



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE NO 1183/3/11

Pursuant to rule 15 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003, as amended by S.I. No. 2068 of 2004) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 16 May 2011 under section 192 of the Communications Act 2003 (“the Act”) by Vodafone Limited (“Vodafone”) against a decision made by the Office of Communications (“OFCOM”) contained in a statement dated 15 March 2011, entitled “Wholesale mobile voice call termination” (“the Decision”). Vodafone is represented by Herbert Smith LLP, Exchange House, Primrose Street, London, EC2A 2HS (reference: Elizabeth McKnight / John McInnes).

In the Decision OFCOM imposed price controls (“MCT price controls”) on each of Vodafone, Telefónica O2 Limited (“O2”), Everything Everywhere Limited (“EE”) and Hutchison 3G UK Limited (“Three”), specifying, in pence per minute terms, the maximum permitted charge which each of them may levy for mobile call termination services in respect of voice calls (“MCT services”) for each of the four years commencing on 1 April 2011 and ending on 31 March 2015.

In summary, the principal grounds of appeal on which Vodafone relies are as follows:

1. OFCOM erred in setting the MCT price controls by reference to what it assessed to be the long run incremental cost (“LRIC”) of providing MCT services. It should have adopted a LRIC+ methodology, and it should have computed the LRIC+ level of the price controls in accordance with a corrected version of its network costing model, which would have shown the LRIC+ cost of providing the MCT services to be higher than OFCOM’s model implied.
2. In the alternative, if the regulatory objectives laid down in sections 3, 4 and 88 of the Act are best served by the application of LRIC-based price controls and if it is practicable to implement a LRIC-based price control, nonetheless the method used by OFCOM to derive a LRIC cost of providing the MCT service was unsound. OFCOM should have used a different method designed to produce a better approximation to the LRIC cost of the MCT service.

Vodafone submits that all the issues potentially raised in Vodafone’s grounds of appeal are specified price control matters which fall to be referred to the Competition Commission for determination pursuant to section 193(1) of the Act.

Accordingly, Vodafone asks that the Tribunal:

1. direct OFCOM to set aside the Decision, insofar as it imposes the new MCT price controls;
2. direct that OFCOM adopt a new decision, adopting new price controls, the effect of which will be to require Vodafone, O2, EE and Three to set MCT charges at levels which do not exceed the maximum amounts set out in the notice of appeal, but otherwise on the terms of the conditions comprised in the Decision;
3. in the alternative, if the appeal succeeds only in part in respect of the first ground or only in part in respect of the alternative ground, direct that OFCOM adopt a new decision, adopting new MCT price controls, the effect of which will be to require Vodafone, O2, EE and Three to set MCT charges at levels which do not exceed such maximum amounts as the Tribunal may specify (but, for the avoidance of doubt, not being any lower than the maximum amounts specified for any given year or part year in the Decision), but otherwise on the terms of the conditions comprised in the Decision;

4. grant such relief or other relief as may be just and expedient; and
5. direct that OFCOM pay Vodafone's costs of the appeal.

Further Vodafone asks that the Tribunal by way of directions:

1. expedite the appeal so as to minimise the period during which Vodafone is constrained to charge for MCT services on an erroneous basis;
2. at the earliest opportunity establish a confidentiality ring to include the relevant legal and economic advisors of Vodafone;
3. direct OFCOM to disclose to the confidentiality ring a full unredacted version of the Decision and all supporting information relied upon by OFCOM in determining the MCT price controls;
4. refer to the Competition Commission, pursuant to section 193 of the Act questions in the form, or substantially in the form, set out in schedule 3 to the notice of appeal.

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

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