IN THE COMPETITION APPEAL TRIBUNAL

CaseNo: 1637/5/7/24

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Thursday 3rd October 2024

Before:
Bridget Lucas KC
Dr William Bishop
Carole Begent
(Sitting as a Tribunal in England and Wales)

BETWEEN:

Claimant

SportsDirect.com Retail Limited

v

Defendants

Newcastle United Football Club; Newcastle United Limited; and JD Sports Fashion Plc

And

Proposed Additional Defendants

Adidas (U.K.) Limited and Other

A P P E A R AN C E S

Conall Patton KC & Daisy Mackersie on behalf of SportsDirect.com Retail Limited (Instructed by Travers Smith LLP)
Tom de la Mare KC & Alison Berridge on behalf of Newcastle United Football Company Limited & Newcastle United Limited (Instructed by Northridge Law LLP)
Tristan Jones KC on behalf of JD Sports Fashion PLC (Instructed by Addleshaw Goddard LLP)
Kieron Beal KC on behalf of Adidas (U.K.) Limited (Baker & McKenzie LLP)

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Thursday, 3 October 2024

(10.30 am)

Case management conference

THE CHAIR: Before we start, I will read the normal warning.

Some of you are joining us livestream on our website, so I must start therefore with a customary warning: an official recording is being made and an authorised transcript will be produced, but it is strictly prohibited for anyone else to make an unauthorised recording, whether audio or visual, of these proceedings and breach of that provision is punishable as contempt of court.

MR PATTON: Good morning.

THE CHAIR: Good morning.

MR PATTON: May it please the Tribunal, I appear for the Claimant, together with Ms Mackersie; for the First and Second Defendants, which is the Club, we have Mr de la Mare together with Ms Berridge; and then for the Third Defendant at the end, JD Sports, we have Mr Jones; and then for the Proposed Fourth Defendant, Adidas UK, Mr Beal appears today, I think without Ms Patel who (inaudible).

THE CHAIR: Thank you. Before we start, it may come as no surprise to the parties we have done some pre-reading and some pre-thinking, and I thought it would be appropriate to raise with you an option we have been considering.

Now, the parties are completely free to push back on this, but what we wanted to raise with you was that, as we see it, the Club's primary concern seems to be one of delay -- and it's not the only concern but it's one of the concerns -- and we have read that Mr Stannard's witness statement, the second witness statement, at paragraph 20 says that in effect there's likely to be a five to seven-month delay relating to service if Adidas AG is joined; but that statement also says that if a trial date is fixed, that will be significantly shortened.

We do consider these proceedings should proceed to trial as soon as possible and we would like the parties to consider what their position would be on the issues before the court today if we were to fix the trial date now, and the date we have in mind -- again, all parties are free to push back on this -- is 2 February 2026. We have -- the parties will have to consider a time estimate if we go down this route.

Leading up to that, that would suggest that disclosure would be provided by 30 April 2025; we would be looking at a second CMC to resolve disclosure issues on the first available date in May 2025; we would be thinking about witness statements being exchanged on 27 June 2025; expert reports being exchanged on 29 August 2025; and then a third CMC, if it's required, to resolve any issues arising from the expert reports and that would be the first available date in October 2025; a pre-trial review in the first week of January 2026; and then, as I have indicated, a trial could start on 2 February 2026.

Now, we would like the parties to take a little bit of time to consider their position should we proceed in that way. And I have said it twice, I will say it a third time: you must feel free to push back on any aspect of it if you think it doesn't address the principal concerns that are raised today.

It may address the concerns relating to delay, especially if it pushes service along. I would like Mr de la Mare to consider whether it affects his stance on the permission application. Anything we did decide in relation to the timetable would of course be without prejudice to Adidas AG's normal rights to challenge jurisdiction and joinder in the amendments. We think that timetable should give sufficient time to deal with any jurisdiction challenge, but again if the parties disagree about that they are free to tell us. And if the Claimant wished to add any further claims, that would need to be accommodated within that timescale, or an application made to vacate the trial date

or extend the time estimate that we would fix for trial today.

So that is quite a lot to digest. We were going to propose that we rise to give all parties a chance to take instructions on whether that is a feasible way forward, and if so, what the stance is on the other issues before the Tribunal today.

So how long do you think you might need?

MR PATTON: Could we ask for 45 minutes because we will need to try and get hold of people who are not present.

THE CHAIR: 45 minutes? Can we attempt to do it in slightly less time?

MR DE LA MARE: I would say half an hour.

THE CHAIR: 30 minutes?

MR DE LA MARE: Yes. Can I throw one further factor into the mix, which is --

THE CHAIR: Yes.

MR DE LA MARE: -- there is an important influence on the objection to the joinder with Adidas AG because as yet we don't know what the pleaded stance of Adidas UK is going to be in relation to the topic of undertaking; and if there isn't in fact any dispute from Adidas UK that it forms part of the same undertaking as its parent, we think it's very difficult to see how there is any prospect of any utility in the joinder of the parent for the purposes of effectively completing the set of judgments.

In those circumstances, we can't see a world in which it won't give rise to some form of (inaudible) res judicata, issue estoppel (inaudible) cause of action estoppel. So really before we waste time and a great deal of money and effort in having service out and all the attendant delay that everyone recognises in relation to that, I think we actually need to know first whether or not there's an issue that's going to be joined on that issue by the UK subsidiary, not least because the question of what the undertaking is feeds directly into the question of the application of the vertical agreement block

exemption order and questions of market share. And it's an issue Adidas UK is going to have to plead to because of the presumption of decisive influence arising from the 100 per cent shareholding. It is not going to be able to not admit it.

We think it would be very helpful if there were some expedited or sensible means to identify whether there's any issue at all before we go off on some kind of foreign service wild goose chase.

THE CHAIR: Yes, I think we will probably hear you on that in due course, but in the meantime, I would like the parties to consider their position on the timetable that we've proposed because it doesn't pre-suppose anything in relation to whether or not permission is granted.

MR DE LA MARE: Understood.

THE CHAIR: So we will rise for 30 minutes.

(10.39 am)

(A short break)

(11.15 am)

MR PATTON: Madam, we are grateful to you for your proposal and I have briefly discussed it with my learned friends. As I understand it, they are all in principle in agreement with the proposal, but I am going to take up the invitation you offered me to push back on it if appropriate --

THE CHAIR: Yes.

