

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

Case Nos. 1227/4/12/14

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

16<sup>th</sup> May 2014

Before:

THE HON. MR. JUSTICE SALES  
(Chairman)  
DERMOT GLYNN  
CLARE POTTER

Sitting as a Tribunal in England and Wales

BETWEEN:

**A. C. NIELSEN COMPANY LIMITED**

Applicant

- v -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

- and -

**INFORMATION RESOURCES INC.**

Intervener

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**CASE MANAGEMENT CONFERENCE**

## **APPEARANCES**

Mr. P. Lasok QC (instructed by Squire Sanders (UK) LLP) appeared on behalf of the Applicant.

Mr. B. Kennelly and Miss Anneliese Blackwood (instructed by the Office of the General Counsel) appeared on behalf of the Respondent.

Mr. T. Ward QC (instructed by Freshfields Bruckhaus Deringer LLP) appeared on behalf of the Intervener.

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1 MR. LASOK: May it please you, Sir, I appear on behalf of the applicant, A.C. Nielsen. On my  
2 immediate left Mr. Ward QC appears on behalf of the intervener, IRi, and on his left  
3 Mr. Kennelly and Miss Blackwood appear on behalf of the CMA.

4 Has the Tribunal seen a copy of the letter dated 14<sup>th</sup> May 2014, sent by those instructing me  
5 to the Tribunal?

6 THE CHAIRMAN: Yes.

7 MR. LASOK: I think that that in some respects operates as a kind of skeleton argument for the  
8 purpose of these proceedings. As we see it, there are only three matters that arise for the  
9 purposes of today. If you go to page 2 of the letter in the middle, just before the heading  
10 “4. Evidence”, there is a paragraph beginning, “We suggest”, and the suggestion is that the  
11 parties be allowed seven days to sort out between themselves the redactions from the  
12 pleadings, and so forth. As far as I can see, there should be no problem whatsoever in  
13 reaching agreement and sorting that out.

14 THE CHAIRMAN: When you say “the pleadings, and so forth”, that will include discussion  
15 about redactions of the Decision?

16 MR. LASOK: That is correct, yes. It is right to say that our pleadings have been disclosed to the  
17 Intervener’s relevant advisers in unredacted form.

18 THE CHAIRMAN: That is pursuant to the confidentiality ring order?

19 MR. LASOK: Pursuant to the confidentiality ring order, and we have received from the CMA the  
20 unredacted version of the Decision, again to relevant advisers.

21 THE CHAIRMAN: Yes.

22 MR. LASOK: So the next step is just sorting out some of these issues which, as I have submitted,  
23 we think from our side, as it were, is perfectly capable of being the subject of agreement  
24 between the parties. The proposal is that if, for some reason, we cannot agree and there is  
25 an issue of principle, then it would be dealt with by the Tribunal on the basis of short  
26 written submissions.

27 THE CHAIRMAN: Yes, and is that agreed between all the parties?

28 MR. KENNELLY: It is, yes.

29 MR. LASOK: The next issue is at the bottom of that second page, the last two lines. The CMA  
30 has indicated an intention to adduce evidence, and they want extra time.

31 THE CHAIRMAN: When you say “extra time”, that is beyond their defence?

32 MR. LASOK: Beyond the time for the lodgement of the defence, which I think is 20<sup>th</sup> May. In  
33 our letter we indicate a degree of scepticism about the utility, and I could also add the  
34 admissibility, of evidence in a case of this sort in which the argument is based entirely on  
35 what the Decision says and not on anything else. We are concerned about the possibility

1 that the timetable leading up to an early hearing could be derailed by a later than would  
2 otherwise be the case introduction of evidence by the CMA, because we, and no doubt IRi,  
3 would also want to look at that evidence to see whether or not we wanted to respond to it.  
4 That leads on to the third point, which is timetable, but both these things are largely  
5 contingent upon the Tribunal's own availability for a hearing date. The proposal is, and I  
6 think that this is agreed, that we could list this for a two day hearing with one day for pre-  
7 reading, and the timetable leading up to that is very much dependent upon when that date  
8 could possibly be.

