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IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos. 1248/5/7/16

Victoria House,
Bloomsbury Place,
London WC1A 2EB

27 March 2018

Before:

THE HONOURABLE MR JUSTICE GREEN

(Chairman)

SIMON HOLMES

DR WILLIAM BISHOP

(Sitting as a Tribunal in England and Wales)

BETWEEN:

PEUGEOT SA & OTHERS

Claimants

- and -

NSK LIMITED & OTHERS

Defendants

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PRE-TRIAL REVIEW

A P P E A R A N C E S

Mr Thomas de la Mare QC and Mr Tristan Jones (instructed by Hausfeld & Co LLP) appeared on behalf of the Claimant.

Mr Tony Singla and Miss Emma Mockford (instructed by White & Case LLP) appeared on behalf of the Defendant NTN Corporation.

Mr Josh Holmes QC and Mr James Bourke (instructed by Macfarlanes LLP) appeared on behalf of the Defendant AB SKF.

1 THE CHAIRMAN: Yes, Mr de la Mare.

2 MR DE LA MARE: Sir, I have six topics on my list. I think five are as between all three of us,
3 and one is private grief between me and Mr Singla and our respective clients, which is the
4 left over costs issue. There is no doubt that the chunkiest issue on the agenda is the issue of
5 expert evidence and concurrent expert evidence.

6 THE CHAIRMAN: Yes.

7 MR DE LA MARE: You will see that for once a measure of consensus has broken out in this
8 respect.

9 THE CHAIRMAN: That's very worrying!

10 MR DE LA MARE: Yes. We want the Tribunal to do all the work!

11 THE CHAIRMAN: I can assure you we may have different views on that!

12 MR DE LA MARE: You may indeed! The reason for our position is very simply this: the expert
13 evidence is at the core of this case, I think we're all agreed.

14 THE CHAIRMAN: Yes.

15 MR DE LA MARE: There are two sets of expert evidence with two rival models. It's a case of,
16 effectively, a battle of the models in many respects that have generated a number of
17 headline topics and sub-issues of really quite considerable complexity. We think that those
18 issues play to the particular strengths of this Tribunal, its expertise, in particular its
19 economic expertise, and the experience of the, by our count, six major cases in which
20 concurrent expert evidence----

21 THE CHAIRMAN: Would it help you if we expressed a very provisional and tentative view?

22 MR DE LA MARE: It would, of course.

23 THE CHAIRMAN: Just taking this issue as perhaps a starting point, we're are inclined to go
24 down the hot tubbing route. We think that, stripped to its bare essentials, there are three big
25 issues. One can describe them, if you like, as the baseline issue which is volume; you've
26 then got the overcharge issue, which is the multiplier; and then you've got the discount,
27 which is pass on. Within those three broad issues there are a series of factual disputes. We
28 can see the benefit of dividing the expert process into those three very broad categories with
29 cross-examination to follow each. We think they're sufficiently separate that you could do
30 expert focused cross-examination, so three different - we think. That's our provisional
31 view, that they're sufficiently different, these topics, that it would work. There may be
32 some cross-over which we can accommodate, but we can see the force of there being some
33 sort of hot tubbing exercise.

34 Let me just finish, and then you can tell me why I'm wrong.

1 MR DE LA MARE: Never!

2 THE CHAIRMAN: We can see the benefit of setting aside possibly an entire week for experts.
3 Our general view is that the experts seem to be more important than the witnesses of fact.

4 MR DE LA MARE: Yes.

5 THE CHAIRMAN: And we want to discuss with you whether the division of time really reflects
6 that. It may be there are scheduling issues which make the timetable as it is, but we think
7 possibly that we might set aside up to five days for the experts with gaps between so that
8 people can take breath, prepare cross-examination, allow cogitation periods for us and for
9 you. It may be that if that is the focus of the case, the expert evidence, then it may be
10 sensible to slightly readjust that process.

11 MR DE LA MARE: Yes.

12 THE CHAIRMAN: We think that for the purpose - again, it's highly provisional - of preparing
13 for that, we would like the parties to produce a very - "VERY" in capitals and underlined -
14 short agenda.

15 MR DE LA MARE: Not 204 pages then!

16 THE CHAIRMAN: Not 204 pages, something less than 204 pages - for example, one page per
17 area, which simply identifies, if you like, the agenda. We don't want people to worry about
18 how you describe the topic, because we will form our own view of what is relevant and
19 what isn't relevant, but one page, say, for example, steel prices, wage inflation, the
20 differences. That might be the beginning - which dataset, differences between parties. We
21 think that should be done reasonably quickly, because that might then affect the way
22 everybody prepares for trial, and how you structure your submissions. If that's, if you like,
23 the big part of the case and it's the framework, we were contemplating parties producing a
24 draft by the end of next week for us to consider - Friday of next week.

25 MR DE LA MARE: Yes. Well, a couple of immediate comments----

26 THE CHAIRMAN: Don't say yes in that tone of voice. You say yes!

27 MR DE LA MARE: Yes!

28 THE CHAIRMAN: That's better.

29 MR DE LA MARE: That's not how I say it at home, but...

30 THE CHAIRMAN: That's sort of where we're coming from.

31 MR DE LA MARE: I understand.

32 THE CHAIRMAN: I did say short.

33 MR DE LA MARE: I understand, and none of that comes as any great surprise to me, you'll
34 understand, not least given that I suggested it may be sensible to have the experts here. One

1 of the reasons why you do have a 204 page document is that intervention in that WP expert
2 led process is not a proper or wise thing. So your steer is most welcome in the
3 circumstances. I'm sure that the legal teams, now acting in concert with the experts and
4 conveying the message you've just given us very clearly, will be able to produce a
5 document of that ilk. I think we're all keen to do that.

6 THE CHAIRMAN: It's pages of a page.

7 MR DE LA MARE: I understand. My one concern about the three topics that you've identified
8 is this: they are all discrete topics, no doubt about that, but they are quite non-equivalent it
9 seems to me in terms of the number and weight and importance of issues that go to them.
10 On my understanding of the expert evidence, in reality the issues going to the question of
11 volume are really very limited. To a substantial degree they also go to which model does
12 the data go into? Does it go into the new contracts model or does it go into the amendments
13 model?

14 THE CHAIRMAN: Yes.

15 MR DE LA MARE: And then there are some almost qualitative issues about whether tendering
16 and the existence of tendering is enough to categorise the contractors to go into the new
17 contract model?

18 THE CHAIRMAN: Yes, we've seen that. They don't have to be three equal parts.

19 MR DE LA MARE: The point I'm making is that the issues arising in relation to volume are
20 pretty modest, I think. The issues arising in relation to overcharge are really 90 per cent, or
21 85 per cent of the case on the expert evidence. Then the economic issues in relation to pass
22 on are reasonably sizeable in and of their own right, but then have to be seen through the
23 lens of the law as it currently stands. So that brings certain complications with it.
24 That said, and speaking for myself, I can see the sense of breaking up the issues
25 thematically like that; and, of course, organisation of cross-examination to follow after the
26 hot tubbing on that particular issue is perfectly possible, perfectly sensible, and makes
27 everything more digestible and less of an Olympian task for everyone concerned. It gives
28 everyone pauses at various stages along the way.

29 THE CHAIRMAN: The reason why we think maybe spreading it over five days is that you might
30 all wish a bit of time after each hot tubbing session to prepare cross-examination.

31 MR DE LA MARE: Yes, and you'll have seen in our skeleton argument that we've also
32 suggested in particular that experts need to be formally released so that they can go and
33 discuss the implication of the hot tub with their teams, etc. That applies to both sets of
34 experts.

1 THE CHAIRMAN: Yes.

2 MR DE LA MARE: The three questions we've identified in our skeleton, it sounds like whether
3 or not to use concurrent expert evidence, we're all sold on that.

