



IN THE COMPETITION
APPEAL TRIBUNAL

Case Nos: 1407/1/12/21
1411/1/12/21
1412/1/12/21
1413/1/12/21
1414/1/12/21

BETWEEN:

- (1) ALLERGAN PLC**
(2) ADVANZ PHARMA CORP. LIMITED & OTHERS
(3) CINVEN CAPITAL MANAGEMENT (V) GENERAL PARTNER LIMITED
& OTHERS
(4) AUDEN MCKENZIE (PHARMA DIVISION) LIMITED & ANOTHER
(5) INTAS PHARMACEUTICALS LIMITED & OTHERS

Appellants

- v -

COMPETITION AND MARKETS AUTHORITY

Respondent

CONFIDENTIALITY RING ORDER

UPON reading the notices of appeal of (i) Allergan plc; (ii) Advanz Pharma Corp Ltd & Ors; (iii) Cinven Capital Management (V) General Partner Ltd & Ors; (iv) Auden Mckenzie (Pharma Division) Ltd & Anor and (v) Intas Pharmaceuticals Ltd & Ors relating to the decision of the Competition and Markets Authority (the “CMA”) dated 15 July 2021 and entitled “Hydrocortisone tablets – Case 50277”

UPON reading the correspondence between the parties in relation to the CMA Confidentiality Rings (as defined in paragraph 2(a) below) and the letter from the CMA dated 14 December 2021 enclosing a draft order on the terms below

UPON the parties by their respective legal representatives having in writing agreed to the terms of this Order

UPON the parties agreeing that this form of confidentiality ring should cover case 1407/1/12/21 and cases 1411-1414/1/12/21

AND UPON each of the persons named in Parts A and B of the Schedule to this Order having given a written undertaking to the Tribunal in the terms of Part C or D respectively of the Schedule to this Order prior to receiving any Confidential Information (as defined below)

IT IS ORDERED BY CONSENT THAT:

1. This Order becomes effective in respect of each of the persons named in Parts A and B of the Schedule to this Order (and any other persons subsequently admitted to the Confidentiality Ring pursuant to paragraph 8 of this Order) only upon receipt by the Competition Appeal Tribunal (the “Tribunal”) of a signed undertaking in the terms of Part C or D of the Schedule to this Order.

Definitions

2. For the purposes of this Order:
 - (a) **“CMA Confidentiality Rings”** refers to the confidentiality rings that were established by the CMA in Case 50277 (including Cases 50277-1, 50277-2, and 50277-3).
 - (b) **“Confidentiality Ring”** means all those Relevant Individuals who have signed an undertaking to the Tribunal in the terms of Part C or D of the Schedule to this Order, of which a copy has been provided to the Tribunal.

- (c) **“Confidential Information”** means Inner Confidentiality Ring Information; Outer Confidentiality Ring Information and information that is subject to the CMA Confidentiality Rings.
- (d) **“Inner Confidentiality Ring Information”** means documents, including any part of those documents and any information contained within those documents, which the CMA and/or the Tribunal consider justify the requirements for confidential treatment in accordance with Rule 99 and/or Rule 101 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648). These documents are listed by reference to their Unique Reference Number (“URN”) in Schedule E to this Order.
- (e) **"Inner Confidentiality Ring Members"** are those persons listed in Part A of the Schedule to this Order, as amended from time to time in accordance with the provisions of paragraphs 8 and 9 below or an order of the Tribunal, who have given a signed undertaking in the terms of Part C of the Schedule to this Order in these proceedings and that signed undertaking has been provided to the Tribunal and (in the case of those persons who are added as Inner Confidentiality Ring Members in accordance with the provisions of paragraph 8 below) where the Proposing Party has complied with paragraph 8.
- (f) **“Outer Confidentiality Ring Information”** means documents or information provided by a Party or Third Party (the **“Disclosing Party”**), including any part of those documents and any information contained within those documents which the Disclosing Party considers justify the requirements for confidential treatment in accordance with Rule 99 and/or Rule 101 of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648).
- (g) **"Outer Confidentiality Ring Members"** are:

