

O-093-13

TRADE MARKS ACT 1994

**IN THE MATTER OF TRADE MARK APPLICATION 2579750
BY TELEPHONICA, SA
TO REGISTER THE FOLLOWING TRADE MARK IN CLASS 9, 35, 38 & 41:**

CLARO

AND

OPPOSITION THERETO (NO 102377) BY CLARO SA

The background and the pleadings

1) The trade mark the subject of this dispute was filed on 22 December 2000 as a Community Trade Mark (“CTM”) by Telephonica, SA (“Telephonica”) and was accorded the CTM filing number 2017341. On 14 December 2010 Telephonica requested a conversion of what, by this time, was a CTM registration. The mark and the goods and services for which conversion was requested are set out below:

CLARO

Class 09: Weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission and reproduction of sound or images; magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus; cash registers, data processing equipment and computers; fire-extinguishing apparatus and telephone apparatus and accessories therefor, included in this class.

Class 35: Publicity; commercial business management; commercial administration; office work; all of the aforesaid services provided by means of a worldwide computer network; all of these services relating to telecommunications.

Class 38: Telecommunications. Services consisting of providing multiple user access to a global computer data network.

Class 41: Providing of education; providing of training; entertainment; cultural and sporting activities.

2) The conversion request was accepted by OHIM and transmitted to the IPO. The IPO allocated number 2579750 to it and, after examination, it was published in the Trade Marks Journal on 10 June 2011. It is common ground that the request for conversion followed an application (by the opponent in these proceedings) for the revocation of the CTM; this stemmed from Telephonica trying to use its CTM to oppose a later filed CTM application by the opponent.

3) Claro SA (“Claro”) is the opponent. Its opposition was filed on 9 November 2011 and is based on section 3(6) of the Trade Marks Act 1994 (“the Act”). Whilst the statement of case contains greater detail, Claro summarises the reasons for its claim thus:

—1) The Applicant has no bona fide intention to use the mark in the UK;

- 2) The Opponent has established a significant reputation in the mark in a number of overseas jurisdictions and the Applicant is aware of this reputation; and
 - 3) The Applicant knows that the mark belongs to the Opponent and knows (or should know) that the Opponent wishes to use and register the mark in the UK and has filed the application simply to block any application by the Opponent.”
- 4) Telephonica filed a counterstatement denying these claims. Only Claro filed evidence. Telephonica requested and attended a hearing before me which took place on 7 December 2012. Mr Alan Fiddes of Urquhart-Dykes & Lord LLP represented Telephonica. Claro neither attended the hearing nor filed written submissions in lieu of attendance.

Telephonica's evidence

5) This comes from Rafael Dias de Lima who is a partner in the law firm Dennemann Siesen. He has been in charge of the national and international IP affairs of Claro for a number of years.

6) Mr de Lima states that Claro operates the largest mobile telephone network in the Americas and is part of the Mexican telecoms group America Movi (evidence is provided from Wikipedia that this is one of the four largest telecoms companies in the world (as of 2010)); the entry adds that America Movi was founded in 2000 and that the Claro mark is a brand offered in Brazil. Claro has customers in Argentina, Brazil, Chile, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Puerto Rico and Uruguay. Reference is made to 43 Brazilian trade mark registrations owned by Claro's predecessor, Telet SA (“Telet”). These are shown in Exhibit ECCF 1; the earliest are from October 1999 and are in respect of the word CLARO for various telecoms goods/services. Claro is now the owner of the marks by way of Telet transferring ownership to BCP SA who subsequently changed its name to Claro (in 2006).

7) Mr de Lima states that the CLARO mark has been extensively used and marketed throughout South America since 1998 and that it is extremely well known in the region. Exhibits containing advertisements that feature the word CLARO (often in conjunction with other brands and words) are referred to as follows:

- Exhibit ECCF 4: Advertisements from the Brazilian newspaper Zero Hora dated between 1998 and 2000. Zero Hora is a daily newspaper based in Porta Alegre, Brazil's seventh biggest city. It is the sixth most widely circulated newspaper in Brazil and has been available on the internet since 2007. It is not clear whether the newspaper is available only in Porta

Alegre or whether it is a Brazilian national newspaper. The advertisements are in Portuguese. Over 150 are supplied. The earliest is from December 1998 the latest is from December 2000.

