



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1299/1/3/18

BETWEEN

ROYAL MAIL PLC

Appellant

-v-

OFFICE OF COMMUNICATIONS

Respondent

-and-

WHISTL UK LIMITED

Intervener

ORDER

UPON reading the correspondence from the legal representatives of the parties to this appeal relating to the establishment of a confidentiality ring in case 1299/1/3/18

AND UPON hearing counsel for the parties at the case management conference on 7 November 2018

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

IT IS ORDERED THAT:

1. This Order becomes effective in respect of each of the persons named in Part A of the Schedule to this Order only upon receipt by the Tribunal of a signed undertaking in the terms of Part B of the Schedule to this Order.

2. For the purposes of this Order:
 - a. **“Confidential Information”** means information contained in the Relevant Documents (as defined below), where such information has been identified by any party to these proceedings and is (or is likely to be) accorded confidential treatment by the Tribunal in accordance with Rule 101 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015/1648).
 - b. **“Relevant Advisers”** are those persons:
 - i. listed in Part A of the Schedule to this Order who have given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to this Order;
or
 - ii. authorised by the Tribunal upon further application and who provide a signed undertaking in the terms of Part B of the Schedule to this Order.
 - c. **“Relevant Document”** means all pleadings and other documents filed, served and/or disclosed by the parties for the purposes of these proceedings (including, for the avoidance of doubt, unredacted and non-confidential versions of such pleadings and other documents).
3. Each of the parties (as appropriate) shall hereafter disclose to the other parties the unredacted versions of the Relevant Documents containing Confidential Information on the condition that, save in respect of employees of the Office of Communications, such unredacted versions and any Confidential Information contained within those pleadings and documents shall be disclosed only to the Relevant Advisers.
4. In the case of the pleadings and other documents served thus far in the proceedings, the following shall apply:
 - a. no later than two working days following receipt of signed undertakings from the Relevant Advisers in the terms of Part B of the Schedule to this Order:
 - i. the Respondent shall disclose an unredacted version (marked or highlighted in accordance with paragraph 8 below) of its Decision of 14 August 2018 to each party in relation to which it has received signed undertakings from the Relevant Advisers to that party;
 - ii. the Appellant shall disclose the unredacted versions (marked or highlighted in accordance with paragraph 8 below) of its Notice of Appeal, Witness Statements and Expert Reports (in each case, excluding appendices and exhibits) to each party in relation to which it has received signed undertakings from the Relevant Advisers to that party; and
 - iii. the Appellant shall disclose to the Intervener (which shall be disclosed only to the Relevant Advisers) unredacted versions of the appendices and exhibits to its Notice of Appeal, Witness Statements and Expert Reports in the form in which

they were filed with the Tribunal.

- b. the Appellant shall disclose non-confidential versions of its Notice of Appeal, Witness Statements and Expert Reports (in each case, excluding appendices and exhibits) to the Intervener within 7 days of the date of this Order;
 - c. the Appellant shall disclose unredacted versions (marked or highlighted in accordance with paragraph 8 below) of the appendices and exhibits to its Notice of Appeal, Witness Statements and Expert to each party in relation to which it has received signed undertakings in the terms of Part B of the Schedule to this Order from the Relevant Advisers to that party as soon as practicable and in any event within five weeks of the date of this Order; and
 - d. the Appellant shall disclose non-confidential versions of the appendices and exhibits to its Notice of Appeal, Witness Statements and Expert Reports to the Intervener as soon as practicable and in any event within five weeks of the date of this Order.
5. Subject to paragraphs 6 and 7, a party or Relevant Adviser to whom a Relevant Document has been disclosed may use the Relevant Document only for the purpose of these proceedings, except where (other than in respect of Relevant Documents containing Confidential Information):
 - a. the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public;
 - b. the Tribunal gives permission; or
 - c. the party who disclosed the document and the person to whom the document belongs agree.
6. Nothing in this Order prevents the disclosure of any information to the Office of Communications (including any Office of Communications employee) to facilitate the exercise of its functions or prevents the Office of Communications from obtaining or using any information pursuant to its powers under any enactment.
7. Nothing in this Order applies to any document or information insofar as:
 - a. it is, or becomes, generally available to the public other than as a result of a breach of the terms of this Order; or
 - b. it was available to, or in the possession of, a party or Relevant Adviser prior to disclosure for the purpose of these proceedings.
8. With the exception of the unredacted versions disclosed pursuant to paragraph 4(a)(iii) above, all unredacted versions of the Relevant Documents shall be marked or highlighted so as to indicate the parts in relation to which confidential treatment is claimed, in the manner referred to in paragraph 7.46 of the Tribunal's Guide to Proceedings 2015. A system of colour-coding

shall be used to indicate to which entity the confidential information belongs (or such other system as the parties shall agree where colour-coding is considered unworkable).

