



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1107/4/10/08

BETWEEN:

MERGER ACTION GROUP

Applicant

-v-

**THE SECRETARY OF STATE FOR
BUSINESS, ENTERPRISE AND REGULATORY REFORM**

Respondent

- supported by -

(1) HBOS PLC
(2) LLOYDS TSB GROUP PLC

Interveners

ORDER

UPON receiving written submissions from the legal representatives of the Merger Action Group, the Secretary of State for Business, Enterprise and Regulatory Reform (“the Secretary of State”), HBOS plc (“HBOS”) and Lloyds TSB Group plc (“Lloyds”) relating to the establishment of a confidentiality ring

AND UPON hearing the legal representatives of the Merger Action Group, the Secretary of State, HBOS and Lloyds TSB at a case management conference on 3 December 2008

IT IS ORDERED THAT

1. For the purposes of this Order:
 - a. **Confidential Information** means:

- i. information the disclosure of which would be contrary to the public interest;
- ii. commercial information the disclosure of which could significantly harm the legitimate business interests of the undertaking to which it relates; and/or
- iii. information relating to the private affairs of an individual the disclosure of which could significantly harm his interests.

Information contained in submissions made by either Lloyds or HBOS to the Secretary of State or to the Office of Fair Trading (“OFT”) and which was agreed as between HBOS or Lloyds and the Secretary of State or the OFT, as the case may be, to be confidential shall be deemed to be Confidential Information for the purposes of this order. Information contained in submissions made by either Her Majesty’s Treasury or the Bank of England or the Financial Services Authority (“the Tripartite Authorities”) to the Secretary of State or to the OFT and which was agreed between the Tripartite Authorities and the Secretary of State or the OFT, as the case may be, to be confidential shall be deemed to be Confidential Information for the purposes of this order.

- b. **Parties** means the Merger Action Group, the Secretary of State, HBOS and Lloyds, and "Party" shall be construed accordingly.
 - c. **Relevant Persons** are those external counsel and solicitors:
 - i. listed in Part A of the schedule to this Order; or
 - ii. authorised by the Tribunal upon further application.
2. To the extent that any Party wishes to submit documents containing Confidential Information to the Tribunal or rely on any such documents at any hearing in respect of these proceedings, that Party will provide un-redacted copies of the relevant document to each of the other Parties on and subject to the conditions set out in paragraphs 3 to 6 below.
 3. Any documents containing Confidential Information provided to a Party under paragraph 2 above shall be provided to and inspected only by Relevant Persons and only when such Relevant Persons have each given a written undertaking to the Tribunal in the terms of Part B of the Schedule to this Order.
 4. Any documents containing Confidential Information provided to a Party under paragraph 2 above must be marked so as to indicate the parts containing Confidential Information in the manner referred to in paragraph 13.22 of the Tribunal’s Guide to Proceedings (October 2005).

5. Each of the Parties will serve upon every other Party its skeleton argument as required by paragraph 2 above (and as ordered by the Tribunal on 3 December 2008) on all other Parties simultaneously by 5pm on Friday 5 December 2008.
6. Nothing in this Order shall prevent the disclosure by a Relevant Person to his or her client of any information which such client has already seen.
7. If any Party wishes to add any person not listed in Part A of the Schedule to this Order as a Relevant Person for the purposes of paragraph 1.c above, they shall apply to the Tribunal indicating whether each of the other Parties consents or does not consent to the addition of that person.
8. There be liberty to apply.

The Honourable Mr Justice Barling
President of the Competition Appeal Tribunal

Made: 3 December 2008
Drawn: 3 December 2008

SCHEDULE

Part A

This part contains the names, for each Party, of the Relevant Persons:

The Merger Action Group

External counsel and solicitors

Ian Forrester QC (of White & Case LLP)
Stefan Mahoney
Andrew Bowen
Walter Semple

The Secretary of State

Any member of, or person employed by, the Department for Business Enterprise and Regulatory Reform who is for the time being working on these proceedings or the matters which have given rise to them.

External counsel and solicitors

Paul Harris
Elisa Holmes
(all of Monckton Chambers)

Adam Chapman
(of Treasury Solicitors)

HBOS

External counsel and solicitors

Nicholas Green QC
Aidan Robertson
(both of Brick Court Chambers)

Alistair Asher
Mark Friend
Cerry Darbon
Jonathan Parker
(all of Allen & Overy LLP)

Lloyds

External counsel and solicitors

Helen Davis QC
Andrew Henshaw

(both of Brick Court Chambers)

Michael Cutting

John Turnbull

Jeremy Parr

Claudia Berg

Dario Dagostino

(all of Linklaters LLP)

Part B

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CONFIDENTIALITY UNDERTAKING

I, [], of [] being a [barrister/solicitor/other as applicable] and regulated so far as my professional conduct is concerned by [the General Council of the Bar through the Bar Standards Board / the Law Society of England and Wales through the Solicitors Regulation Authority / other as applicable] undertake to the Tribunal as follows:

1. I will not disclose Confidential Information (as defined in the Tribunal's order of [December, 2008]) to any person outside those listed in Part A of that order (the **Relevant Persons**) without the consent of the person originally disclosing the information or the permission of the Tribunal.
2. I will use the Confidential Information only for the purpose of these proceedings (and for no other proceedings or use).
3. All documents which I receive that contain Confidential Information will remain in my custody or the custody of the other Relevant Persons at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
4. The production of further copies by me of the documents containing the Confidential Information shall be limited to those required for my use or the use of the Relevant Persons for the purposes of these proceedings.
5. Any such copies and the documents in paper form containing the Confidential Information will be a) returned or (b) destroyed and certified as such to the Party originally disclosing the documents at the conclusion of the present proceedings; any such copies and the documents containing the Confidential Information in electronic form will either be returned where possible or where that is not possible will be rendered inaccessible from any computer system, disk or device so that it is not readily available to any person save that such copies in either paper or electronic form may be retained if necessary to

comply with any professional conduct rule or if required by the relevant insurers of external counsel or solicitors of the Parties, in which case I shall disclose all such copies to those individuals within [my firm]/[my chambers] responsible for professional conduct or insurance issues on the condition that those individuals provide similar undertakings to those in this Part B and I shall have no further access to such copies.

6. Save that none of the requirements listed at paragraphs 1. to 4. above shall prevent the Relevant Persons from disclosing to the Party advised by them information which such Party has already seen.