EN

Case No COMP/M.5953 - RECKITT BENCKISER/ SSL

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REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) in conjunction with Art 6(2)
Date: 25/10/2010

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION
in combination with
ARTICLE 6(2)

To the Notifying Party:

Dear Sir/Madam,

Subject: Case No COMP/M.5953 - RECKITT BENCKISER/ SSL
Notification of 6 September 2010 pursuant to Article 4 of Council Regulation No 139/2004[1]

1. On 6 September 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Reckitt Benckiser plc, belonging to the Reckitt Benckiser Group plc ("Reckitt Benckiser", UK) acquires, within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of the undertaking SSL International plc ("SSL", UK) by way of a public bid announced on 18 August 2010.

I. THE PARTIES

2. Reckitt Benckiser, based in the UK, is active worldwide in the manufacture and sale of branded products for household cleaning, health and personal care products, food and pharmaceutical products, including over the counter pharmaceutical products. It has sales in around 180 countries worldwide.

3. SSL, also based in the UK, is active in the personal care sector with *Durex* products, *Scholl* footcare and footwear, over the counter pharmaceutical products and other personal care products. It has sales in over 100 countries worldwide.

[1] OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

II. CONCENTRATION

4. The proposed transaction relates to the acquisition by Reckitt Benckiser of sole control over SSL by way of a public offer published on 18 August 2010 for the entire issued and to be issued capital of SSL. All terms and conditions of the Offer (including merger clearance) must be satisfied by 7 November 2010, after which the offer becomes unconditional in all respects.

5. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[2] (Reckitt Benckiser: EUR 8 706 million, SSL: EUR 906 million). Each of them has an EU-wide turnover in excess of EUR 250 million (Reckitt Benckiser: EUR […] million, SSL: EUR […]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

7. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. RELEVANT MARKETS

8. The Parties are both active in the development, manufacturing and marketing of a number of over-the-counter pharmaceutical products in the UK and Ireland, as well as of skincare products in the UK.

9. The Parties also conduct limited contract manufacturing of over-the-counter pharmaceutical products for third companies on an EEA scale. This gives rise to a vertical relationship, as SSL and Reckitt Benckiser are active in contract manufacturing some products that the other Party sells on downstream markets.

IV.1. INTRODUCTORY REMARKS

IV.1.1. Analysis based on the ATC classification

10. The Commission has analysed markets for pharmaceutical products in previous decisions.[3] The Commission has taken as a basis for market definition purposes the Anatomical Therapeutic Chemical ("ATC") division of medicines by therapeutic use devised by the European Pharmaceutical Marketing Research Association ("EphMRA") and maintained by EphMRA and Intercontinental

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2 Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p.1).

3 See, for example, COMP/M.5778 ***Novartis/Alcon***; COMP/M.5253 *Sanofi-Aventis/Zentiva*; COMP/M. 4007 *Reckitt Benckiser/Boots Healthcare*; COMP/M. 3354 *Sanofi-Synthelabo/Aventis*, COMP/M. 3544 *Bayer Healthcare/Roche*.

Medical Statistics ("IMS")[4]. This classification, which is regularly updated, is developed and maintained for commercial use and provides ready access to statistics. It is based on finished dose pharmaceutical products and their approved indications in various countries, which may in many cases vary from one country to another.

11. The EphMRA classification has 16 categories (A, B, C, D, etc.), each subdivided in four levels. The first level (ATC1) is the most general and the fourth level (ATC4) the most detailed. The third level (ATC3) allows medicines to be grouped in most cases according to their therapeutic indications, i.e. their intended use, and has generally been taken as the starting point for market definition in the Commission's competition analyses. However, it may be appropriate to carry out analyses at other levels, for example at the fourth ATC level (ATC4), or at the molecule (or active pharmaceutical ingredient, API) level, or across ATC classes, if specific circumstances indicate that the ATC3 level is not the most appropriate for the purposes of market definition. The ATC4 level may be based on therapeutic or, more frequently, pharmacological criteria such as molecule class, formulation or mode of action.[5] Sometimes the ATC4 level consists of a single molecule, in which case the analyses at the ATC4 level and the molecule level become identical.

