THE HIGH COURT

[2021] IEHC 379

[Record No. 2017/8782 P]

BETWEEN

RYANAIR DAC

PLAINTIFF

AND

SC VOLA.RO SRL

AND

(BY ORDER OF COURT OF 8 MARCH 2019)

YPSILON.NET AG

DEFENDANTS

JUDGMENT of Mr. Justice Mark Sanfey delivered on the 1st day of June, 2021.

1. In these proceedings, there have been two judgments of the court, and two orders, which are relevant to the present application of the plaintiff. They are as follows: -

   (1) judgment of 22nd June, 2020 ('the substantive judgment'), reported at [2020] IEHC 308;

   (2) judgment of 24th July, 2020, ('the costs judgment'), reported at [2020] IEHC 367; and

   (3) two orders of 24th July, 2020, perfected on 30th July, 2020, giving effect to the aforesaid judgments.

2. As I do not propose to set out in any detail in this judgment the background to the dispute between the parties, the judgments and orders referred to above – and the substantive judgment in particular – should be read in conjunction with this judgment.

3. In the proceedings, the plaintiff ('Ryanair') seeks a wide range of reliefs against the defendants, alleging that they are engaged in a process of "screen scraping", whereby data the property of Ryanair is taken or extracted from the Ryanair website without Ryanair's authority, and used for the defendants' purposes. Ryanair alleges that, in doing so, the defendants are in breach of contract, have unlawfully infringed upon Ryanair's intellectual property rights, and are guilty of conversion, trespass to goods or property, and passing off.

4. While both defendants deny comprehensively the allegations made against them, the present application concerns only the first named defendant ('Vola'), which has counterclaimed against Ryanair. Vola claims that Ryanair has abused its "dominant position", and seeks injunctive relief and damages "including exemplary damages". The counterclaim was the subject of prolonged and detailed requests for particulars by Ryanair, and its dissatisfaction with the responses from Vola prompted an application to have the counterclaim struck out "for failing to disclose a reasonable or sustainable cause of action and/or being bound to fail and/or constituting an abuse of process". While other reliefs were sought in the alternative, Ryanair argued in effect that Vola's claim was so devoid of detail and precision, despite numerous attempts by Ryanair through repeated

requests for particulars to elicit details of the counterclaim, that an order striking out the counterclaim, rather than compelling appropriate replies, was warranted.

5. In the event, as the substantive judgment makes clear, I did not accede to this application. However, I did express dissatisfaction with the way in which the counterclaim had been particularised, particularly in relation to the "downstream market" which Vola contends is affected by the actions of Ryanair:

> "107 … the case made by Vola in relation to the downstream market was unclear to me in a number of respects. The particulars proffered by Vola concentrate on the damage it alleges it will suffer if precluded from offering Ryanair tickets for sale. It was unclear how the market in the provision of OTA ['online travel agent'] services generally would be affected, and in particular how the consumer would be affected. It was suggested that enforcement by Ryanair of its contractual rights would damage OTAs and Vola in particular, possibly driving Vola out of business, but it was not expressly set out how this would affect other OTAs, or the consumer of services in this downstream market."

6. I went on to state as follows: -

> "108. I am not disposed to strike out the counterclaim on the basis of what in my view is a lack of clarity and precision. However, I do consider that Ryanair, in order to understand the parameters of the market contended for, and the way in which its actions or proposed actions are alleged to harm consumers, requires, as a matter of urgency, answers to the following queries:
>
> - Who are the 'other OTAs' [para. 11 of the second replies] which it is alleged compete with Ryanair and Vola in respect of 'the retailing of flights and other ancillary services such as insurance, car hire and accommodation' [para. 11 second replies]?
> - What percentage of the alleged downstream market is alleged these 'other OTAs' comprise?
> - What does Vola contend will be the effect on these 'other OTAs' if the plaintiff is successful in its claim; and what is the basis of this contention?
> - What percentage of the specific downstream market contended for by Vola (as opposed to the 'Romanian market' referred to at para. 11 of the second replies) does Vola say that it holds?
> - If Ryanair succeeds in its claim, prevents Vola and other OTAs from selling Ryanair tickets, how does this distort competition in the downstream market and affect consumers, given that Ryanair tickets and ancillary services will still be available from Ryanair?"

