

ANNEX 1



sjberwin

Date 1 September 2011 Non-Confidential
Our ref 2244/M17284.24
Your ref
Partner Elaine Gibson-Bolton
Direct tel +44 (0)20 7111 2149
Email rahul.saha@sjberwin.com

Dear Sirs

British Telecommunications Plc v Office of Communications (Termination charges: 080 calls) Case: 1151/3/3/10
Everything Everywhere Limited v Office of Communications (Termination charges: 0845/0870 calls) Case: 1168/3/3/10
British Telecommunications Plc v Office of Communications (Termination charges: 0845/0870 calls) Case: 1169/3/3/10

We are contacting you regarding the Competition Appeal Tribunal's (Tribunal) judgment of 1 August (the 'Judgment') and order of 12 August 2011 (the 'Order') in the above appeals.

As set out in Telefónica's letter to the Tribunal of 5 August, Telefónica is considering appealing the Judgment to the Court of Appeal (assuming permission is granted). As also explained in that letter a practical issue arises from the Judgment due to the requirement that Telefónica must commit to a retail price position by 30 August 2011. The latest date for committing to a retail price was changed to 31 October 2011 pursuant to paragraph 5 of the Order.

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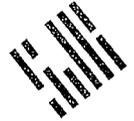
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In particular, Telefónica must set its retail prices prior to the outcome of any appeal to the Court of Appeal. In the ordinary course of events, this would not be an issue as a successful appeal would return parties to the position they would have been in but for the disputed judgment. In this case however, any change in business policy is unlikely to be reversible and any losses incurred by Telefónica are unlikely to be recoverable.

In light of this, Telefónica will be applying to the CAT and, if necessary, to the Court of Appeal for a stay of the Order in so far as it requires Telefónica to commit to a retail

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price by 31 October. Telefónica will therefore be applying to have paragraph 5(ii) of the Order stayed, in so far as it applies to Telefónica, until either (i) permission to appeal has been refused by both the Tribunal and the Court of Appeal or (ii) the Court of Appeal has handed down its judgment.

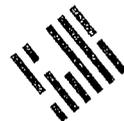
The specific terms on which Telefónica will be requesting the stay of the Order will be that Telefónica will be paying BT the charges set out in the Judgment and Order on the basis of the broad principles outlined below:

1. Telefónica will pay all charges due to BT for Period One within the applicable timescale set out in the Order and, to the extent necessary, as determined by Ofcom.
2. Telefónica will pay all charges due to BT in accordance with all applicable NCCNs for Period Two and the period between 1 August and either the date that permission to appeal is refused or the date the Court of Appeal judgment is handed down based on its current retail prices.
3. Once either permission to appeal is refused or the Court of Appeal has handed down its judgment, Telefónica will make a decision on its retail prices and notify this to BT within three months of the date of the Court of Appeal judgment.
4. In the event that permission to appeal is granted and Telefónica is unsuccessful at the Court of Appeal, a refund of the difference in charges between what has actually been paid to BT and what would have been due had Telefónica changed its retail prices on or before 31 October 2011 will be due to Telefónica or BT with interest at the contractual rate.
5. In the event that permission to appeal is granted and Telefónica is successful at the Court of Appeal, BT will refund to Telefónica, with interest, all interconnect payments made to it by Telefónica prior to the Court of Appeal judgment with interest at the contractual rate.
6. Notwithstanding the above, if, following the Court of Appeal judgment, it is apparent that an under or over payment has been made by Telefónica a full refund with interest will be due to Telefónica or BT in accordance with all applicable NCCNs with interest at the contractual rate.

In order to reduce costs and in the interests of expediting the proceedings we ask all parties to consent to the stay of the Order in the above terms within four working days from the date of this letter, i.e. by close of business on Wednesday, 7 September. We will then inform the Tribunal accordingly.

Telefónica reserves its rights to bring the contents of this letter to the attention of the CAT or the Court as applicable.

1 September 2011



We look forward to receiving your comments.

