



[2006] CAT 26

IN THE COMPETITION

Case No. 1071/2/1/06

APPEAL TRIBUNAL

Victoria House
Bloomsbury Place
London WC1A.2EB

23 October 2006

Before:
MARION SIMMONS QC
(Chairman)
PROFESSOR PETER GRINYER
DAVID SUMMERS

Sitting as a Tribunal in England and Wales

BETWEEN:

CITYHOOK LIMITED

Appellant

and

OFFICE OF FAIR TRADING

Respondent

supported by

**ALCATEL SUBMARINE NETWORKS LIMITED
BRITISH TELECOMMUNICATIONS PLC
CABLE & WIRELESS PLC
GC PAN EUROPEAN CROSSING UK LIMITED
AND
GLOBAL CROSSING EUROPE LIMITED
GLOBAL MARINE SYSTEMS LIMITED
NTL GROUP LIMITED
TYCO TELECOMMUNICATIONS (US) INC.**

Interveners

RULING

APPEARANCES

Mr. Ben Rayment (instructed by Edwin Coe) appeared for the Appellant.

Mr. Mark Hoskins (instructed by the Solicitor to the Office of Fair Trading) appeared for the Respondent.

Mr. Jon Turner QC and Mr. Meredith Pickford (instructed by Blake Laphorn Linnell, Charles Russell, Bridgehouse Partners and Beachcroft) appeared for the Interveners: Alcatel Submarine Networks Limited, Cable & Wireless Plc, Global Marine Systems Limited and Tyco Telecommunications (US) Inc.

Mr. Fergus Randolph (instructed by Eversheds) appeared for the Intervener, NTL Group Limited.

Mr. Gerald Barling QC (instructed by BT Legal) appeared for the Intervener, BT plc.

Miss Frances Murphy (of Mayer Brown Rowe & Maw) appeared for the Interveners, GC Pan European Crossing UK Limited and Global Crossing Europe Limited.

1 THE CHAIRMAN:

- 2 1. We have two applications before us for an extension of time to intervene. The first
3 application is by NTL, who were one hour three minutes late because they had failed to read
4 the Tribunal Rules which set 4 p.m. as the deadline for fax applications.
5
- 6 2. It is no excuse that our Rules have not been properly read and implemented: nor is it any
7 excuse that the party's legal representatives do not organise their timetable so as to make sure
8 that they comply with the Rules of court and do not put their clients in jeopardy – even if the
9 application had not been made by fax they were three minutes' late.
10
- 11 3. In this case the Appellants are not opposing the application for an extension of time. They
12 have not submitted that they will suffer any prejudice and there are circumstances in the
13 present case which might give rise to prejudice to the Appellant if NTL's application was
14 refused.
15
- 16 4. In relation to disclosure, which may concern NTL's confidential information, they would in
17 any event be entitled to make submissions. In these particular proceedings we also take into
18 account that there are proceedings both in the Chancery Division and in the Administrative
19 Court which have both been stayed (or are in the process of being stayed) and in respect of
20 the Chancery Action NTL is a party. Having regard to all the circumstances of this particular
21 case, the Tribunal reluctantly extends the time for making the application. However, the
22 decision is in relation to the particular facts of this case and the Tribunal considers that its
23 rules relating to time limits must be complied with by parties, or potential parties.
24
- 25 5. The second application is by Global Marine. Global Marine were eight days' late. Mr.
26 Turner submitted that Global Marine could not properly consider whether or not they wished
27 to intervene until the transcript of the CMC hearing had been published on the internet. He
28 submitted that this was done on 26th September. However, the publication was, in fact, on
29 19th September, so Mr. Turner's submission in this respect is very much weaker indeed.
30
- 31 6. The application was made 10 days after the transcript was published. This delay appears to
32 us to be wholly unacceptable having regard to the Rules. But, in all the circumstances of
33 these particular cases and for the reasons which we have already explained in relation to NTL
34 (which also apply to Global) we will reluctantly extend the time for Global to make its
35 application to Intervene, but we emphasise that this must not be taken as any precedent for

1 any other case. Our decision today is based on the facts and circumstances pertaining to this
2 case alone. It is very important for the legal profession to know that they must adhere to the
3 time limit set in the Tribunal Rules.

4
5 7. On that basis all of today's applications to intervene are granted by the Tribunal on condition
6 that there is no duplication at any stage between the Interveners' submissions, whether in
7 writing or orally.