

COMPETITION TRIBUNAL

OTTAWA, ONT.

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IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, and the *Competition Tribunal Rules*, SOR/2008-141;

AND IN THE MATTER OF certain contracting practices of Isologic Innovative Radiopharmaceuticals Ltd.;

AND IN THE MATTER OF the filing and registration of a consent agreement pursuant to sections 79 and 105 of the *Competition Act*.

B E T W E E N :

THE COMMISSIONER OF COMPETITION

Applicant

– and –

ISOLOGIC INNOVATIVE RADIOPHARMACEUTICALS LTD.

Respondent

CONSENT AGREEMENT

RECITALS:

A. The Commissioner of Competition has concluded that certain contracting practices of Isologic Innovative Radiopharmaceuticals Ltd. with certain of its customers constitute an abuse of Isologic’s dominant position in the supply of radiopharmaceuticals used for the purpose of single photon emission computed tomography in Canada.

B. Isologic does not admit to any wrongdoing, whatsoever, including but not limited to that it has not abused its dominant position or violated any of the reviewable practices or other provisions of the *Competition Act*, but solely for purposes of this Agreement, including execution, registration, enforcement, variation or rescission, it will not contest the Commissioner’s conclusions that (i) the impugned contracting practices constitute an abuse of Isologic’s dominant position in the supply of SPECT Radiopharmaceuticals in

Canada; and (ii) the implementation of this Agreement is necessary to eliminate any substantial lessening or prevention of competition from these contracting practices.

THEREFORE Isologic and the Commissioner agree as follows:

I. DEFINITIONS

[1] Whenever used in this Agreement, the following words and terms have the meanings set out below:

- (a) **“Act”** means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
- (b) **“Affiliate”** has the meaning given to it in subsection 2(2) of the Act;
- (c) **“Agreement”** means this Consent Agreement, including the schedules hereto, and references to a “Part”, “Section”, “Paragraph” or “Schedule” are, unless otherwise indicated, references to a part, section, paragraph or schedule of or to this Agreement;
- (d) **“Business Day”** means a day on which the Competition Bureau’s Gatineau, Quebec office is open for business;
- (e) **“Commissioner”** means the Commissioner of Competition appointed under the Act and includes the Commissioner’s authorized representatives;
- (f) **“Customer”** means any purchaser of Products from Isologic;
- (g) **“Isologic”** means Isologic Innovative Radiopharmaceuticals Ltd. and its Affiliates and their directors, officers, employees, agents, representatives, successors and assigns;
- (h) **“Notifiable Transactions Regulations”** means the *Notifiable Transactions Regulations*, SOR/87-348, as amended;
- (i) **“Product”** means a SPECT Radiopharmaceutical product or service and **“Products”** means any grouping of such products or services;
- (j) **“Provincial Government Authority”** means a Customer that purchases on behalf of the government of a province or territory in Canada;
- (k) **“Records”** means records within the meaning of subsection 2(1) of the Act;
- (l) **“Shared Services Organization”** means a Customer that purchases on behalf of one or more hospitals;
- (m) **“SPECT Radiopharmaceuticals”** means radiopharmaceuticals used for the purpose of single photon emission computed tomography; and,

- (n) **“Tribunal”** means the Competition Tribunal established by the *Competition Tribunal Act*, R.S.C. 1985, c.19 (2nd Supp.).

II. DURATION

- [2] This Agreement shall become effective on the date when it is registered, and shall remain in effect for 10 years;

III. OBLIGATIONS OF ISOLOGIC

- [3] Isologic shall not enter into any contract, or extend, renew or fail to prevent the automatic renewal of an existing contract, with a Customer that:

- (a) contains any term that requires or induces the Customer to purchase any Product(s) from Isologic on a sole or exclusive basis;
- (b) contains any term that requires that the Customer purchase a minimum quantity of any Product(s) from Isologic on the basis of a percentage of its total purchases of any Product; or,
- (c) for contracts longer than one (1) year in length, fails to contain any term(s) that provide the Customer with the ability to terminate the contract without penalty, provided that the termination is to take effect more than one (1) year after the contract was entered into and that the Customer provides Isologic with (i) ninety (90) days of notice in advance of the date termination is to take effect if the Customer’s contract does not require that it purchase a minimum quantity of any Product(s) from Isologic or that it must purchase a minimum quantity of less than 10 doses per Business Day from Isologic, or (ii) one (1) year of notice in advance of the date termination is to take effect for all other contracts.

- [4] Isologic shall not be prohibited from entering into or enforcing a contract that contains a term referenced in section 3 where such a contract is entered into as a consequence of a procurement process run by a Shared Services Organization or Provincial Government Authority. However, Isologic shall not induce such Shared Services Organization or Provincial Government Authority to purchase any Product(s) from Isologic on a sole or exclusive basis where such a term was not originally sought in the procurement process.

- [5] Isologic shall not refuse to supply any Customer, directly or indirectly, solely as a result of that Customer not purchasing one or more Product(s) from Isologic on a sole or exclusive basis. For greater certainty, this section does not require Isologic to supply any Customer on demand or without an existing contract.

