



[2007] CAT 22

**IN THE COMPETITION
APPEAL TRIBUNAL**

Case No: 1079/3/3/07

Victoria House,
Bloomsbury Place,
London WC1A 2EB

16th July 2007

Before:
LORD CARLILE OF BERRIEW QC
(Chairman)

ANN KELLY
DAVID SUMMERS

Sitting as a Tribunal in England and Wales

BETWEEN:

BRACKEN BAY KITCHENS LIMITED

Appellant

- v -

OFFICE OF COMMUNICATIONS

Respondent

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Mr. Edward Mercer (of Taylor Wessing) appeared for the Appellant.

Mr. Tim Ward and Mr. Ben Lask (instructed by the Director of Telecommunications and Competition Law, Office of Communications) appeared for the Respondent.

RULING

1 THE CHAIRMAN: The Tribunal this morning, for the first time was handed a letter signed by a
2 director of the appellant company, Bracken Bay Kitchens Ltd. That letter reveals that the
3 company is unable to pay its debt due either to its solicitors appearing here today through
4 Mr. Mercer or to other creditors. The company is described in the letter as being “insolvent
5 within the meaning of the Insolvency Act 1986”. It says that the company is in no position
6 to fund its liquidation. It has no assets with which to fund a liquidation. It has ceased
7 trading and is sending a letter to the Registrar of the Companies, requesting that the
8 company be struck off. It is a very unfortunate situation for the company and its directors.
9 As I have said, we were informed of this for the first time this morning. OFCOM, the
10 respondents to this appeal, were informed of this for the first time when Mr. Mercer rose to
11 address the Tribunal this morning.

12 I speak for all three members of the Tribunal in expressing our strong concern that no
13 information to this effect was brought to the attention of the Tribunal until this morning
14 despite an attempt which I know took place during the course of last week to make contact
15 by the Tribunal with Mr. Mercer’s firm about this case.

16 Although Mr. Mercer, commendably, remains willing to continue with the appeal, he has
17 told us that energetic attempts to obtain instructions from the directors of the company have
18 failed to produce any response. He therefore appears here with old instructions, but without
19 a client present and without new instructions which might reflect comments on material that
20 has been submitted lately by OFCOM, the respondents. I expressed, and agree with, the
21 view that there is a danger that this could turn into an abstract or arid hearing in which the
22 appellant’s case could not be fully presented, and in which the respondents might not be in a
23 position to meet the full case, or to meet the existing case fully.

24 We are also concerned that in our view, as an officer of the court, any solicitor has a duty to
25 ensure that any case before such a court or Tribunal is managed effectively and therefore to
26 provide material information in good time before the listed hearing of a case. On the face of
27 it, that just has not happened here. So, what we have determined is the following, and we so
28 direct:

- 29 (1) that this matter be adjourned for thirty days;
- 30 (2) that the appellant’s solicitors, within fourteen days, and in writing, clarify
31 their position as to whether they wish to remain on the record and/or whether
32 the appeal is to continue;

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- (3) that if they so wish OFCOM reply to those representations within seven days thereafter;
- (4) that the appellants solicitors make submissions in writing to the Tribunal within twenty-one days concerning the costs of this hearing and, in particular, as to why a wasted costs order should not be made. OFCOM to have liberty to respond, if they so wish - not that they need it, but I thought we would express that;
- (5) that any further case management directions will be given in writing at the end of that thirty day period to determine how, if at all, this matter proceeds.
