Medicines Australia
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COMPLAINT OUTCOME

1169 - EPCLUSA
Promotional Materials and Activities

DETERMINATIONS OF THE MEDICINES AUSTRALIA CODE OF CONDUCT AND APPEALS COMMITTEES

The administration of the Code is supervised by the Code of Conduct Committee. The Code of Conduct Committee has the power to make a determination as to a breach of the Code and impose sanctions. The right of appeal is available to both the Complainant and Subject Company. An appeal is heard by the Appeals Committee which has the power to confirm or overturn the decision and to amend or remove any sanctions.

The decisions of the Code of Conduct and Appeals Committees are relevant to the date of publication of the materials subject to complaint and approved Product Information (PI) at that time. A complaint is not deemed finalised until the Subject Company has advised Medicines Australia that they will not appeal the outcome of the Code of Conduct Committee decision (following circulation of the Code minutes) or, in the case of an appeal, the minutes of the Appeals Committee meeting have been provided to both parties.

This report is an extract of the minutes of the complaint heard by the Code Committee on 16 January 2023 and an extract of the minutes of the appeal heard by the Appeals Committee on 15 March 2023.

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Medicines Australia

COMPLAINT 1169 EPCLUSA Promotional Material and Activities

SUBJECT COMPANY	PRODUCT	COMPLAINANT
Gilead Sciences (Gilead)	EPCLUSA (ofosbuvir/velpatasvir)	AbbVie

COMPLAINT HAS 4 PARTS

1. EPCLUSA promotional materials containing the "*Defy Uncertainty*" headline and qualifying claim "Proven high cure rates in patients where uncertainties exist such as ongoing injecting drug use, adherence, liver disease severity or unstable housing"
   - "*Defy Uncertainty*" print/digital advertisement dated March 2022
   - "*Defy Uncertainty*" banner lightbox advertisement, observed in use at Drug and Alcohol Nurses of Australasia (DANA) forum in Canberra on 6 May 2022.

   AbbVie contends that the promotional headline "Defy Uncertainty" is an overreaching claim that asserts to healthcare professionals that EPCLUSA can completely overcome uncertainties in the management of hepatitis C. Additionally, it creates an impression to the reader that EPCLUSA can be prescribed without full consideration of important clinical issues associated with the management of chronic hepatitis C patients. AbbVie asserts that this claim cannot be sufficiently diminished by qualification, in any event is not substantiated by the cited references, nor can it be substantiated by any other current or future evidence. On this basis AbbVie asserts that the phrase is misleading.

   While resolution through intercompany dialogue had been reached on some aspects relevant to the "Defy Uncertainty" material, some were acted upon after the complaint was submitted to Medicines Australia. AbbVie remained of the view that the Committee should hear the complaint in its entirety.

2. EPCLUSA promotional symposium and associated presentation slides at the AVH2022 meeting (Symposium)

   AbbVie identified particular slides in the presentation which it considered to be misleading including slides "no one left behind: making cure a reality", slides "choosing the right DDA", slides identifying potential DDIs and a case study. AbbVie contended that the slides/presentation were misleading through undue emphasis, focusing on selected drug-drug interactions in a comparative manner that is unfair and unbalanced with AbbVie's MAVIRET.

3. Gilead In-field promotional messaging/activities regarding drug-drug interactions (DDIs) to healthcare professionals

   AbbVie provided the Committee with statements from healthcare professionals about representations made by Gilead's representatives, which it considered to be misleading. In particular, the statements related to, and provided a focus on, DDIs with fentanyl which AbbVie submitted were misleading and inaccurate.

4. The EPCLUSA materials, collectively, lead to confusion and uncertainty regarding the safety of AbbVie's MAVIRET, creating a misleading picture of the comparative safety with EPCLUSA, which has the potential to inappropriately influence prescribing, affect patient safety and impact the quality use of medicines

SECTIONS OF THE CODE (EDITION 19)

- **Overarching Principle 1** : All activities undertaken by Companies have the purpose of supporting the quality use of medicines.
- **Overarching Principle 3**: Companies are responsible providing current, accurate, balanced, and scientifically valid information products to support their use.
- **Overarching Principle 6**: Companies' interactions with all stakeholders are at all times professional, consistent with all legislative requirements, and appropriate to the information needs of the respective audience.
- **Overarching Principle 7**: Information relevant to prescribing, in particular product and safety information, are clearly communicated in all promotional materials. Promotional materials are designed by Companies to not only create awareness of Therapeutic Goods Administration (TGA) approved medicines, but to support proper assessment of their risks and benefits.
- **Section 1**: Requirements for promotional claims directed at healthcare professionals
- **Section 1.1**: Substantiating data

RESPONSE TO THE COMPLAINT

1. Since receiving details of the complaint, Gilead has withdrawn the materials and made a commitment not to use the same or substantially similar claims in future. Because of this, Gilead argued that the Committee should not deal with part (i) of the complaint "because it has been resolved" due to Gilead addressing AbbVie's demands as outlined in the Complaint. Whilst Gilead argued the Committee should not consider part (i), it also provided its response should the Committee choose to consider it.

