

REGISTERED AT THE COMPETITION
APPEAL TRIBUNAL
UNDER NUMBER 1169
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IN THE COMPETITION APPEAL TRIBUNAL

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CASE NO. 1018/3/3/03

BRITISH TELECOMMUNICATIONS PLC

Appellant

-v-

THE DIRECTOR GENERAL OF TELECOMMUNICATIONS

Respondent

- and -

VODAFONE LIMITED

First Intervener

- and -

O2 (UK) LIMITED

Second Intervener

SKELETON ARGUMENT OF THE SECOND INTERVENER

1. O2 supports the submissions advanced by the Respondent in its Skeleton Argument of 24 November 2003. O2 has also been shown, by the solicitors acting for the First Respondent, a draft of the Skeleton Argument to be submitted by the First Intervener and supports those submissions. O2 would limit its observations at this time to the following general submission.
2. The Appellant's case rests upon a single ground, namely whether its dispute with Vodafone constitutes a "*dispute concerning interconnection between organisations*" under Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 ("the Regulations"). The Appellant expressly makes this clear at paragraph 10 of its Notice of Appeal. The Appellant makes the point again at paragraph 4 of its Reply and at paragraph 9 of its Skeleton Argument.
3. It follows that the only issue relevant to this appeal is the meaning of "interconnection" as defined in the Regulations and the underlying directive, namely the Interconnection Directive (97/33/EC) ("the Directive").

Interconnection

4. O2 supports the submission of the Respondent that interconnection under the Directive and the Regulations involves only three elements:
 - (i) that there exist two (or more) "telecommunications networks" that are linked;
 - (ii) there is a linking between those telecommunications networks which is physical and logical; and

- (iii) that linking takes place in order to allow the users of one organisation to communicate with users of the same or another organisation, or to access services provided by another organisation.
5. For all of the reasons put forward by the Respondent and First Intervener in their respective Skeleton Arguments, O2 considers that the provision of the RBS backhaul service by the Appellant involves interconnection within the meaning of that term under the Directive and the Regulations.
 6. On this basis, O2 submits that some of the arguments put forward by the Appellant in its various pleadings are largely irrelevant in determining this case.
 7. In this regard, O2 would refer to the Appellant's Skeleton Argument, and in particular to paragraphs 30 to 38, where the Appellant appears to be attempting to introduce a number of further considerations and criteria such as the possibility of self-provision and reciprocity for the existence of interconnection which have no legal basis in the Directive or the Regulations.
 8. In particular, O2 submits that the question of whether a mobile operator could replace the RBS backhaul service supplied by the Appellant with another technology such as point-to-point microwave links has no bearing on the question of whether RBS backhaul circuits fulfil the definition of interconnection.
 9. Quite simply, there is nothing to support the Appellant's contention that this or any other additional criteria are part of the test to determine the existence of interconnection under the Directive and Regulations as set out at paragraph 4 above.
 10. Moreover, the Appellant's Skeleton Argument repeatedly seeks to rely upon interconnection "*as commonly understood*". The definition of interconnection is a point of law for this Tribunal and the Appellant's (or others') "common understanding" of the meaning of interconnection cannot derogate from the meaning attached to it in the Directive and Regulations.

SJ Berwin

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