Medicines Australia

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COMPLAINT OUTCOME

1171 - LAGEVRIO® Promotional Materials

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 both parties have advised Medicines Australia that they will not appeal the outcome of the Code of Conduct Committee decision (following circulation of the Committee's Reasons) or, in the case of an appeal, the Appeals Committee Reasons have been provided to both parties.

This report is an extract of the minutes of the complaint heard by the Code Committee on 14 August 2023 and an extract of the minutes of the appeal heard by the Appeals Committee on 18 October 2023.

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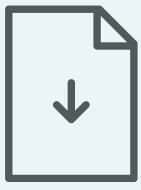

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COMPLAINT 1171 LAGEVRIO® Promotional Material

SUBJECT COMPANY	PRODUCT	COMPLAINANT
MSD	LAGEVRIO® (molnupiravir)	Pfizer

COMPLAINT

Pfizer alleged that MSD's promotion of Lagevrio using materials with the headline, "Reasons to say YES to LAGEVRIO", were in breach of Code Principles 1, 3 and 7. Five materials were supplied as part of the complaint (print advertisements, trade display banners and leave behinds for general practitioners), sharing common elements as they formed a promotional campaign. They included claims that were referenced to the Lagevrio PI, and therefore related to adults with COVID-19 who are at risk of hospitalisation or death (in accordance with the Lagevrio approved indications).

There are two TGA-approved medicines indicated for the treatment of these patients, Lagevrio and Paxlovid. In this context, Pfizer viewed the messaging to be comparative, and in providing reasons to say YES to Lagevrio, the pieces inferred reasons to say NO to Paxlovid. Pfizer asserted that the pieces encouraged prescribers to set aside the PBS Administrative Note for Lagevrio, which stated: "*This drug (Lagevrio) should be considered for use only if nirmatrelvir (&) ritonavir (Paxlovid) is contraindicated or otherwise unsuitable.*"

Pfizer asserted that the material "No known drug interactions" was provided as a reason to say YES to Lagevrio and argued that a potential for a drug interaction is not a reason to say NO to Paxlovid as many drug interactions can be managed, and not all patients eligible for Paxlovid will be on interacting medicines. Additionally, Pfizer alleged the promotion of Lagevrio did not contain balanced information regarding the differences in PBS eligibility of Lagevrio and Paxlovid, did not provide clear efficacy information regarding Lagevrio, and lacked sufficient information for general practitioners to interpret the efficacy outcome of the Lagevrio registration study.

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 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.

RESPONSE TO THE COMPLAINT

MSD disputed Pfizer's allegations and firmly believed that the Lagevrio materials subject to this complaint aligned to the Lagevrio Product Information, provided current, accurate, balanced and scientifically valid information on Lagevrio, thereby supporting the assessment of the risks and benefits of prescribing Lagevrio and supporting the Quality Use of Medicines.

MSD disagreed the promotional material providing reasons to 'say YES to Lagevrio' is inherently comparative and asserted that a reasonable healthcare professional would not understand the material in that way. MSD expressed that throughout the process they made every effort to resolve the matter (including agreeing to many concessions and the removal of materials from the marketplace) and conveyed they were disappointed a resolution was not achieved.

CODE COMMITTEE DECISIONS

The Code Committee considered the complaint and determined there were **no breaches of the Code.**
No sanctions were applied by the Code Committee.
See the table of Committee Decisions below, and the the Code Committee Reasons on pages 4-7.

APPEAL

The complainant appealed all the findings of the Code Committee, with an exception, being: Whilst they continued to allege the material was misleading by omission of differences in PBS criteria for Lagevrio and Paxlovid, their appeal was limited to the Code Committee's decision on Principle 3, and they did not appeal the findings of Principles 1 and 7.

The subject company did not appeal any findings of the Code Committee but in their appeal response, they counterclaimed that the complainant had abused the Code and used the Code in a vexatious manner to achieve greater market share. This is an alleged breach of Section 16.4 of the Code.