7. I indicated that "as a condition of being allowed to proceed with the counterclaim...", Vola would have to give "substantial and meaningful" replies to these queries, and directed that such replies be given within six weeks from the date of perfection of the order in relation to the application, *i.e.* 24th July, 2020.

8. There ensued the following correspondence in relation to the "para. 108 queries" in the substantive judgment: -

(1) Vola's response to the para. 108 queries by letter of 4th September, 2020 ('Vola's first answer');

(2) Ryanair's letter of 24th September, 2020, taking issue with Vola's first answer ('Ryanair's first response');

(3) Vola's letter of 7th October, 2020, responding to Ryanair's first response ('Vola's second answer');

(4) Ryanair's letter of 11th October, 2020 ('Ryanair's second response'), responding to Vola's second answer; and

(5) Vola's letter of 3rd November, 2020 ('Vola's final answer') in which it did not engage with Ryanair's second response, simply asserting that it had "satisfactorily addressed" the para. 108 queries.

The present application

9. By a motion issued on 21st December, 2020, the plaintiff applied for the following substantive reliefs: -

"(1) An order pursuant to the inherent jurisdiction of the Court striking out the First Defendant's Counterclaim, for failure to deliver substantial and/or meaningful replies to the queries raised by the Court at para. 108 of the judgment of the High Court (Sanfey J.) of 22 June 2020, [2020] IEHC 308, and/or deleting paras. 93 to 107, and reliefs A to F of the defence and counterclaim delivered on 7 June 2019;

(2) Further, or in the alternative, an Order pursuant to the inherent jurisdiction of the Court, striking out the First Defendant Counterclaim as an abuse of process and/or bound to fail;

(3) Further, or in the alternative, an Order pursuant to O.9, r. 27, 28 of the Rules of the Superior Courts 1986, striking out the First Defendant's Counterclaim whether, for failure to disclose reasonable or sustainable cause of action and/or being bound to fail, and/or being frivolous and/or constituting an abuse of process, or otherwise;

in the alternative and strictly without prejudice to the foregoing:

(4) An Order pursuant to the inherent jurisdiction as per above, and/or O.19, r. 27, 28 or otherwise, staying (with strict terms and/or directions, as may be deemed appropriate) the prosecution of the First Defendant's counterclaim, pending the determination of the Plaintiff's claim; …"

10. This application was grounded upon the affidavit of Thomas McNamara, who describes himself as "Director of Legal of the Plaintiff", sworn on 27th November, 2020. Mr. McNamara exhibited all relevant documentation in relation to the previous application,

and the correspondence between the parties on foot of the orders of the court. The deponent offered some further details relevant to the application, but otherwise refrained from comment as to its merits. There was no replying affidavit from Vola.

11. The hearing of the application took place before me on 9th March, 2021. Both sides proffered detailed written submissions, and supplemented them with oral submissions of which I have a verbatim note, as the parties kindly arranged for me to have a transcript of the day's proceedings.

12. The reliefs sought in the notice of motion adhere closely to the reliefs which had been sought in the previous motion in respect of which the substantive judgment was delivered. I asked Ryanair's counsel, Mr. Martin Hayden SC, whether Ryanair was going so far as to invoke the court's power to strike out the counterclaim on the grounds of abuse of process – as the second relief in the notice of motion would suggest – or that the court should strike out the counterclaim for failure to answer the para. 108 queries satisfactorily, as the first relief sought would suggest. Counsel intimated that he was not pressing the second relief in the notice of motion, but urged that Vola again be given a period within which to remedy what Ryanair considers to be the deficiencies in its responses to date, with the proceedings being struck out if Vola failed to respond.

13. I asked counsel what would happen if Vola did respond in accordance with my order, but in a manner which Ryanair still considered to be inadequate. Counsel indicated that if the answers were "meaningful", that would be the end of the matter, but that if they were "more of the same", the plaintiff would effectively renew its application for reliefs one and/or two of the present notice of motion. See transcript p.82 line 24 to p.85 line 3.

