Neutral Citation Number: **[2025] EWHC 1995 (Comm)**

Case No: **CL-2022-000558**

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (KBD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 July 2025

Before:

The Hon. Mr Justice Bryan

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Between:

IPJSC UNITED COMPANY RUSAL **Claimant**

- and –

(1) WHITELEAVE HOLDINGS LIMITED

(2) VLADIMIR OLEGOVICH POTANIN

(3) CRISPIAN INVESTMENTS LIMITED

(4) ROMAN ARKADIEVICH ABRAMOVIC

Defendants

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Nathan Pillow KC, Tom Ford and Sophia Hurst
(instructed by **PCB Byrne LLP**) for the **Claimant**
Craig Morrison KC, Joshua Pemberton and Firdaus Mohandas
(instructed by **Seladore Legal**) **for the First and Second Defendants**
Adam Baradon KC and Dominic Howells
(instructed by **Signature Litigation LLP**) for
the Third Defendants
The **Fourth Defendant** was not represented and did not appear.

Hearing date: **10 July 2025**

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APPROVED JUDGMENT

MR JUSTICE BRYAN:

A. INTRODUCTION

1. There are before me today two applications brought by the Claimant, IPJSC United Company Rusal ("Rusal") on what is the first case management conference in this action (the "Proceedings"). The Proceedings involve allegations of breaches of a shareholders' agreement dated 10 December 2012 (as varied by various deeds of substitution and side letters) (the "Framework Agreement") in relation to the governance of PJSC MMC Norilsk Nickel ("NN"), the Claimants and the Defendants are all parties to the Framework Agreement.

2. The first application that is before me is an application for alternative service (the "Alternative Service Application") upon the Fourth Defendant, Mr Roman Abramovich. The Claimants have taken steps to serve Mr Abramovich with the Proceedings but he has not engaged with the Proceedings. Pursuant to an order of Cockerill J dated 11 April 2024 (the "Cockerill Order"), the parties were excused from serving documents on Mr Abramovich, save where orders were sought against him, pending this first Case Management Conference ("CMC1"). The Cockerill Order is clear on its face that it expires at CMC1, so the question of service of documents upon Mr Abramovich (so that he is aware of the progress of the Proceedings and is in a position to take part as he sees fit), is a matter that needs to be considered afresh. The application is not opposed by the First to Third Defendants (Whiteleave Holdings Limited, Vladimir Potanin and Crispian Investments Limited, respectively).

3. In the second application Rusal seeks permission to re-amend its Re-Re-Amended Particulars of Claim ("2RAPOC") (the "Amendment Application"). The amendments sought by Rusal in the Amendment Application are largely agreed to by the First to Third Defendants save that the First and Second Defendants object to a plea in one paragraph of the proposed draft amendment.

4. The applications have been addressed in the respective application notices, supporting evidence and correspondence, as well as in the parties' submission. I decided at the outset of CMC1 that it was appropriate for me to rule upon each of these applications at this hearing, and in advance of case management matters on the CMC, so as to progress matters, as far as possible, at this hearing and in the furtherance of the overriding objective.

B. BACKGROUND

5. Before turning to the applications, it is first necessary to set out the background to the Proceedings, which is of relevance in the context of the various issues that arise on the applications and on this CMC.

6. The parties are all shareholders (direct or indirect) of, or the ultimate beneficial owners of shares in, Norilsk Nickel (NN), or, on the Third Defendant's case, it was formerly such a shareholder. NN is a Russian company which, together with its subsidiaries (collectively the "NN Group"), is one of the world's largest producers of nickel, palladium, platinum, rhodium, copper and cobalt. NN's operations are centred in and around the town of Norilsk, which is in a remote part of northern Siberia.

7. The Claimant (Rusal) is a Russian company and (together with its subsidiaries) one of the world's largest producers of aluminium and alumina. It has been a major shareholder in NN since 2008.

8. The First Defendant ("Whiteleave") is part of a group (the "Interros Group"), and is owned and controlled by the Second Defendant ("Mr Potanin"). Mr Potanin has, through various Interros Group entities, been a major beneficial owner of shares in NN since 1995.

9. The Third Defendant ("Crispian") is a Cypriot company which acquired a shareholding in 2013 as part of an arrangement by which the Fourth Defendant ("Mr Abramovich", who, at least at that time, owned and controlled Crispian) was to take on the role of "peacemaker" between Whiteleave and Mr Potanin, and Rusal (and, as at that time, Mr Deripaska).

10. Rusal brings claims for breaches of the written "Framework Agreement" (the "FA"). The FA was entered into on 10 December 2012 as part of the settlement of certain long-running disputes between Rusal and Interros as to the management of NN, and has subsequently been amended by a number of "Side Letters" incorporated into its terms. It is governed by English law and disputes are subject to the jurisdiction of the English courts. Some of the background to, and approach to construction of, the FA has previously been considered by this Court in prior litigation between Rusal, Whiteleave and Crispian, namely *UC Rusal PLC v Crispian Investments Limited and Whiteleave Holdings Limited* [2018] EWHC 2415 (Comm); [2019] BCC 237.

11. The FA (as subsequently amended) regulated relations between the principal shareholders in, and governance of, the NN Group. Its features included the following:

    (1) Mr Abramovich, through Crispian, acquired a 5.87% shareholding in NN, for the purpose (at least in part) of acting as a "peacemaker" (as noted above).

    (2) Whiteleave, Rusal and Crispian are defined as "investors" under the FA.

    (3) Mr Potanin became General Director of NN, a position equivalent to CEO, with executive authority to manage NN and select individuals for key positions.

    (4) Mr Potanin, it is said, became subject to various duties set out in the FA, which were enforceable by (amongst other things) a series of contractual remedies.

    (5) Each of Rusal, Whiteleave and Crispian acquired a "Veto Right" in respect of certain "Reserved Matters". The Reserved Matters, as defined in the FA, included transactions disposing of NN group assets that exceeded certain values.

    (6) The FA provided for various contractual remedies for a breach of the rights and duties set out therein. These included the FA providing that:

        (a) certain breaches constitute "Material Breaches", which would potentially entitle the other Investors to certain compulsory purchase rights, including in certain circumstances the right to acquire the breaching party's "Part of Shares Block" (a portion of shares transferred to Crispian which would stand as security for that party's compliance with key provisions of the FA);

        (b) certain breaches of Mr Potanin's duties (defined as "Indemnity Breaches") give rise to a duty to indemnify Rusal in accordance with a contractual formula;

        (c) certain breaches by Mr Potanin give rise to a duty to account for benefits received by Mr Potanin or related parties; and

(d) certain breaches may result in the termination of Mr Potanin's powers, and his replacement, as General Director of NN.

12. Clause 4.4 of the FA provides that the FA ceased to have effect on 1 January 2023. There is a dispute as to which (if any) of the parties' obligations under the FA survive after that date.

13. By way of these proceedings, Rusal asserts a number of claims arising from alleged breaches of the FA by Mr Potanin and Whiteleave. I should say at the outset that all the claims are hotly contested. What follows is a summary of the claims as advanced by Rusal:

(1) First, the "**Diversion Scheme**": it is alleged Mr Potanin and Whiteleave engaged in a dishonest scheme to divert strategic business assets out of the control of NN and into the control of third parties connected with them; to divert cashflows and profits out of the NN Group into the hands of Mr Potanin and/or his associates, and to divest the NN Group of critical business functions so as to make it dependent on Mr Potanin's goodwill.

(2) Second, the **AF and Altan Claims**: it is alleged that Mr Potanin and/or affiliated companies received the benefit of substantial sums which were fraudulently diverted from the NN group.

(3) Third, the **Charities Claims**: it is alleged that various substantial payments by the NN Group, which were fraudulently presented as charitable donations were, in fact, gifts for the benefit of Mr Potanin and/or his associates.

