



IN THE COMPETITION
APPEAL TRIBUNAL

Case No.: 1246/8/3/16

BETWEEN:

BRITISH TELECOMMUNICATIONS PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

- and-

SKY UK LIMITED

Intervener

ORDER

UPON considering the application by the Appellant (“BT”) dated 4 March 2016 for the disclosure of documents before the Respondent (“OFCOM”) in reaching its decision dated 19 November 2015 and entitled “*Review of the pay TV wholesale must-offer obligation*” (the “2015 Statement”)

AND UPON considering the submissions and correspondence received from BT, OFCOM, the Intervener (“Sky”), TalkTalk Group plc (“TalkTalk”) and the Anonymous Respondent

AND UPON a confidentiality ring having been established by order of the Tribunal dated 24 February 2016 ([2016] CAT 1) as amended by the Tribunal’s orders of 8 March 2016, 22 March 2016 and 8 April 2016 (“the Confidentiality Order”)

AND UPON OFCOM confirming it has not identified any material relating to Sky other than that set out in its 9 March 2016 letter to Sky which would fall within the list of Specified Materials, or the categories of documents referred to at paragraphs 1(b) and 1(c) of this Order

AND UPON the parties having agreed the terms of this Order

IT IS ORDERED THAT:

1. Subject to paragraphs 3 and 4, by 5pm on 14 April 2016 OFCOM serve on the Relevant External Advisers of the parties un-redacted copies of:

- a. the Specified Materials;
- b. the responses of Sky, TalkTalk and the Anonymous Respondent to the consultations issued by OFCOM on 19 December 2014 and 29 July 2015; and
- c. any notes of meetings, telephone conferences and/or evidence provided outside of the consultation process by Sky, TalkTalk and the Anonymous Respondent in respect of matters covered by the 2015 Statement,

which have been identified by Ofcom as falling into these categories as at the date of the Order.

2. For the purposes of this Order:
 - a. **“Relevant External Advisers”** means the persons listed in part A(i) of the Schedule to the Confidentiality Order who have given a signed undertaking to the Tribunal in the terms of Part B(i) to the Confidentiality Order;
 - b. **“the Specified Materials”** means the documents listed in the Annex to this Order;
 - c. **“the Anonymous Respondent”** means the anonymous third party respondent referred to in the 2015 Statement.
3. In relation to Sky, OFCOM do not disclose (i) any information which Sky has indicated constitutes Highly Sensitive Material in paragraph 9 of its observations dated 11 March 2016 on BT’s application for disclosure; and (ii) in relation to the class of documents listed at paragraph 1.c of this Order, any documents other than those listed in part 3 of the letter from Sky's solicitors dated 1 April 2016.
4. In relation to the Anonymous Respondent, OFCOM do not disclose any information which (i) reveals the identity of the Anonymous Respondent and/or (ii) the Anonymous Respondent has indicated it wishes to remain confidential for reasons of commercial sensitivity in its letter to the Tribunal of 11 March 2016.
5. Costs be reserved.
6. There be liberty to apply.

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

Made: 11 April 2016
Drawn: 11 April 2016

ANNEX
SPECIFIED MATERIALS

1. Documents referred to in the 2015 Statement relating to the terms of supply for Sky Sports channels between Sky and each of Virgin Media, TalkTalk, EE and [Redacted];
2. Evidence supporting the statement made in footnote 99 of the 2015 Statement;
3. The documents referred to in footnotes 248, 259 and 262 of the 2015 Statement;
4. Submissions and evidence supporting the statements made in footnote 265 of the 2015 Statement;
5. The document referred to in footnote 276 of the 2015 Statement;
6. The underlying source of the data contained in Table 6.1 of the 2015 Statement;
7. Evidence supporting the statements made in paragraphs 6.55 and A3.4 of the 2015 Statement, as referred to in footnotes 287 and 448;
8. The research documents referred to in paragraph A2.3 of the 2015 Statement; and
9. The Sky internal documents referred to in paragraph A2.30 of the 2015 Statement.