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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No. 1105/5/7/08

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

17<sup>th</sup> November 2008

Before:

LORD CARLILE OF BERRIEW QC  
(Chairman)

RICHARD PROSSER  
GRAHAM MATHER

Sitting as a Tribunal in England and Wales

BETWEEN:

**(1) FREIGHTLINER LIMITED**  
**(2) FREIGHTLINER HEAVY HAUL LIMITED**

Claimants

- v -

**ENGLISH WELSH & SCOTTISH RAILWAY LIMITED**

Defendant

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**CASE MANAGEMENT CONFERENCE**

## APPEARANCES

Mr George Peretz and Miss Valentina Sloane (instructed by SJ Berwin LLP) appeared for the Claimants.

Mr Mark Brealey QC (instructed by Freshfields Bruckhaus Deringer LLP) appeared for the Defendant.

Mr Daniel Beard (instructed by Orrick, Herrington & Sutcliffe) appeared for Enron Coal Services Limited (in liquidation) as an observer.

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1 THE CHAIRMAN: Good afternoon.

2 MR. PERETZ: Good afternoon. I appear with my learned Junior, Miss Sloane for Freightliner,  
3 and Mr. Brealey QC appears for EWS, the defendant. Sir, we have just been handed a draft  
4 order which we are currently looking at.

5 THE CHAIRMAN: I would not dignify it quite with the term “draft order” it is a suggested  
6 fleshed out version of the agenda really, though it appears in the form of a draft order on the  
7 basis that we thought it might be more convenient to look at it in this form.

8 I wanted, if I may, to start by working backwards, but with the preliminary comment that I  
9 understand that Enron – if I may call them that – are represented here today?

10 MR. BEARD: Sir, yes. I appear on behalf of ECSL in our claim. Obviously this is a case  
11 management conference between two other parties concerning a different claim. Obviously  
12 we are not aware of precisely what is going on, we do not have any documents in relation to  
13 these matters, save for those publicly available on the website. We have sought to obtain  
14 the claim form but there seems to be a degree of reluctance ----

15 THE CHAIRMAN: Well I hope you will be aware of what is going on a little more as the  
16 minutes unfold, but I just wanted to establish that you are here and we are grateful to you  
17 for attending in “observer” status at the moment. I hope that neither Mr. Peretz nor Mr.  
18 Brealey will object if you want to intervene at any stage.

19 MR. PERETZ: No, the position simply is we were told only this morning that Enron were going  
20 to turn up by counsel, and I obviously intended no discourtesy by not mentioning them, I  
21 simply was not sure what their status was.

22 MR. BEARD: I am sorry to have disappointed, but yes we are here and we are happy to sit as  
23 observers, and if we can assist the Tribunal in any way ----

24 THE CHAIRMAN: Thank you very much. Well I mention that because I think we have to start  
25 in a sense with ECSL. The position is that ECSL have made a claim, that there are going to  
26 be issues which certainly overlap between the two claims, and the Tribunal will certainly  
27 have to consider whether these two claims are either consolidated or heard together. My  
28 provisional view and that of my two colleagues, and we have discussed this – of course only  
29 provisionally – this morning, is that probably consolidating the two claims would be a step  
30 too far because they are not identical, but hearing them together might well make a huge  
31 amount of sense, particularly because there would be duplicated evidence for the defendants  
32 at the very least, and hearing them together might save a great deal of court time. So our  
33 current inclination is to hold a separate case management conference (which would have to  
34 take place anyway) in relation to the ECSL claim, to fix a date for it but to invite the

1 existing parties in today's case to attend as part of that case management conference – how  
2 we deal with it formally can be arranged afterwards, it may well be that we will simply have  
3 to have two case management conferences in parallel which I do not see as a problem.  
4 Then we can look at how we proceed with the whole of the two cases. My current view,  
5 and I think that of my colleagues, is that we are likely to have one hearing which would  
6 produce two judgments, or possibly one common part and two separate parts. Does anyone  
7 want to say anything about that?

8 MR. PERETZ: Just as a general observation, as far as we can tell from the Enron claim it does  
9 raise a number of quite discrete issues. In particular there is a claim for restitutionary  
10 damages which, as you know, will raise legal issues of its own and possibly a preliminary  
11 issue for all we know. That issue does not exist in our claim which is simply a claim for  
12 compensatory damages.

13 The second point I would like to make, again as far as we can tell, is that the Enron claim is  
14 distinct from ours in that Enron's position was somewhat different from ours as Enron was  
15 a broker in this industry and that itself may raise a number of factual economic issues which  
16 simply do not arise in our case; we are a straight forward competitor to EWS.

17 I hear what you say, Sir, about there being overlapping issues. I would emphasise there are  
18 a number of issues which, as far as we can tell, do not overlap and that itself will lead to  
19 costs implications if there is a hearing together because at some point one party is going to  
20 have to sit through (or potentially have to sit through) discussion of issues which are  
21 nothing to do with it at all.

22 THE CHAIRMAN: Mr. Brealey?

23 MR. BREALEY: Sir, we endorse what you are saying. We do say it would be a huge amount of  
24 common sense to have them heard together. Consolidation is probably a step too far.  
25 Restitutionary damages are not going to make any difference. So really, working  
26 backwards – we will come on to this in a moment – but May is too early, maybe a  
27 July/October date for the two trials, but May, certainly five days, I do not think the two  
28 actions can be heard in five days. Five days for the Freightliner case is quite optimistic, and  
29 we will come on to that in a moment obviously, but working backwards, yes, a huge amount  
30 of sense for the two of them to be heard together.

31 THE CHAIRMAN: Right, thank you very much.

32 MR. PERETZ: Yes, one immediate observation, it is not a complete surprise that my learned  
33 friend seizes on that. He says May is too early for the Enron claim, and suggests October. I  
34 hope it is apparent from our skeleton argument we are very keen to get on with the

1 determination of our claim, and we are not – to put it gently – assured that the same is true  
2 on the other side. We are concerned by any suggestion that the existence of this second  
3 claim, which has come along only very recently, should not be an excuse to stall the speedy  
4 determination of our claim which was brought in early August.

5 MR. BREALEY: If I could just put one marker down right away. We are not trying to stall  
6 anything. We are simply trying to case manage the Tribunal's directions in an orderly way.  
7 We do take objection to any allegation of "stalling".

