



COMPETITION APPEAL TRIBUNAL

NOTICE OF A CLAIM UNDER SECTION 47A OF THE COMPETITION ACT 1998

Case No: 1671/5/7/24

Pursuant to Rule 33(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (the “Tribunal Rules”), the Registrar gives notice of the receipt of a claim for damages (the “Claim”) on 25 July 2024, under section 47A of the Competition Act 1998 (the “Act”), by (1) The Scottish Ministers, and (2) – (15) The Scottish Health Boards (the “Claimants” / “NHS Scotland”) against (1) Accord-UK Limited (Formerly known as Actavis UK Limited), (2) Allergan Unlimited Company (Formerly known as Actavis Plc / Allergan Plc), (3) Intas Pharmaceutical Limited, (4) Accord Healthcare Limited, (5) Waymade PLC (Formerly known as Waymade Healthcare PLC), (6) Amdipharm UK Limited, (7) Amdipharm Limited, and (8) Advanz Pharma Services (UK) Limited (together, the “Defendants”). The Claimants are represented by RPC, Tower Bridge House, St Katharine’s Way, London E1W 1AA (Reference: Melanie Eales / Catherine Percy).

This is a claim for damages based on the facts and matters that on 15 July 2021 were the subject of an infringement decision taken by the Competition and Markets Authority (“CMA”) in respect of the sale and supply of 10mg and 20mg immediate release hydrocortisone tablets¹ (“the Decision”), and subsequent judgments on appeal. The Decision found two infringements of s.2 (“the Chapter I Prohibition”), and two infringements of s.18 of the Act (“the Chapter II Prohibition”) – collectively the “Infringements”.

The Claimants are the bodies that have borne the cost of reimbursing pharmacists and dispensing general practitioners (“Pharmacy Contractors” and “Dispensing GPs” respectively; collectively “Dispensing Contractors”) for drugs dispensed in the NHS in Scotland including the supply of 10mg and 20mg immediate release hydrocortisone tablets.

The Defendants and/or the undertakings of which they formed part were, at all material times, directly or indirectly engaged in the pharmaceutical industry. The Defendants were all addressees of the Decision.

According to the Claim Form, the loss and damage suffered by the Claimants is the difference during the Relevant Period between the amounts that the Claimants paid to reimburse Dispensing Contractors for dispensing 10mg and 20mg immediate release hydrocortisone tablets (or simply “hydrocortisone tablets”), and the amounts that they would have paid absent the Infringements.

As to the Infringements, in summary:

1. Auden/Actavis charged excessive and unfair prices for 10mg hydrocortisone tablets (the “10mg Pricing Abuse”) and 20mg hydrocortisone tablets (the “20mg Pricing Abuse”) (together the “Pricing Abuse Infringements”).
2. The 10mg Pricing Abuse lasted from 1 October 2008 to 31 July 2018 (the “10mg Pricing Abuse Infringement Period”) and the 20mg Pricing Abuse lasted from 1 October 2008 to 8 January 2017 (the “20mg Pricing Abuse Infringement Period”) (together the “Pricing Abuse Infringement Periods”).
3. Between 11 July 2011 and 30 April 2015 (the “20mg Agreement Infringement Period”), Auden McKenzie (Pharma Division) Limited (“AM Pharma”) and “Waymade” were parties to an agreement

¹ *Competition and Markets Authority Decision: Hydrocortisone tablets, Excessive and unfair pricing and Anti-competitive agreements*, Case 50277, 15 July 2021.

that had the object of restricting competition (the “20mg Agreement”) based on a common understanding that: (a) AM Pharma would supply Waymade with 20mg hydrocortisone tablets on terms that amounted to monthly value transfers to Waymade; and (b) in exchange for these payments, Waymade would not enter the market independently with its own 20mg hydrocortisone tablets.

4. Between 23 October 2012 and 24 June 2016 (the “10mg Agreement Infringement Period”), AM Pharma, Accord-UK Limited (then known as Actavis UK), Waymade and AMCo were at various times parties to an agreement that had the object of restricting competition (the “10mg Agreement”) based on a common understanding that: (a) AM Pharma, initially, and then subsequently Actavis UK, would supply Waymade initially, and then subsequently AMCo, with 10mg hydrocortisone tablets at prices that were heavily discounted off the market rate and amounted to very substantial value transfers; (b) in exchange for which Waymade, initially, and then subsequently AMCo would not enter the market independently with its own 10mg hydrocortisone tablets. The 10mg Agreement and the 20mg Agreement are collectively referred to as the “Cartel Agreements”.

Other than in respect of the 20mg Agreement, the CMA’s infringement findings in the Decision were appealed under s.46 of the Act. Those appeals were determined by the Tribunal in the following judgments:

1. *Allergan plc & ors v Competition and Markets Authority* [2023] CAT 56 (“Hydrocortisone 1”), decided on 18 September 2023. This was an appeal against the Pricing Abuse Infringements, which were upheld by the Tribunal.
2. *Allergan plc & ors v Competition and Markets Authority* [2023] CAT 57 (“Hydrocortisone 2”), decided on 29 September 2023 and published on 8 March 2024. This was an appeal against the CMA’s findings relating to the 10mg Agreement. The Tribunal found that “[a]ll of the grounds of appeal fail. The 10mg Agreement ... is a by object infringement of the Chapter I prohibition. The object was flagrantly anti-competitive and the anti-competitive effects significant, in that an abused monopoly position was maintained and supported”. However, the Tribunal stated that it was unable finally to determine these appeals because of concerns as to whether the CMA had properly put its case to witnesses who gave evidence during the trial, in respect of which the Tribunal invited submissions and which were the subject of the following judgment.
3. *Allergan plc & ors v Competition and Markets Authority* [2024] CAT 17 (“Hydrocortisone 3”, ‘Due Process’), decided on 8 March 2024, which considered questions of due process arising out of *Hydrocortisone 2* and ultimately determined that the findings in *Hydrocortisone 2* ought to be set aside.
4. *Allergan plc & ors v Competition and Markets Authority* [2024] CAT 29 (“Hydrocortisone 4”, ‘Penalties’), decided on 29 April 2024, was a s.46 appeal of the penalty imposed by the CMA in respect of the 20mg Pricing Abuse. The CMA’s penalty decision was affirmed by the Tribunal.

As of the date of filing the Claim Form, permission to appeal has been sought in respect of the first three judgments, and that the appeals against the *Hydrocortisone 2* and *Hydrocortisone 3* judgments were heard from 10 to 17 July 2024.²

Accordingly:

1. The CMA’s 20mg Agreement infringement finding has become final (as the time for appealing against it expired without an appeal being brought) and is therefore binding on the Tribunal for the purpose of these proceedings under s.58A of the Act; and

² After the Claim Form was filed, the Court of Appeal, on 6 September 2024, issued its Judgment: [2024] EWCA Civ 1023.

2. The other infringement findings (i.e. relating to the 10mg Pricing Abuse, 20mg Pricing Abuse and 10mg Agreement infringements) have not yet become final as they have been appealed and those appeals processes are ongoing.

The Claimants submit that the Infringements of competition law above constitute breaches of statutory duty which are actionable in damages under section 47A of the Act.

The Claimants claim:

- (1) Damages for breach of statutory duty.
- (2) Simple interest on damages.
- (3) Costs; and
- (4) Such further and other relief as the Tribunal considers appropriate.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at www.catribunal.org.uk. Alternatively, the Tribunal Registry can be contacted by post at Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP, or by telephone (020 7979 7979) or email (registry@catribunal.org.uk). Please quote the case number mentioned above in all communications.

Charles Dhanowa OBE, KC (Hon)
Registrar

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