

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION

Case No. 1049/4/1/05

APPEAL TRIBUNAL

Victoria House,
Bloomsbury Place,
London WC1A 2EB

31st January 2005

Before:
SIR CHRISTOPHER BELLAMY
(The President)
PROFESSOR PAUL STONEMAN
GRAHAM MATHER

Sitting as a Tribunal in England and Wales

BETWEEN:

UNICHEM LIMITED

Applicant

and

OFFICE OF FAIR TRADING

Respondent

supported by

PHOENIX HEALTHCARE DISTRIBUTION LIMITED

Intervener

Miss Maya Lester (instructed by Allen & Overy LLP) appeared for the Applicant

Mr. Peter Roth QC and Mr Daniel Beard (instructed by the Director of Legal Services (Competition) Office of Fair Trading) appeared for the Respondent

Miss Kelyn Bacon (instructed by CMS Cameron McKenna) appeared for the Intervener.

Transcript of the Shorthand notes of
Beverley F. Nunnery & Co.
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Tel: 020 7831 5627 Fax: 020 7831 7737

CASE MANAGEMENT CONFERENCE

1 THE PRESIDENT: Good afternoon, ladies and gentlemen. Yes, Mr Roth?

2 MR ROTH: Good afternoon. I appear with my friend Mr Daniel Beard for the Office of Fair Trading,
3 and my friend Miss Maya Lester appears for the Applicant, Unichem, and my friend Miss Kelyn
4 Bacon for the Intervener, Phoenix Healthcare, and I understand there are no other applications to
5 intervene.

6 Sir, you put on the helpful agenda the issue of confidentiality.

7 THE PRESIDENT: Yes.

8 MR ROTH: I hope and trust that we have found a way through that meets the needs of the Applicant,
9 the Intervener and, of course, most importantly the public interest in having as an open a hearing
10 as possible. For me to explain that, and how the problem arises in its nature is something that
11 I would seek to do in the absence of the Intervener and the public though we then envisage, if the
12 Tribunal adopts the course we suggest, that everything can be made open, and I would therefore
13 respectfully ask if the Tribunal can go into camera so I can explain what the confidentiality issue
14 is without, as it were, having waived all the confidentiality in doing so.

15 THE PRESIDENT: Is this taking matter further forward than they were on Friday night when we had an
16 excised version of the Notice of Application?

17 MR ROTH: Absolutely, and we hope considerably further. I have explained the position to counsel for
18 Phoenix who understands the situation we are in and why we are proposing that course.

19 THE PRESIDENT: What do you say, Miss Bacon?

20 MISS BACON: Yes, I have spoken to Mr Roth and we are entirely happy for the matter to be dealt with
21 in camera initially.

22 THE PRESIDENT: We are not at all enthusiastic about going into camera, Mr Roth, but we will in this
23 particular case.

24 MR ROTH: I am very grateful.

25 THE PRESIDENT: What I need to do is to ask any member of the public who is not associated with
26 Unichem or the Office of Fair Trading to kindly withdraw, and that includes, if I may suggest,
27 Phoenix Healthcare and its representatives. Thank you.

28 (For In Camera hearing see separate transcript)

29 **Later:**

1 THE PRESIDENT: Mr Roth, if I could just be clear, your suggestion relates to both annex 2 and annex
2 3 of the Notice of Application – is that right? It certainly covers annex 3, but annex 2 is the
3 application that led to annex 3.

4 MR ROTH: Yes, that is right. Thank you.

5 (For Judgment see separate transcript)

6 MR ROTH: Thank you, I am very grateful, Sir.

7 THE PRESIDENT: Thank you, Mr Roth, that sounds a very sensible solution. It correctly anticipated
8 how we were approaching the matter.

9 MR ROTH: I am very much obliged. If I can add just one further point, because your Judgment of
10 course dealt with the confidential guidance given to Unichem. There was another confidential
11 guidance that is much more closely related to the Decision.

12 THE PRESIDENT: I do not think we know anything about that, yet.

13 MR ROTH: I think that is right, Sir, but that was the confidential guidance given to Phoenix regarding
14 this particular bid. There is no application in that regard by the applicant, but just to make
15 clear ----

16 THE PRESIDENT: They may not have known that there was such guidance.

17 MR ROTH: They may indeed not have known – they do know now.

18 THE PRESIDENT: Anyway there was guidance?

19 MR ROTH: There was.

20 THE PRESIDENT: So you have disclosed that.

21 MR ROTH: We have not disclosed it yet, but ----

22 THE PRESIDENT: Well no, but you have disclosed the fact that there was, despite having submitted
23 earlier that it was very important that the fact of having sought guidance should not be made
24 known.

