Neutral citation [2023] CAT 55

Case No: 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

7 September 2023

Before:

ANDREW LENON K.C.
(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

CINVENT PARTNERS LLP

(The Cinven Appellants)

MERCURY PHARMACEUTICALS LIMITED

ADVANZ PHARMA SERVICES (UK) Limited

MERCURY PHARMA GROUP LIMITED

ADVANZ PHARMA CORP LIMITED

(The Advanz Pharma Appellants)

- and -

COMPETITION AND MARKETS AUTHORITY

Respondent

RULING ON THE HG APPELLANT'S APPLICATION FOR PERMISSION TO AMEND ITS NOTICE OF APPEAL

A. INTRODUCTION

1. This ruling adopts the abbreviations used in the Judgment of the Tribunal dated 8 August 2023.

2. On 10 July 2023 I gave permission to Hg to amend its Notice of Appeal to add the following grounds:

> "In the alternative, the penalty imposed on Hg should be reduced from £8.6 million to £6.2 million, or such other figure as appears appropriate to the Tribunal, because the CMA was wrong to conclude that a deterrence uplift was necessary at Step 3 to deter the Appellants, including Hg, from breaching competition law in the future.
>
> Further, in the event that any other ground applicable to any Appellant is upheld at a later stage of these proceedings (i.e. on appeal or remittal) and is equally applicable to the position of Hg, Hg's penalty should be reduced in accordance with that ground as well."

3. This ruling sets out my reasons for giving that permission.

B. BACKGROUND

4. In the Decision which is the subject of the appeal the CMA concluded that Advanz had abused its dominant position in breach of section 18 of the Competition Act 1998 ("the Act") by charging excessive and unfair prices for Liothyronine Tablets. The CMA imposed penalties on each of the Appellants.

5. In calculating the penalties payable, the CMA followed its six-step Penalty Guidance. Step 4 of the Penalty Guidance provides that the CMA may apply an increase to the penalty figure reached after steps 1 to 3 in order to ensure that the penalty is sufficient to deter the infringing undertaking from breaching competition law in the future ("the Deterrence Uplift"). In the Decision, the CMA found that it was necessary to apply the Deterrence Uplift in relation to the penalties payable by each of the Appellants. Cinven's penalty was accordingly increased from £37.1 million to £51.9 million, Advanz Pharma's penalty from £54.36 million to £65.2 million and Hg's penalty from £6.2 million to £8.6 million.

6. By their Notices of Appeal, Hg, Cinven and Advanz Pharma each appealed against the CMA's conclusion that Advanz had abused its dominant position. Cinven and Advanz Pharma also appealed against their penalties. Hg did not appeal against its penalty.

7. By its case management order dated 5 February 2022 the Tribunal ordered that the appeals brought by Hg, Cinven and Advanz Pharma be case managed and heard together.

8. The hearing of the appeals took place between 27 September 2022 and 14 October 2022. None of the parties adduced any new evidence in relation to penalties. Cinven and the Advanz Pharma Appellants took issue with the penalty calculations in the Decision, including the application of the Deterrence Uplift, which they contended was not justified. The CMA contended that its penalty calculations were correct in reliance on its findings in the Decision.

9. On 20 June 2023 a draft judgment was circulated to the parties in which the Tribunal dismissed all the Appellants' grounds of appeal against the CMA's finding of abuse and all the grounds of appeal advanced by Cinven and Advanz Pharma in relation to penalties with the exception of their challenge to the Deterrence Uplift. The Tribunal concluded in the draft judgment that the CMA had failed to establish any justification for the Deterrence Uplift. This conclusion was reached on the grounds, in summary, that the magnitude of the penalties imposed on Cinven and Advanz Pharma even without the Deterrence Uplift, the likely concern on the part of the management of Cinven and Advanz Pharma about reputational damage resulting from the Decision and the new powers available to the DHSC to control prices, made any further deterrent unnecessary. The Tribunal went on to say that, although Hg had not appealed against its penalty, its position was not materially different from that of Cinven and Advanz Pharma. On the basis of these conclusions, the Tribunal reduced the penalty payable by Cinven and Hg by removing the Deterrence Uplift. Advanz Pharma's penalty would have been similarly reduced but for the limit on its penalty by reason of the statutory cap.

