



COMPETITION APPEAL TRIBUNAL

# The United Kingdom Experience

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# UK Statutes & *Instruments*

- Competition Act 1998
- Enterprise Act 2002
- Communications Act 2003
  
- *Competition Appeal Tribunal Rules 2003*

# Competition Act 1998

- Created a specialist appellate body in 2000
- Since 2003, the Competition Appeal Tribunal (CAT)
- Permits **appeal on the merits**
- The CAT can exercise the powers of an NCA
- **Two weapons** in the armoury of an aggrieved party in communications markets - public law and private enforcement

# Competition Act Appeals

- **Freemove v DGT/Wanadoo v Ofcom** (France Telecom)
  - Allegation of predatory behaviour on internet access
- **Floer Telecom** (and VIP Communications)
  - Refusal to supply GSM gateway services

# Communications Act 2003

- Implements the EU Framework Directives
- Ofcom operates the market definition, SMP, remedy process with national and EU consultations
- Ofcom is the first point of call for dispute resolution
- Complemented by an extra-statutory telecommunications adjudicator
- Provides for article 4 *appeals on the merits*
- Principal remedy quash and remit to Ofcom

# Communications Act Appeals

- Finding of SMP
  - Hutchison 3G - first appeal
- Processes for enabling competition
  - **Co-regulation** and the pace of transferring mobile customers
  - Use/misuse of confidential information
  - Non-geographic numbers
  - Number portability

# Enterprise Act 2002

- Domestic competition law
  - Mergers
  - Market investigations
  - Criminal cartels
- New powers for the CAT
  - Monetary claims after competition infringement decisions - UK and EU Commission
  - Judicial review of merger and market decisions

# Enterprise Act Undertakings

- **Undertakings**

- *in lieu* of a reference to the Competition Commission for a market investigation
- A form of ex ante regulation outside the EU framework - supervised by NCA (Ofcom)
- Used by Ofcom and BT to create ***Openreach*** as a distinct access supplier
- Subject to judicial review by the CAT

# Appeals and Reviews in the UK

- The CAT is a UK wide appellate/review body
- Regional courts may judicially review decisions
- Regional appeal courts may review points of law from the CAT
- The House of Lords (UK's supreme appellate court) may review points of law from regional appeal courts
- Any may refer questions to the ECJ - Art. 234

# Competition Appeal Tribunal Rules 2003

- Complemented by the [www.cattribunal.org.uk](http://www.cattribunal.org.uk) and a *Guide to Proceedings* (October 2005)
- Govern proceedings before the CAT
  - Amended in 2004 to take account of communications law changes
  - Provides for interim orders and measures
  - The CAT may suspend an NRA decision

# Decisions may be suspended

Principles to be applied by the CAT under Rule 61

- *Prima facie* case Rule 61(6)
- Rule 61(2)
  - Preventing serious, irreparable damage
  - Protecting the public interest
- Rule 61(3)
  - Urgency
  - Effect if the request is not granted
  - Effect on competition if the request is granted

# Expertise of the CAT

- **Three sit on each appeal**
  - “an expert and specialised body”
- **President** - *about to have a fresh appointment*
  - Sir Christopher Bellamy CAT 1999-2006 CFI 1992-1999
- **Chairmen**
  - Three lawyers chosen by competition
  - Sixteen English chancery judges
  - *Scottish and Northern Irish judges not yet appointed*
- **Members** – a panel now of 17 - now 8 year fixed terms
  - Six with academic/ professional legal backgrounds
  - Six with academic/ professional economics backgrounds
  - Six with varied backgrounds without legal/economics backgrounds

# Relationship between the CAT, UK judges and the Commission

- Commission:
  - Recommendations and Guidance
  - Comments and clearance of the SMP decision being appealed
  - Comments, serious doubts, clearance and vetoes of other SMP decisions
- Crehan – House of Lords decision 2006
  - Commission - expert, evidential, persuasive but possibly wrong on the particular facts of new case
- Informal relationships

# Relationship with other EU judges and jurisdictions

- Weekly monitoring and regular training
- Taking account of decisions taken elsewhere
- Association of European Competition Law Judges
- OECD training
- 2004 and 2005 meetings of article 4 judges and referendaires - EIPA and the Commission

[www.cab.org.uk](http://www.cab.org.uk)