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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1249/5/7/16

Victoria House,
Bloomsbury Place,
London WC1A 2EB

14 October 2016

Before:

THE HON. MR. JUSTICE PETER ROTH
(The President)

(Sitting as a Tribunal in England and Wales)

BETWEEN:

SOCRATES TRAINING LIMITED

Claimant

- and -

THE LAW SOCIETY OF ENGLAND AND WALES

Defendant

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Mr. Philip Woolfe (instructed by Socrates Training Limited) appeared on behalf of the Claimant.

Ms. Kassie Smith QC (instructed by Norton Rose Fulbright LLP) appeared on behalf of the Defendant.

PRE-TRIAL REVIEW

1 THE PRESIDENT: Good morning. Thank you both for your brief and helpful skeleton
2 arguments. I see there is some further evidence that needs permission. Mr. Murphy wants
3 to put in a second witness statement of 30th September - is that correct?

4 MS. SMITH: Yes, Sir, that is correct.

5 THE PRESIDENT: So you seek permission for that?

6 MS. SMITH: Yes, Sir.

7 THE PRESIDENT: I think that is not opposed on the basis that Mr. George can put in a response,
8 which he has produced, dated 13th October - is that right?

9 MR. WOOLFE: That is correct, Sir.

10 THE PRESIDENT: On that basis, I grant permission for both witness statements.

11 The next thing I have noted from your skeletons is that the claimant seeks an extension of
12 time for service of its analysis of the customer lists, an extension from the time ordered in
13 the order of 5th October, from 13th October to 20th October - is that right, Mr. Woolfe?

14 MR. WOOLFE: That is right, Sir, an extension of one week.

15 THE PRESIDENT: Is that opposed, Ms. Smith?

16 MS. SMITH: Sir, we have no objection to the extension of one week. We would, however, note
17 that Mr. George has given some indication in his third witness statement of the matters that
18 he wants to cover of Dr. Majumdar's data, number crunching. We would note that, in our
19 view, what Mr. George proposes to put in his reply to that report, particularly what he sets
20 out at paras.13 to 14 of his third witness statement, does appear to us to be in the nature of
21 opinion evidence rather than fact evidence. Your order, Sir, of 5th October said that the
22 report should be limited to fact evidence. We are not going to object to that opinion
23 evidence going in, but we should note that we have been very careful to make sure that
24 Dr. Majumdar's report on the subscriber data is only number crunching, to put it crudely,
25 and we obviously do have views on what those figures show, but those have not been put in
26 any report in front of this Tribunal.

27 THE PRESIDENT: Mr. Woolfe, you have heard that. That seems to me to be a fair point. These
28 are supposed to be factual analyses, they can be addressed in argument and submission.

29 MR. WOOLFE: Sir, that is absolutely fair, and it actually keys into something else that I wanted
30 to raise with you today, which is----

31 THE PRESIDENT: Subject to that point, you have your extension of one week.

32 MR. WOOLFE: Thank you, Sir.

1 What I wanted to raise with you, Sir, and it could be raised at the start of the trial as well,
2 but I think now is convenient, is this: Dr. Majumdar has come up with some figures. In the
3 normal way, and I will be cross-examining him anyway, one would start to put things to
4 him and ask him what they show in order that one can then make the points about it in
5 submissions at the end. However, obviously there was no permission for opinion evidence
6 in relation to the issue of anti-competitive effect, and therefore it would not be appropriate
7 for Dr. Majumdar to express those opinions in the box marked "To be admissible as
8 evidence". Therefore, there needs to be clarity so that if I do not put things about the
9 interpretation of the data to him then I am not restricted from making points in relation to
10 that in closing submissions.

11 THE PRESIDENT: I think the approach we took at the outset was that the experts will be dealing
12 with market definition and dominance. It is obviously fine that they have assisted - or one
13 side they have assisted, I think Mr. George for the claimant is doing it himself, but if he
14 wants to get help from Mr. Williams behind the scenes, as it were, of course he can - in
15 producing the number crunching analysis. The experts will not be dealing with competitive
16 effect or objective justification or whatever might be raised. The experts will not be asked
17 about that, and that will be a matter for submissions.

