



Neutral citation [2007] CAT 32

IN THE COMPETITION
APPEAL TRIBUNAL

Case Number:1093/3/3/07

Victoria House
Bloomsbury Place
London WC1A 2EB

14 November 2007

Before:

Marion Simmons QC
(Chairman)
(sitting alone)

Sitting as a Tribunal in England and Wales

BETWEEN:

T-MOBILE (UK) LIMITED

Appellant

-v-

OFFICE OF COMMUNICATIONS

Respondent

supported by

HUTCHISON 3G UK LIMITED

Intervener

RULING ON PERMISSION TO
AMEND THE NOTICE OF APPEAL

1. T-Mobile (UK) Limited (“T-Mobile”) is appealing against a decision of the Office of Communications (“OFCOM”) dated 17 August 2007 entitled “*Determinations to resolve disputes between Hutchison 3G and each of O2, Orange and T-Mobile concerning donor conveyance charges*” (the “DCC Decision”).
2. On 14 November 2007, T-Mobile (UK) Limited (“T-Mobile”) submitted an application for permission to amend its notice of appeal. A draft amended notice of appeal was appended to that application.
3. The question the Tribunal must determine in relation to this application is whether the principal amendment proposed by T-Mobile relating to “Ground C” amounts to a “new ground” of appeal for contesting the decision taken by OFCOM, in which case the Tribunal could only grant permission to amend if it was satisfied that the application fell within paragraph (a), (b) or (c) of rule 11(3) of the Tribunal Rules (S.I. 2003 No. 1372).
4. T-Mobile submits that the proposed amendments relating to Ground C do not amount to a new ground of appeal, but clarify that in addition to contesting the failure of OFCOM to give effect to Article 30(2) of the Universal Service Directive (Directive 2002/22/EC) in the context of the DCC Decision, that failure also constitutes a failure to act more generally. T-Mobile submits that this was implicit in the original version of the notice of appeal, particularly in paragraph 55 and in the general reference in the notice of appeal to the appeal being brought under section 192 of the Communications Act 2003.
5. OFCOM does not seek to argue that the proposed amendment is a new ground of appeal and considers that this question is a matter for the Tribunal. In any event, OFCOM does not resist the proposed amendment, and would consent to it on the basis set out in its letter of 14 November 2007.
6. At the case management conference in this case on 12 November 2007, it was agreed that the Chairman, sitting alone, could decide this question of amendment. I have carefully considered the proposed amendment, T-Mobile’s application for

permission to amend the notice of appeal and OFCOM's letter of 14 November 2007. In my judgment, T-Mobile has simply identified or clarified a manifestation of the error of law alleged in the original notice of appeal and has not added a new ground of appeal. I therefore have a general discretion to grant permission to T-Mobile to make the amendment under rule 11(1) of the Tribunal Rules.

7. OFCOM states in its letter of 14 November 2007 that the application has been submitted at an early stage, significantly in advance of the deadline for the service of a defence, and it does not consider the amendment to give rise to any substantial prejudice on its part.
8. In the circumstances outlined above, I grant permission to T-Mobile to amend its notice of appeal, as set out in the draft amended notice of appeal attached to T-Mobile's application of 14 November 2007.

Marion Simmons QC

Charles Dhanowa
Registrar

Date: 14 November 2007