August 4, 2020

Doug Clark
Executive Director
Patented Medicine Prices Review Board
Standard Life Centre, Suite 1400
333 Laurier Avenue West
Ottawa, Ontario K1P 1C1

Submitted electronically: PMPRB.Consultations.CEPMB@pmprb-cepmb.gc.ca

RE: SANOFI Canada Comments - PMPRB Draft Guidelines Consultation (June Version)

Dear Mr. Clark:

Building on our prior communications with PMPRB during the Guidelines consultation process, SANOFI Canada (SANOFI) would like to offer a number of comments on the latest iteration of the Guidelines under the current consultation period.

In our previous submission of Feb 14, 2020 and in other conversations with you and your staff, SANOFI provided PMPRB with specific examples of challenges with the prior version of Guidelines (November 2019). We highlighted for PMPRB the potential impact to Canadians and potential solutions for your consideration, with a particular focus on the areas of rare disease treatments, oncology treatments, prevention of infectious diseases and ensuring a stable supply of currently available medicines and vaccines. In this submission, we intend to assess whether our prior recommendations have been accounted for, with a focus on remaining challenges associated with the current draft Guidelines issued in June 2020. We recognize that certain changes have been advanced in a positive direction, and we want to work with PMPRB to build on those changes and evolve a simpler, more effective, differentiated and risk-appropriate price compliance framework.

SANOFI is one of the leading innovative biopharmaceutical companies in Canada and the world. With an extensive and diversified product portfolio, we are a proud local and global health partner. Our work in Canada spans the research and development, production and distribution of vaccines (for both domestic and global markets), important advancements in cardiovascular treatments, insulin therapy for patients with diabetes, innovation to patients struggling with cancer, multiple sclerosis, immunological conditions and treatments for rare diseases and rare blood disorders. As we have highlighted to you previously, during the next 5 years, SANOFI aims to bring additional therapeutic innovations to Canada, with at least 15 planned new medicine launches.

SANOFI has worked hard to sustain the largest and most consistent investment footprint in Canada from the life sciences sector – a contribution reaching $120 million in 2018. Over and above this ongoing commitment, SANOFI was proud to secure a landmark global investment in 2017 of $570 million towards our SANOFI Pasteur Building 100 project – the largest single investment in Canadian life sciences history.

During the course of the current Guidelines consultation, Canada and the entire world has been challenged by the emergence of the COVID-19 pandemic. The severe health and economic shocks from COVID-19 have highlighted the need for access to both existing medicines and the urgency of continued innovation in our sector to respond to emerging health challenges. SANOFI moved quickly and without hesitation to mobilize the full scale of our global resources as an innovative healthcare company to address COVID-19 directly. In addition to making major investments in the clinical development for both vaccine platforms and other treatments, SANOFI has engaged multiple partners in the public and private sectors in the spirit of collaboration and protecting public health. Our major and unprecedented COVID-19 vaccine partnership with GSK is emblematic of this extraordinary effort. We will continue to respond to the challenge of COVID-19 in this spirit.

The experience of recent months reinforces the critical importance of developing and maintaining a policy that is consistent with the promotion of healthcare, and innovation, while appropriately addressing public policy considerations. Within this important context, SANOFI has identified a number of outstanding questions and concerns with the latest iteration of the draft Guidelines.

General Comments

Based on our assessment of the current PMPRB proposals, SANOFI supports the fundamental position advanced by our trade associations that a significant reformulation of the Guidelines is warranted. We recognize that some adjustments have occurred in the current version of the draft Guidelines, and we are hopeful that this positive momentum can be continued.

For the next version, we recommend that the PMRPB instead focus on predictable list pricing only, incorporating clear and transparent international price tests and minimizing staff discretion, consistent with the PMPRB's established mandate and jurisdiction.

We highlight both general and specific factors below.

Admissibility of Third-Party Rebates.

The PMPRB is in receipt of the recent decision from the Federal Court which found that the requirement for patentees to report third-party rebates falls outside of the authority of the PMPRB. The approach contained in the latest draft Guidelines depends upon this information as part of operationalizing the Maximum Rebated Price (MRP) concept. Consequently, given that access to third-party rebate information will not be available to Board staff, a more significant re-engineering of the Guidelines is warranted.

Operational Complexity.

As a collective package, the latest set of proposals is far more complex for new medicines which would fall under Category 1. The PMPRB's desire to address "high-cost" drugs will disproportionately impact medicines for rare disease and oncology, areas with high unmet patient needs. As we and other stakeholders have repeatedly emphasized in prior submissions, the application of multiple tests including market size and pharmacoeconomic analyses for the purposes of price-setting is highly problematic, complicated, and represents a clear departure from the PMRPB's established mandate.

