PUBLIC CONTRACTS APPEALS BOARD

Case No. 14

CT 2501/2002 – Supply of Factor VIII Inhibitor By-Passing Activity Complex (Advert No 290/2002)

This call for tenders, published in the Government Gazette on the 27th September 2002, was issued by the Contracts Department following a formal request received by the latter from the Government Pharmaceutical Services (GPS).

The global estimated value of the contract in question covering a period of three years was Lm 122,258.16.

The closing date for this call for offers was 14.11.2002.

The Government Pharmaceutical Services appointed an Adjudication Board consisting of Mesrs.

a. M. Dowling (Chairperson)
b. D. Zerafa (Pharmacist)
c. B. Briscoe (Senior Pharmacy Technician)

to anlayse the two offers received.

Following the adjudication by the Adjudication Board of the contract, Messrs. Charles de Giorgio Ltd filed a Notice of Objection on 05.05.2003 against the said award to Messrs. Drugsales Limited.

The Public Contracts Appeals Board made up of Mr. Alfred Triganza (Chairman), Mr. Edwin Muscat and Mr. Maurice Caruana, respectively, as members, convened a public hearing on 19.11.2003.

Present for the hearing were:

a. Mr David Stellini (Messrs Charles de Giorgio Ltd / Novo Nordisk)
b. Mr George Smith (Messrs Charles de Giorgio Ltd / Novo Nordisk)
c. Mr Alfred Gera de Petri (Messrs Drugsales Limited)
d. Mr Dens Knadsen (Novo Nordisk)
e. Mr Monolis Karmalis (Novo Nordisk)
f. Dr Isaac Odeyemi (Novo Nordisk)
g. Mr Axel Schoppmann (*Baxter Biosciences)*
h. Ms Anna Debattista (Director GPS)
i. Dr D P Busuttil (Consultant Haemologist)
j. Mr Joseph Meli (Contracts Department)

Mr David Stellini, representing Messrs. Charles De Giorgio Ltd, started by stating that initially there was a proposal to award the tender to Novo Nordisk. Subsequently, on the basis of the price which was calculated on the cost per bottle/vial, a different

decision was taken and the tender was proposed to be awarded to their competitor, Baxter Biosciences Austria. As a result, an appeal was lodged aimed at proving that the product being offered by his principals was in fact substantially cheaper than that offered by Baxter. He argued that, in order to conduct a scientific and evidence-based evaluation, the two products should not have been calculated on direct acquisition cost per vial but on the total cost of treatment of a bleeding episode, that is, price per patient per kg per year.

Mr Gera de Petri, representing Messrs. Drugsales Ltd, stated that he was in a position to prove that the appellant's product was more expensive. He also claimed that Novo Nordisk were completely out of specifications because they offered a different product from that requested in the tender.

In reply to this statement, Mr David Stellini stated that their product gave the same or better results. He and Dr Dens Knadsen insisted that they launched their objection on the basis of the price since in the GPS's report it was never mentioned that they were out of specifications. They declared that if the latter was the case they would not have lodged the appeal or come to the public hearing. Mr Stellini said that they offered an alternative product that was recombinant factor VII (rFVII).

Dr Busuttil, a Consultant Haemologist, stated that the tender was specifically issued for Factor VIII inhibitor bypassing activity. In the medical lexicon this was synonymous with an activated plasma derived prothrombin complex (aPCC) of which two were available on the market. He said that although rFVII was used in patients with inhibitors, it did not belong to that family of agents and therefore on technical grounds it did not meet the specifications of the advert.

Dr Dens Knadsen, representing Novo Nordisk, said that NovoSeven, which was produced by Novo Nordisk, was not a plasma-derived product but a recombinant product manufactured by gene technology. He contended that the Health Department asked for a bypassing product, which treated haemophilia patients who developed inhibitor to Factor VIII. NovoSeven was used to treat patients from severe bleedings who were unresponsive to the normal Factor VIII. He stated that most of the Western World decided to use NovoSeven as first line treatment because it did not carry the risk of transferring of complexes diseases which were always a concern for plasma-derived products. He said that NovoSeven worked more rapidly than any other product and so people with haemophilia could relatively go on with their normal lives.

Dr Dens Kandren declared that Novo Nordisk avoided the use of plasma-derived products and that in the EU NovoSeven was considered as a bypassing product.

Mr Monolis Karamalis, who frequently served as a health economist in many different countries, stated that, according to guidelines in other countries, NovoSeven was specifically recommended as a first line treatment for haemophilia patients with inhibitors (antibodies). He argued that, for this reason, the Maltese people should not be denied from getting the same best treatment.

Mr Axel Schoppmann, Baxter Biosciences' representative, confirmed that their FEIBA product was deduced from human plasma and that NovoSeven was a recombinant product. He said that it was not true that recombinant products were never exposed to human plasma or animal viruses. To prove his point he said that,

according to product information leaflets, NovoSeven contained bovine components recalling in the process bovine related diseases which ensued some time ago. He said that his company produced and strongly advocated the use of common Factor VIII because of its excellent efficacy and safety features. He said that, in Malta, plasma Factor VIII was the major supply for haemophilia A and plasma Factor IX for haemophilia B.

With regard to what was stated by Mr Karamalis, Mr Axel Schoppmann claimed that international treatment guidelines and recommendations for the treatment of inhibitor patients preferred Feiba. He said that an anti-inhibitor coagulation complex was used to treat bleeds in people with haemophilia who would have developed inhibitors to factor VIII or IX. He said that data available demonstrated that there was no scientifically proven comparative analysis between the two products. The literature from published papers demonstrated that FEIBA was highly effective, needed fewer infusions and involved short periods of hospitalisation (product consumption and duration of treatment were less with FEIBA than FVIIa). FEIBA's efficacy made this product a cost effective treatment for patients with inhibitors to FVIII.

Mr Isaac A O Odeyemi Ph.D., a Health Economics Consultant and an international expert in Haemophilia, made a presentation on the Therapeutic and Pharmaco-Economic Equivalence of rFVIIa (NovoSeven – recombinant factor VIIa) and aPCC (FEIBA) which were two of the most widely-used treatments available on the market. This presentation was made to demonstrate that the product offered by Novo Nordisk (Messrs. Charles de Giorgio Ltd.) was cheaper. He based his presentation on a study carried out by himself and Julian F Guest, the aim of which was to estimate the economic impact of using rFVIIa when compared to aPCC (FEIBA) to manage a minor (ie mild to moderate) bleeding episode at a haemophilia treatment centre among haemophilia patients with inhibitors in the UK. The comparison between the two products was based on the total cost of treatment of a bleeding episode, that is, price per patient per kg per year.

According to Dr Odeyemi the results and conclusion reached following this study showed that:

- the cost of treatment was significantly lower with rFVIIa (NovoSeven), in hospital [rFVIIa - £11,794 vs aPCC - £20,467], but comparable at home [rFVIIa - £12,944 vs aPCC - £14,645] but still 12% cheaper;

- rFVIIa stopped the bleed twice as fast as aPCC (FEIBA) – [time to resolve a bleeding episode took 32 hours as compared to 60 hours];

- as regards clinical efficacy, patients receiving 2.3 doses of rFVIIa (90 µg/kg body weight) would resolve 92% of bleeds whilst 3 doses of aPCC (75 units/kg body weight) would only resolve 79% of bleeds;

- empirical evidence suggested rFVIIa 1 µg/kg was equivalent to APCC 1.6 (1.2-1.9) IU/kg and 56 vials rFVIIa (1,2mg) equals 216 vials aPCC (500 IU).

Mr Stellini stated that on the basis of the formulae referred in the penultimate point, the therapeutic equivalence mentioned in the latter point and also taking into account

the prices that were actually quoted in the tender (1 vial of rFVIIa and aPCC cost DKK 4,620 and US$ 378.53 respectively), then the estimated cost, based on the overall cost of treatment, would amount to:

(a) 56 vials rFVIIa X DKK 4,620 = DKK 258,720 @ 17.955 = Lm 14,409 *whilst*
(b) 216 vials aPCC X US$ 378.53 = US$ 81,763 @ 2.4063 = Lm 33,978.

This revealed that rFVIIa was 57% cheaper.

Mr Monolis Karamalis from Novo Nordisk, stated that from a costing efficacy point of view their treatment worked twice as much as the other product and at a very significant lower cost.

