European Haemophilia Consortium

Ms Sabine Jülicher
Head of Unit, Medicinal Products – Authorisations, European Medicines Agency
DG SANCO
European Commission

Brussels, 14 March 2014

RE: Concern regarding market exclusivity for longer-acting factor VIII and longer-acting factor IX concentrates

Dear Ms Jülicher,

On behalf of our pan-European and worldwide haemophilia patient and clinician constituents, we are writing in advance of the first longer-acting factor VIII and longer-acting factor IX concentrates expected to come to the market in North America this year and in Europe between 2015-2016.

We are aware that the EMA and the Commission are currently considering the "similarity" of these different products under the orphan drug designation that each of these products has received in Europe. As a result of this designation, and as the Commission is aware, the first product to receive market authorisation in Europe will also be entitled to receive ten-year market exclusivity, thereby barring market access to subsequent longer-acting products for the same therapeutic indication that are also considered to be "similar."

The European Haemophilia Consortium (EHC), the European Association for Haemophilia and Allied Disorders (EAHAD) and the World Federation of Hemophilia (WFH) hereby urgently communicate our joint position that these products are and should be considered to be non-similar due to the fact they contain different active substances.

Based on the Commission's interpretation of 'active substance' as having "*the same principal molecular structural feature and acting via the same mechanism*"[1] and further based on the Commission's interpretation of '*same mechanism of action' as meaning that both products share "the same pharmacological target and the same pharmacodynamic effect*,"[2] our joint position is that products based on PEGylation, Fc-fusion and albumin-fusion are non-similar due to the use of *different* pharmacological targets, and should therefore be considered by the EMA and by the Commission as being non-similar.

The broader position of the EHC, which is hereby endorsed and supported by EAHAD and the WFH, is well known and has been formally communicated both to the Commission and to the EMA. If the first of the several longer-acting products currently under development should receive ten-year market exclusivity:

1) The potential benefits from better products based on different mechanisms of action may never be realised in Europe;
2) Patients will be deprived of potentially better clinical options for their individual clinical needs;
3) There will be no competition and therefore higher prices – thereby potentially hindering or severely limiting patient access to these products in Europe; and
4) There will be no cascading effect on lowering prices for current treatment products or broadening market access into European countries where patients have limited or severely limited access to treatment products.

[1] EC Guideline on Article 8(1) and 8(3), Section 2, C (2008) 4077 final, emphasis ours
[2] EC Guideline on Article 8(1) and 8(3), Section 2.2, C (2009) 4077 final, emphasis ours

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The original and noble intention of the landmark orphan drug regulation was to ensure that patients with rare diseases finally gain access to treatment. The EHC, EAHAD and the WFH fully support the spirit and purpose of this regulation, which continues to stimulate investment into research and production of products for very rare diseases – including rare bleeding disorders such as factor V, factor X and factor XIII deficiencies – which to this day completely lack or have very limited access to factor-specific treatment products.

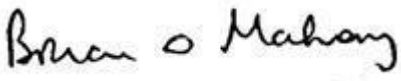
Haemophilia – while qualifying as an orphan disease based on prevalence and incidence alone – does not require market exclusivity to be profitable. Haemophilia A has a total of 40 plasma-derived and recombinant treatment products available worldwide (of which 22 are available in Europe) and haemophilia B has a total of 30 plasma-derived and recombinant treatment products available worldwide (of which 13 are available in Europe).

Further, haemophilia products are not covered by the spirit of the orphan drug legislation, which was elaborated specifically for *"…conditions [that] occur so infrequently that the cost of developing and bringing to the market a medicinal product to diagnose, prevent or treat the condition would not be recovered by the expected sales of the medicinal product; the pharmaceutical industry would be unwilling to develop the medicinal product under normal market conditions…"*[3] It should be noted that the current global market for haemophilia products is worth in excess of USD 7 billion and the market is expected to be worth USD 11 billion by 2016.[4]

Given the above-outlined context, granting market exclusivity to any new haemophilia treatment product would not only be an aberration of the spirit of the orphan drug regulation, but also would result in a gross misapplication of the legislation, set a dangerous precedent and gravely damage patients' rights to access.

On behalf of both patients and clinicians in Europe as well as internationally, we sincerely hope that you will give our joint position serious consideration and that it will inform your current deliberations in a meaningful and patient-centred manner.

With sincere regards,



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[3] Preamble 1, Regulation (EC) 141/2000
[4] http://uk.reuters.com/article/2014/03/07/us-hemophilia-idUKBREA260OT20140307