



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

MAY 5 2010

Office of the Director  
Bureau of Competition

Fiona Schaeffer, Esq.  
Weil, Gotshal & Manges L.L.P.  
767 Fifth Avenue  
New York, New York 10153

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

Dear Ms. Schaeffer:

The Federal Trade Commission's Bureau of Competition has conducted a non-public investigation to determine whether, your client, Arrow International, Ltd. (which was recently acquired by Watson Pharmaceuticals, Inc.), and King Pharmaceuticals, Inc. 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.<sup>1</sup> 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

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<sup>1</sup>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,

A handwritten signature in black ink, appearing to read "Richard A. Feinstein". The signature is fluid and cursive, with the first name "Richard" being more prominent.

Richard A. Feinstein  
Director