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IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos. 1304/7/7/19
1305/7/7/19

Victoria House,
Bloomsbury Place,
London WC1A 2EB

23 September 2019

Before:

THE HON MR JUSTICE ROTH
(President)
SIMON HOLMES
PROFESSOR ROBIN MASON
(Sitting as a Tribunal in England and Wales)

BETWEEN:

JUSTIN GUTMANN

Applicant

- and -

FIRST MTR SOUTH WESTERN TRAINS LIMITED
STAGECOACH SOUTHWESTERN TRAINS LIMITED
LONDON & SOUTH EASTERN RAILWAY LIMITED

Respondents

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PRE-HEARING REVIEW

APPEARANCES

Mr Philip Moser QC and Mr Stefan Kuppen (instructed by Charles Lyndon Ltd and Hausfeld & Co LLP) appeared on behalf of the Applicant.

Mr Tim Ward QC and Mr James Bourke (instructed by Slaughter and May) appeared on behalf of First MTR South Western Trains Limited.

Ms Sarah Abram (instructed by Dentons UK and Middle East LLP) appeared on behalf of Stagecoach South Western Trains Limited.

Mr Paul Harris QC and Mr Michael Armitage (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of London & South Eastern Railway Limited.

1 Monday, 23 September 2019

2 (2.00 pm)

3 THE PRESIDENT: Yes, Mr Ward.

4

5 Application by MR WARD

6 MR WARD: Sir, as you're aware, the tribunal has before it
7 the respondents' application for a stay of these
8 proceedings, in light of the grant of permission to the
9 Supreme Court in Merricks. You will also have noted,
10 I am sure, from the skeleton arguments, that we don't
11 seek a stay in respect of the costs issues, where there
12 are active discussions between the parties and in the
13 event that there is anything left to decide, we would be
14 very content for that to be dealt with on one day
15 in November, within the current listing that the tribunal
16 has, should the tribunal be minded to stay the rest of
17 the CPO.

18 THE PRESIDENT: Yes, and indeed, if progress is made in
19 these discussions, it might be less than a full day.

20 MR WARD: Indeed, there may be little or nothing, but at the
21 moment it's a little too early to say. Would it be helpful
22 for me to outline some of the core reasons why we
23 submit a stay is the appropriate course on the
24 remaining issues of substance?

25 THE PRESIDENT: Yes, in brief terms. We've read the three

1 skeletons. We take it you are, as it were, the
2 spokesperson for all three respondents, because the
3 arguments are very much the same.

4 MR WARD: Yes, the other respondents will speak for
5 themselves in addition but I am going to make what I
6 understand to be the core arguments which are
7 common. The first point which is, of course, a very
8 obvious one, is that the ruling of the Supreme Court will
9 determine the correct approach to such hearings, in
10 circumstances where, of course, the tribunal and the
11 Court of Appeal have taken very different views on
12 matters which are fundamental. In particular,
13 I appreciate how familiar this is, but how intense the
14 review is by the tribunal at this stage, in other words
15 whether it is just a strike out test, the standard of
16 scrutiny of the evidence, what the Court of Appeal has
17 characterised as an impermissible mini trial, whether it's
18 necessary to show that damages to individuals are
19 compensatory, and whether the question of distribution
20 is even relevant to certification.
21 Now, of course at present, the tribunal and the parties are
22 bound by the approach of the Court of Appeal, but the
23 Supreme Court's answer to the questions will be
24 definitive, and it may adopt one or other formulation or
25 something entirely different of its own, of course. The

1 approach of the defendants to this hearing has been
2 based upon the legally binding standard of the Court of
3 Appeal. We haven't, and indeed couldn't, argue the
4 case as if the competition tribunal's judgment still stood,
5 and in my client, First MTR's pleadings, we expressly
6 reserve the position pending the ruling of the
7 Supreme Court, as to whether we might seek to adduce
8 fresh evidence or make further submissions, and I think
9 the position of my friends is the same. This is not a, if
10 you like, proforma objection based on a sort of just in
11 case basis. If it were of assistance, I could take the
12 tribunal through the First MTR response document and
13 just show you where we have explicitly said that the
14 approach of the Court of Appeal bites directly on the
15 way we're putting the case, and made clear that were
16 we free to do so, there may be other matters that we
17 would wish to raise.

18 THE PRESIDENT: No, I don't think you need to. We've
19 looked at the response to the application, and I don't
20 think you need take us to the documents.

