



IN THE COMPETITION
APPEAL TRIBUNAL

Cases No: 1152/8/3/10 (IR)
1155/3/3/10
1156-1159/8/3/10
1170/8/3/10
1179/8/3/11

BETWEEN

BRITISH SKY BROADCASTING LIMITED
VIRGIN MEDIA, INC.
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED
BRITISH TELECOMMUNICATIONS PLC
TOP UP TV EUROPE LIMITED

Appellants / Intervenors

- v -

OFFICE OF COMMUNICATIONS

Respondent

- and -

RFL (GOVERNING BODY) LIMITED
THE FOOTBALL ASSOCIATION LIMITED
FREESAT (UK) LIMITED
RUGBY FOOTBALL UNION
THE FOOTBALL LEAGUE LIMITED
PGA EUROPEAN TOUR
ENGLAND AND WALES CRICKET BOARD

Intervenors

ORDER

UPON appeals having been brought in respect of a decision (the “Pay TV Decision”) by the Office of Communications (“OFCOM”) pursuant to sections 3(4)(b) of the Broadcasting Act 1990 and 316 of the Communications Act 2003 to insert licence conditions into licences held by British Sky Broadcasting Limited (“Sky”) contained in a statement published by OFCOM entitled “Pay TV Statement” dated 31 March 2010 (the “Pay TV Statement”) on 1 June 2010 by:

- (1) Sky in Case 1158/8/3/10 (“Sky’s Main Appeal”);
- (2) The Football Association Premier League Limited (“FAPL”) in Case 1157/8/3/10 (“FAPL’s Main Appeal”);
- (3) Virgin Media, Inc. (“VM”) in Case 1156/8/3/10 (“VM’s Main Appeal”); and
- (4) British Telecommunications plc (“BT”) in Case 1159/8/3/10 (“BT’s Main Appeal”)

AND UPON Sky having brought an appeal on 11 October 2010 in respect of the decision contained in the document published by OFCOM entitled “Assessment of a complaint by Top Up TV alleging breach by Sky of Condition 14A of the TLCS licences for Sky Sports 1 and 2: Decision and Direction” dated 11 August 2010 (the “Linear-only Set Top Boxes Decision”) in Case 1170/8/3/10 (“Sky’s Linear-only Set Top Boxes Appeal”)

AND UPON Sky having brought an appeal on 14 February 2011 in respect of the decision contained in the document published by OFCOM entitled “Top Up TV complaint against Sky under the wholesale must-offer obligation: CI+ CAMs – Ofcom Decision” dated 13 December 2010 (the “Conditional Access Modules Decision”) in Case 1179/8/3/11 (“Sky’s Conditional Access Modules Appeal”)

AND UPON Top Up TV Europe Limited (“TUTV”) having brought an appeal on 27 May 2010 in respect of the decision contained in the statement published by OFCOM entitled “Proposed BSkyB Digital Terrestrial Television Services: Statement on Sky’s “Picnic” proposal” dated 31 March 2010 (the “Picnic Statement”) in Case 1155/3/3/10 (“TUTV’s Picnic Appeal”)

AND UPON Sky having brought an application for interim relief pursuant to Rule 61 of the Competition Appeal Tribunal Rules 2003 (S.I. 1372 of 2003) (the “Tribunal Rules”) in respect of the Pay TV Decision in Case 1152/8/3/10 (IR) (“Sky’s Interim Relief Application”)

AND UPON the President having made an order in Sky’s Interim Relief Application on 29 April 2010 (the “First Interim Order”)

AND UPON the President having made a further order in Sky’s Interim Relief Application amending the First Interim Order on 23 November 2010 (the “Second Interim Order”)

AND UPON the Tribunal having handed down a non-confidential summary of its judgment in these appeals on 8 August 2012 and having published the non-confidential version of its full judgment on 26 October 2012 ([2012] CAT 20) (the “Judgment”)

