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IN THE COMPETITION

Case No. 1061/1/1/06

APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London WC1A.2EB

21st June 2006

Before:
MARION SIMMONS QC
(Chairman)

MICHAEL BLAIR QC
VIVIEN ROSE

Sitting as a Tribunal in England and Wales

BETWEEN:

MAKERS UK LIMITED

Appellant

and

OFFICE OF FAIR TRADING

Respondent

1065/1/1/06

PRATER LIMITED

Appellant

and

OFFICE OF FAIR TRADING

Respondent

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CASE MANAGEMENT CONFERENCE

APPEARANCES

Mr. Aidan Robertson (instructed by DLA Piper Rudnick Gray Carey LLP) appeared for the Appellant Makers UK Limited.

Mr. Ben Rayment (instructed by Shadbolt & Co. LLP) appeared for the Appellant Prater Limited.

Mr. Tim Ward (instructed by the Solicitor to the Office of Fair Trading) appeared for the Respondent.

1 THE CHAIRMAN: Good afternoon. Mr. Ward?

2 MR. WARD: I was simply going to offer to explain to the Tribunal what we had discussed over the
3 adjournment if that would be helpful?

4 THE CHAIRMAN: Yes.

5 MR. WARD: The template for this order is in fact the order that CAT made in the *Claymore* case
6 when it had to consider confidentiality issues and, in particular, the undertaking at the back
7 was derived from that, but that is rather to jump ahead as most of this is, of course, specific to
8 these appeals.

9 Paragraph 1 leaves the case floating over the proposed week, and makes the point that one and
10 a half of the days are to be allowed for the Makers' appeal and half a day for Prater's.

11 Paragraph 2 provides for the OFT to disclose a schedule of the calculations used for all of the
12 penalties imposed in this particular decision. Then it provides such disclosure "to be confined
13 to the External Advisers" who are defined below.

14 Paragraph 3: "In the Prater appeal, Prater to serve a Reply..." by 4 o'clock on 5th July.

15 THE CHAIRMAN: Which is what we have dealt with this morning.

16 MR. WARD: Yes, two weeks' today. Paragraph 4: "In the Makers' appeal, the OFT to produce a
17 bundle of any documents relied upon in addition to those served by Makers" as you will
18 recall – in fact, as you can see behind you – there are six bundles that have been served by
19 Makers and the suggestion was if there was anything additional from the file that the OFT
20 wants to rely on we would put that in a separate bundle.

21 THE CHAIRMAN: I want to come back to that because when I think I looked at those bundles they
22 are not in chronological order.

23 MR. WARD: Bundles numbered 1 to 6?

24 THE CHAIRMAN: Yes.

25 MR. WARD: Well I will leave Mr. Robertson to address you on that. Should I continue through the
26 draft?

27 THE CHAIRMAN: Yes.

28 MR. WARD: Paragraph 5 is really to deal with the progress of the 'toys and replica kit' and we
29 would all make submissions to you effectively two weeks ahead of the start date.

30 Paragraph 6 is the exchange of skeletons which, in a moment of enthusiasm Mr. Robertson has
31 brought forward from the Monday to the previous Friday.

32 Paragraph 7: Liberty to apply. Then the Schedule, which reflects what was done in *Claymore*
33 provides for the people named below to be external advisers, subject to further application to
34 the Tribunal for substitution; and you will see in the case of Prater, my friend, Mr. Rayment is

1 mentioned and also Mr. Bowsher. I think as I understand it only because it is unclear which of
2 them will have conduct of the appeal, not that two counsel are envisaged.

3 Part B is an almost verbatim copy of what was done in the *Claymore* case. There are two
4 small changes. In the *Claymore* case in (a) there was an exception for disclosure which was
5 not only to the Office of Fair Trading and the Tribunal, but also to the Treasury Solicitor,
6 which I anticipate were acting for the OFT at that stage as they did in a number of early cases.

7 THE CHAIRMAN: Yes.

8 MR. WARD: Then there was an (e) as well as the (a), (b), (c) and (d) in *Claymore*, which dealt with
9 a specific issue about external advisers who were chartered accountants, in other words,
10 experts which does not arise in this case.

11 THE CHAIRMAN: Is there a definition of 'protected information'?

12 MR. WARD: Yes, it is in order number 2.

13 THE CHAIRMAN: I see, yes.

14 MR. WARD: Just to explain, the OFT has prepared in draft – not yet finalised – a Schedule which
15 simply provides columns for each of the Appellants. He goes through steps 1, 2, 3, 4 and 5.
16 He gives the figures, it shows where adjustments were made and then it expresses the figures
17 in various ways at the bottom, that are simply arithmetical. In other words, it is a percentage of
18 turnover and so on and so forth. That is what we propose to serve and I think we have given
19 ourselves another week in order to finalise that, but also because this order only becomes
20 effective upon the Tribunal receiving the written undertakings from the external advisers. You
21 will see that in the second recital.

22 THE CHAIRMAN: Yes, I am with you.

23 MR. WARD: And the written undertaking is to be given in the form of Part B.

24 THE CHAIRMAN: Yes. I have a list here of I think the people that have been written to? That is
25 Anglo-Asphalt – the names are not confidential, are they?

26 MR. WARD: No, because they are all mentioned in the public version of the Decision.

27 THE CHAIRMAN: I thought I had better be careful: Anglo Asphalt, Asphaltic Contracts, Briggs,
28 Cambridge, Coverite, Durable, Holme, Prater and Rio.

29 MR. WARD: I hope that everyone has been written to who is a party to the Decision.

30 THE CHAIRMAN: And the idea is that whether or not they have written back saying that the
31 claimed confidentiality the material is to go in to the confidentiality ring.

32 MR. WARD: This is, of course, upon your order.

33 THE CHAIRMAN: Absolutely. But some of them have written back saying that they do not mind,
34 for example, Coverite.

1 MR. WARD: I just mention that Pirie and Walker are also parties to the Decision and I hope they
2 have been written to, because I was ticking them off as you were reading them out, ma'am.
3 (After a pause) I gather they were not written to because their penalty was not assessed in the
4 same way. As you recall, as Miss Rose was pointing out this morning, there was effectively a
5 step 1 and a step 5 and therefore there is not a steps 1 thro' 5 calculation with direct bearing
6 upon the facts of these appeals. It was not just an oversight.

7 THE CHAIRMAN: I was wondering, for example, Coverite had written back saying that it can all
8 be disclosed. Now, there are two ways of proceeding. One would be that we make an order
9 that everything goes into the confidentiality ring, then there cannot be any mistake as to what
10 happens because it is clear. The other is that where, for example, Coverite, have said that they
11 do not mind everything being disclosed that that should be separately dealt with.

12 MR. WARD: I am in your hands on this, ma'am.

13 THE CHAIRMAN: Whatever order we make is an order for the purposes only of the preparation.
14 When we come to the decision we will have to reconsider what we do?

15 MR. WARD: Yes.

16 MISS ROSE: Mr. Ward, the Schedule that you describe the OFT as being in the process of drawing
17 up, if that sets out the calculation of the penalties as you say, will it not also include, for the
18 purposes of step 3, the total turnover?

19 MR. WARD: Yes.

20 MISS ROSE: But that should not fall within the definition of the protected information, should it,
21 because that is in the public domain?

22 MR. WARD: That is correct, yes.

23 MISS ROSE: So will there be something in the Schedule? At the moment the way this is drafted
24 there is a danger that the undertakings in Part B will attach to those figure which it should not
25 really attach to.

26 MR. WARD: Perhaps it could be dealt with simply by saying in para.2 something to the effect of
27 "save in so far as already in the published version of the Decision, rather than trying to
28 identify precisely what is what at this stage.

29 MISS ROSE: Yes, I think the schedule that you described would be the most helpful document, but
30 there needs to be something to narrow the definition of what is protected.

31 THE CHAIRMAN: One way around this would be to have two schedules, one which is an open
32 schedule, which has the open material on it, and the other one which is the confidentiality
33 schedule, so that everybody knows what is open and what is not.

34 MR. WARD: Yes.

1 THE CHAIRMAN: Well why do we not do it that way? Yes?

2 MR. WARD: So one schedule simply to reflect what is in the published Decision and then a second
3 schedule filling in the blanks?

4 THE CHAIRMAN: Yes. Then everybody knows in the confidentiality ring what is confidential and
5 what is not.

6 MR. WARD: Yes, thank you.

7 THE CHAIRMAN: Mr. Robertson, are you happy with the way ----

8 MR. ROBERTSON: We are happy to proceed on the basis of this draft order subject to those
9 amendments.

10 THE CHAIRMAN: Subject to us making it?

11 MR. ROBERTSON: Yes.

12 THE CHAIRMAN: What about Coverite?

13 MR. ROBERTSON: Coverite?

14 THE CHAIRMAN: The point that I was making just now that Coverite, as I understand it – have
15 you seen the answers to the letters?

16 MR. ROBERTSON: No, hence my blank look.

17 THE CHAIRMAN: I saw your face, that is why I asked. They have been sent out.

18 MR. ROBERTSON: Perhaps while we are getting to the bottom of that can I just deal with the
19 point that you raised about documents in the bundles that you have not being in chronological
20 order. The way we propose to deal with that, if you are happy for us to do so, is to produce a
21 separate ‘core’ bundle of documents, in chronological order and we will do that by agreement
22 with the OFT. That means that when we have witnesses being cross-examined every single
23 bundle of documents to which they can then refer ----

24 THE CHAIRMAN: Which are relevant, because **these** will contain things which are not relevant.

25 MR. ROBERTSON: Absolutely, the relevant core documents.

26 THE CHAIRMAN: So we want to make an order that instead of “4”, who is going to do it, the OFT
27 or you?

28 MR. ROBERTSON: In terms of drafting this Mr. Ward has undertaken the drafting of it so far.

29 THE CHAIRMAN: No, I do not mean the drafting, I mean ----

30 MR. ROBERTSON: Producing the bundle? We will produce the bundle.

31 THE CHAIRMAN: In the Makers’ Appeal Makers to produce an agreed bundle of all documents
32 relied upon. Then we can cross out up to “the notices of appeal”?

33 MR. ROBERTSON: Yes. “To produce an agreed bundle of all documents relied on in
34 chronological order, earliest date first.” Yes?

1 MR. ROBERTSON: Yes.

2 THE CHAIRMAN: By 4 p.m. on 14th July, that gives everybody a week – that is all right is it not?

3 MR. ROBERTSON: Yes.

4 THE CHAIRMAN: Because then you will be able to use that for your skeletons?

5 MR. ROBERTSON: Yes.

6 MR. BLAIR: And “relied on” means relied on by either or both parties to this Appeal?

7 MR. ROBERTSON: Yes.

8 THE CHAIRMAN: It is an agreed bundle.

9 MR. ROBERTSON: Yes.

10 THE CHAIRMAN: “... an agreed bundle of all documents relied upon”, do I have to say
11 “numbered”, or does that ----

12 MR. ROBERTSON: I think that is implicit that we will make sure that it is paginated.

13 THE CHAIRMAN: That means that we will not have to look at your six files?

14 MR. ROBERTSON: Well you will need them because we may be referring, for example, to the
15 Decision.

16 THE CHAIRMAN: Yes, but apart from that?

17 MR. ROBERTSON: Yes . Sorry, if I can just take instructions? (After a pause) It has just been
18 pointed out to me that of course with the witnesses, they will be taken to their witness
19 statements which have the documents to which they referred annexed to their witness
20 statements.

21 THE CHAIRMAN: Do not worry, what you can do, as long as you know where they are you can
22 just remark the numbers on their witness statements.

23 MR. ROBERTSON: I think it means we are going to have to produce a substitute file of witness
24 statements for the Tribunal with the cross references inserted to the core bundle.

25 THE CHAIRMAN: I was wondering if we could save you that expense.

26 MR. ROBERTSON: That is what we were wondering as well.

27 THE CHAIRMAN: I wonder if you could do it by an index which we have beside us?

28 MR. ROBERTSON: My experience is that it is usually easier to have the cross-references there on
29 the document so you know they can be easily turned up rather than having to turn back to an
30 index and then do that, you cross refer in that way.

31 THE CHAIRMAN: It is quite an expense – how many witness statements are there?

32 MR. ROBERTSON: There are three witness statements, none of them are long, and none of them
33 have voluminous documentation.

1 THE CHAIRMAN: You would not have to do anything about the documentation; you would only
2 cross reference it to the new bundles.

3 MR. ROBERTSON: There is not a lot of cross references to be made.

4 THE CHAIRMAN: So it is only a matter of what – 30 or 40 pages, or something?

5 MR. ROBERTSON: I think it might be nearer 60 or 70. It is not a huge task.

6 THE CHAIRMAN: Then they will put the number of the cross-reference to the new number.

7 MR. ROBERTSON: Yes, “Core bundle”, “Page” – I think that is the sensible way of doing it.

8 THE CHAIRMAN: Yes, if there are only 60 pages.

9 MR. ROBERTSON: Yes, I think it is a small item of extra expense.

10 THE CHAIRMAN: And possibly you do not need to do 10 copies of that.

11 MR. ROBERTSON: We need to make sure that everyone who needs one has got one.

12 THE CHAIRMAN: You need at least four.

13 MR. ROBERTSON: We will make sure that everyone who needs to use the bundle for the purpose
14 of the hearing has it.

15 THE CHAIRMAN: (After a pause) We can manage with four in here if that saves a lot of expense.

16 MR. ROBERTSON: We will consider that at the time. There is one further point that has been
17 made to me about the core bundle. Again, it is just a pragmatic one. We are going to produce
18 that by the 14th July. That means we are going to need to know what the OFT’s additional
19 documents are that they rely upon by 7th July.

20 THE CHAIRMAN: Is that all right?

21 MR. WARD: I am sure it is.

22 THE CHAIRMAN: If I put it in the order, or ----

23 MR. ROBERTSON: I think probably for the sake of clarity it ought to go into the order.

24 THE CHAIRMAN: “In the Makers’ Appeal the OFT to ...” do they have to give you copies of those
25 documents?

26 MR. ROBERTSON: I think it is probably easiest just for the sake of clarity if they just serve us with
27 the documents, copies of the additional documents upon which they propose to rely.

28 THE CHAIRMAN: “OFT to serve Makers with any documents in addition to those contained in the
29 bundles served by Makers with its notice of appeal, by Friday, 7th July?”

30 MR. ROBERTSON: Yes.

31 MR. WARD: May I just address you briefly on that date. It would be a huge help to me personally
32 to have a couple of extra days, in fact, as for the whole of next week I am going to be involved
33 in a trial, and I would like to turn my own attention to what documents would be included if

1 we were to get the documents to Makers' solicitors by, say, mid-day on the Wednesday, and I
2 would be very surprised if there were more than a handful of documents in any event.

3 THE CHAIRMAN: That is the 12th, is it?

4 MR. WARD: Yes, for the bundle to be produced by the Friday, that would be a big assistance.

5 MR. ROBERTSON: Just logistically I am told that we would prefer the following Monday then as
6 being our deadline to produce the core bundle, that is Monday 17th July?

7 MR. WARD: I do not object to that of course.

8 THE CHAIRMAN: But you have to produce your skeleton arguments by the 21st?

9 MR. ROBERTSON: That is correct.

10 THE CHAIRMAN: Is it going to work?

11 MR. ROBERTSON: That will be fine.

12 MR. WARD: It certainly will not be fine for us.

13 THE CHAIRMAN: So by Wednesday, 12th July, and then by Monday ----

14 MR. ROBERTSON: I think my learned friend when he said "12th July", he said mid-day on 12th
15 July.

16 THE CHAIRMAN: Yes, fine. Mid-day, 12th July, and then what is in here as being 4(b) but we will
17 re-number is "Monday, 17th July".

18 MR. ROBERTSON: Yes, again 4 p.m. on that, it just gives the full day.

19 THE CHAIRMAN: Yes. I do not need to do anything about the witness statements, you will deal
20 with that?

21 MR. ROBERTSON: We will deal with that.

22 THE CHAIRMAN: We are dealing with the Coverite position?

23 MR. ROBERTSON: Yes.

24 THE CHAIRMAN: There is a letter from the OFT to the Competition Appeal Tribunal, but copied
25 to your solicitors.

26 MR. ROBERTSON: Unfortunately we do not have our correspondence files here with us.

27 THE CHAIRMAN: Right, we will give you a copy of the letter. (Document handed to Mr.
28 Robertson)

29 MR. ROBERTSON: Yes, the position in relation to Coverite is that they have consented to
30 disclosure of the information and therefore it does not need to come within the definition of
31 protected information.

32 THE CHAIRMAN: Is the answer that that goes into the open schedule? Since we are doing two
33 schedules that can go into the open schedule?

34 MR. WARD: Certainly.

1 MR. ROBERTSON: That seems sensible.

2 THE CHAIRMAN: Yes?

3 MR. ROBERTSON: Yes.

4 THE CHAIRMAN: And what about Prater's? Is Prater's going to go into the open schedule,
5 because you said that you do not mind?

6 MR. RAYMENT: I am sorry, ma'am, I am not with you at the moment.

7 THE CHAIRMAN: I think Prater has said that they are happy for the matters to be disclosed, or was
8 it only to be disclosed to Makers?

9 MR. ROBERTSON: We do not have an issue about confidentiality on this point.

10 THE CHAIRMAN: Well apparently Prater has no issue on confidentiality either.

11 MR. ROBERTSON: In that case it will be fine for that to go in the open schedule, I imagine.

12 MR. RAYMENT: The open schedule is getting longer.

13 THE CHAIRMAN: Yes. That is right, is it, that you have no issue?

14 MR. ROBERTSON: Yes.

15 THE CHAIRMAN: Makers is in the confidentiality schedule, what is the position between Makers
16 and Prater?

17 MR. ROBERTSON: Our information can go into the open schedule.

18 MR. BLAIR: We are talking about the open schedule, I just wonder whether it would be helpful if
19 the four firms that you did not write to, if the open figures relating to them also appeared in
20 that schedule, in case it was ever relevant?

21 MR. ROBERTSON: In the open schedule?

22 MR. BLAIR: In the open schedule.

23 THE CHAIRMAN: But only the open figures.

24 MR. BLAIR: Only the open figures.

25 THE CHAIRMAN: The non-confidential figures, that stuff that is in the public domain.

26 MR. BLAIR: Just to save us going back to the Decision.

27 MR. WADE: I had understood that to be the suggestion. In other words, anything which his in the
28 decision about those firms will go into the open schedule.

29 MR. BLAIR: Thank you.

30 THE CHAIRMAN: Maybe on that basis we ought to revisit the wording?

31 MR. WARD: Yes.

32 THE CHAIRMAN: "The OFT to disclose to the solicitors for Makers and Prater two schedules
33 containing the non-confidential and the confidential figures respectively." Does that work?

34 MR. WARD: Yes.

1 THE CHAIRMAN: "... used in calculation of the penalties imposed in its Decision. Two schedules
2 A and B. Schedule B to be confined to the External Advisers." Then we have to redefine
3 'protected information'?

4 MR. WARD: Yes. Such information as appears only in Schedule B.

5 THE CHAIRMAN: Yes, "Protected Information being the information contained only in Schedule
6 B. Is there anything else?"

7 MR. ROBERTSON: There is nothing else on behalf of Makers.

8 THE CHAIRMAN: Is there anything else on behalf of Prater?

9 MR. RAYMENT: We have one relatively minor matter that we would like to raise. I have raised it
10 with Mr. Ward. In the early stages of June we raised an issue that if the OFT's defence was
11 going to be to rely on methodology in relation to penalties that it had applied in other decisions
12 we might request disclosure of figures in relation to those other decisions that would allow us
13 to verify whether that was in fact the case. In relation to the North East decision we have
14 identified three companies which we think provide appropriate comparators with our own
15 situation which would allow us to carry out that verification process. Our first thought was
16 that we would invite the OFT to consider writing to those companies to see whether they
17 would be prepared to disclose that information. All three companies are in liquidation at the
18 moment and it seems likely that the information in question probably falls outside what the
19 Tribunal would normally regard as confidential because of the age of the figures. But Mr.
20 Ward has indicated that his client is not prepared to do that, so that presents us either to invite
21 you to invite them to write, or we could write ourselves to the liquidators I think it would be to
22 see what response we got and, depending on that, we might raise the matter with the Tribunal
23 depending on how we got on.

24 THE CHAIRMAN: You have nothing to say?

25 MR. WARD: Well we do actually on this because in essence we are not very enthusiastic about the
26 idea of this Appeal drawing in a consideration of the North East penalty roofing decision
27 which was, I believe published in March 2005. It is absolutely right, as Mr. Rayment says, that
28 in the annex to the defence we explain that the method used in this case has been used in other
29 roofing decisions and that part of the reason for that was ensure consistency of approach. But
30 it does not follow from that that it is necessary or appropriate for the CAT in this case to revisit
31 those decisions and excavate the arithmetic that went into the reasoning behind those decisions
32 as well. We respectfully submit that the appropriate course is to concentrate on the penalties
33 actually imposed in this particular decision which are sufficient to enable the CAT to either
34 accept or reject the grounds of appeal that have been advanced.

1 MR. RAYMENT: Ma'am, I would only respond to say that the problem here comes from the
2 paucity of explanation about the way that the stage 3 figures were calculated. The OFT has
3 sought to fill that gap by saying "This is well established, this is the way we have done it in
4 these previous decisions and hereto" and we think that the cases we have identified provide a
5 ready comparator which could help shed light on what has been going on. It is true, as Mr.
6 Ward says, that there are other parties to the decision with which we are primarily concerned in
7 the case which this exercise can also be carried out on. But for various reasons my solicitor,
8 who is more versed in the detail at this stage than I, says that some of those other companies,
9 particularly ones that have been involved in payments which we also have been found to have
10 engaged in, some of those companies with which we would be making a comparison in our
11 decision are slightly complicated – companies like Rock and Briggs, the number of
12 infringements and so on, complicate the comparison – whereas these are much more straight
13 forward.

14 THE CHAIRMAN: You are going to compare yourself with effectively nine other people to start
15 with in this decision.

16 MR. RAYMENT: Well that is the process we are going to go through.

17 THE CHAIRMAN: Yes, to have to go and extend that to other decisions.

18 MR. RAYMENT: It is only this limited sample from this other decision that we have identified. I
19 hear that Mr. Ward is unenthusiastic but I do not think he would actually seek to say that we
20 should not approach the liquidators in these cases.

21 (The Tribunal confer)

22 THE CHAIRMAN: Mr. Rayment, we are not enthusiastic about this either. I do not think we can
23 stop you writing if that is what you choose to do, and if you then decide you want to use the
24 information that you get then you are going to have to apply probably to amend, are you not?

25 MR. RAYMENT: That would be correct.

26 THE CHAIRMAN: And then we would have to deal with it at that stage.

27 MR. RAYMENT: Yes.

28 THE CHAIRMAN: But you do have nine other companies that you are going to compare yourself
29 with and to go outside that and start comparing with other decisions etc., is extending it rather
30 a long way.

31 MR. RAYMENT: Well I think we have heard what the Tribunal's view is on that and if we seek to
32 amend we will do so with good grounds, and you would obviously want to see the information
33 before you gave permission for that to happen. It can all be done in a controlled manner, I
34 think.

1 THE CHAIRMAN: Yes. One would have to show that it was an exceptional situation really, and
2 that therefore the right course is to amend.

3 MR. RAYMENT: We hear what you say.

4 THE CHAIRMAN: Is there anything else? That leaves the fact that we have to provide a reasoned
5 decision in relation to the confidentiality in order that everybody knows. Is the right course is
6 that I will do that in writing, because we do not have to name everybody. That will come in
7 due course.

8 In relation to para.5 on the order, on the question of the Court of Appeal appeals, since it is
9 only the OFT who is actually a party to those other appeals, and although I understand DLA
10 know all about it but it is in another case, possibly our order ought to read: "The OFT to
11 update the Tribunal and each of the parties as to the availability of the currently pending
12 Judgment of the Court of Appeal in the appeals from the Tribunal's judgments in Cases ..."
13 etc., "... and the parties to file any submissions." The OFT and DLA ought to be apprised of
14 the same information, but I think for the purposes of our order it is better that it just says the
15 OFT. One would hope that by the 14th July one would in the circumstances get an idea of
16 whether or not the Court of Appeal were in a position to deliver a Judgment before the end of
17 term.

18 MR. WARD: At the very least I will ask my clerks to phone the Judge's clerks a day or two before
19 then and find out if any clue can be extracted.

20 THE CHAIRMAN: Yes, but not putting any pressure on the Court of Appeal but merely knowing
21 for the purposes of whether we are effective or not.

22 MR. WARD: Yes.

23 THE CHAIRMAN: I hope that we can be effective. We have the float in that week. We would
24 prefer to hear these cases on Monday and Tuesday, but if, because of the Court of Appeal
25 decision, that is not possible but we are going to have a decision then we will hear them on
26 Thursday and Friday.

27 MR. ROBERTSON: We have made sure that our witnesses have kept that week free.

28 THE CHAIRMAN: If the situation is that we do not have a judgment or judgments, we assume that
29 those judgments then will not be available until after 1st October?

30 MR. ROBERTSON: I am sure that Mr. Ward and I will make sure that our clerks, if they are given
31 information it is not going to be handed down before the end of term, we will inquire if there
32 is any prospect of them being handed down during the vacation.

33 THE CHAIRMAN: Yes, but in any event I think this Tribunal cannot sit until probably the third
34 week in October.

1 MR. ROBERTSON: Is that after the first week in August.
2 THE CHAIRMAN: I think we have a problem in August, I do not know if we can find two days
3 between all of us.
4 MR. ROBERTSON: Well the two weeks that were going to be *MasterCard* have certainly just gone
5 out of my diary.
6 THE CHAIRMAN: They were September though were they not?
7 MR. ROBERTSON: The last two weeks in September.
8 THE CHAIRMAN: We cannot sit the last two weeks in September unfortunately – not at the
9 moment, anyway. Anything else? Thank you for the order and for dealing with that between
10 the two hearings, that was very helpful. Thank you very much.
11 (The hearing concluded at 3.15 p.m)