



IN THE COMPETITION
APPEAL TRIBUNAL

Case Numbers: 1237-1238/3/3/15

BETWEEN:

TALKTALK TELECOM GROUP PLC

Appellant in Case 1237
Intervener in Case 1238

BRITISH TELECOMMUNICATIONS PLC

Appellant in Case 1238
Intervener in Case 1237

-v-

OFFICE OF COMMUNICATIONS

Respondent

-and-

SKY UK LIMITED

Intervener in Case 1238

ORDER

UPON reading the respective notices of appeal of British Telecommunications Plc (“BT”) and TalkTalk Telecom Group Plc (“TalkTalk”) relating to the decision made by the Respondent (“OFCOM”) dated 19 March 2015 and entitled “Fixed Access Market Review: Approach to VULA margin” (the “Statement”)

AND UPON reading the requests for permission to intervene in Case 1238/3/3/15 (the “BT Appeal”) from: (i) Sky UK Limited (“Sky”) and; (ii) TalkTalk, and in Case 1237/3/3/15 (the “TalkTalk Appeal”) from BT

AND UPON hearing counsel for the parties and the Competition and Markets Authority (“the CMA”) at a case management conference on 18 June 2015

AND UPON the Tribunal issuing a Ruling dated 29 June 2015 ([2015] CAT 13) (the “Ruling”) *inter alia* determining that: (i) Grounds 2 to 6 (excluding Ground 5A and the matters stated in paragraphs 260(a) and 262 of BT’s Notice of Appeal) in the BT Appeal and both grounds in the TalkTalk Appeal are specified price control matters that must be referred to the Competition and Markets Authority (the “CMA”) pursuant to section 193(1) of the Communications Act 2003 (the “2003 Act”) (“specified PCMs”); and (ii) Grounds 1 and 5A (including the matters stated at paragraphs 260(a) and 262 of BT’s Notice of Appeal) in the BT Appeal are not specified price control matters and they therefore fall to be considered by this Tribunal (the “non-specified PCMs”)

IT IS ORDERED THAT:

Forum

1. Each of the appeals be treated as proceedings in England and Wales

Interventions

2. The requests by BT and TalkTalk respectively for permission to intervene in each other’s appeals be granted
3. The request by Sky for permission to intervene in the BT Appeal be granted
4. At this stage, the permissions to intervene referred to in paragraphs 2 and 3 above, in so far as the interventions relate to the non-specified PCMs, be limited to statements of intervention and supporting written evidence
5. All the interveners liaise as necessary between themselves and the party whose position they support so as to ensure there is no duplication in their submissions or evidence

Disclosure and use of documents

6. A single confidentiality ring which shall include specific restrictions in respect of any in-house legal advisers admitted to the ring consistent with the Ruling, be established by separate order (the “Confidentiality Ring Order”)
7. Subject to paragraph 8 below, within three working days of the making of the Confidentiality Ring Order, the following be provided to the Relevant Advisers (as defined in the Confidentiality Ring Order):

- a. by OFCOM, a confidential versions of those parts of the Statement that OFCOM considers relevant to the TalkTalk Appeal and the BT Appeal and supporting materials that OFCOM considers relevant to the TalkTalk Appeal.
 - b. by OFCOM, the calculations by which Ofcom derived the 60-month figure (referred to at paragraph 166 of BT's notice of appeal)
 - c. by TalkTalk, unredacted versions of their pleadings and other documents served in these proceedings
 - d. by BT, unredacted versions of their pleadings and other documents served in these proceedings
8. If, within two working days of the later of (i) Ofcom indicating to a person that it intends to disclose documents or materials that it considers to be confidential to that person pursuant to paragraph 7(a) and/or (b) above and (ii) the making of the Confidentiality Ring Order, any person makes an application to the Tribunal seeking to prevent the disclosure of any such documents or materials (the "Disputed Material"), the obligations in paragraph 7 shall be suspended in relation to the Disputed Material pending further order
9. All documents or materials served or disclosed in the TalkTalk Appeal may be used for the purposes of the BT Appeal and vice versa, including before the CMA, unless the CMA determines otherwise in the context of proceedings before it

Future conduct of the appeals

10. Consideration by the CMA of the specified PCMs and consideration by this Tribunal of the non-specified PCMs will proceed in parallel
11. By 5pm on 17 November 2015:
- a. BT provide to the Tribunal Registry an agreed draft setting out the questions in its appeal to be referred to the CMA for determination and indicating which of these questions are likely to be affected by Ofcom's decision on the enforcement of the Condition
 - b. TalkTalk to provide to the Tribunal Registry an agreed draft of the questions in its appeal to be referred to the CMA
 - c. in the absence of agreement in respect of a. or b. above, the relevant party inform the Tribunal of the outstanding matters for the Tribunal to resolve
12. Subject to paragraph 8 above, in relation to the service of further pleadings:
- a. with respect to the BT Appeal only, all pleadings and evidence must distinguish clearly between the specified PCMs and non-specified PCMs

- b. within three weeks of the completion of disclosure pursuant to paragraph 7 above, BT and TalkTalk (if so advised) file and serve draft amended notices of appeal and any supporting evidence
 - c. by 5pm on 30 September 2015, OFCOM file and serve its defence and any supporting evidence in respect of the specified PCMs and the non-specified PCMs
 - d. by 5pm on 21 October 2015, the Interveners file and serve their respective statements of intervention in support of Ofcom and any supporting evidence in respect of the specified PCMs and the non-specified PCMs
 - e. by 5pm on 11 November 2015, BT and TalkTalk file and serve their Replies (if so advised) and any supporting evidence
13. In BT's Appeal, the need for and timing of the filing and service of additional pleadings in respect of the specified PCMs following Ofcom's final statement on *Supplementary guidance on assessment of the VULA margin* may be determined by the CMA in the context of proceedings before it, unless it becomes expedient for the Tribunal to determine this
14. A hearing in respect of the non-specified PCMs be listed for 9-17 December 2015 with a time estimate of a maximum of seven days and further directions as to witnesses, experts and filing of skeleton arguments to be given in due course
15. Costs be reserved
16. There be liberty to apply

Andrew Lenon QC
Chairman of the Competition Appeal Tribunal

Made:17 July 2015
Drawn:17 July 2015