- (i) Inner Confidentiality Ring Members; and
 - (ii) those persons listed in Part B of the Schedule to this Order, as amended from time to time in accordance with the provisions of paragraphs 8 and 9 below or an order of the Tribunal, who have given a signed undertaking in the terms of Part D of the Schedule to this Order, and that signed undertaking has been provided to the Tribunal and (in the case of those persons who are added as Outer Confidentiality Ring Members in accordance with the provisions of paragraph 8 below) where the Proposing Party has complied with paragraph 8.
- (h) “**Party**” means a party to these proceedings.
- (i) “**Relevant Individuals**” are Inner Confidentiality Ring Members and Outer Confidentiality Ring Members.
- (j) “**these proceedings**” means the appeals in case 1407/1/12/21 and cases 1411-1414/1/12/21.
- (k) “**Third Party**” means a legal or natural person other than a Party that made a request to the CMA for confidential treatment of its information during the administrative procedure in Case 50277.

Inner Confidentiality Ring Information

3. Inner Confidentiality Ring Information provided in the context of these proceedings is to be provided or made available only to any employee of the Tribunal; any employee of the CMA and Inner Confidentiality Ring Members, to be held by them on the terms set out in Part C of the Schedule to this Order, subject to the following paragraphs of this Order.

Outer Confidentiality Ring Information

4. Outer Confidentiality Ring Information provided in the context of these proceedings is to be provided or made available only to any employee of the Tribunal; any employee of the CMA and Outer Confidentiality Ring Members, to be held by them on the terms as set out in:
 - 4.1 if the individual is also an Inner Confidentiality Ring Member, Part C of the Schedule to this Order, subject to the following paragraphs of this Order;
 - 4.2 if the individual is not also an Inner Confidentiality Ring Member, Part D of the Schedule to this Order, subject to the following paragraphs of this Order.

Confidentiality Markings

5. All documents served in these proceedings must be marked so as to indicate the parts in relation to which confidential treatment is claimed, in the manner referred to in paragraph 7.46 of the Tribunal's Guide to Proceedings 2015. A system of colour-coding shall be used to indicate to which entity the Confidential Information belongs (or such other system as the parties shall agree should this colour-coding be considered to be or to have become unworkable). The system of colour-coding to be used, subject to any alternative agreement between the parties, is as follows:
 - 5.1 Yellow highlighting to indicate Inner Confidentiality Ring Information belonging to a Party;
 - 5.2 Green highlighting to indicate Outer Confidentiality Ring Information belonging to a Party;
 - 5.3 Blue highlighting to indicate Inner Confidentiality Ring Information belonging to a Third Party;
 - 5.4 Pink highlighting to indicate Outer Confidentiality Ring Information belonging to a Third Party; and

- 5.5 Red highlighting to indicate personal information that should be protected on the basis of GDPR and/or data protection.

Scope of the Order

6. For the avoidance of doubt, nothing in this Order or in its Schedule shall prohibit any Relevant Individual from:
- 6.1 making use of any necessary secretarial, IT, printing, and other support personnel (not including trainee solicitors or paralegals) under the supervision of such Relevant Individuals, provided that such personnel have been informed of the confidential nature of the Confidential Information and the terms of Part B of the Schedule to this Order; and/or
 - 6.2 granting access to Confidential Information contained in any relevant document to an external eDisclosure/eBundle or litigation support provider engaged by or on behalf of any of the parties in connection with these proceedings in order to provide eDisclosure/eBundle or similar services in support of a Relevant Individual and whose identity is notified in writing to the other parties in advance, provided always that the provider has been engaged on terms that impose strict confidentiality obligations on it and informed of the confidential nature of the relevant material and the terms of Annex B to this Order;
 - 6.3 disclosing any Inner Confidentiality Ring Information to any other Inner Confidentiality Ring Member and/or disclosing any Outer Confidentiality Ring Information to any other Outer Confidentiality Ring Member (as appropriate); and/or
 - 6.4 showing any Confidential Information to an individual who is employed by, or who is giving evidence on behalf of, the Party who disclosed that Confidential Information.

7. Nothing in the confidentiality terms of this Order shall prevent or prohibit a receiving party from taking any action (including, in particular, disclosing Confidential Information to a person who is not a Relevant Individual and/or referring to such documents or information before the Tribunal) which has been authorised in writing by the party originally disclosing the Confidential Information (the “**Disclosing Party**”) or which a receiving party is required to take by applicable law or by a court of competent jurisdiction.