25 MR ROTH: That is why I want to explain the very particular distinction, it is for precisely that reason.
26 It does not raise the same concerns because it was, in effect, superseded by an actual Decision and,
27 most important, it is the confidential guidance relating to the Decision under challenge in these
28 proceedings. We have raised the matter with Phoenix and they have no objection to reference
29 being made to it. So it is in a very distinct and particular category and we will be disclosing it as
30 part of the witness statement in response to the application, and I just wanted to make that clear to
31 everyone.

1 THE PRESIDENT: That is fine. So it is obviously an important element in the OFT's position that the
2 recipient of the guidance is content for it to be disclosed.

3 MR ROTH: Absolutely, and that it is here, the one leading to the Decision.

4 THE PRESIDENT: And in this particular case it is a step on the way to this particular Decision.

5 MR ROTH: Yes, which is quite different from previous guidance in other mergers, whether related or
6 not. That, I hope, concludes the confidentiality part of the agenda, and I do not know to what point
7 you would wish to turn.

8 THE PRESIDENT: I think we now probably do turn to the agenda for today, if we may.

9 MR ROTH: I hope we have covered "item 1 – Other permissions to intervene" and there are none. Item
10 2 we have now dealt with.

11 THE PRESIDENT: So we get to item 3 which is a preliminary discussion of the issues likely to arise in
12 the proceedings. Perhaps I could just make two or three very preliminary comments on that,
13 turning up the Decision.

14 This is largely directed towards the OFT, Mr Roth. You mentioned a moment ago the
15 preparation of a witness statement. I think it is helpful to the Tribunal to have a witness statement
16 from the Office, in particular one that explains the process that the Office has, in fact, followed in
17 this case and in such detail as you may at this stage be advised, as to the evidence gathering part of
18 the investigation which is part of the background to help the Tribunal understand the basis of the
19 investigation upon which this Decision is based. So that would be something that would be
20 helpful.

21 Beyond that, there are two specific points of fact. First, what kind of market share figures
22 should we be working on? Have we correctly understood the market share position which arises in
23 particular in this way? In para.26 of the Decision some data is given about market shares, and it
24 appears at first sight that those figures include self-supply. I am only asking a question at the
25 moment, I am not expecting an answer – just putting the point on the table. The figures in para.26
26 include self-supply.

27 We then have some further figures in para.28 that appear to exclude self-supply, perfectly
28 understandably, excludes self-supply, i.e. excluding those customers who are not free to choose
29 Phoenix or EAP as their supplier. The figures in para.28 then give some market share figures for
30 independent pharmacies, and then proceed to give some further figures for dispensing doctors.
31 What we do not appear to have in the Decision at the moment, but we are very happy to be

1 corrected if we have not understood it, is a combined figure for independent supply to independent
2 pharmacies and dispensing doctors taken together, bearing in mind that it is apparently the OFT's
3 case that independent pharmacies and dispensing doctors fall within the same market segment –
4 that there is, as it were, no separate market for dispensing doctors.

5 Secondly, a certain amount of emphasis is placed in the Decision on the suggested ability
6 of AAH, and Unichem in particular, to add one or more drops to an existing round in the event
7 that in certain areas the customers in those areas, i.e. pharmacies or dispensing doctors found
8 themselves largely dependent on one or two suppliers. The Tribunal would have a certain amount
9 of interest, I think, in understanding how the OFT arrived at that conclusion and on what
10 evidential basis? If I can add in parenthesis, that raises the question of what attitude the OFT took
11 to the work of RBB, which has various isochrones giving various analyses of competition
12 depending on which geographical area you take, but which is admittedly based on a driving time
13 assumption of an hour and a half, whereas this Decision seems to be based on a driving time
14 assumption of two hours.

15 Thirdly, and probably fairly central to the case, we have the earlier negative guidance to
16 Unichem, but we also have more recently the Decision to refer to the Competition Commission,
17 AAH's proposal to acquire EAP in December 2003. We had the advantage in the latter case of
18 a reasoned Judgment by the OFT on these points. Indeed, one might say in parenthesis that the
19 confidential guidance from 2000 may not take one very far because one does not know what the
20 reasons were and it is a long time ago, quite a lot may have happened in the last five years. Be
21 that as it may, an obvious point one would have thought in this case is what, according to the OFT,
22 are the essential differences between a takeover of EAP by AAH or Unichem, and a takeover of
23 EAP by Phoenix?

