



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE: 1091/3/3/07

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 Hutchison 3G UK Limited (“the appellant”) against two determinations made by the Office of Communications (“OFCOM”). The first determination is set out 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” dated 7 July 2007 (“the BT Determinations”). The second determination is set out in a document entitled “Determinations to resolve mobile call termination rate disputes between Hutchison 3G and each of O2 and Orange” dated 10 August 2007 (“the O2/Orange Determinations”).

In the BT Determinations OFCOM finds that the charges proposed by the mobile network operators (“MNOs”), namely Orange Limited (“Orange”), O2 (UK) Limited (“O2”), Vodafone Limited (“Vodafone”), T-Mobile (UK) Limited (“T-Mobile”) (“the 2G/3G MNOs”) and the appellant, for wholesale mobile call termination (“MCT”) on their respective 3G networks to British Telecommunications Plc (“BT”) were reasonable.

In the O2/Orange Determinations OFCOM finds that the blended termination charges proposed by O2 and Orange for MCT on their respective networks and, implicitly, the 3G element thereof, to the appellant were reasonable.

In summary the main grounds of appeal on which the appellant relies are that each of the BT Determinations and O2/Orange Determinations:

- (a) contains an error of law and/or assessment regarding the interpretation and/or application of the dispute resolution powers available to OFCOM under, among other provisions, section 185 of the Act;
- (b) are unlawful and/or irrational in view of OFCOM’s legal duties under, among other provisions, sections 3 and 4 of the Act; and/or
- (c) contains an error of assessment as to the facts and/or analysis relied upon; and/or provide insufficient reasons.

As a result the appellant requests the Tribunal to:

- (a) set aside the BT Determinations and O2/Orange Determinations in full or in part;
- (b) direct OFCOM to set appropriate MCT rates in respect of each of the BT Determinations and O2/Orange Determinations;
- (c) direct OFCOM to reconsider whether the 2G/3G MNOs’ MCT rates are reasonable in respect of the BT Determinations and/or O2/Orange Determinations; and/or

- (d) set a non-discriminatory rate for 3G call termination for the appellant, whereby BT cannot pay a higher 3G MCT rate to the 2G/3G MNOs than it pays to the appellant and the appellant cannot be required to pay a higher rate than it is receiving for the same service, such rate to also take into account the historical under-payments to the appellant.

In the alternative:

- (e) in respect of the BT Determinations, the appellant requests the Tribunal to direct OFCOM to amend the determinations so that the determined H3G rate applies from September 2004 or such other date prior to 17 January 2007 that the Tribunal considers appropriate; and/or
- (f) in respect of the O2/Orange Determinations and/or in respect of the 2G/3G MNO's rates under the BT Determinations, the appellant requests that the relevant MCT rates should be applicable only from the date of the O2/Orange Determinations or such other date or dates (later than those determined by OFCOM) as the Tribunal considers 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