

Neutral Citation Number: [2024] EWHC 791 (Comm)

Case No: CL-2024-000040

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

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

Date: 27 March 2024

Before :

**His Honour Judge Pelling KC**

Between :

|   |                         |
|---|-------------------------|
| <b>Airbus Canada Limited Partnership</b>        | <b><u>Claimant</u></b>  |
| <b>- and -</b>                                  |                         |
| <b>Joint Stock Company Ilyushin Finance Co.</b> | <b><u>Defendant</u></b> |

-----  
-----  
**Louise Hutton KC and Owen Lloyd** (instructed by **Freshfields Bruckhaus Deringer LLP**)  
for the **Claimant**

Hearing dates: **27<sup>th</sup> March 2024**

-----  
**JUDGMENT 1**

**His Honour Judge Pelling KC**  
(09:45am)

**Wednesday, 27 March 2024**

Judgment by **HIS HONOUR JUDGE PELLING KC**

1. The first issue I have to determine is whether or not this hearing should take place in private. As Ms Louise Hutton KC for the claimant rightly submits, the starting point in relation to arbitration claims is that they shall be heard in private because the presumption is that arbitrations are a private process that take place as such by agreement between the parties. Nonetheless, this is not the invariable assumption to be made in relation to state court proceedings in England and Wales because of the open justice principle which applies by to all state court proceedings in England and Wales unless court orders otherwise. The touchstone test for whether or not to depart from the open justice principle is -- and that has been established for a number of years to be - one of necessity in the interests of justice.
2. It is submitted that had I should hear these proceedings in private for the following reasons: (1) the arbitration has barely commenced; (2) there is, within the evidence material which is commercially confidential and which the parties would legitimately expect to be protected by the confidentiality that applies to arbitration proceedings between them; (3) there are a number of intermediary positions between a fully open process and a wholly closed process that can be adopted and one them is to have the hearing in private but deliver a judgment with any commercially-sensitive materially redacted, and, if necessary, the parties anonymised. This last point is certainly correct. What response should be adopted is dictated by the nature of the necessity identified and required that the most proportionate response be adopted – that is one that results in the most limited interference with the open justice principle that provides the protection that necessity in any particular case requires.
3. I'm persuaded that the proportionate response to the first two points made by Ms Hutton is to direct that this hearing should take place in private. However, the issue concerning whether the judgment should be published, and if so, subject to what redactions, is an issue which can only be looked at

once the judgment is given, and so in those circumstances this hearing will continue in private.

However, it is highly likely that necessarily needs to be protected at that stage can be achieved by the publication of the judgment with a limited number of redactions set out in a confidential schedule.