



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

Case Number: 1160-1164/1/1/10

BETWEEN:

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

Appellants

- v -

**OFFICE OF FAIR TRADING**

Respondent

**CO-OPERATIVE GROUP LIMITED**

Appellant

- v -

**OFFICE OF FAIR TRADING**

Respondent

**WM MORRISON SUPERMARKETS PLC**

Appellant

- v -

**OFFICE OF FAIR TRADING**

Respondent

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

Appellants

- v -

**OFFICE OF FAIR TRADING**

Respondent

**(1) ASDA STORES LIMITED**  
**(2) ASDA GROUP LIMITED**  
**(3) WAL-MART STORES (UK) LIMITED**  
**(4) BROADSTREET GREAT WILSON EUROPE LIMITED**

Appellants

- v -

**OFFICE OF FAIR TRADING**

Respondent

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**ORDER**

(as amended by a further order on 12 September 2011)

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**UPON** the Office of Fair Trading (“OFT”) requesting disclosure from the Appellants of the data relied upon by their respective expert witnesses

**AND UPON** hearing the legal representatives of the parties at a case management conference on 18 October 2010

**AND UPON** reading the correspondence from the legal representatives of the parties indicating that they have reached agreement as to the establishment of a confidentiality ring

**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 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 53 of the Competition Appeal Tribunal Rules 2003 (S.I. 1372 of 2003)
  - b. “**Relevant Persons**” are those persons:
    - i. listed in Part A 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. any person employed by the OFT; or
    - iii. authorised by the Tribunal upon further application and who have given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to this Order.
  - c. “**Disclosed Data**” means data disclosed pursuant to the terms of this Order and for the avoidance of doubt includes any analysis or results that are produced as a result of and based upon the disclosure of Disclosed Data effected by this Order.
  - d. “**Documents**” means documents containing the Disclosed Data.
3. Subject to paragraph 4 below, Imperial Tobacco Group Plc and/or Imperial Tobacco Limited (“ITL”) shall disclose to the OFT the data requested in the OFT’s letter of 17 September 2010 as clarified by the OFT’s letter of 14 October 2010.
4. In respect of the data referred to in paragraph 3.5 of Philip Haberman’s Expert Report dated 11 June 2010 filed with the Notice of Appeal of ITL, ITL need only disclose data relating to the period 2000 to 2007 inclusive.

5. Co-operative Group Limited shall disclose to the OFT the data requested in the OFT's letter of 17 September 2010.
6. WM Morrison Supermarkets plc, Safeway Stores Limited and/or Safeway Limited shall disclose to the OFT the data requested in the OFT's letter of 17 September 2010.
7. Asda Stores Limited, Asda Group Limited, Wal-Mart Stores (UK) Limited and/or Broadstreet Great Wilson Europe Limited shall disclose to the OFT the data requested in the OFT's letter of 17 September 2010.
8. Subject to paragraph 1, the disclosure ordered in paragraphs 3 to 7 above shall be given forthwith.
9. The Disclosed Data shall be treated as Confidential Information.
10. The Disclosed Data shall only be disclosed to Relevant Persons.
11. If any Party wishes to add any additional person as a Relevant Person for the purposes of paragraph 2b of this Order, they shall apply to the Tribunal indicating whether each of the other parties consents or does not consent to the addition of that person.
12. There be liberty to apply.

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

Made: 15 November 2010  
Drawn: 15 November 2010

## **SCHEDULE**

### **PART A**

This part contains the names of Relevant Persons:

Professor Greg Shaffer (University of Rochester, USA)

Dr Mike Walker

Ragvir Sabharwal

Thomas Buettner

Daniel Donath

Paul Muysert

Matt Tavantzis<sup>1</sup> (all of Charles River Associates)

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<sup>1</sup> Paul Muysert and Matt Tavantzis included by way of an amending order dated 12 September 2011.

## **PART B**

In respect of any Disclosed Data, each Relevant Person referred to in paragraph 2(b)(i) of this Order undertakes that they will comply with the following requirements in the following terms:

I, [name], 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 this Order and understand the implications of the Order and the giving of this undertaking.
2. I will not disclose the Disclosed Data to any person who is not a Relevant Person (as defined in this Order) without the express written consent of the Party originally disclosing the Disclosed Data (to the OFT or the Tribunal as appropriate) 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 Party originally disclosing the Disclosed Data (to the OFT or the Tribunal as appropriate) or the permission of the Tribunal.
4. The Documents (as defined in this Order) will remain in my custody or the custody of another Relevant Person at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. The production of further copies by me of the Documents shall be limited to those required for the use of the Relevant Persons for the purposes of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.
6. Save where the written consent of the Party that originally disclosed the information has been obtained, any and all copies of the Documents in paper form containing the Disclosed Data will either be returned to the Party originally disclosing the Documents (to the OFT or the Tribunal as appropriate) at the conclusion of the present proceedings, or be destroyed at the conclusion of the present proceedings (the Party originally disclosing the Documents may decide whether the Documents are to be destroyed or returned to it); any copies of the Documents 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 Court of Justice.
8. I agree that if I receive Disclosed Data pursuant to this Order, then I will not provide consultancy advice to the tobacco industry until six months following the conclusion of my involvement in these proceedings.

9. Save that none of the requirements listed at paragraphs 2 to 5 above shall prevent Relevant Persons from disclosing Disclosed Data to persons who have already legitimately seen it.

Signed: .....

Name: .....

Date: .....