



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE No 1251/1/12/16

Pursuant to rule 14(2) of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 11 April 2016 under section 46 of the Competition Act 1998 (“the Act”) by Generics (UK) Limited (“GUK”) of Stations Close, Potters Bar, Hertfordshire EN6 1TL against a decision of the Competition and Markets Authority (“CMA”) on 12 February 2016 in CASE CE-9531/11 - Paroxetine (“the Decision”). GUK is represented by King & Wood Mallesons LLP at 10 Queen Street Place, London, EC4R 1BE (reference: Stephen Kon / Christophe Humpe).

The Decision concerns, amongst other things, an agreement (“the Settlement”) entered into by GUK in 2002 to end ongoing patent litigation with pharmaceutical originator company GlaxoSmithKline PLC (“GSK”) relating to paroxetine (supplied in the UK as Seroxat, an antidepressant medicine). The CMA found that GUK infringed section 2(1) of the Act (the “Chapter I prohibition”) and Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) by participating in the Settlement. According to the Decision, the Settlement had the object and effect of restricting competition. The CMA found that GSK made value transfers to induce GUK to desist, during the term of the Settlement, from continuing its efforts to enter the UK paroxetine market independently of GSK, and thereby from offering independent generic competition against GSK. The CMA imposed a fine on GUK of £2,732,765.

GUK appeals the Decision. Under **Ground 1** GUK contends that the CMA erred in finding that GUK was a potential competitor of GSK at the time of entering into the Settlement. Under **Ground 2** GUK contends that the CMA erred in finding that the Settlement had the object of restricting competition in breach of the Chapter I prohibition and Article 101. Under **Ground 3** GUK contends that the CMA erred in finding that the Settlement had the effect of restricting competition in breach of the Chapter I prohibition and Article 101. Under **Ground 4** GUK contends that the CMA committed an error of law in finding that the Settlement did not fall within the scope of the Vertical Agreements Exclusion Order.¹ GUK also contends under **Ground 5** that the CMA infringed essential procedural requirements in the process leading to the adoption of the Decision.

In the alternative, and without prejudice to GUK’s primary grounds of appeal, under **Ground 6** GUK contends that the CMA committed errors of law and erred in the exercise of its discretion by imposing a fine on GUK. In the further alternative, under **Ground 7**, GUK submits that the fine imposed on GUK is disproportionate and that no more than a nominal fine should have been imposed.

As regards the relief sought, GUK requests that the Tribunal:

- (a) annul the Decision as far as it relates to GUK; or
- (b) annul or substantially reduce the fine imposed on GUK; and
- (c) order the CMA to pay the costs incurred by GUK in this appeal.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

¹ The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000, SI 2000/310.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB (email: registry@catribunal.org.uk) so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post (or email) at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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