

Claim No: CL-2019-000752

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

IN AN ARBITRATION CLAIM  
AND IN THE MATTER OF APPLICATIONS UNDER S.67 AND S.68 OF  
THE ARBITRATION ACT 1996  
BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA

Claimant

- and -

PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED

Defendant

Claim No: CL-2018-000182

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

IN AN ARBITRATION CLAIM  
AND IN THE MATTER OF AN APPLICATION UNDER S.66 OF  
THE ARBITRATION ACT 1996  
BETWEEN

PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED

Claimant

- and -

THE FEDERAL REPUBLIC OF NIGERIA

Defendant

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**SKELETON ON BEHALF OF THE FEDERAL REPUBLIC OF NIGERIA ("FRN")  
FOR PRE-TRIAL REVIEW ON 2 DECEMBER 2022**

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References to the Opus Bundle are given in the form {**Bundle/Tab/Page**} as appropriate.

**Time estimate for hearing:** 2 hrs

**Pre-reading estimate (if time allows):** 1 hr (consisting of reading the parties' respective skeletons).

## A OVERVIEW

- 1 The trial concerns P&ID's s.66 enforcement application, and FRN's s.67 and s.68(2)(g) challenges in relation to three arbitral awards (the "**Awards**") relating to a gas processing contract (the "**GSPA**") dated 11 January 2010. P&ID commenced the arbitration on 22 August 2012. The Final Award was made on 31 January 2017, ordering FRN to pay P&ID US\$6.6 billion in damages plus interest at 7 percent p.a., presently totalling c. US\$11 bn.
- 2 Pursuant to paragraph 10 of the Order of Mr Justice Butcher dated 27 April 2021 made following the CMC on 15 April 2021 (the "**Butcher Order**"),<sup>1</sup> the trial has an estimate of 32 days, inclusive of 4 days pre-trial reading time.
- 3 The parties have agreed to use the Opus 2 platform for the purposes of the trial bundle. The trial bundle is sizable, with the main chronological run (**bundle H**) consisting of some 5,000 documents, and separate standalone bundles consisting of the privileged and confidential documents relating to the GSPA and arbitration that were contemporaneously obtained by P&ID (**bundle I**), witness statements provided to the Nigerian police and EFCC (**bundle J**), documents relating to P&ID's arbitration with Tita Kuru (**bundle K**), P&ID's disclosure of WhatsApp threads (**bundle L**) and particular bank statements (**bundle M**). If it would assist the Court – now or at any stage – to have the trial bundle, or any particular bundles or documents to be provided in hardcopy, this can be readily arranged.
- 4 ***In terms of factual evidence at trial:*** P&ID has served statements from eight factual witnesses, each witness choosing to also confirm that any previous statements served by them in these proceedings remain true. As a result, subject to any further witnesses served by P&ID in response to the recently agreed amendments to FRN's Statement of Case, the Court will have before it at trial: (i) seven witness statements of **Mr Andrew**; (ii) five witness statements of **Mr Cahill**; (iii) two witness statements of **Mr Burke KC**; (iv) five witness statements of **Ms Grace Taiga**; (v) two witness statements of **Mr Kuchazi**; (vi) one witness statement of **Mr Lawlor**; (vii) four witness statements of **Mr Murray**; and (viii) three witness statements of **Mr Nolan**. It is notable that each of P&ID's witnesses appears to have a significant financial interest in P&ID's claim.<sup>2</sup>

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<sup>1</sup> {C/19/4}

<sup>2</sup> Thus, for example, P&ID's disclosure reveals that upon the sale in 2017 of a stake in P&ID to VR Global Partners Ltd ("**VR**"), P&ID's commitments in terms of the proceeds of the sale of such stake included payments to Messrs Nolan, Kuchazi, Lawlor {H9/85/6} and Ms Grace Taiga {H9/73/2}, with the residual amount split 75% to Mr Cahill and Mr Adam Quinn, and 25% to Mr Andrew and Mr Burke KC {H9/85/2}.

5 ***In terms of expert evidence at trial:*** the parties have served expert evidence in the following four fields, with the respective experts having produced joint memoranda:

