



Neutral citation [2022] CAT 56

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1524/1/12/22

1525/1/12/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

15 November 2022

Before:

SIR MARCUS SMITH
(President)
EAMONN DORAN
PROFESSOR MICHAEL WATERSON

Sitting as a Tribunal in England and Wales

BETWEEN:

- (1) **PFIZER INC.**
(2) **PFIZER LIMITED**

Appellants

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

AND BETWEEN:

- (1) **FLYNN PHARMA LIMITED**
(2) **FLYNN PHARMA (HOLDINGS) LIMITED**

Appellants

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

Heard at Salisbury Square House on 15 November 2022

RULING (MAIN HEARING)

APPEARANCES

Mark Brealey KC, Tim Johnston and Sarah O’Keefe (instructed by Clifford Chance LLP) appeared on behalf of the Appellants in Case No 1524/1/12/22.

Daniel Jowell KC, Tom Pascoe and Alastair Richardson (instructed by Macfarlanes LLP) appeared on behalf of the Appellants in Case No 1525/1/12/22.

David Bailey (instructed by the Competition and Markets Authority) appeared on behalf of the Respondent in Case Nos 1524/1/12/22 and 1525/1/12/22.

1. We have before us, as is usual in competition matters that are heavy, a diary issue as to when the main hearing of this appeal should be heard. We are going to set the appeal down for a period of four weeks. That period is intended to refer to the actual face-to-face time between the parties and the Tribunal. In other words, it does not include pre-reading, the time for written submissions or the time for oral closing submissions. We will allow a further three days for oral closing submissions, but these should take place after the main hearing, to allow sufficient time to prepare written closing submissions.
2. That is the time we are going to allocate. The parties will, when they are planning their cross examination, have to work within that timeframe and cut their cloth appropriately.
3. The controversial question is when this hearing should take place. We made clear in argument that we were initially inclined to allocate the hearing for July 2023. As it turns out, that is a date that is inconvenient to some of the parties, but more importantly, impossible for two of the three members of this Tribunal as presently constituted. There are sufficient other actions before the Tribunal for it not to be realistic to seek to reconstitute this Tribunal to make a July 2023 date possible. The Tribunal has only so many economists at its disposal, and seeking to find an economist to step into Professor Waterson's shoes is not practically possible.
4. That rules July 2023 out, and leaves two other options: either dealing with the matter in October 2023 or thereafter in that term; or pushing the appeal off into 2024.
5. Hearing this appeal in 2024 is unsatisfactory and not workable for two reasons. First of all, it contravenes the basic approach that this Tribunal has, which is that hearings, particularly appeals, need to come on as soon as they can. October 2023 is in fact second best from that point of view. A hearing in 2024 is definitely third best.

6. More practically speaking, I have in my diary two Tribunal matters at the beginning of 2024. I am hopeful that I can juggle those two, and hear both, but I certainly cannot juggle a third.
7. So, if we are considering 2024, we are actually looking at mid 2024, rather than early 2024. I do not think that is acceptable.
8. So the hearing will take place in the October to December period in 2023. That is a timeframe which two of the three parties before us can make. The problem is Mr Jowell KC's team. Mr Jowell appears for Flynn Pharma Limited and Flynn Pharma (Holdings) Limited (together, "Flynn"). He rightly says that Flynn is not a large company, and he also rightly says that the market for KCs who could step into his shoes, because it is his availability that is the problem, are hard to find.
9. That said, we are just short of a year from the substantive hearing of this appeal and I am afraid, given the other considerations, namely the availability of the other parties and of the need to bring this matter on, with some regret, we are going to have to list the matter for the term commencing October 2023.
10. If it assists Flynn, we are very happy to consider a degree of flexibility in terms of when the trial starts. The appeal does not have to commence on the first day of term in October 2023. I anticipate it could be as late as early November 2023 and provided the parties can reach accommodation regarding the precise start date in short order, we are willing to be flexible about when we start. That may buy Flynn an extra month in terms of summer preparation for their new KC. But we would want to have the closing submissions heard orally before the end of the calendar year 2023 and not drift over into 2024, again because that is going to give rise to scheduling problems in that year.

Sir Marcus Smith
President

Eamonn Doran

Professor Michael Waterson

Charles Dhanowa O.B.E., K.C. (*Hon*)
Registrar

Date: 15 November 2022