The Appeal focused on one promotional piece, rather than the original five, because it included all claims of concern relevant to the Appeal. The piece was Item C in the original complaint, the "Reasons to say YES to LAGEVRIO® Leave Behind (AU-ANV-00343, April 2023), referred to as the 'leave behind'.

The Appeals Committee upheld three aspects of the complaint and overturned two aspects, resulting in breaches of the Code. Sanctions were applied by the Appeals Committee accordingly (see page 3 and 11). The Reasons for their decisions are on pages 8 - 11.

COMMITTEE DECISIONS

	Complaint	Code Committee Decision	Appeals Committee Decision
1.	Failure to comply with the Quality Use of Medicines	Majority decision Overarching Principle 1: No breach Overarching Principle 3: No breach Overarching Principle 7: No breach	Decision overturned Overarching Principle 1: Breach Overarching Principle 3: Breach Overarching Principle 7: Breach
2.	False and misleading messaging regarding PBS administrative note for Lagevrio	Majority decision Overarching Principle 1: No breach Overarching Principle 3: No breach Overarching Principle 7: No breach	Decision upheld Overarching Principle 1: No breach Overarching Principle 3: No breach Overarching Principle 7: No breach

COMMITTEE DECISIONS continued...

3.	Misleading by omission of differences in PBS criteria for Lagevrio and Paxlovid	Majority decision Overarching Principle 1: No breach Overarching Principle 3: No breach Overarching Principle 7: No breach	Decision overturned Overarching Principle 3: Breach **Principles 1 and 7 were not appealed.*
4.	False and misleading messaging regarding "Say YES to Lagevrio based on no dose adjustments required in patients with renal and/or hepatic impairment"	Majority decision Overarching Principle 1: No breach Overarching Principle 3: No breach Overarching Principle 7: No breach	Decision upheld Overarching Principle 1: No breach Overarching Principle 3: No breach Overarching Principle 7: No breach
5.	False and misleading presentation of the outcome of the Lagevrio provisional registration study, MOVe-OUT	Majority decision Overarching Principle 7: No breach	Decision upheld Overarching Principle 7: No breach

The Appeals Committee made no consideration or decision on the counter claim of 'Abuse of the Code' matter.

APPEALS COMMITTEE SANCTIONS

- Subject company to cease using the materials found in breach (noting these have already been withdrawn from circulation).
- Subject company to pay a total fine of $100,000.
- Subject company to issue a corrective letter to healthcare professionals who would have been exposed to these materials. such letter to be reviewed and agreed by the Committee before being circulated.

With regards to the Appeal bond of $20,000 paid by the complainant, the Committee instructed that half of this appeal bond be returned to complainant, and half of the appeal bond retained by Medicines Australia, reflecting the partial success of the appeal.

