



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE: 1083/3/3/07

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 ("the Rules"), the Registrar gives notice of the receipt of an appeal on 23 May 2007 under section 192 of the Communications Act 2003 ("the Act") by Hutchison 3G UK limited ("the appellant") against decisions ("the Decisions") made by the Office of Communications ("OFCOM") contained in (i) a statement entitled "Assessment of whether H3G holds a position of SMP in the market for wholesale mobile voicecall termination on its network" ("the SMP Reassessment Decision"); and (ii) a statement entitled "Mobile call termination" ("the SMP/Price Control Decision") which were published on 27 March 2007.

In the SMP Reassessment Decision, OFCOM found that the appellant had a position of significant market power ("SMP") in the market for wholesale mobile voice call termination ("MCT") on the appellant's network for the period 1 June 2004 to 31 March 2007.

In the SMP/Price Control Decision OFCOM found that each of the mobile network operators ("MNOs"), including the appellant, has SMP in the market for MCT on its own network for the period 1 April 2007 to 31 March 2011 and that, *inter alia*, a price control on each of the MNOs should be imposed for that period as the appropriate remedy.

According to the appellant the relevant parts of the Decisions relating to (i) a finding of SMP on the appellant; (ii) the imposition of a target average charge on the 2G/3G MNOs; and (iii) the imposition of a price control on the appellant for 4 years constitute an error of assessment and/or law.

In summary the principal grounds of appeal on which the appellant relies are that the Decisions:

- (a) contain an error of law as to what constitutes SMP within the meaning of section 78 of the Act; and/or
- (b) are unlawful and/or irrational in view of OFCOM's legal duties under sections 3 and 4 of the Act; and/or
- (c) contain an error of assessment as to the facts and/or analysis relied upon and/or give insufficient reasons.

The appellant seeks an order from the Tribunal:

- (a) setting aside the relevant parts of the Decisions in full; and
- (b) directing OFCOM to find that appellant has no SMP; or
- (c) directing OFCOM to impose no more than an obligation on the appellant to set its MCT rate on fair and reasonable terms with suitable guidance to be issued by OFCOM taking into account actual market circumstances ; and/or
- (d) directing OFCOM to impose any price control conditions, and glide paths, in line with a determination of the Competition Commission.

The appellant reserves its position on costs.

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
Registrar

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