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Reference: 67421/2

July 16, 2004

VIA FACSIMILE

Larry Séguin,
Deputy Registrar
Competition Tribunal
Thomas D'Arcy McGee Building
90 Sparks Street, Suite 600
Ottawa, ON K1P 5B4



Dear Mr. Séguin:

**Re: Wyeth Canada ats Broadview Pharmacy
Court File No. CT-2004-005**

On May 26, 2004, Broadview Pharmacy served Wyeth Canada with its application for leave to bring an application against Wyeth Canada under section 75 of the *Competition Act*. On June 10, 2004, Wyeth Canada served and filed responding materials pursuant to section 103.1(6) of the *Act*. In its written representations, Wyeth Canada argued that Broadview Pharmacy had failed to satisfy the section 103.1 test for leave, and that the Tribunal should therefore refuse to grant Broadview Pharmacy leave to make an application in this matter. In its prayer for relief, Wyeth Canada also requested that an oral hearing be held in this matter.

By this letter, Wyeth Canada seeks to renew and clarify its request that an oral hearing be held prior to the determination of this matter. Wyeth Canada makes this request for an oral hearing on the basis that:

- (i) access to the Tribunal by private litigants through the section 103.1 leave application process is still in a nascent stage, and the full extent of the Tribunal's important gatekeeping role in such matters has yet to be fully addressed by the Tribunal, and
- (ii) the Tribunal's decision in *Barcode Systems Inc. v. Symbol Technologies Canada ULC*, [2004] C.C.T.D. No.1, which was followed in *Allan Morgan and Sons Ltd. v. La-Z-Boy Canada Ltd.*, [2004] C.C.T.D. No. 4, contradicts the two-part test for leave originally set out by the Tribunal in *National Capital News v. Canada (Speaker, House of Commons)* [2002] C.C.T.D. No. 4. Whereas in *National Capital News*, the Tribunal held that an applicant is required to establish

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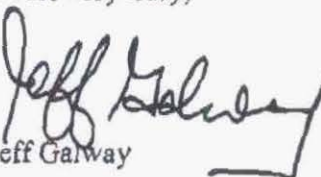
Page 2

reasonable grounds to believe that a section 75 order could issue on the matter, the latter cases suggest that an applicant need not provide any evidence that competition could be adversely affected, even though such effect is necessary for a section 75 order to issue.

In light of the uncertainty that exists with respect to the appropriate standard to be met in connection with the s.103.1 leave process, and the Tribunal's role in that process, Wyeth Canada hereby requests an oral hearing to permit full argument in connection with these issues.

Thank you for your consideration of this matter.

Yours very truly,



Jeff Galway

JWGA:jv

c: D.H. Jack / Mark Adilman, counsel for Broadview Pharmacy
Neil Finkelstein
Rob Kwinter

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MESSAGE:

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(please specify)

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