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רשות ההגבלים העסקיים

ירושלים, כ"ח ניסן תשנ"ט
14 אפריל 1999

לכבוד
מר טל בנד, עו"ד
ש. הורוביץ ושות', עו"ד
רח' אחד העם 31
תל אביב

שלום רב,

הנדון : בריסטול מאיירס - פארמהבסט

מצ"ב החלטת הפטור באשר להסדר הכובל בין חברת בריסטול מאיירס וחברת פארמהבסט.

אני עומדת לרשותך למתן הבהרות, ככל שאלה תדרשנה.

בכבוד רב ובברכה,

דנה רוטמן, עו"ד



רשות ההגבלים העסקיים

פטור מאישור הסדר כובל לפי סעיף 14 לחוק ההגבלים העסקיים, התשמ"ח - 1988

בריסטול מאירס - פארמהבסט

ביום 28.3.99 הביאו בפני החברות Bristol-Myers Squibb International Limited, Bristol-Myers Squibb (Israel) Ltd. (להלן ובצוותא: "בריסטול מאירס") ו-Pharmabest Ltd. בקשה למתן פטור מאישור בית הדין להסדר כובל, לפי סמכותי הקבועה בסעיף 14 לחוק ההגבלים העסקיים התשמ"ח - 1988.

בקשת הפטור עוסקת בשני נושאים הנכללים בהסכמים העוסקים ברכישת קווי הפצת מוצרי בריסטול מאירס, הנעשית כיום על ידי פארמהבסט, בידי בריסטול מאירס: האחד - תניית אי תחרות לתקופה בת שנה אחת (סעיף 5.4 להסכם שיתוף הפעולה), השני - הסכם אי העסקה הדדי של עובדי החברות לתקופה בת שנה מתום הסכם האחסנה (סעיף 2.6(2)(c) להסכם שיתוף הפעולה וסעיף 12 להסכם האחסנה).

בהתחשב בפרקי הזמן של ההסכמות האמורות, ובנתת שוק התרופות המוחזק בידי שתי החברות שאינו עולה על 5%, ניתן בזה פטור להסדר האמור, לתקופה בת שלוש שנים מהיום.

החלטתי זו נתונה לערר בתוך 45 יום מהיום, בפי כבוד בית הדין להגבלים עסקיים, על ידי ארגון צרכנים, איגוד עסקי, או כל הרואה עצמו נפגע מההסדר הכובל עליו ניתן הפטור.

ד"ר דוד תדמור
הממונה על הגבלים עסקיים

ירושלים, כ"ז ניסן תשנ"ט

13 אפריל 1999

RESTRICTIVE TRADE PRACTICES LAW, 5748-1988

APPLICATION FOR EXEMPTION FROM APPROVAL OF RESTRICTIVE ARRANGEMENT

In accordance with paragraph 14 of the Restrictive Trade Practices Law, 5748-1988, (hereafter "the Law"), served herein, for application for exemption from approval of the court, the details of the restrictive arrangement are as follows:

1. Party requesting the exemption:

Name: Bristol-Myers Squibb International Limited
Address: Harrington House
 Milton Road,
 Ickenham,
 Uxbridge Middx. UB10 8PU
 England

Name: Bristol-Myers Squibb (Israel), Ltd.
Address: c/o Tal Band, Adv.
 S. Horowitz and Co.
 31 Ahad Ha'am Street
 Tel Aviv, 65202 Israel

Place for service of documents:

c/o Tal Band, Adv.
 S. Horowitz and Co.
 31 Ahad Ha'am Street
 Tel Aviv, 65202 Israel

2. The other party to the arrangement:

Name: Pharmabest 1983, Ltd.
Address: 14 Shenkar Street
 Kiryat Arie
 Petach Tikva, 49513, Israel

Name: Philtel Pharmaceutical, Ltd
Address: 14 Shenkar Street
 Kiryat Arie
 Petach Tikva, 49513, Israel

3. Type of arrangement:

The arrangement is by written agreement.

4. The written arrangements are contained in the following documents:

- (i) Co-operation Agreement, dated March 22, 1999. (Appended as Exhibit "A")
- (ii) Warehouse and Transportation Agreement, dated March 22, 1999.
(Appended as Exhibit "B")
- (iii) Lease, dated March 22, 1999. (Appended as Exhibit "C")

5. The asset or service that is the subject of the arrangement:

B-MS will import, display, market, distribute and sell:

- (i) Prescription drugs. Only these products are relevant to this Application.

The following are also products with which B-MS deals, but are not relevant herein.

