



IN THE COMPETITION
APPEAL TRIBUNAL

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

B E T W E E N :

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

- v -

OFFICE OF FAIR TRADING

CO-OPERATIVE GROUP 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

- (1) ASDA STORES LIMITED**
(2) ASDA GROUP LIMITED

- (3) WAL-MART STORES (UK) LIMITED**
(4) BROADSTREET GREAT WILSON EUROPE LIMITED

- v -

OFFICE OF FAIR TRADING

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

- v -

OFFICE OF FAIR TRADING

ORDER

(as amended by further Orders on 23 September, 19 October, 22 November 2010, 17 January, 2 February, 7 February, 3 and 21 March, 25 March, 20 April, 3 May, 13 June, 14, 19 July, 2, 12, 20, 21, 22 September, 3, 26 and 27 October 2011)

UPON reading the correspondence from the legal representatives of the Appellants and the Respondent (“the Parties”) in connection with the establishment of a confidentiality ring in relation to Cases No: 1160/1/1/10, 1161/1/1/10, 1162/1/1/10, 1163/1/1/10, 1164/1/1/10 and 1165/1/1/10 (together, “the Appeals”)

AND UPON each of the Appellants having only to date disclosed or indicated willingness to disclose to the other Parties non-confidential versions of the documents relied upon by them in these proceedings

AND UPON the Parties having agreed to 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 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:

2.1 “**Confidential Information**” means (in each case in the opinion of the Tribunal):

2.1.1 information the disclosure of which would be contrary to the public interest;

2.1.2 commercial information the disclosure of which could significantly harm the legitimate business interests of the undertaking to which it relates; or

2.1.3 information relating to the private affairs of an individual the disclosure of which could significantly harm his/her interests,

being the material contained in the Case Documents in respect of which a claim of confidentiality has been or will be made to the Tribunal by the Parties, or has been or will be provided to the Respondent by any of the Appellants and which was treated as confidential during the Respondent’s Investigation CE/2596-03.

2.2 “**Relevant Persons**” are those persons:

2.2.1 who are 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

2.2.2 who are members of the Respondent’s staff; or

2.2.3 who have been 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.

2.2A Adam Aldred of Addleshaw Goddard LLP, who has given a signed undertaking to the Tribunal in the terms of Part B of the Schedule to this Order, shall have the same rights to attend the Tribunal as a Relevant Person for the period in which Sainsbury’s former employee Fiona Corfield (née Bayley) gives evidence¹

¹ Paragraph 2.2A inserted by way of an amending order dated 27 October 2011.

- 2.3 “**Case Documents**” means all pleadings or other documents submitted, or to be submitted, by the Parties to the proceedings before the Tribunal in the Appeals.
3. Each of the Appellants shall as soon as practicable hereafter disclose to each of the other Appellants confidential versions of their Case Documents on condition that the confidential versions of their Case Documents and any Confidential Information contained within them shall be disclosed only to Relevant Persons.
 4. The Respondent is permitted to disclose to the Appellants any Confidential Information of any of the Appellants on condition that such Confidential Information shall be disclosed only to Relevant Persons.
 5. All confidential versions of the Case Documents must be marked so as to indicate the parts in relation to which confidential treatment is claimed, in the manner referred to in paragraph 13.22 of the Tribunal's Guide to Proceedings (October 2005) or as otherwise approved in writing by the Tribunal.
 6. If any Party wishes to add any additional person as a Relevant Person for the purposes of paragraph 2.2 of this Order, they shall apply to the Tribunal (with a copy to the other Parties) indicating whether each of the other Parties consents or does not consent to the addition of that person.
 - 6A. If any Relevant Person wishes to access the LiveNote real-time transcription service out of court (“a Remote LiveNote Connection”), they shall apply to the Tribunal (with a copy to the other parties) and, with the exception of those parties who are Relevant Persons by virtue of paragraph 2.2.2 of this Order, give a signed undertaking to the Tribunal in the terms of Part D of the Schedule to this Order²
 7. If any Party wishes any named person who is not a Relevant Person to review Confidential Information so as to provide instructions to a Relevant Person:
 - 7.1 Such Party shall apply to the Tribunal in writing for the Tribunal to determine whether and on what conditions such Confidential Information should be provided to the named person;
 - 7.2 In making such an application, the Party requesting disclosure should indicate whether the Party originally disclosing the Confidential Information consents or does not consent to the request;
 - 7.3 The Tribunal will thereafter issue a determination by letter indicating whether the named person will be authorised and describing, so far as possible, the Confidential Information to be provided to that person;
 - 7.4 Where the Tribunal determines that the named person should be authorised, that person shall be treated as authorised once he or she has given a signed undertaking to the Tribunal in the form prescribed in Part C of the Schedule to this Order.
 8. There be liberty to apply.

