



COMPETITION APPEAL TRIBUNAL

**NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003**

**CASE: 1082/3/3/07**

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal on 9 May 2007 under section 192 of the Communications Act 2003 (“the Act”) by Rapture Television plc (“the appellant”) against a decision (“the Decision”) by the Office of Communications (“OFCOM”) that determined a dispute between the appellant and British Sky Broadcasting Ltd (“Sky”) concerning electronic programme guide (“EPG”) listing charges. The Decision was published on 9 March 2007.

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

- (a) that OFCOM erred in law by defining the scope of the dispute too narrowly and by considering only the charges for Sky’s EPG service, rather than considering whether the basis of Sky’s EPG service provision was fair, reasonable and non-discriminatory in accordance with section 185(8) of the Act.
- (b) that OFCOM failed to consider whether exceptional circumstances existed that would have justified extending the period within which a determination resolving the dispute should be made beyond the normal four month period referred to in section 188(5) of the Act.
- (c) that OFCOM failed properly to exercise its discretion in applying the guidelines on the *Terms of supply of conditional access*, published by the Office of Telecommunications in October 2002, and failed properly to apply the relevant parts of those guidelines.
- (d) that OFCOM failed to conduct a sufficiently thorough investigation (in particular, in relation to cost analysis) and failed to discharge its statutory duties (in particular those relating to transparency and consistency).

The appellant seeks an order from the Tribunal:

- (a) that the Decision be quashed and the dispute be remitted to OFCOM;
- (b) that OFCOM be directed to reconsider the dispute;
- (c) should the Tribunal view it as appropriate, that OFCOM be directed:
  - (i) to reconsider the dispute under its proper scope in accordance with section 185(8) of the Act – that is, whether Sky provided the appellant with EPG services on a fair, reasonable and non-discriminatory basis, including pricing and non-pricing issues;
  - (ii) to conduct a full and thorough costs analysis;
  - (iii) to have regard to its statutory duties, in particular, the duties of transparency and consistency

- (d) that OFCOM (should it find in reconsidering the dispute that Sky's provision of EPG services was not fair, reasonable and non-discriminatory) be directed to take the appropriate action as set out in section 190(2) of the Act concerning the applicable timeframe of the dispute;
- (e) that OFCOM be directed to prescribe what fair, reasonable and non-discriminatory terms would be in relation to any future EPG agreements between Sky and a small free-to-air digital channel such as the appellant; and
- (f) that OFCOM pay the appellant's costs.

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](http://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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