



COMPETITION APPEAL TRIBUNAL

NOTICE OF APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

CASE No 1254/1/12/16

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 Actavis UK Limited, formerly Alparma Limited (“Actavis”) of Whiddon Valley, Barnstaple, Devon EX32 8NS against a decision of the Competition and Markets Authority (“CMA”) dated 12 February 2016 in CASE CE-9531/11 - Paroxetine (“the Decision”). Actavis is represented by King & Wood Mallesons LLP at 10 Queen Street Place, London, EC4R 1BE (reference: Cameron Firth).

The Decision concerns, amongst other things, an agreement entered into by the predecessors of Actavis, Xellia Pharmaceuticals ApS (“Xellia”) and Alparma LLC (“ALLC”) (referred to collectively as “Alparma”) in 2002 to end ongoing patent litigation with pharmaceutical originator company GlaxoSmithKline PLC (“GSK”) (“the Alparma Agreement”) relating to paroxetine (supplied in the UK as Seroxat, an antidepressant medicine). The CMA found that Actavis infringed section 2(1) of the Act (the “Chapter I prohibition”) by participating in the Alparma Agreement. The CMA found that GSK made value transfers to induce Alparma 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 Actavis, Xellia and ALLC were held jointly and severally liable.

Actavis appeals the Decision. Under **Ground 1** Actavis contends that the CMA erred in: (a) finding that Alparma was a potential competitor of GSK at the time it entered into the Alparma Agreement; and (b) characterising the Alparma Agreement as involving restrictions of competition by object within the meaning of the Chapter 1 prohibition. Under **Ground 2** Actavis contends that the CMA erred in finding that the Alparma Agreement had the effect of restricting competition contrary to the Chapter I prohibition. Under **Ground 3** Actavis contends that the CMA erred in failing to find that the Alparma Agreement is excluded from the Chapter I prohibition by virtue of the Vertical Agreements Exclusion Order.¹ Actavis also contends under **Ground 4** that, by reason of delay, its rights of defence have been irreparably compromised. Without prejudice to Actavis’ primary grounds of appeal, under **Ground 5** Actavis appeals the amount of the penalty imposed by the CMA.

As regards the relief sought, the Tribunal is requested to:

- (a) allow Actavis’ appeal;
- (b) quash the Decision; and/or
- (c) remove and/or reduce the penalty; and
- (d) direct the CMA to pay Actavis’ costs of 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.org.uk) 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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