10. In response to the draft judgment, the CMA wrote to the Tribunal submitting that, as Hg had not appealed against its penalty, the Tribunal did not have jurisdiction to reduce it.

11. Following an invitation by the Tribunal to the parties to make any applications or representations in response to the draft judgment, including an application by Hg to amend its Notice of Appeal, Hg filed written representations on the issue of jurisdiction and an application to amend its Notice of Appeal to which the CMA responded with further written submissions.

C. THE ISSUES

12. The submissions of Hg and the CMA gave rise to two main issues. The first was whether the Tribunal had jurisdiction to adjust the penalty payable by Hg, despite Hg not having appealed against its penalty in its Notice of Appeal. The second was whether, if the Tribunal did not have jurisdiction, the Tribunal should now as a matter of discretion give permission to Hg to amend its Notice of Appeal so as to confer jurisdiction on the Tribunal to determine an appeal by Hg against the imposition of the Deterrence Uplift.

D. THE FIRST ISSUE: JURISDICTION

13. The Tribunal's powers on an appeal under s 46 of the Act are defined in Schedule 8 to the Act, as follows:

> 3 (1) The Tribunal must determine the appeal on the merits by reference to the grounds of appeal set out in the notice of appeal.
>
> (2) The Tribunal may confirm or set aside the decision which is the subject of the appeal, or any part of it, and may—
>
> (a) remit the matter to the CMA,
>
> (b) impose or revoke, or vary the amount of, a penalty,

14. Hg submitted as follows:

(1) Schedule 8 does not state expressly, how the Tribunal ought to treat appeals that have been heard together, in circumstances where the various notices of appeal challenge penalties imposed for the same infringement by the same undertaking, with multiple penalties having been imposed on different legal entities only because of changes in ownership of that undertaking.

(2) The issue was not addressed by the High Court in *Lindum Construction Co Ltd and ors v OFT* [2014] EWHC 1613 (Ch) ("*Lindum Construction*"), a decision cited by the CMA, which was concerned with the position of a cartelist who had not appealed the relevant infringement decision and which later sought restitution of penalty which it had paid. Morgan J rightly held at §111 that the Act does not empower the Tribunal to revoke or vary the penalties imposed on persons who did not appeal at all.

(3) The question of how a review of a penalty for infringement of competition law should be applied in similar circumstances was, however, considered by the CJEU in Case C- 286/11 P *Commission v Tomkins* [2012] Bus LR 999 ("*Tomkins*"). In that case, the Commission had adopted a decision holding that a parent company and its subsidiary participated in a cartel and fined them. As in this case, the parent's liability was derived exclusively from that of its subsidiary. Both companies applied to annul the decision, including challenging the duration of the infringement. However, the grounds that they advanced differed.

(4) The General Court accepted the subsidiary's case as to duration and gave the parent the benefit of the same reduced penalty, even though the parent had not relied on the successful ground of challenge in its own application for annulment. The Commission challenged that result in the CJEU, including on the basis that the General Court's decision was contrary to the *ultra petita* rule, i.e. contrary to the principle that a court may not decide more than it has been asked to. The CJEU concluded, at §49, as follows:

> "in a situation such as that in the present case, where the liability of the parent company is derived exclusively from that of its subsidiary and where the parent company and its subsidiary have brought parallel actions having the same object, the General Court was entitled, without ruling *ultra petita*, to take account of the outcome of the action brought by [the subsidiary] and to annul the contested decision in respect of [the period challenged by the subsidiary] also in so far as [the parent] is concerned".

(5) In the present case, just as in *Tomkins* and unlike in *Lindum Construction*, Hg did appeal the Decision. Indeed, Hg sought the annulment of the whole penalty (on the basis that there was no infringement), in contrast to *Tomkins*' limited challenge to only part of the duration of the infringement. Just as in *Tomkins*, Hg's liability is derived exclusively from that of its subsidiary, now Advanz Pharma, which brought an appeal in its own right, and did challenge the Deterrence Uplift.

