



IN THE COMPETITION
APPEAL TRIBUNAL

B E T W E E N :

Case No.: 1205/3/3/13

BRITISH TELECOMMUNICATIONS PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

Case No.: 1206/3/3/13

(1) CABLE & WIRELESS WORLDWIDE PLC
(2) VIRGIN MEDIA LIMITED
(3) VERIZON UK LIMITED

Appellants

- and -

OFFICE OF COMMUNICATIONS

Respondent

Case No.: 1207/3/3/13

(1) BRITISH SKY BROADCASTING LIMITED
(2) TALKTALK TELECOMMUNICATIONS GROUP PLC

Appellants

- and -

OFFICE OF COMMUNICATIONS

Respondent

ORDER

UPON reading the Notices of Appeal against the determinations made by the Office of Communications (“Ofcom”) in a document dated 20 December 2012 and entitled “Disputes between each of Sky, TalkTalk, Virgin Media, Cable & Wireless and

Verizon and BT regarding BT's charges for Ethernet services: Determinations and Explanatory Statement" ("the Statement") lodged by

- (1) British Telecommunications plc ("BT") on 20 February 2013 in Case No. 1205/3/3/13
- (2) Cable & Wireless Worldwide Plc, Virgin Media Limited and Verizon UK Limited (together, "the 1206 Appellants") on 19 February 2013 in Case No. 1206/3/3/13, and
- (3) British Sky Broadcasting Limited and TalkTalk Telecommunications Group Plc (together, "the 1207 Appellants") on 20 February 2013 in Case No. 1207/3/3/13 (each an "Appeal", and together "the Appeals")

AND UPON reading the requests for permission to intervene made on 13 March 2013 and 15 March 2013 pursuant to Rule 16 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) ("the Tribunal Rules")

AND UPON reading the submissions of the parties filed in advance of the case management conference

AND UPON hearing the parties' legal representatives at the case management conference on 18 March 2013

IT IS ORDERED THAT:

Forum

1. Pursuant to Rule 18 of the Tribunal Rules each Appeal be treated as a proceeding in England and Wales.

Interventions

2. BT be given permission to intervene in Case Nos. 1206/3/3/13 and 1207/3/3/13.
3. The 1206 Appellants and the 1207 Appellants each be given permission to intervene in Case No. 1205/3/3/13.
4. Level 3 Communications Limited be refused permission to intervene in Case No. 1205/3/3/13.

Hearing of Appeals

5. The Appeals be heard together.
6. All evidence adduced and documents served in each Appeal may be used for the purposes of, and relied on in, either of the other Appeals.
7. A party in its submissions may include observations on the Appeal in which it is not an intervener pursuant to paragraph 3 of this Order.

Service of Documents

8. Subject to the making of a separate Order of the Chairman establishing a confidentiality ring in these Appeals (“the Proposed Confidentiality Ring Order”) and to the terms of that Order:
 - a. each appellant or group of appellants serve on the other appellants copies of their Notices of Appeal and supporting evidence marked for confidentiality in both confidential and non-confidential form by 5pm on 22 March 2013;
 - b. thereafter, each of the appellants or groups of appellants serve documents on the other appellants at the same time as serving Ofcom; and
 - c. Ofcom serve documents on all appellants at the same time as serving the appellant or group of appellants in the Appeal to which the document relates.
9. If it is not reasonably practicable to serve non-confidential versions of the documents referred to in paragraphs 7.b. and 7.c. of this Order at the same time as the confidential versions of those documents (where applicable), the non-confidential versions be served:
 - a. by each appellant or group of appellants, within 2 working days of the date of service of the confidential version; and
 - b. by Ofcom, within 4 working days of the date of service of the confidential version, provided that the relevant appellant or group of appellants notifies to Ofcom any parts of the document(s) over which it claims confidential treatment within 1 working day of service of the confidential version.
10. Subject to the Proposed Confidentiality Ring Order having been made, and to the terms of that Order, Ofcom shall file and serve the fully confidential version of the Statement on the appellants in the Appeals by 5pm on 22 March 2013.
11. Where confidentiality is claimed over a document required to be served pursuant to this Order, that document shall be treated in accordance with the Proposed Confidentiality Ring Order.
12. Where the parties would otherwise be required by Rules 14(5) or 16(9)(c) of the Tribunal Rules to serve documents in support of their Defence or Statement of Intervention, the parties have permission not to do so where such documents have already been served with another party’s Notice of Appeal or subsequent pleading. Where parties rely in this way on such documents, they must set out full cross-references to the relevant attachments to the other party’s (or parties’) Notice(s) of Appeal.

