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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1050/1/1/05

Victoria House,
Bloomsbury Place,
London WC1A 2EB

18th May 2005

Before:
MARION SIMMONS QC
(The Chairman)

MICHAEL BLAIR
PROFESSOR JOHN PICKERING

Sitting as a Tribunal in England and Wales

BETWEEN:

AQUA RESOURCES LIMITED

Appellant

And

DIRECTOR GENERAL OF WATER SERVICES

Respondent

supported by

SEVERN TRENT WATER

Intervener

Mr. Raymond Edmed appeared In Person on behalf of the Appellant.

Mr. George Peretz and Mr. Ben Rayment (instructed by the Director of Legal Services, OFWAT) appeared on behalf of the Respondent.

Mr. James Quinney (of Herbert Smith) appeared on behalf of the Intervener

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CASE MANAGEMENT CONFERENCE

1 THE CHAIRMAN: Good afternoon. [After introductions] Can I thank the OFWAT team for their
2 observations on the agenda and we quite understand why you [Mr. Edmed] have not provided
3 any observations.

4 It may be helpful if we just outlined how we see the way forward, subject to hearing
5 submissions today – where we are at the moment. It seems to us that OFWAT’s suggestion
6 that there should be one hearing on all relevant issues is a sensible way forward. For the
7 purposes of that hearing it also seems to us that there should be disclosure of all the material
8 documents in the possession of the parties which would include internal documentation. We
9 note that there is an offer at the moment concerning disclosure by OFWAT of external
10 documentation.

11 We also note the application of Severn Trent Water to intervene, and subject to any
12 submissions today we would be minded to allow that application. So, subject to any other
13 submissions, we would suggest that what we need to discuss is the agenda.

14 Mr. Peretz, would you like to start?

15 MR. PERETZ: Yes. The point I wish to pick up on, madam, is a point about disclosure of internal
16 documents. As you may remember I had the reference in front of me in the *Aquavitae* case,
17 where there was a certain amount of voluntary disclosure of internal documents by OFWAT.
18 The Tribunal did note that disclosure of internal documents was (and I quote):

19 “...we trust unlikely to be the norm not least because of the limited evidential value
20 of preparatory internal documents.”

21 It is not a matter on which we have taken a final view but I think we would at the moment wish
22 to reserve our position on whether it is appropriate to disclose internal documents. What we
23 are certainly proposing to disclose is a full record of the relevant correspondence both with
24 Mr. Edmed and his company and with the Parliamentary Commissioner for Administration.

25 THE CHAIRMAN: And with Severn Trent Water?

26 MR. PERETZ: And with Severn Trent Water. Some of the correspondence is already in
27 Mr. Edmed’s bundles, I think we said in the submissions, he may have more because he has
28 made various Freedom of Information Act requests and so what we are producing may or may
29 not come as a surprise to him. But it is certainly our intention to provide a full bundle of the
30 relevant correspondence in that regard. That will, of course, disclose of itself – insofar as it is
31 not already apparent from the Notice of Appeal – our thinking as it stood at various stages
32 during the progress of the case.

33 THE CHAIRMAN: The question of whether there was a decision is a question of substance not of
34 form.

1 MR. PERETZ: Indeed.

2 THE CHAIRMAN: And therefore your internal documents may be relevant to that?

3 MR. PERETZ: Yes, and I want us to be rather careful in this case to identify exactly what decision
4 is at issue in this case. The decision that is at issue in this case is the decision of 15th February,
5 or recorded in a letter sent on 15th February not to open an investigation into what, by then,
6 was past conduct by Severn Trent.

7 THE CHAIRMAN: Are you conceding that that is a decision?

8 MR. PERETZ: I am conceding that that is a decision. Clearly a decision was taken. The question is
9 whether it is an appealable decision.

10 THE CHAIRMAN: Oh, I see, right.

11 MR. PERETZ: And for the purposes of the admissibility the key issue, the question of what was in
12 OFWAT's mind at various earlier stages of correspondence with Mr Edmed, which has been
13 going on for a couple of years, is, we say, largely irrelevant to that decision. We have set this
14 out in brief in the written skeleton, so interrupt me if I am telling you points that are already in
15 a sense taken on board.

16 In very brief, schematic form what happened was that Mr. Edmed wrote, at the back
17 end of 2003 raising the issue of what we are calling the mandatory licensing condition in
18 STW's Access Code. We then wrote back a few months later, in the Spring of 2004, saying
19 that that was not a matter that we wanted to take up. Mr. Edmed then complained to the
20 Parliamentary Commissioner for Administration (the Ombudsman) about that. The
21 Parliamentary Commissioner had a look at the papers and received submissions from us, and
22 then took the view that what OFWAT ought to have done was essentially to have written a
23 letter to Severn Trent and asked it what its reasons were for putting the mandatory licensing
24 condition in its Access Code. We then wrote to Severn Trent and asked it that question.
25 Severn Trent's response, after a meeting, was to change its Access code into the form which,
26 on Mr. Edmed's case, was what it should always have been, i.e. remove the mandatory
27 licensing condition. That happened in December 2004. It is all background material to
28 understanding the actual Decision, which is the subject of this Appeal. Once that matter had
29 been sorted out in the way it was, there was a decision to go back and to look at a question of
30 whether the inclusion of that condition in the Access Code in the period from 2001, 2002, to
31 the end of 2004 was an infringement. The Director's decision of 15th February was to say
32 "no," we do not want to do that for reasons set out at 3.3 of our skeleton, essentially that the
33 conduct complained of ceased; and secondly, that there is a fundamental change coming
34 anyway with regard to the legal regime, so that the question of the mandatory licensing

1 condition is, in a few months' time, essentially going to be a question of interest to legal
2 historians rather than to lawyers.

3 THE CHAIRMAN: Do you say that the application relates to that decision that you are referring to?

4 MR. PERETZ: Yes, that is the decision that is appealed.

5 THE CHAIRMAN: Where in the application is that referred to?

6 MR. PERETZ: One can start with a preliminary point which is that the Notice of Application is
7 dated, I think, 15th April, so one is looking for a decision that was taken within the previous
8 two months, that is the decision of 15th February – there is no other decision within time as it
9 were. So if Mr. Edmed were now seeking to challenge any other decision he is met with the
10 response that it is out of time. That is one rather simple way in which one can identify the
11 decision taken. But it is also clear enough from the Notice of Appeal itself, making allowances
12 for the fact that it is not professionally drafted, that is what he is after. At p.4 he sets out what
13 he calls “Summary of Grounds for contesting the Decision”. He said: “The reasons for
14 contesting the Director’s decision not to investigate STW”. If one looks at p.3, para.11, you
15 have there request on 3rd February 2005, Aqua Resources requested OFWAT to determine
16 their position. That, if you like, is the actual complaint in relation to which the contested
17 decision was taken - why do you not look at their past actions to see if there was an
18 infringement? Then the decision recorded in para.12: “OFWAT confirmed the Director had
19 made the decision not to investigate Severn Trent Water in respect of their action.”

