

IN THE COMPETITION

Case No. 1104/6/8/08

APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London WC1A.2EB

Thursday 31 July 2008

Before:

THE HON. SIR GERALD BARLING
(President)
PROFESSOR JOHN PICKERING
MR. GRAHAM MATHER

Sitting as a Tribunal in England and Wales

BETWEEN:

TESCO PLC

Applicant

and

THE COMPETITION COMMISSION

Respondent

*Transcribed from the Shorthand notes of
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CASE MANAGEMENT CONFERENCE

APPEARANCES

Mr. Mark Hoskins and Mr. Julian Gregory (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of the Applicant.

Mr. Daniel Beard and Mr. Ewan West (instructed by the Treasury Solicitor) appeared on behalf of the Respondent.

Mr. Tim Ward (instructed by Slaughter & May) appeared on behalf of the potential Intervener, Asda Stores Limited.

Miss Kassie Smith (instructed by Lovells LLP) appeared on behalf of the potential Intervener, Waitrose Limited.

Mr. Robert Donoghue and Miss. Niamh Grogan (instructed by S.J. Berwin LLP) appeared on behalf of the potential Intervener, Marks & Spencer Limited.

Miss Elisa Holmes (instructed by Edwin Coe LLP) appeared on behalf of the potential Intervener, Association of Convenience Stores.

1 THE PRESIDENT: Good afternoon everyone. We have a few items on the agenda but I am
2 hoping it will not take too long. I think we will start, if we may, with location and get that
3 out of the way. As far as I can see no one is objecting to this case being treated as
4 proceedings in England and Wales, and it shall be so treated.
5 Can we deal then with the question of the interventions? We have four applications and as
6 far as three of them are concerned: Asda, Marks & Spencer and Waitrose, as far as we are
7 aware no one has objected to any of those being given permission to intervene, and unless
8 anybody leaps to their feet with some new point or objection we are minded to grant
9 permission for them on the usual terms that their legal advisers liaise with each other. We
10 are also assuming that they are all supporting the Competition Commission – I think the
11 only proposed intervener who did not make that clear one way or the other was Asda, but
12 assuming you are all supporting the Competition Commission then liaise with the
13 Competition Commission as well with a view to ensuring there is no duplication of written
14 or oral submissions, because there are rather a lot of interveners and, subject to anything
15 anybody wants to say, I do not think we are minded to try and restrict you in any other
16 way, for example by representation or written submissions only. We envisage that each
17 will be represented separately but we are very, very anxious to ensure that we do not have
18 any waste of time both in reading the submissions and obviously during the hearing.

19 MR. HOSKINS: Sir, could I raise one point concerning the interventions? It is something we
20 raised in the written submissions. We are not asking for any formal order now but it is
21 something I would like to float with the Tribunal now everyone is here. Obviously the
22 interveners have not seen the content of the application; we were slightly concerned I think
23 in all requests for permission to intervene one of the things said to be offered is insight into
24 the market which the Competition Commission might not have, which suggests to us
25 factual evidence. The point I was going to make was simply that given the nature of our
26 application we are very keen that this should not become – if I can use a colloquialism –
27 bogged down, because the danger is if one of the interveners puts forward a particular fact,
28 it might not be particularly relevant, but of course the trouble is Tesco is probably going to
29 feel obliged to say “Actually we do not agree with that fact, we think ...” and I am just
30 keen to avoid that situation which takes us off into slightly irrelevant ground.

31 THE PRESIDENT: I understand that, Mr. Hoskins, and we saw what you had said about it. I
32 think we do not feel we need to make any specific ruling, but this is a judicial review and
33 the scope for putting in factual material is extremely limited simply because it is a judicial
34 review and because the grounds of the judicial review are, as far as we can judge, to some

1 extent prescribed by the report itself. So the scope for additional factual material is likely
2 to be very limited and we certainly discourage it unless it is thought to be absolutely
3 necessary and there is a justification for it, which I do not try and predict what that could
4 be, but I think that is as far as we will go.

5 MR. HOSKINS: That is all I was seeking, that sort of indication.

6 THE PRESIDENT: Certainly. Before we come on to how we deal with the documents in
7 respect of the interveners, there is a fourth application by the Association of Convenience
8 Stores. Miss Holmes, you represent the Association and your application, as far as we can
9 see, was out of time. It was registered by the Tribunal Registry on 24th July, the last date
10 for applying to intervene was 5 p.m. on 23rd, and so far as we are aware although we have
11 received your application and your subsequent skeleton argument we have not seen any
12 explanation for the failure to comply with the Tribunal Rules, or an application to extend
13 time in fact, but may be you are going to make that?

14 MISS HOLMES: I am indeed going to make that application, Sir. I do apologise you have not
15 received that application nor an explanation. I am instructed the explanation is simply a
16 miscalculation and my clients were going around gathering advice and so forth,
17 information from their stakeholders and they simply miscalculated the date, Sir, and were a
18 day late; there is no further explanation than that. In those circumstances we do seek
19 permission to apply – I think we were one day out of time – one day out of time. In those
20 circumstances we say there is no prejudice to any of the other parties arising out of that, not
21 that of course the Tribunal would want to readily depart from its Guidelines, but in
22 circumstances where there are in any event three other interveners in our submission there
23 is no prejudice to the other parties and we do seek permission to intervene a day out of
24 time. We do say in addition, of course, that we have good grounds for intervening which I
25 will come to if you are minded ----

26 THE PRESIDENT: Well I think you have set those out in your submissions, have you not?

27 MISS HOLMES: Yes.

28 THE PRESIDENT: Perhaps we should hear the other parties on the question of time first before
29 we take a view on that. Does anyone else want to add anything?

30 MR. HOSKINS: I am probably the one making the most noise against the application. I do not
31 have it to hand, but the question arises in my mind as to whether the delay i.e. the time
32 limit is not actually published on the Tribunal website when the notification of the appeal
33 is put on the website, but I do not know the answer to that.

34 THE PRESIDENT: Where is what?

1 MR. HOSKINS: Well the interveners know about this appeal because of the publication and I
2 am just querying whether the deadline is not actually on that.

3 THE PRESIDENT: As I understand it, it does not actually specify the actual day but it says you
4 have three weeks from the day of publication.