12. In this case, both the ATC3 and ATC4 levels as well as the molecule level have been considered as possible product market definitions. At the molecule level, no overlap occurs between the Parties' products on the markets for throat preparations, upper gastrointestinal products and antipruritics. With regard to analgesics and mouth pain relief products, possible product market definitions at the molecule level were examined but, in view of the results of the market investigation, the definitions were closed on the basis of the ATC classification.[6]

IV.1.2. Prescription pharmaceuticals and over-the-counter ("OTC") pharmaceuticals

13. In previous cases the Commission has defined separate relevant product markets within the same ATC3 category for pharmaceuticals available without prescription (over-the-counter or "OTC" pharmaceuticals) and pharmaceuticals available only on prescription, because medical indications (including possible side-effects), the legal framework, marketing and distribution all tend to differ

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4 The EphMRA ATC classification, whilst very similar to the ATC classification maintained by the World Health Organization (WHO), is not exactly the same as the latter. The WHO classification uses similar categories but is based on active ingredients and serves a scientific, rather than commercial, purpose. Thus, in the WHO classification, a given active ingredient is classified in only one place, whereas products may be classified in more than one class of the IMS classification, depending on the formulation and approved use of the product in a given country.

5 See www.ephmra.org.

6 The product market definition of skincare products is based on demand-side considerations as these are not pharmaceutical products.

between the two categories of medicines, even when the active ingredients are identical.[7]

14. Doctors do not directly play a role in the purchase of OTC pharmaceuticals and in most cases consumers bear the full cost. Prescription pharmaceuticals are prescribed by a doctor and part of the patient's purchase price is reimbursed by the public health-care system. Whilst the marketing of prescription pharmaceuticals is targeted at the prescribers and not the patients, the marketing of OTC pharmaceuticals is targeted directly at consumers.[8]

IV.1.3. Conclusion

15. On the basis of the ATC classification and the distinction between prescription and OTC products, the proposed transaction gives rise to affected markets in the UK and Ireland in the following areas: analgesics, mouth pain relief products, throat preparations, upper gastrointestinal products and antipruritics.[9] In addition to OTC medicines, the Parties' activities give rise to an affected market in the UK in the area of skincare products.

16. Besides the above-mentioned horizontal overlaps, vertically affected markets arise in respect of the Parties' contract manufacturing in the EEA of analgesics and throat preparations for third parties.

IV.2. ANALGESICS

IV.2.1. Relevant product market

17. General purpose non-narcotic analgesics are classified under ATC3 class N2B (analgesics and anti-pyretics). This class includes systemic products for the relief of non-specific pain, and excludes narcotic analgesics (e.g. morphine) (N2A), anti-migraine drugs (N2C), analgesics used in cold and flu remedies in combination with other active ingredients such as antihistamines or decongestants (R5A), and topical analgesics (e.g. creams) (M2A). The Commission has considered in previous decisions[10] that the market for medicines to treat mild to moderate pain relief (non-narcotic analgesics) should be defined at the ATC3 level under code N2B.

18. The Commission has also considered that a further distinction might be made between adult and paediatric analgesics, but has ultimately left this question

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7 Cases COMP/M.5253 *Sanofi-Aventis/Zentiva*; COMP/M. 4007 *Reckitt Benckiser/Boots Healthcare*; COMP/M.3751 *Novartis/Hexal*; COMP/M.3544 *Bayer Healthcare/Roche*; M.3394 *Johnson and Johnson/J&J MSD Europe*.

8 In certain cases, the OTC/prescription distinction corresponds also to a distinction at ATC4 level.

9 The Parties' activities also overlap in the field of topical analgesics (UK and Ireland), cough remedies (UK) and topical antifungals (UK and Ireland), although these overlaps do not give rise to affected markets.

10 See COMP/M. 4314 *Johnson & Johnson/Pfizer Consumer Healthcare;* COMP/M.3354 *Sanofi-Synthelabo/Aventis*; COMP/M. 3544 *Bayer Healthcare/Roche (OTC business).*

open[11]. The market investigation confirmed the Commission's product market definition (i.e., including aspirin, paracetamol and ibuprofen products), even if some respondents did consider that a segmentation between adult and paediatric products might be made.

19. The product market definition therefore covers all products classified under ATC3 code N2B. A possible segmentation between adult and paediatric analgesics can be left open in this case as the proposed transaction does not lead to serious doubts under any of the possible market definitions, that is (i) all analgesics classified under ATC3 code N2B, (ii) adult analgesics classified under ATC3 code N2B and (iii) paediatric analgesics classified under ATC3 code N2B.