- 5.1 **Engineering experts:** The engineering experts are Mr Bunten (for FRN) and Mr Newenham (for P&ID). Their evidence goes to two main points: (i) the falsity of Mr Quinn’s witness statement in the arbitration (although, they are largely aligned on this) and (ii) the causal significance of that false evidence, in the sense of whether the Tribunal would or might have reached the view that P&ID could or would not have performed the GSPA had it been appraised of P&ID’s true situation. The evidence also goes to whether the GSPA was a properly thought-through and proceedable project which was awarded on its merits, as P&ID contends, or the result of bribery and corruption, as FRN contends.<sup>3</sup>
- 5.2 **Finance experts:** The finance experts are Mr George (for FRN) and Mr Dimitroff (for P&ID). Their evidence goes to the same two main points as that of the engineering experts (although, again, it is common ground between them that Mr Quinn’s evidence relating to the availability of finance was false). Mr George explains why it is fantastical to believe that P&ID could ever have obtained finance for the GSPA project, contrary to Mr Quinn’s evidence in the arbitration that it had already done so.
- 5.3 **Cash economy experts:** Mr Ojike (for FRN) and Mr Adebajo (for P&ID) have served short reports on the use of cash in the Nigerian economy. This evidence goes to P&ID’s attempts to explain away the eye-watering levels of (mainly large and round-numbered) cash withdrawals on its bank statements. Curiously, Mr Adebajo chose not to serve a reply expert report.
- 5.4 **Nigerian law experts:** Professor Ojukwu SAN (for FRN) and Professor Bamodu (for P&ID) have given evidence on a number of discrete issues of Nigerian law, including the law on bribery and the principles that the Tribunal would have applied had it been appraised of the true situation rather than the account that Mr Quinn presented to it (the GSPA being governed by Nigerian law).

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<sup>3</sup> There is reason to doubt that P&ID ever genuinely believed it could perform the GSPA, especially not on the ‘fast-track’ basis which it agreed to. However, FRN need not go that far to establish that Mr Quinn’s evidence was perjured, and that the contract was procured by bribes.

6 The matters for consideration and of which the Court should be aware at this PTR are addressed briefly in turn below:

## **B CHRONOLOGY AND DRAMATIS**

7 On 11 November 2022 FRN sent drafts of a chronology and dramatis personae to Quinn Emanuel<sup>4</sup>. Nothing was heard further until the evening of 28 November 2022, when Quinn Emanuel responded,<sup>5</sup> (i) asserting the chronology was not capable of agreement, but refusing to provide any suggested amendments, and (ii) unconstructively providing only very high-level comments on the dramatis personae, a list of additions they wished to include, and again no actual amended version. In these circumstances:

7.1 Insofar as the chronology is concerned, FRN considers the document to be one that should be capable of agreement: see FRN’s draft at {O/626}. Insofar as there is disagreement about an entry in FRN’s draft (which in itself would be surprising), Appendix 6 of the Commercial Court Guide provides guidance at paragraph 4 that, *“Where there is disagreement about a particular event or description, it is useful if that fact is indicated in neutral terms and the competing versions shortly stated.”* By letter dated 29 November 2022 Mishcon invited Quinn Emanuel to provide any actual suggested additions or amendments for constructive consideration by FRN.<sup>6</sup> However, by letter dated 30 November 2022,<sup>7</sup> P&ID has refused, instead asserting that, *“the only way in which a joint document is likely to be capable of agreement is if we put the large majority of FRN’s entries in one colour (where we dispute the inclusion of the event / document or the terms in which it is described) and our client’s proposed additions in another colour.”* This is regrettable. The draft chronology provided by FRN (see {O/626}) is a factual document that should in fact be readily capable of agreement by P&ID; P&ID’s suggested approach appears likely to be excessively cost and resource generative for both parties, turning the chronology into a piece of satellite litigation. In these circumstances, FRN’s draft ({O/626}) should stand.

7.2 Insofar as the dramatis personae is concerned (the current draft is at {O/563.3}), FRN will provide a revised draft containing P&ID’s proposed additions. Any further

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<sup>4</sup> {O/563.1} {O/563.2} {O/563.3}

<sup>5</sup> {O/621}

<sup>6</sup> {O/625}

<sup>7</sup> {O/633}

proposed changes from P&ID should be provided via suggested amendments to the draft.

## **C AMENDMENTS TO PLEADINGS**

8 As the Court is aware, on 3 November 2022 FRN provided P&ID with a draft Re-Re-Re-Amended Statement of Case. Having yet to receive agreement to all the amendments or to the proposed consequential directions, on 16 November 2022 FRN issued an application for permission pursuant to CPR 17.1(2)(b)<sup>8</sup>. In the event, on the evening of Friday 25 November 2022 P&ID confirmed its consent to all the amendments and proposed amended consequential directions, asking for a response by Monday 28 November 2022<sup>9</sup>. The delay of almost a month in P&ID confirming its consent to the amendments is unfortunate.

9 FRN duly responded on 28 November 2022, attaching the draft Re-Re-Re-Amended Statement of Case with some further small amendments<sup>10</sup>, and modifications to P&ID's proposed consequential directions. A Consent Order has now been agreed providing (inter alia) that: (i) FRN has permission to rely on its Re-Re-Re-Amended Statement of Case; (ii) P&ID has permission to file any consequential amendments to its Defence by 4pm on 9 December 2022 (over a month since it received the draft Re-Re-Re-Amended Statement of Case on 3 November 2022); (iii) FRN has permission to file any consequential amendments to its Reply by 4pm on 14 December 2022;<sup>11</sup> and (iv) P&ID has permission to file any supplemental witness statements of fact relevant to the amendments by 4pm on 20 December 2022.

### **FRN's Statements of Facts**

10 Commercial Court Guide, paragraph J8.6 provides that:

“The fact that documents in the trial bundle are admissible in evidence does not mean that all such documents have been adduced in evidence so as to form part of the evidence in the trial. For this to happen either the parties must agree that the document in question is to be treated as put in evidence by one or other of them and the Judge so informed or they must have adduced the document in evidence by some other means. What means are used requires the exercise of judgment by the advocates in each case and should be raised with the trial Judge during oral opening

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<sup>8</sup> {N9/1}

<sup>9</sup> {O/609}

<sup>10</sup> {O/607} {A1/1.1} Principally reflecting supplemental disclosure provided by P&ID since 3 November 2022, as well as deletion of subparagraphs 71(6) & (7), which had (inter alia) relied on Mr Shasore's fee of \$2m as in and of itself an indicium of fraud.

<sup>11</sup> FRN has identified in correspondence that if a few more days is in fact required, it trusts this will be constructively agreed by P&ID.

submissions if it has not been considered at a Pre-Trial Review. It is a responsibility of trial advocates to indicate clearly to the Court before closing their case what written evidence forms part of that case, and it will not normally be appropriate for reliance to be placed in final speeches on a document not previously adduced in evidence at the trial.”

11 In this case, the documents referred to in the agreed chronology, the parties’ opening and closing written and oral submissions, the hearsay notices, as well as those documents referred to by, or put to, the factual and expert witnesses, should be treated as forming part of the evidence in the trial.

12 In addition:

12.1 By letter on 19 November 2022,<sup>12</sup> FRN sent to P&ID two Statements of Facts, respectively directed at identifying, from within the many documents within the trial bundle, the principal primary documentation evidencing:<sup>13</sup> (i) the circumstances in which documents privileged or confidential to FRN were contemporaneously obtained by, and then shared by those acting for, P&ID (the “**FRN Privileged Documents Statement of Facts**”) {A5/1}; (ii) payments and cash flows that FRN relies upon as evidencing particular corrupt payments having been made (the “**Bribery Statement of Facts**”) {A5/2}.<sup>14</sup> The references to trial bundle documents within these two Statements of Facts are hyperlinked to assist the Court.

12.2 By Quinn Emanuel’s second letter dated 24 November 2022<sup>15</sup>, P&ID has confirmed that it does not object to FRN relying on these Statements of Facts at trial. Accordingly, the documents referenced within the Statements of Facts should be treated as forming part of the evidence in the trial.

12.3 Moreover, FRN considers that it will save time at trial and considerably assist the Court for P&ID, as invited by Mishcon’s letter dated 19 November 2022,<sup>16</sup> to

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<sup>12</sup> {O/590}

<sup>13</sup> For the avoidance of doubt, the full conclusions and inferences to be drawn from the documents within the two Statements of Facts, as well as other matters and documents supporting such conclusions and inferences, will be a matter for trial, and all FRN’s rights are reserved to refer to additional documents and matters in this context at trial.

<sup>14</sup> For the avoidance of doubt, FRN’s case is that, in addition to the identified payments, it is to be inferred from the totality of the evidence that additional but still concealed payments or benefits were made, provided or promised by, or on behalf of, P&ID to (1) those individuals pleaded as having received bribes and/or (2) to other Nigerian officials and/or other individuals responsible for representing FRN in the arbitration and/or other individuals responsible for obtaining evidence for or giving instructions to FRN’s legal team and/or other individuals directly and/or indirectly involved in FRN’s defence to P&ID’s claim in the arbitration, whose identity and involvement in each case remains currently obscured from FRN.

<sup>15</sup> {O/601.1}

<sup>16</sup> {O/590}

identify, well in advance of trial, if P&ID disputes any of FRN's descriptions of the contents of, or references to, the underlying documents as set out in the Statements of Facts on Payments. *i.e.* for example, that FRN's identifications in the Bribery Statement of Facts that particular bank statements in the trial bundle show particular payments on particular dates are not disputed by P&ID. FRN has made clear that it does not expect P&ID to engage with the inferences which it seeks to draw from the documents, which are matters for trial. FRN has invited P&ID to provide such confirmations by 9 December 2022, but by way of Quinn Emanuel's second letter dated 24 November 2022<sup>17</sup>, P&ID has refused to provide any such confirmations by 9 December 2022, or at all. The Court is invited to indicate at the PTR that it considers P&ID's engagement with the Statements of Facts in this way likely to be helpful.

#### **D TRIAL TIMETABLE**

13 Pursuant to paragraph 18 of the Butcher Order,<sup>18</sup> FRN is to serve its opening skeleton by 4pm on 4 January 2023, with P&ID to serve its opening skeleton by 4pm on 6 January 2023. The parties have agreed in correspondence to invite the Court to direct that no particular page limit should be set as to the length of trial skeletons, with the parties to use their respective judgment and experience as to what will best assist the Court.

