



COMPETITION APPEAL TRIBUNAL

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

**CASE: 1090/3/3/07**

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 British Telecommunications Plc (“the appellant”) against a determination made by the Office of Communications (“OFCOM”) in a document dated 7 July 2007 and 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” (“the Final Determinations Document”).

The appellant raises four independent but inter-connected grounds of appeal challenging OFCOM’s assessment of the reasonableness of the rates at issue in the Final Determinations Document, as follows:

1. OFCOM has adopted a flawed approach to the exercise of its power under the EC Telecommunications Directives (“the EC Telecommunications Directives”), including, in particular, 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 the 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”) and its powers under the Act, which necessarily must, in the appellant’s view, be interpreted in light of the harmonised objectives of the EC Telecommunications Directives. The appellant contends that OFCOM has, in essence, interpreted its powers far too narrowly.
2. OFCOM has compounded its flawed approach by:
  - (a) Concentrating unduly on the appellant’s End to End Connectivity Obligation (“E2E Obligation”) which OFCOM imposed on the appellant under section 74 of the Act; and/or
  - (b) Misconstruing the nature and effect of the E2E Obligation.
3. OFCOM has in any event applied an erroneous methodological approach to assessing the Mobile Call Termination (“MCT”) charges, which, in the circumstances pertaining, has taken its final determinations completely outside the proper range of reasonable charges for MCT. The test applied by OFCOM in the Final Determinations Document fails to comply with the policy objectives and regulatory principles established by the EC Telecommunications Directives as, in particular, the outcome distorts competition and encourages Mobile Network Operators (“MNOs”) to charge excessive rates for MCT services in circumstances where they provide no extra value for money and/or benefit to fixed line customers.
4. In any event, regardless of the legitimacy of the regulatory approach adopted in the Final Determinations Document, OFCOM has irrationally approved MCT rates that are clearly unreasonable.

The appellant seeks the following relief from the Tribunal:

- (a) that the Final Determinations Document be set aside in its entirety;
- (b) a declaration that the rates proposed by the MNOs during the relevant period of the interconnection disputes are unreasonable and excessive;
- (c) an order remitting the matter to OFCOM with directions that, within four months, OFCOM:
  - i. consider the full range of statutory powers under section 190(2) and section 190(4) of the Act, Article 20 of the Framework Directive and Articles 5 and 8 to 13 the Access Directive and select the most appropriate regulatory solution to resolve the disputes in conformity with its Community obligations
  - ii. adopt a methodology that is appropriate for determining a reasonable range of rates for MCT on 3G networks during the relevant period, taking account of the matters raised by the appellant in its notice of appeal;
- (d) an order that OFCOM pay the appellant's costs;
- (e) such further or other 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

12 September 2007