MR PATTON: -- and we do seek to do that.

There are just a number of points I wanted to put before the Tribunal for consideration. The starting point is that the reason that you have put forward this proposal is to attempt to meet the objection that has been made by the Club to joinder by reference to the delay in service.

Of course we have not yet had that debate, but our submission on that is that the delay point is overstated as an objection to joinder, and that's principally because a great deal of progress is going to be made in the proceedings in accordance with the directions that are actually agreed between the parties between now and the next CMC, which will enable the proceedings to progress expeditiously, and it should be possible for Adidas AG to catch up pretty readily, to piggy-back on the back of that work once it is served.

THE CHAIR: Does it not help you to have the service issue put to bed and progressed more quickly, so there isn't the same element of catch-up?

MR PATTON: We certainly are happy for anything to be done that will speed up service. Obviously, it's entirely open to Adidas AG to accept service through the solicitors that its subsidiary has already appointed in this jurisdiction, and who are presumably going to represent it in these proceedings, so they could accept service today if you were to make an order for joinder. That is obviously a solution that's in their hands; it's not something you can order but it's the easiest solution of all.

If the Tribunal were to indicate to the foreign process section that it wanted service to be expedited, we would entirely be happy with that. We are keen for service to happen as quickly as possible.

You may be aware that the issues in the Foreign Process Service have been much discussed among the senior judiciary. It was discussed at the last Commercial Court users' forum in June as a matter of concern to the judges in their court, and I understand there's a working group that's been set up, led by Senior Master Cook, to try and expedite matters within the Foreign Process Service.

So, we are entirely happy, and indeed would support, anything that could be said to expedite service, but our concern is about the setting of a February 2026 trial date

simply to achieve that point. We don't think it's necessary to go that far and we don't think a February 2026 trial date is realistic for the reasons I am going to come to.

So my first point is that the delay point that the Club was intending to make against our application for joinder isn't a reason for refusing joinder because the proceedings will progress significantly in the meantime, and once Adidas AG is joined -- is served, it will presumably instruct the same solicitors as Adidas UK and much of the work will have been done on behalf of Adidas UK and Adidas AG will have the benefit of that.

The second --

THE CHAIR: They might choose to go to another firm.

MR PATTON: They might, but if you have my learned friend, Mr Beal's skeleton, in the final paragraph --

THE CHAIR: Yes.

MR PATTON: -- he does say that the intention is -- I will just get it up. It's in the Core bundle at tab 5, page 41. It's the last page.

THE CHAIR: Yes.

MR PATTON: He says:

"While each of Adidas UK and Adidas AG have different documentary resources and face different issues as the Claim is currently pleaded, there remain obvious efficiencies […] if the substantive disclosure steps are undertaken at the same time."

It seems very unlikely, given that has been said here, that they are intending to instruct different solicitors.

The second point is just to draw to your attention what the impact of the trial date would be on the delay point, and I know you have it in mind, but if you have Mr Stannard's second witness statement, which is in the Core bundle volume 1 at tab 7.

THE CHAIR: Yes.

MR PATTON: At page 60, paragraph 20 is the paragraph you have identified.

THE CHAIR: Yes.

MR PATTON: And in the third line, he says:

"The FPS has indicated that, (i) in ordinary circumstances it will take approximately two to four months from when SportsDirect submits the documents to the Senior Master to when they are forwarded to the relevant Central Authority in Germany."

Then,

"(ii) from the date the documents are received in Germany, the approximate timeline for effecting service is three months and potentially even longer. In respect of, (i) the FPS confirmed during phone calls with representatives of my firm that the time frame for FPS to process an application can be expedited, but only in circumstances where a trial date has been set."

THE CHAIR: Yes.

MR PATTON: So, it would only affect the FPS part of the service process. So far as the service by the Central Authority in Germany is concerned, that obviously wouldn't be affected by this point and on the evidence that part would still take three months, and potentially even longer, regardless of whether you were to set a February 2026 trial date.

Again, it's entirely within Adidas AG's gift to make that period of time disappear and to accept service today or tomorrow, but even with an order for a trial date, that is the position on the evidence before you.

So, turning to the proposal for a February 2026 trial.

THE CHAIR: Yes.

MR PATTON: It's obviously not something that has been debated between the parties in advance of the CMC, but given that the parties might appear to be at daggers drawn

otherwise, you will know the parties have in fact reached a great deal of agreement on directions otherwise. Those are set out in the draft order that was attached to our skeleton which, if you've got them in the Core bundle, are at tab 2 and they start at page 19.

THE CHAIR: Can I just check, is this the same form as was attached to your skeleton? Yes, so it has not been updated at all. I have a hard copy separately printed, that's all.

MR PATTON: It's the same as that, exactly. So, it's internal page 17 of our skeleton.

THE CHAIR: Yes.

MR PATTON: So just at the foot of the previous page, you can see "Directions, Statement of Case". As I understand it, all of these directions are now agreed, or were agreed in advance of the CMC between us and all of the Defendants, including Adidas UK.

So, at paragraph 8, we serve the amended claim form very soon. Then the date for the defences from JD Sports and from Adidas UK is agreed to be 8 November, with any reply then in early December.

THE CHAIR: Yes.

MR PATTON: And then the Further Directions that are then given involves working out what are the issues; and can we seek to agree the issues for disclosure.

THE CHAIR: Yes.

MR PATTON: And so the agreed position is that at paragraph 11, we would serve a draft list of the issues at the same time as our reply, which is 6 December. It's then envisaged the parties' experts would meet to discuss disclosure requests and expert information, and that would happen essentially by Christmas.

Similarly, at paragraph 13 the EDQs would be exchanged by Christmas; and then

early in the New Year at paragraph 14 the Defendants would respond to our draft list of issues; then at the end of January at paragraph 15 there will be exchange of information requests; and then paragraph 16, the parties will either say those are agreed or they will exchange objections; then at the end of February, paragraph 17, they will file the agreed requests and they will identify those that are in dispute.

THE CHAIR: Yes.

MR PATTON: Then paragraph 18, it was envisaged there would be a further CMC and the month is actually missing here, but it's the first available date after 14 March 2025.

THE CHAIR: Yes.

MR PATTON: So that is the position that all of the parties were content to agree in the run-up to this CMC, and that's because they have all taken the view that these are realistic dates to finish off the pleadings as between the parties, apart from AG, to discuss what the issues for disclosure are and what the information is that the experts need, and then to come to a CMC prepared to argue about points of dispute in relation to disclosure and information.

