



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1330/3/3/19

BETWEEN

(1) TALKTALK TELECOM GROUP PLC
(2) VODAFONE LIMITED

Appellants

-v-

OFFICE OF COMMUNICATIONS

Respondent

-and-

(1) BRITISH TELECOMMUNICATIONS PLC
(2) CITYFIBRE INFRASTRUCTURE HOLDINGS LIMITED

Interveners

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

1. Having regard to:

- a. The Statement by the Office of Communications (“Ofcom”) entitled: “Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets”, dated 28 June 2019 (the “Statement”);
- b. The price controls imposed on British Telecommunications plc (“BT”) by SMP services condition 10 in Schedule 3 of Annex 26 to the Statement (the “price control”);

- c. The fair and reasonable terms, conditions and charges requirement imposed on BT by SMP services condition 1 in Schedule 3 of Annex 26 to the Statement;
 - d. The Notice of Appeal dated 27 August 2019 filed by TalkTalk Telecom Group Plc and Vodafone Limited against the Statement (“NoA”);
 - e. The Defence and supporting evidence filed by Ofcom on 1 November 2019;
 - f. The Statements of Intervention and supporting evidence filed by each of the Interveners on 15 November 2019;
 - g. The Reply and supporting evidence filed by the Appellants on 13 December 2019;
 - h. The further supporting evidence filed by the parties and admitted to the Tribunal;
 - i. The judgment of the Tribunal dated 5 March 2020 on the non-specified price control matters in this appeal ([2020] CAT 8).
2. The Tribunal, pursuant to Rule 116 of the Competition Appeal Tribunal Rules 2015 (SI 2015 No 1648) and section 193 of the Communications Act 2003 (“2003 Act”), hereby refers to the Competition & Markets Authority (“CMA”) for its determination the specified price control questions arising in this appeal.

IT IS ORDERED THAT:

3. By this reference the Tribunal orders the CMA to determine the following questions:

Question 1: Was Ofcom wrong to decide to impose a “flat” (or “CPI-CPI”) price control for BT’s supplies of contemporary interface (“CI”) access services in geographic markets defined by Ofcom as “BT Only” and “BT+1”, rather than a cost-based control, for the reasons pleaded in paragraphs 103-132 of the NoA?

Question 2: Was Ofcom wrong to decide to impose a fair and reasonable charges requirement in relation to BT’s supplies of CI access services in the geographic markets (other than the CLA) which Ofcom identified as “High Network Reach” markets, and that no stronger remedy (such as, for example, a specific charge control) was appropriate, for the reasons pleaded in paragraphs 133-162 of the NoA?

4. In the event that the CMA determines that Ofcom was wrong in relation to the questions asked and having regard to the fulfilment by the Tribunal of its duties under section 194A of the 2003 Act, the CMA is to include in its determination, insofar as reasonably practicable, guidance as to what matters (if any) should be included in the ruling of the Tribunal for Ofcom to reconsider on remittal of the Decisions.
5. The CMA is directed to determine the issues contained in this reference on or before 7 October 2020.

6. The CMA shall notify the parties to these appeals of its determinations at the same time as it notifies the Tribunal pursuant to section 193(4) of the 2003 Act.
7. There be liberty for all parties, including the CMA, to apply in relation to this Reference.
8. This Order shall take effect on 7 April 2020.

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

Made: 19 March 2020
Drawn: 19 March 2020