



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 192 OF THE COMMUNICATIONS ACT 2003

CASE No 1267/3/12/16

Pursuant to rule 14(2) of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 8 September 2016 under sections 192(1)(e) and 192(2) of the Communications Act 2003 (“the Act”) by British Telecommunications plc (“the Appellant”) of 81 Newgate Street, London EC1A 7AJ against a decision of the Competition and Markets Authority (“the CMA”) in respect of the costs incurred by the CMA in connection with the reference made in the Appellant’s appeal in Case No. 1238/3/3/15 (“the Decision”). The CMA gave effect to the Decision by an order dated 8 July 2016 made under section 193A of the Act (“the Costs Order”).

The Costs Order was made following two appeals brought by the Appellant and TalkTalk Telecom Group plc (“TalkTalk”) respectively (Case Nos. 1238/3/3/15 and 1237/3/3/15), by which the Appellant and TalkTalk each challenged a price control decision by the Office of Communications (“OFCOM”) contained in a statement entitled “Fixed Access Market Reviews: Approach to the VULA Margin” dated 19 March 2015¹. By orders dated 5 January 2016, the Tribunal referred to the CMA for determination pursuant to section 193 of the Act a number of reference questions. On 13 June 2016, the CMA sent its final determination of the referred questions to the Tribunal².

On 23 June 2016, the CMA sent the Appellant and TalkTalk a letter headed “Costs consultation”, enclosing a draft order to be made pursuant to section 193A of the Act and inviting representations on the terms of the draft order by 30 June 2016. In its representations dated 30 June 2016, the Appellant noted that the CMA had not provided any particulars of how it had arrived at its estimate of the total time spent on each of the two references. On 8 July 2016, the CMA sent the parties the final Costs Order, under cover of a letter responding to the points raised by the Appellant. In that letter the CMA stated that its costs had been “recorded and identified transparently” and provided a breakdown, under five broad heads, of the costs which the CMA had incurred in determining both references.

In summary, the Appellant appeals against the Decision on the basis that it is defective in the following respects:

1. In deciding, as a starting point, to seek to recover all of its costs, the CMA inappropriately failed to consider whether all of those costs had been reasonably and/or proportionately incurred.
2. Further or alternatively, the CMA erred in failing properly to identify the costs it had incurred in connection with the reference in the Appellant’s price control appeal specifically.
3. Further or alternatively, the CMA erred in deciding the proportion to be paid by the Appellant without having regard (or proper regard) to the extent to which the Appellant succeeded in its price control appeal and/or the reasonableness of the Appellant’s conduct in bringing that appeal.

By way of relief sought, the Appellant seeks:

- (a) A decision of the Tribunal allowing the Appellant’s appeal on each of Grounds 1 to 3 above, both as to the points of principle and as to the amounts by which the costs to be recovered from the

¹ A non-confidential version of OFCOM’s VULA statement is available on OFCOM’s website:

http://stakeholders.ofcom.org.uk/binaries/consultations/VULA-margin/statement/VULA_margin_final_statement.pdf

² A non-confidential version of the CMA’s final determination is available on the Tribunal’s website:

http://www.catribunal.org.uk/files/1237-1238_CMA_Final_determination_200616.pdf

Appellant should be reduced (as to the latter, the Appellant will plead fuller particulars following disclosure).

- (b) An order remitting the Decision to the CMA with directions that the CMA should amend the Costs Order to reflect the Tribunal's decision.
- (c) Such further or other relief as may be required or appropriate.
- (d) An award of costs in the Appellant's favour.

The Appellant seeks a direction from the Tribunal pursuant to Rule 19(1) of the Rules (and in particular Rule 19(2)(d) and/or (e)) that the CMA provide information and disclosure as a preliminary step in this appeal in order to enable the Appellant to plead out its case more fully.

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. Alternatively, the Tribunal Registry can be contacted by post at the above address or by telephone (020 7979 7979) or fax (020 7979 7978) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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