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Vol. 481

Pretoria, 8 July 2005
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No. 27740

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GENERAL NOTICES

NOTICE 1055 OF 2005 COMPETITION COMMISSION

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

4284488 CANADA INC.

AND

CREO INCORPORATED

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that It has approved the transaction involving the above mentioned firms subject to the conditions set out below.

A. Condition

A moratorium is placed on retrenchments as a result of the merger at the merged entity for a period of one year. This means that no single worker maybe retrenched as a result of the merger for a period of one year following the act of implementation of the merger.

B. Monitoring of the conditional approval

The following procedures must be adhered to in order for the Commission to properly monitor the abovementioned condition:

The merged entity must:

- a. Provide the Commission with quarterly reports regarding the effects of the proposed transaction on employment.
- b. Each report must include the following information:
 - I. The current levels of employment, per job category, at the merged entity.
 - II. The number of planned retrenchments per job category after one year from the date of implementation of the merger.
 - III. The process upon which the retrenchments will take place.
 - IV. A signed affidavit by a senior official of the merged entity confirming that the merged entity has honoured the moratorium placed on retrenchments for the period under review.

- c. The quarterly reports must be submitted for the period of this conditional approval. In the event of non-finalisation of the retrenchment process in the merged entity, within the period of this conditional approval, the merged entity shall be obliged to submit quarterly reports until the entire retrenchment process has been finalised.
- d. The quarterly reports must be submitted to the Commission no later than one calendar month following the end of each quarter.

Enquiries in this regard may be addressed to Ms. Lizél Blignaut at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3295, or Facsimile: (012) 394 4295. (Reference: 2005Mar1493)

**NOTICE 1056 OF 2005
COMPETITION COMMISSION**

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

Norvatis Deutschland GmbH

and

Hexal AG

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to the conditions set out below.

1. INTERPRETATION

- 1.1. The headings of the clauses in this Annexure "A" to this Commission decision are for the purpose of convenience and reference only, and shall not be used in the interpretation of, or to modify or amplify, the terms of this order, or any clause hereof.
- 1.2. In this Commission decision, unless a contrary intention clearly appears, words importing:
 - 1.2.1. any one gender include the other genders;
 - 1.2.2. the singular includes the plural and vice versa;
 - 1.2.3. natural persons include legal persons and vice versa.
- 1.3 The following terms shall have the meanings assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:
 - 1.3.1 **"the Act"** – means the Competition Act 89 of 1998, as amended;
 - 1.3.2 **"the Commission"** – means the Competition Commission of South Africa;
 - 1.3.3 **"days"** – means business days;

- 1.3.4 **"the divested business"** – means the business as referred to in clause 2 of this order;
- 1.3.5 **"final date"** – means the last day of any particular time period prescribed in this order wherein which any activity connected to the divestment of the divested business has to be duly completed.
- 1.3.6 **"merging parties"** – means Novartis (Deutschland) GmbH ("Novartis"), its subsidiaries and Hexal AG (Hexal).
- 1.3.7 **"proposed purchaser"** – means any willing and able independent third party, which elects to purchase the divested business and which is approved by the Commission;
- 1.3.8 **"proposed transaction"** – means the sale of the divested business to the proposed purchaser;
- 1.3.9 **"sale agreement"** – means an agreement, to be approved by the Commission, that will be entered into by the merging parties and the proposed purchaser, whereby the divested business will be sold;
- 1.3.10 **"the Trustee"** – means the individual charged with the duty of executing this order in the event that the parties fail to do so in the prescribed period;
- 1.3.11 **"the divestiture period"** – is the particular time period prescribed by the Commission for the merging parties to secure a proposed purchaser;
- 1.3.12 **"Trustee divestiture period"** – means the particular time period within which the trustee executes his mandate to divest the divested business.
- 1.3.13 **"the date of disposal"** – the date on which transfer of legal title of the divested business is transferred to the proposed purchaser.
- 1.3.14 **"trustee team"** – advisors, assistants and other personnel appointed by the trustee to assist the trustee in the execution of his/her mandate.

2 DIVESTED BUSINESS

The merging parties shall divest all right, title and interest in the Hexal product – Ketohexal Syrup in the RO3C category – Registration Number 31/10.2.2/0639 which is currently registered in the name of Hexal Pharma (SA) (Pty) Ltd, a wholly owned subsidiary of Hexal, as a going concern.

