

**SKELETON DRAFT FOR COMMENTS
FEBRUARY 14, 2007**

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**STRICTLY CONFIDENTIAL
ATTORNEY-WORK-PRODUCT**

Mexico City
February 14, 2006

Alberto Navarro, Esq.

Senior Counsel
Johnson & Johnson Office of General Counsel
Miguel Angel de Quevedo 247
04310, Mexico, D.F.

Ref: Commercial Benchmarking Study by BAH

Dear Alberto,

Reference is hereby made to your request to analyze the possibility of Janssen-Cilag de Mexico (JC) incurring in an antitrust practice by:

- (i) Commissioning Booz Allen Hamilton (BAH) to carry out a commercial benchmarking study to assess the competitiveness of certain commercial practices (hereinafter the "Project");
- (ii) Accepting the terms of the Commercial Benchmarking Study proposed by BAH;
- (iii) Receiving and becoming aware of the terms of the first study report presented by BAH on the Project (hereinafter the "First Report"); or
- (iv) Receiving and becoming aware of the terms of the second study report presented by BAH on the Project (hereinafter the "Second Report");

[All documents listed above, hereinafter collectively referred to as the "Documents"]

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To render this opinion, we have relied upon:

- (v) The information received from JC concerning (i) the background of the Proposal; (ii) the methodology used by BAH to prepare both the First Report and the Second Report and (iii) the involvement of other manufacturers in the preparation of the both Reports;
- (vi) The terms of the Proposal;
- (vii) The terms of the First Report;
- (viii) The terms of the Second Report; and
- (ix) The applicable antitrust legislation.

Whereas,

- (x) The Proposal was prepared by BAH as a response to JC's need to assess the competitiveness of its commercial practices (hereinafter the "JC Commercial Practices") towards the largest wholesalers of pharmaceutical products in Mexico (hereinafter the "Wholesalers");
- (xi) The Proposal was designed and prepared by BAH without the involvement of JC, the involvement of the Wholesalers or the involvement of any other manufacturers (as defined hereinbelow);
- (xii) BAH decided - on its own - to offer the same commercial benchmarking study to several other manufactures of pharmaceutical products (hereinafter the "Other Manufacturers").
- (xiii) JC did not participate in the recruiting process nor was it recruited itself by any other participant to enter into the Project; all the Other Manufacturers were recruited directly by BAH without the knowledge of JC.
- (xiv) JC and the Other Manufacturers - each on its own - accepted the terms of the Proposal and abided by BAH's proposed methodology to submit their relevant information pertaining to the Project's concern, anonymously and relying on BAH's

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commitment to maintain their names and information undisclosed and unidentified to the Other Manufactures.

- (xv) During the development of the Project, some of the Other Manufacturers deflected from the Project, arguing certain antitrust concerns and hardship to obtain corporate clearance for the Project;
- (xvi) BAH produced and delivered the First Report to JC same which breached the terms of the proposal by (i) specifically identifying the names of the Other Manufacturers participating in the Project, and (ii) making a specific reference to a discount percentage gap between the JC Commercial Practices and the discounts granted for Pfizer's Viagra;
- (xvii) All the Other Manufacturers have only received the Second Report and are not even aware of the existence of the First Report;
- (xviii) As of the date hereof, JC has not used the information contained in any of the Reports;
- (xix) No representative of JC has commented or discussed the content of the Documents with any representative of the Other Manufacturers, nor with any representative of the Wholesalers;
- (xx) The applicable provisions of the Federal Antitrust Law (LFCE) provide as follows:

“ARTICLE 9

Absolute monopolistic practices are contracts, agreements, arrangements, cartels or combinations among competitive economic agents, whose aim or object is any of the following:

- I. To fix, raise, concert or manipulate the purchase price or sale of goods or services supplied or demanded in the markets, or to exchange information with the same purpose or effect;*

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- II. *To establish the obligation of not producing or to only produce, process, distribute, market or purchase a restricted or limited amount of goods or to only render a restricted or limited number, amount or frequency of services.*

- III. *To divide, distribute, assign or impose portions or segments of a present or potential market of goods and services, by means of a determinable group of customers, suppliers, time or spaces; or*

- IV. *To establish, rig or coordinate bids or abstention of bids in tenders, public auctions or biddings.*

The acts referred to in this article will not have any legal effects and the economic agents engaged in such acts will be subject to the penalties established by this law, regardless of any criminal liability that may ensue.

ARTICLE 10

Subject to verification of articles 11, 12 and 13 of this Law, relative monopolistic practices are considered to be those acts, contracts, agreements, cartels or combinations, which purpose or effect is to improperly displace other agents from the market, substantially impede their access thereto, or to establish exclusive advantages in favor of one or several entities or individuals, in the following cases:

- I. *Between economic agents that do not compete between each other, fixing, imposition or establishment of exclusive distribution of goods or services, by means of subject, geographic location or period of time, including the division, distribution or assignment of customers or suppliers; as well as the imposition or obligation not to manufacture or distribute goods or render services for a determined period of time or for a period of time subject to determination;*

- II. *The imposition of price or other conditions that a distributor or supplier must comply with when selling or distributing goods or rendering services;*

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- III. *The sale or transaction subject to the purchase, acquisition, sale or distribution of another additional good or service, normally distinct or distinguishable, or through reciprocity basis;*
- IV. *The sale or transaction subject to the condition of not using or acquiring, selling or providing other additional goods or services produced, processed, distributed, or marketed by a third party;*
- V. *A unilateral action consisting in refusing to sell or supply to certain persons available goods or services that are normally offered to third parties;*
- VI. *The agreement between various economic agents or the invitation extended to them to exert pressure over a certain customer or supplier, in order to dissuade him from executing a certain practice, to retaliate, or to force him to act in a certain manner;*
- VII. *The systematic sales of goods or services at a price lower than its average total cost, or spot sales under its variable average cost, when there are elements to presume that the losses thereof will be recovered by means of a future price raise, as per the provisions of this law's regulations;*

When it has to do with goods or services produced in a joint manner, or divisible for its commercialization, the total average cost and the variable average cost shall be distributed among all the sub-products or products, as per this law's regulations.

- VIII. *The concession of discounts or incentives from the producers or suppliers to the purchasers, with the requisite of not using, acquiring, selling, commercializing or supplying the goods or services produced, possessed, distributed or commercialized by a third party, or the purchasing or transaction subject to the requisite of not selling, commercializing or supplying a third party, the goods or services which are the object of the sale or transaction;*

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- IX. *The use of the gains obtained by an economic agent, from a good or service to finance the losses derived from the sale or commercialization or supplying of other goods or services.*

- X. *The establishment of different prices and sales/purchase conditions for different purchasers or buyers in equal conditions;*

- XI. *The action by one or more economic agents with the direct or indirect intention or effect to increase the costs or hinder the productive process or to reduce the demand faced by their competitors.*

To determine whether or not the practices referred to in this article must be sanctioned pursuant to this law, the Commission will analyze the efficiency gains derived from the behavior proved by the economic agents that favorably impact in the competition and free concurrence process. Such efficiency gains might include the following: the introduction of new products; the benefit obtained from left over, off specs products or products to expire; the cost reductions derived from new techniques or production methods, from the assets integration, from the incremental production scales and from the production of new goods and services using the same production factors; the introduction of technological advances that produce new or improved goods and services; the combination of production assets or investments' return which improve quality or spread the attributes of the goods and services; the improvements in quality, investments' return, opportunity and services that favorably impact the distribution change; that do not cause a significant price increase, or a significant reduction in the consumer's options, or a significant inhibition in the level of innovation in the relevant market; as well as the others that prove that the net contributions to the consumer's wellbeing derived from such practices out-serve its anti-competition effects."

Now, based on the foregoing, we are of the opinion that:

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- (xxi) JC is entitled to and has no legal limitation whatsoever to carry out a commercial benchmarking study in order to determine the commercial strategy that best suits its business interests;
- (xxii) For JC to be considered as having incurred in an absolute or relative monopolistic practice, the following must be proven:
 - (a) JC has entered into either a contract, an agreement, an arrangement, a cartel or a combination thereof with its competitors with the explicit intention or actualizing the hypothesis described in article 9 of the LFCE, or
 - (b) JC has entered into either a contract, an agreement, an arrangement, a cartel or a combination thereof with a third party or third parties with the explicit intention or actualizing the hypothesis described in article 10 of the LFCE (transcribed hereinabove); furthermore it has to be proven that JC has substantial power on the relevant market (as defined in the LFCE).
- (xxiii) None of the actions listed in points (i), (ii), (iii) and (iv) above fit the hypothetical scenarios described in articles 9 and 10 of the LFCE, hence it is fair to conclude that JC has not incurred into any antitrust practice by undertaking such actions.
- (xxiv) It is a strict prerogative of JC, whether to use or not the information contained in the Reports in order to design a future commercial or marketing strategy.

The opinions and considerations contained herein relate exclusively to the provisions of the Law and are not intended to address any analysis or recommendation in connection with any other aspects of the Law or its regulations.

We do not purport to be experts on and do not purport to be generally familiar with or qualified to express legal opinions based on any law other than the laws of the United Mexican States and accordingly express no legal opinion herein based upon any law other than the laws of the United Mexican States as at the date hereof.

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This opinion is delivered to you and may be relied upon by yourselves and shall not be delivered to nor relied upon by any other person or used for any other purpose.

Respectfully,

A handwritten signature in black ink that reads "Victor L. Benmink". The signature is written in a cursive style with a vertical line extending downwards from the end of the name.