Mr Alex Schoppman replied that Novo Nordisk's cost comparison study by Oedeyemi and Guest was invalid because these were based on assumptions and biased in favour of NovoSeven. The outcome of this study was heavily impacted by the selection of references and by wrong or incomplete picking of data from those references. Also he said that, in this study, a *worst-case scenario* for Feiba was compared against a *best-case scenario* for NovoSeven. He argued that the 2.3 doses were not the final dose to be given to patients since probably an additional infusion had to be given to all patients after efficacy evaluations, which was ignored for the cost evaluation. In the Hilgartner study 52% of the patients bleedings were controlled with one infusion but three doses were entered in above cost calculations. He said that a European home care study showed only a 79% success rate when compared to 92% as claimed in the Odeyemi / Guest study report. Mr. Schoppman showed that patients needed more a half-life product. He said that Dr Odeyemi did not consider the complete data from the publication since the cost estimations of Hospital Treatment amounted to rFVIIa - £11,794 vs aPCC - £20,467. He stated that it depended from where data was extracted because this could give different conclusions/results. The Rhonda L Bohn report declared that initial treatment with Feiba was cheaper than with aPCC [US$23,000 per episode (300IU/kg) as against US$34,400 per episode (360ug/kg)]. He said that as far as efficacy rate was concerned, the Hilgartner report findings demonstrate that FEIBA had 93% overall efficacy.

Mr Schoppman stated that all the arguments presented by witnesses / representatives from Novo Nordisk as well as cost assessments and pertinent comparisons made were based on actual clinical data rather than assumptions or on dosing recommendations written on official product inserts. He said that according to inserts 1000 U of Feiba corresponded to 1.2mg of NovoSeven. Treatment costs depended on the number of doses, duration of treatment and success rate, not on the price per vial. With regard to Feiba he said that the large majority of joint bleeds was covered with one infusion, the remainder being covered with 2 or 3 infusions and thus their product was equal or favourable to NovoSeven in this respect. He said that the maximum daily cost for treating severe bleeds with Feiba and NovoSeven was US$160 and US$658 respectively. He claimed that Feiba was cheaper than NovoSeven because of the longer half-life and resulting longer infusion intervals based on similarity in efficacy. Various papers in the literature otherwise favouring NovoSeven explicitly pointed out the huge cost impact this product was bringing about for anti-inhibitor treatment. There was no head-to-head comparison allowing a direct comparison of the two products in the same patients.

Ms Anna Debattista stated that the specifications for this product were based on the specific request by Dr Busuttil, who asked for an *'anti-inhibitor coagulant complex vapour heated, freeze dried, sterile human plasma fraction with factor VIII inhibitor by-passing activity, 500 IU ampoules, powder for injection.'*

With regard to the change in the recommendation of tender, from Charles de Giorgio Ltd, acting on behalf of Novo Nordisk, to Drugsales Limited, representing the interests of Baxter Biosciences (Austria), Ms Debattista said that it was the Adjudication Board's official report of the 9 April 2003 which recommended the acceptance of Drugsales' offer that was binding and not the one mentioned by Mr Stellini because this was crossed out. However, Mr Stellini claimed that he had viewed the report in which the award of contract had originally recommended Novo Nordisk's bid. When his attention was drawn to the fact that it was not normal practice for people to be allowed to view such files, Mr Stellini changed his version and stated that in actual fact the official concerned had read out what was written in the file.

In view of the seriousness of the matter, the Board decided to call Mr Joseph Meli (Contracts Department) to enlighten all present about the proper procedure and to verify whether Mr Stellini was allowed to view the whole file.

Mr Meli declared that in principle they did not disclose any information from files to anyone except when there was mutual agreement among interested parties. Moreover, he confirmed that, in general, the practice was that an official was not allowed to read out anything from file to anyone. He contended that it would be highly unusual for recommendations relating to the award of tenders to be read out to any person or for actual viewing of documentation to be permitted.

