



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE NO 1186/3/3/11

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 19 September 2011 under section 192 of the Communications Act 2003 (“the Act”) by TalkTalk Telecom Group plc (“TalkTalk”) of 11 Evesham Street, London W11 4AR against a determination made by the Office of Communications (“Ofcom”) contained in a document dated 20 July 2011 and entitled “WBA Charge Control – Charge Control framework for WBA Market 1 services, Statement” (“the Statement”)¹. TalkTalk is represented by Towerhouse Consulting LLP, 10 Fitzroy Square, London W1T 5HP (ref: Paul Brisby).

The Statement sets out price controls imposed by Ofcom in respect of wholesale broadband access (“WBA”) services provided by British Telecommunications plc (“BT”) in a particular geographic market within the UK entitled “Market 1”, which comprises those exchanges where only BT is present or forecast to be present. The Statement follows a decision dated 3 December 2010 contained in a document entitled “Review of the wholesale broadband access markets, Statement on market definition, market power determinations and remedies” in which Ofcom, inter alia, made findings of significant market power (“SMP”) in Market 1.

TalkTalk challenges the Statement for the following reasons:

- (a) Ofcom failed to take proper and sufficient steps to satisfy itself that it had complied with its obligation in section 86 of the 2003 Act only to impose an SMP services condition subsequent to a market power determination when there has been no material change in the relevant market since the SMP determination was made.
- (b) Alternatively, insofar as Ofcom did take sufficient steps to ask itself the correct question and equip itself with the relevant information necessary to decide whether there had been a material change in Market 1, it erred in deciding that there had been no material change as a result of TalkTalk’s local loop unbundling (“LLU”) roll out plans.

TalkTalk asks that the Tribunal:

- (a) Set aside the Statement;
- (b) Remit the question of whether there has been a material change (within the meaning of section 86(1)(b) of the 2003 Act) in Market 1 to Ofcom for reconsideration following a proper consultation:
 - (i) without specific directions as to whether the confirmation by TalkTalk of its plans for LLU roll out as had been given to Ofcom by the time of its decision on 20 July 2011 constituted such a material change in Market 1 as compared to 3 December 2010; alternatively
 - (ii) on the basis that the confirmation of TalkTalk’s plans for LLU roll out as had been given to Ofcom by the time of its decision on 20 July 2011 did constitute such a material change;

¹ A non-confidential version of the Statement is available at <http://stakeholders.ofcom.org.uk/binaries/consultations/823069/statement/statement.pdf>

- (c) Award TalkTalk its costs of the appeal; and/or
- (d) Grant any other relief as may be required.

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

Published 23 September 2011