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April 27, 2009

Ms. Sylvie Dupont
Secretary of the Board
Patented Medicine Prices Review Board
Box L40
Standard Life Centre
333 Laurier Avenue West, Suite 1400
Ottawa, Ontario K1P 1C1

Re: PMPRB Notice & Comment
Draft Revised Excessive Price Guidelines (March 2009)

Dear Ms. Dupont:

Through this letter, Servier Canada Inc. is pleased to provide its feedback on particular areas of concern with the PMPRB's Notice & Comment on the Draft Revised Excessive Price Guidelines released on March 26, 2009. In addition, as a member of Canada's innovative pharmaceutical industry, Servier Canada Inc. also draws the PMPRB's attention to the submission forwarded by Rx&D, whose position on these and other issues relating to the proposed new Draft Revised Excessive Price Guidelines Servier Canada Inc. supports.

First, we would like to thank the Board Staff for being readily available to answer questions on an individual basis by phone and through its April 8th teleconference and thereby offering clarification of some aspects of the Draft Revised Excessive Price Guidelines. These sessions allow more fulsome comments on the PMPRB's proposals. We also would like to acknowledge the Board's efforts in considering stakeholder's comments and its willingness to resolve issues brought to its attention, was evidenced by the important steps forward included in the latest version of the Draft Revised Excessive Price Guidelines.

Having said that, we believe that some of the changes currently being contemplated deserve reconsideration in order to provide clarity and price certainty for patentee's who are required to operate within this regulatory environment. These have been summarized the attached technical submission to the Board.

In addition, the Draft Revised Excessive Price Guidelines refer to the term "appear excessive" throughout the document with the patented drug product being reported on the PMPRB's Web site as "Under Investigation" or "Appears Excessive" depending on whether the investigation criteria has been triggered; including when the PMPRB receives a complaint that a price is excessive. This approach prematurely presumes that a price is excessive with no clear definition on how the PMPRB determines the "appearance" of excessiveness. Given the complexity of the any market issues and other interrelated new changes including the dip methodology being proposed, the determination of whether a price is "excessive" or whether the complaint is legitimate will not immediately be clearly apparent. This will lead to confusion as to what is really excessive versus what is not. Thus, we believe that more appropriate terminology is needed. Furthermore, a clear evaluation process is needed to determine whether a complaint is reasonable and substantiated prior to initiating an investigation to prevent unnecessary regulatory and workload burden for both the PMPRB and patentees.

Finally, while we share the PMPRB's desire to finalize and implement the new Guidelines in the near future, in order to put an end to the uncertainties for the industry in terms of the PMPRB's price review process going forward, we strongly recommend that the Board postpone its proposed implementation of the new Guidelines at least until January 1, 2010. Implementing such significant changes to the regulatory process mid-year causes confusion, inconsistencies in application over the year and transitional nightmares for the staff of the PMPRB and for the industry. Moreover, given that the results of the Judicial Review into the PMPRB's new policy of mandatory reporting of benefits is not expected to be available prior to July 1, 2009 and considering that the Board has suspended reporting in this matter until January 1, 2010, a July 1, 2009 implementation of the new Guidelines is premature.

We thank the Board for this opportunity to provide our comments and suggestions and hope that they prove helpful in the Board's deliberations leading to final decisions on the new Guidelines. Working together with the Board to effect resolution of the remaining issues is a priority. We are available to discuss our comments with the Board Staff and to provide additional explanation, as required.

Sincerely,

Rebecca Yu, RPh, B.Sc.Phm.
Manager, Government Affairs
Servier Canada Inc

PMPRB Notice & Comment, March 2009
Draft Revised Excessive Price Guidelines
Technical Submission from Servier Canada Inc

"Any Market" Price Review

While the previous proposal on changes to the Guidelines (August 2008) introduced the notion of "any market" reviews, the PMPRB proposed such reviews at the customer class level only. In its latest version of the Draft Revised Excessive Price Guidelines (March 2009), the PMPRB has expanded this review to include each province and territory in addition to each of three customer classes. This approach will impose a significant regulatory burden on patentees as it increases the already complex process of establishing a price for a new product as well as monitoring and managing a national average selling price, let alone those of sixteen individual markets, to ensure compliance with the PMPRB's pricing Guidelines. In our opinion, such in-depth reviews should be conducted on an exception basis where circumstances dictate their necessity rather than as a general practice for all new medicines and all medicines under investigation.

