, ACSO does want to participate in the process for that disclosure as just articulated by the Tribunal. There was one wrinkle, which is this: ordinarily, Amazon would plead its defence to the ACSO claim before ACSO made any second stage disclosure requests. Here, given that there is a pending judgment from the Tribunal on Amazon's strike-out application --

THE CHAIR: Yes.

MR LASK: -- we acknowledge that the time for Amazon to plead its defence has not yet arisen, and I can address you in due course on what we say should happen in terms of directions for pleadings.

But for present purposes, my submission is that in those circumstances, it wouldn't be appropriate to put ACSO's involvement in second stage disclosure on ice pending Amazon's defence, because that risks creating substantial delay. Instead, we propose that in the first instance, ACSO participates in the second stage disclosure process that the Tribunal has ordered. And of course, ACSO will liaise closely with the other Class Representatives.

THE CHAIR: May I just check for one moment. Pause a moment. (Pause)

Yes.

MR LASK: So in the first instance, ACSO would participate in the process that the Tribunal has ordered, liaising with the other Class Representatives to avoid duplication, and ACSO would then have an opportunity to make any supplemental disclosure requests that may be appropriate once it has Amazon's defence, and also the amended disclosure report and EDQ that Amazon has agreed to provide.

Sir, I addressed you earlier on the application that we made in September. I addressed you on that part of the application that concerned the other proceedings disclosure explanation. ACSO also applied for Amazon to update its disclosure report and EDQ to take account of the ACSO claim. Amazon has agreed to do that, subject to an appropriate deadline being put in place. But what we would propose is that once we have updated disclosure report, EDQ and Amazon's defence, ACSO then has an opportunity to make any supplemental requests for second stage disclosure.

THE CHAIR: Yes, disclosure in this case is largely, though not exclusively, to assist the experts in preparing their report.

MR LASK: Yes.

THE CHAIR: ACSO, if it pursues its participation and is certified -- and I mean, it can be certified if the Tribunal's decided that it will be certified and it fulfils those conditions -- will be relying for Trial 1 on the same experts.

MR LASK: Yes.

THE CHAIR: So the degree of disclosure that Amazon could provide does not change significantly, whether ACSO is in or out, does it? Because, although you may have a chapter I claim --

MR LASK: Yes.

THE CHAIR: -- that is largely a legal issue, though informed perhaps by some documents, and informed by documents that relate to that policy which Stephan already alleges is an abuse. So the documents relating to the introduction or operation of that policy are already covered by disclosure.

MR LASK: Well, that policy, yes sir -- but as we discussed last week, ACSO's claim, we say, is broader than Professor Stephan's claim --

THE CHAIR: Yes.

MR LASK: -- in particular because it covers two additional policies: the competitive external price policy and the account health (overspeaking).

THE CHAIR: One is a monitoring policy, really --

MR LASK: Yes.

MR TURNER: The other two. So it's that second policy, but Dr Houpis also says that's relevant. He doesn't say that in itself is the abuse, but he says that's relevant; but we'll look at that in (inaudible), as it were, together with --, I would be very surprised if that's not already part of the application.

MR LASK: Well, ACSO will certainly want to liaise with the Stephan team and Dr Houpis to ensure that its claim and the analysis that Dr Houpis needs to do, in relation to the ACSO claim, is properly taken into account in the second stage

disclosure process.

THE CHAIR: Sorry to interrupt you. The sensible thing is: you would be jointly instructing Dr Houpis, so there's no difficulty about that, and the Stephan team have made clear they're happy to liaise with you. But prior to 4 November, you are in contact with Dr Houpis and the Stephan team as to what they're going to seek on that area, which is Stephan's abuse 5, and you can feed in any additional points for Dr Houpis to consider. It's really only if he says, "No, no, that's not relevant unless ACSO is the party, but it's not relevant, if it's just Stephan's abuse 5", that there is any issue.

I don't know half as much about your case, obviously, as you do. Sitting here, I think it's quite hard to envisage what additional material Dr Houpis would need if you're in the case or if you're not in the case. So there shouldn't really be much if any additional requests.

I need to say that, because the moment we get further requests coming in after 4 November, it throws the whole thing out, it puts Amazon's programme of meeting requests out, and the timetable gets messed up. So I would expect you to liaise with Dr Houpis to see that anything that's relevant to your claim you can persuade him is also relevant to the Stephan claim, and it all goes in on 4 November.

MR LASK: We will certainly do that, sir, and with respect, I think what you've just done has articulated in more detail what we were already envisaging for the first stage. But then that does still leave the prospect that once we get Amazon's defence, additional issues will come to light on which disclosure is warranted. We do need to have the opportunity to put in supplemental requests once we've seen Amazon's defence.