14 However, the parties are in disagreement as to various other matters concerning the trial.

15 ***Length of trial:*** by Quinn Emanuel's fifth letter dated 18 November 2022,<sup>19</sup> P&ID have asserted that the overall length of trial should be shortened by 4 days. This appears a tactical attempt to deprive FRN of proper time to cross-examine P&ID's factual witnesses at trial. There is no proper basis to shorten the trial. This is an extremely high value claim (worth US \$11bn), involving serious allegations and, since the 32-day estimate ordered at the April 2021 CMC,<sup>20</sup> in fact:

15.1 The parties have exchanged disclosure (comprising more than 40,000 documents), with the trial bundle consisting of well over 6,000 documents;

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<sup>17</sup> {O/601.1}

<sup>18</sup> {C/19/5}

<sup>19</sup> {O/588.1}

<sup>20</sup> Paragraph 10 of the Butcher Order {C/19/4}

- 15.2 New grounds of complaint have emerged from P&ID's disclosure (including, but not limited to, the illicit obtaining of FRN Privileged Documents by P&ID and various interferences with justice, including in relation to Mr McNaughton<sup>21</sup> and the deletion of documents);
- 15.3 P&ID has now served witness statements for trial from eight individuals, with the evidence of these eight individuals to be found within some 29 different statements. At the April 2021 CMC where the trial length was fixed, P&ID stated that it intended to call just three to six witnesses of fact;<sup>22</sup> and
- 15.4 P&ID has identified various reasons why the cross-examination of certain of its witnesses may require more time than might otherwise be the case (*i.e.* Ms Grace Taiga and Mr Kuchazi have now been identified in Quinn Emanuel's fifth letter dated 18 November 2022<sup>23</sup> as having health issues which may require accommodation, and the evidence of Ms Grace Taiga, Mr Kuchazi, Mr Cahill, Mr Nolan and Mr Murray is all likely to be taken remotely).

16 ***Allocation of time at trial:*** the main areas of disagreement are (i) whether FRN's cross-examination of P&ID's factual witnesses should be limited to 10 days as contended by P&ID; (ii) whether P&ID should be entitled to a ½ day to make oral submissions at the close of P&ID's oral evidence; (iii) whether oral evidence by the Nigerian experts is required.

17 As to these matters:

17.1 First, FRN's position is that at least 17 days at trial be used for the oral evidence of P&ID's eight witnesses of fact. There are some 29 witness statements in relation to these eight witnesses and extensive matters to cover with these witnesses. Serious allegations of wrongdoing are made against the individuals, and it is important that FRN has the opportunity fairly and fully to put its case and for the individuals to have a fair opportunity to deal with the points. FRN's estimates of cross-examination are based on careful consideration by experienced Counsel who will be

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<sup>21</sup> Supplemental disclosure provided from P&ID as a result of the Foxton Order {C/22} has revealed that: (a) a Mr Bernard McNaughton, a former employee of companies associated with Messrs Quinn and Cahill, had offered in 2020 to act as a witness and provide documents in connection with these proceedings evidencing corruption (see, for example, {H9/328}), but (b) Mr Cahill and others procured Mr McNaughton's silence and non co-operation through entering a settlement agreement providing payment to Mr McNaughton contingent on P&ID succeeding in its claim against FRN (see, for example, {H9/489}, {H10/112}, {H10/116}, {H10/1167}, {H10/120} and {H10/125}).

<sup>22</sup> P&ID CMIS §13(a) {Z/2/4}.

<sup>23</sup> {O/588.1}



conducting the cross-examinations. Following P&ID's recent indication of the order of its witnesses, FRN's current estimates for cross-examination are as follows:

17.1.1 Mr Andrew: cross-examination time of 2-3 days.

17.1.2 Mr Cahill: cross-examination time of 5-6 days.

17.1.3 Mr Burke KC: cross-examination time of 1.5-2 days.

17.1.4 Ms Grace Taiga: cross-examination time of 1-2 days.

17.1.5 Mr Kuchazi: cross-examination time of 1-1.5 days day.

17.1.6 Mr Lawlor: cross-examination time of ½-1 day.

17.1.7 Mr Murray: cross-examination time of 2-3 days.<sup>24</sup>

17.1.8 Mr Nolan: cross-examination 1-1.5 days.

17.2 The above estimates amount, at their maximum range, to 20 days. However, in the interests of co-operation and an efficient trial, FRN is content to proceed on the basis that 17 days in total be provisionally allocated for cross-examination of the factual witnesses at the trial.<sup>25</sup>

17.3 Second, FRN does not agree that P&ID should have an extra ½ day for oral submissions after the close of P&ID's oral evidence. If FRN had called factual evidence, P&ID's time to test this would have come before, not after, its factual evidence. Rather, FRN contends that if P&ID wishes to draw attention to particular matters, it can do so as part of its oral opening. To this end, FRN has constructively proposed that P&ID be given more time – 1 day – to orally open and to accommodate this, by contrast to the normal position at set out at paragraph J8.2 of the Commercial Court Guide that any oral opening by a defendant be limited to a short opening statement, if anything. This will also fairly allow any matters raised by P&ID in this context to then be put by FRN to P&ID's factual witnesses if and as appropriate. P&ID will, of course, also have the opportunity to re-examine its

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<sup>24</sup> FRN submits that in light of P&ID's application that both Mr Cahill and Mr Murray both give evidence from Ireland, Mr Murray's evidence should come immediately before or immediately after that of Mr Cahill.

<sup>25</sup> This may need to be revisited if there is undue disruption to the cross-examination process at trial, for example caused by uncooperative witnesses, problems with the video arrangements arranged by P&ID, or due to the accommodations that P&ID asks to be made for medical reasons when cross-examining Ms Grace Taiga or Mr Kuchazi.

witnesses if appropriate and to make submissions on the factual evidence in its Closing Submissions.

17.4 Third, FRN considers that oral evidence from the Nigerian law experts is necessary. As evidenced by the Nigerian law joint memorandum, there are significant areas of disagreement as between the experts: see {F4/3}.

18 Accordingly, FRN's proposed trial timetable is set out at Annex 1 of this skeleton. As set out therein, FRN's proposal, which should be directed by the Court, is that:

18.1 2 days be allocated for oral openings (1 day each for each party).

18.2 17 days be allocated for the oral evidence of P&ID's eight factual witnesses.

18.3 5 days be allocated for the oral evidence in the four expert disciplines.

18.4 4 days be allocated for oral closings.

19 ***Timing of written closings:*** The Court is invited to direct that it will be assisted by written closings. FRN proposes that, after week seven, the Court should not sit for a week or two to allow preparation of written closings to then be followed by week eight (oral closings) before the end of Hilary term (which ends on 5 April 2023). However, if this is not possible from the Court's perspective, FRN's position is that the parties will have to proceed without a gap to produce written closings given that the time available at trial is needed for oral openings, oral evidence and oral closings as set out above. P&ID has indicated it does not oppose a gap for written closings, but its position is that this gap should take place using a week of the trial. As set out in paragraph 18, it is FRN's position that the seven weeks of Court time are all fully needed for oral submissions and evidence.

## **E WITNESS ARRANGEMENTS**

### **E1 Remote evidence**

20 Arrangements need to be put in place for Ms Grace Taiga, Mr Kuchazi, Mr Nolan, Mr Cahill and Mr Murray to give their evidence remotely by video during the trial. In fact, FRN has been asking for details of the logistics in this regard since 30 September 2022,<sup>26</sup> but has frustratingly not been provided with such specifics by P&ID.

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<sup>26</sup> {O/465}

21 A regrettable feature of this hearing is that FRN has never disputed that remote evidence should be accommodated in this case, but P&ID has used the issue of remote evidence to serve on 28 November 2022 a last minute and highly tendentious application in this regard.<sup>27</sup> This is not an appropriate way at all for P&ID to have proceeded.

22 The background to these witnesses giving evidence remotely is as follows:

22.1 Three of P&ID's witnesses were originally based in Nigeria (Ms Grace Taiga, Mr Kuchazi and Mr Nolan), with each charged with serious criminal offences. However, in recent weeks it has become apparent that Mr Nolan has, in breach of his bail conditions, absconded. Quinn Emanuel has revealed in its fifth letter of 18 November 2022<sup>28</sup> that Mr Nolan has successfully managed to leave Nigeria.

22.2 FRN has made clear from the outset that it does not oppose the evidence of Ms Grace Taiga, Mr Kuchazi and Mr Nolan being taken by video remotely at trial. The inability of these witnesses to travel to the United Kingdom does not impede their ability to give evidence at trial, and cross-examination over video during trial is now a tried and tested method of taking of evidence. P&ID has, however, complained in correspondence (and now in Marsh 8<sup>29</sup>) that the Attorney General has failed to procure that Ms Grace Taiga and Mr Kuchazi's bail conditions be varied to allow them travel to London to give evidence in person. This is misconceived and a red herring:

22.2.1 The English Court has already concluded that there is strong prima facie evidence that Ms Grace Taiga was corrupt, and both Ms Grace Taiga and Mr Kuchazi face serious criminal charges. P&ID's suggestion that the Attorney General should intervene in prosecutions being independently conducted by the EFCC is constitutionally inappropriate. As Mishcon have made clear in correspondence, the question of whether the bail conditions should be varied is a matter for the EFCC and Nigerian Court. But moreover, the suggestion that a prosecutor should invite the Nigerian Court to vary Ms Grace Taiga and Mr Kuchazi's bail conditions is surprising in the absence of any means of ensuring that they will return to face trial, a matter

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<sup>27</sup> {N10/1} Including (but not limited to) allegations of impropriety by the EFCC and/or Nigerian police, which are denied.