THE CHAIR: Yes.

MR PATTON: So what that --

THE CHAIR: Is there any particular reason, though, why the process of disclosure couldn't carry on whilst we are waiting to have a CMC about disputed issues of disclosure?

MR PATTON: No, I would expect the parties would start the work, particularly in relation to agreed matters, in advance of the CMC.

THE CHAIR: Because when I gave the key stages, the key dates, I don't think it was envisaged these particular paragraphs would be affected, those could still take effect

and it would just be we would then go on to make a date for the provision of disclosure and a case management conference to deal with any issues arising.

MR PATTON: Yes. Well, as I understood it then, the date is then that having had a CMC in the middle of March, all of disclosure would need to be given by the end of April.

THE CHAIR: Yes.

MR PATTON: In my submission, that may be a very challenging deadline to meet. That's only six weeks, and I think certainly we were expecting a much more significant period of time would be needed for that than six weeks.

THE CHAIR: But the issues of disclosure will have been being discussed since December.

MR PATTON: Yes.

THE CHAIR: So is there any particular reason why disclosure will be particularly challenging in this case?

MR PATTON: Well, one simply doesn't know at this stage. There has been -- the pleadings have not closed yet. We have a pleading from the Club; we don't have a pleading from JD Sports; we don't have a pleading from Adidas. So it's early days, in the sense we haven't reached close of pleadings, and none of the steps we have envisaged that the parties have agreed should take place have taken place.

It's unwise, in my submission, to set a timetable on the assumption that all of these issues, disclosure requests and information requests will be readily agreed. Obviously, that's the ideal and the Tribunal will expect the parties to be cooperative, but experience suggests that that doesn't always happen, that the parties see the case differently. And there may well be substantial disputes to be resolved at the CMC, and if that's the case, then that's the point from which the parties will then go off and give

disclosure in relation to whatever you decide should be given.

We submit that this is a case where disclosure is going to be very important -- that the receipt of proper disclosure is going to be very important because, as you know, we plead an infringement, both by object and by effect. And in relation to that, we do rely on the subjective intentions of the parties as being relevant and admissible to what their objective was in agreeing the arrangements that we impugn.

If I can just very briefly show you an example of that in the pleading, it's in the Core bundle volume 3, tab 9, at page 939.

THE CHAIR: Yes.

MR PATTON: It's at the letter E, and we say:

"Further, (while not a necessary component to establish an abuse […]), the aforesaid conduct pursues the subjective anti-competitive goal of maintaining retail prices for the Club's replica kit at a higher level than would be the case if SportsDirect were not excluded from the market to the direct benefit of the Club."

We say this "without prejudice to the generality of the foregoing, then at (i) we say:

"In April 2023 the Club engaged a consultant, Two Circles, to advise it on the implementation of a new retail model" and their report stated, "going down an exclusive route will limit our [the Club's] distribution options in the UK, most noticeably with SportsDirect, (whose discount pricing model would impact our [the Club's] own retail operating margin significantly)'."

Now the reason we've been able to plead that document is because that was produced by the Club as an exhibit, I think, to its evidence in the interim injunction stage of the proceedings. But we are expecting there will be more material of that kind to be obtained from all of the Defendants, and that will be an important part of our case that this is a case of a subjective anti-competitive goal of maintaining retail prices for

the replica kit.

So we do consider that disclosure is so important in this case that what we don't want is for that to be constrained by an unduly tight timetable.

There are two aspects to that, really. First of all, if once disclosure has been given, pursuant to the Tribunal's order, we form the view it's not been adequately carried out, or that there are gaps or that the disclosure throws up areas of further disclosure, we would want to have the opportunity at least to apply to the Tribunal for specific disclosure.

Our concern is that the existing timetable leaves very little room for that to happen. And we've all been in the position where you make a specific disclosure application, and the Tribunal says: look, we've got a trial date, that is not moving, you are simply going to have to cut your cloth accordingly and we are not going to get into specific disclosure applications or we are going to pare them back.

That's our concern, that once the trial date has been set, our ability if we are not satisfied with the disclosure that's been given, to come back before the Tribunal and make sure that we get the disclosure that we consider we need to advance the sort of case I have just shown you, that this will be significantly inhibited if the trial timetable is very tight.

THE CHAIR: So between the date that we were envisaging that disclosure might be provided and the trial itself, there's about nine months, I think, so presumably you would be able to identify in that time period any particular specific disclosure requests you might want to make.

MR PATTON: Well, that's the (several inaudible words). Sometimes the point is taken -- we've moved beyond the disclosure phase, we've now had the witness statements, we've had the expert reports. It's too late for us to go back and start

revisiting the scope of disclosure now. Normally, what one would want is an opportunity before witness statements and expert reports go in, for the disclosure to be given, including any specific disclosure, so that the witness statements are able to take account of that, so the expert reports take account of it.

And what we are concerned with is we will be told: I am sorry, this is just not the sort of timetable that allows for that, this was really a one-shot thing.

I said there were two points. The second point is that in this sort of case it's very common that once the disclosure is given and it's been reviewed -- and that's obviously going to take time, that's not a week or two's work, it's very common that that results in amendments to the pleadings, where further particulars of the case are given, in the same way as we did amend the pleadings and give further particulars when we got the disclosure in the injunction application.

Again, we are concerned that it will be said: this timetable simply doesn't allow for that, we've already had the witness statements, you can't be changing the pleadings now; or; we've already had the expert reports, you can't be changing the pleadings now; that would create new issues that the witnesses haven't addressed, it would create new issues the experts haven't addressed, the train has left the station. We would submit that that would be fundamentally unfair, given the importance, as we have made clear, of disclosure to our case.

THE CHAIR: But the disclosure will be relatively confined on the case as it's pleaded at the moment, won't it; it will be confined to the agreements with the Club and obviously negotiations leading to those?

MR PATTON: No, in my submission, it will not, and I know this is going to be a disputed point and there is an indication in I think my learned friend, Mr Beal's skeleton it is going to be a distributed point. But in fact the idea that disclosure will go

wider is a point that the Club itself has made in correspondence. Can I just show you that.

THE CHAIR: Yes.

MR PATTON: It's in the Supplemental volume, tab 100, at page 792. Perhaps start at 791.

THE CHAIR: Yes.