Yours faithfully

SJ Berwin LLP

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1 September 2011



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From: Elaine Gibson-Bolton [Elaine.Gibson-Bolton@sjberwin.com]
Sent: 08 September 2011 17:42
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Elizabeth.McKnight@herbertsmith.com; John.McInnes@herbertsmith.com
Cc: Amanda Butler; Rahul Saha
Subject: 08x Clarification of Letter of 1 September 2011 - Private and Confidential

Dear Sirs,

Further to our letter of 1 September requesting all parties to consent to Telefónica's stay application, this is to clarify the meaning of paragraph "4" on page 2, which relates to the event that either permission to appeal is refused by the Court of Appeal, or permission to appeal is granted and Telefónica is unsuccessful at the Court of Appeal. In this regard, that paragraph should be read as follows:

"4. In the event that permission to appeal is granted and Telefónica is unsuccessful at the Court of Appeal, a refund of the difference in charges *for Period Two* between what has actually been paid to BT and what would have been due had Telefónica changed its retail prices on or before 31 October 2011 will be due to Telefónica or BT with interest at the contractual rate. *For the avoidance of doubt, if permission to appeal is not granted, or if Telefónica is unsuccessful at the Court of Appeal, Telefónica will not be seeking a refund of any interconnect payments made to BT for the period 1 August 2011 (i.e. the date of the Tribunal's Judgment) and the date on which either permission to appeal is refused or the date on which the Court of Appeal hands down its judgment.*"

Could you please let us know as soon as possible and, in any event, by noon tomorrow (Friday, 9 September) if this clarification changes your response to Telefónica's letter of 1 September 2011.

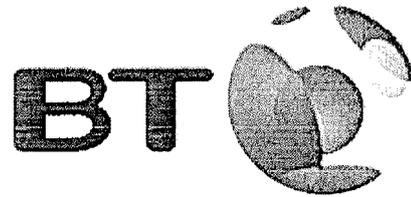
If you have any questions or clarifications please do not hesitate to call me to discuss.

Kind regards,
Elaine

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SJ Berwin LLP
10 Queen Street Place
London EC4R 1BE

12 September 2011

Dear Sirs,

Cases 1151/3/3/10, 1168/3/3/10, 1169/3/3/10

I am pleased to confirm that BT is generally supportive of Telefonica's Proposal for an application for stay as set out in your letter of 1st September and as clarified in your e-mail of 8th September subject to the caveats that we discussed last Friday. Thus whilst BT is supportive of the combined effect of your letter of 1st September and your e-mail of 8th September, it would like the wording clarified and tidied up in one document as regards what is to happen. In particular, BT is concerned that there is certainty as to what is to happen in relation to Period 3 (i.e. that if permission to appeal is refused by the Tribunal/the Court of Appeal or if the appeal is heard and rejected by the Court of Appeal, Telefonica will not ask for the repayment of any sums paid by it in relation to Period 3) and that (assuming any appeal is subsequently dismissed) the setting of prices in relation to the Period 2 mechanism is only to affect the charges for Period 2 and not the sums already paid (at the time of that setting of prices) under Period 1 and Period 3. BT's caveats are the following:

1. Under Telefonica's Proposal, Period 2 (i.e. the period from the date of Ofcom's determinations for 080/0845/0870 until 1st August 2011 - the date of the Tribunal's judgment) apparently relates to NCCNs 956, 986 and 987. BT's position regarding NCCN 1007 needs to be made clear so that there is no subsequent misunderstanding. BT's position is that the monies owed by Telefonica and the other MNOs to BT under NCCN 1007 (and its substitute) do not fall within the scope of Period 2. BT's position is that for 080 calls terminated by BT, Period 2 referred to in paragraph 455(2) of the Tribunal's judgment runs from 6th February 2010 until 31st March 2010 and the termination charges from 1st April 2010 onwards are covered by NCCN 1007 (and any successor) and are not covered by the Tribunal's ruling. BT wants to make clear that its support of Telefonica's Proposal is entirely without prejudice to BT's position on the scope of Period 2 referred to in paragraph 455(2) of the Tribunal's judgment and/or in Telefonica's Proposal and also BT's position on NCCN 1007.

