Neutral Citation Number: [2023] EWHC 1847 (Ch)

Case No: HC-2015-001324

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

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

Date: 19/07/2023

Before :

THE HONOURABLE MR JUSTICE HILDYARD

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Between :

(1) ACL NETHERLANDS B.V. (AS SUCCESSOR TO AUTONOMY CORPORATION LIMITED)	**Claimants**
(2) HEWLETT-PACKARD THE HAGUE BV (AS SUCCESSOR TO HEWLETT-PACKARD VISION BV)	
(3) AUTONOMY SYSTEMS LIMITED	
(4) HEWLETT-PACKARD ENTERPRISE NEW JERSEY, INC	
- and –	
(1) MICHAEL RICHARD LYNCH	**Defendants**
(2) SUSHOVAN TAREQUE HUSSAIN	

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MR LAURENCE RABINOWITZ KC and MR MAX SCHAEFER
(instructed by **Travers Smith LLP)** for the **Claimants**

MR RICHARD HILL KC and MR SHARIF SHIVJI KC
(instructed by **Clifford Chance LLP)** for the **First Defendant**

MR PAUL CASEY
(instructed by **Simmons & Simmons LLP)** for the **Second Defendant**

Hearing date: 26 June 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 19 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MR JUSTICE HILDYARD

Mr Justice Hildyard:

1. In a judgment dated 17 May 2022 ("my Main Judgment") I elaborated my reasons for my conclusion that the Claimants had established most of their claims and had been caused substantial loss. (I had previously given a Summary of Conclusions ("my Summary of Conclusions") delivered on 28 January 2022.)

2. As to quantum, I stated my provisional view that (a) even if Autonomy's financial position and performance had been properly and accurately disclosed, HP/Bidco would nevertheless have wished to proceed with the Acquisition, but at a significantly reduced bid price which Autonomy's shareholders would probably have accepted, and (b) the Claimants' loss under their FSMA claims would, though substantial, be substantially less than the amounts claimed. However, I did not feel able at that stage to determine finally the quantum of the Claimants' loss, either in the context of their FSMA claims or in the context of their personal claims in deceit and misrepresentation (or their claims for direct losses).

3. I explained why not in paragraphs 4056 to 4065 (addressing the FSMA Claims) and 4066 to 4076 (addressing the deceit and misrepresentation claims). In summary:

   (1) The 'True Position' of Autonomy would have to be recalibrated to take into account the fact that HP/Bidco had succeeded in most, but not all, their claims (see paragraph 4062 of my Main Judgment).

   (2) The assessment of what bid price would be likely to have been offered by HP/Bidco and accepted by Autonomy's shareholders would have to take into account what, in Autonomy's True Position, (a) its share price would have been likely to be, (b) what premium its shareholders would reasonably have expected and been required to be paid and (c) whether, taking account also synergy values in Autonomy's counterfactual True Position, a bid likely to be acceptable to shareholders of Autonomy would have been within parameters acceptable to HP having regard to HP's recalibrated (counterfactual) Deal Model: see again, paragraph 4062 of my Main Judgment.

   (3) I needed more assistance on, and to consider further, the basis and rationale of the central theme advanced at Trial by the First Defendant's expert, Mr Giles, that the Claimants' expert, Mr Bezant, had adopted a flawed approach, especially as to the assessment of synergy value and as to the effect of the required adjustments that would be necessary to a DCF valuation to the extent that the claims succeeded. As to this, Mr Giles expressed his point as being that *"Overall the Accounting Adjustments [would] very likely have no impact or very little impact on cash"* and that in consequence a DCF valuation would *"not be materially affected by the Allegations"*: and see paragraph 4063 of my Main Judgment.

   (4) I stated also that I was likely to need further guidance on the alternative *"No-Transaction scenario"* and the differences in the *"FSMA Counterfactual"* and the *"Misrepresentation Counterfactual"* (see paragraph 4064 and, as to the latter, paragraphs 4066 to 4076 of my Main Judgment).