MR PATTON: So I will just wait for Dr Bishop. Sorry, this is in the Supplemental volume, which I think you will only have on the screen.

DR BISHOP: I see.

MR PATTON: So it's a letter from my learned friend, Mr de la Mare's solicitors, dated 30 April 2024, and this was in the context of the Club seeking to join JD Sports as a party to the proceedings. That's the context.

If you go over to page 792, paragraph 4, this is where they explain why it's efficient to join JD Sports as a Defendant. It's 4.3, the point that they rely on:

"The Defendants [and at that stage that means the Club] understand that tripartite arrangements of the nature in place between adidas, JD Sports and the First Defendant regarding NUFC replica kit is only the most recent example of an arrangement that has been used by JD Sports and adidas with respect to other clubs' and associations' replica kit over the course of several years, (including Celtic, Leeds United, Leicester City, the Scottish FA and the Welsh FA). An understanding and assessment of these arrangements is relevant to the issues in the Proceedings and disclosure shall be required to understand their extent and impact on the market."

Madam, we agree with that, so it won't be confined to disclosure in relation to the Club alone. The Club, we respectfully say, was correct to identify that it goes much wider than that to understand what is the rationale, for example, for these arrangements in

relation to the Club, one would want to look at these similar arrangements.

THE CHAIR: Yes, thank you.

MR PATTON: So it's not necessarily -- one can quite understand why it might at first appear it would be narrow, but we would submit, as the Club has rightly pointed out, it will go much wider than that.

Now, I was going to say this position on the importance of disclosure is not a position we are simply taking in response to the Tribunal's proposal today, it's a position we've made clear as a matter of long standing, and just to confirm that, could I ask you to look in the Supplemental bundle at page 385.

THE CHAIR: Yes.

MR PATTON: This is a letter from Travers Smith to the other parties on 19 June 2024, and at 385 in paragraph 5 we are explaining why our previous desire for the proceedings to be on an expedited basis wasn't being pursued.

At paragraph 5, we say:

"Our client however recognises that the addition of JD Sports and Adidas to the Proceedings will have an inevitable impact […] and in practice mean it will be more difficult for […] any trial to be heard before the end of 2025. Our client is also mindful of the central importance that disclosure will have to the fair and just resolution of its claim and is concerned that expedition should not become an excuse for unfairly attenuated disclosure."

That's the same concern I have been seeking to explain to the Tribunal this morning.

So disclosure -- specific disclosure applications and repleading in the light of the disclosure. We submit the timetable is going to be too tight for that to occur.

We do submit that, looking at the other steps in the timetable that the Tribunal has proposed, they also do look tight, given the number of parties that are involved here

and the issues in the proceedings, and in particular the point that my learned friend's solicitors made about the need to look at the other arrangements involving other clubs. Then there's just a final point which is that, as it happens, I would not be available for a trial in February 2026. As the Tribunal may have noticed, I am the second silk in this case because Mr Singla had to be replaced because of his availability, and so my clients would be faced with replacing their leading counsel for a third time, which as you can understand is not very welcome.

THE CHAIR: Yes.

MR PATTON: Unless I can assist you, those were my submissions.

THE CHAIR: So when do you say you would be ready for a trial, then?

MR PATTON: That -- I have not got a date, but we simply focused on the Tribunal's proposal, but I can seek to take instructions on that.

THE CHAIR: How long -- sorry, did you have time to consider how long the time estimate would be?

MR PATTON: Our provisional view -- and I have not discussed this with my learned friends and it's a bit of a guesstimate at this stage because we don't have pleadings and so on -- we thought it would be about four weeks if liability only were tried and possibly a fifth week if everything were part of a single trial.

THE CHAIR: Thank you.

MR DE LA MARE: Our concern, as you've rightly picked up, is delay. This case has taken a pretty marked and largely unexplained procedural turn that has coincided perfectly with the Club's failed attempts to get an interim injunction.

It has gone from being arguably the most urgent case on the CAT's books, with the prospect of a trial of knotty issues you have heard described, all by September 2024, that's last month, within five to six months of the issue of the claim, a trial that was

suggested would take no more than five days, it's gone to a trial date now that can't be heard even by February 2026. And that's news to us because we understood the most recent position to be, as set out in paragraph 5 of the letter that you were taken to at page 385 of the bundle --

THE CHAIR: Yes.

MR DE LA MARE: -- which was that a trial would not be possible before the end of 2025.

THE CHAIR: Yes.

MR DE LA MARE: There was no suggestion -- and I have checked the subsequent correspondence, there's no subsequent suggestion a trial in early 2026 is not possible. All of this, I'm afraid to say, has the very greatest of whiff of tactics because a trial with the degree of expedition originally sought was, in our submission, never realistic, but a trial of an object and effects case of a fairly conventional kind, involving effectively allegations of foreclosure, by the beginning of 2026 is perfectly possible.

THE CHAIR: Of 2026, did you say?

MR DE LA MARE: 2026.

THE CHAIR: Yes, by the end of 2026. Yes.

MR DE LA MARE: No, by February 2026 --

THE CHAIR: Sorry, I heard you say "end".

MR DE LA MARE: -- as you, Madam, proposed, that's perfectly possible. None of that is in any way to deprecate the importance of disclosure. We have, as my learned friend rightly points out, been saying for some time that because of the effects case it will be important to investigate a number of different arrangements on the market, not just the arrangements between JD Sports and Adidas that my learned friend adverted to, but the arrangements of other clubs, for instance, that sell all of their products

through a club shop and don't have distribution arrangements, all of these will be relevant for investigation for the foreclosure case. We've said so consistently at every single hearing in this case, so nothing has changed on our part on that front.

And disclosure is of course an important two-way street. We look forward to receiving candid disclosure on the topics that we've raised, whereas yet not a single document has been disclosed, for instance, in relation to the Castore arrangements and the exclusivity that that contained, or the exclusivities in relation to the Rangers agreements, because of course my learned friend's client's case is exclusivity over shirts is poison and foreclosing, and yet his client has engaged in those arrangements.

So we are going to be hot on the case of disclosure, but the timetable that has been agreed allays all of those concerns for the simple reason that it sets in train a process in which the parties engage early and discuss, with precision and with the benefit of their expert witnesses, which categories of documents will and will not be required.

Now, one of the great merits of that proposal is that it also facilitates early priority disclosure if that is going to speed the plough.