20 So, on the face of the Notice of Appeal it is a decision of pure ... but as I said, there is
21 the simple point that if he has tried to appeal against any other decision he is out of time.

22 PROFESSOR PICKERING: Mr. Peretz, can I first of all just be clear as to what you are saying was
23 the reason for your decision not to investigate. I think I have it that you are saying that first of
24 all Severn Trent had changed its requirements; and secondly, there would be new legislation
25 implemented. When is that going to be implemented?

26 MR. PERETZ: Yes, I am referring to the changes brought about by the Water Act 2003 which is
27 expected in 2005. Somebody will correct me if I am wrong, I think the current position is that
28 there is no formal statutory instrument giving a date when it is going to be brought into force,
29 but it is publicly well known that this Autumn is the date upon which implementation is likely.

30 PROFESSOR PICKERING: So is the Director then taking the view that if neither of those
31 circumstances were pertaining then he would have needed to investigate, or is indeed is he
32 taking the view that there was at least an “infelicity”, to use hopefully a relatively neutral term,
33 in the practice of Severn Trent up until the point at which it changed its access code?

1 MR. PERETZ: Well it is always slightly difficult speculating about what the Director's decision
2 would have been had the particular factors which were present not been present. A certain
3 mental agility is required to go through that process. The fact is that the factors that led to the
4 decision in February not to investigate what by then was a past infringement on any view,
5 because the conduct complained of had ceased, the access code was changed, were first of all it
6 had ceased so that the issue had gone away, and that is plainly, we say, a material factor which
7 the Director is perfectly entitled to take into account.

8 Secondly, the relevance of the Water Act 2003 is that essentially the amendment it
9 introduces will require a common carriage applicant, somebody seeking to supply their own
10 customers across a water undertaker's network, to have a licence and if they do not have
11 a licence they will commit a criminal offence. So once that change has been implemented, the
12 question of whether under the current system (pre-Water Act 2003) an undertaker is entitled to
13 invoke as an objective justification for refusing access the point that the applicant is not
14 "licensed", one has to be "licensed", at the moment – it is a question of holding an
15 appointment, that is the term under the Water Act. That question will become simply of legal
16 academic, historical interest.

17 PROFESSOR PICKERING: In the meantime, does the harm arguably suffered by somebody
18 seeking, but denied common carriage not remain a matter for the Director to consider? There
19 is a three year period. You are saying that this started in 2002 and will go on until
20 implementation, which you think will be Autumn 2005 – that is a fairly long period of time to
21 hinder somebody seeking to inject competition for a wider consumer benefit, is it not?

22 MR. PERETZ: I think I would make this point, which is that the Director has to allocate resources to
23 complaints and issues which he thinks are important. The fact that, because of an impending
24 change to the legal regime, a particular question will no longer be live because it will cease to
25 arise at all under the new regime must be a matter he is entitled to take in to account in
26 deciding where he allocates his resources. It is, of course, perfectly true that if you still have
27 a significant period in front of you in which the matter remains live, you have to consider what
28 the importance of the point will remain over that period. But, as time draws on and one gets
29 closer and closer to the change in the legal regime the case for mounting an investigation gets
30 weaker and weaker.

31 There is also, of course, this point, which is that it would be necessary to conduct an
32 investigation. Whatever view the Director reached in 2002 when he issued his Guidance on
33 what access codes could contain, the Director cannot simply issue on day one of an
34 investigation a Decision saying "this is an open and shut case. I hereby find an infringement."

1 There is a process that has to be gone through and that process involves hearing from the
2 company concerned on what reasons it might have for imposing such a condition. The
3 Director would have to be prepared to listen carefully, even to arguments that he considered in
4 2002, he would have to keep an open mind on them, and listen to those arguments again – you
5 have the whole Rule 4 procedure to go through. It is not something which can be done in a
6 week. It is something that will take some time. So if one is looking at the Decision taken at
7 the beginning of this year, or rather in February this year, it really is very much to the point
8 that the regime is expected to change in the Autumn of this year.

9 MR. PERETZ: To what extent would it be appropriate to consider that the action of Severn Trent, as
10 confirmed in its letter of 16th February to Mr. Edmed, and anticipated by the Director's letter to
11 Mr. Edmed on 20th December, and indeed Severn Trent's anticipatory letter of 10th December
12 to Mr. Edmed, to what extent would those actions constitute a commitment given by Severn
13 Trent?

14 MR. PERETZ: Well they are not a commitment in the technical sense, because as you know the
15 amendments to the Competition Act introduce a whole regime under which statutory
16 commitments are obtained and various procedures have to be gone through. This was not this
17 case. In fact in this case, an investigation was never opened in 2004 into Mr. Edmed's
18 complaint. There was no investigation in the s.25 sense into Mr. Edmed's complaint; the
19 decision never got that far. What happened was that because the Parliamentary Commissioner
20 for Administration thought that OFWAT should have written an informal letter of inquiry
21 (pre-investigation) asking it certain questions about why it had that condition in its access
22 code, OFWAT accepted that recommendation and wrote the letter, at which point Severn Trent
23 changed its access code and the problem disappeared. This is not a commitments' case. It is
24 not, if I may say so, a *Pernod-Ricard* case, because in *Pernod-Ricard* certain undertakings
25 were informally accepted by the OFT, pre the commitments regime, of course, and there was
26 then a live issue as to whether if Bacardi carried on conduct in line with the undertakings that it
27 had given the OFT it would nonetheless still be infringing the Act. That is not an issue here at
28 all. There is no live issue as to whether Severn Trent's access code, as it currently stands (as it
29 has stood since December) is in contravention of the Act. That issue has disappeared.

30 PROFESSOR PICKERING: But you have told us that one of the two reasons why the Director did
31 not pursue an investigation any further was that Severn Trent had had, following
32 communication from you, changed its code.

33 MR. PERETZ: Yes, but the issue had gone away for the future.

34 PROFESSOR PICKERING: I see, thank you.

1 MR. PERETZ: I am not sure I have anything further to say.

2 THE CHAIRMAN: Well if we are thinking about disclosure and internal and external documents,
3 from what you have just said, that the investigation was never opened, the internal documents
4 which show that are going to be relevant. I am not saying go back go 2003, but in the
5 immediate period from the Parliamentary Ombudsman on.