   In summary, Gilead asserted that "Defy Uncertainty" is not a stand-alone claim, nor an absolute statement, rather, it should be read as equivalent to "challenge" or "resist" uncertainty. It is designed to carry the primary meaning that SVR12—HCV cure—can be achieved in a high percentage of cases using EPCLUSA in the referenced population. Gilead disagreed with AbbVie's assertion around the referencing of the claim, the design of the supporting study, and consistency with the body of evidence. Gilead also submitted that the claim must be read together with the disclaimer, and as such was not misleading and relied on the findings of the SIMPLIFY study in support of the claims.

2. Regarding part (ii) of the complaint, Gilead asserted that the Symposium was fair and balanced and supported quality use of medicines, and disagreed that any content was unbalanced, misleading, or disparaging of MAVIRET. Gilead defended its use of the Case Study in the presentation because it was done to highlight issues that arise where patients use other medications rather than leaving an inference (by omission) that MAVIRET played a part in the overdose incident portrayed in the case study.

3. Similarly, in relation to conversations with healthcare professionals in part (iii) of the complaint, Gilead considered that it has an important role in ensuring that factors relevant to patient safety are properly considered by healthcare professionals, and rejected any suggestion that it should not be proactively discussing MAVIRET's potential drug-drug interactions (DDIs) with respect to illicitly used drugs, illicit drugs, and antipsychotics.

4. Gilead otherwise denied that it had engaged in conduct that could, either with respect to individual promotional material or collectively, be considered to be misleading or inappropriate, in response to part (iv) of the complaint or generally.

CODE COMMITTEE DECISIONS

Complaint	Committee Decision
1. "Defy Uncertainty" headline claim, and "Proven high cure rates" qualifier (and claim). Overreaching claim which cannot not diminished by qualification and is not substantiated. Qualifier is not substantiated by cited references. **Multiple promotional materials*	Majority decision: Overarching Principle 1: Breach Overarching Principle 3: Breach Section 1: Breach Section 1.1: Breach
2. Misleading and unbalanced promotional material. Misleading and bias through comparison of DDIs, biased case study, and use of promotional slides with no substantiation. **Symposium "Ensuring a Cure for all"*	Majority decision: Overarching Principle 1: Breach Overarching Principle 3: Breach Overarching Principle 7: Breach Section 1: Breach
3. Misleading and unbalanced promotional activities. Undue emphasis and omission providing an unfair focus on Maviret's interaction with fentanyl. **Gilead in-field promotional activities*	Unanimous decision: Overarching Principle 1: No Breach Overarching Principle 3: No Breach Overarching Principle 6: No Breach Section 1: No Breach
4. Misleading and unbalanced promotional activities. The collective use of EPCLUSA promotional materials is misleading.	Unanimous decision: No separate breach of the Code.

SANCTIONS

The Committee unanimously agreed that the breaches were each classified as moderate, having regard to the potential impact this would have on the way a healthcare professional may prescribe the product. The Committee did not consider that there was likely to be patient safety concerns as a healthcare professional would need to consider any drug-drug interactions based on individual patients. The materials the subject of part (i) of the complaint were considered by the Committee to comprise a breach at the 'lower' end of the moderate category; and the materials the subject of part (ii) at the 'higher' end of the moderate category. In those circumstances the Committee to determined that two separate fines should be imposed, rather than one overarching fine.

Whilst welcoming Gilead's decision to cease use of the promotional material and associated claims subject to the complaint in part (i), the Committee noted this was not done until after the complaint was made to Medicines Australia. In those circumstances, the Committee considered by majority that a fine remained an appropriate sanction.

The Committee agreed via majority decision to impose the following sanctions:

- Cease using all materials found in breach (where they are still in circulation) and not use the claims in the same or similar format in future materials, related to part (i) to (ii) of the complaint.
- With respect to part (i) of the complaint: pay a fine of $100,000.
- With respect to part (ii) of the complaint:
  - pay a fine of $150,000.
  - Issue a corrective letter to healthcare professionals in attendance at the symposium, such letter to be reviewed and agreed by the Committee before being circulated. The corrective letter should identify the materials found to be of concern by the Committee. The Committee noted that the principle reason to issue such a letter is to clarify the drug-drug interactions.

APPEAL

Gilead appealed the findings of the Code Committee as follows:

1. In relation to the Advertisement material:
   - the finding that Principle 1 of the Code had been breached;
   - the finding that the breaches were “moderate”, rather than “minor”; and,
   - the quantum of the fine imposed.

2. In relation to the Symposium Material:
   - The finding that the material breached Principles 1,3 and 7 or Section 1 of the Code;
   - The quantum of the fine imposed;
   - The requirement to issue a corrective letter.

RESPONSE TO THE APPEAL

AbbVie did not appeal any findings of the Code Committee.
AbbVie argued in response to the appeal that the Code Committee’s original decisions should be upheld.
In relation to sanctions, the complainant made only limited submissions, and in both its written and oral submissions essentially took the position that setting sanctions was a matter for the Code or Appeals Committee.

