

TRADE PRACTICES ACT 1974

**Undertaking to the Australian Competition and Consumer Commission
given for the purposes of section 87B of the Act**

by

SmithKline Beecham (Australia) Pty Ltd

(ACN 008 399 415)

BACKGROUND

- A. Glaxo Wellcome plc (“GW”) and SmithKline Beecham plc and related companies (“SB”) propose to undertake a global merger and form a new company named Glaxo SmithKline plc.
- B. The proposed merger is subject to a number of approvals, including regulatory approvals in a number of countries, including Australia and the United States of America.
- C. GW and SB conduct certain businesses in Australia through their subsidiaries Glaxo Wellcome Australia Limited (“GW Australia”) and SmithKline Beecham (Australia) Pty Ltd (“SB Australia”).
- D. GW, SB, GW Australia and SB Australia have made submissions about the merger to the Australian Competition and Consumer Commission (“the Commission”) and have expressed the view that, subject to a proposed undertaking relating to SB Australia’s divestment of the product known as



Famvir, the merger will not have the effect of substantially lessening competition in any market in Australia.

- E. On 8 September 2000, the Commission advised that, provided that satisfactory undertakings pursuant to section 87B of the *Trade Practices Act 1974* (“the Act”) were given to the Commission by the relevant parties in relation to SB’s sale of Famvir to Novartis, then the Commission did not intend to object to the proposed merger of SB and GW pursuant to section 50 of the Act. SB Australia has agreed to give the undertaking herein to divest certain assets so as to comply with the Commission’s requirements.
- F. The Commission agrees that upon the Commission accepting the undertaking and the undertaking being implemented, the Commission’s concerns in respect of the proposed merger will be addressed.

DEFINITIONS

Assets means:

- (1) intellectual property rights relating to famciclovir (“Product”);
- (2) registrations relating to the manufacture, sale and distribution of the Product (“Product Registrations”);
- (3) the existing lists of all current customers for the Product and the pricing of the same for customers;
- (4) all Assigned Contracts in relation to the Product;
- (5) copies of SB’s files pertaining to Product Registrations;

- (6) all marketing materials used solely with respect to the Product;
- (7) the NDC numbers relating to the Product;
- (8) all unfilled customer orders for the Product packaged and ready for distribution to the ultimate customer (“Finished Goods”);
- (9) records and files that relate to manufacturing and manufacturing processes for the Product; and
- (10) all inventories for Finished Goods.

Commission means the Australian Competition and Consumer Commission.

Novartis means Novartis Pharma AG and Novartis Pharmaceuticals Corporation.

Sale Agreement means the Sale Agreement dated 30 August 2000 between SB and Novartis, pursuant to which SB Australia will sell, assign, transfer, convey and deliver to Novartis all of the rights, titles and interests in the Assets in Australia.

SB means SmithKline Beecham plc, SmithKline Beecham Corporation, SmithKline Beecham (Cork) Limited, SmithKline Beecham (Australia) Pty Ltd and their affiliates.

SB Australia means SmithKline Beecham (Australia) Pty Ltd

COMMENCEMENT OF UNDERTAKINGS

1. This undertaking comes into effect when:
 - (a) the undertaking is executed by SB Australia; and
 - (b) the undertaking so executed is accepted by the Commission.

UNDERTAKINGS

2. Sale of Assets

- 2.1 SB Australia will, pursuant to the Sale Agreement, sell, assign, transfer, convey and deliver to Novartis all of the rights, titles and interests in Australia in the Assets.
- 2.2 SB Australia will divest the Assets no later than 10.00am New York (USA) time on the third business day following the satisfaction or waiver of certain conditions to the obligations of the parties set forth in sections 12, 13 and 14 of the Sale Agreement (or such other date as may be agreed between the parties).

3. Notice

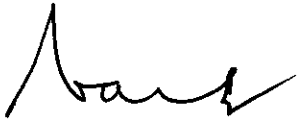
- 3.1 SB Australia shall give prompt written notice to the Commission by post, courier, or facsimile transmission (in confidence) of:
 - (a) the sale of the Assets to Novartis pursuant to the Sale Agreement; or
 - (b) a decision or event which prevents the sale of the Assets to Novartis pursuant to the Sale Agreement.

3.2 If on the expiration of 3 months after the undertaking comes into effect SB Australia is unable to comply with its obligations under clause 2 due solely to circumstances outside its control, then it must notify the Commission and the Commission shall review the undertakings contained in clause 2, and negotiate in good faith the amendment or revocation of this clause and/or this undertaking as may be necessary in order to ensure there is no substantial lessening of competition in the relevant markets in Australia.

4. Acknowledgments

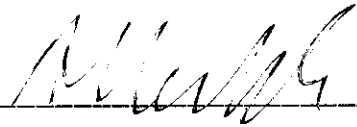
4.1 SB Australia acknowledges that the Commission will make this undertaking available for public inspection and the Commission will from time to time publicly refer to this undertaking.

4.2 SB Australia further acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person arising from the proposed sale and the conduct to which this undertaking relates.


Signed for and on behalf of)
SmithKline Beecham (Australia)) 
Pty Ltd by its duly authorised)
representative and agent) M. D. STARK
COMPANY SECRETARY

Dated : 14th November 2000

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION**



Chairperson

Dated:  7 July 2000