



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1419/1/12/21
1421/1/12/21
1422/1/12/21

BETWEEN:

(1) HG CAPITAL LLP
(2) CINVEN (LUXCO 1) S.A.R.L. & OTHERS
(3) MERCURY PHARMACEUTICALS LIMITED & OTHERS

Appellants

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

ORDER – EXTENSION OF TIME

UPON the application made by the Respondent on 22 October 2021 for directions from the Tribunal for (1) a consolidated Defence be filed in relation to appeals against the decision of the Respondent of 29 July 2021 regarding the supply of liothyronine tablets in the UK in the UK (“the Decision”) and (2) an extension of time for filing the consolidated Defence until 23 December 2021

AND UPON reading the letter from the solicitors for the Third Appellant dated 22 October 2021 objecting to the Respondent’s application for an extension of time

AND HAVING REGARD TO rules 15(1) and 19 of the Competition Appeal Tribunal Rules 2015

IT IS ORDERED THAT:

1. The Respondent shall file a single consolidated Defence in respect of all appeals brought against the Decision.

2. The time for the Respondent to file a single consolidated Defence is extended to 23 December 2021.

REASONS:

1. The Respondent is required to respond to three separate Notices of Appeal, each raising complex issues of law and economics. Although there is a significant degree of overlap, each Appellant also relies on (i) distinct grounds of Appeal raising wide-ranging issues; and (ii) material which was not before the Respondent during the administrative phase, including new expert evidence.
2. The Respondent is responding to separate appeal proceedings relating to its decision made on 15 July 2021 regarding the supply of hydrocortisone tablets in the UK (the “Hydrocortisone proceedings”), which includes an excessive and unfair pricing infringement. The Respondent’s Defence in the Hydrocortisone proceedings is due to be filed by 1 December 2021. Given the overlap between both sets of proceedings, the Respondent has instructed the same members of its standing counsel panel in both cases. It follows that the standing counsel members of the Respondent’s counsel team will be heavily committed in preparing the Defence in the Hydrocortisone proceedings. As noted in my Order dated 3 August 2021 granting Advanz’s application for an extension of time to file its Notice of Appeal, preparing appeals against two wholly distinct and heavy decisions given only two weeks apart is exceptional. That reasoning applies also to the time required for the Respondent to file its Defence.
3. The Respondent has appointed an economic expert witness in relation to both the Hydrocortisone and Liothyronine proceedings. It follows that that expert will be involved in the Respondent’s response to the Hydrocortisone proceedings when the Defence to the current appeals are due. The Respondent has explained in its application that it is not able to appoint an alternative economic expert witness given that the expert was appointed following an open procurement process.

4. The extension sought is for a modest period and I do not consider that any prejudice will result from the extension. There is no obligation on the Appellants or their advisers to read the Defence over their Christmas break.

The Honourable Mr Justice Roth
President of the Competition Appeal Tribunal

Made: 29 October 2021
Drawn: 29 October 2021