(5) I confess that I also felt the need for a pause for thought and further assistance after a long trial at which issues of quantum came last and (despite the length of the Trial) in the end were less fully dealt with than issues of liability.

4. However, it is clear that the parties formed different views as to the scope of the further exchanges of evidence that I had anticipated and invited.

5. In particular, it appears from their email to my clerk dated 1 August 2022 (as well as inter-parties exchanges included in the Trial Bundles now available to me) that Travers Smith had taken the view that (a) the only intended exercise required of the Claimants' expert was to consider "the narrow issue of the effect of the Excluded Transactions on his existing valuation evidence", and they were instructing the Claimants' expert (Mr Bezant) to address only that in his report, (b) since Mr Giles had not produced his own counterfactual valuation of Autonomy at Trial, all he was entitled to do now was to "respond to Mr Bezant's revised valuations": he could not "meaningfully update any aspect of his own existing analysis to reflect the narrow issue of the Excluded Transactions; and in any event, (c) neither Mr Bezant nor Dr Lynch's expert (Mr Giles) should address any "broader issues, including as to the appropriateness or otherwise of Mr Bezant's (or any other) approach to valuation, [which] were fully ventilated between the parties and their experts in evidence and submissions at trial."

6. Travers Smith did make an exceptional allowance for some further evidence if the Court itself should require further guidance on any "broader methodological or legal issue". However, they stated that it should not be for the parties to pre-empt such directions, there being "no justification to reopen [evidence] after the close of trial, beyond the very narrow issue of the Excluded Transactions"; and that it should be left until after exchange of the experts' further (restricted) reports, and then to any directions made by the Court for the experts to address "specific questions" identified by the Court itself after review of the further evidence.

7. Clifford Chance, on the other hand, took a broader view of the permissible scope of the further evidence, and objected in any event to the constraints Travers Smith were seeking to impose. Whilst disclaiming any intention on the part of themselves or Mr Giles of "trying to build his own valuation model or advance new points on broader issues of methodology" their position was that the impact of the Excluded Transactions would be likely to "further change how a valuer would view Autonomy (as compared to Autonomy's Revised Accounts presented by the Claimants at trial)" it being Mr Giles's view that "they lead to an improvement in Autonomy's revenues and also growth rates over the period…[leading to]…a positive impact on cashflows (including deferred revenues) and growth rates (short term and medium term)."

8. As they elaborated in subsequent exchanges, Clifford Chance suggested that the Claimants were "conflating the methodological differences between the parties (which have been well ventilated at trial) with the quantification of those differences based on the Revised Accounts". They observed that "In any event, based on past experience, it is expected that the parties will have very different views on valuation in light of these Revised Accounts". Anticipating that any "update" envisaged by Mr Bezant would be likely to be "substantial"; and Mr Giles should be permitted to explain his revised position in light of this exercise, making (and explaining) the "required adjustments" to Mr Bezant's modelling of the Revised Accounts based on Mr Giles's "central themes" as they maintained was expressly envisaged in paragraph 4063 of my Main Judgment.

9. By the time of my return to work in October 2022, it was clear that Mr Bezant's report would be ready by 7 October 2022. In light of the parties' disagreement, I initially proposed a short Directions Hearing to put in place a settled way forward. However, Clifford Chance's position on behalf of Dr Lynch was that this would probably need more than half a day, and no convenient date was readily available. In the circumstances, I instead adopted a course intended to hold the ring before a longer Directions Hearing could be fixed.

10. To that end, the approach I adopted was (in summary) to allow the parties to continue the process of sequentially exchanging the evidence which they each considered to be apposite and necessary in order to assist me, with the proviso that, whilst I did need assistance and did consider that the First Defendant, like the Claimants, should be permitted to "set out their valuation positions based on the Revised Accounts" (quoting Clifford Chance's description of their objective), there would be likely to be cost consequences if I subsequently determined that expert evidence had been put forward which went beyond its proper scope.

