



IN THE COMPETITION
APPEAL TRIBUNAL

Case Number: 1237/3/3/15

B E T W E E N:

TALKTALK TELECOM GROUP PLC

Appellant

-v-

OFFICE OF COMMUNICATIONS

Respondent

-and-

BRITISH TELECOMMUNICATIONS PLC

Intervener

**REFERENCE OF SPECIFIED PRICE CONTROL MATTERS TO THE COMPETITION
AND MARKETS AUTHORITY**

1. Having regard to:

- (a) the decision contained in a Statement entitled “*Fixed Access Market Reviews: Approach to VULA margin*” dated 19 March 2015, issued by the Office of Communications (“Ofcom”) (the “Decision”);
- (b) the price control imposed on British Telecommunications plc (“BT”) by SMP services condition 14 in Schedule 1 of Annex 2 to the Decision and the related guidance set out at Annex 3 of the Decision (the “Price Control”);
- (c) the Notice of Appeal (“NoA”) dated 15 May 2015, as amended on 2nd September 2015, lodged by TalkTalk Telecom Group plc (“TalkTalk”) against the Decision;
- (d) the order of the Tribunal dated 17 July 2015 (as amended), providing the Tribunal’s case management directions in the appeal;
- (e) the Defence and supporting evidence filed by Ofcom on 5 October 2015;

- (f) the Statement of Intervention and supporting evidence filed by the Intervener on 23 October 2015;
 - (g) the Reply of TalkTalk of 11 November 2015
2. The Tribunal, pursuant to Rule 116(2) of the Competition Appeal Tribunal Rules 2015 (SI 2015 No. 1648) and section 193 of the Communications Act 2003 (the “2003 Act”), hereby refers to the Competition and Markets Authority (the “CMA”) the following questions for determination of the specified price control matters arising in this appeal
 3. By this reference, the Tribunal orders the CMA to determine the following questions:

Question 1

Whether Ofcom erred in deciding not to supplement its portfolio level test with a product level test, for the reasons set out in paragraphs 47 to 92 of the NoA.

Question 2

Whether, when calculating the revenues of an ‘adjusted equally efficient operator’, Ofcom erred in deciding not to use BT’s call revenues for newly acquired customers, for the reasons set out in paragraphs 93 to 122 of the NoA.

Question 3

Having regard to the fulfilment by the Tribunal of its duties under section 195 of the 2003 Act and in the event that the CMA determines that Ofcom did err in relation to any of the above questions, the CMA is to include in its determination insofar as reasonably practicable:

- (a) clear and precise guidance as to how any such error found should be corrected; and
 - (b) a determination as to any consequential adjustments to the Price Control.
4. The CMA is directed to determine the issues contained in this reference on or before 5 July 2016
 5. The CMA 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 2003 Act
 6. There be liberty to apply.

Andrew Lenon QC
Chairman

Made: 5 January 2016
Drawn: 5 January 2016