18 MR. WOOLFE: That is very clear, Sir, thank you.

19 THE PRESIDENT: No doubt you will pick me up if I miss things out, but I think, while we are
20 on experts, having read the reports, it does seem to me that it would be sensible for them to
21 meet. I know time is short, but just to serve, not what has become the trend recently of an
22 exhaustive schedule of every point on which they agree and disagree with comments, but
23 simply of the material points on which they are agreed and on which they are disagreed. If
24 they could meet just as experts without lawyers in attendance without prejudice and then
25 produce such a list by, I think it is reasonable to say, 27th October. We do not know their
26 availability, but that is why I was putting quite a far date.

27 MR. WOOLFE: We are totally content with that, subject to their availability. If there is a
28 problem with availability we could write to the Tribunal.

29 THE PRESIDENT: We can work round it. It should be in time for your skeletons, but because it
30 will not have commentary, it is not as though it is going to say things that you cannot work
31 out yourself with a lot of effort, but it will assist a great deal if we have that produced.
32 The next thing is trial timetable, and we can work back from that on the question of
33 skeletons. I see you are asking if we can start on the Tuesday, and we are content with that.

1 You want on Wednesday, 9th November, video link evidence. We are content with that. It
2 means, however, that this trial will be in the Rolls Building, not here, because we do not
3 have----

4 MS. SMITH: The entire trial?

5 THE PRESIDENT: I think it makes sense. It is a short trial, and we do not want to bring
6 everything over here. We do not yet have - we soon will - facilities for a video link, so we
7 will do the whole trial in the Rolls Building.

8 You also want to start at 9 am on 9th November, because the witness is in Australia. It
9 means, if you want to stay up and watch the US election you do not have to go bed! We
10 will do that at 9 o'clock on 9th November, and we will finish on the Friday.

11 I have seen your proposal. There are just three witnesses, as I understand it, plus the
12 experts.

13 MS. SMITH: Yes, we will not be seeking to cross-examine Socrates' second witness, simply Mr.
14 George.

15 THE PRESIDENT: Yes, it is three to be cross-examined.

16 MS. SMITH: That is right.

17 MR. WOOLFE: Sir, on that basis, can I perhaps seek a direction that Mr. Hamilton need not
18 attend?

19 THE PRESIDENT: No, if he is not being cross-examined, if the defendant does not want him to
20 attend, he does not have to attend.

21 The experts will be on Thursday, 10th November. We think it will be appropriate in this
22 case to have their evidence heard concurrently - that is to say a 'hot tub' - which will mean
23 that the Tribunal will lead the questioning and then counsel can ask supplementary
24 questions of the expert called by the other side.

25 MS. SMITH: Sir, do you envisage the experts giving a short summary of their evidence before
26 we start the 'hot tub', or just straight into----

27 THE PRESIDENT: No, straight into.

28 MS. SMITH: Would you be assisted by suggestions of issues from the parties? I am sure you
29 will have your own views, but also----

30 THE PRESIDENT: We do not mind getting suggestions. We are quite happy to get suggestions.

31 MS. SMITH: As a sort of agenda that might be helpful to the Tribunal.

32 THE PRESIDENT: Yes, the list that they will produce will help in terms of agenda. Given that
33 the experts' reports are quite confined, there is a sort of self-evident agenda.

1 MS. SMITH: Yes, I am sure that things will not fall through the cracks.

2 THE PRESIDENT: The up-stream market, the product market, the geographical market, the
3 down-stream market, and so on. So it is not a case where the agenda is particularly
4 complicated. It seems to me that there should not be a difficulty. It may be that, as a result
5 of hearing the evidence that way, it generally has the effect, and this Tribunal has just been
6 doing it another case that is going on in court 1 - as you may know, I did it in a trial in the
7 High Court - all the experience is that it has the effect of shortening the expert evidence. If
8 we finish early on Thursday, all well and good, we will just rise early and give you more
9 time to prepare your closing, which I am sure you will both welcome.