IV.2.2. Relevant geographic market

20. In previous decisions, the Commission has held that the relevant geographic market for finished pharmaceutical products, including OTC products, is of a national scope because of differences between EU Member States in price setting, conditions of reimbursement and channels of distribution.[12]

21. The market investigation in this case confirmed that the relevant geographic market for analgesics is national.

IV.3. MOUTH PAIN RELIEF PRODUCTS

IV.3.1. Relevant product market

22. The Commission has previously found a separate product market for mouth infection treatments[13] without specifying an ATC classification. The Commission has only concluded that mouth infection treatment products are OTC medicines used for the treatment of specific medical problems such as mouth ulcers, gingivitis and throat infections, and are different from cosmetic mouthwashes.

23. The Parties submit that the product market for mouth pain relief products should cover (i) antiseptics, anti-infectives and mouthwashes classified under ATC4 code A1A2, and (ii) anti-inflammatories and analgesics classified under ATC4 code A1A3, as customers use products in both classes to treat mouth infections. The Parties state that their products all contain an antiseptic and either an anti-inflammatory or analgesic ingredient and thus fall into both categories.

24. In the market investigation, a clear majority of respondents expressed the view that mouth pain relief products include (i) antiseptics and anti-infectives classified under ATC code A1A2 and (ii) anti-inflammatories and analgesics

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11 See COMP/M. 4314 *Johnson & Johnson/Pfizer Consumer Healthcare*.

12 See, for example, COMP/M.5778 ***Novartis/Alcon;*** COMP/M.5253 *Sanofi-Aventis/Zentiva*; COMP/M. 4007 *Reckitt Benckiser/Boots Healthcare*; COMP/M.3751 *Novartis/Hexal*; COMP/M.5295 *Teva/Barr*.

13 COMP/M. 2192 *SmithKline Beecham/Block Drug*.

classified under ATC code A1A3, but *not* mouthwashes classified under ATC code A1A2.

25. A clear majority of respondents also considered that adult and paediatric products constitute separate product markets.

26. Some respondents believed that the market for mouth pain relief products only covers antiseptics classified under ATC code A1A2. However, as indicated, the Parties' products all also contain a component classified under ATC code A1A3 (either an anti-inflammatory or an analgesic) and therefore fall under the two ATC codes (A1A2 plus A1A3). In view of this and of the results of the market investigation, a definition of the market for mouth pain relief products which would cover only one of the categories of products classified under ATC code A1A2 (i.e. antiseptics) is not pertinent in the circumstances of this case.

27. The market investigation has been conclusive as to (i) the exclusion of mouthwashes from the market definition of mouth pain relief products and (ii) the existence of separate markets for adult and paediatric mouth pain relief products. It can therefore be concluded, with regard to the product market definition that, in the circumstances of this case, there are two separate product markets for mouth pain relief products, namely: (i) a market for adult mouth pain relief products that covers products classified under ATC code A1A2 excluding mouthwashes (i.e. antiseptics and anti-infectives) and products classified under ATC code A1A3 (i.e. anti-inflammatories and analgesics), and (ii) a market for paediatric mouth pain relief products that covers products classified under ATC code A1A2 excluding mouthwashes (i.e. antiseptics and anti-infectives) and products classified under ATC code A1A3 (i.e. anti-inflammatories and analgesics).

IV.3.2. Relevant geographic market

28. In previous decisions, the Commission has held that the relevant geographic market for finished pharmaceutical products, including OTC products, is of a national scope because of differences between EU Member States in price setting, conditions of reimbursement and channels of distribution.[14]

29. The market investigation in this case confirmed that the relevant geographic market for mouth pain relief products is national.

IV.4. THROAT PREPARATIONS

IV.4.1. Relevant product market

30. The Parties argue that the product market definition for throat preparations should, in line with previous decisions of the Commission,[15] correspond to

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14 See, for example, COMP/M.5778 ***Novartis/Alcon;*** COMP/M.5253 *Sanofi-Aventis/Zentiva*; COMP/M. 4007 *Reckitt Benckiser/Boots Healthcare*; COMP/M.3751 *Novartis/Hexal*; COMP/M.5295 *Teva/Barr*.