8 THE CHAIRMAN: We are not going to adjudge on any allegation of stalling whether it is made  
9 or not, because we do not need to at the present time, we are simply going to case manage  
10 within what we regard as a realistic time frame. Our current view is that given that this  
11 Tribunal works at a pace generally which is unfamiliar in other courts, we regard aiming for  
12 a trial, including the Enron matter on 18<sup>th</sup> May as entirely realistic, and we would take a  
13 considerable amount of persuasion to the contrary. We would like to work backwards from  
14 that date, indeed, I have to say to you, Mr. Brealey, that when we started our tentative  
15 deliberations this morning we were looking at a much earlier date than 18<sup>th</sup> May. So subject  
16 to further discussions later, what I would like to do is to try and work backwards from 18<sup>th</sup>  
17 May for now, and we can return to that if absolutely necessary later in the hearing.

18 MR. BREALEY: Very well, Sir, but can I start – I am not saying to dissuade you from May, but  
19 indirectly persuade you that May is not realistic; if I can give the Tribunal some reasons.  
20 The claimants totally overestimate what is involved here, totally overestimate. There are  
21 some 12,000 documents in the defendant's possession that have to be vetted for relevance  
22 and confidentiality. Obviously if you put a team of 100 people on it, it can be done, but  
23 there has to be some sensible case management ----

24 THE CHAIRMAN: But this must have been anticipated for a very long time on your side?

25 MR. BREALEY: Absolutely, it has been anticipated for a very long time, but the documents have  
26 to be vetted for confidentiality, they have to be redacted. There is no consideration given by  
27 the claimants as to whether the Regulator and the generators are going to have any say in  
28 what is disclosed. There is this very tricky question of specified information which the  
29 defendant cannot disclose to the claimants. It will have to be subject to the order by the  
30 Tribunal, but the question arises as to whether the generators should have a say; whether it  
31 is an appropriate case management direction that the generators should have a say as to  
32 what is disclosed. There are all these nuances which are not made in the claimants'  
33 skeleton. It is pretended that this is a five day hearing, it is all about causation and there are  
34 some really deep issues on disclosure that the Tribunal and the parties have to work out.

1 We are only talking a matter of weeks at the end of the day. There is five, six, eight weeks  
2 between the parties, and one has to remember there has been a delay by the claimants in  
3 bringing this, the decision is November 2006, the claim is August 2008. So the urgency  
4 that the claimants somehow say “We have to get on”, has to be balanced with the  
5 prejudice ----

6 THE CHAIRMAN: I am not interested in urgency, Mr. Brealey, it is a question of managing this  
7 case within the sort of timeframe that is familiar in the Competition Appeal Tribunal.

8 MR. BREALEY: I do take that on board.

9 THE CHAIRMAN: It may well be that issues will arise in the future which will have to be  
10 considered separately such as third party disclosure, for example, but at the moment this  
11 Tribunal is minded to keep within the sort of time frame which is familiar to those of you  
12 who practise regularly before this Tribunal. The sort of timetable that I have mentioned and  
13 which is in the very tentative draft proposal is within those parameters.

14 MR. BREALEY: Well if I can just give one example of where it may prove to be unrealistic, and  
15 that is para. 3 of the Tribunal’s draft order – 3(b)(ii).

16 MR. BEARD: I am sorry, if I might interpose? I am sorry, Mr. Brealey. We do not actually have  
17 a copy of the draft order ----

18 THE CHAIRMAN: You will be provided with one.

19 MR. BEARD: I wonder if all might agree that we could ----

20 THE CHAIRMAN: You should have a copy. Any objection?

21 MR. PERETZ: No.

22 MR. BREALEY: None at all. (Document handed to Mr. Beard)

23 MR. BEARD: That is very kind.

24 MR. BREALEY: “3(b) the Defendant shall disclose ...” then “(ii) relevant documents from the  
25 ORR’s files relating to the decision provided by the ORR to the Defendant.” So that is  
26 documents in the defendant’s possession from the ORR file. At the moment disclosure has  
27 to be by 1<sup>st</sup> December. Again, there are tens of thousands of documents that have to be  
28 reviewed for the relevance, not only to the Freightliner claim, but also to the Enron claim.  
29 Then there have to be issues of confidentiality, redaction, and the extent to which the  
30 Regulator and the generators are going to have a say. If they say: “This is highly  
31 confidential” then someone has to determine that the document be redacted.

32 THE CHAIRMAN: So how long are you saying you need before we can reach the stage in  
33 proposed para.3?

1 MR. BREALEY: I unquestioningly urge the Tribunal that it has to be some sort of realistic date  
2 round about 29<sup>th</sup> January which is the date in (4). Many documents are going to be  
3 disclosed prior to that in any event because that is the specific disclosure. The claimants  
4 have to provide the documents relied on in the statement of claim. But at the end of January  
5 all the documents, including in the Enron claim, will have been sorted out for their  
6 relevance, hopefully the generators and the Regulator will have had their say, which would  
7 probably be in December, and that is a very sensible case management order, in my  
8 respectful submission. But to do it in about two weeks' time is just totally unrealistic, with  
9 respect.

10 THE CHAIRMAN: Right, so in effect what you are suggesting is that in order to meet a  
11 reasonable disclosure timetable we have to push the whole timetable back by eight weeks.  
12 That is what it comes to.

13 MR. BREALEY: It is a part of disclosure and yes, it does have to go back by at least eight weeks.  
14 Again, in the scheme of the history of this case to date, and whether that causes any  
15 prejudice at all to the claimants, we say it does not. If they are out of pocket by eight weeks  
16 they get compensated in interest.

17 THE CHAIRMAN: Supposing we were to move (b)(ii) into part of the standard disclosure in  
18 suggested para.4, which in fact has date of 30<sup>th</sup> January 2009, that solves that problem, does  
19 it not.

20 MR. BREALEY: It does, Sir, it does.

21 THE CHAIRMAN: Right, thank you. What I would like to do, if I may – I promise you that we  
22 are entirely open minded about the date of the trial and we will at some point retire and  
23 consider the date of the trial, and if the date of the trial is not to be the date I suggested,  
24 which was 18<sup>th</sup> May, everything will be adjusted accordingly.

25 MR. BREALEY: Thank you, Sir.

26 THE CHAIRMAN: By a strict arithmetical formula. We might have to leave it to you because  
27 there are only three of us and there are a lot of you. If we may just for the sake of doing this  
28 tidily assume, rightly or wrongly, that we are working from the date of 18<sup>th</sup> May backwards,  
29 the periods will then fall into place whether we use that date or a subsequent date.

30 MR. BREALEY: I really do not want to be destructive, as it were, of the order, but if I could just  
31 mention a few other items if one is looking at May.