4 THE CHAIRMAN: Yes.

5 MR DE LA MARE: Which topics? It sounds like there is a measure of consensus, so that it
6 really is all of the expert reports. That's seems to be agreed. Then there's the question of
7 which limitations, or what limitations to apply. You've seen our position and I think the
8 defendants agree with it pretty much without reservation, that it's really a question for the
9 Tribunal to maintain balance between the parties. Just because they have two experts,
10 because there are two defendants, it doesn't mean they get twice the air time.

11 THE CHAIRMAN: No.

12 MR DE LA MARE: But then again, it may be a particular line of questioning calls for focus upon
13 either the claimants' experts or the defendants' experts, and that would be up to the
14 Tribunal's judgment and fairness can be maintained.

15 THE CHAIRMAN: I think that's a running process.

16 MR DE LA MARE: It is, yes.

17 THE CHAIRMAN: And we would expect all parties to avoid duplication. If the first defendant's
18 experts have dealt with something, the second one may have something to add, but it would
19 be short.

20 MR DE LA MARE: Yes. The one slight area of friction between me and the defendants' teams
21 is our suggestion that they should try to identify a lead expert on any particular topic, and
22 they've said that's an excessive constraint. I'm totally willing to accept that, but I think
23 what would be helpful is that if some effort is made in some areas, to work out which of the
24 two defendant experts is taking more of a lead, perhaps in terms of then identifying who's
25 going to be answering the questions first, with the understanding in the hot tub being that
26 the second expert who speaks on any particular topic from the defence side doesn't then
27 regurgitate and rehash----

28 THE CHAIRMAN: We have a process of boiling down this exercise into a truncated agenda.
29 I suspect it will naturally follow that one of the defendants' experts will lead - it may be a
30 natural evolutionary process which emerges.

31 MR DE LA MARE: Yes.

32 THE CHAIRMAN: But our instruction will be that we expect economy and efficiency and we
33 will avoid duplication.

1 MR S HOLMES: We saw the beginnings of that in the experts' memorandum where, *de facto*,
2 one of the defendants' experts tended to comment and the others agreed or disagreed.

3 MR DE LA MARE: Yes, there is the beginnings of that, and I think as long as the experts are
4 told, the obligation is just as much on you not to duplicate what the other is saying and to
5 work out where you're adding value----

6 THE CHAIRMAN: We'll control that.

7 MR DE LA MARE: I don't seek any formal rules. It's just an indication of the kind of problem
8 arising.

9 THE CHAIRMAN: No one has mentioned it, but we're not averse to the experts having a five or
10 a ten minute intro on each topic just to set the scene.

11 MR DE LA MARE: Yes.

12 THE CHAIRMAN: Again, we're reasonably flexible, we want people's ideas so that this is a
13 constructive exercise.

14 MR DE LA MARE: Yes. How do you want to play the agenda for this CMC? Shall we deal
15 with it, as we're going to have to get used to it, topic by topic and let everyone have their
16 three-penny worth on----

17 THE CHAIRMAN: It did seem to us that deciding the question of hot tubbing was really key to
18 everything.

19 MR DE LA MARE: Yes.

20 THE CHAIRMAN: Let me just make sure that Mr Holmes and Mr Singla are in agreement with
21 this process. Let me take their views on that and we'll then catch up.

22 MR HOLMES: Sir, I can be brief: the idea of dividing up the expert evidence into three chunks
23 seems eminently sensible to us as a way of organising the expert evidence.

24 We also think that an agenda would be a helpful document. As we understand you, what
25 you have in mind is a set of broad heading - in other words, not a discussion of the areas of
26 agreement or disagreement in order to boil down the joint memorandum, but rather just
27 some broad headings to give structure.

28 As regards time, we fully agree that time is needed between the sessions to ensure that the
29 cross-examination is a helpful supplement to the discussion which has gone before.

30 As regards balance, we hear what the Tribunal says and, for our part, we are confident that
31 the Tribunal will be well able to ensure an appropriate division of time. In any event, based
32 on past experience, it's very difficult for two defendants' experts simply to repeat one
33 another in succession. It just doesn't work in the hot tub setting.

34 So I think there's a breakdown of entire agreement from our side of the Bar,

1 THE CHAIRMAN: Yes, Mr Singla?

2 MR SINGLA: Sir, we would also be happy with that. Could I just make two suggestions in
3 relation to the list of topics for the agenda? Obviously you mentioned a page per topic, but
4 it would seem to me at least that it might make more sense to have the overcharge topic split
5 into the RFQ and the APR issues, and for those to be dealt with actually as separate topics.
6 Also, I would tentatively suggest the addition of a fourth or fifth topic, which would be the
7 qualitative assessment which the experts have covered in some detail, both as regards the
8 overcharge issues and indeed the pass on issues. So it may well make sense for there to be a
9 separate section dealing with theory of harm, and so on.

10 Subject to those points, sir, we adopt the proposal and we are grateful for that.

11 THE CHAIRMAN: Let's just take those in stages. So far as the overcharge is concerned, if the
12 parties think that dividing it between the two types of tender process has practical value for
13 us then I'm sure we will be led by that, and I think it's a matter for you to decide how you
14 do it. If you want to divide overcharge into overcharge A and overcharge B, if you think it
15 works then...

16 MR SINGLA: I think that would naturally follow the way in which the reports have been
17 produced, and really I think this goes to the length of the document, and the weighting point
18 which Mr. de la Mare made. I think, given the way in which each of the experts has dealt
19 with matters, it would make sense for there to be a page, say----

20 THE CHAIRMAN: My instinct is we would leave that one to you.

21 MR S. HOLMES: The only comment I would make is that I can see that both - I can see how
22 your report is divided up. Within each of those sections there was a whole section on data
23 and model specification and then data and model specification. I think what we would wish
24 to avoid is that we had over-duplication on those two subjects. So if you did divide them up
25 within overcharge, my instinct is that one would have cross-examination after the two
26 sections have both been covered.

27 MR SINGLA: I think, with respect, there are, for example, dataset issues which arise separately
28 in relation to the RFQ and the APR issues, and it would seem to me at least - and obviously
29 Mr Hilton and Mr de la Mare will make their position clear - but it would seem to me that
30 within overcharge one could have a section on RFQ effects and then the dataset or the data
31 issues which relates to the RFQ effects, and then a separate section on APR and the data
32 points and the other points which arise in relation to the APR. It would seem to me to be
33 more logical for the data points to be dealt with on a topic by topic basis rather than have a

1 free-standing topic which is data across. There are separate data points which arise, for
2 example, in relation to pass on and overcharge.

3 If one, for example, were to take the structure of Mr Holt's report, which has formed the
4 basis - I'm just looking at the contents page of the joint memo - it would seem to me that
5 one would have a volume section that could be a short one, an overcharge RFQ effects
6 sections, an overcharge APR effects section, a pass on section and then a qualitative
7 assessment section. So that would make the list of topics longer, but it would actually be,
8 I think, more useful as a tool for the hot tubbing.

9 THE CHAIRMAN: I think we're going to leave this one to you for the moment. If there is
10 serious disagreement and we feel we have to decide it then we will, but you are much
11 further up the learning curve than we are at the moment in terms of understanding
12 implications of the detail.

13 MR SINGLA: With the benefit of having spent the last few weeks buried in these reports, those
14 would be my tentative suggestions as to how this would work.

15 THE CHAIRMAN: Are you expecting sympathy as a result!

16 MR SINGLA: Never sympathy from the Bench! I think I'm just really laying down a marker
17 that there's a danger with over-simplification, and that a three page document with three
18 topics----

19 THE CHAIRMAN: Understood. Can I leave it to the parties to have a go at that one?

20 MR DE LA MARE: Of course you can, Sir, and in principle actually we agree with what
21 Mr Singla says. It sounds very sensible. The data issues are quite distinct as between the
22 two overcharge models and pass on.

