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4 record.

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

Case No. 1429/4/12/21

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

12
13 Tuesday 19 April 2022

14
15 Before:
16 **SIR MARCUS SMITH**
17 (President)

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19 (Sitting as a Tribunal in England and Wales)

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24 **BETWEEN:**

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26 **META PLATFORMS, INC.**

Applicant

27
28 v

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30 **COMPETITION AND MARKETS AUTHORITY**

Respondent

31
32 _____
33
34 **A P P E A R A N C E S**

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36 Daniel Jowell QC, Gerard Rothschild and Richard Howell (On behalf of the Applicant)
37 Tristan Jones and Emma Mockford (On behalf of the Respondent)
38 Alison Berridge (On behalf of Snap, Inc.)
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(10.30 am)

DISCUSSIONS RE CONFIDENTIALITY

THE PRESIDENT: Mr Jowell, good morning.

MR JOWELL: Good morning, Mr Chairman. Mr Chairman, the issue for today, of course, is confidentiality and the question is how best we can reconcile the interests of a public hearing with on the one hand the confidential information pertaining to third parties and also our ability as the Applicant to properly and fairly put our case.

Mr Chairman, I am very much in your hands as to how you wish to deal with matters.

THE PRESIDENT: That's very helpful, Mr Jowell. First of all, let me start by thanking the parties for their very helpful written submissions, which I have read with great attention. I wonder if it would be best if I articulated my thinking about how to run this and then anyone who wishes to, can push back and I want to make clear that this is very much a provisional view based upon my reading of the skeletons.

So the position of Meta with which the CMA agrees is that grounds 1, 2, 5 and 6 can be conducted in public. Meta's view is that grounds 3, 4 and 4A will at least in part have to be conducted in private.

Now broadly speaking the CMA agree with that in the sense that there is a sensitivity in relation to 3, 4 and 4A, but I think there is a difference in emphasis between the CMA and Meta as regards 3 and 4A in the sense that the CMA agrees that ground 4 essentially has got to be heard substantially in toto in private. I mean, there may be fringes in public, but basically in private. I think on 3 and 4A the CMA's position is that the grounds can be heard in public with an elliptical reference on your part to confidential material. I think that's where

1 you would push back.

2 Now the CMA rightly point out that the starting point is schedule 4, para 1 of the
3 Enterprise Act and it seems to me that we need to reason back from the
4 judgment that in due course the Tribunal have to produce and work out the
5 stages before that, allowing the judgment to inform how those stages should
6 be run. Again I think that is broadly speaking common ground. Certainly it is
7 the CMA's articulated position in their skeleton.

8 So starting from the end point, the judgment, it seems to me that the paramount
9 objective that the Tribunal must have in mind is to produce a judgment that is
10 comprehensible to a reasonably interested person not a party who wishes to
11 understand precisely why the Tribunal has reached the conclusion that it did.
12 That I think is what open justice means. If at any point in the decision you
13 have got to say "Well, you can only understand why you have reached
14 a conclusion if you look at confidential annex X, which you can't look at, then
15 that is I think unacceptable." So that's the end point that we want to achieve.

16 It seems to me there are going to be certain matters which are going to be trumped
17 by the need for open justice, which I think we can say now are going to be
18 problems. The one area which I thought was going to be a problem and
19 which I think is going to be a problem if Snap push back on this is the identity
20 of the owner, Snap, but reading Snap's written submissions, it seems to me
21 that whilst Snap are making clear that they regard the ownership question as
22 confidential, they aren't saying that this is a justification on itself for going into
23 private session at all.

24 It does seem to me that it is going to be next to impossible I think to keep the fact of
25 the acquisition and who acquired it out of the judgment. I can say I will try, but
26 I very much have my doubts, and it does seem to me that one of the nettles

1 that we perhaps should be grasping today is that we accept that ownership is
2 going to be in the public domain. It will make my job easier running the
3 proceedings. It will I think make Mr Jowell's position rather easier, because
4 this is the sort of thing one is going to be talking about on all of these grounds.

5 I have to say I do find that the use of the Tribunal's jurisdiction to protect the question
6 of named ownership is an area that I am going to require a degree of
7 persuasion to go down. It seems to me that whilst I quite understand why
8 a party may wish to keep its ownership of an entity confidential, that is one
9 thing. It is very much another thing to wheel out the in private hearing to
10 protect that, because I am not really sure that I see the legitimate interest in
11 ownership, but that's where I'm coming from on that question alone.

12 However, it does seem to me that the points that Snap make regarding the
13 development of their business are on the face of it quite clearly matters that
14 ought to be protected. How I will handle those in the judgment is a matter that
15 is a question of careful formulation, but I am reasonably confident that one
16 can get an open judgment that refers with the requisite degree of vagueness
17 to sensitive matters such that Snap's position is protected, but which enables
18 a reader who is not a party to understand why we have got to the conclusion
19 that we have. Now I may be wrong about that, but that is my present thinking,
20 that it can be done.

21 Now that, as it seems to me, informs how we handle matters in terms of the hearing.

22 The choice is between dealing with matters by way of a confidentiality ring but
23 in public with elliptical references or dealing with matters in private. The
24 difference between those two regimes in terms of open justice is it seems to
25 me not particularly great. The fact is we can have third parties in, hear the
26 matter in public, require you to effectively sculpt your submissions in a way

1 that you wouldn't otherwise do to avoid reference and say "Well, read this".
2 The third party is going to be none the wiser, because that's the whole point of
3 the elliptical reference. So why not go into private session and enable you to,
4 as it were, take the gloves off and make the points that you want to make in
5 the way that you wish to?

6 So it seems to me that there is a real advantage in cutting to the chase now and
7 saying since it is not really a choice between in public and in private, it's
8 a choice of how one protects the Snap confidential information, there isn't that
9 much difference therefore between elliptical reference and in private except
10 that the elliptical reference rather cramps your style, Mr Jowell, and I don't
11 want that to occur unless there is good reason.

12 My thinking is that I should give a fairly clear indication that I would like you to do
13 your best to do the most in public that you can but to leave it to you to decide
14 when you say we should go into private session in relation not merely to
15 ground 4 but also grounds 3 and 4A. I can't I think go further than hope that
16 you can sculpt your submissions in a way that will maximise the public
17 hearing, and if it seems things are going wrong, then I will obviously raise that
18 in the course of the hearing, but I have every confidence that Meta will be
19 responsible about this and I have every confidence that your skills, Mr Jowell,
20 will enable you to limit the extent of time that we are operating in private, but it
21 does seem to me that whilst it is possible when sculpting a reserved judgment
22 to navigate around the sensitive areas and to produce the requisite degree of
23 vagueness that will ensure that Snap's position is protected, that's far harder
24 to do when one has the cut and thrust of submissions and the articulation of
25 evidence. It just seems to me that you shouldn't be required to pull your
26 punches in that sort of stage, because it is just too woven in.