10 On the basis that we are starting on Tuesday, 8th, I see there is the small issue of skeletons.
11 I think it probably fair that the claimant should have the weekend. If I said, Mr. Woolfe,
12 12 noon on 31st October----

13 MR. WOOLFE: I would be totally content with that, Sir.

14 THE PRESIDENT: -- and, Ms. Smith, I can say 4 pm on 3rd November, is that acceptable?

15 MS. SMITH: We are happy with that, Sir.

16 THE PRESIDENT: Then trial bundles: we do not want to put you to a lot of extra and
17 unnecessary copying, but at the same time a certain amount of extra copying and
18 preparation really does help the efficient conduct of a hearing. I say that having recently
19 done a hearing in this Tribunal where we used the original bundles as they came - it was
20 only a two day hearing and it was still quite confusing, and this is a four day trial. Please
21 can the respective solicitors liaise with the Registry here, and we will try and keep your
22 copying burden down to a minimum. We do need five copies, and I think we will need
23 some of these afresh. The order I would like to suggest, please, is that bundle A - we will
24 number them alphabetically - will be pleadings and orders, B will be the expert reports and
25 these two factual analyses, which enables C to be appropriately the claimant's witness
26 statements, and then C1, C2 and C3, etc, exhibits, and then D the defendant's witness
27 statements and D1, D2, D3, etc, exhibits. I think the exhibits bundles, I do not know how
28 many copies we have had, there is no need to re-copy them in so far as we have got them as
29 long as we have enough copies. Then E should be any additional material from the
30 disclosure. Again, I do not know whether there needs to be an E1 and E2, I hope not, but
31 you will know. Then F, can be solicitors' correspondence, if relevant. We frequently get a
32 bundle of solicitors' correspondence. In my experience, nobody ever refers to it until the

1 trial is over and they argue about costs, but if you want a bundle of solicitors'
2 correspondence it can be F.

3 MR. WOOLFE: I suspect there will be some at the back of the court, and it can be handed in, if
4 necessary.

5 THE PRESIDENT: It seems to me generally a bit of a waste of paper. Then separately the
6 authorities.

7 MS. SMITH: And the parties' skeleton arguments?

8 THE PRESIDENT: The skeleton arguments we are happy to have loose. We tend to keep them
9 out rather than putting them into bundles. Could we please have electronic copies of the
10 witness statements, the experts' reports and the pleadings in Word?

11 MR. WOOLFE: There is one other issue which I perhaps should raise, Sir, at the time of bundles,
12 which is the claimant's training materials, which were disclosed. They can be printed out,
13 but it will effectively become a series of screen shots. In their native form, one screen
14 slides into another and things appear and disappear, and so on. If the Tribunal thinks it is
15 likely to want to look at the training then that can be provided, I think, by means of a log-in
16 that can be seen on a computer, if that can be of assistance. Perhaps we can leave that until
17 the trial.

18 THE PRESIDENT: Perhaps we can think about that nearer the time.

19 Could I just draw the attention of those preparing the bundles to the guidance - it is more
20 than guidance, it is instruction, at para.9.56 of the Tribunal guide to proceedings about the
21 labelling of bundles, the way they should be labelled. It sounds pernickety but it really does
22 make a difference to the ease of use in a trial if they have labels on the inside at the top left,
23 and so on, so that you can see the bundle number when it is open. It is mechanical things
24 like that, but the reason that it is in the guide is that experience shows it really is of practical
25 assistance.

26 MR. WOOLFE: Understood.

27 THE PRESIDENT: That was what I derived from your skeletons in terms of issues. Are there
28 any other matters that we need to deal with?

29 MS. SMITH: Not that I can think of, Sir, it has been very helpful.

30 MR. WOOLFE: No, Sir.

31 THE PRESIDENT: Thank you all very much. We will see you in the Rolls Buildings on
32 8th November.

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