

## NOTICE 2731 OF 2004

## COMPETITION COMMISSION

## NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

ASPEN PHARMACARE HOLDINGS LIMITED

AND

FINE CHEMICALS CORPORATION (PTY) LIMITED

The Competition Commission hereby gives notice, in ~~terms of~~ Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms on 08 July 2004 subject to ~~the~~ conditions set out below.

In its evaluation ~~of~~ the effect ~~of~~ the transaction on the public interest ~~the~~ Commission considered, amongst others, the effect ~~of~~ the transaction on the pharmaceutical manufacturing industry and the argument ~~raised~~ by the parties that vertical integration will ultimately create a strong and stable manufacturer in South Africa. The **Commission** has found that the transaction may be to the benefit ~~of~~ the South African economy and certain consumers ~~of~~ pharmaceutical products, but ~~may~~ also negatively affect the ability of other pharmaceutical manufacturersto operate in South Africa.

The Commission concluded that a remedy ensuring that FCC continues to deal ~~with~~ its customers on a fair and **equitable basis** would address the concerns raised by the **merger**.

The Commission thus approves the merger subject to the following conditions:

1. FCC shall supply narcotics' to all its existing South African customers of narcotics. in the **event that** there is a shortage of narcotics, such that FCC is unable to meet the **full** contractual requirements ~~of~~ all **its** South African customers, it shall supply the narcotics to **its** South African customers on a non-discriminatory **pro** rata basis based on prior financial **year** purchases.
  2. FCC shall **supply** all new South African customers ~~of~~ narcotics based on their annual calendar year **forecasted** purchases. **After** the first full financial year of volumes purchased they **will** be treated **as** existing customers (per **paragraph 1**).
  3. **FCC shall** price the narcotics **based** on the **current** pricing scale used. In the case of codeine phosphate **this is based** on a price/volume scale and in the
1. **The word narcotics shall** mean the existing narcotic **products produced by FCC and** include: codeine **phosphate**; codeine hydrochloride; **morphine tartrate**; morphine hydrochloride; **morphine sulphate**; pholcodine; and fentanyl citrate.



cases of the other low volume narcotics, these products are **sold** to all South African customers at the same price, as applicable to each product.

4. In the event that FCC increases the price of narcotics, it shall provide the Competition Commission with written notice of such an increase, the formula **used** to calculate the increase and supporting documentation. The formula **will** set out the cost component **of** the relevant products as well as the **basis** for the increase.
5. **FCC** shall provide the Competition Commission within 30 days of the conditional approval of this transaction **with FCC's current pricing scale of all narcotics sold in the South African market as well as FCC's current formula used to calculate the pricing scale.** FCC shall simultaneously provide the Competition Commission with **an** affidavit **deposed to by a** duly authorised official **of FCC** confirming that the provided pricing scale and **formula** are **the** current formula and pricing scale **used by** FCC.
6. FCC shall provide the Competition Commission with a detailed report proving compliance with the above-mentioned undertakings. The report **shall** contain **an** audit certificate from an independent auditor **verifying** FCC's compliance with the conditions.
7. FCC shall provide **the** Competition Commission with **an affidavit**, **deposed to by a senior official of** FCC, confirming the accuracy **of** the detailed report referred to in paragraph 6 above.
8. The **first** report shall be due within 3 months from the date of **the** conditional approval. Subsequent reports **shall** be provided on an annual basis for a **period of three years.**
9. These undertakings are valid **for** a period **of** three years **from the date of** conditional approval.

Enquiries in **this** regard **may** be addressed to Mr. **M.** van Hoven at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3293, or Facsimile: **(012)** 392 4293. (Reference: 2004Apr954)