



COMPETITION APPEAL TRIBUNAL

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

**CASE No 1252/1/12/16**

Pursuant to rule 14(2) of the Competition Appeal Tribunal Rules 2015 (S.I. No. 1648 of 2015) (“the Rules”), the Registrar gives notice of the receipt of an appeal on 12 April 2016 under section 46 of the Competition Act 1998 (“the Act”) by GlaxoSmithKline PLC (“GSK”) of 980 Great West Road, Brentford, Middlesex TW8 9GS against a decision of the Competition and Markets Authority (“CMA”) on 12 February 2016 in CASE CE-9531/11 - Paroxetine (“the Decision”). GSK is represented by Nabarro LLP at 125 London Wall, London, EC2Y 5AL (reference: Brian Sher / Rachel Bickler / Russell Hoare).

The Decision concerned agreements and conduct in the years 2001-2004 between the pharmaceutical originator company GSK and certain generic companies, which relate to the terms on which GSK settled expected or ongoing patent litigation relating to paroxetine (supplied in the UK as Seroxat, an antidepressant medicine). The CMA found that:

- GSK infringed section 2(1) of the Act (the “Chapter I prohibition”) and Article 101 of the Treaty on the Functioning of the European Union (“TFEU”) by participating in an agreement with Generics (UK) Limited (“GUK”) (the “GUK Agreement”) which had the object and effect of restricting competition in the UK.
- GSK infringed the Chapter I prohibition by participating in an agreement with Alpharma Limited (“Alpharma”) (the “Alpharma Agreement”) which had the object and effect of restricting competition in the UK.
- GSK infringed section 18(1) of Act (the “Chapter II prohibition”) by making cash payments and other value transfers to induce three potential competitors (Norton Healthcare Limited, which traded as IVAX Pharmaceuticals UK, GUK and Alpharma) to delay their potential independent entry into the UK paroxetine market.

The CMA imposed a fine on GSK of £37,606,275.

GSK appeals the decision. Under **Ground 1** GSK contends that the CMA erred in finding that GSK held a dominant position because it incorrectly defined the relevant product market as the market in a single molecule (paroxetine). Under **Ground 2** GSK contends that the GUK and Alpharma Agreements were excluded from the scope of the Chapter I prohibition and/or Article 101 TFEU by virtue of the Vertical Agreements Exclusion Order<sup>1</sup>. Under **Ground 3** GSK contends the CMA has not established that the GUK and Alpharma Agreements had the object of restricting competition. Under **Ground 4** GSK contends the CMA has not established that the GUK and Alpharma Agreements had the effect of restricting competition. Under **Ground 5** GSK contends that the GUK and Alpharma Agreements are in any event exempt under Section 9 of the Act / Article 101(3) TFEU. Under **Ground 6** GSK contends that the CMA erred in finding that GSK’s conduct constituted an abuse of dominant position because: (a) the CMA’s conclusion that GSK was not ‘competing on the merits’ was wrong; (b) the CMA erred in finding that GSK’s conduct had the likely effect of restricting competition; and (c) GSK’s conduct was objectively justified.

Without prejudice to GSK’s primary grounds of appeal, under **Ground 7** GSK contends that the CMA erred in imposing any fine on GSK. In the alternative, under **Ground 8**, GSK submits that any fine imposed on GSK should have been substantially smaller.

As regards the relief sought, GSK requests that the Tribunal:

- (a) set aside each of the decisions; or, alternatively

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<sup>1</sup> The Competition Act 1998 (Land and Vertical Agreements Exclusion) Order 2000, SI 2000/310.

- (b) annul or substantially reduce the fine imposed on GSK; and
- (c) order the CMA to pay the costs incurred by GSK in this appeal.

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.

A request for permission to intervene should be sent to the Registrar, The Competition Appeal Tribunal, Victoria House, Bloomsbury Place, London, WC1A 2EB (email: [registry@catribunal.org.uk](mailto: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](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by post (or email) at the above address or by telephone (020 7979 7979) or fax (020 7979 7978). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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