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Generic Medicines Industry Association

Submission to ACCC concerning Medicines Australia Limited - Revocation & Substitution - A91316 - A91320

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Purpose of this submission

GMiA maintains that the ACCC should reject the proposed amendment to section 2.6 of the MA Code to introduce a total prohibition on the provision of brand name reminders to healthcare professionals or, alternatively, include provisions so that the prohibition exempt the generic medicines market. GMiA requests that the ACCC amend the draft determination in relation to brand name reminders in light of the additional information provided in this submission.

Background

This submission is made on behalf of the members of the Generic Medicines Industry Association ("GMiA"). The members of GMiA agree to be bound by the GMiA Code of Practice ("**GMiA Code**").

GMiA refers the reader of this submission to its original submission to the ACCC made by GMiA on 27 July 2012.

This submission specifically responds to the ACCC draft determination dated 26 October 2012 in relation to applications for authorisation lodged by Medicines Australia Limited in respect of the Medicines Australia Code of Conduct edition 17 ("**MA Code**"). Specifically, this submission responds to the ACCC's review of the proposed amendments to section 2.6 of the MA Code to introduce a total prohibition on the provision of brand name reminders to healthcare professionals. A healthcare professional is defined under the MA Code to include doctors and pharmacists.

In its original submission GMiA submitted that the ACCC reject this proposed amendment to the MA Code or, alternatively, include provisions so that the prohibition exempt the generic medicines market. This is because a total prohibition on the provision of brand name reminders to healthcare professionals removes an important element of competition in the generic medicines market.

In paragraph 225, the ACCC concludes,

"The ACCC therefore considers that the prohibition of brand name reminders is unlikely to result in significant competitive detriments."

Reasons why the ACCC should amend the draft determination in relation to brand name reminders

1. The removal of low cost promotional activity is most disadvantageous to suppliers of generic medicines

It is of central importance to highlight that brand name reminders are a very low cost type of promotional activity. In contrast, the activity discussed by Medicines Australia in paragraph 213 tends to be more expensive activity.

In paragraph 213, the ACCC states that, *“Medicines Australia submits that while brand name reminders are no longer permitted, medical education items which enhance patient care can be provided. Further, Medicines Australia submits that member companies are not prohibited from promoting their products to healthcare professionals generally, such as via the supply of printed promotional materials, healthcare professional journals, audiovisual material and the internet.”*

The provision of brand name reminders is a key component of promotional activity for many suppliers of generic medicines. This is because of their low cost and consequential accessibility to suppliers of generic medicines who operate with small product margins. Therefore, the prohibition of brand name reminders, a low cost promotional activity, is most disadvantageous to suppliers of generic medicines.

In paragraph 225, *“the ACCC also considers that there are a range of other mechanisms generic manufacturers may utilise to maintain product awareness of their products”*. This statement does not recognise the fact that brand name reminders are considered a very effective and low cost form of promotional activity particularly compared to other forms of promotional activity.

2. The prohibition of brand name reminders does NOT apply equally to all manufacturers of both generic and branded medicines

In paragraph 225, *“The ACCC notes that the prohibition on brand name reminders applies equally to all manufacturers of both generic and branded medicines”*.

Patented medicines enjoy up to 25 years of market exclusivity (sometimes longer). At patent expiry, these original brands have 100 per cent of the market and have created significant brand equity that is the result of substantial investment by the originator company during the market exclusivity period. The existing brand equity of the originator product creates a substantial impediment to market entry for the supplier of generic medicines.

It is completely erroneous to suggest that the removal of brand name reminders apply equally to a brand that has had the benefit of many years in the market as a the single brand and to a generic brand that has been in the market – typically with a large number of other brands – for only a short period of time.

The commercial ability to differentiate a generic medicine on brand name is a key component of the market entry strategies of several suppliers of generic medicines. The prohibition of brand name reminders creates a reduction of competition that is significantly more disadvantageous for the suppliers of generic medicines who have not had the opportunity to establish brand equity in their brand during an extensive period of market exclusivity.

3. Brand name reminders are an important commercial promotional tool for the suppliers of generic medicines

Brand name reminders are not used to induce prescribing, rather, they are regularly used by GMiA members to remind a pharmacist that there are substitutable (and often lower cost) generic medicines available. The expensive methods of promotion utilised by MA members are often not always affordable for suppliers of generic medicines as they cannot be covered within the narrower cost margins for these medicines. However, a brand name reminder is a low cost means by which a pharmacist can be reminded that there are substitutable products available. Therefore, removing the capacity of a company to provide a brand name reminder will have the effect of reducing competition.

The promotional activities of the members of GMiA are targeted at encouraging pharmacists to consider dispensing an alternative brand of a bioequivalent medicine. The choice of which brand of competing bioequivalent medicines to dispense has little or no impact on the health outcome for a patient and, in fact, a decision to dispense an alternative cheaper brand drives savings of hundreds of millions of dollars for the government, the Pharmaceutical Benefits Scheme and the public.

This is in stark contrast to the focus of MA members; promotional activities in respect of medicines where only one brand of the medicine is available. The promotional activities of MA members are targeted at influencing the choice of medicine prescribed by a doctor and this has a direct impact on the health outcome of the patient. Promotional activity by members of MA may also have the potential to result in the over use of medicines by doctors that can cause a blow out of the costs of the Pharmaceutical Benefits Scheme.

In paragraph 225 the ACCC notes that, *“It is not clear that the prohibition of brand name reminders will have a material effect on the competitive process, when compared to factors such as competition on price”*. GMiA submits that brand name reminders and price competition are very different forms of promotional activity.

Competition on price is a promotional activity that is directed to the pharmacy owner and directly influences the profitability of the pharmacy. Brand name reminders are displayed in the dispensary of the pharmacy. The purpose of brand name reminders is to influence the pharmacist at the time of selecting between brands of the same medicine when a customer comes into the pharmacy to fill a specific prescription. The dispensing pharmacist has spent many years filling a prescription with the original brand name medicine. The brand name reminder is used as a prompt and reminder to the pharmacist at the point of sale that there are now alternative brands available.

It is also important to consider that the pharmacy owner is not always the pharmacist dispensing the medicine. Many pharmacies employ pharmacists who are paid a salary and are not privy to the commercial rewards flowing from price competition on generic medicines.

4. There is not a complete assessment of the public benefit and detriment resulting from the total prohibition on brand name reminders

In paragraph 226, *“The ACCC considers that there may be minimal detriments which may arise as a result of the total prohibition on brand name reminders”*. This statement under-estimates the public detriment as the ACCC did not, in full, take into account factors (1), (2) and (3) discussed above.

GMiA submits that there is no public benefit arising from the prohibition of brand name reminders in the generic medicines market. However, the prohibition of brand name reminders will have a material detrimental effect on the competitive process.