Press Release

2 September 2009

Competition Commission approves pharma merger on condition that Abacavir is out-licensed to generic manufacturers

The Competition Commission placed conditions in its approval of the transaction between Aspen Pharmacare Holdings Limited ("Aspen") and the pharmaceutical division of GlaxoSmithKline South Africa (Pty) Ltd ("GSK SA"). The condition requires that GSK grant licences to generic manufactures to produce their patented drug 'Abacavir', used primarily for the treatment of children with HIV.

This transaction forms part of a larger international transaction between the parties to extend their collaboration. Aspen and GSK will in effect share GSK's trading profits equally in GSK SA's business. The transaction constitutes Aspen issuing 68.5 million newly listed shares which amount to a 16% shareholding that GSK will hold in Aspen. GSK will also be represented by one non-executive director on the board of directors of Aspen and will be its single largest shareholder.

The Commission considered the likely effects of this merger under current market conditions as well as on potential competition in the future.

Under current market conditions the Commission found that the merging parties competed in sixteen products. Even though the combined market shares in some of these products are high, with the exception of 'Abacavir', the Commission found that there was sufficient competition in these markets to satisfy its concerns that there would be a substantial lessening of competition.

The Commission also analysed the likely effect of the merger on future competition considering that a large number of GSK patents are due to expire in the next few years, making them available to generic competition. The Commission was particularly concerned with this aspect in the light of the effective competition that the generic drug manufacturers are increasingly providing to patent manufacturers. However, the Commission found that competition from generic companies, both in South Africa and internationally, would prevent the merged entity from substantially lessening competition in the future.

In 2002 the Commission reached a settlement with GSK in another matter following a complaint about the high cost of ARV's in which GSK also agreed to issue licenses to generic manufacturers.

In terms of this merger GSK is required to grant licences, on a non-exclusive basis, to Adcock Ingram, Cipla Medpro, Ranbaxy, Biotech Laboratories and Feza Pharmaceutical and any other interested generic manufacturer for the manufacture and/or import of Abacavir, on terms and conditions no less favourable than those granted to Aspen.

ENDS

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