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IN THE COMPETITION Case Nos: 1572/7/7/22, 1582/7/7/23, 1773/7/7/26 & 1795/7/7/26

APPEAL

TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

30th October 2026

Before:
The Honourable Mr Justice Leech
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Ad Tech Collective Action LLP

Class Representative

AGC Collective Actions Limited

Proposed Class Representative

BIRA Trading Limited

Proposed Class Representative

v

Alphabet Inc. and others

Defendants

A P P E A R AN C E S

Niamh Cleary (Instructed by Hausfeld & Co. LLP, Humphries Kerstetter LLP, and Geradin Partners Limited) On behalf of Ad Tech Collective Action LLP

Mark Brealey KC and Nicholas Khan KC (Instructed by KP Law Limited) On behalf of AGC Collective Actions Limited

Tristan Jones KC and Aoife Sheehan (Instructed by Stephenson Harwood LLP) on behalf of BIRA Trading Limited

Meredith Pickford KC and Natasha Simonsen (Instructed by Freshfields LLP) On behalf of Alphabet Inc. and Others.

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Friday, 30 October 2026

(10.30 am)

THE CHAIR: Yes. Good morning to everybody. I'll just give the usual live stream warning, if I may. Some of you are joining us by live stream on our website so I must start by saying an official recording is being made and an authorised transcript will be produced. It's strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of the proceedings and that breach of that provision is punishable as a contempt of court.

Yes. Who would like to go first?

MR PICKFORD: Sir, I would. I appear for Google. For the transcript, I'm Meredith Pickford and I appear with Ms Simonsen. The cast also today includes for BIRA, Mr Jones, KC, who appears with Ms Sheehan; for AGC, we have Mr Brealey, KC, and Mr Khan, KC, and for the publishers, we have Ms Cleary.

THE CHAIR: Yes. Good morning to you all.

MR PICKFORD: So, as sir, you very well know --

Timetable

THE CHAIR: Can I just first of all, before you start, Mr Pickford, just thank the parties for making themselves available and for your submissions. As you've seen this hearing was initiated, if I can say that, call it that, by the Tribunal because of concerns about -- it's really just timetabling today. I mean, it's been helpful to see where everybody is. I detect a measure of agreement; how much there is we'll no doubt explore in the course of the morning. But I do want to thank you all for making yourselves available at very short notice, but I think hopefully it will be to the benefit of the parties as well as the Tribunal.

MR PICKFORD: Thank you, sir. And it's quite right, there is a substantial measure of agreement on a number of important points. However, there is also some disagreement which has some fairly significant effects. So unfortunately we're not fully yet aligned.

THE CHAIR: Really to focus your minds this morning, can I tell you where I've got to provisionally, which is that I think -- and this is partly pragmatic because I think where -- with the very helpful assistance of the Tribunal staff -- I've got to is that we should use the two days in December if we can. I'm very reluctant to adjourn it, given the timetable to trial in the -- can I call them the Ad Tech proceedings? What's the label you give to the three? I've got BIRA, AGC and Ad Tech, but do you want to call them something different?

MR PICKFORD: In my mind, I call them all Ad Tech. Personally, I call them ATCA, AGC and BIRA, or when we're talking about them in terms of the flip sides of the two-sided market: the publisher claim and the advertiser claims. I think that's probably the easiest way.

THE CHAIR: In relation to, say, the publisher claim -- it's quite a tight timetable to trial and we've debated it in the past, so we won't go over that. I feel that we ought to use the two days in December. But that's also partly because at the moment I have listing problems the other side of Christmas. What I would anticipate at the moment, subject to the parties' views, is that we should use the first day in December for the carriage dispute; the second day for the AGC CPO hearing.

I mean, there are downsides for whatever timetabling exercise you do; we would expect to give a judgment as quickly as possible in both. That's whether we decide against AGC in relation to the carriage dispute, but there may be an appeal, there may be all sorts of reasons why there should be a CPO decision anyway, one way or the other. Then we are currently proposing to list the BIRA CPO hearing at the end of

January, subject to the availability of the parties. One thing I would like the relevant parties to think about is whether, that's Mr Jones, I think really, whether you're available and indeed you, Mr Pickford, whether you and your teams are available towards the end of January for what would be, I think, a one-day hearing.

I mean, my sense of it is that the more difficult issue might be carriage rather than CPO, but that's simply from looking at the documents you filed to date. I may be wrong about that. You may have, you know, root and branch objections to certification, which I've yet to really properly analyse. But let's say that you don't and let's say that you were agnostic about -- you accept that there'll be an advertiser claim and you don't really care one way or the other who's bringing it. I know that's not your position, but let's say that it were, then that would make carriage rather more difficult, wouldn't it? Because the one issue that you might have is whether there's one obvious winner, one obvious claim, that ought to be certified for the purposes of -- but if both claims can be certified, then actually carriage becomes more difficult. I mean, that's a form of reverse engineering, which I shouldn't be doing. But, you know, that's the pragmatics of it, isn't it? That's what we had in mind.

The reasons, if I can briefly state those -- we just think it's too tight. I mean, obviously it would be more sensible if you could do all three at the same time, because then you could make a decision on carriage, then go on to decide the certification of the -- subject to any question of an appeal -- you could then go on to decide certification in relation to the winner, if you like, of the carriage dispute, to the extent that certification was not directly relevant to carriage, because they're very closely related, even my inexperience in this field tells me that.

It just seems to us it's too tight to expect Google to prepare for two certification hearings and prepare a response to the claim form. Because, I don't know, I mean, you may be well advanced, you may not be, but it was 16 October, wasn't it, to prepare

for a hearing and to do that, it seems to me, in six weeks is too much. Although it's only another six weeks to the ...

If we can list a hearing towards the end of January, one, it seems to me if we did, if BIRA wins the carriage dispute and then it's certified in short order towards the end of January, February, we might then be able to adhere to the original timetable. But that seems to me, at least reading your skeletons and thinking about it yesterday, seems to me to be the least worst option.

The worst option is then going the other way. The worst option, it seems to me, is to adjourn everything, because it seems to me that's going to effectively torpedo the timetable, if they're going to be heard together. There's then a long wait. You have a three day hearing sometime before a judgment is delivered. Who knows? I mean, it could be you lose two or three months.

It's really a pragmatic decision and I welcome -- I mean, you can press against it and say I should do something completely different but having read all your submissions, that's where I'd got to.

In the middle somewhere, I suppose, is the possibility that we could do all three in December. I don't think that's possible. I think even if we have a long argument about it this morning, where I'm going to end up is being cautious with six weeks and nor do I really want to get into, you know, why the claim form was issued on 16 October or whose fault it is or what we should be doing. You've floated all that sort of kind of stuff in the skeletons, but I just don't think that's going to help me to get into that. For what it's worth, I'm prepared to accept that you tell me you can't get ready to deal with all three by December, I accept that. That's my starting point. I don't know whether that helps you at all, Mr Pickford?

Submissions by MR PICKFORD

MR PICKFORD: It certainly does help me, sir. Thank you very much. It's both very

helpful because there is very little that I need to push back on but there is one issue I'd like to address you on in relation to that.

There's a separate topic, which we can perhaps come on to afterwards, which is joint case management, because the parties have obviously made submissions on that. We all seem to be joined up on the fact that there should be joint case management. Where we differ is whether that is feasible or not, depending on when certification of an advertiser claim takes place, if and when. Perhaps if I can park that for now and address you first on the immediate issues about what we do with December and what we do thereafter.

THE CHAIR: Yes.

MR PICKFORD: As regards the December hearing, we have no objection whatsoever to the proposals made by the Tribunal. In my respectful submission, they're very sensible. It uses time that's already there in the diary. It uses it effectively and it minimises the chances of there being delay in the publisher proceedings, which everyone is seeking to avoid. It's just we potentially place different weights on how critical that is, at the very end of the day. So, fully endorse that proposal, respectfully. The second part of it was the listing of the certification hearing. In my submission, that isn't the appropriate course here.

THE CHAIR: Right, tell me why.

MR PICKFORD: The reason for that is -- well, it could be listed provisionally but from what I was understanding, seemed possible, but I may have misunderstood, the Tribunal was definitely planning to have that hearing. But as I understand it, if you decide carriage and then you decide carriage in favour of AGC, the BIRA hearing falls away. Is that right?

THE CHAIR: Yes, inevitably, I think so. I mean they could ask -- I mean, you'll have to tell me whether this ever happens, but if you lose a carriage dispute, that's it, really.

MR PICKFORD: Yes.

THE CHAIR: Subject to going to the Court of Appeal. And if you know, BIRA goes to the Court of Appeal in relation to the carriage dispute, it's difficult to see how they can give a decision in time for them to catch up. I mean, I should also say that I'm fully aware of the authorities which say that first to issue is not the critical question in relation to a question of carriage. I make absolutely clear that it's a much broader test, as I understand it, in relation to carriage. Just in case.

MR PICKFORD: Sir, why don't I respond immediately on that and then come back to the timetable.

THE CHAIR: It seems to me that this may be a case in which it does have a significant weight, but that's not the only issue. So I can see --

MR PICKFORD: Absolutely. The reason why we say it's significant here, it's nothing to do with two weeks here and there in relation to September or October. It's a much broader point, which is that since nearly four years ago, when the Tribunal first published its order granting service out in the publisher claim, everyone has known that there is a publisher claim in Ad Tech, and also everyone knows, everyone recognises, that it's essential that an advertiser and a publisher claim are jointly case managed because they're just two flip sides of the same two-sided market.

Putting those two things together, we say if you come along rather late on in those existing proceedings, and you are putting others to prejudice from doing so, well, that's a black mark against you.

THE CHAIR: I fully accept that. I mean, I imagine we will have this argument in December. All I'm saying is, I've not prejudged it.

MR PICKFORD: Yes.

THE CHAIR: I mean, the question is, you know, first in time is not the test. I mean, you know, coming from being an old fashioned insurance lawyer, you know, first past

the post is a critical issue in insurance law, but it isn't in this jurisdiction.

MR PICKFORD: Yes. Certainly, everyone would agree it's not the test. Obviously, the Court of Appeal dicta -- in very different factual circumstances where there wasn't a case that was already advanced that everyone had to get in and align with -- says, "Well, it doesn't really matter in those circumstances". In our case, we say it does, but anyway, that's all you --

THE CHAIR: You can see the argument coming down the track, which is that you may say they're broadly similar, these claims, that there's not a lot to choose between them; there are differences, but if at the end of the day, you can hear one, but you can't hear the other to catch up the timetable, that's a material fact.

I can see that being an argument in December. All I want to just make absolutely clear is that in proposing the listing, I'm not making any assumptions about that; this is purely pragmatic. It's not because we anticipate that AGC have got the better of the argument and that because they got out of the blocks first, they're likely to win in December. That's purely the point I want to make. The listing has got nothing to do with that. It's just: we've got to make use of the time and we've got to do so as efficiently as possible. That's really the only point I want to make.

MR PICKFORD: That makes perfect sense to us.

In which case the only remaining point then on this issue about timetabling right now is the date we have that hearing --

THE CHAIR: Yes.

MR PICKFORD: -- and I do need to make some submissions on this. The reason is that we believe that acting promptly and working as appropriate around Christmas and the New Year, we can produce our response by 15 January. The reason why it's going to take some time is that, contrary to our expectations, the BIRA claim is not on all fours at all with the AGC claim. So BIRA will say, and it's perfectly true, originally when

we were all trying to see whether we cram this into December, we were saying, "Okay, well, let's see if we can respond incredibly quickly and put in our CPO response incredibly quickly".

That was premised on what we were being told at the time by BIRA, that their claim might look very much like AGC's. We've now seen both and there are very substantial differences. Whereas you will see from our response on AGC that the points that we raise on certification are arguably quite limited, and a number of them are really the domain of the Tribunal -- we're simply pointing to things that the Tribunal will ultimately have to think about before it certifies -- that is not the case at all with BIRA. Some points on that --

THE CHAIR: Right. Give me an example.

MR PICKFORD: Yes. Well, a critical example is that there is a much broader claim that's been pleaded by BIRA. We suspect --

THE CHAIR: In terms of the substance of the claim or the class?

MR PICKFORD: In terms of everything. For example, they plead an umbrella claim for damages, which AGC don't. Our immediate response to that -- I'm obviously not making submissions on it -- is we are dubious about that claim. We will need, obviously, to consider it carefully with our economists, and we may need to provide evidence in response to it. We may very well be saying at the certification hearing, "No, that aspect of the claim does not have sufficient support and it shouldn't be allowed to proceed". Just as the Tribunal did, for example, in the recent Apple and Amazon case; there was an umbrella claim that was effectively struck out, in effect, at the beginning of the proceedings. It wasn't certified. That's one aspect, but there are many examples. There's another issue, which I --

THE CHAIR: I mean, I've read both claims and I've read your response -- spent most

of yesterday doing so . I think a list of issues, I think, is the back of --

MR PICKFORD: Yes, what --

THE CHAIR: It does separate out the issues quite conveniently, but the only thing I haven't been able to gauge from that is how significant those differences are.

MR PICKFORD: Well there's --

THE CHAIR: You say they're very significant.

MR PICKFORD: There's obviously a lot of overlap between the claims, but that's not the whole story, because there's also some quite profound differences. Another example of a profound difference is that they are the only party before you in this Tribunal who are seeking to bring a case based on what they describe as reserve price optimisation, RPO, it also more catchily goes by the name of Bulbasaur.

THE CHAIR: Sorry, it goes by the name of ...

MR PICKFORD: They also refer to, relatedly, Bulbasaur B-U-L-B-A-S-A-U-R. You wouldn't necessarily pick up, from the huge table, where there are some differences. You might think, "Oh, that's a subtle difference, there's RPO and Bulbasaur in this claim, but it isn't in the other claims". But I could show you the expert's report where Ms McCall makes clear that of their £2.31 billion in damages, £2.2 billion is accounted for by this reserve price optimisation claim. So potentially 96 per cent of their damages claim, as so far articulated -- obviously, they reserve the right to articulate further heads of damage -- is all based on an entirely novel point that we've never considered in these proceedings whatsoever. So there's no cut and paste; we're going to have to look into that factually.

THE CHAIR: This doesn't arise in the publisher claim?

MR PICKFORD: Doesn't arise in the publisher claim, it doesn't arise in AGC's claim; this is new in these proceedings. Now, that's not to say that across the world that has never been mentioned before, because they say, "Oh, we picked this up from some

other case", I think in the United States. But within these proceedings and this legal team, we are at a standing start on that issue. That's another example. I could give you example after example, but ultimately, when they are all brought together, our position is we ask for -- and we say it's fair --

THE CHAIR: How much time do you say you need?

MR PICKFORD: Well, we say we need until 15 January.

THE CHAIR: I mean, we got your response to AGC this week, was it, or last week?

MR PICKFORD: That was this week; it was Monday.

THE CHAIR: We're looking at six weeks between now ... I'm just trying to see when's the earliest date we could -- because obviously, if I direct a hearing that doesn't take place until March, then effectively I'm --

MR PICKFORD: Well, I certainly don't think we'd be -- I mean, once we've put in our response, we'd obviously work within anything sensible or pragmatic to get a hearing on as soon as it could be in February. I don't think that it would push anything back to March. I don't see any reason --

THE CHAIR: So the critical date from your perspective is the date when you have to serve your response?

MR PICKFORD: Yes. That is because there is a very real chance that that response will be accompanied by economic evidence. There are key factual things that we need to investigate.

THE CHAIR: You may well want to rely on that material at the certification hearing?

MR PICKFORD: At the certification hearing. Obviously, given the way that the Tribunal has hitherto structured carriage and certification, we would not be advancing all of that at carriage. That is a situation where we have some role, but we recognise our role there is very limited. We basically can give a hint of what we might be saying in the future, but ultimately that's largely --

THE CHAIR: In a case like this, let's say that the overlapping claims -- the core claims, if I can just use that for the moment -- which are shared between the publishers and the advertisers, all satisfy -- whether it's Pro-Sys or Microsoft -- that test. So they get over the arguability threshold, let's say, both claims; it's a common position that the core claims both get over the arguability threshold?

MR PICKFORD: On Microsoft?

THE CHAIR: On Microsoft. When we come to carriage, let's say that that's a working assumption. How far would one take into account the differences between the claim and the arguments that are going to come on certification in deciding carriage? Because it seems to me that they are relevant, it seems to me, but they --

MR PICKFORD: It's a very difficult question, to be honest, because there is now an established practice, for sensible reasons, of addressing carriage first and certification second. That is because that potentially saves the time of having two full-blown certification hearings when one might do.

THE CHAIR: That's a pragmatic reason, given the overlap and the issues in the present case, which is why one would have preferred to see all three heard together. But that doesn't seem to me that that's an option.

MR PICKFORD: Well, it's certainly not the sensible option where we've got to today, because of the fact that we've had, for a long time, AGC programmed, and we have a December hearing. All the parties agree that there should be carriage, at least, in December. I don't think any party objects to that.

There's then the question of, "Well, is Day 2 used for certification of AGC?" We're happy with that. You'll obviously hear ultimately from my learned friend on what BIRA has to say about that, but that's not for me, that argument.

In the circumstances that we have arrived at, because of the timings of these claims, it obviously makes sense to adhere to the standard Tribunal procedure of grappling

with carriage first.

THE CHAIR: Absolutely.

MR PICKFORD: A fortiori. There is evidently a subtle interplay between how one goes about approaching a carriage dispute and how one goes about approaching certification, and what we say --

THE CHAIR: In a less complicated carriage dispute, there would be the other issues, whether you go through a checklist, do they satisfy? And if you think that the PCR is dodgy, you say that's a reason we shouldn't certify, or they haven't got their funding in place, or the limitations. You can see lots of --

MR PICKFORD: A lot focuses on the suitability of the class representative; that's the key focus. Not the underlying merits of the claim. Obviously, it would not be appropriate for the Tribunal to proceed on the basis that the Microsoft test is failed for a particular claim before it's heard the argument on that. It can't do that.

THE CHAIR: Do you make the assumption that both will satisfy that test?

MR PICKFORD: The Tribunal might wish to. What I would say about that, not anticipating what we may yet say in a month's time, is that the Tribunal could legitimately say, "Well, I've got one claim here, and I can see that there is no substantive objection under Microsoft to this claim, so that is something that I can reasonably happily rely on. I have this other claim where that has yet to be determined, and what I'm being told is that there's going to be a fight about it".

THE CHAIR: Yes.

MR PICKFORD: Now, obviously, the Tribunal can't assume which way that fight is going to go, but in my submission, it wouldn't be impermissible for the Tribunal if it's got a lot of difficulty looking at everything in the round to still take account of that difference.

THE CHAIR: Well, what's troubling me -- these are all arguments for the future -- is

that simply the proposal I put it seems to me is a pragmatic way of dealing with it.

MR PICKFORD: Indeed.

THE CHAIR: We can haggle, as we inevitably will, about the timing of the second hearing, because that will depend on the availability of the parties and how much time we give you to put in your response. Ultimately, these are all sort of case management decisions about which we can tweak a bit.

MR PICKFORD: Yes.

THE CHAIR: But the only real objection, it seems to me, in relation to doing things that way, is that it is potentially unfair to BIRA to allow the AGC certification hearing to go at the same time, if you like, as we hear the carriage dispute, and then a day later hear the AGC certification hearing, then give a judgment in relation to carriage and certification. It seems to me that parties need to know where they stand immediately. It's… the potential unfairness to BIRA is what concerns me about what I'm proposing at the moment.

MR PICKFORD: Well, in relation to that, sir, I would say there isn't any unfairness because the Tribunal would be taking it in stages. Stage one is: who wins carriage? The Tribunal will determine that question in the ordinary way that it always determines that question.

THE CHAIR: Without a merits test.

MR PICKFORD: Without getting their teeth into the merits.

THE CHAIR: In this case, it's going to be slightly artificial because the following day, that's exactly what we're going to be doing; at least on the threshold.

MR PICKFORD: Well, in my submission, I would say it's no more artificial because the certification hearing may take place the next day in that case, than it would ever be. I mean, ultimately the Tribunal will have to form a judgment using the approach that it ordinarily adopts in a carriage hearing.

