



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 the Tribunal writing to the parties on 4 March 2011 in relation to the future conduct of the proceedings listed above

AND UPON reading the submissions of the parties filed in advance of a case management conference on 8 April 2011

AND UPON hearing the parties' legal representatives at the case management conference on that date

IT IS ORDERED THAT:

1. For the purposes of this Order:
 - a. "Appellants" means the appellants in each of the proceedings listed above;
 - b. "Asda" means Asda Stores Limited, Asda Group Limited, Wal-Mart Stores (UK) Limited and Broadstreet Great Wilson Europe Limited;
 - c. "Co-op" means Co-operative Group Limited;
 - d. "Decision" means the decision of the OFT dated 15 April 2010 in Case CE/2596/03;
 - e. "Gallaher" means Gallaher Group Limited and Gallaher Limited;
 - f. "ITL" means Imperial Tobacco Group plc and Imperial Tobacco Limited;
 - g. "OFT" means the Office of Fair Trading;
 - h. "Safeway" means Safeway Stores Limited and Safeway Limited;
 - i. "Morrison" means WM Morrison Supermarkets plc;

- j. “Non-Appellant Retailers” means First Quench Retailing Limited, Thresher Wines Acquisitions Limited, Thresher Wines Holdings Limited, Sainsbury’s Supermarkets Limited, J Sainsbury plc, One Stop Stores Limited, Somerfield Stores Limited, Somerfield Limited, TM Retail Limited and Martin McColl Retail Group Limited;
- k. “Retailer Appellants” means Asda, Co-op, Safeway, Morrison and Shell;
- l. “Shell” means Shell U.K. Limited, Shell U.K. Oil Products Limited and Shell Holdings (U.K.) Limited.

INTERVENTIONS

2. By 5pm on 15 April 2011 the Appellants shall lodge with the Tribunal, copied to the OFT and each other, any further request for permission to intervene in the appeal of another Appellant;
3. By 5 pm on 6 May 2011, Asda shall lodge with the Tribunal a draft order granting permission in respect of the extant uncontested requests for permission to intervene, extending time for the further requests lodged pursuant to paragraph 2 above and granting permission for any of those further requests which are uncontested.

EXPERT EVIDENCE

4. The parties’ experts shall prepare and file a joint statement, or joint statements, for the Tribunal by 5pm on 23 May 2011 explaining those issues on which they did agree; those issues on which they disagree and a summary of their reasons for disagreeing.

BUNDLES

5. Each Appellant shall prepare chronological bundles of contemporaneous documents based on the annexes to the Statement of Objections and to the Decision (each a “Document Bundle”) as follows:
 - a. ITL will provide Document Bundles in respect of each alleged unlawful agreement with the Non-Appellant Retailers;
 - b. Each Retailer Appellant will provide Document Bundles in respect of the alleged unlawful agreements between itself and ITL and Gallaher.
6. All parties shall notify the relevant appellant whether they wish to add any additional document(s) to any Document Bundle as soon as possible and no later than 22 April 2011; each such party will be responsible for
 - a. providing a copy of the additional document(s) to the relevant appellant,

- b. identifying any confidential information, belonging to itself and any third party, and
 - c. ensuring that any confidential information is appropriately protected.
- 7. The production of six copies of each Document Bundle for the use of the Tribunal shall be completed by 5pm on 6 May 2011; each party to liaise with the Tribunal Registry for the insertion of any additional documents into files already lodged with the Tribunal.
- 8. Each Appellant shall send to the Tribunal Registry electronic versions of the Document Bundles for which they are responsible under paragraph 5 by 5pm on 13 May 2011.
- 9. ITL shall file and serve an agreed joint bundle of authorities to be referred to at the hearing, with key sections flagged for reference, by 5pm on 30 June 2011.
- 10. If so advised, the OFT shall file and serve any supplementary bundle of authorities to the extent that it relies on any authorities in its skeleton argument not included in the bundle filed by ITL.
- 11. ITL shall file and serve a core bundle of documents for the hearing, comprising the pleadings, skeleton arguments and witness statements (without exhibits) by 5pm on 7 September 2011.

SKELETON ARGUMENTS

- 12. Skeleton arguments shall be filed and served as follows:
 - a. ITL by 10am on 3 June 2011;
 - b. The Retailer Appellants by 5pm on 17 June 2011;
 - c. The OFT by 5pm on 30 June 2011.
- 13. The parties shall send to the Tribunal Registry electronic versions (in Word format) of their pleadings, skeleton arguments and witness statements (without appendices) by 5pm on 30 June 2011.

SESSION ON ECONOMIC EVIDENCE

- 14. A non-adversarial hearing to explain the models used and the methods applied both by the OFT in arriving at the Decision and by the parties in challenging the Decision be fixed for 10.30am on 13 September 2011.

HEARING

15. The appeals in Cases No. 1160-1165/1/1/10 be heard together.
16. The main hearing in these proceedings commence on 21 September and provisionally be listed until 21 December 2011.
17. The days on which the Tribunal will not sit are contained in Schedule 1 to this Order.
18. For ease of reference the steps required by this Order are summarised in Schedule 2.
19. Liberty to apply.

Vivien Rose
Chairman of the Competition Appeal Tribunal

Made: 8 April 2011
Drawn: 8 April 2011

SCHEDULE 1

Following the commencement of the hearing on 21 September 2011, the days during the hearing window designated as non-sitting days by the Tribunal are:

Friday 23rd September

Thursday 29th September

Monday 3rd October

Wednesday 12th October

Monday 17th October

Monday 24th October

Friday 4th November

Monday 7th November

Tuesday 15th November

Thursday 24th November

Monday 28th November

Monday 5th December

Wednesday 14th December

SCHEDULE 2

Date in 2011	Action	Order paragraph
15 April	Notification of further interventions requests	2
22 April	Provision of additional documents for Document Bundles	6
6 May	Lodging of draft Interventions Order	3
	Completion of Document Bundles	7
13 May	E versions of Document Bundles	8
23 May	Joint Experts' Statements	4
3 June	ITL Skeleton Argument	12.a
17 June	Retail Appellants' Skeleton Arguments	12.b
30 June	Joint Bundle of Authorities	9
	OFT Skeleton Argument	12.c
	E Versions of pleadings etc	13
7 July	OFT supplementary authorities bundle	10
9 September	Core bundles	11