(4) Fourth, the **Industrial Accidents Claims**: It is alleged that Mr Potanin breached his duty to exercise reasonable skill and care in the management of the NN Group, leading to the development and perpetuation of dangerous approaches to investment and risk management, which have led to two serious industrial accidents.

(5) Fifth, the **PoSB Claims**: If liability is established, one of the remedies provided for under the FA is a right by Rusal compulsorily to purchase certain shares in NN, ultimately owned by Whiteleave, which Crispian is obliged to hold as security for such liability. These shares are referred to in the FA as Whiteleave's "Part of Shares Block" (POSB). In June 2022, Whiteleave and Crispian failed to procure that the POSB was re-transferred back to Crispian, following a temporary transfer out of Crispian's custody for a dividend record date. Rusal alleges that this was a breach of each of D1 to D4's obligations and wrongly neutered what is said to be a key remedy contractually available to Rusal.

(6) Sixth, the **Digital Assets Claims**: it is alleged that NN Group's resources were used to develop a blockchain exchange platform called Atomyze, with the true intent of Mr Potanin's interest in this concealed. NN Group's interest in the platform and software was then substantially diverted and reduced in favour of companies associated with Mr Potanin. NN Group has also launched an incentive share scheme which Rusal alleges improperly benefits companies controlled by Mr Potanin and allows Mr Potanin to dictate how those voting rights are exercised (consistently, it is alleged with the intent behind the Diversion Scheme).

(7) Seventh, Rusal also alleges that Mr Potanin (and through him Whiteleave) breached the FA by procuring negative press about Rusal and by moving NN's internal security functions outside the NN Group. It relies on these alleged further breaches as matters from which it is to be inferred more generally that D1 and D2 have acted in bad faith and dishonesty.

14. All these claims are vigorously defended by the First to Third Defendants, who, in addition, have brought three counterclaims. It suffices to say that these include an allegation that Rusal has been complicit in corporate espionage via hacking or other breaches of confidence, and that Rusal has advanced its allegations in the Proceedings on a false basis.

C. THE ALTERNATIVE SERVICE APPLICATION

15. The Claimant has previously served the Fourth Defendant (Mr Abramovich) with:

    (1) an Order of Sean O'Sullivan KC (sitting as a Deputy High Court Judge) dated 16 February 2024;

    (2) the amended First Claim Form (sealed on 21 February 2024);

    (3) the Second Claim Form (together with the First Claim Form, the "Claim Forms");

    (4) Form N510; and

    (5) a covering letter addressed to Mr Abramovich, which also contained a secure FTP link providing access to electronic versions of the enclosed documents.

16. These documents were served on Mr Abramovich at an address provided at Clauses 5.8(7) and 5.10 of the Framework Agreement, namely at 4 Sadovnicheskaya Street, Building 1, Moscow, 115035 (the "Framework Agreement Address"). However, the persons at the Framework Agreement Address refused to accept the service of those documents (or, indeed, other documents sought to be served at that location), and so they had to be left at the premises.

17. Mr Abramovich failed to serve an Acknowledgement of Service by the required date (20 March 2024) or at all.

18. Additional steps were also taken to bring the documents to Mr Abramovich's attention:

    (1) First, the documents were also couriered on the same day to Mr Abramovich at the Millhouse Registered Office, located in the Moscow region (the "Millhouse Registered Office"). Millhouse was an original party to the Framework Agreement, and was the "Investor" of which Mr Abramovich was the "Beneficial Owner", each being defined terms, until Crispian replaced Millhouse on 18 April 2013.

    (2) Second, an email was sent to a director of Crispian, Mr Styablin, for the attention of Mr Abramovich. Mr Styablin was a director of Crispian between 1 November 2019, and 10 July 2023, and continues to be a director of Stabold Limited, and a shareholder of Crispian.

19. Rusal's solicitors PCB Byrne received, by return post, the letters posted to Mr Abramovich at Millhouse's and Crispian's respective registered offices.

20. It is therefore unclear whether documents have in fact been received by Mr Abramovich at the Framework Agreement Address.

21. Due to Mr Abramovich's lack of engagement with the proceedings, Rusal applied on 5 April 2024 for an order suspending the party's obligations to serve on Mr Abramovich these statements of case

or any other document or application relating to the case management of the proceedings, (save in so far as they sought orders against Mr Abramovich) pending CMC1 (the "2024 Service Application"). Rusal's evidence filed in support of the 2024 Service Application was contained in the Third Witness Statement of Charlotte Anne Bhania, dated 5 April 2024 ("Bhania 3").

22. That application was granted by way of the Order of Cockerill J, dated 11April 2024, to which reference has already been made (the "Cockerill J Order"). The Cockerill J Order suspended the party's obligations to serve Mr Abramovich until CMC1. Since that date, other than to serve the Cockerill Order itself on Mr Abramovich at the Framework Agreement Address, neither Rusal, nor it would appear any of the First to Third Defendants, has attempted to serve any documents in the Proceedings on Mr Abramovich.

23. Absent further order of the Court, the parties will have to effect service on Mr Abramovich of all documents which fall to be served in the Proceedings, pursuant to the default provisions of CPR Part 6, so that he has an adequate and fair opportunity to respond and to engage in the Proceedings if he so chooses.

24. It is against that backdrop that Rusal has filed the alternative service application under CPR r.6.27, for permission to serve by alternative means, supported by the second statement of Olga Bischof ("Bischof 2"), so as to provide a working modus operandi going forward.

25. The order sought by Rusal envisages service by two means:

    (1) First, service (for which alternative service is not required) on Fordstam Limited ("Fordstam") in Mr Abramovich's capacity as a Person with Significant Control over Fordstam. Fordstam is the English entity through which Mr Abramovich previously held Chelsea Football Club, until he was forced to sell it following the imposition of UK sanctions on him. Fordstam was required to provide to Companies House (inter alia) addresses for service for its registrable persons (see the Companies Act 2006, ss. 790K(1)(b) and 790M) and has done so in relation to Mr Abramovich.

    (2) Second, service (for which an alternative service order is required) on senior lawyers at Kobre & Kim LLP, a law firm which has publicly identified itself as acting for Mr Abramovich in relation to other current matters.

C.1 APPLICABLE PRINCIPLES

26. The relevant parts of the CPR concerning alternative service provide:

> "**6.15 Service of the claim form by an alternative method or at an alternative place**
>
> (1) Where it appears to the court that there is a **good reason** to authorise service by a method or at a place not otherwise permitted by this Part, the court may make an order permitting service by an alternative method or at an alternative place".
>
> …
>
> **6.27 Service by alternative method or at an alternative place**

Rule 6.15 **applies to any document** in the proceedings as it applies to a claim form and reference to the defendant in that rule is modified accordingly."

(emphasis added)

27. In *M v N* [2021] EWHC 360 (Comm), Foxton J outlined the applicable principles for alternative service on a defendant who would otherwise have to be served abroad under the Hague Service Convention of 15 November 1965 on the service abroad of judicial and extrajudicial documents in Civil or Commercial Matters, ("the Hague Convention"). Relevantly, at [8] he stated:

> "…(ii) the fact that the Court is being asked to make an order for alternative service on defendants domiciled in a HSC country is a relevant factor in considering whether a good reason has been made out: see, for example, *Deutsche Bank AG v Sebastian Holdings, Inc.* [2014] EWHC 112 (Comm), [19], ("a critically important distinction", Cook J).
>
> (iii) In proceedings in which the HSC is engaged, there are a number of cases which have held that merely avoiding delay or inconvenience will not be sufficient to constitute "good reason" (*Deutsche Bank AG v Sebastian Holdings, Inc,* [28]), *Société Générale v Goldas Kuyumculuk Sanayi* [2017] EWHC 667 (Comm) at [49 (9) (a)]).
>
> (iv) In those cases where the country in question has stated its objection under Article 10 of the HSC to service otherwise than through its designated authority, it has been held that relief under Rule 6.15 will only be granted in "exceptional circumstances" (*Société Générale* [49(9)(b)], approved at [2018] EWCA Civ 1093, [33-35]; *Marashen Limitedd v Kenvett Limited* [2017] EWHC 1706 (Ch), [57]; *Punjab National Bank (International) Ltd v Srinivasan* [2019] EWHC 89 (Ch) or "in special circumstances" (if that is different): *Russian Commercial Bank (Cyprus) Ltd v FedorKhoroshilov* [2020] EWHC 1164 (Comm), [96-97].
>
> (v) There has been some debate as to what the requirement of the "exceptional" or "special circumstances" means, but it has generally been interpreted as requiring some factor sufficient to constitute good reason, notwithstanding the significance which is to be attached to the Article 10 HSC Reservation (see for example *Koza Ltd v Akcil* [2018] EWHC 384 (Ch), [45-49], Richard Spearman QC).
>
> (vi) However, it is clear that there are circumstances in which an order for alternative service will be appropriate in HSC cases (or to put matters another way in which good reason for making an order can be established, notwithstanding the HSC factor)."

28. Therefore, the "good reason" test for alternative service applies unless the defendant would otherwise have to be served abroad under the Hague Service Convention, in which case the "exceptional circumstances" applies.

29. For completeness, sections 790K and 790M of the Companies Act 2006 provide:

> "**790K Required particulars**
> (1) The "required particulars" of an individual who is a registrable person are—
>
> …
>
> (b) a service address"
>
> "**790M Duty to keep register**
>
> (1) A company to which this Part applies must keep a register of people with significant control over the company."

30. Section 1140 of the Companies Act 2006 permits for service of documents on directors. It provides in subsection (1) that:

> "[a] document may be served on a person to whom this section applies by leaving it at, or sending it by post to, the person's registered address."

31. Subsection (3) further notes that:

> "This section applies whatever the purpose of the document in question. It is not restricted to service for purposes arising out of or **in connection with the appointment or position** mentioned in subsection (2) or in connection with the company concerned."
>
> (emphasis added)

32. Subsection (6) provides several exceptions for when the service may not be affected by virtue of section at that address:

> "(a) if notice has been registered of the termination of the appointment in relation to which the address was registered and the address is not a registered address of the person concerned in relation to any other appointment;
>
> (b) in the case of a person holding any such position, as is mentioned in subsection (2)(b), if the overseas company has ceased to have any connection with the United Kingdom by virtue of which it is required to register particulars under section 1046."

33. In *Baig v Hassan* [2024] EWHC 3555 (KB), Master Dagnall analysed the case law on section 1140 of the Companies Act 2006 in respect of a director who had provided a registered address within the jurisdiction, but who himself was outside of the jurisdiction at the time of service, and stated at

[55] and [61] that:

> "55. …The whole point of section 1140 is that where a director has provided a 'registered address' in the sense set out in subsection (4), which encompasses the 'usual residential address' provided for in Form 288a, and that address is within the jurisdiction, **the effect of the section is that the director can be served with proceedings at that address even if he is not physically present within the jurisdiction at the time of service. The position is different if the address given on the form or in the records held at Companies House is an address outside the jurisdiction.** As Master Marsh explained in *Key Homes* that is the situation covered by section 1140(8): if the 'service' address provided is outside the jurisdiction, section 1140 cannot be used to effect service and the normal rules requiring permission to serve out of the jurisdiction to be obtained apply…"
>
> 61. It seems to me, therefore, in principle that service on the defendant by posting the documents to the London flat is valid service even though, at that point in time, the defendant was out of the jurisdiction."
>
> (emphasis added)

34. I myself recently considered the issue of service in circumstances where a defendant is absent from the jurisdiction, albeit in a different context, in *Agrofirma Oniks LLC & Agro UG V LLC v ABH Ukraine Limited & Ors* [2025] EWHC 300 (Comm), see [39]-[44].

C.2 DISCUSSION

35. As I foreshadowed, Rusal envisages service on (1) Fordstam's address in London, where Mr Abramovich is a Person with Significant Control; and (2) on senior lawyers at Kobre & Kim LLP, who represent him in other current matters.

36. As a preliminary point, Fordstam provided the address for service for Mr Abramovich in his capacity as its registrable person (under sections 790K and 790M of the Companies Act 2006). Consequently, pursuant to section 1140 of the Companies Act 2006, Rusal is permitted to serve Mr Abramovich in the jurisdiction by leaving it at, or sending it by post to, the Fordstam address. Mr Abramovich may be outside of the jurisdiction, and may even be a resident outside of the jurisdiction, but this is not a bar for service under section 1140 of the Companies Act 2006 (see *Baig v Hassan, supra* at [55] and [61]).

37. The question therefore arises as to whether I should grant Rusal's Alternative Service Application, even though it is entitled to, and indeed intends to, serve Mr Abramovich at the Fordstam address.

38. In my judgment, it would be appropriate to do so, as I consider that there are good reasons to do so pursuant to CPR r.6.27 for the following reasons.

39. First, I am satisfied there are valid concerns about whether service on the Fordstam address will be effective in bringing the proceedings to Mr Abramovich's attention. In this regard, Fordstam's most recent set of financial statements (to the year ending 30 June 2021), show that Fordstam was the corporate vehicle through which Mr Abramovich's ownership of Chelsea Football Club was held.

Chelsea Football Club was sold on 30 May 2022 following the UK Government's sanctions on Mr Abramovich. Following the sale, the registered address of Fordstam was changed from Stamford Bridge, Fulham Road, London, SW6 1HS, i.e., Chelsea Football Club's home ground, to an apartment at Tower West, 1 Waterfront Drive, Chelsea Waterfront, London, England, SW10 OAA (the "SW10 Address").

40. I am satisfied that there are valid concerns that Fordstam may no longer be an active trading company and may now act as a shell or holding company. It is also possible that Mr Abramovich's shareholding in Fordstam has changed, such that he is no longer a registerable person, and as such could no longer be served under section 1140.

41. It also appears that the SW10 Address is a residential rather than a corporate address, yet it is the registered office address for Fordstam. Fordstam's 22 May 2025 confirmation statement, which was to be filed by 5 June 2025, is currently recorded as being overdue on Companies House. In fact, Fordstam has not filed annual accounts since December 2021. It is possible that there has been a change to Mr Abramovich's shareholding in Fordstam which is not yet reflected in the publicly available Companies House records, and which would affect his ability to be served pursuant to section 1140 of the Companies Act 2006.

42. Secondly, there is a possibility that Mr Abramovich's ownership of Fordstam could change prior to the conclusion of these Proceedings, such that he was no longer a registrable person for the purposes of Fordstam, and was no longer under an obligation to provide an address for service in that capacity, or he could elect to provide an address for service which is outside of the jurisdiction, with the result that service on the SW10 Address would no longer be good service on Mr Abramovich (see *Baig v Hassan* at [55]).

43. Thirdly, there is no evidence (and it seems highly unlikely given his sanctioned status) that Mr Abramovich personally resides at or visits the address, and it is unknown whether anyone communicating with him is monitoring mail posted to there or left there. As already noted, there is also a risk that he may cease to be a registerable person of Fordstam or may change his address for service without warning during the course of these Proceedings.

44. Fourthly, while service under section 1140 of the Companies Act 2006 of Fordstam might be said to render the Alternative Service Application unnecessary or, in the Claimant's words, "superfluous," there is no bar on claimants seeking an order for alternative service in circumstances where there are alternative methods of service without need to apply for the permission of the Court.

