



IN THE COMPETITION
APPEAL TRIBUNAL

B E T W E E N :

Case No.: 1259/3/3/16

TALKTALK TELECOM GROUP PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

Case No.: 1260/3/3/16

BRITISH TELECOMMUNICATIONS PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

Case No.: 1261/3/3/16

CITYFIBRE INFRASTRUCTURE HOLDINGS PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

ORDER

UPON reading the Notices of Appeal against the determinations made by the Office of Communications (“Ofcom”) in a document dated 28 April 2016 and entitled “*Business Connectivity Market Review – Review of competition in the provision of leased lines*” (“the Statement”) lodged by:

- (1) TalkTalk Telecom Group plc (“TalkTalk”) on 27 June 2016 in Case No. 1259/3/3/16 (“TalkTalk’s Appeal”);
- (2) British Telecommunications plc (“BT”) on 28 June 2016 in Case No. 1260/3/3/16 (“BT’s Appeal”); and
- (3) CityFibre Infrastructure Holdings plc (“CityFibre”) on 28 June 2016 in Case No. 1261/3/3/16 (“CityFibre’s Appeal”)

AND UPON reading the requests for permission to intervene pursuant to Rule 16 of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (“the Tribunal Rules”) made on 28 July 2016 by:

- (1) BT in Case Nos. 1259/3/3/16 and 1261/3/3/16;
- (2) CityFibre in Case Nos. 1259/3/3/16 and 1260/3/3/16;
- (3) Colt Technology Services (“Colt”), TalkTalk Telecom Group plc (“TalkTalk”), Hutchison 3G UK Limited (“Three”), Vodafone Limited (“Vodafone”), (collectively referred to as “the Communications Provider Group” or “CP Group”) in Case Nos. 1260/3/3/16 and 1261/3/3/16;
- (4) Hutchison 3G UK Limited (“Three”) and Vodafone Limited (“Vodafone”), (together referred to as “NDR Interveners”) in Case No. 1259/3/3/16;
- (5) Gamma Telecom Holdings Limited (“Gamma”) in Case Nos. 1259/3/3/16, 1260/3/3/16 and 1261/3/3/16;
- (6) Virgin Media Limited (“Virgin Media”) in Case No. 1260/3/3/16

AND UPON reading the request for permission to intervene pursuant to Rule 16 of Tribunal Rules made on 5 September 2016 by Vtesse Harlow Limited (“Vtesse”) in Case No. 1259/3/3/16

AND UPON reading the submissions of the parties and interveners filed in advance of the case management conference

AND UPON hearing the legal representatives of the parties, interveners and of the Competition and Markets Authority (“CMA”) and Mr Aidan Paul, director of Vtesse, at the case management conference on 29 September 2016

AND UPON the parties and interveners agreeing to liaise regarding the drafting of a document that explains the undisputed technical background relevant to BT and CityFibre’s appeals (“the technical primer”) and to consider the feasibility of providing the Tribunal with an introduction to the underlying technology by a neutral, independent adviser with relevant experience in advance of the hearing of BT and CityFibre’s appeals (a “teach in”)

AND UPON the parties and interveners agreeing that TalkTalk's Appeal and grounds 3 and 4b of the CityFibre's Appeal should be referred to the CMA pursuant to section 193(1) of the Communications Act 2003 as specified price control matters ("specified PCMs")

AND UPON CityFibre and Ofcom agreeing that CityFibre will file and serve the report of Dr Cadman as expert evidence

IT IS ORDERED THAT:

Forum

1. Each appeal be treated as a proceeding in England and Wales.

Interventions

2. The request to intervene of Vtesse be refused; all other requests to intervene be granted.
3. The interveners be permitted to file statements of intervention and supporting evidence. Gamma is permitted to intervene in writing only.
4. The interveners shall liaise as necessary between themselves and the party that they support so as to ensure there is no duplication in their submissions or evidence.

Talk Talk's application for a stay

5. The application for a stay by TalkTalk be dismissed.

Reference of Specified PCMs

6. With a view to the Tribunal making a reference to the CMA of TalkTalk's Appeal and grounds 3 and 4b of CityFibre's Appeal on 17 November 2016 with the CMA to issue its final report by 31 March 2017:
 - a. TalkTalk provide to the Tribunal an agreed draft setting out the questions in its appeal to be referred to the CMA for determination by 4pm on 11 November 2016.
 - b. CityFibre provide to the Tribunal an agreed draft setting out the questions in its appeal to be referred to the CMA by 4pm on 11 November 2016.
 - c. In the absence of agreement in respect of a. or b. above, the relevant party inform the Tribunal of the outstanding matters for the Tribunal to resolve.

Introduction of Supplementary expert report and corrections of BT's Notice of Appeal

7. BT be permitted to rely on the supplementary report of Mr Matt Yardley and amend its Notice of Appeal in the light of this supplementary report.

