



Neutral citation [2012] CAT 16

**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 / Interveners

- v -

**OFFICE OF COMMUNICATIONS**

Respondent

-and-

**TELEFÓNICA UK LIMITED**

Intervener

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**ORDER**

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**UPON** the Tribunal handing down its judgment in respect of these proceedings on 3 May 2012 ([2012] CAT 11) (the “Judgment”)

**AND UPON** considering the application by Everything Everywhere Limited dated 17 May 2012 (the “Application”) requesting permission to appeal the Judgment

**AND UPON** considering the written submissions of each of the Competition Commission, Hutchison 3G (UK) Limited and British Telecommunications PLC, each dated 25 May 2012, opposing the Application

**AND UPON** reading the letters from each of Telefónica O2 UK Limited and Vodafone Limited, both dated 25 May 2012, indicating their support for the Application

**IT IS ORDERED THAT**

1. This Order adopts the same definitions as, and should be read with, the Judgment.

2. Permission to appeal is granted on the following question:

Whether the Tribunal erred, in paragraphs 195 to 231 of the Judgment, in holding that the Commission is obliged, when determining price control matters referred to it by the Tribunal, to decide those matters in accordance with the evidence before it.

3. Save to the extent provided in paragraph 2 of this Order, the Application is refused.

## **REASONS**

The Tribunal has unanimously concluded that the Application falls far short of the threshold test set out by EE in paragraph 3(a) of the Application, namely that it should have a real prospect of success. The Tribunal considers the miscellaneous collections of submissions set out in the Application to be wrong and unfounded. In particular, the Tribunal considers the allegation that it has either misunderstood or misstated EE's case to be totally without merit. It is the Tribunal's firm view that it understood, correctly recorded and addressed all aspects of EE's case. The Tribunal notes in passing that this is also the view expressed by each of the Commission, Three and BT in their submissions on the Application.

The Tribunal is, however persuaded that there is some other compelling reason why an appeal should be heard. The Tribunal did reach conclusions (in paragraphs 195 to 231 of the Judgment) which relate to the institutional role and procedures of the Commission when it is determining price control matters within the meaning of section 193 of the Communications Act 2003. EE submits at paragraph 3(b) of the Application that there are points of general importance. Paradoxically, EE takes these no further in the Application.

Whilst the Tribunal is confident as to the correctness of its Judgment on these matters, it is persuaded that they raise points of general public importance on which there is no Court of Appeal authority. Those conclusions are fundamental to the proper conduct by the Commission of price control appeals carried out under the relevant statutory provisions. Further, there are three price control appeals currently pending before the Tribunal and more are likely to arise in the future. It is, therefore, desirable that these matters should be considered by a higher court than this Tribunal. For that reason, and for that reason only, the Tribunal grants permission on the limited basis set out in paragraph 2 of this Order.

**Marcus Smith QC**  
Chairman of the Competition Appeal Tribunal

Made: 6 June 2012  
Drawn: 6 June 2012