I would respectfully suggest that having heard the interchange between my learned friend and you, Madam, the answer to my learned friend's concern is precisely this, which is to institute a process of rolling disclosure. As and when categories are agreed, and particularly important categories are agreed, then the parties can start work on providing that disclosure early.

The dates that you've proposed of end of April, that works perfectly well, both as a longstop date for any residual categories of disclosure and as effectively a target for the exercise to be complete.

The balance of my learned friend's submissions, well, with respect, were predicated either on a suggestion that the Defendants couldn't be trusted to do disclosure

properly, which we certainly don't accept, or that they are somehow wrong-headed if they accept that disclosure can be done by the end of April, as my clients certainly do accept.

So we think the whole topic of disclosure as a bar to trial by the end of -- beginning of 2026 in February is a nonstarter once you take those points on board, and particularly if you build in some mechanism for priority early disclosure of key categories.

After that, we agree with my learned friend, and I think my learned friends on this side, that the CMC should follow the exercise of disclosure and pre-date witness statements. We don't see any linkage of the kind my learned friend suggests between the issues of disclosure and the settlement of his witness statements. His concerns were articulated by reference to documents about my client's subjective intention -- again, that's another two-way street because one of the questions that will undoubtedly arise in this litigation is why, with a proliferation of these types of agreements, it's Newcastle alone that gets sued, and there's a little bit of history between Mr Ashley and Newcastle that might inform some of that.

But none of that is going to have any bearing on the witness statements that have to be filed in relation to the issue. We can't see how Mr Ashley or any of the other people who have given evidence to date needs to do running commentary on our documents. That's not what witness statements are for.

Our concern does arise in relation to the timing of expert evidence. It's in part a practical and in part a personal plea. Expert reports by the end of August means no August for any lawyer.

THE CHAIR: You see, I take my holiday in September.

MR DE LA MARE: Yes. With respect, probably I am likely to be the one engaged in exchanges with Mr Murgatroyd, et cetera. We think the timetable, even to February,

works perfectly well with expert evidence at the end of September, not least because even if that's allied with the standard mechanisms for the experts to meet, reply, report points of agreement, disagreement, which it should be when we get there, we don't see the need for both a CMC and a PTR before the hearing in February. I think that's common ground at least on this side of the court. A PTR in December should kill two birds with one stone, in our submission.

Trial length, we think four weeks for liability and quantum is realistic. It is an effects case, but much of the terrain that is going to be covered by the effects case is going to be relevant to quantum, and there is going to be some overlap on that front. Four, five weeks, not set in stone can be kept under review, the Tribunal can be kept appraised.

As for the availability of counsel point, I too am unavailable in February. This Tribunal doesn't list for the availability of counsel, in my experience, and that's a two-way street. So we say, frankly, the Claimant's bluff has been called by your proposal. Yes, it is true that it may only be the initial FPS delay that is curtailed by your proposal, but that's more than enough to lop off a good deal of the potential delay in this case.

And allied with the point I made earlier, which is that all of this may be a bit of a non-issue if Adidas UK's case is one of admission, that it forms part of the undertaking, then the concerns as to delay go away.

They are not, however, in my submission, overstated. The best proof of the nature of the concerns again comes from my learned friend, Mr Beal's skeleton argument -- it's paragraphs 19 and 20 of his skeleton -- because it reveals the categories of potential source of delay that arise from the attempts to join AG.

The first is just the simple issue of service, so three months' FPS, three to four months' service in Germany.

THE CHAIR: Yes.

MR DE LA MARE: Then there is the unknown as to whether or not there is going to be any challenge to jurisdiction and any challenge to the process by which permission to serve out has been obtained. Of course it may be the case that they have a challenge to both of the gateways, I don't know, but equally it may be that they have things to say about the full and frank disclosure in Mr Stannard's statement; or indeed it may be something that they have to say about the ex parte application to join them in circumstances where the joinder is unnecessary. We just don't know what arguments Adidas AG are going to make on that front.

As identified in paragraph 20, it is going to be potentially disruptive of disclosure if -- and I underline the word "if" -- there is any additional material disclosure that Adidas AG has to give.

As to that, we say Mr Stannard's case is one of the baldest speculation because the case is essentially: there may be Adidas AG documents; why? Because there was a meeting described in Mr Silverstone's statement, with a Mr Daggett of Adidas UK that took place at Adidas AG's headquarters, in Germany. Because of that, it's said to be a reasonable inference, firstly, that Adidas AG has documents, and secondly, that those documents could not be obtained from any of the other Defendants.

Now, both of those propositions are obvious non-sequiturs. Why does it follow from the fact that you have a meeting in Germany that your parent holds any documents about that meeting at all? It may be recorded on Mr Daggett's emails or notes at the time, but those are all going to be held by Adidas UK.

And, why does it follow that there is going to be additional disclosure that is held only by Adidas AG? It doesn't follow at all. The agreement in this case is with Adidas UK. As we understand it, all the other agreements with the other clubs are Adidas UK.

Adidas UK is a huge entity, it has a turnover of £1.3 billion, making profits of in the order of £40 million a year. It's a substantial subsidiary operating in the UK market. It's not some kind of transfer pricing subsidiary; it's a proper commercial entity.

There is simply no basis that we can see to say there are any documents. So it's a Morton's fork for my learned friend, with respect. Either there are no documents, in which case why on earth are we wasting the time joining Adidas AG to this claim? It doesn't have any material additional disclosure and there is no benefit in terms of legal certainty because if Adidas AG -- if Adidas UK confirms it's part of undertaking, the parent company is not going to be able to reopen that. If it doesn't and it's litigated out, it's going to be stuck with whatever finding is made on that front in any event.

If there is additional disclosure, which we very, very much doubt, then it may be that the sorts of problems canvassed by Mr Beal's skeleton arguments about inefficiencies arise and the spectre of delay raises its head.

So we don't think the case of delay is overstated.

That said, we are content to proceed with the Tribunal's proposal, which should cut through a good measure of a number of months of delay on that front. And that being so, we think there is a greater prospect of catch-up and lack of disruption to the existing timetable.

All the points Mr Patton makes about the unwillingness of the parent to accept service, et cetera, will no doubt be recycled as and when the parent attempts, if they do, to complain about the time to catch up.

So on that premise we think a trial in the -- on 2 February for four or five weeks meets all of the concerns. It sets a clear and reasonable timetable; it's a measure of expedition, but one appropriate to the complexity of the case.