11. In the event, this process took somewhat longer than the parties initially had agreed and I had originally anticipated. The parties exchanged further expert reports (exceeding 500 pages excluding appendices) as follows:

    (1) On 12 October 2022, Mr Bezant's Sixth report;

    (2) On 30 November 2022, Mr Giles's Third report;

    (3) On 3 March 2023, Mr Bezant's Seventh report;

    (4) On 5 May 2023, Mr Giles's Fourth report.

12. In light of the developing delays and increasing length of the evidence, I then directed a formal Directions Hearing. This eventually was fixed for 26 June 2023 and took place on that date.

13. At that hearing, and in the skeleton arguments they exchanged before it, the parties' respective positions were rehearsed and elaborated substantially in line with the positions they had taken in correspondence.

14. The Claimants stressed what they presented as the central flaw in the Defendants' approach: this was that it overlooked the basic fact that (contrary to the Claimants' initial stated preference) there was no order for a split trial, and so there had been a full trial already of the issue of quantum, as well as the issue of liability.

15. The Claimants accepted that the well-known *Ladd v Marshall* principles were not directly applicable; but they relied on the fundamental principles underlying it and submitted that the admission of any further evidence after Trial should be governed by the principles applicable to any decision whether to admit new documentary evidence after the close of Trial, such principles being based on fundamental rules that (i) "parties should bring their whole case before the court" and (ii) there should be finality in litigation. They cited a number of authorities for good measure, including *Sainsburys v Mastercard* [2020] UKSC 24; [2020] 4 All Er 807 (para. 239); *Foster v Action Aviation Ltd* [2013] EWHC 2930 (QB); *Heiser's Estate v Iran* [2019] EWHC 2073 (QB); and

Re Southern Counties Fresh Food Ltd [2009] EWHC 1362 (Ch). These authorities do illustrate and support the principles identified above, and the appropriate caution with which a Court should approach an attempt to introduce further evidence after Trial.

16. However, as Warren J pointed out in *Re Southern Counties*, the issue whether to admit further evidence after a long hearing has finished, is *"very much a matter for the discretion of the court having regard to the overriding objective…"* (para. 20), and in the end *"the issues are ones of fairness and justice and of proportionality".* Mr Rabinowitz KC unhesitatingly accepted this, whilst urging me to have the principles adumbrated above in mind in exercising such discretion (as of course I accept I should).

17. More particularly, he submitted that Mr Giles's post-Judgment reports went far beyond their proper scope in (a) producing a valuation of Autonomy, whereas at Trial he had confined himself to critiquing Mr Bezant's approach, (b) seeking to challenge aspects of the Claimants' accounting case that were not challenged by Dr Lynch's accounting expert at Trial and were beyond his expertise, and (c) making new counterfactual contentions about the form Autonomy's financial reporting would have taken absent the fraud, which, if to be advanced at all, should have been advanced at Trial, when they could have been raised with Dr Lynch and his accounting expert in cross-examination. In short, the Claimants submitted that those reports "amounted to "naked attempts to reopen the trial wholesale"" which as a matter of principle should not be admitted, even *de bene esse*, especially after Dr Lynch had opposed any split off of quantum issues and no good reason had been put forward why Mr Giles had not put forward this sort of evidence (in particular, his own DCF valuations) at Trial.

18. Mr Rabinowitz submitted further that if to any extent Mr Giles's evidence was to be admitted, it should be confined to his view (quoting from the Claimants' skeleton argument) "of the impact of the Excluded Transactions on such valuation evidence as was adduced at trial". This, he submitted, would not only be correct in principle but also ensure that the Court could resolve the issue based on the experts' written reports and submissions, dispensing with any further cross-examination and so reducing the hearing length to 2 to 3 days (rather than an estimate of 7.5 days, spread over 3 weeks to accommodate the need for written and oral closings, that he suggested would be needed if the scope of the evidence were not so confined).

