

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION

APPEAL TRIBUNAL

Case No. 1204/4/8/13

Victoria House,
Bloomsbury Place,
London WC1A 2EB

29 January 2013

Before:

THE HON. MR JUSTICE NORRIS

(Chairman)

Sitting as a Tribunal in England and Wales

BETWEEN:

AKZO NOBEL N.V.

Applicant

- and -

COMPETITION COMMISSION

Respondent

- and -

METLAC HOLDING S.r.L.

METLAC S.p.A.

Potential Interveners

*Transcribed by **BEVERLEY F NUNNERY & CO**
Official Shorthand Writers and Audio Transcribers
Quality House, Quality Court, Chancery London, London WC2A 1HP
Tel: 020 7831 5627 Fax: 020 7831 7737
info@beverleynunnery.com*

CASE MANAGEMENT CONFERENCE

APPEARANCES

Mr Alistair Lindsay (instructed by Slaughter and May) appeared on behalf of the Applicant.

Mr Rob Williams (instructed by The Treasury Solicitor) appeared on behalf of the Respondent.

Mr Mario Siragusa and Mr Paul Gilbert (of Cleary Gottlieb Steen & Hamilton LLP) appeared on behalf of Metlac Holding S.r.L. and Metlac S.p.A.

1 THE CHAIRMAN: Good morning.

2 MR. LINDSAY: Sir, good morning, I appear on behalf of AkzoNobel. Mr Williams appears on
3 behalf of the Competition Commission, and Mr Siragusa and Mr Gilbert appear for Metlac,
4 the proposed interveners.

5 Sir, the Tribunal circulated a draft agenda last Tuesday, and I propose to work from that, if I
6 may. In terms of housekeeping, you should have before you a paginated bundle with the
7 correspondence discussing the agenda items, and also an indicative timetable which
8 summarises the position that has been agreed between the parties.

9 THE CHAIRMAN: Yes.

10 MR. LINDSAY: Sir, starting with item 1, forum, it is common ground that the forum is England
11 and Wales.

12 The second item on the agenda is intervention, and I shall give way to Mr Siragusa on his
13 application.

14 THE CHAIRMAN: Yes.

15 MR. SIRAGUSA: Sir, if I am allowed to speak?

16 THE CHAIRMAN: Go ahead.

17 MR. SIRAGUSA: Thank you very much. Metlac is the subject matter of the contested Decision.
18 It has an interest in the outcome of the case. It is well placed to answer any questions that
19 the Tribunal may have about its business and about the markets involved. We will be as
20 efficient as possible and we will minimise our application, and will not duplicate any
21 argument which has been already covered by the Commission.

22 Thank you, Sir.

23 THE CHAIRMAN: Thank you. You will have an application to represent the intervener, and I
24 would propose to grant you a right of audience to do so on the usual conditions. All right?

25 MR. SIRAGUSA: Thank you very much.

26 MR. LINDSAY: Sir, the next item on the agenda is evidence and confidentiality. The
27 Competition Commission has agreed to disclose an unredacted copy of the report and
28 appendices into a confidentiality ring. There has been some discussion between the parties
29 about the terms of the undertaking to be given by members of the confidentiality ring, and
30 we are content with the mark-up that was tabled by the Competition Commission yesterday.

31 Sir, that is at p.24 of the bundle of correspondence that has been handed up.

32 Sir, subject to the amendments that the Competition Commission has proposed, we request
33 that the Tribunal make an order establishing the confidentiality ring in the normal terms.

34 THE CHAIRMAN: Yes, I am content to do that.

1 MR. LINDSAY: I am obliged. Sir, there is one other point I should mention by way of
2 information only, which is that we, AkzoNobel, have also requested from the Competition
3 Commission specific disclosure of certain evidence underlying their report, the key survey,
4 responses, and so forth. That is at p.10 of the bundle. We did this because our second and
5 third grounds concern the sufficiency and selectivity of the Competition Commission's
6 approach to the evidence, and we believe that those grounds are best determined with sight
7 of the key evidence, rather than just the Competition Commission summary. The
8 Competition Commission have so far declined that request, which is pp.13 and 14 of the
9 bundle. It says that the unredacted version of the report may answer our concerns; and it
10 also notes that it is subject to public law obligations, which include the obligation to lay its
11 cards face upright on the table. Sir, we obviously need to see the unredacted version of the
12 appendices, and we will then be in a position to formulate any application for specific
13 disclosure, and we will, of course, move quickly in doing so. Sir, I mention that solely for
14 information. There is no application before you for specific disclosure today.

15 Sir, does that take us on to the timetable for the application?

16 THE CHAIRMAN: Yes.

17 MR. LINDSAY: I have handed up a timetable which has been agreed between the parties. In
18 terms of the second half of that timetable, we are dependent upon identifying a date for the
19 hearing. We have estimated that the hearing will require two days and the Competition
20 Commission and Metlac do not disagree. Sir, is the hearing date something that we should
21 discuss today?

