



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

Case Number: 1212/3/3/13

BETWEEN:

**COLT TECHNOLOGY SERVICES**

Appellant

- v -

**OFFICE OF COMMUNICATIONS**

Respondent

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**ORDER**

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**UPON** reading the notice of appeal filed by Colt Technology Services (“Colt”) on 28 May 2013 (the “Appeal”) relating to the decision made by the Respondent (“OFCOM”) dated 28 March 2013 and entitled “Business Connectivity Market Review – Review of retail leased lines, wholesale symmetric broadband origination and wholesale trunk segments” (“the Decision”)

**AND UPON** reading the requests for permission to intervene from: (1) Everything Everywhere Limited (“EE”), Hutchison 3G UK Limited (“Three”), TalkTalk Telecom Group Plc (“TalkTalk”), Verizon UK Limited (“Verizon”) and Vodafone Limited (“Vodafone”) (collectively, “the Communications Providers Group”); and (2) British Telecommunications PLC (“BT”)

**AND UPON** hearing counsel for the parties and the Competition Commission at a case management conference on 20 June 2013

**IT IS ORDERED THAT:**

1. The proceedings be treated as proceedings in England and Wales;
2. The requests for permission to intervene are granted, subject to paragraph 3 below;
3. In relation to interventions:

- a) The Communications Providers Group and BT limit their interventions to those issues which are of particular concern to them and liaise as appropriate so as to ensure that there is no unnecessary duplication as between their submissions; and
- b) The Communications Providers Group's intervention is to be in writing only, subject to any further order of the Tribunal.

4. In relation to disclosure:

- a) As soon as practicable and by no later than 5pm on the first working day after this Order is made Colt serve a non-confidential version of its Notice of Appeal on the Communications Providers Group and BT;
- b) There be established a confidentiality ring on the terms of the order made on the same date as this Order;
- c) Subject to paragraphs 4(d) and 4(e) below, OFCOM disclose to the members of the confidentiality ring confidential versions of the following documents:
  - (i) Section 8 of the Decision;
  - (ii) Paragraphs 12.153 and 12.154 of the Decision;
  - (iii) Paragraphs A12.44 to A12.55 of the Decision (save that OFCOM may anonymise the identities of the communications providers concerned);
  - (iv) Responses to the following OFCOM consultations insofar as they relate to OFCOM's consideration of passive remedies:
    - (1) the Call for Inputs published on 21 April 2011;
    - (2) the Business Connectivity Market Review Consultation published on 18 June 2012; and
    - (3) to the extent any submissions were addressed to or copied to OFCOM, the Business Connectivity Market Review Draft Statement published by OFCOM on 25 February 2013 (together, the "Confidential Disclosure");
- d) As soon as practicable (and in any event by 5pm on the first working day after this Order is made) and before disclosing the Confidential Disclosure, OFCOM shall write to the persons other than Colt whose confidential information would be disclosed in complying with paragraph 4(c) above:
  - (i) Notifying them of the Tribunal's Order under paragraph 4(c) above;

- (ii) Informing them that if they object to the disclosure within the confidentiality ring of any information contained in the Confidential Disclosure, they must within seven days from the date of that notification make representations to the Tribunal identifying which information should not be disclosed and stating the reasons for their objections to disclosure (such representations to be copied to OFCOM).
    - (iii) OFCOM is not required to give disclosure under paragraph 4(c) of any document in so far as that document contains information in respect of which objection to disclosure has been made until further order.
  - e) Save as regards information which OFCOM is not required to disclose pursuant to paragraph 4(d) above, OFCOM shall give the disclosure ordered by paragraph 4(c) within three days of the expiry of the seven day period referred to in paragraph 4(d)(ii) above.
  - f) If Colt wishes to obtain disclosure of material withheld pursuant to paragraph 4(d)(iii), it may apply to the Tribunal seeking disclosure of the same.
5. In relation to the service of further pleadings:
- a) By 5pm on 11 July 2013, Colt, if so advised, to make any application to amend its Notice of Appeal consequent on receipt of the Confidential Disclosure;
  - b) By 5pm on 11 July 2013, the Communications Providers Group file and serve a single Statement of Intervention and any supporting factual evidence;
  - c) By 5pm on 2 August 2013, OFCOM to file and serve its Defence and any supporting evidence;
  - d) By 5pm on 9 August 2013, BT to file and serve its Statement of Intervention and any supporting evidence;
  - e) By 5pm on 12 September 2013, Colt to file and serve its Reply and any supporting evidence, if so advised, and its Skeleton Argument;
  - f) By 5pm on 26 September 2013, OFCOM to file and serve its Skeleton Argument; and
  - g) By 5pm on 3 October 2013, BT to file and serve its Skeleton Argument.
6. A hearing be listed for up to 4 days in the week beginning 14 October 2013.

7. Each party (with the exception of the parties comprising the Communications Providers Group) has permission to adduce the evidence of a maximum of two experts in the field of economics whose evidence shall not be duplicative.
8. There be liberty to apply.

**The Honourable Mr Justice Barling**  
President of the Competition Appeal Tribunal

Made: 24 June 2013  
Drawn: 24 June 2013