<sup>28</sup> {O/588.1}

<sup>29</sup> {N10/2/6, paragraph 18}

highlighted by the fact that P&ID's other witness, Mr Nolan, has in fact successfully absconded. P&ID's complaint is also all the more surprising in view of Ms Grace Taiga and Mr Kuchazi's health complaints (see Quinn Emanuel's fifth letter of 18 November 2022) which suggest, all other things being equal, they would not wish or be able to travel to London.<sup>30</sup>

22.3 In Quinn Emanuel's letter dated 25 October 2022<sup>31</sup> it was identified by P&ID that, save in respect of Ms Grace Taiga and Mr Kuchazi, it did not anticipate any special arrangements being necessary for any of its other witnesses or experts. However, by Quinn Emanuel's subsequent fifth letter of 18 November 2022, P&ID sought to impose a new requirement that FRN and the Attorney General provide undertakings that Mr Cahill and Mr Nolan not be arrested if they travel to London for trial, whilst in P&ID's application of 28 November 2022<sup>32</sup> it is now also said (for the first time) that Mr Murray should give his evidence remotely too. Again, FRN constructively does not object to each of these witnesses giving their evidence remotely.

22.4 Nor, for the avoidance of doubt, can any legitimate criticism be levelled at FRN in this context. P&ID's last-minute attempt to impose a requirement of undertakings being given was disruptive and misconceived:

22.4.1 P&ID's application fails to identify when Mr Cahill or Mr Murray last travelled to the United Kingdom or otherwise left Ireland, but insofar as they have done so, it has been without any such undertakings being in place.

22.4.2 Mr Cahill, Mr Nolan and Mr Murray may be exposed to arrest in England due to their involvement in serious criminal matters – that is a matter for the English police. Indeed, Mr Cahill, whilst based in Ireland, was arrested by the Irish Gardai in December 2021.<sup>33</sup>

22.4.3 If Mr Cahill, Mr Nolan (a fugitive) or Mr Murray are exposed to arrest because of any Interpol notice, that is a matter for Interpol. As to whether

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<sup>30</sup> {O/588.1} By that letter, Quinn Emanuel has identified that both Ms Grace Taiga and Mr Kuchazi suffer from medical issues, with Mr Kuchazi having recently been too unwell to travel internally within Nigeria, and that both may require additional breaks when giving evidence.

<sup>31</sup> {O/524}

<sup>32</sup> {N10/1}

<sup>33</sup> P&ID have refused to provide information or clarity as to the basis of Mr Cahill's arrest. Reports in the press indicate that Mr Cahill was detained on suspicion of conspiracy, contrary to section 71 of the Criminal Justice Act 2006, which allows the Irish Gardai to investigate offences committed outside the State.

they might be exposed to arrest at the request of FRN in order to extradite them to Nigeria to face criminal charges, it would be a matter for the EFCC whether it took any steps to seek their arrest, and it would be wrong for the Attorney General to seek to interfere in the discharge of EFCC's duties. However, in any event, it would be a matter for the UK authorities whether they took any steps to effect such arrest if requested, and it would ultimately be for the English Court to determine whether, if Mr Cahill, Mr Nolan or Mr Murray were arrested, they should face trial in England or be extradited to Nigeria.

Regardless, notwithstanding the flaws in P&ID's contentions, FRN constructively does not object to Mr Cahill, Mr Nolan and Mr Murray giving their evidence remotely.

23 Accordingly, the only real issue before the Court at this PTR in relation to the taking of such evidence is FRN's concern to ensure that P&ID arranges for the remote taking of evidence to be done from neutral venues, with sufficiently high-speed internet and that P&ID arranging proper access for the witnesses to electronic and hardcopies of the trial bundle, and with appropriate representatives present. As to this, as set out in Mishcon's letter to Quinn Emanuel of 30 November 2022 {O/629}:

23.1 Insofar as the evidence of Ms Grace Taiga and Mr Kuchazi is concerned:

23.1.1 This should take place from a suitable neutral venue in either Abuja or Lagos, with the same venue being used for both individuals. (Ms Grace Taiga and Mr Kuchazi are giving evidence back-to-back, so this will mean one trip for the English lawyer observers).

23.1.2 P&ID has suggested at paragraph 43.3 of Marsh 8<sup>34</sup> that, "*One or more lawyers representing P&ID will attend in the relevant foreign jurisdictions to assist the witnesses while they give evidence. This will be done by associates from my firm in the case of the witnesses not located in Nigeria, **and by local Nigerian lawyers in the case of the Nigerian Witnesses***" (emphasis added). FRN does not agree that it is appropriate for local Nigerian lawyers to supervise the taking of evidence in Nigeria, as opposed to English-qualified solicitors of Quinn Emanuel. First, English-qualified solicitors of Quinn Emanuel are officers of the English

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<sup>34</sup> {N10/2/14}

Court and owe duties to the English Court as such, whereas the same does not apply to any local Nigerian lawyers, who will also lack as much familiarity with the process. Second, P&ID's disclosure to date indicates questionable conduct by certain of the local lawyers acting for those associated with P&ID in Nigeria. For example, P&ID's disclosure on 22 November 2022 includes a message from Mr McNaughton to Mr Cahill dated 15 May 2020<sup>35</sup> identifying that Mr Godwin Odama (one of the Nigerian accountants who had acted for ICIL group companies) had recently contacted Mr Nolan's Nigerian lawyer and "*The Lawyer advised Godwin to destroy all records*".