9. Where a document containing Confidential Information is placed or disclosed into the confidentiality ring established by this Order, the party placing or disclosing the document into the confidentiality ring shall also provide to all parties, within 7 days thereafter, a non-confidential version of the document (i.e. a version that is not subject to the confidentiality ring) from which Confidential Information has been redacted.
10. If any party wishes to add any additional person as a Relevant Adviser for the purposes of this Order, they shall apply to the Tribunal in writing, copied to the other parties, indicating whether each of the other parties consents or does not consent to the addition of that person.
11. If any party wishes one of its Relevant Advisers to be removed as a Relevant Adviser for the purpose of this Order, they shall inform the Tribunal in writing (copying the representatives of the other parties).
12. When a party seeks to add or remove a Relevant Adviser, that party shall provide to the Tribunal in writing (copying the representatives of the other parties) an up-to-date list of the persons in Part A of the Schedule to this Order.
13. The Appellant's and Respondent's costs in respect of this Order shall be costs in the case.
14. The Intervener shall bear its own costs in respect of this Order.
15. There be liberty to apply.

Peter Freeman CBE QC (Hon)
Chairman of the Competition Appeal Tribunal

Made: 14 November 2018
Drawn: 14 November 2018

SCHEDULE

Part A

This Part contains the names, for each party, of the Relevant Advisers for the purposes of this Order:

Royal Mail Plc

External solicitors

Nigel Parr
Duncan Liddell
Steven Vaz
Christopher Eberhardt
Antonia Bussey
Natasha Gromof
Travis Quinn (Trainee Solicitor)
Helen Chamberlain (Trainee Solicitor) (*all of Ashurst LLP*)

External counsel

Daniel Beard QC
Ligia Osepciu (*both of Monckton Chambers*)

External economists

Neil Dryden
Kadambari Prasad (*both of Compass Lexecon*)

External forensic accountants

Greg Harman
Alberto Carpani
Mark Bosley (*all of FTI Consulting LLP*)

Office of Communications

Josh Holmes QC
Julianne Morrison
Nikolaus Grubeck (*all of Monckton Chambers*)

Whistl UK Limited

External solicitors

Rosaleen Hubbard
Paul Brisby

Lucas Ford
Stephanie Warren
James Singer
Aminah Akinloye (Paralegal)
Louise Appleton (Trainee Solicitor) *(all of Towerhouse LLP)*

External counsel

Jon Turner QC
Alan Bates *(both of Monckton Chambers)*

External economists

David Parker
Iain Boa
Luke Davison *(all of Frontier Economics)*

External forensic accountants

Bruno Augustin
Aaron Bradley
Becky House *(all of Haberman Ilett)*

Part B: Form of undertaking

In respect of any Confidential Information disclosed to them pursuant to this Order, each Relevant Adviser mentioned in Part A of the Schedule to this Order undertakes that they will comply with the following requirements in the following terms:

I, [name], of [firm, company, or establishment] being [legal or other qualification] and regulated so far as my professional conduct is concerned by [regulatory body if any] undertake to the Tribunal and each of the parties as follows:

1. I have read a copy of the Tribunal's Order of [date] 2018 ("the Tribunal's Order") and understand the implications of that Order and the giving of this undertaking.
2. Save in respect of provision to the Tribunal, I will only disclose the Confidential Information (as defined in the Tribunal's Order) in accordance with the terms of the Tribunal's Order and will not disclose the Confidential Information to any person who is not an Office of Communications ("OFCOM") employee or a Relevant Adviser (as defined in the Tribunal's Order) without the express consent of the party originally disclosing the information or the permission of the Tribunal.
3. For the avoidance of doubt:
 - any notes, copies, reports, submissions or other documents containing, reproducing or reflecting any aspects of the Confidential Information are themselves to be treated as Relevant Documents containing Confidential Information but versions of the same in which those parts containing, reproducing or reflecting the Confidential Information are redacted are not subject to obligations of confidentiality; and
 - any parts of documents containing, reproducing or reflecting Confidential Information shall not be deemed to have been read into the Court record in the proceedings or to have otherwise become public by reason of their being included in any trial bundle, referred to in any Skeleton Argument or other submission, read by the trial judge or otherwise.
4. I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever without the express consent of the party originally disclosing the information or the permission of the Tribunal.
5. The Relevant Documents (as defined in the Tribunal's Order) containing the Confidential Information will remain in my custody or the custody of another Relevant Adviser or OFCOM at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
6. The production by me of further copies of the Relevant Documents containing the

Confidential Information shall be limited to those strictly required for the use of the Relevant Advisers or OFCOM for the purpose of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.

7. Any and all copies of the Relevant Documents in paper form containing the Confidential Information will be returned to the party originally disclosing the pleading or documents or destroyed by the receiving party at the conclusion of the present proceedings; any copies of the Relevant Documents containing the Confidential Information in electronic form will where possible be returned or where that is not possible will be rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily available to any person.
8. Save that none of the requirements listed at paragraphs 2 to 6 above shall prevent Relevant Advisers from disclosing to a person advised by them Confidential Information which such person has already legitimately seen.

Signed:

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Name:

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Date:

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