5 MR. HOSKINS: It says “A request for permission to intervene should be sent to the Registrar so
6 this is received within three weeks of the publication of this notice.” Then at the bottom it
7 says “Published 2nd July”. Well, with all due respect, there is not much scope for
8 miscalculation, it is very clear, so if that is the explanation proffered it is not good enough.
9 I think it is worth referring to the CAT’s previous practice in relation to intervention.

10 THE PRESIDENT: Well someone very kindly provided us with a bundle in which there were a
11 couple of cases – is that what you are referring to?

12 MR. HOSKINS: It is, absolutely, Sir, yes.

13 THE PRESIDENT: Speaking for myself I glanced at those.

14 MR. HOSKINS: You will see in the past the approach of the Tribunal to these applications to
15 intervene.

16 THE PRESIDENT: It is very strict.

17 MR. HOSKINS: It is very strict, absolutely. In the *Cityhook* case, behind tab 4 of this bundle, in
18 particular para. 2, the Chairman ruled:

19 “It is no excuse that our Rules have not been properly read and implemented: nor
20 is it any excuse that the party’s legal representatives do not organise their
21 timetable so as to make sure that they comply with the Rules of court and do not
22 put their clients in jeopardy – even if the application had not been made by fax
23 they were three minutes’ late.”

24 That shows the level of strictness, but there is also the focus that it is no excuse if the
25 party’s legal representatives get things wrong or misread things, so even if there was a
26 misreading you cannot say “poor old client, it is the party’s legal representative’s fault”,
27 and with respect Edwin Coe are experienced before this Tribunal, and if one turns to the
28 previous page of *Cityhook* and looks at the appearances they were one of the solicitors in
29 the case and so they are well aware of this ruling. They were not for the party who was late
30 in *Cityhook*.

31 THE PRESIDENT: They were eight days late in that case, were they not?

32 MR. HOSKINS: They were three minutes late and eight days late because there were two
33 different applications out of time. But you cannot blame it on your legal representative,

1 and Edwin Coe are experienced in these matters and they are aware of how severe the
2 Tribunal's approach is, they were in *Cityhook*.

3 So in terms of an excuse proffered, there was not one proffered in the original request. We
4 then in our submission said: "Extraordinary, no excuse, no explanation given". There was
5 no excuse or explanations given in the submissions this morning, it is only this afternoon
6 for the first time when prompted, when pushed, that we get an excuse: "we miscalculated";
7 it is very thin and it is not a sufficient excuse.

8 I appreciate we are dealing with excuse explanation timing now. I think probably the
9 proper approach, given there is an overall discretion, it might be that this is wrapped up and
10 looked at in the round, because in deciding whether to grant an extension of time the
11 Tribunal may want to look and say: "How strong is the "sufficient interest"? We will come
12 on to that, and will say: "Has there been any shown? At best we do not accept this and it
13 would be very weak". But the level of excuse explanation we say should weigh very
14 heavily given the Tribunal's practice.

15 Sir, I will leave "sufficient interest" because you indicated we should deal with that
16 separately, unless you wish me to deal with it now?

17 THE PRESIDENT: I do not know whether it would be better to hear Miss Holmes on that first.

18 (The Tribunal confer)

19 THE PRESIDENT: I think we might hear the way Miss Holmes puts sufficient interest and then
20 let you respond to that. Does anyone else want to say anything? I think we will hear Miss
21 Holmes first and then anybody else can chip in afterwards.

22 MISS HOLMES: I am grateful, Sir. Sir, I am pleased to say I agree with my learned friend that
23 this is a matter that should be considered in the round and that is in conjunction or at the
24 same time as considering the level of interest in this case.

25 You have seen, Sir, our written submissions and I do not propose to go over them, but
26 merely to emphasise a few points. In response in particular to my learned friend's written
27 submissions opposing our intervention, we say the fact that the Commission found that
28 there was no adverse effect on competition arising in the market for grocery stores is really
29 wholly irrelevant. The question for this Tribunal and the question in relation to
30 intervention is whether or not my clients have a sufficient interest in the appeal and the
31 nature of the grounds of appeal.

32 In this case the appeal is quite clearly concerning a particular remedy recommended by the
33 Commission in relation to planning and we say that there simply can be no dispute that
34 independent convenience stores have an interest in that remedy being implemented and

1 indeed how that remedy is being implemented and so forth. Indeed, particular aspects of
2 the recommended remedy apply not only to large supermarkets, but to all supermarkets and
3 there are at least two aspects of the proposed remedy that apply in that way.

4 Further to that, Sir, we do bring, of course, a unique and independent, different view.

5 There are three other interveners in this case; they represent large retailers and those
6 stakeholders in my client of course represent independent retailers. The Commission
7 specifically found in at least two different areas, or in two different ways, that smaller
8 retailers were affected by the planning regime as it stands now, and the Commission found
9 that in two separate places when it was addressing the issue of the planning regime, and I
10 have drawn the Tribunal's attention to those in written submissions, but just for the sake of
11 emphasising the Commission concluded that the current planning regime and its
12 application did, in fact, act as a barrier to entry or expansion in a significant number of
13 local markets by imposing costs and risks on smaller retailers. Together with that they also
14 found that generally there were considerable restraints placed on mid-sized and
15 convenience stores, although it is true that it is said that such constraints were more limited
16 than those placed upon new, larger grocery stores.

17 In our submission there can simply be no debate that those stakeholders in my client
18 certainly have considerable interest in the outcome of these proceedings. They do bring a
19 unique voice and certainly it is not proposed that any submissions made by other
20 interveners will be replicated. In the absence of having seen the notice of appeal, the
21 grounds of appeal, it is difficult to know at this stage and indeed, if anything, ACS would
22 add to submissions made by other parties and indeed it is certainly not my client's intention
23 to provide superfluous submissions in that respect and we would, of course, liaise with the
24 Commission and, indeed, the other interveners in this respect.

25 We say, Sir, that the scope of our participation in that respect should be determined once
26 the issues have been identified, but certainly in theory there can be no doubt that the ACS
27 has an interest in these proceedings.

28 Responding to one or two points made by my learned friend, this is indeed a case of one
29 day late, it is not a case of eight days late. It is true that the Chairman in the matter referred
30 to by my learned friend commented about a number of minutes late, but in our submission
31 it should be taken into account by this Tribunal that it is one day and not eight days, and in
32 the circumstances of this case there is no prejudice to any other parties.

