



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1381/7/7/21

**B E T W E E N :-**

**JUSTIN LE PATOUREL**

**Class Representative**

- v -

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

**Defendants**

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**ORDER**

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

**AND UPON** the Order of Mr Justice Waksman dated 15 February 2023 (the “**Further Directions Order**”)

**AND UPON** the Further Directions Order giving each party permission to adduce written and oral evidence from one expert witness in the field of behavioural economics (the “**Behavioural Expert**”)

**AND UPON** the application of the Class Representative dated 20 April 2023 to file and serve an Amended Reply (the “**Reply Amendment Application**”)

**AND UPON** the application of the Class Representative dated 20 April 2023 to adduce further expert evidence in the field of behavioural economics (the “**Behavioural Evidence Application**”)

**AND UPON** the Directions Order of Mr Justice Waksman dated 5 June 2023 (the “**Amended Further Directions Order**”)

**AND UPON** the draft expert report of Professor Graham Loomes provided by the Class Representative to the Tribunal on 23 June 2023

**AND UPON** the application of the Class Representative dated 20 June 2023 to file and serve a Re-Re-Re-Amended Claim Form (the "**Claim Form Amendment Application**")

**AND UPON** the Fourth and Fifth Witness Statements of Sarah Marion Houghton dated 20 April 2023 and 20 June 2023 and the Fourth and Fifth Witness Statements of John Patrick Boylan dated 28 April 2023 and 27 June 2023

**AND UPON** hearing Counsel for the Class Representative and Counsel for the Defendants at a case management conference on 3 July 2023 concerning the Reply Amendment Application, the Behavioural Expert Application, and the Claim Form Amendment Application (together, the "**Applications**")

**IT IS ORDERED THAT:**

**Reply Amendment Application**

1. The Defendants have permission to file and serve their Amended Defence in the form consented to by the Class Representative on 24 February 2023.
2. BT shall file and serve its Amended Defence by **4pm on 7 July 2023**.
3. The Class Representative has permission to file and serve his Amended Reply as enclosed in the Reply Amendment Application.
4. The Class Representative shall file and serve his Amended Reply by **4pm on 7 July 2023**.

**Behavioural Evidence Application**

5. Each party has permission to adduce evidence from their Behavioural Expert in relation to the Informed Choice Averment (as defined in the Behavioural Evidence Application).

**Claim Form Amendment Application**

6. The Class Representative has permission to file and serve his Re-Re-Re-Amended Claim Form on the condition that he shall include the following further information, to be incorporated within it or as an annex thereto:
  - (a) In relation to draft paragraph 133B, the (money) figures which constitute, on the Class Representative's case:
    - (i) the SFV Services benchmark figure;
    - (ii) the estimates of the average Cost of Sales per line;
    - (iii) the cost of Wholesale Line Rental;

- (iv) other network costs, including costs of call conveyance, identifying each component of those costs;
- (v) call termination payments to other network operators;
- (vi) the estimated Long Run Incremental Cost per line for providing non-network retail activities required to serve SFV customers; and
- (vii) the estimated net margin,

and, in each case, a summary explaining how each figure is arrived at.

- (b) In relation to draft paragraph 133C, the same information set out in paragraph 6(a)(i) to (vii) above;
- (c) The information provided pursuant to 6(a) and 7(b) above shall be for each year of the Claim Period by BT financial year; and
- (d) A breakdown of the sums now claimed by way of damages, by reference to the costs items above on the one hand and BT's price on the other (specifying which prices are used), in respect of both competitive benchmarks (ie SFV Services and SFV Access).

#### **Timetable for pleadings**

- 7. The Class Representative shall file his Re-Re-Re-Amended Claim Form by **4pm on 6 July 2023**
- 8. The Defendants shall file and serve their Re-Amended Defence by **4pm on 27 July 2023**.
- 9. The Class Representative shall file and serve any Re-Amended Reply (if so advised) by **4pm on 8 September 2023**.

#### **Timetable for factual evidence**

- 10. The Defendants shall file and serve any further factual evidence regarding BT SFV calls during the Claim Period (as defined in the Re-Re-Re-Amended Claim Form) by **4pm on 3 August 2023**.

#### **Timetable for expert evidence**

- 11. Paragraph 11 of the Further Directions Order and paragraphs 1(b) and 2-4 of the Amended Further Directions Order are varied such that:

- (a) the Class Representative shall file and serve his final signed expert report in the field of behavioural economics by **4pm on 8 September 2023**.
- (b) the Defendants shall file and serve any signed expert report in the field of behavioural economics by **4pm on 29 September 2023**.
- (c) Each party shall file and serve any signed economic and actuarial expert reports by **4pm on 29 September 2023**.
- (d) The Class Representative shall file and serve any signed reply expert report in the field of behavioural economics by **4pm on 10 November 2023**.
- (e) Each party shall file and serve any signed reply economic and actuarial expert reports by **4pm on 10 November 2023**.
- (f) The Class Representative's and Defendants' behavioural, economic and actuarial experts shall, respectively, meet to discuss their respective reports by no later than **4pm on 24 November 2023** and shall produce a joint statement of matters agreed and not agreed in each field that shall be filed and served by **4pm on 15 December 2023**.

### **Hearings**

- 12. Paragraph 14 of the Further Directions Order is varied such that a one-day PTR shall be listed on **8 December 2023**. The parties shall agree a draft timetable for the Trial before the PTR for the Tribunal's consideration at the PTR.
- 13. The Trial shall be listed to start **not before 29 January 2024** and the hearing of the evidence in the trial must conclude **by 15 March 2024**.

### **General**

- 14. Costs reserved.
- 15. There be liberty to apply.