45. The question for the Court, ultimately, is whether there is a good reason for granting the application. The Claimant's Alternative Service Application seeks to maximise the prospects of Mr Abramovich being given effective and actual notice of the Proceedings so that, should he so wish, he has a fair opportunity to present his case in these Proceedings. This is a matter of some considerable importance. The current application is also set against the backdrop that, in the event that the SW10 Address either is not a good address for service on Mr Abramovich for whatever reason, or becomes not a good address for service on Mr Abramovich, then Rusal would otherwise be required to serve documents on him outside of the jurisdiction, absent an order for alternative service.

46. Fifthly, I consider that the Alternative Service Application is appropriate in circumstances where it does not merely encompass "where" documents must be served, but also "what" must be served. It is likely that, in a case such as the present, there will be large numbers of documents that will need

to be served. The order that is contemplated will enable the Claimant to use a secure file-sharing link, effectively to serve documents. This will also obviate the undesirable consequence of large volumes of potentially confidential documents being left at locations to which others than the recipient may have access.

47. Finally, I do not consider that Rusal can be criticised for the timing of the Alternative Service Application, as it has always been envisaged that service would need to be revisited at this CMC in the context of the CMC Order.

48. I am satisfied that there is a good reason to infer that service on senior lawyers at Kobre & Kim LLP will bring the documents for service to Mr Abramovich's attention. The evidence before me supports the conclusion that Kobre & Kim LLP have been instructed by Mr Abramovich and that they remain his solicitors of record, including in proceedings in this jurisdiction (albeit they are not solicitors on the record in relation to these Proceedings). I am satisfied that Kobre & Kim LLP will have the means to contact Mr Abramovich and, indeed, may have a professional duty to do so.

49. The evidence before me is that:

    (1) Documents filed by Kobre & Kim LLP with the United States Department of Justice pursuant to the Foreign Agents Registration Act 1938 (as amended) ("FARA") show that Mr Abramovich instructed K&K in or around June 2022.

    (2) In July 2022, Michael Kim, (founding partner at Kobre & Kim LLP) and Michael Sherwin, (partner at the firm), registered under FARA as the two Kobre & Kim LLP lawyers providing services to Mr Abramovich. Mr Sherwin has since stopped acting for Mr Abramovich, such that Mr Kim is the only Kobre & Kim LLP lawyer currently registered as active under the FARA regime.

    (3) Kobre & Kim LLP publicly confirmed their representation of Mr Abramovich in July 2022.

    (4) There is also correspondence before me which supports an inference that Kobre & Kim LLP remain instructed by Mr Abramovich in this jurisdiction in relation to other matters:

        i. Page 2 of K&K's filed engagement letter with Mr Abramovich, in which K&K note that they are required to obtain and will seek a license from the UK Office's Office of Financial Sanctions Implementation ("OFSI");

        ii. Pages 12 and 14 of K&K's Supplemental Statement pursuant to FARA, dated 29 May 2025, where K&K note that all payments and disbursements in respect to Mr Abramovich are "pursuant to license (f) from [OFSI]";

        iii. K&K's public statements in response to media speculation that UK legal proceedings or investigations were being considered in relation to the proceeds of Mr Abramovich's sale of Chelsea Football Club;

        iv. Kobre & Kim LLP have an office in Limassol, Cyprus and are quoted as Mr Abramovich's lawyers in 2025 articles relating to EU tax disputes (including in Cyprus) over his superyacht.

50. I am satisfied that service on Kobre & Kim LLP will increase the likelihood of Mr Abramovich

receiving the documents and, for the reasons I have identified above, there is a good reason to order alternative service, in circumstances in which I am satisfied that it will ensure that Mr Abramovich has fair notice of the Proceedings, which will allow him to make his case, should he wish to do so. I accordingly make the order sought in relation to alternative service and Kobre & Kim LLP.

51. For completeness I would add that I do not consider that the "exceptional circumstances" test is engaged. This is in circumstances where notwithstanding, the uncertainties that exist in relation to service on Fordstam's SW10 Address that address remains a valid address for service within the jurisdiction on the information currently available, and it is also unknown where Mr Abramovich currently is (including whether he resides in a Hague Convention State or not).

52. I would only add that had the "exceptional circumstances" test been engaged, I am satisfied that such test would in any event have been met. In this regard:

    (1) If Mr Abramovich were to be residing, for example, in Russia, service in the Russian Federation pursuant to Article 5 of the Hague Service Convention would take a very considerable amount of time (as confirmed by the Foreign Process Section at the Royal Court of Justice, it can take more than a year). This is a considerable delay in circumstances where (i) the parties will now be conducting a disclosure exercise and preparing expert evidence; (ii) a further CMC is scheduled for 8 December 2025; (iii) further CMCs may possibly take place and (iv) parties will give extended disclosure and exchange signed statements of fact and hearsay notices under CPR 33.2. Mr Abramovich needs to be aware of all such matters now, and on an ongoing basis, so that he has a fair opportunity to participate in all stages of these Proceedings, should he wish to do so.

    (2) Secondly, service at the Framework Agreement Address is not appropriate because

        i. Rusal has previously arranged for several documents in the proceedings to be delivered to the Framework Agreement Address by way of service. Once delivered, these documents were not accepted at the premises. The documents had to be left in a publicly accessible location, with no control over who could gain access to them.

        ii. At the time of Bhania 3 dated 5 April 2024, the premises had been leased to Promsvyazbank and were undergoing renovation. It now appears from the Promsvyazbank website that those renovations have been completed and the premises are operating as a bank branch, including an ATM. The Claimant is unaware of any connection between that bank and Mr Abramovich. Therefore, service at the address would likely result in documents being left with a third party with no connection to the proceedings, or any apparent connection to Mr Abramovich.

        iii. Despite service of the documents at the Framework Agreement Address, Mr Abramovich has not to date acknowledged services of the Proceedings or taken any steps in relation to the Proceedings.

    (3) Thirdly, the Claimant has taken, I am satisfied, extensive steps to bring the Proceedings to Mr Abramovich's attention.

    (4) Fourthly, in circumstances where Mr Abramovich has already provided an address for service in the jurisdiction, i.e. via Fordstam, an order granting permission to serve documents to the Kobre & Kim LLP London Address and to the Kobre & Kim LLP Email Addresses is not likely

to cause any prejudice either to Mr Abramovich or to any interests of the Russian Federation (or of any other State in which Mr Abramovich is or may be a resident), which are intended to be protected by the reservations to the Hague Convention.

(5) Fifthly, if, as is a reasonable inference, Kobre & Kim LLP are still instructed by Mr Abramovich, then service on Kobre & Kim LLP will bring these proceedings to Mr Abramovich's attention.

53. Accordingly, and for such reasons, the Claimant's Alternative Service Application succeeds and I make the orders for alternative service that are sought.

D. AMENDMENT APPLICATION

54. The second application before me today is the Claimant's Amendment Application.

55. In this regard, on 30 June 2025, the Claimant provided their draft 2RAPOC to the parties, seeking their consent to propose amendments. Given the limited time available before this CMC1, the Claimant issued an application notice dated 1 July 2025. Whilst the First and Second Defendants noted the late timing of the application, it has been possible for the First and Second Defendants to consider the application.

56. The only remaining dispute between the Claimant and the First and Second Defendants (the Third Defendant, Crispian, does not oppose the application in substance) is over the proposed addition of eight words in one of the paragraphs that has been amended, namely para.42.3 of the 2RAPOC:

> "42.3, PSL is an intermediary engaged in supplying goods to the NN Group. It is controlled by Mr Rodov (either with Mr Nafikov or by himself) and has established a track record of substantially overcharging the NN Group, **which it is to be inferred is continuing**. In particular, KPMG identified PSL as over-charging the NN Group for goods by margins of over 70%, while an internal NN investigation revealed ten separate instances in which PSL had overcharged the NN Group by margins of up to 49% (generating potential losses to the NN Group between RUB 821 million and RUB 1.173 billion (c. USD 13.66 million to USD 19 million)). **It is inferred that the reason why PSL services have not yet been discontinued is because of Mr Rodov's and/or Mr Nafikov's close ties to Mr Batekhin and Mr Potanin**."
>
> (emphasis added)

57. The words which are objected to are the words, "which it is to be inferred is continuing". I emphasise the closing words of para.42.3 for the reasons further addressed below. It is, in my judgment, clearly in the interest of the overriding objective, for me to grasp the nettle and determine this narrow issue at the CMC so that further directions can be given to finalise the statements of case.

