

CAT overturns dark fibre access remedy

28/07/2017 (EU/Competition)

On 26 July 2017 the Competition Appeal Tribunal allowed an appeal by BT against OFCOM's Business Connectivity Market Review concerning competition in the provision of leased lines ("BCMR").

In the BCMR OFCOM imposed a dark fibre access remedy permitting competing communications providers regulated access to BT's dark fibre to which they would attach their own equipment in order to "light" the fibre.

The dark fibre access remedy was premised on OFCOM's conclusions as to the definition of the relevant market. OFCOM defined a single product market for contemporary interface symmetric broadband origination ("CISBO") services of all bandwidths; and four separate relevant geographic markets: the Central London Area; the London Periphery; Hull; and the Rest of the UK ("RoUK"). OFCOM also made determinations as to the extent of BT's core network.

BT appealed against the BCMR. Virgin Media Limited intervened in support of BT. Gamma Telecom Holdings Limited intervened in support of BT on the matter of geographic market definition.

The Tribunal found that OFCOM had erred in concluding that it was appropriate to define a single product market for CISBO services of all bandwidths and in concluding that the RoUK comprises a single geographic market. OFCOM also erred in its determination of the extent of BT's core network. The Tribunal quashed OFCOM's decisions in respect of these matters and remitted the matter to OFCOM for reconsideration.

Sarah Ford QC (instructed by Ashurst LLP) appeared for Virgin Media Limited.

Sarah Love and Tim Johnston (instructed by Charles Russell Speechlys) appeared on behalf of Gamma Telecom Holdings Limited.

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