THE HIGH COURT

[2026] IEHC 521

Record No. 2024/2077P

Between:-

RYANAIR DESIGNATED ACTIVITY COMPANY

Plaintiff

-and-

EDREAMS ODIGEO S.A.

AND

VACACIONES EDREAMS S.L.

Defendants

Judgment of Mr. Justice Oisín Quinn delivered on 22 July 2026

I. INTRODUCTION

1. The central question raised by this application is whether proceedings commenced by Ryanair in 2024 are barred by reason of earlier litigation conducted in France and Spain between Ryanair and companies within the eDreams group. The defendants contend that the present proceedings are *res judicata* and, alternatively, fall within the rule in *Henderson v Henderson*. Ryanair contends that the earlier proceedings were conducted in a materially different factual, technological, contractual and legal environment and between different parties and that the requirements necessary to establish a *res judicata* have not been met.

II. BACKGROUND

2. Ryanair is an Irish company which operates an international business as a low cost airline and the defendants (collectively "eDreams" and separately "EDO" and "VESL") are Spanish companies which operate an online travel agency.

3. Ryanair commenced these proceedings in April 2024 claiming *inter alia* that eDreams was unlawfully using its flight information and engaging in a variety of economic torts involving "screen-scraping" type activities and wrongfully selling Ryanair flights through eDreams web platforms.

4. eDreams entered a conditional appearance in June 2024, contesting jurisdiction, claiming that these proceedings are *res judicata*.

5. Ryanair delivered a Statement of Claim in December 2024. eDreams then issued this motion in March 2025 asking the court to "decline jurisdiction" on the basis that the causes of action and/or issues advanced by Ryanair are *res judicata* by virtue of previous proceedings between Ryanair and eDreams, or related parties, in France and Spain.

6. Following multiple exchanges of affidavits (there are twenty-six affidavits), eDreams' motion was originally estimated to take three days and was allocated a hearing date of 27 January, 2026. By that time however, each side had served notices to cross examine their respective French and Spanish law experts and it was estimated that the matter would take four days, with three days for evidence and one further day for submissions. For a variety of reasons (including problems with translators and logistical challenges finding subsequent hearings dates) the matter ultimately ran for seven days on 27, 28 and 29 January, 2026 and then on 13 February, 2026, 12 March, 2026, and 4 and 10 June, 2026. Each side helpfully filed two sets of comprehensive written submissions (one set at the beginning and one set at the end) together with additional speaking notes.

7. In summary, eDreams claim, by reason of the decisions made by the French and Spanish courts, that the issues raised in these proceedings are *res judicata*. Ryanair says they are not because the issues are different, because the material facts and legal circumstances have changed since the French and Spanish proceedings and because the parties are different.

III. CORE LEGAL PRINCIPLES

8. The doctrine of *res judicata* forms part of the rules of law compendiously described as estoppels. It has been described as an umbrella term to cover two species of estoppel known as "cause of action estoppel" and "issue estoppel"; see McDonald J. in *George v AVA Trade (EU) Ltd.* [2019] IEHC 187 at para. 55.

9. The public policy underpinning the doctrine of *res judicata* is that a party should not be allowed to re-litigate matters that have already been determined by a final judgment of a court of competent jurisdiction.

10. The principle accordingly serves the interests of finality in litigation and the proper administration of justice; see Costello J. in *Morrissey v IBRC* [2015] IEHC 200. In *Morrissey,* at para. 5 *et seq.* in particular, Costello J. (as she then was) sets out a very clear statement of the principles and policies that underpin this doctrine and the related jurisdiction of the courts to restrain an abuse of process.

11. The doctrine of *res judicata* extends to decisions of foreign courts; see McDonald J. in *George* at para. 52 *et seq.*

12. In *George,* McDonald J. also carefully explains how the doctrine interfaces with the rule in *Henderson v Henderson*.

13. eDreams relied on all three elements, namely cause of action estoppel, issue estoppel and the rule in *Henderson v Henderson* in this application.

14. In summary, the jurisprudence indicates that a party alleging a *res judicata* must demonstrate four matters, that:

(i) the earlier judgment has been given by a court of competent jurisdiction;

(ii) the earlier judgment constitutes a final decision on the merits;

(iii) the earlier judgment has determined a question which is now raised in the new proceedings (the "same issues" requirement); and

(iv) the parties to the litigation must be the same as the parties to the earlier proceedings or be their "privies" (the "same parties" requirement).

See *Delaney & McGrath on Civil Procedure*, 5th Edition, 2023 at para. 16-88 and Simons J. in *McCool* at para. 33 and McDonald J. in *George* at para. 59.

15. The first two issues were not in dispute here and eDreams accepts that it bears the burden of proof; see eDreams supplemental submissions at para. 6(j). Consequently, the ultimate focus of this judgment is on whether eDreams have established that:

(i) either the French or Spanish decisions have already determined issues (or causes of action) raised in these proceedings, including claims that "*could* and *should*" have been raised in the earlier proceedings; and

(ii) these proceedings involve the same parties or their "privies", in the sense that this requirement has come to be interpreted by the jurisprudence.

16. This judgment therefore principally concerns the application of the principles governing the third and fourth requirements of *res judicata,* along with the rule in *Henderson v Henderson,* to the facts of this case.

IV. OVERVIEW OF THE EVIDENCE

17. In relation to the French proceedings expert evidence was given by Professor Tristan Azzi for eDreams and Professor Jérome Passa for Ryanair, on Days 3, 4 and 5 of the hearing.

18. Earlier, expert evidence was given by two Spanish law experts on the Spanish case by Professor Fernando Carbajo Cascón for eDreams and Professor María Jesús Guerrero Lebrón for Ryanair, on Days 2 and 3 of the hearing.

19. In addition to that, the parties filed further affidavits discussing the details of the French and Spanish proceedings.

20. The question of whether or not it was necessary for eDreams to also establish that these proceedings would be *res judicata* in either France or Spain if a similar action was commenced there took up significant time and evidence during this hearing. The evidence of the aforementioned four experts largely focused on that issue.

21. The hearing opened and ran on that basis, until on Day 7 both sides accepted (see Transcript Day 7, page 48 in particular) that it was not necessary for eDreams to establish that the proceedings would be *res judicata* in France and Spain.

22. Suffice it to say that the decision of McDonald J. in *George* makes clear that where a party contends that Irish proceedings are *res judicata* by reason of an earlier foreign judgment, that issue falls to be determined by reference to Irish law. I am satisfied that

it is appropriate to adopt and follow that approach and that it is not therefore necessary to consider whether or not these proceedings would be *res judicata* in either France or Spain according to either French or Spanish law.

23. In *George*, McDonald J. states at paras. 52 and 54 as follows:-

> *"As noted above, the plaintiffs accept that the res judicata principle applies not only to decisions of Irish courts but also to decisions of foreign courts. Moreover, it is clear that, even if an issue of this kind were to be considered by reference to EU law, a court would resort to its national procedural rules on res judicata in order to determine the issue. This is the view expressed by Briggs in Civil Jurisdiction and Judgments, 6th ed., at p.p. 666-667 where he said:-*
>
> > *'…the applicable principles will be those of [national]law rather than European law. Accordingly, although the [Brussels I] Regulation will determine that the judgment is one which is entitled to recognition, and that the adjudicating court was jurisdictionally competent, it must still be shown that the point relied on can be accurately characterised as a finding which the court needed to make, and was final in the court which pronounced it and was given in proceedings between the parties or their privies, and was founded on the merits of the point at issue, for these are the elements of common law estoppel by res judicata …'*
>
> *In the circumstances, I propose to consider the res judicata issue by reference to the common law principles applicable in Ireland."*

24. If Ryanair's initial position was correct, then an Irish court would be required to determine that the issue was not only *res judicata* in Ireland but *res judicata* in France and Spain, *according to French and Spanish law.*

25. Such a scenario would appear to potentially require European wide legislation. As the CJEU notes in Case C-40/08 *Asturcom v Nogueira* at para. 38:

> *"In the absence of Community legislation in this area, the rules implementing the principle of res judicata are a matter for the national legal order, in accordance with the principle of the procedural autonomy of the Member States. However, those rules must not be less favourable than those governing similar domestic actions (principle of equivalence); nor may they be framed in*

such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by Community law (principle of effectiveness)"

26. The foreign law experts in a *res judicata* application based on an earlier foreign jurisdiction judgment should, in the ordinary course, give evidence relevant to establishing that the foreign court's decision meets the requirements of coming from a court of competent jurisdiction and that the judgment represents a final decision on the merits. Thereafter they could be expected in most cases to be able to provide helpful evidence as to the issues determined by the foreign judgment which should be done primarily by reference to the pleadings in the foreign case and by reference to the foreign judgment itself.

27. In this case, there was no dispute but that the French and Spanish courts in question were courts of competent jurisdiction. Nor was there any dispute but that their judgments represented final decisions on the merits. The evidence of all the experts clearly establishes those propositions. There was one interlocutory decision made in France by the Paris Commercial Court on 9 November 2007 (referred to as the *Vivacances French Proceedings*) but eDreams did not seek to rely on that decision as it was an application for interim relief and eDreams accepted, quite correctly, that it was not therefore a final decision on the merits for the purposes of Irish *res judicata* rules.

28. During this hearing, most of the evidence from the French and Spanish experts focused on whether or not the proceedings would be *res judicata* in those jurisdictions. For the reasons explained above, it is not necessary to consider that evidence.