In cases where an "any market" review may be appropriate, the methodology described in the Guidelines needs clarification since it is unclear at the moment whether the market-specific National Average Transaction Price will be compared to the market-specific National Non-Excessive Average Price rather than the National Non-Excessive Average Price. Moreover, sales mix-shift should also be considered when evaluating the National Average Transaction Price.

Sources of Prices for Patented Comparators

Different Patentee

The PMPRB is proposing the use of the public price closest to an existing patented medicine's National Non-Excessive Average Price for the review of a patented new medicine. We are extremely concerned about this proposed approach since it can reveal information about the general level of average prices of competitor products, information that is commercially sensitive and thus highly confidential.

In addition, we respectfully submit that this approach provides little clarity for patentees attempting to establish a non-excessive price for the upcoming launch of a new medicine since a company will have no means of determining with certainty which published price the PMPRB will use for comparison purposes. Furthermore, given the PMPRB's position on the reporting of all benefits, a practice that will serve to lower average selling prices of patented medicines, the approach has a high likelihood of limiting the prices of new medicines to the lowest price in Canada; the "any market" review process will limit the prices in all provinces to that lowest Canadian price even though published competitor's prices in most markets are higher. In our opinion, this represents an unfair limitation and we urge the PMPRB to

maintain its current practice of using Ontario Drug Benefit (ODB) prices, when available, and to specify a sequential order for other public sources that will be used when ODB prices are not available.

Same Patentee

With regards to the PMPRB's use of patented comparators' non-excessive average selling price in cases where that product is sold by the *same* company as the new product under review, while this approach is not new, it takes on significant implications as a result of the PMPRB's new policy on the reporting of all benefits. As a result, the new medicine is reviewed against the depressed average selling price of the comparator product merely because the patentee happens to sell both products. This represents a significant disincentive to offer any benefits since the resulting decrease in the average selling price will negatively impact that patentee's future products within the same class (i.e. a therapeutic class comparison test) as well as within the same product line (i.e. a reasonable relationship test). In addition, given that the PMPRB publishes the new medicine reviews of new active substances, including the therapeutic class comparison test, use of a comparator's average transaction price rather than its list price reveals confidential and commercially sensitive information into the public domain.

In contrast, the price of a new medicine being introduced by a *different* patentee will be based on the comparator's *public* price. As such, the approach creates an inequitable application of the Guidelines with, in our opinion, no reasonable rationale. We urge the PMPRB to eliminate this unfair application by establishing a standard approach in this regard for all patentees by using Ontario Drug Benefit (ODB) prices, when available, and to specify a sequential order of other public sources that will be used when ODB prices are not available.

Recognition of Benefits (DIP Methodology)

The DIP methodology proposed by the PMPRB is intended to allow an average price impacted by benefit offerings to rebound to back to non-benefit levels. While we agree that the methodology would allow a "rebound" to the pre-contract price, the approach as proposed assumes that the price to other non-benefit customers within that market remains the same during the benefit period. In fact, allowable increases in keeping with changes in CPI could have been implemented within this latter customer group. By limiting the post-benefit rebound to the pre-benefit price, the PMPRB is effectively freezing the price in the market over the period during which the benefit was offered. As such, we urge the PMPRB to allow the application of its established CPI-adjustment methodology to the pre-benefit price in the determination of allowable rebound level in the context of the proposed DIP methodology.