Admissions to the Inner or Outer Confidentiality Ring

8. If a Party (the “**Proposing Party**”) wishes to add an additional person as an Inner Confidentiality Ring Member or as an Outer Confidentiality Ring Member:
 - 8.1 it shall notify and request the express written consent of the other Parties (each a “Receiving Party” and together, the “Receiving Parties”) and when requesting such written consent specify the name and role of the proposed additional person;
 - 8.2 following receipt of a notice pursuant to paragraph 8.1 above, a Receiving Party shall not unreasonably withhold or delay their consent and if any Receiving Party objects to the proposed addition to the Inner Confidentiality Ring or the Outer Confidentiality Ring, they shall notify the Proposing Party in writing within 2 working days that they so object;
 - 8.3 if express consent is given by the Receiving Parties, or the Receiving Parties (or any Receiving Party) fail to give express consent or fail to give written notice of objection within the 2 working day period specified in paragraph 8.2 above, the additional person will be required to give the written undertaking to the Tribunal in the terms of Part C or D (as appropriate) of the Schedule to this Order; and the Proposing Party will provide that written undertaking and an amended version of Part A or B (as appropriate) of the Schedule to this Order to the Tribunal and the other Parties;

8.4 if any objection is received in accordance with paragraph 8.2 above, the Proposing Party may apply to the Tribunal and give notice of such application to the Receiving Parties.

9. If a Party wishes to remove a person as an Inner Confidentiality Ring Member or an Outer Confidentiality Ring Member, that Party will notify the other Parties and provide an amended version of Part A or B (as appropriate) of the Schedule to this Order to the Tribunal and the other Parties.

Enforcement of the Order, Costs and Liberty to Apply

10. In the event of any anticipated or actual breach of this Order, any Party may seek to enforce the terms of this Order.

11. In the event there is a conflict between this Order and the CMA Confidentiality Rings, the terms of this Order shall prevail.

12. Costs be reserved.

13. There shall be liberty to apply.

The Honourable Mr Marcus Smith
President of the Competition Appeal Tribunal

Made: 15 December 2021
Drawn: 16 December 2021

SCHEDULE

PART A

This part contains the names of Inner Confidentiality Ring Members:

1 For the First Appellant

Relevant Individuals	Role(s)
External counsel	
Daniel Jowell QC	Counsel (Brick Court Chambers)
Tim Johnston	Counsel (Brick Court Chambers)
External solicitors	
<i>Addleshaw Goddard LLP</i>	
Bruce Kilpatrick	Partner
Valeri Bozhikov	Managing Associate

2 For the Second Appellants

Relevant Individuals	Role(s)
External counsel	
Mark Brealey Q.C.	Counsel (Monckton Chambers)
External solicitors	
Morgan, Lewis & Bockius UK LLP	
Frances Murphy	Partner
Joanna Christoforou	Partner
Leonidas Theodosiou	Senior Associate
Emma Walsh	Associate
Michael Zymler	Associate
Edward Cook	Associate
Christina Lewes	Trainee Solicitor
External economists	
<i>Alix Partners</i>	
Derek Holt	Managing Director
Ben Forbes	Senior Vice President

Relevant Individuals	Role(s)
Robert Scherf	Senior Vice President

3 For the Third Appellants

Relevant Individuals	Role(s)
External counsel	
Robert O'Donoghue Q.C.	Counsel (Brick Court Chambers)
Max Schaefer	Counsel (Brick Court Chambers)
Emma Mockford	Counsel (Brick Court Chambers)
Ben Rayment	Counsel (Monckton Chambers)
External solicitors	
<i>Clifford Chance LLP</i>	
Luke Tolaini	Partner
Greg Olsen	Partner
Ben Jasper	Senior Associate
Tabitha Ward	Associate
Nissim Massarano	Associate
George Tyler	Associate
Nhi Nguyen	Associate
Chloe Lettington	Trainee Solicitor
<i>Weil, Gotshal & Manges (London) LLP</i>	
Jenine Hulsmann	Partner
Chris Chapman	Counsel
External economists	
<i>CRA</i>	
Matthew Bennett	Vice President
Uğur Akgün	Director
Muath Masri	Associate Principal
Daryl Tiong	Consulting Associate
Ed Spiers	Analyst

