



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1584/5/7/23

BETWEEN:

WHISTL UK LIMITED

Claimant

- v -

(1) INTERNATIONAL DISTRIBUTIONS SERVICES PLC

(2) ROYAL MAIL GROUP LIMITED

Defendants

ORDER (DIRECTIONS)

UPON hearing Counsel for the Claimant (Mr A Bates) and Counsel for the Defendants (Mr A McIntyre) at a case management conference on 19 December 2023

AND UPON the parties having filed with the Tribunal an agreed List of Issues

AND UPON the parties having filed with the Tribunal a draft Confidentiality Ring Order (“**CRO**”), the terms of which had been agreed amongst the parties

AND UPON the Claimant having voluntarily filed an “Indicative Breakdown of [its] Heads of Loss” on 18 December 2023

AND UPON the Claimant confirming to the Tribunal that the Claimant does not pursue its claim for alleged loss and damage pleaded within paragraph 110.2 of the Particulars of Claim insofar as it relates to costs of participating in proceedings in the UK Supreme Court (“**the UKSC Costs Claim**”)

AND UPON the Tribunal indicating that it is not necessary for the Claimant to formally amend the Particulars of Claim at this time so as to delete the UKSC Costs Claim

IT IS ORDERED THAT:

Forum

1. Pursuant to rules 52 and 18 of the Competition Appeal Tribunal Rules 2015, the forum of these proceedings is England and Wales.

Confidentiality

2. A CRO shall be made in these proceedings.
3. The Claimant and the Defendants shall jointly send forthwith the draft CRO (the text of which they have agreed as between the parties) to the Office of Communications (“Ofcom”), LDC (Managers) Ltd, and PostNL Holding B.V. (each of them “Consultees”), inviting them to provide to the parties any objections to, or comments upon, the terms of the draft CRO by no later than 11 January 2024.
4. By no later than 15 January 2024, the parties shall provide to the Tribunal: (i) a further draft CRO incorporating any amendments agreed between the parties; (ii) the objections/comments, if any, received from Consultees pursuant to paragraph 3 above; and (iii) any observations the parties wish to make in response to those objections/comments. Following receipt of those documents, the Tribunal will finalise and approve the CRO on such terms as the Tribunal determines to be appropriate.
5. Where this Order, or an Order subsequently made in these proceedings, requires a party to provide inspection of any disclosed document, inspection of that document may, if appropriate, be made within the confidentiality ring arrangements established by the CRO.
6. Paragraphs 10 to 14 of this Order shall take precedence over any restrictions or conditions on the holding, use, release or provision of any documents or other materials

arising under sections 237, 241 or 245 of the Enterprise Act 2002, any undertakings given by the parties or their external advisers, or any Order of this Tribunal made in the Tribunal proceedings relating to the appeal against Ofcom’s decision dated 26 October 2018 (the “**Ofcom Decision**”) in respect of:

- (a) the file(s) that Ofcom provided to the Defendants (or either of them) containing material obtained or produced by Ofcom for the purposes of the Competition Act investigation it carried out between 2014 and 2018 relating to Royal Mail (the “**Ofcom Investigation File**”);
- (b) other material provided to Ofcom for the purposes of its investigation; and
- (c) material contained in the consolidated hearing bundles for which there is a 117-page index and which were produced for the purposes of the Tribunal proceedings relating to the appeal against the Ofcom Decision (the “**Appeal Trial Bundles**”).

Provision by the Claimant of further information as to the quantum of alleged loss and damage for which it claims

- 7. The Claimant shall, by 4 p.m. on 29 February 2024, serve on the Defendants a full and substantive response to Requests 11 and 13 of the Defendants’ Request for Further Information dated 25 November 2022.

Identification of binding findings made in the Ofcom Decision

- 8. The Claimant shall, by 4 p.m. on 29 February 2024, serve on the Defendants a list of matters which the Claimant contends to be findings made within the non-redacted version of the Ofcom Decision on which the Claimant intends to rely as constituting findings that are binding in the present proceedings, identifying the specific paragraphs in the non-redacted version of the Ofcom Decision which will be relied on.
- 9. The Defendants shall, by 4 p.m. on 28 March 2024, serve on the Claimant a document responding to the Claimant’s aforesaid list indicating whether they accept those alleged findings as binding in these proceedings and, if not, giving reasons.

Disclosure

Ofcom Decision

10. By 4 p.m. on 12 February 2024 the Defendants shall disclose and provide inspection of the non-redacted version of the Ofcom Decision.

Ofcom investigation file

11. By 4 p.m. on 29 February 2024 the Defendants shall disclose and provide inspection of:
 - (a) the index to the Ofcom Investigation File;
 - (b) all relevant documents contained in the Ofcom Investigation File.

Other documents provided by a party to Ofcom for the purposes of the investigation

12. By 4 p.m. on 25 March 2024 the parties shall disclose and provide inspection of all relevant documents which they provided to Ofcom during the Competition Act investigation which were not included in the Ofcom Investigation File.

