



COMPETITION APPEAL TRIBUNAL

SUMMARY OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE No: 1064/3/3/06

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 4 April 2006 from OFCOM to BT, purporting to amend the scope of a dispute between BT and Conduit Enterprises Limited (“Conduit”) 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 Conduit for the provision of directory information. The directory information in question was supplied to Conduit 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 Conduit concerns Universal Service Condition 7 (“USC7”). In December 2005/January 2006 OFCOM informed BT and Conduit 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 Conduit 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 Conduit since 25 July 2003; and (2) in so deciding OFCOM has relied upon certain apparent findings of fact which are erroneous and unsupported by the record before OFCOM. As to (1) above BT submits that BT could not have owed any obligation to Conduit under GC19, if at all, until June 2005 at the earliest, at which time Conduit arguably made a request for BT subscriber data. Accordingly, no dispute could have existed between BT and Conduit in respect of the period from 25 July 2003 to June 2005. Further, on the facts, no dispute in the relevant sense exists between the parties as to alleged obligations pursuant to GC19 in respect of any period.

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 The Number (UK) Limited (see Case 1063/3/3/06) 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 Conduit such as could generate any obligation or dispute under GC19 prior to June 2005;
- (b) no such obligation therefore exists;
- (c) no such dispute therefore exists in respect of that period, or at all;
- (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 Conduit pursuant to GC19 at all or alternatively, prior to June 2005, and/or that there had been negotiations which had failed, and/or that a dispute has arisen between BT and Conduit under CG19 at all or alternatively in respect of matters occurring prior to June 2005;
- (b) a finding that OFCOM's factual finding that BT discharged any obligations owed to Conduit 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 or alternatively withdrawn forthwith in so far as it relates to any period prior to June 2005;
 - (ii) that OFCOM proceed to determine the dispute in its unamended form or alternatively without the purported amendment to cover GC19 in so far as it relates to any period prior to June 2005;
 - (iii) that any findings or directions by OFCOM as to BT's obligations to Conduit under GC19 be withdrawn or alternatively any such obligations prior to June 2005 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. 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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