1 The last point is that we would I think need to debate the precise regime for ensuring
2 that Snap's position is protected on the circulation of a judgment. Normally
3 a judgment would be circulated in draft only to the parties and I would impose
4 on the CMA the obligation to liaise with the parties -- third parties interested in
5 confidentiality. I think in this case that regime would not be appropriate. It
6 would be better to have Snap involved at the stage of circulation and, as it
7 were, remove from the CMA's shareholders the burden of passing up and
8 down the chain the concerns. I think it is probably fair that I make that
9 indication now, because it is all part of one thing.

10 The last point that I just want to get on the record, I don't think it is a problem, but it
11 concerns, Mr Jowell, your clients. The confidentiality ring that I understand
12 operates excludes, as it were, internal persons. It is an external adviser only
13 ring. Now there are a lot of cases which say that one should be very careful
14 about ordering such a ring, and if it is working for Meta, then I am very
15 pleased that it is, but I think it does need to be at least articulated that if there
16 is any degree of unhappiness on Meta's part, then that is something which
17 I think ought to be on the agenda for today.

18 I completely understand why Miss Berridge would be concerned about that, but that's
19 why I am raising it now. As I say, I hope it is not a problem, but the usual
20 point that is made is that one needs someone to give instructions to the
21 external advisers on points that are being argued, and I am inferring, because
22 it doesn't seem to have raised its head as an issue, that it is not a problem.
23 I know Meta would want someone in. It is more a question of how important it
24 is to the fairness of the process that that be dealt with, and because it has not
25 raised its head, I am assuming it is not a problem, but I do think it needs to be
26 out there today now that we have all parties involved.

1 So I have spoken for far too long, but I think, Mr Jowell, I will hear responses from all
2 three to see whether that regime would need to be adjusted in a minor way or
3 indeed in a major way.

4 MR JOWELL: I am very grateful indeed, Mr Chairman, for that indication. I think
5 starting at the beginning, as it were, we fully appreciate the desirability for
6 hearing as much of the hearing in open as possible, and that's an outcome
7 that we positively wish to achieve, but at the same time, as you rightly
8 recognise, there are certain areas where we would just have our hands
9 unduly tied if we were seeking to make submissions on points where we
10 couldn't properly articulate the points that we wish to make. We have in mind
11 that we will seek so minimise the amount that we go into closed session.

12 With that in mind, when it comes to, for example, grounds 1 and 2, there are points
13 where I will have to refer to confidential information, and what I have in mind
14 is that we will have probably a sheet of paper that we will pass up to the
15 Tribunal with particular points of confidential information, which we can then
16 say "And you will find the figure at number 3 in the confidential sheet", but
17 when it comes to the arguments around ground 3, which is the counterfactual,
18 it really isn't possible properly to articulate those points without going into
19 confidential information. That's information that's not just about -- in fact, it is
20 not at all about Snap's ownership of Gfycat, it is rather what it intends to do
21 with Gfycat. It is rather about on the counterfactual on ground 3 it is all to do
22 with what external investors would have been prepared to invest and at what
23 valuation and internal investors and what they would have been prepared to
24 invest and at what valuation and also whether there was an alternative
25 purchaser in the form of Snap.

26 That's a point I think I will need to come back to, because there is a key piece of

1 confidential information there which we think also falls into the category as
2 Snap's acquisition of Gfycat, which is a point of some fundamental importance
3 and we think minimal confidentiality, and which we think could usefully be
4 made public as well. I will come back to that in a moment, if I may. So that's
5 ground 3. Clearly there we can't make our submissions properly without
6 going into private at some point.

7 Similarly, and I think it is common ground in relation to ground 4, when one is talking
8 about the excisions and the points on which we were not consulted.

9 Additionally, in relation to ground 4A I think there are a couple of the changes that
10 were made after the group's approval again that involve confidential
11 information, but it is fair to say that in relation to 4A it is less and we will give
12 careful consideration to whether it may be possible to deal with that by
13 elliptical references, but we think it is probable that we will need to go into
14 a short private session.

15 I should mention in relation to ground 6 there's one aspect of that that also involves
16 the strategy of Snap after its acquisition of Gfycat. I will try and deal with that
17 as part of ground 4 so that we don't have to go back into private session. So
18 that's what we intend in terms of the main -- effectively the way we plan to run
19 the proceedings, of course with your permission.

20 I think the next point that you raised, Mr Chairman, was the question of whether it's
21 appropriate for the purposes of the hearing that Snap's acquisition of Gfycat
22 should come into the public domain. We very much endorse the fact that it
23 should. We can't really see the great confidentiality of the point. It is going to
24 come out in any event in due course. It is strongly arguable that it has already
25 been disclosed in the public domain and you will have seen the references to
26 various documents in our skeleton argument, and we think it is fully

1 appropriate -- it will be impossible to write a comprehensive judgment without
2 at least that information coming in. Whether it is possible to write a judgment
3 in due course without mentioning the strategy we will have to see. It may be
4 that by the time the judgment is finalised at least it may be that that
5 information or some of it is already in the public domain and that issue may go
6 away.

7 Now the other issue -- the other point where we think there is information over which
8 confidentiality is claimed where we think it is going to be of some centrality to
9 the hearing and is of minimal genuine confidence is the fact that Snap made
10 a valuation of Gfycat internally of some \$142 million in a draft term sheet.

11 Now we accept that the precise provisions of the term sheet, how that amount was
12 structured and so on, does not need to come into the public domain, but we
13 do suggest that the fact that an offer at that level was what Snap valued
14 Gfycat at and was prepared to pay for Gfycat is information that is going to be
15 of some centrality, and it will be difficult again for you, Mr Chairman, in our
16 submission to write a comprehensible judgment without that information
17 coming out.

18 We think it is better that -- forgive me. I am corrected. That's the valuation of
19 GIPHY, not Gfycat. Forgive me. I misspoke. That is information that we say
20 is going to be central and should be disclosed, and sooner rather than later in
21 our submission. It will also make it easier for us to make more of our
22 submissions in open court.

23 So that's what we would suggest on the principal issues before you. Were there
24 other issues on which you were seeking our feedback?

25 THE PRESIDENT: I think it was only if you had an issue on the confidentiality ring.

26 MR JOWELL: The issue on the -- yes, we do have an issue on the confidentiality

1 ring is the short answer to that. We have had this issue all along in the sense
2 that we would have wanted very much to take instructions on all of these
3 points from Meta, because we believe that those in the business would have
4 had valuable information to provide us with, and in a sense this is part of our
5 complaint in relation to the failure to consult is that we have simply not -- there
6 are areas where we would have wished to make submissions based on
7 expertise that is in our client's hands, but which we don't have as lawyers or
8 even the external economists.

