UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Director
Bureau of Competition

MAY 5 2010

Michael McFalls, Esq.
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113

Re: King-Arrow (Altace); FTC File No. 061-0192

Dear Mr. McFalls:

The Federal Trade Commission's Bureau of Competition has conducted a non-public investigation to determine whether, your client, King Pharmaceuticals, Inc., and Arrow International, Ltd. engaged in, or are engaging in, unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, by agreeing not to compete in the United States market for ramipril capsules.

Commission staff considered whether the agreements entered into by King and Arrow on February 12, 2006 and February 27, 2006 ("King-Arrow agreements"), would delay competition for King's high blood pressure medication, Altace, until King could switch patients to a new tablet formulation. Staff determined the agreements did not adversely affect competition because changing market conditions prevented King from switching consumers to its new formulation prior to generic entry. However, it would have raised serious antitrust concerns had the King-Arrow agreements been implemented as we believe they were planned, and had thereby succeeded in quickly moving the market to King's tablet formulation.

The decision to close this investigation should not be taken as a rejection of the theory that switch strategies may, in certain factual situations, violate either the Sherman Act or the Federal Trade Commission Act. The Bureau of Competition intends to continue investigating "switch strategies" and will recommend enforcement actions where it is in the public interest. Switch strategies can harm consumers significantly by depriving them of the benefits of competition from generics.[1] Converting the market to a revised formulation of the branded product – for example, a tablet instead of a capsule – has the potential to destroy the market for a generic version of the original formulation. Even if the two formulations are therapeutically

[1] *See Abbott Labs. v. Teva Pharms. USA, Inc.*, 432 F. Supp. 2d 408 (D. Del 2006).

similar, the FDA may not consider the generic to be AB-rated to the new formulation. As a result, laws allowing pharmacists to substitute lower cost generics for branded products would not apply, and the benefits of generic entry will be dramatically reduced.

We are mindful that the introduction of a new formulation can also be beneficial to consumers if it is a real improvement over an older formulation. Thus, investigations involving new product introductions are necessarily fact-specific and focus on the ultimate effect on consumers.

Upon further review of this matter, it now appears that no additional action is warranted by the Commission at this time. Accordingly, pursuant to authority delegated by the Commission, 49 Fed. Reg. 6171 (1984), the investigation has been closed. This action is not to be construed as a determination that a violation may not have occurred, just as the pendency of an investigation should not be construed as a determination that a violation has occurred. The Commission reserves the right to take such further action as the public interest may require.

Sincerely,

Richard A. Feinstein
Director