

Neutral citation: [2002] CAT 9

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

Case No. 1007/2/3/02

New Court,  
Carey Street,  
London WC2A.2JT

11 November, 2002

Before:  
SIR CHRISTOPHER BELLAMY  
(President)

PROFESSOR JOHN PICKERING  
DR ARTHUR PRYOR CB

BETWEEN:

FREESERVE.COM PLC

Applicant

and

THE DIRECTOR GENERAL OF TELECOMMUNICATIONS

Respondent

supported by

BT GROUP PLC

Intervener

Mr Nicholas Green QC (instructed by Messrs Baker & Mckenzie)  
appeared for applicant.

Mr Jon Turner (instructed by The Director of Legal Services (Competition), Office of  
Telecommunications) appeared for the respondent.

Ms Kelyn Bacon (instructed by the Head of Competition and Public Law, BT Retail) appeared for the  
intervener.

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Transcribed from the shorthand notes of  
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**DECISION**

THE PRESIDENT: A point has arisen in this part of the case, a case management conference, regarding the time for serving the defence in this case.

The appeal was lodged by Freeserve on 9th September, and in the normal way under the Tribunal Rules the defence would be due for service six weeks after that. The matter has been complicated because the Tribunal has had to determine a preliminary issue as to whether the Tribunal has jurisdiction to hear Freeserve's appeal at all. That issue was heard on 22nd October, and time for serving the defence was extended until 19th November to ensure that the Director did not have to serve his defence until the admissibility issue had been decided.

The Tribunal has decided the admissibility issue in favour of Freeserve today, Monday, 11th November. Therefore, under the present timetable, the defence is due tomorrow week, that is to say Tuesday, 19th November.

The Director's counsel now asks for further time and in particular for an extension until 29th November on the basis that up until now most of the effort has been devoted to the admissibility issue; that the relevant case officer is away on paternity leave, that Oftel's chief economist is absorbed on other matters, that the market part of the defence is complicated, and that counsel for the Director has various court commitments in the period between now and 29th November.

Freeserve, on the other hand, points out the desirability of the case proceeding expeditiously, in particular because there may yet be interlocutory issues to sort out.

The Tribunal has provisionally pencilled in a main hearing date for January 20th and a directions' hearing for 17th December, at which point it should be possible to identify more precisely the future shape of this case.

We wish to make it clear once again that the timetable for appeals to this Tribunal has to be strictly adhered to. We have set out in our Guide to Appeals the kind of timetable the Tribunal would expect to follow and that timetable involves close case management of the issues, and a fairly strict adherence to deadlines, including adherence by the Tribunal itself.

We would emphasise that this is, to some extent, a cultural change in the way that some kinds of litigation are conducted. We are not in general sympathetic to requests for extensions of time on the basis that those involved have other commitments, or that in practice it has been difficult to organise matters better. This is a new jurisdiction in which those involved before the Tribunal, particularly the relevant Directors, need, if we may say so, to be properly organised in order to meet the kind of deadlines that the Tribunal is minded to set. We take the view that there is some truth in the old saying that "work expands according to the time available" and we do not expect more to be done than can be done in the time. However, we attach importance to setting and sticking to deadlines.

That said, this particular case has been complicated by the fact that we have had a preliminary issue to sort out. Although that does not, in our view, justify a long extension of time we are prepared to give some extension. Our view is that much of the work on the

defence, particularly within the framework of this particular case, could already have been done by now.

We propose at this stage to extend time for service of the defence until November 26th - that is 5pm on Tuesday, November 26th. That will be - more or less - two and a half months after the original service of the application which, again bearing in mind that the time under the rules is six weeks, does seem to us to be a reasonable time for service of the defence. The consequence is that BT's time is extended for its notice of intervention until 3rd December.

The Tribunal has pencilled in a directions hearing for 17th December, but we have in mind to meet internally to discuss this case in the week beginning December 9th. In those circumstances if there are any interlocutory applications that are to be made at the case conference provisionally fixed for 17th December, the Tribunal would be glad to have notice of those applications by 5 pm on 9th December, that is to say a week before the case management conference.

Let us hope that on that timetable things are manageable. If any of the parties find themselves *in extremis* there is always the possibility of making a further application to the Tribunal. The Tribunal would not necessarily be particularly sympathetic if that were made, but that possibility remains.

So that is the timetable that we propose to fix for the rest of this case.

MR GREEN: Can I mention one matter, Sir? You mentioned 20th January as the date for the hearing---

THE PRESIDENT: Yes.

MR GREEN: ---having discussed with Mr Turner and Miss Bacon, we thought that it may be sensible to set aside two days on the basis that it could run over - it rather depends upon what happens from now on in.

THE PRESIDENT: That is a perfectly fair point, Mr Green. The same point had occurred to us so we have provisionally pencilled in the 20th and 21st.

MR TURNER: Sir, there is only one other small matter. First, may I say we are obliged to the Tribunal for granting that extension of time, and we shall endeavour to meet it.

The Tribunal may be aware that Freeserve have submitted to the Director further complaints and there has been some desultory correspondence about that.

THE PRESIDENT: Yes.

MR TURNER: It will be referred to almost certainly in our defence, and the question that arises is whether the Tribunal would wish to have sight of it beforehand in any event, bearing in mind the linkage to the issues in the case. I do not propose that there should be any submissions but simply the presentation of the document as it will be referred to later on.

THE PRESIDENT: Well I would be inclined to say, for good order's sake, that if you want us to be aware of it, or you want to make some point about it, probably the best course is to annex

it to your defence and draw to our attention whatever it is you want us to take into account. I think that is the sensible way to proceed.

MR TURNER: Yes, I am obliged.

THE PRESIDENT: Very well, thank you all very much indeed.

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