

9 December 2021

Danielle Staltari  
Director, Competition Exemptions  
Australian Competition & Consumer Commission  
Level 17, 2 Lonsdale St  
Melbourne VIC 3000

**BY EMAIL:** [danielle.staltari@acc.gov.au](mailto:danielle.staltari@acc.gov.au)

Dear Danielle

**Additional information - Application for authorisation of conduct - Settlement and Licence Agreement between Celgene Corporation, Celgene Pty Ltd, Natco Pharma Limited and Juno Pharmaceuticals Pty Ltd**

1. **Introduction**
  - 1.1 Minter Ellison acts for Juno Pharmaceuticals Pty Ltd (**Juno**) and Natco Pharma Limited (**Natco**). Jones Day acts for Celgene Corporation and Celgene Pty Ltd (together, **Celgene**) (the **Applicants**).
  - 1.2 Thank you for your request for further information dated 7 December 2021 with respect to the application for authorisation dated 3 December 2021, first submitted to the ACCC for pre-lodgement consultation on 2 November 2021<sup>1</sup> (the **Application**).
  - 1.3 This letter comprises the Applicant's response to the issues raised. Defined terms in this letter have the same meaning as set out in the Application.
2. **The Applicant's response**

***Question 1: Description of the Proposed Conduct – Paragraph 3.7 states***

***'The Applicants seek authorisation under section 88 of the CCA to enter into, and to give effect to, the following provisions of the Agreement, each of which is a provision that is subject to a condition precedent in the Agreement to the effect that that the Applicants will not enter into / give effect to those provisions unless and until authorisation under section 88 of the CCA has first been obtained from the ACCC or Australian Competition Tribunal'.***

***We note that section 45AM of the Act provides that sections 45AF and 45AJ do not apply in relation to the making of a contract that contains a cartel provision if:***

- ***The contract is subject to a condition that the relevant provision(s) will not come into force unless and until the corporation is granted an authorisation to give effect to the provision(s) and***

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<sup>1</sup> As recommended in paragraph 3.3 of the ACCC's *Guidelines for Authorisation of Conduct (non-merger)*, March 2019.



Application and which would be entered into and given effect if authorisation were granted and the ACCC Condition in the Agreement were to be satisfied.

**Table 1: Corresponding clauses**

Clause in Application	Corresponding clause in Agreement
Clause 3.7(1)	
• 3.7(1)(i)	
• 3.7(1)(ii)	
• 3.7(1)(iii)	
Clause 3.7(2)	
Clause 3.7(3)	
• 3.7(3)(i)	
• 3.7(3)(ii)	
Clause 3.7(4)	
Clause 3.7(5)	
Clause 3.7(6)	
Clause 3.7(7)	

**Question 2: Confidentiality claim over the authorised launch dates – We understand that the specific dates are commercially sensitive. However, it is difficult for interested parties to comment on the public benefits of the Proposed Conduct when there is no explanation of the meaning of ‘significantly earlier than the expiry dates for the Celgene Patents’. The lack of public information may make it difficult for the ACCC to assess the public benefits claims.**

- **Is there an approach the Applicants can consider which provides a sense of how significant the earlier entry of the generic products will be?**

[REDACTED]

[REDACTED]

- **Would the parties allow the ACCC to disclose the exact dates with relevant government agencies, including the Department of Health, Pharmaceutical Benefits Scheme, Therapeutic Goods Administration and IP Australia?**

2.8 The Applicants would have no objection to the ACCC disclosing the exact dates to the Department of Health (including the Pharmaceutical Benefits Scheme) on the basis they

undertake to keep this information strictly confidential. The Applicants do not agree to disclose the exact dates to any other party or agency.

**Question 3: Confidentiality claim over the information in 3.9(2) – It is difficult for interested parties to comment on the scope of the Proposed Conduct given the current claim for confidentiality and this may impact the ability for the ACCC to consider this information in assessing the likely public benefits and public detriments to arise from the Proposed Conduct. Could you please consider the claim over this paragraph or if there is another approach to conveying the information.**

2.9

[Redacted]

**Question 4: Confidentiality claim over Table 1 under paragraph 4.14 – this table appears to be based on information from the Department of Health. Why is this table confidential? If the market shares between Juno and Janssen are not publicly available, can this information be redacted from the table instead of all the information?**

2.10 The Applicants do not press this claim for confidentiality.

**Question 5: Attachment E - confidential to Juno/Natco - it appears that there may be information in this attachment which is public. For example, the information provided at Table 2, the information at paragraph 1.2 and paragraph 1.4? Can you please review the claim made over this attachment. We note that in considering requests to exclude information from the public register we are unlikely to grant exclusion for information which is public.**

2.11 Juno / Natco do not press the claim for confidentiality in respect of paragraph 2 and Table 2. Juno / Natco do press the claim for confidentiality in relation to paragraph 1.4 as this is a highly commercially confidential analysis and conclusion with respect to Juno / Natco's commercial options in the counterfactual which should remain confidential from both Celgene and the public.

Please contact us if the ACCC requires further information.

Yours faithfully

**MinterEllison**

**Jones Day**

Contact: Alice Waterston [Redacted]

Contact: Prudence Smith [Redacted]

Partner: Geoff Carter [Redacted]  
OUR REF: 1355471

Contact: Matthew Bull [Redacted]  
Ref: 501872 - 750001