Consumers
Health Forum
of Australia

1 October 2010

Dr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Dr Chadwick

GMiA application for authorisation: request for comments on Condition C2

The Consumers Health Forum of Australia (CHF) is the peak organisation providing leadership in representing the interests of Australian healthcare consumers. We work to achieve safe, good quality, timely healthcare for all Australians, supported by the best health information and systems the country can afford.

CHF has a strong interest in the ethical promotion of therapeutic goods. CHF has provided submissions to the Australian Competition and Consumer Commission (ACCC) on the original application from the Generic Medicines Industry Association (GMiA), GMiA's subsequent request for interim authorisation and the ACCC's draft determination. CHF's earlier submissions identified a range of concerns, including that the draft Code did not apply to educational and promotional activities to pharmacists, although pharmacists may play a substantial role in the decision to supply a generic medicine.

CHF welcomed the conditions imposed in the ACCC's draft determination, including proposed condition C2 that GMiA must require its members to report six-monthly on the value of all benefits (such as hospitality, entertainment and gifts) other than more favourable trading terms provided to pharmacists.

CHF has reviewed GMiA's responses to the draft determination (submission dated 8 September 2010 and letter providing additional data dated 22 September 2010). We note that GMiA has submitted that proposed condition C2 should not be imposed by the ACCC, on the grounds that the proposed additional conditions will entail significant compliance costs generating additional administrative burdens on GMiA members, and that the public benefit derived from the reporting of non-price benefits is '*trivial and non-existent*'.

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CHF does not consider that GMiA has provided compelling arguments against the imposition of condition C2. Comments on some of GMiA's key arguments are provided below.

In its 8 September 2010 submission, GMiA argued:

> *GMiA believes that pharmacists do not recommend a particular generic medicine to a patient solely because of a provision of an educational event or other non-price benefits, but rather the decision to select a particular brand is influenced by a range of factors.*

Given that GMiA is arguing against the imposition of conditions, CHF does not consider that it is sufficient to base this argument on a 'belief'. Rigorous, peer-reviewed evidence should form the basis for such an argument. Without such evidence, CHF is unable to support the removal of this condition.

In the same submission, GMiA argued that:

> *...a broad obligation on generic suppliers to report on educational events and other non-price benefits to pharmacists will not provide the public with an accurate picture of why pharmacists recommend a particular generic to a patient. The public may gain the erroneous impression from the proposed reporting conditions that a particular educational event or non-price benefit may have influenced a pharmacist to recommend a particular generic medicine, when in actual fact there were a range of other factors which contributed to that decision.*

Again, CHF does not consider that this is a compelling argument for not imposing condition C2. Pharmacists should be willing to discuss with consumers why they consider generic substitution is appropriate, and to explain what factors have led to that decision. Arguably, an unwillingness on behalf of industry to report non-price benefits may create a consumer perception of a lack of transparency of the relationship between pharmacists and the generic medicines industry, potentially causing a loss of confidence and trust.

GMiA has argued that compliance costs associated with condition C2 will be *'very significant'*, and further argues that *'In GMiA's view, the information which members will be required to record and publish in order to comply with the second condition will be of limited value to consumers'* and *'...it is not appropriate to impose such a significant compliance costs on members of GMiA for a public benefit of limited value'*. CHF questions the basis on which GMiA makes the assertion that this information will be of 'limited value' to consumers. As far as CHF is aware, GMiA has not consulted with consumers to ascertain their views on the value of this information. CHF's position is that consumers will benefit from increased transparency in the relationship between the generic medicines industry and pharmacists.

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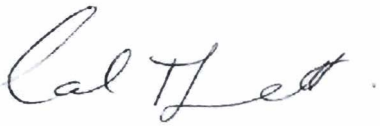
CHF also questions the additional data provided by GMiA in its letter of 22 September 2010. GMiA states in this letter that *'The current level of non-price benefits as a proportion of total benefits provided to pharmacy by each member of GMiA is less than 1%'*. However, no information is provided about how this figure was reached. CHF would be interested in knowing more about the basis for this calculation, particularly given the difficulties outlined in GMiA's 8 September 2010 submission in relation to collecting information about non-price benefits and placing a financial value on these benefits. Further, CHF considers that the small proportion of non-price benefits as a proportion of total benefits does not mean that this information should not be publicly reported.

Finally, given the statement in GMiA's letter of 22 September 2010 that *'the monetary value of the sum of the non-price benefits is insignificant'*, CHF questions whether the administrative and compliance costs would be as significant as argued by GMiA in the 8 September 2010 submission.

CHF supports the conditions imposed in the ACCC's draft determination, including condition C2.

Please do not hesitate to contact me if you would like to discuss any aspect of this submission further.

Yours sincerely



Carol Bennett
EXECUTIVE DIRECTOR

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