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4 record.

5 **IN THE COMPETITION**
6 **APPEAL TRIBUNAL**

Case No: 1418/5/7/21

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10 Salisbury Square House
11 8 Salisbury Square
12 London EC4Y 8AP

Monday 21 February 2022

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15 Before:
16 The Honourable Lord Ericht
17 Peter Anderson
18 Andrew Young QC
19 (Sitting as a Tribunal in Scotland)
20

21
22 **BETWEEN:**

23
24 Blue Planet Holdings Ltd
25 **Pursuer**

26
27 v

28
29 Orkney Islands Council
30 Orkney Ferries Limited
31 Sinclair Haulage Limited
32 **Defenders**
33
34

35 **A P P E A R A N C E S**

36
37 Kenneth Murray (On behalf of Blue Planet Holdings Ltd)
38 Daniel Byrne (On behalf of Orkney Islands Council and Orkney Ferries Limited)
39 Dave Neil (on behalf of Sinclair Haulage Limited)
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1
2 **Monday, 21 February 2022**

3 **(11.30 am)**

4 **Case Management Conference**

5 **THE CHAIRMAN:** Good morning everyone, I am Lord Ericht, I am the chair of this
6 Tribunal. These proceedings are taking place on the Microsoft Teams platform
7 and I must therefore start with the customary warning. These are proceedings
8 in open court as much as if they were being heard before the Tribunal physically
9 in its Salisbury Square premises in London, or in a venue in Scotland.
10 An official recording is being made, and an authorised transcript will be
11 produced, but it is strictly prohibited for anyone else to make an unauthorised
12 recording, whether audio or visual, of the proceedings and breach of that
13 provision is punishable as a contempt of court.

14 So with that rather severe warning, we can now move on to introductions. I have
15 already introduced myself. The two panel members I have with me today are
16 Mr Young and Mr Anderson, and there are also various officials from the
17 Competition Appeal Tribunal.

18 Now, I understand that the parties I have with me are as follows and I will just ask you
19 to confirm that you are present and that will be a test also that the equipment is
20 all working properly. So for the pursuer, Blue Planet Holdings Limited,
21 I understand we have Mr Murray, is that correct?

22 **MR MURRAY:** Yes, that's correct.

23 **THE CHAIRMAN:** Thank you.

24 For Orkney Island Council and Orkney Ferries Limited, who are the first and second
25 defenders, I understand we have Mr Byrne, is that correct?

26 **MR BYRNE:** Yes my Lord, that's correct.

1 **THE CHAIRMAN:** Thank you.

2 I am just going to check, Mr Byrne, you have appeared, you were -- I didn't have your
3 picture a second ago but it has now appeared, so that is good.

4 And for the third defender, Sinclair Haulage, I have Mr Neil, is that correct?

5 **MR NEIL:** That's correct, my Lord.

6 **THE CHAIRMAN:** Thank you, Mr Neil.

7 Well, we have an agenda for today which deals with the matters we have to deal with,
8 and I am just going to go through that, and I will give you an opportunity to raise
9 matters which you wish to raise under each of these agenda items and also any
10 other matters you wish to raise at this stage.

11 What I would say is that today is a hearing to deal with the procedure, and find out the
12 procedure we are going to adopt moving forward. So it is not the intention to
13 decide any matters today, but merely set out the procedures for how we are
14 going to deal with them.

15 So I think you should all have a copy of the agenda, and the first issue is
16 representation. Now, the Tribunal rules provide that the court may allow a party
17 who is a limited company to be represented by a person, and I understand,
18 Mr Murray, that you would like to represent Blue Planet Holdings Limited, is that
19 correct?

20 **MR MURRAY:** I would, my Lord.

21 **THE CHAIRMAN:** Thank you. And Mr Neil, you would like to represent Sinclair
22 Haulage Limited, is that correct?

23 **MR NEIL:** My Lord, yes.