IV. COMPLIANCE

- [6] Isologic shall notify the Commissioner at least 30 days prior to:

- (a) any proposed dissolution of Isologic; or,
 - (b) any other change in Isologic if such change may affect compliance obligations arising out of this Agreement including, but not limited to, a reorganization, material acquisition, disposition or transfer of assets, or any fundamental change for purposes of Isologic's incorporating statute.
- [7] For a period of two (2) years after the registration of this Agreement, Isologic shall not, without providing advance written notification to the Commissioner in the manner described in this Section, directly or indirectly:
- (a) acquire any assets or shares of, or any other interest in, any SPECT Radiopharmaceutical supply business in Canada; or,
 - (b) consummate any merger or other combination relating to the SPECT Radiopharmaceutical supply business in Canada.
- [8] If a transaction described in (a) or (b) is one for which notice is not required under section 114 of the Act, Isologic shall supply to the Commissioner the information described in section 16 of the Notifiable Transactions Regulations at least 30 days before completing such transaction (or such shorter period as the Commissioner may agree). Isologic shall certify such information in the same manner as would be required if section 118 of the Act applied. The Commissioner may accept a competitive impact brief from Isologic instead of such information. The Commissioner may, within thirty (30) days after receiving the information described in this Section, request that Isologic supply additional information that is relevant to the Commissioner's assessment of the transaction. In the event that the Commissioner issues such a request for additional information, Isologic shall supply information to the Commissioner in the form specified by the Commissioner and shall not complete such transaction until at least thirty (30) days (or such shorter period as the Commissioner may agree) after Isologic has supplied all such requested information in the form specified by the Commissioner.
- [9] For purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, Isologic shall, upon written request given at least five (5) Business Days in advance to Isologic, permit any authorized representative(s) of the Commissioner, without restraint or interference:
- (a) to access, during regular office hours of Isologic on any Business Day(s), all facilities and to inspect and copy all Records in the possession or control of Isologic related to compliance with this Agreement, which copying services shall be provided by Isologic at its expense; and,
 - (b) to interview such officers, directors or employees of Isologic as the Commissioner requests regarding such matters.

V. NOTICES

[10] A notice or other communication required or permitted to be given under this Agreement is valid if it is:

- (a) in writing and delivered by personal delivery, registered mail, courier service, facsimile or electronic mail; and,
- (b) addressed to the receiving party at the address(es) listed below, or to any other address designated by the receiving party in accordance with this Section.

if to the Commissioner:

Commissioner of Competition
Competition Bureau Canada
Place du Portage, 21st Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9

Attention: Commissioner of Competition
Fax: (819) 953-5013
Email address: ic.avisdefusionmergernotification.ic@canada.ca and
avisdefusionmergernotification@cb-bc.gc.ca

with a copy to:

Executive Director and Senior General Counsel
Competition Bureau Legal Services
Department of Justice
Place du Portage, 22nd Floor
50 Victoria Street, Phase I
Gatineau, Quebec K1A 0C9
Fax: (819) 953-9267
Email address: ic.cb_lsu_senior_general_counsel-
avocat_general_principal_usj_bc.ic@canada.ca and
cb_lsu_senior_general_counsel-avocat_general_principal_usj_bc@ised-
isde.gc.ca

if to Isologic:

André Gagnon
Isologic Innovative Radiopharmaceuticals Ltd.
11205 chemin de la côte-de-liesse
Dorval, Quebec H9P 1B1
Fax: (514) 636-3876
Email address: andre.gagnon@isologicradiopharm.ca

with a copy to:

Borden Ladner Gervais
Bay Adelaide Centre, East Tower
22 Adelaide St. W
Toronto, ON M5H 4E3
Fax: (416) 367-6749
Email address: DRothschild@blg.com

- [11] A notice or other communication under this Agreement is effective on the day that it is received by the receiving party and is deemed to have been received as follows:
- (a) if it is delivered in person, by registered mail or by courier, upon receipt as indicated by the date on the signed receipt;
 - (b) if it is delivered by facsimile, upon receipt as indicated by the time and date on the facsimile confirmation slip; or
 - (c) if it is delivered by electronic mail, when the recipient, by an email sent to the email address for the sender stated in this Section or by a notice delivered by another method in accordance with this Section, acknowledges having received that email, with an automatic “read receipt” not constituting acknowledgment of an email for purposes of this Section.

If a notice or other communication is received after 5:00 p.m. local time, or on a day that is not a Business Day, it shall be deemed to have been received on the next Business Day.

- [12] Notwithstanding Sections 10 and 11, a notice or other communication that is not communicated in accordance with Sections 10 and 11 is valid if a representative of the party to this Agreement that is the recipient of such communication confirms the receipt of such communication and does not, at the time of such confirmation, request that it be delivered differently.

VI. GENERAL

- [13] In this Agreement:
- (a) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.
 - (b) **Time Periods** – Computation of time periods shall be in accordance with section 108 of the Act.

- [14] The Commissioner shall file this Agreement with the Tribunal for registration in accordance with section 105 of the Act. Isologic hereby consents to such registration.
- [15] Nothing in this Agreement precludes Isologic or the Commissioner from bringing an application under section 106 of the Act. Isologic will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions that: (i) the impugned contracting practices constitute an abuse of Isologic's dominant position in the supply of SPECT Radiopharmaceuticals in Canada; and (ii) the implementation of this Agreement is necessary to eliminate any substantial lessening or prevention of competition from the contracting practices.
- [16] Isologic attorns to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement.
- [17] This Agreement, constitutes the entire agreement between the Commissioner and Isologic, and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral, with respect to the subject matter hereof.
- [18] This Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.
- [19] In the event of a dispute regarding compliance with or the interpretation, implementation or application of this Agreement, the Commissioner or Isologic may apply to the Tribunal for directions or an order. In the event of any discrepancy between the English language version of this Agreement and the French language version of this Agreement, the English language version of this Agreement shall prevail.
- [20] This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute one and the same Agreement.

The undersigned hereby agree to the filing of this Agreement with the Tribunal for registration.

DATED this 23rd day of March, 2023

COMMISSIONER OF COMPETITION

[Original signed by Jeanne Pratt]

Name: for: Matthew Boswell

Title: Commissioner of Competition

ISOLOGIC INNOVATIVE RADIOPHARMACEUTICALS LTD.

[Original signed by André Gagnon]

I/We have authority to bind the corporation

Name: André Gagnon

Title: President