The Vola responses

14. Vola's first answer of 4th September, 2020 set out responses to the five queries at para. 108 of the substantive judgment. The responses to queries one to four were brief, and I will set them out below: -

> *Query 1:"Who are the 'other OTAs' [para. 11 of the second replies] which it is alleged compete with Ryanair and Vola in respect of 'the retailing of flights and other ancillary services such as insurance, car hire and accommodation' [para. 11 second replies]?"*
>
> Answer:

This is primarily Esky, no 2 OTA in Romania's flight OTA market and a couple of small operations such as fly-go.ro and veltravel.ro.

> *Query 2:"What percentage of the alleged downstream market is alleged that these 'other OTAs' comprise?*
>
> Answer:

Vola understands the downstream market in Romania to be shared as follows:

(1) Vola.ro – 10%
(2) Esky – 5%
(3) Other OTAs – 5%
(4) Airline websites – 80%.

Query 3:"What does Vola contend will be the effect on these 'other OTAs' if the plaintiff is successful in its claim; and what is the basis of this contention?"

Answer:

By way of clarification, Vola has not made any claim in its pleaded case concerning the effect on other OTAs if Ryanair is successful in its claim against Vola. Nor does Vola believe that such a claim would form an essential element of the cause of action pleaded. Nevertheless, Vola believes that the other OTAs would be forced out of the downstream market, Ryanair's stated position is to prevent third parties selling Ryanair tickets and to preserve for itself the market in the sale of its own flights in combination with other products and services.

Query 4:"What percentage of the specific downstream market contended for by Vola (as opposed to the 'Romanian market' referred to at para. 11 of the second replies) does Vola say that it holds?"

Answer:

It is confirmed that the downstream market contended for by Vola is the Romanian market as stated at page 15 of Vola's second replies to particulars dated 30 September 2019 (by reference to the city pairs set out on page 14).

Please see the shares of the downstream market of Vola and its competitors stated in answer to Query 2.

15. The response to query no. 5 extended over three and a half pages, and I do not propose to reproduce the response verbatim in this judgment. For ease of reference, the query was as follows: -

Query 5:"If Ryanair succeeds in its claim, and prevents Vola and other OTAs from selling Ryanair tickets, how does this distort competition in the downstream market and affect consumers, given that Ryanair tickets and ancillary services will still be available from Ryanair?"

16. The response to query no. 5 commenced by stating that "[c]ompetition in the online travel market depends on customers' ability easily to shop around between the different travel providers". This was followed by narrative as to what Vola considers to be the difficulties for the consumer if she has no ability to compare readily the various offerings of different airlines:

"…OTAs such as Vola, try to offer as much transparency as possible to the shopping comparison process and list the full price of the ticket on its website already on the

first page shown after hitting the 'search' button. This makes comparing the offering of the various airlines so much easier and less time consuming on an OTA site and represents an important reason why many consumers prefer to book via OTAs rather than on the individual airline websites.

The ability of the consumer efficiently to compare the airlines' offering is strictly tied to the availability of these airlines on the OTA websites. If Ryanair succeeded in preventing Vola and other OTAs from presenting its fares, the ability of consumers efficiently to compare the offering of Ryanair with other airlines will be significantly hampered for reasons explained above. While customers will still be able to purchase the Ryanair fare on the Ryanair website, it will be much harder to compare that fare with the offering of other airlines. In many cases such customer will settle for what he/she has found on the Ryanair website – even if that choice does not necessarily maximize that consumer's welfare and the consumer would have been better off purchasing another airline ticket, but the investment of time and effort needed to access that fare prevented him/her from accessing that other option."

17. Vola also emphasised what it saw to be distinct advantages from using an OTA, particularly in offering combinations of flights from different airlines where more than one leg of a journey is necessary, rather than those from just one airline. As the response put it "…in the online travel world, it is not the technical ability to access the airline inventory but the ease at which one can do so that is decisive". Vola offered figures for 2018 and 2019 which purport to show that "…Ryanair flights are a vital input for the provision of over half of such multi-carrier booking services…[i]f Vola is prevented access to the crucial input of Ryanair flights which make such combined flight itinerary travel offerings meaningful, these products (being beneficial to the consumer) will be precluded from the downstream market and be unavailable to consumers".

18. I do not propose to analyse in detail the remainder of the correspondence between the parties as to the adequacy or otherwise of Vola's first or second answers. I shall however try to give a sense of how the correspondence developed.