23 THE CHAIRMAN: We'll leave that one to you. So far as qualitative review is concerned, we
24 have read - we're slightly puzzled by some of it. Nonetheless, it is part of the defendants'
25 case. The experts may get a bit of a hard time from us on that one, but so be it. If you think
26 there is a session which it's worthwhile having, then again I think if you want to have a
27 fourth session on that so be it.

28 MR DE LA MARE: Qualitative considerations was one area that we had suggested might be the
29 subject of just simple conventional cross-examination.

30 THE CHAIRMAN: But it may just be a short... It's part of the defendants' case, so-----

31 MR DE LA MARE: Just to correct that notion, Sir, Mr Holt, [*inaudible*] is on pass on, but the
32 quantitative effects show there was pass on, but it all turns on his qualitative assessment.
33 I think we just need to be careful about saying it's all the defendants' evidence and it won't
34 go very far.

1 THE CHAIRMAN: That part of the analysis would go into the pass on section.

2 MR DE LA MARE: Yes, indeed, there would be a qualitative aspect to the pass on analysis, but
3 qualitative aspects have featured in all of the experts' report.

4 THE CHAIRMAN: Understood. Again, I think, instinctively, we have to leave that to you.
5 We're going to assume that you can work out what is going to make life most easy for us.

6 MR DE LA MARE: Well, I can't see any reason to depart from the qualitative structure, the topic
7 based structure, but it may be that in that respect the Tribunal's questioning is quite light
8 and we leave questions to cross-examination in the conventional fashion.

9 THE CHAIRMAN: Or submissions.

10 MR DE LA MARE: Or submissions, indeed.
11 The only other topic I wanted to raise in this connection was the question of duplication of
12 questioning by the claimants. You've seen in our skeleton argument that we suggest that
13 shouldn't in the conventional cross-examination phase have to put our case to each of the
14 witnesses.

15 THE CHAIRMAN: In other words, the implication is that you won't be criticised by us in
16 closing if you haven't put your full case to each witness?

17 MR DE LA MARE: Yes, exactly. We're going to choose which of the witnesses to put the case
18 to and how to put it in the light of what's happened in the hot tub.

19 THE CHAIRMAN: Yes, it will be for us to decide whether or not a witness has been properly
20 cross-examined on an issue, or an issue has been properly aired?

21 MR DE LA MARE: That's the question: has the issue been properly aired, as opposed to----

22 THE CHAIRMAN: Quite, has the witness been properly aired?

23 MR DE LA MARE: Exactly, Sir, and I think my learned friends are agreed that's a perfectly
24 sensible way to approach it once you down the CCE route.

25 THE CHAIRMAN: Absolutely, as it follows.

26 MR DE LA MARE: We will go away and do what you have bid us to do.

27 THE CHAIRMAN: But we do need it short. Don't get too hung up about titles. We will form
28 our own views about the relevance of individual topics, and so on. The titles, the headings,
29 the questions and the topics really don't add up to a great----

30 MR DE LA MARE: We've got the message, promise.

31 THE CHAIRMAN: If that's then the key to this, thinking it through, reassess timetable, please:
32 how much time do we need with proper gaps between the various sections to deal with this?

1 MR DE LA MARE: We provided for four days with a reserve day for expert evidence in any
2 event, so that's the full week. There are some spare days floating around in the previous
3 week.

4 THE CHAIRMAN: We have some difficulties. We may have difficulties on the 9th and possibly
5 10th May.

6 MR DE LA MARE: Right.

7 THE CHAIRMAN: At the moment, looking at the amount of time set down for the cross-
8 examination of witnesses of fact, we think that's extremely generous, and our instinct was
9 that the amount of time for the experts was quite tight. I really wondered - maybe you've
10 got scheduling problems for the witnesses of fact.

11 MR DE LA MARE: We have got some scheduling problems, but we're simply going to
12 effectively the best indications the defendants can give us and we can give the defendants as
13 to how long we will take for the evidence. I can talk you through the scheduling that we've
14 proposed. There are some witness availabilityMr Jaouen. He has pretty strong personal---

15 THE CHAIRMAN: 2nd and 3rd May?

16 MR DE LA MARE: He can't do it before the 2nd.

17 THE CHAIRMAN: Again, we can interpose if necessary to increase flexibility.

18 MR DE LA MARE: What we hoped to do is to get Mr Baralle and Mr Laxenaire away on the
19 10th. Baralle is one of the witnesses for whom an interpreter is going to be required. We'll
20 come back to the issue of interpretation in a second.

21 Mr Gautier can then appear on the 30th. We have problems on our side for witness
22 availability on 1st May, which is a Bank Holiday in France. They stick to the actual May
23 Day itself, rather than the first Monday of the month of May.

24 THE CHAIRMAN: Yes.

25 MR DE LA MARE: And PSA is finding it very, very difficult indeed to get more junior
26 employees to be available on that day. That's why Mr Gautier's evidence might spill over
27 into that day, but, in principle, that day is going to be free.

28 Then we have the two big purchasing witnesses whom the defendants have indicated
29 between them they want a day and a half - in the order of a day and a half for each of those.

30 THE CHAIRMAN: This is Mr Jaouen and Mr Mahieu?

31 MR DE LA MARE: Yes. Mr Mahieu presents his own difficulties. You'll have seen his original
32 statement was in French. It's been translated. He is going to need an interpreter. That's
33 why he's been highlighted. Mr Singla has raised some concerns about the time available
34 and the use of concurrent versus consecutive translation in relation to that. We propose

1 having the ordinary interpreter system, where the witness speaks, it's then interpreted and
2 then the parties' questions interpreted, etc. That's how outside those tribunals that are able
3 to organise simultaneous interpretation it's often run. We can come back to that issue. One
4 of Mr Singla's entirely proper concerns is that may slow down the process, and the time
5 available, he thinks, for Mr Mahieu, a day and a half, could be very tight if there is the
6 constraint of interpretation that way.

7 Then the next week we get into the defendants' witnesses. Mr Lefevre is also going to need
8 an interpreter, but, notwithstanding that, we're comfortable that we'll be able to deal with
9 him within a day or less. Then we've got three witnesses lined up for the 9th and 10th.

10 THE CHAIRMAN: Yes, this is where we may have some difficulties.

11 MR DE LA MARE: Yes, being candid, it's likely that we'll get through that evidence in
12 somewhere between a day and a day and a half. Konrad and Clomen are quite small
13 witnesses. Mr Pezzetta is a modest witness introduced in reply only, but whose evidence is
14 effectively to reinforce Miss D'Inca's evidence. It may be that we could bump that to the
15 10th May, with a limited overspill to the morning of 11th May.

16 THE CHAIRMAN: Those are - between us, on the Panel, we have difficulties on certainly the
17 Wednesday. If it were possible it may be desirable to avoid the 10th. If it's going to cause
18 insuperable scheduling problems we'll try and work round that.

19 MR HOLMES: Sir, if it assists, we can certainly make enquiries and try to move those three
20 witnesses, which are all SKF witnesses, to 11th May, but it depends a little on whether
21 Mr de la Mare thinks that that would allow him enough time. I think he said a day to a day
22 and a half.

23 MR DE LA MARE: If we sat, if necessary, early and late on the 11th, that may solve the problem.

24 THE CHAIRMAN: Dr Bishop's issue is that he has a difficulty on both the 10th and 11th. We're
25 either using them or we're not using them at all.

26 MR DE LA MARE: You mentioned a difficulty on the 9th as well?

27 THE CHAIRMAN: Yes.

28 DR BISHOP: It's not imperative. It's a 'nice to have', not a 'must have'. Is it the case that these
29 witnesses need to be scheduled - let's suppose we were to find that in the previous week it
30 took much less time than we had supposed - I suppose it might - and there were days
31 available, such as 3rd and 4th May, would it be possible to have those witnesses come
32 forward?

