



IN THE COMPETITION
APPEAL TRIBUNAL

Case: 1241/5/7/15 (T)

B E T W E E N:

SAINSBURY'S SUPERMARKETS LTD

Claimant

-v-

(1) MASTERCARD INCORPORATED
(2) MASTERCARD INTERNATIONAL INCORPORATED
(3) MASTERCARD EUROPE S.P.R.L

Defendants

ORDER

HAVING REGARD TO the High Court Consent Order dated 8 September 2014 establishing a confidentiality ring for the disclosure of the Defendants' documents to named individuals (the "Defendants' Confidentiality Ring"); and the High Court Consent Order dated 22 December 2014 establishing a confidentiality ring for the disclosure of the Claimant's documents to named individuals (the "Claimant's Confidentiality Ring"), which Orders, pursuant to CPR Rule 30.4(2), are not affected by the transfer of these proceedings to the Tribunal

AND HAVING REGARD TO the subsequent agreement of the Parties that (i) the witness statements and expert reports filed on behalf of the Parties in these proceedings be released into the relevant confidentiality ring; and (ii) the Claimant's witnesses be included in the Defendants' Confidentiality Ring on a limited basis for the purpose of reviewing identified extracts of the witness statements and expert reports filed on behalf of the Defendants

AND HAVING REGARD TO paragraphs 1 and 2 of the Order of the Chairman dated 18 December 2015 pursuant to which the Tribunal will accede to the Parties' applications that part of the hearing be in private when the Claimant and/or Defendants' confidential information, as described more fully in those paragraphs, is to be referred to in evidence or submissions

AND HAVING REGARD TO the agreement of the Parties that documents that were part of the EC or OFT antitrust investigation processes (the fourth category of

documents identified in the Defendants' Application dated 10 December 2015) are confidential in the respects already marked up by the Defendants

AND UPON the documents in the core hearing bundle (which consists of Bundles A to E and G to I) having been marked up by the Parties to indicate where they contain the Parties' confidential information (which exercise had not been undertaken at the time the Defendants' Confidentiality Ring and the Claimant's Confidentiality Ring were established)

AND UPON such confidentiality markings being without prejudice to (i) any disputes as to whether confidential treatment should be accorded which may need to be determined by the Tribunal under Rule 101(2) of The Competition Appeal Tribunal Rules 2015 (the "Tribunal Rules"); and (ii) the Parties' right to make further requests for confidential treatment pursuant to Rule 101 of the Tribunal Rules

AND HAVING REGARD TO the written request made on 21 January 2016 by the solicitors acting for WM Morrison Supermarkets plc and Others, the claimants in High Court proceedings against the Defendants (Case Nos. 2012 Folios 669-703 and 1305-1311), to be admitted to those parts of the hearing concerning the Defendants' confidential information

AND UPON the Parties having consented to this request

AND UPON the Tribunal considering that the confidentiality position should be re-stated in order to facilitate the efficient administration of privacy and confidentiality issues at the hearing

AND UPON the Parties having agreed 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:
 - 2.1 "**Confidential Information**" means (in each case in the opinion of the Tribunal):
 - 2.1.1 information the disclosure of which would be contrary to the public interest;
 - 2.1.2 commercial information the disclosure of which would or might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - 2.1.3 information relating to the private affairs of an individual the disclosure of which could significantly harm his/her interests,

being the material contained in the Relevant Documents in respect of which a claim of confidentiality is agreed or has been or will be made to the Tribunal by the Claimant or the Defendants pursuant to Rule 99 and/or Rule 101 of the Tribunal Rules.

- 2.2 **“Relevant Documents”** means all pleadings and other documents submitted, or to be submitted, by the Parties to the present proceedings before the Tribunal.
- 2.3 **“Relevant Persons”** are those persons:
- 2.3.1 who are 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; or
- 2.3.2 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. All confidential versions of the Relevant Documents must be marked so as to indicate the parts in relation to which confidential treatment is claimed.
4. If any Party wishes to add any additional person as a Relevant Person for the purposes of paragraph 2.3 of this Order, they shall apply to the Tribunal (with a copy to the other Parties) indicating whether each of the other Parties consents or does not consent to the addition of that person.
5. If any Party wishes any named person who is not a Relevant Person to review Confidential Information so as to provide instructions to a Relevant Person:
- 5.1 Such Party shall apply to the Tribunal in writing for the Tribunal to determine whether and on what conditions such Confidential Information should be provided to the named person;
- 5.2 In making such an application, the Party requesting disclosure should indicate whether the Party originally disclosing the Confidential Information consents or does not consent to the request;
- 5.3 The Tribunal will thereafter issue a determination by letter indicating whether the named person will be authorised and describing, so far as possible, the Confidential Information to be provided to that person;
- 5.4 Where the Tribunal determines that the named person should be authorised, that person shall be treated as authorised once he or she has given a signed undertaking to the Tribunal in the form prescribed in Part C of the Schedule to this Order.
6. There be liberty to apply.

