



Neutral citation [2010] CAT 20

**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case Number: 1145/4/8/09

Victoria House  
Bloomsbury Place  
London WC1A 2EB

3 August 2010

Before:

VIVIEN ROSE  
(Chairman)  
PROFESSOR ANDREW BAIN OBE  
MICHAEL BLAIR QC

Sitting as a Tribunal in England and Wales

BETWEEN:

**STAGECOACH GROUP PLC**

Applicant

- v -

**COMPETITION COMMISSION**

Respondent

---

**RULING ON COSTS**

---

1. In the judgment handed down on 21 May 2010 ([2010] CAT 14) the Tribunal upheld Stagecoach's application for review of the Decision on Grounds 2 and 4 to the extent and for the reasons set out in that judgment (the "Main Judgment"). We adopt the same abbreviations and terminology as in the Main Judgment.
2. In this ruling, which is unanimous, we deal with Stagecoach's application for costs. Stagecoach argues that the Commission should pay Stagecoach's costs in full, or, in the alternative, pay a substantial proportion of its costs. The Commission has resisted that application submitting that there should be no order for costs. The parties were content for us to decide this matter on the papers.
3. In the Schedule to its application, Stagecoach set out a statement of costs incurred to 22 June 2010, amounting to £371,469.78. Initially Stagecoach included a claim for VAT but later withdrew this part of its claim, having accepted that since it is able to recover the VAT paid, it is not entitled to claim it from the Commission.
4. The Tribunal's jurisdiction to award costs is set out in rule 55 of the Tribunal Rules. That rule confers on the Tribunal a discretion to make any order it thinks fit. In determining how much a party is required to pay, the Tribunal may take account of the conduct of all parties in relation to the proceedings and other factors: see *Merger Action Group v Secretary of State for Business, Enterprise and Regulatory Reform (expenses)* [2009] CAT 19, paragraph 19.
5. We deal first with the costs incurred in relation to a stand alone matter, namely the Commission's strike out application which was decided on the papers: see the Tribunal's ruling at [2010] CAT 1. In our judgment Stagecoach is entitled to its costs of that application since it was entirely successful and the Commission's application was, in our judgment, misconceived. The Schedule provided by Stagecoach states that the costs incurred for that application were £14,847 and we consider that is a reasonable sum for the Commission to pay in respect of that application.

6. As regards the costs of the main proceedings, Stagecoach successfully established that the Commission's findings of fact in relation to what had happened in the 18 months prior to the merger were not supported by evidence. We do not consider that the fact that the Tribunal upheld the finding that the merger resulted in an SLC should affect the issue of costs. Stagecoach's second ground of review remained relevant both as a matter of principle and for the choice of remedy (see paragraph 39 of the Main Judgment). Further, the fact that no relief was granted in respect of the Application or that the parties ultimately agreed that it would be appropriate to proceed with the divestment of PBL are not relevant, in our judgment.
7. We do not agree with the Commission's submission that its success on Ground 1 cancels out Stagecoach's success on Ground 2. Although Ground 1 was pleaded at length, it did not account for a significant proportion of the hearing. The lion's share of the hearing time was clearly taken up by submissions directed at whether certain findings of fact by the Commission were supported by evidence. It follows that the Commission's contention that there should be no order as to costs fails to recognise that Stagecoach's challenge on Grounds 2 and 4 succeeded to the extent set out in the Main Judgment. But the Commission's success on Ground 1 should fairly be reflected in the amount of costs award and Stagecoach should not receive all its costs.
8. Stagecoach has asked the Tribunal to make a summary assessment of costs in the sum of £371,469.78 for work carried out by Stagecoach's solicitors and external counsel. This includes the costs of the strike out application that we have already dealt with. The Commission has not challenged this sum as unreasonable of itself. Save for one head of cost, the remaining sum relating to the main proceedings does not seem excessive or disproportionate given the grounds of challenge and the commercial importance of the outcome of the case. The head of cost which we do not regard as recoverable is the sum of £54,776 claimed for costs incurred after the Tribunal handed down the Main Judgment. This is an unusually high proportion of total costs (14.7 per cent), and an unduly high amount in respect of work on consequential directions and other unrelated matters. It appears to us that much of what is claimed for here is not properly recoverable as the costs of these

proceedings but rather relates to the work done in relation to the extension of time for complying with the divestiture undertakings.

9. We consider that in this case it is preferable for the Tribunal summarily to assess the amount to be paid rather than require a detailed assessment. An appropriate amount to be paid by the Commission in respect of Stagecoach's costs of the main proceedings is in our judgment £200,000. This costs award serves the justice of the case by requiring that Stagecoach, the party who successfully challenged the Decision, receive its costs less a material discount in respect of unsuccessful grounds deployed in its review application.
10. For the foregoing reasons the Tribunal unanimously:

**ORDERS THAT:**

The Commission pays to Stagecoach a sum of £214,847 in respect of its costs, such payment to be made within 28 days of the date of this ruling

Vivien Rose

Andrew Bain

Michael Blair

Charles Dhanowa  
Registrar

Date: 3 August 2010