



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos.: 1152/8/3/10 (IR)
1156-1159/8/3/10
1170/8/3/10
1179/8/3/11

BETWEEN:

SKY UK LIMITED
VIRGIN MEDIA, INC.
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED
BRITISH TELECOMMUNICATIONS PLC

Appellants / Intervenors

- v -

OFFICE OF COMMUNICATIONS

Respondent

- and -

TOP UP TV EUROPE LIMITED
RFL (GOVERNING BODY) LIMITED
THE FOOTBALL ASSOCIATION LIMITED
FREESAT (UK) LIMITED
RUGBY FOOTBALL UNION
THE FOOTBALL LEAGUE LIMITED
PGA EUROPEAN TOUR
ENGLAND AND WALES CRICKET BOARD

Intervenors

ORDER (WITHDRAWAL OF APPEALS)

UPON publication of the Pay TV Statement dated 30 March 2010 (the “2010 Statement”) pursuant to which the Office of Communications (“Ofcom”) inserted conditions into Sky’s broadcast licences (the “Conditions”)

AND UPON Sky UK Limited (“Sky”), British Telecommunications plc (“BT”), The Football Association Premier League Limited (“FAPL”) and Virgin Media, Inc. (“VM”) (the “Appellants”) bringing appeals in cases 1158/8/3/10, 1159/8/3/10, 1157/8/3/10 and 1156/8/3/10 respectively, and Sky bringing appeals in cases 1170/8/3/10 and 1179/8/3/11 (the “Appeals”)

AND UPON the Tribunal’s orders dated 29 April 2010 and 23 November 2010 (the “Interim Relief Orders”) pursuant to which sums were paid by BT and Top Up TV Europe Limited (“Top Up TV”) into escrow

AND UPON publication of Ofcom’s Statement dated 19 November 2015 (the “2015 Statement”) pursuant to which: (i) Ofcom decided that Sky was not engaging in a practice prejudicial to fair and effective competition which would warrant regulation; and (ii) the Conditions were withdrawn

AND UPON the Appellants and Ofcom considering the Appeals now to be moot and no longer serving any purpose and Ofcom and the Appellants agreeing to the withdrawal of the Appeals on the terms of this Order

AND UPON Sky and BT agreeing terms for the distribution of funds paid by BT into escrow under the Interim Relief Orders as set out in the confidential annex hereto (the “Confidential Annex”)

AND UPON it being recorded that: (i) none of the Appellants concedes that its appeal was unfounded; and (ii) Ofcom does not concede that any of the Appeals were well-founded

AND UPON BT indicating that it may seek to appeal the 2015 Statement (the “Putative Appeal”)

AND UPON BT agreeing that, in the event that the Putative Appeal or any other appeal against the decisions contained in or contingent upon the 2015 Statement results in any such decision or decisions being set aside or withdrawn in whole or in part, BT will not seek to argue that the Conditions are, or are to be treated as being, automatically re-inserted into Sky’s broadcast licences by operation of law (without prejudice to BT’s liberty to argue that an appropriate condition should be inserted into any of Sky’s broadcast licences, either pursuant to the final disposal of the Putative Appeal or on an interim basis pending such final disposal)

IT IS ORDERED THAT:

1. Pursuant to Rule 12 of the Competition Appeal Tribunal Rules (S.I. 2003 No. 1372) the Appellants be permitted to withdraw their Appeals on the terms of this Order
2. The issue of costs as between Ofcom and Sky be determined by the Tribunal, if not agreed
3. The funds paid by BT into escrow under the Interim Relief Orders be paid out according to the terms set out in the Confidential Annex

4. Subject to paragraph 5 below, the distribution of funds paid into escrow by Top Up TV under the Interim Relief Orders, if not agreed, be determined by the Tribunal on the papers on the basis of what is just and equitable in all the circumstances and with no claim to the funds being prejudiced by paragraph 1 above; Sky and Top Up TV's primary written submissions be filed and served by 5pm on 26 February 2016; any written submissions in reply be filed and served by 5pm on 18 March 2016
5. Sky serve a copy of this Order on Top Up TV within 3 working days of the Order being made by the Tribunal; any application by Top Up TV to vary paragraph 4 of this Order be filed and served within 4 weeks of service of the Order on it
6. Save as aforesaid, there be no order as to costs
7. There be liberty to apply

Peter Freeman C.B.E., Q.C. (*Hon*)
Chairman

Prof. John Beath O.B.E.

Michael Blair Q.C. (*Hon*)

Charles Dhanowa O.B.E., Q.C.
(*Hon*)
Registrar

Made: 18 December 2015
Drawn: 18 December 2015