

NOTICE 1515 OF 2009
COMPETITION COMMISSION

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

PFIZER INC.

AND

WYETH

CASE NO. 2009JUN4462

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.

DIVESTITURE CONDITIONS

1. INTERPRETATION AND CONDITIONS PRECEDENT

- 1.1 The headings of the clauses in the Commission's order 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 the Commission's order, 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, both in the Commission's order and in any annexure to the Commission's order, 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 as established in terms of section 19 of the Act, and shall include all advisers and consultants to the Commission;
- 1.3.3 "the Commission's order" – means Annexure A and Annexure B attached to the Commission's merger clearance certificate, Form CC15;
- 1.3.4 "the date of disposal" – the date on which transfer of legal title of the divested business is transferred to the proposed purchaser;
- 1.3.5 "days" – means business days;
- 1.3.6 "the divested business" – means Wyeth's Fort Dodge's multivalent respiratory cattle vaccine business which will consist of certain rights, title and interests, including the right to develop and improve, in assets related to the following multivalent cattle respiratory vaccines in South Africa: Pyramid MLV-4, Triangle 4 + PH+K and Pyramid 4 + Presponse SQ. For the avoidance of doubt, the Cattle Vaccines Divestment Business will not include any right to sell cattle vaccines outside of South Africa.
- 1.3.6.1 The Cattle Vaccines Divestment Business includes:
- 1.3.6.1.1 All tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the divested business;
- 1.3.6.1.2 All licences, permits and authorisations issued by any governmental organisation for the benefit of the divested business, to the extent possible under the United State laws;
- 1.3.6.1.3 All contracts, leases, commitments and customer orders of the divested business; all customers, credit and other records of the divested business; (hereinafter collectively referred to as Assets); and
- 1.3.6.1.4 Certain personnel contemplated to be made available to the purchaser, as required in the US under the Asset Purchase Agreement between Pfizer and the potential purchaser.
- 1.3.7 "the First divestiture period" – means an initial period of 6 (six) months from the date on which the merger between the merging parties is cleared by the United State's Federal Trade Commission, or such further extended period as provided for in terms of clauses 3.2 and/or 9.1.1 of Annexure A, within which time merging parties must have executed a sale agreement with the proposed purchaser;
- 1.3.8 "the Divestiture Trustee" – means one or more natural or legal person(s), independent from the merging parties, who is approved by the

Commission and appointed by the merging parties, and who will have the status akin to a non-executive director of a company and who will have those rights and duties as will be set out in the terms of the Divestiture Trustee mandate;

- 1.3.9 **“merging parties”** – means Pfizer Inc. and Wyeth;
- 1.3.10 **“the Monitoring Trustee”** – means one or more natural or legal person(s), independent from the merging parties, who is approved by the Commission and appointed by the merging parties, and who has the duty to monitor the Parties' compliance with the conditions and obligations in the Commission's order and who will have the status akin to a non-executive director of a company and who will have those rights and duties as set out in the terms of the Monitoring Trustee mandate in **Annexure B**;
- 1.3.11 **“proposed purchaser(s)”** – means a third party that elects to purchase the divested business and is approved by the Commission in accordance with the provisions of this **Annexure A**;
- 1.3.12 **“proposed transaction”** – means the sale of the divested business to the proposed purchaser(s);
- 1.3.13 **“Purchaser of the US divested business”** – means the United States' Federal Trade Commission (FTC) approved purchaser of the Pfizer and Fort Dodge Animal Health products being divested in the United States and Canada in the context of the Pfizer – Wyeth transaction.
- 1.3.14 **“sale agreement”** – means a written agreement, to be approved by the Commission, that will be entered into between the merging parties or the trustee and the proposed purchaser, whereby the divested business will be sold to the proposed purchaser;
- 1.3.15 **“Trustee(s)”** – means the Monitoring and/or Divestiture Trustee;
- 1.3.16 **“Trustee divestiture period”** – means the period of 3 (three) months, which commences at the end of the *First* divestiture period, within which the Divestiture Trustee executes his mandate to sell the divested business on the basis of a power of attorney and in accordance with the Divestiture Trustee mandate,
- 1.3.17 **“the South African clearance date”** – the date referred to in the Commission's Merger Clearance Certificate (Form CC 15);
- 1.3.18 **“the US clearance date”** – means the date on which the merger between the merging parties is cleared by the United State's Federal Trade Commission;
- 1.3.19 **“Trustee team”** – means any person appointed by the Trustee to enable the trustee to fulfil his mandate, which appointment shall only be effective with the prior written approval of the merging parties.