4 For the Fourth Appellants

Relevant Individuals	Role(s)
External counsel	
Sarah Ford QC	Counsel (Brick Court Chambers)
Charlotte Thomas	Counsel (Brick Court Chambers)
External solicitors	
<i>Macfarlanes LLP</i>	
Cameron Firth	Partner
Emma Radcliffe	Partner
Andrew Morrison	Senior Solicitor
Matthew Redfern	Solicitor
Adam Fieldgate	Trainee Solicitor

5 For the Fifth Appellants

Relevant Individuals	Role(s)
External counsel	
Robert Palmer Q.C.	Counsel (Monckton Chambers)
Laura Elizabeth John	Counsel (Monckton Chambers)
Jack Williams	Counsel (Monckton Chambers)
External solicitors	
<i>Linklaters LLP</i>	
Nicole Kar	Partner
Harriet Ellis	Partner
Jonathan Ford	Counsel
Emily Burke	Managing Associate
Verity Egerton-Doyle	Managing Associate
Rebecca McGregor	Managing Associate
Haidee Barratt	Managing Associate
Charlotte Beardsworth	Associate

Relevant Individuals	Role(s)
Darshan Chohan	Associate
Antonia Adebambo	Associate
Irene Obahiagbon	Associate
Annabel Sim	Trainee Solicitor
Selina Yip	Trainee Solicitor
External economists	
<i>CRA</i>	
Diana Jackson	Vice President
Johannes Dittrich	Associate Principal
Tara Mampilly	Senior Associate
Marissa Li	Senior Associate
<i>RBB Economics</i>	
Simon Bishop	Partner
Richard Murgatroyd	Partner
Jasmine Peng	Senior Associate
Linus Adelt	Associate Principal

6 For the Respondent

Relevant Individuals	Role(s)
External counsel	
Josh Holmes QC	Counsel (Monckton Chambers)
Marie Demetriou QC	Counsel (Brick Court Chambers)
David Bailey	Counsel (Brick Court Chambers)
Daisy Mackersie	Counsel (Monckton Chambers)
Nik Grubeck	Counsel (Monckton Chambers)
Michael Armitage	Counsel (Monckton Chambers)
External economists	
Tommaso Valletti	Professor of Economics, Imperial College London

PART B

This part contains names of Outer Confidentiality Ring Members (excluding Outer Confidentiality Ring Members who are also Inner Confidentiality Ring Members):

7 For the First Appellant

Relevant Individuals	Role(s)
In-house counsel	
<i>AbbVie Inc.</i>	
John R. Duff	Vice President, Corporate Litigation
Alexandru Potlog	Legal Director, UK & Ireland

8 For the Second Appellants

Relevant Individuals	Role(s)
In-house counsel	
Robert Sully	General Counsel

9 For the Third Appellants

Relevant Individuals	Role(s)
In-house counsel	
Babett Carrier	General Counsel

10 For the Fourth Appellants

Relevant Individuals	Role(s)
In-house counsel	
<i>Teva Pharmaceuticals (for Auden Mckenzie)</i>	
Jim Back	General Counsel, EU Antitrust
Vanessa Kitching	General Counsel, UK & Ireland
Bibianne Bon	General Counsel, Europe

11 For the Fifth Appellants

Relevant Individuals	Role(s)
In-house counsel	
Andrew Webb	UK&I General Counsel
Roger Marquilles	Europe & MENA General Counsel

PART C

UNDERTAKING

(TO BE PROVIDED BY INNER CONFIDENTIALITY RING MEMBERS)

Defined terms set out in this document have the meaning set out in the Tribunal's Order of [●] 2021 above (the "Tribunal's Order").