3 TIME PERIODS

- 3.1 The merging parties shall find a proposed purchaser for the divested business, enter into a sale agreement, (subject to the approval of the Medicines Control Council ("MCC")), of the divested business within (confidential time period) from the date of this decision, and transfer ownership of the divested business as soon as approval from the MCC is received.
- 3.2 If the merging parties are not able to transfer the legal title of the divested business, subject to the approval of the MCC, to the proposed purchaser within confidential time period from the date of this decision they shall appoint a Trustee approved by the Commission before the expiration of the confidential time period. The Trustee will, subject to the approval of the MCC, have an exclusive mandate and power of attorney to sell the divested business within a further period of (confidential time period) at no minimum price.

4 UNDERTAKING BY THE MERGING PARTIES

- 4.1 The merging parties undertake to do the following in respect of the divested business:
 - 4.1.1 Preserve and maintain the economic and competitive value of the divested business until the date of disposal in accordance with good commercial practice and to manage the divested business in the best interest of such business;
 - 4.1.2 Refrain from carrying out any act that may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the divested business.
 - 4.1.3 Refrain from carrying out any act that may be of such a nature as to, in an adverse way, alter the economic value of the divested business or which could alter the commercial strategy in respect of such business in a significantly adverse way; and
 - 4.1.4 Provide sufficient resources for the maintenance of the divested business, in accordance with any approved strategic business plan.

5 THE PURCHASER

- 5.1 The proposed purchaser of the divested business shall be independent and not related to the merging parties' or any directly or indirectly affiliated member of the merging parties' corporate groups.
- 5.2 The purchaser will possess the financial resources, the ability and the incentive to maintain the divested business as a viable and active competitive force in

competition with the merging parties or any directly or indirectly affiliated member of the merging parties' corporate group and other competitors.

- 5.3 The proposed purchaser must obtain all necessary approvals from the Commission and other regulatory authorities for the acquisition of the divested business (taking into account any remedies that might be offered).
- 5.4 The proposed purchaser shall provide the Commission with an affidavit deposed to by a senior official of the proposed purchaser confirming the accuracy of all information provided to the Commission.
- 5.5 In order to maintain the structural effect of this decision, the merging parties or any directly or indirectly affiliated member of their corporate group, will not subsequently directly or indirectly re-acquire influence over the whole or part of the divested business.

6 PRIOR APPROVAL BY THE COMPETITION COMMISSION

- 6.1 When the merging parties have reached an agreement with a proposed purchaser it will submit to the Commission a fully documented and reasoned proposal enabling the Commission to:
 - 6.1.1 Verify that the proposed purchaser is a suitable purchaser of the divested business.
 - 6.1.2 Grant any approvals required under these commitments with respect to any ancillary arrangements, e.g. licensing agreement to sell Ketoheal Syrup in the RO3C category.
- 6.2 Such a proposal shall be submitted no later than one month prior to the end of the divestiture period and shall include copies of the draft and/or final sale agreement and all other ancillary agreements and/or other documents related to the proposed divestment.
- 6.3 The Commission will approve or reject the merging parties' proposal in writing. The approval of the proposal shall not be unreasonably withheld.
- 6.4 Once the sale agreement with the proposed purchaser has been concluded, the merging parties shall submit a signed copy of the sale agreement, together with any other relevant documentation to the Commission.

7. DUTIES AND OBLIGATIONS OF THE PARTIES DURING THE TRUSTEE DIVESTITURE PERIOD

- 7.1 If the merging parties are not able to transfer, subject to the approval of the Medicines Control Council, the divested business to an approved purchaser within confidential time period from the date of this decision, the trustee shall, subject to the approval of the MCC, have an exclusive mandate with the necessary power of attorney to sell the divested business at no minimum price.
- 7.2 At the expense of the merging parties, the trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the merging parties approval, (this approval not to be unreasonably withheld or delayed), if the trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations, provided that any fees and other expenses incurred by the trustee are reasonable.
- 7.3 If the merging parties refuse to approve the advisors proposed by the trustee, the Commission may approve the appointment of such advisors, after having heard the merging parties' objection thereto.

8. IMPLEMENTATION OF THE TRANSACTION

The merging parties may implement the transaction immediately after receiving this decision, subject to the conditions of the divestiture as set out in 1 to 7 above.
