



COMPETITION APPEAL TRIBUNAL

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

CASE NO 1100/3/3/08

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (SI 2003, No 1372) (“the Rules”), the Registrar gives notice of the receipt of an appeal dated 7 May 2008, under section 192 of the Communications Act 1998 (“the Act”), by The Number (UK) Limited of Sterling House, Malthouse Avenue, Cardiff Gate Business Park, Cardiff, CF23 8RA (“The Number”) and Conduit Enterprises Limited of Conduit House, East Point Business Park, Dublin 3, Ireland (“Conduit”) (together, “the Appellants”) in respect of Final Determinations made by the Office of Communications (“OFCOM”) on 10 March 2008 in relation to the resolution of price disputes concerning the supply of certain directory information by British Telecommunications plc (“BT”) to the Appellants (“the Determinations”).

The Determinations relate to disputes over whether BT’s charges to the Appellants for supplying directory information from BT’s database known as Operator Services Information System (“OSIS”) are consistent with BT’s regulatory obligations. The Number originally referred a dispute between it and BT to OFCOM under section 185(2) of the Act on 7 September 2005 as to whether and to what extent BT’s charges for the supply of directory information were fair, objective, cost oriented and not unduly discriminatory in compliance with Universal Service Condition 7 (“USC7”), which requires BT to supply its OSIS database to providers of directory enquiry services, such as those provided by the Appellants. Conduit referred a similar dispute between it and BT to OFCOM on 20 December 2005. Both The Number and Conduit subsequently requested OFCOM to also consider in its determination of the disputes the provisions of General Condition 19 (“GC19”), which requires BT and other communications providers to supply certain directory information for the purposes of the provision of certain services, such as those provided by the Appellants.

The Determinations conclude that USC7 is unlawful (for the reasons set out in section 5 of the Determinations) and as a result BT is not required to provide access to the OSIS database under USC7 and therefore no issues arise in relation to the charges paid by the Appellants to BT for the supply of the contents of OSIS. The Determinations also conclude that BT has not overcharged the Appellants for the data that it is required to provide under GC19.

In summary the principal grounds of appeal on which the Appellants rely are that:

- (a) The Determinations are wrong in law and/or are an improper exercise of OFCOM’s discretion;
- (b) OFCOM erred in law in deciding that USC7 is unlawful and that, contrary to OFCOM’s findings in the Determinations, USC7 is lawfully made under the domestic statutory framework and entirely consistent with the requirements of Directive 2002/22/EC of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services (“the Universal Service Directive”); and
- (c) USC7 is the obligation which underpins the supply of directory information from BT’s OSIS to all directory enquiry service providers in the UK and that the Appellants are severely prejudiced by OFCOM’s decision that BT is not bound by its obligations under USC7.

The Appellants seek the following relief from the Tribunal:

- (a) a declaration that USC7 is lawful;
- (b) an order setting aside the Determinations in so far as they hold USC7 to be unlawful;
- (c) an order that OFCOM re-determines the disputes on the basis of USC7 and re-determines the issue of repayment to the Appellants of any overpayment made to BT;
- (d) such further or other relief that the Tribunal may consider appropriate; and
- (e) an order that OFCOM should pay the Appellants' costs of, an incident to, this appeal.

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
Registrar

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