6 MR. PERETZ: The fact that an investigation was never opened is simply a matter of fact.

7 THE CHAIRMAN: The documents show whether or not an investigation was opened.

8 MR. PERETZ: The documents will show that, but in the usual situation on a Judicial Review
9 application, the course that would probably be taken is that an affidavit would be prepared
10 without disclosing internal documents and the giver of the affidavit would simply say that no
11 investigation was opened.

12 THE CHAIRMAN: That would be because he would have no documents?

13 MR. PERETZ: The usual way in which Government Departments work, there usually are quite
14 a few internal documents, but it would be up to the giver of the affidavit to say "This was the
15 position as we saw it at the time", and the Judicial Review Court would not normally require
16 production of the internal documents to substantiate what the giver of the affidavit was saying.
17 Now as the Respondent in this Tribunal one can take different approaches. I have to say we
18 had it in mind simply in the course of pleading the defence to explain what the position was
19 rather than to some extent the formality of putting that in an affidavit. It is possible of course
20 to produce a witness statement but that is not normally the way in which things are done in this
21 Tribunal, which can take a slightly more relaxed view of these things than the court can do.
22 But in our view it is not appropriate if OFWAT says in its defence, "This is the Decision that
23 we took", or "We took no such Decision" at such and such a time, it would not normally, we
24 would suggest, be necessary for it to substantiate that by reference to internal documents. The
25 duty of a public authority is to make sure that the Tribunal has in front of it what it needs to
26 reach the decision and the facts are fairly and squarely put in front of the Tribunal. That, of
27 course, we intend to do. The discussion is more about how one actually goes about that task.
28 In the usual course it is not necessary to produce the internal documents to do that. Apart from
29 everything else, as the Tribunal recognised in *Aquavitae*, it described preparatory internal
30 documents as having limited evidential value ----

31 THE CHAIRMAN: It depends what documents we are talking about. If they are documents which
32 show whether or not there was an investigation, and whether you closed before an
33 investigation, but it is the route to the investigation and whether what you were doing in
34 substance was an investigation or whether it was preliminary to an investigation, and those

1 documents I can see at the moment would be relevant. I am not suggesting that you disclose
2 your whole file, but there are certain documents internally which might show whether or not
3 there was in substance an investigation or not, and that those might be relevant. Now, it may
4 be that it all comes out of the correspondence you had with Severn Water, but it might
5 not ----

6 MR. PERETZ: Yes.

7 THE CHAIRMAN: -- and that is all I am exploring.

8 MR. PERETZ: I think it is very difficult to conduct this debate, as it were, in the abstract.

9 THE CHAIRMAN: Absolutely.

10 MR. PERETZ: As it happens in this case, because of the involvement of the Parliamentary
11 Commissioner for Administration, correspondence with whom we propose to disclose, there is
12 a lot of material about by which the Tribunal will be able to trace, quite apart from the
13 explanation that OFWAT itself will give in the Defence, but to trace through what actually
14 happened, and our current thinking – I am not going to rule things out at this stage – is that we
15 do not see any internal documents that will need to be disclosed in the course of giving a full
16 picture to the Tribunal. I think my concern in raising the point was, as it were, to flag this up
17 in case the Tribunal was working on the assumption that there would inevitably be internal
18 documents produced, and simply to say “Hang on a moment, we can put a complete picture
19 before the Tribunal of what happened, which is everything relevant to Mr. Edmed’s appeal
20 without necessarily disclosing any internal documents at all”. So I just wanted to flag that up.

21 THE CHAIRMAN: On the freedom of information application you had to disclose an internal
22 document, the draft letter?

23 MR. PERETZ: That is not an internal document. It was indeed draft letter, but it was a draft letter
24 sent to the Parliamentary Commissioner for Administration, and this sometimes happens in the
25 course of Competition Act investigations, sometimes one sends a draft letter to a third party for
26 their comments on the factual accuracy of it. That letter and the draft would be, in the usual
27 course of things, not internal documents.

28 THE CHAIRMAN: My concern would be to limit you to external documents when there may be
29 some internal documents that are relevant. In the first instance one has to leave that to you.

30 MR. PERETZ: Indeed, entirely, all I wanted to do, because the Tribunal seemed to indicate that
31 there were bound to be some internal documents, was just to flag up and say “Hang on
32 a moment, that is not necessarily the case”. We will put a full picture before the Tribunal. As
33 it happens, because of the involvement of the Ombudsman a lot of what happened is set out in
34 external correspondence. That, we think, at this stage is likely to be a complete picture, so we

1 have not ruled anything out. But at the moment we suspect that internal documents will not
2 need to be produced, but that is a decision we will keep under review.

3 THE CHAIRMAN: In answer to Professor Pickering's suggestion that commitment is going through
4 the Tribunal's mind, you said I think that this was an offer by Severn Trent Water, it was not
5 something which you provoked. Now, again that may come out of the correspondence. There
6 is an indication in the correspondence that we have that it was provoked by you, and will that
7 be covered in your disclosure now that that has been raised?

8 MR. PERETZ: Yes. This is a matter of record; it emerges from the Notice of Appeal, I think there
9 is a reference somewhere to correspondence going from OFWAT to Severn Trent in November
10 or December.

11 THE CHAIRMAN: One of the reasons that we are raising this issue about internal documents is that
12 if you look at the letter of 10th December 2004 I have put the bundle which was provided, very
13 helpfully, into chronological order and it is appendix 34.

14 MR. PERETZ: Thank you. I thought it was more prudent to keep mine in the order in which it
15 came.

16 THE CHAIRMAN: Well it probably is more prudent, but I was not being very prudent!

17 MR. PERETZ: Yes, following discussion between OFWAT and STW, yes.

18 THE CHAIRMAN: And therefore, if there is discussion then there will be some sort of internal
19 record of those discussions which might be relevant. That is really our inroad into this.

20 MR. PERETZ: I think I can put it this way, we will make sure that the Tribunal is fully apprised of
21 what those contacts and discussions consisted of.

22 THE CHAIRMAN: By giving us what we would call the "attendance notes", or because you will do
23 it in some sort of affidavit or witness statement.

24 MR. PERETZ: I do not think a final decision has been taken, but it will be likely to be in the form of
25 giving you the appropriate attendance notes, yes.

26 (The Tribunal confer)

27 MR. PERETZ: If I can speak generally, we are very conscious, and it is no criticism of Mr. Edmed
28 at all, that the Notice of Appeal inevitably gives only part of the picture, because it is the
29 picture as he sees it. It is our job as the respondent in an application like this, as it would be
30 our obligation in Judicial Review, to make sure that the Tribunal has the full picture, and not
31 just the picture that the Applicant, for reasons beyond its control, is apprised of.