- (ii) Nutritional products
- (iii) Ostomy and wound care products
- (iv) Medicinal and pharmaceutical products
- (v) Medical devices
- (vi) Toiletries

6. The essence of the restriction and the details of it:

The Agreements include two (2) restrictions. They are:

Non-competition clause (Clause 5.4 of the Cooperation Agreement).
Non-solicitation of employees clauses . (Clause 2.6(2)(c) of the Cooperation Agreement). (Clause 12 of the Warehouse and Transportation Agreement).

7. The period of the restrictive arrangement:

The period of the aforesaid non-competition clause is one year.

The period of the non-solicitation of employees clause is 5 years (the term of the Agreements).

8. The reasons which support exemption from approval of the court:

8.1. Introduction. The agreements which form the basis of the arrangements between the parties are primarily a buy back arrangement in which B-MS is taking back the distribution and sales of its products in Israel from Pharmabest, which has performed said functions since 1980.

8.2 Non-competition Clause. The non-competition clause provides that Pharmabest will not actively compete with B-MS in Israel for a period of one year from the date of the signing of the Agreements. Pharmabest is not limited from distributing B-MS products or the products of other companies. The terms of the Agreements limit

Pharmabest only in that it cannot fully represent a competitor of B-MS in Israel for one year. Said restriction is minimal and insignificant.

In addition, the following facts render the restrictive nature of the non-competition clause as minimal: (i) the combined total market share of the parties (approximately 5%) is low; (ii) this matter is a vertical merger between parties which have had a manufacturer-distributor relationship since 1980; (iii) the arrangements are part of a transaction for B-MS to take back the distribution rights of its own products from Pharmabest; (iv) Pharmabest will be free to distribute the products of other companies, without limitations, even during the restrictive period; and (v) Pharmabest is permitted to represent other companies which do not compete with B-MS from the beginning.

Therefore, given the limited scope and duration of the non-competition clause, the restriction contained therein is both common and reasonable and in actuality, does not restrict competition in any significant manner.

8.3. Non-solicitation of employees. Except as set forth in the Agreements, which provide that most of Pharmabest's employees will become employees of B-MS, the parties are restricted from actively pursuing the employees of the other and from hiring the employees of the other for a cooling off period of one year from the time such employee leaves the employ of the other. In view of the fact that most of Pharmabest's employees will be transferred to B-MS under the terms of the Agreements, the effect of said restriction is minimal both in scope (the number of employees affected), and in duration (not an absolute restriction, but merely a cooling off period).

8.4. Conclusion: The effects of the restrictions on competition contained in the Agreements are common and insignificant for the following reasons:

- (i) The total combined market share of the parties is estimated to be only approximately 5%.
- (ii) B-MS is not acquiring the assets of a competitor. B-MS and Pharmabest did not engage in inter-brand competition. Rather, the arrangements between the parties represent a vertical merger, by which B-MS is taking back the distribution activity of its own products from its own long-standing distributor. Said restrictions are common and usual in such cases.
- (iii) The vertical buy-back by B-MS does not increase the concentration in the relevant market, since B-MS will be performing for itself, activities which were formerly performed in its name by Pharmabest. In fact, said Agreements could result in an increase in the competitiveness of the relevant market, since Pharmabest could, in a very short period of time, start representing new "actors" in the market or existing competitors of B-MS in the distribution of their products.
- (iv) The restrictive arrangements contained in Agreements do not reduce competition in the market, since they are pursuant to reasonable and

common restrictions under all of the circumstances.

9. The parties to this application believe that the aforementioned restrictions constitute all of the restrictions contained in their Agreements. If the Controller finds that there are other restrictive practices contained in said Agreements, the parties request that they be given the opportunity to present their arguments relating to the said restrictions and that said restrictions be held to be exempt, along with the restrictions set forth herein.

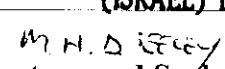
I declare that all of the details mentioned herein are complete and correct, that the documents attached hereto are correct and that there are no other documents which determine or are concerned with the arrangement.

Bristol-Myers Squibb
International, Limited

By: 
Signature and Seal

23.3.1999
Date

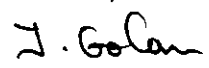
Bristol-Myers Squibb
(Israel), Ltd.

By: 
Signature and Seal

BRISTOL-MYERS SQUIBB
(ISRAEL) LIMITED

23.3.1999
Date

Pharmabest 1983, Limited

By: 
Signature and Seal

Date 24.3.99

Philtel Pharmaceuticals, Ltd

By: 
Signature and Seal

Date 24.3.99