Then, because, sir, as you rightly say, we want to try to move these proceedings on as quickly as we can, it makes sense to use that next day for certification. Because a possible result is that AGC wins both and if that's the result then, certainly, as between us and ATCA, the publishers, we're both much happier because everyone wants to move these proceedings on and there'll be less of an argument between us as to the extent to which that is possible in the light of the delays that will otherwise begin to rack up.

I mean, on that, I do have to give a slight warning that -- it's a two-pronged warning. One's a warning you've heard from me before. It's my, "remember the CMA decision" warning. That always has the potential to come along and upset things. I obviously don't say that you should therefore do anything differently now. It's just a warning to always remember that things may change.

The other warning is that even under our current timetable -- and I'm not going to develop this -- but even under our current timetable, we're quite tight for the hearing in September 2028. There's quite a few things bubbling under the surface that you, sir, may not yet be aware of, but they have the potential to use quite a lot of Tribunal time over the coming six months. Those are just warnings.

But subject to those warnings, there is obvious sense in trying to move proceedings along, if we can.

THE CHAIR: Can I just ask you, if I may, just two final questions.

MR PICKFORD: Yes.

THE CHAIR: Then perhaps I'll hear from your opponents. The first is that, as I understand it, you don't see that there's a real difficulty in catching up with the publisher claim, if AGC win both in December. Is that right? You think it's going to be tight, but you think --

MR PICKFORD: Yes, I think the fair way of putting it would be that it will be tight but

doable, as long as before Christmas we know --

THE CHAIR: One way or the other.

MR PICKFORD: -- one way or the other. I think if that slips into next year then it stops being tight but doable and it becomes not doable. That's my response on that.

What I have not developed at all yet -- and I don't want to deal with this yet, because you may want to deal with this entirely separately -- is all the submissions we have to make about joint case management, because there are some differences between the parties on that.

That's my response to that question. I think you might have had a second just before I sit down?

THE CHAIR: Does the same apply -- let's say if I accepted that you should have until 16 January?

MR PICKFORD: 15 January.

THE CHAIR: 15 January -- to serve your CPO, your response to the BIRA claim.

MR PICKFORD: Yes.

THE CHAIR: If I directed a hearing as soon as possible in February, let's say mid to late February.

MR PICKFORD: Yes.

THE CHAIR: Is it still possible for BIRA, the advertiser proceedings, to catch up then?

MR PICKFORD: No, I think in those circumstances the delay would be modest but we say if we're not getting out of the blocks until a couple of months later, we need to adjust by a couple of months. Realistically, the sensible thing to do at that point would be to bite the bullet and say, okay, well, let's go back to the next term -- so, three months later -- and that then would allow everything to proceed in an orderly fashion.

THE CHAIR: What, in terms of case management -- let's say that BIRA wins carriage on day 1 in December.

MR PICKFORD: Yes.

THE CHAIR: And is certified back end of February. Let's say a bit of slippage for a decision; complicated judgment takes a few weeks to write. You get a decision in early March and BIRA is certified. What then happens about joint case management at that point?

MR PICKFORD: Well --

THE CHAIR: One option is -- and I know that this comes out very loud and clear in your submissions is that the very last thing you want to slip is the trial date.

MR PICKFORD: I'm not sure that's quite our position. I think that's very much ATCA's position: the last thing they want to happen is for the trial date to slip. I mean, our position is we understand why ATCA want to keep the trial date. We would like to facilitate that if it is sensible, but it can only sensibly be achieved under scenario 1, which is the AGC wins and they win very quickly scenario. Once we are into we don't know what's happening until early March, we've effectively lost about three months.

THE CHAIR: No, I see that.

MR PICKFORD: Our submission then is, naturally, we are going to basically have to sort of push everything around by about three months to allow BIRA to catch up. Now, I can develop more detailed submissions to this, but the basic argument between us on this is we say, if you're going to have joint case management, which everyone thinks is sensible, you need not just to have a joint trial, you need to have the steps to that trial to work sensibly in tandem with one another so that the factual evidence takes place before the expert evidence. The expert evidence is -- in exactly the way that it was programmed in the publisher claim --

THE CHAIR: Let's say that I decide the least worst option, looking at it now, is that it

may well be that I've got to adjourn. I know that ATCA are very against that. I'll hear what (inaudible) has to say about that. But let's say that the least worst option, it seems to me, is that we've got to contemplate a hearing following the BIRA certification, where we've got to the inevitable consequences or one consequence may be that the trial goes back by three months.

MR PICKFORD: Yes. I mean, in my submission, that will be the moment -- if that's how it works out. This assumes that BIRA win carriage in December and then therefore we have the BIRA hearing and then judgment is given in early March, whatever. In that world, then obviously what the Tribunal will need to do is at that moment, take stock and say, "Okay, well, we're now in March, let's look at the directions. Are they still feasible to have the trial starting in September, late September 2028, or do we need to shift them by a small amount?"

THE CHAIR: I mean, it does seem to me a strong -- you know, I mean, the parties to the existing proceedings, the active claim, as you call it, they're entitled to say, "We're not prepared to engage with this. We've been doing our own thing for what is now ...", I can't remember when the first CMC -- well, the certification hearing was almost over two years ago, I think. One was going to have to contemplate that one will have to decide whether there's going to be joint case management. But if let's say that all the parties are reluctantly agreed that the trial date goes back or that's the decision that the Tribunal made by, let's say, three months, how would you then anticipate joint case management?

MR PICKFORD: Well --

THE CHAIR: You'd effectively wait. You say we should wait until they catch up; is that --

MR PICKFORD: No, no, I mean, I would be urging on the Tribunal, insofar as the Tribunal considers it's interlinked to how it assesses the claims before it in terms of

carriage, which I'm going to explain why it actually would be, to grapple with the question of principle about joint case management today.

THE CHAIR: Right.

MR PICKFORD: We've all come here making submissions about joint case management. It's not something that so far I have developed because I've been responding obviously on the more micro issues of how we programme the next hearing or two. But we're all well able to address the Tribunal today on whether there should be joint case management. And my submission is the case for that is overwhelming. It is overwhelming. And therefore, there are two implications that come out of that.

THE CHAIR: Yes.

MR PICKFORD: Everyone agrees, in fact, that it should happen. And if it really is overwhelming but the Tribunal is also worried about keeping the final hearing date, well, then that weighs very heavily in favour of AGC because they've got the lead. If, on the other hand, the Tribunal accepts, as everyone says, we do need joint case management, but is less concerned about there being, in my submission, a modest amount of slippage, because this is a hearing that is two years out, roughly, and we're talking about it maybe starting three months later. So this is not a serious setback. Obviously, there's interest that would be payable insofar as, you know, they get their damages three months later. In that world, when the Tribunal is prepared to adopt that approach, then the timing difference between the two proposed advertiser claims becomes far less acute.

THE CHAIR: Right.

MR PICKFORD: So I would be encouraging the Tribunal not to put off the principle of dealing with joint case management too far into the future, even if -- what I would say the right approach to do is to decide whether there is going to be a joint trial today, and then deal with the implications of that, the micro implications, in terms of, well,

exactly how do we then reprogramme that? If you want, we can also have argument today about whether it would be okay for that joint trial to take place three months later, if necessary.

THE CHAIR: I mean, I'm quite prepared to give an indication that the Tribunal certainly would ... I mean, it seems to me joint case management is obvious. I mean, I'll listen to everybody to say otherwise, but I don't think anybody does.

MR PICKFORD: No.

THE CHAIR: I mean, what that means in practice, I think, we'd have to work out and whether that's embodied in an order now, I'm not so sure. I'd like to hear argument about that. But in principle, it seems to me there must be joint case management but I don't think ... I mean, you're pushing at an open door.

MR PICKFORD: Yes.

THE CHAIR: And I'm prepared to say so today if that's going to help the parties.

MR PICKFORD: Well, I think --

THE CHAIR: What that means in practice I'd like to -- so far as the trial date is concerned, I think that does depend on what happens in December. It may well be that the right thing to do is to give directions, not to give directions now, but if we hand down a judgment in December in favour of AGC, we can maybe possibly deal with it on paper or get a very quick hearing at which we deal with the implications of that so far as joint case management towards the trial date in December is concerned.

MR PICKFORD: Yes.

THE CHAIR: It may be that we have to take the same ... I just think we should take it in steps. But so far as the principle of joint case management is concerned, you're pushing at an open door. If somebody says to me today that shouldn't happen, then I'll actually make a ruling if you want, as it seems to me that the whole point of this exercise -- and the reason that you're all here -- is because ultimately the idea is that

there should be joint case management. If I thought there wasn't going to be joint case management, I wouldn't have bothered to insist on this hearing.

MR PICKFORD: Well, I would ask the Tribunal to direct that today. Obviously, it doesn't have to give a reasoned ruling if no one is objecting to it but I think it would be sensible.

THE CHAIR: I mean, I think, ATCA may want to think about that; take instructions. Nobody's come, I think, asking me to make a -- but if they say, "Well, we'd rather like to hang on to the trial date. On balance, we'd rather have the trial date than joint case management". And, you know, if BIRA wins, they'll have to go. There shouldn't be joint case management to trial. You wouldn't formally consolidate them, would you? Would you consolidate them or wouldn't you? You wouldn't. They'd still be heard one after the other or together or --

MR PICKFORD: What I had imagined is that the order would be that they would be heard and managed together.

THE CHAIR: Heard and managed together? That's quite a big order to make, I think, on the hoof. I'm quite happy to indicate now that as far as I'm concerned, there should be joint case management, which is why we're all here. Because if there wasn't, then we'd just let the questions of carriage and certification take their own course.

MR PICKFORD: Yes, quite.

THE CHAIR: If it can be done. But I think if there's going to be an argument about that from ATCA -- as I now call them, rather than Ad Tech.

MR PICKFORD: Well, I think the way through may be this, we --

THE CHAIR: Well, shall I wait to hear what they say?

MR PICKFORD: Yes, can I just make two final points then?

THE CHAIR: Because they may say, "Well, you know, in principle, joint case management is fine. If AGC win, they can catch up, that's fine, but you know, we want

to die in a ditch over the trial date".

