



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1330/3/3/19

BETWEEN

(1) TALKTALK TELECOM GROUP PLC (“TTG”)
(2) VODAFONE LIMITED (“VODAFONE”)

Appellants

-v-

OFFICE OF COMMUNICATIONS (“OFCOM”)

Respondent

ORDER

UPON reading the Appellants’ Notice of Appeal filed on 27 August 2019 which sets out appeals against three decisions (“the Decisions”) made by Ofcom in its Statement, “Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets”, published on 28 June 2019 (“the Statement”)

AND UPON reading the requests for permission to intervene pursuant to Rule 16 of the Competition Appeal Tribunal Rules 2015 (S.I. 1648 of 2015) (“the Tribunal Rules”) of (1) British Telecommunications plc (“BT”) dated 30 September 2019, and (2) CityFibre Infrastructure Holdings Limited (“CityFibre”) (the “Proposed Interveners”) dated 1 October 2019

AND UPON reading the written submissions of the parties, the Proposed Interveners and the Competition and Markets Authority (“CMA”) filed in advance of the case management

conference

AND UPON hearing counsel for, respectively, each of the parties, each of the Proposed Interveners, and the CMA, at a Case Management Conference (“CMC”) on 10 October 2019

AND UPON the Appellants and Ofcom agreeing to liaise with each other promptly following the CMC to seek to reach agreement concerning the Appellants’ requests for specific disclosure so as to facilitate disclosure into the confidentiality ring by no later than the date when Ofcom serves its Defence

AND UPON the parties and Proposed Interveners agreeing that the appeal as it concerns Ofcom’s Decisions 2 and 3 (as identified in the Notice of Appeal) raise Specified Price Control Matters (“SPCMs”) requiring referral to the CMA pursuant to section 193(1) of the Communications Act 2003 and Rule 116 of the Tribunal Rules

IT IS ORDERED THAT:

Forum

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

Interventions

2. BT’s request to intervene in the appeal is granted.
3. CityFibre’s request to intervene in relation to the appeal brought against Decisions 2 and 3 only is granted.
4. BT and CityFibre (“the Interveners”) are permitted to file statements of intervention and supporting evidence.
5. The Interveners shall liaise as necessary between themselves and with Ofcom (in whose support they have intervened) so as to avoid unnecessary duplication in submissions or evidence.
6. The Appellants shall promptly disclose to each of the Interveners the non-confidential versions of the Notice of Appeal and supporting evidence (insofar as the Appellants have not already been provided with those materials).
7. Subsequent references in this order to “the parties” include the Interveners.

Reference of SPCMs

8. The Tribunal will hear and decide the appeal so far as it concerns Decision 1 (as identified in the Notice of Appeal), which does not raise SPCMs, prior to referring to the CMA the SPCMs raised by the appeal as it concerns Decisions 2 and 3.
9. Following service of the Defence, the parties are to liaise with each other to seek to agree the drafting of the questions which are to, in due course, be referred to the CMA in respect of the SPCMs relating to Decisions 2 and 3.

Confidentiality and Disclosure

10. A confidentiality ring be established by a separate order (“Confidentiality Ring Order”) to facilitate the disclosure of documents containing confidential information. (The Confidentiality Ring Order includes specific provisions requiring disclosure into the confidentiality ring of sections of the confidential version of the Statement, and of the unredacted Notice of Appeal and supporting evidence and other annexes.)

Future Conduct of the Proceedings

11. The procedural timetable for the Appeal shall be as follows:
 - (a) Ofcom file and serve its Defence by 4pm on 1 November 2019;
 - (b) The Interveners file and serve their Statements of Intervention and any evidence relied on by 4pm on 15 November 2019;
 - (c) The Appellants file and serve their Reply and any reply evidence by 4pm on 13 December 2019;
 - (d) The main hearing be provisionally listed to take place in a window commencing on 13 January 2020 with a time estimate of 5 days with an additional day in reserve.
 - (e) The Appellants file and serve their skeleton argument by 4pm on 20 December 2019;
 - (f) Ofcom file and serve its skeleton argument by 4pm on 6 January 2020;
 - (g) BT file and serve its skeleton argument by 4pm on 8 January 2020.
12. A second CMC will be listed for a date between 16 and 20 December 2019 in case it is required. The parties are to inform the Tribunal by 4pm on 2 December 2019 whether the CMC is needed or may instead be vacated.

Expert Evidence

13. All expert reports on which a party proposes to rely are to be served with the relevant pleading or Statement of Intervention. Permission to rely upon such reports is to be determined at the Second CMC (or, if that CMC is vacated, in writing).

Costs and other matters

14. Costs be reserved.
15. There be liberty to apply.

Peter Freeman CBE QC (Hon)
Chairman of the Competition Appeal Tribunal

Made: 10 October 2019
Drawn: 16 October 2019