



IN THE COMPETITION APPEAL
TRIBUNAL

Case No: 1381/7/7/21

BETWEEN:

JUSTIN LE PATOUREL

Class Representative

- v -

(1) BT GROUP PLC
(2) BRITISH TELECOMMUNICATIONS PLC

Defendants

ORDER

UPON the Directions Order of Mr Justice Waksman dated 13 May 2022 (the “**Directions Order**”)

AND UPON the further Order of Mr Justice Waksman dated 29 September 2022 that the period for listing a trial shall be amended to the window between 22 January 2024 and 29 March 2024

AND UPON the application of the Class Representative dated 2 September 2022 to adduce expert evidence in the field of behavioural economics and the filing of an Outline Report of the proposed expert, Professor Graham Loomes (the “**Behavioural Evidence Application**”)

AND UPON the Second Witness Statement of John Patrick Boylan dated 10 October 2022 in response to the Behavioural Evidence Application

AND UPON the application of the Class Representative dated 4 November 2022 for disclosure of (i) previously undisclosed documents that are directly connected to disclosed documents, such as covering emails and/or attachments and/or emails within the same thread (the “**Family Documents**”); and (ii) documents that are relevant to BT’s mitigation defence, as set out in paragraph 37 of the Outline Report of Professor Loomes (the “**Mitigation Defence Documents**”)

AND UPON the Third Witness Statement of Sarah Marion Houghton dated 10 November 2022 and the Third Witness Statement of John Patrick Boylan dated 10 November 2022

AND UPON the parties having agreed to the directions in paragraphs 2-4, 11-12 and 14 of this Order.

AND UPON hearing Counsel for the Class Representative and for the Defendants at a case management conference on 18 November 2022

IT IS ORDERED THAT:

Disclosure

1. The application by the Class Representative for disclosure of Family Documents is refused. For the avoidance of doubt, this does not preclude the Class Representative from requesting BT to provide particular Family Documents to the Class Representative in the course of these proceedings.
2. The Defendants shall disclose to the Class Representative data in response to the request for a disaggregation of BT Consumer selling, general and administrative expenses data (“**SG&A Data**”) and depreciation and amortisation data (“**D&A data**”) set out in Cell F28 of the Parties’ Economic Experts’ Data Table by **4pm on 30 November 2022**.
3. The Defendants shall disclose to the Class Representative call volume data beyond that relating to SFV Customers in response to the requests at G41, H18 and H20 of the Parties’ Economic Experts’ Data Table and not included in the Third Tranche Disclosure (“**New Call Volume Data**”) by **4pm on 16 December 2022** and the corresponding summary tables by **4pm on 23 December 2022**.
4. The Defendants shall disclose to the Class Representative a further tranche of documents, data and information (“**Fourth Tranche Disclosure**”) as follows:
 - a. The Defendants shall disclose to the Class Representative data responsive to the request for variable costs and balance sheet items as set out in Cell G28 of the Parties’ Economic Experts’ Data Table by **4pm on 27 January 2023**.
 - b. The Defendants shall disclose to the Class Representative all remaining structured data agreed between the Parties by **4pm on 28 February 2023**.

Behavioural evidence

5. Each party shall have permission to adduce written and oral evidence from one expert witness in the field of behavioural economics (“**Behavioural Evidence**”).
6. The Behavioural Evidence shall relate to the following issue:

The extent to which members of each of the Sub-classes in the Collective Proceedings (BT Voice Only Customers (“**VOCs**”) and BT Split Purchase Customers (“**SPCs**”)) were, by virtue of their particular characteristics (as alleged by the Class Representative) in a position to or likely to make conscious and informed choices about whether:

- (a) to remain with BT on their existing tariffs; or

(b) to engage with and take advantage of such opportunities as were available to them to switch to an alternative service provider or tariff.

7. The Class Representative shall by **4pm on 2 December 2022** inform the Defendants, in writing, of the following matters:
 - a. What relevant characteristics the Class Representative alleges were/are possessed by the members of each Sub-class.
 - b. What proportion of each Sub-class the Class Representative alleges possessed/possesses those relevant characteristics; and
 - c. The materials upon which the Class Representative intends to rely to prove those allegations.
8. The Defendants shall by **4pm on 16 December 2022** respond to the Class Representative, in writing, and in particular state:
 - a. Whether the Defendants admit, do not admit, or deny the allegations made by the Class Representative as to what relevant characteristics were/are possessed by the members of each Sub-class.
 - b. Whether the Defendants admit, do not admit, or deny the allegations made by the Class Representative as to what proportion of each group possessed/possesses any relevant characteristics.
 - c. Any comments on the materials upon which the Class Representatives intends to rely including (i) the existence or proportionality of obtaining those materials where they are said to be materials the Defendants may hold and (ii) whether the Defendants dispute the admissibility of any of such materials.

Timetable for expert evidence

9. The Class Representative shall file and serve any signed expert report in the field of behavioural economics by **4pm on 9 June 2023**.
10. The Defendants shall file and serve any signed expert report in the field of behavioural economics by **4pm on 4 August 2023**.
11. Paragraphs 14-16 of the Directions Order are varied such that:
 - a. Each party shall file and serve any signed expert reports pursuant to paragraphs 1 and 4 of the Directions Order by **4pm on 7 July 2023**.
 - b. Each party shall file and serve any signed reply expert reports by **4pm on 29 September 2023**.

- c. The Class Representative and Defendants' experts in each discipline shall meet to discuss their respective reports by no later than **13 October 2023** and shall produce a joint statement of matters agreed and not agreed that shall be served by **4pm on 10 November 2023**.

Timetable for factual evidence

12. Paragraphs 12 and 13 of the Directions Order are varied such that:
 - a. The Class Representative and Defendants shall file and serve any signed witness statements of fact by **4pm on 24 February 2023**.
 - b. The Class Representative and Defendants shall file and serve any signed reply witnesses statements of fact by **4pm on 6 April 2023**.

Hearings

13. There shall be a further case management conference to be listed on a date agreed between the parties to consider any outstanding issues and to set further directions to trial.
14. Paragraphs 12 and 13 of the Directions Order are varied such that a PTR shall be listed on 24 November 2023.

General

15. Costs in the case.
16. There be liberty to apply.
17. By agreement the parties may vary without further order any deadline in this Order provided that they inform the Tribunal of such agreement in advance of the expiry of the relevant deadline and the extension does not affect the dates of any listed hearings.

The Hon Mr Justice Waksman
Chair of the Competition Appeal Tribunal

Made: 15 February 2023
Drawn: 15 February 2023