29. In addition to the experts, eDreams relied on affidavits from Mr. Guillaume Teissonniere (who swore seven affidavits). Mr. Teissonniere described himself as the General Counsel and Company Secretary of the eDreams Odigeo Group since 2016. Consequently, he had not been involved in the French or Spanish cases. He sought to deal with, *inter alia*, the question of whether the defendants in the French and Spanish proceedings were "privies" of the defendants in these proceedings (aside from VESL, which was a defendant to the Spanish proceedings).

30. eDreams also filed two affidavits from a Spanish lawyer, Mr. Montiano Monteagudo Monedero who explained that he was the leading counsel for eDreams in the Spanish litigation. He sought to explain why the matters complained of now in the Statement of

Claim for the Irish proceedings essentially overlapped with the issues raised in the Spanish courts. He concluded by saying that the Spanish court decisions have "already found" that "screen-scraping by eDreams" does not breach the terms of use on Ryanair's website, does not infringe Ryanair's copyright over the computer programmes underlying Ryanair's website, and does not constitute an act of unfair competition (see para. 27 of Mr. Monedero's first affidavit).

31. Ryanair filed five affidavits from Mr. Thomas McNamara who explained he was the Director of Legal at Ryanair. His affidavits addressed, *inter alia*, the changes that he says have happened since the French and Spanish proceedings. In addition he raised issues and referred to evidence (including accounts of the first defendants) seeking to explain why the defendants in the French and Spanish cases were not the privies of the first defendant.

32. There was also an affidavit from Mr. John Hurley, Ryanair's Chief Technology Officer, which sought to explain the various technological changes that have been made to the way Ryanair and its website operates, in particular since 2015.

33. Ryanair also filed an affidavit from Ms. Virginie Bernard, a French lawyer who had acted for Ryanair since 2009 and in particular had acted for Ryanair in one of the French cases, the Court of Appeal hearing in Paris that resulted in the judgment of 23 March 2012. She explained by reference to the pleadings and French judgments why she considered that the issues raised in the French proceedings were not the same as the issues raised in the Irish proceedings.

34. Ryanair also filed an affidavit from Mr. Jaime Fernandez Cortés, a Spanish lawyer who had acted for Ryanair in the Spanish proceedings. He explained by reference to the pleadings and Spanish judgments why he considered that the issues raised in the Spanish proceedings were not the same as the issues raised in the Irish proceedings.

35. Before examining the matter in more detail in respect of both the French and Spanish proceedings, it is important to note that the burden of establishing that the Irish proceedings are *res judicata* by virtue of either the French or Spanish proceedings rests with eDreams. Secondly, eDreams did not seek to cross-examine Mr. McNamara, Mr. Hurley, Mr. Cortés or Ms. Bernard on any of their affidavits, despite filing many subsequent affidavits taking issue with their averments. In addition, while formally

interlocutory in nature, this application represents the sole hearing on, and final determination of, eDreams' contention that these proceedings are *res judicata*.

V. THE ISSUES DETERMINED IN THE FRENCH AND SPANISH CASES

36. The first exercise therefore is to understand the causes of action and issues that were determined by the relevant French and Spanish cases. The evidence of the four foreign law experts, their affidavits and the affidavits of Mr. Teissonniere, Mr. Monedero, Ms. Bernard and Mr. Cortés were very helpful in this regard.

(i) Summary of the issues raised in the French proceedings

37. The relevant French proceedings concern three decisions in proceedings between Ryanair and a company called Opodo.

38. The proceedings commenced on 25 June 2008. The first decision was of the Paris Tribunal de Grande Instance of 9 April 2010. Ryanair were unsuccessful and they appealed. This led to the second decision of the Paris Court of Appeal of the 23 March 2012. Ryanair were unsuccessful. They appealed to the French Court of Cassation and by decision of 10 February 2015 the appeal was rejected.

39. A review of the French decisions and how they are described in the affidavits and by the parties indicates that, in summary, the issues raised by Ryanair can be summarised as follows:-

(a) Screen scraping from Ryanair's database

Ryanair alleged that Opodo obtained Ryanair flight data through screen-scraping and used that data in connection with the sale of Ryanair flights.

(b) Breach of contract / Ryanair Terms of Use

Ryanair contended that Opodo was bound by Ryanair's website terms and conditions and that its activities breached those terms. The French courts rejected the proposition that a travel agency was bound by Ryanair's website terms because the agency remained a third party to the airline ticket contract and the customer could access the information as an "internet surfer" on Ryanair's website without having to accept and terms of use of the website.

(c) Trade mark infringement

Ryanair alleged that Opodo infringed Ryanair's trademarks through its use of the Ryanair name and marks when marketing Ryanair flights. The French courts' concluded that the use made of the marks was necessary and informational rather than infringing.

(d) Damage to Ryanair's goodwill, reputation and business

Ryanair alleged that Opodo damaged Ryanair's goodwill and reputation, interfered with the distribution of its services and caused loss of revenue. This claim was unsuccessful.

(e) Consumer deception and misleading pricing

Ryanair alleged that Opodo added commissions and surcharges and published misleading pricing information. The French courts rejected those allegations, finding that consumers were informed of the total price and would only end up purchasing a flight by deciding to purchase directly from Ryanair.

40. Specifically, the decision of the French Court of Cassation of 10 February 2015 indicates that with regard to the database claim, Ryanair maintained that it had made substantial financial, technical and human investments in the creation and operation of a database containing flight schedules, availability, fares and related information.

41. Ryanair argued that those investments entitled it to the benefit of the sui generis protection afforded to database producers under French and European law and that Opodo had unlawfully extracted and reused material from that database.

42. The Court of Cassation accepted that the collection of information concerning Ryanair's flights, schedules, availability and pricing constituted a database capable, in principle, of protection.

43. However, the Court held that Ryanair had failed to establish that the investments upon which it relied were investments directed to obtaining, verifying or presenting the contents of the database in the sense required by the applicable legislation. Rather, the French Court decided that much of the expenditure relied upon related to Ryanair's ordinary commercial operations, including software systems, ticketing functions and general airline business infrastructure. The Court therefore concluded that Ryanair had not established the substantial investment necessary to obtain sui generis database protection and was not entitled to the relief sought on that basis.

44. The second aspect of the Court of Cassation decision concerns Ryanair's trade marks. Ryanair alleged that Opodo reproduced both its word mark and figurative mark without authorisation in the course of marketing Ryanair flights to consumers. Ryanair contended that such use infringed its exclusive trade mark rights.

45. The Court rejected that contention. It found that Opodo had not used the Ryanair marks as indicators of the origin of Opodo's own services. Rather, Opodo used the name and logo solely for the purpose of identifying Ryanair as the airline operating the flights being offered to consumers. The Court considered such use to be necessary and informative in nature and held that there was no likelihood of confusion as to the source of the services. In those circumstances, the use complained of did not constitute trade mark infringement.

46. The Court of Cassation decision also indicates that Ryanair advanced claims founded upon unfair competition and parasitism. It asserted that it had adopted a direct distribution model and that Opodo's conduct interfered with that model, appropriated the benefit of Ryanair's investments and deprived Ryanair of revenues associated with ancillary products and services.

47. The French court rejected those arguments. The Court of Cassation held that a duly authorised online travel agency was entitled to market airline tickets and that Ryanair could not unilaterally prevent such an intermediary from offering Ryanair flights for sale. The court further held that Ryanair had failed to demonstrate that Opodo's activities unlawfully disrupted Ryanair's business or amounted to parasitic conduct under French law. Indeed, the court considered that Opodo was acting within the scope of a legitimate commercial activity as an intermediary between consumers and airlines.

48. Accordingly, the Court of Cassation dismissed Ryanair's appeal in its entirety. The judgments of the lower French courts were affirmed, Ryanair's claims based on database rights, trade mark infringement and unfair competition were rejected, and the appeal was dismissed (Ryanair was ordered to pay the sum of €3,000 for costs to Opodo pursuant to Article 700 of the French Code of Civil Procedure).

(ii) Summary of the issues raised in the Spanish proceedings

49. The relevant Spanish proceedings were *Ryanair v VESL*, the second defendant in these proceedings. The Spanish claim was commenced on 5 May 2008. The first decision

was of the Barcelona Commercial Court of 11 February 2009 and Ryanair was unsuccessful. Ryanair appealed to the Barcelona Provincial Court, and by decision of 17 December 2009 the appeal was rejected. Ryanair then appealed to the Spanish Supreme Court and by decision of 30 October 2012 that appeal was rejected.

50. A review of the Spanish decisions and how they are described in the affidavits and by the parties indicates that, in summary, the issues raised by Ryanair were as follows:

(a) Screen-scraping

Ryanair alleged that VESL was obtaining information from the Ryanair website through screen-scraping and using that information to market Ryanair flights. The Spanish courts expressly found that VESL's direct or indirect use of screen-scraping technology as complained of was lawful and legitimate.

(b) Contractual claims based on Ryanair's Terms of Use

Ryanair contended that users of the Ryanair website were bound by the website Terms of Use and that VESL breached those terms through screen-scraping and resale activities. The Spanish courts rejected that argument and found that no contract arose merely because a person (in this case VESL) browsed the Ryanair website as it was essentially a free and open website. The Spanish courts also held that Ryanair had not implemented sufficient technological measures to control access to the site or acceptance of the terms and therefore could not establish a contractual relationship with VESL based on website navigation alone.

(c) Claims that VESL's conduct amounted to unlawful competition

Ryanair alleged that VESL's sale of Ryanair flights caused consumer confusion, appropriated Ryanair's reputation and constituted unfair competition. These allegations were rejected by the Spanish courts. Ultimately, the customer had to purchase the flight directly from Ryanair.