It should cut through the issues of delay and thereby attenuate the problems in relation

to AG; and it meets the professed concerns of all of the parties that this case should be got on with as soon as is reasonably practicable. There are plenty of mechanisms to deal with disclosure, and if necessary we build in an early disclosure mechanism into the timetable.

Unless there is anything else I can assist you with further ...

THE CHAIR: Thank you. Yes, Mr Jones.

MR JONES: Madam, members of the Tribunal, my client, JD Sports, came late to these proceedings, as you know. They started as the latest instalment, as we saw it, of the very public tensions between Mr Patton and Mr de la Mare's clients, who at that point were the only ones sued.

When JD Sports was brought in, it took the position of being pragmatic and trying to cooperate with a proportionate trial of what is, after all, a relatively straightforward claim in this Tribunal. But we did flag that we had concerns, I made the point in my skeleton, over what we called "game playing".

So on the question of Adidas AG, which is at the heart of this issue, JD Sports took a neutral stance. It wanted simply to get ahead with the issues in the case, but it said: we can see that this does appear to be leading to some delay. And we are concerned, given especially the erratic history of these proceedings, about the game playing that may be going on behind the scenes at SportsDirect's end.

Your suggestion, Madam, therefore struck us as a pragmatic way forwards. It clearly would deal with some of the delay associated with joining Adidas AG. My learned friend, Mr Patton, said it wouldn't speed up service in Germany. I wasn't sure whether there was actually evidence to support the notion that it wouldn't speed it up or whether the actual position is we just don't know whether it would or wouldn't speed it up in Germany.

Quite apart from any of that, more generally setting a timetable to trial of the kind you have proposed would hold the parties' feet to the fire and keep things moving, not at a great pace, not in the few months' period that was originally suggested by the Claimant when they wanted a speedy trial -- on some views, and I don't mean this as a criticism, it's a rather leisurely pace to have a trial in February 2026 of a matter such as this, but on a sensible timetable.

So in light of all of that, Mr Patton's submissions to you did cause us great concern because it does not, in our submission, make a lot of sense to say that this cannot be done in a year or more from now. It is a straightforward trial.

I should say that everything I have just submitted is on the premise that it goes ahead in the manner currently pleaded. And of course we have lurking in the background this suggestion there may be a wider claim; we don't even know what that is, so clearly if and when that comes along, we may need to revisit some of this.

On the question, though, of the timetable, could I make a few submissions on some of the details?

THE CHAIR: Yes.

MR JONES: You have been taken to already -- and I think it's helpful to just remind ourselves of what has been agreed. It's on page 17 of Mr Patton and Ms Mackersie's skeleton argument. I think that's page 19 of the Core Bundle.

THE CHAIR: Yes.

MR JONES: It's under the heading "Further Directions". You have been taken through all of those. Down as far as 18 or so, from 11 to 18 have been agreed, and as Mr Patton said, the idea was that there would be a case management conference on the first available date after 14 March 2025, which is of course after the parties have identified any disputes regarding disclosure --

THE CHAIR: Yes.

MR JONES: -- but before the disclosure. My understanding is that we are all agreed that is sensible. And that's a difference with, Madam, the timetable you read out, which I think had disclosure, then followed by CMC two, whereas my understanding is that we've agreed, and certainly my submission would be it would be sensible to have CMC two before disclosure. So 14 March --

THE CHAIR: So my thinking there was simply that any uncontroversial disclosure could crack on and then if you had the second CMC a little bit later, you could resolve issues about categories of disclosure to be given and the standard of disclosure that had been given, you could have a CMC that would deal with both of those issues.

MR JONES: Yes, and Madam, I say two things about that. The first is I entirely agree with the sentiment I think you have just expressed -- and I think Mr de la Mare was making a similar point -- which is that disclosure can start earlier than when we are talking about, and should start earlier, and there are going to be some issues that might be agreed, there might even be some obvious disagreements we should bring on quickly before the Tribunal.

So this set of directions I think should not be treated as the complete set. That said, it does seem likely that in this process of exchanging expert requests and disclosure requests in the normal way, there is going to be a set of disagreements which really need to be resolved by the Tribunal before the main disclosure exercise. One reason for that is we know there will be disagreements, but another reason is it's often much more effective, efficient, to do as much disclosure as possible in one go --

THE CHAIR: Yes.

MR JONES: -- so in other words to resolve disputes before going through the exercise of having people review documents, otherwise you have one review on your own

preferred approach, then you have a hearing, then you are told you should have done something different, and it's very expensive to go back and do it again.

So having the CMC on 14 March followed by a disclosure deadline is, in my submission, the better way of structuring that.

THE CHAIR: Right.

MR JONES: But we then get into this period, which is a long period up to February 2026, and I do agree with Mr Patton on one point, which is that the period between middle of March and the main disclosure deadline, which, Madam, you suggested would be 30 April --

THE CHAIR: Yes.

MR JONES: -- is rather tight. And if one thinks about who is going to be doing the disclosing in this case, there is a lot being said about my client needing to give disclosure of various documents. Now, of course there may be battles to come about the scope of disclosure, but we are concerned that that is a much smaller window than you would normally have. And it does seem to us that all of the timetable, Madam, which you set out could all be pushed back by four weeks, and there is still plenty of time. So I will just run through it quickly. It would mean disclosure on 28 May.

THE CHAIR: Yes.

MR JONES: Witness statements on 25 July.

THE CHAIR: Yes.

MR JONES: Experts on 26 September, which also deals with Mr de la Mare's August point.

THE CHAIR: Yes.

MR JONES: Then the next date in this timetable would be the PTR in January 2025 because at the moment we certainly agree with Mr de la Mare's point, that it certainly

isn't clear there would need to be a CMC between those dates.

But that then leaves that period between September and January to be filled in, for example, with reply expert reports, which we don't need to discuss today, but at some point there will be discussion about should there be reply reports; should there be a joint expert statement; should there be another CMC. But none of that needs to be ironed out.

With that proposed tweak, the timetable seems to us to be eminently sensible.

Unless I can assist further, those are my submissions.

THE CHAIR: Do you have anything to say about the time estimate for the trial?

MR JONES: Well, four weeks -- I heard what my learned friend said. We also thought four weeks, I have to say we thought four weeks as a maximum, but setting four weeks now would seem sensible (inaudible due to audio distortion) in future, then we should do so.

