



Manvin
Mayell/NY/US/KSFHH
03/06/2007 01:09 PM
Phone: (212) 836-7031

To wdiaz@mwe.com
cc
Subject Re: Native Files

EXHIBIT C

See typo correction below in **Bold**.

Will,

Amgen's failure to produce its ASP, CCS and DDD data listed below, which is responsive to requests 70-72 and 74 of our document requests, in non-native format is a clear default of Judge Young's 29 order that this information be produced by February 28. At no time prior to the expiration of that deadline has Amgen told Roche that it would not be producing that information by that date in non-native format, or sought our consent to any extension of the Court's deadline. Any discussions that we have had about the exchange of information in native format did not mean that Amgen could ignore the Judge's directive to produce by February 28 in non-native format -- and we never made any such representation. Your "proposal" for the exchange of native information was only sent to us after the Court's deadline -- on Sunday, March 4, 2007 -- and contains a litany of requests for native file information that will take time for Roche to evaluate. Because the Amgen information that you list below is clearly responsive to our Requests 70-72, and 74, which Judge Young ordered produced "not necessarily in their native format although that would be helpful," by February 28, Amgen must produce his information immediately to Roche in some form. Amgen's failure to produce this information -- which has been requested by Roche since October -- is severely prejudicing Roche. Please confirm whether Amgen will produce this information in some form immediately; if you cannot, we will have to make an emergency motion to the Court for appropriate relief.

As to your proposal, I doubt that we will ultimately be able to agree to it. Off the bat, it seems that you are asking from us a lot more than you are offering, particularly as to pricing models and dose conversion models, which you do not offer to provide us. As I had offered earlier, Roche is willing to exchange immediately its Mircera projections model in native format for the Amgen data listed below in native format.

-- Manvin
wdiaz@mwe.com



wdiaz@mwe.com
03/06/2007 12:03 PM

To mmayell@kayescholer.com
cc
Subject Re: Native Files

Manvin,

Amgen is prepared to provide the models/data discussed below in native form provided Roche makes a reciprocal production. It has not yet produced these items.

Will

William Diaz | McDermott Will & Emery LLP | 18191 Von Karman Avenue, Suite 500, Irvine, California 92612-7108
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 | wdiaz@mwe.com

mmayell@kayeschol
er.com

03/06/2007 09:00
AM

wdiaz@mwe.com

To

cc

Subject

Re: Native Files

Will,

I did receive and am checking with the client. One question -- Amgen is producing, or has produced, the information listed below on the Amgen side (ASP Model, CCS data, and DDD data) as part of its production, correct. I'll get back to you on the proposal as soon as I can.

-- Manvin

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To

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Native Files

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Manvin,

I would like to close the loop on the native format software models and data we've discussed in the past few weeks. Provided below is a description of the models/data Amgen is willing to produce and a description of the models/data Amgen has requested Roche to produce.

Amgen is prepared to provide the following models/data in native form provided Roche makes a reciprocal production as outlined below:

ASP Model. The ASP Model is built in Excel, and has two purposes: (1) forecast quarterly ASP based on the best available information at Amgen; and (2) provide reimbursement-related scenarios in support of commercial strategies. Amgen is particularly concerned about the protections afforded to this model. In order to provide this model, Amgen would need Roche's assurance that it would not challenge a designation of "Highly Confidential" under the Protective Order, for the model itself. Amgen would not object to any reports derived from the ASP Model being treated as "Confidential Information," as described in the Protective Order. Furthermore, Amgen considers the ASP Model to be "trade secret" in accordance with the Protective Order. As such, Amgen needs Roche's assurance that it will provide Amgen with notice and an opportunity to obtain an order sealing information related to the ASP Model should Roche seek to introduce any data, output, or report derived from the ASP Model.

Contract and Chargeback System ("CCS") data. CCS is Amgen Sales & Marketing's primary transaction system responsible for the tactical implementation of commercial and government contracting strategic initiatives. CCS is the source system for customer contract and chargeback information. CCS supports Amgen business by processing direct, ex-factory, and external sales, customer-rep alignments, managed care profiles, payments and outcomes data, credit memo check ledgers,

checks and purchase credits, and chargeback invoices that generate contract terms, membership lists, bid awards, chargeback discrepancy reports, contract performance valuations, statement calculations, product pricing, product discounts, Medicaid rebate utilizations, rebate checks, purchase credits, credit memo requests, Medicaid rebate checks, and industrial funding fee checks. This data will be provided in form that can be manipulated in standard spreadsheet or with database software.

IMS Drug Distribution Data ("DDD"). DDD provides information on sales to customers from wholesalers and Amgen. The information detail includes monthly sales by product (vial size at NDC level) in dollars and number of boxes sold. A data tape from DDD of Amgen's sales comes on a weekly and monthly basis. The monthly tape contains sales information for the last 24 months, and it rolls over each month as a moving 24 month reporting schedule. This data will be provided in form that can be manipulated in standard spreadsheet or with database software.

Amgen requests that Roche produce the following data/models:

The models or tools used by Roche to project sales volume in units and/or revenue information for MIRCERA or any other ESA in their native, executable format (for example, Excel files with built-in algorithms, or standalone executables). To the extent that there are embedded formulas or algorithms, we also need to ability to understand the calculations taking place (for example, by viewing formulas in Excel, or by viewing electronic version of source code for executables). This production should include all linked, embedded, or referenced data files, assumptions, projections and outputs from the model or tool. To the extent there are existing instructions or manuals for the use of these tools, they, too, should be produced.

The models or tools used by Roche to calculate or project dose conversion from EPO to MIRCERA, or Darbepoetin to MIRCERA, for each dosing regimen in their native, executable format (for example, Excel files with built-in algorithms, or standalone executables). To the extent that there are embedded formulas or algorithms, we also need to ability to understand the calculations taking place (for example, by viewing formulas in Excel, or by viewing electronic version of source code for executables). This production should include all linked, embedded, or referenced data files, assumptions, projections and outputs from the model or tool. To the extent there are existing instructions or manuals for the use of these tools, they, too, should be produced.

The models or tools used by Roche to calculate or project prices (including WAC and ASP) and/or discounts and rebates for MIRCERA and/or any other ESA, including EPOGEN, PROCRT, and ARANESP, in their native, executable format (for example, Excel files with built-in algorithms, or standalone executables). To the extent that there are embedded formulas or algorithms, we also need to ability to understand the calculations taking place (for example, by viewing formulas in Excel, or by viewing electronic version of source code for executables). This production should include all linked, embedded, or referenced data files, assumptions, projections and outputs from the model or tool. To the extent there are existing instructions or manuals for the use of these tools, they, too, should be produced.

The models or tools used by Roche to calculate or project any effect of Medicare and/or private reimbursement on sales, prices, patient outcomes, or any other economic or clinical benefit of Medicare or private reimbursement for MIRCERA use. Including all Excel files with built-in algorithms, or standalone executables. To the extent that there are embedded formulas or algorithms, we also need to ability to understand the calculations taking place (for example, by viewing formulas in Excel, or by viewing electronic version of source code for executables). This production should include all linked, embedded, or referenced data files, assumptions, projections and outputs from the model or tool. To the extent there are existing instructions or manuals for the use of these tools, they, too, should be produced.

To the extent there are models or native files used to calculate dosing information (e.g., average dosing, dose distribution, and dose conversion, including formulas, calculations or information containing such formulas or calculation Roche makes or will make available to doctors regarding the switching from EPO or Aranesp to MIRCERA), these should also be produced in native electronic format (for example, XML or Excel files).

To the extent Roche has compiled or ordered DDD data or other such competitive intelligence, models, forecasts, tools, etc., those, too, should be produced in their native format.

Please let me know if this proposal is agreeable to Roche.

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