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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1109/6/8/09

Victoria House,
Bloomsbury Place,
London WC1A 2EB

16 October 2009

Before:

THE HONOURABLE MR. JUSTICE BRIGGS
(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

BARCLAYS BANK PLC

Applicant

- v -

THE COMPETITION COMMISSION

Respondent

- and -

FINANCIAL SERVICES AUTHORITY
LLOYDS BANKING GROUP
SHOP DIRECT GROUP FINANCIAL SERVICES LTD

Interveners

HANDING DOWN

1 THE CHAIRMAN: For the reasons given in the written judgment which the Tribunal has cause
2 to be handed down, the application by Barclays Bank plc for judicial review of the
3 Competition Commission's report entitled "Market investigation into payment protection
4 insurance" succeeds in part. The Competition Commission's decision to impose the point
5 of sale prohibition as described in the Report is quashed and that decision is remitted to the
6 Commission for reconsideration in accordance with the principles set out in the Tribunal's
7 judgment. We have not concluded that the Commission could not by that process lawfully
8 decide to include the point of sale prohibition as a result of that reconsideration.

9
10 We will on a date to be fixed hear submissions as to the form which the Tribunal's order
11 should take and submissions as to costs. Alternatively, if all the parties prefer we will
12 accept written submissions on those matters and determine them on paper.

13
14 The Tribunal was informed yesterday by one of the parties that it appeared that the
15 substance of its decision had been communicated to a national newspaper at a time when its
16 draft judgment had been distributed in confidence to the parties. The strong probability
17 pending further enquiry is that this can only have occurred by reason of a serious breach by
18 a person or persons as yet unidentified of the strictly confidential terms upon which the
19 draft judgment had been made available. It has not so far as the Tribunal is aware happened
20 before in relation to any judgment of the Tribunal.

21
22 The Tribunal wishes to emphasise in the strongest possible terms that there must be strict
23 adherence to the terms of the confidentiality embargo upon the basis of which its judgments
24 are customarily released in draft before handing down. Strict adherence requires that parties
25 and their advisors take all necessary steps to ensure that individuals within their
26 organisations are aware of the terms of that embargo and that management takes all
27 necessary steps to ensure that breaches do not occur. In the circumstances the Tribunal will
28 in the meantime revisit the question of whether the release of draft judgments prior to
29 handing down can be allowed to continue.