



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1152/8/3/10 (IR)

B E T W E E N:

BRITISH SKY BROADCASTING LIMITED

Appellant

- supported by -

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED

Intervener

- v -

OFFICE OF COMMUNICATIONS

Respondent

- supported by -

BRITISH TELECOMMUNICATIONS PLC
TOP UP TV EUROPE LIMITED
VIRGIN MEDIA, INC.
ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED

Interveners

DAVID HENRY
REAL DIGITAL EPG SERVICES LIMITED

Appellants

ORDER

UPON British Sky Broadcasting Limited ("Sky") having brought an appeal on 1 June 2010 against the decision of the Office of Communications ("OFCOM") dated 31 March 2010 contained in a document entitled "Pay TV Statement" (the "Decision") under section 317(6) of the Communications Act 2003 and the Tribunal Rules (S.I. No. 1372 of 2003) (the "Appeal")

AND UPON Sky having brought an application for interim relief in respect of the Decision which application was settled by a consent order on 29 April 2010 (the "Interim Order")

AND UPON considering an application (the "Application") by Mr David Henry and REAL Digital EPG Services Limited ("REAL") to amend the Schedule to the Interim Order

AND UPON reading the written submissions and evidence of the parties and hearing submissions from Mr David Henry/REAL, Sky and OFCOM at an oral hearing on 29 October 2010

AND UPON the Tribunal handing down its judgment in respect of the Application on 8 November 2010 ([2010] CAT 29) (the "Judgment")

AND UPON the parties agreeing to the terms of this Order save in so far as the President has not acceded to REAL's request to include the words "and Ireland" in paragraph 1 of the Schedule hereto

AND UPON REAL undertaking to the Tribunal:

- (1) to pay into escrow, in respect of each customer supplied under Conditions 14A in the licences for Sky Sports 1 and Sky Sports 2, the difference between:
 - (a) the prices to be paid for Sky Sports 1, Sky Sports 2, or Sky Sports 1 and 2 (as appropriate) under those Conditions; and
 - (b) Sky's rate card prices for the same service (which are as at the date of this Order, Sky Sports 1 - £15.00, Sky Sports 2 - £15.00 and Sky Sports 1 and 2 - £20.70 excluding VAT per subscriber per month) as notified from time to time, subject to any increase in rate card prices not being greater than any corresponding absolute increase in Sky's retail prices for Sky Sports 1, Sky Sports 2, or Sky Sports 1 and 2 (as appropriate), for which purpose Sky's retail prices shall be calculated on a weighted average basis in accordance with the methodology set out in paragraph 1.239 of Annex 7 of the Decision
- (2) that such sums as the Tribunal considers appropriate be paid out of the escrow at the final determination of the Appeal for the purpose of compensating Sky for any difference between the sums paid in accordance with the prices in (a) and the sums the Tribunal considers should have been paid.

IT IS ORDERED THAT:

1. OFCOM's decision to insert the Conditions contained at §12.14 of the Decision (the wholesale must offer obligation) into the licences referred to at paragraph 12.14 of the Decision is implemented in respect of REAL subject to the above undertaking and the attached schedule, but otherwise remains suspended subject to the Interim Order and until further order.
2. There be general liberty to apply.

The Honourable Mr Justice Barling
President of the Competition Appeal Tribunal

Made: 23 November 2010
Drawn: 23 November 2010

SCHEDULE

For the purposes of this Order:

Condition 14A is varied as follows:

1. Qualifying Platform means REAL's platform for distribution of channels to residential customers in the United Kingdom via direct to home (DTH) satellite.
2. Condition 14A(3) of each of the Sky Sports 1 TLCS licence and the Sky Sports 2 TLCS licence is varied so that "publish by Friday 14 May 2010" is replaced by "provide to REAL Digital EPG Services Limited by 10 December 2010".
3. The obligations in condition 14A(1) and (2) of each of the Sky Sports HD TLCS licence and Sky Sports 2 HD TLCS licence shall apply to REAL in respect of Sky Sports 1 HD and/or Sky Sports 2 HD on REAL providing credible evidence to Sky that it would be able to offer the relevant service within 90 days of provision of an offer for supply by Sky under 14A(1), such offer to be provided within 42 days of request.
4. Condition 14A(2) of each of the Sky Sports HD TLCS licence and Sky Sports 2 HD TLCS licence is varied so that the date for compliance is varied in accordance with the provisions of paragraph 3 above.

And:

5. At the same time as providing material under any of paragraphs (2)-(4) above, Sky shall provide the same to OFCOM.