24 As Professor Stoneman points out, on that last point it is not just a question of is there an
25 intrinsic difference depending on who is the taking over party, but is there some change that has
26 happened in time terms between 2000 and December 2003 that makes a material difference?

27 I think those are the most immediate factual issues that come to mind. Obviously we shall
28 need a certain amount of help from all parties on what we are to make of the IBA Judgment, and
29 what general approach we should be adopting in this particular case.

1 Before we go further, I think I had better go around the table and see where we are,
2 because Miss Lester, for the Applicants, may well have other comments that you would like to
3 feed in at this stage of the discussion, or whether that is sufficient for present purposes?

4 MISS LESTER: As I understand it, those comments that the Tribunal has helpfully set out are largely
5 the same as the three factual issues which Unichem identified in the Notice of Application in our
6 third ground as being issues of fact, and our position is as set out in the Notice of Application on
7 those issues of fact, and the OFT's duties given the circumstances. The other main issues in the
8 case are set out in writing and I do not seek to repeat those matters – it would not be helpful to the
9 Tribunal – but there are four grounds as set out in full.

10 THE PRESIDENT: I am sure the OFT will have those points in mind and will want to address them as
11 they prepare their evidence. Yes, Mr Roth, did you want to add to that?

12 MR ROTH: No, just that that is very helpful and we shall certainly address those in our evidence and
13 bear in mind what you say about what evidence is relied on.

14 THE PRESIDENT: Miss Bacon, we appreciate that the Intervener at this stage is probably running to
15 catch up a little bit with the proceedings.

16 MISS BACON: Yes. We have no further comments on the issues that you have outlined, but I would
17 add that we will also be seeking to put in a witness statement which would concentrate on some of
18 the issues that you have raised very helpfully just now.

19 THE PRESIDENT: Thank you. We had better come in a moment to the issue of timing and
20 practicality, etc. As far as we can see at the moment, do we need to make any specific directions
21 about documents or disclosure? I am inclined to think not – let us just see how the case unfolds
22 and see where we get to. I do not know whether there is going to be any scope for agreement of
23 facts – probably not in the timescale, though it would be advantageous I suppose to reduce any
24 dispute there may be on, for example, how to calculate market shares to manageable proportions,
25 but we have not yet I think reached that stage – there may not be any significant factual dispute
26 here.

27 Does that really take us on to item 7 and the timetable for the case?

28 MISS LESTER: One comment briefly on disclosure. We are very happy for matters to take their normal
29 course. I would just note to the Tribunal that in a conversation earlier with the OFT's counsel, we
30 have indicated that we would be particularly interested in seeing the spreadsheets on which the
31 OFT has relied on in its Decision and we have addressed this issue in our submissions at para.67

1 and they are in the OFT's Decision at para.35, but we are content without a specific order in that
2 regard, of course.

3 THE PRESIDENT: Thank you for mentioning it. It may be that Phoenix will want to refer to it (or it
4 may not be) I do not know, in their evidence, or it may be that there is something very sensitive
5 about these sheets or whatever – we will just let that unfold and leave it to the parties to take their
6 own line.

7 As to the timing of matters from now on, the Tribunal in general is quite anxious to deal
8 with cases of this kind as expeditiously as is reasonable, bearing in mind that uncertainty for the
9 parties and in particular for Phoenix and EAP, but also Unichem, is highly undesirable. But it
10 always depends on how expeditiously a case like this can be conducted consistent with justice to
11 the parties and giving everybody time to get their point of view ready. What we have
12 provisionally suggested is that we would try to have the main hearing for this case tomorrow
13 week, i.e. 8th February. I think that was suggested by the Registrar on Friday evening. That would,
14 in practice, I think mean that the OFT's witness statement, and any outline skeleton they wish to
15 submit, and indeed the Intervener's witness statement and any skeleton they would wish to submit,
16 really ought to be in on Friday of this week. That would give the Tribunal the weekend and
17 Monday, and the Applicants the weekend and Monday to react, and we would go straight into it on
18 Tuesday. Without a formal Defence, the witness statement and skeleton would stand effectively
19 as the Defence and we would go on from there.

20 From the Applicant's point of view, the case has been pretty fully pleaded and I think
21 your Notice of Application is very close to being a skeleton argument anyway. But that,
22 I suppose, in thumbnail is what we broadly have in mind. How far do the parties think that is an
23 appropriate course of action?

24 MISS LESTER: It is going to be mainly for the OFT and Phoenix to make submissions on this point,
25 because as you point out we have largely pleaded our case. There is one point that does concern
26 us which is that we should have sufficient time to respond to the OFT's submissions both in terms
27 of their defence and any evidence they put in on disclosure. As long as the timetable satisfies that
28 we would be happy. We would be, I think, concerned with the timetable that the Tribunal
29 suggested for that reason, because it may be that we will have to put in further evidence ourselves,
30 possibly involving RBB and that simply would not leave us time to do it. So we were looking for

1 a timetable that would allow us a week at the minimum in between hearing from the OFT, but we
2 are certainly content, without putting in certainly a lengthy skeleton argument for our part, but
3 I think timing is largely going to be a matter for the OFT and Phoenix.

4 THE PRESIDENT: Well let us go around the table and see where we are, Miss Lester. What is your
5 position, Mr Roth?

6 MR ROTH: We appreciate there is always this balance between the need for expedition and the rights
7 of the Defence, and the need to put the necessary materials before the Tribunal in a proper form
8 and having regard to your previous observations of what we need to do.

9 I think I can say that the merger is not completed, it has not been carried out. Miss Bacon
10 will be in a position in a moment to address you from the point of view of the parties to the merger
11 and what their envisaged concerns are about time, which may perhaps give a bit more flexibility,
12 and we would be in great difficulties completing the whole exercise by Friday, which we could see
13 would be necessary for a hearing next Tuesday. One is not looking for any delay but we were
14 very much hoping that it could be a week or two later.

15 THE PRESIDENT: The hearing a week or two later?

16 MR ROTH: The hearing a week or two later. That would give time, therefore, that we could put in our
17 evidence in the first of next week. Miss Lester's clients can then make their response as she has
18 just indicated and then the matter can proceed to a hearing.

19 THE PRESIDENT: This was served on 19th January, so quite a lot of time has already passed.

20 MR ROTH: Sir, I appreciate that, but the reality is that the time required now to deal with all the issues
21 arising, dealing with the requests that you have made, we really do need that time.

22 THE PRESIDENT: Somebody has started work already, presumably?

23 MR ROTH: Work has started, yes, indeed. The related point is what is the time estimate for the
24 hearing?

25 THE PRESIDENT: Yes.

26 MR ROTH: I think our collective view is that a day would be extremely tight, and that this is really
27 a day and a half to two, and that it would be prudent to list it for two days or a day and a half and
28 not seek to go into what are, as you have just indicated, some quite detailed factual points – it may
29 involve pouring over isochrones or whatever, in one day – leaving aside the legal issues you
30 mentioned of how does one interpret IBA and all the argument about that – and there are three

1 parties that will be addressing you. So that to look for two days a bit later on in February rather
2 than next week.

3 THE PRESIDENT: Right, let us see what Miss Bacon thinks.

4 MISS BACON: The position of the merging parties is obviously that they would like the hearing to be
5 as soon as possible in order that the merger may be completed. We have already referred in our
6 application to intervene of some of the pressures that are on the parties at the moment in the
7 situation of uncertainty. Having said that, I have discussed the timetable with Mr Roth and I fully
8 appreciate that it is also in the interest of the merging parties that the OFT should be able properly
9 to put its case together for the hearing. So we would not object to the OFT being given a little bit
10 more time to put in its witness statement and skeleton argument effectively and for the hearing to
11 come on, perhaps, a week later than the date suggested by the Tribunal, for example, at some stage
12 in the week beginning 14th February and if possible for Judgment to be given as soon as
13 practicable thereafter. Ideally, we were hoping that we would have a Judgment by the end of the
14 month, if that were feasible in the Tribunal's timetable, and I do not know if that would be
15 possible if there were a hearing in the week beginning 14th February, indeed I do not know what
16 the Tribunal's own availability is like during that week. But our position is we would be content if
17 the OFT were to put in its witness evidence and skeleton and indeed if we were to put our witness
18 evidence and skeleton in at some stage next week between 9th and 11th February.

19 MR ROTH: If it helps, I do not know if it meets the needs, but I expect it would, of Phoenix and EAP if
20 that course commended itself to the Tribunal, it may be possible to give, as happens in some
21 urgent but complex cases, your Decision with reasons to follow, and then they know where they
22 stand, and you have not got the pressure of -----

23 THE PRESIDENT: I am sure the Tribunal would make every effort to give Judgment as soon as
24 possible, and just at the moment there is absolutely no reason why we should not give the result
25 before the end of February, if not the whole Judgment – that can be regarded as do-able, subject to
26 unforeseen developments. Yes, Miss Lester.

27 MISS LESTER: If there is any scope for flexibility in the Tribunal's dates I am asked to say that the
28 week of 14th February is not ideal for availability on our side, but if there is no flexibility then so
29 be it.

30 THE PRESIDENT: This is partly a question of juggling the Tribunal's own list with the various
31 requirements.

1 MISS BACON: Sir, if I could interject, my own submissions were made completely irrespective of the
2 availability of myself and also, I know, of Mr Roth and we have taken the view that this is too
3 important give the merger between the two parties which really needs to get on as soon as
4 possible, so we decided on the basis of counsel availability.

5 THE PRESIDENT: Well we tend not to take much notice of that.

6 MISS BACON: If I could just come back on the suggestion that Judgment could be delivered in full by
7 the end of February we would be very grateful for that, in particular so that any issues of Appeal
8 can be dealt with at that stage rather than having to wait for some period of time before
9 a Judgment is delivered and then any appeal issues to arise.

10 THE PRESIDENT: One of the reasons behind the Tribunal's thinking is that it so happens that one
11 Member of the Tribunal, i.e. me, is engaged in a fairly heavy case that starts on 21 February and
12 one of the factors influencing us about the suggested timetable was to enable the Tribunal to have
13 time to do a Judgment before that hearing started, and it is necessary to find the relevant slot that
14 will enable the case both to be fairly heard and for the Judgment to be prepared in the time
15 available. I think we had better have a discussion amongst ourselves to see where we are. (After
16 a pause) I think it will be easier if we rise to discuss matters.

17 (The hearing adjourned at 2.45 p.m. and resumed at 2.52 p.m)

18 THE PRESIDENT: Yes, Miss Bacon?

19 MISS BACON: Sir, I asked by Mr Roth to correct an impression that I seem unfortunately to have
20 given. Of course, in saying that we would be delighted to get a Judgment by the end of the month,
21 I was not suggesting that we would not also be very happy, if that were not feasible, to receive
22 a Decision first with reasons later. I meant to convey the impression that it would be a bonus if we
23 could also get the reasons at the same time.

24 THE PRESIDENT: Yes, I had understood that, Miss Bacon, thank you.

25 I think, ladies and gentlemen, it is just a question of juggling the Tribunal's diary, and the
26 parties' diaries and all the various considerations. At the moment, the diary situation is that we
27 have available in the immediate future 11th February (Friday) which would mean moving the
28 hearing from the Tuesday to the Friday. We have 14th February (the following Monday) and we
29 have the 18th February (the following Friday). I think what that boils down to in practice would
30 be, as alternatives: starting on Friday 11th and carrying on on Monday 14th; or, starting on Monday
31 14th and carrying on, if necessary, on Friday 18th with a gap in the middle, which in some ways is

1 not particularly desirable, but in other ways there is sometimes advantage in a pause for breath
2 half way through a period of intensive argument. That is basically our “offer”!

3 We are reluctant for this hearing to slip any later, partly because of the President’s
4 personal difficulties in the case that starts on 21st February and partly because with an application
5 introduced on 19th January, we really have to get it on for hearing within a month of it having been
6 introduced in a merger case, because the whole system risks to be undermined by delay at the
7 litigation end of the proceedings.

8 I do not know whether you want a moment or two to reflect?

9 MR ROTH: It would be helpful.

10 THE PRESIDENT: Yes, we will rise for five minutes while you all reflect.

11 (The hearing adjourned at 2.54 p.m. and resumed at 3.04 p.m.)

12 THE PRESIDENT: Yes, Mr Roth?

13 MR ROTH: From the OFT’s side, and if Miss Bacon and her team are content with that, we would go
14 for the Valentine’s Day option – the 14th and the 18th.

15 THE PRESIDENT: Right.

16 MR ROTH: The gap, as you indicated, sometimes concentrates ones mind and leads to shorter
17 submissions when one comes back. We also do not have regard to the convenience of counsel,
18 indeed I am not sure I will be there for the OFT.

19 THE PRESIDENT: I am sure the OFT will be well represented, however.

20 MR ROTH: That must take priority. If I might just mention, because you did mention before that we
21 got this on 19th, unlike the IBA case, there was no request for expedition here, and the letter we
22 got from the Registrar on 20th – very properly – said under the Rules “Your defence is due on 18th
23 February”, so of course it was treated urgently, but it was not that the Tribunal said, as you did in
24 IBA, following request for expeditions – interim measures I think were asked for there – that this
25 is all going to be brought on so incredibly quickly.

26 THE PRESIDENT: If it was IBA we would be hearing it tomorrow, that was the timetable.

27 MR ROTH: Yes, but we were told that immediately, that it was going to be brought so quickly. In this
28 case it was on Friday that we received the fax suggesting that it might be 8th February. The
29 previous indication from the Tribunal was that it was not going to be expedited so much. I simply
30 make that point elaborating my earlier answer, when you said “You have had this since the 19th,
31 why do you need time for evidence?” just to explain the circumstances ----

1 THE PRESIDENT: I think in these cases one should just assume that the Tribunal is going to do it as
2 quickly as it can.

3 MR ROTH: Yes I take that point, but there will I suspect be a difference in cases where the applicant is
4 saying “We want expedition as a matter of great urgency” and where they are not. After all, the
5 Rules shorten the time for merger cases anticipating that, but they do provide the shortening is
6 from six weeks to four weeks for Defence, which rather suggests it is only in exceptional cases
7 that it will be very much quicker than that. I simply mention ----

8 THE PRESIDENT: As a rule of thumb we need to bring these hearings on within at least a month of the
9 application coming in, and it may be that that does truncate a bit the time for the Defence, or the
10 time for the Defence and the hearing is about simultaneous. But if we are not fairly strict on this
11 then the whole system will suffer a bit of strain from another direction and people will just get
12 bogged down in litigation on these matters.

13 MR ROTH: I only mention that, Sir, to explain the point I made earlier and why it is and we did
14 rely ----

15 THE PRESIDENT: Yes, thank you. Anyway, working back from the 14th I think is what you were
16 going to do.

17 MR ROTH: We would respectfully ask for our evidence for Tuesday, 8th, and for any evidence in reply
18 (if there is any) by lunchtime on Friday, 11th.

19 THE PRESIDENT: The same would go for the intervener, presumably?

20 MR ROTH: I think that is right. I think they are also content with that, I believe.

21 THE PRESIDENT: Let us just see what the Applicants say about that timing suggestion? Thank you,
22 Mr Roth. What is your position first of all on the hearing date, Miss Lester?

23 MISS LESTER: Our position on the hearing date is, for reasons of availability, we would have favoured
24 the previous option, but since for understandable reasons that is not going to be a consideration
25 then we would be content with the February dates. I have discussed with the Registrar the fact
26 that there are clashes with other Competition Appeal Tribunal listings for those dates, but
27 I understand those will be sorted out insofar as they really are clashes.

28 THE PRESIDENT: We have had to displace various things in the diary in order to accommodate this
29 case, but not main hearings.

30 MISS LESTER: In terms of the timetable for responding to the OFT, in view of the length of time that
31 the OFT has had the application and it now being Monday, 31st January, if it is possible for us to

1 have more than essentially two days to deal with the evidence and put in anything in response,
2 then we would ask for that. But if the timetable simply cannot allow it then it cannot allow it.

3 THE PRESIDENT: Thank you.

4 (The Tribunal confer)

5 THE PRESIDENT: By agreement between the parties we will start the substantive hearing of this case
6 on 14th February at 10.30, and we will carry on on 18th February at 10.30 insofar as necessary. As
7 far as the timetable for exchange of evidence and any skeletons is concerned I think, Mr Roth, it
8 would be convenient if you could get your material in by close of play on Monday 7th, that is
9 effectively today week, which would give the Applicants three working days and the morning of
10 11th February to respond. If there is a response, Miss Lester, it is very convenient for the Tribunal
11 if that response is in by 1 o'clock on the Friday, because that gives us some reasonable hope of
12 distributing things on Friday night without reaching the various members, none of whom live in
13 London, so that the papers can be read over the weekend. Basically the same timetable for the
14 Intervener, if you would be so kind – close of play on Monday 7th February seems to be
15 a reasonable timetable in the circumstances.

16 Very well, are there any other further matters that we ought to deal with at the moment?

17 (After a pause) No further applications or observations. Very well, thank you very much indeed.

18 (The hearing adjourned at 3.05 p.m.)