21 MR WARD: Thank you, sir. Of course, one thing here that
22 is central is the now two reports of Mr Holt, the expert
23 for the claimant. Whilst we have raised points about
24 Mr Holt's report in our response, as I know the other
25 two respondents have, we were of course constrained

1 by the observations of the Court of Appeal insofar as to
2 the kind of points we could realistically take, if the Court
3 of Appeal's approach is correct.

4 Now, the real purpose of the stay is to avoid what would
5 otherwise be a very large amount of wasted effort and
6 expenditure if this hearing goes ahead and the
7 Supreme Court then varies the legal test in a way that
8 implies that there were other avenues that could have
9 been explored and that have not been. So although it's,
10 of course, right for the applicant to say that the tribunal
11 has a power to reconsider certification if necessary, in
12 our respectful submission that would be a very large
13 waste of time, energy and money, given that, unlike the
14 position in Trucks, we do now know for certain that
15 permission to the Supreme Court has been granted.

16 The other matter that I would just advert to now is the
17 question of prejudice arising from the delay, because
18 that is a matter that the applicant has raised in his
19 skeleton argument. Well, the starting point for that, of
20 course, is this is a damages only claim, and a claim in
21 which interest is also claimed. So if at the end of the
22 day the proposed representative is successful, there
23 will be compensation for the delay, and it is important,
24 when considering the arguments about prejudice, to
25 bear in mind the scale of the claims.

1 THE PRESIDENT: Yes.

2 MR WARD: The estimate of Mr Holt, his central case
3 estimate, is the value per individual claimant is £29. So
4 without wishing to minimise the significance of these
5 proceedings, certainly on a collective level, any
6 individual prejudice arising out of the delay is, in my
7 respectful submission, very slight, and indeed, when
8 one looks at the kind of proceedings these are, any
9 concern about the effective effluxion of time is not
10 powerful in this case. The applicant himself says that
11 he is unlikely to call any individual members of the
12 proposed class as a witness. That's in the litigation
13 plan. My clients have taken, of course, all appropriate
14 steps to preserve documents. In reality, the evidence
15 that we are concerned with is not likely to turn on my
16 client's side, on individual recollection of specific
17 events. The tribunal will appreciate that's one of the
18 things we say is wrong with this claim, is that it doesn't
19 actually engage with individual circumstances, but the
20 way the claimant is putting the case is, effectively, that
21 there is a sort of alleged systemic defect in the way
22 these tickets are sold. The kind of evidence one needs
23 to address that is not itself likely to be harmed by a stay
24 of the period it will require for the Supreme Court to
25 consider the petition, which is now of course, fully

1 pending before it.

2 THE PRESIDENT: Yes.

3 MR WARD: So those are just the brief outline points that we
4 would make in favour of this stay.

5 THE PRESIDENT: You said, I think, that this is a damages
6 only claim, but I think the relief sought is also injunctive.

7 MR WARD: Yes, sorry.

8 THE PRESIDENT: And one of the points that's made in the
9 applicant's skeleton is that this is an ongoing practice,
10 and therefore, the longer the litigation goes on, the
11 longer the practice goes on.

12 MR WARD: And indeed, if they're right, the larger the pool
13 will be of potential claimants. That is right, and thank
14 you, sir, for picking me up on that. In truth, where we
15 are talking about the very, very modest level of
16 individual damage that is at stake in this claim, in my
17 respectful submission that may well be a factor to weigh
18 in the scales, but it is very evidently and powerfully
19 outweighed by the other considerations that I've already
20 urged upon the tribunal.

21 MR HOLMES: Should we weigh in the scales the fact that
22 the applicants say that the anti-competitive behaviour is
23 ongoing? You mentioned a moment ago that your
24 clients have taken steps to preserve documents. Have
25 any steps been taken, without prejudice to your views

1 on the behaviour, to change the behaviour?

2 MR WARD: As far as I'm aware, no. Of course my clients
3 don't accept that anything that's said here is capable of
4 amounting to an abuse of dominance, but this is why
5 I do advert again to the fact that even if the applicant is
6 right, and that this is abusive, I fully take on board the
7 point that the behaviour is continuing, but the actual
8 harm we're talking about here, even if there is any, on
9 their case, is of a very, very modest scale. I don't say
10 that's something you should ignore entirely, I just say
11 it's plainly outweighed.

