



## COMPETITION APPEAL TRIBUNAL

### NOTICE OF AN APPEAL UNDER SECTION 46 OF THE COMPETITION ACT 1998

Case No: 1432/1/12/22

Pursuant to Rule 14 of the Competition Appeal Tribunal Rules 2015 (S.I. No 1648 of 2015) (the “Rules”) the Registrar gives notice of the receipt of an appeal on 25 April 2022 under section 46 of the Competition Act 1998 (“Act”), by Focus Pharma Holdings Limited, Focus Pharmaceuticals Limited, Mercury Pharma Group Limited, Concordia Investment Holdings (UK) Limited, Concordia Investments (Jersey) Limited and Advanz Pharma Corp. Limited (together “Focus”) against a decision by the Competition and Markets Authority (“CMA”) dated 3 February 2022 in Case 50511-2 in respect of prescription only Prochlorperazine 3mg buccal tablets sold in packs of 50 (“Prochlorperazine POM”) (“Decision”). Focus is represented by Morgan, Lewis & Bockius UK LLP of Condor House, 5-10 St. Paul’s Churchyard, London EC4M 8AL United Kingdom (reference: Frances Murphy/Leo Theodosiou).

By the Decision the CMA determined that Alliance Pharmaceuticals Limited and Alliance Pharma plc (together “Alliance”) and Lexon (UK) Limited and Lexon UK Holdings Limited (together “Lexon”) were party to an agreement whereby (a) Lexon would not compete with Alliance in the supply of Prochlorperazine POM manufactured for Lexon by Medreich plc, Medreich Ltd, Meiji Seika Pharma Co. Ltd and Meiji Holdings Co. Ltd (together “Medreich”) in return for compensation from Alliance and (b) Alliance and Lexon would give effect to the agreement by each of them entering into a distribution agreement with Focus for their respective Prochlorperazine POM product save that Lexon would not supply any of its Prochlorperazine POM product to Focus and in order for the compensation to be transferred from Alliance to Lexon, Lexon would include in its distribution agreement with Focus, an obligation on Focus to share with Lexon the profit made by Focus on the sale of Prochlorperazine POM by any supplier (“Market Exclusion Agreement”).

The CMA finds that the Market Exclusion Agreement had as its object the restriction of competition in breach of the Chapter I prohibition in the Act and that Focus participated in the Market Exclusion Agreement from 22 June 2013 until 31 July 2018 (“Focus Infringement Period”) through its involvement in the two distribution agreements.

The CMA has fined Focus £13.4 million for its participation in the Market Exclusion Agreement (“Fine”).

Focus appeals the Decision. The principal grounds of appeal on which Focus relies are as follows:

1. Focus did not knowingly participate in the Market Exclusion Agreement, and its conduct does not give rise to an infringement under section 2 of the Act. The CMA has not discharged its burden of proof that throughout the Focus Infringement Period, Focus knowingly and intentionally participated in the alleged Market Exclusion Agreement and has erred in the correct application of the law in determining whether Focus participated in the alleged Market Exclusion Agreement. In actual fact, Focus entered into what it thought were two perfectly ordinary distribution agreements for Prochlorperazine POM pursuant to which it fully expected to be supplied with Prochlorperazine POM for resale in the UK market.
2. The CMA has erred in imposing the Fine. There should be no Fine because the evidence shows that Focus did not participate in the Market Exclusion Agreement intentionally or negligently. Alternatively, the Fine should be greatly reduced. The Fine is manifestly excessive and disproportionate and the CMA’s calculation of it is vitiated by material errors of law and factual assessment.

As regards the relief sought, Focus requests that:

- a. The Decision be set aside in whole or in part so far as it concerns Focus;

- b. The Fine be annulled or, in the alternative, reduced significantly; and
- c. The CMA be ordered to pay Focus's costs incurred in connection with the appeal.

Any person who considers that they have sufficient interest in the outcome of the proceedings may make a request for permission to intervene in the proceedings, in accordance with rule 16 of the Rules.

Please also note that a direction of the President is currently in place as to the electronic filing of documents: see paragraph 2 of the [Practice Direction](#) relating to Covid-19 published on 20 March 2020. Therefore, a request for permission to intervene should be sent to the Registrar electronically, by email to [registry@catribunal.org.uk](mailto:registry@catribunal.org.uk), so that it is received within **three weeks** of the publication of this notice.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, QC (Hon)*  
Registrar

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