33 MR DE LA MARE: I think that's a question for Mr Holmes, to be fair, Sir.

1 MR HOLMES: Sir, the difficulty is that these witnesses are travelling from Germany and from
2 France, so there are certain logistical limitations on their availability. It's not simply a
3 matter of a short train ride. I can't tell you here and now whether those days would work
4 for them, but we can certainly make enquiries.

5 THE CHAIRMAN: We will leave this one flexible. Can you make enquiries? If we have to,
6 Dr Bishop may be able to get away on the evening of the Thursday. That would be
7 preferable for him, rather than having to do the Friday.

8 MR HOLMES: Understood. So it would be preferable to use the 10th May, but not the 9th or the
9 11th?

10 THE CHAIRMAN: If that's what it boils down then we'd use the 10th.

11 DR BISHOP: The 10th rather than the 11th.

12 THE CHAIRMAN: The 10th rather than the 11th.

13 MR HOLMES: Very good. We've heard the Tribunal's position. Perhaps the parties should take
14 this away and see what can be arranged.

15 THE CHAIRMAN: Yes, thank you very much.

16 MR HOLMES: Again, Sir, we're happy, if it's convenient to you, to start a bit earlier and finish a
17 bit later in order to make time.

18 THE CHAIRMAN: Absolutely, we'll be flexible as to daily timings anyway.

19 MR DE LA MARE: And maybe it's sensible in the meantime for my learned friend as to whether
20 either Mr Konrad or Miss Clomen, who are the two smaller witnesses, could be available on
21 stand-by to plug any gap arising. Mr Pezzetta is a bit more of a chunky task and is likely to
22 have less of a 'Polyfilla' role perhaps than the other two smaller ones.
23 Then Miss D'Inca on the 14th. That's an availability issue. That's the first date I think she
24 can give evidence. So that slot unfortunately dictates itself. So it does interrupt the clear
25 week we'd hoped to have for the expert evidence.

26 THE CHAIRMAN: Yes.

27 MR DE LA MARE: It sounds from what you've been saying, Sir, that there's no potential of
28 taking one of the lighter topics at an earlier 'gappy' day in the schedule.

29 THE CHAIRMAN: When you say a 'lighter topic', you mean a lighter expert topic?

30 MR DE LA MARE: Yes. It probably doesn't make sense to break up the factual and the expert
31 evidence anyway.

32 THE CHAIRMAN: But the risk is that the witnesses of fact say something which the experts will
33 need to take into account.

34 MR DE LA MARE: Yes.

1 THE CHAIRMAN: I think preferably we keep the experts together.

2 MR DE LA MARE: Agreed. So that probably means that any overspill is going to have to go
3 into week 6, and 21st May.

4 THE CHAIRMAN: Yes. We will need to ensure that we do finish on the 25th.

5 MR DE LA MARE: Yes. No pressure back for me on that one!

6 MR HOLMES: Very good. Just to manage the Tribunal's expectations, the timetable for the
7 factual witnesses is undoubtedly leisurely and we expect some of them to go short. On the
8 Friday of week two, for example, those witnesses are quite unlikely to take a full day. It
9 really has been the difficulty of scheduling witnesses coming from other jurisdictions during
10 a period where there are a number of public holidays.

11 THE CHAIRMAN: We understand, and in one sense we will use that time in any event for
12 preparation for the experts. It'll be a rolling process. Our view again is we are way behind
13 you guys in terms of preparation - you know the detail - but it did seem to us that the factual
14 witnesses were far less important than the expert witnesses in overall terms. The issues that
15 they are addressing, we will probably end up having a lot of other evidence to address these
16 as well, like documentary evidence and expert evidence. That's the nature of the beast.
17 So that is the timetable. I mentioned that I had another problem. Part of my duties as a
18 presider mean that I have some public duties which are just unavoidable. I might have a
19 few hours that I have a difficulty on at some point between the 15th and 17th, and I'll just
20 have to tell you nearer the time once I mean.

21 MR HOLMES: Well, Sir, I'm sure we could find a way of accommodating the breaks between
22 sessions in that time.

23 MR DE LA MARE: Again, the expert week, if we need to sit early or sit late, that would be a
24 sensible thing to do.

25 THE CHAIRMAN: Yes.

26 MR DE LA MARE: Particularly if it means we can keep Monday, 21st free to prepare a shorter
27 document. The George Bernard Shaw rule applies with special vigilance at closing
28 submissions: the longer you have, the shorter they are.

29 THE CHAIRMAN: Yes. So that's the timetable.

30 MR DE LA MARE: We're agreed also, with your blessing, on the date for skeleton arguments.

31 THE CHAIRMAN: You're agreed on which date?

32 MR DE LA MARE: The 17th.

33 THE CHAIRMAN: We may not be agreed.

34 MR DE LA MARE: I was checking whether or not you're agreed.

1 THE CHAIRMAN: The date which was originally mooted I think was the 12th.
2 MR DE LA MARE: Yes.
3 THE CHAIRMAN: And is that the date you're suggesting?
4 MR DE LA MARE: No, the 17th.
5 THE CHAIRMAN: We would like it back to the 12th.
6 MR DE LA MARE: Very well.
7 THE CHAIRMAN: Because we would like to have the skeletons for that weekend. We think we
8 will need the Friday plus the weekend to start reading in, and then we can get stuck into the
9 documents in the following week, unless that creates insuperable problems for you all.
10 MR HOLMES: Sir, I don't attempt to horse trade with the Tribunal, it's not for me to negotiate
11 with you, but if the weekend is a particular concern, could we at least consider a date later
12 during the course of the week of the 12th to allow the parties again to apply - I'm not sure, is
13 it the Mark Twain rule, the----
14 MR DE LA MARE: It's George Bernard Shaw.
15 MR HOLMES: Ah, there we are, it's attributed to many different people, the rule that the longer
16 one has the more focused----
17 THE CHAIRMAN: We apply the 1984 rule. The 12th is a Thursday. If you needed until the
18 Friday----
19 MR HOLMES: I think the 12th is a Tuesday. No, it's a Thursday. Very good, I think my point
20 applies only to a single day then. Could we have until the Friday at four?
21 THE CHAIRMAN: From the Tribunal's perspective, they've got to get everything in and then
22 get them to us. I suppose if it's all in email it can be circulated pretty quickly. The general
23 consensus, then Friday at 4 pm.
24 MR HOLMES: I'm grateful.
25 THE CHAIRMAN: So that's the 13th then, is it? Friday, the 13th. That sounds lucky----
26 MR HOLMES: Very good, lucky for some. Thank you, Sir.
27 MR DE LA MARE: Logistics then: we had two topics under the heading of logistics,
28 interpreters and translators.
29 THE CHAIRMAN: Yes.
30 MR DE LA MARE: In relation to interpreters, the issue is whether or not we have simultaneous
31 interpreters or consecutive translation. The problem with interpreters is really twofold. If
32 we're going to have simultaneous interpretation we're going to need to have booths and
33 equipment installed and headphones available for the witnesses and counsel and those
34 listening in on the evidence, and we understand it's going to be considerably more

1 expensive, though there may be some disagreement between us and NTN and SNR, who are
2 the ones requesting in particular that there be simultaneous interpretation. So there's a costs
3 consideration and a logistics consideration. In relation to Mr Baralle----

4 THE CHAIRMAN: Is it possible, is it feasible? How would it work in practice?

5 MR DE LA MARE: I don't know if there's been any experience of setting one of those booths in
6 one of these courts. I can't see why it shouldn't be feasible, but I suspect it will be
7 cumbersome and disruptive. It may be that there's some kind----

8 THE CHAIRMAN: You need a booth because a translator needs to have peace and quiet in order
9 to receive what's coming from the advocate?