CONSIDERATION OF THE COMPLAINT by the CODE COMMITTEE

- The complaint as submitted was some 43 pages in length, and during its deliberations, the Committee noted that some parts of the complaint material shared common themes. As such, the Committee considered these with close attention in order to adjudicate on all the elements of the complaint.
- The events of the COVID-19 pandemic, specifically, the introduction of these medicines during a coordinated national public health emergency are important background contexts.
- The Committee was satisfied that the two medicines relevant to the complaint (Paxlovid and Lagevrio) were essentially unique in terms of their historical market entry and evidence base, and the degree to which prescribers (and GPs in particular) had considered how to approach prescribing decisions.
- The Committee was satisfied that in relation to both Paxlovid and Lagevrio, prescribers had (both during and since the pandemic period) engaged in an exceptional degree of consideration and collegial dialogue, as well as having been exposed to an exceptional volume of authoritative material and guidance.
- Because of this unusual history, the likely interpretation of the promotional material by a reasonable prescriber would not, in the Committee's view, necessarily be the same as it would in relation to material promoting a different product or connected with a different health concern.
- The Committee noted PBS listing materials relevant to the complaint and noted that Lagevrio should be promoted in line with its PBS listing.
- As part of its more general consideration of the subject matter of the complaint, the Committee made the following observations in relation to the two products and the considerations relevant to prescribing (or not prescribing) them:
    - Paxlovid should properly be regarded as a first-line prescribing choice for the relevant patient population.
    - Lagevrio should properly be regarded as a second-line choice for that population.
    - On balance, it appeared that both Paxlovid and Lagevrio should be regarded as having demonstrated efficacy.
    - However, Paxlovid could be regarded as having greater efficacy than Lagevrio.
    - The issue of drug-drug interactions was an important one in relation to Paxlovid. However, this issue could not properly be avoided by prescribing Lagevrio. Rather, it would be necessary to consider prescribing Paxlovid, assess possible drug-drug interactions, and only after having assessed possible interactions, consider prescribing Lagevrio.
    - Drug-drug interactions, while significant and important, were not an undue challenge for prescribers and the process of attending to this issue is somewhat algorithmic in nature. Moreover, where possible interactions are identified, they can in some instances be dealt with (for example, by temporarily ceasing the use of the other medicine).
    - Lagevrio is, from a patient compliance standpoint, a simpler medication. Paxlovid includes two different medications in a single pack, with each to be taken according to specific directions throughout the day. Lagevrio requires a single tablet to be taken four times per day.
    - Many patients, including those in the relevant population, do not require oral antivirals at all, and the decision to prescribe neither Paxlovid nor Lagevrio would in many instances, (and after consideration of a wide range of individual patient factors), be a wholly appropriate prescribing decision.
    - Because of the pandemic and the ongoing significance of COVID-19 in the community, and the intense attention given to prescribing decision-making in the context of these, prescribers to whom the promotional material was directed could properly be regarded as highly sophisticated readers and interpreters of any promotional or other material concerning COVID-19 medicines. In forming this view the Committee did not conclude that misleading material could be excused merely because sophisticated readers would see through it. However, the Committee was satisfied that prescribers viewing the material could be expected to carefully assess it in its full context and to regard it as but one item of information in an extensive body of information relevant to prescribing.
- By way of background, the Committee also noted that, during the pandemic period there was little or no clarity in relation to the comparative efficacy of the two medicines, beyond a position that both products appeared to have some degree of efficacy. The subsequent Panoramic study has contributed further to the understanding of efficacy of the place of therapy of anti-COVID medications.
- On review of the full body of material, the Committee did not form a view that it would have any improper effect on prescribing behaviour.
- The Committee was satisfied that, in the specific context relevant to the complaint, a reasonable prescriber having viewed the promotional material would make a prescribing decision that took into account appropriate factors

including the relative priority of Paxlovid (a first-line treatment) and Lagevrio (a second-line treatment), the considerations highlighted in the PBS material, a proper consideration of the potential drug-drug interactions arising from a prescription of Paxlovid (and not merely discarding Paxlovid because of possible but unidentified interactions), out of pocket costs to patients, the greater expected efficacy of Paxlovid, the possibility that treatment other than an oral antiviral could be appropriate, and any other consideration relevant to the individual patient attending upon them.

COVID-19 National Clinical Evidence Taskforce Guidelines

- The Committee noted that both Paxlovid and Lagevrio had reached the market in the singular context of the COVID-19 pandemic, and that this context had had a significant impact on their availability and the evidence base upon which prescribing decisions could be made.
- The Committee noted the COVID-19 National Clinical Evidence Taskforce Guidelines.
- The Committee noted that at certain times during the pandemic, prescribing decisions were heavily influenced by practical factors such as stock availability and by Government-instigated vaccine and National Stockpile medication rollout rather to a degree that would be quite atypical outside the context of the pandemic.
- The Committee acknowledged that the COVID-19 National Clinical Evidence Taskforce Guidelines were important in that historical context and reflected an effort to collate the best available evidence on an ongoing basis, at a time when evidence was rapidly and intensively evolving.
- The Committee noted that the promotional materials that were the subject of the complaint were circulated in 2023 and therefore post-dated the most substantial practical constraints stemming from the pandemic, such as stock shortages or features of the rollout, as well as the ongoing updating of the Taskforce Guidelines.
- On this basis, the Committee agreed that the COVID-19 National Clinical Evidence Taskforce Guidelines were not critically relevant to the material subject to the complaint.

