



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE No 1253/1/12/16

Pursuant to rule 14(2) of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 12 April 2016 under section 46 of the Competition Act 1998 (“the Act”) by Xellia Pharmaceuticals ApS (“Xellia”) and Alpharma LLC (“ALLC”) (together, “the Appellants”) against a decision of the Competition and Markets Authority (“CMA”) dated 12 February 2016 in CASE CE-9531/11 - Paroxetine (“the Decision”). The Appellants are represented by Clifford Chance LLP at 10 Upper Bank Street, London E14 5JJ (reference: Luke Tolaini).

The Decision concerns, amongst other things, an agreement entered into by the predecessors of Xellia, ALLC and Actavis UK Limited (“Actavis”) (referred to collectively as “Alpharma”) in 2002 to end ongoing patent litigation with pharmaceutical originator company GlaxoSmithKline PLC (“GSK”) (“the Alpharma Agreement”) relating to paroxetine (supplied in the UK as Seroxat, an antidepressant medicine). The CMA found that Xellia and ALLC infringed section 2(1) of the Act (the “Chapter I prohibition”) by participating in the Alpharma Agreement. The CMA found that GSK made value transfers to induce Alpharma to desist, during the term of the Settlement, from continuing its efforts to enter the UK paroxetine market independently of GSK, and thereby from offering independent generic competition against GSK. The CMA imposed a fine of £1,542,860, for which Xellia, ALLC and Actavis were held jointly and severally liable.

The Appellants appeal the Decision. Under **Ground 1** the Appellants contend that the CMA erred in finding that the Alpharma Agreement had the object of restricting competition. Under **Ground 2** the Appellants contend that the CMA erred in finding that the Alpharma Agreement had the effect of restricting competition. Under **Ground 3** the Appellants contend that the CMA erred in finding that the Alpharma Agreement did not fall within the scope of the Vertical Agreements Exclusion Order.¹ Under **Ground 4** the Appellants contend that the CMA erred in attributing liability to them. It is alleged that the CMA should have attributed liability to A. L. Industrier S.A. or Actavis. Under **Ground 5** the Appellants contend that the CMA erred in imposing a fine on the Appellants. The infringement was entirely novel and was not one committed intentionally or negligently. No fine should also be imposed for reasons of legal certainty given the gap of almost 15 years between the infringement and the Decision.

As regards the relief sought, the Appellants seek:

- (a) the annulment of the Decision in full;
- (b) in the alternative, an annulment of the Decision in so far as it is addressed to the Appellants;
- (c) in the further alternative, an annulment of the fine imposed on the Appellants; and
- (d) the payment of the Appellants’ costs incurred in connection with the appeal.

Any person who considers that he has sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB (email: registry@catribunal) so that it is received within **three weeks** of the publication of this notice.

¹ The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000, SI 2000/310.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post (or email) at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

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