Levels of Therapeutic Improvement and Application of Price Test

For new medicines classified as a "slight or no improvement" for which there is no comparable existing medicine identified, the PMPRB is proposing that "superior" medicines be identified for price review purposes and that the new medicine's price be limited to the lowest price among those "superior" products. This represents a major departure from the PMPRB's current practice and one for which no rationale has been offered for limiting the new medicine's price in such a way nor any process identified for the selection of these "superior" products. The approach being proposed lacks clarity in that there is no rationale provided for consideration and no information provided on how the PMPRB intends to quantify the superiority or lack thereof of the existing medicines identified. In our opinion, it imposes an unreasonable limitation on the price of certain new medicines. We urge the PMPRB to apply its standard approach in these cases, whereby the price is reviewed on the basis of a therapeutic class comparison that includes all medicines in the same therapeutic class used in the target indication or, in the absence of such comparators, reverts to the median of the new medicine's international prices to establish its maximum non-excessive price.

International Therapeutic Class Comparison (ITCC) Test

The Draft Revised Excessive Price Guidelines include two approaches to the conduct of an international therapeutic class comparison: the Straight Class approach and the Ratio Approach. The methodologies as described for each approach are associated with significant weighting issues that will skew the results and are inconsistent with current price review practices and with the recommendations of the working groups that were tasked with conducting in-depth reviews of these tests. Our specific issues with these tests are as follows:

Straight Class Approach: The PMPRB is proposing to conduct therapeutic class comparison tests in each of the seven reference countries using the comparators identified for the Canadian-based test. The median of all of these foreign prices will then be compared to National Average Transaction Price of the new medicine in Canada. Because the approach uses the median, it has the significant potential to be skewed to prices in one country based on the number of comparator products available in each country (i.e. not all will be approved and available in all jurisdictions) and further skewed by the inclusion of generic products. The median limitation is inconsistent with the therapeutic class comparison approach used in Canada, where the top of the therapeutic class establishes the critical comparator for price review purposes. It is not clear why the PMPRB has chosen to reference the median in the Straight Class approach since its ITCC Working Group did not recommend this approach and there is no rationale provided for the deviation in practice. Further, in our opinion, generic products have no place in the price review of branded pharmaceuticals. The PMPRB is urged to apply the Straight Class approach in the same manner as it is applied in Canada, such that the top of the therapeutic class in each country is considered in the result of the test, and to exclude generic products from the review as supported by its ITCC Working Group.

Ratio Approach: The PMPRB is proposing to use the overall median of the price ratios of all products in all countries to the medicine under review. Once again, the median based on this approach will be significantly skewed by the availability, or lack thereof, of comparators in other countries and by the inclusion of generic products in the assessment. The PMPRB has an established methodology for the Ratio Approach, which was accepted by stakeholders in relation to the price reviews of Humalog and Viread and was recommended by its ITCC Working Group after a detailed examination of various methods. This methodology uses the median of the international ratios of the critical comparator identified in the Canadian-based therapeutic class comparison test as a basis for the test. There is no rationale provided by the PMPRB for its deviation from this accepted and recommended methodology. The PMPRB is urged to adopt the already accepted Ratio Approach methodology used in the Humalog and Viread price reviews as supported by its ITCC Working Group.

Criteria for Commencing an Investigation - Complaints

According to the Draft Revised Excessive Price Guidelines, "complaints with significant evidence" will result in the commencement of an investigation. Under the Draft Revised Excessive Price Guidelines, an investigation will be commenced when the "PMPRB receives a complaint that a price is excessive". While the wording change is subtle, its implications are significant. In the latter case, the PMPRB staff are required place a product under investigation upon receipt of a complaint from whomever regardless of its validity. The burden associated with the conduct of an investigation (for both the staff and for the affected company) in terms of additional analyses, correspondence and, in many cases, face-to-face meetings, is by no means insignificant. In addition, an investigation leads to the publishing of the medicine's status as "Subject to Investigation" in the PMPRB's Annual Report, a gross inaccuracy in the case of a frivolous complaint that will live on in that publication. Therefore, we urge the PMPRB not to consider the commencement of an investigation based on a complaint without a clear evaluation process including the requirement of evidence supporting the complaint.