



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 317(6) OF THE COMMUNICATIONS ACT 2003

CASE No: 1156/8/3/10

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003, as amended by S.I. No. 2068 of 2004) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 28 May 2010 under section 317(6) of the Communications Act 2003 (“the 2003 Act”) by Virgin Media, Inc. (“Virgin Media”) whose operational headquarters are at Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9UP against a decision made by the Office of Communications (“OFCOM”) of 2a Southwark Bridge Road, London SE1 9HA on 31 March 2010 (“the Decision”). Virgin Media is represented by Ashurst LLP, Broadwalk House, 5 Appold Street, London EC2A 2HA (reference CQF\VIR24.00021).

The Decision was taken under sections 3(4)(b) of the Broadcasting Act 1990 (“the 1990 Act”) and 316(2) of the 2003 Act to vary, with effect from 31 March 2010, the licences granted to British Sky Broadcasting Limited (“Sky”) under Part I of the 1990 Act for Sky’s pay television channels, Sky Sports 1, Sky Sports 2, Sky Sports 1 HD and Sky Sports 2 HD (“the Licensed Services”) through the imposition of conditions concerning the supply by Sky of the programme content of the Licensed Services to other undertakings (“the Conditions”).

The Conditions, amongst other matters, imposed a “wholesale must-offer obligation” (“WMO obligation”) which compelled Sky to offer the Licensed Services to any person meeting minimum qualifying criteria (to be specified in the first place by Sky) for retail by that person to residential consumers in the UK on qualifying platforms upon a reasonable request in writing; within a reasonable time; on a non-exclusive basis; on fair and reasonable terms and without undue discrimination; and to supply Sky Sports 1 and 2 at charges which do not exceed specified maximum prices set by OFCOM. The Decision further required Sky to wholesale HD services on fair, reasonable and non-discriminatory terms.

By an Order dated 29 April 2010 in Case No. 1152/8/3/10 (IR) *British Sky Broadcasting Limited v Office of Communications*, the President of the Tribunal varied the Conditions on an interim basis, suspending the operation of the Decision generally and modifying Sky’s obligations in respect of specified platform operators.

In summary, the principal grounds of appeal on which Virgin Media relies are as follows:

1. OFCOM has failed to consider relevant matters in deciding to exclude Sky Sports 3 and/or 4 from the scope of the WMO obligation or, alternatively, any such consideration was inadequate and/or incorrect.
2. OFCOM has failed to impose any control on the wholesale prices that Sky may charge for the supply of Sky Sports 1 and/or 2 where they are bundled with Sky Sports 3 and/or 4 and/or any of Sky’s Core Premium Movie channels.
3. The methodology adopted by OFCOM to calculate the maximum prices for the supply of Sky Sports 1 and Sky Sports 2 under the WMO obligation is flawed.
4. OFCOM has made an error in the mechanism which applies to calculate the maximum prices under the WMO obligation following changes in Sky’s own retail prices.

As regards the relief sought, Virgin Media states that it would be appropriate for detailed submissions on relief to be made following judgment by the Tribunal on the substantive issues raised by Virgin Media’s

grounds of appeal. In addition, Virgin Media seeks an Order that OFCOM should pay Virgin Media's costs of this appeal.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB, so that it is received by **5pm** on **21 June 2010**.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

Published 8 June 2010