MR PICKFORD: Yes. Actually, fortunately, it's simpler than that, given the way that the parties have articulated their cases. Everyone agrees that there should be joint case management. What BIRA and ATCA say is that also you keep that final trial and you can have joint case management even if it's BIRA that's certified and it happens in a couple of months.

THE CHAIR: Right.

MR PICKFORD: We say, "No, that's actually wrong". At that point, given that the premise is that we will definitely have joint case management, the argument then can be, "Okay, are they right that we should just hold the trial date, or are we right that we should push that trial date out by three months?" That then becomes not an argument about whether there should be joint case management; it simply becomes an argument about when is the right trial date, given that we all agree on joint case management.

THE CHAIR: I'm prepared to rule now that, if possible – that being quite an important qualification -- there should be joint case management. I'm quite happy to decide in December. I think this is the best way to do it; gives ATCA some time to think about it and make submissions on this point. I don't know how involved they would be in the actual carriage dispute.

You'd probably be represented, but would you have submissions to make?

MS CLEARY: That would rather depend on the directions you're giving today about what you're going to be deciding then. If it was a straightforward carriage dispute, we'd be there, but we wouldn't expect to say very much.

THE CHAIR: Right. I think if we decide carriage, let's say, and certification, in December, given that you say that we can hold the trial date, it seems to me that we should hear submissions then, because I think we will sit as a full Tribunal, I think, in

December to deal with both carriage and certification. I think what I would direct is that we deal with the question of joint case management and trial date in December. If I direct now that we'll hear alternative submissions both on the consequences, if you like, of either outcome. That way it gives time for everybody to prepare; they know that issue will be on the menu, and then we… you can articulate for me, perhaps less on the hoof and think about it, what the consequences will be of finding in favour of AGC and/or finding in favour of BIRA. I think that's a fairer way to deal with it.

I'm perfectly happy to say that we're all working on the principle of joint case management. What the ultimate consequences of that will be we'll work out in December; does that seem sensible?

MR PICKFORD: Well, I'm very happy to make submissions about it now, but obviously ultimately we will be guided by the Tribunal.

Could I just turn around for a moment just to take instructions very, very briefly? (Pause)

Yes, we're content with that approach.

THE CHAIR: That issue may be part of the carriage dispute. Let's say we form the view that AGC will be certified. Based on your objections today, that doesn't seem an unlikely outcome, but also we take the view that we can't decide at that stage whether BIRA is likely to be certified. You have all material objections. But nevertheless, we can see it's quite a complicated issue, and they may well be certified.

The carriage issue may come down to general case management issues, or they may be a significant part of it. If I've already prejudged some of those case management decisions at this hearing, then it may not be open. So it may be that ATCA could turn up and say, "Well, you know, this is quite important to us on the carriage dispute. If it means that we lose our trial date, you should certify AGC ahead of BIRA".

MR PICKFORD: Yes.

THE CHAIR: And that's a material consideration which, on the authorities, you're entitled to take into consideration.

MR PICKFORD: Yes.

THE CHAIR: If I've already decided what's going to happen, it seems to me that is going to be a slight problem. I mean, we can always change our minds, I suspect. But I think it's better to leave all of that to December unless anybody else objects.

I'll hear from everybody else, but in principle, joint case management: in practical terms, we defer that until we work out whether we catch up, whether we hold the trial date, what the consequences are of a BIRA certification, I think we decide in December. If BIRA loses, the issue may go away; if BIRA wins, then we've got to reformulate or give much more active case management guidance, I think.

MR PICKFORD: We're content with that, sir. My final footnote point was: on the issue of the date by which we need to respond --

THE CHAIR: Yes.

MR PICKFORD: -- I gave you some illustrations, but another illustration is that the classes aren't even the same. There's an opt-in element --

THE CHAIR: Yes, that's the point that I've noticed when I read it.

MR PICKFORD: Yes.

THE CHAIR: I mean, what that means in practical terms, you're bound to develop, I imagine.

MR PICKFORD: Yes.

THE CHAIR: You've got an opt-in class as well as an --

MR PICKFORD: There's an opt-in class and also -- it's not merely customers of Google; it's customers of advertising more generally. There are quite a lot of quite complex ramifications to the differences between --

THE CHAIR: And your position may be very different in relation to BIRA as it is to

AGC. But they may be saying, "The width of our claim is a reason why we should have carriage", you know.

MR PICKFORD: They may indeed. It may be possible that it was tactical that their claim is put as broadly as it is, but anyway, those are submissions that can be made in the future.

THE CHAIR: Those are all for December, it seems to me.

MR PICKFORD: Yes.

THE CHAIR: Is there anything else you'd like to say before?

MR PICKFORD: No, thank you.

THE CHAIR: Who would like to go next?

Submissions by MR BREALEY

MR BREALEY: Should I go?

THE CHAIR: Why don't you go next, because I suspect there's not going to be very much difference.

MR BREALEY: No, there isn't. I mean, basically, you have said what we said in our submissions that there should be, in December, carriage and AGC certification. But you've just flipped it, so I think it's carriage on the 14th --

THE CHAIR: Yeah.

MR BREALEY: -- and certification --

THE CHAIR: Well, I think that's just because that's the way things are done in the Tribunal. There's no magic in that, I think, but I think that is the right way to do it.

MR BREALEY: That's fine by us, can I just float one idea?

THE CHAIR: Yes.

MR BREALEY: You've heard that BIRA has a broader scope of claim. We clearly will make submissions on that at the carriage hearing, because we say that BIRA leaves a lot of money on the table, not actually protecting the class of advertisers as they

should.

THE CHAIR: Just explain that to me in a little more detail.

MR BREALEY: Well, we say --

THE CHAIR: Not too much more detail.

MR BREALEY: No. We say that our claim captures better the harm to the advertisers.

THE CHAIR: Right, is that a class objection? Is it a merit objection?

MR BREALEY: It's a theory of harm, head of loss.

THE CHAIR: Are you challenging their formation of the class? I don't think you are.

MR BREALEY: Well, there are issues about how they define the class, but broadly we can read what they say --

THE CHAIR: Yes.

MR BREALEY: -- and the impact it has on the claim generally. More importantly, we say that the BIRA claim does not capture the true harm to the class of advertisers.

THE CHAIR: Right.

MR BREALEY: And we shall expand on that at the carriage hearing. We will also deal with what Mr Pickford said about the RPO. We're going to hear a lot about this RPO, which constitutes 96 per cent of BIRA's claim, which we say is wildly exaggerated.

There are issues about it, so we will deal with that on the 14th, but I am just floating -- and we don't have to decide this now -- with the Tribunal the following, which is that if on the 14th and 15th, or the 14th, really, the Tribunal considers that it would need to see Google's submissions on RPO, it could adjourn its carriage judgment until there had been an exchange of those submissions.

We believe that we can do what is necessary to persuade the Tribunal that BIRA's claim doesn't capture the harm, but I got a sense from the Tribunal that there's a degree of unease about hearing carriage without hearing Google's submissions on

the breadth of BIRA's claim -- they've essentially put the kitchen sink into it.

It may well be that if the Tribunal is still in doubt on the 14th and 15th, it would want to see what Google says on 15 January, and perhaps in reply, and then adjourn its carriage judgment for three or for four weeks. I'm just floating that as a possibility. I mean, it's no easy fix, as we say in our -- it is no easy fix.

THE CHAIR: No. It became apparent to me reading all of your submissions that we're looking for the least worst option here. I mean, what I was contemplating was a very early exchange of skeleton arguments, and possibly some reply skeletons so that we could try and focus entirely. If this RPO issue is going to be a big one, Mr Pickford might want to put in something on that without actually --

MR BREALEY: Yes, that's what I was also thinking, that, okay, they need their economists to opine on it by 15 January, but it may well be that they could put a five or six pager in.

THE CHAIR: Yes.

MR BREALEY: Or a 10 pager, which gives the Tribunal a flavour of what they would say.

THE CHAIR: I'll hear from him. He may say no, but I mean the danger is that we then drift, you see, on carriage and then we drift --

MR BREALEY: That's the problem that's why (overspeaking).

THE CHAIR: I just think it's going to be a material factor. You can see the way it's going to go, which is that all of you will be ganging up on poor Mr Jones at the --

MR BREALEY: He's going on sabbatical, so he's not going to worry about it.

THE CHAIR: Everybody's against BIRA at the carriage hearing, and the real reason at bottom is going to be a case management one, which is: can the advertiser claims catch up? And should there in some way -- I mean, we're already floating the possibility that there's going to be slippage in the timetable anyway. My aim would be

to get something out as early as possible after the 14th and 15th.

MR BREALEY: Yes.

THE CHAIR: Christmas permitting.

MR BREALEY: It may well be, then, if Google can put something in just to give the Tribunal a flavour of its concerns, that would be helpful. We will do it.

THE CHAIR: But you want the heft of also -- you want to say, "Look over there, that's what they're getting". That's going to be a big issue for you come trial, if you certify. But it's not an issue -- if you said, "If you choose them over us, that's going to be a really big issue at trial, see what Google say about it". I fully understand.

MR BREALEY: There is a prejudice to AGC, because it would be most unfortunate if the Tribunal said, "Right, well, I'm going to prefer BIRA because of the RPO. I can't work out what on earth AGC have put in the evidence, but I'm" -- and then four or five weeks later, you're persuaded that actually there's nothing in it.

THE CHAIR: No, I'd contemplated actually BIRA would be prejudiced by the staggering of the two hearings, but what you're saying is actually there is a prejudice to AGC as well.

MR BREALEY: Correct. That's what I was just trying to rectify if at all possible. As I say, we are content with carriage and certification on the 14th and 15th. We've done a lot of work behind the scenes on certification. That's why the issues are narrowed. We will obviously make submissions on the scope of the claims. We will make submissions on delay because there is case law and it's not as simple as just that --

THE CHAIR: No, I understand that. It's just I'd rather hear that in one go now. I mean, today is a timetabling hearing. I wouldn't even go so far as case management hearing. I mean, if I'd had a confidence that I knew what the outcome was, I would have dealt with it on paper then actually, because it is quite a difficult decision. I wanted to hear from everybody orally. I know it involves gathering everybody together at short notice,

but it does seem the fairest way to deal with it.