19. In Ryanair's first response, it complained that Vola had failed to outline the product and geographical scope of the downstream market for which it contended. As regards queries 1-4, it was said that Vola had not clearly identified the "other OTAs" in a number of respects, and alleged that there was a "lack of clarity regarding the relevant market". In particular, complaint was made in relation to the response to query no. 2, which identified Vola as having 10% of "the downstream market in Romania", whereas Vola had identified itself at p.21 of its replies to particulars of 30th September, 2019 as being "the largest OTA in the Romanian market with an approximated share of the OTA segment of that market of 60%". Ryanair complained vehemently about the alleged "lack of precision" in Vola's responses, which it contended "…undermines this apparent confirmation of the downstream market for which it contends".

20. As regards the response to query no. 5, Ryanair pointed out that it "…does not prohibit the use of its flight data for flight comparison purposes". The point is made that the importance of Ryanair tickets to Vola "…is something which benefits Vola, not competition". Ryanair also complained that Vola's response "does not address, head on, the impact on consumers if Vola could not sell its flights, when Ryanair tickets would still be available from Ryanair". In this regard, Ryanair makes the following points: -

    - "Vola appears to suggest that there would be no price comparison of Ryanair flights without OTAs (paras. 1,2,7) but fails to acknowledge or address the material fact that Ryanair flight data is available by licence for flight comparison purposes;

    - Vola appears to suggest that it offers greater transparency on prices (paras. 4 to 6) but fails to acknowledge or address the fact that Ryanair flight [sic] are sold cheaper on Ryanair's website and Vola charges the customer an additional fee when a Ryanair flight is sold on its website;

    - Vola appears to suggest that the possibility of purchasing Ryanair flights as part of a combination benefits consumers (paras. 14 to 20) but fails to acknowledge or address the fact that Ryanair flights are always capable of being combined with other airlines and its flight data is available for flight comparison purposes, and any type of support service could exist without selling Ryanair flights." [p. 9, Ryanair's first response]

21. In Vola's second answer of 7th October, 2020, it argued that "despite its protestations", Ryanair clearly understood Vola's case, and that "assertions to the contrary are deliberate attempts on Ryanair's part to hinder the progress of Vola's counterclaim". It stated that "…Ryanair clearly understands that the downstream market is that of online retailing of flights for the city pairs listed at page 14 of Vola's second replies and ancillary services such as insurance, car hire and accommodation for such flights".

22. In relation to the first query, the "other OTAs…are sufficiently identifiable to Ryanair by stating the brand name they trade under". Notwithstanding that, Vola furnished further details in relation to Esky, fly-go.ro. and veltravel.ro. It confirmed that it did not assert "any material competitors on the downstream market" other than the named OTAs and "the online self-selling carriers on the stated city pairs such as Ryanair, Wizzair and Blue…Vola understands that the following airlines also operate city pair offerings in and out of Romania: Tarom, Lufthansa Group (including Austrian, Swiss), Air France KLM, Turkish Airlines and other small carriers".

23. In relation to query 2, Vola stated that it "holds 60% of the total share of the downstream market enjoyed by OTAs (non-carrier sellers); and 10% of the whole market (which includes the shares held by airline websites/carriers, *i.e*. by Ryanair, Wizzair, Blue)." It was suggested that these answers addressed any issues arising under queries 3 and 4.

24. In a relatively brief reply to query 5, Vola maintained that Ryanair's assertions "…are just argumentative and not substantive to the adequacy of Vola's reply. Ryanair knows the

case it has to meet and that is the purpose of pleadings. Ryanair's points may be proper matters for submissions or evidence at trial, but not for challenging the adequacy of Vola's reply. It is clear that Ryanair's motivation is to hinder the progress of Vola's counterclaim so that it will not be ready for hearing immediately after the hearing of Ryanair's claim".

25. Vola went on to state as follows: -

> "Vola has set out its position on how a Ryanair success on its claim would, despite the fact that Ryanair tickets and ancillary services would still be available from Ryanair, distort competition in the downstream market and affect consumers. Vola has stated in detail the advantages to consumers in the product range and development generated by competition to Ryanair by Vola (and indeed by OTAs generally) on the pleaded downstream market. In the event that such product range and development driven by OTAs should not be prevented by the prevention of the sale of Ryanair tickets, the continuing availability of Ryanair tickets and ancillary services will be no proper substitute for the range of services and future potential services lost to customers."

