

Competition Tribunal



Tribunal de la Concurrence

CT-1989-002 – Doc # 34

IN THE MATTER OF an application by the Director of Investigation  
and Research under sections 79 and 77 of the *Competition Act*,  
R.S.C., 1985, c. C-34, as amended;

AND IN THE MATTER OF The NutraSweet Company.

BETWEEN:

The Director of Investigation and Research

Applicant

and

The NutraSweet Company

Respondent



**ORDER REGARDING CONFIDENTIALITY**

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**Date of Pre-hearing Conference:**

August 18, 1989

**Presiding Member:**

The Honourable Madame Justice Barbara J. Reed

**Counsel for the Applicant:**

**Director of Investigation and Research**

Warren Grover, Q.C.  
Brian W. Chambers

**Counsel for the Respondent:**

**The NutraSweet Company**

Bruce C. McDonald, Q.C.  
James B. Musgrove

**COMPEITION TRIBUNAL**  
**ORDER REGARDING CONFIDENTIALITY**

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*The Director of Investigation and Research*

v.

*The NutraSweet Company*

UPON CONSIDERING the representations regarding the confidentiality of documents and information in this proceeding made, by counsel for the applicant and for the respondent ("the parties"), at the session of the pre-hearing conference held on August 18, 1989;

AND UPON CONSENT of the parties to an order regarding confidentiality in respect of documents produced or filed and evidence given in discovery;

AND UPON CONSIDERING the draft order submitted by the parties;

THE TRIBUNAL ORDERS THAT:

1. Each party shall make available to counsel for the other party a copy of the documents and portions of documents in respect of which confidentiality is claimed ("confidential documents").
  
2. Any document for which confidentiality in whole or in part is claimed shall be marked, on the cover or first page thereof and on each page that contains confidential information, with the words "SUBJECT TO PROTECTIVE ORDER".
  
3. Counsel for each of the parties, those members of their immediate staff whose assistance is considered necessary for proper preparation and representation and the staff of the Bureau of Competition Policy shall be entitled to examine all confidential

documents. No copies of such documents shall be made without the consent of the applicant or the respondent, as the case may be, except to the extent that such are necessary for the purpose of preparing confidential evidence and argument for the hearing of this application. The counsel requesting a copy or copies of such documents shall be the judge of what he or she considers necessary for the preparation of the case. But in any case no more than three copies shall be made for the Bureau of Competition Policy.

4. Statements, information and documents provided on examination for discovery as well as the transcript thereof shall be treated as confidential, in accordance with terms set out in paragraphs 2 and 3, for 14 days after receipt of the transcript by counsel for the party being examined or for such longer period of time as may be agreed to by the parties and communicated to the Tribunal. Within 14 days of receiving a transcript of any examination for discovery, or within such longer period as may be agreed by the parties, the party examined shall notify counsel for the other party and the Tribunal, in the form of an appropriately marked or edited version of the transcript, of those portions of the transcript or exhibits with respect to which it claims confidentiality, following which time all other portions of the transcript or exhibits shall cease to be protected by this order.

5. Counsel for the respondent may make one copy of any confidential document available to Mr. Alan J. Weinschel of the firm of Weil, Gotshal & Manges of New York and counsel for the parties may each make one copy of any confidential document available to an independent expert or consultant for the sole purpose of obtaining advice, provided that Mr. Weinschel or such other independent expert or consultant first executes a Confidentiality Agreement in the form attached hereto and provides it to counsel for the other party. In this paragraph, "independent expert or consultant" means a person who has been retained exclusively for the purposes of this proceeding and who is on the regular full time teaching staff of a university, and does not include an employee or ex-employee of the respondent, Tosoh Canada Ltd., Holland Sweetener Company VOF or any of their affiliates, or of any other person engaged in the manufacture, marketing or distribution of

any sweetener. In particular, and except for Canadian counsel of record for the parties to this application and Mr. Weinschel, persons who act or have acted as counsel to any person engaged in the manufacture, marketing or distribution of any sweetener, including the companies named above, shall not be provided with confidential documents unless the Tribunal orders otherwise.