2. DIVESTED BUSINESS

The merging parties shall divest the divested business as a going concern. The business shall comprise of those assets of the divested business owned by Wyeth and used in or in connection with the divested business.

3. TIME PERIODS

3.1 The merging parties shall during the First divestiture period identify a proposed purchaser for the divested business.

3.2 The merging parties must notify the proposed transaction to the Commission, at which time the First divestiture period shall, following the fulfilment of all notification requirements, be suspended, pending the approval of the transaction by the Commission.

3.3 If the merging parties are not able to conclude a sale agreement in respect of the divested business with the proposed purchaser within the First divestiture period or the extended period/s as the case may be, the Divestiture Trustee will have an exclusive mandate and a power of attorney to sell the divested business during the Trustee divestiture period at no minimum price.

3.4 Once the sale agreement has been concluded, the parties to the sale agreement must use their reasonable commercial endeavours to ensure that the sale agreement becomes unconditional and that it is implemented as soon as possible from the date of signature of the sale agreement. This shall be included as a provision in the sale agreement.

3.5 The specific details of the Monitoring Trustee mandate are annexed hereto at **Annexure B**.

3.6 Should the Divestiture Trustee fail to identify and conclude a sale agreement for the divested business with a proposed purchaser within the 3 (three) month Divestiture Trustee Period, the Divestiture Trustee may apply to the Commission for a further 3 (three) month extension, on good cause shown. The Commission's consent may not be unreasonably withheld.

4. UNDERTAKING BY THE MERGING PARTIES

4.1 The merging parties undertake to do the following with respect to 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 manage the divested business in the ordinary course of business with reasonable care and skill, pursuant to good business practices until the

date of disposal; and

- 4.1.3 provide sufficient resources for the maintenance of the divested business, in accordance with any approved strategic business plan, during the First divestiture period or the trustee's divestiture period or until the date of disposal whichever is the earliest.
- 4.2 Notwithstanding the provisions of clause 4.1.1 above, the merging parties shall not in any way be obliged, as a result of the provisions of the Commission's order, to in any way constrain their activities and business operations.
- 4.3 Notwithstanding any provisions contained in the Commission's order, the merging parties will not be obliged to provide any resources with respect to the divested business after the date of disposal, unless they are required to do so due to their failure during the divestiture period to fulfil their undertakings set forth in clause 4.1.

5. APPOINTMENT OF TRUSTEE

- 5.1 The merging parties shall appoint a Monitoring Trustee and, if applicable, a Divestiture Trustee. Such appointment shall be subject to the prior written approval of the Commission.
- 5.2 If the merging parties have not entered into a binding sale and purchase agreement 15 (fifteen) days before the end of the First Divestiture period or if the Commission has rejected all purchasers presented to the Commission by the merging parties prior to 15 (fifteen) days before the end of the First Divestiture period, the merging parties will appoint a Divestiture Trustee to carry out the function as specified in clause 8.1 and propose a Divestiture Trustee mandate, subject to the prior approval by the Commission. The appointment of the Divestiture Trustee will take effect upon the commencement of the Trustee Divestiture period.
- 5.3 The Trustee shall be independent of the merging parties, possess the necessary qualifications to carry out his mandate, for example an investment banker, consultant or auditor and shall neither have nor become exposed to a conflict of interest.
- 5.4 The merging parties shall provide a comprehensive and duly executed power of attorney to the Divestiture Trustee on the first day of the appointment of the Divestiture Trustee.
- 5.5 This power of attorney will become effective on the first day of the Trustee Divestiture period.
- 5.6 A certified copy of the power of attorney shall be submitted to the Commission within 5 (five) days of the Divestiture Trustee's appointment.
- 5.7 The power of attorney shall enable the Divestiture Trustee to perform such actions, which the Divestiture Trustee considers strictly necessary or appropriate

to facilitate the sale of the divested business to a purchaser approved by the Commission, including to appoint advisors and to execute the Divestiture Trustee mandate attached hereto, until the expiry of the Trustee divestiture period.

