



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE NO.: 1207/3/3/13

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 20 February 2013 under section 192 of the Communications Act 2003 (the “Act”) by (1) British Sky Broadcasting Limited (“Sky”) of Grant Way, Isleworth, Middlesex TW7 5QD and (2) TalkTalk Telecom Group plc (“TalkTalk”) of 11 Evesham Street, London W11 4AR (together, the “Appellants”) against the determinations by the Office of Communications (“OFCOM”) contained 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”).¹ The Appellants are represented by Herbert Smith Freehills LLP, Exchange House, Primrose Street, London EC2A 2EG (reference: Stephen Wisking, Andrew North and John McInnes).

The Statement contains OFCOM’s determination of disputes between British Telecommunications plc (“BT”) and each of Sky and TalkTalk, among others, concerning BT’s historic charges for certain wholesale Ethernet services. OFCOM concluded in the Statement that BT had overcharged Sky and TalkTalk, among others, and required BT to make repayments for the amounts it believed BT had overcharged them.

In summary, the principal grounds of appeal on which the Appellants rely are that:

1. OFCOM erred in its calculation of the overcharge because:
 - a. when assessing BT’s compliance with the cost orientation obligation at the centre of the disputes, OFCOM failed to apply any check which was capable of ensuring that BT did not charge prices that, in aggregate, led to substantial over-recovery of its common costs;
 - b. OFCOM wrongly failed to make a regulatory assets value adjustment when calculating the maximum level of prices that BT should have been permitted to charge;
 - c. OFCOM failed to make any changes to BT’s balance sheet to reflect its decision to allow BT to exclude holding gains from its balance sheet; and
2. OFCOM erred in failing to require BT to pay interest on its repayments.

The Appellants ask that the Tribunal:

1. determine the appeal in accordance with section 195 of the Act, setting aside the decision contained in the Statement (or directing OFCOM to withdraw the same) and requiring OFCOM to recalculate, in accordance with the principles set out in the Tribunal’s judgment, (a) for which services and over what periods BT breached significant market power condition HH3.1 and (b) the appropriate repayment that should be made to each of Sky and TalkTalk where breach occurred;
2. award Sky and TalkTalk their costs of the appeal; and/or
3. grant any other relief as may be required.

¹ A non-confidential version of the Statement is available on OFCOM’s website at:
http://stakeholders.ofcom.org.uk/binaries/consultations/ethernet-services/annexes/Ethernet_FD.pdf

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, QC (Hon)
Registrar

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