



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 (Amended Confidentiality Ring)

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

AND UPON considering the Tribunal's two further Orders in relation to confidentiality of 3 May 2012;

AND UPON reading various correspondence between the parties' legal representatives and the legal representatives of, respectively, Lactalis McLelland Limited and Arla Foods Limited and Arla Foods UK Holdings Limited;

AND UPON hearing counsel for the parties at the hearing on 14 May 2012;

AND UPON reading the letter from the OFT to the Tribunal dated 15 May 2012;

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. For the purposes of this Order:
 - a. 'Confidentiality Ring Orders' means the Confidentiality Ring Order, together with the Further Confidentiality Ring Order;
 - b. 'Confidentiality Ring Order' means the Tribunal's Order of 18 April 2012 establishing a confidentiality ring in these proceedings;

- c. 'Further Confidentiality Ring Order' means the Tribunal's Re-issued Order of 3 May 2012 establishing a further confidentiality ring in these proceedings;
 - d. 'Red-boxed' refers to information which is identified in a red-coloured box on certain documents contained in the hearing bundles, which is subject to the terms of the Confidentiality Ring Orders.
 - e. The terms defined in the Confidentiality Ring Orders apply equally to this Order.
2. The Confidentiality Ring Order be varied by the deletion of paragraph 2(c) and the substitution of the following text:

“(c) “Relevant Documents” means:

(1) in the case of McLelland

- (i) Document at page 302 of document 226d of Annex 2 to the SO (Tab 97);
- (ii) Document at page 360 of document 226d of Annex 2 to the SO (Tab 120);
- (iii) Document at page 48 of document 226c of Annex 2 to the SO (being the attachment to the document at page 46 of document 226c of Annex 2 to the SO (Tab 85).”

3. The Further Confidentiality Ring Order be varied by the deletion of paragraph 2(c) and the substitution of the following text:

“(c) “Relevant Documents” means:

(1) in the case of Asda:

- (i) Annex 2: Results of Asda Internal Enquires (SSO Document 14) (from Tab Q5)
- (ii) Transcript of OFT Interview on 20 June 2009 (SSO Document 15) (from Tab E3)
- (iii) Internal Asda email (SO Document 176) (from Tab 37)
- (iv) Internal Asda emails (SO Document 279) (from Tab 125)

(2) in the case of Dairy Crest:

- (i) Letter dated 9 March 2005 (Annex 2 SO Document 147) (from Tab 128A)
- (ii) Note of Discussions on 27 September 2007 (SSO Document 24) (from Tab C3)

- (iii) Note of discussion on 27 September 2007 (SSO Document 28) (from Tab C5)
 - (iv) Note of Discussion on 27 September 2007 (SSO Document 30) (from Tab X11)
 - (v) Note of Discussion on 27 September 2007 (SSO Document 32) (from Tab X12)
 - (vi) Note of Discussions on 26 October 2007 (SSO Document 27) (from Tab C4)
 - (vii) Note of Discussions on 30 October 2007 (SSO Document 33) (from Tab X13)
 - (viii) Letter from Eversheds to the OFT dated 14 February 2008 (SSO Document 34) (from Tab X6)
- (3) in the case of Glanbia:
 - (i) Notes of OFT's interview on 6 September 2005 (SSO Document 41) (from Tab X8)
 - (ii) Notes of OFT's interview on 19 October 2005 (SSO Document 42) (from Tab X9)
 - (iii) Notes of OFT's interview on 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."
- 4. The Confidentiality Ring Orders be varied to the extent that, following an undertaking being given by Messrs. Alan Porter and Gaucho Rasmussen in terms satisfactory to the legal representatives for Arla, the following red-boxed information also be disclosed to Messrs. Porter and Rasmussen:
 - (a) Email dated 14 November 2002 at Tab 85A;
 - (b) Document at 35A of Annex 2 to the SO (also referred to as Document 100A);
 - (c) Document at Annex 2 SO Document 106d page 142 (from Tab Q1);
 - (d) Pages 1 to 10 and 29 of the document 218 at Annex 2.
- 5. The red-boxed information contained in the document at Tab 85A of the hearing bundle may be put to witnesses in these proceedings provided that that information is not read out

in open court and that, subject to paragraph 4 above, any hard copies remain subject to the Confidentiality Ring Order.

6. Costs be reserved.
7. Liberty to apply.

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

Made: 17 May 2012
Drawn: 17 May 2012