



IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1381/7/7/21

BETWEEN:

JUSTIN LE PATOUREL

Applicant/Proposed Class Representative

- v -

(1) BT GROUP PLC

(2) BRITISH TELECOMMUNICATIONS PLC

Respondents/Proposed Defendants

INTERIM CONFIDENTIALITY RING ORDER

UPON the parties to the above-named proceedings (the "Proposed Collective Proceedings") having agreed that documents containing confidential information be subject to the confidentiality terms contained in this Order (the "Confidentiality Terms") for the period up to and including the hearing of the application for a Collective Proceedings Order ("CPO Hearing")

AND HAVING REGARD TO the Tribunal's powers under the Competition Appeal Tribunal (the "Tribunal") Rules 2015 (the "Tribunal Rules") (Rules 53(h), 101 and 102)

AND UPON the Parties having agreed to the terms of this Order

IT IS ORDERED BY CONSENT THAT:

1. DEFINITIONS

1.1 For the purpose of these Confidentiality Terms:

1.1.1 “**Confidential Information**” means:

- (a) documents provided by a Party, including any part of those documents and any information contained within those documents, which:
 - (i) the Disclosing Party has disclosed prior to the CPO Hearing
 - (ii) the Disclosing Party or the Tribunal has designated as confidential; and
 - (iii) has not subsequently been re-designated not confidential, either by consent or by order of the Tribunal; and
- (b) documents such as:
 - (i) working documents created by the receiving Party or its advisers or its advisers or experts;
 - (ii) *inter-partes* correspondence;
 - (iii) documents filed at the Tribunal, such as pleadings, witness evidence, expert reports, skeleton arguments, applications and draft orders; and
 - (iv) transcripts prepared by a third party service provider, which contain, reproduce, or reflect the content of the documents/information provided under paragraph 1.1.2(a); but

(c) the following documents/information will not be Confidential Information:

(i) redacted versions of the documents described at paragraph 1.1.1(b) if they have been redacted so that they no longer contain or refer to the content of the documents/information provided under paragraph 1.1.1(a); and

(ii) documents that use Confidential Information (for example, to provide an aggregation of Confidential Information) but which do not reveal the content of Confidential Information.

1.1.2 "**Disclosing Party**" means, in relation to any document, the Party that disclosed that document.

1.1.3 "**Guide**" means the Tribunal's 2015 Guide to Proceedings.

1.1.4 "**Party**" means the Proposed Class Representative or the Proposed Defendants.

1.1.5 "**Permitted Persons**" means:

(a) those persons listed in Annex A (as amended from time to time pursuant to these Confidentiality Terms and/or by the Tribunal) that have provided undertakings to all Parties in the form set out in Annex B;

(b) necessary secretary, business services or other support personnel, including for the avoidance of doubt internal providers of eDisclosure or litigation support services (not including trainee solicitors or paralegals), IT, reprographics staff and clerks, acting under the supervision and/or instructions of the persons identified at paragraph 1.1.5(a) for the purpose of the Proposed Collective Proceedings, provided that such personnel have been informed of the confidential

nature of the Confidential Information and the terms of Annex B; and

- (c) any external eDisclosure or litigation support provider engaged by any Party for the purpose of the Proposed Collective Proceedings to provide eDisclosure or similar services in support of those persons identified at paragraph 1.1.5(a) above, who may have access to the Confidential Information as a necessary consequence of the provision of their services and whose identity is notified to the other Parties in writing at least two (2) working days in advance, provided that such providers have been informed of the confidential nature of the Confidential Information and the terms of Annex B.

1.1.6 **"Proposed Class Representative"** means Justin le Patourel.

1.1.7 **"Proposed Defendants"** means BT Group Plc and British Telecommunications Plc.

1.1.8 **"Tribunal"** means the Competition Appeal Tribunal.

2. **CONFIDENTIAL INFORMATION**

2.1 Confidential Information provided in the context of these proceedings is to be provided or made available solely to the Permitted Persons, to be held by them on the terms set out in Annex B of these Confidentiality Terms, subject to the following paragraphs of these Confidentiality Terms.