This complexity within the proposed Guidelines contributes to a commensurate high degree of uncertainty which will have a negative impact on the ability of Canada to attract new product launches. Indeed, Canada is already witnessing early indications of negative impact on product launches with rare diseases and oncology disproportionately impacted.[1] Compliance predictability is a key requirement for providing all stakeholders with sufficient information upon which to make market decisions. Incorporating a reliance on reanalyses from Health Technology Assessment (HTA) agencies as a key aspect of price compliance for Category 1 products will be impractical, as often these analyses are conducted many months or years following the receipt of a Health Canada Notice of Compliance (NOC).

Combined with the recent legal decision impacting the Maximum Rebated Price (MRP) proposals noted above, the current complex, multi-stage approach appears untenable. Instead, the PMRPB should focus on predictable list pricing grounded in its established mandate and jurisdiction, based on clear and transparent international price tests.

Destabilizing Reliance on PMPRB Staff Discretion.

The proposed Guidelines incorporate significant latitude and discretion for Board staff on multiple aspects of compliance enforcement. A key example of this discretion relates to the determination of Therapeutic Criteria Levels (TCL). It has not been demonstrated that Board Staff have access to the required level of scientific and clinical expertise to make these types of important and consequential determinations for patented medicines and vaccines. We also question the indeterminate and open-ended staff roles during investigations, including the ability to apply any price tests in that context.

Clear rules and procedures should be provided as a baseline standard for compliance requirements and transparency for a regulatory agency. Their absence contributes to further unpredictability for patentees. The standard for both commencing and conducting investigations must be explicit and consistently applied for the benefit of all parties.

Continuing Lack of Relevant Information.

Despite this concern having been raised repeatedly during the draft Guidelines process, key information on new reporting requirements and price sources remain unavailable to patentees at this time. We understand that the PMRPB intends to make available a data and information portal for patentees later in 2020, but after the close of this consultation process. The lack of this information complicates the ability of patentees to complete internal assessments of the draft Guidelines and provide meaningful and accurate feedback to the PMRPB.

Necessary information for patentee compliance, including any and all specific forms, requirements and other related PMPRB operating infrastructure, should be made available for assessment and stakeholder comments prior to implementation.

[1] See https://lifesciencesontario.ca/wp-content/uploads/2020/06/EN_LSO_Global-Launch-Benchmarking_Webinar-June22-20_Final.pdf.

Perspectives Related to Oncology and Rare Disease

Our SANOFI Genzyme product portfolio is comprised of innovative rare disease, rare blood, oncology, and other specialty medicines. The majority of our global late-stage R&D remains focused in these therapeutic areas.[2]

In our February 2020 submission on the last iteration of the draft Guidelines, we made two key recommendations:

- **That the PMPRB place any proposed guidelines as they would apply to drugs for rare diseases on hold, pending further development of:**
    - **The federal funding initiative**
    - **The provincial rare disease assessment initiative, and**
    - **A comprehensive review of the best global practices for funding and reimbursement of in other countries.**
- **That the PMPRB set aside the application of pharmacoeconomic analysis to establish a maximum rebated price for these therapies in the Guidelines or, in the alternative, to defer development of such guidelines until a more thorough review is conducted in consultation with oncology and rare disease stakeholders.**

Based on the revised draft Guidelines, our February recommendations have not yet been adequately addressed despite some changes to scope and thresholds. The majority of our new portfolio of medicines appears to still fall into Category 1 and would be subject to substantial price compliance uncertainty. This will undermine our ability to plan and launch future products in these areas in a timely manner.

It is unfortunate that the revised draft Guidelines continue to penalize treatments for rare diseases rather than incentivize treatments in areas of high unmet need. A more comprehensive and differentiated approach is required to account for these unique and important categories of medicines, rather than simply including them in the wider general scope of scrutiny under the Guidelines. The threshold adjustments for the new economic factors made in the latest iteration of the draft Guidelines are a move in the right direction, but still insufficient. The adjustments will have negligible impact on the deeper challenges with achieving workable compliance and future launches.

As has been identified previously, many first-in-class innovative products may not have a relevant comparator to benchmark against for the purposes of conducting a proper pharmacoeconomic analysis. Where those analyses do take place, there is a high level of unpredictability in how Canadian HTA agencies conduct their work. It has been demonstrated that a wide range of results can be achieved with a pharmacoeconomic model, which makes the predictability of a PEP by PMPRB highly uncertain and a fundamentally inappropriate regulatory tool.

[2] See https://www.sanofi.com/-/media/Project/One-Sanofi-Web/Websites/Global/Sanofi-COM/Home/common/docs/science-and-innovation/Table-projects-Q1-2020.pdf?la=en&hash=F9BE09FCB1A15C518998B3AF07037752 for current pipeline information (updated April 24, 2020).

This undifferentiated application of thresholds will limit the number of new oncology and rare disease products that are launched in Canada. As a key example, we remain concerned that the application of a market size test would take the PMPRB away from its established "excessive price" mandate into the domain of active price and market management. This type of market activity properly rests with reimbursement agencies and the funders of medications in Canada, who are in the position of accountability for budget allocation and overall health delivery decisions. Prescribed discounts of a further 25-35%, over and above any mandated discounts via the revised Maximum List Prices set at the median of the PMPRB11, threaten the commercial viability of marketing those products in Canada.