23.1.3 P&ID should ensure that both an electronic and hard copy bundle of the trial bundle is available to the witnesses.

23.1.4 FRN should be entitled to have two members of Mishcon present to observe.

23.2 Insofar as Mr Cahill and Mr Murray are concerned: this should take place from a single neutral venue in Dublin, with P&ID to ensure that both an electronic and hard copy bundle of the trial bundle is available to the witnesses, and FRN is entitled to have two members of Mishcon present to observe. As part of the permission being granted for remote evidence, Mr Murray should be called by P&ID to give his evidence either immediately before or after that of Mr Cahill (who is to be P&ID's second witness called), thereby assisting in smooth logistics (*i.e.* the facilities, room and arrangements set up for Mr Cahill will be able to be used for Mr Murray) and avoiding multiple trips to Ireland having to be taken during trial.

23.3 Insofar as Mr Nolan is concerned, P&ID are unwilling to reveal Mr Nolan's location to FRN. This appears excessive; indeed, P&ID have not even confirmed that there is a potentially applicable extradition treaty between whichever location in which Mr Nolan is currently based and Nigeria. Notwithstanding this, FRN's focus is on ensuring that Mr Nolan's oral evidence is available at trial and as a result is constructively prepared to agree that FRN should not be informed of such location. Instead, Mishcon should be entitled to put forward the names of four English qualified barristers or solicitors (who have had no prior involvement in this case), with one to be arranged by P&ID to attend as an independent observer. The costs

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<sup>35</sup> {H9/447.1/2}

should be paid for by P&ID in the first instance, with the question of where those costs are to fall to be ultimately determined by the Court at the end of trial.

## E2 Witness sequestration

24 The Court has discretion to exclude a party’s witnesses from hearing or seeing the content of each other’s oral evidence before they have given their own oral evidence. The Court can exercise this power to protect the “*quality, purity and reliability*” of the evidence to be given.<sup>36</sup> As the Court explained in *BGC Brokers LP v Tradition (UK) Ltd* [2019] EWHC 3588 (QB)<sup>37</sup>, the Court may exclude a witness “*for the purpose of preventing the evidence of such witnesses from being influenced by what they have heard and seen of other witnesses called to testify before the court*”. There must be a “*good reason for concern as to the quality, purity and reliability of the evidence*”.

25 Here, there is (at least) strong prima facie evidence from P&ID’s disclosure of those acting for P&ID having sought to co-ordinate evidence being given and acting in concert to withhold incriminating matters. Thus, for example:

25.1 P&ID’s disclosure of WhatsApp communications reveals that on 24 May 2020, Mr Cahill messaged Ms Grace Taiga’s daughter, Aisha, instructing her on (it seems) what to say if interviewed by the EFCC, namely stating, “*Also you don't know the amounts involved. Mick [Quinn] dealt directly with Vera as far as you remember. Don't let them speak to your Mom till we have our ducks in a row.*”<sup>38</sup>

25.2 The WhatsApp communications also reveal that, shortly before Mr Cahill’s reply evidence for the extension of time hearing was filed, Mr Cahill messaged Mr Andrew and Mr Burke on 22 June 2020 stating, “*One last item. Kobre are looking for the full list of 'benevolent payments'. I think we are agreed that this item could open new and unwelcome lines of enquiry. Let's consider our response*”.<sup>39</sup> In response, Mr Andrew replied two minutes later, “*Yes we don't want to go there. I would say that the list you [p]ut together is probably the best you can do as it is not something that is susceptible to a word search in the records*”. This appears to have been implemented, with Mr Cahill sharing his response with Mr Smyth the next day, which misleadingly stated, “*Hi Nate, Many thanks, understood. The problem is that I have already conducted the exercise of looking through the records to find all of the 'charitable' payments I could spot. I daresay I could do a more thorough trawl but I think this is pretty much*

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<sup>36</sup> {Y/1} *Luckwell v Limata* [2014] EWHC 536 (Fam).