- Exhibit ECCF 5: A small number of advertisements placed in Brazilian publications between 2009 and 2011. The publications include weekly magazines: Info exame, Istoe exame, Contigo and Veja.
- Exhibit ECCF 6: A large number of advertisements placed in two national El Salvadorian newspapers (El Diario de Hoy and La Prensa Grafica) which are said to be the highest circulated newspapers in that country.
- Exhibit ECCF 7: Around 30 advertisements which appeared in Puerto Rican newspapers between 2007 and 2011. The newspapers are, again, said to be highly circulated ones.
- Exhibit ECCF 8: Just under 20 advertisements/articles which appeared in two leading newspapers in Nicaragua between 2006 and 2009.
- Exhibit ECCF 9: Around 20 advertisements which appeared in an Ecuadorian newspaper in 2011.
- Exhibit EECF 10: Around 10 advertisements which appeared in two leading newspapers in Peru between 2006 and 2009.

8) Mr de Lima states that Telephonica has also been operating in South America (specifically Brazil) since the 1990s. He refers to Telephonica's own website which states that operations began in 1998 in Brazil. Further detail is given which indicates that Telephonica developed its business to other Latin American countries and by the end of 2011 was the leading operator in a number of them. To further demonstrate that Claro [or more accurately its predecessors] and Telephonica were operating at the same time, reference is made to a public hearing in Brazil in 1999 at which both Claro's predecessors and Telephonica attended. It is stated that Telephonica's brand in Brazil is VIVO, a mark they have also registered as a CTM. A 2007 report about telecoms providers in Brazil is also provided which mentions the CLARO mark and Telephonica's VIVO brand. It is stated that, unlike Claro, Telephonica has never traded in South America under the CLARO mark and has no trade mark registrations for it.

9) Mr de Lima explains that in 2006 Claro applied for the mark CLARO as a CTM (and also as a US application) as part of its international expansion plans. Telephonica opposed the CTM on the basis of its earlier CTM 2017341; this is the mark from which the trade mark is dispute was converted. Claro's CTM was refused due to the opposition. It is stated that Telephonica filed no evidence of use of its mark and that Claro could not request proof of use because despite it being filed in 2000, it was not registered until 2005. It is explained that having

been unable to discover any use of the mark by Telephonica in the EU, Claro made a second attempt to register CLARO as a CTM in 2010. It simultaneously filed an application to cancel Telephonica's earlier mark. It is stated that Telephonica did not produce any evidence of use of the mark but instead filed opposition against Claro's application, surrendered its CTM registration, and sought conversion of it in the UK, Germany and Spain.

10) Reference is made to Claro's use of its mark beyond South America by way of sponsorship of the Sauber Formula 1 team. Some examples of such sponsorship use is provided, dating from 2011.

11) Mr de Lima then gives his understanding of the position in that for the mark in dispute to be valid in the UK, Telephonica must have a bona fide intention to use it. As will become apparent later, this assumption is not strictly correct. Mr de Lima states that Telephonica has never used CLARO anywhere. He highlights Telephonica's surrender of its registration when it was challenged. He states that Telephonica would have been aware of the use of Claro's CLARO mark. He states that:

—I believe that the only explanation for Telephonica's application to register a mark it has never used and never intended to be used was to prevent Claro from competing in the EU market. From Claro's size and status in the South American markets it would have been evident that a move into Europe would be an obvious step. In my opinion, Telephonica filed their CTM Application for the Claro mark in 2000 and have maintained their rights by converting into Germany, Spain and the UK purely as an obstacle to Claro's legitimate plans for expansion."

Section 3(6)

Legislation and the leading case-law

12) Section 3(6) of the Act states:

—A trade mark shall not be registered if or to the extent that the application is made in bad faith."

13) In *Red Bull GmbH v Sun Mark Ltd & Anr* [2012] EWHC 1929 and [2012] EWHC 2046 (Ch) (*–Sun Mark*) Mr Justice Arnold summarised the general principles underpinning section 3(6) as follows:

“Bad faith: general principles

130 A number of general principles concerning bad faith for the purposes of section 3(6) of the 1994 Act/ Article 3(2)(d) of the Directive/ Article 52(1)(b) of the Regulation are now fairly well established. (For a helpful

discussion of many of these points, see N.M. Dawson, —Bad faith in European trade mark law” [2011] IPQ 229.)

