



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case: 1059/4/1/06

BETWEEN:

CELESIO AG

Applicant

-v-

OFFICE OF FAIR TRADING

Respondent

Supported by

BOOTS PLC AND UNICHEM PLC

Interveners

ORDER

IT IS ORDERED BY CONSENT THAT:

1. The Applicant and the Interveners shall enter into and comply with a mutual confidentiality undertaking in the form attached.
2. There be liberty to apply.

Marion Simmons QC
Chairman of the Competition Appeal Tribunal

Made: 3 April 2006
Drawn: 3 April 2006

CELESIO V OFFICE OF FAIR TRADING – CASE 1059/4/1/06

CONFIDENTIALITY TERMS

In connection with the proceedings, Celesio v Office of Fair Trading, Case 1059/4/1/06 (the “**Proceedings**”), each of Boots Group PLC, Alliance UniChem Plc and Celesio AG (together, “**the Providers**”) may make certain confidential information available to some or all of the persons listed in paragraph 9 below (the “**Permitted Persons**”) on the terms and conditions set out below in this document (the “**Confidentiality Terms**”). The Competition Appeal Tribunal shall be referred to as the “**CAT**” for the purposes of these Confidentiality Terms.

1. Any confidential information provided by a Provider to any Permitted Person for the purposes of the Proceedings (referred to as “**Confidential Information**”) must be marked or identified by the disclosing party with the words “CONFIDENTIAL NOT TO BE COPIED – CATEGORY [A/B]”. Where a document contains both Confidential Information which is marked or identified as “CATEGORY A” (“**Category A Confidential Information**”) and Confidential Information which is marked or identified as “CATEGORY B” (“**Category B Confidential Information**”), the Provider shall provide two copies of that document, one complete copy marked or identified “Category A” (which shall contain all the non-confidential and confidential information and shall be “Category A Confidential Information” in this document) and one marked or identified “Category B” (which shall contain only the Category B Confidential Information and the non-confidential information). Each document so disclosed containing Confidential Information may be separately numbered. For the avoidance of doubt, any information, which is permitted to be prepared in accordance with paragraphs 3(A) and 5(A) of the terms of this letter and which directly or indirectly contains, reflects or derives from any such Confidential Information shall be treated as “**Confidential Information**” for the purposes of these Confidentiality Terms.

2. Category A Confidential Information shall only be disclosed to the persons specified in paragraph 9(A) below (the “**Category A Permitted Persons**”) and only on the basis that:
 - (A) any such Category A Confidential Information will be treated by each Category A Permitted Person as secret and confidential and will be used by each such person solely for the purpose of the proper conduct of the Proceedings (the “**Purpose**”); and
 - (B) no such Category A Permitted Person will, save as expressly contemplated by paragraph 3, disclose, copy, reproduce or distribute any Category A Confidential Information.

3. Nothing in paragraph 2 shall however prohibit any Category A Permitted Person from:
- (A) making notes or copies of, or concerning, or preparing reports, submissions or other documents containing or reflecting the Category A Confidential Information provided by any Provider or the OFT (and, for the avoidance of any doubt, all information in such notes, copies, reports, submissions or other documents which directly or indirectly contains, reflects or derives from any such Category A Confidential Information shall be treated as “Category A Confidential Information” for the purposes of these Confidentiality Terms); or
 - (B) disclosing any Category A Confidential Information contemplated by paragraph 3(A) above to any other Category A Permitted Person,

PROVIDED, in each case, that such actions are effected solely for the Purpose and PROVIDED FURTHER that no such Confidential Information shall be directly or indirectly referred to, or disclosed, in the conduct of the Proceedings.

