



Neutral citation [2015] CAT 12

IN THE COMPETITION
APPEAL TRIBUNAL

Case Numbers: 1156-9/8/3/10

Victoria House
Bloomsbury Place
London WC1A 2EB

22 June 2015

Before:

PETER FREEMAN CBE QC (HON)
(Chairman)
PROFESSOR JOHN BEATH OBE
MICHAEL BLAIR QC (HON)

Sitting as a Tribunal in England and Wales

B E T W E E N:

SKY UK LIMITED
VIRGIN MEDIA, INC.
THE FOOTBALL ASSOCIATION PREMIER LEAGUE
BRITISH TELECOMMUNICATIONS PLC

Appellants/Interveners

- v -

OFFICE OF COMMUNICATIONS

Respondent

- and -

TOP UP TV EUROPE LIMITED
RFL (GOVERNING BODY) LIMITED
THE FOOTBALL ASSOCIATION LIMITED
FRESAT (UK) LIMITED
RUGBY FOOTBALL UNION
THE FOOTBALL LEAGUE LIMITED
PGA EUROPEAN TOUR
ENGLAND AND WALES CRICKET BOARD

Interveners

RULING (PERMISSION TO APPEAL)

1. On 6 May 2015, the Tribunal handed down its ruling ([2015] CAT 9) (“the Ruling”) concerning the constitution of the Tribunal for the purpose of hearing a matter remitted by the Court of Appeal in its judgment of 17 February 2014 ([2014] EWCA Civ 133). In that Ruling the Tribunal decided that it was appropriate for the Chairman (Mr Justice Barling) to recuse himself from hearing the remitted matter, but that there was no basis for the recusal of Professor Beath or Mr Blair. On 4 June 2015 BT applied for permission to appeal against the Ruling. This decision on BT’s application uses the same abbreviations as set out in the Ruling. Following the recusal of Mr Justice Barling, Mr Freeman was appointed to chair these proceedings.
2. In its application for permission, BT contends that the Tribunal erred in law by misapplying the test for apparent bias and that it was wrong to conclude that the “fair-minded and informed observer” would not have concluded that there was a real possibility that the Tribunal was biased. The correct application of the test would, in BT’s view, have led to the recusal of all three members.
3. Sky objects to BT’s application and contends that the Ruling was correct. No submissions have been received from any other party.
4. Appeals from the Tribunal to the Court of Appeal are on points of law only. The test for granting permission to appeal is set out in Civil Procedure Rule 52.3(6); it is applied by analogy by this Tribunal.

5. In our view, the appeal does not have a real prospect of success on a point of law and there is no other compelling reason why the appeal should be heard.
6. Accordingly, we unanimously refuse permission to appeal.

Mr Peter Freeman C.B.E.,
Q.C. (*Hon*)

Prof. John Beath O.B.E.

Michael Blair QC (*Hon*)

Charles Dhanowa O.B.E., Q.C.
(*Hon*)
Registrar

Date: 22 June 2015