32 THE CHAIRMAN: Yes, of course.

33 MR. BREALEY: The date for the expert evidence. Now at the moment that is at (14) and that is  
34 one week after the exchange of witness ----

1 THE CHAIRMAN: Can I explain to you why we have used these dates, and we can make any  
2 adjustments accordingly. The view of all three of us is, we do not wish to hear this case  
3 which will be evidentially complicated – the expert evidence is going to be fairly difficult –  
4 without having three weeks to consider all the papers ourselves, to read ourselves into it  
5 properly, otherwise we are not going to give you the sort of hearing we should like to give,  
6 because it can be slow, repeated and concentrated reading. So whenever we hear this case  
7 we must have everything in our possession three weeks before the hearing to give ourselves  
8 enough reading time.

9 We have worked backwards from that assumption so that the date that you have just  
10 referred to is partly based on that assumption.

11 MR. BREALEY: Well if one starts from May then I understand that, but for the expert, who has  
12 also got to read the disclosure relevant to the expert, has to rely on the factual witnesses –  
13 every expert has to rely on the facts as set out in the witness statements – one week, even  
14 given the speedy resolution of the cases in the Tribunal compared to the High Court, is very,  
15 very optimistic. Even in the claimants own timetable it is a lot longer, it is four weeks.

16 THE CHAIRMAN: So this is the gap between 26<sup>th</sup> March and 3<sup>rd</sup> April?

17 MR. BREALEY: This is the gap between (14) and (11).

18 THE CHAIRMAN: Yes, 26<sup>th</sup> March and 3<sup>rd</sup> April.

19 MR. PERETZ: Can I make a suggestion in response to that. We hear what my learned friend  
20 says about that, one obvious answer to it might be to make the date for exchange of witness  
21 statements earlier than it is in the current timetable because that is a good six weeks or so  
22 after disclosure and we could easily set a date one or two weeks earlier for the exchange of  
23 factual witness statements.

24 MR. BREALEY: With respect it sounds so easy to say: “We can just shorten it by two weeks”,  
25 but there will be thousands of documents here, and if the case is going to be properly argued  
26 and managed, the witnesses have to be able to look at the documents and digest them,  
27 because the witness statements will be relying on the documents. The claimants’ case will  
28 be “We could have got more business from the generators”. We have to take their witness  
29 statements to the generators and say: “Do you agree with this?”

30 THE CHAIRMAN: We are not starting from today, are we, Mr. Brealey?

31 MR. BREALEY: No, no, but we can go today to the generators and say: “What do you think?”

32 But realistically what happens is we have to take their case against us, which will be in the  
33 witness statements, and hand it to the generators’ witnesses, if they are going to come along.

1 So our witnesses, if we have any from the generators, will have to reply to the text in the  
2 claimants' witness statements and not in a vacuum which it is at the moment.

3 When one is again looking at two or three weeks here, in the scheme of things it has been  
4 compressed too much.

5 THE CHAIRMAN: Okay, thank you.

6 MR. BEARD: Sir, I am sorry to interpose, we are at something of a disadvantage having not had  
7 any intimation of what the sort of timings were that were being proposed. The claimants in  
8 their wisdom decided that that was not something that they wished to provide to us. If the  
9 Tribunal is considering a joint final hearing and we obviously hear what the Tribunal says  
10 about consolidation not being perhaps so desirable, a hearing together eventually being  
11 desirable. Any date that is set for a hearing now it would seem is *de facto* going to be set  
12 for the Enron proceedings. Now, that is somewhat – unless I misunderstand – at odds with  
13 the suggestion that there would be separate case management conference in relation to  
14 Enron to set a date.

15 THE CHAIRMAN: It will be a provisional date but it will be nice and encouraging for those who  
16 instruct you.

17 MR. BEARD: I am sure not just for those who instruct me, but for all concerned. There were  
18 two points in relation to timetabling that may be of relevance so far as Enron is concerned.  
19 First, since Enron is not trading in this field any further confidentiality arrangements it is  
20 anticipated will be rather less onerous or problematic.

21 THE CHAIRMAN: We will come back to confidentiality later.

22 MR. BEARD: The second point is that given the nature of Enron's position and the position of  
23 the administrator who is properly instructing in these circumstances, it is going to be  
24 important that they do have opportunity to consider the disclosure properly and enable  
25 experts being instructed by them to be able to consider that disclosure, because the volume  
26 of material that the administrator holds I anticipate is likely to be substantially less than that  
27 held by either of the parties before you today. Those are the instructions that I have in  
28 relation to ----

29 THE CHAIRMAN: Why should that be the case? The administrator should have been able to  
30 take possession of all the relevant paper work?

31 MR. BEARD: The question of what came out of the Enron administration and fell into the hands  
32 of the administrators in those circumstances is one that I am certainly not in a position to  
33 give a fuller story on, I am simply taking account of those instructing me. The message I  
34 have received that here we might have an issue that we will need some time to consider

1 disclosure and witness statements for the purposes of our expert reports. That may mean  
2 the disclosure times need to be brought forward rather than pushed back; we understand  
3 that, but it is a marker simply to be put down that we are not quite in the same position as  
4 other parties in this litigation.

5 THE CHAIRMAN: That is understood. The provisional date we had marked down for a case  
6 management conference for what I will call the “Enron case” is 12<sup>th</sup> January. On that date  
7 any more complex issues relating to disclosure, availability of information and so on  
8 affecting the administrators of Enron can be discussed. Your point is well understood.

9 MR. BEARD: I am grateful.

10 THE CHAIRMAN: But the position in administrations varies enormously.

11 MR. BEARD: Of course, I quite accept that; I am simply passing on what may be a particular  
12 concern in these circumstances, not a general proposition about administration.

13 THE CHAIRMAN: Yes. Mr. Brealey is showing signs of being on his haunches. Mr. Brealey,  
14 please, what did you want to say?

15 MR. BREALEY: If case management conference is 12<sup>th</sup> January for Enron, that obviously ties in  
16 with the proposed case management conference that the Tribunal is directing in this case,  
17 the next case management conference. That also would allow the Tribunal to give an  
18 opportunity to any generators and the ORR to come along at that case management  
19 conference ----

20 THE CHAIRMAN: In what capacity?

21 MR. BREALEY: To object to any information that we intend to disclose to the claimants. It  
22 would give us four or five weeks to provide the list, to continue going through the 10,000,  
23 12,000 documents, and then the Regulator, and the generators can come along on 12<sup>th</sup> and  
24 say: “In the light of this list then we object to that” and the Tribunal would have to make a  
25 ruling, or say it will be redacted. That would neatly case manage third parties’ interests.  
26 At some stage, in my respectful submission, the generators have to be put on notice as to the  
27 intended order that the Tribunal is going to make which is to force the defendant to disclose  
28 ----

29 THE CHAIRMAN: It is not the Tribunal’s role to put the generators on notice of anything, is it?  
30 The Tribunal will give whatever directions as are appropriate. The parties, we presume,  
31 will then contact the generators, and if the generators wish to object to material that is  
32 already in the possession of the parties being disclosed, well so be it, presumably they have  
33 a *locus standi* to come along and object.