APPEALS COMMITTEE DECISIONS

Appeals Committee Decision	Appeals Committee Sanction
1. In relation to the Advertisement material: • The Committee upheld the decision of the Code Committee, in relation to the finding that Principle 1 was breached. • The Committee upheld the decision of the Code Committee, in relation to the finding that the breach was moderate in nature. • The Committee chose to vary the fine imposed by the Code Committee	• Cease using all materials found in breach (where they are still in circulation) and not use the claims in the same or similar format in future materials. • Pay a fine of $75,000.
2. In relation to the Symposium material: • The Committee upheld the decision of the Code Committee, in relation to the finding that there was a breach of Principles 1,3,7 and Section 1. • The Committee upheld the decision of the Code Committee, in relation to the requirement to issue a corrective letter • The Committee chose to vary the fine imposed by the Code Committee	• Cease using all materials found in breach (where they are still in circulation) and not use the claims in the same or similar format in future materials. • Issue a corrective letter to attendees of the symposium, such letter to be reviewed and agreed by the Appeals Committee before being issued. • Pay a fine of $100,000.

It was determined that Medicines Australia will retain the appeal bond paid by Gilead because the Appeals Committee upheld the Code Committee’s decisions.

CONSIDERATION OF THE COMPLAINT by the CODE COMMITTEE

Complaint 1: Promotional materials that include the "Defy Uncertainty" headline claim, is an overreaching claim, is not sufficiently diminished by qualification, is not substantiated by the cited references, and is misleading. Further, the qualifier associated with this headline claim, is in and of itself a further claim that is not substantiated.

The Committee first considered Gilead's submission that it should not deal with part (i) of the complaint in circumstances where Gilead had completely addressed AbbVie's demands, withdrawn the advertisements and agreed not to use them in the future, such that Medicines Australia should not accept this part of the complaint.

The Committee noted that while Gilead had advised AbbVie on 19 December 2022 of its decision to withdraw materials that are the subject of this aspect of the complaint and also making the commitment not to use the same or substantially similar claims in future, this only occurred after the complaint was made to Medicines Australia.

The Committee determined that it should hear the complaint given that Gilead's actions occurred only after the complaint to Medicines Australia was made, and where AbbVie had not withdrawn the complaint. The Committee considered that the Code does not prohibit the Committee from considering a matter where one company wishes the Committee to adjudicate and another does not. Similarly, the Committee was of the opinion that withdrawal of controversial material does not always resolve a matter, and consideration should be given to the length of time the material was in circulation, the volume of the audience, and any impact that material may have had on prescribers, as well as the severity of the alleged non-compliance. In the circumstances, the Committee unanimously decided to adjudicate on this first part of the complaint.

The Committee then proceeded to consider the materials. The Committee noted that there was significant merit in a campaign to address vulnerable and marginalised populations.

Regarding the headline claim "defy uncertainty", some members held the view that the claim was overly bold and did not reflect a consideration that there would always be degrees of uncertainty, and that complexity and nuances with different patients would never overcome uncertainty. Committee members also noted that there always remains uncertainty with respect to patient adherence to a treatment regime, which may lead to lower efficacy.

In terms of the word "Defy", some but not all members of the Committee considered that the meaning was to "stand-up to" rather than "overcome". Other members of the Committee considered that healthcare professionals may interpret that term to mean "overcoming uncertainty".

The majority of the Committee considered that the term needed to be read with the qualifier. However, the majority considered that even when read with a qualifier the statement did have a significant capacity to mislead because of the inference that the medication was safer and/or more effective than others.

The Committee also noted the Qualifier "Proven high cure rates…" itself also requires a qualifier, and good practice dictates that a qualifier statement should adequately qualify the claim in question rather than require a qualifier of its own. The word "cure" was discussed, and whilst the word "cure" can be understood as "everyone can be treated", the assertion for healthcare professionals to "defy uncertainty" implies there remain uncertainties in the treatment for Hepatitis C, especially for those in the relevant patient population identified in the materials. Good clinical practice requires consideration of any uncertainties in forming a treatment decision for an individual patient.

Members are also to be reminded that qualifying statements should appear directly below or adjacent to the claim.

In terms of substantiation, the Committee considered that 'Defy Uncertainty' alongside its qualifier, was an overreaching claim which was not sufficiently substantiated by the SIMPLIFY study. Overall, the Committee formed a majority view that this claim, when read together with its qualifier, is misleading

CONSIDERATION OF THE COMPLAINT by the CODE COMMITTEE continued ...

Complaint 2: A presentation within Gilead's EPCLUSA Symposium presentation was misleading through undue emphasis and by omission, including undue focus on selected DDIs in a comparative manner is neither fair nor balanced, and a biased case study

The Committee noted this aspect of the complaint remained unresolved through intercompany dialogue. Committee members gave context to the Hep C treatments and patient population, asserting it was reasonable to consider drug-drug interactions and it would feature in many complex patient cases. Furthermore, highlighting the University of Liverpool HEP Drug Interactions Checker was commendable and the Committee notes this website is the appropriate source of current information regarding potential DDIs in this setting.