19. To that end, Mr Rabinowitz urged me to (a) define (restrictively) the permitted scope of post-Judgment expert evidence as a matter of principle and then (b) direct here and now that a number of parts of Mr Giles's reports should not be admitted. Mr Rabinowitz instanced especially, as beyond the proper scope of the exercise and as thus required to be excluded, (i) Mr Giles's overall counterfactual DCF valuation, (ii) his new multiple valuations and views as to what Autonomy's share price would likely have been, and the premium which on the basis of the new counterfactual Autonomy's shareholders would have held out for, (iii) his re-working of how Autonomy's Q1 2011 transaction with Bank of America ("BoA"), which I described at length in my Main Judgment, should be accounted for and presented in counterfactual accounts (accounting for a difference between him and Mr Bezant of some US$ 1 billion), and (iv) Mr Giles's new counterfactual contentions as to the revenue categories that Autonomy would have reported absent the fraud (which, it emerged, accounted for a difference between the two experts of some US$ 1.4 billion).

20. The Claimants provided a draft Order defining the "Permitted Scope" of expert evidence and making express provision for categories of evidence falling outside that definition to be inadmissible.

21. The Defendants, on the other hand, contended that the evidence of both experts should be admitted in its entirety and directions given for a further hearing with a time estimate of 5 days, to include "focused" cross-examination.

22. Mr Hill KC elaborated the position of Dr Lynch by reference to six propositions, to the following effect:

    (1) Mr Giles's third and fourth reports (filed post-Judgment) were within what my Main Judgment had contemplated.

    (2) Such reports were in accordance with my subsequent directions in October 2022.

    (3) The Claimants had mischaracterised both Mr Giles's evidence and also the evidence of their own expert, Mr Bezant: the latter had expressly stated in paragraph 1.15 of his sixth report that "In considering the effect of the RTP ["Revised True Position", taking account of the Excluded Transactions] on my valuation and Loss assessment, I consider it appropriate to approach my assessment of Autonomy afresh in light of the RTP, rather than starting from the valuation analysis set out in my First and Fourth Reports, which were based on the FTP ["Former True Position" being the accounts corrected for the matters of which the Claimants complained] and seeking to adjust them." There were identifiable parts of his post-Judgment reports which far from "modest tweaking" constituted a whole new exercise, with new and different growth rates and forecasts which could not be said to be simply responsive to the effect of the Excluded Transactions, and could easily have been put forward at Trial. Conversely, and again contrary to the Claimants' characterisation of it, Mr Giles's exercise was not a new model but an adjustment to what Mr Bezant had done, using Mr Bezant's own model and correcting its inputs in the way that Mr Giles considered appropriate.

    (4) The process of exchanging reports had been helpful and narrowed the essential points to a small number in evidence which Mr Hill described to me as "concise…complete and…well marshalled" so that "quantum can now be determined in a short hearing."

    (5) The exercise put forward by the Claimants was unnecessary, unwieldy and unfair. It would (a) cut out evidence I had previously (in my Main Judgment and in my emails of October 2022) indicated would be of assistance; (b) be asymmetric, in that Mr Bezant's sixth report would not have to go through the same 'pruning' exercise; (c) be unfair and misconceived because it would cut out matters properly and fairly within scope; (d) artificially "funnel and truncate" evidence that might ultimately be shown to have been potentially helpful to the Court; (e) introduce a yet further contentious and cumbersome process; and (f) strip out the very material which marshalled and explained the differences between the experts.

(6) He submitted also that even if (contrary to his primary submission) there is a viable argument that Mr Giles's evidence is beyond scope, the time for determining such matters, now that evidence has been exchanged, is not now, but at the quantum hearing itself. That would also avoid the obvious problem of a single definition of scope.

