



COMPETITION APPEAL TRIBUNAL

**NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003**

**CASE: 1084/3/3/07**

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal on 29 May 2007, under section 192 of the Communications Act 2003 (“the Act”) by O2 (UK) Limited (“the appellant”) against a decision (“the Decision”) by the Office of Communications (“OFCOM”) that the appellant has significant market power in a single market for the provision by it of wholesale mobile voice call termination to other communications providers (“off-net call termination”). The Decision is contained OFCOM’s statement entitled “*Mobile call termination*” published on 27 March 2007.

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

- (a) OFCOM’s determination that the relevant market for call termination on O2’s network includes the supply of off-net call termination for all O2’s subscribers without exception, including subscribers with ported numbers, is incorrect in fact and law, and inadequately reasoned. The appellant contends that calls to “ported-in” numbers are provided on a separate economic market from the market for the termination of calls to other, non-ported numbers and that OFCOM has not made any finding of significant market power on that separate market; nor could it as a matter of law.
- (b) OFCOM’s consequent determination that O2 has significant market power over all off-net call termination on its network, including call termination for ported numbers, is therefore incorrect in fact and in law.

The appellant seeks an order from the Tribunal that:

- (a) the Decision be quashed insofar as it includes, within the definition of relevant market, the supply of call termination to ported-in numbers;
- (b) the Decision be quashed insofar as it finds that O2 has significant market power in respect of the supply of off-net call termination for ported-in numbers; and
- (c) the matter be referred back to OFCOM with a direction to reconsider and take a new decision in respect of the supply of call termination to ported-in numbers, in accordance with the ruling of the Tribunal.

The appellant also seeks its costs and such further relief as the Tribunal may consider appropriate.

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](http://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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