MR BREALEY: We are very happy with the Tribunal's suggestion. The only kind of slight addition is whether the Tribunal would (overspeaking) ...

THE CHAIR: Well, I'm not sure we've actually given any directions for the hearing in December. Is there actually an order for --

MR BREALEY: Well, there are directions for certification, which --

THE CHAIR: But not for carriage.

MR BREALEY: Not for carriage.

THE CHAIR: I'm going to need to do some directions today. Subject again to the parties, I mean, we're only talking six weeks away.

MR BREALEY: Yes.

THE CHAIR: If skeletons can be exchanged seven days before, okay, or even earlier, I'd say, that would be of great benefit to the Tribunal. I mean, it's a question of -- I'm conscious that it's a very short time period between now and then and you've got a lot of work to do.

MR BREALEY: There is a timetable at the back of BIRA's submissions.

THE CHAIR: Yes.

MR BREALEY: At annex 1. I mean, obviously this doesn't apply now because it's not going to be a rolled-up hearing.

THE CHAIR: No.

MR BREALEY: But one can --

THE CHAIR: I spent quite a lot of time trying to work out whether you'd still call it a rolled-up hearing.

MR BREALEY: But it's not rolled up for BIRA. But you can see there -- this is in the submissions, page 15 of Bundle E -- you've got the Google response, the CMC, Google's response, then you've got BIRA's submissions on carriage on 20 November.

We don't see any problem with that. Then if one goes down a little bit, BIRA's and AGC's response on 2 December. What we would say is that the skeletons can be the 9th if necessary, but probably a bit before that.

THE CHAIR: I wasn't anticipating actually… but you say there are going to be written submissions on carriage, even before skeletons?

MR BREALEY: Well, BIRA -- I mean, certainly from our perspective, we need to put our --

THE CHAIR: Evidence in.

MR BREALEY: -- evidence in as to why this 96 per cent RPO is overegging it.

THE CHAIR: And any other evidence, upon which you --

MR BREALEY: Yes.

THE CHAIR: Any other evidence upon which you (inaudible).

MR BREALEY: Yes.

THE CHAIR: I'm going to have to give directions. Whether you call them written submissions or --

MR BREALEY: Sorry. Well, this is not our term, but yes.

THE CHAIR: I'm anticipating exchange of evidence.

MR BREALEY: Evidence, yes.

THE CHAIR: Yes. It may be that they can be accompanied by submissions because that would be very helpful to the -- if you're prepared to go with that, in terms of submissions, I'm happy to direct that because the more we can read ahead of time, the quicker that you get a judgment immediately after.

MR BREALEY: Well, when we put our evidence in on the 20th -- obviously there are going to be page limits but we can encapsulate what we are saying in 15 or 20 pages or whatever is directed by the Tribunal. Then there's a response and then there's the

hearing. So, there is a kind of a grounding for directions.

THE CHAIR: For directions, (inaudible).

MR BREALEY: It may well be that Google can play a part in these carriage directions.

THE CHAIR: Is there anything you wanted to say about joint case management?

MR BREALEY: No, we've been -- it was April of this year that we suggested it so we're fully on board with it.

Submissions by MR JONES

MR JONES: My Lord, thank you for the suggestion at the outset. We approach it, if I can put it this way, in the pragmatic spirit that we have tried to approach things since getting funding and starting to liaise with the other parties, including, for example -- I'll come back to joint case management -- but including promoting joint case management from the outset and presenting, for example, the expert report in a way which is intended to show the respects in which our expert agrees with and will build on the work that is done by the publishers, and only to explain to the Tribunal those respects in which her evidence is additive.

We have tried broadly to be flexible at every opportunity to say that we will fall in line with the existing timetables. There's some question marks from Mr Pickford in particular about whether we could do that, but we say we could, whatever the timetable is set.

That brings me to your suggestion, my Lord, which I'm not going to try to dissuade you from but I'll make a few observations --

THE CHAIR: Yes, please do.

MR JONES: -- about it. Carriage in December is obviously sensible. Mr Brealey's certification hearing, in December also, we entirely see that there are reasons for pressing ahead with that. The work's been done, and so on. The question which then arises firstly is whether or not my client's claim could be heard for certification in

December? My Lord, I heard what your Lordship said about that and I'm not going to try to dissuade you from the course that you've suggested. In other words, we won't be in December, but I will, if I may, just flag a couple of concerns that we, as you've indicated, have about that and make some suggestions.

It does give rise to questions of fairness and perhaps equally importantly, the perception of fairness, if one structures things in a way which has been suggested. In particular, because there are going to be some overlaps between the carriage issues and then the certification issues in Mr Brealey's client's case.

Now, one, if I may, small practical suggestion is that we will remain for the certification hearing, hopefully silently and quietly throughout, but in case there is anything that is raised in that context that has, as it were, some feedback to the carriage hearing. So the carriage hearing could perhaps formally even be adjourned for the day, but the issues would remain open until they've been decided and we would have an opportunity to comment, which addresses, I think, the equal and opposite concern that was raised in Mr Brealey's written submissions, because he also had said, from his client's perspective, there is potential unfairness, because what if Google says something during certification that is relevant to carriage.

THE CHAIR: I mean, I assume that all the parties would be present for both days, or are you going to take a representation point? I mean, what you get to say, it seems to me, depends rather on what's said by the other parties. But I was planning on giving you an opportunity to say something as long as -- we've got a day for certification.

MR JONES: Absolutely.

THE CHAIR: What I was going to control quite carefully was the idea that you could re-argue the carriage issue at the certification hearing. So I might limit what you say purely to points about certification, but insofar as there are issues that come up which directly relate to the BIRA certification, then I would want to know about them on that

second day.

MR JONES: Yes, my Lord, that's very useful. Or points which come up which feed back to the carriage dispute and which need to be tied up, as it were, in the certification hearing.

THE CHAIR: Exactly. So I was always intending to give you an opportunity to be present and to be heard as well.

MR JONES: I'm grateful. I'm grateful. There's then what happens the other side of that hearing, where of course, there are also fairness questions, but this, in the end, it seems to me, boils down to the need for the Tribunal and you, of course, will have very much in mind that they are separate issues and the difficulty which arises inevitably from knowing, as it were, the outcome of the certification hearing when one is trying to decide carriage (overspeaking) ...

THE CHAIR: Well, I can give you --

MR JONES: Simply has to (overspeaking) ...

THE CHAIR: -- give you an indication now. It seems to me that the -- subject to questions of, you know, whose fault it is that we are where we are, which, as I say, I don't want to hear about today, but it seems to me that the way all questions of fairness can be met is if you win the carriage dispute and you're certified -- the worst possible situation is that you win the carriage dispute and then we refuse to certify your claim. I mean, that's an outcome, I suppose, that is theoretically on the table, but it seems an unlikely outcome.

But if assuming you win the carriage dispute, you're certified, then inevitably there's then a choice about joint case management and if that involves a rejigging of the timetable, then you know, that's what will --

MR JONES: That's what will have to happen at that stage.

THE CHAIR: I mean, I will hear, you know, what ATCA have to say and they may

want, as I say, to die in a ditch, but I'm not anticipating that. But if I were, just to say that, if I were sitting in the Chancery Division and somebody said, well, we need to push the trial date, BPD, as I now have to call it. You know, somebody says to me at the end of 2026 for a trial in September 2028, we need to push the trial date back to January, I'd probably say yes. I mean, unless there's some very powerful reason to clinging onto the trial date.

I mean, I had a brief discussion behind the scenes. I think that would be possible but obviously listing an eight-week trial is quite complicated. But, you know, subject to re-listing, the availability of the Tribunal, which you would hope would all be able to be accommodated, we would do that. I understand the importance of getting it done. If you were saying it needed to be pushed back by a year, then I would be much more resistant.

MR JONES: Yes.

THE CHAIR: But if it's the difference between Septemberand January, then ...

MR JONES: I understand.

THE CHAIR: That seems to me that may well be the issue that we have to grapple with at the end of December. You know, we just have to have that argument then.

MR JONES: Yes. And to be clear, my clients will say really, (overspeaking) whenever our claim is certified, if it is certified, whether that's in December or in early 2027, we can fit in and we can get it done. That is a different debate for another day and I'm not going to go into it now. But also the other point which comes in on timetabling is, as Mr Pickford fairly said, Google has all sorts of reasons that they're floating about why the trial might need to be pushed back and so there may need to be a hearing in my client's claim (overspeaking) ...

THE CHAIR: But again, the very last consequence I want to bring about, even if the BIRA -- BIRA, you win carriage, you win, you get certified, then it seems to me, on

balance, we should do what we can to ensure that they're both case managed and heard together. Again, the outcome which nobody wants, including the Tribunal, is that then the publisher claims and the advertiser claims are then decoupled.

MR JONES: Absolutely.

THE CHAIR: That's an outcome that nobody wants.

MR JONES: Absolutely right. Absolutely right.

The question then that I want to turn to is when should the BIRA certification claim be listed for? This does raise a different kind of fairness question. I want to spend a little bit of time on that. My Lord suggested the end of January.

THE CHAIR: Yes.

MR JONES: That would, in our submission, be the appropriate time for it, because it would mean that that claim proceeds not as quickly as possible, because as I say, we think it could be done in December, but it proceeds at least at a good pace.

Now, Google did originally say that -- before seeing the claim, admittedly -- they wanted two and a half weeks to respond to it. The position which Mr Pickford has outlined today for the first time -- this hasn't been told to us in correspondence -- is that they need three months. In other words, the claim was given on 15 October or 16 October, and they need until 15 January.

Now, my Lord, I've made the point -- I just repeat it -- that even if they're given all of that time, and even if the BIRA certification hearing is in February and the decision is in March, just to be clear, BIRA still thinks it could catch up. I just emphasise that that is our position. However --

THE CHAIR: Again, we'll have that argument --

MR JONES: There'll be argument, but that's the cause of my concern. My Lord put it as they're ganging up on me, but we can see the dynamic. What's become clear is Google doesn't like the wider claim that my clients are bringing, and it's true to say that

we rely on the wider claim in our favour. Google does not like that wider claim.

