



Neutral citation [2007] CAT 17

**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No. 1027/2/3/04

Victoria House
Bloomsbury Place
London WC1A 2EB

2 April 2007

Before:

Marion Simmons QC (Chairman)
Michael Davey
Sheila Hewitt

BETWEEN:

**VIP COMMUNICATIONS LIMITED
(in administration)**

Appellant

-v.-

OFFICE OF COMMUNICATIONS

Respondent

supported by

T-MOBILE (UK) LIMITED

Intervener

**REASONS FOR REFUSING
PERMISSION TO APPEAL**

1. T-Mobile (UK) Limited (“T-Mobile”) has lodged an application (“the application”) for permission to appeal from the judgment of the Tribunal handed down in case 1027/2/3/04 *VIP Communications Limited (in administration) v Office of Communications* on 22 January 2007 ([2007] CAT 3) (“the Judgment”).
2. The issue before us was whether the Tribunal had jurisdiction under paragraph 3(2)(e) of Schedule 8 of the Competition Act 1998 (“the Act”) to substitute an infringement decision for a non-infringement decision made by the Office of Communications (“OFCOM”). For the reasons set out in the Judgment, the Tribunal decided that it has jurisdiction to take such a decision.
3. OFCOM does not dispute, as a matter of statutory construction, that the Tribunal has jurisdiction under paragraph 3(2)(e) of Schedule 8 of the Act to make a finding of infringement or to determine the various elements that are inherent in any such finding in an appropriate case.
4. For the reasons set out in the Judgment the Tribunal considers the statutory construction of paragraph 3(2)(e) of Schedule 8 of the Act to be clear, and the grounds of appeal raised by T-Mobile to have no real prospect of success.
5. We have carefully considered T-Mobile’s application. Throughout its application T-Mobile has erroneously conflated the question of whether the Tribunal might, would or should exercise its discretion, if it considered it appropriate to do so in all the circumstances, to make any other decision which the regulator could make instead of remitting the matter to the regulator (which was not the issue being decided by the Tribunal) with the question of whether it had statutory jurisdiction under paragraph 3(2)(e) of Schedule 8 of the Act to make such a decision (which was the issue decided by the Tribunal).

6. The Tribunal did not address in the Judgment whether, when or how it might exercise its jurisdiction in the particular circumstances and on the particular facts of the case. It would be premature for the Tribunal to have done so in the absence of a hearing at which the relevant evidence and further submissions of the parties were before the Tribunal.
7. T-Mobile requested an oral hearing in relation to this application. There is no automatic right in the Competition Appeal Tribunal Rules 2003 (SI 2003 No. 1372) to an oral hearing. The Tribunal considers that it would be disproportionate in this case to hold an oral hearing, having regard both to the weakness of the submissions contained in the application and the opportunity which T-Mobile has to apply to the Court of Appeal in writing for permission to appeal and, if refused, to make an oral application (see section 49(2)(b) of the 1998 Act and CPR 52.3(4)).
8. For the above reasons, the application by T-Mobile for permission to appeal from the Judgment is unanimously refused.

Marion Simmons QC

Michael Davey

Sheila Hewitt

Charles Dhanowa
Registrar

2 April 2007