15 COMP/M. 3354 *Sanofi-Synthelabo/Aventis*; COMP/M. 4007 *Reckitt Benckiser/Boots*.

ATC3 code R2A. This code includes all preparations formulated for infections of the throat and the pharynx, such as tablets, lozenges, drops, sprays, gargles and suppositories. The Parties also consider that both licensed and unlicensed products should be included under that code and that, in the UK, the market for products classified in code R2A includes medicated confectionery products purchased by consumers to relieve sore or dry throats but which do not have a medicine licence. Under the WHO Guidelines for ATC classification[16], code R2A is further subdivided into preparations which contain antiseptic ingredients (R2AA), antibiotic ingredients (R2AB), local anaesthetics (R2AD) and other products such as homeopathic and herbal products (R2AX).

31. The market investigation did not reveal any alternative market definition. No evidence was found to support a differentiation between distribution channels, as most of the products concerned are sold – to different extents – through both pharmacies and groceries. Consequently, only one respondent suggested that a market distinction should be made according to distribution channels.

32. Throat preparations for infants were not known to respondents. This indicates that there is no such segment of the market for throat preparations. Furthermore, the only difference between adult and infant products would be the concentration of the active ingredient in the product, which would suggest a high degree of supply-side substitutability and therefore that there would be no separate markets for adults and infants.

33. As regards a possible segmentation between licensed and unlicensed products, it should be noted that the products are displayed side by side in the consumer outlet (pharmacy and grocery) regardless of whether they are licensed or not. According to the Parties, producers often decide to remain unlicensed in order to avoid the restrictions that result from having a medicine license for a product or from requesting a licence so that they may then make medical claims. Although the use of some active ingredients requires a license, the use of others, such as menthol, does not. This explains why some menthol-products are licensed[17] and others are not[18]. The foregoing indicates that a differentiation between licensed and unlicensed products would not be an appropriate criterion for the delimitation of the product market. This was broadly confirmed by the market investigation, where only a small number of respondents considered that a segmentation between licensed and non-licensed products should be made.

34. With regard to whether antiseptic, anti-inflammatory and analgesic substances (that is, menthol/eucalyptus-only products), whether licensed or not, should be included in the product market, the outcome of the market investigation was mixed. Almost half of the respondents – among them, all producers of menthol only-products – considered they did. The other half – among them, most producers offering preparations with antiseptic, anti-inflammatory or analgesic

16 WHO Collaborating Centre for Drug Statistics Methodology, Guidelines for ATC classification and DDD assignment 2010, Oslo, 2009, p. 234.

17 As for example Mars' *Lockets*.

18 As for example Cadbury's *Halls Soothers*.

substances – did not and stated that "menthol/eucalyptus-only" products address other consumer needs as they are less effective and rather intended to provide cold relief.

35. In this case, the product market definition for throat preparations can be left open as no serious doubts arise under either a wider definition of the product market which includes products containing only menthol as the active ingredient or a narrower definition of the product market where only products with antiseptic, anti-inflammatory or analgesic substances are included (that is, excluding menthol-only products).

IV.4.2. Relevant geographic market

36. In previous decisions, the Commission has held that the relevant geographic market for finished pharmaceutical products, including OTC products, is of a national scope because of differences between EU Member States in price setting, conditions of reimbursement and channels of distribution.[19]

37. The market investigation in this case confirmed that the relevant geographic market for throat preparations is national.

IV.5. UPPER GASTROINTESTINAL PRODUCTS

IV.5.1. Relevant product market

38. The Commission has indicated in previous merger cases that the relevant product market for upper gastrointestinal ("upper GI") products may be ATC3 class A2A, which comprises antacids (including alginates), antiflatulents and carminatives, although it considered that not all products within this class may be part of the same product market and that a more appropriate market definition might include antacids from the A2A class and H2 antagonists from the A2B class (A2B1).[20]

39. In an antitrust decision concerning a producer of proton pump inhibitors (PPIs), the Commission found the relevant product market to cover PPIs classified under ATC4 code A2B2.[21] According to this decision, upheld by the General Court,[22] the upper gastrointestinal disease area is characterised by a continuum of diseases and conditions ranging from the innocuous to the very severe, and antacids, alginates, H2 antagonists and PPIs are considered to form part of a hierarchy of treatments. The UK's Office of Fair Trading considered in an

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19 See, for example, COMP/M.5778 ***Novartis/Alcon;*** COMP/M.5253 *Sanofi-Aventis/Zentiva*; COMP/M. 4007 *Reckitt Benckiser/Boots Healthcare*; COMP/M.3751 *Novartis/Hexal*; COMP/M.5295 *Teva/Barr*.

