Case Name: *Interoute Vtesse Limited v Alison Gidman (VO)* [2020] UKUT 0013 (LC) (22 April 2020)

Topic: Method of valuation of fibre network – whether the Vtesse network was comparable with that of BT, by disaggregating the latter's fibre network from the cumulo assessment in the Central List

Full case: click here

Summary: Vtesse Networks (as it was known at the compilation date of the 2010 list) challenged the method of valuation primarily based on the length of its fibre network, extending to just over 7,500km (ignoring relatively minor buildings forming part of the assessment). The VO had valued the fibre at £250/km whereas Vtesse argued for £20/km (that ostensibly payable by BT), which would have reduced the RV from £2,020,000 to £234,637. Vtesse's core argument was that the VO's basis of assessment was unlawful in the EU context, in that it breached competition law principles (which require equal treatment in tax terms for comparable businesses and networks). The Tribunal found that a different valuation approach was justified and, therefore, competition law principles had been observed (as the comparability test was not satisfied). The appeal was dismissed.

Commentary: This case demonstrates once again that the method of valuation for rating purposes is dependent on the type of hereditament being valued and that superficially-comparable hereditaments may not necessarily share the same characteristics, enabling the valuer to "read across" by taking a component of a much larger business and applying that extracted value to a smaller and simpler business. Here there was an attempt to take part of an R&E valuation (the basis of the BT assessment, where there were no comparables) to value Vtesse's network, which was fully capable of being valued on a comparable basis.

The Tribunal took into account the EU regulatory framework for the electronic communications industry, but noted that it is not yet clear if the consolidating Code will be fully applied in the UK by 21 December 2020 in compliance with the appropriate Directive. However, the regulatory controls already exist to promote competition and fairness where any undertaking (such as BT) has significant market power. The EU Commission had previously conducted an investigation (initiated by Vtesse) into whether BT was in receipt of unlawful state aid, but concluded in 2006 that it was not, making the comment that "the use of a specific valuation method depends on the circumstances of the case". It went on to say that "there is no evidence that the use of [a different method of valuing the BT business for rating purposes, namely R&E, compared with its competitors] is not justified by the objective differences between those firms and their competitors and by the extent of the evidence available to the VOA".

The Tribunal noted that BT's business is entirely different from that operated by Vtesse, given the extent and complexity of the former's network and overall operation. The central issue was whether the R&E valuation for BT can be disaggregated in order to identify an accurate figure attributable to the fibre network (i.e. an amount per kilometre of paired fibres) - it had been decided by the Court of Appeal ([2010] EWCA Civ 16) on a previous appeal by Vtesse not to refer to the European Court of Justice the question as to whether EU competition law

compelled the VO to take account of BT's assessment when deciding Vtesse's RV. The Court confirmed that equality between ratepayers is a fundamental principle of rating law, but that does not extend to compelling the VO to make a direct comparison between disparate undertakings such as BT and Vtesse.

The core issues between the parties were (1) whether there was a settled tone of the list for long-distance fibre networks of £250/km (adopted by the VO) and (2) if the BT hereditament (valued on an R&E basis) was comparable to the Vtesse hereditament (and was susceptible to disaggregation). The Court of Appeal had previously held in 2010 that disaggregation of an assessment valued on an R&E basis was unprecedented in rating law history and that the exercise would yield a wholly unreliable result. The underlying reason was that the R&E method has regard to the economics of the business operating the undertaking being assessed, which is appropriate where the assets used by the business as a whole are rarely, if ever, let and there is as a consequence no comparable rental evidence for the purpose of the statutory formula. BT's network was older, much larger and more diversified than the Vtesse network, being primarily a local access copper network serving millions of residential and business customers, whereas Vtesse operated a fibre network providing leased line services joining some 350 customer sites.

The Tribunal adopted the court's approach in 2010 and rejected Vtesse's argument for disaggregation. Para 177 of the Tribunal's decision summarises the conclusion: "The Vtesse and BT hereditaments have been fairly and properly valued on their own terms but, necessarily, by different valuation methods. That is because the hereditaments are fundamentally distinct. The mode and category of occupation of the Vtesse hereditament is but a subset of the mode and category of occupation of the BT hereditament, which must be valued as a whole and which is orders of magnitude larger in scale and diversity". That being the case, there could be no question of competition law being engaged to require equal treatment of the two undertakings for rating purposes.

The Tribunal was also satisfied that a tone of the list had been established at £250/km for fibre networks (based on a value for a pair of fibres, the standard requirement for data transmission). Accordingly, the appeal was dismissed and the rateable value remained at £2,020,000 in the 2010 list.

Town Legal LLP