



[2003] CAT 9

IN THE COMPETITION

Case No. 1013/1/1/03

APPEAL TRIBUNAL

New Court,
Carey Street,
London WC2A.2JT

6 May 2003

Before:
SIR CHRISTOPHER BELLAMY
(President)

HEARING IN CHAMBERS

BETWEEN:

GENZYME LIMITED ("Genzyme")

Applicant

and

THE OFFICE OF FAIR TRADING ("OFT")

Respondent

Supported by

HEALTHCARE AT HOME LIMITED ("HH")

Intervener

Mr David Vaughan QC and Mr Aidan Robertson appeared for applicant.

Mr Jon Turner and Miss Anneli Howard appeared for the respondent.

Mr Ben Tidswell and Mr Euan Burrows appeared for the intervener.

*Transcribed from the shorthand notes of
Harry Counsell & Co
Clifford's Inn, Fetter Lane, London EC2A.1LD
Telephone: 0207 269 0370*

RULING ON COSTS

1 THE PRESIDENT: On the issues of costs in relation to the Order I have just made, Mr
2 Vaughan invites me to reserve the costs pending the outcome of the final proceedings,
3 and he submits that to a large extent his clients have been successful at the interim
4 stage.

5 Mr Turner, on behalf of the OFT, asks me to make a ruling on costs at this stage
6 in the sense that there should be no Order for costs, on the basis that neither party has
7 sustained its starting positions - the position we have arrived at is somewhere in the
8 middle; that the OFT has shown flexibility and fairness throughout these proceedings,
9 and that in his submission at least that has not always been the case as far as Genzyme
10 is concerned.

11 I would accept Mr Turner's submission that the OFT has indeed shown
12 considerable flexibility and fairness in the way that it has approached this case. As I
13 said in my Judgment, the attitude adopted on behalf of the Office in seeking to achieve
14 a reasonable compromise was, in my view, an eminently reasonable and appropriate
15 attitude for the public authority to have adopted.

16 A difficulty, however, is that as in all interim applications it is difficult to reach
17 a concluded view on costs at the interim stage until one has arrived at a decision on the
18 main appeal unless exceptional circumstances exist. If Genzyme were to win the main
19 appeal that would, or might have an impact on the costs of the interim stage. Similarly,
20 if Genzyme were to lose the appeal it may very well be that the order for costs, if any,
21 would take into account the situation as it arose at the interim stage. At that stage, that
22 is to say the final stage, one can also test in much more detail the strength and
23 reliability of the various points that have been made at the interim stage.

24 So in my view the Tribunal is not in a wholly satisfactory position in making an
25 order for costs at this stage and it might very well be, simply hypothetically, that either
26 party would do better at the final stage than the suggestion at present that there should
27 be no Order as to costs. In those circumstances it seems to me the right order is to
28 reserve the costs until the final determination of the appeal, acknowledging as I do the
29 exemplary way in which the OFT has conducted the interim stage of these proceedings.
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