26. Ryanair's second response was by way of letter of 30th October, 2020. The letter sets out over eight pages extensive views as to the inadequacy of the Vola answers. It makes reference to the purpose of market definition as set out in the Commission notice on the definition of relevant market for the purposes of community competition law (97/C 372/03), and to case law in which the definition of the relevant market is expressed to be of "essential significance". There is then an extended analysis of how the "downstream market" has been described by Vola, Ryanair complaining that its difficulty "stems from the fact that Vola has employed a variety of terminology and referred to a myriad of purported markets in its defence, its first replies and its second replies". Ryanair puts forward a "proposed solution", which essentially calls upon Vola to "define, precisely and in full…" the downstream market and confirm that this is the definitive definition for which Vola contends.

27. In relation to queries 1-4, Ryanair continues to claim that the previous answers given by Vola are unclear, and complains of "Vola's failure to close the category of 'other OTAs'…". It continues to call for what it sees as greater precision in relation to who are the "other OTAs", and complains of what it sees as the ongoing difficulties with the definition of the "downstream relevant market".

28. In relation to query 5, Ryanair commented that "Vola's further response does not do any better, and simply seeks to defer the question of the adequacy of its response to the trial of the action…", and calls upon Vola to "clearly specify and provide material facts for each alleged distortion of competition or effect on consumers on [sic] 'the downstream market' which would occur, if Ryanair succeeded in preventing Vola and other OTAs from 'selling Ryanair tickets'…". It also calls upon Vola to "consider how the fact that Ryanair flights and ancillary services would still be available to book from Ryanair, impacts upon each of those alleged distortions of competition or effect on consumers".

The submissions

29. The written submissions of Ryanair canvassed two topics: the jurisdiction to strike out the counterclaim, and the adequacy of the Vola responses. Given that counsel is not pressing the application to strike out the counterclaim at this point – see the exchange between the court and counsel referred to above at pp. 82 to 85 of the transcript – I am only concerned with whether or not Ryanair is correct in its contention that the para. 108 queries have not been adequately answered, and if so, what action should be taken.

30. The submissions on behalf of Ryanair, both oral and written, summarised lucidly and accurately the complaints articulated by Ryanair's solicitors in the correspondence to which I have referred above. The written submissions on behalf of Vola are somewhat more succinct, consistent perhaps with its position that it has already answered the para. 108 queries adequately. It is stated that it is "…suggested that while Ryanair had issues with Vola's replies to queries 1 to 4 that Ryanair had by its own investigations resolved these issues". Vola suggests that, in rejecting the adequacy of Vola's replies to query number 5, it has done so "…by deploying arguments more properly the subject of submissions or evidence at trial (based on Ryanair's defence to counterclaim once delivered), not for challenging the adequacy of Vola's reply. Ryanair knows the case it has to meet and that is the purpose of pleadings". [Paragraph 20]

31. It fell to counsel for Vola, Mr. Ciaran Lewis SC, to defend in oral submissions the answers of Vola to the para. 108 queries. Counsel submitted that Ryanair was attempting to undermining Vola's case by conflating the substance of the case with the necessity to understand the case being made against the plaintiff. It was asserted that Ryanair did indeed understand the case being made against it, and that it was not open to Ryanair to "re-litigate" matters decided in the previous application; the only issue was whether or not the five queries had been satisfactorily answered. [Transcript p. 128 lines 5 to 22].

32. As regards the answers to queries 1 and 2, counsel argued that these queries had been addressed fully and adequately. In relation to query 3, counsel submitted that Vola was not obliged to contend that the alleged anti-competitive behaviour of Ryanair would have an effect on other OTAs, but that Vola did contend that "…if Ryanair prevent Vola from selling Ryanair flights, that it will do the same to the other OTAs and that will have the effect of pushing the other OTAs and Vola out of the market because we won't be able to sell Ryanair flights and therefore we won't be able to sell the ancillary products that go with the sale of those flights". [Page 132 lines 1 to 17].

