



**IN THE COMPETITION
APPEAL TRIBUNAL**

Cases No: 1083/3/3/07
1085/3/3/07

B E T W E E N

HUTCHISON 3G UK LIMITED

-and-

BRITISH TELECOMMUNICATIONS PLC

Appellants / Interveners

-v-

OFFICE OF COMMUNICATIONS

Respondent

-and-

O2 (UK) LIMITED

T-MOBILE (UK) LIMITED

VODAFONE LIMITED

ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED

Interveners

ORDER

UPON considering (a) the materials filed by Hutchison 3G UK Limited (“H3G”) on 7 March 2008 in its own appeal (the “Supplementary Materials”); (b) H3G’s letter of

14 March 2008 to the Tribunal requesting permission to attach two further documents to the Supplementary Materials; (c) H3G's letters to the Tribunal of 28 March 2008 and 16 April 2008 referring to further documents; (d) H3G's outline statement of intervention filed in the BT appeal on 30 November 2007; and (e) H3G's full statement of intervention filed in the BT appeal on 21 April 2008;

AND UPON the Respondent and certain of the Intervenors having contested the admissibility of parts of those pleadings and that material;

AND UPON the Tribunal having suspended the timetable which was set out in the Tribunal's order of 25 February 2008 for the exchange of further pleadings in the H3G appeal until further notice;

AND UPON hearing counsel for the parties and for the Competition Commission at a case management conference on 21 April 2008;

AND UPON the Tribunal having handed down its Ruling of on the admissibility of the pleadings served by H3G on 20 May 2008 ("the Ruling")

IT IS ORDERED THAT:

1. The following parts of the Supplementary Materials are inadmissible:
 - a. in the document entitled "Supplemental Submission to the Competition Commission on behalf of Hutchison 3G UK Limited":
 - i. The words "and F2M MCT rates being an order of magnitude lower than at present (Mr Russell on behalf of H3G suggests less than 0.4 ppm for both, being one of BT's wholesale charges for fixed call termination) (Annex 1 hereto)" at the end of sub-paragraph 1.2(c)(i)(A);
 - ii. Sub-paragraph 1.2(c)(iii);

- iii. The words “(or a close to zero ppm rate which thereby produces a substantially similar outcome)” in paragraph 2.3;
 - iv. The words “and F2M rates” in paragraph 2.7;
 - v. The last sentence of paragraph 2.8;
 - vi. Paragraphs 2.11, 2.14, 2.17, 2.18, 2.21 and 2.22; and
 - vii. Paragraphs 3.1-4.5 inclusive;
 - b. In the appendix to the Supplemental Submission entitled “Appendix 1 – Legal Basis for NPZ”:
 - i. Paragraph 6;
 - ii. Footnotes 20 and 21 to paragraph 7.2; and
 - iii. The words from “the empirical evidence ...” to “... associated with this form of remedy/pricing structure” in lines 3-8 of paragraph 7.4;
 - c. Paragraphs 3.4-3.5 and 3.12-3.15 of the “Schedule of Evidence”;
 - d. Paragraphs 4 to 42 (inclusive) and paragraph 49 of the third witness statement of Mr Kevin Russell; and
 - e. Annex 5 of the Supplementary Materials (entitled “Estimates of origination and termination LRAICs”) in its entirety.
- 2. Permission to adduce the additional documents referred to in H3G’s letters of 14 March, 28 March and 16 April 2008 is refused.
- 3. The following parts of H3G’s outline statement of intervention the BT appeal are inadmissible:
 - i. Paragraph 1.4 (except for the first two sentences of that paragraph);
 - ii. The whole of section 2;
 - iii. Sub-paragraph (a) of paragraph 3.1;

- iv. Sub-paragraph (a) and the second sentence of sub-paragraph (c) of paragraph 4.1;
 - v. The whole of section 5; and
 - vi. Paragraphs 6.29 and 6.31-6.34 inclusive.
- 4. The following parts of H3G's full statement of intervention in the BT appeal are inadmissible:
 - i. Sections 3 and 4 in their entirety;
 - ii. Sub-paragraph (a) of paragraph 9.1; and
 - iii. Annexes 1 and 2.
- 5. Where the Ruling provides that certain parts of the pleadings or Supplementary Materials which are admissible are to be treated by the Competition Commission as relating to particular arguments or grounds only, they are to be so treated.
- 6. The timetable for the further exchange of pleadings in the H3G appeal is as follows:
 - a. OFCOM file and serve confidential versions of any response to the admissible parts of H3G's Supplementary Materials and/or any further statements or submissions in response or supporting evidence by 5.00pm on 13 June 2008;
 - b. All appellants and interveners notify OFCOM by 5.00pm on 17 June 2008 of any confidential information contained in the documents served pursuant to paragraph 6a of this Order. OFCOM shall be entitled to treat any information contained in those documents that has not been identified by any party as confidential information in accordance with this paragraph as non-confidential information;
 - c. OFCOM file and serve a non-confidential version of the documents served pursuant to paragraph 6a by 5.00pm on 19 June 2008;

- d. The Interveners file and serve the full confidential and non-confidential versions of their Statements of Intervention (including any evidence in support) by 5.00pm on 30 June 2008;
 - e. H3G file and serve confidential and non-confidential versions of any further reply (including any additional evidence in support) by 5.00pm on 14 July 2008;
 - f. OFCOM file and serve a confidential version of any further reply (including any additional evidence in support) by 5.00pm on 14 July 2008;
 - g. All appellants and interveners notify OFCOM by 5.00pm on 16 July 2008 of any confidential information contained in the documents served pursuant to paragraph 6f of this Order. OFCOM shall be entitled to treat any information contained in those documents that has not been identified by any party as confidential information in accordance with this paragraph as non-confidential information;
 - h. OFCOM file and serve a non-confidential version of the documents served pursuant to paragraph 8 by 5.00pm on 18 July 2008.
7. All pleadings and supporting evidence and other documents or materials filed and served pursuant to this Order are to be served on the Competition Commission at the same time as they are filed with the Tribunal and served on the other parties.
8. There be permission to apply.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 30 May 2008
Drawn: 30 May 2008