



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

- v -

COMPETITION AND MARKETS AUTHORITY (“CMA”)

Respondent

ORDER

UPON reading the documents filed at the Tribunal in advance of the case management conference heard on 22 July 2022 (“the CMC”)

AND UPON reading the CMA’s Application dated 10 June 2022 for permission to adduce New Evidence (as defined in paragraph 6 below) pursuant to Rule 21(1)(b) of the Competition Appeal Tribunal Rules 2015

AND UPON all parties accepting that the New Evidence should be admitted (without prejudice to arguments that it would be wrong to place any weight on the New Evidence);

AND UPON hearing Leading Counsel for each of the parties at the CMC

IT IS ORDERED THAT:

Skeleton arguments

1. The Appellants shall file and serve their skeleton arguments by 4 p.m. on 9 September 2022 limited to 30 pages.
2. The CMA shall file and serve its skeleton argument by 4 p.m. on 19 September 2022 limited to 40 pages.

Format of expert evidence

3. Dr Bennett, Dr Chowdhury, Ms Jackson and Professor Valletti shall give evidence concurrently on issues of economic principle and the appropriateness of the Cost-Plus test (but excluding questions of detail as to the calculation of the Cost Plus).
4. Following the giving of concurrent evidence each of the parties' experts shall be tendered for cross-examination (the timing of which to be agreed as far as possible).

Factual evidence

5. By 4 p.m. on 20 September 2022 the parties shall file a joint list of the factual issues that arise in the appeals (to be agreed as far as possible).

The CMA's Application to adduce New Evidence

6. "New Evidence" means the following data which was not contained in the Decision in Case 50395 limited to those periods for which that data has already been disclosed to the Appellants by the CMA as at 22 July 2022:
 - (a) Pricing data comprising:
 - (i) Market price data on 20mcg Liothyronine tablets in the UK in the form of the WaveData Report issued on 25 March 2022;

- (ii) Publicly available Drug Tariff data as regards 20mcg Liothyronine tablets in the UK as it is published by NHS Business Services Authority; and
 - (b) The companies authorised to supply 20mcg Liothyronine tablets in the UK; and the companies that supply 20mcg Liothyronine tablets in the UK.
- 7. The CMA is granted to permission to adduce New Evidence. The admission of the New Evidence is without prejudice to any argument that any Appellant wishes to raise that the New Evidence should not be given any weight by the Tribunal.
- 8. By 4 p.m. on 5 August 2022 the CMA shall file and serve a statement setting out the relevance of the New Evidence and how it intends to deploy the New Evidence at the main hearing.
- 9. By 4 p.m. on 5 September 2022 the Appellants may, if so advised, serve responsive evidence in relation to the New Evidence.
- 10. By 4 p.m. on 9 September 2022 the parties shall file an updated version of the Joint Statement Between Experts dated 1 July 2022 in light of the New Evidence.

Trial Timetable

- 11. The parties shall file a copy of the agreed timetable for the hearing of the appeals.

Costs

- 12. Costs shall be in the case.

Andrew Lenon QC
Chair of the Competition Appeal Tribunal

Made: 22 July 2022
Drawn: 4 August 2022