D.1 APPLICABLE PRINCIPLES

58. In deciding whether to grant permission pursuant to CPR 17.1(2)(b), the overriding objective is of central importance. In general:

> "[p]arties should be allowed to amend their statements of case to bring forward intelligible and apparently credible claims or defences where the balance of injustice to the applicant if the amendment is refused outweighs the injustice to the other party and to litigants in general if the amendment is permitted" (see *Essex CC v UBB Waste (Essex) Limited* [2019] EWHC 819 TCC at [11]).

59. As identified in *Município De Mariana & Ors v BHP Group (UK) Ltd & Anor* [2024] EWHC 23 (TCC) at [16], the relevant facts to consider include:

    (1) The overriding objective and the desirability of determining the real issues in dispute between the parties;

    (2) Whether the proposed amendment is arguable, coherent and properly particularised;

    (3) Whether the amendment is late and, if so, whether there is a good explanation; and

    (4) The balance between, (i) the prejudice to the applicant if the amendment is not allowed and, (ii) the prejudice to the respondent if it is permitted. This includes:

        i. the extent to which the applicant would be shut out from bringing its claims;

        ii. whether the amendment advances an issue that relies on already-pleaded facts, in which case the Court would be inclined to permit it (see *P&O Nedlloyd BV v Arab Metals Co (The UB Tiger)* [2007] 1 WLR 2483 (CA); and

        iii. disruption to the timetable, pressure and duplication of costs and effort caused by the amendment, such as further disclosure of evidence – verses on the other end of the scale, the simple fact of being "mucked around" (see *CIP Properties (AIPT) Ltd v Galliford Try Infrastructure Ltd* [2015] EWHC 1345 (TCC), [19]).

D.2 SUBMISSIONS

60. In short, the Claimant submits that: (1) the amendment is straightforward; (2) it arises out of the same facts already pleaded; (3) it has been brought at an early stage before the DRD is finalised; and, (4) it will allow the full extent of Rusal's case to be properly and fairly tried. It is further submitted that there will be no prejudice to the First and Second Defendants, who will be entitled to the costs of and occasioned by the amendment, in terms of pleading back to it. in the usual way. Reference is made to the terms of the existing pleading, in particular at paragraphs 2 and 105, to which I will return, as well as the amendments to which consent has been given, including paragraph 49.6.

61. For their part, the First and Second Defendants object to the amendment on the basis that it is said that the Claimant is seeking to expand its case in relation to the alleged Diversion Scheme with a bare assertion, without particularising the inference that PSL, a company that supplies goods to the NN Group, had a "track record of substantially overcharging the NN Group, **which it is to be inferred is continuing**" (emphasis added). It is said that the purpose of the existing plea in that regard, at paragraph 42.3, is in the context of the circumstances in which funds were received by Mr Rodov, and that it certainly, as previously pleaded, was not an independent plea in relation to substantial overcharging on a continuing basis.

62. In this regard, I was also referred to Issue 21 in the list of issues in relation to that aspect of the pleading where it is said "whether the purchase price paid by Mr Aleksandrovich for LC was provided by Mr Rodov from funds diverted from the NN Group."

D.3 DISCUSSION

63. I have already identified why I consider it appropriate to deal with the amendment application at this CMC. I do not consider it would be appropriate simply to grant the other amendments and leave the contentious issue over to another hearing. Even if there is a need for further particularity of the objected paragraph, I consider that it is important on a case management conference to progress matters as much as possible, including seeking to ensure that statements of case are finalised and all associated issues are crystallised at this time or as soon as possible thereafter, and without the possibility of there being satellite applications and further costs being incurred in that regard.

64. I am satisfied that the amendment makes clear that the Claimant is advancing a case that it is to be inferred that the alleged overcharging is continuing and that the Claimant is kept out of information. On a careful examination of the pleadings, there are existing pleadings which are in the same territory and allege that the Diversion Scheme is continuing, including in relation to the diversion of cash flows and profits from the NN Group.

65. This can be seen from the closing words of pargraph.42.3, which I have already emphasised. In addition, and importantly, what is pleaded at paragraph 2 of the RAPOC is as follows:

> "The **first** category of breaches involves a dishonest scheme (the "Diversion Scheme") on the part of Mr Potanin and Whiteleave to divert strategic business units out of the control of NN and into the control of third parties connected to them. The aim of this scheme is twofold: to divert assets, cashflows and profits out of NN into the hands of Mr Potanin and/or his associates or nominees; and to divest NN of business functions that are critical to its operation, making NN dependent on Mr Potanin's continued goodwill and cooperation for the continued supply of those functions."
>
> (emphasis added)

66. The existing plea at paragraph 105 provides as follows:

> "Further, or alternatively, it is to be inferred that the Diversion Scheme, and/or other instances of Mr Potanin and Whiteleave procuring or allowing NN Group companies to enter into transactions with Mr Potanin (or related parties of Mr Potanin and/or Whiteleave), for the benefit of Mr Potanin (or his and/or Whiteleave's related parties) and to the detriment of NN and its shareholders as a whole, **are continuing in breach of Mr Potanin's duties under clause 3.14 and will continue until restrained by order of the Court. This is to be inferred from:**
>
> **105.1. Mr Potanin and Whiteleave's conduct as set out above in this section E**; and

> 105.2. Mr Potanin and Whiteleave's conduct as set out below in sections F and G; which reflect conduct spanning almost a decade."
>
> (emphasis added)

67. It will be seen that at paragraph 105 there are existing allegations of continuing breach which are to be inferred from, amongst other matters, Mr Potanin and Mr Whiteleave's conduct, as set out above in this section. Section E is the section which begins at paragraph 36 headed, "The Diversion Scheme." Therefore, even on the existing pleadings, including paragraph 42.3 and the reference which is pleaded to an established track record of substantial overcharging the NN Group, there is already an allegation of ongoing overcharging by PSL.

68. I do not consider that such plea, properly construed, is limited simply to particularity under paragraph 42.3 of the source of funds in relation to what is pleaded at paragraph 42. In any event, even if that was the case previously, the new amendments are concerned generally with the diversion of cash flow and profits from NN, and all the amendments – bar that which is now being addressed – have been consented to by the First and Second Defendants. That includes substantive amendments at paragraph 49.6.

69. Those give particulars in which it is alleged that PSL has been and is overcharging the NN Group:

> "In particular, NN Group has suffered from a pattern of conduct in which LC (in common with other companies controlled by Mr Rodov, Mr Trofimov and/or Mr Nafikov, such as PSL, TKLC and it is to be inferred Zavod Vostok STAL JSC ("ZVS")) have been permitted to charge excessive profit margins and/or insert themselves unnecessarily into NN Group supply chains resulting in significant gross profit margins for those companies. In addition to the particular contract/transactions pleaded above, this pattern is evidenced by and to be inferred from following matters…"

70. Then, in the sub-paragraphs that follow, those include para.(b) which relates to what appears to be on its face a current relationship, and in (c) in relation to revenue which, again, appears to be current revenue, both of which, therefore, are in the context of ongoing relationships and ongoing revenue.

