

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1152/8/8/10 (IR)

Victoria House,
Bloomsbury Place,
London WC1A 2EB

29th April 2010

Before:
THE HON. MR JUSTICE GERALD BARLING
(President)

Sitting as a Tribunal in England and Wales

BETWEEN:

BRITISH SKY BROADCASTING LIMITED

Proposed Appellant

- v -

OFFICE OF COMMUNICATIONS

Proposed Respondent

- supported by

BRITISH TELECOMMUNICATIONS PLC
TOP UP TV EUROPE LIMITED
VIRGIN MEDIA, INC

Proposed Interveners

—————
Transcribed from tape by Beverley F. Nunnery & Co.
Official Shorthand Writers and Tape Transcribers
Quality House, Quality Court, Chancery Lane, London WC2A 1HP
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com

—————
HEARING

APPLICATION FOR INTERIM RELIEF

APPEARANCES

Mr. James Flynn QC and Mr. Meredith Pickford (instructed by Herbert Smith LLP) appeared for the Proposed Appellant.

Miss Dinah Rose QC and Mr. Josh Holmes and Mr. Ben Lask (instructed by the Office of Communications) appeared for the Proposed Respondent.

Mr. Mark Hoskins QC and Mr. Gerard Rothschild (instructed by Ashurst LLP) appeared for the Proposed Interveners Virgin Media.

Mr. David Anderson QC and Miss Sarah Ford and Miss Sarah Love (instructed by BT Legal) appeared for the Proposed Interveners British Telecommunications PLC.

Mr. Daniel Beard (instructed by Milbank, Tweed, Hadley & McCloy LLP) appeared for the Proposed Intervener Top Up TV.

Mr. Keith Jones (of Baker McKenzie) appeared for the Proposed Intervener Orange Personal Communications Services Limited.

Ms Maya Lester (instructed by DLA Piper UK LLP) appeared for the Proposed Intervener Football Association Premier League.

1 THE PRESIDENT: Good afternoon.

2 MR. FLYNN: Good afternoon, Sir. The last few hours have been productive from our point of
3 view. Sir, have you been given a piece of paper?

4 THE PRESIDENT: I have.

5 MR. FLYNN: This is a draft order which represents something to which – I will not say everyone
6 is “happy”, that might not be the right word – everyone is committed to.

7 THE PRESIDENT: Sufficiently not unhappy!

8 MR. FLYNN: Sufficiently not unhappy! Would it assist you if I were to take you through it, Sir?

9 THE PRESIDENT: I have read it. I assume on these occasions the less I have to say the better,
10 and I have not got anything to say of substance. I just have a couple of quick points on it.
11 One is whether it would be sensible to say, perhaps in the last recital, “And upon [whoever
12 it is] agreeing to the terms of the order”. There is nothing to indicate that. I think one can
13 imply it because there are undertakings by both groups, as it were. If that has not been left
14 out because of some ----

15 MR. FLYNN: There is no outstanding agreement. Everyone has agreed, we are not waiting for
16 anyone.

17 THE PRESIDENT: Could I therefore suggest that the final recital says, “And upon”, is it “all the
18 parties”, or “upon the parties agreeing to the terms of this order”?

19 MR. FLYNN: I suppose I would question the position of the Premier League and Orange.

20 THE PRESIDENT: “And upon”, and their names.

21 MR. FLYNN: Then it would be Sky, the three front interveners and Ofcom, if I can put it that
22 way.

23 THE PRESIDENT: If that is not going to put the cat among the pigeons then I think that would
24 be quite a good thing to add.

25 MR. FLYNN: Speaking for Sky, it certainly would not put the cat among the pigeons from our
26 point of view.

27 THE PRESIDENT: The only other point I have is just in para.1 of the substantive part of the
28 order. “Subject to the other conditions of this order and the attached schedule”, I was not
29 sure, was that just a reference to the undertakings?

30 MR. FLYNN: I think it is, Sir, yes. I think that is right.

31 THE PRESIDENT: I think it might be better just to say, “Subject to the above undertakings and
32 the terms of this order”.

33 MR. FLYNN: Yes, I think that must be right, because apart from the undertakings and the
34 schedule, the only other thing in the order is the liberty to apply. I think that must be right.

1 THE PRESIDENT: It might be better, otherwise it might confuse the reader, the easily confused
2 reader like me. Apart from that there is the odd typo.

3 MR. FLYNN: Yes. I will not bore you with the ones that we have collectively picked up in the
4 last few minutes, but we will convey those to the Registrar.

5 THE PRESIDENT: You probably want that order made as soon as possible, do you not?

6 MR. FLYNN: As soon as may be, Sir. We will have a word on the tidying up now, I imagine,
7 and then it will be for you to make the order at your convenience.

8 THE PRESIDENT: I will do that today, if it can be tidied up fairly quickly. I am sure, if you
9 agree the tidying up, we can make the order. Have we got this electronically on our
10 system?

11 MR. FLYNN: Yes, you have.

12 THE PRESIDENT: In which case, we can do that very quickly. In fact, before people leave, if
13 they could feed in their typos and other little changes and agree them then that can be done.

14 MR. FLYNN: So long as Mr. Bailey knows the typos that you have spotted, then we can do that.

15 THE PRESIDENT: The ones that he discovered with his eagle eye!
16 It only remains for me to commend you all for having reached an arrangement, and thank
17 you all very much, and those who are not present as well, for all the assistance and hard
18 work you must have put in over the last few days.
19 Thank you very much.
20 _____