



**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

CONFIDENTIALITY REVIEW ORDER

UPON the Amended Confidentiality Ring Order dated 13 February 2023 (the “**Confidentiality Ring**”)

AND UPON the Class Representative (the “**CR**”) filing a final version of an expert report in the field of behavioural economics on 8 September 2023 (the “**CR’s Behavioural Expert Report**”)

AND UPON the Class Representative providing (i) written requests that BT review and reconsider the confidential designation of documents referred to BT’s witness statements and the draft version of CR’s Behavioural Expert Report by 31 July 2023 (which was extended by agreement to 18 September) (the “**CR’s Initial Requests**”) and (ii) a written request on 8 September 2023 that BT review and reconsider the confidential designation of 7 confidential documents relied upon in the final version of CR’s Behaviour Expert Report within 14 days (which was extended by agreement)

AND UPON the Class Representative being due to file (i) economic and actuarial reports on 29 September 2023 (the “**CR’s Economic and Actuarial Expert Reports**”); (ii) and economic, actuarial and behavioural reply reports on 10 November 2023 (the “**CR’s Reply Expert Reports**”)

AND UPON BT being due to file (i) economic, actuarial and behavioural reports on 29 September 2023 (“**BT’s Expert Reports**”) and (ii) economic and actuarial reply expert reports on 10 November 2023 (“**BT’s Reply Expert Reports**”)

AND UPON the Pre-Trial Review in these proceedings being listed for 8 December 2023 (the “**PTR**”) and the trial listed to begin not before 29 January 2024 (the “**Trial**”)

AND UPON the parties agreeing to use an electronic trial bundle for the PTR and the Trial (the “**Trial Bundle**”)

AND UPON BT having agreed to review the existing confidentiality designations of certain documents forming part of its disclosure by the dates set out in this order (“**the Confidentiality Reviews**”)

AND UPON BT having undertaken a confidentiality review of the majority of documents listed in the CR’s Initial Requests and, in respect of such reviewed documents, having (a) notified the CR in writing of documents that it has re-designated as non-confidential; and (b) provided the CR with the reasons for maintaining existing confidentiality designations in respect of other documents.

AND UPON 23,025 out of 23,392 of BT’s disclosure documents being designated, as at 20 September 2023, by BT as containing Outer Ring Confidential Information for the purposes of the Confidentiality Ring

AND UPON the Tribunal reading the CR’s application by way of letter to the Tribunal dated 21 September 2023 and appended parties’ correspondence and BT’s response dated 22 September 2023

AND UPON the Tribunal writing to the parties to direct that a hearing be provisionally listed

AND UPON reading BT’s letter dated 27 September 2023 in response to the Tribunal’s letter

IT IS ORDERED THAT:

1. By **4pm on 22 September 2023**, BT shall:

- a. undertake a confidentiality review of all documents referred to in the CR’s Behavioural Expert Report and outstanding requests in the CR’s Initial Requests, and notify the CR in writing of any documents that it has re-designated as non-confidential; and
- b. in respect of each document referred to in the CR’s Behavioural Expert Report and the outstanding requests in the CR’s Initial Requests over which it intends to maintain its existing confidentiality designation, provide the CR with reasons for the maintenance of such designation.

2. By **4pm on 2 October 2023**, the CR shall provide to BT a list of documents referred to in the CR's Economic and Actuarial Expert Reports (and not previously re-reviewed by BT for the purposes of confidentiality designations).
3. By **4pm on 13 October 2023**, BT shall:
 - a. undertake a confidentiality review of all documents referred to in BT's Expert Reports, and notify the CR in writing of any documents that it has re-designated as non-confidential; and
 - b. in respect of each document referred to in BT's Expert Reports over which it intends to maintain its existing confidentiality designation, provide the CR with reasons for the maintenance of such designation.
4. By **4pm on 16 October 2023**, BT shall:
 - a. undertake a confidentiality review of all documents listed pursuant to paragraph 2 above in respect of the CR's Economic and Actuarial Expert Reports and notify the CR in writing of any documents that it has re-designated as non-confidential; and
 - b. in respect of each document referred to in the CR's Economic and Actuarial Expert Reports over which it intends to maintain its existing confidentiality designation, provide the CR with reasons for the maintenance of such designation.
5. By **4pm on 23 October 2023**, BT shall provide the CR with marked up versions of any documents referred to in BT's Expert Reports, the CR's Economic and Actuarial Expert Reports, and CR's Behavioural Expert Report over which BT seeks to maintain confidentiality, clearly identifying the specific material over which confidentiality is asserted.
6. A remote hearing shall be provisionally listed for half a day on 7 November 2023 at 10.30am for the resolution of any disputes arising out of the Confidentiality Reviews undertaken pursuant to paragraphs 2 to 5 above (the "**Confidentiality Hearing**"). Should the hearing not be required, the parties are to inform the Tribunal's Registry as soon as this becomes apparent.
7. By **4pm on 13 November 2023**, the CR shall provide to BT a list of documents referred to in the CR's Reply Expert Reports (and not previously re-reviewed by BT for the purposes of confidentiality designations).
8. By **4pm on 17 November 2023**, BT shall:
 - a. undertake a confidentiality review of all documents referred to in BT's Reply Expert Reports, and notify the CR in writing of any documents that it has re-designated as non-confidential; and

- b. in respect of each document referred to in BT's Reply Expert Reports over which it intends to maintain its existing confidentiality designation, provide the CR with reasons for the maintenance of such designation.
9. By **4pm on 27 November 2023**, BT shall:
 - a. undertake a confidentiality review of all documents listed pursuant to paragraph 7 above in respect of the CR's Reply Expert Reports and notify the CR in writing of any documents that it has re-designated as non-confidential; and
 - b. in respect of each document referred to in the CR's Reply Expert Reports over which it intends to maintain its existing confidentiality designation, provide the CR with reasons for the maintenance of such designation.
10. By 4pm on **4 December 2023**, BT shall provide the CR with marked up versions of any documents referred to in BT's Reply Expert Reports and the CR's Reply Expert Reports. over which BT seeks to maintain confidentiality, clearly identifying the specific material over which confidentiality is asserted.
11. Following a reasoned written request, the parties may agree to vary any of the dates in paragraphs 2 – 5 and 7 – 10 above, provided that any extension does not prejudice the dates for: (i) the Confidentiality Hearing; (ii) the PTR; or (iii) the Trial. Consent is not to be refused unreasonably.
12. BT shall review the confidentiality designations of any document that it wishes to rely upon at Trial prior to its being included in the Trial Bundle (save insofar as it has already been reviewed pursuant to the Confidentiality Reviews or otherwise).
13. Liberty to apply.
14. No order as to costs.

Mr Justice Waksman
Chair of the Competition Appeal Tribunal

Made: 9 October 2023
Drawn: 9 October 2023