



Neutral citation [2008] CAT 4

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1094/3/3/08

Victoria House
Bloomsbury Place
London WC1A 2EB

28 February 2008

Before:

Lord Carlile of Berriew QC (Chairman)

BETWEEN:

VODAFONE LIMITED

Appellant

-v-

OFFICE OF COMMUNICATIONS

Respondent

ORDER OF THE CHAIRMAN

1. This is an application by the respondent, OFCOM, for an extension of time for serving its defence which is due at 5pm on 12 March 2008¹. The extension sought is relatively short one until 5pm on 28 March 2008 (taking into account the Easter public holiday).
2. The application takes the form of a letter dated 19 February 2008. The grounds set out in the letter are that OFCOM is engaged in various appeals currently before the Tribunal (Cases 1083, 1085, 1089-1092); Vodafone has raised a large number of detailed factual issues; and the importance of the decision under appeal (OFCOM's Concluding Statement, *Telephone number portability for consumers switching suppliers*, dated 29 November 2007²) for the telecommunications industry, and ultimately for consumers, makes it essential that OFCOM has an opportunity to respond fully and effectively to the grounds of appeal.
3. The application is opposed by the appellant, Vodafone, primarily on the basis that prolongation of the appeal timetable increases the risk that time, money and resources would be wasted by all network operators if Vodafone's appeal is successful. Vodafone refers to the cost of having to comply with the deadlines laid down by the contested decision pending the appeal. Vodafone also expresses surprise that OFCOM is having difficulties in preparing its defence given that it has been working on mobile number portability for more than a year.
4. Both parties were content for me to consider OFCOM's application on the papers, and I have carefully considered their submissions. For the reasons set out below, my decision is that it is reasonable in the particular circumstances of this case to extend time for service of the defence until 5pm on 28 March 2008.
5. First, it will be important for OFCOM to clarify in its defence the matters at issue in this appeal, and in particular why it considers that it has correctly

¹ The provisions governing the filing and service of the defence are contained in rule 14 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003, as amended by S.I. No. 2068 of 2004) ("the Tribunal Rules").

² <http://www.ofcom.org.uk/consult/condocs/gc18review/statement/statement.pdf>

evaluated the likely benefits and detriments arising from the implementation of its decision on mobile number portability. A full and properly argued defence is particularly important in this case since both parties emphasise the wider public interest implications of the contested decision. A full defence will also have the benefit that supplemental pleadings should not be necessary.

6. Second, on the face of the submissions, the extension does not appear to prejudice Vodafone to any material degree, and not in a way that cannot be dealt with by a slight adjustment to the timetable for the case. As regards the costs associated with having to comply with the decision pending the appeal, as is normally the case: a decision stands unless and until it has been set aside. Furthermore, it was (and still is) open to Vodafone to make an appropriate application for an order under rule 61 of the Tribunal Rules suspending, pending the hearing of Vodafone's substantive appeal, certain aspects of the decision.
7. Third, the short delay in filing and serving the defence in this case is not likely to be prejudicial to the Tribunal's management of the case since a comprehensive timetable down to the oral hearing has yet to be laid down, and Vodafone's concerns as to expedition can be factored in to the determination of the dates for further steps in the preparation of the case and the fixing of the oral hearing.
8. For the reasons given above, I therefore extend the time limit for the serving the defence until 5pm on 28 March 2008.

Lord Carlile of Berriew QC
Chairman of the Competition Appeal Tribunal

Made: 28 February 2008
Drawn: 28 February 2008