9 So we do make that point. It is very difficult for us to comment on the detail of that,
10 because, of course, we haven't had an opportunity to take instructions, and so
11 we would find it of great assistance if, for example, we were able to extend the
12 ring to, say, one in-house lawyer at Meta, if they were able to -- from who we
13 could potentially take instructions. It is difficult for us to say precisely the
14 manners in which we have been -- that we would be disadvantaged, because
15 it is difficult to know really where to start because there are so many pieces of
16 this confidential information, and so many different respects in which they
17 could potentially assist us.

18 THE PRESIDENT: Well, I quite understand that, Mr Jowell. In a sense that's why
19 I raised it, because, as I say, there are at least three decisions that I can think
20 of where it has been said that one should exclude the lay client, if I can call it
21 that, from the ring at one's peril. One can do it, but one should be very careful
22 about it.

23 MR JOWELL: Yes.

24 THE PRESIDENT: Because it is a form of effectively closed session.

25 That said, we are perhaps beyond the 11th hour. The reason I raised it was
26 because I wanted it on the record either the absence of the problem or

1 articulation of the problem. The fact is this is the first time you have raised it
2 with the Tribunal.

3 MR JOWELL: That is correct, yes.

4 THE PRESIDENT: Now I don't want anyone to be bounced by the fact I have raised
5 something simply because I wanted the Is dotted and the Ts crossed. The
6 point could be made that since you have managed so far and framed your
7 case to a fairly advanced state -- I think we are days away from the hearing --

8 MR JOWELL: Yes.

9 THE PRESIDENT: -- you have managed so far and should therefore be obliged to
10 soldier on.

11 My thinking at the moment, and I am very conscious that I have heard from no-one
12 about this and raised it effectively of my own motion, my thinking would be we
13 ought perhaps to carry on as we have, but that I would certainly want to hear
14 from you if there was a concrete point where you were actually in difficulties.

15 Now I say that because we are in *medias res* or towards the end of the *res* rather
16 than the beginning. My view might well have been different if this had been
17 raised right at the get-go.

18 MR JOWELL: Yes.

19 THE PRESIDENT: But in a sense you have been --

20 MR JOWELL: Yes, I see that. Where it comes in perhaps is when it comes to
21 considering whether, for example -- if some information which has been
22 withheld from us had, in fact, been consulted on and at that point it may be
23 said "Well, if you had known this, what more could you really have said?" At
24 that point the answer is often going to be "Well, there are many things that we
25 would have liked to have said, some of which we would like to say in
26 conjunction with assistance from our lay client, who know the business much

1 better than we do".

2 I think perhaps it is important that the fact that we are not necessarily able to give
3 specific examples isn't held against us in those instances, because our hands
4 are tied by the fact that we are unable to consult with our lay client. So it may
5 be that it comes in at that point.

6 I mean, one of the points on which we have felt that our hands have been tied is the
7 fact that we are not able to consult with the lay client on the fact -- on what
8 they would want to say about the fact of the acquisition of Gfycat by Snap,
9 and actually it certainly would assist us if we were able to reveal that. If the
10 decision is made to lift the confidentiality on that, that we could do that
11 immediately, so that at least we are then able to take instructions on that point
12 before I stand up next Monday.

13 THE PRESIDENT: The problem is that involves introducing quite late new material
14 to which the CMA will not really be able to respond, save on the hoof. That's
15 my concern about the point at which this is being raised. It is no criticism of
16 you. I am doing the raising.

17 MR JOWELL: Well, I see that. If it is simply points that relate to that one issue, then
18 it seems to us that it should be possible for the CMA, if we wish to say "Our
19 client has said in light of that we would have liked to have made the following
20 points if we had known about this, and they are additional to points we have
21 already -- the legal and economic team thought of", it should be possible for
22 the CMA in the time available to respond to that.

23 THE PRESIDENT: Thank you.

24 MR JOWELL: Those are our submissions.

25 THE PRESIDENT: I am very grateful. Mr Jowell. We will return I suspect to that
26 point, if none others. I think I will hear from the CMA next, Mr Jones, and

1 then, Ms Berridge, from you.

2 MR JONES: Sir, I am very grateful. Five topics then, which I will go through briefly.

3 Sir, firstly, on the overview and your suggested approach to the hearing, we are very
4 content with that. It seems to us very sensible to do as much as possible in
5 public for all three of those grounds which have been highlighted, 3, 4 and 4A,
6 and then short private sessions when necessary. All I will say about that is it
7 may be some of 4 could be done in public. I know in my skeleton we said the
8 whole thing should be done in private. On reflection there are some issues
9 there which could be done in open.

10 MR JOWELL: I quite agree with that. There is quite a long session at 4 where we
11 just discuss the law. So that will clearly --

12 THE PRESIDENT: My thinking -- and let me be clear this applies as much to 1, 2, 5
13 and 6 -- is that I entirely recognise, as we all do, that there is significant
14 sensitivity in some of the material. What I can't do is in this case at least ring
15 fence it so that we know exactly what can be dealt with in private and what is
16 not. I think I am very dependent upon the good sense of the parties to deal
17 with this. I think that has broken out. I am very sympathetic to the way the
18 CMA have put it in saying the elliptical reference can be done. I have little
19 doubt that it can be.

20 What I am really saying is I don't want the Applicant to have any sense of
21 disadvantage in the way in which I am framing these matters and that's really
22 why I have left to Mr Jowell's good sense, since he will be doing the running
23 on this, what needs to be said in public and what needs to be said in private.

24 Obviously the same goes for the CMA, but I think, since it is Mr Jowell's challenge, it
25 is really his judgment as to how he wants to make his case that is in this
26 instance paramount. So I wouldn't want it to be said I disagree with anything

1 the CMA said. I think your stance in your skeleton was eminently sensible
2 and entirely justified.

3 MR JONES: Sir, I am grateful for that. We entirely agree and I was going to make
4 a similar comment myself today, which is that in the first instance Mr Jowell
5 puts his case and we will need to respond on the way it has been put. On that
6 first topic that's our position.

7 On the second broad topic, Snap's information about Gfycat, on this general theme
8 clearly the more that can be revealed, the easier it will be for us to make
9 submissions in open. That's obviously true of the acquisition itself. It is also --
10 I agree with Mr Jowell -- true of the valuation of GIPHY, the point which he
11 just raised for the first time. So those two points, if they could be put into
12 public, would assist us to make representations in public, but Ms Berridge will
13 be making submissions on Snap's position on those issues.

14 Thirdly, Sir, there's a point which follows on from that, which is just a practical point
15 about the judgment and the suggestion that it might be circulated to Snap at
16 the same time. I think it follows from that that some of Snap's representatives
17 should come into the confidentiality ring.

18 The reason I say that is that the judgment, even if it is being done for open purposes,
19 might inadvertently contain some of, say, Meta's confidential information.

