

Drug firms accused of illegal market sharing in supply of antibiotic

In a Statement of Objections issued today the CMA alleges that, from 2014 until at least October 2017, 2 suppliers, AMCo (now Advanz) and Morningside, and a wholesaler, Alliance Healthcare, entered into arrangements under which Alliance Healthcare would buy equal volumes of the drug from each of the 2 suppliers so that they would not compete. During 2015 and 2016, the 2 suppliers also committed to supply the drug exclusively to Alliance Healthcare.

Nitrofurantoin is an antibiotic commonly used to treat urinary tract infections such as cystitis. While it is available as tablets and a liquid, this investigation focuses on the capsule forms (50mg and 100mg) which are a prescription-only medicine. AMCo was the sole UK supplier of both products, until Morningside entered the market in mid-2014.

The CMA has also provisionally found that, in May 2014, AMCo disclosed sensitive pricing information to Morningside with the aim of reducing competition between them.

In a Statement of Objections issued today, it is provisionally considered that these arrangements prevented or restricted competition. When Morningside started supplying the drug, this was not followed by the price falls that would normally be expected when a new competitor enters the market.

Ann Pope, the CMA's Senior Director of Antitrust, said:

Drug companies that break competition law risk forcing the NHS, and UK taxpayers, to pay over the odds for important medical treatments.

We've provisionally found that suppliers of this important antibiotic entered into arrangements with the aim of keeping Nitrofurantoin prices artificially high, meaning the NHS wouldn't benefit from the lower prices that come from effective competition.

These findings are provisional and no conclusion should be drawn at this stage that there has in fact been any breach of competition law. The CMA will carefully consider any representations of the companies under investigation before determining whether the law has been infringed.

Notes to editors

1. The CMA is addressing the Statement of Objections to: (a) Advanz Pharma Services (UK) Limited; (b) Mercury Pharma Group Limited; (c) Cinven Capital Management (V) General Partner Limited; (d) Cinven (Luxco 1)

S.A.; (e) Cinven Partners LLP; (f) Concordia Investment Holdings (UK) Limited; (g) Concordia Investments (Jersey) Limited; (h) Advanz Pharma Corp; (i) Morningside Healthcare Limited; (j) Alvedius Limited; (k) Morningside Pharmaceuticals Limited, (l) Remedi Medical Holdings Limited; (m) Alliance Healthcare (Distribution) Limited; (n) Alliance Boots Holdings Limited.

2. A Statement of Objections gives parties notice of a proposed infringement decision under the competition law prohibitions in the Competition Act 1998 and the EU law equivalents. It is a provisional decision only and does not necessarily lead to an infringement decision. Parties have the opportunity to make written and oral representations on the matters set out in the Statement of Objections. Any such representations will be considered by the CMA before any final decision is made. The final decision will be taken by a case decision group, which is separate from the case investigation team and was not involved in the decision to issue the Statement of Objections.
3. The CMA may impose a financial penalty (i.e. a fine) on any business found to have infringed each of these provisions. In calculating financial penalties, the CMA takes into account a number of factors including the seriousness of the infringement, turnover in the relevant market and any mitigating or aggravating factors.
4. The CMA currently has investigations open in relation to seven different drugs.
5. Media queries should be directed to press@cma.gov.uk, or 020 3738 6460