However, members of the Committee raised concerns with four components of the symposium. Related to this, the Committee considered that the symposium was of a promotional nature, when considered in light of the evidence as a whole (including other promotional material used by Gilead at the symposium).

First, concerns were raised about the statement at the start of one presentation entitled "no one left behind: making cure a reality". The Committee considered this statement to be misleading, and not supported by the evidence. Some Committee members considered this statement to be of greater concern than the "defy uncertainty" claim considered in part (i). **The Committee's majority view was that these statements were misleading, including when considered in context with the entirety of the presentation.**

Secondly, concerns were raised that the comparison with a direct competitor product (Slides #7 and #8) suggested a possible bias, compounded by the fact that all other products approved for this indication contain a medication with potential DDIs. Whilst using results from the Checker was reasonable, engineering the data in the way that it was presented on the slides (with prominent green and red symbols evoking a traffic-light approach) and the selection of interactions presented suggested a biased approach. This was compounded by the inclusion of non-antipsychotics in the slides titled as such which, whilst accepted as an error by Gilead, was indicative of a possible strategy to overstate the superiority of the Gilead product when compared with the AbbVie product. **The Committee's unanimous view was that the way in which the drug-drug interaction comparison information was unfair and misleading.** That said, the Committee emphasised the importance of communicating drug-drug interactions and considered that so long as those communications were in line with the Quality Use of Medicines, it was entirely reasonable to highlight this issue.

Thirdly, the Committee considered the statement in one presentation "ensuring a cure for all". A majority of the Committee considered that his statement pushed the boundaries of what was acceptable given the overall content of the presentation, and the supporting materials. The statement was considered to suggest a 100% cure rate, when the substantiating data did not support such a claim. Some Committee members considered this statement to be of greater concern than the "defy uncertainty" claim considered in part (i). **The Committee's majority view was that these statements were misleading, including when considered in context with the entirety of the presentation.**

Fourthly, the Committee considered the "case study" used in one presentation. The Committee accepted that companies will select and use case studies to educate, and in tandem to highlight the positive attributes of their product, and this in itself is not a Code breach. The Committee viewed this case study to be doing just that.

However in response to whether the case study created bias against MAVIRET, views were shared that there were aspects of the presentation that did contribute to an overall impression of bias against MAVIRET. For example, the presenter states "*He was in intensive care for five days because he had an episode of psychosis and he decided to take some of his quetiapine, which, you will gather from the previous slides, is contraindicated with the meds that I put him on...*" Whilst not explicit, the comment implies that MAVIRET could have been the primary reason for the ICU admission, rather than the investigation of an overdose of quetiapine. Further, the title slide was "choosing the right DDA" which suggested a choice between the two approved products. **The Committee's majority view is that the case study was unfair and misleading.**

CONSIDERATION OF THE COMPLAINT by the CODE COMMITTEE continued ...

Complaint 3: Gilead messaging within the field is misleading through undue emphasis and by omission, including reducing confidence in MAVIRET by disparaging biased drug-drug interactions and surrounding commentary.

The Committee commended Medicines Australia for extending the services of an Independent Facilitator to verify statements made by healthcare professionals, as it provided an additional layer of assurance to the Committee. The Committee also considered that it was appropriate that company representatives discuss drug-drug interactions with healthcare professionals. Some Committee members expressed the expectation that a representative should understand and be able to communicate points of differentiation between their product and others.

Whilst the Committee accepted that the healthcare professional statements had been "verified" by the independent facilitator, in the sense that they were an accurate reflection of what each healthcare professional in fact said, the Committee considered that there were significant limitations in it adjudicating this issue where the Committee did not have complete or detailed information on the context and nature of the purported interactions. The Committee also noted that only one of the three healthcare professional statements provided was made after Gilead addressed AbbVie's concerns by way of a communication to its representative staff about how they should engage with healthcare professionals.

The Committee formed the view that drug-drug interactions should be discussed with Healthcare Professionals appropriately, sensitively, properly and fairly. It is incumbent on all companies to not misrepresent any drug-drug interactions in all company communications. Care should be taken that communication is not limited to words but also to inference; and that should be accurate and balanced, and not misleading.

In the above circumstances the Committee considered that it was not able to form a view, on the balance of probabilities, that the statements made were misleading and/or contrary to provisions in the Code. **The Committee made a unanimous decision that there was no breach of the Code**.

However, the Committee invites Gilead to re-iterate the cautionary message to its representatives to assist to ensure that future interactions with healthcare professionals are conducted in an appropriate manner.

Complaint 4: Misleading and unbalanced promotional activities.

The Committee also considered AbbVie's assertion that Gilead's promotional materials and activities (via the Presentation and the Messaging) are misleading collectively with the overall effect of creating confusion and concern and having the cumulative effect of creating uncertainty around the use of MAVIRET as a treatment option for hepatitis C whilst implying that EPCLUSA can 'defy uncertainty'.

