

## ACQUISITION BY IMS HEALTH INCORPORATED OF PHARMACEUTICAL MARKETING SERVICES INCORPORATED

### UNDERTAKINGS GIVEN TO THE SECRETARY OF STATE FOR TRADE AND INDUSTRY BY IMS HEALTH INCORPORATED

IMS HEALTH Incorporated hereby gives to the Secretary of State for Trade and Industry the following undertakings for the purpose of remedying or preventing adverse effects specified in the report made by the Monopolies and Mergers Commission entitled *IMS Health Inc and Pharmaceutical Marketing Services Inc - a report on the merger situation* (CM 4261, February 1999):

#### **Divestment of Source Dispenser business**

1 Except with the prior written consent of the Director General IMS will on or before the completion date:

- (a) complete the sale of the Source Dispenser business as a going concern to a purchaser or purchasers who shall have been approved in writing by the Director General (provided that the Director General shall not unreasonably withhold or delay his approval);
- (b) (so far as necessary) procure the termination of the agreement between Source Informatics Ltd and the British Association of Pharmaceutical Wholesalers for the supply of non-anonymised account-level wholesaler sales data used in the Source Dispenser business;
- (c) use its best endeavours to ensure that the benefit of:
  - (i) the licence from Orenburg to PMSI UK Ltd for CD and viewing software,
  - (ii) the contracts between Source Informatics Ltd and its customers at the completion date, and
  - (iii) the contracts of employment between IMS or Source Informatics Ltd and the persons included in schedule 1 -

is assigned to the purchaser or purchasers of the Source Dispenser business; and

- (d) assist the purchaser or purchasers of the Source Dispenser business to secure any consents necessary for the full enjoyment of the historic data included in schedule 2 to the extent permitted by the Data Protection Acts 1984 and 1998.

2 After the completion date (except with the prior written consent of the Secretary of State) IMS:

- (a) will not directly or indirectly:
  - (i) hold any interest in the Source Dispenser business;
  - (ii) hold any interest in any undertaking having control of or carrying on the Source Dispenser business; or
  - (iii) hold any option to acquire an interest referred to in sub-paragraph (i) or (ii) above;
- (b) will procure that no director or employee of IMS holds any directorship or managerial position in any undertaking having control of or carrying on the Source Dispenser business and will not nominate any person to any such directorship or managerial position;
- (c) will not participate in the formulation of or influence or attempt to influence the policy of any person having control of or carrying on the Source Dispenser business; and
- (d) will not directly or indirectly acquire any assets of the Source Dispenser business;
- (e) will not for a period of 2 years supply in the United Kingdom any product of the same description as any product supplied in the course of the Source Dispenser business at any time during a period of 2 years before the completion date.

**Licensing prescription data**

3 Provided that it is lawful to do so, IMS will until:

- (a) 31 August 2004, or
- (b) such later date as the Director General may decide -

license to any person seeking them in the United Kingdom all the prescription data in its possession in raw form with the full documentation necessary for their effective use:

- (c) at a fee covering only the recurrent cost of licensing the data (including payments to data providers), and
- (d) otherwise on reasonable terms -

which shall have been agreed between IMS and the licensee or (in default of agreement) decided by an independent expert appointed by the parties (or, in default of agreement, by the Director General), whose costs shall be shared between IMS and the licensee as he thinks fit.

4 IMS will assist licensees of prescription data to secure any consents necessary for the full enjoyment of prescription data licensed under paragraph 3 above to the extent permitted by the Data Protection Acts 1984 and 1998.

5 IMS will make available to licensees of prescription data its technological know-how about setting up a third-party arrangement to ensure compliance with the Data Protection Acts 1984 and 1998.

#### **Price of specialised pharmaceutical data**

6 From 1 January 2000 or from such earlier date which any relevant notice period permits IMS will supply to any person seeking them in the United Kingdom all specialised pharmaceutical data in its possession at prices and subject to discounts which shall have been published on its internet website and (if he so requests) made available to the person seeking them in hard-copy form.

#### **Bundling and discounting of specialised pharmaceutical data**

7 IMS will not supply or offer to supply in the United Kingdom specialised pharmaceutical data:

- (a) subject to a condition that the purchaser will acquire or agree to acquire other goods or services from IMS, or
- (b) with a discount if the purchaser acquires or agrees to acquire other goods or services from IMS.

#### **Exclusive acquisition of specialised pharmaceutical data**

8 IMS will not:

- (a) enter into any contract with a pharmacist in the United Kingdom which contains;  
or
- (b) enforce any contract with a pharmacist in the United Kingdom in so far as it contains -

a provision preventing or restricting the pharmacist from supplying specialised pharmaceutical data to any other person in the United Kingdom.

9 IMS will not take or omit to take any action in relation to computer hardware or software in any pharmacy in the United Kingdom if the action or omission might inhibit the extraction of specialised pharmaceutical data by any other person.

#### **Compliance**

11 IMS will forthwith provide to the Director General such information as he may from time to time reasonably require for the purpose of performing any of his functions under section 88 of the Act.

12 IMS will comply with such written directions as the Director General may from time to time give to take such steps within its power as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings.

#### INTERPRETATION

For the purposes of these undertakings:

“business” has the meaning given by section 137(2) of the Fair Trading Act 1973;

“the completion date” means 1 February 2000 or such later date as the Director General may in writing specify;

“control” is to be construed in accordance with section 65 of the Act, and a person shall be deemed to have control of a body corporate if he holds or has an interest in shares of that body corporate amounting to 10 per cent of its issued share capital or carrying an entitlement to vote at its meetings amounting to 10 per cent of the total number of votes which may be cast at such meetings;

“the Director General” means the Director General of Fair Trading;

“IMS” means IMS Health Incorporated;

“interest” includes shares, an interest in shares and any other interest carrying an entitlement to vote at meetings of shareholders; and an interest in shares includes an entitlement by a person other than the registered holder to exercise any right conferred by the holding of those shares and an entitlement to control the exercise of any such right;

“non-anonymised account-level wholesaler sales data” means any data relating to the sale by wholesalers of a specific product to a pharmacist;

“pharmacist” means:

(a) a person included by a health authority in a pharmaceutical list in accordance with the National Health Service (Pharmaceutical Services) Regulations 1992 reg 4(1), and

(b) a doctor who is able to provide pharmaceutical services to a patient in accordance with arrangements made by a health authority in accordance with National Health Service (Pharmaceutical Services) Regulations 1992 reg 20(3) and (4);

"prescription data" means information contained in a prescription dispensed by a pharmacist since 1 September 1997;

"the Source Dispenser business" means the business and assets set out in schedule 2; and

"specialised pharmaceutical data" means census-level wholesale data (excluding over-the-counter data and veterinary data) and prescription data produced in the United Kingdom.

On behalf of IMS Health Inc:

Signed

~~(director)~~

~~(director/secretary)~~

Date 29 OCTOBER 1999

**SCHEDULE 1**

L Whittaker (Production Manager)  
D Rae (Systems Manager)  
S Oakes (Data Receipt)  
M Martinello (PC Production).  
R Morton (PC Production)  
S Claridge (PC Production and Coding)  
S Brindell (Customer Services)  
A Aladha (Customer Services)

## SCHEDULE 2

- 1 *Computer facilities* - IBM AS400 mainframe computer, together with necessary IBM operating systems; NT server; and the network of 16 pentium personal computers:
  - 3 Compaq Deskpro 2000
  - 1 Compaq Deskpro 4000
  - 1 Compaq Deskpro 6000
  - 2 Dell XPS R450
  - 1 Dell XPS D266
  - 3 Dell XPS D300
  - 2 Dell XPS D333
  - 3 Gateway 2000 P200;
- 2 *Software* - the programme designed to allocate the wholesaler sales data to specific pharmacies; database software (including anonymisation software) for the IBM AS400 computer; file bridging and panel management software; master file maintenance systems; and the CD-ROM production software (licensed from Orenburg) which covers CD production and data viewing technology;
- 3 *Documentation* - information on production and delivery procedures, quality procedures and product descriptions (including codings); customer master lists files (which specify the service each customer buys); customer lists; and quality history files;
- 4 *Brand names* - any rights or goodwill in the Dispenser and the Source Dispenser name; and
- 5 *Historic data* - from 1 March 1997 until divestment, together with compilations and analyses already prepared therefrom and held by IMS.