24 **THE CHAIRMAN:** Thank you. So unless anyone has any objection, I both propose
25 to allow these two companies to be represented in that manner. Does anyone
26 have objection to that?

1 **MR BYRNE:** No, my Lord.

2 **THE CHAIRMAN:** Thank you.

3 **MR MURRAY:** My Lord, I am concerned, as you are aware, about interference with
4 witnesses in this case. With that in mind, I am a bit concerned about the third
5 defendant now being represented by somebody who was previously, as it were,
6 an unconflicted witness.

7 **THE CHAIRMAN:** Yes, so are you objecting to the third defendant being represented
8 by Mr Neil?

9 **MR MURRAY:** I just feel uneasy with it.

10 **THE CHAIRMAN:** Well, really, do you have an objection to it?

11 **MR MURRAY:** I am not objecting at this stage.

12 **THE CHAIRMAN:** Okay, so you are not objecting to that --

13 **MR MURRAY:** I am not.

14 **THE CHAIRMAN:** -- so I will grant that.

15 So the second item on the agenda is forum, to consider the appropriate forum for
16 proceedings. And as you may be aware, when we talk about forum in this
17 context we are talking about whether they are Scottish proceedings or England
18 and Wales proceedings or whatever. It seems to me that it would be
19 appropriate for Scotland to be the appropriate forum for these proceedings, but
20 if anyone has any objection to that, I would be delighted to hear what they have
21 to say.

22 **MR MURRAY:** I have no objection.

23 **THE CHAIRMAN:** No, I see Mr Neil appears to be in agreement with that. Can you
24 just confirm?

25 **MR NEIL:** No objection, my Lord.

26 **THE CHAIRMAN:** No objection. And Mr Byrne?

1 **MR BYRNE:** No objection, my Lord.

2 **THE CHAIRMAN:** Thank you.

3 Now we move on to item 3, confidentiality, to consider any issues as to confidentiality,
4 including whether to establish a confidentiality ring in the proceedings.

5 Now, does anyone have anything they wish to address me on under that heading?

6 **MR MURRAY:** I do not.

7 **MR NEIL:** No, my Lord.

8 **MR BYRNE:** No, my Lord.

9 **THE CHAIRMAN:** Thank you.

10 And now we come on to future conduct of the proceedings. And I think it might be
11 useful at this stage if I indicate how it appears to the Tribunal, having read the
12 paperwork so far, what the procedural matters we have to deal with are. But
13 obviously I will give you an opportunity to consider whether you wish to address
14 me on any other matters. There seem to be two procedural issues we have to
15 deal with. Mr Byrne has made an application for strike-out and Mr Murray has
16 made an application in his letter, his recent letter of 14 February, he has made
17 an application for summary judgment. I am going to open the floor in a second,
18 but just to give you an idea of how we might deal with this.

19 One way we might deal with this is to fix a hearing to deal with both the strike-out
20 motion and the summary judgment motion. We have looked at availability as
21 far as the court is concerned and a one-day hearing could be provided on
22 26 May, with 27 May as a date in reserve in case we spill to more than a day.
23 And we would obviously have to work out a timetable running up to that as to
24 what preparation had to be done. I am conscious, Mr Neil, you haven't lodged
25 any such motion in advance, so you may have other suggestions as to how we
26 proceed from here. But I will just ask you to address us in order. So first of all

1 Mr Murray for the pursuer, how do you think we should proceed from here?

2 **MR MURRAY:** I think a hearing to deal with those two issues on the 26th would be
3 fine for me. I had hoped for something sooner. I thought we were going to deal
4 with it today, but ...

5 **THE CHAIRMAN:** No, well, I think parties require more time to be fully prepared for
6 this so I don't think it is going to be practicable to have it sooner. If people are
7 in agreement that this is where we are ending up, we will come on to discuss
8 the work that will have to be done by all of you between now and then and once
9 you have seen that I don't think you will find that that is a long delay.

10 Yes, Mr Byrne?

11 **MR BYRNE:** I am obliged, my Lord. It took me a moment there to find the unmute
12 button, I apologise for that.