The Committee made a unanimous decision that there was no separate breach of the Code in respect of the materials as a whole however reiterated its findings with respect to the specific promotional materials found to be in breach above.

CONSIDERATION OF THE APPEAL by the APPEALS COMMITTEE

The Appeals Committee considered the oral submissions and the material provided by the parties in their entirety. The Appeals Committee was greatly assisted by the detailed oral submissions made by representatives of each of the parties. Limited summaries of submissions and submitted material have been included in this Complaint Outcome Report for the assistance of readers and should not be regarded as comprehensive.

The Appeal Process

Section 16.6 provides that an appeal is a rehearing of the original complaint and that the Appeals Committee may affirm, set aside, or vary findings and/or sanctions of the Code Committee, provided that the Appeals Committee is "persuaded that the findings of the Code Committee, or the sanction imposed by it, involved an error on the basis of which they should be set aside or varied".

The Appeals Committee took the view that (put in general terms) it ought to exercise its power in relation to each matter that was the subject of appeal as follows:

- for the purpose of correcting any factual, legal (for example, as to the application of the Code), or discretionary error (for example, as to sanctions) that the Appeals Committee might identify in the original decision;
- by having regard to the evidence that was available to the Code Committee and, only if it was appropriate to do so, to new evidence available at the time of the appeal; and,
- on the basis of its own assessment of all of the evidence material in consideration.

The Appeals Committee also took the view that any consensus taken by the Committee is a Committee decision, and communicating whether that decision was made by majority or unanimously does not necessarily serve the appeals process, and will not be communicated to the parties, in the Reasons, or in any other manner.

The Appeals Committee noted that, if there was any new evidence material in the appeal materials provided by the parties it was limited in extent (for example, some screenshots from the "Liverpool checker" for DDIs were included in the appeal materials). During their oral submissions, each of the parties was asked whether there was any objection to Appeals Committee members exploring the "Liverpool checker" in the context of deliberations and each party expressed a view that it would be acceptable for this to occur.

Intercompany Dialogue

In the present matter, the Appeals Committee was satisfied that both of the parties appeared to have engaged in intercompany dialogue genuinely and in good faith, and that the subject matter of the ultimate complaint was broadly consistent with the subject matter of the intercompany dialogue. It is generally not practically possible for the Code Committee or Appeals Committee to consider intercompany dialogue in fine detail, and the Appeals Committee took the view that it would generally not be of great utility to attempt to do so.

The Appeals Committee noted it is the nature of intercompany dialogue that it may deal with certain issues that arise from promotional material, and that each party may make genuine and reasonable efforts to resolve their dispute, but that the dialogue may nevertheless culminate in disagreement before every minute aspect that may be of concern has been addressed.

The Appeals Committee also noted that the withdrawal of material by a subject company after a complaint has been made (or some other significant concession) will not generally mean that a relevant aspect of a complaint must be withdrawn by a complainant or rejected for consideration by the Code Committee or Appeals Committee. Such conduct may however be of relevance to sanctions where a breach is found.

The Appeals Committee noted that Gilead had made meaningful concessions during the intercompany dialogue and had withdrawn material when the complaint was made and took the view that the importance of this conduct was in relation to the determination of sanctions rather than any determination of breach and scale of breach.

CONSIDERATION OF THE APPEAL by the APPEALS COMMITTEE continued...

1. The Advertisement Material

The Advertisement Material was communicated through multiple promotional material formats (the print/digital advertisements and a lightbox banner advertisement), with textual elements as follows:

- There was a headline, "*Defy Uncertainty**";
- There was a qualifying statement in smaller text, "**Proven high cure rates in HCV patients where uncertainties exist such as ongoing injecting drug use, adherence, liver disease severity or unstable housing*";
- Still smaller text linked the claims to the SIMPLIFY study and stated that the meaning of "cure" was "*HCV RNA level of less than 15IU/ml at 12 weeks after the cessation of treatment (SVR12)*".

Gilead noted that the Advertisement Material was not comparative material (i.e. it did not promote the prescribing of Epclusa rather than Maviret) and argued that "*encouraging HCPs to take on the uncertainties that exist with the remaining hepatitis C patients and engage in treatment in that complex environment*" was plainly Gilead's purpose.

The Appeals Committee accepted that the purpose behind the Advertising Material might well have included this purpose, and accepted that the Advertising Material was not on its face comparative. However, this was not a sufficient basis to dispose of this aspect of the complaint or appeal.

Although the breaches of Principle 3 and Sections 1 and 1.1 of the Code were not the subject of the Appeal, the Appeals Committee considered it appropriate to give them consideration as they were, in the Appeals Committee's view, relevant to its consideration of the alleged breach of Principle 1. Therefore the Appeals Committee was satisfied that the representations "Defy Uncertainty" and "proven high cure rates in HCV patients where uncertainties exist ..." had to be considered together.

