



IN THE COMPETITION
APPEAL TRIBUNAL

Case Number: 1027/2/3/04

Victoria House
Bloomsbury Place
London WC1A 2EB

9 April 2010

Before:

VIVIEN ROSE
(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

VIP COMMUNICATIONS LIMITED
(in administration)

Appellant

-v-

OFFICE OF COMMUNICATIONS

Respondent

supported by

T-MOBILE (UK) LIMITED

Intervener

ORDER (ASSESSMENT OF COSTS)

1. On 3 February 2010 the Tribunal ordered that

(a) the suspension of the obligation to pay costs imposed by the Tribunal in its ruling of 3 April 2007 rejecting VIP's interim relief application (Case 1074/2/3/06 (IR)) be lifted; and

(b) the appellant pay the reasonable costs of the respondent incurred in Case 1027/2/3/04 after 10 February 2009 when the Court of Appeal handed down judgment in the related *Floe* proceedings.

The amount of costs was to be assessed by the Tribunal if not agreed between the parties (see [2010] CAT 3). The parties have been unable to agree the amount of costs and OFCOM have therefore applied to the Tribunal for an assessment under rule 55(3) of the Tribunal Rules.

2. The costs claimed by OFCOM are limited to those of outside counsel and are set out in the following table:

	Interim relief application (£)	Post 10.2.09 proceedings (£)	Application for costs (£)
Rupert Anderson QC	14,350.00	5,225.00	-
Anneli Howard	4,564.45	4,050.00	805.50
Ben Lask	5,430.00	630.00	-
Total (having added VAT at 17%)	28,604.70	11,390.75	946.30

3. OFCOM have also claimed interest at a rate of 8% on the interim relief fees (totalling £6,666.90 as of the date of the application).

4. VIP disputes that it is liable to pay interest on the interim relief fees. VIP also complains that three counsel was too many and that there is some duplication in the amounts that OFCOM have claimed. In response, OFCOM submit that there was no duplication and that the rates charged by Counsel were very favourable compared with their normal commercial rates.

5. In our unanimous judgment, the amounts charged by Counsel are reasonable. If OFCOM had not engaged two junior counsel then it is likely that Mr Anderson QC

would have spent much more time on the drafting of submissions, thereby greatly increasing costs overall. For example, it is clear from the detailed schedule of hours spent that Mr Lask and Ms Howard undertook the majority of the drafting of the submissions and that Mr Anderson reviewed those submissions. This is a much more efficient method of working than having a single senior barrister undertaking all the drafting work at the higher rate of fee. This was, we conclude, clearly a case that merited a silk, both in its own right and because of its links with the *Floe* proceedings.

6. On the question of interest on the interim relief application fees, we agree with VIP that since payment was suspended by the Tribunal, it is not appropriate to award interest on the sum. Interest is generally payable on a sum which is due and owing but remains unpaid. No order was made requiring VIP to pay so that they are not late in making a payment.
7. In light of the foregoing, the Tribunal unanimously

ORDERS THAT:

Pursuant to 55(3) of the Tribunal Rules, VIP pay forthwith to OFCOM the sum of £40,941.75.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 9 April 2010
Drawn: 9 April 2010