34 MR. BREALEY: Yes.

1 THE CHAIRMAN: The other aspect is third party disclosure and there may well be applications  
2 for third party disclosure against both generators and ORR. It is hard to think that there is  
3 anything that has not been referred to somewhere in ORR's report, which makes quite a  
4 long read (as I have found already).

5 MR. BREALEY: It does.

6 THE CHAIRMAN: And repeats everything many fold, but that can be dealt with on that  
7 occasion, as you say, but I do not think it is the Tribunal's responsibility ----

8 MR. BREALEY: No, I probably put that too highly.

9 MR. PERETZ: I would just make two observations. First, the copy of our letter of 31<sup>st</sup> October  
10 where we put the Tribunal and the defendant on notice that we were applying for disclosure  
11 of the access to the file material, ORR were sent a copy of that and ORR is well on notice,  
12 and we understand they have decided not to turn up today, even though they were on notice  
13 of that application.

14 In relation to the generators, my understanding was that certain inquiries may have been  
15 made by the Tribunal, but we have certainly alerted the generators to ----

16 THE CHAIRMAN: The Tribunal is in a position to provide anyone who legitimately wishes it  
17 with the addresses of the generators, but that is about as far as the Tribunal has gone. The  
18 Tribunal most certainly and, indeed, I have directed to the contrary, has not taken any  
19 responsibility to carry out any communications of any meaningful kind with the generators  
20 at all. It is part of the litigation, this is a *quantum meruit* claim.

21 MR. PERETZ: Our position in a nutshell is that we do not want the issue of possible third party  
22 interest to in any way delay the disclosure process, and we do not at the moment see why it  
23 should. It seems to us the sensible thing to do would be for the Tribunal to make an order in  
24 the terms of the draft, which is that disclosure be provided of ----

25 THE CHAIRMAN: Could you say that again?

26 MR. PERETZ: Yes. As I understand it, what is currently in the Tribunal's mind is that an order  
27 of disclosure of the relevant documents in the ORR's files, the access to the filed material  
28 be made. At the moment the direction in terms of the draft is that it could be done by 1<sup>st</sup>  
29 December, but there was floating in the discussion between you, Sir, and Mr. Brealey the  
30 possibility that that might move to 30<sup>th</sup> January. Now, if that latter suggestion were adopted  
31 so the disclosure would not be provided until 30<sup>th</sup> January, that would mean that if you  
32 made an order in those terms now the defendant could get on with identifying the material,  
33 and if there were some third party objection ----

34 THE CHAIRMAN: They could make their objection.

1 MR. PERETZ: They could make that on 12<sup>th</sup> January.

2 THE CHAIRMAN: Thank you. Can we just draw breath for a moment; just pause for a moment.

3 (The Tribunal confer)

4 THE CHAIRMAN: Mr. Brealey, Mr. Peretz, we understand completely what has been said and  
5 plainly the third parties, whoever they happen to be, have to have the opportunity to make  
6 any representations they wish to. I am bound to say, however, and I speak for all three of  
7 us, that there is going to be a trial in this matter, it is going to occur at a reasonable point.  
8 We will not be impressed by unnecessary squabbling over what is disclosed or not, if it is  
9 clear in the end that this is material that has to be shared among the parties, and anyone who  
10 wishes to come and object because it is not their usual practice, or something like that, for  
11 relevant material to be disclosed will have to consider the costs aspects of any such  
12 proposal, because I repeat we are going to have a trial within a reasonable time consistent  
13 with the practice of this Tribunal and not any other and possibly more exotic court before  
14 which quantum only actions are heard.

15 This Tribunal is a specialist Tribunal designed to provide reasonably efficient justice for  
16 those who are faced with such claims from the moment when they first choose to intimate  
17 their claim, however long it has taken them to get round to doing it. Is that reasonably  
18 clear?

19 MR. BREALEY: Crystal clear, Sir.

20 THE CHAIRMAN: Thank you. Can we go through, as our easier agenda, the tentative draft that  
21 we proposed, bearing in mind what we have already said about dates. So the dates are  
22 purely indicative working back from 18<sup>th</sup> May, and if we decide to give further time they  
23 will be adjusted arithmetically. You look as though you want to say something, Mr. Peretz?  
24 We are always happy to hear you?

25 MR. PERETZ: I was anticipating going through the list because the first paragraph, para. 3(a)(i)  
26 – I would want to say something very briefly about.

27 THE CHAIRMAN: Which? Yes, 3(a) and it has a (i) that it should not have?

28 MR. PERETZ: Yes.

29 THE CHAIRMAN: Well let us just start at the beginning if we may, as “Alice” might have said.  
30 There are no problems about forum, I take it?

31 MR. BREALEY: No.

32 MR. PERETZ: No.

1 THE CHAIRMAN: Further pleadings. Now, in fact you need leave to amend your defence  
2 because you filed a defence, so technically what we have put in this draft is correct in terms  
3 of the procedure.

4 MR. BREALEY: I do not mind. “If the Defendant wishes to amend ... it should apply...”, we  
5 do not apply.

6 THE CHAIRMAN: Yes, sorry, Mr. Peretz.

7 MR. PERETZ: I assume that para. 2 is a way of dealing with the point that we made about  
8 the ----

9 THE CHAIRMAN: I am sorry, I should have addressed this, I apologise, Mr. Brealey.

10 MR. PERETZ: It is the incompleteness of the defence and the slightly puzzling way ----

11 THE CHAIRMAN: This is para.129?

12 MR. PERETZ: It is para. 129 of the defence, and the cross reference to an expert report that does  
13 not yet exist.

14 THE CHAIRMAN: Yes, and the claimants took this point at para. 39 if I remember rightly, of  
15 one of their documents ----

16 MR. PERETZ: Indeed.

17 THE CHAIRMAN: It may be TP23 [the Claimants’ outline submissions for the CMC].

18 MR. PERETZ: Yes, and our position is simply that that is somewhat unsatisfactory, to put it at its  
19 lowest, that part of the defence appears to be contained in a document that does not yet  
20 exist, or if it does exist has not yet been provided to us. We just invite the defendant to  
21 correct that.

