



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1415/5/7/21 (T)

Before:

ANDREW LENON K.C.
(Chair)

Sitting as a Tribunal in England and Wales

BETWEEN:

- (1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE**
- (2) THE NATIONAL HEALTH SERVICE BUSINESS AUTHORITY**
- (3) THE WELSH MINISTERS**
- (4) SWANSEA BAY UNIVERSITY HEALTH BOARD**
- (5) CWM TAF MORGANNWG UNIVERSITY HEALTH BOARD**
- (6) ANEURIN BEVAN UNIVERSITY HEALTH BOARD**
- (7) HYWEL DDA UNIVERSITY HEALTH BOARD**
- (8) BETSI CADWALADR UNIVERSITY HEALTH BOARD**
- (9) POWYS TEACHING HEALTH BOARD**
- (10) CARDIFF & VALE UNIVERSITY HEALTH BOARD**

Claimants

- v -

- (1) LUNDBECK LIMITED**
- (2) H. LUNDBECK A/S**
- (3) GENERICS (U.K.) LIMITED**

- (4) MERCK KGAA**
(5) ARROW GENERICS LIMITED
(6) ARROW GROUP APS
(7) RESOLUTION CHEMICALS LIMITED
(8) XELLIA PHARMACEUTICALS APS
(9) ALPHARMA LLC
~~**(10) A.L. INDUSTRIER AS**~~
(11) SUN PHARMACEUTICAL INDUSTRIES LIMITED
(12) SUN PHARMA UK LIMITED

Defendants

ORDER (DISCLOSURE)

UPON the Order of the Tribunal made on 29 September 2023 at the first case management conference in these proceedings and drawn on 6 October 2023 directing that the question of limitation is to be determined as a preliminary issue

AND UPON the Defendants serving on the Claimants their disclosure requests in respect of the preliminary issue and the Claimants responding to the Defendants' disclosure requests, indicating whether or not they were agreed and, if not agreed, the Claimants' objections and the Defendants replying to the Claimants' objections and filing the completed Redfern Schedule with the Tribunal on 1 December 2023

IT IS ORDERED THAT:

1. This Order uses the defined terms set out in the Annex.
2. The First to Tenth Claimants shall provide disclosure by list and inspection of documents falling within the following categories by 4pm on 26 January 2023:
 - (1) In relation to the period 16 January 2008 to 19 July 2013, all Documents recording policies, guidelines, processes, training materials and or practices that existed for the purposes of monitoring publicly available information concerning the pharmaceutical

industry relevant to the price of pharmaceutical products to the National Health Service (“NHS”) in England and Wales, the UK Drug Tariff and or the reimbursement price of pharmaceuticals within each of the First to Tenth Claimants, together with materials that evidence any policy or practice monitoring of any such information (including without limitation anything gathered pursuant to such policies), that pertained to either the Investigation or the Sector Inquiry.

- (2) In relation to the period 1 August 2006 to 19 July 2013, all Documents recording policies, guidelines, processes, training documents and or practices that existed for the purposes of sharing information concerning the pharmaceutical industry relevant to the price of pharmaceutical products to the NHS in England and Wales, the UK Drug Tariff and or the reimbursement price of pharmaceuticals as between any or each of the Claimants, together with any materials shared pursuant to such policies (that pertained to either the Investigation or the Sector Inquiry).
- (3) In relation to the period 1 November 2006 to 8 July 2009, all Documents relating to the Sector Inquiry RFIs held by the First and Second Claimants including but not limited to the Communications with the Commission in December 2006 and any drafts of such Communications.
- (4) In relation to the period 1 November 2006 to 31 December 2009, all Documents relating to the Sector Inquiry, its Preliminary Report, its Final Report and or to the Sector Inquiry more generally.
- (5) In relation to the period 1 August 2006 to 19 July 2013, all Documents relating to the Investigation and Investigation RFIs including but not limited to Documents relating to Communications between UK competition authorities in receipt of the Competition Authorities RFI and any of the Claimants; Communications with the Commission in the course of the Investigation; internal Communications within each of the First and Second Claimants concerning the Investigation RFIs;

Communications between the First and. or Second Claimant and any of the other Claimants.

(6) In relation to the period 25 November 2008 to 19 July 2013, all internal Documents that record, forward, discuss, comment on, capture or note information derived from the Press Releases. For the avoidance of doubt, this includes any copies of any of the Press Releases.