13 We have two motions which are both strike-outs and summary judgment applications.
14 Now, on the single authority we have put forward, the Coca Cola case, it seems
15 that these are tests without a substantive difference. However, we order them
16 in terms of a strike-out application first and if that fails, summary judgment. We
17 have produced outline submission on the footing in case the court wanted to
18 address it today, obviously the court doesn't want to address it today, and we
19 would thus invite the court to fix a timetable to allow the defenders, the first and
20 second defenders, to adjust the written submission and no doubt the court will
21 have a view as to what other procedure is necessary, ordering other written
22 submissions or notes of arguments from the other parties. But those are the
23 two motions up for the first and second defender.

24 We also have within the strike-out motion a time bar.

25 **THE CHAIRMAN:** Yes.

26 **MR BYRNE:** And whilst that is subsumed within the broad submission for strike-out

1 and summary judgment, it perhaps is something which might be dealt with
2 slightly separately.

3 So unless there is anything else, my Lord, those are the points that the first and second
4 defender raises.

5 **THE CHAIRMAN:** Yes. In terms of dealing with time bar separately, how would you
6 propose we deal with that separately?

7 **MR BYRNE:** Not exactly separately, my Lord, it is really something which the
8 defenders raise and it goes hand in hand with the complaint that the pursuer
9 has failed to adequately particularise his claim. Now, out of that inadequate
10 particularisation in my submission there is a time bar issue. He identified he
11 acquired the property in 2013. The time bar is five years. And one can draw
12 the inference that he has been aware of the practices of the first and second
13 defender during that period. But it goes hand in hand with the failure to
14 particularise. But it is perhaps a slightly distinct challenge as opposed to the
15 strike-out test.

16 **THE CHAIRMAN:** But it could be dealt with on the same day? You are not suggesting
17 another hearing?

18 **MR BYRNE:** No, my Lord. In my submission it should be dealt with at the same time.

19 **THE CHAIRMAN:** Thank you.

20 Now, just arising out of what you say about particularisation, what I am wondering is
21 whether you and Mr Neil, and we will come to Mr Neil in due course, require
22 some time to finalise your pleadings. And the reason I say that is that we had
23 Mr Murray's original claim form and you have lodged your defences on the basis
24 of that and then after that Mr Murray has amended the claim form and in that
25 amendment, he specifically refers to a witness statement and that amended
26 claim form and the witness statement which he incorporates into that give

1 a large amount of specification as to what his claim is. And neither you or
2 Mr Neil has yet had an opportunity to answer that fully specified claim. So
3 I really have two questions for you. First of all, would it be appropriate for me
4 to give you time to amend in response, and secondly does that affect the points
5 that you are going to take to the strike-out, given that there is specification in
6 the amendment and witness statement?

7 **MR BYRNE:** Well, firstly, my Lord, we would invite the court to provide the first and
8 second defenders a period of adjustment of their defences.

9 **THE CHAIRMAN:** Yes.

10 **MR BYRNE:** However, whilst recognising that the pursuer is a party litigant,
11 representing his company, and some flexibility may properly be afforded to him
12 in fulfilling that role, it is in my submission undesirable that pleadings ought to
13 be essentially by way of a very, very lengthy affidavit document. And it may be
14 that in the first instance the pursuer should be invited to cogently and concisely
15 articulate his claim within an amended claim document, an adjusted claim
16 document, which then the defenders are invited to respond to. However, the
17 court may think that is unnecessarily labyrinthine, in which case we would be
18 happy to simply just adjust our pleadings to take into account the affidavit. But
19 in the first instance we would invite the pursuer to articulate his claim cogently
20 and concisely in a single document, being the claim form.

21 **THE CHAIRMAN:** Yes, thank you.

22 Is there anything else you wish to say on just at the moment on further procedure?

23 **MR BYRNE:** No, my Lord.

24 **THE CHAIRMAN:** Thank you.

