



Neutral citation [2007] CAT 19

**IN THE COMPETITION  
APPEAL TRIBUNAL**

Case No. 1074/2/3/04 (IR)

Victoria House  
Bloomsbury Place  
London WC1A 2EB

3 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

**RULING ON COSTS**

1. There are before us applications for costs by each of the Office of Communications (“OFCOM”) and T-Mobile (UK) Limited (“T-Mobile”) in respect of the Tribunal’s judgment handed down on 28 February 2007 (“the Judgment”) ([2007] CAT 12) on the application by VIP Communications Limited (in administration) (“VIP”) for interim relief.
2. The Registrar of the Tribunal wrote to VIP on 21 March 2007 inviting VIP to make any observations on the applications by OFCOM and T-Mobile. VIP did not respond to that letter and has not made any submissions.
3. For the reasons set out in the Judgment, the Tribunal found that VIP’s application was manifestly unfounded and doomed to fail. This was particularly so since the application was not supported by *prima facie* evidence that VIP had a contractual right to the delivery up of 4,000 SIMs at 2 pence per minute or that the contract would still have been in existence in 2007, irrespective of competition law issues. In addition the Tribunal did not consider that, even had there been evidence as to these matters, it would have been appropriate to grant interim relief since the evidence and submissions on behalf of VIP as to why the application met the test of urgency was somewhat confused and inconsistent. Moreover, on the test of urgency, since there had been no competition in this market since 2003, there was nothing to maintain or preserve, and there was therefore no urgency which needed to be dealt with in that respect.
4. Having regard to our conclusion as to the inappropriateness of making this application we do not consider that any financial prejudice which VIP may suffer by having to meet an award of costs is a consideration which can outweigh the justness of making an award of costs in favour of OFCOM and T-Mobile.

5. Nor do we consider that the usual practice of this Tribunal, that interveners should not normally recover their costs, is applicable to this application by VIP for interim relief. The application was directed against T-Mobile and it was inevitable that T-Mobile would be required to defend it. In these circumstances, and where the Tribunal concludes that the application was manifestly unfounded, it would be unjust if the Tribunal did not exercise its discretion to award costs in favour of the intervener.
6. In these circumstances, the Tribunal considers that it is just that OFCOM and T-Mobile should be awarded their reasonable and proportionate costs of contesting VIP's application for interim relief, to be subject to detailed assessment by the Tribunal if not agreed.
7. However, having regard to the outstanding issues as to costs in respect of the hearing on 13 December 2006 in case 1027/2/3/04 *VIP Communications Limited (in administration) v Office of Communications*, the Tribunal suspends the operation of the order attached to this ruling until further order.
8. T-Mobile has applied for VIP and/or VIP On-Line Limited and/or Mr McCabe to be made jointly and severally liable for any costs awarded in favour of T-Mobile. The Tribunal considers that this application is premature.

For the above reasons:

**IT IS ORDERED THAT:**

- (1) The appellant pay the reasonable and proportionate costs of the respondent and the intervener in respect of the interim relief proceedings, such costs to be assessed if not agreed.
- (2) The obligation of the appellant to pay the costs referred to in (1) above be suspended until further order pending resolution of case 1027/2/3/04 *VIP Communications Limited (in administration) v Office of Communications*.
- (3) There be permission to apply.

Marion Simmons QC

Michael Davey

Sheila Hewitt

Charles Dhanowa  
Registrar

3 April 2007