Annex 5 – Representations on dominance

5.1 Section 4.C.IV.b of this Decision sets out the CMA's conclusion that Advanz was not constrained in its conduct by any countervailing buyer power.

5.2 Advanz argues that '*[a]t all times the DH/NHS held countervailing buyer power in its capacity as a monopsonist and a price regulator*'.[1] HgCapital also argues that Advanz was constrained '*by the DH, a monopsony purchaser with price control powers and the ability to issue guidance to change prescription practices in relation to Liothyronine*'.[2] Cinven argues that '*the NHS had countervailing buyer power and the DoH had the ability to regulate the price of Liothyronine Tablets*'.[3]

5.3 HgCapital also argues that Advanz '*was constrained … by its direct customers – i.e. large vertically integrated pharmaceutical wholesalers*'.[4]

5.4 This Annex sets out additional considerations relevant to the CMA's conclusion that Advanz was not constrained by countervailing buyer power.

I. The Reserve Power did not apply

5.5 Although the CAT and the Court of Appeal have confirmed that it is not necessary to decide the precise extent of the DHSC's powers as a question of statutory interpretation or otherwise,[5] for completeness and since all Parties made extensive representations on the scope of the DHSC's powers, the CMA explains briefly the scope of these powers.

5.6 As explained at paragraphs 3.158ff of this Decision, the Secretary of State's Reserve Power, which enables the DHSC to limit the price charged for a health service medicine, was not exercisable in relation to a member of a voluntary scheme. Advanz entities, including Mercury Pharmaceuticals Limited, were members of the voluntary PPRS at all times.

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[1] Document LIO7781, Advanz RSSO-2019, paragraph 1.6.5. In its representations on the SO, Advanz argued that '*the DH is in the unique position to be both the monopsonistic purchaser and the price regulator*' (document LIO6288, Advanz RSO, paragraph 2.96).
[2] Document LIO7798, HgCapital RSSO-2019, paragraph 229; document LIO6258, HgCapital RSO, paragraphs 161-183.
[3] Document LIO6330, Cinven RSO, paragraph 5.3.
[4] Document LIO7798, HgCapital RSSO-2019, paragraph 229.
[5] *Phenytoin CAT* [2018] CAT 11, paragraph 307. Document PAD172, *Flynn Pharma Limited & Ors v CMA*, Order made by the Rt. Hon. Lord Justice Newey dated 17 December 2018.

5.7 Advanz argues that the Reserve Power applied '*on an individual drug basis rather than on a company basis*'.[6] However, this argument is contradicted by:

(a) the clear wording of section 262(2) of the NHS Act during the Infringement Period;[7]

(b) the fact that the government passed legislation after the end of the Infringement Period specifically to close this loophole in the Costs Act and to prevent its continued exploitation by companies such as Advanz;[8]

(c) CAT precedent;[9] and

(d) contemporaneous documentary evidence showing that Advanz was not constrained by the prospect of such action (see sections 4.C.IV.b and 5.B of this Decision).

5.8 The DHSC stated that this was also its understanding during a meeting with the CMA on 25 September 2019. The DHSC stated that '*[a]s is clear from section 262(2), the power to control prices conferred by section 262 was not available where the manufacturer was a member of a voluntary scheme*'.[10]

5.9 In any event, the Reserve Power was subject to limitations:

(a) With respect to generic drugs, there was no enforcement regime to underpin any exercise of the Reserve Power or the supporting power in section 264 NHS Act 2006 to require the provision of information[11] (which would enable

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[6] Document LIO7781, Advanz RSSO-2019, paragraphs 5.72. HgCapital also argued that '*The DH was understood to have the power to exercise statutory price control powers under the National Health Service Act 2006*': Document LIO6258, HgCapital RSO, paragraphs 163 and 170-175. The Cinven Entities argued that '*the DoH could have exercised its statutory powers under the NHS Act to control the price of Liothyronine Tablets*' and that '*the Reserve Power was exercisable as against [Advanz] in relation to Liothyronine Tablets throughout the Relevant Period, irrespective of [Advanz]'s membership of the PPRS*' (document LIO6330, Cinven RSO, paragraphs 5.107 and 5.114).

[7] Section 262(2) NHS Act provided that the Reserve Power was '*not exercisable at any time in relation to a manufacturer or supplier to whom at that time a voluntary scheme applies*'.

