



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPLICATION UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE No: 1057/3/3/05

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar of the Competition Appeal Tribunal (“the Tribunal”) gives notice of the receipt of an appeal, on 30 November 2005, under section 192 of the Communications Act 2003 (“the 2003 Act”), by The Number (UK) Limited of Sterling House, Malthouse Avenue, Cardiff Gate Business Park, Cardiff, CF23 8RA, (“The Number”) against a decision (“the Decision”) made by the Office of Communications (“OFCOM”), and evidenced in letters dated 20 October 2005 and 10 November 2005 from OFCOM to The Number’s legal representative, not to proceed with the handling of The Number’s dispute with British Telecommunications plc (“BT”) in connection with BT’s published charges for access to information via the OSIS database (“the Dispute”).

The Number appeals (in the following terms) against the Decision on the grounds that OFCOM has erred in law and/or improperly exercised its discretion in deciding to postpone handling the Dispute notwithstanding the terms of sections 186 and 188 of the Act, which clearly require promptness on the part of OFCOM in deciding whether or not it is appropriate for OFCOM to handle a dispute and in considering and determining a dispute which it accepts.

In particular, OFCOM has accepted, in its letter of 20 October 2005 to The Number’s legal representative that the Dispute was “unlikely to be resolved by any other means” and that it “would ordinarily fall to Ofcom” to resolve the Dispute. OFCOM has therefore, in effect, decided that it is appropriate for it to handle the Dispute in accordance with section 186(2) of the Act (there being no alternative means which would cause it to be inappropriate for OFCOM to handle the dispute under section 186(3) of the Act). Accordingly, OFCOM is obliged under section 186(4) of the Act to notify The Number of that decision and, under section 188 of the Act, to consider the Dispute and (except in exceptional circumstances) to make a determination for resolving it within four months.

In the alternative, given the promptness required on the part of OFCOM both in its own guidelines and in sections 186 and 188 of the Act, no reasonable regulator in the circumstances could have failed to come to a decision as to whether it was appropriate for them to handle the Dispute in the twelve weeks that OFCOM has to date taken to come to a decision. Given that OFCOM conceded in its letter of 20 October 2005 that the Dispute was “unlikely to be resolved by other means”, there was no proper basis under the Act or otherwise for OFCOM not to conclude immediately that it was appropriate for it to handle the Dispute and to proceed with handling the Dispute.

The Number seeks the following relief:

1. An order setting aside the Decision;
2. An order that it is appropriate for OFCOM to handle the dispute and that OFCOM should proceed immediately with handling the Dispute;
3. An order that OFCOM report back to the Tribunal on progress made on the Dispute within three months;
4. Such other order or relief as the Tribunal may consider appropriate; and
5. An order that OFCOM should pay The Number’s costs of and incidental to 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 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 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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