In respect of any Inner Confidentiality Ring Information and/or Outer Confidentiality Ring Information disclosed to them pursuant to this Order, each Inner Confidentiality Ring Member undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

I, the undersigned, undertake to the Tribunal and each of the parties as follows:

- 1 I have read a copy of the Tribunal's Order and understand the implications of that Order and the giving of this undertaking.
- 2 I will not disclose Inner Confidentiality Ring Information to any person who is not an Inner Confidentiality Ring Member or a Competition and Markets Authority employee who is for the time being working on these proceedings or the matters which have given rise to them ("CMA employee"), save as otherwise permitted under the terms of the Tribunal's Order or with the permission of the Tribunal.
- 3 I will not disclose Outer Confidentiality Ring Information to any person who is not an Outer Confidentiality Ring Member or a CMA employee, save as otherwise permitted under the terms of the Tribunal's Order.
- 4 I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever in any jurisdiction without the express written consent of the Disclosing Party or the permission of the Tribunal.
- 5 The documents containing any Inner Confidentiality Ring Information will at all times remain either in my custody, the custody of another Inner Confidentiality Ring Member, the custody of an external eDisclosure/eBundle or litigation support provider (in accordance with paragraph 7 of this undertaking) or a CMA employee and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
- 6 The documents containing any Outer Confidentiality Ring Information will at all times remain either in my custody, the custody of another Outer Confidentiality Ring Member, the custody of an external eDisclosure/eBundle or litigation support provider (in accordance with paragraph 7 of this undertaking) or a CMA employee and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
- 7 Insofar as I grant access to Confidential Information to an external eDisclosure/eBundle or litigation support provider, I shall ensure that (a) the identity of the provider has been notified in writing to other parties in advance; (b) the provider has been engaged on terms that impose

strict confidentiality obligations on it; and (c) the provider has been informed of the confidential nature of the Confidential Information and the terms of Part C of the Schedule to this Order.

- 8 Insofar as I make use of any necessary secretarial, IT, printing and other support personnel (not including trainee solicitors or paralegals) under my supervision, I will ensure that such personnel have been informed of the confidential nature of the Confidentiality Information and the terms of Part C of the Schedule to this Order.
- 9 The production of further copies by me of documents containing Inner Confidential Ring Information shall be limited to those strictly required for the use of the Inner Confidentiality Ring Members or CMA employees for the purpose of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.
- 10 The production of further copies by me of documents containing Outer Confidential Ring Information shall be limited to those strictly required for the use of the Outer Confidentiality Ring Members or CMA employees for the purpose of these proceedings and shall be held in accordance with paragraph 4 of this undertaking.
- 11 All copies of Confidential Information which are within my control will be returned to the Disclosing Party or destroyed by the receiving party at the conclusion of the proceedings; copies of documents containing Confidential Information in electronic form will where reasonably possible be returned, or where that is not reasonably possible will be securely disposed of insofar as technologically possible or rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily available to any person.
- 12 Save that none of the requirements listed above shall prevent Relevant Individuals from:
 - i. disclosing to a person advised by them Confidential Information which such person has already legitimately seen.
 - ii. taking any action which has been authorised in writing by the relevant Disclosing Party, or complying with any regulatory requirement in relation to their profession (or individual or firm professional indemnity insurance requirement or practice, provided that relevant documents containing Confidential Information are always retained securely and only disclosed on terms respecting the confidentiality of the information contained therein) or that they are required to take by any applicable law or by a court of competent jurisdiction.

Name:

[Firm] OR [Company] OR [Establishment]:

[Legal qualification] OR [Role / Job title]:

IF APPLICABLE [Professional regulator]:

Signed:

Date: []

PART D

UNDERTAKING

(TO BE PROVIDED BY OUTER CONFIDENTIALITY RING MEMBERS)

Defined terms set out in this document have the meaning set out in the Tribunal's Order of [●] 2021 above (the "**Tribunal's Order**").

In respect of any Outer Confidentiality Ring Information disclosed to them pursuant to this Order, each Outer Confidentiality Ring Member undertakes that they will comply with the following requirements, to the extent applicable to them, in the terms below.

