



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE NO 1210/3/3/13

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 24 May 2013 under section 192 of the Communications Act 2003 (“the Act”) by Verizon UK Limited (“Verizon”) and Vodafone Limited (“Vodafone”) against a decision made by the Office of Communications (“OFCOM”) in its statement dated 28 March 2013 and entitled “Business Connectivity Market Review – Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments” (“the Statement”).¹ Verizon and Vodafone are represented by Towerhouse Consulting LLP, 10 Fitzroy Square, London, W1T 5HP (reference: Paul Brisby and Lucas Ford).

The Appellants are suppliers of leased lines services in the UK. To this end, they purchase significant volumes of wholesale leased lines from BT. The Statement sets out the product and geographic markets and the charge controls for business connectivity services for three years from 1 April 2013. The Appellants’ appeal is concerned with a category of leased line known as Traditional Interface (“TI”) services.

Broadly, the Appellants consider that OFCOM has made a material error in the setting of the price control for TI services by deciding not to allocate common costs away from TI services in proportion to all customer migration, rather only in proportion to forecast customer migration from TI services to Ethernet services (“the decision”). The Appellants argue that OFCOM should have removed from the TI services basket a proportion of common costs which reflected migration to services other than Ethernet (the latter proportion is referred to as “Excess Common Costs”).

In summary, the principal grounds of appeal on which Verizon and Vodafone rely are that:

1. OFCOM misdirected itself, and erred in law, in seeking to determine from which services, other than leased lines, the Excess Common Costs should be recovered. Rather, OFCOM’s task was to achieve an appropriate allocation of common costs (i) to leased lines as a whole and (ii) as between the TI and Ethernet baskets.
2. OFCOM erred in fact in concluding that, if the Excess Common Costs were not allocated to TI services, BT would not be able to recover those common costs from other services.
3. OFCOM’s decision to allocate the Excess Common Costs to the TI basket is inconsistent with its regulatory objectives and approach, and is not justified. In particular, the Appellants submit that the effect of OFCOM’s decision is that TI services are treated differently as compared to Ethernet services and services subject to other charge controls, which is likely to lead to inefficient migration and distortions of competition.

The Appellants contend that all the grounds of appeal raised are specified price control matters within the meaning of section 193(1) and (10) of the Act and rule 3 of the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 (S.I. No. 2068 of 2004).

¹ A non-confidential version of the Statement is available on OFCOM’s website at:
<http://stakeholders.ofcom.org.uk/consultations/business-connectivity-mr/final-statement/>

The Appellants request that the Tribunal:

1. refer the grounds of appeal for determination by the Competition Commission under section 193(1) of the Act;
2. determine the appeal in accordance with sections 193(6) and (7) and 195 of the Act, setting aside the decision contained in the Statement and requiring OFCOM to impose a new price control on BT in accordance with the Tribunal's determination in this appeal;
3. award the Appellants their costs of the appeal and reference to the Competition Commission; and/or
4. grant any other relief as may be required, including if necessary a reference to OFCOM under rule 19(2)(j) of the Rules.

Further, the Appellants ask that the Tribunal by way of directions:

1. establish a confidentiality ring to include external legal, economic, accounting and technical advisors to the Appellants;
2. list a case management conference to give directions for the future conduct of the case; and
3. direct (pursuant to rules 19(1) and 19(2)(k) of the Rules) that OFCOM and BT provide copies to the confidentiality ring of:
 - a. the confidential, populated and fully functional version of OFCOM's leased lines charge control data file model; and
 - b. such other documents as are sufficient to disclose the proportion of common cost in the TI control which relates to local access only, and the assets / activities to which those costs relate.

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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