



**IN THE COMPETITION
APPEAL TRIBUNAL**

Case: 1016/1/1/03

GENZYME LIMITED

Appellant

-and-

THE OFFICE OF FAIR TRADING

Respondent

-supported by-

HEALTHCARE AT HOME LIMITED

Intervener

ORDER OF THE TRIBUNAL

UPON handing down its judgment on the remedy to be imposed following the appellant's appeal against the respondent's decision no. CA98/3/03 ([2005] CAT 32)

AND UPON hearing counsel for the parties at a hearing on 29 September 2005

AND UPON the respondent indicating to the Tribunal that it will not take any step to enforce the penalty imposed in the Tribunal's judgment on the merits of the appellant's appeal ([2004] CAT 4) until the expiry of 1 month from 29 September 2005

IT IS ORDERED THAT

1. Interest at the rate of 1 per cent above Bank base rate shall be payable on the fine imposed in paragraph 711(6) of the Tribunal's judgment dated 11 March 2004 with effect from 27 June 2003 until payment.

2. The respondent and the intervener file and serve such further written observations on costs as they are advised to make by 5pm on 14 October 2005
3. The appellant shall submit further written observations on costs as it is advised to make by 5pm on 28 October 2005.
4. Pursuant to paragraph 3(2) of Schedule 8 to the Competition Act 1998 the Tribunal makes a direction in the form set out in the Schedule hereto.

Sir Christopher Bellamy
President of the Competition Appeal Tribunal

Made: 29 September 2005
Drawn: 29 September 2005

SCHEDULE

Case No: 1016/1/1/03

Genzyme Limited v Office of Fair Trading

DIRECTION

1. Genzyme shall:
 - 1.1. forthwith bring to an end the infringement referred to at paragraph 640 of the Tribunal's judgment of 11 March 2004, namely setting a price for the supply of Cerezyme to providers of Homecare Services which results in a margin squeeze, with the effect of foreclosing the downstream supply of Homecare Services;
 - 1.2. hereafter, refrain from repeating that infringement; and
 - 1.3. refrain from adopting any measures having an equivalent effect.
2. In particular, within fifteen working days from the date of this direction Genzyme shall supply Cerezyme to any bona fide provider of Homecare Services at a drug-only price exclusive of any charge in respect of any element of Homecare Services, at a discount from the prevailing NHS List Price for such drugs from time to time of not less than 20 pence per unit.
3. The OFT may if it thinks fit, after consulting interested parties,
 - 3.1 modify any provision of this direction, with a view to ensuring that this direction remains appropriate and effective for its purpose; and
 - 3.2 revoke this direction or any provision of it,provided that this direction shall not be modified or revoked until three years from the date hereof without the prior consent of the Tribunal.
4. Genzyme shall ensure that any trading as regards Cerezyme taking place between Genzyme and any company carrying on Genzyme's former homecare business is carried out strictly at arm's length in all material respects, and on the same terms and conditions as trading with any other supplier of Homecare Services.
5. Genzyme shall supply to the OFT such information as the OFT may require in order to:
 - 5.1 monitor Genzyme's compliance with, and to assess the effectiveness of, this direction; and

5.2 satisfy itself that any trading between Genzyme and any provider of Homecare Services is at arm's-length and on the same terms and conditions as aforesaid.

6. The term 'Homecare Services' in this direction means, in respect of each of Cerezyme, the delivery of the drug to a patient's home and the provision of homecare services (including, but not limited to, basic stock check, supply of and monitoring of the need for accessories such as fridges and syringes, waste removal, dispensing the drug, training on how to infuse the drug, infusing the drug, providing an emergency helpline, respite care and full nursing support).