[8] In a debate in the House of Commons prior to the enactment of the Costs Act, MPs specifically referred to Advanz (document PAD035, Debate - Health Service Medical Supplies (Costs) Bill, pages 19-25). Earlier in the debate, Jeremy Hunt (the then Secretary of State) said: '*Our concern is that companies have been exploiting the differences between the voluntary and statutory schemes, particularly the loophole, which the Bill seeks to close, that if companies have drugs in both schemes, we are unable to regulate at all the prices of the drugs that would ordinarily fall under the statutory scheme.*' (Document PAD035, Debate - Health Service Medical Supplies (Costs) Bill, pages 5-6).

[9] See *Genzyme* [2004] CAT 4*,* paragraphs 270 to 273, on the equivalent powers under the Health Act 1999: '*those powers are not exercisable in relation to any manufacturer or supplier who for the time being is a member of a voluntary scheme … The effect of these provisions, in our judgment, is that the Secretary of State has no power to "limit prices" or control profits of health service products under the 1999 Act for as long as the relevant supplier is a member of the PPRS, which is the case with Genzyme … since Genzyme is a member of the existing PPRS, the powers under section 34(1) to "limit prices" could not be exercised unless Genzyme was first excluded from the PPRS*'.

[10] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 17. This is consistent with the statement by the Secretary of State referred to above.

[11] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 19.

the DHSC to determine that a current price was excessive, or what a reasonable price would be). Section 265(8) stated that any price limit or requirement under sections 261 to 264A could only be enforced under regulations providing for a right of appeal, and no relevant regulations existed.

(b) The Reserve Power (and the supporting information-gathering power in section 264) was only exercisable after consultation with the BGMA. The DHSC had no established process or agreement with the BGMA on the exercise of these powers, including the factors to which the DHSC would have regard when determining any price reduction.[12]

5.10 Instead of using the Reserve Power, the DHSC's policy with respect to the pricing of generic medicines was:

(a) To rely on competition in the market to control prices.

(b) Where the market was not working well, to have statutory or voluntary schemes in place to secure value for money for the NHS (among other things), rather than consider one product in isolation. The relevant voluntary scheme for generics was Scheme M; there was no statutory scheme. The DHSC and BGMA were in discussions about such a scheme but it would only have applied to companies that were not members of the PPRS, and would have had a very narrow scope. This led to the Costs Act, which has amended the regime to make the power in section 262 available in respect of all medicines outside voluntary schemes (even where the manufacturer or supplier is a member of a voluntary scheme such as the PPRS in respect of other drugs).[13]

II. Scheme M

5.11 As explained at paragraph 3.152 of this Decision, it is unclear whether Liothyronine Tablets were covered by Scheme M.[14] What is clear is that Advanz did not provide any data submissions on Liothyronine Tablets to the DHSC under Scheme M during the Infringement Period, and that Liothyronine Tablets were not in Category M (the category of drugs for which Scheme M was used to set Drug Tariff prices) during the Infringement Period.

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[12] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 19.
[13] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 20.
[14] HgCapital also argued that Advanz '*was a member of Scheme M throughout the Relevant Period, and therefore the DH had powers under this scheme to control the prices of [Advanz]'s products*' (document LIO6258, HgCapital RSO, paragraph 163 and 167-169). The Cinven Entities made the point slightly differently, arguing that the CMA had failed to consider whether '*in practice, the DoH and [Advanz] understood Liothyronine Tablets to be covered by the Scheme M arrangements during the Relevant Period*' (document LIO6330, Cinven RSO, paragraph 5.106).

5.12 The DHSC has stated that since Scheme M was voluntary, a company's membership would depend on how it wanted to participate. For example, it may be that only one company forming part of a corporate group would participate; or alternatively the group might do so. It was therefore for a corporate group to determine how it wished its group companies to participate in Scheme M.[15]

5.13 Even on the assumption that Advanz's Liothyronine Tablets were covered by Scheme M, however, the scheme did not provide an effective constraint.

5.14 The DHSC stated that in its view, because Advanz was a member of the PPRS, the power in paragraph 30 of Scheme M could not apply.[16]

5.15 In any event, although as explained at paragraph 3.150, paragraph 30 of Scheme M stated that the DHSC may '*intervene to ensure that the NHS pays a reasonable price for the medicine(s) concerned*', the DHSC stated that in practice, any intervention attempted by the DHSC would have triggered the dispute resolution procedures under Scheme M:[17]

(a) Although it was expressly non-contractual, Scheme M operated on a similar basis to a bilateral agreement in which the parties undertake to resolve issues between themselves and refer them to external resolution where that fails.[18] Disputes were to be resolved by a panel comprising a DHSC appointee, a BGMA appointee and a chair agreed between the DHSC and the BGMA. Both the DHSC and the Scheme M member concerned would be required to make their case to this panel, via written and oral submissions.[19]

(b) There would have been no certainty of outcome for the DHSC: its view would not have been binding and the member would have been free to leave the voluntary Scheme M at any time, including in response to an unfavourable panel ruling.[20] The Scheme document made clear that non-compliance with its terms led not to compulsion to comply, but to expulsion from the Scheme,[21]

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[15] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 21.
[16] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 23.
[17] Scheme M did not include any detail as to what such an '*intervention*' by the DHSC would involve: paragraph 30 listed the factors to which the DHSC would have regard in examining the reasonableness of a Scheme member's prices but did not explain how the DHSC would go about intervening, or how a 'reasonable' price would be determined.
[18] The DHSC and Scheme members undertook '*that issues arising […] may be normally resolved by discussion between them*'. However, where significant issues (such as '*refusal by the Department to agree a price increase under the Scheme*') could not be resolved by discussion, the Scheme allowed for either party to refer the issue to dispute resolution. Scheme M, paragraph 35.
[19] Scheme M, paragraphs 36-41.
[20] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 24.
[21] '*Any company that fails to comply with the Scheme or fails to provide information required under the terms of Scheme membership, or in any other way acts in a manner that would breach the Scheme, will be required to leave the Scheme*' (Scheme M, paragraph 14).

and that '*[a] Scheme member may, at any time, withdraw consent for the voluntary Scheme to be treated as applying to it*'.[22]

5.16 Further, the DHSC did not have the processes it would have needed to intervene under Scheme M and it considers any such process required agreement with the BGMA.[23]

5.17 Therefore, the CMA concludes that as a matter of law the DHSC's 'regulatory' powers did not effectively constrain Advanz's market power. This is further illustrated by the amendments to the NHS Act 2006 introduced by the Costs Act, discussed at paragraphs 3.161 to 3.167 of this Decision, which demonstrate that the DHSC itself considered it did not already have the necessary powers in this area.[24]

III. Other potential means of the DHSC exercising countervailing buyer power

5.18 The Parties also argue that the DHSC could have intervened in the pricing of Liothyronine Tablets via a variety of other, considerably more remote, means. They argue that the DHSC could, for example, have:

(a) Expelled Advanz from the PPRS in order to exercise its Reserve Power;[25]

(b) Introduced a new industry-wide statutory scheme to control generic drug prices;[26]

(c) Asked Parliament to introduce legislation to close the loophole that excluded voluntary scheme members from the Reserve Power;[27]

(d) Moved Liothyronine Tablets into Category M and/or requested data submissions under Scheme M;[28]

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[22] Scheme M, paragraph 44.
[23] Document LIO6878, DHSC's response to question 6 of the CMA's s.26 notice dated 2 July 2018.
[24] Compare *Phenytoin CAT* [2018] CAT 11, paragraph 207.
[25] Document LIO6258, HgCapital RSO, paragraphs 163 and 176-177; document LIO6330, Cinven RSO, paragraph 5.107; document LIO6288, Advanz RSO, paragraphs 4.42-4.44 and 5.74-5.75. Document LIO7781, Advanz RSSO-2019, paragraph 5.72.
[26] Document LIO6258, HgCapital RSO, paragraph 171; document LIO6330, Cinven RSO, paragraphs 5.113 and 5.116; document LIO6288, Advanz RSO, paragraphs 4.47 and 4.50-4.54.
[27] Document LIO6288, Advanz RSO, paragraphs 4.54-4.56.
[28] Document LIO7781, Advanz RSSO-2019, paragraphs 5.60-5.65. It is not clear how this would amount to 'intervening' in the price of Liothyronine Tablets – Advanz refers here only to the DHSC using these measures in order to oblige Advanz to provide data submissions (although in its representations on the 2017 SO it stated that this would give the DHSC '*another means of adjusting the price of a drug, by way of the quarterly price adjustments the DH makes to Category M products to ensure the annual £800 million pharmacy margin target is achieved*' (paragraph 4.37)). The relevance of the DHSC's adjustments to the retained margin across Category M is addressed at paragraphs 3.143 and 5.241 of this Decision and paragraph 6.78 below.