10 MR DE LA MARE: Absolutely, they have to receive what's coming - imagine you're in the----

11 THE CHAIRMAN: Live time, yes.

12 MR DE LA MARE: You have to be in your booth listening to what's coming in and interpreting
13 straight away, which then goes out on the microphones to those who----

14 THE CHAIRMAN: Absent a booth, the risk is that it's too distracted a process?

15 MR DE LA MARE: The experience is that, absent a booth, it takes more time, but then you'd
16 have less breaks with concurrent... If you don't have a booth then the interpreter is talking
17 over the witness, which is obviously unfeasible.

18 The point I was going to make is that there can't really be any concerns about using
19 consecutive interpretation for Mr Baralle, because there's plenty of time available on his
20 day for evidence. For our part, we don't have any concerns in relation to Mr Lefevre, who
21 has a relatively generous day allotted to him, which we think is more than sufficient for our
22 purposes. So the concern really arises in relation to Mr Mahieu, for somewhere in the
23 region of a day and a half is available. The concern Mr Singla has expressed on behalf of
24 his clients is that that day and a half may be insufficient.

25 THE CHAIRMAN: Just remind me what the main issues for Mr Mahieu are?

26 MR DE LA MARE: He's the purchasing - the principal PSA purchasing witness until about -
27 I can't remember when it is, 2007, at which point Mr Jaouen takes over.

28 THE CHAIRMAN: So he deals with the period until 2007?

29 MR DE LA MARE: Yes, that's right.

30 THE CHAIRMAN: And thereafter?

31 MR DE LA MARE: It's Mr Jaouen.

32 THE CHAIRMAN: Mr Jaouen, right. So between the two of them they are principal PSA
33 purchasers for the cartel period?

1 MR DE LA MARE: We have grouped the two purchasing witnesses together. They, between
2 them, cover the whole period.

3 THE CHAIRMAN: And they're going to be covering - they're taking the thrust of the defence
4 case?

5 MR DE LA MARE: On the overcharge.

6 MR SINGLA: The claimants' case.

7 THE CHAIRMAN: Well, advancing the defendants' case.

8 MR SINGLA: Yes, the short point is that Mr Jaouen and Mr Mahieu are the witnesses who say
9 things like, "We had no visibility over the various suppliers' costs and we were always very
10 willing to take any steel price increases", and so on. So they are really going to face the
11 longest cross-examination. We've heard what obviously you say about----

12 THE CHAIRMAN: It covers passing on as well, doesn't it?

13 MR SINGLA: Well, Mr Gautier is really the primary witness who deals with the way in which
14 Peugeot set their prices, and so he will bear the brunt of the cross-examination on pass on.

15 THE CHAIRMAN: Yes.

16 MR SINGLA: Really, this is not a major point. It's simply that we've allowed ourselves a day
17 and a half. Ultimately that may well prove to be too long. Obviously we're still some way
18 away from finalising our cross-examination preparation, but the issue with interpretation
19 only came up at the back end of last week, and these time estimates were agreed without
20 that in mind. So we simply thought that if the Tribunal can accommodate simultaneous,
21 then that would at least allow us to stick broadly to the time estimates we had in mind. The
22 costs issue, as I understand it, is not a major one. I think we have made enquiries and for
23 the four days, and it may actually not be necessary for Mr Lefevre and Mr Baralle, but for
24 the four days I think the cost estimate we had was £10,000, which in the grand scheme of
25 the claim is not much.

26 Sir, the point is simply that at this stage we do want to allow ourselves a day and a half for
27 each of Mr Jaouen and Mr Mahieu. I can't promise that we will need all of that time, but
28 equally, to the extent they do make some sweeping statements about the visibility over
29 costs, and essentially all of our case on buyer power that we advance both through our
30 factual witnesses and our experts does need to be put to those witnesses, and that could take
31 some time.

32 THE CHAIRMAN: That why I said really the thrust of your case is going to be put through these
33 witnesses.

34 MR SINGLA: Well, put to them, Sir, they're the claimants' witnesses.

1 THE CHAIRMAN: The thrust of your case, this is where you're challenging, therefore ought to
2 be put to these witnesses.

3 MR SINGLA: Exactly, will be put to them, exactly. It's not something we're pressing
4 particularly hard and it may well be that it's not feasible in this Tribunal, in which case
5 obviously we'll just go with consecutive, but we may ask the Tribunal to sit early and late if
6 that turns out to be necessary.

7 THE CHAIRMAN: I just don't know whether we have capability within the Tribunal for this.

8 MR HOLMES: Sir, it does seem that the Tribunal lacks the information really to form a view
9 about this at the moment. May I suggest that the parties might continue to liaise? There are
10 obvious efficiencies if simultaneous translation is possible because it will save time which
11 would otherwise be wasted, you know, listening to the question being put, then the
12 translation and equally with the answers. I'm not sure we've reached a landing yet on what
13 the costs are or on what the practicalities are. Unless the Tribunal feels able to do so,
14 perhaps we should take it away and see what can be agreed.

15 THE CHAIRMAN: From our perspective and indeed yours as listeners to the exercise, we will,
16 I think want to listen to the question in English rather than through a translator.

17 MR HOLMES: Yes, Sir.

18 THE CHAIRMAN: But we'll obviously need to listen to the answer through the translator.

19 MR HOLMES: Yes.

20 THE CHAIRMAN: So we'll be constantly like this - is that-----

21 MR HOLMES: I think that can be sorted by having the headphone put on during the course of
22 those passages which you need to listen to in translation. It's possible to switch on and off
23 the equipment while the question is being asked.

24 THE CHAIRMAN: As the cross-examination goes on, we'll be doing that perpetually.

25 MR HOLMES: I don't think you need to do it. I think it can be done for you with a feed going to
26 the witness when the question is being put and a feed going to you when the answer is
27 coming back.

28 THE CHAIRMAN: Yes, I see.

29 MR HOLMES: So it's really a question about whether the paraphernalia can be accommodated.

30 THE CHAIRMAN: Yes. I think your suggestion that we leave it in limbo is sensible for the time
31 being.

32 MR S HOLMES: As a clarification question, would we hear the response in the original French
33 as well as the response in the English when it's translated?

1 MR HOLMES: You would hear in the headphone the translation. You might hear the witness
2 speaking as well, but because of the volume in the headphone it doesn't tend to distract and
3 you tend to follow in the English. If you would rather follow in the French, I'm sure that
4 would be a matter for you.

5 MR SINGLA: I think what might be helpful is just a provisional indication from the Tribunal as
6 to whether this is something that we should explore further. Obviously, if the Tribunal's
7 instinct is that this is all going to be too much bother and it won't actually assist or will
8 efficiency and improvements then the parties can leave it there. For our part, as we say, it
9 has worked very well in the Commercial Court, for example, in trials. The anecdotal
10 evidence is that simultaneous translation is materially better than consecutive. That's why
11 it's something that we were keen to explore.

12 THE CHAIRMAN: It's essentially your concern about timing?

13 MR SINGLA: Yes.

14 THE CHAIRMAN: Which is driving this?

15 MR SINGLA: Yes.

16 THE CHAIRMAN: So if you were of the view that the defendants could not cover this witness
17 within a day and a half and that this would make a significant difference to your ability to
18 cover this witness in that time then we're more likely to be sympathetic.

19 MR SINGLA: As I say, I don't want to be held to a day and a half if, in six weeks' time, it turns
20 out that----

21 THE CHAIRMAN: No, we understand that. No one is going to come back and say, well, you
22 were wrong, you dealt with this in two-thirds of a day.

23 MR SINGLA: Mr de la Mare might! Sir, the background to this is that we were given very strict
24 parameters from PSA. They wanted to know exactly when particular witnesses - which is
25 not a criticism, but we did our best to accommodate them.

26 THE CHAIRMAN: No, they've got other things to do in their lives and businesses.

27 MR SINGLA: Exactly, so the position we got to was Mr Mahieu really wants to be available for
28 that two day block, and that two day block only. We're not saying he should be on stand-by
29 all week, or even that he should be available the following week, but, in order to keep that
30 within sensible bounds at this stage, we would like to explore some alternatives.

