



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

Case No: 1188/1/1/11

B E T W E E N:

**(1) TESCO STORES LIMITED**  
**(2) TESCO HOLDINGS LIMITED**  
**(3) TESCO PLC**

Appellants

- v -

**OFFICE OF FAIR TRADING**

Respondent

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**ORDER**

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**UPON** reading the correspondence of the Appellants and the Respondent (the “Parties” ) in connection with the Appellants’ request to establish a confidentiality ring in relation to the confidential information specified in this Order, comprising: (a) letters and emails from the Appellants’ solicitors to the Respondent dated 3 November 2011, 23 December 2011, 3 February 2012, 23 March 2012, 2 April 2012, and 13 April 2012; and (b) letters from the Respondent to the Appellants’ solicitors dated 15 December 2011, 22 December 2011, 3 February 2012, 16 February 2012, 1 March 2012, 29 March 2012, 5 April 2012, 14 April 2012 and 16 April 2012;

**AND UPON** reading letters from the Tribunal to the Appellants’ solicitors dated 17 January 2012 and 24 January 2012;

**AND UPON** reading submissions made by the legal representatives of Arla Foods Limited and Arla Foods UK Holdings Limited (“Arla”) to the Tribunal in letters dated 9 January 2012 and 23 January 2012 (“Arla’s Submissions”);

**AND UPON** reading the submissions made by the legal representatives of Lactalis McLelland (“McLelland”) to the Tribunal in letters dated 9 January 2012 and 20 January 2012 (“McLelland’s Submissions”), and the Respondent’s letter to McLelland’s legal representatives dated 6 February 2012 and their letter to the Respondent dated 10 February 2012;

**AND UPON** the Parties having reached agreement as 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:
  - (a) “Case Documents” means all pleadings or other documents filed with, or otherwise provided to, the Tribunal for the purposes of these proceedings.
  - (b) “Confidential Information” means information contained in the Relevant Documents which has been identified in Arla’s Submissions or McLelland’s Submissions as being confidential, including where that information is disclosed in any Case Documents.
  - (c) “Relevant Documents” means:
    - (1) in the case of McLelland:
      - (i) document 188 of Annex 1 to the Statement of Objections (“SO”);
      - (ii) the document at page 46 of document 226c of Annex 2 to the SO;
      - (iii) the document at page 320 of document 148a of Annex 2 to the SO;
      - (iv) the document at page 302 of document 226d of Annex 2 to the SO;
      - (v) document 264 of Annex 1 to the SO;
      - (vi) document 272 of Annex 1 to the SO;
      - (vii) the document at page 360 of document 226d of Annex 2 to the SO,  
and
      - (viii) the document at page 364 of document 226d of Annex 2 to the SO.
    - (2) in the case of Arla: certain extracts of the Document 35A of Annex 2 to the SO (also referred to as Document 100A) relating to sales and supply information in the two tables titled ‘*The supply of cheese in the UK*’ and ‘*The supply of fresh processed liquid milk in the UK*’.
  - (d) “Relevant Persons” are those persons:
    - (1) 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 (and for the avoidance of doubt Relevant Persons do not include any in-house counsel or any other employee of the Appellants); or
    - (2) who are members of the Office of Fair Trading’s staff; or

- (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.
3. For the purposes of paragraph 4 below, all confidential versions of Relevant Documents and any confidential versions of the Case Documents must be marked so as to indicate the parts which constitute Confidential Information, in the manner referred to in paragraph 13.22 of the Tribunal's Guide to Proceedings (October 2005) or by framing all Confidential Information in a red box, or as otherwise approved in writing by the Tribunal.
4. In accordance with this Order and in each case on condition that Confidential Information shall be disclosed only to the Relevant Persons:
  - (a) the Respondent shall as soon as practicable after the making of this Order disclose to the Appellants' legal representatives who are Relevant Persons confidential versions of the Relevant Documents marked in accordance with paragraph 3;
  - (b) the Respondent shall within a reasonable time after the making of this Order disclose to the Appellants' legal representatives who are Relevant Persons confidential versions of the Respondent's Case Documents already filed at the date of the making of this Order if those Case Documents contain any Confidential Information; and
  - (c) each of the Respondent and the Appellants' legal representatives who are Relevant Persons shall disclose to the other confidential versions of any further Case Documents they file in this Appeal within a reasonable time of such Case Documents being filed if those Case Documents contain any Confidential Information.
5. If either Party wishes to add any additional person as a Relevant Person for the purposes of paragraph 2(d) of this Order, they shall apply to the Tribunal in writing, and copied to the other Party, and the other Party shall be entitled to make representations to the Tribunal before the Tribunal directs that an additional person is to be added as a Relevant Person.
6. Costs be reserved.
7. Liberty to apply.

**Lord Carlile of Berriew Q.C.**  
Chairman of the Competition Appeal Tribunal

Made: 18 April 2012  
Drawn: 18 April 2012

## **SCHEDULE**

### **PART A**

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

#### **Tesco**

##### *External counsel*

Dinah Rose QC (of Blackstone Chambers)

Maya Lester

Daniel Piccinin (both of Brick Court Chambers)

##### *External solicitors*

Paul Lomas (Partner)

Deidre Trapp (Partner)

Dan Burton (Senior associate)

Mary Wilks (Associate)

Michelle Yip (Associate) (each of Freshfields Bruckhaus Deringer LLP)

#### **Office of Fair Trading**

##### *External counsel*

Stephen Morris QC (of 20 Essex Street, London WC2R 3AL)

Kassie Smith (of Monckton Chambers, 1 & 2 Raymond Buildings, Gray's Inn, London WC1R 5NR)

Josephine Davis (of 20 Essex Street, London WC2R 3AL)

Thomas Raphael (of 20 Essex Street, London WC2R 3AL)

## PART B

In respect of any Confidential Information disclosed to them pursuant to the Tribunal's Order of 19 April 2012 (the "Tribunal's Order"), each Relevant Person as defined in the Tribunal's Order undertakes that they will comply with the following requirements in the following terms:

I, [name], of [chambers or firm or company] 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) without the consent of the party which originally disclosed the Confidential Information or the permission of the Tribunal.
3. I will use the Confidential Information only for the purpose of these proceedings (and for no other proceedings or use).
4. All the Relevant Documents (as defined in the Tribunal's Order) and any Case Documents (as defined in the Tribunal's Order) which I receive containing the Confidential Information will remain in my custody or the custody of one of the other Relevant Persons at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access to or disclosure of the Confidential Information.
5. The production of further copies by me of the Relevant Documents and any Case Documents containing the Confidential Information shall be limited to those required by Relevant Persons for the purposes of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.
6. I will ensure that (i) any and all copies of the Relevant Documents and Case Documents in paper form containing the Confidential Information which I have received are destroyed at the conclusion of the present proceedings (including the determination of any appeals); and (ii) any copies of the Relevant Documents and any Case Documents containing the Confidential Information in electronic form which I have received will be deleted or, where that is not possible, will be rendered inaccessible from any computer system, disk or device so that the Confidential Information is not 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. None of the requirements listed at paragraphs 1 to 4 above shall prevent the Relevant Persons from disclosing Confidential Information to persons who have already lawfully seen it.

Signed: .....

Name: .....

Date: .....