



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

Cases:1160, 1162-63/1/1/10

**B E T W E E N :**

**(1) IMPERIAL TOBACCO GROUP PLC**  
**(2) IMPERIAL TOBACCO LIMITED**

- v -

**OFFICE OF FAIR TRADING**

**WM MORRISON SUPERMARKETS PLC**

- v -

**OFFICE OF FAIR TRADING**

**(1) SAFEWAY STORES LIMITED**  
**(2) SAFEWAY LIMITED**

- v -

**OFFICE OF FAIR TRADING**

---

**ORDER**

(as amended by further orders on 3 May, 2 and 12 September 2011)

---

**UPON** Imperial Tobacco Group plc and/or Imperial Tobacco Ltd (“ITL”) disclosing certain market share data to the Respondent pursuant to the Tribunal’s Order of 15 November 2010 relating to data relied on by expert witnesses

**AND UPON** the Respondent having sought consent from ITL to disclose the market share data to WM Morrison Supermarkets plc, Safeway Stores Ltd and/or Safeway Ltd (together “Morrison’s/Safeway”) used in connection with its defence in Cases 1162-63/1/1/10

**AND UPON** the Nielsen Company, the owner of the market share data in question, having consented to such disclosure on the terms set out in its letter to ITL dated 21 December 2010

**AND UPON** reading the correspondence from the legal representatives of the parties indicating that they have reached agreement as to the terms of this Order

**IT IS ORDERED THAT:**

1. For the purposes of this Order:
  - 1.1 “Confidential Information” is defined as information justifying confidential treatment by the Tribunal in accordance with rule 53 of the Competition Appeal Tribunal Rules 2003 (S.I. 1372 of 2003).
  - 1.2 “Relevant Persons” are those persons:
    - 1.2.1 who are listed in Part A of the Schedule to this Order who have given a signed undertaking to the OFT in the terms of Part B of the Schedule to this Order;
    - 1.2.2 who have given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to the Tribunal’s Order of 16 August 2010 and are listed in Part C of the Schedule of this Order; or
    - 1.2.3 who are authorised by the Tribunal upon further application, in accordance with paragraph 5 below.
  - 1.3 “Market Share Data” means cigarette brand market share data by value from 2001 to 2003 proprietary to the Nielsen Company (of AC Nielsen House, London Road, Headington, Oxford, OX3 9RX) contained in the tab entitled “Cigarette Value” in the file entitled “4. Proportion of cigarettes for ITL.xls” (disclosed by ITL to the Respondent on 17 November 2010 pursuant to the Tribunal’s Order of 15 November 2010).
  - 1.4 “Derived Results” means the weighted average adherence analysis results produced by Charles River Associates (as contained in the Respondent’s defence and supporting documents in Cases 1162-3/1/1/10) which are based in part upon the Market Share Data.
2. The Respondent shall disclose to Morrisons/Safeway the Market Share Data on condition that the Market Share Data shall be disclosed only to Relevant Persons.
3. The Respondent shall disclose to Morrisons/Safeway the Derived Results.

4. The Market Share Data disclosed pursuant to the terms of this Order shall be treated as Confidential Information.
5. If any party wishes to add any additional person as a Relevant Person, they shall apply to the Tribunal (with a copy to ITL and the Respondent) indicating whether the other parties consent or do not consent to the addition of that person.
6. There be liberty to apply.

**Vivien Rose**  
Chairman of the Competition Appeal Tribunal

Made: 14 February 2011  
Drawn: 25 February 2011

## SCHEDULE

### **PART A**

This part contains the names of the Relevant Persons as defined in Paragraph 1.2.1 of this Order:

#### **WM Morrison Supermarkets Plc**

Richard Pennycook

Jonathan Burke

Grant Eastwood

#### **Competition Law Process Management Ltd**

Neil Davidson

John Price

## **PART B**

In respect of the Market Share Data and the Derived Results (together “the Disclosed Data”) disclosed to them pursuant to the Tribunal’s Order of 14 February 2011 (“the Tribunal’s Order”) each Relevant Person, as defined in paragraph 1.2 of the Tribunal’s Order, undertakes that they will comply with the following requirements in the following terms:

I, [name], of [firm, company or establishment] being [job title / professional status] undertake to the Tribunal as follows:

1. I have read a copy of the Tribunal’s Order and understand the implications of the Tribunal’s Order and the giving of this undertaking.
2. I will not disclose the Disclosed Data to any person unless they are a Relevant Person (as defined in the Tribunal’s Order) or a person authorised to receive Disclosed Data by the Tribunal pursuant to paragraph 1.2.3 of the Tribunal’s Order (and who has signed an undertaking in the terms of Part B of the Tribunal’s Order) without the express consent of the Nielsen Company and the person originally disclosing the Disclosed Data to the Office of Fair Trading or the Tribunal as appropriate (“the Disclosing Person”) or the permission of the Tribunal.
3. I will use the Disclosed Data 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 Disclosing Person or the permission of the Tribunal.
4. Any document (either in electronic or paper form) containing the Disclosed Data will remain in my custody at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. I will not produce any further copies of any document containing the Disclosed Data.
6. Save where the written consent of the Disclosing Person has been obtained, any and all copies of any documents in paper form containing the Disclosed Data will either be returned to the Relevant Person who provided the Disclosed Data to me at the conclusion of the present proceedings, or be destroyed at the conclusion of the present proceedings (the Relevant Person providing the Disclosed Data may decide whether the documents are to be destroyed or returned to him or her); any copies of any documents containing the Disclosed Data in electronic form will be deleted or, where that is not possible, will be

rendered inaccessible from any computer systems, disk or device so that the Disclosed Data is not readily available to any person.

7. The present proceedings for these purposes shall include any further appeals from the Tribunal to a higher court and/or any references to the European Courts, save in so far as that higher court orders otherwise.
8. Save that none of the requirements listed at paragraphs 2 to 5 above shall prevent me from disclosing the Disclosed Data to Relevant Persons.

Signed.....

Name.....

Dated.....

## **PART C**

This part contains the names of Relevant Persons as defined in Paragraph 1.2.2 of this Order (those who have given a signed undertaking to the Tribunal in the terms of Part B of the Tribunal's Order of 16 August 2010):

### **Morrisons/Safeway**

#### *External counsel*

Pushpinder Saini QC

Tristan Jones (both of Blackstone Chambers)

Meredith Pickford (of Monckton Chambers)

#### *External solicitors*

Suyong Kim

Christopher Hutton

Paul Castlo

Julie Ngov

Rosamund Drew

Charlie Hawes<sup>1</sup>

Jan Stjernsward<sup>2</sup>

Jonnie Heath

Alice Wallace-Wright<sup>3</sup> (all of Hogan Lovells International LLP)

---

<sup>1</sup> Rosamund Drew and Charlie Hawes included by way of an amending order dated 2 September 2011.

<sup>2</sup> Jan Stjernsward included by way of an amending order dated 12 September 2011.

<sup>3</sup> Jonnie Heath and Alice Wallace-Wright included by way of an amending order dated 3 May 2011.

*External experts*

Professor George Yarrow

Dr Chris Decker (both of RPI Europe)