<sup>37</sup> {Y/2} *BGC Brokers LP v Tradition (UK) Ltd* [2019] EWHC 3588 (QB)

<sup>38</sup> {H9/459/1}

<sup>39</sup> {L/33/123}

*it*”<sup>40</sup> In consequence, the hearing before Sir Ross Cranston was conducted without Mr Cahill’s evidence mentioning that many more payments than those that had by then been identified by FRN as having been made to Ms Grace Taiga and her daughters had in fact been made. (The Court will recall at the recent hearing on 22 November 2022, Lord Wolfson KC was at pains to state that Mr Andrew, who was in Court and so the direct source of instructions, disputed that the intention was for anyone to be misled).<sup>41</sup>

26 In these circumstances, and to protect the quality and purity of the cross-examination process, the Court should exercise its discretion to order sequestration of all of P&ID’s witnesses during the trial prior to their having given their oral evidence.

## F CONFIDENTIALITY

27 It is common ground that the trial should be in public. (Consistent with this, it appears inappropriate for the Court file to be sealed, as currently appears to be the case).

28 However, whilst needing to be further addressed in correspondence and not appropriate to resolve in the brief time available for this hearing, the Court should be aware that: (i) P&ID has suggested in correspondence that when the recently disclosed documents relating to the arbitration between P&ID’s current shareholders are referred to at trial (“**the Shareholder Arbitration**”), this should be in camera; (b) FRN has indicated in correspondence (and as also raised at the hearing on 22 November 2022) that reference at trial to documents relating to the Sunrise arbitration should likewise be in camera.

29 It is respectfully submitted that the appropriate way to proceed is:

29.1 The issues of in camera requirements should be further addressed by the parties in correspondence.

29.2 Insofar as either party pursues this, appropriate applications are to be issued by 4pm on 16 December 2022 and determined by the Court at a brief hearing during the following week.

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<sup>40</sup> {L/22/209}

<sup>41</sup> {Z/3/27, Paragraph 102} Lord Wolfson KC stated, “[M]y learned friend alleged that Mr Andrew misled the court and my client’s former instructing solicitors about a so-called list of payments that was missing before Sir Ross Cranston. I imagine, of course, that is something which Mr Andrew would deny, but it was an allegation made in open court and therefore I should just say that in response.”



29.3 Insofar as the determination of those applications is not possible pre-Christmas, insofar as the parties are asked to share their trial skeletons with the press (which will have been exchanged and provided to the Court on 4 and 6 January 2023 respectively), appropriate redactions be applied to any parts of those skeletons which are the subject of the issued applications.

**G CONCLUSION**

30 For the reasons set out above, the provisional timetable in the form at Annex 1 should be adopted.

**MARK HOWARD KC  
PHILIP RICHES KC  
TOM FORD  
TOM PASCOE  
SEBASTIAN MELLAB**

**1.12.2022**

	Monday	Tuesday	Wednesday	Thursday	Friday
Week 1	16 Jan Reading time  Day 1	17 Jan Reading time  Day 2	18 Jan Reading time  Day 3	19 Jan Reading time  Day 4	20 Jan
Week 2	23 Jan  C's oral opening (1 day)  Day 5	24 Jan  D's oral opening (1 day)  Day 6	25 Jan  Factual xx (Day 1)  Day 7	26 Jan  Factual xx (Day 2)  Day 8	27 Jan
Week 3	30 Jan  Factual xx (Day 3)  Day 9	31 Jan  Factual xx (Day 4)  Day 10	1 Feb  Factual xx (Day 5)  Day 11	2 Feb  Factual xx (Day 6)  Day 12	3 Feb
Week 4	6 Feb  Factual xx (Day 7)  Day 13	7 Feb  Factual xx (Day 8)  Day 14	8 Feb  Factual xx (Day 9)  Day 15	9 Feb  Factual xx (Day 10)  Day 16	10 Feb
Week 5	13 Feb  Factual xx (Day 11)  Day 17	14 Feb  Factual xx (Day 12)  Day 18	15 Feb  Factual xx (Day 13)  Day 19	16 Feb  Factual xx (Day 14)  Day 20	17 Feb
Week 6	20 Feb  Factual xx (Day 15)  Day 21	21 Feb  Factual xx (Day 16)  Day 22	22 Feb  Factual xx (Day 17)  Day 23	23 Feb Technical experts xx (2 days, split equally)  Day 24	24 Feb
Week 7	27 Feb  Technical experts xx (2 days total, split equally)  Day 25	28 Feb  Financing experts xx (1 days total, split equally)  Day 26	1 March  Cash economy experts xx ( ½ day total, split equally) Nigerian law experts (1.5 days total, split equally)  Day 27	2 March  Nigerian law experts (1.5 days total, split equally)  Day 28	3 March
<b>POSSIBLE GAP TO PRODUCE WRITTEN CLOSINGS</b>					
Week 8	6, 13 or 20 March  C's closing (1 ½ days)  Day 29	7, 14 or 21 March  C's Closing (1 ½ days) D's Closing (2 days)  Day 30	8, 15 or 22 March  D's Closing (2 days)  Day 31	9, 16 or 23 March  Ds' Closing (2 days) C's Reply (½ day)  Day 32	