



Supreme Court of New Zealand

26 August 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

***Astrazeneca Ltd v Commerce Commission and Pharmaceutical
Management Agency***
(SC 91/2008 [2009] NZSC 92)

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Pursuant to section 98 of the Commerce Act 1986, the Commerce Commission issued a notice to AstraZeneca requiring it to supply specified information and documents relating to certain of its pharmaceutical products and some dealings with the Crown's drug funding agency, Pharmac.

The Supreme Court has unanimously found that this notice was invalid and has allowed AstraZeneca's appeal. The Court has held that AstraZeneca's conduct in negotiations with Pharmac regarding two pharmaceutical products (Betalog CR and Betalog IV) was within the exemption from Part 2 of the Commerce Act contained in s 53 of the New Zealand Public Health and Disability Act 2000. This exempts from the Commerce Act's prohibitions on

anti-competitive conduct anything done by a pharmaceutical company for the purpose of entering into an agreement with Pharmac. The Court has found that in seeking to tie supply of Betaloc IV to supply of Betaloc CR, AstraZeneca was endeavouring to obtain an agreement for supply of the latter drug, and so that action fell within the exemption. It should have been apparent to the Commerce Commission when it issued its notice that AstraZeneca was acting lawfully. Hence, the notice was beyond the powers of the Commission.

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