Consideration of out-of-pocket-costs

- The Committee considered the PBS listing material for Lagevrio. It was noted that promotional material should not overstate the role of PBS listing in clinical decision-making.
- The Committee acknowledged that PBS listing is logically separate from clinical decision-making, but that PBS listing of medicine, and the question of whether a medicine can be prescribed in accordance with its PBS listing, is frequently relevant in the prescribing decision because out-of-pocket costs are usually important to the patient.
- Therefore, the PBS listing of Lagevrio remains an important consideration in relation to this promotional material.
- The Committee noted that, provided they are prescribed in accordance with the PBS, each of the products would have essentially the same out-of-pocket cost to consumers.

Whether the material was comparative

- The historical context of Paxlovid and Lagevrio was discussed; specifically, how and when they emerged on the market to meet the demands at that time. The Committee appreciated that the circumstances of the pandemic provided some context to help understand the drug-drug interactions associated with Paxlovid, and the use of Lagevrio in nursing homes.
- The Committee acknowledged that there are currently just two oral antiviral medications available in Australia, Lagevrio, and Paxlovid. The Committee also expressly noted that prescribing no medication may be a valid prescribing decision in relation to some patients, and this is a matter for clinical judgment on a case-by-case basis.
- Given the limited availability of head-to-head trial or clear comparative studies, the Committee understood it would be very difficult to provide scientifically valid comparative information. In lieu of this, prescribing decisions continue to be strongly guided and framed by the national and governmental prescribing guidelines and algorithms within the context of the public health emergency represented by the COVID-19 pandemic, and importantly PBS listings of both products.
- Although it was expressed in several ways, the core of the complainant's argument that the material headed 'reasons to say YES to Lagevrio' was comparative in nature and infer they 'are reasons to say NO to Paxlovid'.
- The Committee agreed that all the material was not inherently comparative, and that the phrase 'reasons to say YES to Lagevrio' was not inherently comparative as between Paxlovid' and Lagevrio. As already noted, the Committee was satisfied that prescribing no oral antiviral would also be a potential prescribing decision.

- The Committee was therefore satisfied that a reasonable healthcare professional audience would not interpret the catch-phrase, "Reasons to say YES to LAGEVRIO" as a comparison between Lagevrio and Paxlovid.
- Some of the material included express reference to Paxlovid, including reference to a PBS administrative note in relation to Lagevrio adjacent to reference to a PBS caution note in relation to Paxlovid. The Committee accepted that in at least some respects the inclusion of such material could be viewed as a comparison.
- However, noting the specific context of highly engaged prescribers, the Committee did not find that such material was likely to mislead or improperly influence prescribers and in particular noted that the material highlighted that Lagevrio® should be considered only if Paxlovid is contraindicated or unsuitable.

Use of the word 'simple'

- The Committee appreciated that there were common-sense reasons why taking Lagevrio could be termed simple. This extended to the way the medicine is administered and the way this can be explained to a patient.
- The Committee discussed whether the claim of simplicity could be understood in relation to 'simple prescribing' due to the fact it has no drug interactions and no dose adjustments required in patients with renal and/or hepatic impairment when prescribing Lagevrio.
- The Committee was satisfied that understanding drug interactions was relatively easy due to the availability of online interaction check-software, specific to COVID therapies and part of the usual prescribing practice, and a prescriber would check any interactions whether there were few or many known drug-drug interactions. The Committee discussed the degree of complexity involved in assessing drug interactions and noted that doing so is somewhat algorithmic and not unduly difficult.
- Ultimately the Committee agreed that considering drug-drug interactions was of high importance but was also satisfied that prescribers would assess potential interactions and the benefits and risks to the patient of managing any such interactions, prior to considering Lagevrio.
- Temporarily stopping or changing usual interacting medications to accommodate Paxlovid could present its own inherent risk to the patient. The Committee took the view that consideration of these risks was the responsibility of the healthcare professional.
- The Committee did not share Pfizer's view that the promotional material was false and misleading because of any omission regarding the importance of making any such interaction assessment.

