



IN THE COMPETITION
APPEAL TRIBUNAL

Case Number: 1027/2/3/04

Victoria House
Bloomsbury Place
London WC1A 2EB

2 July 2010

Before:

VIVIEN ROSE
(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

VIP COMMUNICATIONS LIMITED
(in administration)

Appellant

-v-

OFFICE OF COMMUNICATIONS

Respondent

supported by

T-MOBILE (UK) LIMITED

Intervener

ORDER (ASSESSMENT OF COSTS)

1. On 3 February 2010 the Tribunal lifted the suspension of the obligation to pay costs imposed by the Tribunal in its ruling of 3 April 2007 rejecting VIP's interim relief application (Case 1074/2/3/06 (IR)). Those costs included the costs of T-Mobile, the intervener in these proceedings. The amount of those costs was to be assessed by the Tribunal if not agreed between the parties (see [2010] CAT 3). T-Mobile and VIP have been unable to agree the amount of costs and T-Mobile, by letter dated 4 June 2010, has therefore applied to the Tribunal for an assessment under rule 55(3) of the Tribunal Rules. T-Mobile has also applied for its costs incurred in preparing the present application.
2. The costs claimed by T-Mobile are limited to those of outside counsel and are (updated as at 2 July 2010) as follows:

	Interim relief application (£)	Application for costs (£)
Meredith Pickford	45,845.65	195
Ewan West	-	975
Total (excluding VAT)	45,845.65	1,170

3. VIP disputes the amount of costs sought by T-Mobile, claiming that they are exorbitant. In particular, it argues that T-Mobile is only entitled to its costs related specifically to the interim relief hearing and not those incurred in considering any of the substantive issues raised in the *Floe* proceedings. T-Mobile in response submits that the vast majority of time spent by counsel was related to VIP's application for interim relief. However, in any event, T-Mobile was required to stay abreast of developments in *Floe* to some extent as they would inevitably impact on its preparations for the interim relief hearing, given the clear relationship between the two sets of proceedings.
4. VIP has also complained that the fee notes provided by T-Mobile's counsel are not detailed enough to ensure that the work for which payment is claimed was work exclusively related to the interim relief application and not work which might have been done in addition for the purposes of the substantive case or for the parallel *Floe* proceedings. VIP proposes that we remit the matter to be dealt with by the detailed assessment of a costs officer of the Supreme Court. In the alternative they ask that

costs be limited to £18,000 which they put forward as the sum of the amounts which are clearly and indubitably incurred in relation to the interim relief application.

5. In our unanimous judgment, the amounts sought by T-Mobile are reasonable and we should order VIP to pay them forthwith. T-Mobile have accepted that although the fee notes from counsel are clearly headed “VIP”, some of the work covered may include some consideration of *Floe* over the same period. However we accept T-Mobile’s submission that it was impossible for them to defend the VIP interim relief application without keeping abreast of developments in *Floe* to some extent.
6. We did have some concern over the lack of itemisation as to the nature of the work done in the fee note, particularly where larger sums are claimed. But we recognise that it is important not to look back with the benefit of hindsight – counsel might not have appreciated when noting down the work done that it might at a later stage be important to distinguish between work done for the interim relief application and work done for the case more generally. Further, it is inevitable that some of the work undertaken for the interim relief application might have had to be undertaken anyway at some stage for the main action. Provided of course that there is no double counting, it would not be fair to deprive T-Mobile of those costs or to require counsel retrospectively to draw distinctions that cannot in reality easily be drawn.
7. T-Mobile has not sought to recover its legal costs incurred internally. Moreover, while the serious nature of the issues to be resolved in these proceedings may have merited instructing a silk and external solicitors, T-Mobile exercised commendable restraint in instructing a single junior counsel. This pragmatic approach in all likelihood reduced the costs incurred in these proceedings and VIP’s eventual exposure. We also consider that it is neither useful nor appropriate to seek to conduct a comparison between the costs sought by T-Mobile and those awarded to OFCOM by Order of the Tribunal dated 9 April 2010. There is nothing to be gained by prolonging this matter further or in requiring the parties to incur further costs involved in remitting for a detailed assessment.
8. In light of the foregoing, the Tribunal unanimously

ORDERS THAT:

Pursuant to 55(3) of the Tribunal Rules, VIP pay forthwith to T-Mobile the sum of £47,015.65.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 2 July 2010
Drawn: 2 July 2010