

Veterinary Medicines

A report on the supply within the United Kingdom of
prescription-only veterinary medicines

Volume 1: Chapters



COMPETITION COMMISSION

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Trade and Industry by Command of Her Majesty
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¹These members formed the Group which was appointed to investigate and report on this reference under the Chairmanship of Mrs D P B Kingsmill.

Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which she considers would not be in the public interest to disclose and which, in her opinion, would seriously and prejudicially affect certain interests.

The omissions are indicated by a note in the text or, where space does not permit, by the symbol ✂.

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Part I

Summary and Conclusions

1 Summary

Introduction

1.1. On 9 October 2001 we were asked to investigate the supply of prescription-only veterinary medicines (POMs) within the UK (see Appendix 1.1). On 16 April 2002 we published a statement setting out issues on which we would welcome comment (see Appendix 1.2). On 17 September 2002 we published a statement of provisional conclusions on complex monopoly situations and hypothetical remedies (see Appendix 1.3).

1.2. As most POMs are supplied by manufacturers to veterinary surgeries via veterinary wholesalers, and sold by veterinary surgeons to animal owners, we focused on this chain of supply, and on the ability of pharmacies to compete with veterinary surgeons at the retail level.

The monopoly situations

1.3. We found one scale, and three complex, monopoly situations within the meaning of the Fair Trading Act 1973 (FTA):

- National Veterinary Services Ltd (NVS), a wholly-owned subsidiary of Dechra Pharmaceuticals PLC (Dechra), supplies more than one-quarter of all POMs at the wholesale level and so meets the definition of a scale monopoly.
- The first complex monopoly situation involves veterinary surgeons engaged in one or more of the following conducts:
 - (a) failure to inform animal owners that they can ask for prescriptions, or discouraging requests for prescriptions, or declining to provide prescriptions on request;
 - (b) failure to inform clients of the price of POMs prior to dispensing them, or to provide itemized bills; and
 - (c) pricing of POMs which does not reflect their cost of supply, including:
 - (i) mark-ups on manufacturers' list prices that take no account of the discounts and rebates they receive from wholesalers and manufacturers, or do not reflect variations in those discounts and rebates; and
 - (ii) pricing POMs to subsidize, to a greater or lesser extent, professional fees.
- The second complex monopoly situation arises from the failure of eight manufacturers (Fort Dodge Animal Health Ltd (Fort Dodge), Intervet UK Ltd (Intervet), Merial Animal Health Ltd (Merial), Novartis Animal Health UK Ltd (Novartis), Pfizer Ltd (Pfizer), Pharmacia Ltd (Pharmacia Animal Health) (Pharmacia), Schering-Plough Ltd (Schering-Plough Animal Health (UK)) (Schering-Plough) and Virbac Ltd (Virbac)) to enable pharmacies to obtain supplies of POMs on terms which would enable them to compete with veterinary surgeons.

- The third complex monopoly situation arises from the failure of all the veterinary wholesalers to take reasonable steps to market to pharmacies and supply them with POMs, so that they can compete with veterinary surgeons.

1.4. We found these conducts, which have the effect of preventing, restricting or distorting competition, to be interconnected in ways that are important for a proper understanding of the lack of competition in this market:

- First, through interconnections of effect, in that conducts at the different levels combine to raise barriers to entry and expansion by pharmacies.
- Second, through interconnections of relationship: the manufacturers, wholesalers and veterinary surgeons each maintain direct relationships with the others.
- Third, through interconnections of justification, in that certain conducts at one level in the supply chain provide a rationale for those at other levels to maintain their conducts.
- Fourth, through interconnections of benefit, in that each of those engaged in the conducts benefits from the conducts of the others through their combined effects.
- Fifth, through interconnections of dependence, in that certain conducts at one level of the supply chain depend upon conducts at others.

Markets, competition and prices

1.5. At the manufacturer level we identified the UK as the relevant geographic markets for the supply of POMs and identified 30 separate product markets under five broad headings. Of the five veterinary wholesalers in the UK, three operate in most regions of Great Britain; one operates in Scotland, Wales and northern England; and one, only in Northern Ireland. Competition between veterinary practices is local.

1.6. An examination of all three levels in the supply chain led us to conclude that competition in the supply of POMs is weakest at the retail level and that, as a result of the conducts listed in paragraph 1.3, pharmacies provide only minimal competition for veterinary surgeons.

