

CMA fines firms over £35m for illegal arrangement for NHS drug

- CMA fines firms in relation to an arrangement under which a competitor was paid not to launch a product, and which enabled price increases
- From 2013 to 2017, the prices paid by the NHS for prochlorperazine rose from £6.49 per pack of 50 tablets to £51.68 – an increase of 700%
- The firms fined include Advanz, the private equity firm Cinven, and Lexon, all of which have been fined for breaking competition laws in previous pharmaceutical CMA investigations

The fines are the result of a Competition and Markets Authority (CMA) investigation into the conduct of several pharmaceutical firms. The CMA found that, from June 2013 to July 2018, Alliance Pharmaceuticals, Focus (now owned by Advanz, previously owned by the private equity firm Cinven), and Lexon were involved in an arrangement that restricted competition in the supply of prochlorperazine 3mg dissolvable or “buccal” tablets to the NHS. Another company (Medreich) was involved in the arrangement between February 2014 and February 2018. Prochlorperazine is an important drug used to treat nausea, dizziness and migraines.

Under the arrangement, Alliance Pharmaceuticals appointed Focus as its distributor, and Lexon and Medreich were paid a share of the profits that Focus earned by selling Alliance’s product. In return, Lexon and Medreich agreed not to compete in the supply of these prochlorperazine tablets in the UK.

Before entering into this arrangement, Lexon and Medreich had been taking steps to launch their jointly-developed version of prochlorperazine. Although Medreich first obtained a licence to supply prochlorperazine in January 2014, it did not supply commercial volumes of the product during the period of the infringement.

From December 2013 to December 2017, the prices paid by the NHS for prochlorperazine rose by 700%. Consequently, between 2014 and 2018, the annual costs incurred by the NHS for prochlorperazine increased from around £2.7 million to around £7.5 million, even though the number of packs dispensed fell.

The CMA has fined the pharmaceutical and private equity firms involved a total of over £35 million for the relevant periods in which they broke the law. This includes: a £7.9m fine for Alliance Pharmaceuticals; a £7.3m fine for Lexon; a £4.6m fine for Medreich; and a fine for Focus of £15.5m, apportioned between Advanz and Cinven. Medreich’s fine would have been

higher, but was reduced by 40% as a result of Medreich being granted leniency in return for admitting its involvement in the infringement and cooperating with the CMA's investigation.

Andrea Coscelli, Chief Executive of the CMA, said:

The size of the fines reflects the seriousness of this breach. These firms conspired to stifle competition in the supply of this important medication, so that the NHS – the main buyer of the drugs – lost the opportunity for increased choice and lower prices. While the arrangement was in place, the price increased significantly for a drug that people rely on to manage debilitating nausea, dizziness and migraines.

All firms should know that we will not hesitate to take action like this against any businesses that collude at the expense of the NHS.

The investigation into these firms is part of the CMA's ongoing work in the pharmaceutical sector. Recent action includes [fining pharmaceutical firms over £260 million for competition law breaches](#) and [imposing over £100 million of fines for charging unfair and excessive prices for a crucial thyroid drug](#).

Advanz, Cinven, and Lexon have all previously been issued fines in previous CMA pharmaceutical investigations. In the case of Advanz and Cinven, this is the first time that a company has been fined by the CMA in three separate investigations.

For more information see [the pharmaceuticals: suspected anti-competitive agreements](#) case page.

1. Advanz and Cinven have filed appeals in the Competition Appeal Tribunal against the CMA's decisions in the other two investigations in which they have been fined.
2. The infringement decision is addressed to the following legal entities: (i) Alliance Pharmaceuticals Limited and Alliance Pharma plc; (ii) Focus Pharmaceuticals Limited, Focus Pharma Holdings Limited, Mercury Pharma Group Limited, Concordia Investment Holdings (UK) Limited, Concordia Investments (Jersey) Limited and Advanz Pharma Corp. Limited; (iii) Cinven Capital Management (V) General Partner Limited, Cinven (Luxco 1) S.à.r.l and Cinven Partners LLP; (iv)- Lexon (UK) Limited and Lexon UK Holdings Limited; (v) Medreich plc, Medreich Ltd, Meiji Seika Pharma Co. Ltd and Meiji Holdings Co. Ltd.
3. In its decision, the CMA found that an agreement existed between Alliance and Lexon relating to prochlorperazine 3mg buccal tablets sold in packs of 50 which is a prescription only medicine, in which Focus, and subsequently Medreich, participated which had as its object the

restriction of competition. This agreement infringed the Chapter I prohibition in the Competition Act 1998.

4. The infringement commenced by 7 June 2013, and continued until 31 July 2018. Focus was involved in the infringement from 22 June 2013 until 31 July 2018. Medreich was involved in the infringement from 5 February 2014 until 15 February 2018.
5. Focus was independent until 1 October 2014. Cinven indirectly owned Focus between 1 October 2014 and 20 October 2015. Advanz, the current owner, acquired indirect ownership of Focus from Cinven on 21 October 2015.
6. The total fines imposed are as follows:
 1. Alliance: Alliance Pharmaceuticals Limited and Alliance Pharma plc are jointly and severally liable for £7,900,000
 2. Lexon:
 1. Lexon (UK) Limited is liable for £6,706,220; and
 2. Lexon (UK) Limited and Lexon UK Holdings Limited are jointly and severally liable for a further £593,780
 3. Medreich:
 1. Medreich plc and Medreich Ltd are jointly and severally liable for £1,167,554; and
 2. Medreich plc, Medreich Ltd, Meiji Seika Pharma Co and Meiji Holdings Co Ltd are jointly and severally liable for a further £3,452,446
 4. Focus:
 1. Focus Pharmaceuticals Limited and Focus Pharma Holdings Limited are jointly and severally liable for £549,343;
 2. Focus Pharmaceuticals Limited, Focus Pharma Holdings Limited, Mercury Pharma Group Limited, Cinven Capital Management (V) General Partner Limited, Cinven (Luxco 1) S.à.r.l and Cinven Partners LLP are jointly and severally liable for a further £1,843,380;
 3. Focus Pharmaceuticals Limited, Focus Pharma Holdings Limited and Mercury Pharma Group Limited are jointly and severally liable for a further £921,357;
 4. Cinven Capital Management (V) General Partner Limited, Cinven (Luxco 1) S.à.r.l and Cinven Partners LLP are jointly and severally liable for a further £4,856,620; and
 5. Focus Pharmaceuticals Limited, Focus Pharma Holdings Limited, Mercury Pharma Group Limited, Concordia Investment Holdings (UK) Limited, Concordia Investments (Jersey) Limited and Advanz Pharma Corp. Limited are jointly and severally liable for a further £7,288,853
7. Work on this case by the CMA was paused in April 2020, in order to reallocate resources and ensure that the CMA was able to focus on urgent

work relating to the ongoing Coronavirus (COVID-19) pandemic. Work on the case was resumed at the first feasible opportunity in July 2020.

8. Under the CMA's leniency policy a business that has been involved in a cartel may be granted immunity from penalties or a significant reduction in penalty in return for reporting cartel activity and assisting the CMA with its investigation. More information on the CMA's leniency and informant reward policies is available on the [guidance page](#).