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10 December 2007

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By Express Post and Email: adjudication@acc.gov.au

Dear Sir / Madam

Exclusive Dealing Notification by Sydney Drug Stores Pty Ltd trading as Pharmacy Direct (Pharmacy Direct) in relation to the proposed Coralan Patient Access Scheme (Scheme)

I act for Pharmacy Direct.

I enclose a Form G - Notification of Exclusive Dealing in relation to the Scheme, and a cheque for \$100 as the lodgement fee, which the ACCC will receive by Express Post on 11 December 2007.

I understand that, unless the ACCC formally objects to the Scheme, Pharmacy Direct will receive immunity from legal action in relation to the Scheme from 25 December 2007.

Please contact me on (03) 9829 5523 should you wish to discuss this application.

Yours sincerely

Simone Brookes
Solicitor
Legal Services



Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)
NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of person giving notice:
(Refer to direction 2)

Sydney Drug Stores Pty Ltd trading as Pharmacy Direct (ABN 18 000 030 955)
(referred to as Pharmacy Direct) **N93239**

- (b) Short description of business carried on by that person:
(Refer to direction 3)

Retail of pharmacy products.

- (c) Address in Australia for service of documents on that person:

Attention: Company Secretariat
Sydney Drug Stores Pty Ltd
800 Toorak Rd, Tooronga, Victoria 3146.

2. Notified arrangement

- (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

The product is Coralan (ivabradine). It is supplied in strengths of 5mg and 7.5mg. Each packet contains 56 tablets, and provides one month of treatment.

- (b) Description of the conduct or proposed conduct:

Initially, Servier Laboratories (Australia) Pty Ltd (**Servier Laboratories**) proposes to select 50 cardiologists throughout Australia to be involved in the scheme. Cardiologists will be chosen in proportion to population size (for example more will be chosen in capital cities than regional centres) and according to whether they regularly treat patients with conditions targeted by the drug. Each cardiologist will be provided with 250 vouchers to distribute to 250 patients that are intolerant to, or whose condition cannot be adequately controlled by, alternative treatment. Patients who receive a

voucher from their cardiologist will be entitled to receive Coralan at a discounted price at Pharmacy Direct, including for future prescriptions.

The proposed conduct will involve the supply by Pharmacy Direct of Coralan at a discounted price to customers on the condition that those customers obtain medical services from one of the 50 selected cardiologists.

If the initial trial is successful, Servier Laboratories proposes to increase the number of cardiologists to which it provides vouchers to 100. In addition, it also proposes to include those cardiologists which it accepts on independent application. This will increase the number of persons who will be entitled to receive Coralan at a discounted price from Pharmacy Direct.

(Refer to direction 4)

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

- (a) Class or classes of persons to which the conduct relates:
(Refer to direction 5)

The conduct relates to persons who are in need of prescription medication for the treatment of certain heart conditions. Those persons who obtain professional services from a participating cardiologist and receive a voucher from that cardiologist will be entitled to participate in the scheme. Those persons who obtain services from a medical practitioner other than a participating cardiologist, or who obtain services from a participating cardiologist but do not receive a voucher, will not be eligible to participate in the scheme. However, those persons will still be able to purchase Coralan at the retail price set by the applicable pharmacy.

- (b) Number of those persons:

- (i) At present time:

Initially, Servier Laboratories proposes to provide 250 vouchers to 50 selected cardiologists. This will entitle 250 persons to receive Coralan at a discounted price from Pharmacy Direct.

- (ii) Estimated within the next year:
(Refer to direction 6)

If the initial trial is successful, Servier Laboratories proposes to increase the number of cardiologists participating in the scheme by a further 100 (to 150 in total). This will potentially entitle 750 persons to receive Coralan at a discounted price from Pharmacy Direct. In addition, it also proposes to include those cardiologists which it accepts on independent application.

- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:
(Refer to direction 7)

The rationale behind the proposed conduct is to provide a means by which Coralan can be made available to patients who would benefit from the drug at an affordable cost during the period before Coralan is listed on the Pharmaceutical Benefits Scheme (PBS). It is intended that the voucher scheme will operate until Coralan is listed on the PBS, which is expected to take place within approximately 12 months.

There is a genuine and substantial public benefit involved in the proposed conduct. Coralan is a medication which is used to relieve stable angina, by lowering the heart rate. Coralan is a new product which does not have the same side effects associated with existing angina treatments and may therefore better suit a number of patients. Consequently, there is a real public benefit in making a limited quantity of this medication available to suitable patients at a subsidised cost prior to PBS listing.

Further, the arrangement between Servier Laboratories and Pharmacy Direct would provide a simple distribution system for patients who are prescribed Coralan, and would enable patients throughout Australia, including in regional and remote areas, to obtain an ongoing supply of Coralan by mail order under this low cost scheme. As many angina sufferers are elderly, it would also ensure that patients such as pensioners who may not be able to afford to pay the actual cost of the drug on a private (non PBS) basis can obtain the product.

As noted above, initially Servier Laboratories will supply 50 cardiologists around Australia with the vouchers. If this initial trial is successful, an additional 100 cardiologists will be included in the voucher scheme. In addition, the vouchers will be made available to any other cardiologists who apply to Servier Laboratories to be included in the voucher scheme. In this way, it is expected that patients around Australia who would benefit from Coralan will be able to access it under the low cost voucher scheme via Pharmacy Direct.

- (b) Facts and evidence relied upon in support of these claims:

Servier Laboratories has supplied the information above in (a).

5. **Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):
(Refer to direction 8)

The relevant product market is the market in which Coralan and other prescription drugs that can treat the same heart conditions are supplied. The supply of Coralan and its substitutes is limited by law to persons who have been prescribed the product by a medical practitioner.

The proposed scheme will enable persons who are prescribed Coralan and receive a voucher from a participating cardiologist to purchase the product at a discounted price from Pharmacy Direct. However, Coralan and its substitutes will also be available to persons with a prescription at a non-discounted price from Pharmacy Direct and other retail pharmacies.

The market in which cardiologists provide professional services will not be affected by the scheme. As the identity of cardiologists participating in the scheme will not be publicly known, potential patients will not be in a position to pick and chose their cardiologist on the basis of whether or not they are involved in the scheme.

6. **Public detriments**

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:
(Refer to direction 9)

No detriment to the public is expected. On the contrary, the scheme offers substantial public benefits.

- (b) Facts and evidence relevant to these detriments:

Not applicable.

7. **Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Simone Brookes

Solicitor

Sydney Drug Stores Pty Ltd trading as Pharmacy Direct

800 Toorak Rd
Tooronga Vic 3146

Dated: 10 December 2007

Signed by/on behalf of the applicant

A handwritten signature in black ink, appearing to read 'Simone Brookes', is written over a light grey rectangular background.

(Signature)

Simone Brookes

(Full Name)

Sydney Drug Stores Pty Ltd trading as Pharmacy Direct

(Organisation)

Solicitor

(Position in Organisation)