9 THE CHAIRMAN: I will tell you. We were proposing to list for dates between 23<sup>rd</sup> and  
10 25<sup>th</sup> June. I have to say, two days, I think, strikes all of us as on the lengthy side, given the  
11 nature of the issues. We were thinking of listing it for a day and a half, and perhaps, subject  
12 to any submissions anyone wants to make, and listing it to begin on the 24<sup>th</sup> with an  
13 estimate of a day and a half?

14 MR. LASOK: From our perspective we see no reason at all to dissent from a day and a half  
15 estimate. We put in two days because, basically, we rounded it up and we are a bit cautious.  
16 But from our perspective we are perfectly happy with that. As you can see from the letter,  
17 working backwards from, let us say, 24<sup>th</sup>, we had proposed a skeleton  
18 argument ----

19 THE CHAIRMAN: I can see the logic of working out the timetable once we know the hearing  
20 dates, can I just check whether there is any difficulty anyone has with the hearing dates?

21 MR. LASOK: No.

22 THE CHAIRMAN: Mr. Kennelly?

23 MR. KENNELLY: For me, in terms of those dates, no, Sir.

24 THE CHAIRMAN: So that will be the listed hearing date.

25 MR. KENNELLY: Sir, I need to make submissions to you about whether our application to  
26 adduce evidence after the defence works with that timetable.

27 THE CHAIRMAN: Provisionally, it does work. Shall I indicate our provisional view, subject to  
28 submissions, with regard to setting a timetable? We are provisionally of the view that the  
29 Competition and Markets Authority should have until 28<sup>th</sup> May to file its evidence. IRi have  
30 until 3<sup>rd</sup> June to put in its statement of intervention. Nielsen's skeleton and evidence in  
31 response be 9<sup>th</sup> June, and Competition and Markets Authority's and IRi's skeletons on 16<sup>th</sup>  
32 June. So that is a tentative proposal so everyone knows what we are thinking about, and  
33 people can say if they disagree and why.

34 MR. LASOK: For our part we are perfectly happy with that.

35 THE CHAIRMAN: Mr. Kennelly?

1 MR. KENNELLY: Thank you for that. Unfortunately, from our perspective, and I need to  
2 explain the reasons for this, the time permitted for the evidence does not address the  
3 availability of the key individuals.

4 THE CHAIRMAN: When do you need until?

5 MR. KENNELLY: We need until 6<sup>th</sup> June.

6 THE CHAIRMAN: You can have until the 3<sup>rd</sup>.

7 MR. KENNELLY: I am grateful.

8 THE CHAIRMAN: Does anyone have anything additional they want to say? Mr. Ward, what is  
9 proposed is that the Competition and Markets Authority has until 3<sup>rd</sup> June to put in its  
10 evidence.

11 MR. WARD: My client will be asking to put in its statement of intervention on the same day,  
12 obviously without sight of it and then the opportunity to respond to it later.

13 THE CHAIRMAN: Yes.

14 MR. WARD: Is it envisaged the Competition and Markets Authority's defence will still be due  
15 on 20<sup>th</sup>?

16 THE CHAIRMAN: Yes, that is our understanding also, yes.

17 MR. WARD: We are content with that also.

18 THE CHAIRMAN: Mr. Lasok, anything you wanted to say?

19 MR. LASOK: For us it is extremely tight, but ----

20 THE CHAIRMAN: It is tight for everyone, but you are the ones that want it done quickly.

21 MR. LASOK: That is what I was going to say, one just has to put up with it.

22 THE CHAIRMAN: Yes. Mr. Ward, I think it is probably right that IRi have an opportunity to put  
23 in evidence in response. I have to say it is a little bit difficult to forecast what it might be,  
24 but I think you should have that opportunity. What I would tentatively suggest in relation to  
25 that is that you also have until 9<sup>th</sup> June for any evidence in response from you. In relation to  
26 all opportunities for evidence we urge the parties to proceed with restraint. You all know  
27 the rules about evidence in relation to these matters and we will expect you to approach  
28 these directions with those rules in mind. Is there anything else that we needed to talk  
29 about?

30 MR. LASOK: No, Sir.

31 THE CHAIRMAN: In that case I am very grateful. I am grateful to you for discussing matters  
32 between yourselves in the way that you have. I am hopeful that there will be agreement on  
33 the approach to redactions, but if there is not then Mr. Lasok's proposal is acceptable, if we  
34 deal with it on the basis of written submissions. We will rise now, thank you very much.