2. BT of course recognises that Telefonica does not accept BT's position on NCCN 1007. That matter is currently being considered by Ofcom. As a matter of practicality, BT is prepared, in the interim (and subject to 1. above) to accept payment at NCCN 956 rates for both Period 2 and for the period from 2nd August 2011. However this practical arrangement

is entirely without prejudice to whatever rights BT may have to determine the effect of and/or enforce payment of charges under NCCN 1007.

3. The monies owed to BT under Period 3 (that is the ongoing period from 2nd August 2011 until eventually either (a) the refusal by the Tribunal and/or the Court of Appeal of an application for leave to appeal or (b) if an application for leave to appeal is accepted, the date when the Court of Appeal rejects the appeal) are payable to BT immediately that they are incurred (subject to 1 and 2 above) i.e. that is immediately from 2nd August 2011 onwards. Further (again assuming any attempted appeal fails) the amounts paid for Period 3 will not be adjusted (other than in the eventuality of NCCN 1007 being upheld) regardless of whatever price may be set by Telefonica in respect of the so called Period 2.

4. Certain of the wording in the respective letters of 1st September 2011 and the e-mail of 8th September 2011 has to be tidied up to BT's satisfaction. By way of one example paragraph 3 in the letter of 1st September 2011 probably needs to read: "*Once either permission to appeal is refused or the Court of Appeal has handed down its judgment rejecting the appeal, Telefonica will make a decision on its retail prices in respect of Period Two within the meaning of the Tribunal's order dated 12 August 2011.....*"

5. Telefonica's Proposal including BT's caveats are not opposed by any of the other MNOs.

6. The application for stay to be submitted to the Tribunal or the Court of Appeal is drafted in a way that is entirely satisfactory to BT.

If you have any query please do not hesitate to revert to me.

Yours faithfully,



Frederic Dupas

British Telecommunications Plc

Date 20 September 2011
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 Your ref
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Dear Sirs

Case 1151/3/3/10 - British Telecommunications plc v Ofcom (Termination charges: 080 calls)

Case 1168/3/3/10 - Everything Everywhere Limited v Ofcom (Termination charges: 0845/0870 calls)

Case 1169/3/3/10 - British Telecommunications plc v Ofcom (Termination charges: 0845/0870)

We write in relation to Telefónica's application (dated 12 September 2011) for a stay of the Tribunal's Order of 12 August 2011 (the "Application"). We note that the Tribunal had asked for parties to comment on the Application and all parties have now responded. As agreed, we are responding to certain points raised in that correspondence and reserve the right to make further comments if required.

Telefónica notes that both Vodafone and Everything Everywhere ("EE") have stated that they do not consent to the stay. As neither Vodafone nor EE have made any substantive comments on the Application, Telefónica does not understand the reasons behind these parties not consenting to the Application although Telefónica notes that both Vodafone and EE have, for their own commercial reasons, already changed their 08x retail prices and may therefore be unable to have the benefit of a stay. However, this does not have any direct bearing on the granting of a stay. Both Vodafone and EE had the option to apply for a stay on the same terms as Telefónica and did not as, we presume, they considered that it was not in their commercial interests to do so. We further note that at no point has Telefónica had any objection to the stay applying to any other MNO. However, formally, Telefónica could only apply for a stay on its own behalf.

In addition, we note that in its letter to the Tribunal of 15 September, Ofcom has noted that having considered its statutory duties, there are no reasons for it to object to the Application and that it adopts a neutral position. Further, Cable & Wireless and Opal Telecom have also adopted a neutral position regarding the Application.

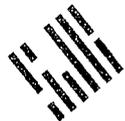
Telefónica also notes that in its letter of 15 September 2011, BT has indicated that Telefónica and BT are in the process of agreeing a consent order as regards a stay. Three has also indicated that it may be able to consent to a draft order subject to certain revisions. Telefónica believes that it is close to agreeing a consent order relating to the stay with BT and Three. We hope to be send this to the Tribunal shortly.

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If you require any further information please contact Elaine Gibson-Bolton (020 7111 2463) or Rahul Saha (020 7111 2149) of these offices.

Yours faithfully

SJ Berwin LLP

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