33 Those are my submissions, Sir.

1 THE PRESIDENT: Thank you very much. Now, Mr. Hoskins, do you want to deal with
2 sufficient interest?

3 MR. HOSKINS: “No prejudice to other parties”, well an unnecessary intervention creates a
4 serious risk of complicating the proceedings and adding to time and money spent. One
5 only has to look at the room today to see that every moment is going to be expensive in this
6 case, so certainly in terms of prejudice unnecessary intervention does create potentially
7 very expensive prejudice.

8 In relation to sufficient interest, the suggestion that the finding by the Competition
9 Commission that there is no adverse effect on competition in the whole grocery stores
10 market is wholly irrelevant; with respect, it is simply the wrong way around. This is an
11 appeal against a particular recommendation and the recommendation applies only to the
12 market which involves larger grocery stores and which excludes convenience stores. I think
13 the easiest way for me to take it is probably to take the ACS’s written submissions because
14 there are certain points of the report I would like to take you to.

15 THE PRESIDENT: The ones that came in today?

16 MR. HOSKINS: The ones that came in this morning, absolutely, and if you could have the
17 report open as well – file 2 in the files that we provided. First of all, one can see what the
18 role of the ACS was in the investigation, given that it is called “The Association of
19 Convenience Stores”, it is not surprising to learn that its role was focused on convenience
20 stores, and one sees the Commission’s response to the submissions made by the ACS, para.
21 6 of the summary, which is at p.9 of the report. If I could ask you to read para. 6, please?

22 THE PRESIDENT: (After a pause) Yes.

23 MR. HOSKINS: So a considerable body of evidence from the ACS about “please do something
24 for convenience stores” and, Sir, we do not think there are sufficient concerns in relation to
25 convenience stores to take any steps. So that is really what the ACS’s role was and that is
26 where it got to with the Commission.

27 We then find a sort of attempt to play off certain bits of the report but, with respect, taken
28 out of context. Paragraphs 4 to 5 of the ACS submissions refer to the fact that the
29 “Competition Commission concluded that the [relevant] geographic market for its market
30 investigation was local”. That is absolutely correct, that is para. 4.134 of the Report. Of
31 course, what that fails to take account of is that the Commission also concluded that there
32 were three distinct product markets, and each distinct product market in the geographical
33 scope is local. So with respect one cannot simply say that because the geographical
34 markets are local you can ignore the fact that there were three separate product markets.

1 What is also important is that the competition test remedy is intended to address an AEC in
2 relation to the market for larger grocery stores, and one sees that – if one stays in the
3 summary – first of all at para. 12. Paragraph 12 is the identification of the three individual
4 product markets that I have just referred to. The first one:

5 “(a) for larger grocery stores, other larger grocery stores, (i.e. stores larger than
6 1,000 to 2,000 sq. metres) are in the same product market”
7 and that market is local.

8 “(b) for mid-sized grocery stores, other mid-sized and larger grocery stores are in
9 the same product market ...”
10 and that market is local, and

11 “(c) for convenience stores, all grocery stores (i.e. convenience stores, mid-sized
12 and larger grocery stores) are in the same product market.”

13 And again that market is local – but three separate product markets.

14 Paragraph 31 in the summary:

15 “In terms of the three major product markets that we identified, we concluded
16 that:

17 * for larger grocery stores [the first product market] an AEC arises from the
18 planning system, which necessarily constrains overall entry and also acts in
19 favour of the existing large grocery retailers ...”

20 and it is the planning system that the competition test is obviously intended to address, so I
21 will leave controlled landsites out of it.

22 Then:

23 “* for mid-size and larger grocery stores, an AEC arises from controlled
24 landsites,”

25 but not from the planning issue.

26 “* for all grocery stores, limited barriers to entry or expansion mean we have not
27 identified an AEC.”

28 So no AEC relevant to the competition test, except in relation to the first product market -
29 larger grocery stores - to which convenience stores do not belong.

30 Then para. 39 an explanation of the remedy of the competition test. Of course, by
31 definition, the Competition Commission can only put forward a recommendation to
32 address an AEC that it has found.

33 THE PRESIDENT: That is your point, is it not?

1 MR. HOSKINS: Exactly, the competition test therefore relates solely to the product market
2 including larger grocery stores and excluding convenience stores. That is clear, I do not
3 think there would be any contention that s.134(4)(b) of the act. When one looks at what
4 this application for review is about it is about the recommendation of a competition test
5 which relates solely to a market in which convenience stores do not feature, and we say
6 that there has simply been no showing of a sufficient interest, it has not even been
7 articulated once one recognises that.

8 Paragraph 6, first sentence of the ACS submissions:

9 “The Commission found that the planning system placed constraints on entry by
10 mid-sized grocery stores and convenience stores, although such constraints were
11 more limited than those placed upon new larger grocery stores.”

12 Then there is a reference to para. 29 of the summary: Paragraph 29:

13 “We found that the planning system, in pursuing the broad-based objective for
14 which it is intended, necessarily constrained the development of new larger
15 grocery stores, but placed more limited constraints on entry by mid-sized grocery
16 stores and convenience stores as well as extensions to existing larger grocery
17 stores.”

18 So any effects were more limited and, of course, the punch line, we have already seen it, is
19 para. 31. Yes, there were more limited constraints but they were not sufficient to give rise
20 to an AEC in that market (para. 31, third bullet point). So with respect the suggestion, the
21 reliance on a statement “more limited constraints” therefore there are constraints on
22 convenience stores, you have to read the punch line, and that pulls the legs away from this.

23 Paragraph 6, second sentence:

24 “It is clear that convenience stores have an interest in the planning remedy
25 imposed by the Commission, since the planning rules and practice have at least
26 some impact on barriers to entry for convenience stores.”

27 Well, whilst it is certainly true that convenience stores are subject to the general planning
28 system – there is no doubt about that - they are wholly outside the scope of the measure
29 which is at issue in these proceedings. The proposed competition test would only apply to
30 larger stores in excess of 1000 sq. metres.

31 THE PRESIDENT: Mr. Hoskins, could they not be affected by whether the competition test is
32 imposed or is not? Could it not have some knock on effect on convenience stores?

1 MR. HOSKINS: Well it has not been put that way. The irony is, of course, that if the
2 competition test is about introducing more competition into the local market, taken
3 generically including all three product markets will be bad for the convenience stores.

4 THE PRESIDENT: Yes.

5 MR. HOSKINS: If the competition test, as the Competition Commission suggests, is intended to
6 bring in more competition then why does the ACS want to come in in support of the
7 Competition Commission? It is supporting a remedy that would have an adverse effect on
8 its members.

