



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE NO 1167/3/3/10

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003, as amended by S.I. No. 2068 of 2004) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 11 August 2010 under section 192 of the Communications Act 2003 (“the Act”) by Everything Everywhere Limited (“EE”) of Hatfield Business Park, Hertfordshire, AL10 9BW against a determination made by the Office of Communications (“OFCOM”) contained in a document dated 11 June 2010 and entitled “Determination to resolve a dispute between Stour Marine and O2 about termination rates”¹ (“the Determination”). EE is represented by its regulatory counsel at the above address (reference: Robyn Durie / Xavier Mooyaart).

The Determination concerns a dispute between Stour Marine Limited (“Stour Marine”) and Telefónica O2 UK Limited (“O2”) in relation to the termination rates payable for voice calls that originate on O2’s network and that terminate on Stour Marine’s network. According to the Determination, OFCOM concluded that the termination rate applicable to calls originating on O2’s network and terminating on number ranges on Stour Marine’s network should be set at the lowest current regulated mobile termination rate for such calls, which for the charge control year running from 1 April 2010 to 31 March 2011 is 4.4 pence per minute in nominal terms. OFCOM also concluded that O2 and Stour Marine should enter into a transaction such that O2 is obliged to open Stour Marine’s number ranges on its network so that O2 customers will be able to call Stour Marine customers, and vice versa.

In summary, EE submits that the Determination was based on an error of fact and/or law in its characterisation of the service(s) provided by Stour Marine, and the inferences it thereby drew in respect of an appropriate termination rate. EE advances the following main grounds of appeal:

- (a) OFCOM erred in its conclusion that Stour Marine offers wholesale mobile voice call termination in the same way as the incumbent mobile network operators (“MNOs”).
- (b) OFCOM erred in its assessment of the appropriate termination rate. In particular:
 - a. OFCOM’s competing pricing options for setting the termination rate were based on wrong assumptions.
 - b. OFCOM erred in its choice of an appropriate benchmark rate for its assessment of an appropriate termination rate.
 - c. OFCOM erred in its assessment of the effects on competition and consumers of its competing pricing options.
 - d. OFCOM erred in its assessment of principles of pricing and cost recovery.

As regards the relief sought, EE asks that the Tribunal:

- (a) set aside the challenged decision;
- (b) direct OFCOM to take a new decision in accordance with its judgment on the appeal;
- (c) award EE its costs; and/or

¹ http://stakeholders.ofcom.org.uk/binaries/consultations/draft_deter_stour_marine_o2/determination/final_determination.pdf

(d) grant such further or other relief as may be appropriate.

Any person who considers that he has 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, Victoria House, Bloomsbury Place, London, WC1A 2EB, 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 fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE
Registrar

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