

CMA welcomes EU Court ruling in pay-for-delay drug case

The ruling, released today, follows appeals from GlaxoSmithKline and other pharmaceutical companies against the Competition and Markets Authority's (CMA) decision that they had broken competition law. The CMA imposed fines of £45 million on the companies involved.

This ruling has clarified a number of important questions and will help competition authorities, including the CMA, in their work to tackle this harmful behaviour by pharmaceutical companies.

In 2016 the CMA found that GlaxoSmithKline had agreed to make payments totalling over £50 million to other generic suppliers of paroxetine. These payments were aimed at delaying the potential entry of these competitors into the UK market.

The CMA found these 'pay-for-delay' agreements deferred the threat of increased competition, and potentially deprived the NHS of the significant price falls that generally result from generic competition. In this case, when independent generic entry eventually took place, average paroxetine prices dropped by over 70% in 2 years.

Following today's ruling, the case will now go back to the Competition Appeal Tribunal for a final judgment on the appeals.

Andrea Coscelli, Chief Executive at the CMA, said:

"This case shows our ongoing determination to take action against illegal behaviour by drug companies designed to stifle competition at the expense of the NHS. This has been a lengthy process, and we look forward to the CAT's final judgment.

"Cracking down on harmful behaviour, such as pay-for-delay agreements, is essential to protect the NHS – and so UK taxpayers – from paying more than they should for an important medicine."

The CMA currently has other, unrelated investigations open in relation to 7 other pharmaceutical drugs.

More information on this investigation can be found on the [Paroxetine investigation case page](#).

Notes to editors:

1. In 2016 GlaxoSmithKline and the generic suppliers – including GUK and Alparma – appealed the CMA's decision to the Competition Appeal Tribunal (CAT).
2. The CAT then referred a series of questions to the Court of Justice of the European Union (under Article 267 of the Treaty on the Functioning

of the European Union) about the application of law to these types of 'pay for delay' agreement.

3. Today's judgment follows the opinion from Advocate General Kokott from the Court of Justice of the European Union issued on 22 January.
4. The payments made by GSK to the generic companies consisted of cash and other non-cash value transfers.
5. Appeals against the CMA's decision were brought by Glaxosmithkline Plc, Generics (UK) Limited, Xellia Pharmaceuticals APS/Alpharma LLC, Actavis UK Limited and Merck KGAA.