25 Yes, Mr Neil.

26 **MR NEIL:** My Lord, I am in agreement firstly with setting a date of 26 May. I don't see

1 any issue why we shouldn't proceed with that. Largely I am in agreement with
2 Mr Byrne on his point, regarding the amended claim form. And allowing
3 ourselves as the third defendant to submit a response based on the amended
4 claim form. Apart from that I have no other issues on the future conduct.

5 **THE CHAIRMAN:** Thank you very much.

6 Mr Murray, the suggestion is that you should first amend your claim in order that your
7 case is properly set out in the claim form rather than in the affidavit and you
8 should be given time to do that. What do you have to say to that?

9 **MR MURRAY:** I believe that the statement that accompanied the reply to defence
10 was part of the document, the reply to defence. There is nothing in that that
11 I believe shouldn't be there. It sets out the facts. I appreciate there are a lot of
12 facts in this case. It went on for a long time, the events that I have referred to.
13 And if the Tribunal is content to accept that, and it is a statement of my case,
14 I really don't see the point in editing it down. I have made the facts available to
15 people. If they believe that they wish to prioritise them, and that some have
16 more bearing than others, then that is for them to do. But making the facts
17 available to the Tribunal, I can only see as the proper thing to do.

18 **THE CHAIRMAN:** Thank you.

19 I think what we should do at this stage is I am going to retire with the other members
20 of the Tribunal to consider whether we should proceed on the basis of the
21 amended claim form and the witness statement, or whether we should go along
22 with the proposal of Mr Byrne to ask you to amend your case into the claim
23 form. So we will now adjourn and you will be advised when we are ready to
24 return.

25 **(11.53 am)**

26 **(A short break)**

1 (12.00 pm)

2 **THE CHAIRMAN:** Thank you.

3 We have had an opportunity to discuss this amongst the Tribunal and the conclusion
4 we have come to is that, Mr Murray, we are not going to ask you to revise your
5 pleadings further to incorporate the legal matters in your witness statement into
6 your pleadings, we are going to go on the basis that that is your case set out in
7 that form.

8 So what we are proposing for a suggested timetable is this. By 14 March, so that is
9 three weeks, we will allow the first, second and third defenders to lodge
10 amended defences responding to the pursuer's reply to defence of
11 12 September 2021 and attached witness statement. So the next stage would
12 be 4 April, which would be a further three weeks after 14 March. We will order
13 the pursuer to lodge a skeleton argument in support of its motion for a summary
14 order in its letter of 14 February, together with the legal authorities on which it
15 relies.

16 The document should also address whether this Tribunal has the power to grant the
17 order sought in the pursuer's claim form in paragraph 9(b), which is
18 disqualification of directors, and 9(c), which is interdict.

19 So for the same day, which is 4 April, we will order the first and second defenders to
20 lodge a revised skeleton argument in support of their two motions, that is the
21 motion for strike-out and for summary judgment, together with the legal
22 authorities on which they rely. And we will order the third defender, if so
23 advised, to lodge a skeleton argument in support of any motion for strike-out or
24 summary judgment which they may wish to put before the court on 26 May,
25 together with the legal authorities on which they rely.

26 For the same date, which is 4 April, we will order the pursuer and all three defenders

1 to lodge (a) a list of all of the witnesses whom they propose to call at any proof,
2 together with a summary of the evidence of each witness and (b) all productions
3 on which they intend to rely at proof.

4 Now, just to explain these terms because I realise, Mr Neil and Mr Murray, you may
5 not be familiar with them. When we talk about proof, that is what is sometimes
6 called the trial, that's where you have witnesses and you have evidence. Now,
7 the hearing on 26 May will not have witnesses, but we need to get ahead with
8 the preparation so that -- depending on what happens at that hearing, the next
9 stage may be a hearing with witnesses, so we want the ground work for that to
10 be done so that these matters are to be lodged by 4 April.

11 The next date will be 25 April, which will be a further three weeks on from that. We
12 will order the pursuer and all three defenders to lodge revised skeleton
13 arguments responding to the arguments in the other parties' skeleton
14 arguments, which were lodged on 4 April.

15 And then between 25 April and 26 May there will be dates set for lodging any bundles
16 of documents, et cetera. I don't think we need to trouble with the exact dates
17 today, since that is just administrative. But when the order is issued it will have
18 the dates for that in it.

19 Then on 26 May we will have a one-day hearing which will be on the first and second
20 defenders' strike-out application and summary judgment application. It will be
21 on the pursuer's request for summary order in its letter of 14 February and it
22 will also be on any strike-out application or summary order which may be sought
23 by the third defender. The hearing will be on one day hearing on 26 May, but
24 we will keep 27 May in reserve in case the case overruns, so the Tribunal will
25 be available on the 27 May, so I would suggest that it is important for the rest
26 of you to be available also on the 27 May if it overruns. Hopefully it won't

1 | overrun and we will manage to deal with things in one day.

2 | Now, things are moving on in the world in respect of Covid precautions and hearings.

3 | What we propose to say at the moment is that this hearing will probably be in
4 | person rather than over the Teams platform. But that would have to be
5 | confirmed nearer the time. And it will probably be in Edinburgh, in the Court of
6 | Session building, but that is obviously also subject to confirmation.

7 | So that is the proposed timetable. I am just going to invite you in turn to give me any
8 | comments on that, because it is just a suggestion at the moment, and if anyone
9 | has a better way it deal with it, well, I am quite happy to look at how that could
10 | be done. Mr Murray.

11 | I think you are muted, Mr Murray.

12 | **MR MURRAY:** Sorry, I beg your pardon.

13 | I was wondering if we could deal with the time bar issue at the same time as we deal
14 | with the application to strike-out. It seems to me it is relatively simple, and I feel
15 | that I can address it very quickly.

16 | **THE CHAIRMAN:** That is what I think I intended to happen, because the time bar
17 | issue, it is in the skeleton note of argument, but we will just make sure in the
18 | order that we clarify that this will include the time bar issue and will be dealt with
19 | on the same day.

20 | **MR MURRAY:** Thank you.

21 | I guess the other issue that is in the background here from my point of view is the
22 | Pursuer's entitlement to a fair trial and what has gone on. I obviously made the
23 | Tribunal aware of what had gone on in my letter of the 14th February, and those
24 | are matters that do concern me. I am wondering how the Tribunal proposes to
25 | deal with them.

26 | **THE CHAIRMAN:** We propose to deal with these matters on 26 May. You have

1 flagged them up in your letter, which is your application for summary judgment,
2 so they are part of your argument as to why there should be summary judgment,
3 and so we will deal with them on 26 May.

4 **MR MURRAY:** Okay, thank you for explaining it.

5 **THE CHAIRMAN:** Okay.

6 Yes, any other comments, Mr Murray, on the timetable?

7 **MR MURRAY:** No, thank you.

8 **THE CHAIRMAN:** Thank you.

9 Mr Byrne?

10 **MR BYRNE:** My Lord, I am content with the timetable. The Tribunal might want to
11 give consideration to whether a pre-hearing is appropriate. The reason it might
12 be appropriate is after the exchange of skeleton arguments it may be that they
13 raise points which are so overwhelmingly powerful and crystallise matters so
14 clearly that either party decides to drop their motion, or something along those
15 lines, or change their position, rendering the hearing unnecessary, or
16 something along those lines. That could be covered off by another procedural
17 hearing on or around the end of April, probably after 25 April, when the revised
18 arguments are exchanged, or perhaps alternatively for any party to write into
19 the Tribunal to indicate that a hearing is appropriate, or that any change of
20 position is to be intimated, because obviously the court don't want to have
21 a hearing for everyone to stand up and say nothing has changed, we are ready
22 to proceed. But I envisage that just in case something arises out of the skeleton
23 arguments it might be helpful to envisage what would happen if something did
24 arise.

25 **THE CHAIRMAN:** Thank you. Well, it is not that easy to get together the number of
26 people that we have got together today. So I think my view on that is we will

1 do it if we need to do it, but we won't fix it now. So we won't fix another case
2 management hearing before the 26 May, but we will just note that it is open to
3 any of the parties at any time to bring forward a motion a request it to be dealt
4 with prior to the 26 May.

5 **MR BYRNE:** I am obliged, my Lord.

6 **THE CHAIRMAN:** Thank you.

7 Yes, Mr Neil.

8 **MR NEIL:** I am content with the timetable laid out, my Lord. I don't have any issues
9 with that.

10 **THE CHAIRMAN:** Thank you.

11 Now, Mr Neil, I appreciate that you are new to this. As I understand it you have
12 recently taken over the company and become a director of it.

13 **MR NEIL:** Yes.

14 **THE CHAIRMAN:** Now, that puts you in a slightly different position from the others in
15 that you are coming to this fresh.

16 **MR NEIL:** Yes.

17 **THE CHAIRMAN:** The previous owners and directors had lodged documents with
18 their position at an earlier stage, but you are coming at it new. The matters are
19 extremely technical, and extremely complicated. So I would urge you to
20 consider taking legal advice and getting legal representation for this matter. Of
21 course it is up to you. If you wish to continue yourself that is entirely up to you,
22 but I would strongly urge you to fully consider getting legal advice, and at the
23 very earliest stage, so that you can have the benefit of the input of that advice
24 from the earliest stage of that timetable, because as you can see, it is quite
25 a tight timetable and so if you were to instruct lawyers and they came in, they
26 would need time to be able to comply with that.

1 **MR NEIL:** Yes, understood, and thank you, I will take that away.

2 **THE CHAIRMAN:** Thank you. Good.

3 Going back to our agenda, the next matter in the agenda is fast-track application, and

4 Mr Murray, you had suggested in your original claim that this would be suitable

5 for a fast-track. What I am going to suggest is this, and again it is merely

6 a suggest and if people think we should do it differently then we are happy to

7 do that. We have this hearing on 26 May, and it is a strike-out hearing or

8 a summary judgment hearing. The result of that may be that either you,

9 Mr Murray, or you, Mr Byrne, or indeed you, Mr Neil, may completely succeed.

10 Now, in the light of that what I propose to do is to postpone consideration of

11 whether this should go down the fast track procedure until after we have the

12 result of 26 May, because we are moving quite quickly towards 26 May and

13 depending on the result we will be in a better position to decide whether to go

14 down the fast-track application or not. Can I just ask you for peoples'

15 observations on that or whether anyone wishes the question of fast track

16 procedure to be decided today. Mr Murray.

17 **MR MURRAY:** I am happy to go forward on that basis.

18 **THE CHAIRMAN:** Thank you.

19 Yes, Mr Byrne?

20 **MR BYRNE:** Yes, content with that, my Lord.

21 **MR NEIL:** I am content with that my Lord, as well.

22 **THE CHAIRMAN:** Thank you. So that deals with both items 5 and 6, which is the

23 costs cap, because that also relates to the fast-track procedure. And then we

24 have other matters, to consider whether any party should be required to clarify

25 any matter in dispute or supply additional information. Mr Murray, do you have

26 anything to say under that heading?

1 **MR MURRAY:** There are a number of documents that I would like the court to order
2 the defendants and others to produce. Am I required to list them now or shall
3 I deal with that later?

4 **THE CHAIRMAN:** Well, I think if you have a list of them you could give us the list now,
5 that would be helpful.

6 **MR MURRAY:** Okay. I would like to see a copy of the sale and purchase agreement
7 for Weil Holdings' acquisition of Sinclair Haulage and I would like to know and
8 see bank statements showing how that was funded.

9 **THE CHAIRMAN:** Yes.

