



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE: 1094/3/3/08

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003, as amended by S.I. No. 2068 of 2004) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 29 January 2008, under section 192 of the Communications Act 2003 (“the Act”) by Vodafone Limited (“the appellant”) against a decision (“the Decision”) made by the Office of Communications (“OFCOM”) pursuant to section 48(1) of the Act to modify Part 1 and General Condition 18 of Part 2 of the General Conditions regarding number portability, as set out in OFCOM’s Concluding Statement on Telephone number portability for consumers switching suppliers. The Decision was published on 29 November 2007.

The appellant states that in deciding whether or not to adopt the Decision, OFCOM was obliged:

- (a) to take appropriate steps to obtain all relevant evidence;
- (b) to take account of all relevant evidence;
- (c) correctly to evaluate the likely benefits and detriments arising from the implementation of its proposed Decision, via an appropriate impact assessment, in accordance with section 7 of the Act;
- (d) to consult all interested parties and, in order to allow such consultations to be undertaken effectively, to act transparently, by publishing full details of the evidence and reasoning on which its proposed Decision was to be based; and
- (e) to adopt the Decision only if, having observed all the foregoing requirements, it was reasonably satisfied that the implementation of the Decision would contribute to the attainment of the statutory objectives laid down in sections 3 and 4 of the Act, in compliance with section 47(2) of the Act.

The appellant contends that OFCOM’s Decision is vitiated by its breach of each of the obligations identified in paragraphs (a)-(e) above, each of which breaches individually, and some or all of which collectively, amount to serious procedural and/or substantive errors, as a result of which it is likely that, or there is a serious risk that, the conclusions which OFCOM draws from its cost benefit analyses (to the effect that there will be sufficient net welfare benefits to justify the adoption of its Decision) are wrong, both in respect of the decision to adopt a phased ACQ/CDB routing solution, and in respect of the decision to adopt a recipient-led two hour porting process, with the result that its Decision fails to comply with sections 3, 4 and 47 of the Act.

The appellant seeks the following relief from the Tribunal:

- (a) an order directing OFCOM to set aside the November 2007 Statement, including the Decision, in whole or in part;

- (b) should the Tribunal consider it appropriate, an order remitting back to OFCOM the task of reviewing whether any modifications should be made to General Condition 18, so far as it deals with number portability arrangements;
- (c) should the Tribunal consider it appropriate to remit such matters back to OFCOM, an order directing OFCOM, in conducting such review, to have regard to such findings of fact or directions as the Tribunal shall further consider necessary or appropriate;
- (d) an order that OFCOM pay the appellant's costs of this Appeal; and
- (e) such further and other relief as the Tribunal may consider 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

8 February 2008