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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No. 1275-6/1/12/17

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

27 June 2017

Before:

**PETER FREEMAN CBE, QC (Hon)**  
(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

**(1) FLYNN PHARMA LIMITED**  
**(2) FLYNN PHARMA (HOLDINGS) LIMITED** Appellants

- and -

**COMPETITION AND MARKETS AUTHORITY** Respondent

- and -

**(1) PFIZER LIMITED**  
**(2) PFIZER INC** Appellants

- and -

**COMPETITION AND MARKETS AUTHORITY** Respondent

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**CASE MANAGEMENT CONFERENCE**

## **APPEARANCES**

Miss Kelyn Bacon QC, and Mr. Tom Pascoe (instructed by Macfarlanes LLP) appeared on behalf of the Appellants, Flynn.

Mr. M. Brealey QC, Mr. R. O'Donoghue QC and Mr. Tim Johnston (instructed by Clifford Chance LLP) appeared on behalf of the Appellants, Pfizer.

Mr. Mark Hoskins QC, Mr. Hugo Leith and Miss Jennifer MacLeod (instructed by CMA Legal) appeared on behalf of the Respondent.

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1 THE CHAIRMAN: Good morning, welcome to the Tribunal. This is the second case  
2 management conference. I wanted to thank everybody for the work ahead of all this to try  
3 and agree things. I think you have made some considerable progress and we are grateful. I  
4 am afraid this morning it is only me. Mr. Allan is indisposed, and we either sit as one or we  
5 sit as three. I am afraid you are denied, only for the moment, the pleasure of meeting  
6 Professor Waterson, and he is denied the equal pleasure of meeting all of you. Mr. Brealey?

7 MR. BREALEY: I think if we just go through the agenda.

8 THE CHAIRMAN: Please.

9 MR. BREALEY: As you say, sir, a lot of it has been agreed. I think there are a few issues that  
10 we have got to iron out. Going to the agenda, point number 1, to establish whether the  
11 CMA has any objection to the admission of evidence filed by the appellants. As I  
12 understand it from the skeletons, the CMA do not object. I can go through the nature of the  
13 evidence in response. Sir, you will have seen there is a survey relating to the continuity of  
14 supply.

15 THE CHAIRMAN: This is the evidence of Mr. Goosey.

16 MR. BREALEY: Mr. Goosey, and clearly he is highly relevant to a critical issue in the case. It is  
17 a central plank in the CMA's decision, this continuity of supply. It feeds into dominance,  
18 market definition and even abuse. So it is relevant, and the CMA are quite right to see its  
19 relevance.

20 THE CHAIRMAN: Timing - it is a bit late?

21 MR. BREALEY: It is not late at all, and even if it were, it does not prejudice the CMA, and the  
22 CMA say they are not prejudiced. This actually is a theme that I do want to develop today,  
23 which is the nature of the hearing in the autumn. It is important to remember that this is an  
24 appeal on the merits. This is not a judicial review. I know, sir, you know this. This is not a  
25 judicial review, this is not asking the question as to whether the CMA have asked relevant  
26 questions. It is a brand new hearing in front of the Tribunal, and the burden of proof of  
27 establishing infringement is on the CMA in this Tribunal. I do want to develop that a little  
28 bit later on, not much because we will deal with this in the appeal, but it feeds in to para.20,  
29 for example, of the CMA's skeleton where they say we do not have a right or the ability to  
30 question Flynn's witnesses. In my respectful submission, and I will develop that if the  
31 CMA continue to resist, it is absolutely standard practice for the defendant to be able to ask  
32 questions of another defendant's witnesses. It is standard practice in the High Court, the  
33 Commercial Court, it is also standard practice in the Tribunal, and I will take you, if  
34 necessary, to certain parts of transcripts of relevant proceedings.