131 First, the relevant date for assessing whether an application to register a trade mark was made in bad faith is the application date: see Case C-529/07 *Chocoladenfabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH* [2009] ECR I-4893 at [35].

132 Secondly, although the relevant date is the application date, later evidence is relevant if it casts light backwards on the position as at the application date: see *Hotel Cipriani Srl v Cipriani (Grosvenor Street) Ltd* [2009] EHWC 3032 (Ch), [2009] RPC 9 at [167] and cf. Case C-259/02 *La Mer Technology Inc v Laboratoires Goemar SA* [2004] ECR I-1159 at [31] and Case C-192/03 *Alcon Inc v OHIM* [2004] ECR I-8993 at [41].

133 Thirdly, a person is presumed to have acted in good faith unless the contrary is proved. An allegation of bad faith is a serious allegation which must be distinctly proved. The standard of proof is on the balance of probabilities but cogent evidence is required due to the seriousness of the allegation. It is not enough to prove facts which are also consistent with good faith: see *BRUTT Trade Marks* [2007] RPC 19 at [29], *von Rossum v Heinrich Mack Nachf. GmbH & Co KG* (Case R 336/207–2, OHIM Second Board of Appeal, 13 November 2007) at [22] and *Funke Kunststoffe GmbH v Astral Property Pty Ltd* (Case R 1621/2006-4, OHIM Fourth Board of Appeal, 21 December 2009) at [22].

134 Fourthly, bad faith includes not only dishonesty, but also —some dealings which fall short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the particular area being examined”: see *Gromax Plasticulture Ltd v Don & Low Nonwovens Ltd* [1999] RPC 367 at 379 and *DAAWAT Trade Mark* (Case C000659037/1, OHIM Cancellation Division, 28 June 2004) at [8].

135 Fifthly, section 3(6) of the 1994 Act, Article 3(2)(d) of the Directive and Article 52(1)(b) of the Regulation are intended to prevent abuse of the trade mark system: see *Melly's Trade Mark Application* [2008] RPC 20 at [51] and *CHOOSI Trade Mark* (Case R 633/2007-2, OHIM Second Board of Appeal, 29 February 2008) at [21]. As the case law makes clear, there are two main classes of abuse. The first concerns abuse vis-à-vis the relevant office, for example where the applicant knowingly supplies untrue or misleading information in support of his application; and the second concerns abuse vis-à-vis third parties: see *Cipriani* at [185].

136 Sixthly, in order to determine whether the applicant acted in bad faith, the tribunal must make an overall assessment, taking into account all the factors relevant to the particular case: see *Lindt v Hauswirth* at [37].

137 Seventhly, the tribunal must first ascertain what the defendant knew about the matters in question and then decide whether, in the light of that knowledge, the defendant's conduct is dishonest (or otherwise falls short of the standards of acceptable commercial behaviour) judged by ordinary standards of honest people. The applicant's own standards of honesty (or acceptable commercial behaviour) are irrelevant to the enquiry: see *AJIT WEEKLY Trade Mark* [2006] RPC 25 at [35]-[41], *GERSON Trade Mark* (Case R 916/2004-1, OHIM First Board of Appeal, 4 June 2009) at [53] and *Campbell v Hughes* [2011] RPC 21 at [36].

138 Eighthly, consideration must be given to the applicant's intention. As the CJEU stated in *Lindt v Hauswirth*:

—4.1 ... in order to determine whether there was bad faith, consideration must also be given to the applicant's intention at the time when he files the application for registration.

42. It must be observed in that regard that, as the Advocate General states in point 58 of her Opinion, the applicant's intention at the relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case.

43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market.

45. In such a case, the mark does not fulfil its essential function, namely that of ensuring that the consumer or end-user can identify the origin of the product or service concerned by allowing him to distinguish that product or service from those of different origin, without any confusion (see, inter alia, Joined Cases C-456/01 P and C-457/01 P *Henkel v OHIM* [2004] ECR I-5089 , paragraph 48).”

