



Neutral Citation [2007] CAT 10

IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1071/2/1/06

Victoria House
Bloomsbury Place
London WC1A.2EB

30 January 2007

Before:
MARION SIMMONS QC
(Chairman)

PROFESSOR PETER GRINYER
DAVID SUMMERS

Sitting as a Tribunal in England and Wales

BETWEEN:

CITYHOOK LIMITED

Appellant

and

OFFICE OF FAIR TRADING

Respondent

supported by

ALCATEL SUBMARINE NETWORKS LIMITED
BRITISH TELECOMMUNICATIONS PLC
CABLE & WIRELESS PLC
GC PAN EUROPEAN CROSSING UK LIMITED
GLOBAL CROSSING EUROPE LIMITED
GLOBAL MARINE SYSTEMS LIMITED
NTL GROUP LIMITED
TYCO TELECOMMUNICATIONS (US) INC

Interveners

Transcribed from the Shorthand notes of
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RULING (DISCLOSURE)

APPEARANCES

Mr. Kenny Shovell (assisted by Mr. David Greene of Edwin Coe) appeared for the Applicant.

Mr. Mark Hoskins (instructed by the Solicitor to the Office of Fair Trading) appeared for the Respondent.

Mr. Jon Turner QC and Mr. Meredith Pickford (instructed by Blake Laphorne Linnell, Charles Russell, Bridgehouse Partners and Beachcroft Stanley) appeared for the Interveners: Alcatel Submarine Networks Limited, Cable & Wireless PLC, Global Marine Systems Limited and Tyco Telecommunications (US) Inc.

Mr. Fergus Randolph (instructed by Eversheds) appeared for the Intervener, NTL Group Limited.

Mr. Gerald Barling QC (instructed by BT Legal) appeared for the Intervener, British Telecommunications PLC

Miss Frances Murphy (of Mayer Brown Rowe & Maw) appeared for the Interveners, Global Crossing Europe Limited and GC Pan European Crossing UK Limited.

THE CHAIRMAN:

- 1 Cityhook are seeking internal documents of the OFT which record discussions preliminary to the taking of the decision which is under the spotlight at this hearing. Such, or similar, documents were the subject of our disclosure ruling on 20 November 2006. In that ruling we decided that those documents did not meet the test in Rule 19 of our rules as construed in the Tribunal's judgment in Case No: 1008/2/1/02 *Claymore Dairies Limited and Arla Foods UK PLC v Office of Fair Trading (Recovery and Inspection)* [2004] CAT 16, at [113].

- 2 Since our disclosure ruling the House of Lords' decision in *Tweed v. Parades Commission for Northern Ireland* [2006] UKHL 53 (hereinafter referred to as "*Tweed*") has been published. It has been submitted by Cityhook that the approach we took in our previous ruling was different from the approach approved in *Tweed*. We reject that submission. The approach which we took was consistent with the principles laid down in *Tweed*.

- 3 We have had careful regard to Cityhook's submissions today as to the relevance of the documents now requested on the question of admissibility. However, it does not seem to us that the disclosure sought is necessary, relevant and proportionate to the question presently before us which is, 'What was the nature of the decision which the OFT took to close the investigation?'

- 4 The documents are preparatory and preliminary, and do not contain any decision of the OFT. The issues which were being discussed at the earlier stages, and which were considered when making the decision, the subject matter of this hearing, have been clearly and candidly set out in the witness statements of Mr. Smith. In our judgment, it is not necessary, relevant and proportionate to see the underlying documents to consider the question of admissibility which is now before us.