Hearing of Appeals

8. BT's Appeal and CityFibre's Appeal be heard together and all evidence adduced and documents served in one appeal may be used for the purposes of, and relied on in, the other appeal.

Confidentiality; Disclosure

9. A confidentiality ring be established by separate order in TalkTalk's Appeal (the "Case 1259 Confidentiality Ring Order") and a further confidentiality ring be established by a separate order in BT and CityFibre's Appeals (the "Case 1260-1261 Confidentiality Ring Order").
10. Subject to the establishment and terms of the Case 1259 Confidentiality Ring Order:
 - a. TalkTalk serve on the interveners in TalkTalk's Appeal copies of their Notices of Appeal and supporting evidence marked for confidentiality in both confidential and non-confidential form by 4pm on 3 October 2016;
 - b. thereafter, each party or intervener in TalkTalk's Appeal serve documents on each of the other parties and interveners in TalkTalk's Appeal simultaneously.
11. Subject to the establishment and terms of the Case 1260-1261 Confidentiality Ring Order:
 - a. BT and CityFibre serve on each other, and on the other interveners in either or both of BT's or CityFibre's Appeals, copies of their Notices of Appeal and supporting evidence marked for confidentiality in both confidential and non-confidential form by 4pm on 3 October 2016;
 - b. thereafter, each party or intervener in either or both of BT's or CityFibre's Appeals serve documents on each of the other parties and the interveners in either or both of BT's or CityFibre's Appeals, simultaneously.
12. Subject to the establishment and terms of the Case 1260-1261 Confidentiality Ring Order, Ofcom file and serve:
 - a. the confidential version of the sections of the Statement relevant to BT's Appeal and CityFibre's Appeal (except the relevant parts of section 13 of the Statement) on the appellants and the interveners in either or both of BT's or CityFibre's Appeals, by 4pm on 3 October 2016;
 - b. thereafter, the confidential version of section 13 of the Statement to the appellants and the interveners in either or both of BT's or CityFibre's Appeals, as soon as possible but in any event by 4pm on 7 October 2016

13. Subject to the establishment and terms of the Case 1259 Confidentiality Ring Order, Ofcom file and serve the confidential version of the sections of the Statement relevant to TalkTalk's Appeal on TalkTalk and the interveners in TalkTalk's Appeal by 4pm on 7 October 2016.
14. Where the parties to BT's Appeal or CityFibre's Appeal would otherwise be required by the Tribunal Rules to serve documents in support of their Defence or Statement of Intervention, they have permission not to do so where such documents have already been served with another party's Notice of Appeal or subsequent pleading in either or both of BT's Appeal or CityFibre's Appeal. Where parties rely in this way on such documents, they must set out full cross-references to the relevant attachment(s).
15. Where the parties to TalkTalk's Appeal would otherwise be required by the Tribunal Rules to serve documents in support of their Defence or Statement of Intervention, they have permission not to do so where such documents have already been served with another party's Notice of Appeal or subsequent pleading in TalkTalk's Appeal. Where parties rely in this way on such documents, they must set out full cross-references to the relevant attachment(s).

Future Conduct of the Proceedings

16. The procedural timetable for the three appeals shall be as follows:
 - a. BT, CityFibre and TalkTalk (if so advised) file and serve draft amended Notices of Appeal, with amendments agreed with the other parties where possible, by 4pm on 13 October 2016;
 - b. CityFibre (if so advised) file and serve the report of Dr Cadman in the form of an expert report, with amendments agreed with the other parties where possible, by 4pm on 13 October 2016;
 - c. Statements of Intervention in support of the appellants and any evidence relied upon be filed and served by 4pm on 3 November 2016;
 - d. Ofcom file and serve its Defence(s) and any evidence relied upon by 4pm on 17 November 2016;
 - e. Statements of Intervention in support of Ofcom and any evidence relied upon be filed and served by 4pm on 1 December 2016;
 - f. BT and CityFibre file and serve their Replies and any reply evidence by 4pm on 16 January 2017;
 - g. Gamma file and serve any application for permission to make oral submissions at the main hearing in BT's and CityFibre's appeals by 4pm on 16 January 2017;

- h. a further case management conference be listed for 10:30am on 23 January 2017 (“the Further CMC”); and
- i. the main hearing in BT’s and CityFibre’s Appeals be provisionally listed to take place in a window commencing on 3 April 2017 until 12 May 2017, with the dates of an interval over the Easter period and the further pleadings prior to the hearing to be considered at the Further CMC.

Expert Evidence

17. All expert reports on which a party or intervener proposes to rely be served with the relevant pleading or Statement of Intervention. Permission to rely upon such reports to be determined at the Further CMC.

Costs etc.

18. Costs be reserved.

19. There be liberty to apply.

The Honourable Mr Justice Snowden
Chairman of the Competition Appeal Tribunal

Made: 29 September 2016
Drawn: 03 October 2016