

Friday the 11th day of October 2013

BEFORE MR JUSTICE COOKE

IN THE MATTER OF AN APPEAL PURSUANT TO REGULATION 4 OF THE
EUROPEAN COMMUNITIES (ELECTRONIC COMMUNICATIONS
NETWORKS AND SERVICES) (FRAMEWORK) REGULATIONS 2011

BETWEEN/

VODAFONE IRELAND LIMITED

APPELLANT

AND

COMMISSION FOR COMMUNICATIONS REGULATION

RESPONDENT

The Appeal on behalf of Vodafone Ireland Limited the Appellant

herein pursuant to Notice of Motion dated the 18th day of December 2012 making
application as follows

1. An order pursuant to Regulation 6(2)(a) of the European Communities (Electronic Communications Networks And Services) Regulations 2011 (the "Framework Regulations") setting aside the Decision Instrument: Mobile Voice Call Termination (Decision D12/12) contained in Annex 2 of the document entitled "Mobile and Fixed Voice Call Termination Rates in Ireland" (Reference ComReg 12/125)(the "Price Control Decision") issued and published by the respondent the Commission for Communications Regulation of Block DEF Abbey Court Irish Life Centre Lower Abbey Street Dublin 1 on 21 November 2012
2. As necessary an order pursuant to Regulation 6(2)(b) of the Framework Regulations remitting the Price Control Decision to the Commission for Communications Regulation to be reconsidered in accordance with the directions of the Court
3. An order pursuant to Regulation 6(2)(a) of the Framework Regulations setting aside the Decision Instrument: Mobile Voice Call Termination (Decision D11/12) contained in Annex 2 of the document entitled "Market Review: Voice Call Termination on Individual Mobile Networks: Response to Consultation and Decision Notice" (Reference ComReg 12/124)(the "SMP Decision") issued and published by the respondent on 21 November 2012 insofar as the SMP Decision makes a finding pursuant to Regulation 13(1) of the European Communities (Electronic Communications Networks and Services)(Access) Regulations 2011 (SI No 334 of 2011)(the "Access Regulations") that each Mobile Service Provider having significant market power is subject to a cost orientation obligation as regards mobile termination rates and prices charged by that Mobile Service Provider to any other undertaking for access to identified products services and facilities
4. As necessary an order pursuant to Regulation 6(2)(b) of the Framework Regulations remitting that part of the SMP Decision to the respondent to be reconsidered in accordance with the directions of the Court

5. As necessary an order pursuant to Regulation 7(2) of the Framework Regulations staying the operation of implementation of all or part of the Price Control Decision and/or the SMP Decision for the purpose of securing the effectiveness of the hearing and determination of this appeal
6. If necessary an interlocutory injunction restraining the operation or implementation of all or part of the Price Control Decision and/or the SMP Decision
7. Such further or other orders as the Court considers necessary pursuant to Regulation 6(1) of the Framework Regulations

coming on for hearing on the 30th day of April and the 1st 2nd 3rd 7th 8th 9th and 10th days of May 2013

On reading said Notice the Order herein dated the 14th day of January 2013 (Kelly, J) entering the within into the Commercial List and providing initial directions herein the Affidavits set out in the Schedule attached hereto and the documents and exhibits respectively attached thereto the Statement of Opposition on behalf of the Respondent filed on the 7th day of March 2013 and the Pleadings herein

And on hearing Counsel for the Appellant and Counsel for the Respondent

The Court Reserved judgment

The matter called on for judgment on the 14th day of August 2013

The Court noted that it is not appropriate or necessary to rule on the SMP Decision and the additional grounds of appeal advanced in respect of the Price Control Decision subject to hearing from the parties further

The Court adjourned the matter (For Mention) to the 25th day of September and to the 30th day of September 2013 to hear legal submission of the parties on *inter alia* the form of the Order herein

The matter called on for hearing on the 30th day of September in the presence of said Counsel herein and Counsel for each of the undertakings Meteor Mobile Communications Limited and Eircom and Telefónica 02 and Hutchison 3G Ireland (the “non-party undertakings”)

Having read the said submissions prepared by Counsel for the Appellant and Counsel for the Respondent and on hearing Counsel herein on the form of Order of the Court

And Counsel for Meteor Mobile Communications Limited and Eircom service providers in the sector the subject matter of these proceedings applying to be heard before this Court in the within Appeal on the form of the order to be made herein in the presence of Counsel for the parties to this Appeal and of Counsel for the two other said non-party undertakings

The Court postponed hearing any representations by the said non-party undertakings and adjourned the matter to this day

The matter called on this day on *inter alia* the form of the Order herein

THE COURT DOTH DECLARE AND ADJUDGE that

1. the Decision Instrument: Mobile Voice Call Termination (Decision D12/12) contained in Annex 2 of the document entitled "Mobile and Fixed Voice Call Termination Rates in Ireland" (Reference ComReg 12/125)(the "Price Control Decision") constitutes a Single Decision
2. Section 4 of the said Price Control Decision (being the paragraphs numbered 4.1 and to 4.6 therein) be and is hereby quashed and set aside
3. In exercise of the Court's power under Regulation 7 of the Framework Regulations 2011 and until the final determination of the within Appeal or further Order the Appellant's weighted average Mobile Termination Rate should be no more that 2.60 cents per minute

And so Orders accordingly

And IT IS ORDERED that the

4. view expressed by the Court in the said judgment that it is unsatisfactory and unwise to determine now the additional grounds of appeal directed at the al-

Amended this 22nd day of October 2013 pursuant to Order 28 Rule 11 RSC as amended by SI 271 of 2009 by replacing the word "and" with the word *to* in paragraph number 2. across

Noeleen McDonnell
Registrar

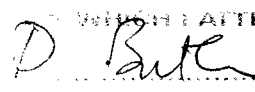
leged inherent incompatibility of a pure BU-LRIC methodology and model with the conditions and requirements of a Price Control obligation is confirmed and the Court will provide a further statement of its reasons in that regard to the parties in early course

5. application by the above non-party undertakings to be heard in this matter is refused
6. question of costs stands adjourned
7. Liberty to the Appellant and the Respondent to apply

Noeleen McDonnell
 REGISTRAR
 Perfected
 17th day of October 2013

McCann FitzGerald
 Solicitors for the Appellant
 [SEB\5323839.2]

William Fry
 Solicitors for the Respondent

IN WITNESS WHEREOF

 REGISTRAR

SCHEDULE OF AFFIDAVITS ATTACHED HEREIN REFERRED TO

DEPONENT	DATE FILED
Paul Ryan	18 th day of December 2012 20 th day of March 2013
Edward Traynor	9 th day of January 2013
George Houpis	7 th day of February 2013 26 th day of March 2013
Caroline Dee Brown	6 th day of March 2013 4 th day of April 2013 3 rd day of October 2013
Peter James Allen	6 th day of March 2013 4 th day of April 2013 17 th day of April 2013
Daniel Maldoom	6 th day of March 2013 4 th day of April 2013
Tommaso Valletti	6 th day of March 2013 17 th day of April 2013
Jerry A Hausman	4 th day of April 2013