1 It is important to realise that this is an appeal on the merits. The burden of proof is on the  
2 CMA, and the Tribunal has a discretion to allow evidence in because it is a *de novo* hearing.  
3 There are reasons why the survey could not have been done at the notice of appeal. I do not  
4 need to go through them, but one of the reasons was because it was so close to the  
5 infringement decision. We were told by those who did the survey that essentially we would  
6 not get a proper response if it is so close to the publicity surrounding the infringement  
7 decision.

8 So there were various reasons why it was not attached to the notice of appeal.

9 Another reason why we found it necessary to have this evidence was because in the defence  
10 - it was very, very subtle but we saw the subtlety - the CMA elevate this continuity of  
11 supply into some sort of rule, and one sees references to it being breached. One has to  
12 remember that this was a guideline, it was not a rule, no question of anything being  
13 breached, and again the survey goes to tackle the perception that the CMA give in the  
14 defence that this continuity of supply is some sort of rule, which the pharmacists breached,  
15 and that is simply not the case.

16 I will not labour this, because looking at their skeleton----

17 THE CHAIRMAN: I am not sure this is now in dispute. I think it has passed----

18 MR. BREALEY: We see that the CMA say that it is all unsatisfactory. We could go into it. I do  
19 not think it is fruitful to go into it, but on issue 1, evidence, I do not believe that CMA has  
20 any objection to the admission to evidence filed in Flynn's reply or Pfizer's reply.

21 THE CHAIRMAN: Miss Bacon, do you want to add anything to that? No. Mr. Hoskins?

22 MR. HOSKINS: It is clearly late but we do not object.

23 THE CHAIRMAN: You do not object. All right. Are you going to deal with the CMA's request  
24 to put in another witness statement for Mr. Harman.

25 MR. BREALEY: I was going to do that----

26 THE CHAIRMAN: You can do that later if you want.

27 MR. BREALEY: I was going to do that at item 2, but I can do that now.

28 MR. HOSKINS: I think it is probably for me to go first on that.

29 THE CHAIRMAN: Why do you not tell us about Harman 2.

30 MR. HOSKINS: I should say this is now agreed as well.

31 THE CHAIRMAN: Wonderful.

32 MR. HOSKINS: You have seen in the skeleton argument that the position simply is that  
33 Mr. Harman read the replies and the accompanying expert evidence, and he had further  
34 views he wished to express. The question then is what is the best way for him to do it, and

1 we are about to come on to the question of the expert meetings and agreed statement, etc. It  
2 has now been agreed between the parties that the most efficient way for Mr. Harman to  
3 express those views is through a second short responsive statement.

4 THE CHAIRMAN: A strictly responsive statement.

5 MR. HOSKINS: Absolutely, we are perfectly happy with that.

6 THE CHAIRMAN: Then there will be a response to the responsive statement, which would be  
7 equally strict - is that right?

8 MR. HOSKINS: Correct. We have given dates and the dates are agreed, so everything is agreed,  
9 so long as you are happy, sir.

10 THE CHAIRMAN: Yes.

11 MR. HOSKINS: The dates are 7<sup>th</sup> for us and the 31<sup>st</sup> for the appellants. So again, unless you  
12 want me to go into the detail, that is agreed.

13 MR. BREALEY: It is agreed, but we endorse what the Tribunal has said. It has got to be strictly  
14 responsive.

15 THE CHAIRMAN: Yes, I have got that very much in mind.

16 MISS BACON: That was exactly what I wanted to say. We were concerned in the exchange of  
17 correspondence that Mr. Harman was going to be giving evidence at large. We are content  
18 on the basis that it is strictly responsive, responding to new arguments.

19 THE CHAIRMAN: So we are all agreed that this should not spiral out of control - is that right?  
20 Good. Is that it for witness statements?

