



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

#### CASE No 1195/3/3/12

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 1 June 2012 under section 192 of the Communications Act 2003 (“the Act”) by British Telecommunications Plc (“BT”) of 81 Newgate Street, London, EC1A 7AJ against a determination made by the Office of Communications (“OFCOM”) dated 2 April 2012 as to the repayment that Vodafone Limited (“Vodafone”) has to make to BT for charges for terminating calls to 080, 0845 and 0870 numbers under NCCNs 956, 985 and 986 (“the Determination”)<sup>1</sup>. The repayments are required in consequence of the Tribunal’s judgment of 1 August 2011 on appeals by BT and Everything Everywhere Ltd against OFCOM’s determinations of disputes relating to termination charges for 080, 0845 and 0870 calls ([2011] CAT 24) (“the Judgment”)<sup>2</sup>. BT is represented by BT Legal at the above address (reference: Frederic Dupas/Maria Ouli).

BT’s challenge is brought by way of an application under paragraph 7 of the Tribunal’s order dated 12 August 2011 (“the Order”)<sup>3</sup> which gave effect to the directions contained in Section N of the Judgment. However, to the extent necessary and in the alternative BT brings the challenge by way of a fresh appeal under section 192(1)(a) of the Act. On either basis BT contends that the test is whether OFCOM was wrong in its conclusion as to the amount due to BT from Vodafone.

The background to the arrangements for the charging for 080, 0845 and 0870 non-geographic numbers and to this matter is explained in the Judgment. In summary, BT introduced new termination charges for calls to 080, 0845 and 0870 numbers hosted on its network. BT set the termination charge by reference to the individual retail pricing practices of each originating communications provider (“CP”). For the reasons given in the Judgment, the Tribunal concluded that BT had, at all material times, the right to vary the termination charges by serving the Network Charge Control Notices under the Standard Interconnection Agreement on its contractual counterparties. Following the Judgment, a question arose as to what retail prices had been charged by CPs, specifically the mobile network operators (“MNOs”), for calls placed by their customers during the time prior to the Judgment. BT was unable to reach agreement with Vodafone in respect of certain sums due to be repaid following the Judgment. On 19 January 2012 the dispute between BT and Vodafone was referred<sup>3</sup> to OFCOM under paragraph 6(3) of the Order. In its Determination OFCOM confirmed that Vodafone should repay to BT the amount that Vodafone calculated and notified to BT in the first instance.

BT challenges the Determination on the basis that OFCOM has erred in its interpretation of paragraph 455(1) of the Judgment, and of paragraph 17 of the Consequential Tribunal Ruling of 12 August 2011, and/or it has failed properly to implement the approach laid down by the Tribunal when issuing this Determination under paragraph 6(3) of the Order. In doing so, BT submits that OFCOM has reached the wrong answer, insofar as it provided answers at all to the questions arising by reason of the Tribunal’s specified approach.

Further, BT submits that OFCOM’s consideration was wrong in a number of important respects each of which undermined OFCOM’s conclusion. As a result of its errors, OFCOM did not reach conclusions as to whether Vodafone had proved any particular price or prices for calls to 080, 0845 and 0870 numbers.

<sup>1</sup> [http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw\\_01076/](http://stakeholders.ofcom.org.uk/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_01076/)

<sup>2</sup> <http://www.catribunal.org.uk/238-7221/Judgment.html>

<sup>3</sup> <http://www.catribunal.org.uk/237-6086/1151-3-3-10-British-Telecommunications-Plc-Termination-Charges-080-calls.html>

As regards the relief sought, BT submits that:

- (a) the Determination cannot stand and should be quashed;
- (b) in the alternative, the matter should be remitted to OFCOM for reconsideration of the material provided by Vodafone applying the proper test as specified in the Tribunal's rubric.

In the light of the fact the Judgment is currently under appeal and, if that appeal were to succeed, this application would fall away, BT seeks a stay of proceedings or an adjournment of all relevant time limits under rule 19 of the Rules pending the final outcome of that 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](http://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, QC (Hon)*  
Registrar

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