ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 158 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MEDPRO PHARMACEUTICA PROPRIETARY LIMITED

AND

ALLERGAN GX

CASE NUMBER: 2016JUL0345

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 conditions as set out below:

1. On 11 July 2016, the Competition Commission ("Commission") was notified of an intermediate merger wherein Medpro Pharmaceutica (Pty) Ltd ("Medpro") intends to acquire joint control over Allergan Gx ("Allergan Gx"), through an unincorporated Teva/Medpro Joint Venture which is jointly controlled by Medpro and Teva Pharmaceuticals (Pty) Ltd ("Teva") ("Teva/Medpro JV"). Teva and Medpro formed the unincorporated Teva/Medpro in 2014 to collaborate on the marketing and distribution of certain pharmaceutical products. The transaction of the formation of Teva/Medpro JV was notified to and subsequently approved without conditions by the Commission on 9 December 2014. When the Teva/Medpro JV was formed, each of Teva and Medpro transferred some of their products, marketing and distribution functions to Teva/Medpro JV.

2. Teva recently acquired the global generic pharmaceutical business of Allergan ("Allergan Generics Business"). The proposed transaction is meant to transfer some of these Allergan Generics Business' products and functions of Teva's subsidiary, Allergan Generics

Business, to Teva/Medpro JV. Through the proposed transaction, Teva is transferring part of the Allergan Generics Business ("Allergan Gx") to the Teva/Medpro JV. Because Teva already has some form of control over these products, the proposed transaction is meant to enable Medpro to acquire joint control over Allergan Gx as Allergan Gx will be placed under the Teva/Medpro JV, which is jointly owned by Teva and Medpro. Post-merger, Allergan Gx will be a wholly-owned subsidiary of the unincorporated Teva/Medpro JV, which is jointly owned by Teva and Medpro.

3. The primary acquiring firm is Medpro, through the unincorporated Teva/Medpro JV. Medpro is incorporated in terms of the laws of the Republic of South Africa. Medpro is a wholly-owned subsidiary of Cipla Limited ("Cipla"), a global generic pharmaceutical manufacturing company incorporated in accordance with the company laws of India. Medpro supplies over-the-counter ("OTC") and scheduled medicines across various therapeutic areas within South Africa.

4. Teva is a private company incorporated in accordance with the company laws of the Republic of South Africa. Teva is ultimately controlled by Teva Pharmaceutical Industries Limited ("Teva Pharm"). Teva Pharm is a fully integrated public pharmaceutical company incorporated in accordance with the laws of Israel. Teva Pharm's business comprises of two primary segments namely (i) generic medicines and (ii) speciality medicines, which include products in the women's health, respiratory and central nervous system ("CNS") therapeutic areas. In South Africa, Teva Pharm operates through its wholly-owned subsidiary, Teva. Teva develops, sells and markets a range of scheduled pharmaceutical products.

5. The proposed transaction raises horizontal overlap on several products, based on the Anatomical Therapeutic Chemical ("ATC") Classification System. There is no horizontal overlap between the activities of the Teva/Medpro JV and Allergan Gx. However, as Teva/Medpro JV's activities are hosted and operated through Medpro, the horizontal overlap in the transaction is raised by the fact that Medpro also distributes products substitutable with those of Allergan Gx.

6. In addition to these generic products, both Allergan Gx and Medpro sell Respiratory Products. However, the Respiratory therapeutic area does not form part of the Teva/Medpro JV and each of the Allergan Generics Business and Medpro firms will continue to sell and distribute their Respiratory Products independent of Teva/Medpro JV.

7. The merging parties defined the product markets based on the categories of the third level of ATC ("ATC3") Classification, as is commonly done by the Competition Tribunal ("Tribunal") and other competition authorities the world over. The Commission concurs with merging parties with regard to defining the product markets based on ATC3 categories.

8. There are substantial markets in which a horizontal overlap arises in terms of this ATC3 classification. The Commission considered the market shares of these relevant markets (ATC3 categories) and found that the market share accretions are small in almost all of the product offerings.

9. The Commission is of the view that the proposed transaction does not raise substantial concerns as the post-merger market shares and/or the market share accretions are low. In addition, the proposed transaction involves generic products which are scheduled medicines and are thus regulated through the single exit pricing (SEP) regime by the Department of Health. The merged entity will continue to face significant competition from other viable rivals such as Pfizer, Aspen, Novartis, Roche, Boehringer, and Adcock among others.

10. Furthermore, the merging parties have an existing relationship on some of their products. The proposed transaction will not have any effect on the markets for these products as these products will be distributed separately by the Teva/Medpro JV and Medpro.