12 Can I assist further at this time?

13 THE PRESIDENT: Yes, Ms Abram.

14

15 Submissions by MS ABRAM

16 MS ABRAM: Sir, I gratefully adopt the submissions of
17 Mr Ward and I just make three very short,
18 supplementary points, if I may. The first, very briefly, is
19 that so far as my clients, Stagecoach, is concerned, the
20 behaviour is not continuing, because Stagecoach is no
21 longer running the franchise. Just as a matter of fact,
22 that is over.

23 THE PRESIDENT: When did that end?

24 MS ABRAM: In 2017.

25 THE PRESIDENT: Thank you.

1 MS ABRAM: The second point is to underline that the
2 potential implications of the tribunal's decision on a stay
3 extend beyond the question of certification. If the
4 tribunal were to certify these proceedings, the applicant
5 would doubtless and quite understandably want to push
6 on past the certification stage to, for instance,
7 advertising and publicising the CPO, setting a date for
8 an opt out, a defence on the part of the respondents
9 and replies. All of those stages would be substantial,
10 time consuming on the part of the tribunal, and very
11 costly on the part of all parties. And so the question of
12 the egg that is to be unscrambled, as you, sir, put it in
13 your judgment in Trucks, is not just a matter of the
14 certification stage but goes beyond it. The applicant
15 hasn't addressed this point, and that's I think, because
16 there's no good answer to it, because if the applicant,
17 understandably, were to wish to push ahead, if
18 certification were granted, the problem would arise. If
19 the applicants were to say: no, I wouldn't want to push
20 ahead any further if you were just to certify the
21 proceedings, well then, why not grant the stay to begin
22 with?

23 That's the second point that I make. The third is just to
24 emphasise another point that the applicant has not, with
25 respect, fully grappled with, that the issues that the

1 Supreme Court may address in Merricks won't
2 necessarily be restricted to the question of how high the
3 threshold should be set for a certification application.
4 There's a whole range of issues that are in play in
5 Merricks, and of course, a penumbra of issues on which
6 the Supreme Court might also choose to comment. So
7 for instance, the test for data availability, just to take
8 one example. Is the test, as the Court of Appeal held,
9 merely that the applicant's approach to what data would
10 be available is credible, or is a more detailed review of
11 what data would be available appropriate, as the
12 tribunal held in Merricks? Now the Supreme Court
13 might go for one of these approaches or for a third one
14 altogether, and for that reason, in my submission it's
15 unrealistic for the applicant to say blithely: well, it's open
16 to the tribunal in November to look at the question of
17 certification by reference to both tests. Just do the
18 Court of Appeal test, do the tribunal test, it'll all come
19 out in the wash. Actually, there's a whole range,
20 a multi-factorial analysis that would need to be
21 considered, and it's not realistic for the tribunal to be
22 asked to look at all of the bits of the Court of Appeal
23 approach, all of the bits of the tribunal approach, and
24 a third hybrid or possibly totally different approach that
25 the Supreme Court might adopt.

1 So in my submission, their proposed solution just won't work.

2 THE PRESIDENT: Yes, thank you. Mr Harris.

3

4 Submissions by MR HARRIS

5 MR HARRIS: Sir, very briefly, I adopt too, the submissions
6 of Miss Abram and Mr Ward on behalf of London &
7 South Eastern Railways. Just three very quick points.
8 Reference is made to the ongoing alleged
9 anti-competitive effect, but in addition to those points
10 made by Mr Ward, there's no application of course, for
11 interim relief. If that were thought to be a genuine
12 concern, that application could have been made but it
13 hasn't been made. The second point is that in addition
14 to emphasising certain of the points from Mr Ward and
15 Ms Abram, if the non-funding issues were to proceed
16 in November, and given that although it's not yet been
17 set down, it looks most likely that the appeal in Merricks
18 before the Supreme Court will be May 2020, or
19 thereabouts, in any event, at least six months beyond
20 that, then there would be no choice on the part of any
21 respondent who was so minded, who lost at
22 the November hearing, to issue all the appeal papers,
23 and there would therefore be yet further resource and
24 expense, because they would have to preserve their
25 position. As you know, the respondents have largely

1 taken the view that the Court of Appeal decision is not
2 the correct approach and that they, obviously, hope and
3 potentially envisage that it will be, if I can put it like this,
4 relaxed, so as to be more in line with the tribunal
5 approach when the Supreme Court hearing occurs. So
6 the second point is simply appellate costs wasted that
7 don't need to be wasted.