(7) In relation to the period 25 November 2008 to 19 July 2013, all Documents recording Communications between any or each of the Claimants forwarding, mentioning or referring to the contents of the Press Releases.

(8) In relation to the period 16 January 2008 to 19 July 2013, all internal Documents that record, forward, discuss, comment on, capture or note the existence of News Coverage concerning the Investigation and or the Sector Inquiry. For the avoidance of doubt, this includes any copies of any News Coverage.

(9) In relation to the period 16 January 2008 to 19 July 2013, all Documents recording communications between any of the Claimants mentioning or referring to the News Coverage concerning the Investigation and or the Sector Inquiry.

3. The First Claimant (private office of the Secretary of State for Health and or Minister for Health), the Second Claimant Board Members and the Third Claimant (private office of Minister for Health and Social Services) shall also provide disclosure by list and inspection of documents falling within the following categories by 4pm on 26 January 2023:

(1) In relation to the period from August 2006 to 19 July 2013, all ministerial submissions, ministerial updates, ministerial briefings and/or board papers or analogous documents or communications prepared by or for the Department of Health, any of its constituent parts and or any of its arm's length bodies for submission to the Secretary of State for Health and or Minister for Health, the third

Claimant, the Board of the Department of Health and Social Care, and or the Board of the Second Claimant in relation to the Investigation and or the possible existence of a claim against any of the Defendants arising out of the Investigation.

4. Costs in the case.

Andrew Lenon KC
Chair of the Competition Appeal Tribunal

Made: 29 December 2023
Drawn: 29 December 2023

ANNEX

“Board Members” refers to the members of the Board of the Second Claimant and the Fourth to Tenth Claimants.

“Claimants” means the First to Tenth Claimants as identified in the Claim Form. Any reference to one or more Claimants includes any predecessor-bodies-in- title who bore the cost of reimbursing pharmacists and doctors for drugs dispensed in the community by the National Health Service.

“Communications” means communications in all their various forms including but not limited to in writing, orally, by telephone and in face-to-face meetings.

“Competition Authorities RFI” means the Request for Information sent by the European Commission (including its relevant bodies) directly or indirectly to the UK competition authorities in August 2006.

“Defendants” means the First to Twelfth Defendant (excluding the Tenth Defendant, A.L. Industrier AS, which is no longer a party to this claim).

“Documents” encompasses the definitions of “documents” and “electronic documents” in Civil Procedure Rules rule 31.4 and Practice Direction 31B paragraph 5(3) respectively.

“Investigation” means the European Commission’s Investigation into breaches of Article 101 TFEU in relation to the supply of Citalopram in the European Union (Case COMP/B2 39226 — Lundbeck).

“Investigation RFIs” means the Competition Authorities RFI and Requests for Information sent by DG Competition to the First and or Second Claimant in relation to the Investigation and all Communications responsive to those RFIs including but not limited to requests and/or responses sent in August 2006, 24 March 2011, 6 April 2011, 26 August 2011, 1 September 2011, 2 September 2011, 18 October 2011, 20 October 2011, 21 October 2011 and 16 February 2012.

“News Coverage” means all references to the Sector Inquiry, the Investigation, and its progress, set out in any of: (a) the trade-specific pharmaceutical press; (b) the national and/or international non-trade press (including, without limitation, the agencies Reuters and Associated Press); or (c) email alerts, other electronic media or newsletters in the period from 16 January 2008 to the 19 July 2013.

“Press Releases” means each of the press releases /memos issued by the European Commission in relation to the Sector Inquiry and the Investigation including those of: 25 November 2008; 9 December 2009; 7 January 2010; 25 July 2012; 30 July 2012; 31 January 2013 and 19 June 2013.

“Sector Inquiry” means the European Commission’s Pharmaceutical Sector Inquiry, which resulted in a Final Report adopted on 8 July 2009. **“Sector Inquiry RFIs”** means all Requests for Information sent by DG Competition to the First and or Second Claimants in relation to the Sector Inquiry (and all Communications responding thereto) including but not limited to an RFI sent by DG Competition in late 2006 and responded to by Mr David Kullman (of the First Claimant) on 6 December 2006.

“Statement of Objections” means the Statement of Objections produced by the Commission in association with the Investigation, which was the subject of a Press Release on 25 July 2012.