

AstraZeneca wins against Pharmac

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The Pharmaceutical Management Agency (Pharmac) is responsible for managing the pharmaceutical budget for New Zealand's public health system. In particular, Pharmac decides which medicines will be subsidised. This has caused strained relations with research-based pharmaceutical companies wishing to supply the New Zealand market. In recent years, Pharmac seems to have had the upper hand, but a Supreme Court decision released in August and an agreement between AstraZeneca and Pharmac for the supply of two drugs, may indicate that the tide is turning.

In early 2007, patent protection for AstraZeneca's Betaloc CR (controlled release) was nearing expiry, thus exposing AstraZeneca to potential competition from generics.

AstraZeneca entered into negotiations with Pharmac for continued listing of Betaloc CR during which AstraZeneca indicated that if negotiations were unsuccessful, it would be "forced to also review the commercial viability of Betaloc IV". Supply of Betaloc IV to hospitals around New Zealand was considered uneconomic by AstraZeneca.

Pharmac issued a press release accusing AstraZeneca of "pursuing tactics to avoid or delay competition". The resulting media attention led the Commerce Commission to investigate AstraZeneca and to issue it a notice requiring the disclosure of sensitive commercial information under the Restrictive Trade Practices provisions of the Commerce Act.

AstraZeneca challenged the Commission's ability to issue the notice because a statutory exception in the legislation establishing Pharmac excludes certain activities from the scope of this part of the Commerce Act. The High Court and the Court of Appeal held that the Commission could issue the notice and that the information had to be disclosed.

AstraZeneca appealed to the Supreme Court, which considered that the actions taken by AstraZeneca, including the alleged anti-competitive tie of Betaloc IV to Betaloc CR, were done "for the purposes of obtaining an agreement with Pharmac" as allowed by the statutory exception. The Court held that this exception applied to both Pharmac and the pharmaceutical company and broad interpretation of the section was necessary to ensure that Pharmac's statutory purpose is achieved. The Commission should have appreciated that no unlawful activity was being undertaken by AstraZeneca and therefore there was no proper basis for issuing the notice.

The outcome is a positive development for AstraZeneca, and for research-based pharmaceutical companies in New Zealand.

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