Alignment with the PBS

- The Committee considered that the promotional material references Lagevrio to be a 'second-line drug'. This is demonstrated in the material A and C through the highlighting of the PBS Administrative Note "This drug should be considered for use only if nirmatrelvir/ritonavir is contraindicated or otherwise unsuitable".
- On balance, the Committee agreed that the material evidenced Paxlovid as the first treatment choice as aligned with the PBS listing. This was confirmed through the use of 'eligible patients' – inferring that Lagevrio was not suitable for all patients and 'reasons to say yes' related only to those eligible for Lagevrio (as per the PBS listing).

On the issue of accurate, referenced, and balanced materials.

- The Committee noted the material included many references and prompts for a prescriber to better understand the information and make their own decision.
- The majority of the Committee took the view that the material was not inaccurate, nor imbalanced; instead describing the potential benefits and balancing this with the potential harms of using Lagevrio through precautions and contraindications, as well as by listing common adverse events from the MOVe-OUT trial.
- The Committee noted a few items that were not subject to the complaint; these are general observations in relation to the issue of the material being accurate and balanced, and provided in good faith:
    - There appeared to be a lack of consistency among the different promotional materials.
    - Whilst the use of PBS criteria was in line with Code requirements, there remained scope for the material to communicate more clearly the PBS criteria to ensure healthcare professionals understood that Paxlovid was the first-line treatment choice as indicated by its PBS criteria.
    - In Item B, qualifying statements should be prominent and appear directly below or adjacent to the claim.

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

Referencing the interim and final efficacy results of the MOVe-OUT study

- The complainant expressed concern in relation to information that referred to results of the "MOVe-OUT" clinical trial. The issues raised by the complainant, and the response from MSD, were somewhat complex.
- The Committee acknowledged that there appeared to be some legitimate controversy around the interpretation of the MOVe-OUT trial and its results, and in particular the presentation of two sets of results – the results realised for all randomised modified intent-to-treat populations, and the results obtained from an interim analysis. The complainant's allegation, summarised, was that "presenting more than one efficacy outcome is confusing for general practitioners."
- Ultimately, however, the Committee concluded:
    - The MOVe-OUT results presented in the promotional material substantially aligned with the PI for Lagevrio.
    - While there was potentially some risk of confusion in the presentation of two sets of results from a single study, there would also be some risk of incompletely informing prescribers if only one or the other set of results had been presented. The Committee understood that the subsequent full data set adjusted risk reduction however the figure does not provide a more positive value.
    - Whilst there is more detail provided in the summary of trial results than is typically seen, the Committee understood this as an attempt to explain the data appropriately, rather than to support a headline promotional figure.
    - The results, as presented, were unlikely to have a problematic effect on prescribing behaviour and did not undermine the position already noted by the Committee, i.e., that prescribers would (unless it were inappropriate for proper clinical reasons) prioritise Paxlovid as the first-line treatment for prescription, and Lagevrio as second-line treatment.
- The Committee was therefore not satisfied that the presentation of the MOVe-OUT material was misleading and nor did it breach the Code as alleged by the complainant.

Intercompany dialogue

- The Committee noted that inter-company dialogue had taken place and these efforts met the threshold for the Code Committee in adjudicating the complaint.
- The Committee emphasized the purpose of intercompany dialogue is to make every effort to achieve a resolution and to undertake this dialogue with genuine and meaningful attempts to resolve the matter.
- MSD's actions of withdrawing the material, making adjustments, and then seeking further dialogue were viewed positively, and the Committee understood concessions made by MSD during inter-company dialogue to be concessions designed to meet Pfizer's concerns and not admissions of non-compliance.
- The Committee believed that the concessions suggested by MSD had improved the materials significantly and recommended that those changes be incorporated into future materials similar to those subject to the complaint.