(e) Issued guidance to de-prescribe Liothyronine Tablets;[29] and/or

(f) Intervened via 'informal' means, without exercising its powers as such. By way of example, they pointed to a discussion between the DHSC and Teva in relation to phenytoin sodium tablets in 2007 and to discussions with Flynn Pharma and Pfizer in relation to phenytoin sodium capsules in 2012/13.[30]

5.19 The CMA rejects these arguments. Fundamentally, the prospect of intervention via any of these means is too remote and speculative. As explained in sections 4.C.I and 4.C.IV.b of this Decision, the Court of Appeal and the CAT have confirmed that the focus should be on whether Advanz was subject to an effective and realistic constraint in practice from the prospect of DHSC intervention. The evidence clearly shows that it was not.

5.20 In any event:

(a) Although there was provision for voluntary scheme members to be ejected from a scheme under section 261(4) of the NHS Act, in order to remove a manufacturer or supplier from the PPRS it would be necessary for the Secretary of State to show that the PPRS was '*ineffective*' as regards that scheme member for the purpose of limiting that member's prices or profits, and give the member concerned the opportunity to make representations.[31] However, it would be difficult to find that the PPRS was '*ineffective*' on the assumption that the scheme member has complied with the provisions of the scheme.[32] The PPRS only applied to branded products: it was not the scheme's purpose to regulate unbranded generic drugs. Advanz's conduct in relation to Liothyronine Tablets would therefore not provide a reason for its expulsion on the grounds that the scheme was '*ineffective*' for the purposes of

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[29] Document LIO12043, Advanz RSSO-2020, paragraph 3.46.6.
[30] Document LIO6258, HgCapital RSO, paragraphs 163, 174 and 178-179; document LIO6330, Cinven RSO, paragraphs 5.107 and 5.110-5.112; document LIO6288, Advanz RSO, paragraphs 4.57-4.59. Document LIO7781, Advanz RSSO-2019, paragraphs 5.66-5.70; document LIO12043, Advanz RSSO-2020, paragraph 1.20.2. Advanz also claims that the DHSC could have intervened in its pricing of Liothyronine Tablets by '*raising a concern under its non-statutory powers as it did with Concordia in relation to price increases it proposed regarding other products under the NHS-BSA procedure*' (document LIO7781, Advanz RSSO-2019, paragraph 5.49.5). However, although Advanz referred in its RSO to the DHSC raising a concern '*in relation to other of Concordia's products when Concordia notified its prices to them under NHS-BSA-PPD procedure*', it gave only one example: of the DHSC's PPRS team objecting to a price increase for Celevac 500mg tablets being implemented without authorisation under the PPRS. That example relates to price modulation in respect of a PPRS drug, not generic drug pricing: the email from the DHSC headed '*2014 PPRS – Celevac 500mg Tablets unauthorised price increase*' states '*As we have not received a modulation proposal in respect of this product, AMCo is in breach of the scheme rules … We would be more than happy to review a modulation proposal that takes this price change into account*' (document LIO6288, Advanz RSO, paragraph 4.16; and document LIO6284.20, Emails from the DHSC to [Advanz General Counsel and Secretary], [Advanz Director of Strategic Finance] and [Advanz employee]). This example is therefore irrelevant to the present case: the PPRS provided a mechanism for the DHSC to object to such price increases. See also document LIO8044, [✂] witness statement, paragraph 30; and document LIO11005, letter from [✂] to the CMA dated 27 March 2020, paragraphs 2.3 and 4.1.
[31] Section 261(4) and (5) NHS Act 2006.
[32] *Genzyme* [2004] CAT 4, paragraph 273.

limiting Advanz's prices or profits.[33, 34] In any case, expulsion from the PPRS for Advanz's conduct in relation to Liothyronine Tablets would not have been realistic given the DHSC's lack of effective powers to require the provision of the financial and cost information needed to assess the reasonableness of pricing.[35]

