



COMPETITION APPEAL TRIBUNAL

**IN THE COMPETITION APPEAL
TRIBUNAL**

Case:1008/2/1/02

BEFORE:

**Sir Christopher Bellamy (President)
Peter Clayton
Peter Grant Hutchison**

BETWEEN:

**(1) CLAYMORE DAIRIES LIMITED
(2) EXPRESS DAIRIES PLC**

Applicants

-v-

THE DIRECTOR GENERAL OF FAIR TRADING

Respondent

supported by

**ROBERT WISEMAN DAIRIES plc
ROBERT WISEMAN AND SONS LIMITED (“WISEMAN”)**

Interveners

ORDER

Upon hearing the legal representatives of the parties at a case management conference on 9 June 2003

And upon perusing the subsequent correspondence between the parties

And upon each of the persons named in Part B of the Schedule to this Order (“the External Advisers”), prior to the making of this Order, having given a written undertaking to the Tribunal, in the terms of Part C of the Schedule to this Order

IT IS ORDERED THAT:

1. Within 7 days of the date of the service of this Order upon the respondent, the respondent is to serve on the applicants’ solicitors and upon the interveners’ solicitors a copy of the witness statement of Robert Brian Lawrie signed on 16 May 2003 and a copy of the exhibit RBL1 in respect of both of which the

Protected Information (as defined in Part A of the Schedule to this Order) has not been excised.

2. Within 9 weeks of the service upon them of the witness statement (and its exhibit) of Mr Lawrie in accordance with paragraph 1 above, the applicants are to file an amended version of the notice of application dated 6 November 2002 with the Tribunal.
3. Within 7 days of the service of this Order upon the applicants, the applicants are to prepare and serve on the intervener a copy of the notice of application dated 6 November 2002, from which is excised all confidential information relating to Claymore Dairies(1)Express Dairies(2) v The Director General of Fair Trading (Case 1011/2/1/03), in particular the following information:
 - 3.1 the second sentence of paragraph 5.33 and footnote 32;
 - 3.2 Annex 16.
4. The following information be excised from the letter contained in Annex 22 to the notice of application from Messrs Ashurst Morris Crisp to the OFT of 14 August 2002 (page 607):
 - 4.1 the second sentence of the first paragraph of that letter;
 - 4.2 the words between “letter” and “Express” in the first line of the second paragraph of that letter.
5. There be liberty to the interveners to apply to the Tribunal that individual items of Protected Information should not be disclosed to the applicant pursuant to the terms of this Order.
6. Costs be reserved
7. There be general liberty to apply

Sir Christopher Bellamy
President of the Competition Appeal Tribunal

Made: 9 June 2003
Drawn: 17 July 2003

Schedule

Part A

“**Protected Information**” means:

1. As regards the applicants’ External Advisers, all the confidential material excised from the version of the witness statement of Robert Brian Lawrie signed on 16 May 2003 and exhibit RBL1 served on the applicants under the cover of a letter from the Treasury Solicitor dated 27 May 2003 excepting material supplied to the respondent by persons other than parties to these proceedings save for material emanating from *[excised on grounds of confidentiality]* already disclosed to the parties under the cover of a letter from the Treasury Solicitor dated 6 June 2003.
2. As regards the interveners’ External Advisers:
 - 2.1 the version of the notice of application served on them pursuant either to paragraphs 3 and 4 of this Order or to any further order of the Tribunal in so far as that version differs from the version served on the interveners on 9 December;
 - 2.2 all the material excised from the version of the witness statement of Robert Brian Lawrie signed on 16 May 2003 as served on the interveners under the cover of a letter from the Treasury solicitor dated 6 June 2003 and all the material excised from exhibit RBL1 to such statement served on the interveners under cover of a letter from the Treasury Solicitor dated 16 May 2003 excepting material supplied to the respondent by persons other than parties to these proceedings save for material emanating from *[excised on grounds of confidentiality]* already disclosed to the parties under the cover of a letter from the Treasury Solicitor dated 6 June 2003.

Part B

For the purposes of this Order:

“**External Advisers**” is limited to the following persons save as otherwise expressly authorised by the Tribunal upon the further application of the parties:

For the applicants:

Nicholas Green	Queen’s Counsel	Brick Court Chambers
Nigel Parr	Partner	Ashurst Morris Crisp
Ben Tidswell	Partner	Ashurst Morris Crisp
Mat Hughes	Director of Economics	Ashurst Morris Crisp
Euan Burrows	Barrister	Ashurst Morris Crisp
Claire Wylie	Solicitor	Ashurst Morris Crisp
Merryck Lowe	Chartered Accountant	Ernst & Young
Philip Haberman	Chartered Accountant	Ernst & Young
Bruno Augustin	Chartered Accountant	Ernst & Young

Mark Williams	Economist	Nera
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For the interveners:

James Flynn	Queen's Counsel	Brick Court Chambers
Jonathan Scott	Partner	Herbert Smith
James Quinney	Partner	Herbert Smith
Ronit Kreisberger	Solicitor	Herbert Smith
Alex Lee	Solicitor	Herbert Smith
Alan Overd	Economist	Lexecon
Ian Small	Economist	Lexecon

Part C

In respect of any Protected Information disclosed to them pursuant to this Order, each External Adviser mentioned in Part B of this Order undertakes that they will comply with the following requirements, that:

- i. The Protected Information will not be disclosed to any person other than the External Advisers, the Treasury Solicitor, the Office of Fair Trading and the Tribunal without the permission of the Tribunal;
- ii. The Protected Information will only be used for the purpose of these proceedings;
- iii. The documents containing the Protected Information are to remain in the custody of the External Advisers at all times; and
- iv. The production of further copies of the documents containing the Protected Information shall be limited to those required for the use of the External Advisers for the purposes of these proceedings.; copies shall be numbered and identified as being for the specific use of one of the External Advisers; any such copies and the documents containing the Protected Information will be returned to the respondent at the conclusion of the present proceedings; and
- v. The External Advisers named as Chartered Accountants will not, without the permission of the Tribunal, for a period of 2 years from the date of this Order, be involved in providing advice on the dairy operations of Claymore/Express [*excised on grounds of confidentiality*].

Save that none of the requirements listed at paragraphs i. to v. above shall prevent the External Advisers from disclosing to the party advised by them information which such party has already seen.