THE CHAIR: Thank you.

MR BEAL: May it please the Tribunal. I appear, as you know, for Adidas UK, not for Adidas AG.

THE CHAIR: Yes.

MR BEAL: I just stipulate that. Adidas AG was not served with these applications. It's an application that's made without notice to them because, largely, the Claimants chose not formally to serve their applications out of the jurisdiction.

There is, with respect, nothing wrong with a foreign company waiting for formal service of documents on it. That point was vouch safed recently by the Court of Justice in the Volvo AB case -- for your note, that's page 452 of the bundle of authorities -- where the court recognised that a company for the purposes of defence of its rights was entitled to require formal process to be followed. And there is indeed an entire

structure, as there now is even post-Brexit, on formal service of documents cross-border.

My learned friend says: well, you could agree not to enforce those rights and simply agree to submit to the jurisdiction. My client is perfectly entitled not to agree to submit to the jurisdiction, insofar as I am instructed by them in due course. They may take a different view, but they are not at this stage submitting to the jurisdiction.

THE CHAIR: Yes.

MR BEAL: That out of the way, for Adidas UK's perspective, we respectfully suggest that the timetable that has been proposed by the Tribunal today is a sensible and pragmatic way of dealing with all of the parties' concerns. It enables, as my learned friend, Mr Jones, has made clear, not a particularly rigorous timetable, but one that is realistic in the circumstances.

We would respectfully endorse his submissions about tweaking the dates by four weeks, to put them back by four weeks on each occasion because it makes it easier to deal with in particular the disclosure issues.

I would say this on disclosure, that regardless of whether Adidas AG is brought in or it's just Adidas UK at that stage, the position for us will be that we will of course give disclosure on the basis of the pleaded case as it stands.

The suggestion that there will be somehow wide-ranging roving requests for disclosure that go to issues beyond the pleaded case would suggest a fishing expedition, which is to be deprecated.

I didn't understand my learned friend, Mr Patton's, submissions to go as far as that, but of course this Tribunal will be alert to ensure that that doesn't happen, especially when there is a threat of a further pleaded case going wider than the pleaded case at present that is hanging over us all like a sword of Damocles.

When it comes to disclosure, we will give proper and proportionate disclosure by reference to the pleaded case, and that's something that will necessarily be done by UK, or if in due course Adidas AG is served and is party to these proceedings and doesn't bring a successful application to set aside service out, then Adidas AG will give disclosure as well.

Our concern therefore is, given that that is a potential course, it would be preferable for Adidas AG and Adidas UK disclosure to take place side by side, regardless of the issue of representation which I am not in a position to comment on, simply because you've got two units within a group, a corporate group, who will be undertaking a disclosure exercise at the same time.

It's for that reason that we've endorsed, with respect, the sensible and pragmatic timetable put by this Tribunal because it deals with that concern and enables enough time for the service out issue on Adidas AG to be resolved, and therefore disclosure can take place from Adidas UK in the meantime, they can get on with looking at the documents they have, and to the extent there are any additional documents from Adidas AG as and when in due course, then that can be dealt with within the timetable that has been proposed.

With respect, the reticence of the Claimants to commit to a trial within, effectively, a very substantial period of time from now is surprising, given their previous stance, and their concerns about the constraints that we would face on disclosure are, if not touching, then at least surprising, because of course it's for us to say whether or not we think disclosure is achievable for us within the time period envisaged.

We would be objecting if we didn't think we had time to do it properly. We are not objecting, so the suggestion can only be somehow we would deliberately not do it properly and that they don't have time to rectify that. I'm afraid there's simply no basis

for that submission to be advanced if that is what is being suggested.

Finally -- and this is a very small point -- there is an agreed confidentially ring order that's been agreed between the parties. It's a recent addition to your Supplementarybundle, tab 89.6, at page 738.18, which I'm afraid won't give the PDF page. It was a late addition last night into the PDF bundle.

But the short point is we don't yet have a finalised list of permitted persons.

Essentially we are ironing out the final instruction of the expert.

THE CHAIR: Yes.

MR BEAL: We would therefore ask for a short period until a week tomorrow, 11 October, within which to provide our list of permitted persons. The insertion of our list of permitted persons would then be subject to the standard provisions in the CRO for objection by the other parties and removal in the usual way at their application.

THE CHAIR: Yes.

MR BEAL: That seems to us, with respect, to be a short period of time within which to finalise our list of people, given we've only ex hypothesi just been joined, and there is an incentive on us for it to be dealt with as quickly as possible, so we can crack on with work towards filing our defence by 8 November.

THE CHAIR: Yes.

MR BEAL: Unless I can be of any further assistance, those are my submissions.

THE CHAIR: The time estimate?

MR BEAL: We thought four weeks as matters are pleaded at present was generous, so, yes, we think it can be done within four weeks.

THE CHAIR: Yes.

MR PATTON: I am not going to repeat the points I have made, I am sure you have those well in mind. Obviously, I am in the unhappy position of having a range of

opponents against me, all of whom are united in agreement with the proposal that has emanated from the Tribunal. But I would ask you to bear in mind that these parties, despite the history of disagreements between them on other matters, were all agreed at 10.30 this morning that the proper course in these proceedings was to make directions through to a CMC early next year, and then to take stock at that point, once the Amended Claim Form has been served, once the disclosure issues identified and the areas of disagreement identified, and then set a trial date at that point.

We remain of the view, which was the view seemingly shared by all of the Defendants at that point, that that's the proper course.

It is clear, in my submission, from what you've heard this morning that there are going to be fundamental disagreements about the scope of disclosure in this case. Although I took you to the Club's letter, with which we agree, which sees the disclosure exercise as needing to look at these other arrangements involving other clubs, you did not hear any assent to that from either JD Sports or Adidas UK, and reading between the lines you might expect that they will not agree to that, from what both of my learned friends said about that.

None of my learned friends has addressed how the repleading that I submit is normal and to be expected in a case like this, potentially when -- particularly when -- there's an allegation about the subjective object of the arrangements, what the subjective purpose of it was, which can only be properly particularised following disclosure, none of my learned friends has explained how that could be accommodated within the timetable that we've got with the dates that have been proposed.