With respect to specific decisions made by the Committee in response to the complaint

- The Committee:
    - Did not agree that the promotional material seeks to set aside the PBS administrative note for Lagevrio based on Lagevrio being a simple treatment choice.
    - Did not agree that the promotional pieces seek to influence a GP to choose Lagevrio without considering out-of-pocket expenses to the patient.
    - Agreed they supported general practitioners to make prescribing decisions to use medicines safely and effectively.
    - Did not agree that the promotional material brings discredit to the industry.
    - Did not agree that the material contained exaggerations that breached the Quality Use of Medicines.
    - Agreed that the messaging regarding the potential for drug interactions with Paxlovid supported prescribing decisions and did not constitute false and misleading messaging.
    - Agreed that adequate information on the PBS listings for Lagevrio and Paxlovid were provided to support prescribing decisions.
    - Agreed that the material was largely balanced in the way it provided information on the PBS listings for Lagevrio and Paxlovid and that it was not required to provide full details of PBS listings for both products to guarantee balance and accuracy.

- end of Code Committee's Reasons -

CONSIDERATION OF THE APPEAL by the APPEAL COMMITTEE

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 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 Appeal focused on one promotional piece, rather than the original five, because it included all claims of concern relevant to the Appeal. The piece subject to the Appeal is the "Reasons to say YES to LAGEVRIO Leave Behind (AU-ANV-00343, April 2023), referred to as the 'leave behind'. This is Item C in the original complaint.

The findings in relation to the Leave Behind

- The complainant's submissions at both the complaint and appeal stages were primarily based on their view that the leave behind is comparative promotional material (i.e. it compared Lagevrio with Paxlovid and promoted prescribing of Lagevrio rather than Paxlovid), and this aspect of the appeal is dealt with below.
- The Appeals Committee shared the view expressed by the Code Committee that the statement 'Reasons to say YES to Lagevrio' was not comparative in nature and a reasonable prescriber would not interpret this statement as 'Reasons to say NO to Paxlovid'.
- On this point, the Appeals Committee shared the view expressed by the Code Committee that prescribing no oral antiviral may also be a potential prescribing decision and that this may occur for a number of reasons. The Appeals Committee accepted that collaborative decision-making with the patient and clinical experience will influence a prescribing decision. Notwithstanding it is understood the public health advice is to treat at-risk patients.
- Whilst the Code Committee had acknowledged there were comparative elements in the material, the Appeals Committee found they had erred in their decision to not consider the piece comparative as a whole.
- The Appeals Committee, however, did not agree with the complainant's sentiment that if material has a comparative element, it does not automatically follow that the whole piece is comparative.
- The Appeals Committee formed its own view in relation to the leave behind and was satisfied that the material taken as a whole, in context, would convey to a reasonable healthcare professional key comparisons between Lagevrio and Paxlovid. On balance, it was considered comparative promotional material.
- Reasons it was considered comparative promotional material included the express reference to Paxlovid, including a reference to a PBS administrative note in relation to Lagevrio adjacent to a reference to a PBS caution note in relation to Paxlovid. This was exacerbated because Lagevrio and Paxlovid are the only two oral anti-virals available for COVID-19.
- The Appeals Committee noted that comparative promotional material is permitted under the Code, so the fact the material was considered comparative, does not present any Code breach.
- Further, it was noted that any comparative statements or comparative material needs to be presented in a fair and just manner, and extra care must be taken to ensure that any comparison properly reflects the body of evidence and does not mislead by distortion, by undue emphasis or in any other way. All materials need to be current, accurate, balanced, and scientifically valid information on products to support their appropriate use.

Complainant asserted inaccurate and unbalanced PBS information

- The Appeals Committee agreed with the Code Committee's view that the leave behind included many references and prompts for a prescriber to better understand the information and make their own decision, as well as describing the potential benefits and balancing this with the potential risks of using Lagevrio through precautions and contraindications.
- The Appeals Committee, however, took the view that the material failed to include complete and balanced information of Paxlovid and Lagevrio. Having introduced information about the PBS listings for Lagevrio and Paxlovid, the leave behind should have included fair and balanced information regarding the PBS listings for these two oral antivirals. The leave behind refers the reader to the PBS listing for Lagevrio, however there is no

indication that the PBS listing for Paxlovid and Lagevrio are not the same. In addition, the fact that the PBS criteria for Paxlovid is broader than that for Lagevrio® has been omitted.

