



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

Case No. 1381/7/7/21

BETWEEN:

**JUSTIN LE PATOUREL**

Applicant/Class Representative

- v -

**(1) BT GROUP PLC**

**(2) BRITISH TELECOMMUNICATIONS PLC**

Respondents/Defendants

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**CONFIDENTIALITY RING ORDER**

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**UPON** the expiry of the interim confidentiality order dated 4 March 2021 which contained confidentiality terms that were agreed between the parties for documents that contained confidential information for the period up to and including the hearing of the application for a Collective Proceedings Order ("**CPO Hearing**")

**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 HAVING REGARD TO** the powers of the Competition Appeal Tribunal (the "**Tribunal**") powers under the Competition Appeal Tribunal Rules 2015 (the "**Tribunal Rules**") (Rules 53(h), 101 and 102)

**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, as well as:
    - a) necessary secretarial and other support personnel, including inter alia providers of eDisclosure (not including trainee solicitors or paralegals) under the supervision of those persons identified in (a) above), provided that such personnel have been informed of the

confidential nature of the Confidential Information and the terms of Part D of the Schedule to this Order;

- b) any external eDisclosure or litigation provider engaged by one of the Parties in connection with these proceedings to provide eDisclosure or similar services in support of those persons identified in (a) above, who may have access to Confidential Information as a necessary consequence of the provision of their services and whose identity is notified in writing to the other Parties, provided that such provider has been informed of the confidential nature of the Confidential Information and the terms of Part D of the Schedule to this Order

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.

- 1.7 **“Party” or “Parties”** means a party to these proceedings.
- 1.8 **“these proceedings”** means Justin Le Patourel v (1) BT Group PLC and (2) British Telecommunications PLC (Case No: 1381/7/7/21) and any appeal to the Court of Appeal or Supreme Court of England and Wales.

## **ACCESS TO AND USE OF CONFIDENTIAL INFORMATION**

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.

## **ADDITIONAL MEMBERS**

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 and request the express written consent of the other Party (the **“Receiving Party”**), providing the name and role of the proposed additional person;
  - 4.2 following receipt of a notice pursuant to paragraph 4.1 above, the Receiving Party shall not unreasonably withhold or delay their consent and if the Receiving 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 3 clear working 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) of the Schedule 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.
- 4.5 If a Party wishes to remove a person it has itself added as an Inner or Outer Confidentiality Ring Member, that Party will notify the other Party and provide an amended version of Part A or Part B (as applicable) of the Schedule to this Order to the Tribunal.

## **DESIGNATION OF CONFIDENTIAL INFORMATION**

5. A Party disclosing a document in connection with these proceedings may designate that document as containing Confidential Information. The following procedures shall apply:

- 5.1 designation of a document as containing Confidential Information must be made in writing to the Party receiving the disclosure and must comply with paragraph 7.46 of the Tribunal's 2015 Guide to Proceedings (the "**Guide**"). Such designation should specify whether the document contains Inner or Outer Confidential Ring Information;

- 5.2 a designation of not confidential means that the document does not contain Confidential Information. For the avoidance of doubt, in the event of a designation of not confidential, Rule 102 of the Competition Appeal Tribunal Rules 2015 continues to apply (to the extent it would otherwise have applied);
- 5.3 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 is not confidential. A Party may alter the designation of a document/information to correct an incorrect designation by notice in writing to the other Party that received such document/information;
- 5.4 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.
- 5.5 Each Party shall be responsible, in respect of any document containing Confidential Information belonging to them, for labelling and highlighting any Confidential Information in the following ways:
- Any bundle index will state which documents contain Confidential Information and identify the Party or Parties to which the Confidential Information relates.
  - Any text and/or extract which contains Confidential Information
6. Disclosure of any Confidential Information shall be restricted to, and may be inspected only by, the Confidentiality Ring Members in respect of that document and only on the basis that:
- 6.1 the recipient Confidentiality Ring Member holds the Confidential Information on the terms set out in Part C or Part D of the Schedule to this

Order (as appropriate);

6.2 any such Confidential Information will be treated by each such Confidentiality Ring Member as confidential and will be used by each such person solely for the purpose of the proper conduct of these proceedings; and

6.3 no such Confidentiality Ring Member will, save as expressly provided for by the Confidentiality Order, discuss, disclose, copy, reproduce or distribute any Confidential Information.

7. Provided it is for the purpose of the proper conduct of these proceedings, nothing in this Confidentiality Order shall prohibit any Confidentiality Ring Member from:

7.1 making notes or copies of, or preparing reports, submissions or other documents concerning, containing or reflecting any Confidential Information (which notes, copies, reports, submissions or other documents would themselves be Confidential Information); and

7.2 disclosing any Confidential Information to any other person who is an Inner Confidentiality Ring Member or Outer Confidentiality Ring Member (as appropriate) in respect of that document, or any Confidential Information to any other person who is an Inner Confidentiality Ring Member or Outer Confidentiality Ring Member (as appropriate) in respect of a document containing such information, provided that no Confidential Information shall be otherwise directly or indirectly disclosed in the conduct of these proceedings beyond the relevant Inner Confidentiality Ring Members or Outer Confidentiality Ring Members (as appropriate).

7.3 During any hearing in these proceedings, each Party wishing to refer to Confidential Information shall be responsible for indicating to the Tribunal, that the document contains Confidential Information.

## **PROPOSED PROVISION OF CONFIDENTIAL INFORMATION TO PERSONS OUTSIDE THE RING**

8. 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:
  - 8.1 the requesting Party must provide a written request to the disclosing Party, specifying the relevant Confidential Information (by reference to the relevant documents) and the person or persons to whom it is proposed that the document should be shown, and why it is reasonable to show the Confidential Information to that person or those persons;
  - 8.2 following receipt of a request pursuant to 8.1 above, a recipient of any such request shall not unreasonably withhold or delay their consent and if any such recipient objects to Confidential Information being provided or made available to the proposed person, they shall notify the Requesting Party in writing within 7 days that they so object;
  - 8.3 if express consent is given by the recipient of any request under 8.1 above, or the recipient fails to give express consent and fails to give written notice of objection within the 7 day period specified at paragraph 8.2 above, the additional person(s) 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. Such consent shall not be unreasonably withheld;
  - 8.4 the requesting Party shall not unreasonably withhold consent to an extension of time to the 7 day period specified at 8.2 and 8.3 above 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; and
  - 8.5 should an objection be received in accordance with 8.2, 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.
9. 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 8 of this Order.

10. Nothing in this Confidentiality Order shall prevent or prohibit a receiving Party from taking any action which a receiving Party is required to take by applicable law or by a court of competent jurisdiction. In these circumstances, a receiving Party may produce such Confidential Information but shall take all reasonable measures to have the Confidential Information treated in accordance with this Confidentiality Order.

### **COPIES OF CONFIDENTIAL INFORMATION**

11. Subject to the exceptions in paragraph 12 below, copies of Confidential Information provided pursuant to these Confidentiality Terms (in both hard and soft copy) must be destroyed (insofar as technologically feasible) or made inaccessible at the conclusion of these proceedings, or when an individual ceases to be involved in the proceedings. Each Party shall notify the other Party that the Confidential Information has been destroyed or made inaccessible (as appropriate).

12. The obligation in paragraph 11 above is subject to the following exceptions:

- 12.1 paragraph 11 does not apply to solicitors' or counsel's notes;

- 12.2 paragraph 11 does not create an obligation to search for transitory or deeply stored soft copies of Confidential Information which may exist on the computer system of the Receiving Party and which cannot be recovered without special measures, provided that such documents and/or information will be promptly deleted in the event of the restoration of such copies;

- 12.3 paragraph 11 does not apply to Party's copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in these proposed proceedings as well as lawyer work product referring to Confidential Information, subject to continued compliance with the terms of this Order in respect of the Confidential Information contained within such documents; and

12.4 paragraph 11 does not apply to a Party in respect of the Confidential Information it provided.

## **UNAUTHORISED DISCLOSURE OF CONFIDENTIAL INFORMATION**

13. In the event of any disclosure of Confidential Information other than in a manner authorised by this Confidentiality Order, including any unintentional or inadvertent disclosure, solicitors for the improperly disclosing Party shall immediately notify the improper recipient(s) and the solicitors for the Party which provided the Confidential Information in these proceedings, and the improperly disclosing Party shall use all reasonable endeavours to further prevent unauthorised disclosure including retrieving all copies of the Confidential Information from the improper recipient(s) thereof and seeking to secure the agreement of such recipient(s) not to further disseminate the Confidential Information in any form.

## **SCOPE OF THE ORDER**

14. For the avoidance of doubt:

14.1 nothing in this Order or in its Schedules applies to documents and/or information received by a Party other than via these proceedings under the terms of this Order;

14.2 it is intended that Confidential Information be limited to: (i) information the disclosure of which would be contrary to the public interest; or (ii) commercially sensitive information, the disclosure of which by one Party to another and/or to third parties could significantly harm the legitimate business interests of the person(s) or undertaking(s) to which it relates;

14.3 Confidential Information shall exclude information which is already published or generally available to the public or becomes published or generally available to the public, other than through the act or omission of a receiving Party or a Confidentiality Ring Member.