22 MR. BREALEY: I am really at a loss to understand this point. The claim on predatory pricing in  
23 the statement of claim is not particularised at all. What they do then is they calculate a  
24 damages claim by reference to an expert report, and all we were doing in the defence is  
25 saying that when we get the documents upon which the claimants’ expert has got access to  
26 that we do not have access to, we will be able to calculate and reply in a fuller way to their  
27 damages claim.

28 THE CHAIRMAN: This is an entirely hypothetical problem, is it not? Because if material  
29 appears in the final version of an expert’s report that you should fairly have had access to  
30 then no court is going to refuse you permission to amend your defence accordingly – is it?

31 MR. BREALEY: I hope not.

32 THE CHAIRMAN: Not this one, anyway! So it is a bit of a hypothetical point.

33 MR. BREALEY: It is, very hypothetical.

34 MR. PERETZ: I will happily leave it there.

1 THE CHAIRMAN: If we go to disclosure, you wanted to make a point about 3(a), Mr. Peretz?

2 MR. PERETZ: Yes, the point is a very short one, the material set out in Annex B, and this is  
3 partly for the benefit of my learned friend behind me, this is the list of documents that are  
4 said to be referred to in our claim form, but not provided. The position quite shortly is this:  
5 the request came in the middle of last week and we are currently taking instructions on these  
6 documents. We are anticipating that we will be able to provide quite a high proportion of  
7 them to the defendant very shortly. Some of the documents we cannot readily find quite so  
8 easily and we can explain why in a subsequent letter. Some of the requests are actually for  
9 classes of document and insofar as Annex B relates to classes of documents we suggest that  
10 is most economically dealt with simply in the course of standard disclosure, because we are  
11 going to have to identify the class of documents as we go through the disclosure exercises –  
12 to some extent we have started on that process already, but that will need to be done. The  
13 bottom line, Sir, is that I suggest at the moment it is premature to make an order in that  
14 form. What I can say to you and to the defendant is we will be writing to them shortly and  
15 they will have a large proportion of the documents in Annex B, and where we are not  
16 providing them we will explain why.

17 THE CHAIRMAN: So basically what you are saying is that you can disclose all of the available  
18 documents referred to in the claim form, but that any other documents should form within  
19 standard disclosure?

20 MR. PERETZ: Some of the requests in Annex B are for classes of documents, documents said to  
21 be relevant to certain matters – I do not have Annex B in front of me – there are requests for  
22 classes. That is sensibly dealt with in relation to, for example, documents relevant to FHH’s  
23 negotiations with LEG, we are going to have to work out what those documents are in sorts  
24 of disclosure. So that is sensibly dealt with under that head, but where specific documents  
25 are referred to, and there are, for example, some contractual documents, we will either  
26 provide them very shortly, or we will explain why there is a problem, and in some cases  
27 subject to instructions there might conceivably be one. All I am saying at the moment is we  
28 would request that there not be an order in that form.

29 THE CHAIRMAN: Supposing we added the word “specific” before “documents”?

30 MR. PERETZ: Yes, that would be acceptable.

31 THE CHAIRMAN: Right. So far as 3(b) is concerned: given a transfer of (b)(ii) to the next main  
32 paragraph, is there any issue about 3(b)? No.

33 Paragraph 4 – we add 3(b)(ii) to para.4, but this section deals with standard disclosure.

34 MR. BREALEY: Yes, Sir.

1 THE CHAIRMAN: Can we help you?  
2 MR. BREALEY: No, sorry, I am just ---- (Laughter)  
3 THE CHAIRMAN: Thank you very much, Mr. Brealey for your courtesy and good manners.  
4 MR. BREALEY: I will sit down!  
5 THE CHAIRMAN: Mr. Peretz, can we help you further.  
6 MR. PERETZ: We are entirely content with that.  
7 THE CHAIRMAN: Thank you. Paragraph (5) subject to dates? Good. Any problem on (6)?  
8 No. (7), subject to dates? (8)? (8) is probably redundant, but I think we will leave it in just  
9 for avoidance of doubt. (9)? (10)? Witness statements – (11), subject to dates? (12)? (13)?  
10 Now, experts – one expert for each party? I should say that we have looked for the  
11 purposes of this part of the directions, at the various forms of directions used in different  
12 parts of the High Court and this is, in effect, a kind of amalgam of the best of High Court  
13 practice as probably I and, in the end, we saw it, but it seems to me to be a sensible sort of  
14 approach to take, and it is consistent with other directions that the Tribunal has given in  
15 other cases. Do you want to say anything about experts, Mr. Brealey?  
16 MR. BREALEY: No, just for our part I think one expert for each party. On (12), I still do believe  
17 there needs to be some provision made for reply witness statements.  
18 THE CHAIRMAN: Enable a reply on witness statements.  
19 MR. BREALEY: You get them in and then did you want a comment on them?  
20 THE CHAIRMAN: To be honest we had a line or two in an earlier discussion draft of ours about  
21 a reply and I rather thought that this is such a matter of commonsense that we simply leave  
22 it out of the directions at this stage, given that this is serious litigation without litigants in  
23 person – not that they cannot do serious litigation I hasten to add – in which there are going  
24 to be highly qualified professionals on both sides, and if a reply is necessary it will ----  
25 MR. BREALEY: That is absolutely true, Sir, the only question is how that impacts on the expert,  
26 because if our expert reads the claimants' factual witnesses and then three weeks before the  
27 trial the reply comes in it is skewed.  
28 THE CHAIRMAN: I think the parties are going to have to be pretty rigorous about factual  
29 witnesses actually, and ensure that the statements after all have a statement of truth attached  
30 to them, they are going to stand subject to the proviso in para. (12) as their evidence-in-  
31 chief, so I would be very surprised if there were significant additions to their statements in  
32 the form of replies, and I think we would rather just leave it to the parties to apply  
33 intellectual rigour to this process, if we may?  
34 MR. BREALEY: Absolutely.

1 THE CHAIRMAN: Trust the parties – unusual, but it might be wise.

2 MR. BREALEY: Misguided?

3 THE CHAIRMAN: Can I explain why we have put in the proviso to para. (12)? This is borne of  
4 my experience of sitting here and in other courts where I find it a rather arid procedure  
5 simply to have the witnesses’ statements in chief with no focus placed on what they have  
6 said. So we all thought it might be helpful to give the parties the opportunity both with the  
7 factual witnesses, if there are any, and with the experts, to have a short headline focus –  
8 time limited – in order that the Tribunal can have its mind concentrated on the main issues.  
9 Is that acceptable?

