



Neutral citation [2003] CAT 20

IN THE COMPETITION APPEAL

Case No. 1018/3/3/03

TRIBUNAL

New Court,
Carey Street,
London WC2A 3BZ

12 September 2003

Before:
SIR CHRISTOPHER BELLAMY
(President)

DR ARTHUR PRYOR CB

BETWEEN:

BRITISH TELECOMMUNICATIONS PLC

Appellant

and

THE DIRECTOR GENERAL OF TELECOMMUNICATIONS

Respondent

supported by

VODAFONE LIMITED

and

O2 (UK) LIMITED

Interveners

Mr Gerald Barling QC and Mr Alan Maclean (instructed by British Telecommunications PLC Legal Services) appeared for appellant.

Mr Richard Fowler QC and Miss Kassie Smith (instructed by The Director of Legal Services (Competition), Office of Telecommunications) appeared for the respondent.

Mr Andrew Lidbetter of Herbert Smith appeared for the intervener (Vodafone Limited).

Mr Stephen Kon of SJ Berwin appeared for the intervener (O2 (UK) Limited)

*Transcribed from the shorthand notes of
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RULING ON O2's REQUEST TO INTERVENE

The President:

1. This case concerns a challenge by British Telecommunications PLC (“BT”) to a Direction under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 relating to a dispute between BT and Vodafone Ltd (“Vodafone”) concerning the provision of partial private circuits. Vodafone has applied to intervene in the proceedings and there is no objection to that.

2. O2 (UK) Limited (“O2”), who is also a mobile phone operator, seeks to intervene. That application is, however, opposed by BT, primarily on the grounds that O2 has, in BT's words: "nothing to bring to the feast". According to BT it is a pure matter of law that is before the Tribunal. O2 is in a different position from Vodafone in that they are not directly mentioned in the Direction, and that it would not be useful in those circumstances to permit the intervention, notably because to do so would simply add to the expense.

3. Rule 16 of the Competition Appeal Tribunal Rules SI 2003 No. 1372 (“the Tribunal's Rules”) provides that any person who has "a sufficient interest in the outcome" may request the Tribunal for permission to intervene.

4. The Direction concerns the supply of what are known as RBS Backhaul Circuits on wholesale terms. Although directed to Vodafone the effect of the obligation imposed on BT to supply on non-discriminatory terms is that BT is also in effect obliged to supply O2 on the same terms as Vodafone. Indeed, we are told by O2 that an order has already been placed pursuant to the Direction.

5. During the course of the procedure leading up to the adoption of the Direction, O2 submitted a representation to the Director, and BT's notice of appeal was also served on O2 prior to, or at the same time as being lodged with the Tribunal.

6. For those reasons, if for no other, the Tribunal considers that O2 have a sufficient interest to intervene in these proceedings in terms of Rule 16 of the Tribunal Rules, and the Tribunal allows the intervention.
