

BRITISH VIRGIN ISLANDS COMMERCIAL COURT

Digicel (BVI) Ltd -v- The Telecommunications Regulatory Commission Claim No. BVIHCV 214/2012

JUDICIAL REVIEW - THE TELECOMMUNICATION ACT, 2006 - RULES 56.13 AND 65.6 OF THE EASTERN CARIBBEAN SUPREME COURT RULES CONSTRUED

The Claimant, Digicel (BVI) Ltd (“Digicel”) issued a claim for judicial review of a decision made by the Telecommunications Regulatory Commission. The Commission found that Digicel was in breach of Section 75(1)(a)(iii) of the *Telecommunications Act, 2006* (anti-competitive effect contrary to public interest) and imposed a fine of US\$314,250. Digicel’s complaints against the Commission were that the decision was (i) ultra vires; (ii) an abuse of power; (iii) unreasonable; (iv) procedurally unfair; and, (v) the fine disproportionate. Digicel successfully argued grounds (iv) and (v) and an order was made quashing the Commission’s decision, and for repayment of the fine with costs. The decision is relevant for its guidance on costs.

The relevant cost provisions for administrative proceedings are found under *Civil Procedure Rules* (“CPR”) 56.13. The Commission submitted that Digicel should be disallowed its costs on the basis that they are “*A substantial trading entity which is part of a large international group of companies and ... [the] claim [was] being brought not in order to test the legality of some provision of general application ... but rather to challenge a targeted regulatory decision which is directed specifically and only at that corporate entity*”.

The Court found no merit in this argument and referred to the clear provisions of CPR 56.13(6), which provides for no order as to costs being made against an applicant if the court considers that the applicant acted unreasonably. The Court held that the provision cannot carry over to a successful litigant. There being no specific provision which relates to a successful applicant in administrative matters, the Court accepted the general rule that costs follow the event is applicable.

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