



IN THE COMPETITION
APPEAL TRIBUNAL

Case Number: 1210/3/3/13

BETWEEN:

(1) VERIZON UK LIMITED
(2) VODAFONE LIMITED

Appellants

- v -

OFFICE OF COMMUNICATIONS

Respondent

-and-

BRITISH TELECOMMUNICATIONS PLC

Intervener

REFERENCE OF SPECIFIED PRICE CONTROL MATTERS
TO THE COMPETITION COMMISSION

1. Having regard to:

- (A) the Statement entitled “Business Connectivity Market Review – Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments” dated 28 March 2013, issued by the Office of Communications (“Ofcom”) (“the Decision”), in particular paragraphs 19.347 to 19.369 and 19.376 thereof;
- (B) the price control imposed on British Telecommunications Plc by Annex 7 to the Decision;
- (C) the Notice of Appeal (“NoA”) dated 24 May 2013 lodged by Verizon UK Limited and Vodafone Limited against the Decision;
- (D) the order of the Tribunal dated 24 June 2013, providing for the Tribunal’s case management directions in the appeal;

the Tribunal, pursuant to Rule 3(5) of the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 (SI 2004 No. 2068) and section 193 of the Communications Act 2003, hereby refers to the Competition Commission (“CC”) for its determination the specified price control questions arising in this appeal.

2. By this reference the Tribunal orders the CC to determine the following questions:

Question 1

Whether the price control on Traditional Interface (“TI”) services has been set at a level which is inappropriate because OFCOM erred in law deciding not to allocate common costs away from TI services in proportion to all forecast customer migration, rather only in proportion to forecast customer migration from TI services to Ethernet services for the reasons set out at paragraphs 74 to 78 of the NoA.

Question 2

Whether the price control on TI services has been set at a level which is inappropriate because OFCOM erred in fact for the reasons set out at paragraphs 79 to 90 of the NoA.

Question 3

Whether the price control on TI services has been set at a level which is inappropriate because OFCOM’s decision not to allocate common costs away from TI services in proportion to all forecast customer migration is inconsistent with its regulatory objectives and approach and is not justified for the reasons set out at paragraphs 91 to 95.

Question 4

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 CC determines that OFCOM did err in any of the respects set out above, the CC is to include in its determination insofar as reasonably practicable:

- a. clear and precise guidance as to how any such error found should be corrected; and
 - b. a determination as to any consequential adjustments to the charge control.
3. The CC is directed to determine the issues contained in this reference on or before 23 December 2013. The CC shall notify the parties to this appeal 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 Q.C.
Chairman of the Competition Appeal Tribunal

Made: 22 July 2013
Drawn: 22 July 2013