



## COMPETITION APPEAL TRIBUNAL

### SUMMARY OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

**CASE No: 1063/3/06**

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 8 May 2006, under section 192 of the Communications Act 2003 (“the 2003 Act”), by British Telecommunications plc of 81 Newgate Street, London, EC1A 7AJ (“BT”) against a decision (“the Decision”) made by the Office of Communications (“OFCOM”), and evidenced in letters dated 8 and 24 March 2006 from OFCOM to BT, purporting to amend the scope of a dispute between BT and The Number (UK) Limited (“The Number”) under section 185(2) of the 2003 Act (“the Dispute”).

According to the notice of appeal the Dispute related to charges made by BT to The Number for the provision of directory information. The directory information in question was supplied to The Number via BT’s Operator Services Information System (“OSIS”) (a database which BT is required by OFCOM to maintain and to which access must be provided for specified classes of person). According to the notice of appeal the dispute between BT and The Number concerns Universal Service Condition 7 (“USC7”). In December 2005/January 2006 OFCOM informed BT and The Number that OFCOM had been advised by counsel that USC7 is invalid. By the Decision OFCOM decided that the scope of the issues in dispute should be amended so as to include certain alleged obligations of BT to The Number pursuant to General Condition 19 (“GC19”) of the General Conditions of Entitlement set by OFCOM pursuant to section 45 of the 2003 Act.

BT appeals against the Decision on the following grounds: (1) OFCOM incorrectly held there to be a dispute between BT and The Number in circumstances where GC19 cannot apply and where no such dispute has ever existed; and (2) in so deciding, OFCOM has relied upon certain apparent findings of fact which are erroneous and unsupported by the record then before OFCOM.

According to the notice of appeal BT has filed its notice of appeal as a precautionary measure in order to avoid any risk of being out of time to challenge the Decision and related findings contained therein. BT’s appeal against a decision concerning its alleged dispute with Conduit Enterprises Limited (see Case 1064/3/3/06) raises essentially the same issues and has been brought for the same reasons. BT suggests that these appeals may provide the Tribunal with an opportunity to provide guidance as to whether decisions such as the Decision constitute decisions that must be appealed immediately to preserve an appealing party’s rights, separate from any ensuing appeal against any final decision OFCOM takes in determining the disputes between BT and The Number and Conduit Enterprises Limited, respectively.

The notice of appeal submits that the most convenient course would be for the Tribunal to defer consideration of this appeal pending OFCOM's final determination of the Dispute as a whole (which, according to the notice of appeal is expected on or about 8 July 2006).

BT further submits:

- (a) no relevant request has ever been made to BT by The Number such as could generate any obligation or dispute under GC19;
- (b) no such obligation therefore exists;
- (c) no such dispute therefore exists;
- (d) BT has not consented to OFCOM handling a non-existent dispute pursuant to its powers under the 2003 Act or at all; and
- (e) OFCOM has reached its Decision on the basis of findings which are manifestly in error,

and accordingly the Decision is ultra vires, irrational and unlawful.

BT seeks the following relief:

- (a) a finding that OFCOM has erred both in law and fact in concluding that BT has or had obligations to The Number pursuant to GC19, and/or that there had been negotiations which had failed, and/or that a dispute has arisen between BT and The Number under CG19;
- (b) a finding that OFCOM's factual finding that BT discharged any obligations owed to The Number under GC19 via the OSIS database is wrong;
- (c) a finding that the Decision was ultra vires, irrational and unlawful;
- (d) an order remitting the matter to OFCOM with the following directions:
  - (i) that the Decision to amend the scope of the dispute to include a purported dispute under GC19 be withdrawn forthwith;
  - (ii) that OFCOM proceed to determine the dispute in its unamended form;
  - (iii) that any findings or directions by OFCOM as to BT's obligations to The Number under GC19 be withdrawn;
  - (iv) such further or other directions as the Tribunal shall consider appropriate in order to give effect to its findings;
- (e) an order that OFCOM pay BT's costs of the appeal;
- (f) such further or other findings or other relief (including interim relief) as the Tribunal

shall consider necessary or appropriate.

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](http://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

Published 17 May 2006