

**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 – Keto Hexal 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 reacquire 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 Ketohexal 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.

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## 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 **I**f 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.

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