THE CHAIR: Because ACSO at the moment is not a party in the litigation. We can't preclude you here as a non-party from seeking disclosure when you become a party, and (inaudible) we can't prohibit you, as it were, bar you from making any application. All we can say is we wish to limit any such prospect as far as possible, so you could

throw out the timetable, and therefore encourage you to liaise as much as you can, so that it all goes in at once. In terms of Amazon's defence, you've seen their defence to Professor Stephan's abuse 5. They're not going to take an inconsistent course defending your claim, but there may be some additional things said.

MR LASK: Indeed. But they haven't had to plead back on the competitive external price policy.

THE CHAIR: You'll see what happens relatively soon on the summary judgment application.

MR LASK: Yes. But of course, even if the summary judgment application goes against ACSO, competitive external price policy is still part of ACSO's abuse claim. So it's still in -- it's still relevant.

THE CHAIR: Yes, and as I say, it's not dismissed by Dr Houpis as completely irrelevant.

MR LASK: No, it's not.

Sir, we've heard what the Tribunal says. We will obviously do everything we can to ensure that the first stage of the second stage disclosure process is as comprehensive as possible, but all I can do in light of your indication is reserve ACSO's right to make those supplementary requests.

THE CHAIR: You can put down your marker. We've all heard it, and you've heard what we've said, that you should seek to minimise the prospect as far as possible. I don't think we can really go much further at this point, and you're not yet a party.

MR LASK: Understood, sir.

Then that just leaves me with one point of disagreement between ACSO and Amazon, in relation to Amazon's agreement to provide an updated disclosure report, an EDQ. Obviously, the purpose --

THE CHAIR: It's just an updated EDQ, I think.

MR LASK: But they've agreed to update their disclosure report and EDQ to reflect ACSO's claim. I can show you the correspondence on that, if it's helpful. The only point outstanding between the parties is the time period that those updated documents should cover.

I should say, the parties are in agreement that Amazon should provide those updated documents five weeks after the date on which ACSO confirms its intention to pursue the CPO application.

Then on date range, ACSO has asked Amazon to provide an updated disclosure report and EDQ that cover the period covered by ACSO's pleading; namely, 15 August 2019 to 14 August 2025. Amazon's position is that date range should be the same as that directed by the Tribunal in the Hammond and Stephan CMC in the summer.

So far as the end date for the date range is concerned, we do say that ACSO's position ought to be --

THE CHAIR: What was the date range we said in the --

MR LASK: The date range for Hammond and Stephan was --

THE CHAIR: 26 June 2024.

MR LASK: Yes. 1 January 2021 until 26 June 2024.

The end date, June 2024, was ordered because that's the end date for Stephan's pleaded claim. The Tribunal made clear at that CMC that that's why it was imposing that end date. I can show you the transcript if it's helpful.

THE CHAIR: Just pause there for a moment.

Mr Beal, given that you told us that you are going to seek to extend your period --

MR BEAL: Yes.

THE CHAIR: -- to as close to trial as possible, and indeed, we've just ordered disclosure of monitoring trustee beyond that period, particularly ACSO (inaudible),

should not in general the EDQ go, as it were, up to date --

MR BEAL: Yes.

THE CHAIR: -- for your case, and I don't know Mr Hammond's position on extending his period, but I expect you all, because it's an ongoing --

MR BEAL: We probably will fall into line with each other.

THE CHAIR: Yes, I would have thought so. I mean, isn't that right, Mr Turner? We've been told, and it's no surprise, that they will seek -- as indicated in the pleading -- to extend the period to a date closer to trial, and that therefore your updated EDQ should be not cut off on 26 June 24, but go to date.

MR TURNER: Our concern is simply to minimise work that's unnecessary. We've now got this process, Redfern process, in which we can pick up requests which relate to the full period in that way. So rather than work on another document --

THE CHAIR: Well, the EDQ is -- it might come in to the -- it doesn't perhaps matter tremendously where it's done, but I think the understanding should be that the disclosure process is going to be conducted on the basis that we're looking at allegations of abuse up to date.

MR TURNER: Yes.

THE CHAIR: Whether that needs an amended EDQ, or whether it means that in your responses you will have a custodian mentioned who is not in your EDQ because he or she only started working in September 2024, that is relevant. One way or the other it should come in.

MR TURNER: Yes. As a point of substance, we agree.

THE CHAIR: Then the only question is whether the Class Representatives actually want an amended EDQ up to date, or whether it can be done through the proposals in the Redfern process.