33. In relation to query number 4, counsel referred firstly to the statement at p.21 of Vola's replies to particulars of 30th September, 2019 that "Vola is the largest OTA in the Romanian market with an approximated share of the OTA segment of that market of 60%". Counsel distinguished between Vola's percentage of 10% of the downstream market, of which Ryanair and other airline websites who compete with Vola comprise 80%, and its percentage of 60% of the "OTA segment" of that market, i.e. the downstream market excluding the airline websites: see transcript p.133 line 11 to p.134 line 17, and p.136 lines 5 to 15.

34. Counsel then referred to Vola's reply to query number 1 in its second answer of 7th October, 2020, and submitted that if a party was interrogating Vola's answers in an open-minded way, "…it would understand precisely and without any doubt that the case being made was that Ryanair had a dominant position in the upstream market, not a monopoly, on the precise city pairs that had been identified and that Ryanair competed with Vola and others in the downstream market for the sale of flights and the related products…" [p. 141 lines 17 to 24]. It was suggested that Ryanair was raising particulars, not through a genuine desire to understand the counterclaim, but in order to undermine it and to attack Vola's definition of the market and show inconsistencies in it [p.141 line 29 to p.142 line 27].

35. In relation to query number 5, counsel relied on the benefits which Vola contends it confers on customers as set out in its replies to particulars, and which would ultimately be denied to those customers if Vola were unable to sell Ryanair tickets. In this regard, and given that information regarding Ryanair flights and products is available to Vola for comparison purposes for a licence fee, I asked counsel as to what Vola contended was anti-competitive about a prohibition on Vola selling Ryanair tickets, given that it could carry out its comparisons of Ryanair flights and charges with those of other airlines and could still market its ancillary services [p. 147 lines 10 to 22].

36. In reply, counsel stated as follows: -

> "…it is somewhat artificial, Judge, to say that a consumer would go onto the Vola website, find out who had the cheapest tickets, leave the website, go onto the Ryanair website, go through all of the steps they are required to go through on the Ryanair website to buy the ticket, and then turn down the option of the car hire or the insurance or the accommodation on the Ryanair website, go back and go through the Vola website to make those purchases. I mean, in theory, it could be done, but we would argue strongly, Judge, and would lead evidence to support this, that the consumers simply won't behave in that way. And, Ryanair, in my submission, Judge, understand that well, which is why they launched this litigation to prevent the sale of its tickets through anybody else but itself, because it wants to jealously guard to itself the ability to have these add-ones [sic] that the consumers will purchase." [Page 147 line 23 to p.148 line 11]

37. In relation to this point, counsel for Ryanair in brief replying submissions argued that the inability on Vola's part to sell Ryanair flights impacted on Vola but not on the consumer, as Vola cannot sell the seats on a Ryanair flight for a price which is less than Ryanair's price. It was submitted that there was in fact no impact on the consumer, rather than on Vola itself. [Page 156 line 26 to p.157 line 26].

Discussion

38. I should say firstly that, while for the sake of brevity I have synopsised and condensed the submissions of the parties, I have read and considered, not just the passage of correspondence between the solicitors for the parties in relation to the para.108 queries,

but also the pleadings and exchanges in relation to particulars which preceded Ryanair's previous motion.

39. It should also be said at the outset that the only substantive matter which I have to consider is the adequacy of the replies of Vola to the queries raised by me at para.108 of the substantive judgment. I am not concerned with the wider questions of adequacy of pleading of the counterclaim which were addressed in the substantive judgment.

40. In that judgment, I referred to Ryanair's assertion that "… in pursuing a claim in competition law, Vola has a heightened obligation to plead its case in a way that Ryanair knows what case it has to meet at trial with sufficient clarity…" [para. 28]. Ryanair made very detailed criticisms of the lack of detail in Vola's claim, which are set out in the judgment.

41. Ryanair adopted a similar approach in the passage of correspondence regarding the para. 108 queries. The answers provided by Vola were subjected to granular analysis – and clearly not just from a legal standpoint – and were roundly criticised in considerable detail. Vola complained that this was not because Ryanair did not understand the case being made against it, but because it was trying to undermine the case being made and "hinder the progress" of the counterclaim.

