



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE: 1079/3/3/07

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal on 29 March 2007, under section 192 of the Communications Act 2003 (“the Act”) by Bracken Bay Kitchens Limited (“the appellant”) against a determination of a penalty in the sum of £40,000 (“the Determination”) by the Office of Communications (“OFCOM”) pursuant to section 130(4) of the Act in respect of persistent misuse of an electronic communications network or service (by means of silent or abandoned calls). The Determination is set out in the “Notice of Imposition of a Penalty under Section 130 of the Communications Act 2003” (“the Penalty Notice”) that was issued to the appellant and published on 30 January 2007¹.

In summary the principal grounds of appeal on which the appellant relies are that:

- (a) Contrary to section 130(5) of the Act, no proper regard was had to the significant steps which the appellant took to ensure that the misuse was brought to an end and was not repeated;
- (b) Contrary to section 130(4) of the Act the penalty was inappropriate and disproportionate;
- (c) The Penalty Notice was inadequately reasoned;
- (d) Contrary to the Penalty Guidelines provided under section 392 of the Act:
 - i) OFCOM’s selection of a starting figure of £40,000 was inappropriate in the absence of an allegation of dishonest or improper motivation; and
 - ii) No proper regard was had to the factors tending to decrease the level of any penalty.
- (e) Contrary to OFCOM’s statement of policy on the persistent misuse of an electronic network or service published in March 2006:
 - i) No proper regard was had to the fact that this was the appellant’s first offence and that this was not a scam motivated by greed; and
 - ii) No proper regard was had to the appellant having done everything required of it in the enforcement notice and in making amends.

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.

¹ See further details at http://www.ofcom.org.uk/bulletins/comp_bull_index/comp_bull_ocases/open_all/cw_905/

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

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