



IN THE COMPETITION
APPEAL TRIBUNAL

Cases No: 1152/8/3/10 (IR)
1156-1159/8/3/10
1170/8/3/10
1179/8/3/11

BETWEEN

BRITISH SKY BROADCASTING LIMITED
VIRGIN MEDIA, INC.
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED
BRITISH TELECOMMUNICATIONS PLC

Appellants / Intervenors

- v -

OFFICE OF COMMUNICATIONS

Respondent

- and -

TOP UP TV EUROPE LIMITED
RFL (GOVERNING BODY) LIMITED
THE FOOTBALL ASSOCIATION LIMITED
FREESAT (UK) LIMITED
RUGBY FOOTBALL UNION
THE FOOTBALL LEAGUE LIMITED
PGA EUROPEAN TOUR
ENGLAND AND WALES CRICKET BOARD

Intervenors

ORDER

UPON appeals having been brought in respect of a decision by the Office of Communications (“OFCOM”) pursuant to section 3(4)(b) of the Broadcasting Act 1990 and section 316 of the Communications Act 2003 to insert licence conditions into licences held by British Sky Broadcasting Limited (“Sky”), contained in a statement published by OFCOM entitled “Pay TV Statement” dated 31 March 2010, on 1 June 2010 by:

- (1) Sky in Case 1158/8/3/10 (“Sky’s Main Appeal”);
- (2) The Football Association Premier League Limited (“FAPL”) in Case 1157/8/3/10 (“FAPL’s Main Appeal”);
- (3) Virgin Media, Inc. (“VM”) in Case 1156/8/3/10 (“VM’s Main Appeal”); and
- (4) British Telecommunications plc (“BT”) in Case 1159/8/3/10 (“BT’s Main Appeal”)

AND UPON Sky having brought an appeal on 11 October 2010 in respect of the decision contained in the document published by OFCOM entitled “Assessment of a complaint by Top Up TV alleging breach by Sky of Condition 14A of the TLCS licences for Sky Sports 1 and 2: Decision and Direction” dated 11 August 2010 in Case 1170/8/3/10 (“Sky’s Linear-only Set Top Boxes Appeal”)

AND UPON Sky having brought an appeal on 14 February 2011 in respect of the decision contained in the document published by OFCOM entitled “Top Up TV complaint against Sky under the wholesale must-offer obligation: CI+ CAMs – Ofcom Decision” dated 13 December 2010 in Case 1179/8/3/11 (“Sky’s Conditional Access Modules Appeal”)

AND UPON Top Up TV Europe Limited (“TUTV”) having brought an appeal on 27 May 2010 in respect of the decision contained in the statement published by OFCOM entitled “Proposed BSkyB Digital Terrestrial Television Services: Statement on Sky’s “Picnic” proposal dated 31 March 2010 in Case 1155/3/3/10 (“TUTV’s Picnic Appeal”)

AND UPON the Tribunal having handed down a non-confidential summary of its judgment in these appeals on 8 August 2012 and having published the non-confidential version of its full judgment on 26 October 2012 ([2012] CAT 20) (the “Judgment”)

AND UPON applications for costs dated 18 January 2013, made by Sky and FAPL (the “Costs Applications”)

AND UPON a hearing held at Victoria House on 6 February 2013 addressing matters consequential to the Judgment (the “Consequential Matters”), including the Costs Applications and the question of whether FAPL’s Main Appeal should be allowed or dismissed in light of the Judgment (the “FAPL Outcome”)

AND UPON the Ruling of the Tribunal dated 27 February 2013 dealing with the Consequential Matters, save for the Costs Applications and the FAPL Outcome (the “Ruling on Consequential Matters”) ([2013] CAT 4), in particular paragraph 6 thereof

AND UPON the Order agreed by the parties in light of the Ruling on Consequential Matters and made and drawn by the Tribunal on 6 March 2013, *inter alia* (1) allowing: (a) Sky’s Main Appeal; (b) Sky’s Linear-only Set Top Boxes Appeal; and (c) Sky’s Conditional Access Modules Appeal; and (2) dismissing: (a) VM’s Main Appeal; (b) BT’s Main Appeal; and (c) TUTV’s Picnic Appeal (the “Dispositive Order”)

AND UPON a pending appeal by BT against the Dispositive Order, pursuant to an Order made by the Court of Appeal (Lewison LJ) dated 1 May 2013 (the “BT Appeal”)

AND UPON the Ruling of the Tribunal dated 9 May 2013 dealing with the Costs Applications and the FAPL Outcome ([2013] CAT 9)

IT IS ORDERED THAT

1. FAPL’s Main Appeal be dismissed.
2. OFCOM pay Sky the costs of:
 - (a) the second ground as described in Sky’s Amended Notice of Appeal, including the costs of the sub-issue of strategic incentives;
 - (b) Sky’s Linear-only Set Top Boxes Appeal; and

(c) Sky's Conditional Access Modules Appeal.

3. The costs referred to in paragraph (2) above be the subject of detailed assessment on the standard basis by a costs officer of the Senior Court Costs Office, if not agreed.
4. Save as set out in paragraph (2) above, there be no order for costs in these appeals.
5. Paragraph (1) of this Order and paragraph (4), in so far as it provides that there be no order as to FAPL's costs, take effect only in the event that the BT Appeal be dismissed in its entirety.
6. There be liberty to apply.

The Honourable Mr Justice Barling
President of the Competition Appeal Tribunal

Made: 17 May 2013
Drawn: 17 May 2013