



Neutral citation [2026] CAT 48

Case Nos: 1407/1/12/21

1413/1/12/21

IN THE COMPETITION
APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

9 June 2026

BETWEEN:

ALLERGAN PLC

(The **Allergan Appellant**)

AUDEN MCKENZIE (PHARMA DIVISION) LIMITED
ACCORD UK LIMITED

(The **Auden/Actavis Appellants**)

Appellants

- and -

THE COMPETITION AND MARKETS AUTHORITY

(The **CMA**)

Respondent

REASONED ORDER (SLIP RULE APPLICATION)

UPON the Tribunal's Reasoned Order dated 4 March 2025 ([2025] CAT 15) (the **Reasoned Order**)

AND UPON reading the letter from Macfarlanes LLP dated 27 May 2026 and enclosures as supplemented by a further letter dated 8 June 2026 (**the Slip Rule Application**) filed on behalf of the Allergan Appellant and the Auden/Actavis Appellants (together **AAA**)

AND UPON reading the letters from the CMA dated 3 June 2026 and 8 June 2026 in response to the Slip Rule Application

IT IS ORDERED THAT:

1. The Slip Rule Application is refused.

REASONS

1. The Tribunal requested both AAA and the CMA to inform it if the Slip Rule Application engages the interests of any other party related to this litigation. Since the Tribunal has not been informed that any other party's interests are engaged, the Slip Rule Application is being determined by reference only to the written submissions of AAA and the CMA.
2. The Slip Rule Application is made pursuant to r. 114(3) of the Competition Appeal Tribunal Rules 2015 (the **Rules**). That permits the Tribunal to correct an error in the Reasoned Order that is a "clerical mistake" or an "error arising from ... an accidental slip or omission". It is common ground that this power is similar to that set out in Civil Procedure Rule (**CPR**) 40.12 and that the Tribunal should generally expect to interpret r. 114(3) in the same way as the courts interpret CPR 40.12.
3. I will use words and phrases defined in the Slip Rule Application in this order unless the context requires otherwise. I will take the Slip Rule Application as read: in summary it asks the Tribunal to amend the Reasoned Order so as to provide that it grants AAA permission to appeal (**PTA**) not only against the Tribunal's judgments in H1 and H4, but also against the Tribunal's judgment in H2 so far as it concerns penalty. The Slip Rule Application also includes some submissions to the effect that, even without an amendment, the Reasoned Order grants PTA against H2. I will not provide any declaration as to the meaning of the Reasoned Order in its unamended form for the simple reason that it is for the Court of Appeal, rather than this Tribunal, to determine the scope of AAA's permissible appeal to the Court of Appeal. This order, therefore, addresses only the application under r. 114(3) of the Rules.

4. I was referred to the judgment of the Court of Appeal on the scope of CPR 40.12 in *Bristol Myers Squibb Company v Baker Norton Pharmaceuticals Inc and others* [2001] EWCA Civ 414, [2001] 3 WLUK 769 and to Henshaw J’s survey of authorities on CPR 40.12 in *Deutsche Bank AG v Sebastian Holdings Inc* [2023] EWHC 2563 (Comm), [2023] 4 WLR 76. In my judgment, I should apply the following principles:
- (1) If I am satisfied that, by the Reasoned Order, the Tribunal intended to give AAA PTA against H2, but the Reasoned Order did not express that intention because of an accidental slip or omission, I can and should allow the Slip Rule Application.
 - (2) However, the conditions for an amendment under r. 114(3) would not be met if the Tribunal overlooked the application for PTA against H2, even if I am satisfied that the Tribunal would have granted PTA had it considered the matter. That follows from the principle that the slip rule is not intended to enable the Tribunal to have “second thoughts”.
 - (3) I should not allow the Slip Rule Application if I consider that the Tribunal intended to refuse PTA against H2.
 - (4) Nor should I allow the Slip Rule Application if I consider that the Tribunal positively concluded that the application for PTA against H2 had fallen away or did not need to be considered. That is the case even if the Tribunal’s conclusion is, or might be, wrong, again because the purpose of the slip rule is not to enable the Tribunal to have second thoughts.
5. AAA points out that the Reasoned Order refers, in its fourth recital, to various applications for PTA. I do not doubt that those applications included applications for PTA against H2. I regard that, on its own, as a neutral indication. Read in any straightforward fashion, the Reasoned Order granted PTA only against H1 and H4. Paragraphs 1 and 2 of the Reasoned Order set out those judgments that can be appealed (H1 and H4 only). I do not agree with AAA that this conclusion is altered by the fact that the Reasoned Order grants PTA “in respect of the ground[s] of appeal pleaded in the Appellants’ PTA Applications” (which applications contained grounds of appeal

against H2). The Reasoned Order appears straightforwardly to grant PTA only in relation to H1 and H4 in respect of those grounds (relating to H1 and H4) that are set out in the Appellants' PTA Applications.

