



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1426/3/3/21

BETWEEN:

CITYFIBRE LIMITED

Appellant

- v -

OFFICE OF COMMUNICATIONS

Respondent

- and -

BRITISH TELECOMMUNICATIONS PLC

Intervener

ORDER

UPON reading the skeleton arguments from the legal representatives of the Parties relating to the establishment of a confidentiality ring in case 1426/3/3/21 (the “**Proceedings**”)

AND UPON hearing counsel for the Parties at a case management conference held remotely on 4 February 2022

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

IT IS ORDERED BY CONSENT 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(s) (as defined below), where such information has been identified by any Party 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.
 - (b) **“Party”** and **“Parties”** means any of the Appellant, Respondent or Intervener in these Proceedings.
 - (c) **“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 in accordance with paragraph 8 below and who have given a signed undertaking in the terms of Part B of the Schedule to this Order.
 - (d) **“Relevant Document(s)”** means the version(s) of pleadings and other documents filed, served and/or disclosed by any Party for the purposes of the Proceedings containing Confidential Information.
 - (e) **“Relevant Ofcom Representatives”** means those in-house Ofcom representatives who are for the time being working on the Proceedings.
3. Each of the Parties (as appropriate) shall hereafter disclose unredacted versions of Relevant Documents only to (i) the Relevant Advisers and (ii) the Relevant Ofcom Representatives, and not to any other person.
4. All unredacted versions of Relevant Documents must 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.

5. The Relevant Documents are to be used by the Relevant Advisers and the Relevant Ofcom Representatives only for the purpose of the Proceedings. The subsequent use of any Relevant Document for any purpose is prohibited, even where the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public, subject to an order of the Tribunal to the contrary. Nothing in this paragraph shall prevent the Relevant Ofcom Representatives from using any Relevant Document for the purpose of exercising Ofcom's regulatory functions where (i) the Relevant Document was in Ofcom's possession prior to the commencement of these Proceedings; or (ii) Ofcom subsequently obtains the Relevant Document using its powers under any enactment.
6. The Relevant Advisers and the Relevant Ofcom Representatives may share the Relevant Documents with those trainees, paralegals, barristers' clerks and other support staff who (i) are for the time being assisting with the Proceedings and (ii) need to have access to Relevant Documents to provide such assistance for the purposes of the Proceedings, provided that such individuals treat the Relevant Documents as strictly confidential and handle and store the Relevant Documents in such a manner as to preserve their confidentiality.
7. Where any Party discloses a Relevant Document into the confidentiality ring established by this Order (in accordance with paragraph 3 above), the disclosing Party shall also provide a redacted, non-confidential version of the document which can be made available to the other Parties. This paragraph does not apply where a Relevant Document constitutes Confidential Information in its entirety or where the very existence of a Relevant Document constitutes Confidential Information.
8. If any Party wishes to add an additional person as a Relevant Adviser for the purpose of paragraph 2(c)(ii) above, they shall apply to the Tribunal in writing, copying the other Parties, indicating whether each of the other Parties consents or does not consent to the addition of that person.

9. 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 other Parties).
10. When a Relevant Adviser is admitted to or removed from the confidentiality ring in accordance with paragraphs 8 or 9 respectively, the relevant Party shall provide to the Tribunal and the other Parties an updated Part A of the Schedule to this Order.
11. Costs to be reserved.
12. There be liberty to apply

Ben Tidswell
Chairman of the Competition Appeal Tribunal

Made: 4 February 2022
Drawn: 8 February 2022

SCHEDULE

Part A

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

CityFibre Limited

External solicitors (of Bristows LLP)

Stephen Smith

Edwin Bond

James Batsford

External counsel

Josh Holmes QC (Monckton Chambers)

Jessica Boyd (Blackstone Chambers)

Isabel Buchanan (Blackstone Chambers)

Ofcom

External counsel

Monica Carss-Frisk QC (Blackstone Chambers)

Naina Patel (Blackstone Chambers)

Khatija Hafesji (Monckton Chambers)

British Telecommunications plc

External solicitors (of Addleshaw Goddard LLP)

Bruce Kilpatrick

Sarah Persky

Thomas Withers

External counsel

Robert Palmer QC (Monckton Chambers)

Laura John (Monckton Chambers)

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] undertake to the Tribunal and each of the Parties as follows:

1. I have read a copy of the Tribunal's Order of 4 February 2022 (the "**Tribunal's Order**") and understand the implications of that Order and the giving of this undertaking. I understand that this undertaking adopts the definitions set out in the Tribunal's Order at paragraph 2.
2. Save in respect of provision to the Tribunal, I will only disclose the Confidential Information in accordance with the terms of the Tribunal's Order and, subject to paragraph 3(b) below, will not disclose the Confidential Information to any person who is not a Relevant Adviser or a Relevant Ofcom Representative without the express consent of the Party originally disclosing the information or the permission of the Tribunal.
3. For the avoidance of doubt:
 - (a) 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
 - (b) the Relevant Advisers may share the Relevant Documents with those trainees, paralegals, barristers' clerks and other support staff who (i) are for the time being assisting with the Proceedings and (ii) need to have access to Relevant Documents to provide such assistance for the purposes of the Proceedings, provided that such individuals treat the Relevant Documents as strictly confidential and handle and store the

Relevant Documents in such a manner as to preserve their confidentiality.

4. I will use the Confidential Information only for the purpose of the 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 containing the Confidential Information will remain in my custody or the custody of another Relevant Adviser 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 Relevant Documents containing the Confidential Information shall be limited to those strictly required for the use of the Relevant Advisers for the purpose of the Proceedings and shall be held in accordance with paragraph 5 of this undertaking.
7. At the conclusion of the Proceedings:
 - (a) any copies of the Relevant Documents in paper form containing the Confidential Information will be returned to the party originally disclosing the Relevant Documents or destroyed by the receiving party; and
 - (b) any copies of the Relevant Documents containing the Confidential Information in electronic form will where possible be returned to the Party originally disclosing the Relevant Documents 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. None of the requirements listed at paragraphs 2 to 6 above shall prevent Relevant Advisers from disclosing to their clients any information contained within the Confidential Information which:

- (a) is or becomes publicly available otherwise than through the Relevant Adviser's default;
- (b) was lawfully in the Relevant Adviser's possession prior to the date of this undertaking;
- (c) is subsequently received from a third party not under any obligation of confidence in relation to the Confidential Information; or
- (d) is required to be disclosed by operation of law or by order of a court of competent jurisdiction or by a regulatory or other body having jurisdiction over the Relevant Adviser.

Signed:

Name:

Date: