

**Telecoms: resisting a code agreement, and
terms of agreements, following CTIL v UAL**

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The recording may be accessed [here](#).

When will an agreement be imposed?

What is the test to be applied by the court?

- 21(1) Subject to sub-paragraph (5), the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.
- (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.
 - (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.
 - (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.
 - (5) The court may not make an order under paragraph 20 if it thinks that the relevant person intends to redevelop all or part of the land to which the code right would relate, or any neighbouring land, and could not reasonably do so if the order were made.

The test for what terms to impose

What are the terms of an agreement imposed under paragraph 20?

- 23 (1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
- (2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
- (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).
- (4) Paragraph 24 makes provision about the determination of consideration under sub-paragraph (3).
- (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
- (a) occupy the land in question,
 - (b) own interests in that land, or
 - (c) are from time to time on that land.

...

Upgrading and sharing

Power for operator to upgrade or share apparatus

- 17(1) An operator (“the main operator”) who has entered into an agreement under Part 2 of this code may, if the conditions in sub-paragraphs (2) and (3) are met—
- (a) upgrade the electronic communications apparatus to which the agreement relates; or
 - (b) share the use of such electronic communications apparatus with other operators.
- (2) The first condition is that any changes as a result of the upgrading or sharing to the electronic communications apparatus to which the agreement relates have no adverse impact, or no more than a minimal adverse impact, upon its appearance.
- (3) The second condition is that the upgrading or sharing imposes no additional burden on the other party to the agreement.
- (4) For the purposes of sub-paragraph (3) an additional burden includes anything that—
- (a) has an additional adverse effect on the other party's enjoyment of the land, or
 - (b) causes additional loss, damage or expense to that party.
- (5) Any agreement under Part 2 of this code is void to the extent that—
- (a) it prevents or limits the upgrading or sharing, in a case where the conditions in sub-paragraphs (2) and (3) are met, of the electronic communications apparatus to which the agreement relates, or
 - (b) it makes upgrading or sharing of such apparatus subject to conditions to be met by the operator (including a condition requiring the payment of money).

Thank you for listening

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