



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1330/3/3/19

BETWEEN

(1) TALKTALK TELECOM GROUP PLC (“TTG”)
(2) VODAFONE LIMITED (“VODAFONE”)

Appellants

-v-

OFFICE OF COMMUNICATIONS (“OFCOM”)

Respondent

-and-

(1) BRITISH TELECOMMUNICATIONS PLC (“BT”)
(2) CITYFIBRE INFRASTRUCTURE HOLDINGS LIMITED (“CITYFIBRE”)

Interveners

AMENDED CONFIDENTIALITY RING ORDER

UPON reading the correspondence from the legal representatives of all the parties to these appeals relating to the establishment of a Confidentiality Ring in case 1330/3/3/19.

AND UPON hearing the legal representatives of the parties to this appeal at a Case Management Conference on 10 October 2019 at 2:00pm

AND UPON the parties having agreed the terms of this order

AND UPON the parties having agreed the amendments to the terms of this order

IT IS ORDERED THAT:

1. This Order becomes effective in respect of each of the persons named in Part A of the Schedule to this Order (including persons subsequently admitted to the confidentiality ring pursuant to paragraph 8 of 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**” is defined as information justifying confidential treatment by the Tribunal in accordance with rule 101 of the Competition Appeal Tribunal Rules 2015 which is contained in (i) the full un-redacted versions of the parties’ pleadings and other documents served on the Tribunal which has not, prior to the making of this Order, been disclosed to all other parties in the non-confidential versions of pleadings and other documents thus far served; and/or (ii) any documents served or disclosed hereafter.
 - (b) “**Confidential Network Information**” is Confidential Information relating to any party or third party’s plans or proposals for (i) future investment in or expansion or roll-out of infrastructure to be used as part of an electronic communications network or (ii) the wholesale purchase of access to such infrastructure, and which is identified as such by the Office of Communications in its pleadings or other documents served 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. subsequently added to the lists in Part A after being admitted to the ring in accordance with paragraph 8 below and who have given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to this Order.

3. Subject to paragraph 5A, each of the parties shall hereafter disclose to the other parties un-redacted versions of their pleadings and other documents served in these proceedings on the condition that, save in respect of the Office of Communications’ employees, such un-redacted versions and any Confidential Information contained within those pleadings and documents shall be disclosed only to the Relevant Advisers listed in Part A of the

Schedule to this Order and who have signed an undertaking to the Tribunal and to the parties in the terms of Part B of the Schedule to this Order.

4. In the case of pleadings and other documents served thus far in the proceedings, the Appellants shall comply with paragraph 3 of this Order in respect of each Party immediately on receipt of signed undertakings from that Party in the terms in Part B of the Schedule to this Order.
5. Subject to paragraph 5A, the Respondent shall disclose to the parties' solicitors who are Relevant Advisers listed in Part A of the Schedule to this Order and who have signed an undertaking to the Tribunal for distribution to all Relevant Advisers listed in Part A as necessary and to the parties in the terms of Part B of the Schedule to this Order the un-redacted versions of the following parts of Ofcom's statement: "Promoting competition and investment in fibre networks: review of the physical infrastructure and business connectivity markets", published on 28 June 2019:
 - a) Volume 2: Sections 5, 6, 10 and 13; and
 - b) Annexes: 4, 6, 7, 8 (paragraph A8.40 and Table A8.2 only), 9, 10, 11, 12 (Table A12.20 only) and 14.
- 5A. To the extent that the pleadings and other documents referred to in paragraph 3 of this Order and the statement referred to in paragraph 5 contain Confidential Network Information, such information shall only be disclosed in accordance with paragraph 3 or paragraph 5, as applicable, to the Relevant Advisers listed in Part A(i) of the Schedule to this Order and who have signed an undertaking to the Tribunal and to the parties in the terms of Part B of the Schedule to this Order. Such Confidential Network Information shall be redacted from the pleadings and other documents and the statement which are disclosed in accordance with paragraphs 3 and 5 to the Relevant Advisers listed in Part A(ii) of the Schedule to this Order and who have signed an undertaking to the Tribunal and to the parties in the terms of Part B of the Schedule to this Order. Such Confidential Network Information may be disclosed to the Relevant Advisers listed in Part A(ii) only where the party disclosing it has obtained the express written consent of the Office of Communications.
6. All such un-redacted versions of pleadings and other documents served in the course of

these proceedings must be marked 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. A system of colour-coding shall be used to indicate to which entity the confidential information belongs (or such other system as the parties shall agree where colour-coding is considered unworkable).

7. Where a document containing Confidential Information is placed or disclosed into the confidentiality ring established by this Order, the party placing or disclosing the document into the confidentiality ring shall also provide to all parties, within 7 days thereafter, a non-confidential version of the document (i.e. a version that is not subject to the confidentiality ring) from which Confidential Information has been redacted. This paragraph does not apply to pleadings and documents disclosed to a Relevant Adviser listed in Part A(ii) of the Schedule to this Order in accordance with paragraph 5A, such pleadings and documents to be served at the same time as the unredacted versions of the documents are disclosed to Relevant Advisers listed in Part A(i) of the Schedule to this Order.
8. If any party wishes to add any additional person as a Relevant Adviser for the purposes of paragraph 2(b) of this Order, they may either:
 - a) obtain the written consent of each of the other parties to the admission of that individual to the Confidentiality Ring and inform the Tribunal in writing accordingly (copying the representatives of the other parties); or
 - b) apply to the Tribunal for an order authorising the admission of that individual to the Confidentiality Ring.
9. If any party wishes one of its Relevant Advisers to be removed from the Confidentiality Ring, they shall inform the Tribunal in writing (copying the representatives of the other parties).
10. When a Relevant Adviser is admitted to or removed from the Confidentiality Ring the relevant party will provide to the Tribunal (and circulate to the parties) an up-to-date list of the persons in Part A.