6. Given that apparent clarity, the fact that H2 is not mentioned in the Reasoned Order is (at least) just as consistent with the Tribunal either: (i) deciding not to grant PTA against H2; (ii) overlooking the need to consider whether to grant PTA against H2; or (iii) deciding that there was no need to consider the question of PTA against H2, as it is with the conclusion that the Tribunal intended to grant PTA against H2 but overlooked to do so.
7. There is something in AAA's point that, if the Tribunal had intended to refuse PTA against H2, it would have given some reasons for doing so. However, the absence of reasons for refusing PTA is also consistent with the Tribunal overlooking the application for PTA against H2. It is also consistent with the Tribunal considering it so obvious that the application for PTA against H2 had fallen away, or been overtaken by events, that no consideration of H2 was necessary.
8. AAA refers to its understanding as to the scope of the permissible appeal after the date of the Reasoned Order. Perhaps if AAA and the CMA shared an understanding that PTA against H2 had been granted that might have something to say about the Tribunal's intention. For example, if it was "obvious" to both AAA and the CMA that an appeal against H2 was in scope, despite H2 not being mentioned in the Reasoned Order, it could be argued that this must have been obvious to the Tribunal. I am inclined to doubt the strength of any inference that could be drawn from any common understanding of the parties. However, the CMA's submissions suggest that there was no common understanding in any event.
9. AAA relies on a letter of 9 December 2025, which Tribunal staff sent on my instructions. I consider that has nothing to say about the Tribunal's intention when it made the Reasoned Order in March 2025. The letter of 9 December 2025 was sent nine months after the Reasoned Order. Moreover, it set out my own understanding, whereas the Reasoned Order reflected the reasoning of a completely different Tribunal panel.

10. The CMA has advanced an explanation as to why the Tribunal might have considered that the need to consider an application for PTA against H2 might have fallen away by the time the Tribunal made the Reasoned Order. AAA does not agree with that analysis. I do not need to decide whether the CMA's or AAA's analysis of surrounding circumstances is to be preferred. However, the CMA's analysis shows that AAA's applications for PTA against H1, H2 and H4 were made on 20 May 2024. On 25 September 2024, the Court of Appeal made an order refusing certain applications for PTA against H2 and remitting the issue of the 10mg penalty (that the Tribunal had, in H2, declined to decide) back to the Tribunal. I do not agree with AAA that this matter is irrelevant to the Slip Rule Application. It is relevant in that it suggests that the Tribunal may (rightly or wrongly) have decided not to deal with H2 in the Reasoned Order, because it considered that had been overtaken by events.
11. Moreover, even if AAA's analysis of the interaction with the Court of Appeal proceedings were to be preferred, that would simply suggest that there would have been utility in the Tribunal considering an application for PTA against H2. That still does not demonstrate that the Tribunal intended to grant PTA against H2. Other perfectly realistic alternative analyses are possible for example that: (i) the Tribunal thought (wrongly) that there was no need to address an application for PTA against H2; or (ii) that the Tribunal simply overlooked the application for PTA against H2. In either of these cases, a slip rule amendment would not be appropriate as it would amount to the Tribunal having "second thoughts".
12. The CMA emphasises the lapse of time between the Reasoned Order being made and the Slip Rule Application being made. The parties have different perceptions on whether this is "delay" at all and whether any delay is justified. I do not regard "delay" in itself as a reason not to make the amendment sought. If the Reasoned Order fails to give effect to the intention of the Tribunal it should be amended. However, the lapse of time does make it very difficult for me to be satisfied that the Reasoned Order fails to give effect to the Tribunal's intention. I was not part of the panel when the Reasoned Order was made. Matters that would have been obvious to the Tribunal panel when it made the Reasoned Order may appear far from obvious now. Moreover, there is the inevitable possibility that the parties' submissions as to what the Tribunal had in mind when it made the Reasoned Order have been affected by their knowledge of events after

the Reasoned Order so that submissions as to what the Tribunal “intended” are, in reality, submissions as to what the parties think the Tribunal could, or should, have done.

13. Overall, I am not satisfied that the Tribunal intended, by its Reasoned Order, to grant PTA against H2 and the Slip Rule Application is refused for that reason.

The Honourable Mr Justice Richards
Chair

Charles Dhanowa CBE, KC (Hon)
Registrar

Date: 9 June 2026