



Neutral citation [2007] CAT 31

IN THE COMPETITION
APPEAL TRIBUNAL

Cases No: 1089/3/3/07
1090/3/3/07
1091/3/3/07
1092/3/3/07

Victoria House
Bloomsbury Place
London WC1A 2EB

20 November 2007

Before:

VIVIEN ROSE
(Chairman)
PETER CLAYTON
ARTHUR PRYOR CB

Sitting as a Tribunal in England and Wales

BETWEEN:

T-MOBILE (UK) LIMITED

-and-

BRITISH TELECOMMUNICATIONS PLC

-and-

HUTCHISON 3G UK LIMITED

-and-

CABLE & WIRELESS & ORS

Appellants / Interveners

-and-

VODAFONE LIMITED

ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED

Interveners

-v-

OFFICE OF COMMUNICATIONS

Respondent

RULING: REQUEST TO INTERVENE

The application

1. By an application dated 29 October 2007, Software Cellular Network Limited which trades as Truphone (“Truphone”) requests permission to intervene in four appeals currently before the Tribunal, Cases 1089 – 1092/3/3/07 (“the Termination Rate Dispute appeals”). The Termination Rate Dispute appeals are brought by four mobile network operators against the determination by OFCOM of disputes to which they are party. Those disputes concerned mobile call termination rates and were resolved by OFCOM pursuant to its powers under section 185 of the Communications Act 2003.
2. Truphone describes itself in the application as “a new type of mobile operator” which uses Voice over Internet Protocol technology to route calls over the internet between Truphone subscribers. Truphone is currently in dispute with one mobile network operator over whether that operator should enable its subscribers to connect with Truphone numbers. More recently another mobile operator has challenged the charges which Truphone sets for terminating calls from that other operator’s subscribers’ calls.
3. Truphone submits that its interest is not in “the specifics” of any of the Termination Rate Dispute appeals but rather in the general principles to be applied since it is likely that it will itself be using the section 185 dispute resolution procedure in the future to settle disputes over its mobile call termination rates.

The Tribunal Rules

4. Rule 16 of the Competition Appeal Tribunal Rules 2003 (S.I. 2003, No 1372) (“the Tribunal Rules”) governs the procedure for intervention in the Tribunal’s proceedings. In order to be admissible an application to intervene must comply with certain conditions set out in that Rule relating to the form and content of the application and to the period within which the application must be made.
5. Rule 16(2) provides that the request for permission to intervene “must be sent to the Registrar within the period referred to in rule 15(2)(f)”. Rule 15(2)(f) provides that a person may apply to intervene in proceedings within three weeks of the publication of the notice of the appeal or such other period as the President may direct. These

provisions on procedural time-limits are important in enabling the Tribunal to ensure that cases are heard expeditiously and that the parties have adequate notice of the issues raised.

6. The Tribunal's Guide to Proceedings¹ states:

“Parties who wish to intervene should do so at the earliest moment **without waiting until the end of the period allowed**. The earlier an intervention is made, the more possibility the intervener will have of participating in the development of the case (particularly the first CMC which is the key planning stage in the Tribunal's procedure and generally takes place around four weeks after the notice of appeal is lodged) and the more efficiently the Tribunal will be able to carry out its case management functions.” (emphasis in the original)

Tribunal's analysis

7. All the other parties to these appeals oppose the application on the grounds, in essence, that it is inadmissible because that it does not satisfy the requirements set out in the Tribunal Rules.
8. In the present case, the summaries of the Termination Rate Dispute appeals were published on the Tribunal website on 12 September 2007 and stated that:

“Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received within three weeks of the publication of this notice”.

9. Truphone's request was therefore received almost four weeks after the deadline expired on 3 October 2007. No adequate explanation for the delay in making the application is provided by Truphone. The application refers only to the importance of the issue of termination rates in Truphone's own disputes having only recently become apparent since it now involves two other operators rather than one. It is clear from the application that the first dispute between Truphone and another operator was the subject of High Court injunction proceedings in July 2007.

¹ The requirements of this Guide to Proceedings in the Competition Appeal Tribunal constitute a Practice Direction issued by the President pursuant to Rule 68(2) of the Tribunal Rules in relation to the procedures provided for by those Rules.

10. The Termination Rate Dispute appeals are already procedurally complicated in that the appellants, and some other mobile operators who have not brought their own appeals, have intervened in each of the other appeals. Each of the four appeals thus already involves three or four interveners. These cases are also linked to a fifth appeal, Case no. 1080/3/3/07 (in which there are four interveners) and with two other appeals, Case no. 1083/3/3/07 (in which there are five interveners) and Case no. 1085/3/3/07 (in which there are also five interveners). Truphone's application arrived at the Tribunal the day before a case management conference was held in the Termination Rate Dispute appeals and Case no. 1080/3/3/07. At that case management conference, which lasted for most of the day, seven different parties made submissions about the future conduct of those cases. The hearing of the main issues in the Termination Rate Dispute appeals in which Truphone has requested permission to intervene is likely to take place in January and February 2008 with a correspondingly demanding timetable for the service of pleadings.

Tribunal's conclusion

11. For the reasons given above, the Tribunal will not extend the time limit for the making of the application to intervene.
12. Truphone therefore does not have standing to apply to intervene in the proceedings and its application is accordingly dismissed.

Vivien Rose

Arthur Pryor

Peter Clayton

Charles Dhanowa
Registrar

Date: 20 November 2007