



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPEAL UNDER SECTION 47 OF THE COMPETITION ACT 1998 AND SECTION 192 OF THE COMMUNICATIONS ACT 2003 CASE NO 1027-2-3-04

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of an appeal, received at the Competition Appeal Tribunal on 20 February 2004, under section 47 of the Competition Act 1998 (“the 1998 Act”) and under section 192 of the Communications Act 2003 (“the 2003 Act”) by **VIP Communications Limited** (“VIP”) in respect of a decision dated 22 December 2003 (“the Decision”) made by the Director General of Telecommunications (“the Director”).¹

According to the Decision,² the Director rejected a complaint by VIP and decided that T-Mobile Limited (“T-Mobile”) had not infringed the prohibition on abuse of a dominant position contained in section 18 of the 1998 Act by periodically suspending VIP’s GSM Gateway services³ on the grounds of unlawful activity yet still permitting GSM Gateway services by others, including its own service providers.

In summary, as set out in the notice of appeal, the principal grounds of appeal relied on are:

1. VIP’s complaint was made under the Telecommunications Act 1984 and the 1998 Act, but the Director investigated only under the latter;
2. the Director incorrectly formed the view that T-Mobile had an objective reason for refusal to supply VIP’s public GSM services;
3. the Director used Condition 8 of T-Mobile’s licence under the Wireless Telegraphy Act 1949 to argue that VIP could only have acted with T-Mobile’s express written authorisation. However, VIP believed that it already had authorisation. Business had been transacted between the parties. VIP does not understand how it can be guilty of non-compliance with a licence condition, which in any case was imposed on T-Mobile, not VIP, and which VIP did not know even existed.

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 within **three weeks** of the publication of this notice.

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

¹ Under section 408(5) and Article 3(2) of the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No.2) Order 2003 SI no 3142 anything which was done by the Director prior to 29 December 2003 is to have effect after that time as if it had been done by the Office of Communications (“OFCOM”).

² The text of the decision may be found at

http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_c_act/cw_662/case_662/?a=87101

³ According to the Decision a GSM gateway is a bank of Subscriber Identity Module (or “SIM”) cards mounted in a device that provides connectivity between a fixed telephone line and a mobile network.

by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa
Registrar

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