



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

#### CASE NO 1182/3/3/11

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 Hutchison 3G UK Limited (“Three”) 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”). Three is represented by Baker & McKenzie LLP, 100 New Bridge Street, London EC4V 6JA (reference: Richard Pike / Rodger Burnett).

In the Decision OFCOM imposed price controls (“MCT price controls”) on each of Three, Vodafone Limited (“Vodafone”), Telefónica O2 Limited (“O2”) and Everything Everywhere Limited (“EE”) 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.

Three’s appeal is directed to one aspect only of OFCOM’s cost modelling in the Decision (“the 2011 Model”). Three contends that OFCOM set rates too high for all four years of the charge control imposed by the Decision because OFCOM has relied on costs associated with certain items of radio access network equipment that are wrongly stated. In particular, Three argues that OFCOM has made factual errors as regards certain of the unit costs adopted in the 2011 Model and that OFCOM’s approach to calibration is flawed.

Three contends that its ground of appeal raises specified price control matters within the meaning of section 193 of the Act and rule 3 of the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 (S.I. No.2068 of 2004).

Three requests 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, setting aside the Decision and requiring OFCOM to impose a new charge control in accordance with the Competition Commission’s determination; and
3. grant any other relief as may be required.

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

1. establish a confidentiality ring to include external legal advisers and economic advisers to Three; and
2. direct OFCOM to disclose to the confidentiality ring in full an unredacted version of the 2011 Model and all supporting information relied upon by OFCOM in determining the charge control.

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](http://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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