8 And then lastly, on a point of fact, my client has put in place
9 full litigation holds, so there's no suggestion that a stay
10 of the sort of ambit we're talking about would lead to
11 any greater danger of loss of evidence on my client's
12 part.

13 THE PRESIDENT: Put in place full litigation?

14 MR HARRIS: Holds.

15 THE PRESIDENT: On documents?

16 MR HARRIS: Yes, that's right. Preservation protocols.
17 Unless I can assist further, those are the additional
18 points.

19 THE PRESIDENT: Thank you very much. Yes, Mr Moser.

20

21 Submissions by MR MOSER

22 MR MOSER: Sir, we've set out our position in the skeleton
23 arguments. I'm, like my learned friends, not going to
24 repeat that. As the tribunal knows, our claim has
25 pleaded to what, for us, is the higher standard, as it

1 were, of CAT Merricks, and the responses have been
2 pleaded to what is, for them, the higher standard of the
3 Court of Appeal. And I needn't turn up the pleadings for
4 that, that's generally accepted. We submit that the
5 certification hearing can and should go ahead, and that
6 is just and proportionate, and that the correct legal test
7 for this, as yet unmentioned, is one on which all parties
8 are agreed. It's the AB Sudan case mentioned by the
9 tribunal in Trucks, and the question, essentially, is there
10 has to be a good reason for a case not to go ahead.

11 Sir, I don't have to show a good reason why there
12 should not be a stay, they have to show a good reason
13 for a stay. Of course, we do say there are good
14 reasons to go ahead and we do say those are the
15 matters that ought to be considered in the balance
16 when considering a stay. Above all, there ought to be
17 no delay. Further, the appropriate class representative,
18 who is in court, sitting at the far end of the second row,
19 Mr Gutmann, ought not to be prejudiced by memories
20 fading --

21 THE PRESIDENT: When you say no delay, that means that
22 if we go ahead in November, and you're successful,
23 then we proceed, presumably, to fixing a date when the
24 opt out must close, then go to responses, then start
25 disclosure; is that right?

1 MR MOSER: Sir, yes.

2 THE PRESIDENT: And then if it turns out that the standard
3 we've applied, as we have to, of the Court of Appeal, is
4 too low, and contrary to your views expressed, you
5 don't satisfy the higher standard, all that's been
6 wasted?

7 MR MOSER: But what we propose, and I appreciate we're in
8 the tribunal's hands, but what we propose is that the
9 tribunal should look at it on both bases.

10 THE PRESIDENT: Yes, I understand that, but still, if we
11 apply the -- let's suppose we can look at it on both
12 bases, and let's suppose that we find, contrary to what
13 you say, but it's quite possible, that you satisfy what is
14 the governing Court of Appeal standard, but you would
15 not satisfy the higher tribunal standard, we then make
16 the order in your favour, because we're bound by the
17 Court of Appeal. And that's why I was asking you. And
18 we then go ahead to advertise the class, fix a date for
19 opt out, go ahead with defences, start disclosure, and if
20 the Supreme Court in July or October says: actually, it's
21 the higher standard, and you say: we don't need
22 another hearing because we've already discussed that,
23 but then of course, the CPOs are revoked and all that
24 money is wasted.

25 MR MOSER: There are three possible outcomes --

1 THE PRESIDENT: Isn't that what would happen?

2 MR MOSER: In that exact timeline, yes, of course. But
3 there are three --

4 THE PRESIDENT: And who would bear the cost of that?

5 MR MOSER: That would be a matter for argument, but, sir,
6 there are three possible outcomes, aren't there. Either
7 the tribunal is going to find that you don't need to satisfy
8 the strike out test, we, the applicants, and the case is
9 over. In which case no time has been wasted. Or it is
10 found that we satisfy the higher CAT standard, in which
11 case I venture to submit it's not going to matter what the
12 Supreme Court find in May or whenever it gives
13 judgment afterwards. Then there is the third option,
14 which quite rightly, you're testing me on, and there it is
15 possible that we meet the Court of Appeal standard but
16 not the CAT standard. My submission is we proceed
17 on the current law, which is not an unusual situation,
18 because it's the standard Sudan approach. You have
19 to show why you shouldn't proceed under the law as it
20 stands.