71. In addition, it is clear that the whole purpose of the amendments as a whole relates to the question of diversion of cash flow and profits from NN. That can be seen from those paragraphs which are amended and which are consented to and which lead up to the pleadings that I have already quoted at paragraph 105. Those include paragraph 102, where it said that:

> "Further, in the above premises, each such sale **and/or the overcharging by and diversion of funds to companies controlled by Mr Rodov, Mr Trofimov Mr Nafikov and/or Mr Alexandrov**…"
>
> (emphasis added)

72. The words that are in bold and underlined are words added by the latest amendments and to which consent has been given by the First and Second Defendants. Equally in paragraph 103, it is pleaded:

> "Further, alternatively in the above premises, each such sale **and/or the**

overcharging and diversion of funds cause loss and damage to Rusal…"

(emphasis added)

73. The words in bold and underline are amendments, and the latest amendments to which the First and Second Defendants have given their consent.

74. In such circumstances, I consider it appropriate to grant permission to make the amendment in paragraph 42.3, which is part and parcel of the package of amendments which is being made for the reasons which I have identified, and which I am satisfied Rusal is entitled to advance at trial. I also consider that it is better to have, on the face of the pleadings, that which the Claimant will be saying needs to be inferred at trial, in circumstances where by one route or another, and in all likelihood, it would be possible for Rusal to make that inference at trial. Far better for that to be spelled out, and the basis on which it is to be inferred particularised.

75. That leads me on to two further matters. The first is that I do consider that the words, "which it is to be inferred is continuing," are lacking in particularity. I was urged on behalf of the First and Second Defendants that that is a reason why I should, as it were, adjourn the application pending receipt of further particulars. I consider, however, that such an approach would simply lead to further cost and expense as well as delay, and amount to a failure to case manage matters so far as possible on the CMC.

76. I consider that the more appropriate course, is to order that, effectively, further and better particulars, in the form of further information, giving full particulars of the basis on which it is said it is to be inferred that this is continuing. Whilst Mr Pillow KC, on behalf of Rusal, did not accept that further particularisation was required, he indicated that Rusal did not object to providing further particularisation if the Court considered it both appropriate and necessary for his clients to do so. I do consider that it is appropriate and necessary to do so and therefore direct that such further information is provided within 28 days.

77. The second matter that I would draw attention to is that one of the concerns of the Second and Third Defendants is a concern that, by reference to what is a generalised plea of an inference of continuing overcharging, that the Claimants could seek to hang a hook on that to seek extensive disclosure that they might not otherwise be entitled to, which the First and Second Defendants would characterise as a "fishing expedition" which could lead to the incurring of substantial costs and wide-ranging disclosure.

78. I have some sympathy with the concerns of the First and Second Defendants that disclosure should, at all stages, be proportionate and relate to those matters which are necessary for the fair resolution of the dispute which is, of course, trite. In this regard, and simply because a matter is pleaded, does not necessarily give rise to a disclosure issue and does not necessarily circumscribe the scope of any searches that have to follow, depending, of course, on the form of disclosure that is ordered at the next CMC.

79. Mr Pillow KC was not willing, for understandable reasons, to commit himself to the question of disclosure, not least in the circumstances where he said he had not yet put his mind to it, but I suspect that Mr Pillow KC will rely on other paragraphs of the existing pleading which may carry with them certain disclosure obligations. For my part, I would simply put a marker down that it is certainly not my intention by granting permission, to add the words, "which it is to be inferred is

continuing," to give a green light to any particular scope of disclosure.

80. What will be the appropriate scope of disclosure will be a matter for the judge hearing CMC2, based on the entirety of the statements of case. On one view, and having regard to the existing paragraphs of the pleading, which I have quoted, and the additional paragraphs of the pleading which the First and Second Defendants have consented to, many aspects of disclosure may already have been encapsulated in the list of issues and, indeed, in the issues for disclosure to the extent that they have so far been addressed. It may or may not be the case that the additional words add anything to that. That is not a matter for today, but for the second CMC and the judge hearing that.

81. Accordingly, and for those reasons, I grant permission to amend the Re-Amended Particulars of Claim in the form of the draft which is before me on the usual basis, which is that the costs of and occasioned by the amendments be those of the Defendants in any event.

E. SHOULD THERE BE A SPLIT TRIAL?

82. Mr Craig Morrison KC, who appears on behalf of the First and Second Defendants, submits that there should be a split trial in this action; the first dealing with liability, the second dealing with both quantum and remedy. He says that that will save time and expense, firstly because the liability trial will be able to come on earlier than a combined trial. A combined trial could take up to 14 weeks, whereas it is estimated a liability trial would take 11 weeks. He suggests as well that costs will be saved because if one did not reach the stage of addressing quantum, then certain evidence, including certain expert evidence, would not be necessary which will amount to a costs saving.

83. He recognises, however, that that of course depends on the outcome of the liability trial and the possibility that, with certain liability findings, there would then have to be a second trial. He candidly accepts that if there had to be a second trial in that scenario, then costs would be likely to increase. There would also be, inevitably, a delay before that second trial could take place.

84. Nevertheless, his overall submission is that time and expense will be saved if liability and quantum are split. He chose to illustrate his points by reference to the draft order, and those issues which it was proposed on the part of the First and Second Defendant would take place at the second trial. He illustrates that by reference to one of the groups of issues that I have already identified, namely industrial accidents and the position of Mr Potanin. He refers me to para.73 of the list of issues, which provides as follows:

> "If Mr Potanin did fail to take the steps set out above, was this a breach his duty of care and skill under clauses 3.14 and/or 4.2 of the FA? If so, would Mr Potanin having taken the steps set out above have had the effect of preventing the diesel spill and/or the beneficiation plant collapse in whole or in part? **If so, what (if any) loss did Rusal suffer**?"
>
> (emphasis added)

85. He submits that the cost which would be incurred in ascertaining what, if any, loss did Rusal suffer would be saved if there was not a liability finding in favour of the liability of Mr Potanin. In the abstract, and without regard to the other issues in the case, it might be thought that there was a superficial attraction to such submission. However, even looking at the industrial accident issue in the abstract, if Mr Potanin was found liable, then inevitably there would then need to be a second

trial as to what loss Rusal suffered, which would require expert evidence.

86. Mr Morrison KC, ultimately, also recognised that there is a possibility of appeals from any initial liability trial, although he suggested that this was not a case which gave rise to a large number of issues of law, and he submitted that this reduced the possibility of an appeal. However, there are undoubtedly substantial issues of construction of the contract governed by English law, and it is not difficult to foresee that an unsuccessful party, whoever that might be, might well at least seek permission to appeal and potentially could get permission to appeal in relation to what are difficult issues of construction of complex contractual provisions.

87. Mr Pillow KC, for Rusal, submits that far from saving time and costs, a split trial would both increase costs and would cause delay. He identified that there is a real possibility of appeals on particular issues and also that to bifurcate liability and quantum is a more complicated exercise than was suggested by Mr Morrison.

88. He also makes a number of points about the fact that if one removes oneself from the sphere of industrial accidents and look at the other claims like the AF claim, the Altan claim and the charities claims, then those are all rather different because they involve, for example, in relation to AF, whether or not there was a sale at an undervalue, and that will involve expert evidence in relation to that at the liability stage. He says it will be immediately seen that there is an overlap such that expert would be required at the liability stage, and there is no good reason, therefore, why there should be a splitting off. He elaborated those points in relation to a number of the claims, including the Altan and charities claim as well, where similar points could be made.

89. He pointed out as well that because the Defendants were proposing that remedies, as well as quantum, be split off, that it is possible that there could in fact be no less than three trials on the approach adopted by the Defendants. Indeed, he points out that in their Skeleton Argument the First and Second Defendants candidly admit as much, because footnote 13 provides:

> "It necessarily follows that the six month period for remediation under the FA can only begin once the High Court reaches a decision on the appropriate remedy to award, which will – if a split trial of liability and remedy is ordered – only take place at the conclusion of the trial on remedy."

90. It is therefore possible, on the Defendants' approach, that not only might there be a split trial between liability and quantum, but questions of remediation might not be possible until a third stage. Mr Pillow KC also points out, in context of fact that some of the issues involve claims, for example, for specific performance, that some of the very things which a Court would be keen to consider sooner rather than later would, on this approach, be put off to a later stage.