But subject to that, I think I have made my submissions. Just two small points. One is that my learned friend, Mr Beal, suggested that we were asking Adidas AG to submit to the jurisdiction. We've never asked Adidas AG to submit to the jurisdiction; we've

simply asked them if they would accept service through their solicitors. That does not in any way prejudice their ability to challenge jurisdiction if they so wish, it simply cuts out the five to seven-month period as unnecessary and then upon being served they can immediately apply to challenge jurisdiction and to set aside any orders if they wish. We've always made clear that if they accept that pragmatic proposal, then that's without prejudice to their position on jurisdiction.

So the delay that the Tribunal is concerned with is something that is entirely within the gift of Adidas AG to resolve by that small pragmatic step, which doesn't prejudice their position in any way, but simply eliminates unnecessary delay.

Then, finally, in relation to the detail of the directions, given that these have not been discussed between the parties and there may be points which, on reflection, all of us would want to have considered in a bit more detail, I would suggest that if the Tribunal does decide to fix a trial it should allow the parties a little bit of time to look at the detail of the dates and seek to agree those or, if they are disputed, to come back to the Tribunal.

THE CHAIR: Yes, thank you.

I think we will rise for about 10 minutes and we will come back and let you know where our current thinking is.

(12.10 pm)

(A short break)

(12.25 pm)

THE CHAIR: Thank you all very much for your helpful submissions on the Tribunal's proposal.

We are minded to fix the trial date for a time estimate of four weeks, with one week in reserve, to start on 2 February 2026. The other directions will be as per the draft that

was provided to us, paragraphs 11 to 18, which includes the case management conference to be held on the first available date after 14 March 2025.

The longstop date for disclosure will be 28 May 2025, but we would invite the parties to consider proposals for rolling disclosure leading up to that longstop date. Witness statements will be 25 July. The expert reports, that will be 26 September.

There is another point I have to raise about experts but I will do that in a minute.

We will hold a date, once the parties have fixed one, for a third CMC in mid-November. If the parties don't need it, it can be vacated. The PTR will be the first sitting week in January and, as I have said, the trial will start on 2 February 2026.

The point I was going to raise about experts is at the moment we don't have any provision for expert evidence and there has been no attempt to define who the expert is going to be or the issues on which that evidence will be required. I think I will take up the invitation that the parties go away and formulate some words as to what you are going to ask the Tribunal to grant permission for.

MR DE LA MARE: I think it's often taken as read, not least because we both filed provisional expert reports --

THE CHAIR: Yes.

MR DE LA MARE: -- in the context of the application for interim injunctive relief. Obviously expert evidence is going to be required on market definition, which is a critical issue, object and the effects case and quantum. So we will --

THE CHAIR: Formulate some wording.

MR DE LA MARE: Yes.

THE CHAIR: That would be fantastic.

MR DE LA MARE: Forgive me jumping to my feet, it's my learned friend's case, but there's only one item I think left on the agenda and it's actually an agreed issue as

between me and Mr Jones' clients. It's item 7 on the agenda.
THE CHAIR: I should have said, in relation to the directions I have made, I will or we will provide brief written reasons in due course so you know how we've reached the conclusion that that's an appropriate way to proceed.
Yes, on the agenda, so do I take it that the permission to serve Adidas AG has gone and the permission to join, there's no dispute about that anymore?
MR DE LA MARE: Yes.
THE CHAIR: Right. Thank you. So it's the agreed --
MR DE LA MARE: Agreed from us, but of course Adidas AG may have something to say about it in due course.
THE CHAIR: Yes, in due course, and everything is obviously without prejudice to their right to do so.
Yes, so the one issue left on the agenda.
MR DE LA MARE: It's item 7, permission to serve the contribution claim form from the First and Second Defendants against JD Sports.
THE CHAIR: Yes.
MR DE LA MARE: And then stay that claim. The issuing of the claim was effectively accepted by the CAT but we don't have permission to serve it.
THE CHAIR: Yes.
MR DE LA MARE: It's agreed that it should be served and then stayed because, now that the Claimants have joined JD Sports as a Defendant to the main action, the need for the contribution proceedings or the issues they raised to be resolved now has fallen away. So a stay, Mr Jones and I are agreed, is the sensible way forward.
THE CHAIR: Yes, I think that must be right. Yes, we'd be happy to make that order.
MR BEAL: I am sorry to rise, please could I put in a bid for the direction I sought for

permission to serve our list of permitted persons for the CRO by 11 October 2024.

THE CHAIR: Yes, and are we being invited to make the CRO in the form in the bundle?

MR DE LA MARE: Yes, we have a draft CRO in place already.

THE CHAIR: You do?

MR DE LA MARE: Yes. Effectively, the changes that have been made are largely to facilitate the addition of JD Sports and Adidas into that ring.

THE CHAIR: Yes.

MR DE LA MARE: The ring is working perfectly well as between Sports Direct and my clients.

MR BEAL: If it's easier, we could simply seek, endeavour, to agree the final version and serve it by consent, with the Tribunal's permission, by the date I have just indicated.

THE CHAIR: Yes, I think that might be helpful. Thank you.

MR PATTON: Can I just mention, just so that it helps --

THE CHAIR: Yes.

MR PATTON: -- now that we have been given permission to join Adidas AG and to serve out, what we need to do is to translate the documents that have to be served into German, because that is part of the requirements for service out. We didn't do that pending your order because it's apparently quite an expensive exercise.

There is a point we just need to check as to quite what has to be translated, whether that includes the exhibit or not. The exhibit, as you may know, includes the decisions of the courts and permission to serve out and so on. It would seem madness if that had to be translated into German, but we'll check that. But we'll get it translated and sent to the Foreign Process Office as soon as possible.

THE CHAIR: Yes, and actually, just thinking about it, would it help if in the final order that's submitted to the Tribunal there is a recital referring to service to be expedited, in some shape or form?

MR PATTON: Yes.

THE CHAIR: I think we could probably record that in the recital and try and kick it along.

MR PATTON: Yes.

MR JONES: There's an incredibly tiny point, as I have to say, but four weeks with one week in reserve, I have heard that being interpreted differently by different people. Do you mean four weeks and one additional week in reserve?

THE CHAIR: Yes, so if the parties could keep the fifth week available.

MR JONES: Yes, I am grateful.

THE CHAIR: Then at some point, at one of the CMCs or the PTR, we can consider the order in which things should be heard and whether we do actually need the fifth week.

MR JONES: Thank you.

THE CHAIR: Unless there is anything else, I think business may be concluded for today. Thank you.

(12.31 pm)

(The hearing concluded)