



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

Case No: 1379/5/7/20

BETWEEN:

**KERILEE INVESTMENTS LIMITED**

Claimant

- v -

**INTERNATIONAL TIN ASSOCIATION LTD**

Defendant

---

**ORDER (CONFIDENTIALITY RING)**

---

**UPON READING** the correspondence from the parties;

**AND UPON** each of the persons named in Part A of the Schedule to this Order giving a written undertaking to the Tribunal in the terms of Part C of the Schedule to this Order prior to receiving any Confidential Information (as defined below);

**AND UPON** each of the persons named in Part B of the Schedule to this Order giving a written undertaking to the Tribunal in the terms of Part D of the Schedule to this Order prior to receiving any Outer Confidentiality Ring Information (as defined below);

**AND UPON** the terms of this Order as set out below having been agreed between the Parties;

**IT IS ORDERED BY CONSENT THAT:**

**DEFINITIONS**

1. For the purposes of this Order

- 1.1 **Confidential Information**” means Inner Confidentiality Ring Information and Outer Confidentiality Ring Information.
- 1.2 **“Inner Confidentiality Ring Information**” means documents disclosed in these proceedings, including any part of those documents and any information contained within those documents, which (a) the disclosing party designated as confidential and to be shared with external advisers only, and (b) has not subsequently been re-designated as Outer Confidentiality Ring Information or as not confidential, either by consent or by order of the Tribunal;
- 1.3 **“Outer Confidentiality Ring Information**” means a document or documents disclosed in these proceedings, including any part of those documents and any information contained within the documents, which (a) the disclosing party has designated as confidential but has not requested be confined to external advisers, and (b) has not subsequently been re-designated as not confidential, either by consent or by order of the Tribunal;
- 1.4 **“Confidentiality Ring Members**” means Inner Confidentiality Ring Members and Outer Confidentiality Ring Members;
- 1.5 **“Inner Confidentiality Ring Members**” are persons who:
- a) are external advisers;
  - b) are listed in Part A of the Schedule to this Order, as amended from time to time in accordance with the provisions of paragraph 4 below or by an order of the Tribunal; and
  - c) who have also given a signed undertaking to the Tribunal in the terms of Part C of the Schedule to this Order;
- 1.6 **“Outer Confidentiality Ring Members**” are:
- a) the Inner Confidentiality Ring Members; and

- b) those persons listed in Part B of the Schedule to this Order, as amended from time to time in accordance the provisions of paragraph 4 below, who:
    - i. have given a signed undertaking to the Tribunal in the terms of Part D of the Schedule to this Order; and
    - ii. only have access to the Outer Confidentiality Ring Information which has been identified pursuant to paragraph 5 below.
- 2. When Inner Confidentiality Ring Information is disclosed in the context of these proceedings, it is to be provided or made available solely to the Inner Confidentiality Ring Members, to be held by them on the terms set out in Part C of the Schedule to this Order, subject to the following paragraphs of this Order.
- 3. When Outer Confidentiality Ring Information is disclosed in the context of these proceedings, it is to be provided or made available to Outer Confidentiality Ring Members and Inner Confidentiality Ring Members, to be held by them on the terms set out in:
  - 3.1 if the individual is also an Inner Confidentiality Ring Member, Part C of the Schedule to this Order, subject to the following paragraphs of this Order;
  - 3.2 if the individual is not also an Inner Confidentiality Ring Member, Part D of the Schedule to this Order, subject to the following paragraphs of this Order.
- 4. If a Party (“the Proposing Party”) wishes to add an additional person as an Inner Confidentiality Ring Member or as an Outer Confidentiality Ring Member:
  - 4.1 it shall notify the other Parties in writing, and they may consent in writing, with such consent not to be unreasonably withheld;

- 4.2 if any Party objects to the proposed addition to the Inner Confidentiality Ring or the Outer Confidentiality Ring (as applicable), they shall notify the Proposing Party in writing within 7 days that they so object, giving reasons;
- 4.3 on the sooner of consent being provided in accordance with paragraph 4.1 above and/or no such objections being received under paragraph 4.2 above:
- a) the additional person will be required to give the written undertaking to the Tribunal in the terms of Part C or Part D (as appropriate) of the Schedule to this Order; and
  - b) the Proposing Party will provide the written undertaking referred to in paragraph 4.3(a) above and an amended version of Part A or Part B (as appropriate) to this Order to the Tribunal and the other Parties;
- 4.4 if any objection referred to in paragraph 4.2 above is received, the Proposing Party may apply to the Tribunal, on notice.
5. A Party disclosing a document in connection with these proceedings may designate that the document as confidential or not confidential. The following procedures shall apply:
- 5.1 designation of a document as confidential must be made in writing to the Parties receiving the disclosure. Failure to provide a designation for a document at the time the document is disclosed shall be deemed to be a designation that the document in question as not confidential;
- 5.2 upon written request, within 7 days of the date of disclosure the Party providing the disclosure must provide a written explanation of the confidential designation, sufficient to make the basis of that designation clear. The requesting Party shall not unreasonably withhold consent to an extension of time for this purpose, where it is reasonably required in view

of the nature and/or number of documents which are the subject of the request.

5.3 a Party receiving disclosure of documents may request that the disclosing Party amend the designation of a document that it has disclosed. The following procedure shall apply:

- a) the requesting Party must provide a written request to the disclosing Party, copied to the other Parties, specifying the relevant Confidential Information and explaining why it is reasonable and necessary for the designation of the Confidential Information to be amended. The Parties will make reasonable endeavours to ensure that any such requests are brought, as far as possible, in manageable batches;
- b) the disclosing Party may consent in writing to amend the designation of the Confidential Information. Such consent shall not be unreasonably withheld;
- c) a response should be provided within 7 days of the written request referred to at paragraph 5.3(a) above being received, save that requesting Party shall not unreasonably withhold consent to an extension of time for this purpose, where it is reasonably required in view of the nature and/or number of documents which are the subject of the request. If no response is provided within 7 days, or the extended time period that the Parties have agreed, consent shall be deemed to have been given; and
- d) should an objection be received within the 7 day period referred to in paragraph 5.3(c) above, the requesting Party may apply to the Tribunal, on notice, for an order that the designation of the Confidential Information should be changed.

5.4 If a Party considers that particular Confidential Information, contained in a document or any part thereof, needs to be shown to a person who is not a Confidentiality Ring Member, or that Inner Confidentiality Ring Information, contained in a document or any part thereof, needs to be shown to an Outer Confidentiality Ring Member:

- a) the requesting Party must provide a written request to the disclosing Party, copied to the other Parties, specifying the relevant Confidential Information and explaining the person or persons to whom it is proposed that the document should be shown, and why it is reasonable to show the document to that person or those persons;
- b) the disclosing Party may consent in writing to the Confidential Information being shown to the additional person or persons concerned, upon them providing written undertaking to the Tribunal in the terms of Part C or Part D (as appropriate) of the Schedule to this Order. Such consent shall not be unreasonably withheld;
- c) a response should be provided within 7 days of the written request referred to at paragraph 5.4(a) above being received, save that requesting Party shall not unreasonably withhold consent to an extension of time for this purpose, where it is reasonably required in view of the nature and/or number of documents which are the subject of the request. If no response is received within 7 days, or the extended time period that the Parties have agreed, consent shall be deemed to have been given; and
- d) should an objection be received within the 7 day period referred to in paragraph 5.4(c), the requesting Party may apply to the Tribunal, on notice, for an order that the Confidential

Information may be disclosed to the additional person or persons concerned.

- 5.5 Where a Party has previously agreed in writing that Confidential Information, contained in a document or any part thereof, may be shown to a person who is not a Confidentiality Ring Member, or that Inner Confidentiality Ring Information may be shown to an Outer Confidentiality Ring Member, that agreement shall be deemed to have been provided pursuant to paragraph 5.4(b) of this Order.
6. The obligations contained in the undertakings provided pursuant to this Order and/or Rule 102 of the Competition Appeal Tribunal Rules 2015 shall continue to apply upon conclusion or discontinuance of the Claimant's claim, or any of them, and the each of the Parties shall continue to treat all Confidential Information in accordance with this Order unless they have confirmed to the other Party that all Confidential Information held by it or on its behalf has been destroyed.
7. Any correspondence containing any Confidential Information shall be clearly marked "Confidential Information - Confidentiality Ring Only."
8. For the avoidance of doubt, Confidentiality Ring Members who are external advisers may provide access to documents containing Confidential Information for the purposes of the instant proceedings to individuals retained or employed by them (or their Chambers) in connection with their business services who fall into the following categories: IT, reprographics staff and clerks, who are dealing only with the documents containing Confidential Information for administrative purposes and only for the purposes of assisting a Confidentiality Ring Member fulfilling his/her instructions or duties under the Confidentiality Ring Order and in relation to the instant proceedings.
9. There shall be liberty to apply, if appropriate.
10. Costs in the case.

**The Hon Mr Justice Butcher**

Chairman of the Competition Appeal Tribunal

Made: 29 October 2021

Drawn: 2 November 2021



## **SCHEDULE**

### **PART A**

This part contains the names of Inner Confidentiality Ring Members:

#### **Claimant**

Brian Kennelly QC (Blackstone Chambers)

Tim Parker (Blackstone Chambers)

Ian Sellars (Berkeley Rowe)

Leonard Scudder (Berkeley Rowe)

Daniel Roberts (Berkeley Rowe)

#### **Defendant**

Laura Elizabeth John (Monckton Chambers)

Jack Williams (Monckton Chambers)

Paul Marmor (Sherrards)

Greg Pooler (Sherrards)

Sarah Newman (Sherrards)

Charlotte Yam (Sherrards)

Annika Choudhury (Sherrards)

Maximilian Marmor (Sherrards)

Tessa Herring (Sherrards)

Joseph Bell (Oxera Consulting)

James May (Oxera Consulting)

## **SCHEDULE**

### **PART B**

This part contains the names of Outer Confidentiality Ring Members:

#### **Claimant**

Brian Beckett (Kerilee)

Steven Arrowsmith (Hudson Sterling)

#### **Defendant**

Kay Nimmo (ITA)

Roper Cleland (ITA)

Sonia Marsh (ITA)

Richard Evans (ITA)

## SCHEDULE

### PART C

In respect of any Confidential Information disclosed to them pursuant to this Order, each Inner Confidentiality Ring Member undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

None of the requirements listed at paragraph 1 to 9 below shall prevent Confidentiality Ring Members from disclosing to their clients any information contained within the Confidential Information which:

- (a) is or becomes publicly available otherwise than through the Confidentiality Ring Member's default;
- (b) is subsequently received from a third party not under any obligation of confidence in relation to the Confidential Information; or
- (c) is required to be disclosed by operation of law or by order of a court of competent jurisdiction or by a regulatory or other body having jurisdiction over the Confidentiality Ring Member.

I, **[name]**, of **[chambers, firm, or company]** being **[legal or other qualification]** undertake to the Tribunal and each of the Parties as follows:

- 1 I have read a copy of the Tribunal's Order of [date of confidentiality order] and understand that Order and the implications of giving this undertaking.
- 2 I have read rule 31.22 of the Civil Procedure Rules and Rules 101 and 102 of the Competition Appeal Tribunal Rules 2015 and am aware of and will comply with the obligations imposed by the rule.
- 3 I will not disclose Inner Confidentiality Ring Information to any person who is not an Inner Confidentiality Ring Member; or Outer Confidentiality Ring Information to any person who is not a Confidentiality Ring Member.

- 4 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 in any jurisdiction.
- 5 The documents containing any Inner Confidentiality Ring Information will remain in my custody or the custody of another Inner Confidentiality Ring Member at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
- 6 The documents containing any Outer Confidentiality Ring Information will remain in my custody or the custody of another Confidentiality Ring Member at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
- 7 The production of further copies by me of the documents containing the Inner Confidentiality Ring Information shall be limited to those required for the use of the Inner Confidentiality Ring Members for the purposes of these proceedings only and shall be held in accordance with these undertakings.
- 8 The production of further copies by me of the documents containing the Outer Confidentiality Ring Information shall be limited to those required for the use of the Confidentiality Ring Members for the purposes of these proceedings only and shall be held in accordance with these undertakings.
- 9 I will continue to comply with these undertakings after the conclusion of the proceedings, in respect of any Confidential Information that I do not destroy and continue to hold.

Signed:

Name:

Date:

## SCHEDULE

### PART D

In respect of any Outer Confidentiality Ring Information disclosed to them pursuant to this Order, each Outer Confidentiality Ring Member undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

None of the requirements listed at paragraph 1 to 8 below shall prevent Confidentiality Ring Members from disclosing any information contained within the Confidential Information which:

- (a) is or becomes publicly available otherwise than through the Confidentiality Ring Member's default;
- (b) is subsequently received from a third party not under any obligation of confidence in relation to the Confidential Information; or
- (c) is required to be disclosed by operation of law or by order of a court of competent jurisdiction or by a regulatory or other body having jurisdiction over the Confidentiality Ring Member.

I, **[name]**, of **[company]** being **[legal or other qualification or position]** undertake to the Tribunal and each of the Parties as follows:

- 1 I have read a copy of the Tribunal's Order of [date of confidentiality order] and understand that Order and the implications of giving this undertaking.
- 2 I have read rule 31.22 of the Civil Procedure Rules and Rules 101 and 102 of the Competition Appeal Tribunal Rules 2015 and am aware of and will comply with the obligations imposed by the rule.
- 3 I will not disclose the Outer Confidentiality Ring Information to any person who is not a Confidentiality Ring Member.

- 4 I will use the Outer Confidentiality Ring 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 in any jurisdiction.
- 5 The documents containing any Outer Confidentiality Ring Information will remain in my custody or the custody of another Confidentiality Ring Member at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
- 6 The production of further copies by me of the documents containing the Outer Confidentiality Ring Information shall be limited to those required for the use of Confidentiality Ring Members, for the purposes of these proceedings only and shall be held in accordance with these undertakings.
- 7 I will continue to comply with these undertakings after the conclusion of the proceedings, in respect of any Confidential Information that I do not destroy and continue to hold.

Signed:

Name:

Date: