



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE: 1093/3/3/07

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal on 17 October 2007, under section 192 of the Communications Act 2003 (“the Act”) by T-Mobile (UK) Limited (“the appellant”) against determinations made by the Office of Communications (“OFCOM”) to resolve, pursuant to sections 188 and 190 of the Act, disputes between Hutchison 3G UK Limited (“H3G”) and each of the appellant, O2 (UK) Limited and Orange Personal Communications Limited concerning donor conveyance charges. The three disputes arose out of changes which H3G wished to make to the charges payable in its relationships with each of O2, Orange and the appellant. The determinations were published in a document entitled “Determinations to resolve disputes between Hutchison 3G and each of O2, Orange and T-Mobile concerning donor conveyance charges” on 17 August 2007 (“the DCC Decision”¹).

The donor conveyance charge is a charge payable in relation to calls made to mobile telephone numbers which have been ported from one network to another pursuant to the UK system of mobile number portability. The DCC Decision describes the donor conveyance charge as the charge payable by the recipient network operator to the donating network operator for the routing of a ported call.

The appellant appeals against the DCC Decision on the following grounds:

1. OFCOM erred in its assessment of the period for which the new charges should apply.
 - (a) OFCOM failed to construe General Condition 18 (number portability)² in accordance with Community law, in particular the provisions of the Universal Service Directive³;
 - (b) OFCOM’s approach to “agreement” under General Condition 18.2(a)(i) was erroneous and/or inconsistent; and
 - (c) The retroactive application of donor conveyance charge rates was not permissible as a matter of Community law.
2. OFCOM misdirected itself or erred as to the extent of its powers.
 - (a) OFCOM misunderstood its role in relation to determination of disputes under sections 188 and 190 of the Act and misdirected itself in law by failing to have regard to the possibility of determining the dispute via the modification of General Conditions (or using such other powers as might be appropriate);
 - (b) OFCOM failed to have proper regard to the full extent of its powers to decline to handle a dispute on the basis that an alternative means for resolving the dispute

¹ http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ccases/closed_all/cw_952/deter.pdf

² One of the general conditions set by OFCOM pursuant to section 45 of the Act.

³ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services.

was available, namely modification of General Condition 18 or some other industry-wide approach.

3. OFCOM failed to have regard to the obligation under Article 30(2) of the Universal Service Directive to ensure that pricing for interconnection related to the provision of number portability is cost-oriented.
 - (a) By failing to reduce donor conveyance charges on an industry-wide basis to a cost-oriented level, OFCOM was in breach of Article 30(2) of the Universal Service Directive.
 - (b) OFCOM's failure to impose an industry-wide solution was discriminatory.
 - (c) By creating an arbitrary and un-level playing field in relation to charges for mandatory number portability, OFCOM failed to promote competition.

The appellant seeks the following relief from the Tribunal:

1. The setting aside of the DCC Decision;
2. A requirement that OFCOM take a new decision:
 - (a) on the donor conveyance charge applicable to all mobile network operators, on an equal basis and effective from the same date in respect of all operators; in the alternative,
 - (b) on the donor conveyance charge applicable between T-Mobile and H3G, with any new donor conveyance charge to take effect from the date of the new decision;
3. A direction that OFCOM pay T-Mobile's costs in the appeal;
4. The granting of such further or other relief as may be 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 OBE
Registrar

25 October 2007