11. The parties shall make available without charge to any person on request an up-to-date list of the persons in Part A.
12. The provisions of this Order do not prevent the provision, by Relevant Advisers, of any documents or information (including Confidential Information) to the Tribunal or to the Competition and Markets Authority or their officers or employees.
13. Nothing in this Order prevents the disclosure of any information to the Office of Communications (including any Office of Communications employee) to facilitate the exercise of its functions or prevents the Office of Communications from obtaining or using any information pursuant to its powers under any enactment.
14. The Appellant's and Respondent's costs in respect of this Order shall be costs in the case.
15. The Interveners shall bear their own costs in respect of this Order.
16. There be liberty to apply.

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

Made: 21 November 2019
Drawn: 21 November 2019

SCHEDULE

PART A

This part contains the names, for each party, of Relevant Advisers.

PART A(i)

Vodafone Limited and TalkTalk Plc

Counsel

Alan Bates

Imogen Proud (both of Monckton Chambers)

External Solicitors

Paul Brisby

Lucas Ford

Zach Meyers

Helen Rutland

James Singer

Louise Appleton, Trainee

Gemma Motion, Trainee (all of Towerhouse LLP)

External Advisors

Martin Duckworth

Garima Nirula (both of Frontier Economics)

Office of Communications

Counsel

Josh Holmes QC

Julianne Morrison (both of Monckton Chambers)

British Telecommunications plc

Counsel

Robert Palmer QC

Ligia Osepiciu (both of Monckton Chambers)

External advisors

Matt Hunt (Alix Partners UK LLP)

Neil Pratt (NP Economics Consulting Ltd)

Greg Harman

Adam Mantzos

Scott Morrisson

Martina Mussett (all of Berkeley Research Group (UK) Ltd)

CityFibre Infrastructure Holdings Limited

Counsel

Sarah Love (Brick Court Chambers)

External Solicitors

Chris Watson

Caroline Hobson

Russell Hoare

Madeeha Anthony (all of Cameron McKenna Nabarro Olswang LLP)

PART A(ii)

British Telecommunications plc

In-house solicitors

Sophie Thomson

Sophie Bouckaert (both of Openreach Limited)

PART B

In respect of any Confidential Information disclosed to them pursuant to this Order, each Relevant Adviser undertakes that they will comply with the following requirements in the following terms:

I, [] of [FIRM, COMPANY OR ESTABLISHMENT] being [LEGAL OR OTHER QUALIFICATION] and regulated so far as my professional conduct is concerned by [REGULATORY BODY, IF ANY] undertake to the Tribunal and each of the parties as follows:

1. I have read a copy of the Tribunal's Order of [date] ("the Tribunal's Order") and understand the implications of that Order and the giving of this undertaking.
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 will not disclose the Confidential Information (as defined in the Tribunal's Order) to any person who is not an Office of Communications ("OFCOM") employee or a Relevant Adviser (as defined in the Tribunal's Order) to whom the information has been disclosed in accordance with the terms of the Tribunal's Order without the express consent of the party originally disclosing the information (which, for the avoidance of doubt, shall be Ofcom in relation to any Confidential Network Information as defined in the Tribunal's Order) or the permission of the Tribunal.
3. I will use the Confidential Information only for the purpose of these 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.
4. The pleadings and documents containing the Confidential Information will remain in my custody or the custody of another Relevant Adviser or OFCOM at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
5. The production by me of further copies of the documents containing the Confidential Information shall be limited to those strictly required for the use of the Relevant Advisers for the purpose of these proceedings and shall be held in accordance with paragraph 4 of this undertaking
6. Any and all copies and the pleadings and documents in paper form containing the Confidential Information will be returned to the party originally disclosing the pleading or documents or destroyed by the receiving party at the conclusion of the present proceedings, unless otherwise agreed by the parties; any copies of the pleadings and the

documents containing the Confidential Information in electronic form will where possible be returned 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.

7. Where the Relevant Advisor is also an employee of a company that is party to these proceedings, or is an employee of a subsidiary company of a party to these proceedings but is involved in reviewing Confidential Information, the Relevant Adviser will take all reasonable steps to minimise the risk of confidential information being accessed by another part of that business, including but not limited to IT ring fencing and password protection of all confidential information.
8. Where the Relevant Advisor is an employee of BT Group plc, or a subsidiary company of BT Group plc, the Relevant Advisor also shall treat all confidential information disclosed by a party to these proceedings as 'Customer Confidential Information' (within the meaning of the Commitments of BT plc and Openreach Limited to Ofcom).
9. Save that none of the requirements listed at paragraphs 2 to 8 above shall prevent Relevant Advisers from disclosing to a person advised by them Confidential Information which such person has already legitimately seen.
10. The provisions of this undertaking do not prevent the provision, by Relevant Advisers, of any documents or information (including Confidential Information) to the Tribunal or the Competition & Markets Authority, including any officers or employees of those organisations, for the purposes of these proceedings.

Signed:

Name:

Date: