



IN THE COURT OF APPEAL, CIVIL DIVISION

(CIV:GS:29.03.12)

REF: C3/2012/0692A

Her Majesty's
Court of Appeal [SEAL]

4 - APR 2012

BRITISH TELECOMMUNICATIONS PLC
(Respondent and Cross-appellant)

-v-

OFFICE OF COMMUNICATIONS and OTHERS

ORDER made by the Rt. Hon. Lord Justice Lloyd

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal by a Respondent's Notice

Decision: granted, refused, adjourned. An order granting permission may limit the issues to be heard or be made subject to conditions.

Granted in relation to the appeal by Telefonica O2 UK Ltd; refused in relation to the appeals by Everything Everywhere Ltd, Hutchinson 3G UK Ltd and Vodafone Ltd

Reasons

This appeal is linked with appeals C3/2011/3316, 3315, 3121 and 3124. All five appeals are due for hearing imminently. As regards Telefonica O2, the issue of remedy is already in play on its appeal, and it is fair that BT should be allowed to argue for the opposite result from that contended for by Telefonica O2, by way of cross-appeal against the relief granted by the CAT.

As regards the other three mobile network operators, they have not raised the issue of remedy, and there is therefore no justification for BT in extending the scope of these appeals by a Respondent's Notice at so late a stage before the hearing of the appeals.

Information for or directions to the parties

If BT wishes to renew its application for permission to cross-appeal as against the other three appellants, that application will be heard at the hearing of the appeal. If permission were granted it would be likely to result in the issue of remedy being deferred to a later hearing.

Telefonica is to serve its skeleton argument in response on the Respondent's Notice no later than 4pm on Friday 20 April 2012.

The date for lodging the bundles required under the order of 15 February is extended to 4pm on 16 April; any additions to the bundles consequential on Telefonica's skeleton argument on the Respondent's Notice are to be made by 4pm on 23 April.

This case falls within the Court of Appeal Mediation Scheme automatic pilot categories*. Yes No

Recommended for mediation Yes No

If not, please give reason:

The substantive appeal hearing is imminent and is not suitable for mediation at this stage.

Where permission has been granted, or the application adjourned

- a) time estimate (excluding judgment) No change to the time estimate for the substantive appeals
b) any expedition Yes - as for the substantive appeals

Signed: *Timothy Lloyd*
Date: 4 April 2012

By the Court

Notes

- (1) Rule 52.3(6) provides that permission to appeal may be given only where –
a) the Court considers that the appeal would have a real prospect of success; or
b) there is some other compelling reason why the appeal should be heard.
- (2) Rule 52.3(4) and (5) provide that where the appeal court, without a hearing, refuses permission to appeal that decision may be reconsidered at a hearing, provided that the request for such a hearing is filed in writing within 7 days after service of the notice that permission has been refused. Note the requirement imposed on advocates by paragraph 4.14A of the Practice Direction.

**DATED 4TH APRIL 2012
IN THE COURT OF APPEAL**

**BRITISH TELECOMMUNICATION PLC
(Respondent and Cross-appellant)**

- and -

OFFICE OF COMMUNICATIONS & OTHERS

ORDER

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