Future Conduct of the Proceedings

13. The outline procedural timetable for the Appeals shall be as follows:
- a. Ofcom file and serve its Defence and any evidence relied upon by 4pm on 23 May 2013;
 - b. all Statements of Intervention and any evidence relied upon be filed and served by 4pm on 27 June 2013;
 - c. each appellant or group of appellants file and serve their Replies and any reply evidence by 4pm on 23 July 2013;
 - d. the parties prepare a single provisional list of issues for determination in the Appeals, such list to be filed by Ofcom by 4pm on 26 July 2013;
 - e. a further case management conference be listed for 10:30am on 30 July 2013 (“the Further CMC”); and
 - f. the main hearing in these proceedings be listed to commence on the first available date on or after 28 October 2013, with a time estimate of no more than 15 days.
14. If interest is to be awarded as submitted in the Appeals in Case Nos. 1206/3/3/13 and 1207/3/3/13, the question of what rate of interest is to be applied is adjourned to be determined subsequent to the judgment in those Appeals.

Expert Evidence

15. BT be permitted to rely on the expert reports of:
- a. Dr Daniel Maldoom of DotEcon Ltd;
 - b. Mr Greg Harman of FTI Consulting LLP; and
 - c. Mr David Coulson of Ernst & Young LLP.
16. The 1207 Appellants be permitted to rely on the expert reports of:
- a. Dr George Houpis of Frontier Economics Ltd; and
 - b. Mr Thomas Mark Robinson of RGL Forensics.
17. The 1207 Appellants be permitted, if so advised, to file and serve a supplemental expert report of Dr George Houpis of Frontier Economics Ltd addressing the necessity, from an economic perspective, for interest to be awarded, by 4pm on 28 March 2013.

18. The 1206 Appellants be permitted to file and serve up to 2 expert reports, if so advised, by no later than the date for service of Statements of Intervention or, if relevant only to their Reply, by the date for the service of the Reply.
19. Ofcom be permitted to file and serve up to 2 expert reports (which shall include any evidence from its internal expertise, whether in the form of an expert report or by way of a witness statement).

Disclosure and Further Information

20. Subject to the making of the Proposed Confidentiality Ring Order, and to the terms of that Order, Ofcom provide the following to each of the 1207 Appellants and BT by no later than 4pm on 2 April 2013, insofar as Ofcom is in possession of the same:
 - a. corrected and adjusted unit DSAC, unit FAC and volume (both external and total) data for WES10, WES100 and WES1000 connection services for the period 2006/07 – 2009/10;
 - b. corrected and adjusted unit DSAC, unit FAC and volume (both external and total) data for WES10000 rental services for the years 2006/07 and 2009/10;
 - c. corrected and adjusted unit DSAC, unit FAC and volume (both external and total) data for BES2500 and BES 10000 rental services for the years 2006/07, 2007/08 and 2009/10;
 - d. total volume data for WES155, WES622 and WES10000 services; and
 - e. BT's RAV model populated with information for each of the years in the dispute period and any related information required to calculate a RAV adjustment by year.

Costs

21. Costs be reserved.
22. There be liberty to apply.

The Honourable Mr Justice Roth
Chairman of the Competition Appeal Tribunal

Made: 18 March 2013
Drawn: 22 March 2013