9 THE PRESIDENT: Well let us take it a step back, because we have to have a “sufficient
10 interest”. The point I am interested in putting to you is whether, directly or indirectly the
11 existence or otherwise of a competition test could have an impact on convenience stores?

12 MR. HOSKINS: Commercially it might do but the effect would be detrimental and I do not
13 know why the ACS has not put it that way, because obviously when I went through this I
14 thought how would I put it if I was acting for the ACS? The answer probably is because
15 there is that terrible tension in their position. They say they want to come in in favour of
16 the competition test, and the competition test if it works in the way the Competition
17 Commission suggest, of course that is what our application is about ----

18 THE PRESIDENT: Maybe they think it will not. Maybe they think it will have some perverse
19 effects.

20 MR. HOSKINS: Sir, you are very kind suggesting what the ACS might say, I can only go on
21 what they have put forward as an explanation, they have not put forward that potential
22 commercial effect as an explanation and, as I have explained, if they were to there would
23 be a terrible tension between the request to be on the side of the Competition Commission
24 and an interest stated in that way.

25 THE PRESIDENT: Well they do, in that last sentence that you have quoted to us, put it fairly
26 generally do they not:

27 “It is clear that convenience stores have an interest in the planning remedy
28 imposed by the Commission, since the planning rules and practice have at least
29 some impact on barriers to entry for convenience stores.”

30 MR. HOSKINS: “... on barriers to entry for convenience stores”, the competition test has
31 nothing to do with barriers to entry for convenience stores.

32 MR.MATHER: So are you saying in this respect that they have an interest though they have
33 misunderstood the effect?

1 MR. HOSKINS: I am saying they have no interest. I am saying that if they wanted to put an
2 interest forward on a commercial basis in the way that the President suggested might exist
3 they should have done so, but I suggest that the fact they have chosen not to do so when it
4 is fairly obvious that that is the way one could run this, must be a reflection of the fact that
5 they want to come in and support the Competition Commission. There is a terrible muddle
6 going on somewhere in the ACS's thinking.

7 Now, the question for the Tribunal, of course, coming in as an intervener brings an awful
8 lot of obligations because this is a dispute between us and the Competition Commission,
9 certain people can intervene, but if you intervene you have to show a certain amount of
10 rigour. In this case the ACS has been late, it has not provided a proper explanation for
11 being late. It has not itself put forward any reason for having a sufficient interest, and the
12 only one that anyone else trying to help the ACS has come up with does not tally with why
13 they want to intervene, which suggests a terrible muddle on their part. Now, the question
14 for the Tribunal is in your discretion with all those factors is this the sort of intervener you
15 want to let into these proceedings. It is in my client's interest actually to say: "Let us bring
16 the ACS in because it will make things more complicated, it will delay things", and you
17 know why I am saying that because we are going to come later on to Mr. Sumption's
18 availability.

19 We are not interested in artificially making this a muddle, far from it, we want a clean
20 challenge.

21 THE PRESIDENT: What about Miss Holmes's point that they are different? We have three
22 interveners who are all larger retailers, and the ACS, as it were, is seeing things from a
23 different perspective.

24 MR. HOSKINS: Well if they have not established a sufficient interest, or if their case on
25 sufficient interest is very weak; then they say they are different, well what are they going to
26 bring as a different party? Well they are surely going to bring a different view of the facts,
27 so we are into the factual evidence type scenario. It is not clear what is said – para. 8:

28 "ACS is in a position to provide the Tribunal with a unique perspective on the
29 operation of local markets and of the effect of the proposed remedy challenged by
30 the Appellant ..."

31 Well that is factual information because we have the report, we are challenging the report.
32 If the ACS is saying "We are unique, we can give you new factual insights into the local
33 markets" well we do not need it, the Competition Commission has spent two years doing
34 that. Every aspect of your discretion – delay is badly against them, the explanation they

1 have to give for delay is badly against them. Sufficient interest at best very weak. Unique
2 perspective, well do you really want someone coming in with new factual perspective?

3 Answer: no. We say the answer is obvious on that basis, they really struggle on all
4 elements of discretion.

5 As I said when I last looked around the room, we do not want this to be muddled, we do not
6 want this to be dragged back, we do not want money to be spent unnecessarily, we want a
7 clean hit at the Competition Commission if I can put it as boldly as that, and the ACS, the
8 way they have conducted it so far, are threatening to just make a muddle of this. That is all
9 I have to say, Sir.

10 THE PRESIDENT: Thank you very much. Does anybody else want to say anything?

11 MR. BEARD: Just one or two brief points in relation to ACS. Just to clarify, ACS did make
12 certain submissions to the Competition Commission in relation to the competition test
13 itself. It may be worth noting – I will provide the Tribunal with references – para. 11.18,
14 para. 11.39, at which point ACS was agreeing with Tesco on a particular matter; para.
15 11.67 and 11.71. I do not suggest that those are comprehensive and I am also not
16 commenting on the rigour or otherwise of those submissions that were put to the
17 Competition Commission, but I think it is perhaps important that the Tribunal realises that
18 ACS did make submissions about the competition test. Mr. Hoskins may be right, he may
19 be wrong about whether or not those submissions are actually contrary to their best interest,
20 but we would not think that that is a matter which is appropriate to speculate upon in
21 relation to this test. We do not object to their coming into the proceedings on the basis of
22 their interest, they were the trigger for the reference and they did make submissions along
23 the way.

24 As to the matter of timing, we quite recognise the fact that the rules have not been complied
25 with. We consider that that is a matter that the Tribunal must consider, and we leave that to
26 the Tribunal's discretion. We would note just for reference, my learned friend referred to
27 the *Cityhook* decision in the course of which the Chairman, Miss Simmons, did wag a
28 rather stern finger in para. 2 although it did presage in para. 4 that having wagged the finger
29 she did actually let that particular applicant in – in other words, the one that was three
30 minutes late was in, if you read down the judgment the one that was eight days late was not
31 allowed in, so we quite accept the importance of having these rules in place and we think it
32 is important that the judgment cited is recognised in relation to what actually happened
33 there as well. But, as I say, the Commission does not make any further submissions in
34 relation to ACS.

1 THE PRESIDENT: Thank you. Anybody else on that before we give Miss Holmes another
2 shot? Right, Miss Holmes?

3 MISS HOLMES: Sir, just a small point in reply to my learned friend, we quite accept that the
4 Commission found there was no adverse effect on competition in the all groceries market,
5 which of course is the market that included convenience stores, but that is not to the point.
6 Now, Tesco itself has appealed, and the basis for its appeal it says is that the planning
7 remedy – as I have used shorthand to describe the competition test imposed – so says Tesco
8 is not sufficiently related to any adverse effect on competition identified in the report and
9 therefore is beyond the Commission's powers and so forth. In other words, Tesco's very
10 appeal is about that remedy imposed. Now, the question we say for the Tribunal is whether
11 my client, convenience stores, for example have any interest in the effects of that remedy.
12 The Competition Commission itself found – including in para. 39 of the summary referred
13 to by my learned friend – but also in other provisions, that the relevant planning rules and
14 so forth, both the existence of the rules and their application, did have an effect on
15 convenience stores. So there is that interest and there is also obviously the knock-on
16 commercial effect, and that we say goes without saying, but it is acknowledged by the
17 Commission throughout.
18 In short, Sir, the relevant question is whether or not independent stores have an interest in
19 this appeal, not in the Commission's report as a whole, but in this appeal, and this appeal is
20 concerned with the particular remedy imposed, and we say there is simply no doubt – even
21 on the basis of the Commission's report - that convenience stores have an interest in that
22 remedy. The imposition or not of that remedy will affect convenience stores; it will affect
23 their commercial position, it will affect their competitive position.

24 (The Tribunal confer)

25 PROFESSOR PICKERING: Miss Holmes, could I ask you in relation to the argument that you
26 have advanced that convenience stores have an interest in the existence or otherwise of the
27 competition test that is proposed, is one line of your thought process that if the competition
28 test is applied and found to operate against the particular retail group that is proposing to
29 develop a particular site, then are you suggesting that there may not actually be another
30 large retail group that would be interested in taking over that site, and that therefore that
31 may actually bring benefit to some of the convenience stores that are operating within the
32 15 minute isochrone that is referred to in the Competition Commission report?

33 MISS HOLMES: That is certainly one aspect of the effect which my client sees. There are
34 several possible knock-on effects, some of which have been debated, but yes, that is

1 certainly one aspect of the potential effect on my client – or stakeholders in my client more
2 precisely.

3 THE PRESIDENT: We are just going to rise for five minutes to have a word.

4 (Short Break)

5

6 [See separate transcript for Ruling on interventions]

7

8 Now, that takes us to the questions of documents. It seems to me we have two issues to
9 deal with, we have the question of documents and the question of timetable. It may be that
10 it is appropriate to deal first with documents, what it is that should be served on whom. I
11 think it may be helpful if we tell you where we are provisionally going on this. Once
12 people have been given the opportunity to intervene I think the assumption should be,
13 obviously always bearing in mind expense, and unnecessary copying etc, that they get the
14 same as everyone else gets. That therefore is our provisional view but we are capable of
15 being dissuaded from it on good grounds.

16 I do not know, Mr. Hoskins, have you undertaken the job of, as it were, preparing some
17 kind of non-confidential version of the documents?

18 MR. HOSKINS: We have, Sir, and the actual supporting documents which the Tribunal has are
19 marked up for confidentiality in the sense that there are square brackets around the
20 passages, etc. We did a test run to see how long it would take to do an effective black-out
21 of the files and to do it electronically took one person one day to do one file. We can
22 certainly live with the documents being provided to the interveners, you have seen that was
23 our primary submission, hearing what the Tribunal says.

24 If we are going to do that some days will have to be built into the timetable just to allow
25 that process to take place.

26 THE PRESIDENT: So it cannot just be photocopied and the words blacked out?

27 MR. HOSKINS: I did ask about the technological wizardry of the black pen, I think there is
28 slight concern it does not always do the job particularly effectively. I am sure a couple of
29 people could be put on it. I should also say it was done with a certain amount of haste, we
30 would actually also like in a day or two just to double check.

31 THE PRESIDENT: Well how long is it going to take?

32 MR. HOSKINS: I think five working days should be sufficient to complete the double check and
33 the electronic blacking out.

1 THE PRESIDENT: In the meantime presumably there is no reason why they could not have
2 some of it.

3 MR. HOSKINS: They could have the application, certainly, the report is not a problem – I do
4 not think there is any confidential material in it.

5 THE PRESIDENT: The report itself is subject to quite a lot of excision.

6 MR. HOSKINS: There is a published version I think, Mr. Beard will correct me if I am wrong,
7 there is an HMSO version which is available to one and all and I think the suggestion
8 would be certainly interveners should have that.

9 THE PRESIDENT: I think that is the one we have.

10 MR. BEARD: There is a slight problem with the HMSO version apparently. There have been
11 some fine eyes applied to this and apparently the footnote references and some of the
12 pagination goes awry from the version that has been provided quite properly by Tesco at
13 the moment. There is also an issue that the HMSO version actually contains more
14 information than the non-confidential version that Tesco has seen and is on the website. In
15 the circumstances we do not quite understand what happened in relation to these matters,
16 but we do think it would be sensible if a compiled version that is not the HMSO version but
17 follows the pagination of footnoting that Tesco has been working off so far is put together
18 and made available. In other words, all bits of the report that are so far made public in any
19 version are consolidated into a single version using the pagination that appears in the
20 version that Tesco provided and we can liaise with Tesco to sort that out.

21 It should be stressed however there are a number of other excisions in the report beyond
22 those and we can perhaps come on to those matters, but those are excisions that in part
23 Tesco will have seen the matters lying behind those because they will relating to the
24 information that came from Tesco, although they may not yet have had a version with that
25 put back into it, but obviously Tesco will not have seen redactions that pertain to other
26 parties, so there will be some others.

27 THE PRESIDENT: Whatever we have has redactions so the question that arises is whether we
28 do not need to see what is behind the redactions, but I expect if someone does then
29 everybody probably does, and then we get into the confidentiality ring issues.

30 MR. BEARD: I was going to come on to this aside from the disclosure of intervention
31 documents at the end, because obviously when our defence is provided our ordinary
32 expectation would be that we would append an unredacted version to the Tribunal. Our
33 concern is simply that if we do that we are going to have to put in place a confidentiality
34 ring, and we have already heard some noises that even a confidentiality ring would not be

1 good enough given that some of the data is so sensitive to the various parties. Normally,
2 we would say that that is just a fact of litigation and we are going to have to trust the
3 lawyers and the confidentiality ring will have to stand. The only issue here is that most of
4 this information we do not think is going to be in any way relevant to the outcome of the
5 proceedings. The reason we say that is because the numbers that might be averted to do not
6 form any critical part of either the background analysis that leads to the test, or the test
7 itself. Now, they are relevant inputs to that analysis but we have real doubts whether or not
8 it is going to be absolutely necessary for anybody to go into those numbers. So what we
9 were actually going to propose was unusually we would not assume that we are going to
10 provide an unredacted version but over the next week we will be looking at whether there
11 are any numbers that we think it is particularly important that the CAT sees at this stage,
12 that are very sensitive. If so, we are going to look at a confidentiality ring for those matters.
13 If not we will wait and see.

14 THE PRESIDENT: Yes.

15 MR. BEARD: Because people can come back and apply and if it turns out the Tribunal does
16 want to see certain figures that remain redacted because they think that it is important then
17 of course the Tribunal must see them, we are not for a moment trying to avoid that, but we
18 are slightly conscious of the degree of sensitivity that exists understandably between the
19 various parties, we are not suggesting that these are just concerns that are just being
20 conjured up, these are very sensitive pieces of information that matter to these businesses
21 and we are conscious that we do not want this sort of information inadvertently shared or in
22 people's minds that are regularly advising on these sorts of matters. So we understand the
23 concerns and we are just trying to work around it. We hope we might be able to do it
24 without a confidentiality ring but that is where we are at the moment. It may be necessary,
25 we suggest, when we serve our defence that in fact a ring is put in place and I have
26 highlighted that that may be a possibility to my learned friends acting both for Tesco and
27 also for the interveners.

28 THE PRESIDENT: Obviously we do not want to see any information that is not really important
29 to see, and if no party suggests it is important then I would be surprised if the Tribunal
30 thinks it is.

31 MR. BEARD: We are conscious that Tesco has not asked for any specific material to be
32 unredacted. We are not holding Tesco to any of that, nor are we holding any of the
33 interveners to an indication that this matter is not relevant because Tesco has not raised it.

1 One thing we should say if it is of any comfort for any of those here, that any material that
2 relates to supplier issues we would not unredact in any circumstances for the purposes of
3 this appeal because we think it is completely irrelevant for the purposes of the matters being
4 considered in these applications. We know there is a great deal of sensitivity out there
5 about complaints by suppliers against supermarkets and how they have been treated, that is
6 what the supplier code deals with and we would not restore any information in that regard.

7 THE PRESIDENT: Well let us see where we get to on that. Mr. Hoskins?

8 MR. HOSKINS: If I could sum-up I think there is probably not a huge amount between Tesco
9 and the Competition Commission. We will provide the notice of application with 24 hours
10 because we would just like to do a last sweep, as I said, on confidential information.

11 THE PRESIDENT: The order will reflect that then.

12 MR. HOSKINS: Then I would ask for the five working days as I indicated for the supporting
13 documents.

14 THE PRESIDENT: Can we just work to when the interveners might expect to get it, when does
15 that lead to?

16 MR. HOSKINS: The date would be 7th August, five working days – a week's time.

17 THE PRESIDENT: Are you in a position to say you will supply copies to the interveners on that
18 day?

19 MR. HOSKINS: That is what I am suggesting, yes. The only point, in relation to the copy of the
20 report, we have taken this from the Competition Commission website, of course there is no
21 magic in this, we are quite happy to copy it again so everyone has the same thing in the
22 same bundle.

23 THE PRESIDENT: Had you better not wait, if there is an exercise being carried out?

24 MR. HOSKINS: That is what I was coming to, to get matters moving we are quite happy to copy
25 this and give it to the interveners. If the Competition Commission is taking a view on
26 whether there are confidentiality issues arising it is a matter for the Competition
27 Commission to get on with.

28 MR. BEARD: It is entirely sensible if Tesco copies that, what we are actually saying is that in
29 that non-confidential version there are actually other bits that are in the HMSO copy that
30 can be slotted in, so the copying can carry on, we will go away, we will check those bits,
31 we will make sure that everyone has the most complete public version and then we will
32 deal with the redactions that remain in the course of our preparing our defence.

33 MR. HOSKINS: The only question is – I am sorry to do this to Mr. Beard – by when, because it
34 might impact on the timetable?

1 MR. BEARD: There can be beautiful harmony with 7th August – we can provide that material.

2 THE PRESIDENT: So by 7th August the interveners will have redacted supporting documents,
3 and they will have a final value-added version of the report.

4 MR. HOSKINS: Shall we save trees by not copying file 2 of our application, or shall we copy it
5 in any event?

6 THE PRESIDENT: Well I assume they have already got some, they have the report – I see some
7 people are nodding.

8 MR. HOSKINS: I would hope so.

9 THE PRESIDENT: Is there anybody who really wants to have another copy of it – something
10 you have already got - so I do not think you need to basically, no. But presumably
11 everybody will want to have whatever composite report Mr. Beard’s clients come up with.

12 MR. HOSKINS: I have just been prompted, it would helpful if we all knew what had been added
13 in by the Competition Commission.

14 THE PRESIDENT: Well how will it be done? How do you envisage this being done
15 mechanically?

16 MR. BEARD: The thought was that pages could be printed and copied and circulated with the
17 numbers in that at the moment are represented by scissors on the bit in the website, but are
18 actually represented by numbers in the report. Apparently what happened was some
19 material was published in one of the appendices which had been redacted from the main
20 report – I think it may have been Tesco’s eagle eyes that spotted that there was a disparity
21 and said: “Look, there is a disparity here”, at which point the Competition Commission
22 said: “No, you are quite right those bits should be unredacted in the main report”, but for
23 some reason the version on the website does not reflect that; it is as mundane as that.

24 MR. HOSKINS: I am still not clear about how we are going to know what bits have been added?

25 THE PRESIDENT: Well I think what is going to happen is that you are going to be sent
26 additional pages to slot in, is that right?

27 MR. BEARD: Yes, it is in relation to chapter 6, it is some tables in chapter 6 – they have grey
28 bits on them at the moment.

29 MR. HOSKINS: So there will be pages, I was just concerned if there was a paragraph here and
30 there.

31 THE PRESIDENT: They may be replacement pages ----

32 MR. BEARD: Yes, they will be replacement pages. The idea is we do not want to monkey with
33 the pagination that you have already worked on. We are trying not to have a whole new
34 report generated.