(b) The suggestion that the DHSC could have legislated to introduce a new statutory scheme covering Liothyronine Tablets – or to close the loophole relating to the Reserve Power – is too remote to be considered a credible constraint on Advanz's behaviour. The same applies to the prospect of the DHSC issuing guidance. As explained in paragraphs 5.232 to 5.239 of this Decision, the NHSCC's decision following its consultation not to recommend the wholesale de-prescribing of Liothyronine Tablets is in fact evidence of its inability to exert an effective constraint through this means, since Liothyronine Tablets continued to be prescribed notwithstanding the finding that they were '*subject to excessive price inflation*'.

(c) In relation to the Teva and Flynn/Pfizer '*interventions*':

(i) Advanz states that in the *Phenytoin* proceedings '*the accepted position was that the DH has the power to intervene on the price of an unbranded generic pharmaceutical product and that it chose to exercise that power to intervene on the price of Epanutin/phenytoin sodium capsules*'.[36] This is incorrect. In fact, the CAT held in *Phenytoin* that the DHSC had not '*"effectively regulated" the tablet price*' and that '*[w]e do not doubt that the DH would have preferred an even lower price*';[37] and in relation to capsules the CAT concluded: '*[w]e do not think that the DH was, in fact, exercising, or able to exercise, buyer power in a way that effectively constrained Pfizer or Flynn's conduct*'.[38] The

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[33] HgCapital argues that there was evidence of the DHSC considering ejecting Advanz from the PPRS – but concedes that this was '*not in relation to concerns about the pricing of Liothyronine*' (document LIO6258, HgCapital RSO, paragraph 177). The DHSC's concerns related to Advanz's compliance or otherwise with the PPRS – not to its generic drugs. See document LIO2393, Note of meeting between the DHSC and Advanz dated 25 July 2013.

[34] For the avoidance of doubt, contrary to Advanz's representations on the 2017 SO, the CMA does not accept '*that the DH could have removed [Advanz] from the PPRS based on its conduct on a non-PPRS medicine*' (document LIO6288, Advanz RSO, paragraph 4.43).

[35] As explained above, there was no relevant enforcement regime to underpin an exercise of the Reserve Power or the supporting power in section 264 NHS Act 2006 to require the provision of information (section 265 stated that any price limit or requirement could only be enforced under regulations providing for a right of appeal, and no relevant regulations existed). The power in section 264 in any event only applied to acts under statutory schemes or the Reserve Power (contrary to HgCapital's argument in document LIO6258, HgCapital RSO, paragraph 181), neither of which was available to the DHSC in relation to Liothyronine Tablets. The position in relation to Scheme M is discussed above.

[36] Document LIO12043, Advanz RSSO-2020, paragraph 3.37. See also paragraph 4.64. The CMA also rejects Advanz's statement that '*the undisputed facts in Phenytoin are that the DH had the power to intervene on the price of an unbranded generic pharmaceutical product and did so intervene*' (document LIO11005, letter from [✂] to the CMA dated 27 March 2020, paragraph 2.3).

[37] *Phenytoin CAT* [2018] CAT 1, paragraphs 381-382.

[38] *Phenytoin CAT* [2018] CAT 1, paragraph 235.

issues of dominance and countervailing buyer power did not feature in the subsequent appeal proceedings.[39]

(ii) It is therefore not the case that the Flynn and Teva discussions are accepted examples of successful DHSC interventions in the prices of generic drugs. In fact, the Flynn '*intervention*' in particular is an example of the limitations on the DHSC's powers to intervene.[40] In the context of the meeting with Flynn in November 2012, Flynn (and subsequently Pfizer) refused to provide the DHSC with the cost data required to understand their justifications for the pricing of phenytoin sodium capsules.[41] As the CAT put it, '*Flynn referred the DH to Pfizer in relation to Flynn's cost of goods, whilst Pfizer declined to comment to the DH on Flynn's pricing, saying it was a matter for Flynn.*'[42]

(iii) Advanz was aware of this: in his witness statement submitted to the CMA dated 11 February 2020, [Advanz General Counsel and Secretary] stated that he understood from multiple sources including BGMA meetings during the Infringement Period that '*the DH had allegedly approached Flynn Pharma to complain about the price increases, but that Flynn Pharma had refused to cooperate or reduce the price*'.[43] Advanz was therefore aware that suppliers could effectively refuse to cooperate with 'informal' DHSC intervention.

