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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1191/6/1/12

Victoria House,
Bloomsbury Place,
London WC1A 2EB

8 June 2012

Before:
VIVIEN ROSE
(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

(1) ASSOCIATION OF CONVENIENCE STORES
(2) NATIONAL FEDERATION OF RETAIL NEWSAGENTS

Applicants

- v -

OFFICE OF FAIR TRADING

Respondent

- and -

PRESS DISTRIBUTION FORUM

Proposed Intervener

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CASE MANAGEMENT CONFERENCE

APPEARANCES

Ms Laura Elizabeth John (instructed by Edwin Coe LLP and by Nabarro LLP) appeared on behalf of the Applicants.

Mr Josh Holmes (instructed by General Counsel of the Office of Fair Trading) appeared on behalf of the Respondent.

Ms Maya Lester (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of the Proposed Intervener.

1 THE CHAIRMAN: Good morning, ladies and gentlemen. The Tribunal sent out a draft order to
2 the parties in an effort to resolve a timetable for the further conduct of this case, but parties
3 have written in, and two of the parties – assuming for the moment that Press Distribution
4 Forum becomes a party – their counsel are not able to manage the date proposed by the
5 Tribunal of 13th September, with a day in reserve. Everyone has written in with various
6 dates they cannot make, leaving it to us to try and see if there is any date that everyone can
7 make, to which the answer seems to be, bearing in mind that I am chairing a two week
8 hearing starting on 15th October and need some preparation time for that, the only possible
9 dates are Monday, 24th September, possibly going over, but only for the morning of the 25th,
10 the Tuesday, if needed – though I appreciate that will be the first day back for Mr. Holmes –
11 or Friday, 28th September, but it appears that that could not then go over to 1st October,
12 because Mr. Peretz is not available on 1st October. So if it was going to be on 28th
13 September it would absolutely have to finish in one day which, it seems to me, is perfectly
14 possible, but would need some quite strict timetabling. Other than that there do not really
15 seem to be any days in October when everybody is free, nor in September.
16 That is the conclusion that I have come to having read all the letters this morning. That
17 seems to be the main item for discussion today.
18 The other items as far as I am aware are the Press Distribution Forum’s request to intervene,
19 to which, as I understand it, no one objects, and the Tribunal has indicated that we are
20 minded to allow that provided that the Press Distribution Forum recognise the limited scope
21 of the issues in this application, and this is not going to turn into a debate about the merits or
22 demerits of the current method of distribution of newspapers and magazines.
23 The one point remaining is in relation to their request for a non-confidential version of the
24 application for review and annexes, which they want to see before they draft their statement
25 of intervention. I do not see any difficulty with that, though I do not have a clear idea in my
26 mind as to what the volume of that is as a copying exercise, and whether there is an issue
27 about who should pay the costs for that.
28 There is some mention of confidentiality ring in the papers, but I am not sure whether that is
29 really needed. Somebody might want to tell me about that.
30 As regards the position as to the costs of the intervention, whether the Tribunal is going to
31 make an order now indicating that PDF will bear its own costs but not have to pay anybody
32 else’s costs regardless of the outcome of the application – again people may want to address
33 me on that.

1 Other than that, as I understand it, it is simply the timetable, working back from whatever
2 we decide will be the hearing date, and if it is delayed from 13th September, whether that
3 enables a bit more flexibility in the timing of the early stages of the timetable.

4 Finally, just to say, although the Tribunal initially suggested dates in July for this hearing,
5 that now is not possible from the Tribunal's point of view.

6 Who would like to say something first? Mr. Holmes, do you want to go first?

7 MR. HOLMES: Madam, may I first express my gratitude to the Tribunal for being prepared to
8 reconsider the listing date, given my circumstances. I am grateful to the Tribunal for that.
9 My own preference, if it were possible, would be to attempt to do the hearing in the course
10 of a day on Friday, 28th September. This is not a particularly substantial or unusual case
11 and, as it appears to us, it ought to be perfectly possible for it to be heard in the course of a
12 day. When the timing was first discussed as between the applicants' and the respondent's
13 counsel, our collective view was that a day ought to suffice.

14 Since then we have, of course, had the application to intervene, but even taking that into
15 account and given the limited role that an intervener will play in proceedings of this nature,
16 it appears to us that a day should be sufficient.

17 Would the Tribunal be in a position to indicate whether there would be any scope perhaps to
18 slightly lengthen the day in order to ensure that it could be accommodated – whether we
19 could, for example, begin at ten or conclude at five in order to ensure that all of the business
20 could be done?

21 THE CHAIRMAN: Yes, I do not see any difficulty with that. One Panel member lives in
22 Northern Ireland, but I think she will have to be here the night before in any event, so I do
23 not see any difficulty with that.

24 MR. HOLMES: Madam, I am grateful. The other matters I think are really for the other parties'
25 counsel.

26 THE CHAIRMAN: One possibility is to indicate that PDF should, in drafting their skeleton
27 argument, really make that their written submissions so that although they attend the
28 hearing they need have a speaking role at the hearing only if something untoward occurs
29 that they want to address, but that their main intervention would be in written form rather
30 than needing to have time specially allocated to them during the hearing.

31 MR. HOLMES: Indeed, madam.

32 THE CHAIRMAN: Yes. Miss John?

33 MISS JOHN: Madam, if I might assist, I understand that Mr. Peretz is actually available on
34 1st October, it is the 11th that he is not available. It may well be in the interests of all

1 concerned that we do nonetheless attempt to keep ourselves to one day, but if a run-over
2 were necessary ----

3 THE CHAIRMAN: I am sorry, it is one of the applicants that is unavailable on 1st and 9th
4 October according to the letter that we got yesterday. I am not sure what means.

