

BETWEEN :

Case No.: 1259/3/3/16

TALKTALK TELECOM GROUP PLC

Appellant

– and –

OFFICE OF COMMUNICATIONS

Respondent

– and –

**BRITISH TELECOMMUNICATIONS PLC
CITYFIBRE INFRASTRUCTURE HOLDINGS PLC
NDR INTERVENERS (VODAFONE LTD AND HUTCHISON 3G UK LTD)
GAMMA TELECOM HOLDINGS LTD**

Interveners

AND BETWEEN :

Case No.: 1261/3/3/16

CITYFIBRE INFRASTRUCTURE HOLDINGS PLC

Appellant

– and –

OFFICE OF COMMUNICATIONS

Respondent

– and –

**BRITISH TELECOMMUNICATIONS PLC
CP GROUP (TALKTALK TELECOM GROUP PLC, VODAFONE LTD, COLT
TECHNOLOGY SERVICES AND HUTCHISON 3G UK LTD)
GAMMA TELECOM HOLDINGS LTD**

Interveners

CMA COSTS ORDER

Having regard to:

- a) Ofcom's decision in a statement entitled the *Business Connectivity Market Review – Review of competition in the provision of leased lines* issued by Ofcom on 28 April 2016 (“the *BCMR Statement*”);

- b) the price control imposed on British Telecommunications plc (“BT”) by SMP Services Condition 10A set out in Schedule 1 to Annex 35 to *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 Notices of Appeal (“NoA”) filed at the Competition Appeal Tribunal (“the Tribunal”) in relation to the Ofcom’s decision by, respectively, TalkTalk Telecom Group plc (“TalkTalk”) on 27 June 2016 and CityFibre Infrastructure Holdings plc (“CityFibre”) on 28 June 2016;
- e) Ofcom’s and TalkTalk’s agreement that TalkTalk’s NoA raised 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) Ofcom’s contention, which was not resisted by CityFibre, that Grounds 3 and 4b of CityFibre’s NoA also raised specified price control matters;
- g) the Tribunal’s Orders made on 17 November 2016 that the specified price control matters (“the Reference”) be referred to the CMA for determination on or before 31 March 2017;
- h) the Tribunal’s Order made on 10 March 2017 granting the CMA an extension of time for its determination on the Reference to 7 April 2017;
- i) the CMA’s Final Determination on the Reference sent on 6 April 2017 to the Tribunal;
- j) the CMA’s determination that Ofcom was wrong to decide that the non-domestic rates costs to be deducted from the price of the reference active products in deriving the price for the Dark Fibre Access remedy at paragraph 10C.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 TalkTalk’s NoA;
- k) the CMA’s determination that Ofcom was not wrong to set the leased line charge control by reference to BT’s costs of replacement of its network instead of the costs of a reasonably efficient operator or a modified equally efficient operator, as claimed in Grounds 3 and 4b of CityFibre’s NoA;
- l) the Orders of the Tribunal made on 29 June 2017 dismissing Grounds 3 and 4(b) of CityFibre’s appeal, and allowing TalkTalk’s appeal;

- m) the CMA's decision, made pursuant to section 193A(1) and (2) of the 2003 Act, to make a costs order in respect of the costs incurred by it in connection with the Reference ("Costs Order");
- n) the extent to which the determination on the reference upheld Ofcom's decision in relation to the price control matter in question, the extent to which the costs were attributable to the involvement in the appeal of each party and the conduct of each party; and
- o) the comments, which the CMA has taken into account, from the parties on the proposed Costs Order sent on 11 August 2017 to the parties in accordance with paragraph 8.7 of the CMA's guidance *Cost recovery in telecoms price control references: Guidance on the CMA's approach* (CMA5);

IT IS ORDERED THAT:

1. The total costs incurred by the CMA in connection with the Reference were £479,890.36.
2. The proportion of those costs which CityFibre must pay the CMA is £250,260.57.
3. No proportion of the costs incurred by the CMA in connection with the Reference is to be paid to the CMA by TalkTalk, Ofcom or the Interveners.

Alasdair Smith
CMA Group Chairman
28 November 2017