

COMPETITION ACT 1998

No CA98/2D/2001

4 May 2001

DIRECTIONS GIVEN BY THE DIRECTOR GENERAL OF FAIR TRADING UNDER SECTION 33 OF THE COMPETITION ACT 1998 TO NAPP PHARMACEUTICAL HOLDINGS LIMITED AND ITS SUBSIDIARIES

Whereas the Director General of Fair Trading (the "Director") has made a decision dated 30 March 2001 (No CA98/2/2001) (the "Decision") that conduct on the part of Napp Pharmaceutical Holdings Limited and its subsidiaries infringes the prohibition imposed by section 18 of the Competition Act 1998 (the "Act");

And whereas the Director may under section 33 of the Act give to such person or persons as he considers appropriate such directions as he considers appropriate to bring the infringement to an end;

Now therefore the Director in exercise of the powers conferred on him by section 33 of the Act hereby gives the following directions to Napp:

Direction to bring the infringement to an end

1. Save as provided in paragraph 4 below, Napp shall bring the Infringement to an end and shall refrain from any conduct having the same or equivalent effect.

Pricing

2. Without prejudice to the generality of paragraph 1 above and save as provided in paragraph 4 below, Napp shall in respect of each strength of MST Tablet which it supplies or offers for supply in the United Kingdom:

- (a) within fifteen Working Days from the date of these directions replace its Current NHS List Price with a revised NHS List Price which is equal to or lower than 85 per cent of the Current NHS List Price;

(b) not without the prior written consent of the Director increase its NHS List Price to a level which is higher than 85 per cent of the Current NHS List Price;

(c) where it offers supplies of MST Tablets in the United Kingdom, offer such supplies at a price which is equal to or lower than 87.5% of the NHS List Price;

(d) not without the prior written consent of the Director supply or offer to supply MST Tablets to a Hospital at a price which is lower than 20 per cent of the NHS List Price; and

(e) where the effect of such supply would be to circumvent the object of paragraph (d) above, not without the prior written consent of the Director, either:

(i) supply or offer to supply MST Tablets to a Hospital on terms which make the supply or the terms of supply, including the price, conditional on the supply of any other product or service to the Hospital or to any other person; or

(ii) supply or offer to supply any other product or service to any person, including a Hospital, on terms which make the supply or the terms of supply, including the price, conditional on the supply of MST Tablets to a Hospital.

Existing contracts

3. (1) Napp shall within four months from the date of these directions cease to supply MST Tablets to Hospitals on the terms of its Existing Contracts.

(2) Napp shall in all good faith enter into negotiations with the other parties to its Existing Contracts with a view to agreeing revised terms for the supply of MST Tablets to the Hospitals covered by those contracts following the expiry of the period of four months from the date of these directions.

(3) Any agreements or arrangements made by Napp following the negotiations referred to in subparagraph (2) above shall be fully compliant with paragraphs 1 and 2 above.

Transitional arrangements

4. (1) Nothing in paragraph 1 above shall prevent Napp between the date of these directions and the expiry of the period of fifteen Working Days from that date, from supplying or offering to supply MST Tablets to customers in the United Kingdom at prices which are calculated by applying a 12.5% discount to the Current NHS List Price.

(2) Nothing in paragraphs 1 or 2 above shall prevent Napp in respect of an Existing Contract from complying with the terms of that contract between the date of these directions and the expiry of the period of four months from that date.

Compliance

5. Napp shall procure that each of its Subsidiaries from time to time complies with these directions.

6. Napp shall forthwith provide to the Director such information as the Director may from time to time require for the purpose of ascertaining whether these directions are being or will be complied with.

Application of the Act

7. (1) These directions are without prejudice to the application of the Act to Napp's conduct or that of any of its Subsidiaries from time to time or to any agreement or concerted practice to which Napp or any of its Subsidiaries from time to time may be a party.

(2) These directions do not in any way preclude or restrict any action that may be taken by the Director under the Act or under any other legislation whether in respect of a breach or alleged breach of the directions or otherwise.

Duration

8. (1) The Director may by written notice given to Napp vary, supercede or withdraw these directions if, by reason of any change of circumstances, he considers that they are no longer appropriate.

(2) Before varying, superceding or withdrawing these directions in accordance with paragraph (1) above, the Director shall:

- (a) give written notice to Napp; and
- (b) give Napp a reasonable opportunity to make representations.

Interpretation

9. (1) The Interpretation Act 1978 shall apply to these directions as it applies to Acts of Parliament.

(2) For the purposes of these directions:

“BNF” means British National Formulary;

“Chemist” has the same meaning as in regulation 2(1) of The National Health Service (Pharmaceutical Services) Regulations 1992 (Statutory Instrument 1992/No. 662);

“Current NHS List Price” means the NHS List Price as at the date of these directions;

“Existing Contract” means a contract which is in force as at the date of these directions, or which arises from the acceptance by another person or persons, before it is withdrawn, of an offer made by Napp prior to the date of these directions, and which in each case governs the terms on which Napp supplies MST Tablets to Hospitals;

“Hospital” means a hospital or hospice in the United Kingdom;

“the Infringement” means Napp’s infringement of section 18 of the Act, as set out in paragraph 236 of the Decision;

“MIMS” means Monthly Index of Medical Specialists;

“MST Tablet” means a sustained release morphine tablet or capsule which is formulated for administration to patients twice daily and which at the date of these directions is supplied by Napp to customers in the United Kingdom under the brand name “MST Continus”;

“Napp” means the undertaking comprising Napp Pharmaceutical Holdings Limited, together with its subsidiaries, Napp Pharmaceutical Group Limited, Napp Pharmaceuticals Limited, Napp Research Centre Limited, Napp Laboratories Limited, Moore Chemicals Limited and Bard Pharmaceuticals Limited;

“NHS List Price” means the list price prepared from time to time by Napp for publication by the BNF and MIMS and which is used for the purpose of calculating the amount which Chemists are paid for MST Tablets by the Prescription Pricing Authority on behalf of the National Health Service;

“Subsidiary” has the meaning given by section 736(1) of the Companies Act 1985 (as amended); and

“Working Day” means any day of the week other than a Saturday, Sunday or any other day which is a public holiday in England.

John Vickers
Director General of Fair Trading