

**MCAC 02 2014**

***COMPLAINT BY THE NATIONAL ASSOCIATION OF PHARMACEUTICAL MANUFACTURERS (NAPM)***

***AGAINST NOVARTIS SA (PTY) LTD AND ROCHE PRODUCTS (PTY) LTD***

**Adjudication**

10 March 2014

**Committee Members:**

3 MCA Panelists (1 Legal)

The Adjudication Committee considered the matter and on 10<sup>th</sup> March 2014 issued the following award:

1. The Adjudication Committee was unable to establish that the comments by SwissCham could be attributed to the First or Second Respondents.
2. There is insufficient evidence to establish that SwissCham made the comments in the capacity as duly authorized and appointed agent and representative of the First and Second Respondents
3. The complaint was dismissed
4. No order was made as to the costs.

NAPM then lodged an appeal against the ruling of the Adjudication Committee.

**Appeal**

1<sup>st</sup> May 2014

**Committee Members:**

3 MCA Panelists (1 Legal)

The Appeal Committee dismissed the appeal on the basis that the Appeal Committee was satisfied that:

1. There is no evidence to support any suggestion that SwissCham made the unfortunate statements for and on behalf of its members, or in particular for and on behalf of Novartis and/or Roche;
2. there is no evidence contradicting both Novartis and Roche's versions that SwissCham made the unfortunate statement independently from them, without having consulted or having obtained a mandate from them to represent them in the matter;

3. it is inconceivable that Novartis and/or Roche would have provided a mandate to SwissCham, specifically appointing them to act as their agent and representative, allowing them to make any commentary, on its behalf, at their own free will and volition;
4. that the Adjudication Committee provided reasons for its decision of 10 March 2014;
5. the comments by SwissCham are unfortunate and for which the NAPM may have recourse in law through our civil courts; and
6. That no provisions of the Marketing Code were contravened by either of Novartis or Roche.

There was no order as to costs.