5 MISS JOHN: Yes, I beg your pardon. That is the NFRN, but I have been told this morning that
6 we can rearrange that if required to do so.

7 THE CHAIRMAN: Right, that is helpful. That is helpful, although given the nature of the case, I
8 still think we should really try and get it done in one day.

9 MISS JOHN: Yes, and it is certainly our view that that should be possible, madam, yes. We are
10 also available on 24th and 25th September, if that is a preferable alternative.

11 THE CHAIRMAN: Yes, any submissions on any other matters?

12 MISS JOHN: On the other matters that you mentioned, madam, as we have indicated we have no
13 objection to the PDF intervention, and we were content with the directions that the Tribunal
14 proposed on Wednesday in that regard.

15 On the matter of a non-confidential bundle, I am told that that should be ready to give to
16 them by the end of today.

17 On the question of a confidentiality ring, as you said, madam, that has been mooted in
18 correspondence. I do not know whether Miss Lester wants to say anything about whether
19 that is necessary or not, but the information that has been marked as confidential in the
20 bundles is information relating to the commercial information of various of our members.

21 If the PDF were to want access to the redacted information then we would ask that there be
22 a confidentiality ring put in place to confine it to external advisers. It may be that this can
23 be dealt with without that being necessary. I will let Miss Lester address that.

24 THE CHAIRMAN: Yes, thank you. Yes, Miss Lester?

25 MISS LESTER: On the timetable date, either of those slots is fine for my client and for me. So
26 we are very grateful for that.

27 We are also grateful for the Tribunal's indication that we be given permission to intervene.
28 We are fully mindful of the nature of the proceedings, the limited scope of the intervention,
29 and also grateful for the Tribunal's indication that we liaise with the OFT in order to ensure
30 that there will not be duplication. We are very happy to do so.

31 On confidentiality, it is very difficult for us to say what, if anything, we need to say since
32 we have not seen the non-confidential application yet. We hope that we would be able to
33 resolve any issue about the extent of the redactions without troubling the Tribunal. If we
34 need to ask for a confidentiality ring then we will do so, but at this stage it is very hard to

1 say anything other than that. It sounds from the indication as if the extent of the redactions,
2 if has been kept within appropriate bounds, should not be a difficulty, but it is very hard to
3 say without having seen the application.

4 The only other point I would make is that we would ask for a chance to make oral
5 submissions as well as written submissions at the hearing. Again, I would stress that we
6 would not duplicate matters that the OFT has already raised, and we bear in mind the nature
7 of the proceeding, but we would ask for a short and appropriate possibility to make oral
8 submissions, as commonly happens with an intervention. So if that can be built into the
9 timetable for the hearing we would be very grateful, particularly if on both hearing slots
10 there is a second day available if it is necessary, or if we could build in, say, an hour of the
11 hearing date if there were one day available.

12 I think those are all my points, thank you.

13 THE CHAIRMAN: As far as the timetable is concerned, I think in one of the letters you have
14 said that if a hearing was going to be postponed a little, you would like a bit of extra time
15 for your ----

16 MISS LESTER: Yes, this was when our statement of intervention was going to be due. We
17 would ask for two weeks, if that is possible within the scope of the timetable. I think
18 originally a week had been mooted, and there was no objection from the applicants to
19 allowing longer than that. This is the letter from Edwin Coe of yesterday, of 7th June, which
20 agreed that if the defence was being served on 15th June, we would have until the 27th rather
21 than the 20th. I think that is not contentious. I do not know if those dates are now going to
22 change if the hearing date is changing. I do not know what the Tribunal has in mind about
23 dates for defence and statements of intervention, but we would certainly be grateful for two
24 weeks if that was available.

25 THE CHAIRMAN: What I have in mind is to keep 15th June as the date for the defence. Is that
26 acceptable, Mr. Holmes, and then 27th June, which is a Wednesday, so we will say 29th June
27 for the statement of intervention, assuming that you get the non-confidential notice of
28 application and annexes today.

29 MISS LESTER: Edwin Coe did helpfully indicate that it would be by close of play today before
30 this hearing, so if that is all right then 29th June we would be very grateful.

31 THE CHAIRMAN: Yes, and then the applicants file and serve a skeleton by 27th July, the
32 respondents serve their skeleton by 23rd August. Then PDF can have until, say, 7th
33 September for your skeleton. Agreed bundle of authorities and documents by, say, 14th
34 September, and then the hearing on the 28th.

1 I would also like the parties to lodge by 21st September an agreed timetable for the day
2 between 10 am and 4.30 pm, say. We will assume that we will get it resolved within that
3 day. As we have a Panel member overseas, it is more convenient to know whether it is
4 going to be on the Monday as well as early as possible.

5 I will also direct that people file electronic copies of the documents that they serve as well,
6 please.

7 MISS LESTER: Can I enquire, is the Tribunal content for us to build in a short chance to make
8 oral submissions within that day?

9 THE CHAIRMAN: Yes, if you can agree that amongst yourselves. If there is pressure on time
10 you will be the first to go, and therefore the skeleton should be drafted with that possibility
11 in mind.

12 MISS LESTER: I am grateful.

13 THE CHAIRMAN: Is there anything else that anybody wants to say about the costs point, or are
14 you content, Miss John, to leave it at the moment that we will determine that at the end of
15 the case?

16 MISS JOHN: Yes, madam, we were grateful for the indication in the letter.

17 THE CHAIRMAN: Is there anything else? No. Thank you very much.
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