I, the undersigned, undertake to the Tribunal and each of the Parties as follows:

- 1 I have read a copy of the Tribunal's Order and understand the implications of that Order and the giving of this undertaking.
- 2 I will not disclose Outer Confidentiality Ring Information to any person who is not an Outer Confidentiality Ring Member or a Competition and Markets Authority employee who is for the time being working on these proceedings or the matters which have given rise to them ("**CMA employee**"), save as otherwise permitted under the terms of the Tribunal's Order or with the permission of the Tribunal.
- 3 I will use the Confidential Information only for the purpose of these proceedings and for the purpose of no other current or future proceedings, dispute, complaint, or other use whatsoever in any jurisdiction without the express written consent of the Disclosing Party or the permission of the Tribunal.
- 4 The documents containing any Outer Confidentiality Ring Information will at all times remain either in my custody, the custody of another Outer Confidentiality Ring Member, the custody of an external eDisclosure/eBundle or litigation support provider (in accordance with paragraph 5 of this undertaking) or a CMA employee and be held in a manner appropriate to the circumstances so as to prevent unauthorised access or disclosure.
- 5 Insofar as I grant access to Confidential Information to an external eDisclosure/eBundle or litigation support provider, I shall ensure that (a) the identity of the provider has been notified in writing to other parties in advance; (b) the provider has been engaged on terms that impose strict confidentiality obligations on it; and (c) the provider has been informed of the confidential nature of the Confidential Information and the terms of Annex D of the Schedule to this Order.
- 6 Insofar as I make use of any necessary secretarial, IT, printing and other support personnel (not including trainee solicitors or paralegals) under my supervision, I will ensure that such personnel have been informed of the confidential nature of the Confidentiality Information and the terms of Part D of the Schedule of this Order.
- 7 The production of further copies by me of documents containing Outer Confidentiality Ring Information shall be limited to those strictly required for the use of the Outer Confidentiality

Ring Members or CMA employees for the purpose of these proceedings and shall be held in accordance with paragraph 3 of this undertaking.

- 8 All copies of Confidential Information which are within my control will be returned to the Disclosing Party or destroyed by the receiving party at the conclusion of the proceedings; copies of documents containing Confidential Information in electronic form will where reasonably possible be returned, or where that is not reasonably possible will be securely disposed of insofar as technologically possible or rendered inaccessible from any computer systems, disk or device so that the Confidential Information is not readily available to any person.
- 9 Save that none of the requirements listed above shall prevent Relevant Individuals from:
 - i. disclosing to a person advised by them Confidential Information which such person has already legitimately seen.
 - ii. taking any action which has been authorised in writing by the relevant Disclosing Party, or complying with any regulatory requirement in relation to their profession (or individual or firm professional indemnity insurance requirement or practice, provided that relevant documents containing Confidential Information are always retained securely and only disclosed on terms respecting the confidentiality of the information contained therein) or that they are required to take by any applicable law or by a court of competent jurisdiction.

Name:

[Firm] OR [Company] OR [Establishment]:

[Legal qualification] OR [Role / Job title]:

IF APPLICABLE [Professional regulator]:

Signed:

Date: []

PART E

This part contains a list of the documents containing Inner Confidentiality Ring Information

- Document URN 00038A
- Document URN 00213
- Document URN 00452
- Document URN 00512
- Document URN 00592
- Document URN 00729
- Document URN 00744
- Document URN 00747
- Document URN 01787
- Document URN 01987.B
- Document URN 02664.E
- Document URN 200018
- Document URN 200160
- Document URN 200165
- Document URN 200166
- Document URN 200167
- Document URN 200170
- Document URN 200201
- Document URN 201088
- Document URN 201089
- Document URN 201092
- Document URN 201093
- Document URN 201094
- Document URN 201095
- Document URN 201097
- Document URN 201099
- Document URN 201100
- Document URN 201102
- Document URN 201970
- Document URN 201971
- Document URN 202510
- Document URN 202749
- Document URN 203351
- Document URN 203378
- Document URN 204903
- Document URN 204904
- Document URN 205212
- Document URN 205217
- Document URN 205345
- Document URN 205401
- Document URN 205566
- Document URN 205799
- Document URN 205802
- Document URN 205931
- Document URN 206017
- Document URN 206280
- Document URN 206315B
- Document URN 206344
- Document URN 206381
- Document URN 206612
- Document URN 206657
- Document URN 206670
- Document URN 206689
- Document URN 206690

- Document URN 301315
- Document URN 301689