10 **MR MURRAY:** The second document I would like to see, I would like -- if I could read
11 this -- the Tribunal to order OIC, Orkney Islands Council, to provide us with
12 a copy of all agreements that subsist or have subsisted between OIC and JBT
13 Distribution, and in particular those relating to how JBT Distribution ran the
14 Outer Isle freight depot.

15 **THE CHAIRMAN:** Yes.

16 **MR MURRAY:** Another document I would like is a sworn statement from the first and
17 second defendants averring as to what hauliers have received subsidised or
18 discounted fares on the Kirkwall to Sandy routes in the last ten years, and the
19 amount of those subsidies, set out on a per year basis.

20 **THE CHAIRMAN:** Yes.

21 **MR MURRAY:** I would also like an order asking -- sorry -- Menzies Distribution
22 Limited, who now own JBT Distribution, to produce documents and agreements
23 that they have between them between themselves and OIC regarding the
24 Outer Isles freight depot.

25 **THE CHAIRMAN:** Yes.

26 **MR MURRAY:** For the moment that is it, my Lord.

1 **THE CHAIRMAN:** That is the end of the list? Well, we are going to have to consider
2 how we deal with this. It may be that we have to adjourn this to allow you to
3 put in a formal document requesting all of these in writing, but at the moment
4 I am just going to identify what the issues are in relation to two other documents.

5 So, Mr Byrne, are there any documents which you wish to be supplied to you?

6 **MR BYRNE:** No, my Lord.

7 **THE CHAIRMAN:** I am not going to ask you to reply on the hoof to that particular list
8 of documents, I think you would need to have an opportunity to have that and
9 consider it and see what can be done voluntarily first.

10 Mr Neil, are there any documents or information which you would like to be supplied
11 to you?

12 **MR NEIL:** No my Lord, no.

13 **THE CHAIRMAN:** So we have these four items. I don't think it would be appropriate
14 to deal with these today. I think what would be appropriate would be for you,
15 Mr Murray, to put in a formal document requesting these which could then be
16 proposed, and we could have another hearing, perhaps, dealing with that. But
17 I am going to adjourn just shortly to discuss that with my fellow Tribunal
18 members.

19 But before we do that can I just raise item 8, any further issues raised or directions
20 sought by the parties. Mr Murray.

21 **MR MURRAY:** I don't have any others, my Lord.

22 **THE CHAIRMAN:** Thank you.

23 Mr Byrne.

24 **MR BYRNE:** My Lord, I understand we are going to be dealing with time bar at the
25 strike-out hearing.

26 **THE CHAIRMAN:** Yes.

1 **MR BYRNE:** Mr Murray has indicated that he proposes to answer the time bar
2 complaint that the defender advances in his written submission. If he proposes
3 to do that then there is no need for the court to really deal with it any further, we
4 can see that, but if Mr Murray can give the court some assurances we can
5 simply wait to see his written submission on his response to time bar and
6 nothing further need be done.

7 **THE CHAIRMAN:** Yes, well, do we need to do anything at all in relation to that?
8 I mean time bar is on the agenda and we are going to deal with it on the 26th,
9 and I exact all parties to deal with all matters which are relevant to them in their
10 skeleton arguments. And you will have time bar in your skeleton argument, and
11 Mr Murray will have to respond to that in his skeleton argument.

12 **MR BYRNE:** Yes, my Lord, I have not been terribly clear. The defenders have raised,
13 at least within the written submission, that Mr Murray has not articulated when
14 he first became aware of the practices which he complains of, and I think he is
15 going to address that in his skeleton argument.

16 **THE CHAIRMAN:** Well, is there anything I need to do about that, or can we just wait
17 and see what the skeleton arguments say?

18 **MR BYRNE:** I think we can wait and see what they say, the first and second
19 defenders. If we don't have a clear position from Mr Murray on when he first
20 became aware of that, we will in probability be writing to him asking him to
21 explain when he first became aware of the practices he complained of. But it
22 is just to make sure that the court is in a position to deal with it when we get to
23 the hearing on 26 May.