1.7. Comparison of the UK prices of some commonly-used POMs with those in other European countries showed that, for the veterinary medicines studied:

- (a) Most best-selling POMs in the UK are substantially more expensive, ex-manufacturer, than in all the European countries in our study.
- (b) The difference in price between the UK and other European countries is greater for POMs, ex manufacturer, than for other veterinary medicines, and countries where pharmacies play a larger role in their supply have the lowest ex-manufacturer prices.
- (c) Retail prices for POMs (excluding VAT) are never lower and are generally substantially higher in Great Britain.
- (d) For those POMs for which it was possible to make a comparison of retail prices after adjusting for differences in ex-manufacturer prices, prices in Great Britain are still higher in the majority of cases.

The public interest

1.8. We find that the scale monopoly situation does not in itself raise issues for the public interest as the conducts in which NVS engages over which we have expressed concern are

attributable to the complex—rather than the scale—monopoly situation. We find that each of the three complex monopoly situations operates in favour of veterinary surgeons, manufacturers and veterinary wholesalers who supply POMs in the UK, whether or not they engage in the conducts themselves, and have effects detrimental to the public interest in that they lead to a lack of choice of supplier for animal owners and to the prices of POMs being higher than they would otherwise be.

1.9. We were not persuaded by arguments that the behaviours over which we have raised competition concerns serve a wider public interest in the protection of public safety and animal welfare, and that any attempt to introduce greater competition into the supply of POMs would be damaging. We take the view that continuation of the anti-competitive conducts we identified is not necessary to deliver public safety and animal welfare, nor that these conducts self-evidently provide the most economic and effective route for securing such wider benefits.

Recommendations

1.10. Effective competition in the retail supply of POMs depends on a number of factors:

- on alternative sources of supply able to offer effective competition to the veterinary surgeon who made the diagnosis and recommended the POM: under current regulations this competition can come only from pharmacies, as one veterinary surgeon may not supply POMs prescribed by another;
- on the ready availability of prescriptions from veterinary surgeons;
- on pharmacies being able to supply POMs—which, in turn, means that they must be able to obtain them on terms that do not prevent, restrict or distort competition with veterinary surgeons; and
- on the provision of transparent information to enable animal owners to understand and compare prices.

1.11. To reduce barriers, and to otherwise promote competition, in relation to each of these factors, and to address the detriments we have identified, we recommend that the following remedies be introduced under the FTA:

- (I) A requirement for a large and prominently displayed sign in all veterinary surgeries advising clients on:
 - the availability of—and charge for—prescriptions, consistent with recommendations (V) and (VI), to enable them to obtain POMs from pharmacies if they wish;
 - the price of the ten POMs most commonly prescribed or dispensed by that surgery in a typical three-month period; and
 - the availability of further information on prices of all POMs stocked or sold.
- (II) A requirement for veterinary surgeons to inform clients, on request, of the price of any POM they propose to dispense and to quote the price of any POM stocked or sold to anyone who asks.
- (III) A requirement for veterinary surgeons to provide itemized bills distinguishing the cost of services from the cost of POMs.

- (IV) A requirement for veterinary surgeons recommending the use of POMs to inform clients of their policies and charges regarding further examination of animals requiring repeat prescriptions, either by provision of a leaflet or in a letter of engagement. We would encourage veterinary surgeons also to include in these leaflets or letters of engagement texts advising clients of the matters covered in remedies (I), (II) and (III).
- (V) A requirement for clients of veterinary surgeons to be offered, either orally or in writing, prescriptions for POMs the veterinary surgeon recommends, except for those used in emergency treatment, for treatments during surgical procedures or as anaesthetics; and for prescriptions requested in consequence to be provided by the veterinary surgeon.
- (VI) A requirement, for a period of three years, for veterinary surgeons providing prescriptions to do so at no additional charge to the client beyond that of the consultation. The Director General of Fair Trading (DGFT), with the Royal College of Veterinary Surgeons (RCVS), to monitor the prescriptions written, and the charges made for them, over the 12 months following the end of that period. The DGFT to set charges for prescriptions if, in his judgement, veterinary surgeons are charging for prescriptions so as to deter animal owners from asking for prescriptions or to influence the terms of competition with pharmacies to their own advantage.
- (VII) A requirement for manufacturers that supply POMs in the UK to inform veterinary practices and pharmacies, not less than once every three months, of the ex-manufacturer unit price(s) net of any discount or rebate at which its POMs were supplied to the veterinary practice or pharmacy in the preceding period and, on request, to quote the ex-manufacturer unit price(s) net of any discount or rebate at which any stated mix and volume of products would be supplied in the next three months.
- (VIII) A requirement for all manufacturers that supply POMs in the UK to supply pharmacies and veterinary surgeons on the same terms for the same volumes, including ensuring the same ex-manufacturer net prices whether the POMs are obtained direct or through veterinary wholesalers or other third parties.
- (IX) A requirement for veterinary wholesalers that supply POMs in the UK to supply pharmacies and veterinary surgeons on the same terms for the same volumes.

