

8 January 2018

VetLife Limited

Attn: Adrian Campbell, VetLife Limited

Dear Mr Campbell

### **Commerce Act 1986: Warning**

1. As you aware, the Commission has been investigating VetLife Limited (VetLife) concerning allegations of anti-competitive conduct in the veterinary industry, in particular relating to the supply of restricted veterinary medicines.

#### **Commission's view**

2. The Commission considers that VetLife Limited (VetLife) is likely to have breached the price fixing prohibitions in the Commerce Act 1986 (the Act) by entering into and giving effect to an agreement with a competing veterinary practice (the Competitor) relating to the supply of Cepravin to a customer in 2015 (the Agreement).
3. The Commission has exercised its enforcement discretion to issue a warning to VetLife rather than to commence proceedings. In reaching a decision to warn and not commence proceedings, we have taken into account the extent of harm caused by the Agreement and the limited duration of the anti-competitive conduct.

#### **Price fixing conduct prohibited by the Act**

4. Section 27, via section 30, of the Act prohibits contracts, arrangements or understandings between competitors that have the purpose, effect, or likely effect, of fixing, controlling or maintaining the prices charged for goods or services.<sup>1</sup>
5. A contract, arrangement, or understanding need not be formal, written, or signed. All that is required is for the parties to reach a consensus which creates an expectation as to how at least one of them will act, or not act.

#### **Basis for the Commission's view**

6. The Commission is of the view that VetLife entered into and gave effect to the Agreement with the Competitor in breach of section 27, via section 30, of the Act by email communications.

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<sup>1</sup> The conduct outlined in this letter is subject to the price fixing provisions in force prior to the recent amendments to section 30 of the Act made by the Commerce (Cartels and Other Matters) Amendment Act 2017 on 15 August 2017.

7. The communications were prompted by a buying group presenting a prescription for Cepravin to the Competitor on behalf of a customer that was historically a customer of VetLife. The terms of the Agreement reached were that the Competitor would not compete to supply Cepravin to the customer. We consider that this Agreement had the purpose of fixing, controlling or maintaining the price of Cepravin supplied to the customer.
8. The Commission considers that VetLife gave effect to the Agreement by not submitting a competitive price for Cepravin to the customer.
9. We note that, contrary to the purpose of the Agreement, the customer accepted the price submitted by the Competitor. We have taken this into account in reaching our decision not to commence proceedings.

#### **Commission guidance**

10. Competition between firms typically derives from rivalry on price, quality, service, choice and other offerings. Conduct which fixes, controls, or maintains prices reduces competition and can be detrimental to consumers.
11. To avoid breaching the Act in future, we recommend that VetLife's employees are mindful of the Act when attending meetings and/or otherwise interacting with competitors, particularly in circumstances where the conduct involved may interfere with any party's independent decision about a price, component of price, or any other matter relating to prices, such as a discount. This same care is required when attending industry or professional association meetings where competitors or potential competitors are involved.
12. If in doubt, you should seek legal advice from a lawyer experienced in dealing with the Act.

#### **Further action by the Commission and other parties**

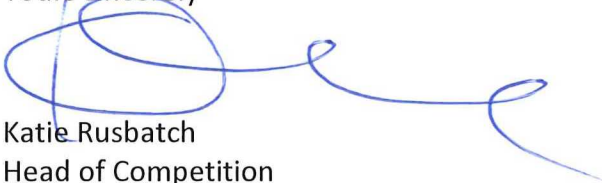
13. Only the courts can decide whether the Act has been breached or not. This warning letter does not represent a ruling of law.
14. The court can impose penalties where it finds the law has been broken. An individual can be fined a maximum of \$500,000 and/or be prohibited from being a company director or a manager of a company. A body corporate can be fined the greater of \$10 million or three times the commercial gain from the breach (or if this cannot be easily established then 10% of turnover). Every separate breach of the Act may incur a penalty.
15. While the Commission does not intend so take any further action against VetLife for this conduct, you should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking a private action for damages under section 82 of the Act.

16. We may draw this warning to the attention of a court in any future proceedings brought by the Commission against VetLife for other conduct in breach of the Act. Previous warnings may be considered an aggravating factor in sentencing by the court for any future conduct.
17. This warning letter to VetLife will be published on our website. We will also refer to this warning letter in a media release that will be published.

**Further information**

18. We have published a series of fact sheets and other resources to help businesses comply with the Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
19. You can also view the Act and other legislation at [www.legislation.govt.nz](http://www.legislation.govt.nz).
20. Thank you for your assistance with this investigation. Please contact me by email at [katie.rusbatch@comcom.govt.nz](mailto:katie.rusbatch@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely



Katie Rusbatch  
Head of Competition