2.2 For the avoidance of doubt, it is intended that Confidential Information be limited to: (i) information the disclosure of which would be contrary to the public interest; (ii) commercially sensitive information, the disclosure of which by one Party to another and/or to third parties could significantly harm the legitimate business interests of the person(s) or undertaking(s) to which it relates; and/or (iii) information relating to the private affairs of an individual, the disclosure of which could significantly harm that individual's interests.

2.3 Confidential Information shall exclude information which is already published or generally available to the public or becomes published or generally available to the public, other than through the act or omission of a receiving Party or a Permitted Person.

3. **DESIGNATION OF CONFIDENTIAL INFORMATION**

3.1 Any documents containing Confidential Information shall be designated as such by the Party that introduces the document into the Proposed Collective Proceedings. The following procedures shall apply:

3.1.1 designation of a document as containing Confidential Information must be made in writing to the Party receiving the disclosure by the Disclosing Party and must comply with paragraph 7.46 of the Guide;

3.1.2 a designation of not confidential means that the document is not Confidential Information. For the avoidance of doubt, in the event of a designation of not confidential, Rule 102 continues to apply (to the extent it would otherwise have applied);

3.1.3 failure to provide a designation for a document at the time the document is disclosed shall be deemed to be a designation that the document in question as not confidential. A Party may alter the designation of a document/information to correct an incorrect designation by notice in writing to the other Party that received such document/information; and

3.1.4 any document which is designated as Confidential Information by a Party may be subject to challenge in accordance with paragraph 4 of these Confidentiality Terms.

3.2 Each Party shall be responsible, in respect of any document containing Confidential Information belonging to them, for labelling and highlighting any Confidential Information in the following ways:

3.2.1 Any bundle index will state which documents are Confidential Information and identify the Party or Parties to which the Confidential Information relates.

3.2.2 Any text and/or extract which contains Confidential Information will be highlighted.

4. CHALLENGE TO CONFIDENTIAL DESIGNATION

4.1 The designation of Confidential Information by a Party may be challenged in accordance with the terms below:

4.1.1 If a Party wishes to challenge the designation of Confidential Information, that Party shall do so by providing a written request to the Disclosing Party specifying the following:

- (a) the relevant document/information concerned;
- (b) the designation the requesting Party considers to be appropriate; and
- (c) why it is reasonably and necessary for the designation of the document/information to be amended.

4.1.2 In the event that a challenge is made, the Disclosing Party may consent in writing to alter the designation of any documents(s)/information, with such consent not to be unreasonably withheld. Any response shall be given as soon as reasonably possible but in any event within seven (7) working days of receipt of the written request referred to in paragraph 4.1.1.

4.1.3 If the Party challenging confidentiality wishes to maintain its challenge following receipt of the Disclosing Party's response pursuant to paragraph 4.1.2, it may apply to the Tribunal for determination of whether or not the document qualifies as Confidential Information, provided that prior written notice is given of that application to the other Party. Any such application must be made as soon as reasonably possible. Save for where there are exceptional reasons that justify a hearing, applications under this paragraph 4.1.3 are to be dealt with on paper. For the avoidance of doubt, a document in respect of which an application is made shall continue to be designated a Confidential Information until such time as the challenge is upheld by the Tribunal.

4.1.4 Should the confidentiality of any document added to the bundle during any hearing be in issue, a challenge will be dealt with in accordance with any directions the Tribunal may give.

4.2 The deadlines in this paragraph 4 may be extended by agreement between the challenging party and Disclosing Party. Consent to a request for an extension shall not be unreasonably withheld.

5. **DISCLOSURE AND INSPECTION OF CONFIDENTIAL INFORMATION**

5.1 Disclosure of any Confidential Information shall be restricted to, and may be inspected only by, the Permitted Persons in respect of that document and only on the basis that:

5.1.1 the recipient Permitted Person holds the Confidential Information on the terms set out in Annex B;

5.1.2 any such Confidential Information will be treated by each such Permitted Person as confidential and will be used by each such person solely for the purpose of the proper conduct of the Proposed Collective Proceedings; and

5.1.3 no such Permitted Person will, save as expressly provided for by the Confidentiality Terms, discuss, disclose, copy, reproduce or distribute any Confidential Information.

