



COMPETITION APPEAL TRIBUNAL

NOTICE OF AN APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

Case No: 1419/1/12/21

Pursuant to rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of an appeal on 28 September 2021, under section 46 of the Competition Act 1998 (the “Act”), by Hg Capital LLP (“Hg”) against a decision of the Competition and Markets Authority (the “CMA”) dated 29 July 2021, entitled ‘*Excessive and unfair pricing with respect to the supply of liothyronine tablets in the UK*’ (the “Decision”). Hg is represented by Linklaters LLP, One Silk Street, London, EC2Y 8HQ (reference: Nicole Kar).

In the Decision, the CMA found that Goldshield Group Limited (“Goldshield”) (currently part of the undertaking referred to as “Advanz” in the Decision) had abused its dominant position by imposing unfair selling prices for 20 mcg liothyronine sodium tablets (“Liothyronine”) in the United Kingdom between 30 December 2009 and 30 August 2012 (the “Hg Ownership Period”), contrary to section 18 of the Act (the “Chapter II Prohibition”). The Decision found Hg jointly and severally liable with Goldshield for the breach of the Chapter II Prohibition during the Hg Ownership Period only in its capacity as a parent entity, rather than being directly involved in the pricing conduct. The Decision imposed a penalty of £8,600,000 in respect of the Hg Ownership Period.

Hg notes that prices during the Hg Ownership Period were significantly lower than the current price for Liothyronine cited in the Decision nearly four years after competitive entry and which the CMA has not found to infringe the Chapter II Prohibition.

Hg disputes the findings made in the Decision.

In summary, Hg advances two grounds of appeal against the finding of infringement made by the CMA in the Decision in relation to the Hg Ownership Period.

1. The CMA was wrong to find that Goldshield’s prices during the Hg Ownership Period were unfair, notably:
 - a. the Decision incorrectly applies the basic test for unfair pricing by rejecting real-world evidence of competition (such as competitor forecasts by sophisticated pharmaceutical companies and current price levels) in favour of a theoretical “cost plus” price so low that it would have foreclosed competition forever, incorrectly relying on a novel theory of competition law that “competition is not an end in itself”;
 - b. no credible competitor was incentivised to make the necessary investments to enter at the price level which prevailed during the Hg Ownership Period;
 - c. the CMA’s modelling choices are flawed and under reasonable “cost plus” assumptions prices during the Hg Period cannot be characterised as unfair; and
 - d. there is no evidence of “exploitative intent” during the Hg Ownership Period.
2. To the extent that any of the CMA’s analysis of infringement is successfully challenged by another appellants, the CMA’s finding of Hg’s liability should also be quashed.

By way of relief, Hg asks that the Tribunal set aside the Decision in so far as it applies to Hg.

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.

Please also note that a direction of the President is currently in place as to the electronic filing of documents: see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020. Therefore, a request for permission to intervene should be sent to the Registrar electronically, by email to registry@catribunal.org.uk, so that it is received within **three weeks** of the publication of this notice.

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 telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, QC (Hon)
Registrar

Published 18 November 2021