Trial bundles from the Tribunal proceedings relating to the appeal against the Ofcom Decision

13. By 4 p.m. on 29 February 2024 the Defendants shall disclose and provide inspection of:
 - (a) the index (non-redacted version) to the Appeal Trial Bundles; and
 - (b) the non-redacted versions of the witness statements and expert reports contained in the Appeal Trial Bundles.
14. After having reviewed the Ofcom Investigation File, the Claimant may make requests to the Defendants to be provided with disclosure and inspection of specific relevant documents contained in the Appeal Trial Bundles. To the extent that any such requests

are not agreed, they may be brought before the Tribunal at the second Case Management Conference referred to at paragraph 25 below. The parties are permitted to use, for the purposes of these proceedings, documents from the Appeal Trial Bundles of which a party has provided inspection in these proceedings.

Disclosure of the Claimant's business plan documents relating to its entry and expansion in self-delivery of bulk letter mail in 2012-15

15. By 4 p.m. on 25 March 2024 the Claimant shall disclose and provide inspection of any business plan and ancillary documents relating to its entry and expansion in self-delivery of bulk letter mail in 2012-15 which it has not already provided to the Defendants in these proceedings and which the Claimant is able to identify and locate without significant search costs.

Further disclosure – process

16. By 4 p.m. on 25 March 2024 the parties shall exchange Disclosure Reports and Electronic Documents Questionnaires (as defined in Rule 60 of the Tribunal Rules). Following the exchange of those documents, the parties shall seek to agree the categories of documents for disclosure and the searches to be conducted for identifying those documents.
17. By 4 p.m. on 15 April 2024 the parties shall produce:
 - (a) Completed Redfern schedules setting out their respective positions on each proposed disclosure category in respect of which they have not been able to agree; and
 - (b) a document setting out their incurred costs to date for the proceedings and their anticipated costs of disclosure going forward.
18. By 4 p.m. on 23 April 2024 the parties shall produce and file updated Redfern schedules showing their updated positions and identifying any outstanding areas of disagreement.

Expert evidence

19. By 4 p.m. on 11 April 2024 the parties shall exchange written proposals for expert evidence. Such written proposals may be supported by short written reports from the proposed experts and shall identify the issues to be covered by each proposed expert and the methodologies that the expert is proposing to use.

Defendants' application to strike out the Claimant's claim insofar as it is for costs relating to its complaint to Ofcom, participating in the Ofcom investigation, and/or participating in the proceedings in this Tribunal and the Court of Appeal relating to the Defendants' appeal against the Ofcom Decision

20. The Defendants shall, if so advised, file and serve any application to strike out (and/or for summary judgment on) the claims for the losses alleged at paragraph 110.2 of the Particulars of Claim (the "**Strike Out Application**") by 4 p.m. on 4 March 2024.
21. The Claimant shall file and serve any evidence in response to the Strike Out Application by 18 March 2024.
22. The Defendants shall file and serve any evidence in reply by 2 April 2024.
23. A hearing of the Strike Out Application is provisionally listed to take place on 25 April 2024 at 2:00 p.m. with a time estimate of half a day. The Defendants shall inform the Tribunal as early as possible if this hearing is no longer required.
24. Skeleton arguments and bundles (including authorities) for the hearing of the Strike Out Application shall be filed by 4 p.m. on 18 April 2024. Bundles should be provided in both electronic form and hard copy (five copies).

Second CMC

25. A second case management conference ("**CMC**") is listed to take place on 26 April 2024 at 10:30 a.m. with a time estimate of 1 day. That CMC will be for considering:
(a) what further disclosure is to be provided; (b) what expert evidence should be permitted and in respect of what issues; (c) any disputes between the parties as to the

bindingness of findings within the Ofcom Decision on which the Claimant intends to rely; and (d) any other case management matters that may be conveniently considered at that hearing.

26. By 4 p.m. on 11 April 2024 the parties shall provide the Tribunal with a draft agenda and list of issues for determination at the second CMC.
27. Skeleton arguments and bundles (including authorities) for the second CMC shall be filed by 2 p.m. on 22 April 2024.

Trial

28. A trial of all issues in the claim shall be listed to begin sitting in late October or early November 2025 with a time estimate of 8 weeks (not including pre-reading). This time estimate is provided on the following indicative basis:
 - (a) Trial bundles and skeleton arguments to be filed at least 3 weeks before the first sitting day of trial.
 - (b) Openings limited to 1.5 days per party.
 - (c) 4 sitting weeks for factual and expert evidence.
 - (d) Allowance of an appropriate non-sitting period for enabling the parties to prepare closing submissions.
 - (e) Oral closings: 2 days per party.

Miscellaneous

29. The parties may agree to extend any time period or deadline in this Order without further order, provided that this does not affect the date of the trial or any listed CMC or other hearing. The parties shall notify the Tribunal in writing in advance of the expiry of the relevant deadline of any such agreed extension.

30. Costs in the case.

31. There be liberty to apply.

Hodge Malek KC

Chair of the Competition Appeal Tribunal

Made: 21 December 2023

Drawn: 21 December 2023