

UK Court Upholds Competition Watchdog's Warrant Against Concordia

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On 16th January, the Court of Appeal rejected Concordia International Rx (UK) Limited's (Concordia) appeal against a CMA search warrant, which was granted by the High Court on 5th October 2017 under section 28 of the Competition Act 1998. Concordia applied for the search warrant to be varied or partially revoked, arguing that the CMA had no reasonable grounds to suspect the drug maker would destroy any documents since it had fully cooperated with the authority's investigation up until then. It was the first challenge to the granting of a search warrant under section 28 of the Competition Act 1998.

Partner Anna Morfey offered the following perspective:

"This judgment deals with issues that are very specific to the search warrant the CMA obtained in respect of its ongoing investigation into suspected competition law infringements by Concordia concerning two pharmaceuticals – Carbimazole and Hydrocortisone. The judgment rejects Concordia's challenge to the warrant's validity, finding that – on the basis of information Concordia could not see, on 'public interest immunity' grounds – the warrant was properly granted.

It is relatively rare for companies under investigation to challenge warrants obtained by the regulators, so it is interesting that Concordia sought to do so here. Although one cannot read too much into the judgment's finding that the warrant was properly granted - given its case-specific nature - it is no doubt a judgment the CMA will welcome. The ability to conduct 'dawn raids' at the premises of companies suspected of infringing competition laws is an important weapon in the CMA's armoury, and one which is often key to obtaining evidence of anti-competitive conduct."

On 17th January 2019 Global Competition Review published an article on the decision (subscription based) incorporating some of Anna's comments.