

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive work.

IN THE COMPETITION APPEAL

Case No: 1018/3/3/03

TRIBUNAL

Victoria House  
Bloomsbury Square  
London WC1 2EB

Wednesday, 12th May 2004

Sir Christopher Bellamy (President)  
Mr Michael Blair QC  
Dr Arthur Pryor CB

BETWEEN

BRITISH TELECOMMUNICATIONS PLC

Appellant

- v -

OFFICE OF COMMUNICATIONS  
(FORMERLY THE DIRECTOR GENERAL OF TELECOMMUNICATIONS)

Respondent

supported by

VODAFONE LIMITED

and

O2 (UK) LIMITED

Interveners

- - - - -

Mr Gerald Barling QC, Mr Alan MacLean and Ms Sarah Stevens  
(instructed by BT Legal) appeared for the Appellant

Mr Richard Fowler QC (instructed by the Director General of  
Telecommunications) appeared for the Respondent

Ms Elizabeth McKnight of Herbert Smith appeared for Vodafone  
Limited

Ms Niamh Grogan of SJ Berwin appeared for O2 (UK) Limited

- - - - -  
HEARING AT WHICH JUDGMENT WAS HANDED DOWN  
- - - - -

Transcription of the stenographic notes of  
Harry Counsell & Co  
(incorporating Cliffords Inn Conference Centre)  
Cliffords Inn,  
Fetter Lane,  
London EC4A 1LD  
Telephone: 020 7269 0370

(At 9.45 a.m.)

1 THE PRESIDENT: For the reasons given in the judgment that we  
2 have handed down today, the Tribunal decides:

3 (1) the appeal is allowed;

4 (2) the Direction dated 23rd June 2003 is declared to be  
5 without legal effect;

6 (3) the Direction is remitted to OFCOM with a direction  
7 to treat the Direction as being without legal effect  
8 and to take no further action pursuant to the  
9 Telecommunications (Interconnection) Regulations 1997  
10 as regards the dispute between BT and Vodafone which  
11 formed the subject matter of the Direction.

12 We make it clear, although that is not part of our  
13 formal order, that in our view the continuation notice  
14 falls with the Direction that we set aside.

15 MR BARLING: I am very grateful to the Tribunal, sir. The only  
16 matter -- well, I suppose there may be other matters but  
17 costs is an obvious matter.

18 THE PRESIDENT: Yes.

19 MR BARLING: The position on that is that Mr Fowler has very  
20 kindly said to me that he anticipates, and I would hope so  
21 too, that we would be able to deal with that matter  
22 without troubling the Tribunal other than to tell you or  
23 perhaps ask you later on to make some sort of consent  
24 order.

25 THE PRESIDENT: Yes.

26 MR BARLING: That is the hope anyway.

27 THE PRESIDENT: We had obviously anticipated that there might  
28 be an application for costs so we had given it very  
29 preliminary sort of first consideration and we had simply  
30 wondered to ourselves what is the right approach to costs  
31 in a regulatory field like this where there is a real  
32 likelihood of litigation of one sort or another between  
33 these two particular parties. This is, in a sense, part of  
34 the regulatory system and in this particular case the  
35 Director was, at least formally speaking, adjudicating on  
36 a dispute that had been brought to him by Vodafone to  
37 resolve.

38 So where all those matters took one on the question  
39 of costs, we had not made further progress other than to

1 ask ourselves, or to point out to ourselves that there  
2 perhaps was a question about costs that we needed to think  
3 about at some point.

4 MR BARLING: So, sir, the obvious sequence would be that if we  
5 were not able to resolve it between ourselves, then we  
6 would inform the Tribunal and the Tribunal would then, in  
7 its busy schedule -----

8 THE PRESIDENT: If you are not able to resolve it, then of  
9 course we will make a ruling if there is an application.  
10 If there is no application, we have nothing to decide.

11 MR BARLING: I think there is an outstanding application. I am  
12 not sure -----

13 THE PRESIDENT: I think, informally speaking, in your Notice of  
14 Appeal there is an application for costs, yes.

15 MR BARLING: In our Notice of Appeal, yes.

16 THE PRESIDENT: But we do not know whether that is pursued or  
17 not at this point.

18 MR BARLING: The answer is -- anyway, I will not say what it  
19 is. It is better if we can resolve matters.

20 THE PRESIDENT: Yes. I think if you can resolve it, so much the  
21 better.

22 MR BARLING: Thank you very much.

23 THE PRESIDENT: Yes. Are there any other matters we need to  
24 decide?

25 MR FOWLER: Sir, Mr Barling has rightly put forward our  
26 position in relation to costs. In relation to permission,  
27 at the moment my clients wish to consider further the  
28 implications of the judgment.

29 THE PRESIDENT: Yes.

30 MR FOWLER: And, if necessary, we would propose to deal with  
31 that within the one-month period for written application  
32 permission.

33 THE PRESIDENT: Yes. As a very preliminary indication, I am not  
34 sure the Tribunal would have a particularly warm feeling  
35 about granting permission to appeal at our level, but that  
36 is a matter, of course, for your clients to consider.

37 MR FOWLER: I am much obliged.

38 THE PRESIDENT: Thank you very much. I think the only other  
39 thing we would like to say, if we may, is that we had

1  
2  
3  
4  
5  
6

enormous amount of assistance from all the parties in this case, BT, OFCOM and the Intervener, and we are very grateful indeed to everybody for that. So thank you very much indeed.

(Adjourned at 9.50 a.m.)

- - - - -