1 THE PRESIDENT: You will do that by the 7th?

2 MR. BEARD: Yes, we can sort that out, that is fine.

3 THE PRESIDENT: I just want to make sure the interveners get everything by the 7th; that is all
4 pretty clear. (After a pause) If any issues arise about the redactions and people say: “We
5 must see this, we must see that”, we will have to deal with that as and when it arises, but
6 with a bit of luck it will not.

7 Let us turn then, if we may, to the timetable. We have obviously seen all the submissions
8 and, in particular, some people have suggested that this is fit for expedition. There are also
9 issues about the availability for a certain period of Tesco’s Leading Counsel. Would it
10 assist if we tell you where we have got to provisionally? Obviously the Tribunal would
11 always like to try and accommodate everybody wherever it is possible to do so, but sadly it
12 is not usually possible to do that and I am afraid there are going to be disappointments here
13 as well.

14 So far as expedition is concerned I have to say we are, provisionally, not impressed by the
15 suggestion that this is somehow terribly urgent. It seems to us that regardless of these
16 proceedings there is quite a long process that is going to be undertaken of consultation by
17 the Government, and there then may be legislative changes that have to be brought in to
18 introduce the competition test – if that is what the Government decides to do – into the
19 planning process. So one is looking at, it seems to us, quite a long drawn out period.
20 The documents that came through yesterday, including the Government’s response to the
21 report, do not seem to disabuse us of that, there is no suggestion there that these
22 proceedings have caused a hiccup or are likely to do so, and indeed we know there has been
23 no application by the Secretary of State to intervene or make any points to us in relation not
24 this. So obviously we will hear anything else people want to say about expedition, but we
25 are not encouraging it frankly – other than of course we expedite all cases. We will come
26 on to the timetable but our position, as I am sure people know, is that the Tribunal tries to
27 get on with the case and I am not sure that if we said it was fit for expedition that we would
28 do it much quicker than I am afraid we are going to propose in any event. So could I
29 perhaps leave the question of expedition over at the moment, so anyone can come back on
30 that, and turn to where we are on the procedural steps.

31 It seems to us that the defence would normally be due on 11th August, although the
32 Competition Commission have indicated they could do it earlier we were minded to leave it
33 at 11th August and I am not sure, maybe there is a discrepancy between our view of when it
34 was due and your view of when it was due. We think it is 11th August ----

1 MR. BEARD: We thought it was 11th August on the ordinary timetable, that is a Monday as I
2 recall and we were just saying bring it back to the Friday and then you set the timetable
3 effectively going forwards on Fridays, that was all.

4 THE PRESIDENT: Let us assume it is 11th August, then we were minded to ask for the
5 intervention statements by 29th August, and we think this is a case where we should fit into
6 the timetable, whether advantage is taken of it, it probably will be if we fit it in, but that is a
7 matter for Tesco, because we think this is probably a case where they are likely to need a
8 reply and to respond to the interveners, so we were proposing 19th September as the date for
9 that.

10 I am leaving aside bundles at the moment, we can come back to those. The skeleton for
11 Tesco should be 10th October, the Competition Commission skeleton on 27th October, and
12 the interveners' skeleton – they should look carefully at the Competition Commission
13 skeleton so we have allowed them to do that to make sure that they keep to the requirement
14 that they do not duplicate, and we would require the interveners' skeletons on 31st October.
15 So far as the hearing is concerned, I am afraid there is a problem trying to accommodate the
16 Leading Counsel for Tesco and I am afraid because we have to work out obviously the
17 availability of the Members of the Tribunal as well we have very limited flexibilities, and
18 we would like this case to be heard on 11th November. We have listed it for three days –
19 two days which I think someone put forward is rather optimistic, and I think three days is
20 probably more realistic bearing in mind the number of interveners. So that is where we
21 have got to at the moment, and we have very, very limited possibilities, if any, I am afraid
22 for going outside those dates. We can tweak the dates for the procedural things but I am
23 afraid not the date of the hearing. The problem with December is that there is no
24 availability, and so I really am sorry. Of course we do bear in mind that in the light of what
25 has been urged that Leading Counsel's difficulties, having been involved for a year or so he
26 now has a very long trial due to begin, but things happen to long trials – long trials can get
27 longer or they can get very much shorter, so it is very optimistic to try and pitch it anyway
28 – but in any event we could not do it.

29 Mr. Hoskins, perhaps you should ----

30 MR. HOSKINS: I would like to take instructions if I may, because obviously it is a very serious
31 matter for my client. They have heard what you have said and I would just like to discuss
32 with them what they would like me to say on the matter.

33 THE PRESIDENT: Do you want us to rise?

1 MR. HOSKINS: If you would not mind, I would like five minutes because it is such an
2 important matter for Tesco, you have seen the strength of feeling from the documents, so I
3 would just like five minutes to discuss it.

4 THE PRESIDENT: Yes, can I just ask whether anybody else wants to raise any major point in
5 relation to what we have just said.

6 MR. BEARD: If I may, it may assist to some extent Mr. Hoskins taking instructions, we have
7 tried to make some contact with both BERR and DCLG – Department for Communities and
8 Local Government – who would be involved in the process of the implementation of the
9 remedy and we are working on the basis that Government does implement the remedy. We
10 understand, of course, that there will be a consultation period, but we rather assume that we
11 would not be here if both we and Tesco did not have somewhat the feeling that this remedy
12 was going to be implemented. We understand that the general process may well be that the
13 General Permitted Development Order, which deals with planning matters, would require
14 some sort of amendment, or that would be the mechanism, or part of the mechanism by
15 which the competition test would be introduced, and we understand that typically, in order
16 to ensure a degree of legal certainty in the development industry, those amendments tend to
17 only occur on 6th April and 1st October each year.

18 Obviously any amendment to this secondary legislation would have to be signed off 28
19 days beforehand, as is the usual process, and that would take us back to March. There
20 needs to be a consultation process before that and obviously a consideration of the
21 consultation responses. That would mean that the date the Tribunal is setting would be the
22 very back end of when we think it would be feasible for the matter to be heard and a
23 judgment to be given, and that consultation process and signing-off process to be
24 accommodated prior to April, and we are concerned about that, because if the April date is
25 missed because of this pattern of changes, it could risk engendering another six months'
26 delay in relation to these matters. We do not need now to go into the more general
27 concerns that we have about the principle that our remedy should be dealt with as quickly
28 as possible, the fact that there are developments in the pipeline that are coming forward –
29 and this is not just a matter about Tesco, this is to do with all developments that are coming
30 forward that may fall within the scope of the competition test, and would otherwise be
31 prevented from going forward if that test were to be implemented. So we are concerned
32 about that.

33 As we indicated in our submissions we had been looking for a slightly earlier date, we
34 understand the difficulties the Tribunal has, but we would ask if at all possible that it be

1 moved forward, but we understand the principal issue is going to be the Tribunal's
2 availability, we recognise that. If that is the earliest date that this can be dealt with then we
3 understand, but we would stress the importance of that date being held, and obviously the
4 time taken for the Tribunal to deal with its judgment is a matter for the Tribunal, but we
5 would just mark that we think effectively the Government is waiting on what the Tribunal
6 is going to do here. It is not going to move forward with this until this judgment is dealt
7 with – I think that is relatively clear from the press release, and in those circumstances we
8 do urge that the Tribunal make sure that this procedure does, if at all possible,
9 accommodate the possibility that if the test is going to be upheld that it can be implemented
10 in the scheme of that 6th April amendment to the planning regime. So I thought it was
11 useful potentially for Tesco to understand where our concerns lie, having made inquiries of
12 the Government Department as to how this sort of scheme might work.
13 We are not saying that the Government has made a decision about how it is going to
14 implement, it has not made a decision about whether it is going to implement, but it is
15 necessary for us to think about these things in order to consider whether or not there really
16 are relevant break points in the timetable in future. I hope that is of some assistance.

17 THE PRESIDENT: Yes, thank you very much. You would like a few minutes?

18 MR. HOSKINS: Yes, indeed.

19 THE PRESIDENT: We will say 10 minutes, if you need longer let us know.

20 MR. HOSKINS: Thank you very much.

21 (Short break)

22 MR. HOSKINS: Thank you very much for that time, Sir. Obviously my client is very
23 disappointed not to have the services of Jonathan Sumption, but one has to recognise that
24 one has met an immovable force.

25 THE PRESIDENT: Well, you never know, with long trials things change.

26 MR. HOSKINS: I understand that, absolutely, we will all have our fingers crossed. There is one
27 point we would like to make on the basis of a hearing date of 11th November, obviously,
28 Sir, as you are well aware over the summer vacation there is a relative outpouring from the
29 Temple and it is quite hard to get a barrister to work on something, let alone someone of
30 your choice. I am not asking to move the hearing date, but simply to move the date for our
31 reply and response to the interventions back by a week to 26th September but maintain the
32 rest of the timetable as it is.

33 THE PRESIDENT: You would like to move that back a day?

1 MR. HOSKINS: By a week, I understood it was 19th September, and I would like to move it to
2 the 26th, but everything else remains the same, including our skeleton.

3 THE PRESIDENT: 26th, yes, I see, I suppose it is only your skeleton, is it not?

4 MR. HOSKINS: That is right, so we can work on both at the same time.

5 THE PRESIDENT: Yes.

6 MR. HOSKINS: I am not sure how strongly the suggestion was pushed that the date should be
7 earlier than 11th November, whether it is actually being suggested, but we would strongly
8 oppose that for two reasons ----

9 THE PRESIDENT: Do not worry! (Laughter).

10 MR. HOSKINS: I hope Mr. Beard recognised the immovable force as well.

11 THE PRESIDENT: We did not say anything about when bundles should be done, because there
12 are two schools of thought about bundles, whether they should come before or after the
13 skeletons, and so I thought I would let you take a view.

14 MR. HOSKINS: I must say it is always nice to have skeletons cross-referenced to the bundles. I
15 am not sure if those instructing me will hang me if I say we will do the bundles by 10th
16 October – it would have to be by that date. I am hoping there should not be too much more,
17 the documentation will be there, at least the interventions will just go in one bundle and be
18 paginated and given a number, and the same with the Competition Commission.

19 THE PRESIDENT: So what is your preference?

20 MR. HOSKINS: Unless I see vigorous shakes of the head, we will suggest that the bundles go in
21 on 10th October as well, because that would allow us to put the references in.

22 THE PRESIDENT: Is anyone against that? (After a pause): Right, we will say bundles by 10th.

23 MR. HOSKINS: The authorities will have to be some time after 31st.

24 THE PRESIDENT: You can always put in some authorities if you know what they are, and then
25 add them, but we will not say anything about that.

26 MR. HOSKINS: I think it is probably best if we just agree a date between 31st October and 11th
27 November, obviously we will get them to the Tribunal as soon as we can.

28 THE PRESIDENT: Thank you, Mr. Hoskins. Mr. Ward?

29 MR. WARD: Sir, a relatively small point on the timetable. Like Mr. Hoskins, we are a little bit
30 concerned about work on a tight timetable during August. The timetable currently
31 proposed is for the defence to be served on 11th August and for the interveners to liaise and
32 produce their statements of intervention by 29th August. Tesco, in its proposed timetable
33 actually gave the interveners until 5th September, but were still willing to produce their
34 skeleton by 10th October, which is I think five weeks later. We would be very grateful

1 indeed for that additional week which should have no knock-on effect at all on the rest of
2 the timetable. I have to confess that I for one am away for part of that time, as is also
3 another key member of the team. I am envisaging as well the process of liaising will also
4 be quite time consuming. We are not simply pleading to the notice of appeal, we are trying
5 very hard to focus our submissions in a way that is most useful and least repetitious for the
6 Tribunal. If that could be done, as I think it can, without any adverse effects to any of the
7 parties we would be extremely grateful. So simply moving the date for the statement of
8 intervention from 29th August to the date of 5th September that Mr. Hoskins had indicated
9 on paper would be acceptable to Tesco in any event.

10 THE PRESIDENT: It is probably only going to affect you and you have a few more days now,
11 have you not, so just be gracious and say “yes”.

12 MR. HOSKINS: It is slightly dripping with irony to accommodate someone else’s counsel, but
13 we can live with the 5th September.

14 MR. WARD: It is not just counsel.

15 MR. HOSKINS: That makes it even worse! The 5th September we can live with. (Laughter).

16 THE PRESIDENT: 5th September it is then. Anything else at all on the timetable? We should
17 just say that we have in mind because 11th November is the two minutes silence, we might
18 indicate nearer the time as to whether we think we should start at just after 11 rather than
19 10.30 rather than have a break, and I think that is probably what we will do, but we will let
20 you know, obviously there is plenty of time for that.
21 If there is nothing else, thank you very much indeed.

22