THE CHAIR: I've got that message.

MR JONES: And it suits Google to build on that, to say they need this huge amount of time, knowing that is then going to be used against my clients in December -- rightly or wrongly, we'll say wrongly -- by his friend in this, Mr Brealey, who's going to say, "Mr Jones's claim is going to cause delay", et cetera, et cetera. We are concerned about that. That's why I say there is a fairness point. As I've said, Google has all sorts of reasons for saying that they think this trial may well need to be delayed. Mr Pickford hasn't even taken your Lordship through all of those.

THE CHAIR: I didn't think it was altruism.

MR JONES: Well, precisely. He has all these different reasons, but the one which Mr Pickford has really emphasised is my client's claim. What he says is the necessary consequence if that goes ahead, he says, then it will definitely need to be delayed. I just put it frankly: we are concerned that there is a degree of game playing here.

THE CHAIR: Doesn't it benefit you for the carriage dispute that we don't see -- because Mr Brealey's very keen that you -- I mean, he would be keener for Google to put it in its response before Christmas so he could wave it at me at the hearing.

MR JONES: Well, I think we're getting to very refined tactics here. Mr Brealey would like a ten-pager before Christmas to wave, and then the prospect of lots of delay going forwards if we succeed in carriage.

THE CHAIR: I can see how this all adds up.

MR JONES: That's how it comes together. That's how it comes together.

THE CHAIR: Well, I mean it seems to me that I've got to decide how long to give them for their response. Then I've also got to decide when we list the hearing.

MR JONES: Yes.

THE CHAIR: We came into court at least thinking that at the end of January was the

right time.

MR JONES: My Lord, I would urge your Lordship to stay with that thought. It is essential --

THE CHAIR: Do I give them -- I mean, it is a tall order to ask them to produce their response and then get ready by the end of January, before we've even gone through the process of trying to list anything. We've got availability, haven't we? I don't know who will be appearing for BIRA at the end of January.

MR JONES: If he's available it'll be Mr Moser, who's managing the claim. Unfortunately, he couldn't be here today.

If one thinks, though, about the points which Mr Pickford has made, which are all about the methodology. Where that takes you is to thinking about Microsoft v Pro-Sys. Are they really going to be saying that that test isn't met in circumstances where the rest of the methodology is, as I understand it, not going to be contested in the AGC claim? My Lord made that point to Mr Pickford. In my submission, there isn't really a good answer to it, because --

THE CHAIR: Well, what does one do if you've got two -- one makes the assumption that their objections -- what I put to Mr Pickford as the "core claim", that's maybe the wrong description, the common issues that you share with AGC. Plainly, you're entitled to have that part of the claim certified. Mr Pickford says that I'm also entitled to blue pencil the bits that he says are unarguable. But I mean, that strikes me as being slightly unusual.

MR JONES: It would be unusual. It would be unusual. I --

THE CHAIR: It's meant to be a threshold test. I mean, the idea that it's a sort of like an amendment application where you go through it line by line, trying to decide which bits stay in and which bits don't, it seems to me it's not (overspeaking).

MR JONES: I hesitate to make this point because I wasn't involved in the drafting, so

I'm trying to avoid getting into too much detail, but I'll just say at a high level, these methodological questions in a case like this are often overlapping anyway between the different tentacles of a case. And so the idea that you could completely separate one off…

THE CHAIR: Well, I just don't think we're going to be in a position to do that exercise anyway, and it would be very unfair to, given you've been living with this claim for a long time, all of you. We're seeing the AGC and the BIRA claims really for the first time as a Tribunal. I mean, we'll have the expertise to be able to address them, but it's not quite the same as having lived with them for six or nine months and done the drafting.

MR JONES: My Lord, we would urge your Lordship to stick with the timetable that was --

THE CHAIR: If I stick with the original timetable, end of January --

MR JONES: Yes.

THE CHAIR: -- what do you say about the date on which we should have their response to your claim?

MR JONES: I'm hesitating only because I'm trying to remember precisely what dates had already been suggested.

THE CHAIR: The 15th. We had --

MR JONES: They've asked for the 15th. If one turns to annex 1, which, my Lord, you were just looking at. Page 15 of the bundle. This was on the basis of a rolled-up hearing, on the basis that it could have been heard in December, which we accept now is not going to happen. But we had suggested then 16 November was the third row down.

THE CHAIR: Right.

MR JONES: One could push that into December. That could go to 15 December, that

could go to just before Christmas, if that's any more use. But there is a lot of room to move that deadline back and give Google a lot more time than it initially said, remember, two weeks.

If it went to the point of mid-December, they would have had a couple of months with it, and there would then be plenty of time for the steps from there to a hearing at the end of January.

THE CHAIR: If you go to annex 2, which is really what we're contemplating, where do you say the --

MR JONES: That's right. Well, annex 2, I think, is the timetable which Mr Pickford would like. Can I just be clear about annex 2? Annex 2 was put in on the premise that the court were to make, as it were, a prior decision that the final hearing definitely needs to be pushed back, because that was floated in correspondence with all these submissions.

THE CHAIR: Yes.

MR JONES: What's happened since then is that Google has put it in a different way, which is, "Well, it will have to be put back if BIRA is certified". That's the context for annex 2. I think that's where 15 January has been taken from, because this --

THE CHAIR: I see.

MR JONES: -- has in it 15 January halfway down the page.

THE CHAIR: So that's where the 15 January came from?

MR JONES: I think so. That was put forward by us on the premise that there was, as I said, a sort of a prior decision that things --

THE CHAIR: What you were contemplating there was the 4 or 5 March for the hearing.

MR JONES: That's right. That's right. I'm repeating myself, but just to be clear, it was in the context of Google having said they think the final hearing has to go back in any event.

THE CHAIR: Yes.

MR JONES: And us saying, "Well, if that's right, there's a lot more breathing space, so here's a much more leisurely timetable". So mid-December, my Lord.

THE CHAIR: You say mid-December. Well, I'll hear from Mr Pickford on that. (Pause) Yes. Is there --

MR JONES: Almost finished, but just to come back to the question of joint case management. To be clear, we do, of course, agree with the joint case management. We also agree what that means in practice will need to be looked at once whichever claim gets certified, gets certified. I don't think there's much more I can say usefully on that topic.

THE CHAIR: Ms Cleary, what would you like to say?

Submissions by MS CLEARY

MS CLEARY: I have five short points.

The first one: in terms of what you're planning to do in December, we've no objections to the proposal of a rolled-up hearing of carriage of both and certification of AGC in December.

I wanted to raise two points for consideration. The first one is: my client would like a right to put in short submissions limited to the case management implications of the carriage dispute. That's not something we had contemplated doing before this morning, but because the two issues are so intertwined, we think it would assist you, and give us the right to be heard, just simply addressing the impact of carriage on our claim in that very limited respect.

The second point that I'm not entirely clear about, having sat here this morning, is whether it is contemplated that the two-day hearing in December is also going to contain some kind of mini direction hearings dealing with the case management implications of however you resolve the case management dispute. Obviously,

Mr Pickford is terribly keen to have a direction for joint case management as soon as possible. We have very clear views on that, which I'll address you on momentarily. But my limited question for this purpose is: if that's going to be a component of that December hearing, we would obviously want to be a part of that hearing and participate more actively than we would if it was simply carriage and then certification, if you see what I mean.

THE CHAIR: My answer, the one I gave Mr Pickford, was that we would, in the order that we made following that hearing, probably direct joint case management, and then we would also hear from the parties, if you like, what immediate case management directions we should make on either of the two alternatives, so that's AGC wins carriage and get certified.

MS CLEARY: And then the alternative --

THE CHAIR: The alternative is BIRA wins carriage and then gets certified. And then we have the hearing, let's say, by mid-March is a working hypothesis.

What we would want to hear from the parties, I think including you, is what's the outcome on that? I mean, it may break a bit because things may have moved on by December, but what I was keen not to do is give any directions today in relation to those two issues, because it seems to me we've got to hear the argument. We will want to hear submissions, and when we hand down a judgment, we'll give an indication on that, and then you can go away and produce an order. So you should be there, and you can --

MS CLEARY: We'll probably want to say a bit more in writing, and maybe on the day.

THE CHAIR: You may want to say something on the day, but you need to be there for that. That should be included in your submissions.

MS CLEARY: On the proposal to list the BIRA certification hearing at the end of January, I think that's a great idea, but we submit it should be no later than that.

Just in terms of the prejudice to Google of listing in late January, because you raised that earlier, I just want to make the point that this is a company with almost unlimited resources, and Mr Pickford has acknowledged this morning that Google is already facing claims about Project Bulbasaur elsewhere. So, we're concerned that the risk of prejudice to Google is being overstated on timing.

THE CHAIR: It's worth a little bit less since yesterday, though.

MS CLEARY: My second point was to respond to Mr Pickford's submission just this morning. I know you've already reached a view that you're not going to give case management directions today, but I just want to set out and trial our position somewhat. Our position is that the approach you've suggested is correct - no decision on that at the moment. Obviously, some of those problems will fall away if AGC are certified. We also share your concern that if you make a direction on joint case management before then you are effectively prejudging the competing applications. Our concern on this is, at the moment, both advertisers are very clear that they're going to be able to catch up with us. But if you decide that can't be done in December, then there might need to be a decision about whether joint case management is appropriate. That's not a die in the ditch over three months point, sir. It's actually a bigger point because as you raised yourself this morning, there is the prospect of an appeal, either from your decision on carriage or aspects of the certification decision. At that point, you're not looking at a three-month delay, you're looking at a delay of potentially a year. So that's a very important consideration.

THE CHAIR: No, I've got that very well in mind.

MS CLEARY: I then just wanted to raise two points so that you can bear them in mind. The first one is that the key major steps in these proceedings need to be tailored to fit with the publisher trial directions in due course. There are active case management steps that you can do to direct this. On disclosure, we've heard what Google have

said about concerns about slippage, but actually the concerns about slippage relating to disclosure are largely of Google's own making in this case, because Google have taken the position in response to AGC that there's to be no disclosure to the proposed class representatives unless and until they're certified.