- 5.8 The power of attorney granted by the merging parties to the Divestiture Trustee, shall expire on the earlier of the termination of the Divestiture Trustee mandate, termination of the Trustee's divestiture period, or the discharge of the Divestiture Trustee.
- 5.9 The merging parties shall propose a Monitoring Trustee for the Commission's written approval within 20 (twenty) days from the South African clearance date. The merging parties shall propose a Divestiture Trustee for the Commission's written approval no later than 15 (fifteen) days before the end of the First Divestiture period.
- 5.10 The proposal of a Trustee shall contain such information for the Commission to determine whether the Trustee is suitable to execute the Trustee mandate and shall include, *inter alia*, the proposed Trustee's contact details and employment history.
- 5.11 The Trustee relationship with the merging parties for the previous 12 months from the South African clearance date must be disclosed to the Commission in writing in the proposal.
- 5.12 The Commission shall have the discretion to approve or reject the proposed Trustee in writing. Such approval shall not be unreasonably withheld. Should the Commission reject the proposed Trustee, the Commission must provide written reasons to the merging parties explaining the reasons for the rejection of the proposed Trustee.
- 5.13 The merging parties shall appoint the Trustee within 5 (five) days of the Commission's approval of said Trustee.
- 5.14 If the proposed Trustee is rejected, the merging parties shall submit the names of at least 2 (two) more proposed Trustees within 5 (five) days of being informed of the rejection.
- 5.15 If the Commission, acting reasonably, rejects all further proposed Trustees, the Commission shall nominate a Trustee, whom the parties shall appoint, or cause to be appointed within 5 (five) days of being informed by the Commission of such Trustee's identity.
- 5.16 The merging parties shall pay the Trustee and the Trustee team's reasonable fees and expenses on the terms and conditions as agreed upon in writing between the merging parties and the Trustee.

6. THE PROPOSED PURCHASER

- 6.1 The proposed purchaser of the divested business shall be independent and not related or connected to the merging parties' or be any directly or indirectly affiliated member of the merging parties' corporate groups.

- 6.2 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).
- 6.3 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 relating to the proposed purchaser and which is provided to the trustee and the Commission.
- 6.4 In order to maintain the structural effect of the Commission's order, the merging parties will not subsequent to the date of disposal and for a period of 2 (two) years from such date, directly or indirectly acquire control over the whole or part of the divested business. The merging parties and the proposed purchaser shall agree to include this provision contained in this clause 6.4 as a provision in the sale agreement.

7. PRIOR APPROVAL BY THE COMPETITION COMMISSION

- 7.1 Once the sale agreement with the proposed purchaser has been executed by the proposed purchaser and the merging parties or the Divestiture Trustee, the merging parties or the Divestiture Trustee shall submit a signed copy of the sale agreement to the Commission.
- 7.2 Notwithstanding that the sale agreement may not require compulsory notification to the Commission, the merging parties and the proposed purchaser agree to notify the Commission of the proposed transaction in terms of which the sale agreement is concluded, in the form of a small merger notification. The Commission undertakes to review the filing and provide the merging parties and the proposed purchaser with a written clearance certificate.

8. DUTIES AND OBLIGATIONS OF THE MERGING PARTIES DURING THE TRUSTEE DIVESTITURE PERIOD

- 8.1 If the merging parties are not able, within the First divestiture period, to enter into a sale agreement with a proposed purchaser which has been approved by the Commission, then the Divestiture Trustee shall have an exclusive mandate with the necessary power of attorney to sell the divested business at no minimum price.
- 8.2 The merging parties will indemnify the Trustee and the Trustee team's and hold the Trustee and the Trustee team's harmless against any liabilities arising out of the performance of the trustee's duties under the trustee mandate, except to the extent that such liabilities result from the wilful default, recklessness and/or negligence of the Trustee.

9. REVIEW CLAUSE

- 9.1 The Commission may, where appropriate, in response to a request from the merging parties showing good cause and accompanied by a report from the Trustee:

- 9.1.1 Grant an extension of the First Divestiture period for a maximum of two further periods each not exceeding 3 (three) months on "good cause shown"; or
- 9.1.2 Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in the Commission's Order.
- 9.2 For purposes of this clause, "good cause shown" means circumstance that could not have reasonably been foreseen by the merging parties at the time the clearance certificate was issued. The Commission's consent may not be unreasonably withheld.

10. IMPLEMENTATION OF THE TRANSACTION

The merging parties may implement the transaction notified to the Commission under 2009May4462 as from the South African clearance date, subject to the successful appointment of the Monitoring trustee as provided for in **Annexure A**.

11. CONFIDENTIALITY

Save for the fact that the Commission has conditionally approved the merger notified to the Commission under case number 2009May4462, the entire contents of the Commission's order is confidential and may not be disclosed in any manner whatsoever to any party other than the Commission.

MONITORING TRUSTEE MANDATE

12. INTRODUCTION

- 12.1 The Monitoring Trustee shall act on behalf of the Commission to monitor the merging parties' compliance with the provisions of **Annexure A** during the First divestiture period.
- 12.2 The key objective of the appointment of the Monitoring trustee, is for the Monitoring Trustee to oversee the operations of the divested business and to take such steps as may be required to ensure that the divested business is managed and maintained in the ordinary course of business, and that the divested business may be sold in a format and to the proposed purchaser who meets the Commission's criteria, as set out in clause 6 of **Annexure A**, to enable continued competition in the relevant market.

