



Neutral citation [2015] CAT 3

**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No.: 1229/6/12/14

11 February 2015

Before:

THE RIGHT HONOURABLE LORD JUSTICE SALES  
(Chairman)  
CLARE POTTER  
DERMOT GLYNN

Sitting as a Tribunal in England and Wales

**BETWEEN:**

**HCA INTERNATIONAL LIMITED**

Applicant

**-v-**

**COMPETITION AND MARKETS AUTHORITY**

Respondent

**-and-**

**AXA PPP HEALTHCARE LIMITED**  
**THE LONDON CLINIC**  
**BUPA INSURANCE LIMITED**

Interveners

---

**RULING (PERMISSION TO APPEAL AND STAY)**

---

1. This is the Tribunal's ruling on HCA International Limited's ("HCA") application for permission to appeal in relation to the Tribunal's ruling in *HCA International Ltd v Competition and Markets Authority* [2014] CAT 23 (the "Ruling") and HCA's related application for an order to stay further steps in relation to the decisions and the part of the private healthcare market investigation which have been remitted to the Competition and Markets Authority ("CMA") for further consideration. This ruling uses the same abbreviations as are set out in the Ruling.

### **Permission to appeal**

2. The Tribunal grants permission to appeal in relation to Ground 1 of the Grounds of Appeal, regarding the Tribunal's refusal to give a direction that the remittal of the Insured AEC Decision and the Divestment Decision should be to a new inquiry group and case team. The Tribunal considers that HCA has an arguable case on a point of law in relation to this which satisfies the test of a real prospect of success on appeal. It is also desirable that the Court of Appeal should review and provide guidance on the proper approach to be adopted to remission to the CMA for reconsideration of decisions made by it, and whether it is appropriate for the reconsideration to be by the same inquiry group and/or the same case team in circumstances where there is no allegation or finding of actual bias but the applicant has expressed concern about the ability of the inquiry group and case team to reconsider matters with an open mind.
3. The Tribunal refuses permission to appeal in relation to Ground 2 of the Grounds of Appeal (order to reserve costs in relation to grounds 2 to 5 of HCA's application). The Tribunal has a wide costs discretion: see Rule 55 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003, as amended by S.I. No. 2068 of 2004) (NB this is in different terms from the costs provisions in CPR Part 44). Further, the Tribunal has wide general case management powers. There is no real prospect of success in relation to appeal Ground 2, which relates to a case management decision regarding exercise of

the Tribunal's discretion with respect to awarding costs. The Tribunal does not consider that there is any reasonable argument that it misdirected itself or went wrong in law. There is no other compelling reason to grant permission to appeal.

4. The Tribunal refuses permission to appeal in relation to Ground 3 of the Grounds of Appeal (order regarding costs of the data room exercise). The Tribunal's discretion in relation to costs is wide: see Rule 55. The Tribunal does not consider that there is any reasonable argument that it misdirected itself or went wrong in law. There is no real prospect of success in relation to appeal Ground 3. There is no other compelling reason to grant permission to appeal.

**Stay in relation to remitted investigation: expedition of appeal**

5. The Tribunal dismisses HCA's application for a stay.
6. It is in the public interest that the remitted market investigation should proceed promptly, since it is possible that there is in existence an AEC which ought to be remedied. Absent good reason to suspend further work on the remitted decisions while the appeal is determined, it is in the public interest for progress to be made with the remitted decisions and market investigation in parallel with the appeal, in order to minimise delay in reaching new determinations after proper investigation.
7. It is a matter for the judgment of the CMA to what extent it wishes to commit the existing inquiry group and case team to work pending resolution of the appeal on Ground 1. Since the CMA opposes a stay, and is better placed than the Tribunal to manage the position so far as its own resources are concerned, it is not for the Tribunal to impose a stay in order to protect the CMA.
8. So far as concerns HCA and other parties interested in making representations for the purposes of the remitted decisions and market investigation, there is no significant

prospect that any work they do will be wasted, whatever the result of the appeal. No party other than HCA has joined it in seeking a stay. HCA will have to make representations to address the new situation brought about by the order remitting the decisions, whichever inquiry group and case team ultimately re-considers those decisions. There is no good reason to delay that process, and the public interest is in favour of HCA being required to get on with that task now, so as to minimise delay in reaching new determinations.

9. The Tribunal does not have power itself to order that the appeal be expedited. However, it does express the view that this is an appeal which would be suitable for expedition. There is a significant public interest in ensuring that any new determination on the matters remitted should be made as promptly as possible and should be free from any doubt resulting from the appeal remaining outstanding. The appeal needs to be determined promptly in order to allow that to happen. The parties should draw this expression of view to the attention of the Court of Appeal, for that Court to consider whether to order an expedited hearing of the appeal.

The Rt Hon Lord Justice  
Sales (Chairman)

Dermot Glynn

Clare Potter

Charles Dhanowa OBE, QC (*Hon*)  
(Registrar)

Date: 11 February 2015