23. Mr Hill accepted that there were important parts of Mr Giles's post-Judgment Reports which could not really be presented as either consequential on recalibration by reference to the Excluded Transactions, nor as simply correcting or adjusting Mr Bezant's valuation model. Thus, Mr Giles's treatment of the BoA transactions, accounting (as noted above) for some US$ 1 billion of value in Mr Giles's estimate, is the most obvious example; but Mr Giles's re-categorisation of IDOL Cloud revenues, evidence on multiples, likely share price and on what premium might have been expected by shareholders are also new, wholly unconnected with the Excluded Transactions, and unheralded in his evidence at Trial. Mr Hill nevertheless contended that the inclusion of these matters now was fairly part of the exercise required, and that there was no material prejudice to the Claimants thereby.

24. The issue relating to the BoA transactions is complex and problematic, as Mr Hill implicitly acknowledged in contending that it required "a little more archaeology". The dispute concerns an adjustment made in Mr Giles's presentation of the Restated Position to "correct" (as he would see it) the accounting in respect of the BoA end-user deal (relating to VT16, VT23 and VT24) and the subsequent hosting transaction (HT61) by recognising the full amount of the stated or headline consideration and in consequence including an additional US$ 9.9 million of IDOL Product revenue in Q1 2011. Mr Bezant had stripped out that sum from the total headline consideration because under the terms of the relevant contract (which was in evidence at Trial) that amount was to be offset by future credits and discounts, eliminating (in Mr Bezant's view) any economic value. Mr Giles's inclusion of this additional amount supported his argument that Autonomy was enjoying fast-growing revenue in Q1 2011.

25. The Claimants contend that not only is the adjustment Mr Giles proposed in respect of the BoA transactions unwarranted and wrong but that it is too late for Mr Giles to raise the point now in his post-Judgment evidence, having never raised it at Trial; and that, furthermore, it would be prejudicial to the Claimants, because it is at heart an issue of accounting treatment not within Mr Giles's expertise and which should have been raised with and tested by the accountancy experts at Trial.

26. Mr Hill's answer to this was, in broad summary, that it is the Claimants who had failed to raise the issue at Trial and had thereby failed to discharge the burden on them to justify accounting for less than the full amount of the revenue receivable. Put another way, Mr Hill contended that the Claimants had never shown why the full amount was not to be taken into account and included as revenue pro-rated over time, nor had they led accountancy evidence in support of such treatment contrary to the amount accounted for as received. Clifford Chance also noted (in pre-hearing correspondence) that I had indeed found in my Main Judgment that full payment had been received. In such circumstances, Mr Hill submitted that Mr Giles was fully entitled to make the relevant adjustments to reflect what appeared, in the absence of contrary proof, to be the position, and to extrapolate from those conclusions as to growth rates and related matters. In any event, he added, it would be wrong and unfair to decide against Dr

Lynch on the matter summarily by precluding this part of Mr Giles's evidence: it would be a matter far better addressed once all the evidence had been (as he put it) "embraced".

27. A little less intricate, but still of some complexity, is the issue arising out of Mr Giles's reconstruction in his counterfactual modelling of the constituent elements of IDOL Cloud revenues, and, more specifically, his identification as being of particular value and importance of a stream of multi-year hosting revenues properly to be included within IDOL Cloud. Mr Giles has accorded special value to this 'stream within a stream' as a new source of rapid revenue growth, and in his counterfactual world he has assumed that "management would have highlighted this line of business…to highlight such a demonstrable success". Mr Rabinowitz objected strongly to this as both misplaced and unfairly prejudicial: he presented this as an obvious example of the kind of point which, if it was to be made, should have been made at Trial so that it could be tested, and put to Dr Lynch in cross-examination. Mr Hill's position was that this was unrealistic: if it had been put to Dr Lynch, he would without a shadow of a doubt have agreed that management would have wished to highlight such a success. In any event, Mr Hill again submitted that the issue should not be foreclosed now but be considered in the round at the further quantum hearing.

28. The other issues were more straightforward, though just as much contested. To take Mr Giles's evidence on multiples as an example, Mr Hill submitted that even though Mr Giles had not offered evidence on multiples at Trial, he was now faced with a new multiples calculation by Mr Bezant and should not be precluded from answering it. Otherwise, the Court would be left with one-sided evidence; and it would also be awkward to unpick this part of the evidence from Mr Giles's reports, and again the matter was far better left to the further hearing. Mr Hill supported Mr Giles's evidence on share price and premiums on a similar basis.

29. More generally, Mr Hill reminded me of paragraphs 4062 to 4064 of my Main Judgment, as well as my emails to the parties through my clerk in October 2022, in commending what Mr Giles had done and the better course of permitting the matter now to proceed to a hearing. He provided for my consideration a revised draft Order excising the restrictive elements of the Claimants' draft (and also a provision in it for discussions between the experts and a Joint Statement by them).

30. This Directions Hearing and the reading required of me has in any event been useful to me as preparation for the final substantive part of this long saga. I have concluded that it would not be right or ultimately productive to restrict the scope of the evidence already exchanged by declaring certain parts inadmissible at this stage.

31. It is quite true that I declined to order a split trial, though my recollection is that an order for one was not in fact pressed hard by the Claimants. In a case such as this, a split between liability and quantum is very often problematic, especially given the need for at least a provisional view on inducement and causation. It is often the case, and is here, that quantum is not only relegated and its treatment somewhat rushed, but also becomes incapable of being addressed with proper focus and finality because, according to the decisions on different parts of the liability case, there are simply too many variables.

32. In addition, the fact is that I need the assistance of the experts in understanding fully the reasons for the exceptional gap between them. Notwithstanding that Mr Bezant has

concluded that stripping out the Excluded Transactions causes him to increase his valuation by some US$ 1 billion, this gap still exceeds US$4 billion. Mr Giles's elaboration of his valuation of somewhere in excess of US $11.1 billion (the price in fact paid by HP/Bidco) compared to Mr Bezant's revised figure of US$7 billion is helpful to me.

33. In my Main Judgment, and most particularly in paragraphs 4062 and 4063, I did indicate that I would need more assistance; and I have found it helpful to see how Mr Giles's approach, based (subject to the dispute on BoA) on the facts as I found them in my Main Judgment, has differed from Mr Bezant in more concrete or figure-based terms, to supplement his critique of Mr Bezant's approach. I do not consider that either precedent or broader principle requires me to disallow further evidence even if it could and perhaps in some instances should have been brought forward at Trial: indeed, as I have previously noted, it was common ground that the matter was ultimately one of judicial discretion. The Claimants' submission to the effect that Mr Giles should not be permitted to update his previous evidence and put in a positive case because he had not put forward his own valuation seemed to me to be an extreme one, which would leave me in a difficult position.

34. Further, I would not subscribe to all Mr Rabinowitz's criticisms of Mr Giles's election not to put forward his own valuation at Trial. I agree with Mr Hill that this is in any event not an entirely accurate depiction. Mr Giles did provide indicative valuations for high-level DCF calculations to support his position that Autonomy was no less valuable than the price paid. Moreover, subject again to the issue relating to the BoA transactions, I broadly accept Mr Hill's description of what Mr Giles has done: adopting the DCF basis of valuation (as the experts always agreed was appropriate consistently with the Deal Model) he has addressed Mr Bezant's valuation and his model, made the corrections he considers to be required and identified the central differences between them. His reluctance to put forward any self-standing valuation at Trial is understandable: the Defendants' case was that there had been no fraud or misrepresentation.

35. As I put to Mr Rabinowitz in the course of his Reply, I consider that, accepting the need for caution and taking into account the principle of finality, the test should be whether, if I consider that the disputed evidence is likely to be of assistance to me, there is real forensic prejudice to the Claimants in admitting that evidence, or some part of it; and if not, whether any further and more extensive hearing which is required would be disproportionate, having regard to costs and the interests of other Court users.

