

SECOND TELECOM LIMITED

v

THE DATA PROTECTION COMMISSIONER

and

TOP 20 LIMITED

v

THE DATA PROTECTION COMMISSIONER

CASE DA/00 31/49/3

APPEAL DECISION

**Members of the Tribunal: David Marks (Deputy Chairman)
Melanie Howard and Jean Nelson**

1. This is a consolidated appeal against enforcement notices, both dated 25 May 2000, served on **Second Telecom Limited** (a company registered in England and Wales under company number 03377448) and **Top 20 Limited** (a company registered in England and Wales under company number 03440393) by the **Data Protection Commissioner** (referred to as the “Commissioner”). Both companies (together referred to as the “Caller”) appealed by way of Notices or Appeal both dated 2 June 2000.
2. During the course of the appeal process discussions between the Caller and the Commissioner took place. These concluded in an agreement between the Commissioner and the Caller.
3. Further to such agreement, by consent, it is ordered by the Tribunal that, pursuant to section 49 of the Data Protection Act 1998, the following notice substitutes each of the Enforcement Notices served by the Commissioner upon the Caller (and each of them):

That the Caller, Second Telecom Limited and/or Top 20 Limited, shall within the period of thirty days from the date of this Notice have taken such steps as are necessary to ensure compliance with regulation 23 of the Telecommunications (Data Protection and Privacy) Regulations 1999 (the “Regulations”), namely:

- (a) **The Caller shall not use, or instigate the use of, publicly available telecommunications services for the unsolicited communication of material, for direct marketing purposes, by means of facsimile transmission, where the called line is that of a subscriber who has previously notified the Caller that such**

unsolicited communications as are so mentioned should not be sent on that line;

- (b) The Caller shall not use, or instigate the use of, publicly available telecommunications services for the unsolicited communication of material, for direct marketing purposes, by means of facsimile transmission, where the called line is one that is subject to this paragraph (b). A called line shall be subject to this paragraph (b) at the expiration of seven working days of any notice in writing from the Commissioner to the Caller that the line in question is the subject of a complaint alleging a breach by the Caller of paragraph (a) above of this Notice; and**
- (c) The Caller shall not use, or instigate the use of, publicly available telecommunications services for the unsolicited communication of material, for direct marketing purposes, by means of facsimile transmission, where the number allocated to a subscriber in respect of the called line is one listed in the record kept under regulation 23(4) of the Regulations except when that number was not so listed at any time within the 28 days preceding that on which the call is made.**

- 4. It was further agreed between the Commissioner and the Caller that the Commissioner would serve upon the Caller (and each of them) Enforcement Notices addressing the issue of compliance with regulation 24 of the Regulations.
- 5. No order as to costs.

Dated the 20th day of November 2000

Signed: David Marks

David Marks
Deputy Chairman
Data Protection Tribunal