42. I understand and sympathise with Ryanair's desire to have clarity in relation to a counterclaim which was minimally pleaded in the counterclaim itself, and particulars of which have had to be elicited in a somewhat piecemeal fashion. However, in complex matters such as competition cases, it is always possible for a defendant to a claim – such as Ryanair in relation to the counterclaim - to assert that, by reason of a lack of detail in the claim, it does not truly understand the plaintiff's claim and is inhibited in its ability to prepare its defence in a number of ways. The court must decide whether the point has been reached when the defendant understands, perhaps not the detail and nuance of the claim, or the manner in which the plaintiff's claims will be substantiated, but the allegations made by the plaintiff which are central to its claim, and which it must substantiate at trial.

43. The queries at para. 108 of the substantive judgment were raised with this in mind. They are directed towards an understanding of the essential elements of Vola's case in relation to the downstream market, which must be sufficiently outlined to allow Ryanair to understand the case made against it.

44. In this regard, I consider that queries 1 to 4 have been answered adequately. I do not think Ryanair can be in any serious doubt as to what Vola alleges is the downstream market, and any possible confusion in relation to "the Romanian market", or references to percentages of 10% or 60%, has now been clarified. While the level of detail provided may not be to Ryanair's exacting standard, this can be interrogated further in discovery or in other pre-trial procedures.

45. As regards query number 5, Vola's case is set out at paragraphs 16 and 17 above. It amounts essentially to a contention that, if consumers cannot buy Ryanair tickets from Vola as well as availing of all of the ancillary services provided by Vola, they will not be likely to access the Vola website at all, with the result that the services Vola provide, and in particular the ability to compare offerings of different airlines and to organise one's journey most economically and efficiently in a way that may involve travelling with more than one airline, may ultimately be lost to the consumer, who may "settle for what he/she has found on the Ryanair website…". As Vola put it in the extract from its second answer quoted at para. 25 above, "…the continuing availability of Ryanair tickets and ancillary services will be no proper substitute for the range of services and future potential services lost to customers".

46. It is evident from Ryanair's submissions to the court, on both this occasion and in respect of the previous motion, that it does not consider Vola's case in this regard to be remotely sustainable, and no doubt it will mount a strenuous defence to this aspect of the counterclaim if module 2 of the case – which involves the trial of the counterclaim in the event that Vola is unsuccessful in its defence of Ryanair's claim – requires to be heard. However, the issues in this judgment are whether, as a result of the process of interrogating Vola's answers to the queries and the submissions made on this application, Ryanair has at least sufficient detail to understand in a general way the claim it has to meet, and whether any purpose would be served by requiring Vola to furnish further details at this stage.

47. It seems to me that the para. 108 queries have, in broad terms, served their purpose, and that Vola's case, at least in outline, is sufficiently clear to allow Ryanair to plan its defence of the counterclaim. There comes a time when the court must call a halt to successive motions to compel appropriate particulars, and in my view, we have reached that point. While it is of course open to Ryanair to initiate any application it chooses, it seems to me that its resources at this point would henceforth be better directed towards other means of eliciting information from Vola, such as discovery, interrogatories, or perhaps a notice to admit facts.

48. Having said that, I would remind both parties of my allusion at para. 143 of the substantive judgment to my intention "to avail fully of the case management powers given to the court by O.36, r.9 and O.63C of the Rules of the Superior Courts to give directions as to preparation for the trial and the conduct of the trial itself". My preliminary view, subject to the views of the parties, would be that witness statements, exchange of experts' reports with a tabulation of areas of agreement and disagreement, and written submissions would all play a part in the preparation for trial. This process will assist each side in developing an understanding of the detail of the other's case, and as before, I will welcome suggestions from the parties as to the most appropriate procedures to be adopted.

Conclusion

49. For the reasons set out above, I do not propose to make any order in relation to the reliefs sought by the plaintiff. However, I am of the view that the application, involving

as it did written submissions of both sides and an oral hearing, has itself been of assistance in clarifying Vola's position in relation to the counterclaim.

50. Accordingly, I take a provisional view, having regard to the criteria in s.169(1) of the Legal Services Regulation Act 2015, that the costs of the application should be costs in the cause. If either party wishes me to make a different order, that party should furnish a written submission of less than 500 words within seven days of delivery of this judgment, with the other party furnishing a submission of similar length within seven days thereafter, following which I will give my final decision on costs without further reference to the parties.