20 COMP/M. 3544 *Bayer Healthcare/Roche*; COMP/M. 3751 *Novartis/Hexal*; COMP/M.5253 *Sanofi-Aventis/Zentiva*.

21 Case COMP/A.37.507/F3 - *AstraZeneca.*

22 Case T-321/05 *AstraZeneca* v *Commission*, Judgment of 1 July 2010.

antitrust decision of 15 October 2010 relating to Reckitt Benckiser's product *Gaviscon* that the relevant product market included antacids and alginates.

40. The Parties submit that the product market should cover (i) antacids (including alginates) (classified, together with antiflatulents and carminatives, under ATC3 code A2A), (ii) H2 antagonists (classified under ATC4 code A2B1) and (iii) PPIs (classified under ATC4 code A2B2). The Parties claim that antacids, alginates, H2 antagonists and PPIs are all used to treat acid-related complaints of the upper GI and that, in the UK, two PPIs within the A2B2 class have recently been reclassified as OTC products from prescription only products.

41. The Parties provided market share data for all the above products combined and also excluding antiflatulents and carminatives, H2 antagonists and PPIs. As the Parties both market products indicated for infants, they also provided a data split between adult and infant products.

42. The results of the market investigation were inconclusive.

43. In this case, the precise market definition of upper GI products can be left open as, regardless of the market definition considered, the transaction does not give rise to serious doubts.

IV.5.2. Relevant geographic market

44. In previous decisions, the Commission has held that the relevant geographic market for finished pharmaceutical products, including OTC products, is of a national scope because of differences between EU Member States in price setting, conditions of reimbursement and channels of distribution.[23]

45. The market investigation in this case confirmed that the relevant geographic market for upper GI products is national.

IV.6. ANTIPRURITICS

IV.6.1. Relevant product market

46. The Parties submit that the relevant product market definition for antipruritics is ATC3 class D4A (Antipruritics), as previously found by the Commission.[24]

47. This category belongs to the broader ATC category D (Dermatologicals). It includes topical preparations for the relief of skin irritation (itching, insect bites, eczema, etc.) and may contain antihistamines, anaesthetics, or other active ingredients (but excluding corticosteroids combinations, which are classified in D7B). These products are typically non-prescription, OTC drugs. D4A is not segmented further by ATC4 classes.

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23 See, for example, COMP/M.5778 ***Novartis/Alcon;*** COMP/M.5253 *Sanofi-Aventis/Zentiva*; COMP/M. 4007 *Reckitt Benckiser/Boots Healthcare*; COMP/M.3751 *Novartis/Hexal*; COMP/M.5295 *Teva/Barr*.

24 COMP/M.2922 *Pfizer/Pharmacia*.

48. The market investigation confirmed the product market definition as previously delineated by the Commission and as proposed by the Parties.

IV.6.2. Relevant geographic market

49. In previous decisions, the Commission has held that the relevant geographic market for finished pharmaceutical products, including OTC products, is of a national scope because of differences between EU Member States in price setting, conditions of reimbursement and channels of distribution.[25]

50. The market investigation in this case confirmed that the relevant geographic market for antipruritics is national.

IV.7. SKINCARE PRODUCTS

IV.7.1. Relevant product market

51. Not being pharmaceutical products, product markets in the personal care sector are usually defined on the basis of demand-side considerations. Individual products for specific end-uses are thus considered to constitute separate markets. The Commission has considered in previous cases a distinction according to sales channels and also between luxury and mass market products.[26]

52. The Parties' products sold in the UK are mass market products to treat foot skin available through the retail channel. Although the Parties consider that the relevant market is that for all skincare products, they have provided market share data for mass market foot skin care products sold through the retail channel.[27]

53. In this case, the precise product market definition can be left open as the transaction does not give rise to serious doubts even on the narrowest market definition of skincare products.