That seems to us to be quite an unconstructive position for Google to be taking, once the carriage dispute is resolved, and that might need to be reconsidered if, you know, BIRA win the carriage dispute, because it seems to us that at that point Google are deliberately putting problems in place and kind of setting things up for a three-month delay that, we suggest, suits them.

In terms of disclosure, also, you'll have seen from the table that we served with our written submissions, there's a very large overlap. Google's disclosure report in our proceedings does a lot of work identifying how the disclosure that it has already given to us corresponds to the issues in our agreed list of issues. If carriage is resolved in January and AGC are certified, it should be quite straightforward for Google to give disclosure to AGC or to BIRA on all of the issues that correspond with the issues raised in those claims. That seems to us to be very straightforward and doesn't need to wait for the close of pleadings.

On expert evidence, I mean, I don't think I need to address you on that now. I just wanted to make some very final short points on the impact of delay, because that has been downplayed to a certain extent in Google's submissions.

The delay to the publisher class is twofold. One, there's delay in having their claims adjudicated, which Google says can be addressed by an award of interest. Google are, in fact, vigorously opposing an award of compound interest in this case, so I'm not clear how those two submissions fit together. But also, the real issue here is actually the cost implications of a three-month extension because our costs will be increased, as a result of consolidation, quite apart from any delay. Consolidation

means more parties, more hearings, more time overall spent on this litigation by all of the parties. That translates into increased costs. Then if you delay the proceedings, that's a further delay and a further increase on top of that.

Given that that's not clearly necessary at this point, we think that actually the more just approach for all parties is to hold off on taking a view as to whether or not that delay is necessary until it becomes clear.

THE CHAIR: Well, I don't plan to make a -- I just wanted to give an indication to the parties that -- and this is a very different kind of litigation from the litigation one might be trying, if you were listing an eight-week trial. Two years out, the attitude of the judge in the hearing would be, well, if it can be relisted and the time can be made available for other parties, the courts have got no real objection to a three-month delay -- that's the only point I was making.

MS CLEARY: Yes.

THE CHAIR: Subject to listing because -- but if, you know, somebody applies the week before the trial starts, they get a very different answer. We are a long way out and subject to the Tribunal being able to accommodate that kind of delay, it does begin to be different because justice delayed is always a little bit justice denied. So if he were asking for a year, I'd probably have a very different reaction. Three months is the kind of slippage that you'd expect to be able to accommodate if it was grappled with early. That's all I'm saying.

MS CLEARY: No, of course. And I mean my only response --

THE CHAIR: I do take your point about the additional costs involved in joining the advertisers, and also the delay, because inevitably, human nature being what it is, work will expand to fill the time allotted. You'll have far more time to prepare, and you'll spend the money doing it.

MS CLEARY: The only point I would make in response to that is that the three months -- it's entirely speculative and it's arbitrary. The delay could be longer, if there's an appeal; the delay could be shorter if the parties can bring themselves more closely aligned to one another.

THE CHAIR: Absolutely. That's why I'm resisting any decision-making in relation to that now. I mean, it depends. I mean, quite a lot depends on the kind of issues that are raised. I mean, let's say we were to take just a crude view that we just didn't think it could be done in the time and for that reason, AGC should have carriage because it's far more important that they should be heard together, that might well be appealable. And also does BIRA have a right of appeal against that decision? Or do any of the other parties? You know, and then if you certify it on that same basis. So you can see a lot depends on the landscape of the dispute. My only concern about what I'm proposing at the moment is that, in an ideal world, we would have wanted to hear all three applications together. It doesn't seem to me we can.

MS CLEARY: That's not a fight I have a dog in. Unless I can assist you further.

THE CHAIR: We should probably take a break for the transcribers. How are we doing time-wise? It's 12.00 so if we say ten minutes, shall we? Hopefully we'll be done by lunch time.

(12.00 pm)

(A short break)

(12.10 pm)

THE CHAIR: Yes, Mr Pickford.

Reply submissions by MR PICKFORD

MR PICKFORD: Sir, thank you. There's a few points that I'm going to need to make in reply.

THE CHAIR: Yes.

MR PICKFORD: The first of those is Mr Brealey's suggestion that when we make our submissions on carriage, we might put in some sort of six pager, I think, as he termed it. We are not going to put in half a submission about RPO and have half a Microsoft argument at a carriage hearing. That's not what we propose to do. That's not the appropriate approach for the Tribunal and we can't sensibly do it. The whole reason why I asked for 15 January is because that is how long we need to engage properly with those issues so that we know what we're actually saying.

THE CHAIR: I was going to start haggling with you over 15 January.

MR PICKFORD: Well, can I come -- that's my next point. So…

THE CHAIR: Well, it's a matter for you. I'm not going to direct you to put anything in.

MR PICKFORD: Yes. Okay.

THE CHAIR: We'll come to directions. When I've decided what in principle I'm going to do, we ought to sort of deal with directions. We can agree between the parties what they either agree, you can agree, go away and agree or I can just give the directions now and we can debate them.

MR PICKFORD: Well, I mean, my understanding is as far as the directions to the carriage hearing are concerned, I don't think there's any real dispute between us about the proposals that are in annex 1 to --

THE CHAIR: This is BIRA's annex 1?

MR PICKFORD: To --

THE CHAIR: Even though that was -- that's anticipated to be for a rolled-up hearing of all three as opposed to two. I'm quite happy to adopt those, if everybody's happy.

MR PICKFORD: I think they can just be relatively easily transposed. I think there is one further date that would need to be added in just for Mr Brealey in relation to his response on certification to us. He has suggested a date and I don't think we've got

any disagreement with that.

THE CHAIR: Okay.

MR PICKFORD: I think we can put that to one side. We will obviously, however, be making full submissions, particularly insofar as carriage and joint case management intersect, for the reasons that must be very obvious now to you, sir.

THE CHAIR: Okay.

MR PICKFORD: Second issue then was Mr Jones's pushback on 15 January. Can I just take you back to his submissions and his annex 2? His annex 2, which is on page 16 of the bundle, bundle E, it's titled:

"BIRA's proposed timetable to a carriage hearing on 14-15 December [which we obviously are now going to have] and a certification hearing early in 2027."

Now, what he said is, "Aha, but that was premised on the final hearing being put back". It was premised on that having now been grappled with and us having won that and therefore he's got all the time in the world.

Can I just take you back to his own submissions. Page 11, paragraph 24. What BIRA say there is:

"BIRA has proposed a timetable to a certification hearing in March 2027, which is compatible with the Trial Listing ..."

They're proposing the hearing in March and they're saying it's compatible with the trial listing. That was the premise for his annex 2. Not that we had won on the issue, but --

MR JONES: (Several inaudible words). That's option two addressing what's described in paragraph 3, just to be clear.

MR PICKFORD: What we say is, firstly, the reason -- you're quite right. The reason why we took 15 January, in part, is because that was what was being proposed by BIRA. But ultimately, because when we thought about it, we thought, yes, we could probably just about make that and so if that's what they want, then we will fit in with

that demand. So, that's the first point.

Second is Mr Jones cast doubt on the idea that we might have some sort of partial argument where we attack part of the claim and not the other. He said I gave no answer to that. Well, he obviously wasn't listening to my submissions. I gave an answer to that and it was the Le Patourel v Apple and Amazon case. In that, certification, as I explained, what the Tribunal decided to do was to certify part of the claim but the umbrella part, the off-Amazon purchases, was not certified because that was considered to be too far-fetched.

That is exactly the kind of point that we may well wish to bring forward in these proceedings. It's not necessarily a partial Microsoft point. It might be. It's also potentially effectively a strike out point. Those are issues on which we currently reserve our position to be able to develop properly. We need proper time to develop them, if indeed we're going to do so. That's the second point in answer.

The third point is, he says, "Well, you get… you are now asking for three months". Well, let's just put that in context. The first two weeks, we've been arguing about timetable and what happens next. There is a world in which we never even potentially respond to BIRA. If AGC win the carriage dispute and then they're certified as a result of the hearing we have the next day, BIRA's claim may effectively go away. So reasonably enough, we have not started the work on the response yet, and we also have Christmas in between. So the reality in practical terms, we're looking more like about two months. That is well within the normal bounds of how long a respondent has to respond to a CPO application.

Mr Jones has shown you no authority whatsoever that ordinarily one gets less than two months in order to respond, with all of your evidence, to an entirely novel £2.2 billion claim that they're bringing against us.

THE CHAIR: His point was that his expert evidence is tailored to what's in already, so

you're not having to reinvent the wheel because their expert evidence is shorter than it would otherwise be, because he's effectively --

MR PICKFORD: Well, quite. There are obviously some savings from that, but these are monumentally complex proceedings. His own claim form is two and a half times longer than AGC's claim form; it's in the hundreds of pages. They've put in an expert witness statement that is twice the normal permitted length.

THE CHAIR: Could I just cut through this slightly. I'm keen to list a hearing as soon as possible after the end of January. So the question is what's doable from your point of view? I mean, if you tell me that you've got to have until 15 January, and if I list a hearing only, let's say three or four weeks later, then I'm going to make them suck it up.

But can you prepare for a hearing, let's say between 15 January and the end of the first week in February? I mean, if I only give you two or three weeks before putting in your -- it may just be that the consequence is they get both your response, which they're going to have to analyse, and your submissions within a space of a couple of weeks.

MR PICKFORD: That may be it. Well, I'm going to take instructions, if I may, if you'd like me to, on that very point.

THE CHAIR: Yes.

MR PICKFORD: But before I do that --

THE CHAIR: What I was thinking of doing, actually, was to -- nobody in your team is going to like me for doing this, but -- slicing a week off your -- you will have the Christmas break. I can either do one of two things, it seems to me: force you to do it before Christmas so everybody has a really relaxing Christmas, giving you till 23 December. Or I could give you to 9 January.

If I gave you 9 January and then listed -- because getting all of you together is going

to be the problem, not getting the three members of the Tribunal together. Well, it might be in my case, but I'm hoping I'll be available. But if I gave you 9 January, so you've got to live with one week less, and listed a hearing from 1 February onwards, that gives you Christmas. It gives you one week less and it might mean that you have a less relaxing Christmas than you might otherwise, which I'm sorry about.