6. Persons who examine or receive confidential documents, information or related materials to which this order applies shall use such documents, information and related materials for the purposes of this proceeding only, shall keep such documents, information and related materials confidential and shall not disclose or allow anyone access to such documents, information or related materials other than persons entitled by the terms of this order to have access.

7. Documents, information and related materials protected by this order shall not form part of the public record unless the Tribunal orders otherwise.

8. Upon completion or final disposition of this proceeding and any appeals relating thereto, all documents marked "SUBJECT TO PROTECTIVE ORDER" and all copies thereof which have been made pursuant to the terms of this order, as well as all documents containing any information protected by this order, shall be returned to the applicant or the respondent, as the case may be, unless such person states in writing that the claim for confidentiality has been withdrawn or that the documents may be disposed of in some other manner.

9. The protective provisions of this order shall not apply to documents, information or other material with respect to which the party that claimed confidentiality has withdrawn such claim in writing, effective as of the date of such withdrawal.

10. This order is subject to further direction of the Tribunal.

DATED at Ottawa, this 29<sup>th</sup> day of September, 1989.

SIGNED on behalf of the Tribunal by the presiding judicial member.

(s) B. Reed  
B. Reed

**COMPETITION TRIBUNAL**

**CT-1989-002**

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AND IN THE MA TIER OF The NutraSweet Company.

BETWEEN:

The Director of Investigation and Research

Applicant

- and -

The NutraSweet Company

Respondent

**CONFIDENTIALITY AGREEMENT**

**COMPETITION TRIBUNAL**  
**CONFIDENTIALITY AGREEMENT**

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TO: The Director of Investigation and Research (the "Director")

and to

The NutraSweet Company ("NSC")

and to

The Competition Tribunal

IN CONSIDERATION of being provided with the confidential material described in Schedule A hereto in connection with the proceeding resulting from the application by the Director against NSC, dated June 1, 1989, with respect to which a claim for confidentiality has been made, I, \_\_\_\_\_, of the City of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_, hereby agree to maintain the confidentiality of such material. It shall not be copied or disclosed to any other person in any manner or form without the written consent of counsel for the Director or NSC, as applicable, nor shall it be used by me for any purpose other than in connection with the above noted proceeding.

I agree that such material and any copies of same shall be returned upon completion of this proceeding to the counsel who retained me for return to the party which provided it.

I acknowledge that I am aware of the order granted by the Competition Tribunal on September 29, 1989 in this regard, a copy of which is attached hereto as Schedule B, and agree to be bound by same.

I will promptly, upon the request of the party providing the material, advise where such material is kept by me and at the conclusion of my involvement in the proceedings deliver to the said party the material without retaining any copy thereof. All documents



relating to the material will be destroyed, except that I may retain in my confidential files, subject to the requirements of confidentiality imposed by this agreement, materials prepared by me, such as study results and materials of a general nature which do not replicate the information contained in the confidential material.

In the event that I am required by law to disclose any of the information or material, I will provide the party providing same with prompt written notice so that the party may seek a protective order or other appropriate remedy. In any event, I will furnish only that portion of the information or material which is legally required and I will exercise my best efforts to obtain reliable assurance that confidential treatment will be accorded to the information and material.

I acknowledge that any breach of this agreement by me will be considered to be a breach of an order made by the Competition Tribunal. I further acknowledge and agree that neither the Director, NSC nor other owner of the document may have an adequate remedy at law and would be irreparably harmed in the event that any of the provisions of this agreement are not performed in accordance with its specific terms or are otherwise breached. Accordingly, I agree that the Director, NSC or other owner shall be entitled to injunctive relief to prevent breaches of this agreement and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which they may be entitled at law or in equity.

This agreement shall be governed and construed in accordance with the laws of the Province of Ontario.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1989.

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Witness)

\_\_\_\_\_  
(Signature)