



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1432/1/12/22
1434/1/12/22
1438/1/12/22
1439/1/12/22

BETWEEN:

- (1) ADVANZ PHARMA CORP. LIMITED & OTHERS
(2) CINVEN CAPITAL MANAGEMENT (V) GENERAL PARTNER LIMITED &
OTHERS
(3) LEXON (UK) LIMITED & ANOTHER
(4) ALLIANCE PHARMACEUTICALS LIMITED & ANOTHER

Appellants

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

AND IN THE MATTER OF LEXON UK HOLDINGS LIMITED, ALLIANCE PHARMACEUTICALS LIMITED, FOCUS PHARMACEUTICALS LIMITED, MERCURY PHARMA GROUP LIMITED, CONCORDIA INVESTMENT HOLDINGS (UK) LIMITED AND MEDREICH PLC AND OTHERS

AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

BETWEEN:

COMPETITION AND MARKETS AUTHORITY

Claimant

-v-

- (1) PRITESH SONPAL; (2) PETER BUTTERFIELD; (3) JOHN DAWSON; (4) MARK CRESSWELL; (5) ROLAND BROWN; (6) GRAEME DUNCAN; (7) DEBANGSHU DEY

Defendants

REASONED ORDER (EXTENSION APPLICATION)

UPON each of the Appellants filing an application to appeal the Respondent's decision of 3 February 2022 ("the Appeals")

AND UPON the Tribunal handing down judgment in the Appeals on 23 May 2024 ([2023] CAT 36) ("the Judgment")

AND UPON the Competition and Markets Authority (the “**CMA**”) making an application to the Tribunal to extend the deadline for filing an application for permission to appeal the Judgment from 13 June 2024 to 27 June 2024 (the “**Extension Application**”)

AND UPON the Tribunal requesting responses from the parties to the CMA’s Extension Application by 7 June 2024 (the “**Tribunal Letter**”)

AND UPON READING the responses received from the parties by the deadline specified in the Tribunal Letter

IT IS ORDERED THAT:

1. The CMA’s application to extend the deadline by which it may file an application for permission to appeal be refused.

REASONS:

(1) INTRODUCTION

1. On 23 May 2024 this Tribunal issued a decision (*Advanz Pharma and others v CMA* [2024] CAT 36) (the “**CAT Decision**”) allowing an appeal against a decision of the CMA dated 3 February 2022 (the “**CMA Decision**”) and finding in respect of related disqualification proceedings that the first condition under section 9A(2) of the Company Directors Disqualification Act 1986 had not been satisfied.
2. Rule 107 of the Competition Appeal Tribunal Rules 2015 (the “**CAT Rules**”) states:

“(1) A request to the Tribunal for permission to appeal from a decision of the Tribunal shall be made in writing and sent to the Registrar within three weeks of the notification of that decision.”
3. The request for permission to appeal must be state the grounds of appeal (Rule 107(2)(c)).
4. As the CAT Decision was notified on 23 May 2024 any request for permission to appeal must be sent by 13 June 2024.

5. By letter dated 5 June the CMA requested an extension of that deadline for a further period of two weeks to 27 June 2024.
6. The solicitors for certain of the appellants and Directors Disqualification defendants wrote to the Tribunal objecting to the request for an extension.
7. The Tribunal has decided the CMA's request for an extension on the papers without a hearing.

(2) SUBMISSIONS FOR THE CMA

8. In their letter of 6 June the CMA submitted that in the specific circumstances of this case, an extension would not cause prejudice to the appellants/defence nor have any significant impact on the efficient conduct of any appeal, and noted:
 - (a) The hearing took place over a period of 5 weeks, involving a significant amount of witness evidence;
 - (b) The judgment runs to over 115 pages and contains detailed findings in relation to evidence in the proceedings; and
 - (c) As a responsible public authority, the CMA needs to consider the possible costs implications.

(3) SUBMISSIONS FOR MAITLAND WALKER

9. On 6 June 2024 Maitland Walker solicitors (for Mr Dey) opposed the extension. They submitted that an extension of time should only be given where special circumstances justify it. No special circumstances had been put forward by the CMA in this case:
 - (a) The length of proceedings was not a reason for an extension: the length of proceedings held last year would not impact the CMA's ability to read the judgement;
 - (b) The judgment ran to just over 115 pages, which was not long; and

- (c) The CMA had ample time to consider costs implications, having received a costs update from each of the parties in November/December 2023 and therefore having been aware of any cost implications for well over 6 months.

10. By letters dated 7 June Macfarlanes (for Mr Dawson) and Linklaters (for Mr Butterfield) adopted Maitland Walkers submissions.

(4) SUBMISSIONS FOR CMS

11. By letter dated 7 June 2024 CMS (for Alliance) invited the Tribunal to refuse the extension application as the CMA had not identified any good reason for needing an extension of time:

- (a) The judgment was not an outlier in terms of length and was shorter than a number of recent judgments, and it related to a single factual issue – whether on the balance of probabilities Alliance and Lexon entered into the alleged Market Exclusion Agreement

- (b) The time limit was clearly set out in the CAT Rules and the Competition Appeal Tribunal Guide to Proceedings 2015 which did not contemplate extensions being provided in the ordinary course.

- (c) Alliance provided costs updates to the CMA on 2 September 2022 and 8 December 2023 for the purpose of assisting the CMA with managing its potential costs exposure. Alliance did not consider the possible costs implications to have bearing on the time required for the CMA to formulate the grounds on which it intends to rely on in any appeal.

(5) DECISION

12. The three week deadline for applying for permission to appeal means that cases are dealt with expeditiously and fairly, and the winning side is not left in limbo but knows with certainty whether there is to be an appeal and can organise its affairs accordingly.

13. The Tribunal has discretion to extend the three week time period. It may give directions as to the extension of time limits (Rule 19(2)(m)). In so doing the Tribunal should seek to ensure that the case is dealt with justly and at proportionate cost (Rule 4(1)), including that it is dealt with expeditiously and fairly (Rule 4(2)).
14. The CMA submits that there would be no prejudice to the other parties in granting the extension sought. That may be the case but is not determinative. If it were determinative, an extension would be appropriate in almost every case, and a coach and horses would be driven through the rule imposing a time limit. It is for a party seeking an extension to persuade the Tribunal that there are special circumstances which justify departing from the expectation, given effect to in the CAT rules, that a losing party should be able to formulate its grounds of appeal and apply for permission to appeal within three weeks. So if, for example, a losing party sets out, in detail, reasons why despite its best efforts it will not be able meet the deadline, then the Tribunal might in the exercise of its discretion come to the view that it is appropriate in the interests of expedition and fairness to extend the deadline.
15. In its extension request the CMA advances three reasons why in the circumstances of this case an extension should be granted. None of these reasons provide a detailed explanation of what efforts have been made by the CMA to comply with the deadline and why such efforts have, in this particular case, been frustrated.
16. The first reason is that the hearing took place over 5 weeks involving significant witness evidence. That is not of itself a good reason for extension of the deadline. There are many cases in which, despite hearings of that length or longer, parties routinely manage to formulate grounds of appeal within a three week period. In this particular case, the factual evidence is well known to the CMA and its counsel and solicitors. The CMA conducted an extensive investigation into the facts before coming to the CMA Decision. The CMA's counsel conducted the trial and analysed the evidence in written and oral submissions which were comprehensive and of very high quality. Members of the CMA staff were in attendance throughout the hearing. The CMA has not advanced any particular reason why the CMA or its counsel will not be able to comply with the normal three week deadline in this case. In all these circumstances the length of the hearing does not justify a departure from the normal three week period.

17. The second reason is that CAT Decision runs to over 115 pages and contains detailed findings in relation to evidence in the proceedings. Again, that is not of itself a good reason for an extension: it should be possible to draft grounds of appeal in relation to a decision of that length within three weeks. In relation to this particular case, the CMA has advanced no good reason why, given the depth of the CMA's counsels' and staffs' knowledge of the case, grounds of appeal against a decision of that length could not be formulated within three weeks. Indeed, given that the CMA Decision appealed against was over 750 pages long, then it can be expected that the CMA and its counsel have enough in depth knowledge of the facts to respond timeously to a CAT Decision of only around 115 pages.
18. The third reason is that as a responsible public authority the CMA needs to consider the cost implications. That is no doubt the case. However the CMA has given the Tribunal no explanation as to whether there are good and exceptional reasons why in this particular case the CMA is not able to do that within the normal three week period. The CMA has given the Tribunal no reason at all as to why it cannot consider the cost implications by the normal deadline. In any event, the making of a decision as to whether to proceed with an appeal on cost grounds is a different matter from deciding whether there are good grounds of appeal, and delay in the former need not delay the drafting of the grounds and their lodging within the three week time period under the rules.
19. In the exercise of its discretion, the Tribunal rejects the reasons advanced by the CMA for the extension of the deadline beyond the normal three week period, and the extension request is refused.