



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1419/1/12/21
1421/1/12/21
1422/1/12/21

BETWEEN

(1) HG CAPITAL LLP
(2) CINVEN (LUXCO 1) S.A.R.L. & OTHERS
(3) MERCURY PHARMACEUTICALS LIMITED & OTHERS

Appellants in the Liothyronine Proceedings

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

ORDER

UPON hearing leading counsel for the Appellants (Mr Brealey, QC, Mr Kennelly, QC and Mr O'Donoghue, QC) and counsel for the Respondents (Mr Holmes, QC) in the above-referenced proceedings (collectively, the "Liothyronine Proceedings" at a Case Management Conference on 21 January 2022 (the "CMC"))

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

IT IS ORDERED THAT:

Forum

1. Pursuant to Rule 18 of the Tribunal Rules, the Liothyronine Proceedings shall be treated as proceedings in England and Wales.

Joint case management

2. The appeals shall be case managed and heard together.

3. The evidence in each appeal shall stand as evidence in other appeals.

Pleadings

4. The Appellants in the Liothyronine Decision (the Appellants) shall file and serve any applications for permission to amend their Notices of Appeal, if so advised, by 15 March 2022.
5. If so advised, the Appellants may each file and serve Replies, together with any supporting evidence, by 4pm on 15 March 2022.

Experts

6. The parties have permission to rely upon evidence from the following experts:
 - (a) Mr Williams and Mr Smith, on behalf of Advanz
 - (b) Dr Bennett and Dr Chowdhury, on behalf of Cinven
 - (c) Ms Jackson, on behalf of Hg Capital
 - (d) Professor Valletti and Mr Harman, on behalf of the CMA.

Progression and case management through the use of Ambulatory Draft documents

7. The Liothyronine 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 Liothyronine Proceedings (“Sections”) in accordance with the directions contained in this and subsequent orders.
8. 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**.
9. 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 costs incurred by the Producing Party in producing a particular Section.
10. 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.
11. 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.

12. 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.

13. 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).
14. The appeal will be heard in September/October 2022 with a time estimate of three weeks.
15. Costs in the case.
16. There be liberty to apply.

Sir Marcus Smith
President of the Competition Appeal Tribunal

Made: 4 February 2022
Drawn: 4 February 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: 1419/1/12/21
1421/1/12/21
1422/1/12/21

IN THE COMPETITION
APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

[*]

Before:

[*]
(Chair)
[*]
[*]

Sitting as a Tribunal in England and Wales

BETWEEN:

HG CAPITAL LLP

(The HG Appellant)

**CINVEN CAPITAL MANAGEMENT (V) GENERAL PARTNERSHIP
LIMITED**

CINVEN (LUXCO 1) SARL

CINVEN PARTNERS LLP

(The Cinven Appellants)

MERCURY PHARMACEUTICALS LIMITED

ADVANS PHARMA SERVICES (UK) LIMITED

MERCURY PHARMA GROUP LIMITED

ADVANS PHARMA CORP LIMITED

(The Advanz Appellants)

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)

Brian Kennelly QC and Daniel Piccinin (instructed by Linklaters LLP) on behalf of the HG Capital Appellant.

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

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

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

A. INTRODUCTION

(1) The Decision

1. By a decision dated 29 July 2021 in Case No 50395 concerning excessive and unfair pricing with respect to the supply of liothyronine tablets (the **Liothyronine Decision**¹), in 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 1.30 of the Liothyronine Decision. It will be necessary, in due course, to set out exactly the nature of these infringements. We shall refer to the infringements generally as the **Infringements**.
2. The Appellants in relation to the Liothyronine Decision, and who are addressees of that decision, fall into three groups, who we shall refer to as follows:
 - (a) The **HG Appellant**.
 - (b) The **Advanz Appellants**.
 - (c) The **Cinven Appellants**.
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 Liothyronine 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 **HG NoA**.
 - (b) The **Advanz NoA**.
 - (c) The **Cinven NoA**.
5. The CMA filed a single Defence (the **Defence**) to all of these notices of appeal on 13 January 2022.

(2) Structure

6. [Deliberately incomplete.]

B. THE INFRINGEMENTS FOUND BY THE CMA IN THE DECISION

7. [Section [1A]]

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.

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
Cinven Appellants	Paragraph 1
Cinven NoA	Paragraph 4
Decision	Paragraph 1
Defence	Paragraph 5
HG Appellant	Paragraph 2
HG NoA	Paragraph 4
Infringements	Paragraph 1

ANNEX 2

A LIST OF THE FACTUAL AND EXPERT WITNESS EVIDENCE

ADDUCED BY THE PARTIES

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

[Section 4]

ANNEX B

SECTIONS TO BE DRAFTED IN ACCORDANCE WITH PARAGRAPH 10 OF THE 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 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> <p>(iv) A short-form term by which the document can be referenced: e.g. “Smith 1”</p>	The parties	10 February 2022