² Paragraph 6A inserted by way of an amending order dated 21 September 2011.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 16 August 2010
Drawn: 31 August 2010

SCHEDULE

PART A

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

Imperial Tobacco Group plc and Imperial Tobacco Limited

External Counsel

Mark Howard QC

Mark Brealey QC

Tony Singla (all of Brick Court Chambers)

External Solicitors

Nigel Parr

Euan Burrows

Ben Tidswell

Matthew Hughes (economist)

Charles Hammon

Ross Mackenzie

Joanna Christoforou

Luke Ainger

Alexander Evans

Alexi Dimitriou

Chris Graf

James Lambert (economist)

Steven Vaz

Lorraine McLinn

Chris Eberhardt

Andy Levett³

Daisy Jones

Trasa Duffy

Robin Watson

³ Included by way of an amending Order made on 17 January 2011.

Jennifer Moore

George Stancliffe

Victoire Binchet

Sophie Morphet⁴

Djalila Boumezbeur

Felicity Auer⁵

Benjamin Schoo

Amanda Eve

Phillippa Holland⁶ (all of Ashurst LLP)

External Experts

Derek Ridyard

Daria Prigioni

Rohan Shah

Paulo Abecasis⁷ (all of RBB Economics)

Philip Haberman

Bruno Augustin

Matt Rees (all of Ernst & Young LLP)

Professor Luke Froeb

Michael Doane (both of Vanderbilt University)

Mikhael Shor⁸ (of Competition Economics LLC)

Co-operative Group Limited

External Counsel

Rhodri Thompson QC

Christopher Brown (both of Matrix Chambers)

⁴ Sophie Morphet included by way of an amending Order made on 3 March 2011.

⁵ Djalila Boumezbeur and Felicity Auer included by way of an amending Order made on 25 March 2011.

⁶ Benjamin Schoo, Amanda Eve and Phillippa Holland included by way of an amending Order made on 20 September 2011.

⁷ Paulo Abecasis included by way of an amending Order made on 14 July 2011.

⁸ Daisy Jones, Trasa Duffy, Robin Watson, Jennifer Moore, George Stancliffe, Victoire Binchet and Mikhael Shor all included by way of an amending Order made on 7 February 2011.

External Solicitors

Laura Claydon

Andrew Borer

Marc Shrimpling

Tim Riisager

Matthew Britton

Peter Roberts⁹ (all of Burges Salmon LLP)

External Experts

Helen Jenkins

Simon Pilsbury

Alexander Gaigl

Thomas Hoe¹⁰ (all of Oxera)

Wm Morrison Supermarkets PLC, Safeway Stores Limited and Safeway Limited

External Counsel

Pushpinder Saini QC (Blackstone Chambers)

Meredith Pickford (Monckton Chambers)

Tristan Jones (Blackstone Chambers)

External Solicitors

Suyong Kim

Chris Hutton

Paul Castlo

Julie Ngov¹¹

Christoph Hinrichsen¹²

Jonnie Heath

Alice Wallace-Wright¹³

⁹ Matthew Britton and Peter Roberts included by way of an amending Order made on 12 September 2011.

¹⁰ Alaxander Gaigl and Thomas Hoe included by way of an amending Order made on 19 July 2011.

¹¹ Paul Castlo and Julie Ngov included by way of an amending Order made on 23 September 2010.

¹² Christoph Hinrichsen included by way of an amending Order made on 21 March 2011.

Jan Stjernsward¹⁴

Rosamund Drew

Charlie Hawes¹⁵ (all of Hogan Lovells International LLP)

External Experts

Professor George Yarrow

Chris Decker

Asda Stores Limited, Asda Group Limited, Wal-Mart Stores (UK) Limited and Broadstreet Great Wilson Europe Limited

External Counsel

James Flynn QC

Robert O'Donoghue (both of Brick Court Chambers)

External Solicitors

Mark Jones

Peter Scott

Ian Giles

Caroline Thomas

Mark Daniels

Celine Fang

Yasmine Gaspard

Bibi Sarraf-Yazdi¹⁶

Sebastien Allain¹⁷

Gal Levin

David Anthony¹⁸

Salah Mattoo

¹³ Jonnie Heath and Alice Wallace-Wright include by way of an amending Order made on 3 May 2011.

¹⁴ Jan Stjernsward included by way of an amending Order made on 12 September 2011.

¹⁵ Rosamund Drew and Charlie Hawes included by way of amending Order made on 2 September 2011.

¹⁶ Included by way of an amending Order made on 19 October 2010.

¹⁷ Sebastien Allain and Reemal Madlani included by way of an amending Order made on 2 February 2011.

¹⁸ Gal Levin and David Anthony included by way of an amending Order made on 13 June 2011.

Sarah Todd¹⁹ (all of Norton Rose LLP)

External Experts

Neil Dryden

Erik Langer

Segye Shin

Nadine Watson

Eduard Barniol

Reemal Madlani (all of LECG)

Bertram Neurohr²⁰ (of Compass Lexecon)

Shell U.K. Limited, Shell U.K. Oil Products Limited and Shell Holdings (U.K.) Limited

External Counsel

Dinah Rose QC

Brian Kennelly

Cleon Catsambis²¹ (all of Blackstone Chambers)

External Solicitors

Richard Pike

Jennifer Revis

Sarah West

Luis Gomez

Tim Pountain-Holes²²

Alex Lloyd

Andrew Matheson²³ (all of Baker & McKenzie LLP)

¹⁹ Salah Mattoo and Sarah Todd included by way of an amending Order made on 3 October 2011.

²⁰ Included by way of an amending Order made on 20 September 2011.

²¹ Cleon Catsambis included by way of an amending Order made on 26 October 2011.

²² Tim Pountain-Holes included by way of an amending Order made on 20 April 2011

²³ Alex Lloyd and Andrew Matheson Included by way of an amending Order made on 22 September 2011.

External Experts

Dr Nicholas Heard (of Imperial College)

Office of Fair Trading

External Counsel

Paul Lasok QC

Anneli Howard

Elisa Holmes

Rob Williams

Josh Holmes

Anneliese Blackwood

Ligia Osepciu

David Unterhalter SC

Robert Palmer (all of Monckton Chambers)

External Experts

Professor Greg Shaffer (of the University of Rochester, USA)

Dr Mike Walker

Ragvir Sabharwal

Thomas Buettner

Daniel Donath²⁴

Jonathan Raggett²⁵

Paul Muysert

Matt Tavantzis²⁶ (all of Charles River Associates)

²⁴ David Unterhalter SC, Robert Palmer, Professor Greg Shaffer, Dr Mike Walker, Ragvir Sabharwal, Thomas Buettner and Daniel Donath all included by way of an amending Order made on 19 October 2010.

²⁵ Included by way of an amending Order made on 22 November 2010.

²⁶ Paul Muysert and Matt Tavantzis included by way of an amending Order made on 12 September 2011.

PART B

In respect of any Confidential Information disclosed to them pursuant to the Tribunal's Order of 16 August 2010 ("the Tribunal's Order") each Relevant Person referred to in paragraph 2.2.1 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 [legal or other qualification] and regulated so far as my professional conduct is concerned by [regulatory body, if any] 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 Confidential Information (as defined in the Tribunal's Order) to any person who is not a Relevant Person (as defined in the Tribunal's Order) or who is not a person authorised to receive Confidential Information by the Tribunal pursuant to paragraph 7 of the Tribunal's Order (who has signed an undertaking in the terms of Part C of the Tribunal's Order) without the express written consent of the person which originally disclosed the Confidential Information 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 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 Disclosing Person.
4. The Case Documents (as defined in the Tribunal's Order) containing the Confidential Information 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 Case Documents containing the Confidential Information 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 Disclosing Person has been obtained, any and all copies of the Case Documents in paper form containing the Confidential Information will either be returned to that Disclosing Person at the conclusion of the present proceedings, or be destroyed at the conclusion of the present proceedings (the Disclosing Person may decide whether the Case Documents are to be destroyed or returned to him or her); any copies of the Case Documents containing the Confidential Information 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 Confidential Information 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 Relevant Persons from disclosing Confidential Information to persons who have already legitimately seen it.

Signed:

Name:

Date:

PART C

In respect of any Confidential Information disclosed to them pursuant to paragraph 7 of the Tribunal's Order of 16 August 2010 (“the Tribunal’s Order”) each person authorised by the Tribunal pursuant to that paragraph 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 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 Confidential Information (as defined in the Tribunal’s Order) to any person unless they are a Relevant Person (as defined in the Tribunal’s Order) or a person authorised to receive Confidential Information by the Tribunal pursuant to paragraph 7 of the Tribunal’s Order (who has signed an undertaking in the terms of Part C of the Tribunal’s Order) without the express consent of the person originally disclosing the Confidential Information 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 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 Disclosing Person or the permission of the Tribunal.
4. The Case Documents (as defined in the Tribunal’s Order) containing the Confidential Information 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 the Case Documents containing the Confidential Information.
6. Save where the written consent of the Disclosing Person has been obtained, any and all copies of the Case Documents in paper form containing the Confidential Information will either be returned to the Relevant Person who provided the Case Documents to me at the conclusion of the present proceedings, or be destroyed at the conclusion of the present proceedings (the Relevant Person providing the Case Documents may decide whether the Case Documents are to be destroyed or returned to him or her); any copies of the Case Documents containing the Confidential Information 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 Confidential Information 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 Confidential Information to Relevant Persons.

Signed:

Name:

Date: