



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case Number: 1193/3/3/12

BETWEEN

**BRITISH TELECOMMUNICATIONS PLC**

Appellant

- supported by -

**EVERYTHING EVERYWHERE LIMITED**

Intervener

- and -

**OFFICE OF COMMUNICATIONS**

Respondent

- supported by -

**BRITISH SKY BROADCASTING LIMITED**  
**TALKTALK TELECOM GROUP PLC**

Interveners

---

**REFERENCE OF SPECIFIED PRICE CONTROL MATTERS  
TO THE COMPETITION COMMISSION**

---

1. Having regard to:

- (A) the Statement entitled “Charge control review for LLU and WLR services” dated 7 March 2012, issued by the Office of Communications (“Ofcom”) (“the Decision”);
- (B) the price control imposed by paragraphs 10, 11 and 14 of, and Condition FAA4(A) in Part I, Schedule 1 to, Annex 12 of the Decision and paragraphs 10, 11, 14 and 15 of, and Condition AAAA4(WLR) in Part IV, Schedule 1 to, Annex 12 of the Decision;
- (C) the Notice of Appeal dated 8 May 2012 lodged by British Telecommunications plc (“BT”) against the Decision;

- (D) the order of the Tribunal dated 31 May 2012, providing the Tribunal's case management directions in respect of the appeal;

the Tribunal, pursuant to Rule 3(5) of the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 (SI 2004 No. 2068) and section 193 of the Communications Act 2003, hereby refers to the Competition Commission for its determination the specified price control questions arising in this appeal.

2. By this reference the Tribunal orders the Competition Commission to determine the following questions:

**Question 1**

Whether the price controls imposed on BT by paragraphs 10, 11 and 14 of, and Condition FAA4(A) in Part I, Schedule 1 to, Annex 12 of the Decision and paragraphs 10, 11, 14 and 15 of, and Condition AAAA4(WLR) in Part IV, Schedule 1 to, Annex 12 of the Decision have been set at a level which is inappropriate because Ofcom erred in one or more of the following respects:

- (i) in forecasting BT's corporate overheads costs, for the reasons set out in paragraphs 96 to 109 of the Notice of Appeal;
- (ii) in calculating the costs of BT's cumulo rates, for the reasons set out in paragraphs 110 to 118 of the Notice of Appeal;
- (iii) in valuing the cost of BT's copper assets using standard work activity units, for the reasons set out in paragraphs 119 to 132 of the Notice of Appeal;
- (iv) in allocating the income received by BT from the recovery of copper cable to the Core Rental Services (MPF, SMPF and WLR), for the reasons set out in paragraphs 133 to 138 of the Notice of Appeal;
- (v) in its allocation of the cost of repairing faults on WLR, MPF and SMPF lines, for the reasons set out in paragraphs 143 to 154 of the Notice of Appeal;
- (vi) in its allocation of BT's line testing test head costs to WLR and SMPF services but not to MPF services and in applying a price adjustment allocating the cost of Test Access Matrices ("TAMs") across all MPF and SMPF lines, for the reasons set out in paragraphs 155 to 194 of the Notice of Appeal; and
- (vii) in calculating BT's costs of MPF Single Migration, SMPF New Provide and SMPF Single Migration services, for the reasons set out in paragraphs 139 to 142 of the Notice of Appeal.

## **Question 2**

Whether the price controls imposed by paragraphs 10, 11 and 14 of, and Condition FAA4(A) in Part I, Schedule 1 to, Annex 12 of the Decision and paragraphs 10, 11, 14 and 15 of, and Condition AAAA4(WLR) in Part IV, Schedule 1 to, Annex 12 of the Decision on BT have been set at a level which is inappropriate because Ofcom erred in its use of a Regulatory Asset Value in valuing BT's pre-1997 duct assets, for the reasons set out in paragraphs 195 to 350 of the Notice of Appeal.

## **Question 3**

Having regard to the fulfilment by the Tribunal of its duties under section 195 of the Communications Act 2003 and in the event that the Competition Commission determines that Ofcom erred in relation to any of the above questions, the Competition Commission is to include in its determination:

- (i) clear and precise guidance as to how any such error found should be corrected; and
  - (ii) insofar as is reasonably practicable, a determination as to any consequential adjustments to the charge controls.
3. The Competition Commission is directed to determine the issues contained in this reference on or before 29 March 2013.
4. The Competition Commission shall notify the parties to these appeals of its determination at the same time as it notifies the Tribunal pursuant to section 193(4) of the Communications Act 2003.
5. There be liberty to apply.

**Vivien Rose**  
Chairman of the Competition Appeal Tribunal

Made: 24 July 2012  
Drawn: 24 July 2012