1.12. We also urge the RCVS to encourage veterinary surgeons to provide prescriptions in a form that will allow identification and dispensing of alternatives which, in their clinical judgement, would be equally acceptable so as to give the animal owner maximum opportunity to seek the most cost-effective solution and, in order to facilitate such behaviour, to consider the desirability of drawing up or endorsing lists of alternative veterinary medicines to be considered by veterinary surgeons in writing prescriptions for common conditions.

1.13. The supply of veterinary medicines in the UK is subject to a significant body of law and to controls primarily aimed at the protection of human and animal health. These regulatory requirements have significant effects upon competition in the supply of POMs by increasing costs of supply, raising barriers to entry, and restricting the outlets through which POMs may legally be obtained. Our inquiry identified features of the present regulatory arrangements that appear to restrict competition more than is necessary. Some, such as the prohibition on one veterinary surgeon dispensing a veterinary prescription written by another, directly impact upon competition at the retail level; others, such as the absence of an effective single market in veterinary medicines within the EC, reduce downward pressure on prices. We therefore recommend:

- *Recommendation 1:* The Secretary of State to consider changing the law to allow veterinary surgeons to dispense a veterinary prescription, whether or not the animal concerned is under their care.
- *Recommendation 2:* The RCVS to modify its *Guide to Professional Conduct* to remove restrictions on veterinary surgeons' publishing the prices they charge for veterinary medicines.
- *Recommendation 3:* The Secretary of State to consider negotiating changes to the draft Council Regulation (proposed in COM (2001) 404 final) so as to allow all categories of veterinary medicine access to the centralized procedure, without making this mandatory for any further categories of medicine.
- *Recommendation 4:* The Secretary of State to consider establishing arrangements to allow any veterinary medicine authorized through the decentralized procedure in the UK to be imported into the UK from any other EC member state in which it is also authorized, without further individual marketing authorization (MA) but subject to:
 - (i) prior notification to the Veterinary Medicines Directorate (VMD); and
 - (ii) the conformity of all labelling and inserts with the UK authorization;
 and to consider negotiating any changes to the Directive necessary to achieve this and to remove barriers to relabelling for this purpose.
- *Recommendation 5:* The Secretary of State to consider amending the remits of the Veterinary Products Committee and the VMD to require them to recommend the lowest distribution classification consistent with their assessment of a product's safety, efficacy and quality.
- *Recommendation 6:* The Secretary of State and VMD to consider instituting automatic review of distribution classification whenever a product's MA is renewed (or at similar intervals if the European Commission's proposal to make MAs permanent is adopted) and, unless there is good scientific reason to require additional information, to base such reviews on the product's existing dossier and accumulated field experience. An early benefit could result from an immediate review of the distribution classifications of ectoparasiticides (for the treatment of fleas) for companion animals, which could provide a particularly effective stimulus to competition from pharmacies in the supply of one of the most widely-used veterinary products.
- *Recommendation 7:* In discharging its responsibilities for the licensing and distribution classification of veterinary medicines against the criteria of safety, efficacy and quality, the VMD should take account, where relevant, of the impact on animal welfare of the availability and accessibility to animal owners of veterinary medicines, including considerations of cost.
- *Recommendation 8:* The Secretary of State, in negotiating the Draft Directive and Regulation, to keep in mind the importance of retaining member states' existing right to control the channels of distribution and supply of veterinary medicines, including those authorized through the centralized procedure.
- *Recommendation 9:* The Secretary of State to consider establishing one or more new distribution classifications of veterinary medicines to allow specific categories of persons (such as agricultural merchants and saddlers as well as veterinary surgeons and pharmacists) to dispense veterinary prescriptions for medicines so classified and to make corresponding changes to the law.

- *Recommendation 10:* The Secretary of State to support the European Commission’s proposal to make MAs permanent (in the absence of adverse field experience or other comparable grounds for review).
- *Recommendation 11:* The VMD should improve its procedures so as to minimize delays to product commercialization, including examination of the ways in which it interacts with manufacturers prior to receipt of complete dossiers.

1.14. Although none of our recommendations or remedies affects veterinary surgeons’ exclusive right to prescribe POMs for animals or herds under their care, they are all designed to encourage and increase competition in the supply of POMs. The eventual success of the measures designed to increase competition between veterinary surgeons, and between them and pharmacies, will depend on animal owners and veterinary surgeons responding to the new opportunities we have sought to create, and on the readiness of pharmacies to enter the market. This, in turn, will require that they should be able to obtain supply, on terms that will allow them to compete.