(6) Accordingly, just as in *Tomkins*, having decided to uphold one of Advanz Pharma's grounds of appeal, which the Tribunal has found was equally applicable to the situation of Hg, it is only logical to extend the benefit of that finding to Hg. This does not involve ruling *ultra petita*. It involves accepting a ground of appeal that was before the Tribunal (i.e. Advanz's ground) and which applies equally to Hg, whose liability depends on that of Advanz and which is in the same position. Further, in this case, unlike in *Tomkins*, the appeals of Advanz and Hg were heard together.

(7) There is no policy justification for the CMA's narrower construction of the Tribunal's powers in this context. The upshot of the CMA's approach would be an incentive for parties to take a "kitchen sink" approach to their Notices of Appeal, expressly running every possible point for fear that another appellant might succeed on a point that would then be ruled inapplicable to them. That would be inconsistent with the governing principle of the Tribunal in Rule 4(1) of the Competition Appeal Tribunal Rules 2015 ("Rule 4(1)") which requires the Tribunal to seek to ensure that each case is dealt with justly and at proportionate cost.

15. The CMA submitted as follows:

(1) The Tribunal's jurisdiction to hear appeals on the merits under para 3(1) of Schedule 8 to the Act is limited to the grounds set out in the notice of appeal: *Ofcom and OFT v Floe Telecoms Ltd* [2006] EWCA Civ 768, at [24].

(2) The power to impose, revoke or vary the amount of a penalty under para 3(2)(b) is subject to para 3(1) and may only be exercised as part of the Tribunal's general power to "confirm or set aside the decision which is the subject of the appeal or any part of it". The decision that is the subject of the Hg appeal is the finding of infringement in the Decision. The penalty decision is not the subject of Hg's appeal. The legislation and case law distinguish between a decision as to infringement and a decision as to penalty; section 46(3) and 49 of the Act and the decision of the Court of Appeal in *BCL Old Co Ltd and ors v BASF plc* [2009] EWCA Civ 434 which expressly refers to "the distinction between decisions as to infringement and decisions as to penalty" see paras 16 - 17, and 23.

(3) The clear meaning of the statutory language in limiting the jurisdiction of the Tribunal to the grounds of appeal raised by the parties is confirmed by the decision of the High Court in Lindum Construction. There is nothing in the judgment of Morgan J to suggest that the principle was to be confined to cases where (as in that case) an undertaking does not appeal at all. To the contrary, Morgan J expressly considered the situation where an undertaking had appealed, and the limits on such an appeal that arise from the "statutory scheme".

(4) The proceedings in *Tomkins* were subject to the procedural rules of the European courts, not those of the Tribunal. Moreover, the facts of the present case are distinguishable from *Tomkins* in that, first, all aspects of the CMA's findings in relation to Hg's infringement have been upheld whereas in *Tomkins* no infringement had been found during the period when the Commission's findings were annulled so that *Tomkins* could

have no liability. Second, both *Tomkins* and its subsidiary had brought grounds of appeal having the same object: to overturn the duration of the infringement period (although their arguments were not identical). Hg brought no ground of appeal having the same object as the Advanz Pharma appeal against the CMA's findings on penalty. The fact that Hg did appeal against the finding of infringement is immaterial. What is material is that Hg did not appeal against the imposition or level of its penalty.

(5) There is no basis for Hg's suggestion that the CMA's construction of the Tribunal's powers would lead other appellants to adopt a 'kitchen sink' approach in their Notices of Appeal. If they did so, the Tribunal would no doubt closely scrutinise any grounds that were baseless and lacked merit. In any event, such an approach may have adverse cost implications if the appeal were unsuccessful.

E. THE TRIBUNAL'S CONCLUSION ON THE FIRST ISSUE

16. Paragraph 3(1) of Schedule 8 to the Act limits the jurisdiction of the Tribunal to considering the grounds of appeal advanced by the parties. The power to vary penalties under paragraph 3(2) is subject to paragraph 3(1). Pursuant to these provisions, it is not open to the Tribunal to quash or vary the penalty for reasons that have not been raised by the parties. The statutory limits on the jurisdiction of the Tribunal are confirmed in the case law cited by the CMA, in particular *Lindum Construction, Ofcom and OFT v Floe Telecoms Ltd* and *BCL Old Co Ltd and ors v BASF plc*.

17. Contrary to Hg's argument, there is no basis for treating the scope of the Tribunal's jurisdiction as any wider in a case where appeals by multiple parties are being heard together in relation to the same infringement by the same undertaking and in which different penalties have been imposed on different legal entities only because of changes in ownership of that undertaking.

