



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1407/1/12/21
1411/1/12/21
1412/1/12/21
1413/1/12/21
1414/1/12/21

BETWEEN:

- (1) ALLERGAN PLC
(2) ADVANZ PHARMA CORP. LIMITED & OTHERS
(3) CINVEN CAPITAL MANAGEMENT (V) GENERAL PARTNER LIMITED
& OTHERS
(4) AUDEN MCKENZIE (PHARMA DIVISION) LIMITED & ANOTHER
(5) INTAS PHARMACEUTICALS LIMITED & OTHERS

Appellants

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

ORDER
(the “Second Hydrocortisone Order”)

UPON hearing leading counsel for the Appellants (Mr Brealey, QC, Ms Ford, QC, Mr Jowell, QC, Mr O’Donoghue, QC, and Robert Palmer QC) and counsel for the Respondents (Mr Holmes, QC) in the above-referenced proceedings (collectively, the “Hydrocortisone Proceedings” at a Case Management Conference on 21 January 2022 (the “CMC”))

AND UPON the order of the Tribunal made 8 December 2021 (the “First Hydrocortisone Order”)

AND UPON READING the documents on the Tribunal file recorded as having been read

IT IS ORDERED THAT:

Progression and case management through the use of Ambulatory Draft documents

1. In parallel with the other directions made in this case, the Hydrocortisone Proceedings will be progressed and case managed through the use of “Ambulatory Drafts” or “ADs”. These documents shall be produced by the Tribunal from time to time and will be based on the sections drafted by one or more of the parties to the Hydrocortisone Proceedings (“Sections”) in accordance with the directions contained in this and subsequent orders.
2. All Sections shall be produced:
 - (a) According to a subject-matter, specification and methodology provided for (the “Specification”).
 - (b) By the party or parties ordered to do so (the “Producing Party”). The Producing Party shall consult, as appropriate, with the other parties in order to produce a Section that meets the Specification but the Producing Party is not obliged to obtain the agreement of all other parties to the Section it submits to the Tribunal.
 - (c) By a date provided for, when it shall be filed with the Tribunal and provided to the other (non-Producing Parties).
 - (d) In Microsoft Word format.
 - (e) Referencing, so far as possible, the pleadings, witness statements, expert reports and other documents in the Proceedings, and utilising (to the fullest extent possible) the Magnum Opus II Case Management System put in place by the Appellants and the Respondents (the “Case Management System”). For the avoidance of any doubt, references to the content of witness statements and expert reports are permitted, but subject *(i)* to that material being adduced in evidence and *(ii)* to the weight attributed to that material after hearing the witness in question.
 - (f) In a style and using definitions consistent with the current Ambulatory Draft. The current Ambulatory Draft (“AD1”) is appended to this order as **Annex A**.
3. Each Section, when filed with the Tribunal, shall be filed with a short-form statement of costs (a “Statement of Costs”) stating (on no more than a single A4

page) the [approximate] costs incurred by the Producing Party in producing a particular Section.

4. Each Producing Party shall file the Sections identified in **Annex B** hereto, by the dates there specified, and in accordance with the Specification there set out.
5. The Tribunal shall, as and when appropriate, circulate in draft form, the next iteration of the Ambulatory Draft, to enable the parties to identify:
 - (a) Any material that is confidential and which should be redacted if the Ambulatory Draft were to be published.
 - (b) Any aspects of the Ambulatory Draft which may be prejudicial to any party. The parties shall bear in mind paragraph 6 of this Order, and the fact that whilst each Ambulatory Draft is a document produced under the control and supervision of the Tribunal, the contents of any Ambulatory Draft cannot and should not be attributed to the Tribunal.

The Tribunal will make provision, from time to time, for the parties to make suggestions as to the drafting of the current Ambulatory Draft.

6. As regards the nature, purposes and content of Ambulatory Drafts, the parties are obliged to bear in mind the following:
 - (a) The essential purposes of Ambulatory Drafts are:
 - (i) To set out, in as much detail as is appropriate, those matters which are uncontroversial, but which need to be set out in order to enable the Tribunal to produce, in due course, a fully reasoned decision.
 - (ii) To identify and demarcate, in as much detail as is appropriate, the areas of controversy and dispute between the parties.
 - (iii) The objective is to enable the final hearing of the appeals to proceed in a manner focussing efficiently on the matters actually in dispute, in circumstances where the parties can be satisfied as to what is, and what is not, common ground.
 - (iv) To give the Tribunal a clear appreciation of the matters that the parties view to be common ground.
 - (b) It is not the purpose of an Ambulatory Draft to determine any matter in dispute between the parties, whether of law or fact. The Tribunal can only

properly determine disputed questions of law and/or fact after hearing all of the evidence and having heard final submissions of all of the parties.

The Tribunal is reliant on the parties settling the Sections with this paragraph in mind. If and to the extent that a party culpably falls short in the settling of any given Section, the Tribunal may declare all or part of the costs identified in a Statement of Costs to be irrecoverable by that party in any event.