20 THE PRESIDENT: I believe that's one of the reasons why one circulates things in
21 draft. That's an entirely fair point.

22 MR JONES: Yes. Fourth, Sir, a point on the mechanics. I wanted to show, Sir, if
23 I may, what we have done in preparation for the hearing. Of course, just
24 when I get to this moment I have been locked out. Sir, you will know that the
25 CMA, of course, gathered representations and the proposal now is to lift some
26 of the old confidentiality markings and leave some in place. I just wanted to

1 show you how that is being done. If one looks at page 408 of the bundle, and
2 I have just taken this as an example.

3 THE PRESIDENT: Yes.

4 MR JONES: What you will see there is some text which is highlighted in gold.
5 That's the marking for third party confidentiality.

6 THE PRESIDENT: One moment. Let me just make sure I am looking at the right
7 page. 408 of the bundle?

8 MR JONES: Yes.

9 THE PRESIDENT: So I have a paragraph 423.

10 MR JONES: 423. Within that there should be some text highlighted in gold.

11 THE PRESIDENT: Right. Mine is in a rather mucky green, but apart from that.

12 MR JONES: Mucky green gold.

13 THE PRESIDENT: It starts:

14 "One investor's internal document": We are talking the same colour then.

15 MR JONES: Yes. That is third party confidentiality. You will see further down the
16 page there is blue. That is Meta confidentiality.

17 THE PRESIDENT: Yes.

18 MR JONES: You will also notice that some of this text -- in fact, as it happens here it
19 is gold text -- has a red box around it with a cross in the margin. That is what
20 we have done or Latham and Watkins did this particular marking, but that is
21 the result of the CMA's reaching out to third parties and liaising with the
22 Applicant to show that whilst that information was marked as confidential in
23 the decision, that confidentiality marking can now be lifted. The reason it is
24 being done like that is because, of course, for ground 4 it is going to be
25 important for the Tribunal to see what was treated as confidential as well as
26 knowing what is no longer going to be treated as confidential.

1 So that is the exercise we are currently engaged in. It is not complete. I am sorry to
2 say some of these pages in the main bundle may need to be replaced. We
3 are nearly there. In broad terms what happened is when third parties said to
4 the CMA that their information should be treated as confidential, meeting the
5 test as set out in the Tribunal rules, the CMA looked at that but essentially
6 agreed with those representations where they had been made, and similarly
7 where they said they didn't need to be treated as confidential, the CMA, of
8 course, accepted that.

9 There are occasions where third parties didn't make representations either at all or
10 on particular pieces of information, and there the CMA has made a judgment
11 and they have in some cases been treated as confidential and in some cases
12 not. Sir, you are, of course, not being asked to look at all of those judgments
13 today, but I simply wanted to explain that process to say where we have got
14 to. I understand that GIPHY actually since this exercise has lifted some more
15 of its confidentiality markings. We need to take that through into the skeleton
16 arguments and so on and so forth. So that's why it is not finished, but that's
17 where we are getting to and it is very nearly done. That was just by way of
18 information. That was my fourth topic.

19 The fifth topic is whether anyone from Meta should be entered into the confidentiality
20 ring. Sir, of course, the background here is that there are different regimes
21 and different requirements at the administrative stage versus this stage. It is
22 absolutely right to say that during the administrative stage Meta asked for
23 more people to be added to the ring and they were not. Before this Tribunal
24 they have not made an application. So at the moment, as you have pointed
25 out, there is not any one from Meta in the ring. It would cause us some
26 concern at this stage because of the last minute nature of it, because, Sir, as

1 you highlight, if they were to come in and make representations now, we are,
2 if I can put it this way, already facing quite a lot of work to get ready for next
3 week after dealing with today as well as, of course, interventions and
4 everything before that. So that would cause us some concern. That's one
5 reason to be cautious of it.

6 The other reason, which is related, is that given the short time which is now left, one
7 has to wonder what could sensibly be said in that short period by someone
8 who has not looked at this. So balancing the risks and rewards we would be
9 cautious. The only reason I have put it that way is I have not taken
10 instructions on this and if an application were to be made and Mr Jowell were
11 to be pursuing this I would ask for an opportunity just to take some
12 instructions on this particular issue.

13 THE PRESIDENT: Thank you, Mr Jones. I am much obliged.

14 Ms Berridge.

15 MS BERRIDGE: Thank you. We are grateful for the indication that you have made
16 and that we have heard here today that the fact of Snap's ownership of Gfycat
17 is very likely to come into the public domain. We have said that we don't
18 resist that and it is useful we should prepare for that to happen next week.
19 We are also very grateful for the indication that we will be able to be involved
20 in the process of circulating and looking at the judgment when we come to
21 that point, and we will be happy to become involved in the confidentiality ring
22 to the extent necessary for that process. So thank you for both of those.

23 I then turn to the specific categories of information that we are here today to discuss.

24 Now I think what I've heard is that you are broadly with us that this information
25 that we have particularised in our 11th March letter and in our written
26 submissions is of the character that should be protected and that you have

1 moved on to -- with a couple of exceptions which I want to come back to and
2 you have moved on to thinking about how to manage that in the hearing.

3 One exception -- sorry. Two points I will make on that, unless anyone wishes to
4 correct me that these are the only two outstanding. The first is the fact that
5 Snap considered making an offer for GIPHY itself and we have said in our
6 submissions we don't argue that that is of a character to justify private
7 hearing. It is not something that we want to be in the public domain. It is
8 something we understand may have to be in the public domain.

9 The second point is the valuation so that internal term sheet --

10 THE PRESIDENT: The 142 million.

11 MS BERRIDGE: Exactly. It is very easy for all of us here to see how that compares
12 with the reported amount that Meta was prepared to pay for GIPHY, which is
13 400 million.

14 THE PRESIDENT: Yes.

15 MS BERRIDGE: It is really the insight that that term sheet, that price provides into
16 the way Snap thinks about acquisitions that is the concern here. These are,
17 as you know, acquisitive organisations. So this is not something that comes
18 up once every ten years. It comes up regularly. So any one who sees those
19 two numbers can immediately draw conclusions about the willingness to pay
20 and the ability to pay and how that compares between Meta and between
21 Snap.

22 It also gives everyone an insight, because that term sheet talks about a balance
23 between cash and stock and stock for specific key staff. So it is an insight
24 into how Snap structures its acquisitions so that anyone who is looking for
25 a sale process would have immediately an insight there and a leverage there
26 that they wouldn't otherwise have had. We say these are material harms in

1 a situation where Snap is regularly buying companies and indeed competing
2 with Meta to buy companies.

