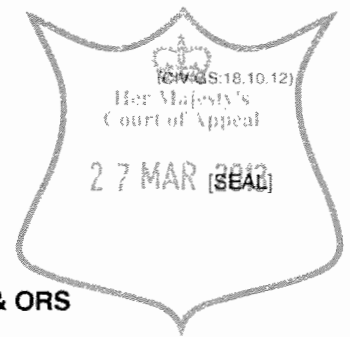




IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C3/2013/0443(A)



BRITISH SKY BROADCASTING LTD & ORS –v– TOP UP TV EUROPE LTD & ORS

ORDER made by the Rt. Hon. Lord Justice Patten

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal, expedited hearing and a stay

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Permission to appeal refused. Stay of CAT's order until after any renewed hearing of this application.

Reasons

1. The CAT accepted that s.316 is what is described as a forward-looking instrument which enables Ofcom as regulator to impose an *ex ante* remedy to secure effective competition in the future. But the dispute (and only real issue) is whether Ofcom's Statement was based on its assessment of Sky's past conduct or could be justified whether or not Sky had intentionally indulged in practices and strategies which were anti-competitive. The CAT in my view correctly analysed Ofcom's reasons and the factual findings which underpinned them and their reversal of many of those critical findings was therefore sufficient to undermine Ofcom's reasons for its conclusions.
2. The CAT explained in its decision how it approached the rate card issue and the second ground of appeal as formulated seems to be a direct challenge to its findings of fact.
3. I am not therefore satisfied that the appeal does raise any real issues of law. I will, however, continue the Tribunal's suspension of its directions until after the effective disposal of any renewed application for permission to appeal. Any such application should be heard as soon as possible in the new term.

Information for or directions to the parties

This case falls within the Court of Appeal Mediation Scheme automatic pilot categories*. Yes No

Recommended for mediation Yes No

If not, please give reason:

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition



Signed:
Date: 26th March 2013

By the Court

Notes

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 16(1) of CPR PD 52C.

**DATED 26TH MARCH 2013
IN THE COURT OF APPEAL**

BRITISH SKY BROADCASTING LIMITED & ORS

- and -

TOP UP TV EUROPE LIMITED & ORS

ORDER

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Lower Court Ref: 2012CAT20