7. There shall be a case management conference in the week commencing 25 July 2022. Provision shall, in due course, be made for earlier case management conferences (as necessary) and for a pre-trial review (if required).
8. The appeal will be heard in November/December 2022 with a time estimate of three weeks. (The Tribunal will allocate a further two weeks, immediately thereafter, for judgment writing.)
9. Costs in the case.
10. There be liberty to apply.

Sir Marcus Smith
President of the Competition Appeal Tribunal

Made: 28 January 2022
Drawn: 28 January 2022

This draft is a document produced under the supervision of the Tribunal. However,
its content is not that of the Tribunal. The content cannot and should not be
attributed to the Tribunal.

ANNEX A
AMBULATORY DRAFT 1

Case Nos: 1407/1/12/21
1411/1/12/21
1412/1/12/21
1413/1/12/21
1414/1/12/21

IN THE COMPETITION
APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

[*]

Before:

SIR MARCUS SMITH
(President)
SIMON HOLMES
PROFESSOR ROBIN MASON

Sitting as a Tribunal in England and Wales

BETWEEN:

ALLERGAN PLC

(The Allergan Appellant)

AMDIPHARM UK LIMITED

AMDIPHARM LIMITED

ADVANZ PHARMA SERVICES LIMITED

ADVANZ PHARMA CORP LIMITED

(The Advanz Appellants)

CINVEN (LUXCO 1) SARL

CINVEN CAPITAL MANAGEMENT (V) GENERAL PARTNER LTD

CINVEN PARTNERS LLP

(The Cinven Appellants)

AUDEN MCKENZIE (PHARMA DIVISION) LIMITED

ACCORD UK LIMITED

(The Auden/Actavis Appellants)

INTAS PHARMACEUTICALS LIMITED

(The Intas Appellant)
Collectively, the “Appellants”

- and -

COMPETITION AND MARKETS AUTHORITY

Respondent

Heard at Salisbury Square House on:

8 December 2021 (a case management conference)

21 January 2022 (a case management conference)

Incorporating:

[Sections]

AMBULATORY DRAFT 1

APPEARANCES

(The representatives below appeared at one or more of the hearings listed above, but did not necessarily appear at all of these hearings)

Daniel Jowell QC and Tim Johnston (instructed by Addleshaw Goddard LLP) appeared on behalf of the Allergan Appellant.

Mark Brealey QC (instructed by Morgan, Lewis & Bockius LLP) appeared on behalf of the Advanz Appellants.

Robert O'Donoghue QC and Emma Mockford (instructed by Clifford Chance LLP) appeared on behalf of the Cinven Appellants.

Sarah Ford QC and Charlotte Thomas (instructed by Macfarlanes LLP) appeared on behalf of the Auden/Actavis Appellants.

Robert Palmer QC, Laura Elizabeth John and Jack Williams (instructed by Linklaters LLP) appeared on behalf of the Intas Appellants.

Josh Holmes QC and David Bailey (instructed by the Competition and Markets Authority) appeared on behalf of the Respondent.

A. INTRODUCTION

(1) The Decision

1. By a decision dated 15 July 2021 in Case No 50277 concerning excessive and unfair pricing and anti-competitive agreements in relation to hydrocortisone tablets (the **Hydrocortisone Decision**¹), the United Kingdom Competition and Markets Authority (the **CMA**) found that the various appellants listed above, collectively the **Appellants**, had infringed UK competition law in the various respects set out in paragraph 1.4 of the Hydrocortisone Decision. It will be necessary, in due course, to set out exactly the nature of these infringements, for they differ according to the persons against whom they are made. However, we shall refer to these infringements generally as the **Infringements**.
2. The Appellants in relation to the Hydrocortisone Decision, and who are addressees of that decision, fall into five groups, who we shall refer to as follows:
 - (a) The **Allergan Appellant**.
 - (b) The **Advanz Appellants**.
 - (c) The **Cinven Appellants**.
 - (d) The **Auden/Actavis Appellants**.
 - (e) The **Intas Appellant**.
3. The various companies and/or persons comprising these groups are specifically listed above, but it will be necessary to explain in greater detail their nature and commercial inter-relationship.
4. The Appellants in relation to the Hydrocortisone Decision all appeal that Decision, and they do so in notices of appeal filed with the Tribunal during the course of September and October 2021. We shall refer to these notices of appeal as follows:
 - (a) The **Allergan NoA**.
 - (b) The **Advanz NoA**.
 - (c) The **Cinven NoA**.
 - (d) The **Auden/Actavis NoA**.
 - (e) The **Intas NoA**.
5. The CMA filed a single Defence (the **Defence**) to all of these notices of appeal on 1 December 2021.

¹ A list of the terms and abbreviations used in this Draft, together with the paragraph in which that term/abbreviation is first used, is at Annex 1 hereto.

