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Press release

## CMA pharma probe secures £8m for the NHS

Drug firm Aspen has offered to pay the NHS £8m, as part of a wider package, to resolve competition concerns over the supply of a vital medicine.

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From:

Competition and Markets Authority (<https://www.gov.uk/government/organisations/competition-and-markets-authority>)



This follows an investigation by the Competition and Markets Authority (CMA) into suspected anti-competitive arrangements regarding the supply of fludrocortisone acetate 0.1 mg tablets.

It is the first time the CMA will secure such a payment to the NHS in one of its pharmaceutical investigations.

Fludrocortisone is a life-saving medicine, on which thousands of patients depend. It is supplied only on prescription, mainly to treat primary or secondary adrenal insufficiency, commonly known as Addison's Disease. It is paid for by the NHS and so ultimately by UK taxpayers.

The CMA has been investigating arrangements that Aspen entered into with 2 rival pharmaceutical companies in 2016, as the CMA suspected competition law had been broken by Aspen paying competitors to stay out of the market. These arrangements left Aspen as the sole supplier of fludrocortisone, with the ability to set prices without facing any competition.

As a result of the CMA's investigation, Aspen recently approached the CMA with an offer to try and resolve the case. After securing changes, the CMA is now announcing the proposed package, which includes:

- Admission of illegality: Aspen admits it was party to an illegal, anti-competitive agreement, by way of settlement.

- Compensation to address CMA's concerns: Aspen will commit to pay £8 million to the NHS – without the Government having to launch court proceedings for damages. This is intended to address the CMA's concerns that as a result of the impact of Aspen's behaviour, the NHS paid a higher price for fludrocortisone.
- Restoring competition: Aspen will also commit to ensuring that, in future, there will be at least 2 suppliers of fludrocortisone in the UK. This aims to address the competition concerns identified by the CMA and provide the NHS with the opportunity to secure better value for money when purchasing this medicine.
- Fine: Aspen will pay a maximum fine of £2.1 million, once the CMA has concluded its investigation, if it reaches a formal decision that the law has been broken. The CMA is continuing its investigation given other companies are involved.

Andrea Coscelli, the CMA's Chief Executive, said:

The CMA launched this investigation because we consider it unacceptable for the NHS – and the taxpayers who fund it - to have to pay millions of pounds more than they should for this life-saving drug.

This is the first time a CMA investigation will secure a payment for the NHS. The £8 million Aspen has agreed to provide will save the NHS the time and expense of seeking damages in court. Importantly, Aspen has also committed to ensuring there are more competitors in this market, giving the NHS the opportunity to secure better value for UK taxpayers' money in the future.

We welcome Aspen approaching us to find a new way of addressing the CMA's concerns. We believe this resolution will benefit the NHS, patients and taxpayers. Meanwhile we continue to investigate the 2 other companies we suspect illegally participated in this arrangement.

The CMA is required to consult interested parties before accepting commitments which it considers address its competition concerns, and so it is today consulting on the proposals to pay the NHS and resolve competition in the market. These parties have until 5pm on Monday 2 September 2019 to respond to the consultation, after which the CMA will decide whether to accept the commitments.

The CMA currently has other, unrelated investigations open in relation to 6 other pharmaceutical drugs.

More information on this investigation can be found on the Pharmaceutical drugs: suspected anti-competitive agreements and conduct page (<https://www.gov.uk/cma-cases/pharmaceutical-drugs-suspected-anti-competitive-agreements-and-conduct>).

## Media enquiries

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### Notes to editors:

1. The Aspen companies involved in the CMA's investigation are Aspen Pharmacare Holdings Ltd, Aspen Global Inc., Aspen Pharma Ireland Ltd and Aspen Pharma Trading Ltd.
2. The CMA has competition concerns in relation to Aspen's acquisition in October 2016 of a fludrocortisone product, in circumstances where Aspen held the only other such product authorised for sale in the UK. Aspen has offered to resolve this part of the case by way of a proposed commitment to pay £8 million to the NHS and ensure that there will be at least 2 suppliers in the market. In order to fulfil the latter commitment, Aspen has committed to divest the fludrocortisone product acquired in October 2016 and reintroduce and commercialise its other fludrocortisone product in the UK. The CMA is today publishing its Notice of Intention to Accept Binding Commitments.
3. The total payment of £8 million will be allocated between the Department of Health and Social Care in England and the equivalent bodies in Scotland, Wales and Northern Ireland in accordance with the Barnett formula. The payment is expected to save the NHS time and money as the NHS would otherwise need to engage in court proceedings to claim damages. The payment does not preclude the NHS from seeking further damages if it considers doing so to be appropriate.
4. Aspen has also admitted to participating in an historic market-sharing agreement involving fludrocortisone. The CMA is investigating whether, under this agreement, Aspen agreed to pay competitors to stay out of the market in order to protect its position as the sole supplier of fludrocortisone in the UK. The other parties suspected to be parties to the same agreement have not made any admissions. The CMA's investigation continues in relation to this suspected anti-competitive agreement.
5. Aspen has agreed to pay a maximum total financial penalty (fine) of £2,101,954 in relation to its admission that it participated in an anti-competitive agreement involving fludrocortisone. This penalty will only become payable when the CMA has completed that aspect of its investigation and if it finds that the agreement at issue breached the law. The CMA may impose a financial penalty (i.e. a fine) on any business found to have infringed UK or EU competition law. In calculating financial penalties, the CMA takes into account a number of factors including the seriousness of the infringement, turnover in the relevant market and any mitigating or aggravating factors.
6. The identity of the other parties to the suspected anti-competitive agreement involving fludrocortisone, which is still under investigation by the CMA, will be disclosed if the CMA decides to issue a statement of objections in this case. A statement of objections gives parties notice of a proposed infringement decision under the competition law prohibitions in the Competition Act 1998 and the EU law equivalents. It is a provisional decision and does not necessarily lead to an infringement decision. Aspen has admitted to an infringement of competition law, but the CMA has taken no decision in relation to the subject matter of the investigation at this stage.

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