(iv) The CAT's ultimate conclusion on these discussions was that '*We find it very difficult to conclude from these events that by early 2013 Pfizer or Flynn's conduct was in practice constrained either by intervention from the DH, or anticipation of that intervention.*'[44] The Court of Appeal rejected Pfizer's application for permission to appeal this aspect of the judgment as having no reasonable prospect of success.[45] In *Phenytoin CoA* the Court of Appeal noted that '*It is important to start by noting two fundamentals of the [CAT] judgment*' (market definition and dominance), and went on to note that '*the CAT accepted that Flynn and Pfizer were essentially able to set and sustain high prices for phenytoin capsules and that they did not face sufficient*

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[39] The CAT expressly declined to rule on the precise extent of the DHSC's powers under the NHS Act and Scheme M: *Phenytoin CAT* [2018] CAT 1, paragraphs 206-207. Permission to appeal this point was refused by the Court of Appeal: Document PAD172, *Flynn Pharma Limited & Ors v CMA*, Order made by the Rt. Hon. Lord Justice Newey, dated 12 December 2018.

[40] The CMA therefore rejects Advanz's statement that the Flynn '*intervention*' shows that '*the undisputed facts in Phenytoin are that the DH had the power to intervene on the price of an unbranded generic pharmaceutical product and did so intervene*' (document LIO11005, letter from [✂] to the CMA dated 27 March 2020, paragraph 2.3).

[41] Document LIO7865, Note of meeting between the DHSC and CMA dated 25 September 2019, paragraph 27. The DHSC further stated that the limitations that applied to formal DHSC intervention, discussed in this Annex, also applied to any informal approach.

[42] *Phenytoin CAT* [2018] CAT 1, paragraph 233.

[43] Document LIO8044, [Advanz General Counsel and Secretary] witness statement, paragraph 33. See also paragraph 47.

[44] *Phenytoin CAT* [2018] CAT 1, paragraphs 234-235.

[45] Document PAD172, *Flynn Pharma Limited & Ors v Competition and Markets Authority*, Order made by the Rt. Hon. Lord Justice Newey, dated 12 December 2018.

competitive pressure, whether from within or from outside the relevant market, to constrain their behaviour, because they each held dominant positions'.[46] It is not plausible that the DHSC's discussions with Teva and Flynn//Pfizer – which have been found not to have imposed an effective constraint on Flynn/Pfizer themselves in relation to phenytoin – demonstrate an effective constraint on a different undertaking (Advanz) in relation to a different drug.

5.21 Advanz further argues that, although the DHSC could have intervened in its prices for Liothyronine Tablets, it '*did not intervene because it acquiesced to the price for LIO*'.[47] This argument – which relies on many of the same points as the claim that the DHSC had countervailing buyer power – is addressed in Annex 6.2 (*'Economic value – willingness to pay'*).

IV. No constraint from wholesalers

5.22 The CMA rejects HgCapital's argument that Advanz was constrained by wholesalers. Advanz was the only choice of supplier for wholesalers until entry occurred after the end of the Infringement Period. Wholesalers therefore had no option to switch to another supplier of Liothyronine Tablets. Advanz's pricing behaviour and maintenance of its sales volumes demonstrates this: wholesalers had no choice but to pay its selling prices and were not able to force Advanz to reduce them. Advanz's decision to supply exclusively through Alliance in 2014 further demonstrates the lack of constraint from its wholesaler customers.

V. No constraint from outside the relevant market

5.23 Cinven argues that the CMA also needs to consider the constraints posed by other treatments outside the market on Advanz's dominance.[48] The CMA finds that the evidence set out in section 4.B.III (*Relevant Product Market*) of this Decision demonstrates that the constraints from other products such as unlicensed liothyronine, NDT and Levothyroxine Tablets were minimal and, in any case, insufficient to undermine Advanz's dominance.

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[46] *Phenytoin CoA* [2020] EWCA Civ 339, paragraphs 192 and 217.
[47] Document LIO6288, Advanz RSO, paragraph 4.25.
[48] Document LIO6330, Cinven RSO, Section 5.