



**IN THE COMPETITION  
APPEAL TRIBUNAL**

Cases No: 1251-1255/1/12/16

BETWEEN:

**GENERICS (UK) LIMITED**

Appellant

- v -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

**GLAXOSMITHKLINE PLC**

Appellant

- v -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

**(1) XELLIA PHARMACEUTICALS APS  
(2) ALPHARMA LLC**

Appellants

- v -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

**ACTAVIS UK LIMITED**

Appellant

- v -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

**MERCK KGAA**

Appellant

- v -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

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**ORDER**

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**UPON** reading the papers filed with the Tribunal

**AND UPON** the Competition and Markets Authority (“CMA”) requesting permission to call Ms Rachel Webster to give expert evidence on economics in substitution of Dr Jennifer Haydock

**AND UPON** the CMA requesting permission to serve rebuttal expert evidence in response to portions of:

- (a) the second expert report of Dr Robert Stillman (“the Second Stillman Report”) filed on behalf of GlaxoSmithKline (“GSK”) on 11 October 2016
- (b) the second report of Dr Adrian Majumdar (“the Majumdar Report”) filed on behalf of Generics (UK) Limited on 11 October 2016
- (c) the report of Dr Helen Jenkins (“the Second Jenkins Report”) filed on behalf of Merck KGaA on 11 October 2016

**AND UPON** hearing the parties’ legal representatives at the case management conference on 17 November 2016

**IT IS ORDERED THAT:**

**Evidence**

1. GSK may redact from its reply evidence served on the other Appellants the confidential passages agreed with the Tribunal.
2. The CMA has permission to call Ms Webster to give evidence in substitution of Dr Jennifer Haydock.
3. Ms Webster’s written report (“the Webster Report”) shall be filed by 4pm on 12 December 2016.
4. The Webster Report:
  - (a) shall indicate those portions of the report of Dr Haydock dated 28 July 2016 which are adopted and those which are not.
  - (b) may address the pricing issues contained in the Second Stillman Report and in Section 5 of the Majumdar Report.
5. The CMA has permission to adduce a concise rebuttal report from Professor Carl Shapiro (“the Shapiro Rebuttal Report”) responding to:
  - (a) paragraphs 43 to 53 of the Second Stillman Report.
  - (b) section 3 of the Second Jenkins Report.
  - (c) paragraphs 12 to 13 and 30 to 31 of the Majumdar Report.

6. The CMA shall use its best endeavours to serve and file the Shapiro Rebuttal Report by 4pm on 23 November 2016 or as soon as possible thereafter and in any event by no later than 4pm on 30 November 2016.

### **Joint Statements**

7. Experts of like discipline addressing common issues shall meet (without the Parties or their representatives) and discuss on a without prejudice basis according to the provisions of Civil Procedure Rule 35.12, and identify in a joint memorandum (a "Joint Statement"), clearly and concisely and in terms that can be understood by a non-expert:
  - (a) the areas agreed between them;
  - (b) the areas in dispute between them;
  - (c) whether each area in dispute is material to the outcome of the case; and
  - (d) in relation to each material area in dispute:
    - i. the extent to which it is material and why;
    - ii. their opinions on what the Court has to decide in order to resolve the particular areas of dispute and how this can be achieved.
    - iii. any assumptions underpinning each expert's views; and
    - iv. a summary of each expert's criticism of the other expert's position.
8. The Parties' legal representatives where necessary may assist in preparations for the expert meetings (including preparing an agenda), but will otherwise not be involved in the production of any Joint Statement.
9. Any expert meeting involving Professor Shapiro shall take place by 21 December 2016 and the resulting Joint Statement(s) shall be produced and lodged with the Tribunal by 4pm on 20 January 2017.
10. Any expert meeting involving Ms Webster shall take place by 13 January 2017 and the resulting Joint Statement(s) shall be produced and lodged with the Tribunal by 4pm on 27 January 2017.

### **Pre-Trial Review**

11. There be a Pre-Trial Review to be listed on 2 or 3 February 2017 with a time estimate of one day.

### **Trial Bundle and Skeleton Arguments**

12. The Parties are to liaise amongst each other and with the Tribunal's Registry to agree the content and production of the Hearing Bundle. Five hardcopies and an electronic copy of the Hearing Bundle are to be prepared and lodged at the Tribunal by 4pm on 27 January 2017. The labelling of the Hearing Bundle is set out in the Schedule to this Order.
13. The Appellants are to liaise to avoid duplication in the production of their skeleton arguments and shall divide and allocate responsibility for leading identified issues common to the appeals.
14. The Appellants shall file and serve their skeleton arguments by 4pm on 10 February 2017.
15. The CMA shall file and serve its skeleton argument by 4pm on 17 February 2017.

### **Trial**

16. The Tribunal will not sit on 17 to 24 March 2017 (inclusive).
17. Any written closing submissions are to be filed and exchanged by 4pm on 21 March 2017.

### **Costs etc**

18. Costs be reserved.
19. There be liberty to apply.

**The Hon Mr Justice Roth**  
President of the Competition Appeal Tribunal

Made: 17 November 2016  
Drawn: 18 November 2016

## Schedule

### Hearing Bundle

<b>Bundle</b>	<b>Contents</b>
A	Appellants' Notices of Appeal
A1, A2, A3 etc	Any exhibits to the Appellants' Notices of Appeal which are <u>not</u> witness statements, expert reports or exhibits thereto
B	CMA's Defence and submissions on the <i>Lundbeck</i> judgments
B1, B2, B3 etc	Exhibits to the Defence which are <u>not</u> witness statements, expert reports or exhibits thereto
C	Appellants' Replies and submissions on the <i>Lundbeck</i> judgments
D	English <i>Paroxetine</i> Judgments
E	Appellants' factual witness statements
E1, E2, E3 etc	Exhibits to the Appellants' factual witness statements
F	CMA's factual witness statement (and exhibits)
G	Appellants' expert reports on economics
G1, G2, G3 etc	Exhibits to the Appellants' expert reports on economics
H	CMA's expert reports on economics
H1, H2, H3 etc	Exhibits to the CMA's expert reports on economics
I	Economists' joint statements
J	Expert report of Professor Young and exhibits
K	Miscellaneous (inter-solicitor correspondence not to be included)
S	Skeleton arguments
T	Transcripts

**Decision:** the decision of the CMA dated 12 February 2016 and entitled "Paroxetine – Case CE-9531/11" (the "Decision") is to be contained in a separate binder.

**Authorities:** the six General Court judgments arising from the European Commission's *Lundbeck* Decision (Cases T-460, 467, 469-472/13) ("the *Lundbeck* Judgments") are to be contained in a binder separate from the other authorities.