13. DUTIES OF THE MONITORING TRUSTEE

- 13.1 The Monitoring Trustee shall until the termination of his mandate as per the provisions of Annexure A, carry out the following duties:

- 13.1.1 Monitor the steps that the merging parties are taking to manage the divested business in the ordinary course of business, pursuant to good business practice.
- 13.1.2 Observe and advise the Commission as to the development of the procedure for selecting the proposed purchaser for the divested business and as to the conduct of the negotiations.
- 13.1.3 Advise the Commission as to whether the proposed purchaser/s with whom the merging parties intend to negotiate are likely to satisfy the Commission's requirements as set out in Annexure A.
- 13.1.4 The Monitoring Trustee's duties set out above may not be extended or varied in any way by the merging parties, save with the express written consent of the Commission.

14. REPORTING OBLIGATIONS OF THE MONITORING TRUSTEE

- 14.1 A detailed work plan describing how the Monitoring Trustee intends to monitor compliance with the obligations and conditions attached to the order will be drawn up in consultation with the merging parties within 10 (ten) days of the Monitoring Trustee's appointment and copied to the Commission.
- 14.2 Within 10 (ten) days from the end of each calendar month during the First divestiture period, or as otherwise agreed with the Commission, the Monitoring Trustee shall submit a written progress report to the Commission, sending the merging parties a copy at the same time.
- 14.3 The report shall cover the Monitoring Trustee's progress in the fulfilment of his obligations under the Monitoring Trustee mandate and the compliance of the merging parties with the conditions and obligations imposed upon them in the Commission's order.
- 14.4 The report shall cover in particular the following topics:
 - 14.4.1 the operational and financial performance of the business to be divested, assessed during any particular time period;
 - 14.4.2 a list of proposed purchasers and a preliminary assessment of each of them;
 - 14.4.3 the state of negotiations with proposed purchasers;
 - 14.4.4 any issues or concerns regarding the sale of the divested business including any issues and concerns regarding the negotiation of the sale agreement.
- 14.5 Throughout the term of the Monitoring Trustee's appointment, if at any time the Monitoring Trustee has any reason to doubt the merging parties' reasonable compliance with any or all of the merging parties' obligations, which are within

the scope of the Monitoring Trustee mandate, the Monitoring Trustee shall immediately advise the merging parties of such doubts or concerns and make recommendations to the merging parties regarding how such doubts or concerns may be remedied without delay.

- 14.6 The abovementioned doubts or concerns as well as related recommendations and progress in their implementation must be contained in the written progress report referred to in clause 14.2 above.

15. ASSISTANCE BY THE MERGING PARTIES TO THE MONITORING TRUSTEE

- 15.1 The merging parties shall provide to the Monitoring Trustee, or cause to be provided, all such reasonable assistance and information as may be required by the Monitoring Trustee to enable him to carry out this mandate, by providing copies of all relevant documents and access to appropriate personnel.
- 15.2 The merging parties shall cover all their own expenses arising from the provision of such assistance.
- 15.3 The merging parties shall provide the Commission, on receipt of a written request by the Commission, with affidavits deposed to by a senior official of the merged entity confirming the accuracy of the information provided to the Monitoring Trustee.

16. CONFIDENTIALITY

- 16.1 The Monitoring Trustee's reports and any other document generated by the Monitoring Trustee in relation to his mandate will be confidential and for the sole use of the Monitoring Trustee and the addressees, who shall be the Commission and the merging parties.
- 16.2 The Monitoring Trustee shall present the draft reports to the merging parties in advance of its submission of these reports to the Commission in order that the merging parties may review the factual content of the report and provide their comments.
- 16.3 Any unresolved disagreement between the Monitoring Trustee and the merging parties concerning the content of the draft report must be noted in the final report.

17. ESTIMATED FEES AND EXPENSES

- 17.1 The merging parties shall pay the trustee's reasonable fees and expenses on the terms and conditions agreed upon in writing between the merging parties and the Monitoring Trustee.

18. REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF TRUSTEE

- 18.1 The Commission may at any time, after consultation with the Monitoring Trustee, order the merging parties to remove the Monitoring Trustee, if the Monitoring Trustee has not acted in accordance with the Monitoring Trustee Mandate.

18.2 The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in **Annexure A**.

19. **TERMINATION OF THE MANDATE**

19.1 The Monitoring Trustee Mandate will automatically terminate upon completion by the Monitoring Trustee of his obligations under this mandate, subject to the written approval of the Commission.

Enquiries in this regard may be addressed to Mr. Maarten van Hoven at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3295, or Facsimile: (012) 394 4295.