(d) Copyright claims

Ryanair also alleged that VESL was infringing Ryanair's copyright. The Spanish courts rejected that claim because VESL was using its own software and had not reproduced, transformed or distributed Ryanair's software.

(e) Consumer deception and pricing complaints

Ryanair also raised allegations relating to consumer deception and price distortion before the Barcelona Provincial Court. The Spanish appellate court refused to entertain those arguments because they had not been pleaded in the original claim and therefore constituted an impermissible *mutatio libelli*.

51. Notably, Ryanair did not pursue a trade mark claim in the Spanish proceedings. However, eDreams argues that such a claim *could* have been brought there because the relevant conduct was already occurring at the time. eDreams relied upon the Spanish *res judicata* rules and Article 400 of the Spanish Civil Procedure Code to contend that Ryanair is now precluded from advancing such a claim in these proceedings.

VI. THE ISSUES RAISED IN THE IRISH PROCEEDINGS

52. Next, it is necessary to understand the causes of action and issues raised in the Irish proceedings.

53. The issues raised in these proceedings can be understood by an assessment of what is pleaded in the Statement of Claim and the evidence provided as to the facts said to underpin the claims as set out in the affidavits of Thomas McNamara and John Hurley on behalf of Ryanair. There was no application to cross examine either of these witnesses.

54. In its Statement of Claim, Ryanair advances a wide-ranging case grounded in alleged unlawful interference with its business model, its contractual rights, and its intellectual property, arising from the defendants' operation of online travel agent platforms and, in particular, their use of what is described as "screen scraping" of the Ryanair website.

(i) The Plaintiff's Business Model and Website

55. Ryanair pleads that it conducts an international low-cost airline business in which its website plays a central and indispensable role. It avers that approximately 99% of its flight bookings are made through its website and mobile application, which together constitute the sole authorised online distribution channel for the sale of Ryanair flights.

56. The website is described as comprising both "front-end" user-facing elements and "back-end" systems, including databases and computer programs, all of which are proprietary to Ryanair. Ryanair further pleads that the website is not merely a

commercial platform, but also a controlled technological environment through which its data, pricing, and booking services are made available on strictly defined terms.

57. Central to this model is the assertion that Ryanair does not permit third party online travel agents to sell its flights independently. While limited access to flight information is available under licence agreements for comparison purposes, the Ryanair maintains that eDreams have never sought or obtained such licences.

(ii) Terms of Use and Contractual Framework

58. The plaintiff places particular emphasis on its website Terms of Use ("TOUs"), which it pleads govern all access to and use of the website. It is alleged that these terms are binding on any user of the website by virtue of both "browse-wrap" and "click-wrap" mechanisms.

59. The TOUs are said, inter alia, to:

(i) prohibit use of the website for commercial purposes;

(ii) expressly forbid the use of automated systems, including screen-scraping, to extract data;

(iii) restrict the sale of Ryanair flights to the Ryanair website itself; and

(iv) assert Ryanair's intellectual property rights in all data and systems associated with the website.

60. Ryanair pleads that any interaction with the website, whether through ordinary user access or technical means, necessarily results in the formation of a binding contractual relationship incorporating these terms.

(iii) Alleged Screen-Scraping and Unauthorised Use

61. At the heart of the claim is the allegation that the defendants have, without authorisation, accessed and extracted Ryanair flight data from the Ryanair website through automated processes.

62. Ryanair pleads that:

(i) Ryanair flight data appearing on the defendants' websites must have originated from the Ryanair website, which is the exclusive source of such information;

(ii) the defendants obtained that data through "screen scraping", involving automated systems mimicking human behaviour; and

(iii) such conduct occurred without Ryanair's consent and in direct contravention of the TOUs.

63. It is further alleged that the defendants used this data to display Ryanair flight information and to facilitate bookings on their own platforms, without redirecting consumers to the Ryanair website.

64. Ryanair then pleads that such bookings could only have been completed through parallel interaction with the Ryanair systems, whether by automated means or manual intervention, thereby necessarily involving further unauthorised use of Ryanair's systems and data.

(iv) Harm and Interference with Ryanair's Business

65. Ryanair alleges that the defendants' conduct has caused substantial harm to its business and operations. In particular, it pleads that:

(i) it has been deprived of direct contact with customers, due to the defendants' failure to provide accurate customer details;

(ii) it is exposed to potential liability under regulatory regimes (such as Regulation (EC) No. 261/2004) where it cannot communicate directly with passengers;

(iii) its advertising revenue and ancillary sales are undermined by the diversion of customers away from its website; and

(iv) its brand and reputation have suffered, particularly where customers experience difficulties or overcharging through the defendants' platforms.

66. Ryanair also pleads that the defendants' conduct interferes with its contractual arrangements and deprives it of the commercial advantages associated with direct distribution.

(iv) Pricing Practices and Consumer Harm

67. A significant aspect of the pleaded case concerns alleged misleading pricing practices on the defendants' websites. Ryanair asserts that:

(i) the defendants frequently sell Ryanair flights at a mark-up, while failing to provide transparent disclosure of the price differential;

(ii) consumers are led to believe they are obtaining the best available prices, or benefiting from discounts through the defendants' "Prime" subscription product;

(iii) in reality, consumers often pay more than they would if booking directly with Ryanair; and

(iv) such practices damage Ryanair's reputation as a low-cost airline.

68. Examples are set out in the Statement of Claim to demonstrate alleged instances of higher prices, hidden fees, and misleading reference pricing across different booking channels and ancillary services.

(v) Intellectual Property and Goodwill

69. Ryanair further alleges that the defendants have infringed its intellectual property rights, including its trade marks and copyrighted computer programs.

70. It is pleaded that the defendants:

(i) use Ryanair's trade marks extensively on their websites without consent;

(ii) create a likelihood of confusion by suggesting a commercial relationship or partnership; and

(iii) take unfair advantage of Ryanair's reputation and goodwill.

71. In addition, the plaintiff alleges that the unauthorised extraction and use of data from its systems constitutes infringement of its database rights and copyright.

(vi) Economic Torts and Related Claims

72. Ryanair also advances claims in economic torts. It is alleged that the defendants:

(i) induced or procured breaches of contract by third parties who accessed the Ryanair website;

(ii) interfered with Ryanair's contractual relationships; and

(iii) engaged in unlawful means conspiracy to injure Ryanair's business.

73. These claims are pleaded in the alternative and are said to arise from the defendants' alleged coordinated use of unauthorised access and data extraction.

(vii) Consumer Protection and Regulatory Breaches

74. The plaintiff further pleads that the defendants' practices constitute breaches of statutory obligations, including:

(i) sections 41, 42, and 55 of the Consumer Protection Act 2007, by engaging in unfair and misleading commercial practices; and

(ii) Article 23 of Regulation (EC) No. 1008/2008, by failing to present transparent and accurate pricing for air services.

75. It is contended that the defendants' conduct misleads consumers as to price advantages and the nature of any relationship with Ryanair, thereby impairing their ability to make informed decisions.

Overall Characterisation of the Claim made in the Irish proceedings

76. Taken as a whole, Ryanair's claim is that the defendants have constructed a parallel commercial model which depends upon the unauthorised exploitation of Ryanair's proprietary systems, data, and brand, in breach of contract, intellectual property rights, and statutory obligations.

77. The material facts alleged are directed towards establishing a continuous course of conduct whereby the defendants access the Ryanair website in an alleged breach of contract, extract and utilise its data for commercial gain, misrepresent their relationship with Ryanair, and thereby cause financial, operational, and reputational harm to the plaintiff.

78. On that basis, Ryanair seeks a combination of declaratory relief, injunctive relief restraining further conduct, and damages (or an account of profits) arising from the defendants' alleged wrongdoing.

New Material facts

79. This element of the case is perhaps where the main answer of Ryanair to the application of eDreams can be found in respect of the "same issues" requirement. The nub of Ryanair's submission on this point is that the material facts underpinning the Irish

proceedings involve new facts and new legal and technological arrangements that would make it both inappropriate and unjust to dismiss their claim. It must be pointed out that the Court is not stating in this judgment whether Ryanair will establish any of these alleged new facts at the trial, however, they are relevant for the purposes of this application as they are either pleaded in the statement of claim or contained in the affidavits filed on behalf of Ryanair that were not challenged at this juncture. However, nothing in this judgment should be understood as determining whether Ryanair will ultimately establish these alleged facts at trial.

80. Based on Ryanair's submissions and affidavits, Ryanair says the factual, technological, contractual and commercial environment has fundamentally changed since the Spanish and French proceedings, such that the issues now before this Court are not the issues previously determined. Ryanair relies on those changes both to deny identity of subject matter and to invoke the "material change of circumstances" exception to *res judicata*.

(a) The Ryanair website is no longer an "open" website

81. Ryanair says that a key feature of the Spanish judgments was the finding that the Ryanair website operated as a "free and open access system" without effective technological restrictions on access or use. Ryanair says that factual premise no longer exists.

According to Ryanair (principally, Mr. Hurley's affidavit):

(i) The website is now protected by the Shield anti-bot system.

(ii) Ryanair has introduced significant technological barriers to detect and exclude screen scrapers.

(iii) Since 2015, bookings require a myRyanair account.

(iv) Flight sales now occur in a protected area of the website.

(v) The website is now effectively a "closed" system rather than an open-access website.