24 **THE CHAIRMAN:** Yes, Mr Murray, do you have anything in response to that?

25 **MR MURRAY:** Yes. The first point I would make, and it is referring to
26 paragraph 17.2(a) of schedule 8, is that even on the first condition under that,

1 if I may read this, paragraph 17.2(a) to schedule A to the Competition Act
2 states -- and I am stating the obvious, I apologise:

3 "Under the law of Scotland proceedings in respect of a competition claim may not be
4 brought before a court or the Tribunal after the end of the prescriptive period."

5 Paragraph 18.2 defines the prescriptive period as five years. Paragraph 19 states
6 that:

7 "The prescriptive period begins with the later of the day on which the infringement of
8 competition law that is the subject of the claim ceases."

9 Well, it hasn't ceased so there is as of yet no end date for that prescriptive period.

10 They carry on acting in breach of competition law, the monopoly still exists and
11 these practices are still going on.

12 But leaving that point and going on a little bit further if I may, the second point is,
13 turning to paragraph 19(b):

14 "I first became aware of the infringers' behaviour on 7 February 2019. That was the
15 day I received an email from Mr Neil, the then manager of the Outer Isles freight
16 centre."

17 Now, I actually did explain this in my witness statement. Perhaps it just wasn't noticed,
18 but it is actually in there. So on that account as well I do not believe that this
19 case is time barred.

20 **THE CHAIRMAN:** Yes. Obviously we are not going into decide that in any way today.

21 **MR MURRAY:** No.

22 **THE CHAIRMAN:** But Mr Byrne, you have now had the opportunity to hear what
23 Mr Murray has to say about that, which is actually what is in his witness
24 statement. So I think we will just proceed towards the hearing and we will
25 decide it on the arguments that are made at the hearing.

26 Yes, Mr Neil, did you have anything else you wished to say at this stage?

1 **MR NEIL:** No, nothing more to add at this point, my Lord.

2 **THE CHAIRMAN:** Thank you. I am just going to adjourn so that with my colleagues
3 we can have a discussion as to how to deal with the four documents which are
4 being requested and what procedure we should deal with in relation to that, so
5 we will now adjourn.

6 **(12.25 pm)**

7 **(A short break)**

8 **(12.32 pm)**

9 **THE CHAIRMAN:** Thank you.

10 We have had a discussion about this amongst ourselves and I think the best way,
11 given the very specific things which you are requesting, Mr Murray -- in fact at
12 the start you did raise the question about whether we should deal with it
13 today -- I think it is only fair that the other parties have a chance to see exactly
14 this in writing. So what we are going to do is I am going to order you, Mr Murray,
15 to produce a written request for these documents within seven days and then
16 allow all three defenders a further period of seven days in which to lodge any
17 objection to the production of these documents. And then after that we will
18 review the situation and decide whether we need another hearing to resolve
19 any dispute about the documents.

20 It may be that that procedure, as well as given notice to everyone as to precisely what
21 you are seeking, Mr Murray, it may be that that will assist matters because there
22 may be some of these which are unobjectionable and parties will hand across
23 to you anyway. It may narrow down if there is a dispute about any of the other
24 ones. We will just decide on that after the 14 days have elapsed.

25 **MR MURRAY:** Okay.

26 **THE CHAIRMAN:** One just practical administrative matter and this is for you, Mr Neil.

1 Just so that we are up to date with changes, I am not going to ask you for all of
2 these details just now, but I am going to ask you to liaise with the registrar of
3 the Tribunal just to check that we have all of the up to date details, contact
4 details, et cetera, for your company.

5 **MR NEIL:** Okay.

6 **THE CHAIRMAN:** Does that deal with all matters we have to deal with today?

7 **MR MURRAY:** Yes.

8 **THE CHAIRMAN:** Well, thank you very much to all of you, and we are now adjourned.

9 **MR MURRAY:** Thank you.

10 **MR NEIL:** Thank you.

11 **(12.35 pm)**

12 **(The hearing concluded)**

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