21 MR. BREALEY: I think that is it for witness statements and expert reports.

22 At the moment, if we then go to item 2, I believe that all the parties - that is the CMA, Flynn  
23 and Pfizer - do not at the moment see the need for a joint statement or 'hot tubbing'. One of  
24 the reasons for this is, as the CMA say in their skeleton, that the experts cover a range of  
25 different, albeit interlinked, issues. It may well be that at some stage they can get together.  
26 We will have to see what Harman 2 says. Certainly on the basis of Ridyard 1 and 2,  
27 Harman 1, Flynn's experts, they are covering rather different ground, as one will have seen  
28 from the table. Therefore, a joint statement, when they are covering broadly different  
29 ground, does not seem to be that sensible.

30 That is the position of the parties, but of course it is subject to the Tribunal's direction on  
31 this question.

32 THE CHAIRMAN: Yes. It is certainly odd, is it not, that the evidence does not cover the same  
33 ground. Because there is a dispute, you would have thought there would be evidence on  
34 each side covering the same points - just speaking purely abstractly.

1 MR. BREALEY: It is, but if one looks at the evidence of Mr. Ridyard, he looks at market  
2 definition and the issue of NRIM taking between 30 and 50 per cent of the market, the  
3 CMA do not engage in that. They are going to do that by way of submission by the looks of  
4 it. They are not adducing any expert evidence on market definition, so there is nothing for  
5 Mr. Ridyard to explore there.

6 If one looks at Ridyard 1, he looks at comparables, because clearly there is an issue as to  
7 whether the tablet is a benchmark which can be used in an excessive pricing case, and to  
8 date the CMA has simply not engaged in comparables. I remind you, sir, that you asked a  
9 question of Mr. Hoskins at the last CMC, "Are you dealing with the second limb of *United*  
10 *Brands*, or any of the first limb?" and he said squarely, "The first limb, I am not dealing  
11 with economic value, the second limb". So Mr. Harman does not deal with that.

12 The only area where there may be some - it is really for Miss Bacon to articulate - common  
13 issues between her experts and Mr. Harman is on the common cost allocation.

14 THE CHAIRMAN: Mr. Williams and Mr. Harman - is that right?

15 MR. BREALEY: Yes.

16 THE CHAIRMAN: You do not want to set up an entire 'hot tub' arrangement just for one very  
17 small issue. I say 'small', you never know whether these issues are large or small.

18 MR. BREALEY: As I understand it, the CMA finally are going to engage in comparables, so  
19 other products which constitute a benchmark for the price that Pfizer and Flynn charged. It  
20 may well be, when we see Harman 2, there is scope for Mr. Ridyard and Mr. Harman to  
21 meet on comparables, for example. Until we see what they are going to say, we really have  
22 no idea.

23 The state of play at the moment is that we do not see the need for joint statements or 'hot  
24 tubbing'.

25 THE CHAIRMAN: The purpose of these things is to try and find common ground, and we shall  
26 continue to try and find common ground. That is the position of all of you, is it?

27 MR. BREALEY: That is the position of all of us at the moment, yes.

28 THE CHAIRMAN: All right, so be it.

29 MR. BREALEY: The next issue we could deal with is the timetable. We can look at the  
30 timetable that the CMA have proposed. Their timetable is set out at para.18, p.5. of their  
31 skeleton. We are broadly happy with this. There is some wriggle room. Paragraph 18, the  
32 CMA proposes the following timetable, we have a day for opening submissions, then Flynn,  
33 then the CMA. Then there are four days - Mr. Hoskins believes that he only needs four  
34 days to cross-examine the witnesses of fact and the experts - that is on p.6. I should say that

1 I do not believe that those four days, Friday, Monday, Tuesday, Wednesday, would  
2 incorporate - for example, the maximum, and I would imagine it's no more than half a day,  
3 it would probably be less for me to ask questions of Flynn's witnesses, and if necessary  
4 Flynn to ask questions of Pfizer's witnesses. I see Miss Bacon shaking her head, but----

5 THE CHAIRMAN: I thought we had come down to one witness.

6 MR. BREALEY: At the moment, standing here, I do not want to be shut out because something  
7 might happen, and I need to develop this. As things presently stand, the only person I have  
8 a desire to ask questions of, particularly in the light of how the CMA treat the witness in  
9 their defence - and I need to go to that - is Mr. Beighton.