MR PICKFORD: I think it would certainly mean we had a much less relaxing Christmas than we otherwise would have had. I say to that sometimes that's what lawyers have to do, but in this case, why the rush? The rush is because BIRA has come late to the party. In my submission, the fairer approach -- because it's them that really should be falling on their knees and asking for the indulgence of the Tribunal -- is that we stick with the 15th, and then we just have a tighter timetable to that trial. That's the fairer approach, given it's not our fault. It is their fault, because for all that they say, "Well, you know, we had to go through getting funding, et cetera", it's four years on from when they knew that there was a publisher claim. That would be my response on that issue.

THE CHAIR: Right.

MR PICKFORD: Finally, we heard submissions from Ms Cleary that were effectively anticipating points that she's going to make in the future. I don't think you need me to respond to those.

THE CHAIR: No objection to the arrangements that I made for the hearing? I was going to ask Mr Brealey to, to comment on those, but that they should both be represented at his certification hearing?

MR PICKFORD: We have no objection to -- insofar as what the Tribunal wants to, to consider which we think is right -- the joint case management issue when it's considering carriage. Obviously, it's fair that they should be entitled to make submissions on that. Those were the submissions --

THE CHAIR: Probably hear them, I would have thought. We may well deal with them on the second day, but it's possible that we might deal with them on the first day. But we'll probably deal with them at the end, I would have thought, just in terms of timetabling of the two-day hearing.

MR PICKFORD: Yes, that could well be the approach. I'm not going to seek to suggest that you should adopt any other approach in terms of the minutiae of the arrangement of that; that's very much within the Tribunal's discretion.

All I would say is we would obviously be making submissions on those things, and we would obviously want to reply to anything that's been said by ATCA.

THE CHAIR: Yes.

MR PICKFORD: And I don't have anything more that I need to say on that.

THE CHAIR: Thank you very much.

Mr Brealey, do you want to comment on Mr Jones and Ms Cleary's submissions on the representation at the hearing, really your certification application with the second day in December?

MR BREALEY: Well, as long as it's limited and I mean, everyone needs a voice. We don't object.

THE CHAIR: Thank you very much.

MR JONES: My Lord, could I do my own little piece of haggling?

THE CHAIR: Yes.

MR JONES: I think my Lord said the 9th, but the 9th is a Saturday, so 8 January. Mr Pickford's pushed back and said the 15th, I think my Lord was also suggesting that my clients would then have one week to respond. We're responding potentially to an attack on the whole methodology. We will do whatever is required. My haggle is: could we split the difference so that Mr Pickford doesn't have until the 15th, but has say, until the 13th?

THE CHAIR: Well, what I was thinking was giving him the 15th, and then three weeks between the -- the start of the second week in February is what ... We're now down to -- the phone is on so I can't actually work out what the date is.

MR JONES: If he has the 15th then I think three weeks from that takes us to -- Friday the 5th would be three weeks after that.

THE CHAIR: We would list the hearing, subject to availability, from the first available date, beginning on 8 February. I mean, well, it would be helpful if you --

MR JONES: That would work. The haggle that I wanted was to get not a week to respond, but ten days, so that would work on that timetable. Grateful.

(12.23 pm)

Judgment

THE CHAIR: This is an ad hoc case management hearing listed by me as the chair of the Tribunal to deal with two advertiser claims that are brought by AGC Collective Actions Limited against the Google parties, who I will refer to as "Google", and also BIRA Trading Limited, also against Google.

The background is fully set out in the parties' submissions, and I will not burden what is a very short extemporary judgment with setting it out. The issue for the tribunal today is simply one of timetabling the three hearings: firstly, the carriage hearing between BIRA and AGC to decide who should have a carriage of the advertiser claims; secondly, the certification application brought by AGC; and thirdly, the certification application brought by BIRA.

At the outset of the hearing, I indicated that I had formed a preliminary view that we should use the two existing dates, 14 and 15 December of this year, to hear first the carriage dispute between AGC and BIRA, and then secondly, AGC's certification

application on the second day, which is currently listed as a day in reserve. I also indicated that the tribunal would do its best to list the BIRA certification application as soon as possible in the new year, 2027.

By and large, the parties have broadly been in agreement with this. There have been some individual submissions made about the individual issues which arise both out of the proposed timetable and also the knock-on effects of what will be, at this stage, impossible to determine, namely what happens if either AGC or BIRA are given carriage of the claims; and then secondly, the timing of any certification of their particular claims.

I am satisfied that the appropriate order to make today is for the listing of the carriage and certification applications of AGC in December. I now have to decide when I should list the BIRA certification hearing, bearing in mind that: one, it may not arise; but secondly, it will arise if BIRA succeeds on carriage.

I take into account the fact that the tribunal will have to deliver a judgment in relatively detailed form as soon as possible after the hearing has taken place in December. But the critical issue, which I have to decide, is how long to give Google to respond to BIRA's claim form, which was served on 16 October, about two weeks ago.

Mr Pickford, who appeared for Google, submitted that I should give Google until 15 January 2026. Mr Jones argued for a much earlier date, given the position that Google had agreed to accept, at least, in correspondence and in earlier submissions.

In my judgment, it is appropriate to give Google until 15 January. It is not a situation of its own making. I attribute no blame to any of the parties. Getting a claim like the BIRA claim off the ground is no mean feat and takes a long time, but the parties in the existing litigation should not be prejudiced by that fact.

All of the parties agree, and the tribunal agree, that in principle, joint case management is preferable, and are working to achieve it. It is that and that alone which dictates the

urgency. I will therefore give Google until 15 January 2026 to file its reply to the claim, and I will list the hearing of the BIRA certification application from 8 February 2027 onwards, subject to the availability of the parties.

I will also direct that the parties file, by the end of next week, a schedule of the availability of those counsel who will be representing the parties at the BIRA application so that the hearing could be listed as soon as possible, the first available date after the 8 February 2026.

It is not, in fact, necessary for me to give any further directions today, but it is important that I should indicate at least the landscape going forward. I qualify that: I am hoping that the parties will be able to agree directions, both for the carriage hearing and the certification hearing in December, and also the certification hearing, if necessary, in February.

I will address any outstanding issues if there are any after I have completed this judgment, but it is important that I should say something about the landscape and the consequences of what may happen in December.

Mr Pickford submitted that I should grasp the nettle and make a direction for joint case management today. He also floated the possibility that I might adjourn the trial date at this stage. I am not prepared to do either of those things today, although I do indicate in this judgment that the principle of joint case management is one which the tribunal favours.

It may be that one consequence of making an order for joint case management is that there may have to be an adjournment of the trial in December, but I make it clear in the course of this judgment that no final, hard and fast decision has been made either about further case management or generally, and that I am not prepared to make a direction at this stage, even for joint case management. But I make it clear that the parties should be available to argue all of these issues on 14 and 15 December, and

that in any reserve judgment which the tribunal hands down, it will expect to set out whether it is prepared to make a joint case management decision, and the consequences which flow either from the outcome of the carriage dispute, or indeed the outcome of either of the certification applications, which will have been determined, at the very latest, by early March 2026.

On that basis, therefore, it is unnecessary for me to give any further directions today, unless there are specific timetabling issues which the parties wish to raise with the tribunal in relation either to the hearing on the 14th and 15th, on 8 February, or as soon as possible.

(12.32 pm)

THE CHAIR: Mr Brealey, have you got any directions you want for December? I think Mr Pickford said he was content to live with BIRA annex 1, effectively, on the assumption that it's a rolled-up hearing of two hearings rather than three. Are you content with those?

MR BREALEY: We're content with those. Obviously, we can correspond and we can try and agree anything --

THE CHAIR: So there's no differences of principle between any --

MR BREALEY: No differences in principle. I'm sure we can sort everything out.

THE CHAIR: I think Mr Pickford said a direction needs to be added for something, is that right?

MR BREALEY: To respond.

MR PICKFORD: I think Mr Brealey would want to respond to our response to his application. He has suggested a date which I can't immediately remember, and we have no objection to it.

THE CHAIR: It sounds as if there are no issues really about directions.

MR JONES: Not to interrupt that. I have a couple of points to raise.

THE CHAIR: Certainly do. Do you have anything more you'd like to say, Mr Brealey?

MR JONES: It's been pointed out to me that the December hearing is listed for a day and a day in reserve, and it seems extremely likely that actually that's going to be two days rather than one.

THE CHAIR: I'm listing it for two days, the 14th and the 15th. We're taking the day in reserve for the AGC certification hearing.

MR JONES: Yes. It's been suggested to me, given the number of things that are

potentially on the table there, that one might even want to list it for two days plus a day in reserve. I'm not pushing that. I'm just raising it because we're all here.

THE CHAIR: Well, it may be I've got a problem on the Wednesday, Thursday, Friday, because I'm supposed to be sitting in the applications list in the Rolls Building, but what I'm trying to do is to get released from that. It seems to me that you'll want a judgment quickly, and my time would be better spent writing some parts of it over those three days rather than sitting in the applications list. But at the moment I'm listed on Wednesday, so I'm going to try and do something about that.

MR JONES: Yes, understood.

THE CHAIR: What do the other parties say? I mean, we'd hope to get through it in two days, I think.

I mean, we've never actually used a reserve day, thankfully, but the consequence, I suppose, is that all counsel will be available that day, is effectively it, isn't it, really. I mean, it would be useful, I think, to have a day in reserve just in case we go over, but I would hope we get through it in two days.

MR BREALEY: We can put a reserve day in. I don't know about people's availability; I think I am. I'm not flying out for a while.

THE CHAIR: Can we do an extra day?

CLERK: 16th is not available.

MR BREALEY: Okay. We'll sort it in two days.

THE CHAIR: Well, it may be that if at the end of two days -- well, we'll see. Let's leave the two days as it is.

MR JONES: Yes, I'm grateful.

THE CHAIR: Did you have some --

MR JONES: No, there are some dates for me and Mr Pickford to talk about, but we will do that.

THE CHAIR: If I can leave it with the parties. If you could try and agree a form of order, and then provide the order in that form.

I just also again thank everybody for making themselves available today.

(12.36 pm)

(The court adjourned)

1

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?