91. In this regard, he makes a number of points about the various issues which he suggested would be put off to a later trial. These include Issue 11, remediability, which provides, "Whether, insofar as breaches are established, such breaches are now irremediable and if not, whether they have been remedied."

92. He submits it is inherently unattractive that that would be split off to a later hearing. He also refers to Issue 49, which is said to be appropriate for being split off, "Whether there is any continuing breach of Mr Potanin and/or Whiteleave's aforementioned duties under the FA."

93. He points out that that, at least at first blush, is not even a quantum issue and would appear to go to liability. He also identifies Issue 69, "Whether there is risk of continuing breaches of clause 3.14 if Mr Potanin is not restrained by the Court."

94. That is another issue which it is proposed would be hived off and, yet, that goes to the question of injunctive relief and is not about quantum at all. It is all to do with liability and the remedies that may be available. The further illustration he gave was Issue 89, which is, "Whether Rusal is entitled to specific performance."

95. Again, it is suggested it would not be appropriate to hive that off to a subsequent hearing.

E1. APPLICABLE PRINCIPLES

96. In the case of *Daimler AG v Walleniusrederierna & ors* [2020] EWHC 525 (Comm), [25] to [32], I addressed the applicable principles that apply in relation to whether or not there should be a split trial. I identified that the Court's power to order a split trial is part of its general powers of case management, which are set out in CPR r.3.1. CPR r.3.1(2) specifically provides that the court may:

> "(f) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings; …
>
> (j) direct a separate trial of any issue;
>
> (k) decide the order in which issues are to be tried."

97. In the competition context, which was also the context in that case, the leading cases are *The Leaflet Company Limited v Royal Mail Group* [2008] EWHC 3514 (Ch), and *Electrical Waste Recycling* [2012] EWHC 38 (Ch), which was applied outside the context of competition law by Norris J in *Hawk v Sumner,* 9 November 2016, Unreported, [49] and following.

98. In *Electrical Waste Recycling*, which set out principles which are equally applicable in cases other than competition cases, Hilliard J provided guidance in the form of a non-exhaustive list of relevant factors to take into consideration whether to split the trial at [6]. The bracketed comments which follow are my own:

> "Where the issue of case management that arises is whether to split trials the approach called for is an essentially pragmatic one, and there are various (some competing) variations. These considerations seem to me to include:
>
> [factor 1] whether the prospective advantage of saving the costs of an investigation of quantum if liability is not established outweighs the likelihood of increased aggregate costs if liability is established and a further trial is necessary;
>
> [factor 2] what are likely to be the advantages and disadvantages in terms of trial preparation and management;
>
> [factor 3] whether a split trial will impose unnecessary inconvenience and strain on witnesses who may be required in both trials;

> [factor 4] whether a single trial to deal with both liability and quantum will lead to excessive complexity and diffusion of issues, or place an undue burden on the Judge hearing the case;
>
> [factor 5] whether a split may cause particular prejudice to one or other of the parties (for example by delaying any ultimate award of compensation or damages);
>
> [factor 6] whether there are difficulties of defining an appropriate split or whether a clean split is possible;
>
> [factor 7] what weight is to be given to the risk of duplication, delay and the disadvantage of bifurcated appellate process;
>
> [factor 8] generally, what is perceived to offer the best course to ensure that the whole matter is adjudicated as fairly, quickly and efficiently as possible.
>
> Other factors to be derived from the guidance given by CPR Rule 1.4 which reflect a common-sense and pragmatic approach may include
>
> [factor 9] whether a split trial would assist or discourage mediation and/or settlement, and
>
> [factor 10] whether an order for a split late in the day at the expenditure of time and cost might actually increase the costs."

99. As I pointed out at [28] in *Daimler*, the judge must undertake a "pragmatic balancing exercise" which requires assessing "how a case is likely to unfold according to whether or not there is a split (*Electrical Waste Recycling* at [7])." As I noted at [29] in *Daimler*, if a split trial is ordered it is important that there should be a careful demarcation of the boundary between the two in terms of the issues to be dealt with at each stage (see *Electrical Waste Recycling* at [9]). With regard to factor 4, one example of the "excessive complexity" that a single trial can lead to is where a large number of possible permutations of loss and damage may arise, depending on the judge's conclusion as to liability (see *Leaflet Company* at [7]).

100. As I noted at [31] in *Daimler*, the Court's power under CPR r.3.12(i) to direct a split trial must be exercised in accordance with the overriding objective in each case. Relative consideration under CPR r.1.1 includes "ensuring that the parties are on equal footing", "saving expense", "ensuring that [the case] is dealt with expeditiously and fairly", and "allotting to it an appropriate share of the court's resources, whilst taking into account the need to allot resources to other cases."

101. As I also noted in *Daimler* at [32], relevant considerations under CPR 1.4, in addition to those set out previously by *Waste Recycling* in para.6, include giving directions to ensure the trial of a case proceeds quickly and efficiently and the importance of the Court dealing with as many aspects of the case as it can on the same occasion.

102. In the *Daimler* case, and for the reasons set out in that case, I reached a conclusion that a split trial was not appropriate in that case. Among the factors that I identified was a consideration of whether

or not there was an alleged saving in Court time between a liability trial and a combined trial. In that case I was far from convinced that such savings existed. I said as follows, at [55]:

> "(1) It is a surprising submission, even in the abstract, that two trials, one on liability and one on quantum, would take less court time than one combined trial. For the reasons set out above, the quantum trial would not necessarily advance faster as a result of certain issues being termed at a liability stage…
>
> (2) I am not convinced based on the information available to me that there will be a substantial saving of time overall in relation to having a split trial. In contrast, the great advantage of a combined trial is that it produces one judgment that can be appealed and the appellant court has all the relevant factual findings on all issues and can so determine matters once and for all, and have the relevant factual and expert evidence before it and associated findings of the judge. That would not be the position if there was a split trial of liability and quantum."

103. At [56], I also said this:

> "I consider that the reality is obvious, that with two trials and likely appeals between the two, and separate disclosure exercises followed by separate expert evidence, the costs are likely to increase and it is not appropriate for me at this stage to attempt to assess the merits of the liability defences. Even if those liability defences are potential shortcuts, they could be treacherous shortcuts in terms of delay and expense once appeals and the separate disclosure exercise and separate trials are taken into account."

104. In that case, at [57], I concluded that the likelihood was that a split trial "would in fact lead to increased costs as well as potentially causing delay, which is contrary to the overriding objective."

105. I also made further points which militated in favour of a combined trial. I identified at [59] that, "Considerations of trial preparation and trial management weigh strongly in favour of a combined trial." The reasons for that that I gave included that:

> "The Commercial Court is well used to dealing with large and complex commercial disputes without adopting split trials for quantum and liability."

106. I also said this at [61]:

> "Secondly, a split trial also impacts on judicial resources, especially once possible appeals are taken into account. In this regard, CPR rule 1.1(2)(d) is to be taken into account as part of the overriding objective, mainly the need to allot an appropriate share of court resources to a particular matter. Each of the trials which are contemplated would be a significant trial. Each would take some time apart. There must be likely to be appeals in the meantime…It might not be possible for the same judge to try both liability and quantum, particularly if there was a

> significant gap, as a result of appeals and the need for disclosure not given at the liability stage. Judges might have been elevated or have retired. It would be an additional burden on court resources for there to be two trials and potentially more than one set of appeals and the potential for a second trial with different judge and additional reading and preparation time. There is also the fact that splitting the trial and allocating two trials – one for liability, one for quantum – would also tie up limited available judicial resources in the Commercial Court, even over an extended period of time."

107. At [62(2)], I said as follows:

> "I consider that such delay as would result in separate trials is further compounded by the strong likelihood that the ruling on liability would result in appeal, however decided."

