SCHERING CANADA INC.

IN THE MATTER OF the *Patent Act* R.S.C. 1985, c. P-4, as amended

AND IN THE MATTER OF Schering Canada Inc. ("Schering") and the medicine "Remicade"

VOLUNTARY COMPLIANCE UNDERTAKING

Product Summary

1. Remicade is the brand name of a medicine known generically as infliximab. Remicade is a patented medicine sold in Canada by Schering Canada Inc. ("Schering"). Schering is a wholly-owned subsidiary of Schering-Plough Corporation of the US.
2. Health Canada issued a Notice of Compliance ("NOC") for the sale of Remicade for the treatment of Crohn's disease (CD) on June 6, 2001 and for the treatment of rheumatoid arthritis (RA) on September 27, 2001 (DIN 02244016). Under the NOC, sales of Remicade commenced on June 14, 2001 with a list price of $1,150.00 per vial.
3. Remicade is a genetically-engineered sterile lyophilized concentrate for intravenous injection. This selective immunomodulating agent is made from murine heavy and light chain regions derived from the anti-TNF monoclonal antibody A2 and genomic DNA-derived human heavy and light chain constant regions. It is supplied in vials which contain 100 mg of active ingredient.
4. Remicade is manufactured by Centocor Inc. in the United States which holds patents pertaining to Remicade in Canada and in other countries, including the countries listed in the *Patented Medicines Regulations, 1994*, i.e., France, Germany, Italy, Sweden, Switzerland, UK and US ("the Regulations Countries"). Schering and Centocor are not affiliated.

Schering and Schering affiliates, respectively, have the exclusive rights to sell Remicade in Canada and the Regulations Countries other than the US, and Schering is the patentee for purposes of the Patented Medicine Prices Review Board ("PMPRB" or "the Board").

Application of the Excessive Price Guidelines

Position of Board Staff

5. The Staff of the Board ("Board Staff") advised Schering that, following an investigation pursuant to the policies of the Board, Board Staff concluded that the price of Remicade exceeded the Excessive Price Guidelines. Based on the recommendations of the PMPRB's Human Drug Advisory Panel ("HDAP"), the policies of the Board, and the price and sales information supplied by Schering pursuant to the Regulations, Board Staff concluded that the price of Remicade exceeded the Guidelines at the time it was introduced in Canada in June 2001 because it exceeded the median of the prices for Remicade in the Regulations Countries by more than 20%.
6. More specifically, the average transaction price for Remicade (i.e., the net ex-factory price as defined under the Patented Medicines Regulations) exceeded the maximum non-excessive (MNE) price of $875.3700 per vial in 2001 and, as a result, Schering received excess revenues from the sale of Remicade in Canada.
7. As a result of Board Staff's investigation, the Board commenced these proceedings by issuing a Notice of Hearing on December 16, 2002 to determine, among other things, if the price of Remicade is or was excessive under the *Patent Act*.

8. By applying the CPI-adjustment provisions of the Guidelines, it is Board Staff's position that the MNE price of Remicade in 2003 is $909.5094 per vial.

Position of Schering

9. When it introduced Remicade in 2001, Schering established a price which it believed would be within the PMPRB's Guidelines. In Schering's current view, the PMPRB should classify Remicade as a category 2 drug with respect to its use in the treatment of RA. The price would be considered to be within the Guidelines if the cost of treatment for its use in RA did not exceed the cost of treatment of other drugs in the same therapeutic class according to the Board's Guidelines for conducting a therapeutic class comparison (TCC).
10. The only appropriate drug for purposes of a TCC at the time Remicade was approved for use in RA in Canada was Enbrel (etanercept). The price of Enbrel had previously been reviewed by Board Staff and found to be within the Guidelines.
11. The recommended maintenance dose of Remicade in RA is 3 mg per kg of body weight administered by infusion every eight weeks. Based on the information available at the time, it was the view of Schering that the annual cost of maintenance therapy with Remicade was below the cost of Enbrel and therefore the introductory price should be considered to have been within the Guidelines.
12. Since then, there has been an evolving trend by practitioners for the personalization of Remicade doses to ensure optimal benefit for their patients. As a result, Schering is prepared to agree that, for the purposes of this Voluntary Compliance Undertaking ("VCU"), in 2003, the calculation of the TCC in comparison with Enbrel would result in an MNE price for Remicade of $940 per vial.

13. As a result, for the purposes of this VCU, Schering acknowledges it has received excess revenues from the sale of Remicade in Canada. The magnitude of the excess revenues has been mitigated by Schering's Limited Compassionate Program. That program was designed to provide some quantities of the medicine at no charge to patients who had been receiving it at no charge under Health Canada's Special Access Program until alternative reimbursement became available. Following discussions with Board Staff, Board Staff and Schering have agreed that an appropriate estimate of excess revenues for the period ending March 31, 2003 is $7,792,650.8926.

Terms of the Undertaking

14. This Voluntary Compliance Undertaking ("VCU") is being made for purposes of resolving the issues relating to the pricing and sale of Remicade and compliance with the Patent Act in respect thereof to date and as a result of settlement discussions with Board Staff. This VCU constitutes no admission by Schering that the price of Remicade in Canada is now, or was at any time since the date of the first sale of the medicine, excessive for purposes of the *Patent Act*.

15. For the purposes of settlement, Schering undertakes to implement the following price reduction effective April 1, 2003:

    a) The list price of Remicade shall be reduced from $1150 per vial to $940 per vial;
    b) The average transaction price for purposes of the Guidelines shall be reduced so that it does not exceed $909.5094 per vial for the remainder of 2003;

c) The maximum non-excessive (MNE) price in future years shall be calculated in accordance with the Guidelines based on the benchmark price of $909.5094 per vial in 2003; and

d) The average transaction price of Remicade shall not exceed the MNE price in all future years during which it is under the Board's jurisdiction.

16. In addition, Schering undertakes to offset the excess revenues described in paragraph 13 by making a payment to Her Majesty the Queen in Right of Canada no later than 30 days after the acceptance of this VCU by the Board.

17. Schering shall advise its existing customers and the federal/provincial/territorial ministers of health of the price reduction set out in this VCU and shall supply such ministers of health with a copy of this VCU within 30 days of its acceptance by the Board. Schering shall provide copies of such notifications to the Board forthwith.

Signature: SCHERING CANADA INC.

Per:

Conor D. M. McCourt
Torys LLP
Counsel to Schering Canada Ltd.
By and with the authority of the company

Date: March 18, 2003