Ryanair argues that the Spanish courts' analysis was built upon the openness of the website and therefore cannot simply be transferred to the current technological environment.

(b) The method of accepting the Terms of Use has changed

82. Ryanair (principally in Mr. McNamara's affidavits) says that the contractual architecture of the website is radically different from that considered in the Spanish and French proceedings. It says that:

(i) In 2008, acceptance of Terms of Use was largely based on browsing the website.

(ii) Since December 2009 and subsequently 2013 and 2017, the website has progressively introduced click-wrap acceptance mechanisms.

(iii) Users are now required to indicate agreement to the Terms of Use before searching or booking.

(iv) Screen-scrapers accessing the back-end must use coding incorporating parameters equivalent to acceptance of the Terms of Use.

(v) By 2017 it was no longer possible to search either the front-end or back-end without accepting the Terms of Use.

Ryanair therefore claims that legal questions now before the Irish Court are materially different given the different background factual matrix underpinning the contractual and other legal questions decided in the earlier proceedings.

(c) eDreams' booking model has changed

83. Ryanair says that eDreams no longer operates as the same type of intermediary that featured in the earlier litigation. It says (in the statement of claim and in its affidavits) that:

(i) In the earlier proceedings, consumers were redirected and various booking functions were completed through Ryanair.

(ii) eDreams now completes the booking process differently.

(iii) OTAs now allegedly pay Ryanair directly for flights and provide their own contact details to Ryanair.

(iv) eDreams can no longer rely on the same "mere intermediary" characterisation that it advanced in the earlier proceedings.

Ryanair says that this changed business model creates a different factual basis for determining contractual liability.

(d) eDreams Prime did not exist

84. Ryanair places considerable reliance on the launch of eDreams Prime in 2017. According to Ryanair, eDreams Prime is now responsible for a substantial proportion of eDreams' revenue and an important component of its business model. In addition, Ryanair says that eDreams Prime creates new issues concerning pricing transparency and consumer protection.

85. eDreams Prime did not exist during either the Spanish or French proceedings. Accordingly, allegations concerning eDreams Prime could never have been litigated in those proceedings.

(e) New consumer-protection claims

86. Ryanair says that the Irish proceedings contain claims that were not part of the earlier litigation. In particular it relies on claims under:

(i) the Consumer Protection Act 2007,

(ii) alleged unfair commercial practices,

(iii) alleged misleading commercial practices,

(iv) alleged hidden mark-ups and pricing opacity,

(v) alleged bait-and-switch practices, and

(vi) Regulation 1008/2008.

(f) New pricing and transparency allegations

87. Ryanair argues that the factual complaints about pricing are different today. It points out that in the French proceedings the courts found that Opodo's prices corresponded to Ryanair's prices with separate administration fees being identified whereas Ryanair now alleges hidden mark-ups, opaque pricing structures and misleading claims concerning savings and best offers.

(g) New trade mark claims

88. Ryanair also says that certain current trade mark allegations either were not raised in Spain or differ significantly from those considered in France. In particular, it argues that no trade mark claim was advanced in Spain, that the Irish proceedings rely on a broader trade mark case and that the claims are not identical to those considered in France.

(h) New legal framework and case law

89. Finally, Ryanair says the legal landscape has changed substantially since 2008. Among the developments it relies upon are subsequent EU and national judgments; the CJEU decision in *PR Aviation BV v Ryanair, C-30/14* (2015); later Italian decisions recognising Ryanair's direct-sales model; and continuing development of consumer-protection law and regulation of online travel sales.

VII. DECISION ON THE "SAME ISSUES" REQUIREMENT

90. The core legal principles of *res judicata* have been described above in section III of this judgment. However, the legal principles that underpin the third requirement ("same issues") of *res judicata* need some further elaboration.

91. While the doctrine of *res judicata* applies to a matter decided in an earlier case and now raised again, the court must also have regard to the rule in *Henderson v Henderson* which extends the scope of the court so that it can potentially strike out matters that were not raised if they *could* and *should* have been raised in the earlier proceedings, unless there are special circumstances that excuse their omission; see *Henderson v Henderson* (1843) 3 HARE 100, Lord Bingham in *Johnson v Gore Wood* [2002] 2 AC 1 at p. 31, McDonald J. in *George*, at para. 121 *et seq*. and paras. 152 and 153 in particular, and Simons J. in *McCool Controls and Engineering Ltd v Honeywell Control Systems Ltd* [2019] IEHC 695 at para. 34.

92. This extended jurisdiction however is applied with "a more broad based approach" as explained by Clarke J. in *Moffitt v Agricultural Credit Corporation plc* [2007] IEHC 245. So if the criteria for *res judicata* are established then the new claim should not be allowed. Whereas if the defendant relies on an argument that the new matter "*could* and *should*" have been raised in the earlier proceedings, then the court has a broader discretionary jurisdiction and can consider the overall context and whether there might

be any special circumstances that justify the new claim not having been raised in the earlier proceedings. As Clarke J. explains in *Moffitt* at paras. 3.7 to 3.9:

> "*Res judicata per se applies where the matter sought to be litigated has already been decided by a court of competent jurisdiction. Res judicata can relate to the cause of action (which may involve a consideration of whether two separate causes of action arise) or an individual issue (issue estoppel). In the latter case the issue sought to be litigated must be identical to the issue decided in the previous proceedings ... The rule in Henderson v. Henderson, on the other hand, applies where a new issue is raised which was not, therefore, decided in the previous proceedings but is one which the court determines could and should have been brought forward in the previous proceedings.*
>
> *The importance of the distinction lies in the consequences. If a matter is res judicata then, in the absence of a defence to the application of the doctrine such as fraud, the availability of fresh evidence in respect of issue estoppel only, estoppel, or other special cases, the plea will necessarily succeed.*
>
> *On the other hand, where reliance is placed on the rule in Henderson v. Henderson to the effect that it would be an abuse of process to now allow the party concerned to raise a different issue which could have been raised in the original proceedings, it is well settled that the court adopts a more broad based approach.*"

93. As to whether or not an earlier case can be said to have decided the same issue as raised in the new case, there are some further elements. Firstly, the determination of the issue must have been "necessary" to decide the first case; see Simons J. in *McCool* at para. 43.

94. Next, the court may have to consider whether there has been a "material change in circumstances" such that the "same issue" may not really be the "same issue". For example, a *res judicata* is not necessarily established by simply saying that P sued D before for a breach of the contract between them if the new case is now based on a different contract with materially different terms or if the alleged breach of contract is based on materially different facts. As Simons J. explains in *McCool* at para. 45:

> *"In principle, a material change in circumstances is something which could prevent an issue estoppel arising. The rationale underlying the principle of issue estoppel is that a party should not be permitted to relitigate an issue which has already been determined against them in earlier proceedings involving the same parties or their privies. If there has been a material change in circumstance, then the issue to be determined in the second or subsequent proceedings may not actually be the same issue as has previously been determined."*

95. Equally, it is necessary to examine any alleged material differences closely to assess whether it can truly be said to be relevant to the particular issue decided by the earlier judgment that is said to create a *res judicata*. Some flexibility is permitted to ensure the policy behind the doctrine is given effect to. So for example, Simons J. in *McCool* gives the following analysis, specific to the facts of that case, at para. 76:

> *"The only tangible difference between the two purported assignments which Mr McCool has been able to point to is the absence of an express provision for the onward assignment of the proceedings. Whereas this difference might potentially be relevant to the finding of the 2018 judgment to the effect that the assignment savoured of champerty, it is irrelevant to the first finding, namely that the assignment was a mere "device" intended to avoid the requirement that a company be legally represented in proceedings. It does not address—still less negate—the findings made by the High Court in the 2018 judgment."*

96. This indicates that a material change of circumstances may prevent an issue estoppel arising because the question to be determined in the later proceedings may not in truth be identical to that previously adjudicated upon. Equally, however, the court must scrutinise carefully any alleged distinction said to exist between the earlier and later proceedings. Differences in factual detail or legal formulation will not suffice unless they bear materially upon the precise issue determined in the earlier action. The court's task is therefore to look beyond form and assess whether the matters now advanced genuinely differ from those already decided.

97. In summary therefore, the "same issues" requirement means that where a matter is truly *res judicata*, the plea will ordinarily succeed once the necessary elements are established. By contrast, where reliance is placed upon *Henderson v Henderson*, the

court exercises a broader and more discretionary jurisdiction, taking account of all the circumstances and considering whether there are special factors which may justify the omission of the issue from the earlier proceedings. For example, not having legal representation in the earlier case is identified as a potential special circumstance. This emphasises that the jurisdiction is anchored in principles of justice.

98. In considering whether eDreams can meet the burden of establishing that the issues decided in the French and Spanish proceedings are the same as the issues raised in these proceedings it is necessary to consider whether the new material facts relied upon by Ryanair are sufficient to mean that the issues are not the same, in the context in which that requirement is meant, bearing in mind the purpose and policy underpinning the doctrine of *res judicata*.

99. The French and Spanish proceedings commenced in 2008. Ryanair perhaps not surprisingly claims that the facts on the ground are now very different and in ways that are sufficiently material to preclude the doctrine of *res judicata* from applying.

100. eDreams did not dispute that there have been changes but rather contended, *inter alia*, that they are either not material or that Ryanair had brought them about unilaterally. This contention came with the submission that minor or inconsequential changes unilaterally introduced to avoid a party being caught be the doctrine of *res judicata* should not be considered sufficient as it would enable a party to circumvent the doctrine in a way that would undermine its purpose.