31 THE CHAIRMAN: Let's leave it this way, that tentatively, we see the force in what you say. If,
32 in fact, you, on reflection, think you need to be absolutely certain that you can deal with this
33 witness in a day and a half and you think it's more likely that you can with simultaneous
34 translation - I'm not certain we are sufficiently well versed in the fact to know whether

1 that's right or wrong at the moment. So think again, and if there's a real issue between us
2 we'll deal with it in writing.

3 MR SINGLA: Yes, I'm grateful.

4 MR DE LA MARE: Can we proceed on the basis that we'll deal with the other two witnesses,
5 Mr Laxenaire and Mr LeFevre in the conventional way?

6 THE CHAIRMAN: Yes, there doesn't seem to be any demur to that.

7 MR DE LA MARE: It's just in terms of logistics. The more logistics we can lock down, the
8 better.

9 THE CHAIRMAN: Yes.

10 MR DE LA MARE: Sir, that's the first of my logistical issues. The second issue is the question
11 of translations, and I readily confess that the translation wonk on my side of the fence is
12 Mr Jones, so he's going to address you on that. There has been a flurry of correspondence
13 between the parties principally between----

14 THE CHAIRMAN: This is about certain key documents?

15 MR DE LA MARE: Certain documents, and in particular which of the exhibits should be
16 translated and which shouldn't, and I think to a fairly large degree, and we'll find out in a
17 second, that peace may have broken out on this front, but I will let Mr Jones explain it.

18 THE CHAIRMAN: Mr Jones, you're the wonk apparently.

19 MR JONES: Yes, we shall see. There is a large degree of agreement between the parties, I think,
20 about translations - this is the documents in the bundles. You may have seen from the
21 skeletons that we thought it had been resolved because an issue arose last week, That issue
22 hasn't completely been resolved. We are, therefore, agreed that it would be sensible for the
23 Tribunal to know where things stand on translations and, if necessary, to flush out any
24 issues that may remain between us now.

25 The background is that all of the parties have put in witness statements with exhibits in
26 languages other than English, some of which were translated, some of which were not.
27 They may be in French. This issue mainly concerns French documents. That was the
28 position until late February, at which stage no party agreed on anything to address the
29 problem. In late February the claimants decided to take the lead on this and sent a letter in
30 which they suggested, or at least intended to suggest - I'll show you in a moment that it was
31 arguably ambiguous - but intended to suggest that they would go through the documents
32 and identify those which the Tribunal might, in fact, need to be taken to and only translate
33 those, which is a necessary process. A lot of these documents - Sir, I don't know if you've
34 had an opportunity to look through some of the bundles, but lots of the documents are big,

1 technical documents that there is no conceivable way in which the Tribunal is going to need
2 to go through them in any detail. So there was a necessary process of identifying
3 documents which you may be taken to. It's also quite an expensive process and a time
4 consuming process. The translators, when they find technical language, and of course
5 there's a lot of technical language in this case, come back to the client and the solicitor to
6 ask for clarification. They stumble over abbreviations, they have internal cross-checking
7 processes, and so on. It is necessary to go through that exercise.

8 There appears to have been something of a breakdown in communication and, Sir, I don't
9 want to dwell on the history, but I should show you why we have got to the stage that we've
10 got to. In the bundle----

11 THE CHAIRMAN: Do you want us to tell somebody off?

12 MR JONES: Sir, I don't. I don't because I don't think it impacts on what happens next. I'm
13 taking you to it because I also don't want to be told off myself.

14 THE CHAIRMAN: It's advisable not to tell anybody off!

15 MR JONES: Sir, it can be done very quickly, there are one or two letters. Could you go to tab
16 20, 20th February, the second page of that, this is from the claimants' solicitors, para.9,
17 under (a) and (b), my solicitor said:

18 "We are in the process of arranging for those foreign language documents which
19 have not yet been translated and which have already been identified as relevant for
20 inclusion in the bundles, and any additional such documents to be identified, to be
21 translated into English."

22 That appears to have been read - and one can see, just reading the sentence on its own why
23 it would be read this way - as meaning that they were arranging for everything to be
24 translated. That isn't what they meant, and if you go on in that paragraph you'll see that
25 what they say two sentences further on is that the defendants should then arrange to
26 translate any additional documents that they want translated for the trial bundles.

27 THE CHAIRMAN: Yes.

28 MR JONES: There was then a further letter on the 28th, which is in the next tab, so this is just a
29 week later and you'll see on the second page of that - it's just in parenthesis really, the
30 second page of that, after (e), this is all about bundling:

31 "We look forward to receiving any comments on the enclosed indices and copies
32 of any additional documents and translations, if required."

33 What my solicitors did was send with this letter a series of Excel spreadsheets, which are
34 not in this bundle, but which explained in excruciating detail which documents were going

1 to be translated, and you'll see over the page at P, they explain column P translation, so this
2 is the last page, p.4 of that letter, in P are further documents being translated.

3 There was then a series of indices which set out every single document and whether it had
4 already been translated, whether it was being translated, in excruciating detail, not only
5 from the claimants' witness statement exhibits but also from the defendants' exhibits. So
6 the claimants took on the burden of translating every document that they thought might be
7 needed to be referred to.

8 So one can see from one side, as I understand it, NTN in particular, thought that everything
9 was being translated because of the 20th February letter, and from the claimants' perspective
10 that would have been absurd way to proceed and they went to great lengths to identify what
11 they thought needed to be translated, and they did that, and it was an expensive process.

12 We have a measure of agreement in this sense: although NTN last week when they looked
13 this afresh said they thought everything needed to be translated, they no longer, as
14 I understand it, take that position, and there is agreement that one needs to do this in a
15 targeted way. Apart from anything else, at this point it simply isn't possible to translate
16 everything. We have, therefore, looked again at the exhibits to our statements, and the other
17 parties are doing the same with their exhibits, which are much smaller so it's easier. For
18 instance, Mr Singla's client I think has said that they will translate the entire exhibit to
19 Mr LeFevre's statement, which is a reasonably manageable task. That cannot be done for
20 the claimants' statements, because they're just too large.

21 We've looked again and, Sir, perhaps I can just explain in broad terms what has been done
22 on the documents. They have been divided into three categories. The first category is what
23 you might call cartel documents. These are the documents that came from the Commission
24 file principally, which show the contacts between the cartelists. They're actually not
25 exhibits to any of the witness statements, but it's an important category of document, and
26 what has been done there is the claimants have ensured that every document which they
27 think the Tribunal may need to go to has been translated. As I understand it, there is no
28 issue, there is no live issue, on those.

29 There are still a lot of documents in, in particular, French in the bundles, but they are, we
30 think, irrelevant or largely irrelevant, and they're often things like hotel invoices and that
31 sort of thing. So we think there's no issue on that.

32 The second category is the documents which have been called RFQ documents and
33 amendment documents. These are the communications between the parties when PSA has
34 had a request for a quotation or is in negotiations over amendments; also internal

1 discussions when those things happen, internal to PSA and internal to the defendants. There
2 we've taken a targeted approach. Most, indeed the large majority, of those documents have
3 been translated. NTN has said in correspondence that that's true because of the number of
4 documents, but they say there's an awful lot of pages which haven't been. Those pages are
5 technical, they're almost entirely technical documents. We're looking again to see whether
6 any more of those documents should be translated. We don't think they should, but we are
7 looking again. That's the current position on those.

8 Then the third category is the pass on documents. These are the exhibits to Mr Gautier's
9 statement in particular. Here we can see that there is scope to translate some of those
10 documents. The current position is that none of them have been. Some are already in
11 English, but they're largely in French and none of them have been translated. So we have
12 agreed that we'll look at that again.