14) Given that these proceedings relate to a conversion of a CTM, I set out below the relevant articles contained in Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark:

“Article 112

Request for the application of national procedure

1. The applicant for or proprietor of a Community trade mark may request the conversion of his Community trade mark application or Community trade mark into a national trade mark application:

(a) to the extent that the Community trade mark application is refused, withdrawn, or deemed to be withdrawn;

(b) to the extent that the Community trade mark ceases to have effect.

2. Conversion shall not take place:

(a) where the rights of the proprietor of the Community trade mark have been revoked on the grounds of non-use, unless in the Member State for which conversion is requested the Community trade mark has been put to use which would be considered to be genuine use under the laws of that Member State;

(b) for the purpose of protection in a Member State in which, in accordance with the decision of the Office or of the national court, grounds for refusal of registration or grounds for revocation or invalidity apply to the Community trade mark application or Community trade mark.

3. The national trade mark application resulting from the conversion of a Community trade mark application or a Community trade mark shall enjoy in respect of the Member State concerned the date of filing or the date of priority of that application or trade mark and, where appropriate, the seniority of a trade mark of that State claimed under Articles 34 or 35.

4. In cases where a Community trade mark application is deemed to be withdrawn, the Office shall send to the applicant a communication fixing a period of three months from the date of that communication in which a request for conversion may be filed.

5. Where the Community trade mark application is withdrawn or the Community trade mark ceases to have effect as a result of a surrender being recorded or of failure to renew the registration, the request for conversion shall be filed within three months after the date on which the Community trade mark application has been withdrawn or on which the Community trade mark ceases to have effect.

6. Where the Community trade mark application is refused by decision of the Office or where the Community trade mark ceases to have effect as a result of a decision of the Office or of a Community trade mark court, the request for conversion shall be filed within three months after the date on which that decision acquired the authority of a final decision.

7. The effect referred to in Article 32 shall lapse if the request is not filed in due time.

Article 113

Submission, publication and transmission of the request for conversion

1. A request for conversion shall be filed with the Office and shall specify the Member States in which application of the procedure for registration of a national trade mark is desired. The request shall not be deemed to be filed until the conversion fee has been paid.

2. If the Community trade mark application has been published, receipt of any such request shall be recorded in the Register of Community trade marks and the request for conversion shall be published.

3. The Office shall check whether the conversion requested fulfils the conditions set out in this Regulation, in particular Article 112(1), (2), (4), (5) and (6), and paragraph 1 of this Article, together with the formal conditions laid down in the Implementing Regulation. If these conditions are fulfilled, the office shall transmit the request for conversion to the industrial property offices of the Member States specified therein.

Article 114

Formal requirements for conversion

1. Any central industrial property office to which the request for conversion is transmitted may obtain from the Office any additional information concerning the request enabling that office to make a decision regarding the national trade mark resulting from the conversion.

2. A Community trade mark application or a Community trade mark transmitted in accordance with Article 113 shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Regulation or in the Implementing Regulation.

3. Any central industrial property office to which the request is transmitted may require that the applicant shall, within not less than two months:

- (a) pay the national application fee;
- (b) file a translation in one of the official languages of the State in question of the request and of the documents accompanying it;
- (c) indicate an address for service in the State in question;
- (d) supply a representation of the trade mark in the number of copies specified by the State in question.”

15) The status of a CTM conversion in the UK is set out in The Community Trade Mark Regulations 2006 as follows:

“10.—(1) This regulation applies where, pursuant to Article 108 of the Community Trade Mark Regulation—

- (a) the applicant for or the proprietor of a Community trade mark requests the conversion of his Community trade mark application or Community trade mark into an application for registration of a trade mark under the Act; or
- (b) the holder of an international registration designating the European Community requests (in accordance with Article 154(1)(a) of that Regulation) the conversion of that designation into an application for registration of a trade mark under the Act.

(2) Where the request has been transmitted to the registrar under Article 109(3) of the Community Trade Mark Regulation, it shall be treated as an application for registration of a trade mark under the Act.

(3) A decision of the registrar in relation to the request shall be treated as a decision of the registrar under the Act.”

