



IN THE COMPETITION
APPEAL TRIBUNAL

Case Numbers: 1180/3/3/11
1181/3/3/11
1182/3/3/11
1183/3/3/11

BETWEEN:

BRITISH TELECOMMUNICATIONS PLC
EVERYTHING EVERYWHERE LIMITED
HUTCHISON 3G UK LIMITED
VODAFONE LIMITED

Appellants / Intervenors

- v -

OFFICE OF COMMUNICATIONS

Respondent

-and-

TELEFÓNICA UK LIMITED

Intervener

REFERENCE OF SPECIFIED PRICE CONTROL MATTERS
TO THE COMPETITION COMMISSION

1. Having regard to:

- (A) the Statement entitled “Wholesale mobile voice call termination” dated 15 March 2011, issued by the Office of Communications (“Ofcom”) (“the Decision”);
- (B) the charge control imposed by paragraph 1.11.2 of, and Condition M3 in Schedule 2 to, Annex 1 of the Decision;
- (C) the Notices of Appeal dated 16 May 2011 lodged by British Telecommunications plc (“BT”), Hutchison 3G UK Limited (“Three”), Everything Everywhere Limited (“EE”) and Vodafone Limited (“Vodafone”) against the Decision;
- (D) the order of the Tribunal dated 13 June 2011, providing a timetable for any amendments to the Notices of Appeal, Ofcom's Defence, and

Statements of Intervention to be lodged in respect of the appeals, and providing for consolidation of the appeals;

the Tribunal, pursuant to Rule 3(5) of the 2004 Rules and section 193 of the Communications Act 2003, hereby refers to the Competition Commission for its determination the specified price control questions arising in these appeals.

2. By this reference the Tribunal orders the Competition Commission to determine the following questions:

Question 1

Whether the charge controls imposed by paragraph 1.11.2 of, and Condition M3 in Schedule 2 to, Annex 1 of the Decision have been set at levels which are inappropriate because Ofcom erred in adopting the pure LRIC cost standard, rather than the LRIC+ cost standard, as the basis for the charge controls (for the reasons set out in paragraphs 41 to 154 of EE's Notice of Appeal (Ground 1), and paragraphs 20(A), 31 to 57 and 63 to 74 of Vodafone's Notice of Appeal).

Question 2

Whether the charge controls imposed by paragraph 1.11.2 of, and Condition M3 in Schedule 2 to, Annex 1 of the Decision have been set at levels which are inappropriate because Ofcom erred in determining the level of the charge control based on pure LRIC (for the reasons set out in paragraphs 155 to 237 of EE's Notice of Appeal (Ground 2), and paragraphs 20B and 75 to 82 of Vodafone's Notice of Appeal).

Question 3

Whether Ofcom erred in determining the level of mobile termination charges that would reflect the adoption of the LRIC+ cost standard (for the reasons set out in paragraphs 238 to 240 of EE's Notice of Appeal (Ground 3), and paragraphs 20A and paragraphs 58 to 62 of Vodafone's Notice of Appeal).

Question 4

Whether the charge controls imposed by paragraph 1.11.2 of, and Condition M3 in Schedule 2 to, Annex 1 of the Decision have been set at levels which are inappropriate because Ofcom erred in deciding to adopt a four-year transition period over which mobile termination rates would be reduced to the level of the pure LRIC cost standard, rather than over a three-year period (for the reasons set out at paragraphs 4.1 to 4.17 and 6.1 of BT's Notice of Appeal).

Question 5

Whether the charge controls imposed by paragraph 1.11.2 of, and Condition M3 in Schedule 2 to, Annex 1 of the Decision have been set at levels which

are inappropriate because Ofcom erred in failing to make a one-off adjustment to the rate at the start of the control to current levels calculated in accordance with the LRIC+ cost standard (for the reasons set out at paragraphs 5.1 to 6.1 of BT's Notice of Appeal).

Question 6

Whether (for the reasons set out at paragraphs 5.1 to 5.19 of Three's Notice of Appeal) the charge controls imposed by paragraph 1.11.2 of, and Condition M3 in Schedule 2 to, Annex 1 of the Decision have been set at levels which are inappropriate because Ofcom erred in relying on a costs model that overstated certain costs associated with certain radio equipment, specifically one or more of the items encompassed within the following descriptions in Ofcom's publicly-available costs model:

- (a) 2G cell site equipment;
- (b) 2G TRXs;
- (c) 2G BSCs;
- (d) 3G cell site equipment; and
- (e) 3G RNCs.

Question 7

Having regard to the fulfilment by the Tribunal of its duties under section 195 of the Communications Act 2003 and in the event that the Competition Commission determines that the answer to any of the above questions is yes, the Competition Commission is to include in its determination:

- (i) clear and precise guidance as to how any such error found should be corrected; and
 - (ii) insofar as is reasonably practicable, a determination as to any consequential adjustments to the charge controls.
3. The Competition Commission is directed to determine the issues contained in this reference on or before 9 February 2012. The Competition Commission shall notify the parties to these appeals of its determination at the same time as it notifies the Tribunal pursuant to section 193(3) of the Communications Act 2003.
4. There be liberty to apply.