



**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case Nos: 1419/1/12/21  
1421/1/12/21  
1422/1/12/21

BETWEEN:

**(1) HG CAPITAL LLP**  
**(2) CINVEN (LUXCO 1) S.A.R.L. & OTHERS**  
**(3) MERCURY PHARMACEUTICALS LIMITED & OTHERS**

Appellants

- v -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

---

**CONFIDENTIALITY RING ORDER**

---

**UPON** reading the notices of appeal filed by the Appellants relating to the decision of the Competition and Markets Authority (the “CMA”) dated 29 July 2021 and entitled “Excessive and unfair pricing with respect to the supply of liothyronine tablets in the UK – Case 50395”

**UPON** reading the correspondence between the parties in relation to the CMA Confidentiality Rings (as defined in paragraph 2(a) below)

**UPON** the parties agreeing that this form of confidentiality ring should apply to the present cases (cases 1419/1/12/21; 1421/1/12/21; and 1422/1/12/21)

**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 50395.
- (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).
- (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 cases 1419/1/12/21, 1421/1/12/21, and 1422/1/12/21.
- (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 50395.

### **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; and/or

- 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.

**Sir Marcus Smith**  
President of the Competition Appeal Tribunal

Made: 25 January 2022  
Drawn: 25 January 2022

**SCHEDULE  
PART A**

**This part contains the names of Inner Confidentiality Ring Members:**

1. For the First Appellant:

Relevant Individuals	Role(s)
<b>External counsel</b>	
Brian Kennelly QC	Counsel (Blackstone Chambers)
Daniel Piccinin	Counsel (Brick Court Chambers)
<b>External solicitors</b>	
<i>Linklaters LLP</i>	
Nicole Kar	Partner
Sarina Williams	Partner
Jonathan Ford	Counsel
Alexander Fawke	Managing Associate
Charalampos Dimoulis	Managing Associate
Ina Lunneryd	Managing Associate
Karolis Pocius	Managing Associate
Charles Jennings	Associate
Ryan Poh Wei Shiung	Trainee Solicitor
<b>External economists</b>	
<i>Charles River Associates</i>	
Diana Jackson	Vice President
Patrick Andreoli-Versbach	Principal
Max-Felix Schlosser	Associate Principal
Balázs Csullag	Senior Associate

2. For the Second Appellants:

Relevant Individuals	Role(s)
<b>External counsel</b>	

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)
<b>External solicitors</b>	
<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 &amp; Manges (London) LLP</i>	
Jenine Hulsmann	Partner
Chris Chapman	Counsel
<b>External economists</b>	
<i>Charles River Associates</i>	
Matthew Bennett	Vice President
Uğur Akgün	Director
Vicki Mertzaniidou	Director
Mariam Arutyunyan	Associate Principal
Max-Felix Schlosser	Associate Principal
Balázs Csullag	Senior Associate
<i>Oxera Consulting LLP</i>	
Avantika Chowdhury	Partner
Adriano Barbera	Senior Consultant

3. For the Third Appellants:

<b>Relevant Individuals</b>	<b>Role(s)</b>
-----------------------------	----------------



<b>External counsel</b>	
Mark Brealey QC	Counsel, Monckton Chambers
<b>External solicitors</b>	
<i>Morgan, Lewis &amp; Bockius LLP</i>	
Frances Murphy	Managing Partner
Joanna Christoforou	Partner
Leonidas Theodosiou	Senior Associate
Michael Zymler	Associate
Emma Walsh	Associate
Edward Cook	Associate
Christina Lewes	Trainee Solicitor
<b>External economists</b>	
<i>Alix Partners</i>	
Derek Holt	Managing Director
Jonathan Sandbach	Senior Advisor
Christina Iacovides	Consultant
<b>External expert witnesses</b>	
Richard Williams	Industry Expert / Expert Witness
Warwick Smith	Industry Expert / Expert Witness

4. For the Respondent:

<b>Relevant Individuals</b>	<b>Role(s)</b>
<b>External counsel</b>	
Josh Holmes QC	Counsel, Monckton Chambers
Tristan Jones	Counsel, Blackstone Chambers
David Bailey	Counsel, Brick Court Chambers
Jennifer MacLeod	Counsel, Brick Court Chambers
Hugo Leith	Counsel, Brick Court Chambers
<b>External experts</b>	
Professor Tommaso Valletti	Expert economist

Relevant Individuals	Role(s)
Greg Harman	Financial analysis expert, Berkeley Research Group
Alberto Carpani	Associate Director, Berkeley Research Group
David Rogers	Director, Berkeley Research Group
Vasundhara Bahadur	Senior Associate, Berkeley Research Group
Rosie Jia	Associate, Berkeley Research Group

**PART B**

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

5. For the First Appellant

Relevant Individuals	Role(s)
<b>In-house counsel</b>	
<i>Hg Capital LLP</i>	
Andrew Jessop	General Counsel
Lisa Eger	Senior Legal Counsel

6. For the Second Appellants

Relevant Individuals	Role(s)
<b>In-house counsel</b>	
Babett Carrier	General Counsel

7. For the Third Appellants

Relevant Individuals	Role(s)
<b>In-house counsel</b>	
<i>Advanz</i>	
Robert Sully	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 [●] 2022 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 Confidentiality 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 [●] 2022 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 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 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: [ ]