



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

#### CASE NO 1171/3/3/10

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 November 2010 under section 192 of the Communications Act 2003 (“the Act”) by British Telecommunications Plc (“BT”) of 81 Newgate Street, London, EC1A 7AJ against a series of decisions made by the Office of Communications (“OFCOM”) under section 186 of the Act that it was appropriate for OFCOM to handle alleged disputes over charges which BT had introduced under the Standard Interconnect Agreement (“the SIA”) with effect from 1 April 2010 for Communications Providers (“CPs”) who use the BT network in order to terminate calls made to 080 numbers. BT is represented by CMS Cameron McKenna LLP, Mitre House, 160 Aldersgate Street, London EC1A 4DD (reference: Chris Watson/John Markham).

The first of the decisions challenged by BT concerned the acceptance by OFCOM of an alleged dispute between BT and Everything Everywhere Limited (“EE”) which was notified to BT in a letter from OFCOM of 11 September 2010. In the same letter, OFCOM also informed BT that it had decided not to stay the determination of the new dispute despite the proximity of an appeal to the Tribunal of an earlier determination relating to comparable substantive issues (see Case 1151/3/3/10). The remaining decisions challenged by BT concerned alleged disputes between BT and each of Telefonica O2 UK Limited (“O2”), Vodafone Limited (“Vodafone”) and Hutchison 3G UK Limited (“H3G”). EE, O2, Vodafone and H3G are referred to collectively as the (“MNOs”).

Under the terms of the SIA BT has the right to notify proposed changes in the prices it charges to those who use the BT network. Notification of these changes is given by a Network Charge Change Notice (“an NCCN”). On 4 March 2010 BT issued NCCN 1007 notifying all CPs in the industry of BT’s new termination charges for 080 numbers, applying from 1 April 2010 onwards. NCCN 1007 followed three previous BT NCCNs relating to termination charges, each of which is the subject of a pending appeal before the Tribunal.

In summary, BT contends that OFCOM should not have concluded that there was a dispute over NCCN 1007 within the meaning of the relevant provisions of the Act and that it should not have decided to handle a dispute. In any event OFCOM should have held that the circumstances, which included the fact that an NCCN on 080 numbers was already being appealed to the Tribunal and that appeals on determinations on NCCNs in relation to 0845 and 0870 numbers were likely to follow, meant the only sensible approach was to stay resolution of the issues in relation to NCCN 1007 until after the judgments in the appeal(s) and to allow the parties to negotiate (if appropriate) following those judgments. To do otherwise will lead inevitably to duplication, wasted time and costs and delay.

BT advances three grounds of appeal against the decisions:

- (a) OFCOM erred in concluding that there was a dispute for the purposes of sections 185 to 191 of the Act, because all avenues of commercial negotiation had not failed and there remained the possibility of a negotiated settlement after the other appeals had been heard and decided.
- (b) Alternatively OFCOM erred in deciding that OFCOM was obliged to handle the “dispute” in relation to NCCN 1007. In particular, OFCOM should have considered that there was an alternative means available for resolving the dispute in the shape of permitting negotiations to continue after judgments in the other appeals had clarified the legal and regulatory framework.

- (c) Further or alternatively, OFCOM erred in deciding that there were no “exceptional circumstances” in the present case within the meaning of section 188(5) of the Act, entitling OFCOM to defer their determination of the “dispute” beyond the four month period referred to in that subsection.

BT seeks an order under section 195 of the Act from the Tribunal as follows:

- (a) Setting aside the decisions; and/or
- (b) Declaring that there was no “dispute” within the meaning of sections 185-191 of the Act or that it was not appropriate for OFCOM to handle any dispute and/or that OFCOM ought not to have rejected the conclusion that there were exceptional circumstances which justified an extension of time in relation to the dispute resolution procedure; and/or
- (c) Referring the matter back to OFCOM with directions to reconsider the questions of whether it was appropriate for it to handle the “disputes” and/or whether there were “exceptional circumstances” within the meaning of section 188(5) of the Act; and/or
- (d) Ordering OFCOM to stay the determination of the NCCN 1007 dispute; and/or
- (e) Ordering OFCOM to pay BT’s costs; and/or
- (f) Ordering such further or other relief as the Tribunal may consider 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](http://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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