36. I am satisfied that, taken as a whole, the evidence is likely to be of assistance to me in understanding the differences between the experts in terms of their approach which has led to such a gulf between them of some US$4 billion in terms of value. I have been fortified in that view by a number of points which have struck me from my consideration (inevitably superficial at this stage) of the evidence thus far. These include not only the fact that (as Mr Hill emphasised) the Claimants' expert, Mr Bezant, has considered it appropriate to approach his assessment of Autonomy afresh, rather than starting from the valuation analysis set out in his earlier Reports) but also (to take three illustrations):

    (1) most obviously perhaps, the fact that he has concluded that the adjustments made necessary by my findings in respect of the Excluded Transactions, which were, after

all, a small proportion of the claims, reduce his loss assessment from his previous reports from around US$5 billion to about US$4 billion. (He confirms that this is so whether loss is assessed on his view of what would have been the Revised Price assuming the transaction would have proceeded or on the alternative basis of the market value of Autonomy on a 'No-Transaction' approach.) It would to my mind be odd, and *prima facie* unfair, to deny the Defendants and Mr Giles the opportunity of a full response, especially since the US$1 billion reduction in loss accepted by Mr Bezant flows from reversing a relatively small amount (US$43 million) of revenue (illustrating how relatively small adjustments in revenue or its potentially disputed classification affect value).

(2) From the other perspective, the considerable potential effect of relatively small adjustments to historical revenues is illustrated by Mr Giles's disputed treatment of the (successfully) impugned BoA transactions (which I accept raises a more nuanced issue to which I return again later). In that context, Mr Giles's proposition that US$9.9 million of revenues should be posted to IDOL Product in Q1 2011, and in turn his approach to forecasting growth for IDOL Product, accounts for US$1 billion of his (re)valuation of Autonomy. Whether or not Mr Giles's treatment is permitted and justified, this illustration has further impressed on me my need for assistance in determining the effect of apparently small variations in the assumptions used, and in assessing the reasons for the large differences in value terms that result.

(3) Related to that is the difference in the two experts' approaches to the significance of revenue growth in Q1 2011 and Q2 2011 and what may, in value assessment, be extrapolated from it in terms of growth forecasts and Autonomy's long-term growth rate to be applied to the terminal value calculation. Their different adjustments to forecast growth compared to HP's Deal Model explains a large part of the difference in their respective valuations. As Mr Bezant has noted in paragraph 3.13 of his Seventh Report, the overall effect of his adjustments is to reduce forecast growth compared to HP's Deal Model only to a small extent, resulting in a reduction in his valuation of Autonomy by around US$472 million. On the other hand, Mr Giles extrapolates from his assessment of the effect of my findings growth rates for IDOL Product and IDOL Cloud significantly higher than HP's. The effect is to increase his DCF valuation of Autonomy by almost US$2.3 billion. As Mr Bezant states "our different revenue growth forecasts alone therefore account for around USD 2.8 billion to USD 3.1 billion – the large majority – of the overall difference between our valuations." He then explains in more detail why he disagrees, and the basis of his view that Mr Giles has made extravagant assumptions regarding IDOL Cloud revenues and growth and future cash flows, based "on a series of new contentions about the counterfactual scenario that have either no basis or are incorrect". (These include Mr Giles's disputed contention that the particularly high growth rate in the 'stream within a stream' of IDOL Cloud revenues would have been highlighted.) Even taking into account the Claimants' point that Mr Bezant's Seventh Report is an answer to evidence, they maintain should not be admissible, the enormous differences once more illustrate the difficulty of achieving a satisfactory valuation model without the detailed worked analyses which detailed comparison of the two approaches enables. It is of considerable assistance to see how, on the figures, the differences translate into the calculation of value.