4. Category B Confidential Information shall only be disclosed to the persons specified in paragraphs 9(A) and 9(B) below (the “ **Category B Permitted Persons**”) and only on the basis that:
- (A) such Category B Confidential Information will be treated by each such Category B Permitted Person as secret and confidential and will be used by each such person solely for the Purpose; and
 - (B) no such Category B Permitted Person will, save as expressly contemplated by paragraph 5, disclose, copy, reproduce or distribute any Category B Confidential Information.
5. Nothing in paragraph 4 shall however prohibit any Category B Permitted Person from:
- (A) making notes or copies of, or concerning, or preparing reports, submissions or other documents containing or reflecting the Category B Confidential Information provided by any Provider (and, for the avoidance of any doubt, all information in such notes, copies, reports, submissions or other documents which directly or indirectly contains, reflects or derives from any such Category B Confidential Information shall be treated as “Category B Confidential Information” for the purposes of these Confidentiality Terms); or
 - (B) disclosing any Category B Confidential Information contemplated by paragraph 5(A) above to any other Category B Permitted Person,

PROVIDED, in each case, that such actions are effected solely for the Purpose PROVIDED FURTHER that no such Confidential Information shall be directly or indirectly referred to, or disclosed, in the conduct of the Proceedings.

6. Notwithstanding any other provision of this document and except with the written consent of the Provider of the Confidential Information:
 - (A) no Category A Permitted Person to whom any Category A Confidential Information has been disclosed in accordance with the terms of this document shall be permitted to directly or indirectly disclose such Category A Confidential Information to his or her client or to any member of his or her client's group or its or their employees and officers or to a Category B Permitted Person; and
 - (B) no Category B Permitted Person to whom any Category B Confidential Information has been disclosed in accordance with the terms of this document shall be permitted to directly or indirectly disclose such Category B Confidential Information to his or her client or to any member of his or her client's group or its or their employees and officers.
7. Each of the Providers expressly acknowledges that no Permitted Person will, or may be required, to disclose to it any of the information constituting "Confidential Information" for the purposes of these Confidentiality Terms notwithstanding, in the case of the Category A Permitted Persons, any duties as legal advisers under any law or applicable rules or regulations or, in respect of any Permitted Person, any conflicting contractual obligation.
8. At the conclusion of the Proceedings, all information constituting Confidential Information for the purposes of these Confidentiality Terms shall, unless the CAT or a court of competent jurisdiction orders otherwise, be destroyed by each such Permitted Person or expunged from any computer, word processor, recording equipment or other device belonging to or controlled by such Permitted Person and no step will be taken by any Permitted Person to access or recover such Confidential Information thereafter.
9. Subject to the provisions of paragraph 10 below, the following are "Permitted Persons" for the purpose hereof:
 - (A) The following individuals:

Allen & Overy LLP

Mark Friend
Antonio Bavasso
Kirsty McCarrol
Richard Burnley
Shaukat Ali
Andrew Denny
Peter Watson
Stephen Matthews

Subject to the prior written consent of the other Providers (such consent not to be unreasonably withheld or delayed), any other employee or partner of Allen & Overy LLP nominated by Alliance UniChem Plc

Slaughter and May

Claire Jeffs
Philippe Chappatte
Peter Rowland
Paul Walter
Anthony Newhouse
Elizabeth Barrett
Andrew Salisbury
Alexander Biles

Subject to the prior written consent of the other Providers (such consent not to be unreasonably withheld or delayed), any other employee or partner of Slaughter and May nominated by Boots Group PLC

Linklaters

Paula Riedel
Bruce Kilpatrick
Rachel Hetherington
Meredith Brooks
Emily Cox
Louise Clifford
Georgina Varley
Matthew Middleditch

Subject to the prior written consent of the other Providers (such consent not to be unreasonably withheld or delayed), any other employee or partner of Linklaters nominated by Celesio A.G

Counsel

Mark Hoskins
Kelyn Bacon
Nicholas Green QC
Maya Lester

(B) The following individuals:

LECG Limited

Jorge Padilla
Justin Coombs
Matthew Bennett
Timothy Warren

Charles River Associates International Inc

Alan Overd
Ian Small

RBB Economics LLP

Simon Baker
Lisa Affuso
Richard Murgatroyd

10. Notwithstanding any other provision of these Confidentiality Terms, no person referred to in paragraph 9 above shall constitute a "Permitted Person" (or, for the avoidance of doubt, a "Category A Permitted Person" or a "Category B Permitted Persons") for the purposes of these Confidentiality Terms or, for the avoidance of doubt, be entitled to receive any Confidential Information (from any Provider or the OFT), unless and until he or she has signed an undertaking as to confidentiality in the form attached and submitted signed copies of the undertaking to the relevant Provider.
11. The Providers acknowledge that, in connection with the Proceedings, the Office of Fair Trading ("OFT") may also make certain information relating, directly or indirectly, to a

Provider and/or any member of its group available to the Providers (or any of them) and/or the Permitted Persons (or any of them) in connection with the Proceedings. Each of the Providers undertakes to ensure that any information so disclosed to it and/or any member of its group or to any Permitted Person engaged by that Provider by the OFT will, save with the written consent of the Provider or Providers to whom such information relates:

- (A) be treated as Category A Confidential Information for the purposes of these Confidentiality Terms; and
 - (B) only be disclosed to, and used by, Category A Permitted Persons in accordance with the terms of these Confidentiality Terms.
12. To the extent that any Confidential Information is covered or protected by legal advice, litigation, common interest or other applicable privilege or doctrine, disclosures of such Confidential Information to a Permitted Person does not constitute a waiver of any such privilege.
 13. These Confidentiality Terms shall remain in full force and effect notwithstanding conclusion of the Proceedings and regardless of whether any Confidential Information is read, or referred to, before the CAT.
 14. These Confidentiality Terms may be executed in one or more counterparts.
 15. These Confidentiality Terms and, for the avoidance of doubt, each undertaking to comply with them, shall be governed by and construed in accordance with English law.
 16. Subject as provided below, the English courts have exclusive jurisdiction to settle any disputes arising out of or in connection with those Confidential Terms and each undertaking to comply with them and, the parties to these Confidentiality Terms and each such undertaking submit to the exclusive jurisdiction of the English courts for this purpose. Nothing in this paragraph shall limit the rights of any Provider to bring proceedings against any Permitted Person in any other court of competent jurisdiction.
 17. Celesio AG irrevocably appoints Linklaters of One Silk Street, London EC2Y 8UQ as its agent for service of process relating to any proceedings before the English courts in connection with these Confidentiality Terms.

Each party confirms its acceptance of the terms of this letter by signing and providing to the other party an executed copy of this letter.

.....
for and on behalf of Boots Group PLC
Date:

.....
for and on behalf of Alliance UniChem Plc
Date:

.....
for and on behalf of Celesio AG
Date:

CONFIDENTIALITY UNDERTAKING

CELESIO V OFFICE OF FAIR TRADING – CASE 1059/4/1/06

Terms used but not defined in this document shall have the meaning given in the Confidential Terms in relation to the above proceedings attached to, or accompanying, this document (the “**Confidentiality Terms**”).

I, [FULL NAME] confirm that I have read and understood the provisions of Confidentiality Terms and hereby undertake to each Provider who makes, or has made, Confidential Information available to me and each Provider (or member of its group) about whom Confidential Information has been made available to me by the OFT in consideration of my being allowed to act as a Permitted Person on behalf of [PARTY] in accordance with the provisions of the Confidentiality Terms that:

- (A) I will treat all Confidential Information made available to me by the relevant Provider or made available to me by the OFT and relating to the relevant Provider (or member of its group) as secret and confidential and will use any such Confidential Information only for the Purpose;
- (B) except as expressly contemplated by paragraphs 3 and 5 of the Confidentiality Terms, I will not use, disclose, copy, reproduce or distribute any such Confidential Information, or authorise, or enable or assist any person to do so;
- (C) I will take such steps as may be necessary or expedient on my part to comply with paragraph 8 of the Confidentiality Terms; and
- (D) I will otherwise comply with the Confidentiality Terms or, as the case may be, take all steps within my power to ensure that Confidentiality Terms are complied with (including by not disclosing such Confidential Information to [PARTY] or to assist or enable any person to do so).

PROVIDED ALWAYS that nothing in this document shall prevent or prohibit me from taking any action which has been authorised in writing by the Provider of the Confidential Information or which I am directed or ordered to take by the CAT or a court of competent jurisdiction.

Signed

Dated