



**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 (Confidential Treatment of Documents)

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 HAVING REGARD TO the Tribunal's oral ruling of 14 May 2012;

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

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. 'Blue-boxed' refers to information which is identified in a blue-coloured box on certain documents contained in the hearing bundles, which may be disclosed to the Appellants and its witnesses for the purpose of these

proceedings only, but which may not be read out in open court nor recorded in the published transcript of the hearing;

- b. 'Confidentiality Orders' means the Confidentiality Ring Order, together with the Further Confidentiality Ring Order and the Reasoned Order;
 - c. 'Confidentiality Ring Order' means the Tribunal's Order of 18 April 2012 establishing a confidentiality ring in these proceedings;
 - d. 'Further Confidentiality Ring Order' means the Tribunal's Re-issued Order of 3 May 2012 establishing a further confidentiality ring in these proceedings;
 - e. 'Reasoned Order' means the Tribunal's Reasoned Order of 3 May 2012 amending the Further Confidentiality Ring Order;
 - f. '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 Orders; and
 - g. The terms defined in the Confidentiality Orders apply equally to this Order.
2. To the extent that any document listed in this Order also appears in one or more of the Confidentiality Orders, it shall be treated in accordance with the provisions of this Order only.
3. Previously red-boxed information which now appears as blue-boxed information contained in the documents set out in paragraph 4 below, shall be treated in accordance with the provisions applicable to blue-boxed information, subject to the additional restrictions that the Appellants shall:
- a. not use the information, or permit the information to be used, other than for the purposes of this appeal;
 - b. not disclose or allow access to the information by or to third parties;
 - c. not disclose or allow access to the information to or by the Appellants' employees other than as strictly necessary for the purpose of this appeal, save

that the information shall not be made available to the Appellants' sales personnel other than Mr John Scouler;

- d. destroy all copies of the information once this appeal (and any further appeal) is determined, save that copies may be kept by the Appellants' legal representatives with suitable confidentiality measures in place.
4. The documents to which paragraph 3 of this Order refers are:
- a. The attachment to letter from McLelland to Sainsbury's dated 1 October 2002 (Tab 34) (referred to in the Reasoned Order at paragraph 1.a.);
 - b. The attachment to the email from McLelland to Asda dated 23 October 2002 (Tab 57) (referred to in the Reasoned Order at paragraph 1.b.)
 - c. Document 188 of Annex 1 to the Statement of Objections ('SO') (Tab 70) (referred to in the Confidentiality Ring Order in paragraph 2.(c).(1)(i));
 - d. The document at page 320 of document 148a of Annex 2 to the SO (Tab 76) (referred to in the Confidentiality Ring Order at paragraph 2.(c).(1)(iii));
 - e. The document at page 46 of document 226c of Annex 2 to the SO (Tab 85) (referred to in the Confidentiality Ring Order at paragraph 2.(c).(1)(ii));
 - f. Those parts of the document at page 48 of document 226c of Annex 2 to the SO (Tab 85) which until the date of this Order were wholly redacted;
 - g. The attachment to the email from McLelland to Sainsbury's dated 25 September 2003 (Tab 107) (referred to in the Reasoned Order at paragraph 1.c.);
 - h. The document at page 360 of document 226d of Annex 2 to the SO (Tab 120) (referred to in the Confidentiality Ring Order at paragraph 2.(c).(1)(vii));
 - i. The document at page 364 of document 226d of Annex 2 to the SO (Tab 122) (referred to in the Confidentiality Ring Order at paragraph 2.(c).(1)(viii)); and

- j. Paragraph 17 of McLelland's written representations, dated 20 March 2008, in respect of alleged factual inaccuracies contained in the Supplementary Statement of Objections (from Tab W) (referred to in the Reasoned Order at paragraph 1.d.).
5. In accordance with the Tribunal's oral ruling of 14 May 2012, previously red-boxed information contained in the documents set out in paragraph 6 below, shall appear as and be blue-boxed information.
6. The documents to which paragraph 5 of this Order refers are:
 - a. Internal McLelland document entitled 'Price Move Update' undated (Annex 2 SO Document 226e pp.306-307) (Tab 51A) (referred to in the Further Confidentiality Ring Order);
 - b. Document 264 of Annex 1 to the SO (Tab 103) (referred to in the Confidentiality Ring Order at paragraph 2.(c)(1)(v)); and
 - c. Document 272 of Annex 1 to the SO (Tab 112) (referred to in the Confidentiality Ring Order at paragraph 2.(c)(1)(vi)).
7. Costs be reserved.
8. Liberty to apply.

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

Made: 17 May 2012
Drawn: 17 May 2012