32 THE CHAIRMAN: And are you going to do that by the date when you put in the Defence?

33 MR. PERETZ: Yes, the Defence will contain as annexes the relevant papers.

1 THE CHAIRMAN: So having taken it slightly out of order, is the appropriate course to take to go
2 through the agenda?

3 MR. PERETZ: Yes. I am happy to remain on my feet, as it were.

4 THE CHAIRMAN: Yes.

5 MR. PERETZ: As far as forum is concerned, it is I think what is technically called a “no brainer”,
6 that it is England and Wales.

7 THE CHAIRMAN: Does everybody agree to that.

8 MR. PERETZ: Indeed, those instructing me have no responsibilities outside England and Wales, so
9 that is what it is.

10 THE CHAIRMAN: Yes.

11 MR. PERETZ: A request for permission to intervene, I suppose at this point I sit down, and hand
12 over to my learned friend. Our position is in the skeleton.

13 MR. QUINNEY: James Quinney of Herbert Smith appearing for Severn Trent. We set out the
14 reasons for our request for permission to intervene in the request that we sent in recently.
15 Given the nature of the case, the relief sought, the fact that it relates to a complaint against
16 Severn Trent, we would submit that it is self-evident that we would have sufficient interest in
17 order to be given permission to intervene.

18 THE CHAIRMAN: Mr. Edmed, just on the question of intervention, do you have some submissions
19 on that? Are you happy that they do intervene, or do you want to suggest they do not?

20 MR. EDMED: I have no objections whatsoever, ma’am.

21 THE CHAIRMAN: On that basis, as I indicated earlier, you have permission to intervene.

22 MR. PERETZ: I think the next item on the agenda – “Issues likely to arise” – I think we have
23 essentially covered that ground in a rather different way in the course of exchanges earlier, and
24 indeed further documents we have discussed, and disclosure.

25 As far as confidentiality is concerned, we are not aware of any issues having arisen.
26 The course of the correspondence we have had with Mr. Edmed and with Severn Trent the
27 issue simply has not come up I think I am right in saying. This is not a case where anything
28 much turns on figures, or costs or anything like that, it is simply an issue of principle.

29 Witnesses I think we have covered, it is not our intention to produce witness
30 statements, let alone call witnesses.

31 THE CHAIRMAN: Well you may produce witness statements.

32 MR. PERETZ: Well I suppose we may, I would not want to rule it out.

33 THE CHAIRMAN: It looks as if that has to be left over.

34 MR. PERETZ: Yes, but as to whether any of those witnesses would need to be called, again in

1 a Judicial Review case it would be highly unusual. Agreeing facts, this does not seem to us
2 a case where that issue really arises.

3 Timetable – madam, you very kindly set out your agreement to our thoughts that there
4 should be a single hearing.

5 THE CHAIRMAN: Well only thoughts on how we are going to deal with it, not on your timetable.

6 MR. PERETZ: Not our timetable, but at least if there was going to be a hearing to deal with
7 admissibility together with substance, if one got that far. We think this case should take no
8 longer than a day, given that the case will be set out in writing, and there are no margins for
9 great points of factual complexity here. We had hoped that it would be possible to have
10 a hearing in September, but we are obviously entirely in the hands of the Tribunal, and it will
11 depend on the Tribunal’s own calendar and commitments.

12 THE CHAIRMAN: Our discussion previously is that we do not see why it should take as long as
13 September to deal with this and that hopefully it can be dealt with at the end of July.

14 MR. PERETZ: Yes, that thought had occurred to us too. The only difficulty is simply that as you
15 may know, those behind me are facing attack on a number of fronts at the moment in this
16 Tribunal, there are a number of cases they are dealing with, and the thought of dealing with
17 one more was just a little bit much, so that is why we preferred September.

18 THE CHAIRMAN: There is the position of Mr. Edmed and Aqua Resources.

19 MR. PERETZ: I do not want to spend too much time sounding as if I am pressing for delay, which
20 I am not. I think it is important to appreciate, Mr Edmed’s remaining interest in this issue of
21 the access code is essentially that he wants an infringement decision as a basis for a possible
22 damages’ action. That is his legal/financial interest. Of course, he may well have a public
23 interest as well, but in so far as his legal interests are affected by the Decision, because he
24 wants an infringement Decision on which to base a damages’ action, whatever damages he
25 may or may not be entitled to those damages are now essentially fixed because the conduct
26 lasted until December 04/January 05, and then stopped on any view. So his cause of action is
27 a sense complete. He has a lump of damages which is now there, it is not growing, and if he
28 wishes at some point to bring action under s.47(a) of the Competition Act in front of this
29 Tribunal he will be able to do that. There are no timing issue runs because the two year time
30 limit runs from when we take a decision. Insofar as he suffers any delay in getting his lump of
31 damages, it is compensated in interest. So he has no financial interest or any other interest in
32 getting this heard quickly. As I say, the last thing I want to do is to argue for delay or that this
33 should be put back. Wee are very keen to get this dealt with quickly, but it is not a case where

1 it is necessary to push ahead so far that one risks overwhelming the people behind me because
2 they are dealing with so many other cases at the moment.

3 THE CHAIRMAN: I do not quite understand that because you are going to put in a Defence by 31st
4 May. You are going to put in this bundle of documents on 31st May. At that point, subject to
5 the other parties, it is a matter for you to get up your arguments and write a skeleton, there is
6 nothing else to do. The people behind you are not really involved.

7 MR. PERETZ: Yes, well put it this way, my experience in acting for Respondents is not that one can
8 sit in one's ivory tower and Chambers will simply produce a skeleton which is then sent ----

9 THE CHAIRMAN: The work is going to be done between now and 31st May.

10 MR. PERETZ: Well not the work of producing a skeleton for the hearing. I have just been handed a
11 note which is that we are happy to try for July, so I am not going to press the point. I just make
12 the point that there is continuing work – the work for those behind me does not stop simply
13 because a Defence has been put in, apart from anything else, Mr. Edmed one way or another
14 will want to respond to what is in the Defence, and we will then have to respond to that.

15 THE CHAIRMAN: I appreciate that, but the main work is being done up front, but anyway that
16 problem has gone now.

17 MR. PERETZ: Yes.

18 THE CHAIRMAN: Thank you.

19 MR. BLAIR: There is a point that occurs to me arising out of that, and I may be either for
20 Mr. Edmed, or possibly for Mr. Quinney to deal with this, but it seemed to me that it is
21 possible that Mr. Edmed might like to know where his position is in advance of the
22 commencement of the new legislation and that leads me to wonder whether the correspondence
23 that we are going to see will deal with the question of whether there has been an application for
24 a licence, or whether there will be one and what the position is in relation to the future?
25 I appreciate that we are dealing with the past, but it helps to understand how things stand. Is it
26 possible for you to say at this stage, either of you, whether there is such correspondence, and
27 whether we would see it?

28 MR. EDMED: I am not entirely sure I understand what you are asking?

29 MR. BLAIR: Have you applied for a Water Licence, or are you going to?

30 MR. EDMED: We will not be applying for a Water Licence in such that the legislation has been
31 drawn up that a retailer would have to request a combined licence where they were responsible
32 for the supply of water into the system.

33 MR. BLAIR: So there is no correspondence for us to see about the question of your coming into
34 terms with the Water Act?

1 MR. EDMED: We will be coming into terms with the Water Act in supplying water into the system,
2 as they are being envisaged by OFWAT for the future.

3 MR. BLAIR: Fine, well anything that is relevant to that I think could be useful in the bundle if it is
4 possible to include it.

5 MR. EDMED: Certainly.

6 MR. BLAIR: Thank you.

7 MR. PERETZ: If I can just add to that, I am instructed that for the moment it is impossible to apply
8 for a Water Licence because the mechanism is no up and running for that to be done – it is
9 expected that in August the mechanism will be up and running for that to be done, there is
10 a procedure to be gone through, and the procedure is not yet out there. So at the moment there
11 is obviously no application. I might just say the Defence will go into a lot of detail on how the
12 Water Act 2003 actually works, but I will just say for the moment I am not sure that
13 Mr. Edmed entirely go the position right, but we can explain it in due course.

14 THE CHAIRMAN: Mr. Edmed, there were two questions of new applications. There is the
15 application under the new Water Act, but there is also the application for the interim period
16 which previously this case is about because they said that you had to be licensed. Now, they
17 will accept an application, even if you are not licensed. Is that an application that is going to
18 be made? Has it been made, or is there correspondence about it?

19 MR. EDMED: We are in the process of going through the procedure for that to happen, having been
20 delayed from doing it previously, that restriction has been taken away so we have started
21 talking again and we are going through the procedure of applying to Severn Trent to enter their
22 distribution system under the present legislation, as it has been defined by the Competition Act
23 so far by the Regulator.

24 THE CHAIRMAN: Because I do not know when the new structure comes into being – it may be
25 that it all runs together.

26 MR. EDMED: Yes, in reality we will probably define the new procedure by actually doing it in the
27 run-up to the new licence coming into place.

28 THE CHAIRMAN: Thank you.

29 PROFESSOR PICKERING: Mr. Peretz, if there are no provisions at the moment for the
30 introduction of the licensing scheme, and that will not come “on stream” – if you will forgive
31 the unintended pun – until August, and it is anticipated that the legislation will be implemented
32 in this respect in the Autumn, how long is it going to take applicants to obtain the requisite
33 licence, and is it going to be possible for the implementation actually to be effective in the
34 Autumn if they do not know what hoops and hurdles they have to go through even now?

1 MR. PERETZ: I will have to take instructions quickly on that. (After a pause) I can say this, the
2 choice of a date for bringing in the new regime under which one can apply for a licence will be
3 determined with an eye to the point at which the relevant provisions of the Act come into
4 force. It is envisaged that it will take about 16 weeks or so to go through the licensing
5 procedure. The dates will be chosen so as to avoid a situation, as far as it can be done, in
6 which an applicant who applies at the earliest possible moment finds it takes so long to get
7 a licence that they are not up and ready by the time the Act comes into force. So the timing
8 should work, if I can put it loosely, so that the problem you identify should not arise, given the
9 time we would expect it will take to get a licence in the usual case.

10 PROFESSOR PICKERING: Well then I am afraid I identify another problem, which is that the
11 possibility of competition being introduced as a result of the licensing scheme is going to be
12 further delayed.

13 MR. PERETZ: If I can put the point shortly, what will happen once the Water Act 2003 comes into
14 force is that it will be a criminal offence for a person to use a water undertaker's supply system
15 without being licensed, that will simply be a criminal prohibition, and that is there in the
16 legislation, that is what the legislation says. It is background to everything that OFWAT does,
17 everything the Tribunal has to do. What will happen is that there will be enough time within
18 which people who, at this stage, think they might want to enter the industry and operate under
19 a licence in the late Autumn, enough time will be allocated for them to apply for a licence and
20 get it by the time that that new regime comes into force

21 PROFESSOR PICKERING: I accept that but is it not inevitably the consequence that if 16 weeks
22 have to be taken from August, assuming that you hit August anyway, then we are up to
23 Christmas and the possibility of competition – and you have talked about a criminal
24 prohibition on introducing water without a licence – insofar as there is any intention to allow
25 competition to take place under licensed terms, then that competition is going to be delayed
26 into 2006? So the implementation of the opportunity to insert under licence supplies of water
27 is not going to happen in the Autumn. I think that follows, the numbers just make that
28 inevitable, do they not?

29 MR. PERETZ: Of course OFWAT's position is as matters currently stand competition can take
30 place, because there is, in OFWAT's view, a duty under the Competition Act on water
31 undertakers, in certain circumstances at least, to make their supply systems available to new
32 entrants. If there is a new entrant now that is in a position tomorrow to start entering into an
33 arrangement that will in a year's time require a licence they can do it under the current regime,
34 that is OFWAT's position. The relevant difference that will happen once the Water Act 2003

1 comes into force is that in order to do it they will need a licence, and if they do not have a
2 licence they will be committing a criminal offence.

3 PROFESSOR PICKERING: I am sorry, Chairman, but may I just make one further point, or ask one
4 further question? Mr. Edmed has been seeking to do this and appears to have at least felt
5 himself unable to do so because of the access code that Severn Trent had. How many other
6 water undertakings have had similar provisions within their own access codes and what has
7 OFWAT done about those?

8 MR. PERETZ: Well I do not think I am in a position to answer that now.

9 PROFESSOR PICKERING: Treat it as rhetorical!

10 THE CHAIRMAN: The people who are entering the water distribution at the moment, are they
11 going to get either grandfathering or an advantage when the licensing comes in, or is
12 everybody going to be looked at completely afresh?

13 MR. PERETZ: I can answer the question in a slightly narrow way by saying that as far as I am
14 aware there is no provision in the legislation that confers any special position on people who
15 happen to be undertaking activities now that towards the end of this year will require a licence.
16 So in that sense there is no grandfathering.

17 THE CHAIRMAN: Right. Why I raise the question is because from what you were saying, whether
18 Mr. Edmed, or Aqua Resources, is at a disadvantage – or might be at a disadvantage – in the
19 sense that if he would have been granted access previously, might he be at any disadvantage
20 when he applies whatever the system is for a licence or a licence through someone else?

21 MR. PERETZ: Yes, I am afraid I will just have to see if there is ----

22 THE CHAIRMAN: Maybe that is a rhetorical question as well! Maybe it is just something that
23 needs to be considered.

24 MR. PERETZ: Yes, I will simply take note of the question, I think that is probably the best I can do
25 at the moment.

26 THE CHAIRMAN: Mr. Edmed, if we take the agenda, the “form of proceedings” – you probably
27 agree it is England and Wales?

28 MR. EDMED: Yes.

29 THE CHAIRMAN: “Permission to intervene” we have dealt with.

30 MR. EDMED: Yes.

31 THE CHAIRMAN: Now, we have had quite a lot of discussion with Mr. Peretz about the issues.
32 Did you want to say anything about what we have said, or any other issues?

33 MR. EDMED: Not at this moment.

1 THE CHAIRMAN: So let us come back to that. Now, documents? You have heard what the
2 discussion has been about documents. Do you have anything else to say about that?
3 MR. EDMED: No.
4 THE CHAIRMAN: Confidentiality?
5 MR. EDMED: No.
6 THE CHAIRMAN: I think we got to witnesses, and I think in relation to witnesses we have to see
7 where we go.
8 MR. EDMED: Yes.
9 THE CHAIRMAN: And the same with whether or not there are any facts that can be agreed. So
10 that effectively leaves us with the timetable. In relation to the timetable OFWAT are going to
11 provide a Defence and their disclosure by 31st May. So I think the next thing that ought to
12 happen is the Statement of Intervention, so possibly if we could hear from Mr. Quinney as to
13 the position in relation to that. Do you understand about this?
14 MR. EDMED: Yes.
15 THE CHAIRMAN: Just stop me if you do not understand something.
16 MR. EDMED: Yes.
17 THE CHAIRMAN: Yes, Mr. Quinney?
18 MR. QUINNEY: First of all, could I clarify a point? You said at the start of the hearing that you
19 agreed with OFWAT's suggestion that there be one hearing covering all the relevant issues.
20 THE CHAIRMAN: Yes.
21 MR. QUINNEY: In OFWAT's skeleton they raise their suggestion, which I assume you were
22 agreeing with, was set out in para.3.4, which was in contrast to the position in 3.5, and
23 I assume that the issues that would be heard in that one day hearing would be those which are
24 set out in s.3.4?
25 THE CHAIRMAN: Which is?
26 MR. QUINNEY: Clearly there is the issue of admissibility, and OFWAT in their skeleton say there
27 are then two potential issues one could go on to consider if the Tribunal decided that it had
28 jurisdiction. The first issue was considering the narrow issue of whether OFWAT had
29 committed an error of approach which, for example, would merit quashing and possibly
30 remitting back to OFWAT and that is their suggestion for the scope of the hearing. They do
31 note in 3.5 the possibility of determining the substantive issue as to whether or not there had
32 been an infringement and, if so, whether to impose a penalty and OFWAT there say that they
33 would strongly submit that that would not be the appropriate course.
34 THE CHAIRMAN: In other words, for us to take over the investigation?

1 MR. QUINNEY: Yes, yes. We would support OFWAT in that respect because I think it is clear in
2 this case that there has been no investigation of substance, and the thrust of the Tribunal's case
3 law to date has been that whilst clearly the Tribunal has very wide powers, it views itself
4 primarily as an appellate body and where there is no decision of substance to review, there has
5 been no consideration of market definition, what is the scope of essential facilities, etc., but if
6 in those cases the Tribunal thinks there is an error the appropriate course is actually to remit to
7 get a First Instance Decision which could then possibly be reviewed again.

8 THE CHAIRMAN: You are probably correct. The only question that is going through my mind is
9 that we have not seen the disclosure and if, in the disclosure, there was sufficient that
10 a decision had been made and all the investigation had taken place, then our remedy may not
11 be to remit. Do you see what I am getting at?

12 MR. QUINNEY: Yes.

13 THE CHAIRMAN: I do not think at the moment, looking at it completely hypothetically and not
14 having sent the documents, and not having seen the Defence, it is appropriate to give you any
15 commitment about that.

16 MR. QUINNEY: Yes.

17 THE CHAIRMAN: Mr. Peretz is nodding, so I assume he sees the force of what I am saying.

18 MR. PERETZ: I am putting myself in the Tribunal's shoes, I can see, madam, with respect where
19 you are coming from on that. In practice I am fairly confident that the issue you speculate
20 about is not going to arise, but obviously it is not something that we can 100 per cent. rule out.

21 THE CHAIRMAN: We cannot tell at the moment if that issue is going to arise?

22 MR. PERETZ: Indeed. The practical question that has to be decided now is essentially how long
23 Mr. Quinney needs for a Statement of Intervention? I can see from his point of view at the one
24 end of the scale if he is simply saying "Yes, we agree in large part to arguments about
25 admissibility and the reasonableness of our approach", that is one thing, if he can simply say
26 that; if, however, he is having to defend a possible allegation of infringement, and
27 a determination on infringement, there will be a whole lot of things he will want to go into
28 such as he flagged up, the question of whether Severn Trent is in a dominant position at all,
29 whether these are essential facilities, all these questions that would have to be covered before
30 an infringement finding is going to be made, and that will expand the territory a lot. From his
31 point of view he is going to want more than, say, a couple of weeks in which to deal with all of
32 that.

33 THE CHAIRMAN: Is the answer not that at the moment we do not know what is covered by the
34 OFWAT – I do not want to use the word "investigation", but I cannot think of any other word

1 – “pre-investigation”, or ----

2 MR. PERETZ: Consideration of the issues.

3 THE CHAIRMAN: The OFWAT consideration, it is unlikely that this Tribunal would enter into
4 looking at evidence which had not been within those deliberations, and therefore you would
5 not need to go into all those things at the moment. But if it turned out that OFWAT had
6 considered those matters, then we are in, I think, a different ball game, are we not? We would
7 have to return and have a look at it?