Ms Debattista reiterated that the Adjudication's Board's report of the 9th April 2003, which recommended the award of contract to Messrs Drugsales Limited, had deemed the latter's offer to be the cheapest. Subsequently, Messrs Charles de Giorgio Ltd lodged a complaint in which they maintained that their offer was cheaper. She admitted that this was quite a complicated and technical tender and so they had to be very careful as to how the basis of the cheapest offer was to be worked out. She decided to refer the matter to Dr Busuttil to explain how the offers were evaluated. The procedure followed by the Health Department in the award of contracts was that they first established which was the cheapest bid and then determined whether they were according to specifications.

Ms Debattista claimed that, after the appeal, when they analysed and worked again the schedule of prices, it resulted that after taking into account the number of vials required per bleeding episode, Drugsales' product was found to be more expensive However, Novo Nordisk's product was not according to specifications because they offered a recombinant factor VII and not Factor VIII inhibitor by-passing activity complex.

Dr Busuttil stated that there was no consensus regarding the optimal treatment of acute bleeding in patients with inhibitors. The general trend for adults treated in UK hospitals was to use aPCCs first line and to resort to rVII in patients not responding in first line treatment.

He said that both products were found to be effective in up to 90% of all haemorrhages in non-randomised studies. He stated that no direct head-to-head comparisons had ever been made between the two products. A cost effectiveness analysis was also planned and so it was premature to state whether one product was more cost effective than the other.

Dr Busuttil concluded by saying that this tender was issued for one particular haemophiliac patient with inhibitors who needed home treatment. For various medical reasons pertinent to the individualised care of this patient, it was advisable to use the agent with the longest half-life.

In its consideration of the evidence given as well as issues and arguments brought to the fore during the public hearing besides relevant documentation made available to this Board, the latter noted particular matters as well as reaching the following conclusions, viz:

- Complainant based the appeal on cost assumptions and not on compliance with specifications;

- When recommending the award of the tender to Drugsales Limited., neither the Adjudication Board nor the General Contracts Committee made any reference to the aspect of compliance with the specifications. This emerges clearly from the text of the (a) adjudication report dated 09/04/2003 and (b) the file minute registering the respective decision of the General Contracts Committee.

- During the public hearing proceedings, Messrs Charles De Giorgio Ltd had no indication that compliance with specifications was also a determining factor, the reason being that the evaluation criteria and sequence applied by the Adjudication Board were such that the primary consideration was given to lowest price and the second concern was compliance with the specifications. The Adjudication Board proceeded by first calculating the total cost of each offer and, on the basis of their assumed dosage requirements / projection, which they later found to be incorrect, concluded that Drugsales' bid was the cheapest. The Adjudication Board then checked whether this offer was compliant with specifications and on confirming that it was proceeded with recommending the award to Drugsales Limited.

  Had the Adjudication Board given more priority consideration to the compliance aspect, they would have immediately noticed that Messrs De Giorgio's bid was not compliant and therefore not eligible for further consideration. The Adjudicating Board would then have been left with only one bid to examine and, in such a situation, the price issue would be irrelevant once the compliance of the product was confirmed. The adjudicating process was flawed as a result of the procedure adopted. The present method of adjudicating bids, as applied by the Government Pharmaceutical Services, calls for serious review to ensure more thoroughness and also the application of proper *prioritisation criteria* in the evaluation of offers.

- As a general rule, it is extremely important that both the report of the adjudicating body as well as the final recommendation to award any tender, should include clear and unequivocal statements regarding the extent of compliance of the bid under consideration.

- From evidence given by Dr Busuttil and Ms Debattista it transpired that the product to be procured through the tender under consideration was patient-specific (i.e., required for one particular patient).

  It resulted also that the product sought through this tendering procedure may be supplied by only two known suppliers. It therefore appears that, in this particular case, recourse to "selective tendering" would have been more appropriate than "open tendering".

- The product offered by Messrs Drugsales Limited was fully compliant with the published specifications and, being the only other offer for consideration, merited the award of the tender not on price considerations but rather on compliance merits.

Following further deliberation of the issues mentioned, this Board finds in favour of the Adjudication Board's decision confirming award of tender to Messrs Drugsales.

Furthermore, the Board strongly recommends that the present method of adjudicating bids, as applied by the Government Pharmaceutical Services, be seriously reviewed to ensure more thoroughness and also the application of proper *prioritisation criteria* in the evaluation of offers.

Alfred Triganza	**Edwin Muscat**	**Maurice Caruana**
Chairman	Member	Member

29th March, 2004