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NATIONAL EXECUTIVE COMMITTEE RESOLUTION

Complaint before the Competition Commission of South Africa:

TAC v MSD and Merck

1. The National Executive Committee (NEC) of the Treatment Action Campaign (TAC) notes that the AIDS Law Project (ALP) – acting on its behalf – has been in ongoing discussions with MSD (Pty) Ltd for more than five years regarding the need for the pharmaceutical company and/or any associated company and/or companies to grant multiple licences for the local production and/or importation of efavirenz (EFV), a patented antiretroviral (ARV) medicine, on reasonable terms.
2. While the TAC NEC notes that two licences have been granted for the local production of stand-alone EFV products, it remains of the view that the public interest demands that further licences be granted and that the terms of all licences be expanded to permit the local production and/or importation of a range of EFV products, including fixed-dose and co-packaged combinations of ARV medicines that include EFV. In addition, the TAC NEC is of the view that the refusal to grant multiple licences on such terms constitutes conduct that is prohibited by the Competition Act 89 of 1998.
3. In the result, the TAC NEC authorises the ALP to take any and/or all steps to submit a complaint to the Competition Commission of South Africa regarding the conduct of MSD and/or any associated company and/or companies:

- a. For the purposes of submitting such a complaint, the TAC NEC hereby authorises its chairperson, Abdurrazack “Zackie” Achmat, to sign or depose to any statement or affidavit that is required in order to comply with the rules relating to the submission of the complaint referred to above; and
 - b. In the event that the ALP is required to obtain any specific consent in connection with the finalisation of the complaint referred to above, then Mr Achmat is authorised to provide such consent on behalf of the TAC.
4. Subject to paragraph 5, the TAC NEC further authorises the ALP, once the complaint has been submitted, to –
 - a. Take any steps to extend any time period contemplated by section 50 of the Competition Act;
 - b. Take any steps relating to the further conduct of proceedings, including but not limited to any referral or other proceedings should the need arise in the Competition Tribunal, any appeal or review, or any legal proceedings in any competent forum in connection therewith; and
 - c. Enter into settlement negotiations with MSD and/or any associated company and/or companies.
5. In the event that the ALP is required to obtain any specific consent in connection with the conduct of referred to paragraph 4 above, then Mr Achmat is further authorised to provide such consent on behalf of the TAC.

DATED AT _____ ON THIS ____ DAY OF NOVEMBER 2007

FULL NAME AND SIGNATURE