



Neutral Citation [2008] CAT 37

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

Case No. 1107/4/10/08

Victoria House  
Bloomsbury Place  
London WC1A 2EB

10 December 2008

Before:

THE HONOURABLE MR JUSTICE BARLING  
(President)

MICHAEL BLAIR QC  
PROFESSOR PETER GRINYER

Sitting as a Tribunal in Scotland

BETWEEN:

**MERGER ACTION GROUP**

Applicants

and

**THE SECRETARY OF STATE  
FOR BUSINESS, ENTERPRISE AND REGULATORY REFORM**

Respondent

- supported by -

**(1) HBOS PLC  
(2) LLOYDS TSB GROUP PLC**

Interveners

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**RULING  
(PERMISSION TO APPEAL)**

## **APPEARANCES**

Mr. Andrew Bowen (instructed by Mr. Walter Semple) appeared for the Applicants.

Mr. Paul Harris, Miss Elisa Holmes and Mr. Gerry Facenna (instructed by the Treasury Solicitor) appeared for the Respondent.

Mr. Nicholas Green QC and Mr. Aidan Robertson (instructed by Allen & Overy LLP) appeared for the Intervener, HBOS plc.

Miss Helen Davies QC (instructed by Linklaters LLP) appeared for the Intervener, Lloyds TSB Group plc.

THE PRESIDENT:

- 1 Mr. Bowen, on behalf of the Applicants, seeks permission to appeal to the Court of Session. We directed that any application that might be made should be made orally to us immediately after the judgment was handed down. We are grateful to Mr. Bowen for making his application in accordance with that direction.
- 2 As is known, an appeal under subsection 120(6) of the Enterprise Act 2002 is only admissible if it raises a point of law. Permission can be granted by us or, if we refuse it, by the Court of Session on the application being renewed to the Court of Session within the stipulated period.
- 3 Mr. Bowen requests permission in relation to certain findings that relate to whether the Secretary of State was fettered by the statements made by senior members of the Government. We do not consider that any of the points just outlined by him raise a point of law. The principles relating to fettering are well established, and the matters that Mr. Bowen was referring to, appear to us to be matters relating to the facts and the evidence.
- 4 In any event we reached clear conclusions in relation to the Applicants' case, as set out in the judgment ([2008] CAT 36), and considered that the case was essentially without legal merits on any of the points that were argued. No other compelling reason occurs to us for the matter being taken further. I am afraid the Applicants must persuade the Court of Session if they wish to pursue it. Permission is therefore refused.