



The Competition Commission Appeal Tribunals

NOTICE OF APPLICATION UNDER SECTION 47 OF THE COMPETITION ACT 1998 CASE NO. 1007/2/3/02

Pursuant to Rule 13 of the Competition Commission Appeal Tribunal Rules 2000 ("the Rules"), the Registrar of the Appeal Tribunals gives notice of the receipt of an application, dated 9 September 2002, under section 47 of the Competition Act 1998 ("the Act") by Freeserve.com plc of Maylands Avenue, Hemel Hempstead, Herts HP2 7TG ("the Applicant") in respect of a decision taken by the Director General of Telecommunications ("the Director") and contained in a letter to the Applicant dated 8 July 2002 ("the Contested Decision"). The Applicant is a company engaged in internet access provision throughout the United Kingdom and is a subsidiary of the France Telecom group.

The Contested Decision *inter alia* rejected the Applicant's request to the Director to withdraw or vary the decision issued on 21 May 2002 ("the Relevant Decision"), taken following an investigation by OFTEL between 16 April 2002 and 21 May 2002, of a complaint submitted by the Applicant to the Director on 26 March 2002. The Relevant Decision found that the information provided in the Applicant's complaint (in relation to the sales and marketing conduct of BT plc ("BT") in what the Applicant characterises as the residential broadband market) did not provide evidence of anti-competitive behaviour by BT and the Director did not therefore consider that the issues raised warranted further investigation. The Contested Decision stated that the Relevant Decision had not been taken using the Director's powers under the Act.

The applicant seeks the following relief:

1. that the Contested Decision be set aside;
2. that the Tribunal find that BT has infringed the Chapter II prohibition (section 18 of the Competition Act 1998);
3. as an alternative to the relief sought at point 2. above, that the matter be remitted to the Director for proper consideration and investigation;
4. that certain interim directions be ordered against the Director, being (in summary) the disclosure of all relevant documents, evidence and correspondence (including economic models and the results generated by them) which form the basis of the Contested Decision and which formed part of the Director's investigation;
5. that costs should be awarded to the Applicant.

The principal grounds on which the Applicant relies are that the Director has:

- (a) taken an appealable decision within the meaning of section 46 of the Act, namely a decision of non-infringement by BT of the Chapter II prohibition; and
- (b) incorrectly failed to withdraw or vary that decision under section 47 of the Act.

In reaching that decision, the Applicant claims that:

1. the Director misapplied the Chapter II prohibition and therefore erred in law; and/or
2. the Director misdirected himself in failing to attribute proper weight to the evidence and in particular relied largely upon assertions, failed to investigate issues adequately and failed to allow the submission of further evidence, resulting in manifest errors of fact; and/or
3. the Director gave inadequate and opaque reasons for his decision.

Any person who considers that he has sufficient interest in the Contested Decision may make a request for permission to intervene in the proceedings, in accordance with Rule 14 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Commission Appeal Tribunals, New Court, 48 Carey Street, London WC2A 2JT, so that it is received within **one month** of the publication of this notice.

Further details concerning the procedures of the Competition Commission Appeal Tribunals can be found on its website at www.competition-commission.org.uk. Alternatively the Tribunal Registry can be contacted by post at the above address or by telephone (020 7271 0395) or fax (020 7271 0281). Please quote the case number mentioned above in all communications.

Charles Dhanowa
Registrar

13 September 2001