The CMA has fined a number of pharmaceutical companies for anti-competitive conduct and agreements in relation to the supply of paroxetine.

The CMA's decision relates to conduct and agreements between 2001 and 2004 in which GlaxoSmithKline plc (GSK), the supplier of branded paroxetine (an anti-depressant medicine), agreed to make payments and other value transfers totalling over £50 million to suppliers of generic versions of paroxetine. The CMA has found that these payments and other value transfers were aimed at delaying the potential entry of generic competitors into the UK market for paroxetine.

In 2001, a number of pharmaceutical companies – including Generics (UK) Limited (GUK) and Alpharma Limited (Alpharma) – were taking steps to enter the UK market for paroxetine with a generic version. GSK’s own branded version of paroxetine, Seroxat, was a ‘blockbuster’ product: In the UK, 4.2 million prescriptions were issued for Seroxat in 2000 and Seroxat sales exceeded £90 million in 2001. At the time GSK held certain patents in relation to paroxetine.

GSK challenged these pharmaceutical companies, alleging that their generic products would infringe its patents, and commenced litigation proceedings against GUK and Alpharma. Before that litigation went to trial, GUK and Alpharma each entered into agreements with GSK, which included terms prohibiting their independent entry into the UK paroxetine market.

These ‘pay-for-delay’ agreements deferred the competition that the threat of independent generic entry could offer, and potentially deprived the National Health Service of the significant price falls that generally result from generic competition. In this case, when independent generic entry eventually took place at the end of 2003, average paroxetine prices dropped by over 70% in 2 years.

The CMA has found that GSK’s agreements with each of GUK and Alpharma infringed the competition law prohibition on anti-competitive agreements. The CMA has also found that GSK’s conduct, in making payments to GUK, Alpharma and one further company, Norton Healthcare Limited (IVAX), to induce them to delay their efforts to enter the UK paroxetine market independently of GSK, infringed the competition law prohibition on abuse of a dominant position.

The CMA has imposed fines totalling £44.99 million on the companies directly involved in the infringements (and, where relevant, on their parent companies or successors to these companies):

- GSK’s total fine is £37,606,275
- In respect of GUK’s infringement, total fines of £5,841,286 have been imposed on Merck KGaA
In respect of Alpharma’s infringement, total fines of £1,542,860 have been imposed on Actavis UK Limited (formerly Alpharma Limited), Xellia Pharmaceuticals ApS (formerly Alpharma ApS) and Alpharma LLC (formerly Zoetis Products LLC, Alpharma LLC and Alpharma Inc).

Michael Grenfell, the CMA’s Executive Director for Enforcement, said:

“Today’s decision sends out a strong message that we will tackle illegal behaviour that is designed to stifle competition at the expense of customers - in this case, the NHS and, ultimately, taxpayers.

This investigation shows our determination to take enforcement action against illegal anti-competitive practices in sectors big and small. Cracking down on these practices is essential to protect consumers, to encourage legitimate business activity that such practices stifle, and to stimulate innovation and growth.”