10 Mr. Beighton is a very important witness, in our view anyway, and the reason for that is that  
11 it goes to the tablet price and the extent to which the Department of Health agreed that  
12 price, was outwardly happy with that price and purported to use its statutory powers as a bit  
13 of a stick to get the price reduction in the tablet. So the perception in the market place was,  
14 "This is a tablet, which if you buy the equivalent, we can price the capsule in line with the  
15 tablet", because the DoH and Teva have got together and that is the price that they have  
16 landed on. Obviously, this is for submission at the trial, but that is the issue to which it  
17 goes. It goes to actually both limbs of *United Brands*, but it is a very important issue.  
18 Perhaps I can develop this now and then we can maybe----

19 THE CHAIRMAN: We have not heard Mr. Hoskins on Mr. Beighton, but I understand that you  
20 agree with that through gritted teeth.

21 MR. HOSKINS: I have got toothache today, that is not just a submission. Let me just explain  
22 what our position on this is. Pfizer has no right to cross-examine Flynn's witnesses. It is  
23 not a right, and I think Mr. Brealey accepted that in his opening remarks.

24 MR. BREALEY: No, I do not accept that.

25 THE CHAIRMAN: This is a Tribunal, and I think we decide what the rights are.

26 MR. HOSKINS: Exactly, he can only do so with the permission of the Tribunal, and that follows  
27 for two reasons.

28 THE CHAIRMAN: That is what we are talking about.

29 MR. HOSKINS: The Tribunal is not bound by technical rules of evidence - for example, see  
30 *Argos v OFT*. That is well established. I have got the authority if you need it, but that is  
31 well established. Under 21(1)(f) of the Tribunal Rules, the Tribunal may give directions as  
32 to the way in which evidence is to be placed before the Tribunal. So there is no right, it is  
33 in the gift of the Tribunal to decide what is appropriate.

1 The way in which Pfizer put this, as you heard from Mr. Brealey this morning, is currently  
2 Mr. Beighton, “but we want to leave open our options”. Previously in correspondence they  
3 said they might need up to a day to ask questions of Flynn’s witnesses. It has now  
4 apparently come down to about half a day.

5 The question is what is appropriate, what is fair and what is just. There is an oddity.  
6 Fairness does not require that Pfizer should be permitted to question Flynn’s witnesses in  
7 this case because Pfizer and Flynn’s interests are aligned. It is not a case where the  
8 defendants have differing interests, they are aligned. So there is no obvious reason why it  
9 should be necessary. For example, in relation to Mr. Beighton where the focus is today----

10 THE CHAIRMAN: They are aligned in the sense that they are both the subject of a stringent  
11 CMA decision.

12 MR. HOSKINS: They are also aligned in so far as they take arguments that are common. There  
13 is no conflict between the positions that they take.

14 THE CHAIRMAN: No, but this is early days. We can see a situation where one argument might  
15 well impact on another argument made by one or other of these appellants. I just do not  
16 think we know at this stage.

17 MR. HOSKINS: If the question was put to me, does the CMA consent to Pfizer asking Flynn’s  
18 witnesses questions and *vice versa*, the answer is no, because, for the reason you have just  
19 described, sir, I am not now going to give a blank cheque to them. You will understand the  
20 fear on our part - I do not know how big a cricket fan you are, and I have not seen  
21 Mr. Brealey play cricket - the prospect of Mr. Brealey lobbing up full tosses for Flynn’s  
22 witnesses to despatch for six is not going to be helpful to the Tribunal, and is not very  
23 attractive to the CMA.

