



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE NO: 1234/3/3/14

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 23 July 2014 under section 192 of the Communications Act 2003 (the “Act”) by Gamma Telecom Holdings Limited (“Gamma”) of 5 Fleet Place, London, EC4M 7RD against the determination by the Office of Communications (“Ofcom”) contained in a document dated 23 May 2014 and entitled “Determination to resolve dispute between Gamma and BT concerning BT’s charges for Interconnect Extension Circuits” (the “Determination”). Gamma is represented by Charles Russell LLP, 5 Fleet Place, London, EC4M 7RD (reference: Paul Stone and Elora Mukherjee).

According to the notice of appeal, the Determination contains Ofcom’s determination of a dispute between British Telecommunications plc (“BT”) and Gamma, concerning BT’s historic charges for certain wholesale interconnection products, namely Interconnect Extension Circuits (“IECs”). Gamma considered that it had been overcharged by BT because BT’s charges did not comply with BT’s cost orientation obligation. Ofcom concluded in the Determination that BT had not overcharged Gamma.

In summary, the principal grounds of appeal on which Gamma relies are that:

1. Ofcom erred in its consideration of BT’s compliance with the cost orientation obligation because, by relying on the distributed stand alone cost (“DSAC”) measure, 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.
2. Ofcom did not have proper regard for relevant case-law (in particular, the Tribunal’s findings in *British Telecommunications plc v Office of Communication* ([2011] CAT 5). Nor did it have proper regard for relevant regulatory precedents, contrary to its obligation under Article 8(5) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

Gamma asks that the Tribunal:

1. Stay all proceedings until two months after the handing down of the judgment in Case 1207/3/3/13 *British Sky Broadcasting Limited and TalkTalk Communications Group plc v Office of Communications (Ethernet Determinations)*; and/or
2. Set aside the Determination and hold that BT failed to comply with its cost orientation obligation by virtue of its charges exceeding fully allocated cost and its return on capital employed exceeding its cost of capital;
3. Direct Ofcom to exercise its power under section 190(2)(d) of the Act to require BT to repay the monies overpaid by Gamma to BT, together with interest thereon;
4. Grant such further or other relief as appears appropriate;
5. Award Gamma its costs of the appeal.

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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