3 Our final point on that piece of information is that, subject to the decision of the
4 Tribunal in this case, it may be that GIPHY is again in a competitive sale
5 process being divested and that valuation that Snap put on GIPHY at that
6 point will be a reference point in that process, and we don't say that's of harm
7 to us. We say that is of harm to the process, the competitive process for the
8 sale of GIPHY.

9 So those are our points on that very specific piece of information. So we say it may
10 be much more convenient to allow that to come into the public domain, but we
11 say that particular piece of information does have the character that should be
12 protected. Disclosing it to the public would cause material and significant
13 harm to Snap.

14 THE PRESIDENT: Now just to pin you down on that.

15 MS BERRIDGE: Yes.

16 THE PRESIDENT: There is, or I am perceiving there to be a difference, and please
17 do correct me if I am wrong in this, between the detail contained in the term
18 sheet and the ball-park figure of 142 million in that actually referencing the
19 figure without the detail of the term sheet probably tells the outsider rather
20 little, because you need to understand the precise terms and conditions on
21 which that sum was advanced; in other words, the detail matters. Would that
22 be right, or is there a sensitivity in the figure just as a bald figure without any
23 detail?

24 MS BERRIDGE: We say there is a high degree of sensitivity in the bald figure.

25 THE PRESIDENT: Right.

26 MS BERRIDGE: Because structure is important, because ultimately the headline

1 price is also important, and that comparison is going to make a difference
2 when Snap is out in the market looking to acquire companies it will find itself
3 not treated as a realistic competitor to Meta, it is something that will be noted,
4 understood, fed into models, and make a real difference to the market
5 operation of those companies. So we say that's something that we don't want
6 to see in the public domain.

7 THE PRESIDENT: Okay. Thank you.

8 MS BERRIDGE: I will now finish by saying a few words about the proposed
9 extension of the confidentiality ring.

10 THE PRESIDENT: Yes.

11 MS BERRIDGE: Which is something that we are very concerned about. It is
12 obviously not something we have had an opportunity to take instructions on,
13 but it is something that we believe will be of very great concern to our clients.
14 So these are matters that are not just confidential, but some of them are of the
15 most confidential and highly sensitive character. We are talking about not just
16 any other litigation party. We are talking about Snap's principal competitor,
17 and you will see from the submissions that it is really in many cases Meta that
18 Snap is concerned about seeing this rather than the general public.

19 Indeed, in some cases this is the sort of information that if Snap itself disclosed it to
20 Meta, we would be hearing from the CMA in quite a different context, and
21 I think that damage to the competitive process that could be revealed if some
22 of our sensitive commercial plans were revealed falls into the public interest
23 category in the legislation that we have cited in our submissions.

24 We do appreciate that Meta is a very large organisation. There will be people,
25 in-house counsel there who are not on the commercial frontline, but we say
26 that the line that has been drawn consistently in this Tribunal and in similar

1 places between an employee and external adviser is an important line. It is
2 drawn there for a reason. The employee can be put in a very difficult position.
3 They can have divided loyalties and they can be put under pressure, whereas
4 an external adviser is much better able to resist those kind of pressures.

5 So we say we would have very great concerns if we saw an application along those
6 lines, but we would also expect to have an opportunity to take instructions and
7 give our full submissions.

8 THE PRESIDENT: Thank you, Miss Berridge.

9 MS BERRIDGE: That's all we have to say. Thank you.

10 THE PRESIDENT: Thank you very much. Mr Jowell.

11 MR JOWELL: May I just come back on a couple of points. The 142 million. First of
12 all, I should be clear we are not seeking disclosure of the full term sheet. One
13 can see that there may be some sensitivity in the structure of the way the
14 transaction was structured, but we do really struggle to see the great
15 confidentiality in the figure itself because, I mean, it is supposed -- I think the
16 thrust of the submission is that what Snap valued GIPHY for by comparison
17 with the 315 million plus that Meta paid, plus certain restricted stock units, is
18 going to give some kind of general insight into the way Snap makes bids or
19 the levels at which Snap makes bids in the market.

20 With respect, we just don't see that. The 142 million was Snap's -- what Snap
21 thought GIPHY was worth, no more, no less. It doesn't give any clue as to
22 what Snap is prepared to pay generally and certainly not what it is able to pay.
23 I mean, it's an enormous company worth tens of billions of dollars. It is
24 obviously able to afford a huge sum for acquisition.

25 THE PRESIDENT: What you are saying is a third party simply having the figures of
26 what Meta paid and what Snap was minded to pay could either say, "Well,

1 there are a variety of reasons for these mismatches. It may be that Meta
2 completely overvalued the entity it was seeking to purchase or vice versa".

3 MR JOWELL: Exactly. They just had a different valuation of the same company. It
4 doesn't give any insight. As for the suggestion that Snap might be interested
5 in buying GIPHY in due course, that's not what they have told the CMA.
6 That's at paragraph 11.156 of the report, where they were asked this by the
7 CMA and they said "No, we are not interested in buying GIPHY". It doesn't
8 help there either. Those are our submissions on the 142 million.

9 The fact they valued it at that amount is important both to ground 3 and also to
10 an extent to ground 1, because it casts some light on the plausibility of the
11 true value of this company and its business.

12 THE PRESIDENT: Can I interrupt there just to gauge, and really for Ms Berridge of
13 the extent of the sensitivity? You don't have a problem, or do you, with the
14 Snap interest in GIPHY being articulated in public?

15 MS BERRIDGE: No. We have no problem with that. That's confidential to date, but
16 it is something we don't argue.

17 THE PRESIDENT: I am grateful. So the question then would be whether one can
18 say the Snap term sheet made reference to a figure that was far lower than
19 that articulated by Meta. One then has to work out whether far lower gives
20 you the sort of protection that reference to 142 million doesn't. What is your
21 client's position on that if we were to in open court refer to the term sheet
22 figure in that sort of way?

23 MS BERRIDGE: Thank you. So to some extent it is quite difficult for us. We haven't
24 had the opportunity of seeing any of the pleadings. So it is quite difficult for us
25 to deal with these issues about how people might want to refer to things. So
26 we don't have instructions on that.

1 The concern that our client has articulated to us is the comparison. Obviously the
2 concern is blunted a little if the comparison is made in general terms, far
3 lower, and the numbers are not put into the public domain. I think we would
4 say the concern remains, because it is the comparison that has caused the
5 issue.

6 THE PRESIDENT: Yes, I understand. I am very grateful. Thank you.

7 MR JOWELL: So you have our submissions on that point and we do think that
8 there's not much to be gained from saying whether it is far lower or 100 to
9 150 million, which is how it is -- or indeed if one gives the precise amount, but
10 actually it is quite important to our case that it was a precise amount, because
11 one of the points we make is that you wouldn't arrive at a precise amount like
12 that without valuing the different aspects of the business, including the paid
13 alignment business.