11. Further, the Commission considered the pipeline products of the merging parties and found that these are products have not yet been brought into the market as they have not yet been approved by the MCC and are therefore not yet registered. Given the regulatory time frames required to bring pharmaceutical products to market (currently estimated to be 4 to 5 years) and the high degree of competition amongst pharmaceutical firms particularly for generic

products, the Commission is of the view that the pipeline products of the merging parties do not raise competition concerns.

12. Lastly, the Commission considered whether Teva/Medpro JV could facilitate information exchange between Medpro and ultimately Teva, as each of these joint venture partners operate as independent pharmaceutical entities in the market. The Commission found that the merging parties have, in terms of the Teva/Medpro JV Agreement, instituted a governance structure through which the flow of competitively sensitive information between their independent entities, namely Teva and Medpro through the Teva/Medpro JV may be ring-fenced.

13. However, the Commission still found that the Teva/Medpro JV is likely to facilitate the exchange of competitively sensitive information between Teva and Medpro and their affiliate companies, resulting in a substantial lessening of competition within the meaning of section 12A of the Act, if the existing governance structure to regulate information remains loose, as is the case, in its current form. The Commission is of the view that this governance structure has to be formalised by making it a condition for the approval of the merger, to enforce compliance. Therefore, it is necessary to adopt the governance structure of the Teva/Medpro JV as a condition to enforce compliance and eliminate any potential flow of competitively sensitive information between Teva and Medpro. The Commission engaged with the merging parties with respect to the matter and the merging parties agreed to the conditions.

14. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the defined markets.

15. The proposed transaction does not raise any substantial public interest concerns.

16. Therefore, the Commission approves the proposed transaction with conditions in Annexure A.

ANNEXURE A

CONFIDENTIAL

Medpro Pharmaceutica (Pty) Ltd and Allergan Gx

CC CASE NUMBER: 2016Jul0345

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. "**Acquiring Firm**" means Medpro Pharmaceutica (Pty) Ltd, through the unincorporated Teva/Medpro JV;

1.2. "**Allergan Gx"** means the primary target firm;

1.3. "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC15);

1.4. "**Commission**" means the Competition Commission of South Africa;

1.5. **"Competitively Sensitive Information"** means all information with respect to the products of Teva and Medpro that are substitutable with one another which is not already within the public domain and which includes but is not limited to pricing, sales, marketing, promotion, distribution and any action or aspect of commercial value in relation to such products;

1.6. "**Competition Act**" means the Competition Act 89 of 1998, as amended;

1.7. "**Conditions**" mean these conditions;

1.8. **"Confidentiality Undertakings"** mean written and binding measures not to disclose

confidential information concluded by the nominees to the JV Governing Body;

1.9. **"Days"** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.10. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.11. **"JV Governing Body"** means the body that manages the direction of the business and affairs of the Teva/Medpro JV;

1.12. **"JV Governing Body Members"** mean individuals appointed in equal proportions by each of Teva and Medpro to the JV Governing Body;

1.13. **"JV Products"** means the pharmaceutical products initially transferred by each of Teva and Medpro into the JV, and the Allergan Gx products which are being transferred into the JV as a result of this Merger;

1.14. "**Medpro"** means Medpro Pharmaceutica (Pty) Ltd, the acquiring firm, through the Teva/Medpro JV;

1.15. "**Merger**" means the acquisition of joint-control by Medpro Pharmaceutica (Pty) Ltd over Allergan Gx, through the Teva/Medpro JV;

1.16. **"Merging Parties**" mean Teva Pharmaceutica (Pty) Ltd (owners of Allergan Gx) and Medpro Pharmaceutica (Pty) Limited;

1.17. **"Teva"** means Teva Pharmaceuticals (Pty) Ltd, the JV partner of Medpro with respect to the unincorporated Teva/Medpro JV;

1.18. **"Teva/Medpro JV"** means the unincorporated JV formed by Teva and Medpro as the JV partners, to market, sell and distribute the JV Products;

1.19. **"Tribunal"** means the Competition Tribunal of South Africa

2. Recordal

2.1. On 11 July 2016, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the Merger, the Commission finds that the Teva/Medpro JV may be used by Teva and Medpro as a platform to exchange competitively sensitive information regarding other pharmaceutical products outside those included in the Teva/Medpro JV, resulting in a substantial lessening of competition within the meaning of section 12A(1) of the Competition Act.

2.2. Teva and Medpro established the Teva/Medpro JV after it was approved by the Commission on 09 December 2014. At that time Teva, the independent entity did not have pharmaceutical products which were distributed within the national market, save for those products which Teva was transferring to the Teva/Medpro JV. Therefore, Teva was not competing with Medpro in South Africa and the Commission did not view the Teva/Medpro JV as a platform through which the Teva and Medpro independent entities could exchange Competitively Sensitive Information. However, in this instant transaction, Teva recently acquired Allergan Generics Business and not all of the pharmaceutical products transferred from Allergan Generics Business to Teva will be placed under the Teva/Medpro JV because the JV is assigned for specific therapeutic areas. Teva will now market and distribute those products not falling under the JV, some of which may be substitutable with those of Medpro. The Commission is therefore concerned that the Teva/Medpro JV may be used by Teva and Medpro as a platform to exchange competitively sensitive information regarding other pharmaceutical products outside those included in the Teva/Medpro JV, resulting in a substantial lessening of competition within the meaning of section 12A (1) of the Competition Act.