101. However, neither of those arguments, satisfactorily address the fundamental changes introduced by eDreams itself whereby it has introduced the eDreams Prime service and, in addition, now actually pays directly for the Ryanair flights using a virtual credit card.

102. Leaving aside the introduction of the eDreams Prime service, the fact that Ryanair may have "unilaterally" introduced changes does not preclude those changes from materially altering the landscape in which the new proceedings are brought in a relevant way for the purposes of the *res judicata* doctrine. Such a proposition would not make sense at a level of principle. By way of example, let us imagine that a construction company decides to unilaterally change the standard terms of the contract it uses for construction projects into the future. It then brings proceedings for a breach of contract relying on its new terms. The dispute concerns the new terms. It could hardly be contended that the issue was *res judicata* simply because the same construction company might have

previously sued the same employer for a "breach of contract" in relation to the terms of an earlier contract. However, in the context of airline travel and online travel agents it is not surprising that the factual backdrop has changed between 2008 when the French and Spanish proceedings commenced and 2024 when these proceedings were commenced.

103. Turning now to examine the changes more closely. In summary, as set out in the section above, Ryanair's core position is that the following facts or circumstances are materially different from those considered by the Spanish and French courts:

(a) The Ryanair website is now technologically closed and protected;

(b) Acceptance of the Terms of Use now occurs through different click-wrap and technical mechanisms;

(c) The eDreams booking process has changed;

(d) eDreams Prime exists and fundamentally alters the commercial context;

(e) New consumer-protection and Regulation 1008/2008 claims are advanced;

(f) The allegations concerning pricing transparency and consumer harm are different;

(g) Certain trade-mark allegations are new; and

(h) The applicable legal framework has evolved since the 2008–2015 litigation.

104. For example, in the judgment of the French court of 9 April 2010, the following summary of the facts is included:

> *"Ryanair asserts that in using the Ryanair.com internet site Opodo expressly agreed to the general terms and conditions of that site and that by offering the sale of flights it charters itself without Ryanair's authorization it has breached its contractual obligations. Ryanair then claims the status of a database producer and alleges that Opodo has extracted and reproduced a substantial part of the content of this database which constitutes an infringement of its rights as producer. Ryanair further alleges that Opodo has identically reproduced on the opodo.fr internet site it's Ryanair community trademarks for*

commercial purposes. Finally Ryanair asserts that Opodo commits acts of unfair competition and parasitism.”

105. The various claims for relief and damages are then described, as is Opodo’s counterclaim for damages for defamation. The judgment then has a section headed “Grounds of the Decision” which explains that Ryanair’s claims are rejected and Opodo is awarded compensation of €30,000 for defamation. In relation to the claim for contractual liability, the judgment stated as follows:

> *“Ryanair states that by offering the sale of Ryanair flights without its authorization Opodo has violated the general terms and conditions for use of its Ryanair.com site where it is expressly specified that “Ryanair does not authorise any other Internet site to sell its flights”.*

The decision of the French court then continues in relation to this issue as follows:

> *“However these general terms and conditions apply only to those who purchase air tickets for themselves, and not to those acting as intermediaries, as in the case with the Opodo, which thus is a third party to the contract. Also, it appears that the flights reserved on the Opodo site are in turn materialised on the Ryanair site; consequently, the contractual provisions in question are not in any respect violated.”*

106. As explained earlier, Ryanair appealed unsuccessfully to the Paris Court of Appeal. In the decision of the Paris Court of Appeal of 23 March 2012 it was noted that the information stored by Ryanair relates to its “flights, hours, availabilities and prices” is “organised and structured” in a way that they can easily be individually consulted by internet surfers who desire to purchase an airline ticket for a particular destination and at a particular time.

107. The Paris Court of Appeal when considering the claim for contractual liability stated as follows:-

> *“Considering Ryanair's assertion that any Internet surfers visiting its www.Ryanair.com site are contractually bound to comply with the “conditions for use of the Ryanair's website” (sic), in which Article 5 states that internet surfers are authorised to use this website only for private and not commercial purposes, And that the use of an automated system or software in order to*

extract data from this site or the www.bookRyanair.com for commercial purposes is prohibited."

The decision then continues:-

> *"However… this purportedly contractual document does not appear on the home page of the www.Ryanair.com site … and only if the internet surfer wants to continue consulting the site by clicking on the "search for flights" link is he asked to first tick off a box before the phrase "I have read and accept the conditions for use of the Ryanair website" the terms of which … are accessible only by clicking on the hyperlink "Conditions for use of the Ryanair website".*

The judgment then continues:-

> *"Considering that the fact of merely visiting a website without making any request such as an order or reservation shall not create any contractual ties between the internet surfer and the company owning the site; that, at this stage of consultation in the absence of any request on the part of the Internet surfer or any offer on the part of the owner of the site there exists no relationship of a contractual nature.*
>
> *Considering … that It is only after consulting the destinations and hours and choosing his flight that the internet surfer is asked before reserving his airline ticket with Ryanair to tick off a box before the "I have read and accept the travel terms and conditions and the conditions for use of the website. All trips are subject to the Ryanair's general terms and conditions for transportation of passengers and luggage. …*
>
> *Considering that the [Terms and Conditions] … apply only to an Internet surfer who intends to conclude with Ryanair an air transportation contract for individuals by reserving a ticket for a particular destination at a particular time …*
>
> *Considering that an Internet surfer who makes a reservation on SAS Opodo's site is directed for purposes of consultation to Ryanair's website on which his reservation is finally confirmed between company and s internet surfer (sic); that SAS Opodo, the holder of a travel agency licence, acting as an*

intermediary, remains a third party to this airline ticket reservation contract, whose stipulations are not enforceable against it.

The judgment then concludes on this issue as follows:

"Consequently, considering that the decision of the court below shall be affirmed in its dismissal of Ryanair's claim against SAS Opodo for contractual liability."

108. In relation to the trade mark claim, the Paris Court of Appeal emphasised that Opodo was only using Ryanair's trade mark to "designate" Ryanair's services and that it was not used to suggest that Opodo was offering the service or direct sale of the services designated by the trademarks, since the tickets corresponding to the flights were ultimately delivered by Ryanair. The Paris Court of Appeal consequently upheld the lower court's conclusion that Opodo "does not use them [the trade marks] for direct sale of the services designated by the trademarks, since the tickets corresponding to the flights are ultimately delivered by Ryanair". The factual premise underpinning that analysis is relevant to the issues which arise in the present proceedings.

109. The Spanish proceedings commenced at a similar time and suffice to say that they were contested and decided against a similar factual background (see the description above in the previous section of this judgment).

110. As against that background, the evidence from Ryanair's deponents and in particular Mr. McNamara and Mr. Hurley indicates, at this juncture at least, substantial material changes since the time of the French and Spanish proceedings. So for example, Mr. McNamara sets out the changes since then starting at para. 17 *et seq.* of his first affidavit. He also describes the introduction of the myRyanair accounts and the changes to the front end and back end of the Ryanair website in relation to the terms of use. He also refers to the fact that eDreams has launched its eDreams Prime service.

111. He explains how the manner in which the terms of use are presented to and accepted by website users has changed. He also explains the differences in the manner in which customers in the French and Spanish proceedings were charged separately for the Ryanair airfare and the online travel agent's commission, whereas now the online travel agent takes a single payment from the customer and separately the OTA pays Ryanair for the airfare directly.

112. He sets out the details of the eDreams Prime subscription service at paragraph 63 of his affidavit and refers to what is pleaded in the Statement of Claim in that regard.

113. He also explains that Ryanair has introduced new technological blocking mechanisms to ensure, it claims, that anyone accessing its site has to accept the Terms of Use whether they access the site from the front end or the back end.

114. The new technological changes claimed by Ryanair are described in more detail in the affidavit of Mr. Hurley, the Chief Technology Officer. He addresses these matters in detail from paragraph 6 of his affidavit, where he explains that now, due to changes made since the French and Spanish proceedings, that Ryanair's website can only be accessed, even to ascertain information, by a user (including a commercial site like that of eDreams) agreeing to Ryanair's Terms of Use.

115. He also explains how Ryanair has made changes to the way it offers its fares. These are described in section seven of his affidavit where he sets out how this position differs from the position at the time of the French and Spanish proceedings. At paragraph 7.12 he states:

> *"Between 2015 and 2017, a party accessing the back end of the Ryanair's website was not required to agree to the terms of use meaning that obtaining data from the Ryanair website without agreeing to the terms of use was possible. However in 2017 Ryanair introduced acceptance to its terms of use as part of a data request made directly of the front end and back end of the Ryanair website."*

116. He goes on to give details of the coding used to achieve this.

117. In section 8 of his affidavit he explains the introduction of the myRyanair accounts. He describes this as a "personalised online account service". He explains that this was originally launched in 2013 but that a new version of the myRyanair account system was introduced in 2015 and made mandatory in November 2015.

118. At paragraph 8.4 he says that:

"Importantly, at the time that the French and Spanish proceedings were issued … the booking flow on the Ryanair website was significantly different to how it operates today both in terms of how it operates technically and how it is navigated by a consumer".

119. He then describes those differences and explains that Ryanair's claim in these proceedings is that eDreams is using fake passenger contact details to make the bookings and also using a virtual credit card to pay for the flight. By contrast, in the earlier arrangements, the online travel agent would ultimately refer the customer to the Ryanair site so that the customer would directly make the booking.

120. Specifically at paragraph 8.6 he explains how the online travel agents use their own credit cards to pay for the flights and explains that this is a change from the manner in which the arrangements were processed in the Spanish proceedings.