24 THE CHAIRMAN: We usually spot a full toss, from whichever direction it is coming,  
25 Mr. Hoskins!

26 MR. HOSKINS: That is right. That is why I wanted to make these submissions, rather than just  
27 simply saying, “We do not oppose”. I want to make the point that this cannot turn into a  
28 ‘six fest’ where you have got Pfizer and Flynn just lobbying up easy hits to each other’s  
29 witnesses. That is the point I wanted to make, sir.

30 THE CHAIRMAN: We are trying to set up a trial which will get as near to the truth as possible,  
31 as the adversarial system permits. We are not inclined to allow a series of leading questions  
32 from one appellant to the other. That is not going to happen. That is what we are here for.  
33 Nonetheless, my take at this stage is that the request is a reasonable one, and we will allow  
34 it.



1 MR. HOSKINS: That is what I expected you to say, but I wanted to make the points I have just  
2 made. Can I say that if we are to allow questions to be asked of Mr. Beighton, at this stage  
3 the permission should be limited to Pfizer asking questions to Mr. Beighton. If Pfizer or  
4 Flynn want to ask questions of other witnesses they should formally ask the Tribunal for  
5 permission to do so at an appropriate stage, so that it is not an open cheque at this stage.  
6 Can I suggest also - and, hopefully, from the conversation I had with Mr. Brealey, this is not  
7 going to be controversial - that Pfizer should put its questions before the CMA begins its  
8 cross-examination, and leading questions should not be permitted because it is not going to  
9 help anyone if leading questions are asked.

10 THE CHAIRMAN: We never like leading questions.

11 MR. HOSKINS: So if we are going to go down that route we say, Mr. Beighton, Pfizer should  
12 put questions before the CMA and no leading questions. That is what we would suggest.

13 MR. BREALEY: I am grateful for the, I think, non-opposition now, and the indication from the  
14 Tribunal.

15 Can I just state, no one has a right to do anything, but there is an order that the evidence in  
16 Flynn's appeal constitutes evidence in the Pfizer appeal. In the *Imperial Tobacco* case - and  
17 I have got transcripts, I do not think I need to take you, sir, to them now - everybody had the  
18 right to ask questions of the other defendants' witnesses. In the four month trial in *Visa* in  
19 the Commercial Court, Mr. Justice Phillips asked me whether I wanted to ask questions of  
20 the co-claimants' experts. If evidence is being adduced in one appeal or case and used in  
21 another, fairness does dictate that that person at least has the right to ask questions. The  
22 court or Tribunal will not allow leading questions, because that obviously is a bit of a full  
23 toss.

24 I am grateful for the Tribunal's indication that it is a reasonable request, and I can assure  
25 you, sir, that I will not abuse it, but it is a necessary safety valve.

26 THE CHAIRMAN: All right. We were talking about how long it is going to take you all. Can I  
27 just put on the table that we have obviously had a look at the CMA's proposed timetable.  
28 My immediate reaction was that the period for drafting and reading closing submissions  
29 was too long.

30 MR. BREALEY: I said there was a bit of wriggle room.

31 THE CHAIRMAN: There is an alternative proposal, which is not that different, but it involves  
32 not sitting on the first two Fridays, and then pausing in the middle of the third week - that is  
33 November 15, a Wednesday, and not sitting for the rest of the third week, and then seeing  
34 how we feel on the Monday morning. I am slightly concerned - all right, it is a complicated

1 trial, the issues are very serious, and we take it very seriously - that if you take a week off in  
2 the middle of a trial, I, for one, tend to forget what the argument was all about, however  
3 helpful the written closings are. I want to also flag that written closings seem to me to have  
4 got longer and longer and longer. That means that they take longer to write and they take  
5 longer to read, and it would be much better and much more helpful if they were shorter, as  
6 indeed skeletons should be shorter. I know I am beating against the wind, but I want to  
7 make that clear. I do not really want to allow six days for a pause in the middle. We can  
8 discuss that, but we are not that far apart.

9 MR. BREALEY: I do not believe we are. It may be that we can have an extra - on Friday we  
10 have got the non-sitting day, so we can have that day for witnesses.