22 THE CHAIRMAN: I was hoping to do so. I have taken on board the fact that this timetable is
23 agreed between you all. The first available dates, it appears to me, are 18th and 19th April,
24 the day following the provision of the core bundles on your timetable. I wonder, looking at
25 this timetable, whether it would be possible to adjust it by seven days, to accelerate it by
26 seven days, starting with item 2. If you have seven days from the provision of the
27 unredacted report to amend your notice of application and make any application for specific
28 disclosure, would that be possible?

29 MR. LINDSAY: Sir, taking it in order, can I first check that 18th and 19th April work for
30 everybody?

31 THE CHAIRMAN: Yes.

32 MR. LINDSAY: Sir, from our part the 18th and 19th is fine, having consulted diaries.

33 MR. WILLIAMS: I think that is the position for us as well, Sir.

1 The other thought that ran through my mind as you raised that proposal was that at the
2 moment we do have a full week to prepare the core trial bundles after the preparation of the
3 skeleton arguments. Another way around this timetable would be to bring that forward to
4 before the preparation of skeleton arguments. Obviously then the skeleton arguments
5 themselves would not be in the core bundles, but it would have the advantage that the
6 skeleton arguments could be referenced to the core bundles.

7 THE CHAIRMAN: Yes, that is another possibility. I have not asked Mr Siragusa yet, but before
8 you all tie yourselves to 18th and 19th April, that is the earliest date. The fallback date
9 would be 2nd or 3rd May. I am assuming that everybody wants it heard at the earliest
10 moment, and that is why I went for 18th and 19th April. Bear in mind there is a fallback of
11 2nd and 3rd May, if you have difficulties with this timetable.

12 MR. LINDSAY: Sir, we would certainly prefer the earlier dates, subject to Mr Siragusa's
13 availability.

14 THE CHAIRMAN: Mr Siragusa?

15 MR. SIRAGUSA: We are available on 18th and 19th April, yes, Sir.

16 THE CHAIRMAN: Very well.

17 MR. LINDSAY: Sir, in terms of tweaking the timetable in order to fit with that, we would
18 endorse Mr Williams' proposal of bringing forward the preparation of the core trial bundles,
19 rather than bringing forward ----

20 THE CHAIRMAN: Yes, because that is administrative.

21 MR. LINDSAY: We could bring that forward a week, so that it is 10th April. It would not
22 contain any supplementary skeleton by Metlac, but that is a single document that can
23 readily be added.

24 THE CHAIRMAN: I am perfectly content to adopt that timetable, if it works for all of you. Shall
25 we draw up an order which follows that timetable with the one amendment to stage 8.
26 The case, as I understand it, is about the insufficiency of evidence rather than about the
27 failure to consider evidence that was before the Commission - is that right?

28 MR. LINDSAY: That is correct, insufficiency of evidence, failure to enquire.

29 THE CHAIRMAN: If there is to be any slant in the argument that evidence that was tendered
30 was not sufficiently considered in some way, it would be useful if we had a little anthology
31 of that evidence, rather than having to go back to the source documents all the time. I am
32 not going to make an order relating to that at all, I am simply mentioning that I would find
33 that helpful in getting through the hearing, if the argument goes that way. The way the

1 argument is put in the notice of application, as I understand it, the argument does not have
2 that slant.

3 MR. LINDSAY: So I understand. We are potentially amending our notice of application, and we
4 will do so with that very much in mind.

5 THE CHAIRMAN: Mr Williams, have you got anything to add to what I have heard?

6 MR. WILLIAMS: I do not think so, Sir, no.

7 THE CHAIRMAN: Any issue that ought to be flushed out?

8 MR. WILLIAMS: The only question that came from behind me was what you meant, Sir, when
9 you mentioned an anthology, whether you meant the material itself?

10 THE CHAIRMAN: Yes, I meant the material itself, but abstracted from the various sources so
11 that we do not need to go back to the source documents. We will all know then what the
12 confines of that evidence are and it is in a convenient place. I would not want to put a
13 burden on anybody, but it is just quite convenient to have that.
14 Mr Siragusa, anything from you?

15 MR. SIRAGUSA: Only, Sir, if we can have the same access to the confidentiality documents as
16 Akzo, and the same access to the confidentiality ring, on the same basis of course.

17 THE CHAIRMAN: Is that a matter which is in issue?

18 MR. LINDSAY: It is not in issue on our side, Sir.

19 THE CHAIRMAN: That is not in issue, Mr Siragusa, so the order will be drawn so that you and a
20 nominated member of your team are some of the relevant advisers who can see the material.

21 MR. SIRAGUSA: Thank you very much.

22 THE CHAIRMAN: You will have to consider the terms of the undertaking.
23 Is there anything else?

24 MR. LINDSAY: No, Sir.

25 THE CHAIRMAN: It has been good to meet you all, and thank you for agreeing so much to
26 enable this to proceed to speedy hearing.

27 _____