10 MR. BREALEY: It is.

11 THE CHAIRMAN: It is more comfortable for counsel as well, I think.

12 MR. BREALEY: Yes.

13 THE CHAIRMAN: (13), (14), (15). (16), (17) and (19) are intended to allow the experts – not  
14 the lawyers, the experts – in line with current practice, the opportunity not hamstrung by the  
15 stringency of the way we lawyers think, to try and narrow down the issues. I hope both  
16 parties are agreeable to that and will ensure that the spirit as well as the letter of that is  
17 followed.

18 MR. PERETZ: Yes, the only comment I have at para. (17) was about – I am afraid this is a date,  
19 but it is a date point because ----

20 THE CHAIRMAN: There is a mistake.

21 MR. PERETZ: There is clearly a mistake in the year, but I just wondered whether the Tribunal  
22 intended the meeting to take place before or ----

23 THE CHAIRMAN: It was intended to be April not March; the original date should have been  
24 April, thank you for that. It should have read: “27<sup>th</sup> April 2009.” (19), plainly we would  
25 hope for a true summary, not something very non-skeletal.

26 Further case management conference, which will also be Enron’s first, on 12<sup>th</sup> January  
27 2009, 10.00am or 10.30. The time estimate, we have heard Mr. Brealey’s prognostications  
28 of doom, you have the reputation for being very short-winded, Mr. Brealey?

29 MR. BREALEY: I like to think so, yes! (Laughter)

30 THE CHAIRMAN: This is not going to take more than five to seven days, is it, all in?

31 MR. BREALEY: Excluding Enron for the moment there could well be 20 witnesses, two experts,  
32 there is already provision for half an hour examination-in-chief of the witnesses of fact, it  
33 just gives the Tribunal some leeway. If it is five days I am a gambling person and I do  
34 guarantee that it will go over five days.

1 THE CHAIRMAN: Mr. Peretz, what is your view? You are very experienced in these things –  
2 with Enron included?

3 MR. PERETZ: It is slightly difficult to tell with Enron included.

4 THE CHAIRMAN: Different quantum issues.

5 MR. PERETZ: This is about quantum only, and the Tribunal can be anticipated to deal with  
6 things in rather more short order than one would expect in the High Court, given the amount  
7 of pre-reading that the Tribunal is able to do.

8 THE CHAIRMAN: And there are three of us.

9 MR. PERETZ: That does not mean it will take three times as long! We thought three to five days  
10 for our claim was a sensible target. May I suggest this, that if there is concern there might  
11 be a bit of slippage it is possible to list in such a way that the Tribunal is not, as it were,  
12 jetting off somewhere the next week, or sitting elsewhere.

13 THE CHAIRMAN: We had better allow two weeks. The one thing we are all against is a  
14 fractured hearing. It may well be that if we had to allow two weeks there would be the odd  
15 day when we would not be able to sit. I have been looking at my diary and I have one or  
16 two unbreakable commitments.

17 MR. BREALEY: It gives the parties a bit of breathing space to prepare closing ----

18 THE CHAIRMAN: Basically we want to have one hearing at one time without the need to do a  
19 huge amount of refresher reading.

20 MR. BREALEY: This is not, as the Tribunal knows, Sir, only about quantum, there are really  
21 deep issues about causation, and that is factual.

22 THE CHAIRMAN: I am sorry “*quantum meruit*” was a rather impolite description of it.

23 MR. BREALEY: Two weeks with the Enron claim is still pushing it.

24 THE CHAIRMAN: Well as you can see, for ourselves we had left the three to five days. I had  
25 frankly thought five to six days, but obviously we will take into account what you say.

26 MR. PERETZ: What about this as a suggestion: that it be six or seven days listed over a two  
27 week period to take account, Sir, of your other engagements and, as has been pointed out, it  
28 is quite often helpful mid-trial to have the odd day to pause for breath and marshal the  
29 evidence, particularly if one is preparing written submissions.

30 THE CHAIRMAN: I will believe the 20 witnesses when I see them, which I hope will be never.

31 MR. BREALEY: We just do not know what Enron ----

32 THE CHAIRMAN: No, obviously. There may be 20 witnesses all in, yes, that is perfectly  
33 possible. Does Enron want to add anything – we will let you in, if you would like to?

1 MR. BEARD: It is rather difficult at this stage for us to add anything constructive, of course we  
2 do not have any defence in our claim, and therefore a resolution in relation to the relevant  
3 issues has not been ascertained. Obviously we can guess some of them, but we do not know  
4 quite how EWS is going to approach this matter and therefore to try and suggest how long it  
5 will take and the scope of witness evidence – we do anticipate there will need to be detailed  
6 witness evidence from experts, undoubtedly factual witnesses we would not want to commit  
7 to at this stage.

8 THE CHAIRMAN: Good administrators do things as economically as possible, do they not?

9 MR. BEARD: They certainly do.

10 THE CHAIRMAN: Because of their duty.

11 MR. BEARD: YES.

12 THE CHAIRMAN: Right.

13 MR. BEARD: I should say “liquidators”, not “administrators”.

14 THE CHAIRMAN: Liquidators, I am so sorry.

15 MR. BEARD: It is my fault for misleading you.

16 THE CHAIRMAN: Right, thank you.

17 MR. BREALEY: Sir, can I just make a few final observations on the timetable?

18 THE CHAIRMAN: Yes.

19 MR. BREALEY: It seems that possibly up to (11), (12), (13) of the draft everything is agreed.

20 The first area where I would urge the Tribunal to give a little bit of leeway to the parties is  
21 the time between witness statements and expert evidence. As I say, the claimants had  
22 originally said four weeks, and one week just for the expert to finalise the report in light of  
23 all the witnesses of fact is a very small period indeed. So if it is going to be pushed back  
24 certainly that is an area where it can be pushed back.

25 THE CHAIRMAN: Right.

26 MR. BREALEY: Four weeks, which would then take the main hearing to mid-June, and I would  
27 still urge the Tribunal a week’s slippage.

28 THE CHAIRMAN: Can we go back, without in any way giving any indication of what we will  
29 do about pushing the hearing back from our original anticipated date because I have not  
30 discussed it with my colleagues as yet, and we will retire to discuss it, so without giving you  
31 any guarantees of any kind, let us work on the basis just for the sake of argument that we  
32 push the hearing back from about 11<sup>th</sup> May to about second half of June, starting around  
33 about a Monday – it might, in fact, be a Tuesday, because the Tribunal likes to meet to  
34 discuss the papers before starting on the substantive hearing; it actually helps everybody

1 and speeds things up. You suggested in relation to para. (3) that we pushed it back to 29<sup>th</sup>  
2 January 2009 for disclosure. What would the effect of that – if any – be on the date of 30<sup>th</sup>  
3 January, which was in the tentative draft for para. (4)?

4 MR. BREALEY: I do not think it has any impact.

5 THE CHAIRMAN: No, I did not think it had any impact at all on that either. So you are asking  
6 then for witness statements to stay at 26<sup>th</sup> March?

7 MR. BREALEY: Yes, Sir.

8 THE CHAIRMAN: Could we not push the witness statements forward a little?

9 MR. PERETZ: That was our suggestion.

10 MR. BREALEY: I am reminded, I have already informed the Tribunal, there are thousands of  
11 documents -----

12 THE CHAIRMAN: All right, okay, do not say it again! Do not say it again, Mr. Brealey!  
13 (Laughter) Please do not think I am being rude, I am simply saving your breath. You are  
14 suggesting therefore that the date of 3<sup>rd</sup> April in para. (14) is too soon?

15 MR. BREALEY: Yes.

16 THE CHAIRMAN: And you would suggest on the timetable I have mentioned pushing it back to  
17 when?

18 MR. BREALEY: Something like 24<sup>th</sup> April

19 THE CHAIRMAN: 17<sup>th</sup> April?

20 MR. BREALEY: I was going to say 24<sup>th</sup> April. If there is no provision in the order for witness  
21 statements in reply a period of four weeks would allow the expert to look at the witnesses of  
22 fact, but also to consider any witnesses in reply if they are going to come along.

23 THE CHAIRMAN: I am anxious that we should fit in the experts' discussion and meeting within  
24 a reasonable time before the hearing in order to give the experts enough time to produce a  
25 meaningful paragraph (19) document.

26 MR. BREALEY: Mr. Lawrence reminds me, and it is a valid point, Sir, that the defendant is  
27 actually fighting two cases here, and so this is not a timetable of just claimants and  
28 defendant, it is being hit from two sides, so when one talks of one week just for the experts,  
29 that is one week in both cases, and that is really pushing it. It may well be that Enron will  
30 have – they probably will have their own expert who will be different from the claimants'  
31 expert in this case.

32 MR. BEARD: That I can confirm, it will be a different expert that will be dealing with these  
33 matters.

34 THE CHAIRMAN: That is inevitable, is it?

1 MR. BEARD: Absolutely, Mr. Brealey had a quizzical tone in his voice about whether or not  
2 there would be separate experts, and I was simply confirming that it is absolutely the case  
3 there will be different experts on behalf of Enron.

4 MR. BREALEY: I am obliged, which does mean they probably cannot meet on the same day.

5 MR. PERETZ: We hear what Mr. Brealey says and, to be entirely fair on him, we do sympathise  
6 with the basic point that a week between the final witness statements and the experts' report  
7 is a bit tight. If the trial date is to be 18<sup>th</sup> May, in our submission really the only thing one  
8 could do would be to have the witness statements served a bit earlier.

9 THE CHAIRMAN: If we were to push it back ----

10 MR. PERETZ: If we push it back to mid-June ----

11 THE CHAIRMAN: -- on the hypothesis ----

12 MR. PERETZ: Yes, we could certainly live with June, as you saw from our skeleton, sir.

13 THE CHAIRMAN: Well we can adjust any dates accordingly. Now, can we turn to  
14 confidentiality next? If there are any really confidential issues that we are going to have to  
15 consider now we would, of course, go into camera, and that would mean the exclusion of  
16 Enron. However, there may well be confidentiality issues that will have to be dealt with in  
17 this case and we were going to make the suggestion that we might postpone the issue of  
18 confidentiality until the hearing in January, when issues relating to any confidentiality  
19 points affecting Enron can be considered at the same time. In that spirit of not wishing to  
20 tie the parties down today we would ask the parties to try and sort any confidentiality issues  
21 out amongst themselves if at all possible; all are experienced in dealing with this sort of  
22 case, and we would have thought that there was a 90 per cent prospect of most, if not all of  
23 the confidentiality issues being dealt with by consent. I hope that is not too wildly  
24 optimistic.

25 MR. BREALEY: (After a pause) Two points on the confidentiality. One is going back to the  
26 order, and this is 3(b)(i), just to make the point that the ORR decision will contain specified  
27 information. We are happy with that but just so that everybody knows that at the moment is  
28 going to be disclosed on 1<sup>st</sup> December 2008 and not on 30<sup>th</sup> January, so I throw it open. At  
29 the moment it may – it may – be better that it is on 30<sup>th</sup> January 2009, but it does contain ---  
30 -

31 THE CHAIRMAN: Point taken. I think we will probably cover that point in another way.

32 MR. BREALEY: The second point I was going to make is that in their skeleton argument the  
33 claimants, for some reason, want to restrict any confidential information being disclosed to  
34 our in-house lawyer, and we would resist that. So hopefully we can sort that out between

1 ourselves, but at the moment we would want our in-house lawyer to have access to the  
2 documents.

3 THE CHAIRMAN: I think these things normally can be sorted out internally. In previous  
4 confidentiality determinations I have seen in the past the in-house lawyer has usually been  
5 included.

6 MR. BREALEY: Yes, it makes sense.

7 THE CHAIRMAN: The in-house lawyer is bound by the same ethical rules as you and Mr.  
8 Peretz.

9 MR. BREALEY: Absolutely.

10 THE CHAIRMAN: I do not think it is right to make a distinction between employed and  
11 unemployed lawyers for this purpose, indeed, one would be seriously out of fashion if one  
12 did. That is an indication. As indications go it is not a bad one, is it?

13 MR. BREALEY: I wish I could have indications like that all the time.

14 THE CHAIRMAN: Mr. Peretz?

15 MR. PERETZ: As my learned friend says there is a very large measure of agreement between us  
16 as to the confidentiality ring. There is this outstanding issue, but let us, as it were, discuss it  
17 offline rather than have an order about it today, which is not necessary.

18 THE CHAIRMAN: Before we retire to discuss this amongst ourselves as we will, is there  
19 anything anybody else wants to raise?

20 MR. PERETZ: Yes, there is just one further matter for completeness, which is the E.ON-EWS  
21 High Court proceedings, we are very aware that that is not a matter that falls within the  
22 jurisdiction of this Tribunal, I simply wanted to flag up that what we are proposing to do  
23 now – EWS has given its consent for the disclosure of relevant documents in those  
24 proceedings, obviously it takes two to tango in this respect and we will need to contact  
25 E.ON which we will be doing and failing that we obviously reserve our right to issue an  
26 application under the appropriate CPR Rule – 5(c) I think. Obviously it is not a matter for  
27 this Tribunal I simply flag it up for the record in case anyone is interested.

28 THE CHAIRMAN: Thank you. As far as I am concerned, there has been so much to read, not  
29 least the ORR report to which I have already referred in passing, that the temptation even to  
30 look at anything related to the High Court, readily available though it may be, has been  
31 resisted without any difficulty whatsoever. So if there is anything to be raised about those  
32 High Court proceedings it can be raised at the next case management conference. Thank  
33 you very much. We shall retire and return in due course.

34 (Short break)

1 THE CHAIRMAN: We are grateful to all concerned, including Mr. Beard, on behalf of Enron,  
2 who has come at fairly short notice to help us out.

3 If I can take our “tentative draft” (as I called it) as our lead document, then I will tell you  
4 what directions we are making. Working backwards, we are going to set a trial date, para.  
5 (21), the main oral hearings will be listed for 8<sup>th</sup> June 2009 with a time estimate of up to  
6 nine days.

7 Now going back to the beginning: para. (1) – Forum – stays as in the original draft.

8 Paragraph numbers will be adjusted accordingly following the removal of para. (2) in its  
9 entirety in relation to further pleadings.

10 Paragraph (3) – disclosure of documents - as in the original draft, we will amend the date:  
11 “By 29<sup>th</sup> January 2009 there should be disclosure of the following specified information.”

12 In (a) it will read: “The Claimants shall disclose all of the specific documents to which the  
13 Claimants refer in the Claim Form.”

14 Because of the adjustment of the date (b)(ii) will remain where it is, there is no need to  
15 move it.

16 The date in para. (4) – exchange of lists – will be 29<sup>th</sup> January 2009, so it is the same date as  
17 in the earlier paragraph.

18 The next change is in tentative draft para. (7) which will read as follows:

19 “The Defendant having provided draft directions to the Tribunal on 12 November  
20 2008 including a list of documents, there shall be liberty to apply in relation to any  
21 such documents as to which there remains a dispute following standard  
22 disclosure.”

23 The next change is in the paragraph in the draft numbered (14):

24 “The Defendant is to file and serve the report of any expert on which it relies by  
25 5.00 pm on 24<sup>th</sup> April 2009.”

26 Paragraph (15) shall read:

27 “The Claimant is to file and serve any additional report of the expert on which it  
28 relies by 5.00 pm on 15<sup>th</sup> May 2009”.

29 Paragraph (17) we have taken out the date, so it reads: “A meeting of both experts take  
30 place to consider ...” we assume that the experts do not need to be told on which date to  
31 meet, or by when, it speaks for itself.

32 Paragraph (19), although I said we required three weeks for all documents we are prepared  
33 to shorten that period a little, so para. (19) will read:

34 “The experts shall by 22<sup>nd</sup> May 2009 prepare and file a statement for the

1 Tribunal ...”

2 As I have already said, para. (21), the main oral hearing will be listed for 8<sup>th</sup> June with a  
3 time estimate of up to nine days. It is to be understood from that that we shall sit on the  
4 Tuesday of the first week, leaving the Monday for the Tribunal, but if the parties require  
5 facilities here on the Monday I am sure they can be provided. There shall be liberty to  
6 apply in general.

7 A fair copy will be prepared and supplied, and other matters as we have already said will be  
8 dealt with on 12<sup>th</sup> January. If there are agenda items for 12<sup>th</sup> January, the Tribunal would be  
9 very grateful for receipt of them in good time – from all parties, Mr. Beard.

10 MR. BEARD: Understood, Sir.

11 THE CHAIRMAN: Anything else? Mr. Brealey?

12 MR. BREALEY: It may be it will sort itself out on the Enron case management conference, and I  
13 appreciate the Tribunal has made this direction, but flagging it for the Enron case  
14 management conference, there are only seven days for our expert to agree. As I understand  
15 it on para. (15) “The Claimant is to file and serve any additional report of the economic  
16 expert ...”

17 THE CHAIRMAN: Sorry, say that again.

18 MR. BREALEY: I beg your pardon, Sir, I am looking at (14) and I understand that it is that the  
19 defendant is to file the report of any economic expert on 24<sup>th</sup> April, and then the claimant is  
20 to file and serve any additional report, and then the experts shall hold a discussion.

21 THE CHAIRMAN: They have a week.

22 MR. BREALEY: They have a week, but the point is that if that is going to apply to  
23 Enron ----

24 THE CHAIRMAN: The general intention is, subject to argument, of course, that there should be  
25 parallel directions for Enron and Enron are now on warning, having done us the kindness of  
26 attending here today, of the timetable, and we will take some persuading to persuade them  
27 out of the timetable. I know Mr. Lawrence is looking worried about the timetable, but there  
28 we are.

29 MR. BREALEY: I wonder if we could have liberty to apply – I think there is a liberty ----

30 THE CHAIRMAN: You have liberty to apply.

31 MR. BREALEY: -- because it may just be the expert just cannot within that time frame look at  
32 the two expert reports. That is our only concern.

33 THE CHAIRMAN: Yes, the experts may find it advantageous to view the Tribunal’s directions  
34 as a fall back position and co-operate as fully as they find convenient themselves. We are

1 not telling them what they can do, we are telling them what they cannot do, which is to go  
2 outside our directions. We could bring forward the date in para. (15) but I imagine that will  
3 give rise to further objections.

4 MR. BREALEY: That is why we were just wondering, because if it brings it forward by a  
5 week ----

6 THE CHAIRMAN: Oh we will do that – 8<sup>th</sup> May?

7 MR. PERETZ: We are content with that.

8 THE CHAIRMAN: 8<sup>th</sup> May, all right; para. (15) “8<sup>th</sup> May”.

9 MR. BEARD: If I can just put a marker down, I cannot say that Enron will necessarily be content  
10 with that, but that is a matter for another day, of course.

11 THE CHAIRMAN: Well marked, “matter for another day”, you know which direction we are  
12 going in, Mr. Beard.

13 MR. BEARD: I hear you, Sir.

14 THE CHAIRMAN: All right, thank you all very much.  
15 \_\_\_\_\_