121. Taking account of all of this and the other matters pointed to by Ryanair, I am satisfied that these are the principal material facts and changes in circumstances that sufficiently distinguish the Irish proceedings from the earlier Spanish and French proceedings.

122. A critical feature of the present case, in my view, is the extent to which the factual circumstances have changed since the French and Spanish proceedings. The evidence, for the purposes of this hearing indicates, that the Ryanair website has undergone fundamental changes in its operation from an "open" website to a "closed" system with the introduction of mandatory acceptance of Terms of Use and the requirement for a named user account and the deployment of technological measures designed to prevent automated access. That evidence has not been displaced for the purposes of this hearing.

123. In parallel, the defendants' business model has evolved, most notably through the introduction of the eDreams Prime subscription product and the manner in which flights are marketed and sold through their platforms.

124. In my view, these changes are not merely incidental or cosmetic. Rather, they go to the core of the legal relationships relied upon by the parties. The earlier French and Spanish cases proceeded on the basis of a website which was freely accessible and in respect of which no enforceable contractual framework was found to exist between Ryanair and the OTA.

125. The present proceedings, by contrast, are grounded upon a different factual and technical matrix, in which access is said to be controlled, acceptance of the Terms of Use is required, and contractual relationships are alleged to arise from such access.

126. In those circumstances, I am satisfied that there has been a material change of circumstances of the kind contemplated in *McCool*. Even though many of the causes of

action are the same or similar (allowing for the different jurisdictional descriptions in France and Spain of these claims as explained by the experts) the issues which arise in the present proceedings are not the same as those determined previously because they arise in a materially altered factual context.

127. So even if, as the eDreams experts explained, some of the claims in these proceedings bear similarities to the claims in the earlier proceedings, the material factual changes identified above are sufficiently central to the contractual, technological and commercial factual matrix underpinning the core of Ryanair's claims, such that 'identity of issue' has not been established. It follows that the third requirement of *res judicata,* namely the requirement of identity of issue, is not satisfied.

128. Turning now to the question of differences in the legal landscape as between these proceedings and the earlier French and Spanish proceedings. Firstly, these proceedings include claims under the Irish Consumer Protection Act 2007 and these claims were not part of the French or the Spanish proceedings. Even allowing for the contention of eDreams (supported by their experts) that French and Spanish law would have allowed potentially a claim under Irish legislation to be made in the French and Spanish proceedings, the claim now made is based on changed material circumstances that mean that it would not be appropriate to rule under the broader jurisdiction encompassed by the rule in *Henderson v Henderson* that it is an abuse of process to allow it be made in these proceedings.

129. Next there have also been developments relating to Regulation (EC) No. 1008/2008 and the regulation of airline pricing. There have been legal cases and regulatory changes that, based on the material before me, appear to have happened on an ongoing basis. Consequently, these proceedings raise issues concerning pricing transparency and the disclosure of air fares that do not appear to have been determined in the earlier French and Spanish judgments and, on the face of the evidence at this juncture, these claims arise from a different regulatory environment governing the online sale and marketing of airline tickets and therefore cannot be safely treated as the same issues that were previously litigated. Specifically, there has also been subsequent case law that has materially altered the legal landscape. In *PR Aviation BV v Ryanair, C-30/14*, the CJEU in a preliminary ruling 15 January 2015 decided that:

"Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that it is not applicable to a database which is not protected either by copyright or by the sui generis right under that directive, so that Articles 6(1), 8 and 15 of that directive do not preclude the author of such a database from laying down contractual limitations on its use by third parties, without prejudice to the applicable national law."

130. This decision appears to recognise that contractual restrictions *can* be imposed on the use of a database not protected by the Database Directive and this is supportive of Ryanair's contention that there is a changed legal context relevant to its claim that users of its website can be bound by its Terms of Use.

131. Ryanair also pointed to further later decisions in other European jurisdictions, which Ryanair says recognise the legitimacy of its direct-sales distribution model and rejected arguments that its reservation of online ticket sales to itself amounted to an unlawful abuse of dominance. These authorities indicate that the legal treatment of online airline distribution and unauthorised intermediary sales has developed since 2008.

132. On intellectual property matters, the trade mark claims made in these proceedings are on their face broader than those brought in France. There was no trade mark claim pursued in Spain. The legal issues presently arising are not simply a repetition of those previously determined. I am not satisfied therefore that the trade mark claims now made are either the same as the claims made in France or that eDreams have persuaded me that they "could and should" have been made in the Spanish proceedings. Such a claim cannot be divorced from the background factual matrix. Firstly, Ryanair says that it now does specifically license certain OTAs but did not so license eDreams. Secondly, the customer was, on the analysis in the French and Spanish proceedings, merely being informed of Ryanair's services and would have to visit Ryanair's site to complete the purchase of the flight. Whereas now, the customer can conclude the transaction, according to the claim, on eDreams' site. The display of Ryanair trade marks on eDreams platforms is therefore occurring in a changed factual context that will be relevant to the assessment of the trade mark claim.

133. Consequently, these legal and regulatory changes combined with the changed factual context, are another reason why I am satisfied that eDreams have not met the burden of

establishing that the issues raised in these proceedings are the "same issues" as those addressed in the French and Spanish proceedings. These legal and regulatory developments reinforce the conclusion already reached that the issues in these proceedings are not the same issues as those determined in the French and Spanish proceedings

134. In summary, many of the allegations now made depend upon facts, technologies, business practices and legal developments that either did not exist or had not crystallised at the time of the French and Spanish proceedings. These changes also mean that it would not be just to determine that Ryanair "could and should" have raised the claims now made in the earlier proceedings.

VIII. DECISION ON THE "SAME PARTIES" REQUIREMENT

135. While the core legal principles are described above in section III of this judgment, it is also necessary to discuss those principles in more detail in the context of the fourth requirement in a *res judicata* application to establish that the proceedings are between the same parties or their "privies". As explained earlier, the fourth issue concerns whether the new proceedings concern the "same parties" as the earlier proceedings. However, it is not strictly necessary to establish that the parties are exactly the same parties. The doctrine of *res judicata* can apply to litigation involving the same parties "or their privies"; see *Clare County Council v Mahon* [1995] 3 IR 193 at 206, and Dixon J. in *Blair v Curran* (1939) 62 CLR 462 pp. 531-532 (in a passage expressly approved by Keane J. in the Supreme Court in *Belton v. Carlow County Council* [1997] 1 IR 172) who stated:

> *"A judicial determination directly involving an issue of fact or of law disposes once and for all of the issue, so that it cannot afterwards be raised between the same parties or their privies."*

136. However, the academic commentary indicates that this question of whether another party is a "privy" is usually dependent on the particular facts and it is difficult to outline an exhaustive set of principles or rules that can be routinely or mechanically applied. *McDermott on The Law on Res Judicata and Double Jeopardy*, 1999 has this to say at para. 5.06:

"*It has been suggested that there is a dearth of authority upon the question of privies and from what little there is, it is not easy to distil any principle. O'Donnell LJ has offered the following general definition:*

> *"Privity means something more than being interested in the outcome. It must involve such interest as would enable the privy to have a voice or say in how the proceedings are, or will be, conducted or concluded."*

The requisite privity is of blood, title or interest. While the concept of privity remains useful as a general descriptive term it must be used with great caution. To say that someone is in "privity" with a party only signifies that the relationship between the two of them is such that the judgment involving the party may justly be conclusive upon the one who is not a party. The problem remains - what relationships justify that consequence - and so the question of who is a privy for the purposes of res judicata ultimately depends on the facts of each case. There are numerous situations in which a non-party or a privy will be bound by a judgment and a list of the most important follows."

137. The examples then given by *McDermott* from paras. 5.07 *et seq*. include the following:-

(i) *de facto* parties, where the so called non-party was actively involved in the litigation as a *de facto* active party;

(ii) persons who were somehow represented in the first set of proceedings, by virtue of, for example, the action being a class or representative action;

(iii) cases in which there is some substantive legal relationship between the person who was a party to the first suit and the person who was not;

(iv) privity can include any person who succeeds to the rights or liabilities of a party to the first suit upon his death or insolvency;

(v) a company and its shareholders are not privies; and

(vi) having a financial interest in the outcome of litigation will not of itself establish privity.

138. The parties referred to *Civil Jurisdiction and Judgments by Adrian Briggs*, 8th Edition, 2025 ("*Briggs*"). On p. 601 *Briggs* states as follows:-

> *"As to the parties or privies point, the requirement is that the judgment be or have been between the same parties, or between parties who were privy in or by blood, or by title or by interest. In essence this means that they had the same interest in the litigation. <u>Privity of interest may be an elusive concept</u>: it was conceded in House of Spring Gardens Ltd, v Waite [1991] 1 QB 241, at 252 that "<u>it is not easy to detect from the authorities what amounts to a sufficient interest" to constitute privity of interest</u>. Although having a mere outside observers interest in the litigation will not suffice, if it can be said that it is just to hold that a finding against one individual should be binding in later proceedings to which another is a party, there will be privity of interest."*
>
> (underlined for emphasis).

This observation in a leading 2025 textbook that that the authorities do not reveal any clear set of principles and that the description of a privy is an "elusive concept" echoes the earlier commentary described above in *McDermott* from 1999.

