



IN THE COURT OF APPEAL, CIVIL DIVISION

REF: C1/2008/1938

INDEPENDENT MEDIA SUPPORT LIMITED

-v-

OFFICE OF COMMUNICATIONS and others



ORDER made by the Rt. Hon. Sir John Chadwick

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal

Decision: Permission to appeal REFUSED

Reasons

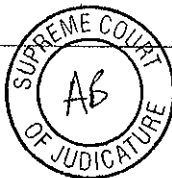
I am not persuaded that an appeal from the Order made in the Competition Appeal Tribunal on 24 July 2008 would have any real prospect of success; nor that there is any other compelling reason why an appeal from that Order be heard by the Court of Appeal.

In particular, I am not persuaded that there is any real prospect of persuading the Court of Appeal that either OFCOM or the CAT failed to appreciate the true nature of the first of the *Delimitis* conditions. It seems reasonably clear that the arguments which the applicant seeks to deploy in support of its present application (and would deploy on appeal, if permission were granted) were not advanced with the same emphasis before the Tribunal; that, I think, explains the fact that those arguments received a less detailed analysis in the Tribunal's decision than that which the applicant now claims they deserved. But, that said, the Tribunal plainly did have the *Delimitis* Condition 1 well in mind: paragraphs [111] and following. The present application may be seen as an attempt to challenge the Tribunal's conclusions on the facts under the guise of a supposed error of law: an approach which this Court discouraged in *Napp* [2002] EWCA Civ 796.

Information for or directions to the parties

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment)
- b) any expedition



Signed:

J. Chadwick

Date: 16 October 2008

By the Court

Notes

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
 - a) the Court considers that the appeal would have a real prospect of success; or
 - b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 4.14A of the Practice Direction.
- (3) Where permission to appeal has been granted, the appeal bundle must be served on the respondents within 7 days of receiving this order (see para. 6.2 of the Practice Direction to CPR Part 52). A letter of notification will be sent to the appellant or his solicitors, as soon as practicable (see para. 6.3).

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