2.3. The Merging Parties have instituted a governance structure through the JV Governing Body which is responsible for the business and affairs of the Teva/Medpro JV. Part of the responsibilities of the JV Governing Body will be to ring fence the flow of Competitively Sensitive Information between Teva and Medpro. The governance structure is in the form of a JV Governing Body which is comprised of the JV Governing Body Members (GBM) as appointed by Teva and Medpro. Whilst the JV Governing Body

of the unincorporated Teva/Medpro JV does aim to limit the exchange of Competitive Sensitive Information by controlling the persons who can be appointed to the JV Governing Body and requiring the JV Governing Body Members to sign Confidentiality Undertakings, the Commission found that the Teva/Medpro JV Agreement is a private agreement which is not enforceable. It is therefore necessary to adopt the principles of the governance structure into conditions that can be enforceable in order to eliminate any potential for the flow of Competitive Sensitive Information between Teva and Medpro.

2.4. The Merging Parties have agreed to the following undertakings in order to address any expressed concerns on the sharing of information.

3. Conditions to the approval of the merger

3.1. Cross directorships

3.1.1. For as long as Teva and Medpro can nominate individuals to the JV Governing Body they shall ensure that their nominees to the JV Governing Body:

3.1.1.1 are not the same persons serving, nominated and/or appointed on any board or management committees or sub-committee of either Teva and/or Medpro who are directly responsible for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV;

3.1.1.2 decline any and all invitation(s) to attend any meeting(s) of the board of directors and/or management committees or discussions at any sub-committee meetings of either Teva and/or Medpro;

3.1.1.3 shall not receive any board documents pertaining to the pharmaceutical businesses of Teva and/or Medpro, to the extent that they contain Competitively Sensitive Information;

3.1.1.4 will not have served on the board of directors and/or management committees of either Teva and/or Medpro and will not have been directly responsible for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV for a period of 3 (three) months prior to be nominated to the JV Governing Body;

3.1.1.5 shall to adhere to the Confidentiality Undertakings.

3.1.2. No director or executive or officer of Teva or Medpro who have direct responsibility for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV shall be invited, permitted or required to attend a JV Governing Body meeting or be permitted to receive the JV Governing Body documents pertaining to its pharmaceutical businesses in respect of any substitutable products nor attend discussions of the JV Governing Body, nor attend any sub-committee meeting of the JV Governing Body, in circumstances where Competitively Sensitive Information is to be discussed.

3.1.3. No director or executive or officer of Teva or Medpro who have direct responsibility for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV shall be invited, permitted or required to attend any operational, executive, management, or technical meeting of the Teva/Medpro JV.

3.2. **Confidentiality of information**

3.2.1. Teva or Medpro shall not disclose to the JV Governing Body Members Competitively Sensitive Information and vice versa.

3.2.2. Every individual that sits on the Teva/Medpro JV Governing Body shall be required to sign a Confidentiality Undertaking.

3.2.3. Teva, Medpro or the Teva/Medpro JV shall, at all times, comply with the Confidentiality Undertaking for the treatment of confidential information, as revised from time to time.

4. Monitoring of compliance with the Conditions

4.1. Within 10 Days of the Approval Date, the Merging Parties shall submit an affidavit listing the names of the persons nominated and/or appointed by Teva and Medpro to the JV Governing Body, their tenure and the nature of their directorships. This affidavit shall also confirm that the nominees to the JV Governing Body meet the requirements set out in clause 3.1.1.

4.2. Within 20 Days of the Implementation Date, the Merging Parties shall provide the Commission with a copy of the Confidential Undertaking referred to clause 3.2.3.

4.3. The Merging Parties shall submit an affidavit deposed to by a senior official on the anniversary of the Implementation Date confirming compliance with the Conditions for the duration of the existence of the Teva/Medpro JV.

4.4. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

4.3 The affidavits/reports and or documents referred to in the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.4 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

5. Duration

5.1. These Conditions shall apply for as long as the Teva/Medpro JV exists and/or as long as Teva and Medpro can appoint individuals/directors as JV Governing Body Members of the Teva/Medpro JV.

Should either Teva or Medpro dispose of their shareholding in the Teva/Medpro JV, Medpro shall inform the Commission of the sale within 30 days of concluding a sale agreement and submit a copy of the sale agreement irrespective of whether the transaction is notifiable in terms of the Act.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298