

**THE COMPETITION
APPEAL TRIBUNAL**



B E T W E E N :

Case No.1260/3/3/16

BRITISH TELECOMMUNICATIONS PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

-and-

**CP GROUP (TALKTALK TELECOM GROUP PLC, VODAFONE LIMITED, COLT
TECHNOLOGY SERVICES AND HUTCHISON 3G UK LIMITED)**

VIRGIN MEDIA LIMITED

GAMMA TELECOM HOLDINGS LIMITED

CITYFIBRE INFRASTRUCTURE HOLDINGS PLC

Interveners

Case No.1261/3/3/16

CITYFIBRE INFRASTRUCTURE HOLDINGS PLC

Appellant

- and -

OFFICE OF COMMUNICATIONS

Respondent

-and-

**CP GROUP (TALKTALK TELECOM GROUP PLC, VODAFONE LIMITED, COLT
TECHNOLOGY SERVICES AND HUTCHISON 3G UK LIMITED)**

GAMMA TELECOM HOLDINGS LIMITED

BRITISH TELECOMMUNICATIONS PLC

Interveners

ORDER – CASES 1260 AND 1261 CONFIDENTIALITY RING

UPON reading the correspondence from the legal representatives of all the parties to these appeals relating to the establishment of a Confidentiality Ring in cases 1260/3/3/16 and 1261/3/3/16

AND UPON hearing the legal representatives of the parties to this appeal at a Case Management Conference on 29 September 2016

AND UPON the parties having agreed 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) “**Relevant Advisers**” are those persons:
 - i. listed in Part A1 and A2 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 A1 and A2 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. 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 A1 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. 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 un-redacted versions of sections 1 to 4, 7, paragraphs 8.198 to 8.249 of section 8, section 9, paragraphs 10.1 to 10.62 of section 10, paragraphs 13.43 to 13.200 of section 13, and section 15 of Volume I, paragraphs 5.48 to 5.100 of section 5 of Volume II and annexes 4 to 11, 13 to 23 and 33 of the Final Statement of the Business Connectivity Market Review issued on 28 April 2016.
6. The Relevant Advisers listed in Part A1 for CityFibre Infrastructure Holdings plc may only disclose documents received under the terms of this Order to the Relevant Advisers listed in Part A2 for CityFibre Infrastructure Holdings plc subject to the terms of a separate Solicitors' Undertaking given by Preiskel LLP to Towerhouse LLP.
7. All such un-redacted versions of pleadings and other documents served in 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).

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 A1 and A2.
11. The parties shall make available without charge to any person on request an up-to-date list of the persons in Part A1 and A2.
12. Costs be reserved.
13. There be liberty to apply.

The Honourable Mr Justice Snowden
Chairman of the Competition Appeal Tribunal

Made: 03 October 2016
Drawn: 03 October 2016

SCHEDULE

PART A1

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

British Telecommunications Plc

External Counsel

Daniel Beard QC

Robert Palmer

Ligia Osepciu

David Gregory (all of Monckton Chambers)

In-house Solicitors

Frederic Dupas

Sophie Thomson

External Experts

Dr Daniel Maldoom (DotEcon)

Mr Bruno Basalisco (Copenhagen Economics)

Mr Matt Yardley (Analysys Mason)

CityFibre Infrastructure Holdings PLC

External counsel

Thomas Sharpe QC

Owain Draper (both of One Essex Court)

External solicitors

Tim Cowen, Partner

Manfred Kuerten, Senior Consultant

Stephen Dnes, Consultant

Eran Tsafir, Consultant

Gianpolao Gangemi, Associate

Maddi Gaunt, Trainee

Brigite Fernandes, Paralegal (all of Preiskel & Co LLP)

External experts

Dr Richard Cadman

Office of Communications

Josh Holmes (Monckton Chambers)

Tristan Jones

David Lowe (both of Blackstone Chambers)

CP Group

External Counsel

Philip Woolfe (Monckton Chambers)

External Solicitors

Paul Brisby

Lucas Ford

Daniel van der Wel

James Singer, Trainee

Zach Meyers

Helen Gill-Williams (all of Towerhouse LLP)

External Expert

Ed Rushton

Virgin Media Limited

External Counsel

Andrew Scott (of Blackstone Chambers)

External Solicitors

Duncan Liddell

Tom Cooling

Tom Punton (economist)

Sinéad Tulley (trainee solicitor)

Alice Rudge (trainee solicitor) (all of Ashurst LLP)

Gamma Telecom Holdings Limited

External Counsel

Sarah Love

Tim Johnston (both Brick Court Chambers)

External Solicitors

Paul Stone

Rory Ashmore (both Charles Russell Speechlys LLP)

Part A2

CityFibre Infrastructure Holdings PLC

Gita Sorensen (GOS Consulting)

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 and/or the Competition and Markets Authority, 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) without the express consent of the party originally disclosing the information 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; 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 party to these proceedings, 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, 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 undertakings given by BT to Ofcom under Part 4 of the Enterprise Act 2002).
9. Save that none of the requirements listed at paragraphs 2 to 5 above shall prevent Relevant Advisers from disclosing to a person advised by them Confidential Information which such person has already legitimately seen.

Signed:

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Name

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Date