The intention to use point

16) Claro claims that Telefonica has/had no intention to use its mark. Mr de Lima refers to his understanding of the position in that there must be a bona fide intention to use the mark. I stated earlier in this decision that Mr de Lima’s understanding is not strictly correct. I will explain my thinking in more detail. Whilst in the UK a number of intention to use bad faith cases have succeeded, such successes have been based on the requirement under the Act to make a declaration of use as per section 32(3). If such a declaration is made, a declaration which is proven to be untrue, then it has been held that this constitutes bad faith; the bad faith lies in the making of a false declaration. However, there is no corresponding requirement to make an intention to use declaration in respect of a CTM. Furthermore, in relation to the request for

conversion of the CTM, although Article 10(2) of the UK's Community Trade Mark Regulations state that the converted CTM is to be ~~tr~~ treated as an application for registration of a trade mark under the Act" there still no requirement to make such a declaration. Indeed, it would not even be possible for the IPO to request that such a declaration be made given the provisions of Article 114(2) of the CTM Regulation which states:

~~2.~~ A Community trade mark application or a Community trade mark transmitted in accordance with Article 113 shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Regulation or in the Implementing Regulation."

17) The consequence of the above is that the ~~home-grown~~ "intention to use" aspect of UK law does not apply to these proceedings. The position was carefully considered by Mr Justice Arnold in the *Sun Mark* case, where, after thoroughly analysing the jurisprudence, he stated:

~~Is~~ there a requirement of intention to use under the Regulation?

158 As the law presently stands, it appears that there is no requirement under the Regulation that an applicant for registration of a Community trade mark must intend to use the mark. Accordingly, a lack of intention to use does not, at least without more, constitute bad faith: see TRILLIUM and Psytech . As Jacob J observed in LA MER , however, it is open to question whether this is correct. Indeed, it would seem arguable that the reasoning of the CJEU in Lindt v Hauswirth at [44]-[45] is applicable: where the applicant has no intention to use the mark, the mark cannot fulfil its essential function of indicating the origin of the applicant's goods or services. Although the CJEU said that there would be bad faith if, in addition to lacking any intention to use the mark himself, the applicant's sole objective was to prevent a third party from entering the market, the purpose of any trade mark registration is to prevent third parties from using the trade mark. Furthermore, it is arguable that this is supported by what the CJEU said in Internetportal v Schlicht at [45]-[48]. Thus the decision of the General Court in Peeters appears to recognise that it may be bad faith to apply to register a trade mark in respect of goods or services which are not ~~commercially~~ "commercially logical" for the applicant. This is not an issue which arises in the present case, however.

18) Although Mr Justice Arnold found the matter to be arguable, I must adopt the above as the current state of the law. Consequently, the lack of an intention to use per se cannot constitute an act of bad faith in these proceedings. Nevertheless, if there is something more to it, some added ingredient, this may be sufficient.

The added ingredient

19) Despite Mr de Lima's erroneous understanding of the position, Claro has nevertheless highlighted an added ingredient. The added ingredient is, effectively, a claim that Telephonica's actions were designed to prevent Claro from expanding the use of its mark from its South American home to the EU/UK; the claim is one of blocking, creating obstacles to prevent Claro's expansion. It is quite clear to me that if such claims are proven then this has a clear potential for a finding of bad faith. Analogous guidance can be seen in the *Lindt* case where the CJEU stated:

-43. Accordingly, the intention to prevent a third party from marketing a product may, in certain circumstances, be an element of bad faith on the part of the applicant.

44. That is in particular the case when it becomes apparent, subsequently, that the applicant applied for registration of a sign as a Community trade mark without intending to use it, his sole objective being to prevent a third party from entering the market."

20) In view of the above, Claro must establish that at the relevant date, Telephonica made its application not with the intention of using it themselves, but instead with the intention of simply blocking a prospective application by Claro.

The relevant date

21) Whether Telephonica made its application in bad faith must be assessed at a particular point in time. Evidence from after the relevant date can, however, be instructive in deciding whether the application was made in bad faith at the relevant date. As stated in the *Sun Mark* case, the relevant date is the application date of the trade mark. However, the question that arises in these proceedings is whether the relevant date should be the date on which the CTM was applied for, or, alternatively, the date on which Telephonica requested that its CTM be converted.

22) In my view, the relevant date must be the date on which Telephonica applied for the CTM. Even when converted, the rights of the resulting national mark go back to the date on which the CTM was filed. The purpose of conversion is to enable a CTM proprietor/applicant in particular circumstances to, effectively, reduce the rights in its mark from a pan-European right to a right in a more limited number of EU Member States, whilst retaining the same date of priority. Whilst the provisions refer to conversion into "anational application", the national application is simply the fruit of the conversion process, a necessity to ensure that the converted CTM meets the criteria of the Member State in which conversion has been requested. **The relevant date is 22 December 2000.**

Telephonica's intentions at the relevant date

23) It is clear that Claro's business under its CLARO mark has expanded since December 2000. However, as of the relevant date, its business was focused in the Brazilian mobile telephone network market. The evidence in Exhibit ECCF 4 contains around 150 advertisements placed in the Zero Hora newspaper between December 1998 and December 2000. Mr Fiddes criticised the evidence as failing to establish the true significance of such advertising. Whilst the evidence could have been fuller (to include turnover/subscriber figures for this period) it seems to me that to have advertised on this scale, in a field in which there are a limited number of players, means that other mobile telephone network operators in the area would have been aware of the use of the CLARO trade mark. I mention other operators because it is clear (and there is no counter evidence) that Telephonica were operating in the Brazilian mobile phone network market at the same time. Therefore, Telephonica, or least personnel with responsibility for Telephonica's Brazilian/South American affairs, would have known of the use by Claro [or more precisely its predecessor] of the CLARO mark. It is noteworthy that Telephonica filed no evidence in these proceedings which in my view means that Claro simply needs to establish a prima facie case which, without rebuttal, should be accepted. In the circumstances, I find that when filing the CTM in December 2000 Telephonica knew that Claro were operating under the CLARO mark in Brazil.

24) However, knowledge alone is not enough. I must be satisfied, at least on a prima facie level, that the intention of Telephonica was to block Claro's expansion. Whilst there is nothing in the evidence that establishes that Telephonica knew of any specific plans on the part of Claro to expand its business, it strikes me that a business in the field of telecommunications is one where expansion would be a practical and a fairly obvious step. There are further factors which Claro throw into the mix. As stated earlier, evidence from after the relevant date may be instructive of the position. One such factor is that Telephonica had not used its mark even by the time of its conversion request (some 10 years after it was initially filed). It also relies upon the overall circumstances leading to conversion.

25) In his submissions, Mr Fiddes emphasised the seriousness of a bad faith allegation and the cogent evidence that must support it. He emphasised Mr Justice Arnold's words (from *Sun Mark*) that it is not enough to establish conduct which is also consistent with good faith. The lack of cogency in Claro's evidence was why, Mr Fiddes explained, Telephonica choose not to file evidence, so keeping costs down. I note this, but I remind myself that Telephonica need only establish a prima facie case. I bear in mind that i) Telephonica knew of Claro's use of its mark in Brazil, ii) that expansion beyond that market was a possible step even though Telephonica had no specific knowledge of such plans, iii) that Telephonica filed for an identical mark for identical or closely allied goods/services, iv) that some ten years have elapsed since that filing with no use

being made of the mark v) that upon a challenge based on non-use, rather than defend such a claim Telephonica surrendered its registration and converted it into a UK (and other Member States') application. All of this taken collectively leads to me to conclude that a prima facie case has been established that Telephonica filed a blocking application and I am of the view that such conduct falls short of the standards of acceptable commercial behaviour observed by reasonable and experienced men in the field. The prima facie case has not been answered, it was clearly within Telephonica's power to do so. **The opposition succeeds.**

Costs

26) Claro has been successful and is entitled to a contribution towards its costs. Mr Fiddes, for Telephonica, sought costs in its favour above the normal scale because of the seriousness of the claim, the lack of compelling evidence, and the lack of participation from Claro in explaining its position. Given that I have found in Claro's favour this represents no good reason not to award Claro costs. I hereby order Telephonica SA to pay Claro SA the sum of £1000. This sum is calculated as follows:

Preparing a statement and considering the other side's statement
£300

Filing evidence
£700

27) The above sum should be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful

Dated this 27th day of February 2013

**Oliver Morris
For the Registrar,
The Comptroller-General**