

**No. 31015/14/2017-Pricing**  
**GOVERNMENT OF INDIA**  
**MINISTRY OF CHEMICALS & FERTILIZERS**  
**DEPARTMENT OF PHARMACEUTICALS**

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A- Wing, Shastri Bhawan,  
New Delhi 110 001

**Subject:** Review application of M/s Zydus Healthcare Limited against price fixation of "Omeprazole 20mg tablets" vide NPPA order No. S.O. 4127(E), dated 22.12.2016 issued under Drugs (Prices Control) Order, 2013 (DPCO 2013).

**Ref:** 1) Review application dated 16.01.2017  
2) NPPA notification under review S.O. 4127(E), dated 22.12.2016  
3) Record Note of discussions held in the personal hearing held in the matter on 16.05.2017.

1. This is a petition under paragraph 31 of the Drugs (Prices Control) Order, 2013 (hereinafter called the DPCO) filed by M/s Zydus Healthcare Limited (hereinafter called the petitioner) against notification S.O. No.4127(E), dated 22.12.2016 issued by the National Pharmaceutical Pricing Authority (hereinafter called the NPPA) fixing the ceiling price of Omeprazole 20mg tablets

2. The petitioner has contended as under:-

(i) Working Sheet related to above Ceiling Price was place on website on 23rd December, 2016. The summary of the computation of Retail Price based on August 2015 data under para 4 of DPCO 2013 as given in the working sheet is as below:-

Sum of MAT value considered for price calculation (Rs. In Lakhs)	1206.23
Sum of PTR per unit considered for price calculation	16.20
Number of Packs considered	4
Average PTR	4.05
Add : 16% Retailer Margin	0.65
Ceiling Price (without local taxes)(w.e.f. 10.3.2016)	4.70
Ceiling Price (without local taxes) (w.e.f. 01.4.2016)	4.57

(ii) Company submitted that the following brands considered in computation of ceiling price of Omeprazole 20mg tablets are **not Omeprazole but are of Omeprazole Magnesium**.

1. OCID QRS 20 MG TABLET 15
2. TACKO M 20 MG TABLET 10
3. OMEZ FF 20 MG TABLET 10
4. OMETAB 20 MG TABLET 10

(iii) The market data of IMS also provides details of both the drugs separately i.e. Omeprazole and Omeprazole Magnesium.

(iv) Omeprazole Magnesium is different from Omeprazole in its structure. The molecular weight of Omeprazole Magnesium is 713.12 and its empirical formula is C<sub>34</sub>H<sub>36</sub>MgN<sub>6</sub>O<sub>6</sub>S<sub>2</sub>. Whereas Omeprazole has an empirical formula of C<sub>17</sub>H<sub>19</sub>N<sub>3</sub>O<sub>3</sub>S and has molecular weight of 345.42.

(v) Omeprazole magnesium tablet is a formulation of individually coated micropellets designed to optimise delivery of drug to the site of its absorption in the small intestine.

(vi) They further submitted that the Explanation Note (5) to the Schedule 1 of DPCO 2013 (NLEM 2015) which clearly states that in case the active drug is different than it cannot be classified as included in NLEM.

The abstract of explanation (5) to the Schedule 1 is reproduced as below:

*(5) In cases where an active moiety is available as different isomers or analogues or derivatives, they are considered as separate entities, and inclusion of one does not imply inclusion of all isomers or analogues or derivatives*

This explanation note clearly highlights that while Omeprazole 20mg tablet qualifies as Scheduled drug while Omeprazole Magnesium which is a different moiety does not qualify as Scheduled drug. The Experts Committee responsible for drafting NLEM 2015 was sensitive to the ambiguity arising out of such erroneous interpretations taken by NPPA in the past and therefore the note (5) was included by them and also endorsed by Department of Pharmaceuticals (DoP).

(vii) They had observed that this erroneous interpretation of NPPA in their draft working sheet placed on website vide O.M. No. 8(34)/2016/DP/NPPA/Div.II dated 21.09.2016. They had represented against the same vide our representation No. NPPA/1016/2016 dated 3.10.2016 submitted on 5.10.2016. However, they never heard from NPPA either in favour or against their representation. In order to ensure higher level of transparency in functioning of NPPA they may kindly be advised to develop a Standard Operating Procedure (SOP) towards accepting or rejecting any representation with appropriate reason(s).

They submitted that from the details given above, it is clear that there is a case of gross error on part of NPPA by including Omeprazole Magnesium based tablets along with Omeprazole tablets to fix the price for Omeprazole 20 mg tablets.

#### **Submission:**

(i) Omeprazole Magnesium tablets are Non Scheduled formulation and should not be covered along with Scheduled formulation of Omeprazole 20mg tablets.

(ii) Ceiling Price for Omeprazole 20mg tablets should be reworked after omitting the brands based on Omeprazole Magnesium.

3. Comments of NPPA:

- I. In this regard, it is mentioned that ceiling price of Rs. 4.57 per tablet for Omeprazole 20mg Table was notified vide S.O. 4127(E) dated 22.12.2016 as per para 4, 10, 11, 14, 16, 17, & 18 of DPCO, 2013.
- II. Company has stated that correct methodology was not followed in arriving at the ceiling price for Omeprazole 20mg Table. The points raised by the company are not relevant. Price fixation has been done strictly in accordance with the provisions of DPCO, 2013 and as per the decisions of 27<sup>th</sup> Authority meeting held on 29.3.2016. Details are as follows:-

Sl. No.	Company's Grievances	NPPA's comments
1.	Company has challenged the inclusion of OCID QRS 20mg, TACKO M 20mg, OMEZ FF 20mg & OMETAB 20mg Tablet in the light of Explanation note (5) to the Schedule-I of DPCO, 2013 (NLEM 2015). Company has also pointed out that Bulk Drug Omeprazole Magnesium instead of Omeprazole is used for manufacturing of above mentioned formulation. Company has considered Omeprazole Magnesium as derivative of Omeprazole (supporting documents are attached by the company).	NPPA has fixed the ceiling price for Omeprazole 20mg Table as per the data provided by pharmatrac for the month of August, 2015. In the absence of sample/documents, it is difficult to ascertain that Omeprazole Magnesium is used for manufacturing of OCID QRS 20mg, TACKO M 20mg, OMEZ FF 20mg & OMETAB 20mg Tablet. DOP vide letter no. F. No. 31015/44/2016-PI.I dated 11.7.2016 gave the following, directions: " <i>NPPA to henceforth place a draft version of the Price Calculation Sheets for the proposed revised price notification, including wherever applicable, the Price to Retailer (PTR) and Moving Annual Turnover (MAT) values adopted for calculations, on the website of NPPA for 10 clear working days to invite comments from the affected pharmaceuticals firms. Only after taking into account the comments or any additional data thus received within the given time period, the NPPA shall finalize the Ceiling and the Retail Prices. This issues with the approval of Hon'ble Minister (Chemicals &amp; Fertilizers)</i> ". Accordingly, NPPA uploaded draft working sheet of proposed ceiling price of this formulation also on its website. This was on the website of NPPA for 10 clear working days. M/s Zydus Healthcare Ltd. <u>did not make</u> any representation against the proposed draft ceiling price uploaded on NPPA's website.

- III. Company has not challenged any notification in respect of **Omeprazole 20mg Table** in the Court.

4. During the personal hearing, the company representative made following further submissions :

- NPPA Notified the Ceiling Price for Omeprazole 20mg tablets vide Notification No. S.O. No. 4127(E) dated 22.12.2016. The Ceiling Price notified is Rs. 4.57 per tablet. NPPA has considered 4 packs. All the 4 Packs are of Omeprazole Magnesium Tablets.
- While computing the price for Omeprazole 20mg tablets NPPA has relied on the explanation note (1) which allows NPPA for controlling the price of variants also. However NPPA has erred and conveniently overlooked the explanation note (4) and explanation note (5).
- Explanation note (4) reads, "In general, medicines have been mentioned with respect to their active moieties, without mentioning the salts and, in cases where there is significant difference between the salts, the medicine finds mention as its specific salt".
- Explanation note (5) reads, "In case where an active moiety is available as different isomers or analogues or derivatives, they are considered as separate entities, and inclusion of one does not imply inclusion of all isomers or analogues or derivatives".
- Omeprazole and Omeprazole Magnesium are two different moieties. Both are structurally different. The molecular weight of Omeprazole Magnesium is 713.12 and its empirical formula is  $C_{34}H_{36}MgN_6O_6S_2$ . While molecular weight of Omeprazole is significantly low (345.42) and its empirical formula is significantly different ( $C_{17}H_{19}N_3O_3S$ ).
- Omeprazole and Omeprazole Magnesium are official separately in US Pharmacopia as well as British Pharmacopia. The reason for two different monograph is that both are different moieties.
- Omeprazole Magnesium tablet has significant therapeutic advantage over Omeprazole Capsule. NLEM 2015 covers Omeprazole 20mg capsule and the same is therefore under Price Control.
- NPPA has probably misjudged the technicality and therapeutic advantages of Omeprazole Magnesium 20mg tablet and thus has brought it under Price Control considering it as an another variant of Omeprazole capsule 20mg.
- Therapeutic advantage of Omeprazole Magnesium 20mg tablet over Omeprazole 20mg capsule.
  - (1) Omeprazole Magnesium tablet is an innovative formulation developed in order to offer increased convenience, flexibility and predictability of absorption over Omeprazole Capsule.
  - (2) These tablets are dispersed in water for quicker absorption as each such tablet is made of individually coated micropellets. Tablet disintegrates

rapidly in the stomach and in the coated pellets are emptied into the duodenum for faster absorption.

- (3) Omeprazole Magnesium moiety is more stable than Omeprazole at high pH of duodenum than the acid pH of stomach. Therefore Omeprazole Magnesium moiety is superior than Omeprazole.
- (4) Omeprazole Magnesium Tablet may thus be taken with food or on an empty stomach while Omeprazole Capsule should be taken before meals.

- **Submission:**

**(1) Omeprazole Capsule is a schedule formulation but Omeprazole Magnesium tablet is not. Therefore NPPA may please be directed accordingly and the Notification No. S.O. 4127(E) dated 22.12.2016 with regard to Omeprazole 20mg tablet may be quashed.**

**(2) NPPA may please be directed to dispose off the representations made against draft working sheets or final notifications in a time bound and transparent manner. Standard Operating Procedures (SOPs) for disposing off the representations should be developed by NPPA. The applicant should be informed of the decision.**

**(3) DoP is requested to strengthen the NPPA with Technical Skill Sets so as to interpret the provisions of DPCO/NLEM/Schedule I of DPCO with Technical Skills as the industry being dealt by NPPA is a highly technical in nature. Mere costing principles may not be enough to have rational interpretation of DPCO 2013.**

**(4) NPPA's submission that M/s Zydus Healthcare Ltd. did not make any representation against the proposed draft ceiling price uploaded on NPPA's website, it is stated that this is factually incorrect. The company had made representation and copy of the same was provided to NPPA's representative and Review Officer.**

NPPA representative submitted that the ceiling price of Omeprazole 20 mg tablet has been fixed as per the provisions of DPCO, 2013 and as per the existing practice and policy of the Authority.

## **5. Examination:**

The formulation Omeprazole 20mg tablet became scheduled drug in the Schedule I (S.No.20.1.1) of revised NLEM 2015, vide DoP's notification 701(E), dated 10.3.2016. NPPA fixed the ceiling price of the subject formulation vide SO 4127(E), dated 22.12.2016. The company claimed that the four brands considered by NPPA are not of the Omeprazole but contain Omeprazole Magnesium as active drug and submitted documentary proof in support of their claim. The company also submitted the therapeutic advantages of Omeprazole Magnesium 20mg tablet over Omeprazole 20mg capsule during the personal hearing.

6.2 Explanation (4) & (5) of DoP's SO 701(E), dated 10.3.2016, reads as under :-

**Explanation (4):**

***"In general, medicines have been mentioned with respect to their active moieties, without mentioning the salts and, in cases where there is significant difference between the salts, the medicine finds mention as its specific salt".***

**Explanation (5):**

***"In case where an active moiety is available as different isomers or analogues or derivatives, they are considered as separate entities, and inclusion of one does not imply inclusion of all isomers or analogues or derivatives".***

6.3 In view of the above Explanation Notes of SO 701(E), dated 10.3.2016, NPPA may be directed to obtain the opinion of an Expert Body, like CDSCO/DGC(I) whether the formulations considered in Notification SO 4127(E), dated 22.12.2016 contain Omeprazole Magnesium or not. On the basis of the expert opinion, the case be re-examined, on merit.

7. **Government Decision:**

**"NPPA is hereby directed to obtain the opinion of Committee of Experts whether the formulations considered in Notification SO 4127(E), dated 22.12.2016 contain Omeprazole Magnesium or not and whether Omeprazole Magnesium is different from Omeprazole in its structure or not, and thereafter re-examine the case, on merit."**

Issued on this date, the 11<sup>th</sup> day of January, 2018.

**(M.K. Bhardwaj)**  
**Deputy Secretary**  
**For and on behalf of the President of India**

To

1. M/s. Zydus Healthcare Limited  
Zydus Tower, Satellite Cross Roads,  
Ahmedabad-380 015.
2. The Member Secretary,  
National Pharmaceutical Pricing Authority,  
YMCA Cultural Centre Building, New Delhi-110001

Copy to :

1. PS to Hon'ble Minister (C&F), Shastri Bhawan, New Delhi for information.
2. PSO to Secretary (Pharma), Shastri Bhawan, New Delhi for information.
3. T.D., NIC for uploading the order on Department's Website