Notes for editors

1. See the case page (https://www.gov.uk/cma-cases/investigation-into-agreements-in-the-pharmaceutical-sector) on the CMA website for further information on this investigation.
2. During the period in question, Seroxat was one of GSK’s best-selling medicines and was used to treat, among other conditions, depression and anxiety disorders.
3. The Chapter I prohibition in the Competition Act 1998 prohibits agreements that have the object or effect of preventing, restricting or distorting competition within the UK. The Chapter II prohibition in the Competition Act 1998 prohibits the abuse of a dominant position in the UK that may affect trade in the UK. The EU counterpart of the Chapter I prohibition, Article 101 of the Treaty on the Functioning of the European Union, covers equivalent agreements which may affect trade between EU Member States.
4. Any business found to have infringed these prohibitions can be fined up to 10% of its worldwide turnover. In calculating financial penalties, the CMA takes into account a number of factors including seriousness of the infringement(s), turnover in the relevant market and any mitigating and/or aggravating factors.
5. The agreements and conduct in this case were brought to the Office of Fair Trading’s (OFT) attention by the European Commission in 2010.
6. Following the Statement of Objections issued by the OFT, responsibility for the decision making passed to a Case Decision Group under procedures introduced to ensure a clear separation between the investigation and decision in each case. Responsibility for this investigation passed from the OFT to the CMA on 1 April 2014.
7. In this case the infringement decision is addressed to the following companies, which the CMA considers were either directly involved in the infringement(s) and/or are liable as parent companies of the companies directly involved, or as successors to these companies:
   - GSK: Beecham Group plc, GlaxoSmithKline UK Limited, GlaxoSmithKline plc and SmithKline Beecham Limited (formerly SmithKline Beecham plc).
   - Generics (UK) Limited and Merck KGaA.
8. The total fines imposed are as follows:
   - The total penalty for GSK is £37,606,275 for which each entity comprising GSK (as listed in note 7) is jointly and severally liable.
• The total penalty in respect of GUK is £5,841,286 for which Merck KGaA is liable for £5,841,286; and of that amount Generics (UK) Limited is jointly and severally liable, with Merck KGaA, for £2,732,765.

• The total penalty in respect of Alpharma is £1,542,860 for which each of Actavis UK Limited, Xellia Pharmaceuticals ApS and Alpharma LLC is jointly and severally liable.

9. In its decision, the CMA found that:

• GSK and GUK infringed the Chapter I prohibition and/or Article 101, by participating in an agreement (the GUK-GSK Agreement) that had as its object and/or effect the prevention, restriction or distortion of competition. The CMA has concluded that this infringement lasted for the duration of the GUK-GSK Agreement from 13 March 2002 to 1 July 2004.

• GSK and Alpharma infringed the Chapter I prohibition, by participating in an agreement (the Alpharma-GSK Agreement) that had as its object and/or effect the prevention, restriction or distortion of competition. The CMA has concluded that this infringement lasted for the duration of the Alpharma-GSK Agreement from 12 November 2002 to 13 February 2004.

• GSK infringed the Chapter II prohibition by making cash payments and other value transfers to induce three potential competitors (GUK, Alpharma and IVAX) to delay their potential independent entry to the UK paroxetine market. The CMA has concluded that the infringing conduct lasted from 3 October 2001 until 30 November 2003.

10. GUK and Alpharma accepted value transfers from GSK as compensation for their agreement to delay their efforts to enter the market independently of GSK. Those value transfers included cash payments, and the effective transfer from GSK of profit margins by means of agreements permitting the supply of limited volumes of product to the market in place of GSK. The appointment of GUK and Alpharma as distributors of GSK’s paroxetine provided a means of transferring value from GSK to these companies, with no meaningful increase in the level of competition facing GSK.

11. Originally, the pharmaceutical company Norton Healthcare Limited (formerly IVAX Pharmaceuticals UK) and its parent at the time IVAX LLC (formerly IVAX Corporation) were subject to this investigation. However, the CMA has issued a no grounds for action decision today concluding that the agreement between GSK and IVAX is excluded from the Chapter I prohibition by virtue of the Vertical Agreements Exclusion Order (see note 12), and the CMA does not proceed to make a finding of infringement in respect of it under Article 101. For the avoidance of doubt, the CMA has not found Norton Healthcare Limited or IVAX LLC has infringed competition law and consequently no fine has been imposed on either entity.


13. The CMA is the UK’s primary competition and consumer authority. It is an independent non-ministerial government department with responsibility for carrying out investigations into mergers, markets and the regulated industries and enforcing competition and consumer law. For more information see the CMA’s homepage (https://www.gov.uk/government/organisations/competition-and-markets-authority) on GOV.UK.


15. Enquiries should be directed to Kasia Reardon (kasia.reardon@cma.gsi.gov.uk, 020 3738 6901).
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