

Statement regarding the CMA's decision to close an investigation into suspected breaches of competition law in relation to the supply of nitrofurantoin capsules on the grounds of administrative priority

Parties: Advanz Pharma Services (UK) Limited; Mercury Pharma Group Limited; Cinven Capital Management (V) General Partner Limited; Cinven (Luxco 1) S.A.; Cinven Partners LLP; Concordia Investment Holdings (UK) Limited; Concordia Investments (Jersey) Limited; Advanz Pharma Corp. (formerly known as Concordia international Corp. and before that as Concordia Healthcare Corp); Morningside Healthcare Limited; Alvedius Limited; Morningside Pharmaceuticals Limited; Remedi Medical Holdings Limited; Alliance Healthcare (Distribution) Limited; and Alliance Boots Holdings Limited.

Case reference: 50511-1

Case closed: 8 October 2021

Issue: Suspected breaches of competition law relating to the supply of nitrofurantoin capsules

Relevant provision: Chapter I of the Competition Act 1998 (CA98)

Summary of closure decision

The CMA has closed its investigation into suspected breaches of competition law in relation to the supply of nitrofurantoin 50mg and 100mg capsules on the grounds of administrative priority. The decision to close the investigation on administrative priority grounds does not amount to a statement as to whether any of the parties to the investigation infringed competition law.

In July 2019, the CMA issued a statement of objections which alleged that AMCo (now Advanz Pharma Services (UK) Limited), Alliance Healthcare (Distribution) Limited, Morningside Healthcare Limited and Morningside Pharmaceuticals Limited (Morningside) entered into arrangements under which Alliance Healthcare would buy equal volumes of nitrofurantoin capsules from each of AMCo and Morningside, and the two suppliers would each supply the drug exclusively to Alliance Healthcare. The CMA alleged that this conduct was a form of market sharing which infringed the Chapter I prohibition of the Competition Act by object. The CMA also alleged that

AMCo disclosed sensitive pricing information to Morningside with the aim of reducing competition between them and that this also infringed the Chapter I prohibition of the Competition Act by object.

The CMA has not reached a decision on whether the parties to the investigation infringed competition law and no assumption should be made that there has been any such infringement.

The CMA's decision to close the investigation on the grounds of administrative priority is based on a careful assessment of the case against the CMA's published [Prioritisation Principles](#). In particular, in the current circumstances the CMA considers that the impact that the case would be likely to achieve does not justify pursuing the investigation further given the resources and the risks that doing so would entail and in light of the CMA's other priorities in relation to its overall portfolio of current and planned future work. In view of this assessment, the CMA considers that, on balance, continuing with the investigation would not be the best most effective use of the CMA's resources at the present time.

Businesses should note that, regardless of the specific circumstances of this case and the administrative decision taken, the CMA takes extremely seriously any kind of market sharing or anti-competitive information sharing, and businesses should ensure they do not engage in it, having regard to the liabilities that arise for infringement of competition law. The CMA will not hesitate to take action where evidence emerges of such practices.