Combined with the increased discretion for Board staff, we are concerned by the prospect of an increase in disputes between patentees and the PMPRB under the proposed Guidelines. SANOFI cannot support a policy outcome from the Guidelines which undermines the ability of Canadian patients to have access to innovative therapies, especially in areas of demonstrated unmet medical need.

Accordingly, SANOFI reaffirms our prior recommendation that the PMRPB set aside the new factors, including pharmacoeconomics and market size, for differentiated product categories in favour of exploring alternative approaches with the input of multiple stakeholders including patient representatives.

Vaccine and Blood Products: Differential Market Context

In our February 2020 submission, SANOFI highlighted the established reality of existing market mechanisms and purchasing tools available to Canadian purchasers of vaccines and blood products. These product categories are currently subject to separate, extensive reimbursement reviews and negotiations, including tendering approaches. In many cases, these products have only a single or small number of public purchasers, consolidating purchasing power on behalf of the public interest. In light of this and consistent with a risk-based approach, SANOFI previously recommended that vaccines and blood products be excluded from the Guidelines to the maximum extent possible.

We acknowledge that the current version of the draft Guidelines includes new language with respect to staff consideration of the existence of tendering for some products in the context of an investigation. This is encouraging but still insufficient to recognizing appropriately the Canadian market reality for these products. There is some current support for taking a differentiated approach to these product categories, given that the PMPRB has already proposed a highly differentiated (and substantively less burdensome) approach in the draft Guidelines for other types of products with different risk profiles, including patented generic, OTC and veterinary medicines.

The current Guidelines language still fall short of offering a risk-adjusted approach while perpetuating the use of subjective staff discretion and overall compliance uncertainty for patentees. Price compliance for these unique product categories must not depend on situational negotiations with PMPRB staff, particularly where the Canadian market has strong and effective price management tools already in operation, and where Canada is competing for finite volumes of product against other international jurisidictions.

SANOFI therefore reiterates strongly our previous recommendation that the Guidelines should adequately recognize the unique aspects of vaccines and blood products, as a function of how they are managed and procured in the Canadian context, and that they be excluded from the application of the Guidelines.

Summary – Path Forward

The majority of our product pipeline is focused on innovative medicines for rare diseases, oncology and vaccines. Despite the encouraging but relatively minor adjustments from the prior version, the overall implication of this version of the draft Guidelines is a disproportionate impact and strong disincentive towards much needed medicines for small patient populations and areas of high unmet need. Those areas of medicine where additional therapeutic options are urgently required will receive the greatest impact. Combined with an increased level of compliance uncertainty and complexity, we would foresee additional barriers to timely product launches in the future. Indeed, early indications since the PMPRB has started down this path suggest that Canada is already witnessing a marked reduction in new product launches, with medicines for rare diseases and oncology prominently affected (as highlighted above).

At a time of extraordinary focus on public health and the critical importance of stakeholder collaboration and providing timely and effective healthcare to Canadians, we find that the PMPRB's approach to its draft Guidelines to be misaligned with, for instance, Health Canada's welcome efforts to faciliate additional clincial trials and access to new therapeutics for Canadians. The current approach to pricing policy greatly undermines these efforts, to the detriment of the future launch viability of new important therapies and Canada's global position in life sciences innovation. This approach is also inconsistent with the worthy objective of advancing Canada's overall innovation-based economy for future jobs and growth.

As a next step, SANOFI would respectfully reaffirm our recommendations from both February and again in this submission:

- **PMPRB should reconstruct the draft Guidelines to focus on predictable list pricing only, incorporating clear and transparent international price tests and minimizing staff discretion, consistent with the PMPRB's established mandate and jurisdiction;**
- **The MRP concept is untenable given the recent Federal Court decision, and consequently calls into question the application and purpose of utilizing the new economic factors in such a broad and undifferentiated manner – the application of these factors must therefore be set aside and reconsidered in a more fundamental manner that respects the value of therapeutic innovation and avoids creating new disincentives to market entry in Canada;**
- **Greater adjustments are required to the overall approach to differentiate and account for the unique aspects of key product categories such as rare diseases and oncology; further, vaccines and blood products should be fully excluded, building on the PMPRB's limited recognition of the market realities for those products to date.**

There is still an opportunity to reconsider the PMPRB's approach to its Guidelines. We sincerely believe that policy options are available to the PMPRB that allow it to exercise its mandate while respecting Canada's other policy priorities and imperatives. SANOFI remains available to Board staff to elaborate on our ongoing concerns with this process, the implications for our marketed and pipeline products, and potential alternative approaches which would reduce the complexity and improve patentee compliance within the context of the PMPRB's mandate.

Yours truly,

Marissa Poole
General Manager, Sanofi Genzyme and Country Lead, Sanofi Canada