139. Turning then to the issue of companies and privies, *Briggs* states as follows on pp. 601-602:

> *"In the particular context of companies, there appears to be a growing acceptance of the proposition that where a corporate vehicle is owned, controlled, and driven by a single controlling mind, there may be privity of interest between the driven vehicle and the driver, so that issues decided against the company are conclusive against the driver, and as the incidence of oligarchic ownership (and reckless driving) of corporate vehicles increases, one might expect this development to be referred to with increasing frequency. Indeed the modern phenomenon of complex and opaque legal structures designed to hide assets and ownership (to say nothing of the need to obey judicial orders), is likely to require sustained attention, for which a loosening of the restrictions inherent in the principle of privity of interest may be*

suggested. The same approach would support an argument that there may be deemed, or sufficient, submission to the jurisdiction of a foreign court by the person who is pulling all the strings of the actual party. Where the identification of the non-party as privy in interest with the party bound by judgment is not quite possible, an interpretation of the principle in Henderson v Henderson may bridge the gap and it be held to be an abuse for the non-party to contest the findings previously made by the court."

140. In the footnote to this passage *Briggs* states the following: "*there is unlikely to be privity of interest as between companies if all that can be said is that they were in the same group*" and the author cites the Court of Appeal of England and Wales decision in *Resolution Chemicals Ltd. v H Lundbeck A/S* [2013] EWCA Civ 924 and [2014] RPC 5, 153. In *Resolution Chemicals* the Court of Appeal of England and Wales were dealing with an issue of *res judicata* in the context of a patent case. The Court noted that privity of interest provided an exception to the general principle that the estoppel bound only the parties to the previous litigation. The Court referred to the decision in *Gleeson v J Wippell & Co Ltd* [1977] 1 W.L.R. 510 where the test was stated to be whether, having due regard to the subject matter of the dispute, there was a sufficient degree of identification between a party to litigation and a third party so as to act as a bar to the third party commencing a fresh action.

141. The Court of Appeal concluded by stating that a court which had the task of assessing whether there was privity of interest between a new party and a party to previous proceedings had to examine the following:

(a) the extent to which the new party had an interest in the subject matter of the previous action;

(b) the extent to which the new party could be said to be, in reality, the party to the original proceedings by reason of his relationship with that party; and

(c) against that background, whether it was just that the new party should be bound by the outcome of the previous litigation.

142. On the facts in *Resolution Chemicals* the Court of Appeal stated that while the two companies were part of a group of companies under common control, that there was no subsisting relationship between them pursuant to which the 2005 proceedings were

being conducted by one for the benefit of the other. Consequently, the court rejected the proposition that each company in a group was to be regarded as the privy of every other company in the group unless it demonstrated to the contrary.

143. There are two significant Irish cases that grapple with this question in the context of companies, one in the context of *res judicata* and the second in the context of the rule in *Henderson v Henderson.*

144. In *Belton v Carlow County Council* [1997] 1 IR 172 the Supreme Court rejected the argument that the shareholders of a company were automatically the privies of the company for the purposes of *res judicata*, with Keane J. (as he then was) stating at p.181 that "*while the interest of the company and its controlling shareholders may very often coincide that is not always the case*". In *Belton*, Keane J. states as follows on this topic:

> *"This lack of privity is clearly demonstrated by the facts of the present case. Although it was indicated in the course of argument that the malicious injury application heard by O'Hanlon J., while nominally brought by the company, was in fact brought by their insurers, who would have been entitled, by subrogation pro tanto, to the proceeds of the claim, I will assume that the third parties had some control over the proceedings. (If they had none, that of itself might be a ground for saying that there was no privity.) Even making that assumption, however, their interests are not identical with the company's: the proceeds of a successful application would become the assets of the company and would fall to be dealt with in accordance with the memorandum and articles and the applicable legislation. Similarly, in the event of the application being unsuccessful, the consequent liability for costs would be that of the company alone and in no sense the personal liability of the third parties. By contrast, in the present proceedings, the third parties alone will be liable, in the event of the local authority's claim succeeding and the company has no interest, present or contingent, in the outcome."*

145. While the Supreme Court accepted that issue estoppel can apply not only to the parties to earlier litigation but also to their privies, the crucial question was whether two individuals (who were shareholders and directors of the company) were privies of the

company for the purpose of being bound by the findings made in the earlier litigation involving the company. The Court held that they were not.

146. On the other hand in *Vico v Bank of Ireland* [2016] IECA 273 the Court of Appeal had to consider whether there was privity of interest as between the O'Donnell children and a company called Vico Ltd. This arose in the context of an application made relying on the rule in *Henderson v Henderson*, rather than pursuant to *res judicata*. Vico Ltd. was an Isle of Man company limited by shares which was, at the relevant time, within the control of the O'Donnell children and could have been joined by them to the earlier proceedings.

147. Finlay Geoghegan J. for the Court of Appeal upheld the High Court decision that there was a "sufficient degree of identity" between the children and the company. In coming to that conclusion she adopted the analysis of Megarry VC in *Gleeson v Wippell* (also referred to above in *Resolution Chemicals*) stating as follows at para. 29:

> "*In the same decision Lord Bingham addresses the position where one or more of the parties to the second set of proceedings was not a party to the first proceedings. This is relevant given the addition of Vico (which was not a party to the Gorse Hill proceedings) as a plaintiff in the current proceedings. Lord Bingham at p. 32 determined that the courts below in those proceedings had correctly rejected a submission that the rule in Henderson v. Henderson did not apply because the personal plaintiff, Mr. Johnson had not been a party to the first action, but rather a company had been. He then identified as the correct approach that formulated by Sir. Robert Megarry V.C. in Gleeson v. J. Wippell & Co. Ltd. [1977] 1 WLR 510, where he said:-*
>
> > *'Second, it seems to me that the substratum of the doctrine is that a man ought not to be allowed to litigate a second time what has already been decided between himself and the other party to the litigation. This is in the interest both of the successful party and of the public. But I cannot see that this provides any basis for a successful defendant to say that the successful defence is a bar to the plaintiff suing some third party, or for that third party to say that the successful defence prevents the plaintiff from suing him, unless there is a sufficient degree of identity between the successful defendant and the third party. I do not say that one must*

> *be the alter ego of the other: but it does seem to me that, having due regard to the subject matter of the dispute, there must be a sufficient degree of identification between the two to make it just to hold that the decision to which one was party should be binding in proceedings to which the other is party. It is in that sense that I would regard the phrase "privity of interest".'*

148. From the foregoing, it can be seen that privity of interest is often an elusive concept. The ultimate inquiry is whether there exists a sufficient degree of identification between the party to the earlier proceedings and the person sought to be bound by the earlier judgment.

149. The focus is therefore not on technical labels but on the substance of the relationship and the extent to which the interests of the respective parties may properly be regarded as aligned.

150. Specifically, in the corporate context, the cases and commentary suggest that privity of interest may exist where a company is effectively owned, controlled and directed by a single controlling mind. In such circumstances, findings made against the company may, in an appropriate case, be treated as binding upon the individual exercising that control or, as in *Vico*, *vice versa*, albeit in the context of the application of the rule in *Henderson v Henderson*.

151. On the other hand, the authorities nevertheless emphasise that membership of the same corporate group, without more, will not establish privity. The critical consideration remains the degree of control, identification and commonality of interest between the relevant parties.

152. The decision of the Court of Appeal in *Vico* illustrates this approach. The court endorsed the principle that there must be a sufficient degree of identity between the original party and the person sought to be bound. It is not necessary that one be the alter ego of the other. Rather, the question is whether the relationship between them is such that it is just to hold that a determination binding upon one should also be binding upon the other.

153. The concept of privity therefore rests ultimately upon considerations of fairness, justice and the public interest in preventing repetitive litigation and inconsistent outcomes.

154. Taken together, *Belton* and *Resolution Chemicals* are both authorities for a relatively fact-sensitive approach to privity in the law of *res judicata* and issue estoppel. They reject the idea that corporate relationship, common ownership, or group membership is by itself enough to bind a non-party to an earlier judgment.

155. In *Resolution Chemicals*, the defendant *Lundbeck* argued that Resolution was barred from relitigating patent validity because an earlier challenge had been brought by Arrow Generics, which belonged to the same corporate group as Resolution at the relevant time. Both Arnold J. and the Court of Appeal rejected that argument.

156. The decision emphasises that mere membership of the same corporate group does not create privity and that common ultimate ownership or common control is also not enough. The real question is whether the later party had a sufficient interest in, or relationship to, the earlier litigation such that it should fairly be treated as having had its day in court. Consequently, in the High Court in *Resolution Chemicals,* Arnold J. found that Resolution had no substantive interest in the earlier litigation and had not stood behind Arrow in a way that justified treating it as bound by the earlier judgment. The Court of Appeal upheld that conclusion.

157. This approach is consistent with that of Keane J. in *Belton* and demonstrates that corporate-group connections alone are insufficient. The court looks for a much closer identity of interest and participation in the previous litigation before imposing estoppel on a non-party.

158. Turning then to apply these principles to the requirement of "same parties" here.

(i) The French proceedings

159. The evidence concerning the corporate structure of eDreams was central to the dispute between the parties as to whether there was sufficient privity between the defendant in the French proceedings (SAS Opodo) and EDO and VESL, the eDreams defendants in the Irish proceedings.

160. Ryanair's argument was that the defendant in the French proceedings was SAS Opodo, whereas the defendants before this Court are eDreams Odigeo S.A. ("EDO") and Vacaciones eDreams S.L. ("VESL").

161. Accordingly, Ryanair contended that the prerequisite identity of parties was absent and that the French judgment could not avail the present defendants. Ryanair also submitted that the evidence adduced by eDreams evolved during the course of the hearing.

