



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE: 1089/3/3/07

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (“the Rules”), the Registrar gives notice of the receipt of an appeal on 7 September 2007, under section 192 of the Communications Act 2003 (“the Act”) by T-Mobile (UK) Limited (“the appellant”) against determinations made by the Office of Communications (“OFCOM”) to resolve, pursuant to sections 188 and 192 of the Act, mobile call termination rate disputes between the appellant and British Telecommunications plc (“BT”) (“the T-Mobile Determination”) and between Hutchison 3G UK Limited (“H3G”) and BT (“the H3G Determination”). The T-Mobile Determination and H3G Determination were published in a document entitled “Disputes between T-Mobile and BT, O2 and BT, Hutchison 3G and BT and BT and each of Hutchison 3G, Orange Personal Communications Services and Vodafone relating to call termination rates” on 7 July 2007 (“the Final Determinations Document”).

In summary, the appellant submits that OFCOM breached the duties and responsibilities set out in the relevant legal framework, namely sections 3 and 4 of the Act; Article 5 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (the “Access Directive”) and Articles 6 and 7 of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (the “Framework Directive”).

1. The appellant appeals against the H3G Determination on the following grounds:
 - (a) its construction of BT’s Standard Interconnect Agreement (“SIA”) which was flawed and undermined the remainder of its analysis; or in the alternative
 - (b) its exclusive focus on end-to-end connectivity and application of a “gains from trade” test as the basis for assessing the reasonableness or otherwise of termination rates; OFCOM failed to take into account and/or give effect to other relevant considerations including the retroactive impact of H3G’s charges on third parties such as the appellant;
 - (c) associated procedural failings with regard to OFCOM’s consultation process prior to the publication of the Final Determinations Document; and
2. The appellant appeals against the T-Mobile Determination on the following grounds:
 - (a) the erroneous rejection of the Second Operator Charge Control Notification (“OCCN”) because it contained an uplift to compensate the appellant for BT’s rejection of the First OCCN; and/or
 - (b) the rejection of the effective date for the Second OCCN of 1 January 2007 in favour of an effective date of 26 January 2007 on the apparent basis that in so doing OFCOM was ensuring that *“the parties to the disputes are treated in a consistent*

and non-discriminatory manner, and in line with industry practice”, which decision was both substantively and procedurally flawed.

The appellant seeks the following relief from the Tribunal:

- (a) the setting aside of the H3G Determination;
- (b) a requirement that OFCOM reassess the reasonableness of the rates set out in the H3G OCCN, taking into account such factors as the Tribunal may determine as appropriate;
- (c) a direction that OFCOM amend the T-Mobile Determination so as to require BT to pay charges to the appellant on the basis of both its OCCN of 5 July 2006 effective as from 1 September 2006 and its OCCN of 1 December 2006 effective as from 1 January 2007;
- (d) the setting aside of such parts of the Final Determinations Document as is consistent with the relief sought in paragraphs (a)-(c) above;
- (e) a direction that OFCOM pay the appellant’s costs in this appeal; and
- (f) the granting of such further or other relief as may be necessary or 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. 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

12 September 2007