18. *Tomkins* does not assist Hg for the reasons given by the CMA. First, the proceedings in *Tomkins* were conducted under different procedural rules: the

decisions of the General Court and the CJEU do not address the construction of Rule 12 or any cognate legislation. Second, the facts of *Tomkins* are distinguishable from the facts of this case and the reasoning of the General Court and the CJEU does not apply here. Tomkins' fine was reduced because its liability was entirely dependent on that of its subsidiary and the finding of infringement on the part of the subsidiary was set aside during the period when the Commission's findings were annulled. In the present case, none of the findings of infringement on the part of Hg or Advanz Pharma have been set aside. Second, Tomkins' appeal had the "same object" as the appeal brought by its subsidiary. There is no parallel here. Hg did not appeal against the decision on its penalty.

19. There is no basis for construing the statutory provisions in the broad way suggested by Hg for policy reasons. Given the possible adverse cost consequences of running bad points, the requirement that an appellant must include in its Notice of Appeal all grounds of appeal on which it intends to rely is not an incentive to include every conceivable point run by other appellants, however unmeritorious, on the off chance that the point might succeed.

20. For these reasons, I conclude that the Tribunal did not have jurisdiction to vary the penalty payable by Hg on the basis of Hg's unamended Notice of Appeal.

F. THE SECOND ISSUE: AMENDMENT

21. An application to amend must be made pursuant to Rule 12:

> **Amendments to notice of appeal**
>
> **12**.— (1) The appellant may amend the notice of appeal only with the permission of the Tribunal.
> (2) Where the Tribunal grants permission under paragraph (1) it may do so on such terms as it thinks fit, and may give any further or consequential directions it considers necessary.
> (3) In deciding whether to grant permission under paragraph (1), the Tribunal shall take into account all the circumstances including whether the proposed amendment—
>
> (a) involves a substantial change or addition to the appellant's case;
> (b) is based on matters of law or fact which have come to light since the appeal was made; or

(c) for any other reason could not practicably have been included in the notice of appeal.

22. It was common ground between the parties that, as the Tribunal has not yet handed down its judgment, it retains the power to permit the proposed amendment set out at paragraph 2 above.

23. Hg submitted as follows:

(1) The critical feature of the application was that the proposed additional ground of appeal would not enlarge the scope of the evidence or argument that the Tribunal needed to consider in order to give judgment. The addition of this ground to its case was not "substantial" within the meaning of Rule 12(3)(a) and caused no prejudice to the CMA.

(2) While Hg accepted that the additional ground of appeal was not based on matters of law or fact that have come to light since the appeal (other than the Tribunal's draft judgment) and could have been included in the original notice of appeal, those points were not decisive. Those factors would be good reasons not to permit an amendment that required the other parties and/or the Tribunal to grapple with further substantial legal and factual issues in a particular case, but that was not the position here.

(3) In exercising its powers under Rule 12, the Tribunal should also have regard to the governing principle in Rule 4(1). Permitting the amendment would produce a more just result at no additional cost and avoid creating incentives for the "kitchen sink" approach to Notices of Appeal.

24. The CMA submitted as follows:

(1) A party seeking a very late amendment to its case bears a heavy onus in persuading the court to allow this. In *Imperial Tobacco Group and others v Office of Fair Trading* [2011] CAT 41 the Tribunal referred to

the decision of the Court of Appeal in *Swain-Mason v Mills & Reeve* [2011] 1 WLR 2735, in which Lloyd LJ commented at [72]:

> "As the court said, it is always a question of striking a balance. I would not accept that the court in that case sought to lay down an inflexible rule that a very late amendment to plead a new case, not resulting from some late disclosure or new evidence, can only be justified on the basis that the existing case cannot succeed and the new case is the only arguable way of putting forward the claim. That would be too dogmatic an approach to a question which is always one of balancing the relevant factors. However, I do accept that the court is and should be less ready to allow a very late amendment than it used to be in former times, and that a heavy onus lies on a party seeking to make a very late amendment to justify it, as regards his own position, that of the other parties to the litigation, and that of other litigants in other cases before the court." (emphasis added)

(2) That judgment concerned private party litigation conducted under the Civil Procedure Rules rather than proceedings before the Tribunal. However, the Tribunal considered that the approach to late amendments could be applied by analogy in the Tobacco appeals. The same approach ought to apply in this case. The application is made at an exceptionally late stage in the proceedings, after the parties' legal representatives have been sent an embargoed version of the Tribunal's draft judgment, and where the only outstanding formal step is the public handing down of the judgment. The general need to maintain discipline in appeals ought to prevail in this case: *Floe Telecom Ltd v Ofcom* [2004] CAT 7.

(3) None of the factors in Rule 12(3) point to the granting of permission for Hg to amend its grounds. Hg accepts, and the CMA agrees, that the specific factors listed in Rule 12(3)(b) and (c) point against allowing the amendment: the new ground of appeal is not based on matters of law or fact that have come to light since the appeal (other than the Tribunal's decision) and could have been included in Hg's original notice of appeal. Indeed, Hg had ample opportunity to consider (with specialised legal advice) whether to appeal against the penalty imposed on it and chose not to appeal the penalty with its eyes open. Moreover, the proposed amendment does involve a substantial change/addition to the appellant's case, opening up Hg's penalty to appeal for the first time.

(4) The fact that the Tribunal has already decided the substance of the point weighs against allowing the amendment.

(5) Allowing the amendment might incentivise other appellants to make 'me too' applications to amend at a very late stage of proceedings. That would be both unworkable and unjust and risks opening up the post-trial process of sharing of draft judgments to opportunistic appellants.

(6) The additional ground of appeal causes prejudice to the CMA in that: (i) the CMA will be forced to incur additional costs in addressing it; (ii) the proposed reduction in Hg's fine of £2.4m will have a direct, prejudicial impact upon the Consolidated Fund (pursuant to section 36(8) of the Act) and therefore upon the public purse; and (iii) the CMA is concerned that allowing Hg's amendment could incentivise other appellants to seek belatedly to amend their notices of appeal to try to secure reductions in fines.

G. THE TRIBUNAL'S CONCLUSIONS ON THE SECOND ISSUE

25. Whether to allow an amendment to a Notice of Appeal is a matter for the discretion of the Tribunal to be exercised in accordance with Rule 12 and the governing principle in Rule 4(1) of seeking to ensure that cases are dealt with justly and at proportionate cost.

26. As indicated in the passage from the judgment of Lloyd LJ in *Swain-Mason v Mills & Reeve* cited above, the exercise of the Court's or Tribunal's discretion generally requires a balance to be struck between injustice to the applicant if the permission to amend is refused and injustice to the opposing party and other litigants in general if permission to amend is granted. Where an application is made late in proceedings, the balance may well be heavily loaded against the applicant because of the potential unfairness to the opposing party in having to deal with new issues at short notice before trial. Alternatively, if the amendment requires an adjournment of the trial, the opposing party may well be prejudiced by the consequential disruption and delay in the disposal of its case; other litigants may also have to wait longer for their hearings to come on.

27. In considering how to strike the balance in the case of a late application, it is, however, necessary to bear in mind that, as observed by Carr J (as she then was) in *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm) at [38], lateness is not simply a matter of dates but needs to be considered in the context of other relevant factors:

> "(d) lateness is not an absolute but a relative concept. It depends on a review of the nature of the proposed amendment, the quality of the explanation for its timing, and a fair appreciation of the consequences in terms of work wasted and consequential work to be done."

28. Earlier in her judgment, Carr J held that a heavy burden lies on a party seeking a "very late" amendment which she defined as an amendment sought to be made when the trial date has been fixed and where permitting the amendment would cause the trial date to be lost, contrary to the legitimate expectations of the parties and the court that trial fixtures will be kept. It was an amendment of that kind that was the subject of the appeal in *Swain-Mason v Mills & Reeves*. That was a professional negligence case in which an application for permission to re-amend the Particulars of Claim to introduce a new case was made at the beginning of a trial which had already been adjourned once. The words "very late" in the context of applications to amend appear now to have become a judicial term of art, meaning an amendment which would cause the trial date to be lost; *CNM Estates (Tolworth Tower Limited) v Carvill-Biggs and anr* [2023] EWCA 480 at [67].

