



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 47 OF THE COMPETITION ACT 1998

CASE NO 1087/2/3/07

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal on 3 July 2007, under section 47 of the Competition Act 1998 (“the Act”) by Independent Media Support Limited of 10 Carlisle Street, London, W1T 4HB (“the appellant”) in respect of a decision entitled “Complaint from Independent Media Support Limited about BBC Broadcast’s provision of television access services to Channel 4” (“the Decision”) and a case closure document entitled “Complaint from Independent Media Support Limited about BBC Broadcast’s provision of television access services to the BBC” (“the Case Closure Document”) both in Case CW/00842/06/05. Both the Decision and the Case Closure Document were issued on 30 May 2007 by the Office of Communications (“OFCOM”).

The Decision found that BBC Broadcast Limited (Now Red Bee Media) was not dominant in the market for the supply of access services to United Kingdom television broadcasters so there were no grounds of action under section 18 of the Act (“the Chapter II prohibition”) or Article 82 of the EC Treaty in respect of an agreement to provide media access services to the Channel 4 Television Corporation (“Channel 4”). In the Decision OFCOM also concluded that BBC Broadcast Limited’s contract with Channel 4 does not appreciably prevent, restrict or distort competition contrary to section 2 of the Act (“the Chapter I prohibition”) or Article 81(1) of the EC Treaty.

In the Case Closure Document OFCOM decided not to continue its investigation under Chapter I and Article 81 into BBC Broadcast Limited’s contract with the BBC for the supply of television access services, given that its duration had been voluntarily reduced by the parties. Having regard to its administrative priorities, OFCOM decided not to commit further resources to conclude its analysis of the contract under Chapter I and Article 81.

The appellant submits that OFCOM has committed errors of assessment in the application of the Chapter I and Chapter II prohibitions and Articles 81 and 82 of the EC Treaty in respect of BBC Broadcast’s contracts with Channel 4 and the BBC respectively.

The appellant seeks the following relief from the Tribunal:

1. A declaration from the Tribunal that:
 - (a) the Case Closure Document is an appealable decision within the meaning of the Act;
 - (b) the contract described in the case closure document infringes Article 81(1) of the EC Treaty and the Chapter I prohibition and does not satisfy the conditions for exemption under Article 81(3) of the Treaty;
 - (c) the Channel 4 contract referred to in the Decision infringes Article 81(1) of the EC Treaty and the Chapter I prohibition and does not satisfy the conditions for exemption under Article 81(3) of the Treaty; and
 - (d) Red Bee (formerly BBC Broadcast) did and does benefit from a dominant position in the relevant market.
2. Pursuant to 1. (a), (b) and (c) above the Tribunal should order the infringements to come to an end (rather than remitting the matter to OFCOM) and the relevant contracts re-tendered.

- i) In the event that the Tribunal does not grant the above relief, it should order all the matters mentioned in paragraph 1 above to be remitted to OFCOM.
- ii) That the costs of the appeal and such further relief as the Tribunal may consider appropriate should be borne by OFCOM.

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 OBE

Registrar

13 July 2007