



Neutral Citation: [2006] CAT 34

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos 1027/2/3/04
1074/2/3/06[IR]

Victoria House,
Bloomsbury Place,
London WC1A 2EB

13th December 2006

Before:
SIR CHRISTOPHER BELLAMY
(The President)

Sitting as a Tribunal in England and Wales

BETWEEN:

VIP COMMUNICATIONS LIMITED
(in administration)

Applicant

- v -

OFFICE OF COMMUNICATIONS

Respondent

Supported by

T-MOBILE (UK) LIMITED

Intervener

Transcribed from the Shorthand notes of
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Mr. Edward P.O. Mercer (of Taylor Wessing) appeared on behalf of the Applicant

Mr. Meredith Pickford and Miss Robyn Durie, Regulatory Counsel, T-Mobile appeared on behalf of the Intervener.

RULING: ADMISSIBILITY OF WITNESS STATEMENT

THE PRESIDENT:

- 1 In this matter I have been asked to decide whether a statement made in paragraph 2 of Robyn Durie's witness statement of 12th December 2006 should be excluded from the proceedings on the grounds that it contains without prejudice material or falls within the without prejudice rule.
- 2 It is submitted on behalf of T-Mobile that nothing in this paragraph is covered by the without prejudice rule and that, even if it is, the rule is not an absolute rule and that what is said in the paragraph in question does relate to various matters at issue in the action including the question of who is the real party to the litigation, who is behind the litigation and, more generally, to the conduct of VIP or its associates in relation to its request for interim measures.
- 3 It is submitted, on the other hand, on behalf of VIP that the paragraph is covered by the without prejudice rule, the essential argument being that the paragraph contains a statement that an approach was made to T-Mobile with a view to settling VIP's claim and the disclosure of that fact is in itself a matter that might prejudice VIP's position and should be covered by the without prejudice rule, and that any other solution would tend to discourage parties from entering into *bona fide* negotiations.
- 4 The without prejudice rule, as far as I am aware, is intended to prevent the disclosure in subsequent litigation of what is said in negotiations between the parties and, in particular, to prevent the disclosure of any admissions that may be made in that negotiation, that is the essential nub of the Judgment of Lord Griffiths in *Rush & Tompkins v Greater London Council* [2000] 1 WLR 1300.
- 5 I do not understand the without prejudice rule to extend to cover the mere fact that an approach was made by one party to another with a view to attempting to enter into negotiations; such a move these days is common place and generally to be encouraged and, in my judgment, is not itself within the without prejudice rule. Nothing in the paragraph in issue contains any indication of the content of the communications or the negotiations, so on that point I am with T-Mobile, this is not covered by the without prejudice rule.

6 In addition, it seems to me (on the admittedly limited knowledge of the main case that I have) that there is material to suggest that what is said in this witness statement could be relevant to other facts in issue between the parties and on that ground too the Tribunal would need considerable persuading that it should keep out of this case material potentially relevant to the facts unless a without prejudice point is very clearly established. That, in my judgment, has not been established in this case and therefore this witness statement is admissible in these proceedings.