MR BEAL: For the Stephan class representative, I can confirm we're not seeking to

push for an amended EDQ. We're happy for it to be folded into the Redfern.
THE CHAIR: Yes.
MR MOSER: We're equally happy, and anyway, for the reasons I think discussed at the last CMC -- I wasn't there -- the EDQ covered that particular date range, but of course the claim period is longer. We prefer to do it all via the Redfern.
MR TURNER: Yes. Well, Mr Lask, I think you have to fall in line with that.
MR LASK: Well, the only point I was going to make, sir, was given that Amazon has already agreed to provide us with an updated disclosure report and EDQ, we were simply asking that those documents reflect the period of ACSO's claim, which would be the ordinary approach.
THE CHAIR: Well, your claim cuts off when?
MR LASK: August 2025, at the moment.
THE CHAIR: Yes.
MR LASK: So it's only another --
THE CHAIR: But given that we're actually going to be looking at a period into 2027 --
MR MOSER: They're not locked out from asking for it in the Redfern schedule process, sir.
THE CHAIR: Yes. If Amazon wants to provide it, they can provide it, but I don't think we'd order it.
MR TURNER: No. I'm grateful, sir. The point is really a very simple practical one, not to create another work stream that's --
THE CHAIR: Yes. I don't see that that's really necessary. I think we've all got enough to be getting on with.
MR LASK: Well, sir, just so we're clear, I'm not going to push the date range point any further. But my understanding is that Amazon is still going to provide an updated disclosure report and EDQ that covers the ACSO claim, so it covers the issues in the

ACSO claim, even if not the full date range.

THE CHAIR: Well, I'm saying it's a matter for them. We're not going to order it. If they want to provide it, they can provide it.

MR LASK: Well, they have agreed to. I haven't heard them resile from that position, and it would be unfortunate if they did.

MS LUKACOVA: Sir, just to confirm, that has been agreed, albeit we do not expect those updates to be significant.

THE CHAIR: Well, that will keep Mr Lask happy, so that's always a good note on which to end today.

Does that conclude second-stage disclosure?

MR BEAL: Sir, it does. We are left with class member disclosure, because Mr Moser has dealt -- in the light of the observation from the Tribunal that we're not going to go into anything beyond May, effectively, directions-wise.

The only thing that's left is class disclosure. I do have a cunning plan of cutting through that, which would be capable of being dealt with potentially very shortly, but I'm in your hands.

THE CHAIR: Well, we thought it might be more substantive, but we don't know your cunning plan.

Disclosure - Class disclosure

Submissions by MR BEAL

MR BEAL: Well, I may have mislabelled it. The experts disagree as to whether seller disclosure is necessary at this stage. The experts are at risk of not agreeing on a process. There's the question of: is it necessary and what does it go to? There's then the question of: if the view is taken by the Tribunal that it is necessary and it goes to a relevant issue for Trial 1, the Tribunal indicated that one of the advantages of

a split trial was that extensive disclosure from the class was not going to be necessary. But putting that to one side, there's then the question of sampling, and we only received the sample --

THE CHAIR: The question of?

MR BEAL: Sampling of the relevant class members. We only received the proposal for sampling on 9 October, and the first skeleton argument from Amazon at paragraph 8 confirmed that no application was being made at this CMC for specific seller disclosure.

I apprehend that the concern Amazon has is that this goes into the long grass or drifts, or it doesn't lead to a resolution in sufficiently good order that it can be dealt with. Given the dispute between the experts, what we're proposing is that the experts get together and work out between themselves what the disclosure would go to, if anything; whether it's necessary; what they're joint, if any, recommendation is; and then comment on what a sampling process might look like -- not on a unilateral basis as it presently is, but on a joint basis agreeing so far as possible.

Now, that's without prejudice to the fact that Dr Houpis may well continue the line he takes at the moment that you don't need any of the seller disclosure for the purposes of Trial 1, because it can be obtained elsewhere.

It would then be open to the Tribunal to direct that any proposals for class disclosure then be exchanged by a suitable date in early January, and the responsive positions can be dealt with. The advantage of that is we've completed the outstanding disclosure from the other proceedings by 11 December as the backstop; we've then dealt with the Redfern process because that has reached the fruition, I think, on current dates by roughly the beginning of January, if not late December; everyone knows where they stand on the bigger picture; and properly-targeted requests for seller disclosure can be made on the basis of wherever the experts have got to with

the core underlying issues.