37. I have had careful regard to the Claimants' overall objection that all this could and should have been put forward and tested at Trial, and that it follows that the parties should not be permitted to supplement their evidence except to deal with the direct effect of my findings in respect of the Excluded Transactions. But in the end, I have concluded this is more theoretical than realistic; and in any event, I do not think the fair resolution of quantum in such a high value and important case should be hung on the petard of the decision not to split the Trial. In this difficult and weighty case, the variables at Trial were so factually various, complex and inter-twined, the possibility of my findings and conclusions not being wholly in favour of one party so enhanced, and the divisions between the experts (including on fundamental issues of approach) so substantial, that it may always have been on the cards that that it would not really be possible fairly to determine quantum without some further process and hearing. Further, even if that was foreseeable, that does not mean that it was wrong not to hive off any evidence on quantum. If the lesson is, as I tend to think it may be, that quantum can in a complex case often only finally be decided after a judgment on liability, I do not think that lesson should tell against the present exercise simply because the Trial was not split: as indicated above, it seems to me that in trials like this, two bites of the cherry may be the fairest, and sometimes necessary, approach, unless there is demonstrated to be a real likelihood of prejudice, and subject to caution given the costs consequences and the diversion of Court time to the detriment of other users.

38. In the circumstances of this case, the prejudice I have in mind, therefore, is something going beyond the inherent prejudice in any departure from the ordinary rule that the parties must bring forward their whole case at Trial, and the principle of finality, both of which may yield in a case such as this, albeit in a controlled way, to the overall objective of a fair result.

39. As to this, the Claimants maintained that they would be prejudiced materially because they would have wished (and were entitled) to challenge some of the most basic propositions, accounting treatments or factual assumptions newly relied on by Mr Giles in cross-examination of Dr Lynch's factual, and other expert, witnesses. In that context, Mr Rabinowitz submitted that (a) he would have wished to test Mr Giles's DCF and multiples valuations with witnesses at Trial such as Mr Sarin, especially on issues such as modelling deferred revenue and the differences between Mr Giles's approach and the approach in the Deal Model; (b) similarly, he would have wished to test, including through the cross-examination of factual witnesses such as Dr Lynch himself and the expert accountancy witnesses (such as Mr MacGregor), Mr Giles's new propositions, such as that the 'stream within a stream' would have been identified separately in Autonomy's accounts, and he would also have wished to put to various factual witnesses (he identified Messrs Morland, Khan, Shelley and Pearson) what would have been the effect of such sperate disclosure.

40. As previously indicated, the Claimants focused also on, as being prejudicial and unfair, Mr Giles's newly-minted analysis of the BoA transactions and his assumption that US$9.9 million should be added back in as additional IDOL Product revenue in Q1 2011 to reflect the total value of the consideration payable and paid to Autonomy. I have sympathy with the Claimants on this point, and I have wavered as to whether to allow it to proceed. However, there is, as it presently seems to me, enough in Mr Hill's counter-argument that the burden was on the Claimants to show that discounts and set-offs reduced the actual value of the transaction so as to merit deducting those amounts,

and that they did not discharge it, to allow that to proceed for the present and not require the late amendment of reports to exclude the point. I should make clear, though, that in large part, this is a course of convenience; and it may well be that I determine the point inadmissible when considering the matter in the round at the substantive hearing.

41. More generally, in determining not, at this stage, to restrict the evidence in the ways urged by the Claimants and provided for in their draft Order, I do not intend to foreclose further argument as to prejudice or unfairness; but in agreement with Mr Hill, I think that the final determination of those issues is best left to that hearing, and that the important and overriding objective now is to press on for an early date.

42. As to further directions:

(1) I have taken it to be agreed, albeit with some reluctance on the part of the Defendants and largely as an expedient to make unnecessary any further separate report from Mr Bezant, that the experts should hold discussions to identify issues where they agree and disagree, as provided for in the Claimants draft Order.

(2) I shall aim to prepare questions on any point on which I seek particular guidance: but some may follow the exchange of written submissions, with a page limit of 125 pages.

(3) The matter should now be set down for hearing in November or December 2023, with a time estimate to be agreed but which I assume presently to be 5 days with additional reading days for me.

43. I invite the parties to agree a final form of Order and to send it to me via my clerk. If there are any other matters requiring my involvement, I would ask they be sent in good time before 28 July 2023.