The Appeals Committee formed its own view in relation to the Advertising Material. The Appeals Committee was satisfied that the representations taken as a whole, in context, would convey to a reasonable member of that audience that Epclusa would have a high cure rate in HCV patients presenting to prescribers notwithstanding uncertainty as to the individual characteristics, circumstances, and needs of those patients. In forming this view the Appeals Committee noted that the list of "uncertainties" was, because of the words "such as" not limited in scope.

The Appeals Committee undertook this consideration of the Advertisement Material not in order to revisit the Code Committee's findings of breaches of Principle 3 or Sections 1 and 1.1 of the Code, as these were not the subject of the appeal.

The findings in relation to the Advertising Material

The Appeals Committee formed the view that, given that the Advertising Material was misleading, it simply could not be regarded as consistent with a "purpose of supporting the quality use of medicines"(Principle 1 of the Code).

The Appeals Committee did not form a view as to whether the appellant had, subjectively, any purpose that was contrary to the quality use of medicines. Rather, the Appeals Committee found that, viewed objectively and on its face, the Advertising Material itself was misleading and therefore inconsistent with such a purpose.

On this basis, the Appeals Committee was satisfied that the Advertising Material breached Principle 1 of the Code and upheld this aspect of the decision of the Code Committee. In relation to sanctions, see page 14.

2. The Symposium Material

Gilead made a number of distinct arguments against the findings of the Code Committee in relation to the Symposium Material. In brief terms, these were that:

- The Code Committee had made errors of fact;
- The Code Committee had considered matters that were not part of the complaint;
- The Code Committee's reasons placed "undue emphasis on the title of the Symposium and Presentations";

CONSIDERATION OF THE APPEAL by the APPEALS COMMITTEE continued...

- The Code Committee's reasons "rely on drawing an inference about the role of MAVIRET in the case study that should not be drawn";
- The Code Committee's reasons "impose too high a bar on pharmaceutical company control of the oral presentation by HCP speakers of their experience and their opinions".

Gilead also made submissions in relation to sanctions; as to these, see below.

Gilead's asserted errors of fact

Gilead asserted that the Code Committee had made errors of fact, citing a reference in the Code Committee's reasons to the slides used at the Symposium involving "engineering [of] the data" and then to "prominent green and red symbols evoking a traffic-light approach". The full passage in the reasons was: "*Whilst using results from the Checker was reasonable, engineering the data in the way that it was presented on the slides (with prominent green and red symbols evoking a traffic-light approach) and the selection of interactions presented suggested a biased approach.*"

It was clear from the material before the Appeals Committee that the "green and red symbols evoking a traffic-light approach" were ordinary parts of the output of the "Liverpool checker" for DDIs and their inclusion in the slides did not constitute "engineering" of data by Gilead.

However, it was not clear to the Appeals Committee that the Code Committee had intended to convey that the "traffic light" symbols themselves constituted any engineering of data. The Appeals Committee inclined to a view that the "engineering" referred to in the reasons was the particular "selection of interactions presented". The apparent emphasis on the "traffic light" symbols could, it seemed to the Appeals Committee, have been unintentional. Ultimately, the Appeals Committee did not consider it appropriate to determine conclusively whether the Code Committee had (or had not) made an error of fact in this regard.

The Appeals Committee accepted that the presentation slides that included screenshots from the "Liverpool checker" were, broadly speaking, accurate representations of output that could be generated by using the "checker". However, the Appeals Committee was satisfied that the slides were nevertheless misleading, for several reasons:

- the generation of the output used in the slides was a result of manual selection, and the Appeals Committee found that the selection of DDIs that were utilised in the slides gave a misleading impression as to the degree of difference between Maviret and Epclusa as far as DDIs are concerned;
- the "traffic light" aspect of the "Liverpool checker" output, while entirely appropriate in the context of a clinical consultation with an individual patient, was not appropriate as used in the presentation. The Appeals Committee found that, as presented, the "traffic light" information suggested that there was a comparable evidentiary underpinning for each "red" interaction, each "green" one, and each "amber" one. In fact, it is not the case that there is a similar level of evidence for each interaction (or non-interaction) and the "checker" is most properly used as a prompt for a clinician to investigate further. In some instances (for example), all that may be required to deal with an interaction flagged by the "checker" is a dose modification.

The Appeals Committee was also satisfied that the strong emphasis on DDI as a basis for comparison was misleading, noting that other important comparative information such as treatment duration (which might have a significant impact on compliance, among other things) was not given sufficient emphasis.

Overall, the Committee formed its own view in relation to this aspect of the Symposium Material and was satisfied that it did indeed breach the Code.

Gilead's asserted consideration of matters that were not part of the complaint

Gilead asserted that in making its decision, the Code Committee considered matters that were not part of the complaint. Gilead cited words from the original complaint, namely:
"*The Symposium featured three presentations (as per the agenda, Appendix I, Section 2a). The last presentation of the Symposium, titled "Ensuring a Cure for All" (Presentation), included comparative slides relating to EPCLUSA and*

MAVIRET DDIs and a MAVIRET case study, which are the subject of this complaint. While AbbVie agrees that there was educational value within aspects of the Symposium, the section that focused on hepatitis C treatment was not appropriately balanced, was misleading, and did not support the quality use of medicines."

Gilead then cited words from the Code Committee's reasons, namely:
"AbbVie identified particular slides in the presentation which it considered to be misleading including slides "no one left behind: making cure a reality", slides "choosing the right DAA", slides identifying potential DDIs and a case study. AbbVie contended that the slides/presentation were misleading through undue emphasis, focusing on selected drug-drug interactions in a comparative manner that is unfair and unbalanced with AbbVie's MAVIRET."

Gilead also noted that one slide (the "no one left behind" slide) considered by the Code Committee was not part of the "last presentation" that the complaint was directed at.

The Appeals Committee did not accept that the original complaint could properly be confined in the way that the Gilead sought. The Appeals Committee was satisfied that the Symposium Material could only be considered both in its entirety, and in its context. That is, the meaning of any particular presentation slide or spoken words could only be assessed in the context of the wider symposium including titles, headings, and other content.

The Appeals Committee was in any event satisfied that the proper scope of the complaint was captured in the following passage from the complaint: *"While [the complainant] agrees that there was educational value within aspects of the Symposium, the section that focused on hepatitis C treatment was not appropriately balanced, was misleading, and did not support the quality use of medicines."*

*T*he Appeals Committee was satisfied that the complaint should not be confined in scope to any particular slides or phrases, even if, inevitably, AbbVie had focused on particular aspects of the material in drafting their complaint.

<u>Gilead asserted there was "undue emphasis on the title of the Symposium and Presentations";</u>
For the reasons noted above, the Appeals Committee was satisfied that the complaint was not confined in scope to any particular slide, and that it was wholly appropriate to consider material such as the title of the symposium and the presentations. Gilead referred to some specific phrases such as "no one left behind", "making cure a reality", and "ensuring a cure for all"; the Appeals Committee was satisfied that it was appropriate to consider the effect of these phrases, included in the Symposium Material, on the audience to which the Symposium Material was directed.

In relation to the text "No one left behind: making cure a reality for the remaining Australians still living with hepatitis C", Gilead's position (summarised very briefly) was that:

- "no one left behind" was a "statement of intent" and was the title of the Hepatitis C Trust - UK's manifesto, a guiding principle, and the like; and
- the phrase "making cure a reality" was also a "statement of intent".

In relation to the phrase "ensuring a cure for all", Gilead argued that it was "similarly aspirational" and "alludes to the aim of HCPs who will do everything they can to ensure everyone is cured from hepatitis C".

It may well be that in a different context, the phrases "No one left behind", "making cure a reality for the remaining Australians still living with hepatitis C" and "ensuring a cure for all" would be taken as purely aspirational claims related to the goals of HCPs and public health bodies. However, the Appeals Committee was satisfied that in the context in which they occurred, at a promotional educative event, they added considerable weight to a finding that the Symposium Material taken as a whole was misleading and was not supported by the available evidence. The phrases strongly contributed to a misleading and unsupported impression that Epclusa was a cure for all who are still living with hepatitis C in Australia.

<u>Gilead asserted that an improper inference was drawn about the role of Maviret in the case study</u>

1. The Symposium Material included a "case study" relating to a patient with complex needs. He was identified in the case study by the name "Bob". It was clear from the material that the relevant contraindication was in relation to the concurrent use of both Maviret and quetiapine.
2. Gilead cited, from the Code Committee's reasons, the words "whilst not explicit, the [case study] implies that MAVIRET could have been the primary reason for the ICU admission, rather than the investigation of an

overdose of quetiapine" and asserted that this was an erroneous finding by the Code Committee.

The Appeals Committee was, like the Code Committee, particularly concerned about the reference to Bob being "in intensive care for five days because he had an episode of psychosis and he decided to take some of his quetiapine, which, you will gather from the previous slides, is contraindicated with the meds that I put him on".

The Appeals Committee considered there the inference from this part of the presentation was variable ("MAVIRET could have been the primary reason for the ICU admission"). However, in the total context of the presentation which plainly and overwhelmingly constituted a comparison between Maviret and Epclusa that emphasised their differing DDI profiles, the Appeals Committee was satisfied that the "Bob" case study conveyed that, because of their differing DDI profiles, prescribing Epclusa rather than Maviret was preferable, and in particular would have been preferable in the case of "Bob".

Gilead asserted that the Code Committee's findings "impose too high a bar on pharmaceutical companies to control the oral presentation of HCP speakers who speak from their experience and opinions"

Gilead never denied that the symposium was a promotional event. The Appeals Committee was satisfied that the Symposium Material, viewed as a whole, could only properly be regarded as promotional material.

The Appeals Committee were of the view that whilst this particular event formed part of a larger conference, the actual event was largely initiated and controlled by Gilead and thus should be viewed as a company-initiated educational event over which they had control and responsibility, rather than an independent third-party event.

Plainly, it will never be within the power of a pharmaceutical company at a company-initiated educational event to control every word used in an oral presentation given by an expert at such a symposium. In any case, the obligations set out in the Code remain applicable. Companies must brief speakers about the company's responsibilities under the Code. In addition, printed, digital, pre-recorded, and other such content that is to be presented at a company-controlled event can be assessed and if necessary edited before it is presented. Oral presentation materials such as slide decks can be read in final draft form, and these too can be assessed and if necessary edited for compliance before they are presented. Where an oral presentation has been recorded, it can be edited if necessary, before being made available for viewing online or by some other means.

The Appeals Committee was satisfied that, to the extent that the Symposium Material did breach the Code, it would not have been unduly onerous for Gilead to have edited it for compliance prior to presentation, and to the extent that the oral material may have deviated from what had been anticipated, it would not have been unduly onerous for the appellant to have edited the recorded presentation prior to making it available for viewing.

The findings in relation to the Symposium Material

The Appeals Committee was satisfied that the Symposium Material breached Principles 1, 3, and 7 and section 1 of the Code. In forming this view, the Appeals Committee noted that the material viewed as a whole was promotional in nature, and that it was aligned with a clearly discernible promotional strategy; namely, a strategy of emphasising drug-drug interactions in comparison with Maviret to dissuade clinicians from prescribing Maviret and encourage them to prescribe Epclusa. This clearly discernible strategy was evident throughout the material and formed part of the context in which the material would be viewed, heard, and interpreted by the audience.

Furthermore, the material was overwhelmingly comparative in nature. The Appeals Committee had no doubt that the audience viewing and hearing the Symposium Material would regard it as conveying a comparison between Maviret and Epclusa that emphasised their differing DDI profiles.

Because the material could only properly be assessed in its total context, the Appeals Committee's findings as to breaches of the Code should be regarded as findings made in relation to the Symposium Material as a whole.

In relation to sanctions, see page 14.

Sanctions

Section 16.5 of the Code also provides that "the Code Committee and the Appeals Committee have the discretion to apply a monetary fine for breaches of the Code individually or cumulatively. The fines above may be imposed for each identified breach determined under Section 16 of the Code up to a maximum of $300,000 per complaint." During the oral submissions phase of the appeal, each of the parties was asked to comment on in relation to the question of individual or cumulative/aggregated sanctions in the present matter. The representatives of both parties indicated that the imposition of separate and distinct sanctions appeared appropriate and noted that the two sets of material were largely distinct.

The Code Committee determined, in the original complaint, that both breaches were of "moderate" severity. The Code Committee stated that the Advertisement Material breaches were at the lower end of the moderate category, while the Symposium Material breaches were at the higher end of the moderate category.

The Appeals Committee was satisfied that the breaches arising from both the Advertisement Material and the Symposium material were unlikely to have safety implications to patient wellbeing; but were likely to have an effect on how the medical profession will prescribe the product.

The Appeals Committee was therefore satisfied that the breaches were both "moderate" as defined in the Code.

Factors that are relevant to determining sanctions are not defined and will be different in each case. Whilst there is no comprehensive list of factors, Code Edition 18 Guidelines included the following, which the Appeals Committee was satisfied was relevant in this case:

- whether the breach should have been clearly evident to the Subject Company;
- breadth of activity or campaign;
- length of time that the materials have been in use;
- the number and type of alleged breach/es; and
- circumstances in which the activity took place – and whether any explanation offered by the subject company.

The Appeals Committee also noted some other factors that are likely to be relevant in many cases:

- that sanctions should be deterrent and more than a mere cost of doing business;
- whether a subject company engaged in intercompany dialogue in good faith;
- whether a subject company made reasonable concessions in response to intercompany dialogue;
- where prescribing behaviour is affected, the likely degree of the effect;
- whether the breaches involve misleading comparisons with competing products.

However, as noted, the range of potential factors is not closed.

In the present matter, the Appeals Committee noted the following ameliorating factors:

- Gilead engaged in genuine, good-faith intercompany dialogue;
- Gilead was cooperative and candid in the complaints process;
- There was a real possibility that the subjective intention of the appellant was primarily directed at benefits to a vulnerable patient population in the context of a serious public health concern;
- Gilead made a number of reasonable concessions during the intercompany dialogue process and in the period following the lodging of the complaint.

The Appeals Committee also considered it appropriate to take into account the aggregate effect of the penalties, noting that although the material was somewhat distinct it also appeared to be part of a total promotional campaign. While the Appeals Committee did not expressly quantify the impact of this consideration on the sanctions imposed, it should be understood that the individual sanctions might have been somewhat more severe were it not for the aggregate impact. The Appeals Committee noted that the highest aggregate fine that could be imposed would be $300,000, and the Appeals Committee did not form a view that the breaches found in the present complaint ought, viewed in totality, to lead to a sanction closely approaching the highest available level.

The Appeals Committee therefore imposed the sanctions as identified on page 5 of this Report.
It was the Committee's understanding that all material found to be in breach had been withdrawn, and therefore the Appeals Committee did not consider it necessary to impose any sanction related to the withdrawal of material.

...end...