



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case Number: 1187/3/3/11

BETWEEN

**BRITISH TELECOMMUNICATIONS PLC**

Appellant

- and -

**OFFICE OF COMMUNICATIONS**

Respondent

- supported by -

**BRITISH SKY BROADCASTING LIMITED**  
**TALKTALK TELECOM GROUP PLC**

Interveners

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**REFERENCE OF SPECIFIED PRICE CONTROL MATTERS  
TO THE COMPETITION COMMISSION**

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**UPON** British Telecommunications plc (“BT”) filing a Notice of Appeal dated 19 September 2011 (“BT’s Notice of Appeal”) against the decision made by the Office of Communications (“OFCOM”) contained in a document dated 20 July 2011 and entitled “WBA Charge Control” and in particular certain aspects of the charge control imposed by paragraph 9 of, and Condition EAA7(A) in Schedule 1 to, Annex 1 of the Decision (“the WBA Charge Control”)

**AND UPON** reading the written observations of the parties and the Competition Commission filed in advance of the case management conference

**AND UPON** hearing counsel for the parties and the Competition Commission at a case management conference on 17 October 2011

**AND UPON** the Tribunal considering that the time for determining the price control reference should not run until after the date on which pleadings are closed in accordance with the timetable established by the Tribunal’s Order of 17 October 2011

**IT IS ORDERED THAT:**

1. The Competition Commission determine the following questions:

**Question 1**

Whether the WBA Charge Control has been set at levels which are inappropriate because OFCOM erred in:

- (i) refusing to allow BT to recover the cost of pensions deficit repair payments, for the reasons set out at Part VI of BT's Notice of Appeal;
- (ii) refusing to take account of the cost of embedded debt in calculating BT's weighted average cost of capital ("WACC") for the reasons set out at Part VIII of BT's Notice of Appeal;
- (iii) calculated BT's WACC on the basis of 50% gearing, rather than 40% for the reasons set out at Part VIII of BT's Notice of Appeal.

**Question 2**

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 part 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.
2. The Competition Commission determine the issues contained in this reference on or before 11 June 2012.
  3. The Competition Commission 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.

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

Made: 2 November 2011  
Drawn: 2 November 2011