(2) Structure

6. [Deliberately incomplete.]

B. THE INFRINGEMENTS FOUND BY THE CMA IN THE DECISION

7. [Section [1A]]

8. [Section [1B]]

C. THE RELEVANT FACTUAL BACKGROUND

9. [Section [2]]

D. THE APPEALS AND THE VARIOUS GROUNDS OF APPEAL OF THE APPELLANTS

10. [Section [3]].

ANNEX 1

TERMS AND ABBREVIATIONS USED IN THE DRAFT

(paragraph 1, footnote 1 of the Draft)

TERM/ABBREVIATION	FIRST USE IN THE DRAFT
Advanz Appellants	Paragraph 2
Advanz NoA	Paragraph 4
Allergan Appellant	Paragraph 2
Allergan NoA	Paragraph 4
Auden/Actavis Appellants	Paragraph 2
Auden/Actavis NoA	Paragraph 4
Cinven Appellants	Paragraph 2
Cinven NoA	Paragraph 4
Decision	Paragraph 1
Defence	Paragraph 5
Infringements	Paragraph 1
Intas Appellant	Paragraph 2
Intas NoA	Paragraph 4

ANNEX 2

A LIST OF THE FACTUAL AND EXPERT WITNESS EVIDENCE

ADDUCED BY THE PARTIES

(paragraph [*], footnote [*] of the Draft)

[Section 5]

ANNEX B

SECTIONS TO BE DRAFTED IN ACCORDANCE WITH PARAGRAPH 4 OF THE SECOND HYDROCORTISONE ORDER

(All terms and definitions are as per AD1)

Section Number	Specification	Producing party	Date for production
Section [1A]	A short-form statement setting out the Infringements found by the CMA in the Decision, identifying (i) the broad nature of the Infringement, (ii) the period of the Infringement, and (iii) the person(s) found to have infringed.	CMA	25 February 2022
Section [1B]	A short-form statement, identifying the penalties imposed on each person.	CMA	25 February 2022
Section [2]	<p>(a) It is anticipated that Section [2] will be long, setting out the necessary factual background so that any person reading Section [3] will be able to understand the grounds of appeal.</p> <p>(b) The drafting intention is that Section [2] should be limited to a description of facts and matters that are <u>uncontentious</u>. Where facts or matters are <u>contentious</u>, then this should either be noted with a statement that the controversy will be addressed later in the Draft (for the avoidance of doubt, <u>no drafting of the later controversial matters should be attempted</u>) or (if <u>unavoidable</u>) the controversy should be articulated setting out all sides.</p> <p>(c) In the first instance, the parties should agree, by the date specified: (i) a list of topics to be covered in Section [2]; (ii) the order in which they should be covered; and (iii) the party who is to settle each particular topic. A list is to be provided to the Tribunal on the date specified.</p> <p>(d) Thereafter, the topics are to be filed, in accordance with the list provided and subject to any changes indicated by the Tribunal, by the date specified.</p>	The parties	10 February 2022 for the work specified in Section [2](c) 11 March 2022 for the work specified in Section [2](d)
Section [3]	A short-form statement, setting out the grounds of appeal of each Appellant, stating (i) the broad nature of the ground	The Appellants collectively	25 February 2022

	<p>of appeal and (ii) the party or parties advancing that particular ground of appeal.</p> <p>The parties should approach Section [3] on the basis that it is not intended that this Section comprise a complete statement of all points of controversy between the parties. Rather, the drafting intention should be that any person, reading only the Draft, should be in a position to understand each specific ground of appeal in issue.</p>		
Section [4]	<p>A neutral and complete chronological narrative of the facts and matters (including references to documents and witness statements) relevant to the market agreement allegedly concluded by Advanz.</p> <p>For the avoidance of any doubt, the relevant material should be adduced briefly, with (so far as possible) a minimum of quotation. However, where the significance of a document is controversial, quotation may be inevitable.</p> <p>Statements as to what may be inferred or concluded from a particular document or event are not permitted. Provision will be made at a later date for <u>submission and argument</u>, and this is to be avoided in this Section.</p> <p>The narrative should, self-evidently, seek to provide a chronological narrative sufficient to enable the Tribunal to understand the issues underlying the Decision, the grounds of appeal, and the subsequent pleadings. It should <u>not</u> be drafted as a partisan document. Rather, the parties should anticipate that later Sections will make provision for the identification of the issues actually in dispute.</p>	Advanz	11 March 2022
Section [5]	<p>A table, listing <u>by party</u> the evidence (factual and expert) adduced so far by each party. The table should identify:</p> <p>(i) The name of the person(s) making the statement or giving the report.</p> <p>(ii) The position and/or discipline of that person.</p> <p>(iii) The date of the statement/report.</p>	The parties	10 February 2022

	(iv) A short-form term by which the document can be referenced: e.g. “Smith 1”		
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