



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1152/8/3/10 (IR)

B E T W E E N:

BRITISH SKY BROADCASTING LIMITED

Applicant

- supported by -

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED

Intervener

- v -

OFFICE OF COMMUNICATIONS

Respondent

- supported by -

TOP-UP TV EUROPE LIMITED

VIRGIN MEDIA, INC.

BRITISH TELECOMMUNICATIONS PLC

ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED

Interveners

ORDER OF THE PRESIDENT

UPON reading the application for interim relief of the Applicant (“Sky”) pursuant to Rule 61 of the Competition Appeal Tribunal Rules 2003 (S.I. 1372 of 2003) (“the Tribunal Rules”)

AND UPON reading the written submissions and evidence of the parties

AND UPON hearing counsel for Sky, the Office of Communications (“OFCOM”), British Telecommunications plc (“BT”), Virgin Media, Inc. (“Virgin”), Top-Up TV Europe Limited (“Top-Up TV”), The Football Association Premier League Limited and Orange Personal Communications Services Limited at a hearing on 23, 26, 27, 28 and 29 April 2010

AND UPON Sky undertaking to the Tribunal to bring an appeal against OFCOM's decision of 31 March 2010 contained in a document entitled "Pay TV Statement" (the "Decision") under section 317(6) of the Communications Act 2003 and the Tribunal Rules (the "Appeal")

AND UPON each of BT, Virgin and Top-Up TV undertaking to the Tribunal:

- (1) to pay into escrow, in respect of each customer supplied under Conditions 14A in the licences for Sky Sports 1 and Sky Sports 2, the difference between:
 - (a) the prices to be paid for Sky Sports 1, Sky Sports 2, or Sky Sports 1 and 2 (as appropriate) under those Conditions; and
 - (b) Sky's rate card prices for the same service (which are as at the date of this Order, Sky Sports 1 - £13.88, Sky Sports 2 - £13.88 and Sky Sports 1 and 2 - £19.15 excluding VAT per subscriber per month) as notified from time to time, subject to any increase in rate card prices not being greater than any corresponding absolute increase in Sky's retail prices for Sky Sports 1, Sky Sports 2, or Sky Sports 1 and 2 (as appropriate), for which purpose Sky's retail prices shall be calculated on a weighted average basis in accordance with the methodology set out in paragraph 1.239 of Annex 7 of the Decision
- (2) that such sums as the Tribunal considers appropriate be paid out of the escrow at the final determination of the Appeal for the purpose of compensating Sky for any difference between the sums paid in accordance with the prices in (a) and the sums the Tribunal considers should have been paid.

AND UPON each of Sky, OFCOM, BT, Virgin and Top-Up TV agreeing to the terms of this Order

IT IS ORDERED THAT:

1. OFCOM's decision to insert the Conditions contained at §12.14 of the Decision (the wholesale must offer obligation) into the licences referred to at paragraph 12.14 of the Decision is implemented in respect of BT, Top-up TV and Virgin subject to the above undertakings and the attached schedule, but is otherwise suspended until further order.

2. There be general liberty to apply.

The Honourable Mr Justice Barling
President of the Competition Appeal Tribunal

Made: 29 April 2010
Drawn: 29 April 2010

SCHEDULE

For the purposes of this Order:

Condition 14A is varied as follows:

1. BT, Virgin and Top-Up TV are deemed to meet the Minimum Qualifying Criteria save in respect of technical standards and standards of security and encryption.
2. Qualifying Platform means via DTT in the case of BT, Virgin and Top-Up TV and via its existing cable platform in the case of Virgin, with all parties having liberty to apply.
3. The provision by Sky to each of BT, Virgin and Top-Up TV of terms and conditions by 14 May 2010 including at least those specified in subparagraph (3) of Condition 14A in respect of Sky Sports 1 and Sky Sports 2 and subparagraph (2) of Condition 14A in respect of Sky Sports 1 HD and Sky Sports 2 HD shall be deemed to constitute in each case an offer satisfying that subparagraph (“reference offer”), subject to paragraphs 4 and 5 below.
4. The obligation to provide a reference offer in respect of Sky Sports 1 HD and/or Sky Sports 2 HD to either of BT or Top-up TV shall apply on the relevant party providing credible evidence to Sky that they would be able to offer the relevant service within 90 days of provision of the reference offer, such reference offer to be provided within 42 days of request.
5. The obligation to provide a reference offer to Virgin for supply via DTT shall apply on Virgin providing credible evidence to Sky that it would be able to make such supply within 90 days of provision of the reference offer, such reference offer to be provided within 42 days of request.

And:

6. BT, Virgin and Top-Up TV shall each be entitled to see any reference offer made to the other parties subject to entering into a reasonable non-disclosure agreement with Sky and to any reasonable confidentiality requirements of those other parties.
7. At the same time as providing offers under any of paragraphs (3)-(5) above, Sky shall provide the same to OFCOM.