21 THE PRESIDENT: We would have to proceed -- I mean we
22 would have to rule on the basis of the Court of Appeal
23 judgment. That's binding on us.

24 MR MOSER: Quite.

25 THE PRESIDENT: There's no question about that.

1 MR MOSER: There is the third way that in that situation it
2 would still be possible to think about whether matters
3 ought to rest there and await the outcome of the
4 Supreme Court in spring of next year.

5 THE PRESIDENT: I don't think we would give judgment in
6 the spring, I think it would be heard in the spring.

7 MR MOSER: Be heard in the spring.

8 THE PRESIDENT: But if it is going to rest there, what really
9 is being achieved? Because we're talking about three
10 or four days' argument, no doubt say, a month for
11 judgment, but I mean in that case, what really -- if
12 you're not going to proceed with the action, it's just
13 going to remain with the potential for further argument,
14 then what is the point?

15 MR MOSER: What we have achieved is in all of the other
16 possible outcomes, sir. This is the one outcome where
17 I can see that there is the potential, potential, for
18 wasted costs.

19 THE PRESIDENT: Well there's a further possibility, as you
20 recognise in your skeleton, namely that the
21 Supreme Court doesn't approach it on the basis of
22 either the Court of Appeal or CAT, but it's quite possible
23 it thinks it through itself and says "We think the proper
24 approach is this", and they bring in some matters that,
25 being the highest court of the land, that escaped the

1 attention of both the tribunal and the Court of Appeal,
2 and say "Actually, the correct approach is this," which
3 we of course haven't done because nobody set it out
4 before, and then we come back and we start doing that,
5 with some of the evidence heard again.

6 MR MOSER: It is a matter of managing the likelihood of this
7 sort of thing.

8 THE PRESIDENT: Well we've no idea what the
9 Supreme Court might say, we can't speculate.

10 MR MOSER: We've no idea. If we consider the options, the
11 way we've dealt with that is it need not concern the
12 tribunal overly, because any third way is going to be, at
13 any rate, somewhere between the Court of Appeal and
14 what this tribunal has said in Merricks, it's not going to
15 be less than a strike out, and so we have said the
16 liberating thought on that is that any third way will in any
17 event be met, if the Court of Appeal standard is met,
18 which is of course, our assumed case. That's the case
19 that we're submitting. Beyond that, my learned friend
20 Mr Ward makes four points, and I'll just address them
21 very briefly if I may, and Ms Abram has supplemented
22 them slightly. The first is how intense is the review, the
23 second is the standard of scrutiny, and Ms Abram adds
24 that includes data, and the third is compensatory
25 damages with the fourth, if it's different, being the

1 relevance of distribution. Those are the four points
2 Mr Ward says the Supreme Court might be looking at,
3 so not just the test. To meet that, sir, I can very quickly
4 point out that, in reality, the question of how intense the
5 review and the scrutiny, whether in relation to data or
6 anything else, that is all of a piece with the question of
7 what is the test, and is the test the strike out test or
8 another test. So I consider that we have dealt with that.
9 The question of compensatory damages and distribution, we
10 say that is not our case. In our case, other than in
11 Merricks, we are not arguing that there should be
12 a non-compensatory methodology. I could take the
13 tribunal to that. The tribunal has the point.

14 THE PRESIDENT: Yes.

15 MR MOSER: What the Court of Appeal says about that is
16 part of the Court of Appeal's findings about distribution.
17 So, really, that simply doesn't arise in this case. So just
18 to deal with Mr Ward's point on that, that is not
19 something that we say should in any way mitigate
20 against a stay.

21 Finally, on the question of prejudice, we've put our case on
22 prejudice twice. The tribunal has seen it, I know, in our
23 letter of 11 September and also in our skeleton
24 argument. I've summarised it briefly as being to do with
25 the loss of memory of witnesses and also in this case,

1 where individuals are concerned, and it may well be
2 that individually, each journey might be low, but
3 individuals, as members of the class, may well have
4 made many journeys, so each individual may have
5 a much higher loss than £29. But where individuals are
6 concerned, unlike in Trucks, where there was a stay, it
7 is a matter of the loss of evidence, the loss of proof,
8 that they will need for distribution, and a general loss of
9 memory, by which Mr Gutmann ought not to be
10 prejudiced. It is admitted, sir, that the conduct is
11 continuing. Obviously, there's something between the
12 parties as to whether or not it's an abuse, but that's
13 simply begging the question, and where it is admitted
14 that the conduct is continuing and it is thought
15 unabated, we say that that is something the tribunal
16 very much ought to have in mind to weigh in the
17 balance as against our approach, which is to proceed
18 on the existing law.