- 14.4 nothing in this order applies to prevent a party from accessing any reports, submissions or other documents concerning, containing or reflecting any Confidential Information belonging to that party.

## NOTICES

15. Any notice, request, consent or objection to be given under or in connection with this Order (each a “**Notice**” for the purposes of this paragraph) shall be in writing.
16. Service of a Notice must be effected by email.
17. Notices shall be addressed as follows:

Notices for the Class Representative shall be marked for the attention of Mishcon de Reya LLP and sent to:

Email addresses: [Sarah.Houghton@mishcon.com](mailto:Sarah.Houghton@mishcon.com);  
[Gwen.Ballin-Reeler@mishcon.com](mailto:Gwen.Ballin-Reeler@mishcon.com)

Reference: SH/GBR/63362.1

Notices for the Defendants shall be marked for the attention of Simmons & Simmons LLP and sent to:

Email addresses: [Patrick.Boylan@simmons-simmons.com](mailto:Patrick.Boylan@simmons-simmons.com);  
[Satyen.Dhana@Simmons-Simmons.com](mailto:Satyen.Dhana@Simmons-Simmons.com);  
[Eleanore.DiClaudio@simmons-simmons.com](mailto:Eleanore.DiClaudio@simmons-simmons.com)  
[Hannah.McEwen@simmons-simmons.com](mailto:Hannah.McEwen@simmons-simmons.com)

Reference: 087544-00031

## GENERAL

18. 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, and 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.
19. Any correspondence containing any Confidential Information shall be clearly

marked “Confidential Information - Confidentiality Ring Only” and make clear whether it is subject to the Inner or Outer Confidentiality Ring(s).

20. There shall be liberty to apply, if appropriate, which shall be on notice to the other Parties.
21. Costs in the case.

**The Hon Mr Justice Waksman**  
Chairman of the Competition Appeal Tribunal

Made: 24 February 2022  
Drawn: 24 February 2022

## **SCHEDULE**

### **PART A**

This part contains the names of Inner Confidentiality Ring Members:

#### **Claimant**

Ronit Kreisberger QC (Monckton Chambers)

Nikolaus Grubeck (Monckton Chambers)

Jack Williams (Monckton Chambers)

Nicholas Bacon QC (Costs Counsel)

Sarah Houghton (Mishcon de Reya LLP)

Gwen Ballin-Reeler (Mishcon de Reya LLP)

Zachery O'Brien (Mishcon de Reya LLP)

Audrey Dwyer (Mishcon de Reya LLP)

Ben Lasserson (Mishcon de Reya LLP)

Alex Jennings (Mishcon de Reya LLP)

Amber Jeral (Mishcon de Reya LLP)

Sophie Leppington (Mishcon de Reya LLP)

Oliver Bartholomew (Mishcon de Reya LLP)

David Parker (Frontier Economics)

Andrew Booth (Frontier Economics)

Hugo Wolters (Frontier Economics)

Martin Duckworth (Frontier Economics)

Garima Nirula (Frontier Economics)

#### **Defendants**

Sarah Ford (QC) (Brick Court Chambers)

Sarah Love (Brick Court Chambers)

Allan Cerim (Brick Court Chambers)

Benjamin Williams QC (4 New Square Chambers)

Patrick Boylan (Simmons & Simmons LLP)

Satyen Dhana (Simmons & Simmons LLP)

Eleanore Di Claudio (Simmons & Simmons LLP)

Duncan Green (Simmons & Simmons LLP)

Anna Crellin (Simmons & Simmons LLP)

Hannah McEwen (Simmons & Simmons LLP)

Josh Farquharson (Simmons & Simmons LLP)

Lisa Kingsbury (Simmons & Simmons LLP)

Shreya Gupta (Oxera)

Michael Weekes (Oxera)

Felipe Florez (Oxera)

Helen Jenkins (Oxera)

Dan Marlow (Oxera)

Beatrice Lombardi (Oxera)

Antoine Comps (Oxera)

## **SCHEDULE**

### **PART B**

This part contains the names of Outer Confidentiality Ring Members:

#### **Claimant**

Justin Le Patourel (Class Representative)

Jane Vass (Advisory Panel)

#### **Defendants**

Bruce Breckenridge (BT Group plc)

Belinda Bagge (BT Group plc)

Emily Wesley (BT Group plc)

Richard Budd (BT Group plc)

Emily Clark (BT Group plc)

Oliver Gilliland (BT Group plc)

Irena Apostopoulos (BT Group plc)

## 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.

## 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 7 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.