29. There can be no dispute that, in purely temporal terms, the application to amend in the present case was made extremely late, after the conclusion of the appeal hearing and the circulation of the draft judgment. It was not, however, a "very late" amendment in the sense envisaged by Carr J. The amendment was not made shortly before a final hearing and did not necessitate the vacating of any hearing. The fact that allowing Hg's proposed amendment to be made, despite its exceptional timing, would not lead to significant delay or to the loss of a hearing date distinguishes this case from the typical "very late" amendment cases such as *Swain Mason* and *Quah* in which the applicant was understandably under a heavy onus to justify the amendment because of the significant prejudice to the opposing party and other litigants resulting from an aborted hearing. The

onus on Hg to justify permission in this case was, for this reason, less heavy than in those cases.

30. With regard to the three specific factors listed in Rule 12, the proposed amendment is a "substantial addition" to Hg's case within the meaning of (3)(a) in the sense of being a significant expansion to the scope of its appeal but it is not substantial in the relevant sense of requiring the CMA to grapple with fresh evidence or new legal arguments and hence being a factor weighing against the grant of permission. Factors (b) and (c) (whether the amendment is based on matters of law or fact which have come to light since the appeal was made or which could not practicably have been included in the notice of appeal), are factors which, if present, would weigh in favour of the grant of permission but the fact that the proposed amendment could have been included in the Notice of Appeal is not decisive. The purpose of the Tribunal's case management powers is to ensure that cases are dealt with justly, not to punish parties for mistakes or to maintain discipline for its own sake. Blameworthiness on the part of the applicant in failing to advance a proposed amendment at an earlier stage in the proceedings should not, in my view, necessarily preclude the grant of permission to amend if the amendment would enable the applicant to frame its case correctly without unduly prejudicing the opposing party.

31. In the present case, allowing the proposed amendment would not cause any significant prejudice to the CMA. Additional costs can be met by an order that Hg as the amending party pays them. A reduction in Hg's fine which would follow, if the amendment is allowed and the Tribunal finds that Hg's penalty was wrongly calculated because of the Deterrence Uplift, would not be prejudice of which the CMA could legitimately complain. It would not be prejudicial for the public purse to be deprived of funds which Hg should not have been ordered to pay in the first place. It is also to be noted that the CMA did not contend that allowing the amendment would deprive it of the opportunity to put forward evidence that it would have put forward had Hg challenged its penalty in its original Notice of Appeal.

32. Disallowing the proposed amendment would conversely cause significant prejudice to Hg. It would prevent Hg from vindicating its rights as a party

ordered to pay a financial penalty which, if the additional ground of appeal is upheld, was wrongly calculated by the CMA by the inclusion of a Deterrence Uplift for which there was no justification, resulting in a penalty which was millions of pounds higher than it ought to have been. The CMA did not suggest that the proposed amendment had no merit. It made the opposite point that the Tribunal has effectively already determined the Deterrence Uplift issue in Hg's favour and that this was a factor against the grant of permission. It was, however, open to the CMA to advance its case against the removal of the Deterrence Uplift in Hg's particular case and to seek to persuade the Tribunal that Hg was in a materially different position to the other Appellants (which is what the CMA subsequently sought to do).

33. Contrary to the CMA's submissions it seems most unlikely that allowing Hg's amendment would incentivise other appellants to seek belatedly to amend their Notices of Appeal to try to secure reductions in fines rather than appealing against penalties in their original Notices of Appeal. My decision on the jurisdiction issue may well have the opposite effect and encourage other appellants to set out their case on penalties fully in their Notices of Appeal from the outset.

34. In conclusion, I consider that for the reasons set out above and taking into account all relevant circumstances in accordance with Rule 12, including, in particular, on the one hand, the timing of the application and Hg's failure to appeal against its penalty in its original Notice of Appeal as it could have done, and, on the other hand, the absence of significant prejudice to the CMA if the amendment is allowed and the desirability of ensuring that the penalty payable by Hg is calculated correctly, as the penalties payable by the other Appellants will be in the light of the Tribunal's judgment, the interests of justice strongly favour the grant of permission to Hg to amend its Notice of Appeal.

Andrew Lenon KC
Chair

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

Date: 7 September 2023