8 MR. PERETZ: Yes, all I can say is I am pretty confident we are in the ball game that we think we
9 are in rather than a different ball game, which is always a comforting thing to know. My
10 practical suggestion was going to be, my guess is that two weeks or so would probably be
11 enough on the basis of in fact what I think the defence is likely to look like, what the Tribunal
12 is likely to think of the issues that arise once the Defence has been seen, and what Severn
13 Trent’s own opinion is likely to be once they have seen it. I would have thought they will take
14 the view that two weeks is probably enough. But probably the sensible thing to do is to give
15 them I say two to three weeks with liberty to apply if it turns out that we all find that we are
16 playing rugby and not football.

17 THE CHAIRMAN: Yes. Does that help you, Mr. Quinney?

18 MR. QUINNEY: Yes, I think if we are in, as Mr. Peretz put it, his ball game or ball park, I think the
19 normal timetable for a Statement of Intervention is 21 days as a rule of thumb, but ----

20 THE CHAIRMAN: I would have thought that in this case you could probably do it by 14th June,
21 which is two weeks after the Defence.

22 MR. QUINNEY: Yes, it may well be that we have very limited additional matters to add to what is
23 in the Defence. One issue that I do not know is client availability to sign-off within a two
24 week period if the relevant people are actually on holiday.

25 THE CHAIRMAN: Well that is a matter that you will have to deal with, we cannot deal with that
26 today – they may be on holiday for four weeks for all we know.

27 MR. QUINNEY: No, indeed. Perhaps then if we could say that we would aim for 14th June?

28 THE CHAIRMAN: If I make the order for 14th June there is always liberty to apply.

29 MR. QUINNEY: Yes.

30 THE CHAIRMAN: But that at least fixes everybody’s mind, and you have the time between now
31 and then, although some of it will be from 31st May.

32 MR. QUINNEY: I am also at a disadvantage, obviously, not having seen the Notice of Application
33 yet.

34 THE CHAIRMAN: Right. Well if we say 14th June?

1 MR. QUINNEY: Yes.

2 THE CHAIRMAN: Now there is going to be some disclosure on your part as well, I assume?

3 MR. QUINNEY: Well if the issues are primarily related to what was in the Director's mind and
4 whether he committed an error of approach I would have thought the most relevant matters
5 would be covered in the Director's file.

6 THE CHAIRMAN: I think that is right, but any documents that you would want to rely on would
7 come with your Statement of Intervention?

8 MR. QUINNEY: Yes, they would.

9 THE CHAIRMAN: So that would be 14th June. Mr. Edmed has already produced his bundle. I do
10 not know if there were any other documents that he would want to rely on?

11 MR. EDMED: No.

12 THE CHAIRMAN: No, there are not. So the next question is whether Aqua Resources, Mr. Edmed,
13 would want to have an opportunity to respond to the Defence and Statement of Intervention?

14 MR. EDMED: Yes.

15 THE CHAIRMAN: If you had another two weeks to do that, would that be all right?

16 MR. EDMED: Fine.

17 THE CHAIRMAN: So that is 28th June.

18 MR. PERETZ: My experience in front of the Tribunal is that it is probably best to proceed,
19 particularly if we are looking at a July hearing, by ordering service of sequential skeleton
20 arguments, with Mr. Edmed to go first as the Appellant. If that is right it may well be that
21 there is very little point in producing a formal document called a "Reply", because the points
22 he wishes to make can simply be put into his skeleton argument which will probably, on this
23 timetable, be at about the same time anyway. As I say, my experience has been that the Reply
24 pleading has not generally been a particularly useful document. It is not often done and when
25 it has been done I am not sure that it has added much, because the ground can effectively be
26 covered in written skeleton arguments which, in this Tribunal, tend to be fairly long and
27 detailed anyway.

28 (The Tribunal confer)

29 THE CHAIRMAN: We appreciate what you are saying, but I think the way to deal with it is that if
30 Mr. Edmed puts in a reply by 28th June then if he does not want to put in a skeleton, but lets his
31 reply stand as a skeleton, then I think that is the appropriate way of doing it, rather than saying
32 he cannot put in a Reply but he puts it all in a skeleton. I think it may become skew-whiff
33 then.

34 MR. PERETZ: It may simply be a question of the name one attaches to the same document?

1 THE CHAIRMAN: Absolutely. Right, so a Reply by 28th June. Skeletons – on that basis they do
2 not have to be sequential because you will know what is being said on 28th June, and therefore
3 if skeletons were 6th July ----

4 MR. PERETZ: Are we getting to a hearing date?

5 THE CHAIRMAN: We are getting to a hearing date which is 20th July, and because we do not quite
6 know what is involved in this case at the moment we will set aside two days but we will hope
7 that you are right that it will only take one day.

8 MR. PERETZ: I think that is a wise precaution, particularly as Mr. Edmed is not represented and
9 a certain amount of time may be needed because of that.

10 THE CHAIRMAN: No, so we will hope it will take one day. We also will need, in order to assist
11 the Tribunal and everybody else, a chronological bundle.

12 MR. PERETZ: Yes, we were proposing that our bundle be a chronological bundle.

13 THE CHAIRMAN: Yes, but what we would want is to make sure that everybody's documents were
14 in one agreed bundle, chronologically – earliest date first.

15 MR. PERETZ: Our current thinking is that to save re-assembled bundles, our proposal was to do as
16 best we can and for obvious reason we are best placed to do it, to produce a chronological
17 bundle, so we will put in it the documents and the Notice of Appeal so that the whole thing
18 reads through sequentially. Apart from anything else that makes the documents easy for
19 everybody to read.

20 THE CHAIRMAN: And then if one has to insert some more because Severn Water decide to
21 produce some documents then those can be inserted as “a’s” and “b’s” if you wish, and we can
22 just have one bundle going – at all times we are looking at just one bundle.

23 MR. PERETZ: Yes, well our intention was to produce the base of such a bundle, certainly, into
24 which things may need to be added later, but which everybody can use. It may be useful for
25 everybody, we were proposing to put in a consolidated version of the Water Industry Act 1991,
26 as amended by the Water Act 2003. The Water Act proceeds almost entirely for relevant
27 purposes by amending the 1991 Act, so one ends up with a consolidated piece of legislation.

28 THE CHAIRMAN: And you have that consolidated document?

29 MR. PERETZ: We are trying to find an appropriate version, the Butterworths' print has many
30 virtues, but it is slightly awkward to use, but we may have to do the best we can with that. The
31 reason I mention it is simply that if the Tribunal already has copies of the legislation or would
32 find that a superfluous set of paper ----

33 THE CHAIRMAN: No, that would be very useful.

34 MR. PERETZ: -- we would rethink our suggestion.

1 THE CHAIRMAN: No, we have not, and I think that would be very useful. I do not know if there
2 have been any other water industry appeals here, but I have not seen it.