19 Just in closing, the presumption that exists in Sudan is not
20 there surprisingly or unusually. We've cited other
21 specific examples, such as Energy Solutions and In re
22 Yates' Settlement Trusts, where on the specific facts of
23 those cases, the court proceeded, despite appeals
24 pending at the highest level. And secondly on that
25 point, case law, including the case law on certification,

1 will always be in flux. On Friday, for example, a few
2 days ago, the Canadian Supreme Court handed down
3 its ruling in Pioneer Corporation v Godfrey, looking
4 again at elements of Pro-Sys, and I make no
5 submissions on that today, but it simply illustrates that
6 the law on certification can change, even in more
7 settled jurisdictions.

8 So again, I hold against that the prejudice, and I comment
9 finally, that in one week's time, we will be celebrating, if
10 that's the word, the fourth anniversary of the
11 introduction of the collective proceedings jurisdiction,
12 with the first certification still awaited. So when we say
13 there should be no delay, we do say that that is also
14 something to put into the balance.

15 Sir, that's all I propose to say for the moment, unless I can
16 assist you further.

17 THE PRESIDENT: Yes, thank you. I think we will rise and
18 consider where we go from here.

19 (2.31 pm)

20 (A short break)

21 (2.50 pm)

22

23 Ruling

24 THE PRESIDENT: Despite the attractive submissions we
25 have heard and read, presented on behalf of the

1 applicant, we have concluded that the only sensible and
2 practicable course, having regard to the interests of the
3 class members, the respondents, and indeed this
4 tribunal and the other cases to be heard before the
5 tribunal, is to grant a stay of the non-funding issues in
6 these applications until after the Supreme Court
7 judgment in the Merricks case. We would only say that
8 once the date of the Supreme Court hearing has been
9 fixed, we are content that the parties should fix on
10 a provisional basis, a date some four to six months
11 later, depending on when the Supreme Court hearing
12 takes place, for the hearing of the non-funding issues
13 that are being stayed, so that we do not lose time by
14 only starting to look for a hearing date after the
15 Supreme Court judgment comes out and then further
16 months are lost.

17 The parties have agreed, as we have understood Mr Ward's
18 submission, that the funding issue can be heard, or
19 issues, can be heard separately. Ultimately, it is for the
20 tribunal to be satisfied whether a split hearing should be
21 ordered, but we accept that it is on these applications,
22 a wholly discrete area. It is not affected by the appeal
23 to the Supreme Court in Merricks, and we agree that
24 the funding issue should be heard as a split issue,
25 using one of the days currently allotted this November.

1 We think and direct that it will be heard on Thursday,
2 7 November. As we understand it, and we expect there
3 should be one counsel for all respondents on the
4 funding issues, we see there is a joint funding
5 response. We would not expect to hear from more than
6 one counsel. There is only the question then, of just
7 revising the directions for skeletons that were
8 previously ordered by the tribunal. We think that given
9 the more confined nature of the hearing and to leave
10 further time for discussions between the parties who
11 are seeking to narrow the issues, perhaps it can be
12 a slightly later date. So, Mr Moser, and indeed all
13 counsel, we thought to put it back to 25 October for
14 both skeletons. That is a Friday, I think. Skeletons and
15 bundles. As regards length of skeletons, again, clearly
16 they can be shorter, they are not going to cover what
17 were the main issues, and we think a page limit of
18 25 pages for each side.

19 Is there anything else that we need to address?

20 MR MOSER: There is perhaps a micro issue as to whether
21 or not it matters what the timetable on the day of the
22 hearing on 7 November is going to be. For what it's
23 worth, the sort of thing we had in mind was two and
24 a half hours for them, then two hours and ten minutes'
25 response for us, and 20 minutes' response for them, but

1 that's perhaps a matter that can be ...

2 THE PRESIDENT: Well I think rather than directing that
3 now, why don't we wait until after you have put in your
4 skeletons, seek to agree timing. If you can't, then we
5 will make a ruling. I'm sure with goodwill, you will divide
6 up the day in a sensible way.

7 Thank you all very much.

8 (2.55 pm)

(The hearing concluded)

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