



Neutral citation [2014] CAT 9

IN THE COMPETITION
APPEAL TRIBUNAL

Case No.: 1229/6/12/14

BETWEEN

HCA INTERNATIONAL LIMITED

Applicant

-v-

COMPETITION AND MARKETS AUTHORITY

Respondent

-and-

AXA PPP HEALTHCARE LIMITED
THE LONDON CLINIC
BUPA INSURANCE LIMITED

Interveners

REASONED ORDER

UPON reading the application made by HCA International Limited (“HCA”) in its Notice of Application for permission to adduce expert evidence in the form of the expert report of Dr Nicola Mazzarotto dated 30 May 2014 (the “Mazzarotto Report”)

AND UPON reading the submissions of HCA, the Competition and Markets Authority (the “CMA”) and The London Clinic (“TLC”) filed in advance of the case management conference

AND UPON hearing counsel for HCA, the CMA and TLC at a case management conference on 8 July 2014

IT IS ORDERED THAT:

1. HCA’s application for permission to adduce the Mazzarotto Report be refused

2. HCA has permission to amend its Notice of Application, limited to amendments consequent upon the order at paragraph 1 above
3. HCA file and serve its amended Notice of Application within seven days
4. Permission to appeal against the order at paragraph 3 above be refused

REASONS

- (1) In its Notice of Application, HCA applied for permission to adduce the Mazzarotto Report. At a case management conference on 8 July 2014 (the “CMC”), the Tribunal dismissed this application. The reasons for the Tribunal’s decision are set out in a Ruling dated 9 July 2014 ([2014] CAT 10).
- (2) At the CMC, the Tribunal directed HCA to file an amended Notice of Application, to make changes necessary to reflect the Tribunal’s Ruling refusing permission for the Mazzarotto Report to be admitted in evidence, within seven days. HCA sought a longer period of 14 days. However, the Tribunal considers that seven days is the just and appropriate period to allow.
- (3) The Tribunal considers that a period of seven days is clearly sufficient for HCA to make the necessary amendments to its Notice of Application following the Tribunal’s refusal to admit the Mazzarotto Report. HCA has a large legal team. The amendments to the Notice of Application consequent upon the Tribunal’s Ruling are limited, consisting of deletion of cross-references to the Mazzarotto Report and (to the extent HCA considers necessary) the incorporation of text or the substance of points already set out in the Report. In these circumstances, the Tribunal’s view is that preparation of an amended Notice is not a particularly onerous burden for HCA and that it can readily be done within a short period of time.
- (4) On the other hand, as the CMA correctly emphasised in its submissions, it is important that the amended Notice of Application should be produced very promptly, so as to give the CMA a fair opportunity to respond to it within the timetable already established by the directions issued by the Tribunal. HCA’s pleaded case in the Notice of Application is already very detailed and extensive. HCA intimated at the CMC that it wishes to make substantive additions to its pleaded case in the Notice of Application consequent upon the Tribunal’s ruling,

going beyond simple deletion of cross-references to the Mazzarotto Report. The CMA's defence is due on 15 August 2014. It is important that it has as much notice as possible of the amendments to be made to the Notice of Application so that it can consider and formulate its case in response to be set out in its defence served on that date.

- (5) Permission to appeal in relation to the seven day period to file and serve the amended Notice of Application is refused because there is no real prospect of success on appeal in relation to such a case management decision made in the circumstances set out above and there is no other compelling reason to grant permission to appeal.

The Honourable Mr Justice Sales
Chairman of the Competition Appeal Tribunal

Made: 8 July 2014
Drawn: 9 July 2014