Discriminatory pricing case study - Napp Pharmaceuticals

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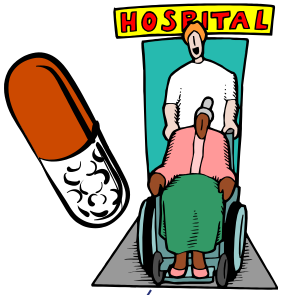
NAPP - Some basic facts

- Sustained Release Morphine. Pain-killer used for palliative care (cancer)
- MST held patent on SR. Ended 1992. 'Me too' branded generics entered in mid 1990s, but forced to leave in 2000

Basic Facts

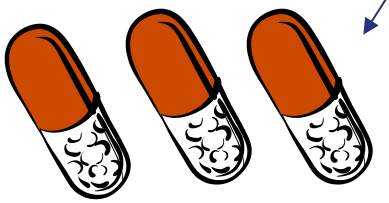
OFFICE OF FAIR TRADING

HOSPITAL SEGMENT (10%)



Follow-on prescriptions

Endorsement and
Reputation effects



Pharmacies

"Strategic
gateway"
to

GPs

COMMUNITY SEGMENT (90%)

Market Definition - SR Morphine

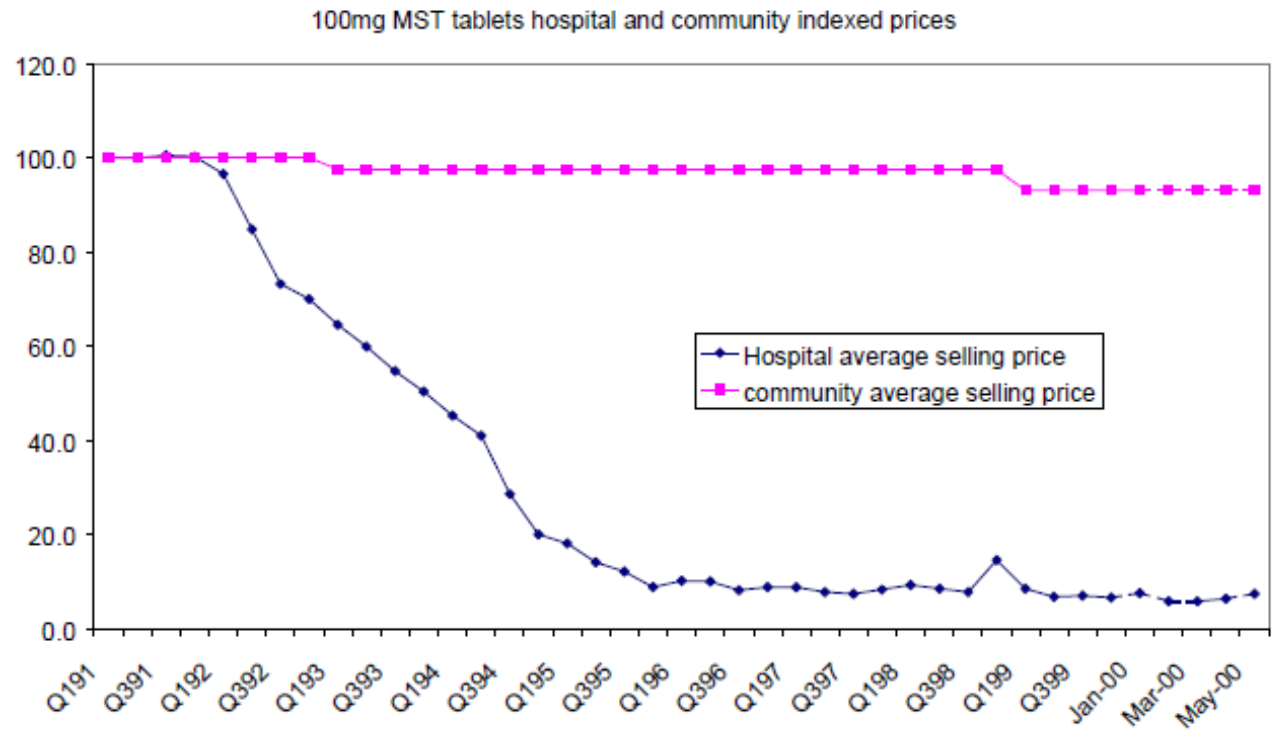
- Non-morphine products, immediate release morphine
  - ATC classifications
  - Prescribing Guidelines, GP Surveys
  - Pricing data, event analysis (but price sensitivity)
  - Supply side substitutability
- Hospital v Community
  - Companies and products same, but…..
  - Conditions of demand and competition different (hospitals bulk buyers, pharmacies - decisions taken by GPs)
  - Prices different (absolute levels, relative, trends (see slide 6)
  - Is supply to hospitals in different market to supply to community, or just different sub-markets?

Napp - Dominance issues

- Sustained high market shares (c. 90%)
- Barriers to entry
  - Regulatory authorisation, parallel imports
- Reputation and switching inertia
- Pharmaceutical Price Regulation Scheme
- Buyer Power - National Heath Service?

Napp - the abuse

Chart 1: Hospital and Community indexed prices of MST tablets (100mg) Q1 1991 = 100



Source: OFT calculation based on data from Napp
NB: figures for 2000 are given monthly, not quarterly

Characterisation of Abuse?

- Price discrimination - neatest way
  - But can you price discriminate between hospital and community customers if they are in different markets?
  - And how would we show that the price discrimination was harmful and not beneficial?
- Exclusionary pricing in hospital market?
  - Selective targeted hospital discounts <AVC
    - Measurement issues
  - Discounts targeted at competitor contracts with hospitals
  - Heavy discounts for exclusivity 2-3 years with hospitals
  - Proving Foreclosure Effect. Key issues
    - Simultaneous recoupment due to follow-on prescriptions
    - But can't an equally efficient competitor follow the same strategy?
    - Reasons for competitor failure. Foreclosure, or poor strategy?
- But wasn't sufficient only to tackle the exclusionary pricing in hospital segment? What about the high prices in the community?

Exploitative Abuse

- Excessive pricing in Community segment
  - Comparison with competitor prices/margins
  - Comparison with patent protection price
  - Comparison with export prices
  - But no whole-life cost assessment
- Finding of excessive prices dependent on foreclosure abuse
  - Prices excessive as a result of limited competition owing to exclusionary prices. Two sides of same coin
- Remedy
  - 15% reduction in the Community price
  - Price to hospitals should be no less than 20% of the reduced Community price
  - Remedy essentially limited degree of price discrimination between hospital and community

Evaluation

- OFT undertook retrospective evaluation of the Napp decision in 2011 (10 years after decision)
- Napp's list price for its SRM products in the community reduced by approximately 25 per cent, in excess of the 15 per cent decrease stipulated by the OFT in its 2001 decision.
- The OFT's 2001 intervention has stimulated entry into the SRM market. Napp's market share in the hospital segment has fallen from approximately 95 per cent to 50 per cent and in the community segment from 95 per cent to 65 per cent.
- Increases in Napp's SRM prices to hospitals have to some extent counterbalanced the savings from cheaper community prices. Nevertheless, the OFT has conservatively estimated that the intervention has saved the NHS in excess of at least £1.5 million in each year between 2001-2009.