Decision: PMPRB-07-D2-QUADRACEL and PENTACEL
Motion for Production of Contracts

IN THE MATTER OF the *Patent Act* R.S.C. 1985, c. P-4, as amended

AND IN THE MATTER OF sanofi pasteur Limited (the "Respondent") and the medicines "Quadracel and Pentacel"

This is the decision of the panel on the motion of Board Staff for an order declaring that the Respondent's 2007 contracts for the sale of Quadracel and Pentacel to Canada and Quebec (the "Contracts") will be admissible in evidence when the Board receives evidence in this matter at the pending oral public hearing.

Decision

The Board has considered the written and oral submissions of the parties and, for the following reasons, allows the motion of Board Staff.

1. This motion began as a motion by Board Staff for an order requiring the Respondent to produce the Contracts to Board Staff as part of the Respondent's documentary disclosure in this proceeding. In its responding materials, the Respondent agreed to produce the Contracts to Board Staff, but reserved the right to argue that the Contracts were not admissible in evidence, or were admissible only for the limited purpose of determining the appropriate remedy if a finding of excessive pricing were reached by the panel.

2. Board Staff then revised the relief sought in its motion and asked for an order affirming the admissibility of the Contracts. Board Staff acknowledged that it was, in effect, using the pre-hearing conference time to settle what appeared likely to be a point of contention during the oral hearing, where time is scarce and its use to argue points of evidence is disruptive and imposes on the schedules of a greater number of hearing participants.

3. The Respondent argued that Board Staff's shift of the relief sought in its motion from an order for production to an order for a declaration of admissibility was improper. The Panel, however, accepts that this was an appropriate and efficient use of the pre-hearing conference time.

4. On the motion, Board Staff established that the Contracts will be relevant and admissible. Board Staff relied, correctly, in the view of the Panel, on the position of the Respondent that the unique nature of contracting for the purchase of vaccines is one of the factors that should be considered when the Panel determines if Quadracel and Pentacel have been or are being sold at excessive prices. This makes any current contract between the Respondent and the same purchasers to whom it is selling, or has sold, Quadracel and Pentacel in the recent past, at allegedly excessive prices, relevant. The Board inquires into the pricing of the sales of medicines under review up to the close of the record in a proceeding, so sales pursuant to the Contracts will be under review in this proceeding.

5. While the threshold for the admissibility of the Contracts has been met by Board Staff, the panel will consider all of the evidence and argument at the hearing before determining what weight, if any, is to be put on the terms of the Contracts.

Conclusion

6. Accordingly, the Panel orders the Respondent to produce the Contracts to Board Staff and affirms that the Contracts will be relevant evidence in this proceeding.

Board Members: Dr. Brien G. Benoit
Anne Warner La Forest
Anthony Boardman

Board Counsel: Gordon Cameron
Nancy Brooks

Sylvie Dupont
Secretary of the Board

November 16, 2007