11 THE CHAIRMAN: My proposal, the Tribunal's proposal, is that we have the three opening days,  
12 Monday, Tuesday, Wednesday, then the first day of Flynn or Pfizer witnesses would be the  
13 Thursday. Then we do not sit on the Friday. Then you have got four days of the following  
14 week if you need them for Flynn and Pfizer witnesses. We have some flexibility there, but  
15 my intention would be not to sit on that Friday unless we are so far ahead that it is obvious  
16 that we should. Then the CMA's expert, Harman 1 and Harman 2, would be the Monday  
17 and Tuesday of the following week. At that point the witness evidence is over, and we can  
18 then give you the rest of the week to prepare closings. If they are ready by the end of the  
19 week we will read them over the weekend.

20 MR. BREALEY: That sounds sensible, sir.

21 MR. HOSKINS: Did you say you would read them over the weekend?

22 THE CHAIRMAN: Yes. Whether you really then need the whole of the next week to close, I  
23 would doubt, but we will see how we are going. If we can finish early that would be better  
24 than holding it up in the middle to finish to some imaginary deadline. Is that something  
25 that you can think about?

26 MR. BREALEY: It sounds sensible.

27 THE CHAIRMAN: I am prepared to give you ten minutes to discuss that, if you want. Shall we  
28 wait and see if there is anything else that you want to discuss and then we can do it all at  
29 once. I think we have got a written proposal we can show you if that is helpful. If we are  
30 still agreed with the start date of the trial, that means the other dates are not that difficult  
31 either. (Same handed)

32 MR. BREALEY: Miss Bacon is very happy with that, because it is almost her timetable.

33 MISS BACON: As I understand it, the only difference between your timetable and ours is that it  
34 moves Mr. Harman into week three, the first two days of week three, and then we have a bit

1 more time in week two for the cross-examination of our witnesses. So we are very happy  
2 with that.

3 THE CHAIRMAN: We are giving ourselves a couple of Fridays off.

4 MISS BACON: We think that is sensible, and it is in line with the Commercial Court practice  
5 anyway.

6 THE CHAIRMAN: I did not realise that but that is good to know. I am glad that they are aligned  
7 with us!

8 MR. BREALEY: This suggested timetable looks sensible, sir. We have the 27<sup>th</sup> and 28<sup>th</sup>, as I  
9 understand it, with some wriggle room, if necessary. We finish on the 24<sup>th</sup>.

10 THE CHAIRMAN: I think this gives us a sporting chance of finishing by Wednesday, 22<sup>nd</sup> at a  
11 pinch, but Thursday, certainly. It depends how you are doing it. Basically, we have  
12 allocated the whole of the week of the 20<sup>th</sup>, if necessary.

13 MR. HOSKINS: That looks fine to me.

14 THE CHAIRMAN: Good. What else is there - dates for skeletons?

15 MR. BREALEY: I think everyone is agreed. As to 4, we would respectfully ask you, sir, not to  
16 order us to divide up and allocate responsibility. Miss Bacon and I, we have just seen that  
17 we have got a certain amount of time which we have got to sort out between us----

18 THE CHAIRMAN: I am told you are wise and experienced, so I do not have to worry! I hope  
19 that applies to CMA's counsel as well.

20 MR. BREALEY: It does.

21 THE CHAIRMAN: There are compliments flying around!

22 MR. BREALEY: The are discrete issues in the Flynn appeal and----

23 THE CHAIRMAN: I am not inclined to make an order on this.

24 MR. BREALEY: I am grateful. That just leaves - I think no one at the moment has got an  
25 appetite for an electronic hearing bundle, so we will have the old-fashioned paper bundles.

26 THE CHAIRMAN: That is terrible news.

27 MR. BREALEY: We had it in *Visa*, and although I do not think it is a substitute necessarily for  
28 paper totally it is quite handy.

