

Competition Commission concludes an agreement with pharmaceutical firms

10 December 2003

The Competition Commission has concluded a settlement agreement with pharmaceutical firm GlaxoSmithKline South Africa (Pty) Ltd (GSK) and is in discussions with Boehringer Ingelheim (Pty) Ltd (BI) regarding a settlement agreement.

The settlement agreement is the result of negotiations following the Commission's announcement in October 2003 that GSK and BI had, in its view, contravened the Competition Act of 1998. From its investigation into the complaints by Hazel Tau and others, the Commission concluded that GSK and BI had abused their dominant positions in their respective anti-retroviral (ARV) markets. This was denied by GSK and BI.

The Competition Commissioner, Menzi Simelane, said he was happy that all parties concerned had agreed to the terms of the settlement agreements as he believed that the agreements addressed the competition concerns raised by the Commission.

"The terms of the agreements are substantially similar to the successful outcomes which we would have hoped to achieve at hearings before the Tribunal, namely the issuing of licenses to generic manufacturers of antiretroviral drugs. It has been a particularly difficult case and we are happy that the matter has been amicably resolved."

Simelane said the Commission had not asked for the imposition of a fine or an administrative penalty.

"We think it is far more important to have broadened access to cheaper ARVs for people with HIV/AIDS through price reductions by generic manufacturers. The introduction of generic substitutes should result in a drastic reduction in the prices of antiretroviral drugs.

"As the agreements provide for more than one generic manufacturer, there will be competition amongst them, which should push prices even lower. GSK will be making financial sacrifices by licensing the ARVs to generic manufacturers at a royalty rate of only 5%, for both the public and private sector. GSK has also reduced Aspen Pharmacare's royalty by 25% and it will retain all the royalties at the same 5%."

In terms of the settlement agreement GSK has undertaken to:

- extend the voluntary licence granted to Aspen Pharmacare in October 2001 in respect of the public sector to include the private sector;
- grant up to three more voluntary licences on terms no less favourable than those granted to Aspen Pharmacare, based on reasonable criteria which include registration with the Medicines Control Council and the meeting of safety and efficacy obligations;
- permit the licensees to export the relevant antiretroviral drugs to sub-Saharan African countries;
- where the licensee does not have manufacturing capability in South Africa, GSK will permit the importation of the drugs for distribution in South Africa;
- permit licensees to combine the relevant ARV with other antiretroviral medicines; and
- charge royalties of no more than 5% of the net sales of the relevant ARVs.

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