13 Sir, if you could turn to tab 32 in this PTR bundle, p.3 of that letter, it's again a letter from
14 my solicitors, you will see at para.13 they go through the different statements, and (d) at the
15 bottom deals with Gautier, that's the pass on statement, "We see there is some scope for
16 translations which could be helpful", and they then set out which documents which they
17 propose to translate. If one jumps down to (iii) you will see the sort of issue which arises,
18 pp.93-417, so that's a very big chunk of these documents:

19 "... contains a series of documents which are included as examples of detailed
20 studies produced to inform prices in various countries. We have arranged for a
21 translation of one of those, namely the one for France, as the largest market."

22 Then documents, which are not identical, but they are very similar documents, one for
23 France, one for Germany, one for the UK, etc, etc. Given the timescale and given that we
24 don't think there's any realistic likelihood that the Tribunal will need to go possibly to any
25 of them, but certainly not to all of them, we will focus on France. That pattern is then
26 continued through Gautier, where essentially what is being said is, we will translate these
27 documents, but where there's more than country we'll just translate the French one as an
28 example.

29 You will also see on this letter - I've gone through the three main categories of document -
30 there are some other small categories. 13(a):

31 "We can see no merit in translating the exhibits to the statements of witnesses who
32 are not being called."

33 So those are, for instance, the internal flows where the claimants' seems not to be in issue.

34 THE CHAIRMAN: And these witnesses who are not being called, are they admitted evidence?

1 MR JONES: Yes, Sir. So we've carved that out, and secondly, we've carved out Baralle and
2 Laxenaire - that's essentially steel and interest where we don't think that their exhibits, such
3 that they are in French - some of those have already been translated, and we don't see
4 there's any need to translate more of them.

5 The third one there, Mahieu and Jaouen, those are the exhibits which I've already discussed,
6 they were the RFQ and amendment documents, and it simply says what I have already told
7 you, which is that we will look again at those.

8 Sir, that's where we've got to. I said there's a measure of agreement. There's this potential
9 difficulty, which is that we, on the claimants' side, have done our best to identify those
10 documents which we think you may reasonably be taken to. We did that the first time
11 round, and we're now taking a more expansive look at that.

12 There is a limit to how far we can go in that because we can't guess - well, we can guess,
13 but all we can do is guess - which documents Mr Singla or Mr Holmes might want to take
14 you to, and that is why we've been asking them which documents they want translated and
15 they've not been able to identify any others. We saw in the letter from White & Case
16 yesterday that it appears that one difficulty that Mr Singla's team is that they can't
17 understand the documents in French, so they can't tell us which documents they might want
18 to go to. Sir, we have a degree of sympathy for that, but to put it somewhat bluntly that is,
19 we think, their problem, and there was correspondence when documents were first disclosed
20 between the parties about how each team needed to ensure that it could understand the
21 documents. As I've said, even if it were sensible, we simply cannot now translate
22 everything. It would be utterly disproportionate to do so in order for them to decide which
23 documents they need. So what we have said is we will do the additional translations that
24 I've explained to you. Anything else which they may decide over the next weeks, once
25 they've been able to read the documents - I understand they have what they call a machine
26 translation process, so they're getting very quick translations done so that they can
27 understand them - anything else we do say they should arrange to have translated if they
28 need to take you to it, in the same way as we have translated some of their documents.

29 THE CHAIRMAN: You say this is a proportionate way to proceed?

30 MR JONES: It's proportionate. We're doing everything we can, and if there are last minute
31 additions they should translate those.

32 Sir, Mr de la Mare suggests you may want to look at bundle B4 to get a flavour of this. B4
33 and B5 are the volumes which have. I hope the Tribunal does have them and----

34 THE CHAIRMAN: What are we looking at?

1 MR JONES: Bundle B4 has the exhibit to Mr Gautier. This is simply by way of illustration.
2 THE CHAIRMAN: This is core bundle B4?
3 MR JONES: B4.
4 THE CHAIRMAN: Page?
5 MR JONES: Sir, I mentioned in the letter - it's at paras.93-417, if you want to have a look at that.
6 At 93 you will see----
7 THE CHAIRMAN: This is exhibit JYGI-93?
8 MR JONES: That's right, that's the internal pagination for Mr Gautier.
9 THE CHAIRMAN: This is Algeria.
10 MR JONES: You'll see that this is Algeria, and if you just flick through those, you'll see it's a
11 series of PowerPoints, essentially, which take what, to my mind, is a baffling amount of
12 time to translate, but part of the reason for that the translators tried to copy the format and
13 the language, and so on. If you look, for example, at p.102, you'll see there's a very
14 complicated drawing, which takes a long time to mock up and translate. These are then just
15 repeated for different countries.
16 THE CHAIRMAN: Most of that's in English, "Emerging markets".
17 MR JONES: Yes.
18 THE CHAIRMAN: A bit of French, 'abandoned', 'crisis', I suspect we could work most of this
19 out but anyway...
20 MR JONES: Sir, that is right. We take the same view.
21 THE CHAIRMAN: In fact, most of it's in 'Française'.
22 MR JONES: A lot of it is in Française, but there you are, you have the flavour of it. That's
23 essentially what the pass on documentation consists of, and it's done for Algeria and then
24 we say we'll translate the French one.
25 MR SINGLA: Mr Jones started by saying this wasn't a contentious issue, but I think where he
26 ended up was that everything was our fault. It's not productive to go through the history,
27 but in a nutshell the starting point, as is the case in the Commercial Court, the Chancery
28 Division, all documents in a trial bundle need to be translated, and there was no issue as
29 between the parties that if one went beyond the exhibits to witness statements, the parties
30 will identify documents they want to rely on at trial out of the disclosure and put them into
31 what's called bundle X, and the party putting them into bundle X will translate them.
32 There was a miscommunication essentially at the end of February about whether or not the
33 exhibits to witness statements would be translated, and one might think that that should be
34 the starting point in any case: if you are adducing evidence you would want to have your

1 own exhibits translated so that the Tribunal and the parties can understand them. Both
2 White & Case and Macfarlanes were under the impression that Hausfeld were going to do
3 that, so the criticism is not justified.

4 Where we have got to is that Hausfeld made some concessions yesterday to translate some
5 more of their material, so this isn't a contentious issue today in the sense that we are raising
6 a complaint, but it is----

7 THE CHAIRMAN: So you're identifying material for Hausfeld to translate now?

8 MR SINGLA: Well, Sir, where things have got to - Sir, let me just take stock of where we were
9 at the end of last week, which was that all of the exhibits to Mr Mahieu and Mr Jaouen were
10 in bundles H and I, and in so far as those exhibits contained RFQ and APR documents they
11 have been translated, but the rest of their exhibits have not been translated. As regards all
12 of the other PSA witnesses, and there are a number of them - although we are cross-
13 examining five of them, there are, I think, 15 witnesses who have been adduced, or 15
14 witnesses of fact. None of those exhibits have been translated. Our short point is that
15 whilst we have got on with it and we've created these machine translations so that we're not
16 hampered in terms of our preparation, we are going to get to a stage where at the beginning
17 of this trial - I think it's common ground now that it won't be feasible to get professional
18 translations of all of the exhibits - Sir, it was just a point to mention, so that there are no
19 surprises for the Tribunal on day one of the trial, that what you will have is some of the
20 exhibits on the claimants' side translated. We, for our part, are translating all of the exhibit
21 to our one factual witness, and I believe there's no issue on SFK's part. It really is just to
22 note that we are left in a slightly sorry state - I'm not seeking to criticise, at least at this
23 point - where the net result of all this is that not all of the documents in the trial bundle will
24 be translated, which is the usual----

25 THE CHAIRMAN: It's the practical reality that, by the time we come to trial, a goodly
26 percentage of the relevant documents will have been translated. If something crops up in
27 the trial, we either cope, because we can work it out, or there's a facility overnight to get a
28 translation of that document. We can do a rallying translation facility.