162. It was pointed out that the original evidence of Mr Teissonniere described a chain of ownership linking SAS Opodo to Go Voyages and the present defendants. However, Ryanair correctly pointed out that the picture was incomplete and that the true structure only emerged incrementally and after the hearing had commenced.

163. I am satisfied that the evidence put before the Court by eDreams failed to establish a sufficient degree of legal or operational identification between SAS Opodo (the defendant in the French case) and the present defendants. While EDO appears to be at the top of the group and while various entities were linked through ownership chains, based on the legal principles identified above common ownership or group membership are not, of themselves, sufficient. Parent and subsidiary companies are not, merely by virtue of that relationship, privies for the purposes of *res judicata*.

164. Professor Azzi's evidence was not sufficient to address this. Firstly, he was called as an expert and not as a witness to fact. eDreams could have chosen to adduce evidence from senior directors or executives with operational responsibilities to explain how these companies operate in relation to each other. They did not do so.

165. There was little or no evidence produced by eDreams concerning the practical realities of control within the group, the degree of operational integration between the companies, or their relationship at the time the French judgment was delivered or since.

166. eDreams bears the burden on this issue and was the party in a position to put the actual detailed evidence before the court and it is not for the court to fill in the blanks; see, by analogy, the judgment of Clarke J. (as he then was) in the context of security for costs in the High Court in *James Elliott Construction Ltd. v Irish Asphalt Ltd.* [2010] IEHC 234 at para. 5.2 where he stated:-

> *"Where there are circumstances that require explanation and where a company does not put before the court evidence sufficient to give such an explanation, the court should lean against filling in such unexplained gaps in a manner favourable to the party who could have provided the relevant explanation."*

167. Consequently, I am satisfied that eDreams has failed to establish sufficient identity for the purposes of the doctrine of *res judicata* as between the defendant in the French proceedings and the defendants in the Irish proceedings.

(ii) The Spanish Proceedings

168. The position regarding the Spanish proceedings differs from that which arises in respect of the French proceedings. In the Spanish litigation, VESL was the defendant and therefore there is no dispute that, at least insofar as VESL is concerned, there is an identity between the defendant in the earlier proceedings and one of the defendants now before the Court.

169. Turning then to the position of the first defendant, EDO, Ryanair submits that EDO was not a party to the Spanish proceedings and that there is no proper basis upon which it could be treated as being so identified with VESL as to obtain the benefit of any *res judicata* said to arise from those proceedings.

170. I am not satisfied that eDreams has satisfied the burden to establish a sufficient privity of interest between EDO and VESL. eDreams sought to contend that EDO was merely joined as a defendant to these proceedings to enable Ryanair to escape the fourth requirement of *res judicata*. However, the evidence does not clearly indicate that EDO is merely a passive holding company. Rather, the nature of Ryanair's claim is to contend that EDO plays an active and significant role in the affairs of the wider eDreams group and is directly involved in matters relevant to the present dispute.

171. For example, it is claimed that EDO is the entity which receives Global Distribution Services incentives and exercises a central role in the management of distribution activities across the group; see the second affidavit of Mr. McNamara for Ryanair. He based those averments on the published accounts of EDO. There was no application to cross examine Mr. McNamara and his averments therefore cannot be ignored in the context of an application by eDreams and where they bear the burden. In addition, this is a matter that eDreams could have chosen to explain by putting before the court detailed evidence from relevant directors of the company. The involvement described by Mr. McNamara highlights a distinction between EDO and VESL.

172. Accordingly, EDO and VESL cannot be treated as interchangeable entities merely because they form part of the same corporate group. I am satisfied that separate

corporate personality remains the starting point, and the burden is on the party who can explain the position to do so by means of clear and cogent evidence. eDreams has not produced sufficiently cogent evidence demonstrating that EDO's interests are so identical and indissociable from those of VESL that a judgment obtained by or against one should automatically bind the other.

173. Separately, for the reasons already identified in Section VII above, the Spanish proceedings do not satisfy the requirement of identity of issue, including as against VESL.

174. Accordingly, I am satisfied that even if the Spanish proceedings could potentially found a plea of *res judicata* against VESL, they cannot do so against EDO because there is no identity of parties.

IX. CONCLUSION

175. I am satisfied that the defendants have failed to establish the essential requirements of *res judicata*, or alternatively, abuse of process and the rule in *Henderson v Henderson*. The key reasons are the significance of the changed material facts, the changes to the legal backdrop and the lack of identity between the parties, explained above in Sections VII and VIII.

176. The Court fully accepts the public interest in finality which underpins the doctrine of *res judicata*. However, finality presupposes that the later proceedings concern the same dispute. For the reasons explained above, I am not satisfied that this requirement has been established by eDreams. In my view, the significance of the changed material facts in the context of *res judicata* is fundamental. It goes directly to the core requirement that the issue or cause of action in the later proceedings must be the same as that previously determined. If the underlying factual matrix has materially altered, the doctrine will not apply. Nor is it appropriate to consider at this juncture what the outcome of the new case might be. Adopting such an approach would turn an application such as this into a mini trial.

177. Under Irish law, *res judicata* requires identity of issue or cause of action. This is not assessed abstractly, but in the context of the actual facts underpinning the claim. As explained in *McCool*, a prior judgment does not preclude litigation where there has been a material change of circumstances. The material changes claimed here involve

changes in the underlying facts arising from new arrangements (technological and others) introduced by Ryanair and, also, changes and new ways of doing business introduced by eDreams, particularly with its eDreams Prime service. These changes fall far outside the types of changes that could be ignored for the purposes of the jurisdiction invoked here.

178. This conclusion reflects the broader principle that the doctrine applies only where the later claim is based on the same state of facts and circumstances. If the facts and/or circumstances are materially different, then the earlier decision is not determinative.

179. The doctrine is rooted in fairness and finality. Fairness, in that a party should not be bound by a prior decision where the context has changed in a legally relevant way; and finality, in that the parties should not re-litigate the same dispute repeatedly.

180. In the earlier French and Spanish proceedings the Ryanair website was open and freely accessible and no binding contractual relationship (via Terms of Use) was established. The customer visited and booked directly with Ryanair and eDreams' activities were assessed against that open-access model. That is clear from the description of the facts and issues in those judgments.

181. The Irish proceedings, by contrast, are based on allegations that the website is now a closed system, that users must accept Terms of Use before accessing the key functions, the introduction of the myRyanair account system and the technical changes and protections (e.g. the automated blocking systems) that are in place and finally, that the defendants' business model (e.g. "eDreams Prime") has evolved so that, for example, it now books the flights itself using virtual credit cards.

182. None of this is perhaps overly surprising given that the French and Spanish cases were commenced in 2008 and these proceedings were commenced in 2024 and that both sides' businesses use highly sophisticated technologies that inevitably evolve in a material way in a span of years of that length.

183. These are not superficial differences. They fundamentally impact on the question of whether a contract exists; whether access is authorised or unauthorised; and whether conduct is unlawful or constitutes a breach or infringement.

184. As a result, the core legal questions arising are qualitatively different from those adjudicated previously.

185. eDreams also relied on the rule in *Henderson v Henderson* to argue that claims which could have been brought earlier are also barred (for example, Ryanair's trade mark claim, which was not brought in the Spanish proceedings). However, that principle does not apply where the later claims arise from new facts or the factual and legal situation has evolved in a way that could not reasonably have been addressed earlier.

186. So for example, in the French proceedings using Ryanair's trade mark was characterised as a sign post to Ryanair's services in a context where ultimately the customer was still required to visit Ryanair's site to book the flight (see para. 108 above). In the new environment Ryanair licenses some OTAs (but not eDreams) and eDreams uses Ryanair's trade mark but provides a service where Ryanair's flights are booked through eDreams without the customer having to visit Ryanair's site. This analysis, to be clear, is not intended to represent any qualitative assessment of Ryanair's claims, but rather is an explanation as to why I am satisfied that it would not be appropriate to exercise the equitable jurisdiction afforded by the rule in *Henderson v Henderson* to bar the claim.

187. As explained in *Johnson v Gore Wood* the doctrine is not rigid and must be applied with regard to fairness and justice, taking account of changed circumstances.

188. The significance of changed circumstances is therefore decisive. It operates as a complete answer to a plea of *res judicata* where those changes alter the substance of the dispute. Where, as here, the factual matrix has evolved in a material way, the later proceedings cannot be characterised as a re-litigation of the same issues. Instead, they constitute new causes of action arising in new circumstances, and the earlier judgments do not preclude them.

189. For substantially the same reasons, I am not satisfied that the present claims are claims which Ryanair "could and should" have raised in those earlier proceedings.

190. In addition, and independently of my conclusions on the "same issues" requirement in Section VII above, I am satisfied for the reasons set out in Section VIII above that eDreams has failed to establish the necessary identity of parties or privity required to sustain its plea of *res judicata* in respect of the French proceedings and in respect of EDO's reliance on the Spanish proceedings.

191. The burden of establishing those matters rested upon eDreams and, for the reasons already given, that burden has not been discharged.

X. FORM OF ORDER

192. Accordingly, for the foregoing reasons, the plea of *res judicata* and the reliance on the rule in *Henderson v Henderson* therefore fails. However, to be clear, nothing in this judgment should be understood as expressing any view on the ultimate merits of Ryanair's claims. The Court's conclusion is confined to the question whether those claims are barred by *res judicata* or the rule in *Henderson v Henderson.*

193. Consequently, I propose to refuse the defendants' application and I will hear from the parties as to costs and any further orders required.