29 THE CHAIRMAN: It will come, but perhaps not this time. There are some Augustine rules, I  
30 think.

31 MR. BREALEY: Skeletons, I think we are agreed on.

32 THE CHAIRMAN: Is it Friday or Monday, I cannot remember?

1 MISS BACON: We have asked for Friday, we think that is more sensible, the 13<sup>th</sup> and the 20<sup>th</sup>.  
2 We have also put a proposal for dates for the hearing bundles to be lodged with the Tribunal  
3 and the authorities bundles in our skeleton at para.5.  
4 THE CHAIRMAN: Does that help you or help us, I am not sure?  
5 MISS BACON: I hope it helps everybody.  
6 THE CHAIRMAN: Anybody have any objection to that? All right, Friday it is.  
7 MR. HOSKINS: Sorry, I think there was one point of detail on the authorities bundle. At the  
8 moment I think our skeleton would come on Friday, 20<sup>th</sup>, and authorities on the Monday,  
9 which would seem quite cruel on someone who is producing those bundles.  
10 THE CHAIRMAN: I agree.  
11 MR. HOSKINS: I was going to suggest pushing the authorities out by a day or two to 24<sup>th</sup> or  
12 25<sup>th</sup> October. There is no point in someone working over the weekend.  
13 THE CHAIRMAN: That will be fine. I will say the 25<sup>th</sup>, to be even kinder.  
14 MR. HOSKINS: Thank you.  
15 THE CHAIRMAN: I hope this mood of kindness continues! I fear it may not!  
16 Pre-trial review: yes, we thought we should schedule that on the basis that it is likely to be  
17 vacated. We were suggesting 28<sup>th</sup> September. That is as a precaution.  
18 MR. BREALEY: I think that is everything.  
19 THE CHAIRMAN: For an important and serious case, that seems astonishingly easy. Maybe  
20 that is a tribute to everybody's hard work.  
21 MR. BREALEY: There has been a lot of co-operation amongst the parties.  
22 THE CHAIRMAN: I am grateful for that.  
23 MISS BACON: I think the only outstanding question is what you would like us to do with the  
24 bundles, whether you would like us to discuss it between ourselves or whether you want to  
25 give directions. Our proposal had been to try and consolidate and streamline the bundles.  
26 There is a problem in that the existing bundles are not highlighted for confidentiality, so we  
27 are going to have to do that in any event. So given that we are going to have to re-copy  
28 everything with appropriate colouring in, we thought it would be a good opportunity to  
29 streamline them with, for example, a set of pleadings, a set of witness statements and expert  
30 reports, and a consolidated set of CMA case file materials, for example. I understand that  
31 Mr. Hoskins opposes that and wants to use the existing bundles, which we think is going to  
32 be rather difficult because at the moment I think there are three or four different places  
33 where there are, for example, CMA case file documents, which we do not think is going to  
34 be helpful to anyone, least of all the Tribunal, at the hearing. So we would propose a

1 consolidation, and we are of course happy to liaise with the parties to produce an agreed  
2 bundle index.

3 THE CHAIRMAN: Mr. Hoskins, you are cast as the villain again.

4 MR. HOSKINS: I get used to it! I am not going to the stake on bundles. I thought it might be  
5 quite useful to use the ones we have, but I am happy to discuss it with the appellants and  
6 come up with something we are all agreed on.

7 THE CHAIRMAN: I am very relaxed about how you want to do this. We are conscious that  
8 confidentiality is quite a tricky issue in this, and I can see instances where figures may get  
9 mentioned if we are not careful. Anything that helps to discipline that we strongly support.  
10 Otherwise I think it is up to you to come up with a sensible suggestion and we will leave  
11 you with that. I see my Référéndaire is nodding, I think! Please can you liaise with the  
12 Tribunal on this as well as amongst yourselves.

13 All right - is that it, as they say? I am sure we have all got other things to do, not as  
14 important perhaps, but thank you very much. I am grateful.

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