14 One of the points we wish to make is that the CMA didn't make enquiries in that
15 regard, because it never sought to find out from Snap whether it had placed
16 any value on the paid alignment business. That we say is an enquiry it should
17 have made and any reasonable regulator would have made and it didn't.

18 So it is quite important for us to be able to articulate that point in public to be able to
19 refer to the actual figure of 142 million. At present we can't. So we leave it
20 with you, Mr Chairman, whether that will be dealt with in closed session or
21 whether we are able to make that public.

22 We don't insist on the admission of an in-house lawyer from Meta on the present
23 occasion. We did raise it in advance in the previous CMC. We didn't push it
24 on that occasion largely for time reasons, but we did reserve our right to raise
25 it at a later date.

26 We do say this, though, which is that if these additional facts, the fact of Snap's

1 acquisition of Gfycat in particular, but also Snap's interest in buying GIPHY,
2 and if you decide also the 142 million, we do think that it is desirable we
3 should be able to tell our client these facts after this hearing or at whatever
4 date or time, Mr Chairman, you decide is appropriate, but our client shouldn't
5 have to hear that for the first time when I open the case on Monday. If the
6 decision is made in principle today that that information will become public, we
7 do say it is appropriate that it should be made public sooner rather than on
8 Monday, if that's possible, or at some date as you, Mr Chairman, think is
9 appropriate between now and Monday, but at least giving us an opportunity to
10 take some instructions, otherwise we are opening the hearing, the client is
11 hearing about this and at that point, you know, we then start receiving
12 representations from our lay client about those issues during the course of the
13 hearing. That does put us in a slightly difficult position.

14 THE PRESIDENT: What exactly do you want?

15 MR JOWELL: We want to be able to tell the fact that Snap has purchased Gfycat,
16 the fact that Snap was interested in buying GIPHY, and, if you decide, the fact
17 that its valuation was 142 million.

18 THE PRESIDENT: Yes, I see. I understand.

19 MR JOWELL: Now it can be at 1 o'clock today or tomorrow or whenever, but it
20 would be desirable in our submission that that information is not first revealed
21 when I open the case on Monday.

22 THE PRESIDENT: Yes. That's very much a timing question, assuming I am, for
23 instance, on the 142 million against Ms Berridge.

24 MR JOWELL: Indeed.

25 THE PRESIDENT: I understand.

26 MR JOWELL: But also in any event on the other two points I think ... (overtalking).

1 THE PRESIDENT: No, indeed. I understand.

2 Ms Berridge, you were going to rise.

3 MS BERRIDGE: Yes, I just wanted to respond on the timing, if I may? I am
4 conscious that Snap is a listed company and has various relationships it
5 needs to manage. We had assumed we would have until next week if you
6 decided that those matters should be in the public domain. It is very much
7 a matter for the Tribunal, but perhaps if you decide that there should be
8 disclosure within Meta, there should be a regime of confidentiality to maintain
9 during this week some protection over that information so that Snap has its
10 own opportunity to decide how that information should come into the public
11 domain.

12 THE PRESIDENT: Well, I think that's fair enough, Mr Jowell.

13 MR JOWELL: Well, I mean, there are two issues really. The one is whether we can
14 use it -- whether it should be publicised, as it were. The other is whether we
15 can take instructions purely for the purpose of the litigation and that wouldn't --

16 THE PRESIDENT: But the two are linked in the sense that if I say that these three
17 matters can be referred to in public, then the cat is out of the bag right away
18 the moment that is said, and the question I think Ms Berridge is saying is if
19 that's going to be the case, then her client has the right of managing, provided
20 it doesn't cramp your opening style, managing how that disclosure is made
21 between now and the day of opening. I think that's right, isn't it, but that
22 doesn't necessarily preclude a limited disclosure before that to a named
23 person within Meta, provided it is absolutely clear that the information can't be
24 further circulated?

25 MR JOWELL: No, indeed.

26 THE PRESIDENT: Until you have made reference to those matters, if you are

1 allowed to, in open court.

2 MR JOWELL: In open court, yes.

3 THE PRESIDENT: Does that square the circle, Ms Berridge? I think it does. Thank
4 you.

5 MR JOWELL: So in that event we will be able to provide the information to a named
6 lawyer within Meta immediately after this hearing, but they will be told that
7 they -- just so we have absolute clarity as to what they can and can't do --
8 they will be able to disclose it within the organisation for the purposes of the
9 litigation but not for other purposes, or they will not be able to disclose it
10 further at all? I think they need to know.

11 THE PRESIDENT: No. I entirely agree. Whatever the outcome, clarity is
12 paramount. One does not want there to be an uncontrolled disclosure.
13 I agree with that.

14 MR JOWELL: The alternative would be, I suppose, to give Snap a short window in
15 which to -- say 48 hours -- two days or whatever in which to disclose the
16 information to the public and then they say on Thursday it would then be in
17 the public domain. That would be another way which would avoid that
18 problem. We are very much in your hands. We want to make sure that those
19 within Meta know exactly what they can and can't do and who they can talk to
20 and for what purposes.

21 THE PRESIDENT: That's helpful, Mr Jowell. Does anyone want to come back
22 further before I make a short ruling on these points? No. I am grateful.

23 (For Ruling, see [2022] CAT 17)

24 THE PRESIDENT: So that is my direction as regards the conduct of the hearing that
25 is shortly to take place. If there's anything in this ruling that is unclear, then
26 I hope the parties will raise it with me so that I can make my thinking plain

1 beyond all doubt, because the one thing I don't want to have happen is for
2 there to be any misunderstanding as to what can and cannot be disclosed
3 from now on and more particularly in the substantive hearing that is shortly to
4 come.

5 MR JOWELL: One point, Mr Chairman, if I may. Ms Berridge referred to a figure of
6 400 million paid by Meta for GIPHY. That's not quite accurate. It is actually
7 315 million, plus an amount in respect of what are called restricted stock units,
8 which are not -- which can't really be equated to the same as consideration for
9 the company. They are effectively stock amounts that may or may not accrue
10 to employees, depending on various conditions. So in terms of Meta's
11 purchase price we think it is important that it should stipulate 315, plus
12 a confidential amount in respect of RSUs, if that's ...

13 THE PRESIDENT: For my part, that seems to me to be entirely fine for the open
14 process. Obviously how I treat the matter in the judgment that comes will
15 depend on the nuance that I have no grip of at the moment. So what we are
16 talking about here is really the shorthand that we are using in open court, and
17 if it is going to be 142 million versus 315, plus associated rights, then I have
18 no issue with that.

19 I don't know, Mr Jones, whether that is something you have a problem with. I make
20 clear that if we are saying 315, plus associated rights, that may end up as
21 a value of 400 or it may not. I really couldn't say.

