



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

ORDER (Re-issued)

UPON considering the Tribunal's Order establishing a confidentiality ring in these proceedings on 18 April 2012 ("the April 2012 Order")

AND UPON the Tribunal having written to the various parties (via the Office of Fair Trading) on 27 April 2012;

AND UPON reading the submissions, dated 1 May 2012, made by the legal representatives of: (1) Arla Foods Limited and Arla Foods UK Holdings Limited ("**Arla**") ("**Arla's Submissions**"); (2) Lactalis McLelland Limited ("**McLelland**") ("**McLelland's Submissions**"); (3) Glanbia Investments (UK) Ltd and Waterford Foods ("**Glanbia**") ("**Glanbia's Submissions**"); (4) Asda Stores Limited, Asda Group Limited, Wal-Mart Stores (UK) Limited and Broadstreet Great Wilson Europe Limited ("**Asda**") ("**Asda's Submissions**"); and (5) Dairy Crest Ltd and Dairy Crest Group plc ("**Dairy Crest**") ("**Dairy Crest's Submissions**") (together, "**Third Party Submissions**")

AND UPON hearing submissions on 2 May 2012 from counsel for: (i) the OFT; (ii) Tesco; (iii) Dairy Crest; and (iv) McLelland;

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 the Third Party Submissions.
 - (c) **“Relevant Documents”** means:
 - (1) In the case of Asda:
 - (i) Annex 2: Results of Asda Internal Enquires into Dairy Product Activities After Receipt of the OFT SSO (SSO Document 14) (from Tab Q5);
 - (ii) Transcript of OFT Interview with Peter Pritchard, formerly of Asda, on 20 June 2009 (SSO Document 15) (from Tab E3);
 - (iii) Internal Asda email from Rachel Fellows to Harvey Bennett regarding cheese price increases (SO Document 176) (from Tab 37);
 - (iv) Internal Asda emails from Jonathan Betts to Peter Pritchard and from Emma Watson to Peter Pritchard regarding cheese pricing update (SO Document 279) (from Tab 125)
 - (2) In the case of Arla:
 - (i) Email F Robinson to S Stevens and P Wilkinson dated 14 November 2002 regarding Dairy Crest telecom (from Tab 85A);
 - (ii) Letter from Lydia Smith to J Sainsbury dated 22 October 2002 (Annex 2 SO Document 106d page 142) (from Tab Q1);

(iii) OFT Transcript of interview with Frank Robinson dated 7 June 2005 (Annex 2 Document 218 pages 1 to 10 and 29).

(3) in the case of Dairy Crest:

(i) Letter from Roger Newton (Dairy Crest) to S Aspinall of the OFT dated 9 March 2005 (Annex 2 SO Document 147) (from Tab 128A);

(ii) Note of Discussions with Bill Haywood on 27 September 2007 (SSO Document 24) (from Tab C3);

(iii) Note of discussion with Arthur Reeves on 27 September 2007 (SSO Document 28) (from Tab C5);

(iv) Note of Discussion with Mike Sheldon on 27 September 2007 (SSO Document 30) (from Tab X11);

(v) Note of Discussion with Mark Taylor on 27 September 2007 (SSO Document 32) (from Tab X12);

(vi) Note of Discussions with David Flower on 26 October 2007 (SSO Document 27) (from Tab C4);

(vii) Note of Discussions with Mark Taylor on 30 October 2007 (SSO Document 33) (from Tab X13);

(viii) Letter from Eversheds to the OFT dated 14 February 2008 listing Dairy Crest's submissions on factual inaccuracies (SSO Document 34) (from Tab X6).

(4) in the case of Glanbia:

(i) Notes of OFT's interview of Kevin Toland 6 September 2005 (SSO Document 41) (from Tab X8);

(ii) Notes of OFT's interview of John Kiely 19 October 2005 (SSO Document 42) (from Tab X9);

- (iii) Notes of OFT's interview of Collin Stump 25 October 2005 (SSO Document 40) (from Tab X10)
 - (iv) Letter from Glanbia to the OFT dated 25 September 2009;
 - (v) Letter from the OFT to Glanbia dated 3 March 2010;
 - (vi) Letter from Glanbia to the OFT dated 12 March 2010.
 - (5) In the case of McLelland:
 - (i) Internal McLelland document entitled 'Price Move Update' undated (Annex 2 SO Document 226e pp.306-307) (from Tab 51A)
- (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. There be liberty to apply.

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

Made: 3 May 2012
Drawn: 3 May 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)

Deirdre Trapp (Partner)

Dan Burton (Senior associate)

Mary Wilks (Associate)

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

Office of Fair Trading

External counsel

Stephen Morris QC

Josephine Davies

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

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

PART B

In respect of any Confidential Information disclosed to them pursuant to the Tribunal's Order of [date] 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: