

**COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING
CLEARANCE**

Date:

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

PART I: TRANSACTION DETAILS

1. The business acquisition for which clearance is sought

1.1 On an international level, Pfizer Inc and Pharmacia Corporation have announced an agreement whereby Pfizer Inc is to acquire Pharmacia Corporation in a stock-for-stock transaction. In New Zealand, that transaction is to be implemented by Pfizer Laboratories Limited ("**Pfizer NZ**") acquiring the business assets of Pharmacia Limited Company ("**Pharmacia NZ**"). [] Clearance is sought for that New Zealand acquisition (subject to the undertaking).

2. The person giving notice

2.1 This notice is given by:

Mark Crotty
Pfizer Laboratories Limited
Level 3
Pfizer House
14 Normanby Road
Mt Eden
Auckland

2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Russell McVeagh
Royal & SunAlliance Centre
48 Shortland Street
Auckland

Attention: G Quigley/B McKay
Telephone: (09) 367 8271/367 8066
Facsimile: (09) 367 8596

3. Confidentiality

- 3.1 Confidentiality is not sought for the fact of this application.
- 3.2 Confidentiality is sought for market share information already provided to the Commission or identified by square brackets in the text.
- 3.3 The grounds upon which confidentiality is sought are that the information referred to above is highly commercially sensitive market share information, obtained from Pfizer NZ and Pharmacia NZ. The information is confidential and includes market share information and information as to the parties' market positions. It will remain commercially sensitive for an indeterminate time after the Commission's final determination of this notice. Accordingly, the Commission should withhold disclosure on the grounds of commercial sensitivity and section 9(2)(b) of the Official Information Act 1982.

4. Details of the participants

Acquirer

- 4.1 Pfizer Inc is the acquirer. Pfizer Inc is a publicly held corporation listed on the New York Stock Exchange with its headquarters in New York City. Pfizer Inc has a presence in 89 countries and Pfizer products are available in more than 150 countries.
- 4.2 Revenue for Pfizer Inc in 2001 was US\$32.3 billion. Research and development expenses for 2001 were US\$4.8 billion.
- 4.3 The principal activities of Pfizer in New Zealand are the distribution and marketing of a range of pharmaceutical, consumer and animal health products.

Target

- 4.4 Pharmacia Corporation is listed on the New York and Stockholm Stock Exchanges and has its corporate headquarters in Peapack, New Jersey, United States of America.
- 4.5 Pharmacia Corporation operates in more than 60 countries with approximately 59,000 employees worldwide. Sales revenue for 2001 was US\$13.8 billion. Pharmacia's annual pharmaceutical research and development budget is over US\$2 billion.
- 4.6 Pharmacia NZ is an overseas company registered in New Zealand and is a wholly owned subsidiary of Pharmacia Corporation. The principal activities of Pharmacia in New Zealand are the distribution and marketing of pharmaceutical and veterinary products.
- 4.7 In the first instance, contact:

Pharmacia Australia Pty Limited
59 Kirby Street
Rydalmere
NSW 2116
AUSTRALIA

Attention: Robert Wong

Ph: +61 2 9848 3204

5. Interconnected or associated persons

Acquirer group/associates:

- 5.1 Pfizer NZ is a subsidiary of Pfizer Corporation (Panama), and has no related companies in New Zealand.

Target company group/associates

- 5.2 Pharmacia NZ has no related companies in New Zealand although through its parent entities in the United States, Pharmacia NZ has an investment in Endocrinz Limited. Full details of that investment have not been obtained but can be obtained if required.

6. Beneficial cross-entitlements

- 6.1 There are none.

7. Links between participants, and between participants and their competitors

- 7.1 There are no ownership or structural links between Pharmacia and Pfizer or between either of them or their competitors.

8. Cross-directorships between acquirer and any other market participant

- 8.1 There are none.

9. The business activities of each participant?

- 9.1 As above. Both companies operate in the human and animal pharmaceutical industries and the consumer health industry but are predominantly involved in the research, development and manufacture of what are known as ethical pharmaceuticals (prescription pharmaceuticals for humans).

- 9.2 Pfizer Inc divides its business into the following divisions:

- (a) Pharmaceuticals;
- (b) Consumer Healthcare; and
- (c) Animal Health.

The Pharmaceuticals division is Pfizer Inc's largest business and accounted for 79% of the company's total revenue in 2001. Some of Pfizer Inc's leading pharmaceutical brands include Lipitor, Norvasc, Zoloft, Viagra and Diflucan.

- 9.3 Pharmacia Corporation also divides its business into the following areas:

- (a) Pharmaceutical healthcare;

- (b) Consumer healthcare;
- (c) Animal healthcare.

Pharmaceutical sales in 2001 constituted 87% of total sales. Pharmacia Corporation's key pharmaceutical products include Celebrex, Xalatan, Detrol La/Detrol, Campostar and Zyvox.

10. Reasons for the proposal

- 10.1 Internationally, there is increasing concentration in the pharmaceutical industry. In line with this international development, Pfizer and Pharmacia wish to consolidate in a market that is becoming increasingly competitive.
- 10.2 Although research and development is essential for the future of the pharmaceutical industry, the costs of research are escalating. It is generally agreed by industry parties that only very large companies can support the costs of research necessary to ensure a continued flow of products. This merger would benefit both corporations by driving costs of product production down and increasing efficiencies.
- 10.3 Internationally, there is a desire among pharmaceutical companies to provide a wider range of products and become a more competitive manufacturers and distributors. A wider product range also reduces the risk that the demise of a single product has a disproportionate effect on the company's future. The product portfolios of Pfizer Inc and Pharmacia Corporation are complementary and the parties have identified various synergies which make a merger very attractive.

PART II: IDENTIFICATION OF MARKETS AFFECTED

11. Horizontal Aggregation

Market Definition

- 11.1 In previous Commission decisions, markets considered have been North and South Island markets for the wholesaling of prescription and OTC pharmaceuticals (Decision 417: Zuellig/Sigma), specific product markets by reference to therapeutic categories (Decision 398: Glaxo/SmithKline) and the “animal healthcare market” (Decision 184 Pfizer/Coopers Animal Health). Consideration of the appropriateness of these definitions is unnecessary, since aggregations of a competitively significant size [] occur only in respect of two product categories: erectile dysfunction products and intramammary antibiotics for lactating cows. Without accepting that there are necessarily single product markets (for the same reason, among others, that analysis of the market in the airline industry by reference to individual routes is also unhelpful), the applicant is prepared for the sake of this analysis to proceed by reference to those products where the aggregation is outside safe harbours. In each case the aggregation is competitively insignificant, for the following reasons.

Erectile dysfunction products

- 11.2 For reasons already set out in information provided to the Commission (responses to Commission questions, provided 12 March 2003):
- (a) the two overlapping products, Viagra and Caverject, are highly differentiated in their application. In reality, they do not compete at all, since Caverject is generally only prescribed where an oral product (such as Viagra) cannot be used;
 - (b) Caverject only has 1.5% market share;
 - (c) Although Viagra is still under patent, the real competition is or will be between Viagra and other oral products, including recent and imminent new entrants.

Intramammary antibiotics for lactating cows

- 11.3 There are a plethora of products in what is an extremely fragmented segment. Pfizer estimates (Pharmacia has its own estimates) that the merged entity may have up to approximately []% of the products in this category (based upon the Guy Scott quarterly “Animal Health Audit” for period ending December 2002. Not all companies participate in this audit). Approximately three product entries per year have been made on average over the last three years. All of the active ingredients used respectively by the various manufacturers are off patent, and the application technology is very simple (tube applicator and paste medium). Note that, unlike Australia, there is no regulatory requirement to include a blue dye and therefore nothing to inhibit entry by those operating overseas who are not already present in the market.

12. Differentiated or standardised product markets

- 12.1 In respect of erectile dysfunction products, they are differentiated. In respect of intramammary antibiotics, they are undifferentiated.

13. Indicia of differentiated product markets

- 13.1 As the information already provided sets out, Caverject is applied in a different manner to other oral erectile dysfunction products, such as Viagra.
- 13.2 In addition, Caverject is generally used in those situations where Viagra is contra-indicated and/or does not produce results. Therefore there is a particular population group where Viagra is contraindicated or is not effective for use. This population group is where Caverject is most frequently used.

14. Vertical Integration

- 14.1 No issues of vertical integration arise.

15. Prior Commerce Commission decisions:

- 15.1 Re Pfizer Laboratories Limited - Coopers Animal Health (NZ) Ltd (Commerce Commission Decision 184).
- 15.2 Glaxo Wellcome Plc and SmithKline Beecham Plc (Commerce Commission Decision 398).
- 15.3 Zuellig Pharma Limited and Sigma NZ Limited (Commerce Commission Decision 417).

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

16. Existing Competitors

- 16.1 Information has already been provided to the Commission in respect of erectile dysfunction products. Information regarding intramammary antibiotics (lactating cows) will be provided by the parties separately.

CONDITIONS OF EXPANSION

17. Barriers to entry/evidence of expansion

- 17.1 Information has already been provided.

18. Existing competitors who could expand

- 18.1 Information has already been provided.

19. The business decision to increase supply

- 19.1 In respect of erectile dysfunction products, Viagra is still under patent but as pharmaceuticals are being developed that are comparable and competitive with Viagra, it is clear that new suppliers of these are seeking to enter the New Zealand market.
- 19.2 As noted above, barriers to entry in the intramammary antibiotic segment are very low and on average three new products have been introduced each year for the last three years. In an undifferentiated product market like this, manufacturers constantly seek to re-invent their various offerings and commonly do so every August when the breeding season begins.

20. The time required for supply to increase

- 20.1 A very small amount of time is required in the antibiotic market. To the extent that products comparable to Viagra are not in breach of its patent, then their entry is not difficult. Competitors are sophisticated in obtaining necessary consents and marketing products.

21. Constraint provided by possible increased supply by competitors

- 21.1 Significant.

22. Overall constraint by existing competitors

- 22.1 Looked at overall, and bearing in mind the increase in market concentration that would be brought about by the acquisition, the merged entity would be constrained in its actions by the conduct of existing and new competitors in the supply of intramammary antibiotics. In respect of erectile dysfunction products, the merger has no significant competitive impact, for the reasons already set out, because Viagra does not really compete with Caverject.

CO-ORDINATED MARKET POWER

- 23. Characteristics post-acquisition facilitating or impeding coordination effects.**
- 24. Characteristics post-acquisition facilitating or impeding monitoring and enforcement of coordinated behaviour by market participants.**
- 25. Evidence of price coordination, price matching or price following.**
- 26. Reasons why the transaction will not increase risk of coordinated behaviour**

Co-ordination between competitors is extremely unlikely. The global pharmaceutical market, as a whole, is characterised by the presence of many large multi-national corporations which are actively competing to ensure that their products are on the market. There will be no real change in the erectile dysfunction segment as a result of the proposed merger, because the effective competition is between Viagra and other oral erectile dysfunction products (and not with Caverject). In respect of intramammary antibiotics, there are a plethora of competitors and entry is easy.

