



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE NO 1181/3/3/11

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 16 May 2011 under section 192 of the Communications Act 2003 (“the Act”) by Everything Everywhere Limited (“EE”) of Hatfield Business Park, Hertfordshire, AL10 9BW against a decision made by the Office of Communications (“OFCOM”) contained in a statement dated 15 March 2011, entitled “Wholesale mobile voice call termination” (“the Decision”). EE is represented by its regulatory counsel at the above address (reference: Robyn Durie).

In the Decision OFCOM imposed price controls (“MCT price controls”) on each of EE, Hutchison 3G UK Limited (“Three”), Vodafone Limited (“Vodafone”) and Telefónica O2 Limited (“O2”) specifying, in pence per minute terms, the maximum permitted charge which each of them may levy for mobile call termination services in respect of voice calls (“MCT services”) for each of the four years commencing on 1 April 2011 and ending on 31 March 2015.

EE contends that:

1. OFCOM was wrong to have adopted the pure long run incremental cost (“LRIC”) standard, rather than LRIC+, as the basis for the charge controls;
2. OFCOM erred in determining the level of the charge controls based on pure LRIC; and
3. OFCOM erred also in determining the level of charges that would reflect LRIC+. In particular, EE considers that OFCOM’s future data usage forecasts are flawed.

EE contends that its appeal concerns price control matters for the purpose of section 193(1) of the Act.

EE asks that the Tribunal:

1. refer the price control matters arising in its appeal for determination by the Competition Commission under section 193 of the Act;
2. determine the appeal in accordance with sections 193(6) and (7) and 195 of the Act, by upholding the grounds of appeal as appropriate and remitting the Decision to OFCOM with directions that OFCOM must adopt a revised price control, so as to implement the Tribunal’s determination; and
3. award EE its costs of the appeal and the reference to the Competition Commission.

By way of other directions sought, EE asks that the Tribunal:

1. expedite the appeal so as to minimise the period during which EE is constrained to charge for MCT on an erroneous basis;
2. establish a confidentiality ring to include the relevant officials of OFCOM, those members of the Competition Commission and its staff determining the reference under section 193 of the Act, and the relevant legal and economic advisers of EE; and
3. direct OFCOM to disclose to the confidentiality ring a full unredacted version of the Decision and all supporting information relied upon by OFCOM in determining the price controls.

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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