29 MR SINGLA: Exactly, so to the extent possible between now and trial, if documents do come up
30 which can be translated in quick time then obviously we'll do that, and as you say----

31 THE CHAIRMAN: We may just have to cope in the course of the trial.

32 MR SINGLA: Exactly, but the starting point is one which we felt, given that we were turning up
33 - well, the starting point was just simply that we wanted to register this issue so that, as
34 I say, on day one of the trial there are no surprises.

1 There's one other logistical matter, I think, which hasn't been mentioned which is the core
2 bundle. You raised this is an idea last week, and I think Mr de la Mare and I are both
3 sceptical as to whether a core would be useful at any state, I think it's fair to say, given the
4 way the documents are the difficulty with identifying any obviously core documents.
5 I think, if the Tribunal does want to go down that route, we are of the view, and I think
6 Mr Holmes shares this view, that we should wait until the trial starts and then have it on a
7 running basis.

8 THE CHAIRMAN: I think there are possibly - sorry, you want to add something at this stage?

9 MR HOLMES: No, simply that in previous trials I've found it quite helpful to have just a file into
10 which contemporaneous documents can be inserted if any of the counsel or the Tribunal
11 identify them as relevant. That is partly because we're going to be working from electronic
12 bundles and having just something that one can carry home of an evening to review at
13 leisure is quite a helpful thing. There may not be many documents that fall into that
14 category, but it's something that we should reserve as a possibility.

15 THE CHAIRMAN: From my own experience, and I have done quite a lot of electronic trials. In
16 crime nowadays, almost all trials in the Crown Court are done without paper, and it's quite
17 rare for there to be trials which have any paper any more, so we're all getting used to it. It
18 is, nonetheless, quite useful to be able to extract the key documents which is usually no
19 more than a small clip. As we all know, however long the trial, it usually boils down to
20 that.

21 There are two things which occur to us: one, if there's going to be a fairly lengthy
22 claimants' opening, there may well be documents that, Mr de la Mare, you're going to be
23 referring to, and you may decide you're going to exhibit them to your opening skeleton, or
24 what have you, but we may want to make sure we've got a comprehensive set of documents
25 that are referred to in openings. There are two ways we can do that. You either provide
26 them to us or, as we're going through the opening, we extract them and put them into our
27 own running file. We just need to find a way that we are all working to the same system so
28 that, throughout the trial and in closings, we all know where the documents are.

29 MR DE LA MARE: The greatest hits documents are primarily going to be focused on the cartel
30 mechanics because, being frank, finding the greatest hits in the RFQ documents is a pretty
31 dull exercise. It's a lot of granular detail about a lot of very detailed procurements.

32 THE CHAIRMAN: Yes.

33 MR DE LA MARE: When we have finalised our skeleton and we have an annex which
34 effectively contains our unpacking of how the cartel works, so far as we can see from the

1 documents that remain, we will do our level best to identify what we think are the greatest
2 hits documents from those. There are some obvious candidates like the notes that survived
3 of the various multilateral meetings. We can try and produce a document list of that kind
4 and it can be added to over time.

5 THE CHAIRMAN: But your general suggestion is we wait and see?

6 MR DE LA MARE: I think that's prudent. I think that's prudent because I suspect actually that
7 what you're going to end up with is a cluster of documents about the working of the cartel
8 which is a topic of some importance but really the greatest hits documents are going to be
9 the three expert reports.

10 THE CHAIRMAN: Yes. Can you just give us a bit of an update of how the electronic system
11 going to work holding the electronic files? Are we going to be provided with laptops, or
12 how is that going to work, or is that just for the parties?

13 MR DE LA MARE: Let me double-check my instructions. (After a pause) We're using a system
14 called XBundle, which is not quite the all bells and whistles of some of the systems that
15 allow team notations, etc. It's just a document presentation system. There will be screens,
16 and if you want to have a laptop with all of the relevant material, a laptop can be provided
17 as well, or you can work off your own laptop with the information installed on your own
18 laptop.

19 THE CHAIRMAN: So it's basically just an archive?

20 MR DE LA MARE: It's, if you like, a PDF archive with a software that mags and navigates you
21 through it, and allows the relevant documents to be called up. There will be an operator
22 effectively who will call up the documents.

23 THE CHAIRMAN: I see, so it will be done for us?

24 MR DE LA MARE: Yes.

25 THE CHAIRMAN: I see, okay.

26 MR DE LA MARE: You can be on autopilot or you can turn it off and go to whichever
27 document----

28 THE CHAIRMAN: You would then provide laptops - either we'd use our own laptop----

29 MR DE LA MARE: Yes.

30 THE CHAIRMAN: But then it's got to be connected into this system so that it can be controlled
31 externally. There may be some problems with some of the judicial documents. They're
32 very, very reluctant, for security reasons, to allow any third party to access anything that we
33 do on our laptop.

34 MR DE LA MARE: Understood, yes.

1 THE CHAIRMAN: So we may need----

2 MR DE LA MARE: A dedicated laptop.

3 THE CHAIRMAN: Yes, a dedicated laptop.

4 MR DE LA MARE: I am told - I should know all this detail - that, in fact, the relevant technical
5 people from the teams are meeting with Mr George this afternoon to discuss this. It's a
6 logistical issue.

7 THE CHAIRMAN: I see, so it's under control.

8 MR DE LA MARE: It's under control. The bundles have been produced, or the process has been
9 finalised, the services have been commissioned, they've all been agreed between the parties.
10 We're all working to the same page. There's a bunch of hyperlinks that are going to be
11 inserted into the bundles. We've agreed that each of the parties are going to be putting in
12 new, updated trial bundle references into the witness statements in the side margins which
13 will then click through to the relevant place that the exhibit page is now found at in the
14 bundle. Obviously the exhibits are broken up in some part. We're trying to make the
15 material as navigable as possible.

16 THE CHAIRMAN: Very good. Okay, thank you.

17 MR DE LA MARE: Those are the only issues between all of us. I don't think there's anything
18 left. There's then the fascinating topic of costs from the disclosure issue, which we're
19 going to ask you to summarily assess, but I don't think we need to trouble Mr Holmes and
20 his team for that particular spat.

21 THE CHAIRMAN: That is unresolved, and unresolvable?

22 MR DE LA MARE: It is unresolved.

23 MR SINGLA: It's not unresolvable, Sir. I wasn't here, but I understand the order was to be
24 assessed if not agreed. So my suggestion would be just to let the parties continue to
25 correspond and, if not, then go off to detailed assessment in the usual way. It just seems to
26 be an unnecessary distraction at this point.

27 MR DE LA MARE: There is - I know Mr Singla is used to the Commercial Court - no usual way
28 for assessment in the CAT, because the assessment is either undertaken by one of three
29 people. It's either the President, other Chairmen or the Registrar. Since you had conduct of
30 the hearing and since you are one of the Chairmen, it would make sense, as it was a one day
31 hearing and since therefore we can approach it in much the same way as a summary
32 assessment----

33 THE CHAIRMAN: I think the message being conveyed is not yet from Mr Singla.

1 MR DE LA MARE: We've tried, and I don't know if we can say any more that, we've tried to
2 agree it.
3 THE CHAIRMAN: I'll give you another ten days to try and resolve it. If not, then I will resolve
4 it on the papers.
5 MR DE LA MARE: I would just point out, Sir, we've been corresponding about this pretty
6 vigorously, and we didn't get any substantive response until, I think, yesterday.
7 THE CHAIRMAN: I will resolve it on the papers if needs be.
8 MR DE LA MARE: Very well.
9 THE CHAIRMAN: Anything else, gentlemen and ladies?
10 I will put this in this way: counsel and parties all know that if there is settlement discussion
11 ongoing, then they have a duty to keep the Tribunal generally informed, because it could
12 impact upon preparation. I am not going to ask anything other than that, but just to remind
13 people. That's an obligation that applies in the High Court and we conclude it also applies
14 here, just to keep the Registrar informed. I don't think I need to say any more than that.
15 Thank you all very much indeed.

16