



Neutral citation [2025] CAT 15

IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1407/1/12/21
1411/1/12/21
1412/1/12/21
1413/1/12/21
1414/1/12/21

BETWEEN:

ALLERGAN PLC
(The “Allergan Appellant”)

AMDIPHARMA UK LIMITED
AMDIPHARM LIMITED
ADVANZ PHARMA SERVICES LIMITED
ADVANZ PHARMA CORP LIMITED
(The “Advanz Appellants”)

CINVEN (LUXCO 1) SARL
CINVEN CAPITAL MANAGEMENT (V) GENERAL PARTNER LTD
CINVEN PARTNERS LLP
(The “Cinven Appellants”)

AUDEN MCKENZIE (PHARMA DIVISION) LIMITED
ACCORD UK LIMITED
(The “Auden/Actavis Appellants”)

INTAS PHARMACEUTICALS LIMITED
ACCORD HEALTHCARE LIMITED
ACCORD-UK LIMITED
(The “Intas Appellants”)

Appellants

- and -

THE COMPETITION AND MARKETS AUTHORITY

Respondent

REASONED ORDER (PERMISSION TO APPEAL)

UPON the Tribunal’s Judgment dated 18 September 2023 ([2023] CAT 56) (the “**Judgment**”)

AND UPON the Order of the President dated 8 March 2024

AND UPON the Tribunal having handed down its judgment [2024] CAT 28 on 29 April 2024 (“**Hydrocortisone 4**”)

AND UPON reading the Allergan Appellants’ application dated 20 May 2024 for permission to appeal the Judgment, the Intas Appellants’ application dated 20 May 2024 for permission to appeal the Judgment and the Auden/Actavis Appellants’ application dated 20 May 2024 for permission to appeal Hydrocortisone 4 and the Judgment (together the “**Appellants’ PTA Applications**”)

AND UPON reading the CMA’s responsive submissions to the Appellants’ PTA Applications dated 30 May 2024.

IT IS ORDERED THAT:

1. The Allergan Appellants, the Auden/Actavis Appellants, and the Intas Appellants are each granted permission to appeal the Judgment in respect of the grounds of appeal pleaded in the Appellants’ PTA Applications.
2. The Auden/Actavis Appellants are granted permission to appeal Hydrocortisone 4 in respect of the ground of appeal pleaded in their application dated 20 May 2024.

REASONS

1. The Tribunal is required to consider whether the appeals would have a real prospect of success, or if there is some other compelling reason why the appeal should be heard by the Court of Appeal.
2. In the Judgment, the Tribunal sets out an analytical framework for differentiating between real world situations in which a producer surplus may exist. The same framework was subsequently applied in the Tribunal’s Judgment in *Pfizer inc &*

Another v The CMA and Flynn Pharma Limited & Another v The CMA (the “Flynn Pfizer Judgment”), [2024] CAT 56 at [194], in respect of which permission to appeal has also been sought. The framework was applied in both the Flynn Pfizer Judgment and the Judgment to analyse whether some form of producer surplus was legitimate or illegitimate; and whether the level of producer surplus was unfair on the facts of each case. This Judgment also raises issues of public importance.

3. Both these grounds constitute compelling reasons why the appeals from Hydrocortisone 4 and the Judgment should be heard and (for the sake of clarity) why permission to appeal the Flynn Pfizer Judgment will also be given, in light of the Judgment.

Mr Justice Marcus Smith
Chair

Simon Holmes

Professor Robin Mason

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 4 March 2025