



Neutral Citation [2008] CAT 38

**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**

Applicant

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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*Transcribed from tape by  
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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. Harris, on behalf of the Secretary of State, applies for permission to appeal our conclusion that the Applicants are “persons aggrieved” within the meaning of subsection 120(1) of the Enterprise Act 2002 ([2008] CAT 36).
- 2 We frankly doubt whether any point of law arises in relation to our ruling on that point. Of course, a point of law must be raised for an appeal to the Court of Session to be admissible under subsection 120(6) of the Act. Cases relating to standing depend very much on their own facts and the evidence, and there is an element of discretion and judgment when the court comes to determine matters of standing.
- 3 Notwithstanding, therefore, that we ruled that the case was an exceptional one and was finely balanced, we see no real prospect of our decision on this issue being reversed and no other compelling reason to allow an appeal to go forward. The Respondent must persuade the Court of Session, within the stipulated time, if he wishes to take this matter further. We refuse permission.