That would then enable any outstanding issues about seller disclosure to be dealt with at the CMC in February. What this is encouraging is an expert- and party-led consensual process to see what can be agreed. It may not lead to agreement; it may still be that the parties are like ships in the night, and one says it's not necessary, the other does not. But at least we are better placed to be able to deal with the objections, if any, to disclosure full stop, and the objections, if any, to the sampling process that's been proposed.

Now, I'm very happy to come back tomorrow morning at great expense to the parties and deal with all of this in a longer time frame, showing you chapter and verse on the authorities --

THE CHAIR: The only application that seems to be before us was your application about orders, not for third-party seller disclosure, but about Amazon communicating.

MR BEAL: What we were seeking to do was to hold the ring to enable a managed disclosure process to be put in place under the supervisory control of the Tribunal, which it's perfectly open to do in its case management powers. The Tribunal can say, "We think the seller disclosure process should follow the following route", and the seller disclosure process will then have the imprimatur of the Tribunal behind it. That disclosure process is envisaged in the timetable.

THE CHAIR: Yes.

MR BEAL: Our application seeks to hold the ring on unilateral approaches to sellers for disclosure until the Tribunal has had ample opportunity to consider the competing proposals.

THE CHAIR: Has this been put to Amazon?

MR BEAL: It was put in our skeleton argument at D2, page 21, paragraphs 24 to 25.

THE CHAIR: Is this the first or second?

MR BEAL: That's the first skeleton. I'm told the application was 11 September.

THE CHAIR: This is at paragraph ...

MR BEAL: 24 and 25 summarise what I've described as the "cunning plan" or practical approach. The application itself, for your note, is A10, page 513. But the specific idea of having parties and their experts consider whether it's necessary; proposals for class disclosure; then exchange by 15 January; and then responsive positions.

THE CHAIR: Yes. I mean, that would cover all third-party disclosure, not just disclosure. There might be other third parties.

MR BEAL: It could do. Dr Houpis has suggested it might be appropriate to contact some delivery firms, some fulfilment companies and so on.

THE CHAIR: Yes, other logistical --

MR BEAL: Subject to instructions, I don't see why that couldn't be brought within the process as well.

THE CHAIR: Yes.

MR BEAL: In my respectful submission, rather than having a big fight about quite important points of principle, if Amazon is willing to sign up to this, what I call pragmatic response, then they get what they want anyway. And if they confirm to the Tribunal that they're not going to go off on a frolic of their own only for the purposes of disclosure -- they're welcome to contact any potential witnesses they want, obviously subject to the Ennis guidelines and the Del Giudice guidelines, but what one is left with is a position where disclosure is properly controlled by this Tribunal --

THE CHAIR: I think we've got the picture.

MR BEAL: Well, I shall sit down at that point.

Submissions by MR TURNER

THE CHAIR: We need to check whether Amazon's content with that.

MR TURNER: Sir, I'm afraid not. I'll just relay what the discussion I had with Mr Beal

before we rose again was.

1, from Amazon's point of view in this case, as I will need to explain, getting information -- we can talk about what we're driving at -- to test abuse of dominance -- which includes market definition, the questions of dominance, the effect on fulfilment, and so forth -- from the sellers; some information is going to be critical to a fair trial. It is not a joint process; it is not a process, essentially, all managed together. The authorities establish very clearly that it's Amazon's legitimate right to investigate material for its defence, and that's what we're seeking to do.

When we've said that we're not seeking an order for specific disclosure at the CMC, of course, that's right. But what we have said -- if you look at paragraph 1 of our Monday skeleton, and the draft order itself, paragraph 1 -- is that we want engagement from the Class Representatives. So far they're saying, "No, we don't accept this, we're not going to give you comments on anything you've provided, and we want a process along the lines that Mr Beal has just outlined instead, a joint process".

Now, leaving aside the fact that this joint process or audit process is, we say, wrong in principle; misunderstands what we're doing, as a matter of sheer practicality we are concerned that this will kill the ability for a fair trial.

Let me show you why. If you go to --

THE CHAIR: Well, I don't think you need to show me why. I think you've said enough to say that Mr Beal's cunning plan --

MR TURNER: It's a Baldrick cunning plan.

THE CHAIR: It's now 4.30 pm.

MR TURNER: Yes.

THE CHAIR: And we have two days. We won't, I think, need all of tomorrow.

MR TURNER: No.

THE CHAIR: But I don't think -- if we start this now, we'll be here for another hour and

a half at least, and that's not acceptable. So we will resume at 10.30 am tomorrow morning.

(4.36 pm)

(The hearing adjourned until 10.30 am on Thursday, 15 October 2026)

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?