



Neutral citation [2012] CAT 12

IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1188/1/1/11

B E T W E E N:

(1) TESCO STORES LTD
(2) TESCO HOLDINGS LTD
(3) TESCO PLC

Appellants

-v-

OFFICE OF FAIR TRADING

Respondent

ORDER

UPON considering the Appellants' ("Tesco") oral application, on 2 May 2012, for disclosure of any potentially relevant third party information contained in the hearing bundles which had not been disclosed to Tesco

AND UPON reading the letter from the Respondent ("the OFT") on 2 May 2012, which identifies and encloses five potentially relevant, but redacted, documents (together "the Documents"), all concerning Lactallis McLelland Ltd ("McLelland"), and records the written representations the OFT received from McLelland in respect of the Documents

AND UPON hearing counsel for McLelland and other parties at a hearing on 2 May 2012

AND UPON the Tribunal considering that it is appropriate to inspect the documents and consider them individually before reaching a decision, and no party objecting to the Tribunal taking that course

AND HAVING REGARD TO the Tribunal's powers under rules 19(1) and 19(2)(k) of the Competition Appeal Tribunal Rules (S.I. 1372 of 2003)

IT IS ORDERED THAT:

1. Paragraph 2(c)(5) of the Order of 3 May 2012 be amended so as to include:
 - a. Attachment to letter from McLelland to Sainsbury's dated 1 October 2002;
 - b. Attachment to email from McLelland to Asda dated 23 October 2002;
 - c. Attachment to email from McLelland to Sainsbury's dated 25 September 2003; and
 - d. Paragraph 17 of the McLelland written representations, dated 20 March 2008, in respect of alleged factual inaccuracies contained in the Supplementary Statement of Objections.
2. There be liberty to apply.

REASONS:

Before determining an application of this kind, where third party confidentiality is in issue, I consider that it is appropriate for the Tribunal to inspect the documents and consider them individually before reaching a decision.

Having read the documents, I am satisfied that, subject to one exception, the redacted information contained in the Documents is *potentially* relevant for the fair disposal of this Appeal, a point which the OFT fairly acknowledged in its letter. In my judgement, it is right, indeed desirable, that the parties' legal representatives be given an opportunity to review the Documents and make any submissions as to their possible relevance and/or probative value. The nature and extent of the disclosure sought is not onerous. Given the concerns expressed by McLelland about the confidential nature of the redacted information contained in the Documents, however, I direct that it be supplied to the parties' external legal advisers within the confidentiality ring only.

The exception is that, in my judgement, the redacted turnover figures contained in the letter from Salans LLP to the OFT, dated 1 August 2005, are neither relevant nor necessary to the liability issues in this Appeal, namely the existence of two Chapter I infringements which allegedly occurred in 2002 and 2003 respectively.

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

Made: 3 May 2012
Drawn: 3 May 2012