The Hon. Mr Justice Barling
Chairman of the Competition Appeal Tribunal

Made: 27 January 2016
Drawn: 27 January 2016

SCHEDULE

PART A

This part contains the names of Relevant Persons for the purposes of this Order:

Claimant representatives

Sainsbury's Supermarkets Ltd: Witnesses
Hannah Bernard (<i>admitted to confidentiality ring on a limited basis</i>)
David Brooks (<i>admitted to confidentiality ring on a limited basis</i>)
Michael Coupe (<i>admitted to confidentiality ring on a limited basis</i>)
Terrence John Rogers (<i>admitted to confidentiality ring on a limited basis</i>)
Sainsbury's Supermarkets Ltd: In-House Counsel
Edward Anderson
Katherine Botting
Timothy Fallowfield
Judith Flory
Nicolas Grant
Gemma Skipper
External Counsel
Mark Brealey QC, Brick Court Chambers
Derek Spitz, One Essex Court
Sarah Love, Brick Court Chambers
External solicitors (MdR)
Stephen Allen
Jonothan Broadbent
Gwen Ballin-Reeler
Isabel Gilbert
Charlotte Gore
Bethany Histed
Sarah Houghton

Anna Kaznowska
Samantha Key
Richard Legge
Robert Murray
Zachery O'Brien
Eleanor Powell
Christina Quinn
Mark Conaty
Agnieszka Kaminiska
Ewa Mendys-Kamphorst
Paul Muysert
Salman Nissan
Alizé Perrot
Paul Rathbone
Paul Reynolds
Alison Sprague
Loes van Bohemen
Barbara Veronese
Anne Marie Vieillard
Nils von Hinten Reed

Defendants' representatives

James Masterson
Christoph Baert
Scott McInnes

External Counsel
Matthew Cook, One Essex Court
Mark Hoskins QC, Brick Court
Hugo Leith, Brick Court
Nick Cotter
Elizabeth Smith
Louise Finch
James Lightly-Hunt
Rachel Morris
Nikesh Pandit
James Freeland
Sarah Al-Subaey
Clare Barnard
Muireann Dennehy
Elizabeth Shimmin
Annabel Treadgold
Bernard Amory
Sebastien Champagne
Werner Derijcke
Dr Gunnar Niels, Oxera
Dr Alexander Gaigl, Oxera
Ilaria Fanton, Oxera
Amy Brancalion, Oxera
Grace Imafidon, Oxera
Shreya Gupta, Oxera

James May, Oxera
Agnes Dufour, Oxera
Adam Giles, Oxera
Lewis Gudgeon, Oxera
Greg Harman, FTI
Tim Warren, FTI
Joel Franks, FTI
Andrew White, FTI
Rachel Scarfe, FTI
Vivian Lee, FTI
Dominic Mitchell, FTI
Margaux Jarry, FTI
Thomas Lee, FTI
Josephine Chu, FTI
Wolf Chan
Sheryl Calimquim

Non-Party representatives

External lawyers to the Claimants in HC-2012 Folios 669-703 and 1305-1311 permitted to attend those parts of the hearing concerning the Defendants' confidential information

Jonathan Sinclair, Stewarts Law LLP
(admitted to confidentiality ring on a limited basis)

Kate Pollock, Stewarts Law LLP
(admitted to confidentiality ring on a limited basis)

Matthew Fidler, Stewarts Law LLP
(admitted to confidentiality ring on a limited basis)

PART B

In respect of any Confidential Information disclosed to them each Relevant Person referred to in paragraph 2.3 of the Tribunal's Order of January 2016 undertakes that they will comply with the following requirements in the following terms:

I, [name], of [firm, company or establishment] 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) or who is not a person authorised to receive Confidential Information by the Tribunal pursuant to paragraph 5 of the Tribunal's Order (who has signed an undertaking in the terms of Part C of the Tribunal's Order) without the express written consent of the person which originally disclosed the Confidential Information ("the Disclosing Person") or the permission of the Tribunal.
3. I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever without the express consent of the Disclosing Person.
4. The Relevant Documents (as defined in the Tribunal's Order) containing the Confidential Information will remain in my custody or the custody of another Relevant Person at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. The production of further copies by me of the Relevant Documents containing the Confidential Information shall be limited to those required for the use of the Relevant Persons for the purposes of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.
6. Save where the written consent of the Disclosing Person has been obtained, any and all copies of the Relevant Documents in paper form containing the Confidential Information will either be returned to that Disclosing Person at the conclusion of the present proceedings, or be destroyed at the conclusion of the present proceedings (the Disclosing Person may decide whether the Relevant Documents are to be destroyed or returned to him or her); any copies of the Relevant Documents containing the Confidential Information in electronic form will be deleted or, where that is not possible, will be rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily 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. Save that none of the requirements listed at paragraphs 2 to 5 above shall prevent Relevant Persons from disclosing Confidential Information to persons who have already legitimately seen it.

Signed:

Name:

Date:

PART C

In respect of any Confidential Information disclosed to them pursuant to paragraph 5 of the Tribunal's Order of ... January 2016 (“the Tribunal’s Order”) each person authorised by the Tribunal pursuant to that paragraph undertakes that they will comply with the following requirements in the following terms:

I, [name], of [firm, company or establishment] 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 unless they are a Relevant Person (as defined in the Tribunal’s Order) or a person authorised to receive Confidential Information by the Tribunal pursuant to paragraph 5 of the Tribunal’s Order (who has signed an undertaking in the terms of Part C of the Tribunal’s Order) without the express consent of the person originally disclosing the Confidential Information (“the Disclosing Person”) or the permission of the Tribunal.
3. I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever without the express consent of the Disclosing Person or the permission of the Tribunal.
4. The Relevant Documents (as defined in the Tribunal’s Order) containing the Confidential Information will remain in my custody at all times and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
5. I will not produce any further copies of the Relevant Documents containing the Confidential Information.
6. Save where the written consent of the Disclosing Person has been obtained, any and all copies of the Relevant Documents in paper form containing the Confidential Information will either be returned to the Relevant Person who provided the Relevant Documents to me at the conclusion of the present proceedings, or be destroyed at the conclusion of the present proceedings (the Relevant Person providing the Relevant Documents may decide whether the Relevant Documents are to be destroyed or returned to him or her); any copies of the Relevant Documents containing the Confidential Information in electronic form will be deleted or, where that is not possible, will be rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily 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. Save that none of the requirements listed at paragraphs 2 to 5 above shall prevent me from disclosing Confidential Information to Relevant Persons.

Signed:

Name:

Date: