



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CR176Feb22/INT074Jul24

In the intervention application between:

CANCER ALLIANCE NPC

Applicant

and

**COMPETITION COMMISSION OF SOUTH AFRICA
ROCHE HOLDINGS AG
F. HOFFMANN-LA ROCHE AG
ROCHE PRODUCTS (PTY) LTD**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent

In re the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

**ROCHE HOLDINGS AG
F. HOFFMANN-LA ROCHE AG
ROCHE PRODUCTS (PTY) LTD**

First Respondent
Second Respondent
Third Respondent

Panel:	A Wessels (Presiding Member) M Mazwai (Tribunal Member) A Kessery (Tribunal Member)
Heard on:	07 November 2024
Last submission on:	13 November 2024
Order Issued on:	14 November 2024

ORDER

By agreement between Cancer Alliance NPC ("Cancer Alliance") and the First to Fourth Respondents, in the application of Cancer Alliance to intervene as a participant in the complaint referral proceedings brought by the Competition Commission ("Commission") before the Competition Tribunal ("Tribunal") against Roche Holdings AG, F.Hoffmann-La

Roche AG, and Roche Products (Pty) Ltd (“the respondents”), the Tribunal makes the following order:

1. Cancer Alliance is granted leave to intervene as a participant in the complaint referral proceedings before the Tribunal under case number CR176FEB22 (“referral proceedings”).
2. Subject to the provisions of paragraph 3 below, Cancer Alliance's participation in the referral proceedings shall be limited to written and oral legal submissions, within the scope of the Commission's referral, on the following issues:
 - 2.1. the harm suffered by both public and private sector patients with breast cancer as a result of the alleged excessive pricing of trastuzumab (the medicine that is the subject of the Commission's complaint referral) during the relevant period;
 - 2.2. the relationship between competition and patent law, and the appropriate approach to be adopted by the Tribunal when dealing with excessive pricing referrals in respect of patented products in general, and patented medicines in particular;
 - 2.3. how the Tribunal ought to interpret and apply section 8 of the Competition Act 89 of 1998, as amended (“the Act”) in light of the positive and negative obligations imposed on all organs of state by the constitutionally-entrenched right to have access to health care services, which includes access to medicines of proven quality, safety, and efficacy; and
 - 2.4. the appropriate remedy to be granted in the event the Tribunal rules that one or more of the respondents in the complaint referral have contravened the Act during the relevant period.
3. Cancer Alliance's right to participate includes the right, through its chosen legal representatives, to –
 - 3.1. attend and participate in all pre-hearing conferences;

- 3.2. obtain confidential versions of the Commission's and the respondents' discovery and pleadings in the referral proceedings, to be made available only to its legal representatives, subject to the signing of appropriate non-disclosure agreements ("NDAs"), and the provisions of paragraphs 5 to 8 below;
 - 3.3. subject to the provisions of paragraph 3.4 below, only use and/or rely on such discovered documents as are relevant to any of the issues listed in paragraph 2;
 - 3.4. provide such discovered documents as are relevant to any of the issues listed in paragraph 2, and on which it intends to rely, for inclusion in the bundle which will be submitted to the Tribunal for the hearing on the merits of the complaint referral;
 - 3.5. supplement the bundle to which paragraph 3.4 above refers on at least 24 hours' notice to the parties during the hearing;
 - 3.6. participate in the hearing of the complaint, which includes the right to put questions to witnesses, and inspect any books, documents, or items presented at such hearing, on any of the issues listed in paragraph 2; and
 - 3.7. deliver written legal submissions, and make oral legal submissions at the hearing of the complaint, on any of the issues listed in paragraph 2.
4. Cancer Alliance's rights granted in paragraph 3 above will be subject to –
 - 4.1. limitations on the exercise of such rights imposed by the Tribunal, from time to time, during the course of the referral proceedings;
 - 4.2. adherence by Cancer Alliance to any timetable set by the Tribunal for the referral proceedings before it;
 - 4.3. compliance with the NDAs referred to in paragraph 3.2 above, insofar as any confidential book, document, or item presented at the hearing is concerned; and

- 4.4. respect for and compliance with the confidentiality regime in terms of which the Tribunal's proceedings are conducted.
5. The Commission is directed to provide the legal representatives of Cancer Alliance with confidential versions of the pleadings in these proceedings, excluding third-party confidential information contained therein, within 21 (twenty-one) days of the signing of the NDAs contemplated in paragraph 3.2 above.
 6. The Commission and the respondents are directed to provide the legal representatives of Cancer Alliance with confidential versions of their discovery, excluding – in the case of the Commission – third-party confidential information contained in its discovery.
 7. Subject to paragraph 8 below, the Commission is directed to facilitate access by Cancer Alliance's legal representatives to third-party confidential information contained in the pleadings and discovery. Such third-party confidential information will be provided only if the relevant third-party has given its consent, and within 7 (seven) days of such consent having been provided by the third-party.
 8. The Commission shall request the relevant third-party to waive confidentiality in respect of Cancer Alliance's legal representatives, and in the event that a waiver of confidentiality is refused, Cancer Alliance may bring an application in terms of section 45 of the Act to obtain access to such third-party confidential information.
 9. There is no order as to costs.

Mr Andreas Wessels

Ms Mondo Mazwai and Adv. Anisa Kessery concurring

14 November 2024

Date