



COMPETITION APPEAL TRIBUNAL

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

**CASE NO: 1066/3/3/06**

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 on 30 May 2006, under section 192 of the Communications Act 2003 (“the Act”), by Hutchison 3G (UK) Limited (“the appellant”) against a decision (“the decision”) made by the Office of Communications (“OFCOM”) in respect of/contained in a statement entitled “Number Portability and technology neutrality - Modification to the Number Portability General Condition and the National Telephone Numbering Plan” dated 30 March 2006 (“the statement”)<sup>1</sup> and/or OFCOM’s failure to act on the concerns raised by the appellant regarding the inefficiencies and inadequacies of the implementation of the number portability system in the United Kingdom insofar as it relates to mobile number portability (“the failure to act”).

According to the appellant, the statement and the failure to act constitute an appealable decision/appealable decisions under the Act in that:

- (a) the statement, in that it expressly or impliedly rejects the appellant’s substantive concerns, not least as it only makes limited amendments to General Condition 18 of the General Conditions of Entitlement and relevant related documents, is a decision taken under Part II of the Act, in particular section 45, 58 and 60; and/or
- (b) The failure to act on the concerns raised by the appellant amounts to a failure by OFCOM to comply with a request to take a decision and/or to exercise a power and/or to perform a duty, which constitutes an appealable decision pursuant to section 192(7)(b) of the Act.

The appellant’s grounds of appeal are as follows:

- (a) the decision constitutes an error of assessment in that OFCOM failed adequately to consider or take into account the appellant’s concerns; and/or
- (b) the decision constitutes an error of assessment and/or law in that OFCOM failed to act despite the substantive material before it and/or is inconsistent with Article 30 of Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services (“the Universal Service Directive”);<sup>2</sup> and/or
- (c) the decision constitutes an error of law and/or assessment in that it is inconsistent with OFCOM’s duties under the Act, inter alia, to further the interests of consumers (section 3(1)(b)) having regard to the desirability of promoting competition in the relevant markets (section 3(4)(b)) and the desirability of encouraging investment and innovation (section 3(4)(d)), to set conditions (section 45) to oblige communication providers to secure compliance with such

<sup>1</sup> The statement can be found at:

[http://www.ofcom.org.uk/consult/condocs/numport/mod/mod\\_statement.pdf](http://www.ofcom.org.uk/consult/condocs/numport/mod/mod_statement.pdf)

<sup>2</sup> OJ [2002] L108/51.

rules relating to the use of telephone numbers by their customers (section 58(1)(i)) and the general duty as to telephone number functions, namely to encourage efficiency and innovation with regard to the use of telephone numbers (section 63); and/or

- (d) the decision fails to give any or any adequate reasons.

The appellant seeks the following relief:

- (a) that the decision be quashed in whole or in part; and/or
- (b) an order remitting the matter to OFCOM with a direction that OFCOM consider the substantive issues raised by the appellant and consider/consult on proposals for improved mobile number portability in the United Kingdom within three months; and
- (c) such other relief as the Tribunal shall consider necessary or appropriate.

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](http://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  
12 June 2006