5.2 Provided it is for the purpose of the proper conduct of the Proposed Collective Proceedings, nothing in these Confidentiality Terms shall prohibit any Permitted Person from:

5.2.1 making notes or copies of, or preparing reports, submissions or other documents concerning, containing or reflecting any Confidential Information (which notes, copies, reports, submissions or other documents would themselves be Confidential Information); and

5.2.2 disclosing any Confidential Information to any other person who is a Permitted Person in respect of that document, or any Confidential Information to any other person who is a Permitted Person in respect

of a document containing such information, provided that no Confidential Information shall be otherwise directly or indirectly disclosed in the conduct of the Proposed Collective Proceedings beyond the relevant Permitted Persons.

5.3 During any hearing in the Proposed Collective Proceedings, each Party wishing to refer to Confidential Information shall be responsible for indicating to the Tribunal that the document contains Confidential Information.

5.4 In the event of any disclosure of Confidential Information other than in a manner authorised by these Confidentiality Terms, including any unintentional or inadvertent disclosure, solicitors for the improperly disclosing Party shall immediately notify the improper recipient(s) and the solicitors for the Party which provided the Confidential Information in these proceedings, and the improperly disclosing Party shall use all reasonable endeavours to further prevent unauthorised disclosure including retrieving all copies of the Confidential Information from the improper recipient(s) thereof and seeking to secure the agreement of such recipient(s) not to further disseminate the Confidential Information in any form.

5.5 Nothing in these Confidentiality Terms shall prevent or prohibit a receiving Party from taking any action (including in particular disclosing Confidential Information to a person who is not a Permitted Person and/or referring to such documents or information in open Tribunal) which has been authorised in writing by the Disclosing Party or which a receiving Party is required to take by applicable law or by a court of competent jurisdiction. In these circumstances, a receiving Party may produce such Confidential Information but shall take all reasonable measures to have the Confidential Information treated in accordance with these Confidentiality Terms.

6. **ADDITION OR REMOVAL OF PERMITTED PERSONS**

6.1 A Party seeking to designate an additional person as a Permitted Person must:

6.1.1 request permission of the other Party in writing for the additional person to be designated as a Permitted Person; and

- 6.1.2 provide details of that person's name and role and an explanation of why his or her designation as a Permitted Person is reasonable and necessary.
- 6.2 Each Party, other than the Party requesting that the additional person shall be designated as a Permitted Person, shall confirm within three (3) clear working days whether they consent to the additional person being designated as a Permitted Person. Such consent shall not be unreasonably withheld.
- 6.3 If a Party does not consent to the person being designated a Permitted Person in accordance with paragraph 6.2, then that Party must provide written reasons for why permission is refused within three (3) clear working days.
- 6.4 If express consent is given by the Party receiving the request specified in accordance with paragraph 6.2 above, or no Party raises an objection in accordance with paragraph 6.3 above within three (3) clear working days, the additional person shall be required to sign the undertaking at Annex B and, upon signing this undertaking, shall be designated as a Permitted Person.
- 6.5 If there are any disputes which cannot be resolved by the parties, the Party seeking to include the additional person as a Permitted Person may apply to the Tribunal to include the person as a Permitted Person, provided written notice of such application is given to the other Party. The additional person will become a Permitted Person if the Tribunal so orders.
- 6.6 If a Party wishes to remove a person as a Permitted Person, that Party shall notify the other Party. The Party must also comply with paragraph 8 (subject to paragraphs 8.1 and 8.2) by notifying the person to be removed as a Permitted Person that such person must immediately destroy (insofar as technologically feasible) or make inaccessible all Confidential Information in their possession. For the avoidance of doubt, a Party may only remove a person whom it had (initially or by following the process in paragraphs 6.1-6.5) proposed as a Permitted Person.
- 6.7 Annex A reflects the current list of individuals who will be Permitted Persons by virtue of signing the Annex B Undertaking in accordance with this paragraph 6.

6.8 A record of the Permitted Persons shall be kept and updated by the Parties upon the addition or removal of Permitted Persons. Such record shall be provided to the Tribunal upon request by the Tribunal. For the avoidance of doubt, there shall be no requirement to amend this Order upon the addition or removal of Permitted Persons.

7. PROVISION OF CONFIDENTIAL INFORMATION TO NON-PERMITTED PERSONS

7.1 If a Party considers that particular Confidential Information, contained in a document or any part thereof, needs to be shown to a person who is not a Permitted Person:

7.1.1 the requesting Party must provide a written request to the Disclosing Party specifying the relevant Confidential Information and specifying the name and role of the person or persons to whom it is proposed that the document should be shown, and why it is reasonable and necessary to show the document to that person or those persons;

7.1.2 the disclosing Party may consent in writing, such consent not to be unreasonably withheld, or object in writing to the Confidential Information being shown to the additional person or persons concerned within the timescales set out at paragraph 7.1.3 below;

7.1.3 a response should be provided within 7 working days of the written request referred to at paragraph 7.1.1 above being received, save that the requesting Party shall not unreasonably withhold consent to an extension of time for this purpose, where it is reasonably required in view of the nature and/or number of documents which are the subject of the request; and

7.1.4 if the disclosing Party provides consent in accordance with paragraph 7.1.2, or no response is received within 7 working days or the extended time period that the Parties have agreed, the additional person will be required to provide a written undertaking to the Tribunal in the terms set out at Annex B. Once this undertaking is given, the additional person may be provided with the Confidential Information.

7.2 If any objection in accordance with paragraph 7.1.2 is received by the receiving Party within the 7 working day period specified, the requesting Party may apply to the Tribunal, for an order that the Confidential Information may be disclosed to the additional person or persons concerned, provided that prior written notice is given of such application to the other Party.

8. **COPIES OF CONFIDENTIAL INFORMATION**

8.1 Subject to the exceptions in paragraph 8.2 below, each Party must destroy copies of Confidential Information provided pursuant to these Confidentiality Terms (in both hard and soft copy) (insofar as technologically feasible) or make them inaccessible at the conclusion of the Proposed Collective Proceedings, or when that Party ceases to be involved in the Proposed Collective Proceedings, and at such time that Party shall notify its Permitted Members that they must destroy (insofar as technologically feasible) or make inaccessible all Confidential Information in their possession. In such circumstances, each Party concerned shall notify the remaining Party within a reasonable time that the Confidential Information has been destroyed (insofar as technologically feasible) or made inaccessible (as appropriate).

8.2 The obligation in paragraph 8.1 above is subject to the following exceptions:

8.2.1 paragraph 8.1 does not apply to solicitors' or counsel's notes;

8.2.2 paragraph 8.1 does not create an obligation to search for transitory or deeply stored soft copies of Confidential Information which may exist on the computer system of the receiving Party and which cannot be recovered without special measures, provided that such documents and/or information will be promptly deleted in the event of the restoration of such copies;

8.2.3 paragraph 8.1 does not apply to Party's copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in these proposed proceedings as well as lawyer work product referring to Confidential Information, subject to continued compliance with the terms of this Order in respect of the Confidential Information contained within such documents; and

8.2.4 paragraph 8.1 does not apply to a Party in respect of the Confidential Information it provided.

9. NOTICES

9.1 Any notice, consent or objection to be given under or in connection with these Confidentiality Terms (each a “Notice” for the purposes of this paragraph) shall be in writing.

9.2 Service of a Notice must be effected by email.

9.3 Notices shall be addressed as follows:

9.3.1 Notices for the Proposed Class Representative shall be marked for the attention Mishcon de Reya LLP and sent to:

Email addresses: rob.murray@mishcon.com;
Natasha.pearman@mishcon.com; gwen.ballin-reeler@mishcon.com; alex.jennings@mishcon.com.

Reference: RM/NP/63362.1

9.3.2 Notices for the Proposed Defendants shall be marked for the attention of Simmons & Simmons LLP and sent to:

Email addresses: Patrick.Boylan@simmons-simmons.com;
Satyen.Dhana@Simmons-Simmons.com; Chris.Owen@simmons-simmons.com;
Eleanore.DiClaudio@simmons-simmons.com

Reference: 087544-00031

10. GENERAL PROVISIONS

10.1 The production of further copies of the Confidential Information shall be limited to those required by the Permitted Persons to whom they are disclosed.

10.2 The Confidentiality Terms are intended to apply for the period up to and including the CPO Hearing.

10.3 In the event of any anticipated or actual breach of these Confidentiality Terms, any Party may seek to enforce the Confidentiality Terms.

- 10.4 These Confidentiality Terms and any Undertakings given in relation to them are governed by and shall be construed in accordance with English law and each Party hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.
- 10.5 Nothing in these Terms or the Schedules to these Terms shall prevent or prohibit any Permitted Persons (as may be extended from time to time) from acting in other proceedings.
- 10.6 There shall be liberty to apply, if appropriate.
- 10.7 Costs in the case.

The Hon Mr Justice Waksman
Chairman of the Competition Appeal Tribunal

Made: 4 March 2021
Drawn: 9 March 2021

ANNEX A

The Proposed Class Representative's Permitted Persons

<i>The Proposed Class Representative</i>
Justin Le Patourel
<i>Counsel</i>
Ronit Kreisberger QC (Monckton Chambers)
Alison Berridge (Monckton Chambers)
Jack Williams (Monckton Chambers)
<i>Costs Counsel</i>
Nicholas Bacon QC
<i>Solicitors (Mishcon de Reya LLP)</i>
Robert Murray
Natasha Pearman
Gwen Ballin-Reeler
Alex Jennings
Rebecca Gough
Victoria Hirst
<i>External economists (Frontier Economics)</i>
David Parker
Andrew Booth
Hugo Wolters
Martin Duckworth

Garima Nirula
<i>Claim Administrators</i>
Clare Ducksbury
Clinton Smith

The Proposed Defendant's Permitted Persons

<i>The Proposed Defendant – BT Group Plc</i>
Bruce Breckenridge
Belinda Bagge
Astrid Jalland
Emily Wesley
Richard Budd
Emily Clark
Isabell Kohten
Russell Johnstone
<i>Counsel</i>
Sarah Ford (QC) (Brick Court Chambers)
Sarah Love (Brick Court Chambers)
Benjamin Williams QC (4 New Square Chambers)
<i>Solicitors (Simmons & Simmons LLP)</i>
Patrick Boylan
Satyen Dhana
Chris Owen
Eleanore Di Claudio
Duncan Green
Katie Bridge

Hannah McEwen
Alice Lauterjung
<i>Economists (Oxera)</i>
Shreya Gupta
Felipe Florez
Helen Jenkins
Dan Marlow
Beatrice Lombardi
Antoine Comps

ANNEX B

In respect of any Confidential Information disclosed to them pursuant to this Order, each Permitted Person undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

The terms used but not defined in this document shall have the meaning given in the Confidentiality Terms in relation to this Order attached to, or accompanying, this document.

I, [insert name] of [insert organisation], being a Permitted Person [and regulated so far as my professional conduct is concerned by [regulatory body]] undertake to the Parties and the Tribunal as follows:

1. I have read a copy of the Order and understand the implications of the Order, the provisions of the Confidentiality Terms and the giving of this undertaking.
2. I will treat all Confidential Information made available to me for the purpose of the Proposed Collective Proceedings as secret and confidential and will use any such Confidential Information only for the purpose of the proper conduct of the Proposed Collective Proceedings.
3. Except as expressly contemplated by the Confidentiality Terms, I will not use, disclose, discuss, copy, reproduce or distribute any such Confidential or Confidential Information to persons who are not Permitted Persons or authorise, enable or assist any person to do so.
4. I have read rule 31.22 of the Civil Procedure Rules and Rules 101 and 102 of the Competition Appeal Tribunal Rules 2015 and am aware of and will comply with the obligations imposed by the rule.
5. I will take all such steps as may be necessary or expedient on my part to comply with any request made under or pursuant to the Confidentiality Terms.
6. I will otherwise comply with the Confidentiality Terms and/or, as the case may be, take all steps within my power to ensure that the Confidentiality

Terms are complied with (including by not disclosing Confidential Information to persons other than relevant Permitted Persons, or assisting or enabling any person to do so).

7 The documents containing any Confidential Information will remain in my custody or the custody of another Permitted Person at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.

8 The production of further copies by me of the documents containing Confidential Information shall be limited to those required for the use of the Permitted Persons for the purposes of these proceedings only and shall be held in accordance with these undertakings.

9 I will continue to comply with these undertakings after the conclusion of the proceedings, in respect of any Confidential Information that I do not destroy and continue to hold.

PROVIDED ALWAYS that nothing in this undertaking shall prevent or prohibit me from taking any action that is permitted in the Order, or has been authorised in writing by the relevant Disclosing Party, or that I am required to take by applicable law or by a court of competent jurisdiction.

Signed:

Date: