



Neutral citation [2025] CAT 12

**IN THE COMPETITION  
APPEAL TRIBUNAL**

Case Nos: 1524/1/12/22 and 1525/1/12/22

BETWEEN:

**(1) PFIZER INC  
(2) PFIZER LIMITED**

Appellants

- v -

**THE COMPETITION AND MARKETS AUTHORITY**

Respondent

AND BETWEEN:

**(1) FLYNN PHARMA LIMITED PFIZER INC  
(2) FLYNN PHARMA (HOLDINGS) LIMITED**

Appellants

- v -

**THE COMPETITION AND MARKETS AUTHORITY**

Respondent

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**REASONED ORDER (PERMISSION TO APPEAL)**

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**UPON** the Tribunal’s Judgment dated 20 November 2024 ([2024] CAT 65) (the “Judgment”)

**AND UPON** reading Flynn’s application for permission to appeal the Judgment dated 20 December 2024 (the “Flynn PTA Application”), Pfizer’s application for permission to appeal the Judgment dated 20 December 2024 (the “Pfizer PTA Application”) and the CMA’s response to the Flynn PTA Application and the Pfizer PTA Application dated 10 January 2025

## **IT IS ORDERED THAT:**

1. Flynn and Pfizer are each granted permission to appeal the Judgment in respect of the grounds of appeal pleaded in the Flynn and Pfizer PTA Applications.

## **REASONS**

1. The Tribunal is required to consider whether the appeal would have a real prospect of success, or if there is some other compelling reason why the appeal should be heard by the Court of Appeal.
2. The Judgment deals with a complex and important area of competition law. The underlying issues have already come before the Court of Appeal on a prior occasion, which (on that occasion) noted the general public importance of this issues considered by it and by the Tribunal on two occasions on these facts.
3. The Tribunal's Judgment in *Allergan plc v. The CMA* (the "Hydrocortisone 1 Judgment"), [2023] CAT 56 at [322] sets out an analytical framework for differentiating between real world situations in which a producer surplus may exist, which has been termed the 'Case 1/2/3' framework by the applicants. Under the 'Case 1/2/3' framework, Case 1 and Case 2 are legitimate forms of producer surplus, whereas Case 3 is illegitimate. The 'Case 1/2/3' framework was applied in both Hydrocortisone 1 and the Judgment to analyse whether some form of producer surplus was legitimate and if so, whether the level of producer surplus was unfair on the facts of each case. This judgment also raises issues of public importance.
4. Both these grounds constitute compelling reasons why the appeals from the Judgment should be heard and (for the sake of clarity) why permission to appeal the Hydrocortisone 1 Judgment will also be given, in light of the Judgment.

Mr Justice Marcus Smith  
Chair

Eamonn Doran

Professor Michael Waterson

Charles Dhanowa CBE, KC (Hon)  
Registrar

Date: 4 March 2025