



## COMPETITION APPEAL TRIBUNAL

### **SUMMARY OF APPEAL UNDER SECTION 47 OF THE COMPETITION ACT 1998 CASE NO 1024/2/3/04**

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar of the Competition Appeal Tribunal gives notice of the receipt of an appeal, dated 2 January 2004, under section 47 of the Competition Act 1998 (“the Act”) by the administrators of **Floe Telecom Limited** (“Floe”) in respect of a decision dated 3 November 2003 (“the Decision”) made by the **Director General of Telecommunications** (“the Director”).<sup>1</sup>

According to the Decision<sup>2</sup> the Director rejected a complaint by Floe and decided that Vodafone Limited (“Vodafone”) had not infringed the prohibition on abuse of a dominant position contrary to the Chapter II prohibition contained in section 18 of the Act by periodically suspending Floe’s GSM Gateway services on the grounds of unlawful activity yet still permitting GSM Gateway services by others, including its own service providers.

By way of relief the appellant seeks the overturning of the Director’s findings detailed in Chapter 5 of the Decision.

In summary the principal grounds of appeal relied on are:

1. the Director’s failure to investigate “private” GSM gateways when they formed part of the complaint;
2. a failure by the Director to base his investigation on the legislation prevailing at the time;
3. the use by the Director of an incorrect assumption in coming to his conclusions. The Director clearly thought that Floe had been made an interconnection offer although this was not so.

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, New Court, 48 Carey Street, London WC2A 3BZ, 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

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<sup>1</sup> Under section 408(5) and Article 3(2) of the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No.2) Order 2003 SI no 3142 anything which was done by the Director prior to 29 December 2003 is to have effect after that time as if it had been done by the Office of Communications (“OFCOM”).

<sup>2</sup> The text of the decision may be found at <http://www.ofcom.gov.uk/Business/Competition+Act/Decisions/Vodafone-Floe.htm>

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

Published 14 January 2004