



IN THE COMPETITION
APPEAL TRIBUNAL

Cases No: 1160-1165/1/1/10

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

**(1) SHELL U.K. LIMITED
(2) SHELL U.K. OIL PRODUCTS LIMITED
(3) SHELL HOLDINGS (U.K.) LIMITED**

Appellants

- v -

OFFICE OF FAIR TRADING

Respondent

ORDER

UPON reading the notices of appeal lodged by the Appellants in each of the proceedings listed above against the decision of the Office of Fair Trading (“OFT”) dated 15 April 2010 in Case CE/2596/03 (“the Decision”)

AND UPON reading the requests for permission to intervene pursuant to Rule 16 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“Tribunal Rules”)

AND UPON considering the Chairman’s Ruling of 30 September 2010 granting Sainsbury’s Supermarkets Limited and J Sainsbury Plc (“Sainsbury’s”) permission to intervene in the appeals for certain purposes

AND UPON considering that a window for the oral hearings in Cases 1156-9/8/3/10 has been listed in the period 9 May 2011 to 8 July 2011, and that a number of the parties’ legal representatives in those appeals are also appearing in these appeals

AND UPON hearing the parties’ legal representatives at the case management conference on 18 October 2010

IT IS ORDERED THAT:

1. Pursuant to Rule 18 of the Tribunal Rules each of the appeals be treated as proceedings in England and Wales.
2. The Appellants’ requests for permission to intervene in each of the appeals be adjourned generally.
3. In relation to each of the appeals:
 - a. The OFT file and serve its defence(s) on liability, including supporting documents, by 5pm on 17 December 2010.
 - b. The Appellants, if so advised, file and serve any reply on liability and/or supporting evidence (or alternatively confirm to the Tribunal that it does not intend to do so) by 5pm on 11 March 2011.

- c. The parties inform the Tribunal, and each other, of the witnesses they intend to cross-examine (identifying in respect of each witness the alleged agreements/concerted practices in respect of which they intend to cross examine him or her) by 5pm on 18 March 2011.
- d. A case management conference be listed for 31 March 2011 to consider directions leading up to the hearing in these appeals, bearing in mind that the core bundle of documents and skeleton arguments should be lodged with the Tribunal no later than 24 June 2011.
- e. A window for the oral hearings in these appeals be listed in the period 15 September 2011 to 30 November 2011.

4. In relation to disclosure of documents:

- a. ITL serve a non-confidential version of its notice of appeal on Sainsbury's by 29 October 2010.
- b. Subject to subparagraphs 4(c) and 4(d) below, the OFT disclose to the members of the confidentiality ring established by Order of 16 August 2010 (as amended) confidential versions (in electronic form only) of the Decision, the Statements of Objections and the annexes to the Statements of Objections and to the Decision (together, "Key Confidential Documents").
- c. Before disclosing the Key Confidential Documents, the OFT shall write to each of the addressees of the Decision other than the Appellants:
 - i. notifying them of the Tribunal's Order under paragraph 4(b) above;
 - ii. requiring them to inform the Tribunal and the OFT within seven days of receipt of that notification whether or not they regard any information contained in the Key Confidential Documents as confidential; and
 - iii. informing them that if they object to the disclosure of any information contained in the Key Confidential Documents, they must within seven days from the date of that notification make representations to the Tribunal identifying which information should not be disclosed and stating the reasons for their objections to disclosure (such representations to be copied to the OFT).
- d. The OFT is not required to give disclosure under paragraph 4(b) of any document in so far as that document contains information in respect of which objection to disclosure has been made until further order.

- e. Save as regards information which the OFT is not required to disclose pursuant to paragraph 4(d) above, the OFT shall give the disclosure ordered by paragraph 4(b) within three days of the expiry of the seven day period referred to in paragraph 4(c)(iii) above.

5. Liberty to apply.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 25 October 2010
Drawn: 25 October 2010