



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE: 1149/3/3/09

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 24 December 2009 under section 192 of the Communications Act 2003 (“the Act”) by The Carphone Warehouse Group plc (“the appellant”) against certain parts of the decision (“the WLR Decision”) made by the Office of Communications (“OFCOM”) contained in a document entitled “Charge controls for Wholesale Line Rental and related services”¹. The WLR Decision was published on 26 October 2009. The appellant is represented by Osborne Clarke LLP of One London Wall, London, EC2Y 5EB (reference: SN/0943190/O8460756/KK).

Openreach, a division of British Telecommunications Group plc (“BT”), provides a number of wholesale telecommunications services that are required by TalkTalk Group Limited, a wholly owned subsidiary of the appellant. The WLR Decision sets out the price control imposed by OFCOM in respect of wholesale line rental following a related decision of 22 May 2009 contained in a document entitled “A new pricing framework for Openreach” (“the LLU Decision”). The LLU Decision sets out price controls imposed by OFCOM in respect of two main services provided by Openreach: metallic path facility (“MPF”) and shared metallic path facility (“SMPF”), together with various ancillary services². That decision is the subject of a separate appeal pending before the Competition Appeal Tribunal: Case No 1111/3/3/09 (“the LLU appeal”).

In summary the principal grounds of appeal on which the appellant relies are that:

1. The price controls imposed on Openreach in respect of WLR are set at an inappropriate level because OFCOM has erred in setting the efficient price differential between MPF and WLR; and MPF and WLR+SMPF.
2. OFCOM should have disclosed the modelling relied upon (and any materials needed to understand and comment on the modelling) to set the WLR price control to the appellant and other interested stakeholders during the consultation process.

The appellant identifies the ground set out at paragraph 1 above as a price control matter within the meaning of section 193 of the Act.

The appellant asks that the Tribunal:

1. refer the price control matters arising in this appeal for determination by the CC under section 193 of the Act;
2. determine the appeal in accordance with sections 193(6) and (7) and 195 of the Act, setting aside the WLR Decision and requiring OFCOM to impose a new price control on BT in respect of WLR services with effect from 1 October 2009 in accordance with the Tribunal’s determination;
3. award the appellant its costs of the appeal and reference to the CC; and

¹ The WLR Decision may be found at: <http://www.ofcom.org.uk/consult/condocs/wlr/wlrcondoc.pdf>

² The two services are defined in detail in the “Final statements on the Strategic Review of Telecommunications, and undertakings in lieu of a reference under the Enterprise Act 2002” Statement, 22 September 2005, available at: http://www.ofcom.org.uk/consult/condocs/statement_tsr/statement.pdf

4. grant any other relief as may be required including a direction to OFCOM to set a revised price control in accordance with the CC's final determination in the event that OFCOM is the appropriate person to determine what such revisions should be.

Further the appellant asks that the Tribunal by way of directions:

1. expedite the appeal so as to minimise the period during which BT continues to set prices on the current erroneous basis;
2. direct that the Price Control Reference be consolidated with the reference to the CC made by the Tribunal on 27 November 2009 in the LLU appeal;
3. establish a confidentiality ring for the appeal to include all external legal and economic advisors to the appellant; and
4. direct that all documents served or disclosed in the LLU appeal may be used for the purposes of this appeal.

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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