



IN THE COMPETITION
APPEAL TRIBUNAL

BETWEEN:

Case No.1259/3/3/16

TALKTALK TELECOM GROUP PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

-and-

NDR INTERVENERS (VODAFONE LIMITED AND HUTCHISON 3G UK LIMITED)

BRITISH TELECOMMUNICATIONS PLC

GAMMA TELECOM HOLDINGS LIMITED

CITYFIBRE INFRASTRUCTURE HOLDINGS PLC

Interveners

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

Having regard to:

- (a) the decision (“the Decision”) made by the Respondent (“Ofcom”) in a Statement entitled “*Business Connectivity Market Review – Review of competition in the provision of leased lines*” issued on 28 April 2016 (“the BCMR Statement”) in particular paragraph 9.5, Annex 23 (notably A23.37-134) and Annex 33 (notably A33.258-261)
- (b) the price controls imposed on British Telecommunications PLC (“BT”) by SMP Condition 10 set out in Annex 35 (the “Condition”) of the BCMR Statement

- (c) the charges obligation in relation to Dark Fibre Access imposed on BT by SMP Services Condition 10C set out in Schedule 1 to the BCMR Statement
- (d) the Notice of Appeal (“the NoA”) filed in relation to the Decision by the Appellant (“TalkTalk”) on 27 June 2016
- (e) Ofcom’s and TalkTalk’s agreement that the NoA raises a specified price control matter under section 193(1) of the Communications Act 2003 (“the 2003 Act”) and Rule 16 of the Competition Appeal Tribunal Rules 2015 (SI 2015 No. 1648)
- (f) paragraph 6 of the Tribunal’s Order in this and related appeals of 29 September 2016
- (g) the draft questions for reference to the Competition and Markets Authority (“the CMA”) received from the parties on 11 November 2016 and correspondence and submissions received on 11 and 14 November 2016

IT IS ORDERED THAT:

1. The following matter (“the Matter”) be referred to the CMA for determination on or before 31 March 2017:

Was Ofcom wrong to decide that, in the event that Ofcom’s recommendation to the Government described in paragraph A23.111 of the BCMR Statement is not adopted, the Non-Domestic Rate costs to be deducted from the price of the reference active products in deriving the price for Dark Fibre Access at paragraph 10.C.1 of the Condition should be based on an attribution of BT’s rates costs to the fibre (rather than on some other appropriate measure) for reasons set out in paragraphs 32 to 44 of the NoA?
2. In the event that the CMA determines that Ofcom was wrong in relation to the Matter, and having regard to the fulfilment by the Tribunal of its duties under section 195 of the 2003 Act, the CMA is to include in its determination, insofar as reasonably practicable, guidance as to what directions (if any) the Tribunal should give to Ofcom on remittal of the Decision.
3. 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.
4. There be liberty for all parties, including the CMA, to apply in relation to this Reference.

The Honourable Mr Justice Snowden
Chairman of the Competition Appeal Tribunal

Made: 17 November 2016
Drawn: 17 November 2016