



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos. 1089/3/3/07
1090/3/3/07
1091/3/3/07
1092/3/3/07

BETWEEN:

T-MOBILE (UK) LIMITED

-and-

BRITISH TELECOMMUNICATIONS PLC

-and-

HUTCHISON 3G UK LIMITED

-and-

CABLE & WIRELESS & ORS

-and-

Appellants /
Interveners

VODAFONE LIMITED

ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED

Interveners

-and-

OFFICE OF COMMUNICATIONS

Respondent

ORDER

1. In this Order:
 - (a) “the 2003 Act” means the Communications Act 2003 (c.21);
 - (b) “BT” means British Telecommunications plc;
 - (c) “BT Disputes Determinations” means the “Determinations to resolve mobile call termination rate disputes between T-Mobile and BT, O2 and BT, Hutchison 3G and BT and BT and each of Hutchison 3G,

Orange and Vodafone” issued by OFCOM on 7 July 2007 (as amended on 19 July 2007);

- (d) “H3G” means Hutchison 3G UK Limited;
 - (e) “H3G Disputes Determinations” means the “Determinations to resolve mobile call termination rate disputes between Hutchison 3G and each of O2 and Orange” issued by OFCOM on 10 August 2007;
 - (f) “MCT” means mobile call termination;
 - (g) “O2” means Telefónica O2 UK Limited;
 - (h) “OCCN” means Operator Charge Change Notice;
 - (i) “OFCOM” means the Office of Communications;
 - (j) “Orange” means Orange Personal Communications Services Limited;
 - (k) “the Rates Judgment” means the judgment of the Tribunal handed down on 15 August 2008, [2008] CAT 19;
 - (l) “T-Mobile” means T-Mobile (UK) Limited; and
 - (m) “Vodafone” means Vodafone Limited.
2. The Tribunal, having considered in accordance with section 195(4) of the 2003 Act what directions are appropriate to give effect to the decisions set out in its judgment in these appeals of 20 May 2008 ([2008] CAT 12) and in the Rates Judgment hereby remits the BT Disputes Determinations and H3G Disputes Determinations to OFCOM with the following directions:
- (a) in relation to the dispute between BT and T-Mobile referred to OFCOM by T-Mobile on 21 December 2006, OFCOM should resolve the dispute by setting, for the periods 1 September to 31 December 2006 and 1 January to 31 March 2007, MCT prices payable by BT to T-Mobile which are the same as the rates described as the “underlying 2G rate” for those periods set out in the table in paragraph 12 of the Rates Judgment;
 - (b) in relation to the dispute between BT and O2 referred to OFCOM by O2 on 16 February 2007, OFCOM should resolve the dispute by setting, for the periods 1 September to 31 December 2006 and 1 January to 31 March 2007 MCT prices payable by BT to O2 which are the same as the rates described as the “underlying 2G rate” for those periods set out in the table in paragraph 26 of the Rates Judgment;

- (c) in relation to the dispute between BT and Vodafone referred to OFCOM by BT on 22 January 2007, OFCOM should resolve the dispute by setting MCT prices payable by BT to Vodafone for the period 1 October 2006 to 31 March 2007 in accordance with the OCCN served by BT on Vodafone on 19 July 2006;
 - (d) in relation to the dispute between BT and Orange referred to OFCOM by BT on 22 January 2007, OFCOM should resolve the dispute by setting MCT prices payable by BT to Orange for the period 1 October 2006 to 31 March 2007 in accordance with the OCCN served by BT on Orange on 19 July 2006;
 - (e) in relation to the disputes between BT and H3G referred to OFCOM by BT on 22 January 2007 and by H3G on 19 March 2007, OFCOM should resolve the disputes by making proportionate adjustments to the rates for daytime, evening and weekend minutes prevailing up to 22 November 2006 (as set out in paragraph 78 of the Rates Judgment) such that, having regard to the numbers of daytime, evening and weekend minutes for which MCT charges were payable by BT to H3G during the period 1 November 2006 to 31 March 2007, the average MCT price to be paid by BT to H3G for minutes terminated over that period is 9.64 pence per minute;
 - (f) in relation to the dispute between H3G and O2 referred to OFCOM by H3G on 21 March 2007, OFCOM should resolve the dispute by setting, for the periods 1 September 2006 to 31 December 2006 and 1 January to 31 March 2007, MCT prices payable by H3G to O2 which are the same as the MCT prices payable by BT to O2 set in accordance with paragraph 2(b) above;
 - (g) in relation to the dispute between H3G and Orange referred to OFCOM by H3G on 21 March 2007, OFCOM should resolve the dispute by setting, for the period 15 August 2006 to 31 March 2007, MCT prices payable by H3G to Orange which are the same as the MCT prices payable by BT to Orange set in accordance with paragraph 2(d) above.
3. OFCOM should order the parties to pay, by way of an adjustment for an underpayment or overpayment, sums arrived at in the following manner;
- (a) within 7 days of the making of this order, BT shall notify each of T-Mobile, O2, Vodafone, Orange and H3G of BT's calculation of the sum of any under or over payment due as between BT and that party, providing sufficient detail to enable that party to see how the sum has been arrived at;
 - (b) within 10 days of receipt of that notification, each of T-Mobile, O2, Vodafone, Orange and H3G shall notify BT either that it accepts that the sum notified to it by BT is correct or, if it does not accept it as

correct, setting out its own calculation of the sum, providing sufficient detail to enable BT to see how the sum has been arrived at;

- (c) within 7 days of the making of this order, H3G shall notify each of O2 and Orange of H3G's calculation of the sum of any under or over payment due as between H3G and that party, providing sufficient detail to enable the other party to see how the sum has been arrived at;
 - (d) within 10 days of receipt of that notification, each of O2 and Orange shall notify H3G whether it accepts that the sum notified to it by H3G is correct, and if it does not accept it as correct, setting out its own calculation of the sum, providing sufficient detail to enable H3G to see how the sum has been arrived at;
 - (e) OFCOM shall, as soon as reasonably practicable thereafter, order the payment of any sum agreed to be correct in those cases where there is agreement between the parties and, in any case where the parties are not agreed, OFCOM shall order such payments between the parties as it considers appropriate having regard to the difference between the amounts paid for MCT by BT or H3G in respect of any period and the amount which would have been paid in respect of that period if the rates set in accordance with the relevant sub-paragraphs of paragraph 2 above had prevailed;
 - (f) every notification sent by a party shall be copied to OFCOM.
4. OFCOM should order interest to be paid on any sums referred to in sub-paragraph (h) above at such rate and for such period as it considers appropriate having regard to the terms of the contracts between the parties.
5. There shall be liberty to apply.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 17 November 2008
Drawn: 17 November 2008