AND UPON the Tribunal's indication in its ruling on matters arising out of the main judgment ([2013] CAT 4) (the "Ruling on Consequential Orders") that outstanding issues of costs and the treatment of FAPL's Main Appeal will be made the subject of a separate ruling in due course

AND PURSUANT TO the Tribunal's request, set out at paragraph 51 of its Ruling on Consequential Orders, that the parties agree on a draft order which reflects the Tribunal's rulings save for costs and the appropriate treatment of FAPL's Main Appeal

AND UPON the parties agreeing the terms of this Order

IT IS ORDERED THAT

1. Pursuant to sections 195(2) of the Communications Act 2003 ("Act") (as applied by section 317(7)):
 - a. Sky's Main Appeal (Case 1158/8/3/10);
 - b. Sky's Linear only Set Top Boxes Appeal (Case 1170/8/3/10); and
 - c. Sky's Conditional Access Modules Appeal (Case 1179/8/3/11)be allowed.
2. Pursuant to sections 195(2) of the Act (as applied by section 317(7)):
 - a. VM's Main Appeal (Case 1156/8/3/10);
 - b. BT's Main Appeal (Case 1159/8/3/10); and
 - c. TUTV's Picnic Appeal (Case 1155/3/3/10)be dismissed.
3. Pursuant to sections 195(3) and (4) of the Act (as applied by section 317(7)), 14 days after the final determination by the Court of Appeal of BT's renewed application for permission to appeal or the withdrawal thereof (the "Relevant Date"):
 - a. the Pay TV Decision be remitted to OFCOM with directions to:
 - (i) withdraw the Pay TV Decision within 7 days; and
 - (ii) remove Condition 14A from each of the (i) Sky Sports 1 Television Licensable Content ("TLCS") Licence; (ii) Sky Sports 2 TLCS Licence; (iii) Sky Sports HD TLCS Licence; and (iv) Sky Sports HD 2 TLCS Licence within 7 days;
 - b. the Linear-only Set Top Boxes Decision be remitted to OFCOM with a direction to withdraw that decision including the directions set out in paragraph 4.7 therein within 7 days; and
 - c. the Conditional Access Modules Decision be remitted to OFCOM with a direction to withdraw that decision including the directions set out in paragraph 5.4 therein within 7 days.
4. Pursuant to section 195(2) of the Act and Rule 61(4) of the Tribunal Rules, and further to the First Interim Order and the Second Interim Order:

- a. each of BT and TUTV (each a “Relevant Distributor”) and Sky take all steps necessary to secure the payment to Sky, within 7 days of the Relevant Date, of all monies (including interest accrued thereon and VAT where applicable) which have been paid into escrow by the Relevant Distributor as at the Relevant Date pursuant to the undertakings contained in sub-paragraph (1) of the fifth recital to the First Interim Order;
 - b. each Relevant Distributor be released from its undertaking to pay monies into escrow as set out in sub-paragraph (1) of the fifth recital to the First Interim Order, if and when:
 - (i) the Relevant Distributor has complied with the obligation set out in sub-paragraph (a) above;
 - (ii) the Relevant Distributor has entered into an agreement with Sky in respect of, as applicable, (1) the payment of any monies due to be paid into escrow after the Relevant Date; and/or (2) any monies payable into escrow prior to the Relevant Date but which were not paid; and/or (3) any ongoing payments to Sky;
 - (iii) the Relevant Distributor has satisfied the conditions for the release of the undertaking set out in the relevant agreement entered into pursuant to sub-paragraph (b)(ii) above; and
 - (iv) the Relevant Distributor and Sky have notified the Tribunal that such conditions have been satisfied; and
 - c. the First Interim Order and the Second Interim Order cease to have effect as from the date when OFCOM takes the steps required under paragraph 3(a) above, save that the undertakings set out in the First Interim Order shall continue subject to sub-paragraph (b) above.
5. There be liberty to apply.

The Honourable Mr Justice Barling
President of the Competition Appeal Tribunal

Made: 6 March 2013
Drawn: 6 March 2013