



COMPETITION APPEAL TRIBUNAL

**IN THE COMPETITION
APPEAL TRIBUNAL**

Case: 1013/1/1/03 (IR)

**Sir Christopher Bellamy
(President)**

GENZYME LIMITED (“Genzyme”)

Applicant

-and-

THE OFFICE OF FAIR TRADING (“OFT”)

Respondent

Supported by

HEALTHCARE AT HOME LIMITED (“HH”)

Intervener

**ORDER OF THE PRESIDENT
(Non-confidential version)**

UPON reading the request (“the Request”) by Genzyme pursuant to Rule 32 of the Competition Commission Appeal Tribunal Rules 2000 (“the Rules”) for interim relief to suspend the direction made by the Director General of Fair Trading (“the Director”) on 27 March 2003 (“the Direction”) under section 33 of the Competition Act 1998 (“the Act”) and forming part of a decision of the Director of 27 March 2003 numbered CA98/3/03 pursuant to section 18 of the Act (“the Decision”).

AND UPON Genzyme stating in the Request and to the Tribunal that it intends pursuant to section 46(2) of the Act and Rule 6 of the Rules to appeal to the Tribunal against the Decision (“the Appeal”).

AND UPON READING HH's request for permission to intervene dated 11 April 2003 and the written observations of the OFT and of HH on Genzyme's Request and the other documents and correspondence on the Tribunal's file.

AND UPON HEARING the legal representatives for the parties at a hearing on 16 April 2003.

IT IS ORDERED THAT:

1. Pursuant to Rule 16(1) of the Rules these proceedings are before a tribunal in England and Wales.
2. HH is granted permission to intervene in these proceedings for interim relief
3. Upon Genzyme undertaking that:
 - (1) Genzyme will continue to supply HH with Cerezyme at the Drug Tariff Price (also known as the NHS List Price); and
 - (2) Genzyme will supply HH with Cerezyme at a discount of [...]% off the Drug Tariff Price wherever HH is able to certify to Genzyme that Cerezyme is supplied to patients in conjunction with nursing services. For the purposes of this undertaking "nursing services" means any services supplied by a qualified nurse employed by HH; and
 - (3) In the event that Genzyme is unsuccessful in the Appeal, (i) Genzyme will put the NHS in the same position it would have been in had the Direction not been suspended, and (ii) HH will be reimbursed for a further [...]% (making a total of [...]%) on all of its purchases falling within (2) above, from 17 April 2003 until the conclusion of the proceedings before the Tribunal, or any further Order of the Tribunal,
the Direction is provisionally suspended so as not to take effect before 5 p.m. on 28 April 2003.
4. Genzyme's undertaking as aforesaid is subject to detailed drafting being submitted by the parties for the approval of the Tribunal.

5. In the event that Genzyme, the OFT and HH are not able to agree by 5 p.m. on 28 April 2003 the terms on which the Direction is to be suspended, subject to the approval of the Tribunal, until the determination of the appeal by the Tribunal, the matter is to be restored and the Direction will continue to be suspended until the Tribunal's further order.
6. In the event that such agreement is not reached, the parties will submit to the Tribunal their observations as to the precise nature of the differences between them and why no agreement can be reached. Such observations and any supporting evidence are to be lodged with the Tribunal by 1.00 p.m. on Wednesday 30 April 2003. The Tribunal will hold a public hearing to determine the matter at 10.30 a.m. on Thursday 1 May 2003.
7. Wherever confidentiality in relation to information mentioned during the hearing was claimed by any party, such information is not to be revealed to any other person, including legal representatives' clients, who were not at the hearing.
8. Costs are reserved.
9. Liberty to apply.

Sir Christopher Bellamy
President of the Competition Appeal Tribunal

Made 16 April 2003
Drawn 17 April 2003