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

Case No 1059/4/1/06

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

9<sup>th</sup> May 2006

Before:  
MARION SIMMONS QC  
(Chairman)

Sitting as a Tribunal in England and Wales

**BETWEEN:**

**CELESIO AG**

Applicant

and

**OFFICE OF FAIR TRADING**

Respondent

Supported by

**ALLIANCE UNICHEM PLC**

and

**BOOTS PLC**

Interveners

Ms. Paula Reidel (of Linklaters) appeared for the Applicant.

Ms. Winnie Ching (of the Office of Fair Trading) appeared for the Respondent.

Mr. Mark Friend (of Allen & Overy LLP) and Mr Peter Rowland (of Slaughter and May) appeared for the Interveners.

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**HEARING TO HAND DOWN JUDGMENT**

1 THE CHAIRMAN: I understand there may be some concerns about confidentiality – are there any?  
2 MR. FRIEND: On behalf of both Interveners, we would like a bit of time to study the Judgment to  
3 identify any confidential material contained in it, and I would suggest that we aim to get our  
4 reactions to you by close of business tomorrow.  
5 THE CHAIRMAN: We do not think that there is anything in it. Let me hear what other people say.  
6 I am not very happy about doing it by close of business tomorrow, that is too long. Has  
7 anybody else got an application?  
8 MS. CHING: Madam, if I could just let you know the OFT's views? Essentially we defer to the  
9 parties because obviously it is their confidential information, so we are happy with whatever is  
10 agreed between the parties.  
11 MS. REIDEL: We have no submissions to make in relation to confidentiality. We have no  
12 concerns.  
13 THE CHAIRMAN: You are speaking on behalf of Boots and Unichem, are you?  
14 MR. FRIEND: I suppose I am technically representing Alliance Unichem, but I have spoken to my  
15 colleague, Peter Rowland, so I think I can speak for both Interveners. If close of business  
16 tomorrow is too long could we say lunch time tomorrow?  
17 THE CHAIRMAN: Well I think we are concerned about that as well. One suggestion that I could  
18 make is that I rise for half an hour and that those in the confidentiality ring remain in court,  
19 everybody else leaves, and you have a look at it and see if you still have concerns.  
20 MR. FRIEND: The difficulty, madam, is that we may need to consult with our clients.  
21 THE CHAIRMAN: That is what I am saying, have a look at it and see because, as I said at the  
22 beginning, we think that there is nothing; that we have dealt with it.  
23 MR. FRIEND: Yes, madam, thank you.  
24 THE CHAIRMAN: Are there the relevant people – you do not have a concern, so it is only Boots  
25 and Unichem who do have a concern. You are within the confidentiality ring?  
26 MR. FRIEND: Yes, we are.  
27 THE CHAIRMAN: All three of you, or all two of you?  
28 MR. FRIEND: All three of us, yes.  
29 THE CHAIRMAN: Does anybody have a concern about them looking at it? That is the problem,  
30 because they will have looked at it before everybody else; that cannot be right. Is there  
31 somebody from each of the parties in the confidentiality ring here?  
32 MS. REIDEL: Yes.  
33 THE CHAIRMAN: You are both in the confidentiality ring?  
34 MS. REIDEL: Yes, we are, both.  
35 THE CHAIRMAN: And you all are?

1 MS CHING: Yes.

2 THE CHAIRMAN: Well then is the answer that you all stay in court, it will be handed to all of you,  
3 you can have a look at it and I will rise for half an hour – hopefully only 20 minutes, but I will  
4 give you half an hour if necessary – and you will have a look and see and then you will come  
5 back to me. Is that all right?

6 MR. FRIEND: Yes, thank you, madam.

7 (The hearing adjourned at 4.43 p.m. and resumed at 5.05 p.m.)

8 **IN CAMERA**

9 MR. FRIEND: Thank you for giving us the opportunity. We have had a quick look at it and have  
10 not identified any confidential material.

11 THE CHAIRMAN: Thank you very much.

12 MS. CHING: The only point we noted, and we obviously do not have the documents to check, was  
13 the 30 per cent. in para. 39 on the fourth last line:

14 “Supermarket pharmacies had reduced prices for a basket of P medicines by 30 per  
15 cent. shortly after the end of resale price maintenance.”

16 I do not know whether that was something.

17 THE CHAIRMAN: If you look at your Decision ----

18 MS. CHING: If it is in there that is fine.

19 THE CHAIRMAN: Yes, and you look at para.30 – have you got it with you?

20 MS. CHING: Unfortunately we do not have any ----

21 THE CHAIRMAN: Let us show it to you so that you can see.

22 MS. CHING: No, no, that is fine. (Document handed to Ms. Ching) Thank you. It was just to  
23 ensure that there was nobody’s confidential material, thank you.

24 THE CHAIRMAN: That is all right. Do you have anything?

25 MS. REIDEL: No, thank you.

26 THE CHAIRMAN: Shall we ask the public to come in now? Thank you very much.

27 **IN OPEN COURT**

28 THE CHAIRMAN: I am handing down the Tribunal’s Judgment on the application by Celesio AG  
29 for review of the decision of the OFT made on 6<sup>th</sup> February 2006, and published on 22<sup>nd</sup>  
30 February 2006. In that Decision the OFT decided not to refer the proposed acquisition of  
31 Alliance Unichem PLC by Boots Group PLC to the Competition Commission, provided that  
32 suitable undertakings were given pursuant to s.73 of the Enterprise Act 2002 to address the  
33 potential competition concerns outlined in the Decision.