- The Appeals Committee agreed with the Code Committee's view that the leave behind included many references and prompts for a prescriber to better understand the information and make their own decision, as well as describing the potential benefits and balancing this with the potential risks of using Lagevrio through precautions and contraindications.
- The Appeals Committee agreed the use of the word 'eligible' inferred that Lagevrio was not suitable for all patients, but caused confusion as to whether eligibility related to the Product Information or the PBS.
- The Appeals Committee acknowledged that balance and accuracy might not require the leave behind to include full details of PBS listings for both products, but at a minimum, it should communicate there is a difference in PBS listing for Paxlovid and Lagevrio, and what this difference includes – noting that Paxlovid has an expanded PBS listing compared to Lagevrio.
- In failing to adequately balance comparative information for the PBS listing of Paxlovid and Lagevrio, the Committee considered the leave behind could be misleading by omission. On this basis, the Appeals Committee was satisfied that the leave behind breached Principle 3 of the Code and overturned this aspect of the decision of the Code Committee.

Complainant asserted failure to comply with the Quality Use of Medicines

- The Appeals Committee found that, given that the leave behind 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 subject company had any purpose that was contrary to the quality use of medicines. Rather, the Appeals Committee found that because the leave behind was misleading, it was therefore inconsistent with such a purpose.
- In deciding the leave behind was misleading, the Appeals Committee considered the leave behind failed to comply with the quality use of medicine. On this basis, the Appeals Committee was satisfied the leave behind breached Principles 1, 3 and 7 of the Code and overturned this aspect of the Code Committee decision.

Complainant asserted false and misleading messaging regarding PBS administrative note for Lagevrio

- The Appeals Committee agreed with the Code Committee's view that the leave behind does not seek to set aside the PBS administrative note for Lagevrio based on Lagevrio being a simple treatment choice.
- The Appeals Committee agreed that the messaging regarding the potential for drug-drug interactions with Paxlovid supported prescribing decisions and did not constitute false and misleading messaging. The Appeals Committee did not agree that the messaging on drug-drug interactions used in the leave behind sought to encourage healthcare professionals to prescribe Lagevrio because it avoided the due process of investigating and assessing drug-drug interactions prior to prescribing.
- The Appeals Committee acknowledged that many potential drug-drug interactions are clinically manageable and may not interact with Paxlovid in a clinically relevant way and took the view that the audience of healthcare professionals are similarly educated and would appreciate any drug-drug interaction needs to be checked prior to a prescribing decision as part of general clinical practice. In their assessment, the Appeals Committee shared the Code Committee's view that consideration of these risks was the responsibility of the healthcare professional, and there was no onus on the subject company to make clear the importance of making any such interaction assessment.
- On this basis, the Appeals Committee was satisfied the Code Committee had not erred in their decision and the leave behind did not breach Principles 1, 3 and 7 of the Code.

Complainant asserted false and misleading messaging that Lagevrio is simpler to use than Paxlovid

- The Appeals Committee accepts the technical error in the Code Committee's Reasons for Decisions regarding the dosing and timing of taking both medications and acknowledges that both are administered orally twice a day. However, the Appeals Committee agreed with the Code Committee's view that there were common-sense reasons why taking Lagevrio could be termed simple and the leave behind provided ample qualification for using this term.

- The Appeals Committee determined that using the word 'simple' did not automatically imply that it was simpler than using Paxlovid, nor that it was simpler to prescribe. The Appeals Committee did not interpret this claim to be comparative, given the layout and presentation of that claim, and understood this related specifically to Lagevrio.
- As per the complainant's view, "managing drug-drug interactions .... is not necessarily complex.". The Appeals Committee suggested managing drug interactions was not simple. And therefore "no known drug interactions" is a valid qualification.
- With regards to "it has no dose adjustments required in patients with renal and/or hepatic impairment when prescribing Lagevrio", the Appeals Committee understood this supports the qualification of the claim 'simple', and was not intended to be a comparison between Lagevrio and Paxlovid. Because of this, the Appeals Committee did not take the view it was intended to disparage Paxlovid.
- On this basis, the Appeals Committee was satisfied that the Code Committee had not erred in their decision and the leave behind did not breach Principles 1, 3 and 7 of the Code.

Complainant asserted false and misleading presentation of outcome data from the MOVe-OUT study

- The Appeals Committee agreed with the Code Committee and determined there was no error in judgment on this aspect of the complaint. They did not believe the data was misleading nor did it breach the Code as alleged by the complainant.
- The Code Committee had understood correctly that the final efficacy analysis was not as advantageous to Lagevrio as the interim results. The Appeals Committee disagreed with the complainant that the Code Committee had misinterpreted the results due to their presentation.
- Whilst the Committee acknowledged that study data does not need to include interim data and can present final analysis as stand-alone data, the inclusion of interim study data did not constitute a breach of the Code.
- The Appeals Committee agreed that the presentation of the MOVe-OUT study results was not as clear as it could be. There was room for improvement specifically by reflecting the relative significance of final analysis compared to the interim analysis. Notably the interim analysis was displayed as prominently as the final analysis, which contrasted with the presentation in the PI (Table 3).
- The Appeals Committee affirmed the Code Committee's view that the MOVe-OUT results presented in the promotional material substantially aligned with the PI for Lagevrio,
- Overall, the Appeals Committee formed its own view in relation to this aspect of the complaint and was satisfied it did not breach the Code.

Complainant asserted consideration of matters that were not part of the complaint

- The complainant asserted that in making its decision, the Code Committee considered matters not part of the complaint. The complainant cited: "Pharmaceutical promotion cannot rely upon all HCPs having read extensively on COVID-19 and having knowledge of/direct access to an extensive body of prescribing information on COVID-19" and "The Code requires that HCPs must be given sufficient information to independently evaluate the validity of promotional material. The promotional material must stand alone and speak for itself".
- The Appeals Committee agreed with the Code Committee that healthcare professionals are sophisticated interpreters of COVID-19 promotional material and could be expected to carefully assess it in its full context. That withstanding, the Appeals Committee emphasised that companies remain responsible for providing current, accurate, balanced and scientifically valid information on products to support their appropriate use, whether or not the audience were sophisticated interpreters of evidence.
- The Appeals Committee considered prescribing data presented by the complainant showing that Paxlovid is not being prescribed in accordance with its first-line positioning, but could not draw cause-and-effect to the promotional material subject to this complaint. As such, the Appeals Committee was not satisfied that the leave behind had contributed to any such trend.

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

The findings in relation to Abuse of the Code, as alleged by the subject company

- The Code at 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.
- The Appeals Committee did not believe it was within their scope to consider the counterclaim by the subject company because this allegation was not part of the original complaint.
- As such, the Appeals Committee made no consideration or decision on this matter.

Sanctions

- The Appeals Committee noted that the subject company had made meaningful concessions during the intercompany dialogue and had withdrawn material when the complaint was made. It noted the importance of this conduct was in relation to the determination of sanctions rather than any determination of breach.
- The Appeals Committee was satisfied that the breaches arising from the leave behind were likely to have safety implications to patient wellbeing, and therefore the breach was categorised as severe.
- The Appeals Committee included the following factors in their determination of sanctions:
    - whether the breach should have been clearly evident to the Subject Company;
    - length of time that the materials have been in use;
    - the number and type of alleged breach/es;
    - circumstances in which the activity took place – and whether any explanation offered by the subject company;
    - whether a subject company engaged in intercompany dialogue in good faith;
    - whether a subject company made reasonable concessions in response to intercompany dialogue or the complaint itself;
    - where prescribing behaviour is affected, the likely degree of the effect; and
    - whether the breaches involve misleading comparisons with competing products.
- The Appeals Committee therefore chose to issue a fine on the lower end of the severe category, and imposed the following sanctions:
    - a total fine of $100,000;
    - the issuing of a corrective letter, such letter to be reviewed and agreed upon by the Appeals Committee before being circulated. The recipients of this letter should be healthcare professionals who have been exposed to these materials in Australia by MSD, to the extent that is reasonable. The determination of recipients will be made reviewed and agreed by the Appeals Committee; and
    - it was the Appeals 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 -