



IN THE COMPETITION APPEAL TRIBUNAL

Case No 1024/2/3/04

[2004] CAT 2

New Court  
48 Carey Street  
London WC2A 2JT

Friday 6 February 2004

Before:

The President  
**SIR CHRISTOPHER BELLAMY QC**  
(Chairman)

**MR MICHAEL DAVEY**  
and  
**MRS SHEILA HEWITT**

B E T W E E N:

**FLOE TELECOM LIMITED**

**Appellant**

- and -

**OFFICE OF COMMUNICATIONS**

**Respondent**

MR EDWARD MERCER and MR PATRICK CLARK appeared on behalf of  
the Appellant.

MR MARK HOSKINS appeared on behalf of the Respondent.

MS ELIZABETH McKNIGHT appeared on behalf of the Potential  
Interveners.

**R U L I N G**  
(Intervention)

Transcribed from the shorthand notes of  
Harry Counsell & Co.  
Cliffords Inn, Fetter Lane, London EC4A 1LD  
Telephone 020 7269 0370

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2 THE CHAIRMAN: In this Case Management Conference the first  
3 issue the Tribunal has to deal with is whether the  
4 company, Vodafone Limited, should be allowed to intervene  
5 as a party to the proceedings.

6 The proceedings are an appeal by Floe  
7 Telecommunications Limited against a decision by what is  
8 now OFCOM dated 3 November 2003 under Chapter 2 of the  
9 Competition Act. That decision concerned a complaint  
10 submitted by Floe to the Director against Vodafone which  
11 alleged that Vodafone had breached Chapter 2 of the  
12 Competition Act in various ways and in particular by  
13 disconnecting Floe in relation to Floe's GSM gateway  
14 service. The Director rejected Floe's complaint in his  
15 decision and Floe now appeals against that rejection.

16 Vodafone applies to intervene on the grounds that  
17 they have a sufficient interest within the meaning of  
18 Rule 16 of the Tribunal's Rules. That application is  
19 opposed by Floe, principally on the grounds that  
20 Vodafone's participation is unnecessary for the  
21 determination of these proceedings and that to permit  
22 Vodafone to participate will only add to the costs  
23 unnecessarily.

24 Mr Mercer, for Floe, this morning has indicated  
25 that one of the principal points in the appeal which he  
26 will seek to bring forward by way of an amendment to the  
27 existing notice of appeal will be the true construction  
28 of the relevant provisions of the Wireless Telegraphy Act  
29 and the Regulations made thereunder, in particular  
30 bearing on the point as to whether Floe's use of the  
31 relevant products or services was lawful or unlawful, the  
32 Director having found in the Decision that the public GSM  
33 gateway services provided by Floe were not lawful.

34 Ms McKnight, for Vodafone, in addition to  
35 submitting that Vodafone has a sufficient interest, also  
36 emphasizes that Vodafone has a close interest in the  
37 correct interpretation of the Wireless Telegraphy  
38 legislation with which this appeal is concerned.

39 The Tribunal is of the view that Vodafone does have

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a sufficient interest in these proceedings and should be permitted to intervene. The original complaint was made against Vodafone. The proceedings are likely to touch on Vodafone's conduct in relation to Floe and the interpretation of the relevant legislation also affects Vodafone's interest, so on that ground we are satisfied that Vodafone has a sufficient interest to intervene. We will give directions later in this Conference as to exactly what form that intervention should take.