

Over £3m in fines and £1m for NHS in CMA pharma probe

The probe by the Competition and Markets Authority (CMA) into the supply of nortriptyline, a drug relied on by thousands of patients every day to relieve symptoms of depression, has resulted in fines totalling more than £3.4 million, and a payment of £1 million directly to the NHS. It has also led to the disqualification of a company director.

This investigation exposed two breaches of competition law:

Market sharing

The CMA found that, rather than competing, King Pharmaceuticals Ltd and Auden Mckenzie (Pharma Division) Ltd shared out between them the supply of nortriptyline to a large pharmaceutical wholesaler. From September 2014 to May 2015, the 2 companies agreed that King would supply only 25mg and Auden Mckenzie only 10mg tablets. The 2 firms also colluded to fix quantities and prices.

King and Auden Mckenzie have now admitted breaking the law. After this market sharing ended, Accord-UK Ltd took control of Auden Mckenzie's nortriptyline business, and so the CMA holds it responsible for Auden's illegal conduct.

As a result, the CMA has fined King and Accord-UK £75,573 and £1,882,238 respectively. On top of this, Accord-UK and Auden Mckenzie have agreed to make a £1 million payment to the NHS in connection with the case. It is the second time the CMA has secured a payment to the NHS following one of its pharmaceutical investigations.

Information exchange

The CMA is also fining King, Lexon (UK) Ltd and Alissa Healthcare Research Ltd for illegally sharing commercially sensitive information, to try to keep nortriptyline prices up. Between 2015 and 2017, when the cost of the drug was falling, the 3 suppliers exchanged information about prices, the volumes they were supplying, and Alissa's plans to enter the market.

In September 2019, King and Alissa both admitted to breaking the law, and they are today being fined £75,573 and £174,912 respectively. Lexon did not admit to breaking the law and is being fined a total of £1,220,383 million.

Andrea Coscelli, Chief Executive at the CMA, said:

"These firms exchanged sensitive information and shared out supply to try and keep prices up, meaning the NHS – and ultimately the UK taxpayer – could have been paying over the odds for this vital drug.

"That's why we've worked hard to secure £3.4 million in fines and another pay

out for the NHS.

“Today’s decisions should act as a clear warning to any pharmaceutical company that considers stifling competition and cheating the NHS.”

Director disqualification

The CMA has also secured the disqualification of Dr Philip Hallwood, a director at King and the sole director of consultancy firm Praze.

Praze conducted King’s corporate and commercial services during the illegal activity and took part in this alongside King.

After King and Praze admitted to their involvement, Dr Hallwood signed a legally binding undertaking which disqualifies him as director of both companies. This means he cannot be involved in the management of any UK company for 7 years.

The CMA is also considering the possible disqualification of other directors. Any updates to this investigation will be made on the CMA’s dedicated web pages.

Today’s announcement follows the CMA’s recent launch of its [‘Cheating or Competing?’ campaign](#), which reminds companies that it’s their business to know which practices are illegal. It also explains why certain practices, like market sharing, are illegal and should be reported, and urges people to come forward if they have information.

Notes to editors:

All the information available on this case can be found on the CMA’s dedicated webpages:

The CMA has addressed its decision that King and Auden Mckenzie had engaged in illegal market sharing to the following companies: Auden Mckenzie (Pharma Division) Ltd, Auden Mckenzie Holdings Ltd, Accord-UK Ltd, King Pharmaceuticals Ltd and Praze Consultants Ltd.

The decision is addressed to Accord-UK Ltd (formerly named Actavis UK Ltd) because the CMA has found it was the economic successor of the nortriptyline business of Auden Mckenzie (Pharma Division) Ltd and should therefore be held liable for that company’s direct involvement in the infringement.

The CMA has addressed its decision that Alissa, King and Lexon engaged in the illegal sharing of commercially sensitive information to the following companies: King Pharmaceuticals Ltd, Praze Consultants Ltd, Lexon (UK) Ltd and Alissa Healthcare Research Ltd. Alissa and King admitted to the infringement in September 2019. Lexon contested the infringement.

Both decisions have also been addressed to Praze because King and Praze formed a single economic unit. Praze is a consultancy which conducted King’s corporate and commercial services during the period of both infringements,

and directly participated in the infringements along with King.

The CMA's [provisional findings](#) in its investigation into the supply of nortriptyline tablets were announced in [June 2019](#). In September 2019, King and Alissa [admitted to infringing competition law](#).

The Chapter I prohibition in the Competition Act 1998 prohibits anti-competitive agreements and concerted practices between businesses which have as their object or effect the prevention, restriction or distortion of competition within the UK. Similarly, Article 101 of the Treaty on the Functioning of the European Union (TFEU) prohibits anti-competitive agreements and concerted practices which may affect trade between EU member states.

The final fines in respect of the market sharing infringement were:

- £1,882,238 (Accord-UK)
- £75,573 (King)

Both companies were handed reduced fines as they admitted their involvement in the infringement.

The final fines in respect of the illegal sharing of commercially sensitive information were:

- £174,912 (Alissa)
- £75,573 (King)
- £1,220,383 (Lexon)

Alissa and King were handed reduced fines as they admitted their involvement in the infringement.

The penalties imposed on King in respect of both infringements would have been significantly higher, but were reduced to ensure that neither exceeded 10% of its worldwide turnover, which is the statutory maximum that the CMA can impose for an infringement of competition law.

The total payment of £1 million made by Auden McKenzie and Accord-UK to the NHS will be allocated between the Department of Health and Social Care in England and the equivalent bodies in Scotland, Wales and Northern Ireland in accordance with the Barnett formula. The payment does not preclude the NHS from seeking further damages from the businesses involved in the infringement, if it considers doing so to be appropriate. The £1 million payment would however be offset against any further damages award.

Under the Company Directors Disqualification Act, the CMA has the power to apply to the court to disqualify a director from holding company directorships or performing certain roles in relation to a company for a specified period, if a company which he or she is a director of has breached competition law. The Act also allows the CMA to accept a disqualification undertaking from a director instead of bringing proceedings, which has the same legal effect as a disqualification order.

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