3 MR. PERETZ: I do not know, but it would probably be useful. We may not produce the whole Act,
4 which is very long and large parts of it are, on any view, plainly irrelevant, but we will err on
5 the side of inclusion and have a consolidated version.

6 THE CHAIRMAN: And what about a bundle of authorities?

7 MR. PERETZ: Well for the hearing it would probably be best to leave the preparation of that bundle
8 until the skeleton arguments were finalised, because I do not know what points ----

9 THE CHAIRMAN: It is useful if everybody works off the same bundle, with the same dividers so
10 that ----

11 MR. PERETZ: Yes, I think the Water Industry Act I can say with some confidence will take up a
12 lever arch file on its own, so that will be in a separate bundle. I have tried my best to be
13 selective with **this**, but you can see it has already gone to a couple of centimetres high.

14 THE CHAIRMAN: Probably your clients can put together an authorities bundle.

15 MR. PERETZ: Yes, we will do that.

16 THE CHAIRMAN: With everybody's authorities in from the skeletons?

17 MR. PERETZ: Yes.

18 THE CHAIRMAN: Then that is very helpful, because it is just so much faster to work.

19 MR. PERETZ: Indeed.

20 THE CHAIRMAN: That probably will not be able to be done on 6th July, it will be by – I have just
21 forgotten what day of the week it is now.

22 MR. PERETZ: Madam, you have given us 6th July for our skeleton. It might make sense for
23 Mr. Quinney's skeleton to come in a bit later. The reason I say that there is obviously a real
24 danger of him trying to reinvent the wheel.

25 THE CHAIRMAN: 6th July is a Wednesday, so what about 11th July?

26 MR. PERETZ: Yes.

27 THE CHAIRMAN: Because that is the Monday. Then the authorities' bundle, could that be done
28 by 11th? It is unlikely that you are going to have different – why do we not say by 11th, but if
29 there are additional cases they can again be put in as “a's” or “b's” or at the end?

30 MR. PERETZ: I am sure that should work, and I am sure that if Mr. Quinney works out by 8th or 9th
31 July that we have missed the obvious authority on which he wishes to rely then he will let us
32 know and we can get it in.

33 THE CHAIRMAN: I think need to consider some sort of issues statement, so that it is known
34 exactly what the issues are at the hearing, and that will probably come out of the skeletons.

1 I can see that there needs to be some agreement over that.

2 MR. PERETZ: Yes, there is a slight amount of hesitation because I am again well conscious that
3 Mr. Edmed is not represented, which does make it a more difficult exercise than it sometimes
4 is to try and agree an issues statement, and one is conscious there is a danger of the “ships
5 passing in the night” a bit in this case, because what Mr. Edmed sees as issues may well be not
6 what we consider the real issues.

7 THE CHAIRMAN: That is why I am thinking that we need to sort that out.

8 MR. PERETZ: We will, of course, do our best, both in our defence and in our skeleton to say
9 “These are the issues before the Tribunal”, but of course what we say is, unfortunately, not
10 always uncontroversial.

11 THE CHAIRMAN: I have hesitated here to have another case management conference because the
12 costs of another case management conference are considerable. I am just wondering whether
13 another case management conference might actually be economical rather than costly.

14 MR. PERETZ: It may be a matter we can keep under review rather than decide now – of course, it
15 depends to some extent on the likelihood of members of the Tribunal having diaries that get
16 clogged up over the period, it might be worth, as it were, pencilling one in.

17 THE CHAIRMAN: We could either do that or, if each party in their skeleton set out what they
18 thought the issues were, we could see if there were joint issues.

19 MR. PERETZ: We are going to do our best to do it in the Defence, but as I say unfortunately
20 I cannot count on that being entirely uncontroversial.

21 (The Tribunal confer)

22 MR. PERETZ: This is, in some respects, a complicated case in the sense there is a certain amount of
23 legislation around which is complicated. As often happens, once one has the complicated
24 legislation under one’s belt the underlying issues are really fairly straightforward and, I am
25 tempting fate by saying this, I hope that the issues between us – at least what they are – will be
26 relatively uncontroversial. I suppose there are a couple of ways forward. One is that it may be
27 more sensible to have a look at this once the Defence is in, because the Tribunal will then read
28 what ----

29 THE CHAIRMAN: I think it is not only the Defence it is the Response.

30 MR. PERETZ: And also perhaps the Response, yes.

31 THE CHAIRMAN: 28th June.

32 MR. PERETZ: Yes.

33 THE CHAIRMAN: For example, we have raised the commitment point and that may or may not be
34 a live issue.

1 MR. PERETZ: Indeed. One possibility I was going, perhaps somewhat cheekily, to suggest is that it
2 might be possible for the Tribunal itself to write a very short note – an issues statement – of
3 what it sees the issues are at some point between the submission of Mr. Edmed’s
4 reply/skeleton and our skeleton. It would certainly help us, for example, if the Tribunal felt
5 that there were issues that we had not dealt with properly in our defence, or skated over, for us
6 to know that so that we could deal with them.

7 THE CHAIRMAN: This Tribunal often does something similar to that that anyway ----

8 MR. PERETZ: Indeed.

9 THE CHAIRMAN: -- if it thinks that something has not been covered.

10 MR. PERETZ: Yes.

11 THE CHAIRMAN: We are wondering whether we pencil in another case management conference
12 so that it is in our diaries. Tuesday, 12th – morning or afternoon?

13 MR. PERETZ: I suppose it would be better in the afternoon, and the reason I say that is the
14 Statement of Intervention is due in on the 11th and it might be helpful if we had the morning.

15 THE CHAIRMAN: All right, let us do it in the afternoon. Tuesday 12th July, at 2 o’clock – if we do
16 not need it we can cancel it. All the parties and the Tribunal will think about issues.

17 Is there anything else that one would need to do for the hearing, or have we covered it
18 all?

19 MR. PERETZ: Certainly nothing has occurred to us.

20 THE CHAIRMAN: Mr. Quinney?

21 MR. QUINNEY: No.

22 THE CHAIRMAN: Mr. Edmed, is that all right?

23 MR. EDMED: Yes.

24 THE CHAIRMAN: The only other point, Mr. Edmed, is you are unrepresented, and this is a very
25 complicated matter. We are very, very happy to have litigants in person here, and I have done
26 a case earlier this year where I had a litigant in person so we are quite used to it. But because it
27 is a complicated matter, perhaps you need to consider ----

28 MR. EDMED: I will give it due consideration, madam.

29 THE CHAIRMAN: Thank you very much. Anything else? Thank you all very much.

30 (The hearing concluded at 3.25 p.m.)