108. At sub-para.(5):

> "As I have already foreshadowed, the Court of Appeal would only have issues of liability before them, not issues of quantum. The result is that the quantum trial would remain inevitable in the context of the follow-on damages claim and, depending on the findings of the Court of Appeal, issues of liability might remain to be resolved. By contrast, if there was one trial then the Court of Appeal would have all the appealed issues of liability in quantum before it and this would bring certainty and finality."

109. I also noted at sub-para.(6) that:

> "There would be a delay in that case of up to three years in determining issues of quantum and I do not regard that as either satisfactory or appropriate, having regard to the overriding objective."

110. On the facts of that case, at [63] I concluded that a split trial would not take place long before a full trial on liability and quantum and went on to conclude that it was not clear that there would in fact be a significant time or cost saving from having one trial as to liability and a further trial on quantum as opposed to a combined trial.

111. I also addressed at [68] the question of settlement. I noted that:

> "The Defendants also submitted that trial and liability taking place in advance of a trial on quantum would encourage the parties to settle by defining the scope of the relevant commerce and defining more clearly the total value of the claim."

112. However, I concluded at [69] that the settlement was more likely to be hindered than helped by a split trial. I expressed the view in that case that the possibility of settlement is maximised if all the issues were prepared and tried together.

113. I also considered at [70] that it was improbable that settlement would be possible until the true quantum of the claim – or the various permutations on the quantum – was apparent in the context of the fact that the sums at stake were very large. Overall in that case, at [77] I concluded that the application to split the trial was inappropriate and that the matter should proceed to trial on liability and quantum.

114. I consider that all the matters there identified apply equally on the facts of the present case, as shall be seen in the discussion section that follows.

115. In this regard, and as was identified by Peter MacDonald Eggers KC, sitting as a Deputy Judge of the High Court, in the case of *Jinxin Inc. v. Aser Media PTE Limited and others* [2022] EWHC 2431 (Comm) at [23]:

> "The fact remains that the decision to split what would otherwise be a single trial into more than one trial each dealing with defined issues is a step out of the norm, where in most cases there will be a single trial determining all of the issues arising in an action. Accordingly, there must be a real and substantial advantage if a split trial were ordered to take place."

116. See also at [26]:

> "Unless a split trial can be justified as a means of resolving the disputed issues in action in accordance with the overriding objective with clear benefits over and above those of a single trial, the peril exists that a split trial will add considerably to the parties' costs burden, will delay the conclusion of the action (with an unappealing drain on the Court's resources) and/or will lead to unanticipated difficulties."

117. I agree with the sentiments expressed in those paragraphs, which are consistent with the views I expressed in the *Daimler* case and also with what was said by Hildyard J in the *Electrical Waste Recycling* case.

E.2 DISCUSSION

118. I am satisfied that far from there being a saving in Court time and costs if liability and quantum were split in this case, it will inevitably lead to additional costs. The superficial attraction of identifying certain of the issues in the liability stage, such as that in relation to the Industrial Accidents Claim and Issue 73, does not bear examination.

119. As was identified by Mr Pillow KC, in relation to other important aspects of the claim, AF, Altan and the Charities Claims, each by their very nature involves a consideration and valuation, for example as to whether there was a sale at an undervalue or the like, which will inevitably involve expert evidence at that time. So, such expert evidence will be needed at the breach stage and, if quantum was to be bifurcated off, then there would need to be further expert evidence and the experts, who may well be the same experts, would then have to come back and give evidence twice. That is inherently unattractive and is likely to increase both costs and lead to delay.

120. Secondly, and as I foreshadowed, and as Mr Pillow KC identified, there is the very difficulty of the First and Second Defendants' proposal to actually identify which issues should be split off. It is

clear, as I have already identified, that many of the issues that are identified as being split off in fact either go to breach or go to remedy and logically should be determined at the first trial. As I have already noted, and as the First and Second Defendants are quite candid about, the approach that they suggest could result in the question of remediation only being dealt with at a much later stage with the possibility only of three trials.

121. As Mr Pillow KC submitted and illustrated (I consider rightly), if a split trial was to take place and if the First and Second Defendants were correct as to when that trial should commence, which the court has yet to determine and will determine later in the course of the case management conference, if one took a split trial from January 2028 – which is the First and Second Defendants' proposal, with an 11-week trial – it is unlikely there would be a judgment before the end of 2028. There is a real possibility, I consider, that there could then be at least applications for permission to appeal and potentially permission to appeal being granted in relation to liability issues. That itself would be unattractive in terms of the fact that the Court of Appeal would not have all issues before them, and also there would be delay of course whilst that appellate process was dealt with.

122. But even leaving aside that appellate process, assuming there were findings in relation to liability, there would then had to be at quantum trial, and that quantum trial could itself take three to four weeks, and almost inevitably that would result in a further significant period before there could be such a trial. Based on current lead times, it is quite possible that that could be a year or 18 months thereafter, by which stage one would be into mid-2030 in terms of quantum. By the time one had a judgment in relation to that, one would be at the end of 2030. Then, on this hypothesis, there would then be the remediation period, whether that be six months or otherwise, which would take one into 2031.

123. If there was a dispute about remediation that would then necessitate another trial, which might well not start until the end of 2032 into 2033. On any view that would mean that a period of up to seven years would have passed from the present time before there was overall finality. Each of those stages of course could also carry the possibility of applications for permission to appeal to the Court of Appeal and potentially appeals to the Court of Appeal, which would introduce further delay in the overall timescale. In the meantime, and as in *Daimler*, the chances of settlement would, I consider, be reduced in circumstances where none of the parties would know what the final outcome might be. That would be all the more acute if quantum was split off so that the sums involved could themselves not be quantified.

124. Far from saving time and costs, I consider that a split trial of liability and quantum, *a fortiori* liability versus quantum and remedies, would lead to considerably increased costs and delay on what is a realistic scenario.

125. For present purposes, it would not be appropriate to consider the merits of the respective claims which are advanced, but on any view no one is suggesting that the claims advanced are not arguable. Therefore, one possible outcome is that those claims might succeed. I consider, for the reasons I have identified, and those which I set out in *Daimler*, which I consider apply also in the present case, not only would there not be a real and substantial advantage if a split trial was ordered, but in fact there would be real and material disadvantages of not dealing with all issues, save remediation, at the first trial.

126. Those relate to increased costs, the possibility of experts having to give evidence on more than one occasion, the use of Court resources in relation to potentially two separate trials, if not three, the

fact that the appellate process could intervene, and the Court of Appeal would not have, at any one time, all the issues before it to be determined at the same time, and the fact that the prospect of settlement would also be reduced all militate against a split trial. For all those reasons, and having regard to the overriding objective, and the need to proceed expeditiously and justly to a final outcome in an action which already relates to events a number of years ago, I consider that a split trial would not be appropriate.

127. Accordingly, the trial will proceed as one trial, dealing with both liability, quantum and remedies, leaving over the possibility of remediation, which of course may or may not apply, depending on the outcome of the trial.

128. I also consider that such a combined trial of liability and quantum is capable of being dealt with within a period of 14 weeks, as compared to 11 weeks for liability only. That itself and the relatively modest difference between an 11-week trial and a 14-week trial is a further factor which shows that dealing with liability and quantum would be an appropriate course. On any view, if it was necessary to deal with quantum and remedies separate, very much more than 14 weeks overall would be needed, with very considerable costs introduced by the bifurcation process, including, by way of example only, the associated brief fees for a second substantial trial which, due to the passage time, would require substantial preparatory work and reading in, which would not be necessary in the event of a combined trial. Ditto the Court resources utilised for a 14-week trial and, if necessary, any appeal therefrom would be far less than bifurcated proceedings, which could result in both multiple appeals to the Court of Appeal and court resources being used on at least two, if not potentially three, trials.

129. I will now address case management directions to ensure the expeditious progress, and trial, of the action as a whole.