22 MR JONES: Sir, we don't have a problem with that.

23 I do have three short practical matters to raise, if I could.

24 THE PRESIDENT: Of course.

25 Mr Jowell, had you finished before we ...

26 MR JOWELL: Yes, on that.

1 There is one further point I should mention -- I will just take this opportunity to
2 mention, but I don't need to mention it now. I don't want to interrupt Mr Jones.

3 THE PRESIDENT: Well, we will come to that.

4 Yes, Mr Jones.

5 MR JONES: Firstly, this really is a very minor point, but just thinking ahead to the
6 bundles -- and I showed you the way that these redactions are being
7 unwound -- can I suggest that our solicitor teams liaise to see whether these
8 new liftings can be done quickly to the bundles? I hope they can, but, of
9 course, the later it is left, the more difficult it becomes to prepare for the
10 hearing. So --

11 THE PRESIDENT: Mr Jones, I think if you can do this quickly, then obviously it
12 makes sense to do it, but I don't think that you should be wasting more than
13 an hour on this. We know where we stand. If you can't do the redactions
14 quickly, then I think your team probably have better things to do than chasing
15 down the lifting of redactions, which I have already ruled on.

16 MR JONES: I am very grateful for that indication, Sir.

17 The second point is an open justice point, which is, Sir, I apprehend from the
18 decision in the end that your ruling can be made public, not this week, of
19 course, but I only mention that, because that would be very helpful I think for
20 future similar hearings. So I just wanted to float that.

21 THE PRESIDENT: No, that's helpful. I mean, I hope -- I will look at it when the
22 transcript is produced, but I would anticipate, given the way I have framed
23 things, though I will check very carefully, that the ruling can be made public,
24 and that is my thinking, but thank you for the clarification. I will obviously
25 make sure that a draft is circulated so that, if I have inadvertently misspoken
26 on anything that is sensitive, that is cured.

1 MR JONES: I am grateful.

2 Then, thirdly, Sir, there is one point of clarification. There was discussion of
3 an in-house lawyer from Meta being added --

4 THE PRESIDENT: Yes.

5 MR JONES: -- but then, Sir, I think when you described it in your ruling, you simply
6 referred to a named person. So we were simply looking for clarification.

7 Could it be anyone or did you intend to limit it to an in-house lawyer?

8 THE PRESIDENT: To be clear, I am not extending the confidentiality ring. All I am
9 doing is indicating to Mr Jowell that there is an ability in him to, as it were,
10 anticipate the fireworks of his opening submissions by disclosing to someone
11 the three matters which I have decided can migrate from the putatively
12 confidential to the public.

13 Now, for my part, I can't see any reason why it shouldn't be any person that
14 Mr Jowell chooses, provided that person understands the fact that these
15 things are confidential between now and the opening, because I do want
16 Ms Berridge's clients to have the ability to frame how this information is
17 released.

18 Now if anyone has a concern that a non-lawyer might not be able to grasp that, then
19 I am all ears. It may be, Mr Jowell, you can short-circuit this by indicating that
20 it will be a lawyer in Meta, but I am really quite agnostic about that at the
21 moment.

22 MR JONES: Sir, could I just take instructions for one second? I see they are
23 coming to me.

24 THE PRESIDENT: That's absolutely fine. Mr Jowell can do the same.

25 MR JONES: Sir, the instructions are we don't have a view either way. We were
26 raising it simply for clarification.

1 THE PRESIDENT: I am very grateful. Ms Berridge may have a view. I see she is
2 taking instructions.

3 MR JOWELL: It will be an American lawyer.

4 THE PRESIDENT: Very good.

5 Ms Berridge, is that a problem?

6 MS BERRIDGE: Apologies. I was taking instructions on a different matter.

7 THE PRESIDENT: Very good. The point was simply whether the identity of the
8 person to whom the three matters that I have ruled will migrate into the public
9 domain should or should not be a lawyer. The question is probably academic
10 now, because Mr Jowell has indicated that it is going to be an American
11 lawyer who will be informed, and he will also be told that he is the only person
12 to receive this information and he or she must not pass it on to anyone else
13 between now and, I make clear, the public opening that Mr Jowell will be
14 making when this hearing starts.

15 MS BERRIDGE: Thank you. Yes, we are very content with that. Would it be a good
16 time to raise (inaudible)?

17 THE PRESIDENT: Yes, of course, absolutely. I think it is your turn.

18 MS BERRIDGE: Just in relation to this number 142 million, our client may perceive
19 a difference between mentioning that number in open court, which may or
20 may not have a large number of avid watchers on the live stream, and placing
21 it in the judgment. So we leave with you that if it is possible to refer to that
22 elliptically in the decision, that would be our preference, even if it has been
23 mentioned in open court.

24 THE PRESIDENT: Yes, I see. Well, I don't think I can make any commitments one
25 way or the other as to how things will appear in the judgment. What I can say
26 I think, though, is that we probably ought to be saying it is circa 142 million

1 and circa 315, plus other rights, because the fact is the bottom line value is
2 always going to be dependent on the precise terms of any offer to buy, and
3 those are, as I have ruled, going to be confidential. So perhaps that is
4 a nomenclature we can use.

5 MR JOWELL: The difficulty with that is, as I said, one of the points we make is that it
6 is a very precise figure, which suggests that it was arrived at by adding things
7 up in a valuation, and so I am not sure I can make that point if I say "circa
8 142".

9 THE PRESIDENT: Fair enough. So it is going to be 142 million --

10 MR JOWELL: Yes.

11 THE PRESIDENT: -- and 315 million, plus additional rights.

12 MR JOWELL: Yes, it is.

13 THE PRESIDENT: Okay. All right. Well, that's clear in any event.

14 MR JOWELL: I am grateful.

15 THE PRESIDENT: How I describe it in the judgment, though, is a matter which will
16 be for further consideration later on.

17 MR JOWELL: Of course.

18 There is one point, Mr Chairman, while we are all here, which I think I should
19 mention so that no-one is taken by surprise.

20 THE PRESIDENT: Yes, Mr Jowell.

21 MR JOWELL: That is in preparing for the opening I apprehend -- it is quite difficult to
22 actually find in one place the information that we say we ought to have been
23 consulted on, the excised material and also the information -- the changes
24 that were made to the decision that we say are important after the group
25 signed off.

26 What we are preparing are three tables of what we say are the key examples that we

1 rely on of the failures to consult, the information that was not provided to us
2 during the consultation process, the key examples of the excisions and the
3 twelve examples of the changes that we identify in our application that were
4 made after the group signed off.

5 What we intend to provide are tables to the Tribunal that don't contain any advocacy,
6 but just simply set out so that you can see the points that we rely on with
7 a text side by side. We hope to be able to circulate those in the next few
8 days. They are not intended to be contentious in any way, although, of
9 course, once the CMA see them, they may have some comments. We
10 genuinely doubt it, but I just wanted to flag that we intend to circulate those
11 documents and then to refer to them by way of assistance during the hearing,
12 just so that the information is there all in one place, as it were.

