



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1155/3/3/10

**B E T W E E N :**

**TOP UP TV EUROPE LIMITED**

Appellant

-v-

**OFFICE OF COMMUNICATIONS**

Respondent

- and -

**VIRGIN MEDIA, INC.**

**BRITISH SKY BROADCASTING LIMITED**

**BRITISH TELECOMMUNICATIONS PLC**

Proposed Interveners

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**AMENDED ORDER**

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**UPON** reading the notice of appeal lodged by Top Up TV Europe Ltd (“Appellant”) dated 27 May 2010 in respect of the statement published on 31 March 2010 by the Office of Communications (“Respondent”) regarding the “Picnic” proposal from British Sky Broadcasting Limited (“Sky”) and Arqiva (formerly National Grid Wireless Limited) (“Arqiva”), which set out the conditions under which decisions would be made pursuant to the relevant Broadcasting Act licences of Sky and Arqiva in order to enable Sky to broadcast and retail pay TV channels on digital terrestrial television (the “Decision”);

**AND UPON** reading the Appellant’s application dated 27 May 2010 for a stay of proceedings or, alternatively, for an extension of time for commencement of any appeal

pursuant to Rule 8 of the Competition Appeal Tribunal Rules (S.I. 1372 of 2003) (the “Tribunal Rules”);

**AND** without prejudice to the views of both the Appellant and Respondent that the Tribunal does not currently have any jurisdiction to hear an appeal in relation to the Decision because there has been no exercise of a Broadcasting Act 1996 power for a competition purpose within the meaning of section 317 of the Communications Act 2003;

**AND UPON** reading the requests for permission to intervene from:

- (1) Virgin Media, Inc. dated 6 July 2010;
- (2) British Sky Broadcasting Ltd dated 6 July 2010;
- (3) British Telecommunications pc dated 7 July 2010.

**AND UPON** the parties’ indication that they agree to the terms of this Order;

**AND UPON** reading correspondence from the legal representatives of the parties and British Sky Broadcasting Ltd relating to the terms of this Order in its unamended form as made on 14 July 2010

**IT IS ORDERED THAT:**

1. Pursuant to rule 18 of the Tribunal Rules, the proceedings be treated as proceedings in England and Wales.
2. The Appellant shall by 4pm on 23 July 2010 provide the Tribunal with ten certified copies of the notice of appeal in accordance with rule 8(7) of the Tribunal Rules.
3. The proceedings (including the applications for permission to intervene) be stayed until further order or any of the following relevant Broadcasting Act decisions is taken by the Respondent (so as, in any of these cases, to enable Sky to broadcast and retail certain pay TV services on digital terrestrial television in accordance with the Decision):
  - 3.1. to modify Sky’s digital television programme services licence as to the services provided on multiplex C; and/or

- 3.2. to modify the services listed in the definition of “Core Proposals” under Arqiva’s multiplex C licence; and/or
  - 3.3. to provide consent under condition 11(11) of Arqiva’s multiplex C licence; and/or
  - 3.4. to extend and/or modify either or both of the consents provided by the Respondent on 16 June 2010 under condition 11(11) of Arqiva’s multiplex D licence and under condition 11(11) of BBC Free to View’s multiplex B licence; and/or
  - 3.5. to provide consent to Arqiva under condition 11(8) of Arqiva’s multiplex C or D licence and/or under condition 11(8) of BBC Free to View’s multiplex B licence.
4. The Appellant may, within 2 months of the lifting of the stay, apply to amend its notice of appeal so as to comply with rule 8 of the Tribunal Rules, if so advised.
  5. There be liberty to apply.

**The Honourable Mr Justice Barling**  
President of the Competition Appeal Tribunal

Made: 14 July 2010]  
Amended: 3 August 2010]  
Drawn: 14 July 2010  
Re-drawn: 6 August 2010