



[2003] CAT 7

IN THE COMPETITION

Case No. 1013/1/1/03

APPEAL TRIBUNAL

New Court,
Carey Street,
London WC2A.2JT

1 May 2003

Before:
SIR CHRISTOPHER BELLAMY
(President)

HEARING IN CHAMBERS

BETWEEN:

GENZYME LIMITED ("Genzyme")

Applicant

and

THE OFFICE OF FAIR TRADING ("OFT")

Respondent

Supported by

HEALTHCARE AT HOME LIMITED ("HH")

Intervener

Mr David Vaughan QC and Mr Aidan Robertson appeared for Applicant.

Mr Jon Turner and Miss Anneli Howard appeared for the Respondent.

Mr Ben Tidswell and Mr Euan Burrows appeared for the Intervener.

*Transcribed from the shorthand notes of
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DECISION
(Confidentiality)

1 THE PRESIDENT: In the course of hearing these proceedings for interim relief an issue has
2 arisen as to the treatment of certain confidential information that the Intervener,
3 Healthcare At Home, has placed before the court.

4 On the provisional view that such information may be relevant to the outcome
5 of the proceedings, I have discussed with the parties how parts of that information
6 which are identified as confidential to Healthcare At Home might be made available to
7 the applicant, Genzyme. The situation at the moment is that Healthcare At Home has
8 served a redacted version of their evidence which excludes a certain amount of
9 information which they, Healthcare At Home, consider to be protected as business
10 secrets, and they regard it as highly confidential information, particularly in the hands
11 of the applicant Genzyme, whom they regard for this purpose as a hostile party.

12 The compromise position that has been reached so far is that I have directed that
13 the evidence in question be made available on a counsel-only basis to external legal
14 advisers in the usual undertakings, those undertakings being that the information
15 identified as confidential should not be disclosed to the lay clients and should be used
16 only for the purposes of these proceedings.

17 The application that has now been made to me is that that order should be
18 extended to allow the confidential information in question to be shown to Miss
19 Elizabeth McMorrow who is, in fact, an in-house counsel for the parent company of the
20 applicant Genzyme, that is to say Genzyme Corporation, who are based in the United
21 States of America.

22 The respondent, The Office of Fair Trading, has no observations on that
23 application, but the intervener, Healthcare At Home Limited, opposes the application
24 on the grounds that it has not been shown to be necessary, and that there are significant
25 differences between being an external legal adviser and being an internal legal adviser.
26 So Healthcare At Home submits that this information should not be disclosed to Miss
27 McMorrow.

28 I am told that Miss McMorrow is a member of four American Bars - the New
29 York, Massachusetts, Washington DC and Connecticut Bars - that she is of ten years
30 standing, that she is subject to the disciplinary arrangements of those Bars, and that any
31 breach of any Order the Tribunal might make, could lead to her suspension or
32 disbarment.

33 She has, I am told, extensive experience of this kind of situation in her previous
34 practice and has, in the past, been subject to both administrative protective Orders, and
35 also judicial protective Orders of the kind here in question. Her position is that of
36 managing counsel. She is not a member of the business management team, and she is
37 prepared to give an undertaking to the Tribunal that she would not divulge confidential
38 information to her clients and she understands the import of such an obligation for the

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reasons that I have just given.

In the particular circumstances of this case I think it right that this evidence from Healthcare At Home, which takes the form of a witness statement, should be disclosed to Miss McMorrow, on the basis of the usual undertaking that the confidential matters disclosed in that statement may not be disclosed to any other person without the permission of the Tribunal, and may be used only for the purposes of these proceedings. In my view it is in the interest of justice that this particular evidence should be disclosed in this way, not least so that the legal adviser to Genzyme Corporation, the parent company of Genzyme, should be in a position to know what evidence is being filed in these proceedings.

Accordingly, assuming, Miss McMorrow, that you are prepared to give me that undertaking?

MISS MCMORROW: Yes.

THE PRESIDENT: Is that right?

MISS MCMORROW: Yes.

THE PRESIDENT: Thank you, there will be an order accordingly.