13 MR JONES: Sir, I am happy to hear that they shouldn't be contentious.

14 I only rise to make this point, which is ground 4 is rather complicated, because there
15 are a lot of strands and a lot of complaints are made, and similarly in 4A there
16 are a lot of different complaints. So there is a challenge both for Mr Jowell --
17 I understand that -- and also for the CMA responding to all of this in a way
18 which is accessible but also comprehensive.

19 The way in which those two grounds 4A and 4B, (a) and (b) in particular, were
20 presented in the skeleton argument from Meta was a bit different to how they
21 have been put in the grounds. They have ordered the points differently. Now
22 I don't criticise that. We responded in our skeleton to the way that it had been
23 presented in Meta's.

24 I am only rising now to make a plea in light of what Mr Jowell has just said, which is
25 that it would be extremely helpful that these tables and then the way it is
26 presented at the hearing matches the way in which it was presented I expect

1 most recently in the skeleton or perhaps going back to the grounds, but it will
2 be difficult for us to join issue on all of these points in a way which is
3 accessible if there is another way of putting them which we hear for the first
4 time at the hearing. So, Sir, obviously it is for Mr Jowell to present his case,
5 but I simply thought I would mention that comment on making ground 4
6 manageable.

7 THE PRESIDENT: Thank you, Mr Jones.

8 MR JOWELL: We will bear that in mind. I think these are really more elementary
9 than that. They are simply the text on which we were not consulted, the text
10 that is excised and the changes. It is just to be able to see those core
11 elements of those grounds in a way that is accessible to the Tribunal.

12 THE PRESIDENT: Forewarned is forearmed. You have given Mr Jones the
13 opportunity to put a marker down, and I don't think I can sensibly or
14 appropriately say anything more than what I have heard in court. So thank
15 you for the indication and thank you for the marker.

16 Thank you all very much. I just think there are two points that I should raise by way
17 of I think clarification more than anything else -- perhaps three points.

18 One is that I don't know whether any of the intervenors will be present in court.
19 I have certainly not given permission for them to address the Tribunal orally,
20 but that is not to say that they can't be here, and they may well wish to, but my
21 understanding of the process is that, come the private sessions, the
22 intervenors will be out rather than in, and we propose to tell them that when
23 we inform all of the parties, not just the parties before the court, as to what is
24 planned.

25 I just wanted to raise that to make sure that there was no divergence of views at
26 least amongst the persons here and I see from the nodding that there is not.

1 So that is what we will do. Of course, if the intervenors wish to protest that,
2 then they will be heard, but that is my present thinking.

3 Secondly, we have discussed Snap's insertion of persons into the confidentiality ring.

4 To be clear, I think those should be only external legal advisers for reasons
5 that are obvious, and I can't see any particular prejudice there, but I think one
6 barrister, one solicitor ought to be enough. I am sure you will be reasonable
7 about this if there needs to be more, but that is what I would envisage in terms
8 of insertion.

9 I don't know whether in light of that Snap is interested in attending or not. I can see
10 some advantage in terms of understanding the way arguments are going
11 when reviewing the judgment of Snap being present. It is obviously a matter
12 only for Snap whether they want to be present, but I thought I would raise the
13 question of their presence if they desired it now so that we could at least see if
14 there were any concerns about that. So it would be one solicitor, one barrister
15 maximally in the hearing if Snap wanted it, but including the private session,
16 and I just wanted to test the waters if that was something of which Snap
17 wanted to avail itself.

18 Mr Jowell, is there any problem with that?

19 MR JOWELL: The only problem would be if Snap were to seek to intervene in the
20 oral argument.

21 THE PRESIDENT: It will not be that. It will be purely and simply to observe. I quite
22 understand that the costs might well make that prohibitive. Ms Berridge, I am
23 not saying you should be there. I am simply saying if you want to be, then
24 I will smooth the path.

25 Mr Jones, is there any is problem from the CMA's point of view in that, as it were,
26 facultative offer?

1 MR JONES: No, I don't think so.

2 THE PRESIDENT: Ms Berridge, you don't need to say anything if you don't want to.

3 MS BERRIDGE: Just to say we don't have instructions about attendance. So I am
4 grateful for the indications that were made.

5 THE PRESIDENT: Indeed. So if you are present on an observer only basis, then
6 you will be very welcome, but don't feel obliged to take up the invitation. You
7 may very well have better things to do. I quite understand that, if that were
8 the case.

9 Finally, I have in my room ten delightfully organised bundles. I know that there are
10 going to be changes to the markings in those bundles. Does that matter?
11 I mean, I don't particularly need to have them updated, because I imagine that
12 they will have an inhibitory effect on me rather than expansive effect in terms
13 of confidential information, but I don't know, Mr Jones, whether they need to
14 be changed out or pages changed out.

15 MR JONES: Firstly, I am hopeful that any changes will be minimal. So we are going
16 to try to replace pages rather than whole documents where that is possible.
17 The reason it may be helpful to you, Sir, is in particular looking forward to the
18 judgment, because having a set of documents which shows you --

19 THE PRESIDENT: You are right. I will leave it in your hands, but clearly do speak
20 to Registry if you need the Tribunal's assistance to do that updating, and we
21 will try our best to accommodate you.

22 MR JONES: I am very grateful.

23 THE PRESIDENT: That was one point where electronic bundles are superior to
24 paper bundles, but I will I think be working from the paper bundles.

25 MR JONES: I am grateful.

26 THE PRESIDENT: Well, thank you all very much. I am greatly obliged. Is there any

1 other points of housekeeping that we ought to air now, recognising that we
2 are not complete in terms of representation?

3 MR JOWELL: Not from our point of view.

4 Forgive me. One point is this. No mention has been made of GIPHY itself, which,
5 although, of course, owned by Meta, is separately represented and subject to
6 a whole separate ...

7 It may be in due course that the judgment should be circulated to GIPHY as well for
8 the purposes of it checking its confidential information or making
9 representations. It is really in a way premature, but I just put that marker
10 down.

11 THE PRESIDENT: That's a fair point. I think it is useful to have that as a marker.
12 We will bear that in mind I think at the end of the hearing rather than the
13 beginning, but, Mr Jones, Mr Jowell, if you don't let me forget, that will be very
14 helpful.

15 MR JOWELL: Of course. From our point of view there is nothing further. Thank
16 you, Mr Chairman.

17 THE PRESIDENT: Mr Jones, any more?

18 MR JONES: No. I am grateful.

19 THE PRESIDENT: Well, thank you all very much. These are not easy matters and
20 I am very grateful for the assistance that everyone has provided. Thank you
21 very much. I will adjourn now. Thank you.

22 (12.05 pm)

23 **(Hearing concluded)**

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