



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

Case No: 1712/3/3/25

Pursuant to Rule 14(2) of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (the “Rules”) the Registrar gives notice of the receipt of an appeal on 11 February 2025 under section 192 of the Communications Act 2003 (the “Act”), by Mr David Henry against alleged decisions of the Office of Communications (“Ofcom”) relating to alleged failures by Ofcom to regulate local television and to take enforcement action in relation to alleged breaches of statutory duty.

Mr Henry alleges Ofcom has been made aware of serious and ongoing breaches of statutory duty with regards to the “localness” of L-DTPS services operated by That’s Television Limited, a company operating local news and information channels. According to Mr Henry’s Notice of Appeal (“NoA”), this appeal relates to public interest issues which arose in June 2018 resulting in an alleged chain of decisions that Ofcom has taken since that date.

The NoA alleges that, since that decision taken by Ofcom in June 2018, there has been, it is said, an “exceptional nature of bifurcation” of Ofcom decisions leading to this appeal, including alleged repeated breaches of the statutory duty for “minimum localness” that are said to be against the public interest. Mr Henry alleges that Ofcom has refused to investigate a detailed complaint he submitted in relation to this. As regards the June 2018 decision, Mr Henry alleges Ofcom failed to promote competition in the local television market when it failed to notify either the Competition and Markets Authority or the Secretary of State of a merger.

In this regard, the NoA refers to an alleged transfer of five Scottish local television broadcast licences to That’s Television Limited, giving it a majority shareholding of Comux UK Limited, a multiplex and technical transmission operator for local television programme services, and therefore, it is alleged, effective control over the local television broadcast infrastructure. The NoA alleges that this transaction was not only against the public interest, but it gave That’s Television Limited significant market power and control of the revenue of Comux Limited and its local broadcast television infrastructure.

The NoA further alleges that a series of licence change requests by That’s Television Limited then followed and were agreed to by Ofcom to allegedly reduce the “localness programme requirements”. It is alleged these changes were agreed to by Ofcom even when objections were made during consultations. The NoA states in this regard that Ofcom failed to enforce “the statutory requirements for the localness minimum programme requirements”, and that after the failure was notified to it, it has taken no corrective action. It is further alleged that Ofcom has failed to have regard to fundamental undertakings under section 3, subsection 4 of the Communications Act 2003.

As regards the relief sought, Mr Henry seeks inter alia:

- a) an injunction against Ofcom preventing it from engaging in any process allowing the extension of local television broadcast licences held by That’s Television Limited or any of its linked companies until such time as the complaint raised relating thereto is fully investigated and corrective action has been taken;
- b) an order directing Ofcom to enforce its statutory duties ensuring the “localness minimum requirements are investigated and enforced without delay”, as well as preventing “any further breaches of the localness statutory duty”; and
- c) costs and damages for alleged regulatory failure and failure to protect the public interest.

Any person who considers that they have 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, Salisbury Square House, 8 Salisbury Square, London, EC4Y 8AP, 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. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa CBE, KC (Hon)
Registrar

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