IV.7.2. Relevant geographic market

54. In previous decisions the Commission considered the possibility of defining the relevant geographic market for skin care products as wider than national.[28] However, no clear evidence was found and the precise market definition was left open.

55. The Parties submit that the geographic market for skincare products should be considered to be EEA-wide.

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25 See, for example, COMP/M.5778 *N**ovartis/Alcon;*** COMP/M.5253 *Sanofi-Aventis/Zentiva*; COMP/M. 4007 *Reckitt Benckiser/Boots Healthcare*; COMP/M.3751 *Novartis/Hexal*; COMP/M.5295 *Teva/Barr*.

26 COMP/M. 5230 *Capman/Litorina/Cederroth;* COMP/M. 5068 *L'Oréal/YSL Beauté;* COMP/M. 4193 *L'Oréal/The Body Shop*.

27 Excluding non-moisturizers as the Parties' overlap relates to moisturizers.

28 COMP/M. 5068 *L'Oréal/YSL Beauté;* COMP/M. 4193 *L'Oréal/The Body Shop*.

56. In this case, the precise geographic scope the market for skincare products can be left open as the transaction does not give rise to serious doubts even on a national level.

IV.8. CONTRACT MANUFACTURING

IV.8.1. Relevant product market

57. The Commission has considered in previous cases that contract manufacturing of finished dose pharmaceuticals consists in the manufacturing under contract, on behalf of third party pharmaceutical companies, of finished pharmaceutical products, which may or may not include final packaging. This third party then goes on to market the finished products under its own label or brands.[29]

58. In previous decisions the Commission has left open the market definition for contract manufacturing. The Commission, however, has found that, whilst certain core technologies in contract manufacturing are widely available and correspond to the most common pharmaceutical forms, certain other technologies are more specialized and cannot be substituted with the former from either the demand or supply side. The Commission has also found that a majority of the core technologies are offered by most undertakings which are active in contract manufacturing either as their main business or as an adjunct to their captive production activities, and that a number of contract manufacturing markets could thus be defined in function of the pharmaceutical form and in some cases of the conditions of manufacture (types of active ingredients involved, toxicity, sterile environment, etc).[30]

59. The Parties submit that contract manufacturing should be segmented, for reasons of demand- and supply-side substitutability, into four product markets, namely: contract manufacturing of (i) solid dose and powder pharmaceuticals; (ii) liquids and semi-solid pharmaceuticals; (iii) sterile liquid pharmaceuticals; and (iv) medicated confectionary pharmaceuticals. The Parties argue that each of these segments is a separate product market because, whilst production facilities can be switched to produce different products within these four categories, production facilities cannot be switched to produce other formats of pharmaceutical products (for example, between production of solids to production of liquids), as the technology and the equipment involved would be entirely different.

60. With regard to a possible segmentation of the contract manufacturing market in accordance with the active ingredient used in the manufacture of the finished dose pharmaceutical, the Parties submit that the manufacturer's ability to switch production between different products is based on the type of production line (e.g. solid dose or liquid; pharmaceutical standard or not) rather than on the

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29 This definition of contract manufacturing excludes the manufacturing of active pharmaceutical ingredients, as such ingredients are not typically manufactured on a contract basis and may be procured from a wide variety of sources.

30 COMP/M.5253 *Sanofi-Aventis/*Zentiva; COMP/M.5555 *Novartis/EBEWE*; COMP/M.5778 *Novartis/Alcon.*

active ingredient used, such that it is not appropriate to segment contract manufacturing by active ingredient.

61. Concerning a possible segmentation of the contract manufacturing market in accordance with contract manufactured OTC products, the Parties submit that a production line that is of pharmaceutical standard may be used to produce either prescription only medicines or OTC medicines, such that it is not appropriate to segment contract manufacturing by OTC medicines.

62. The market investigation showed that several respondents agreed with a segmentation of the contract manufacturing market as proposed by the Parties on the grounds that the technology, equipment and know-how required to manufacture the various forms of pharmaceuticals are considerably different and that a significant investment and amount of time would be needed to switch production facilities to produce other forms of pharmaceuticals. One respondent considered that additional segmentations should be made, whilst another considered that two of the segmentations proposed by the Parties could be grouped into one. Finally, another respondent considered that the market for contract manufacturing should be considered as a single product market without any segmentation.

63. In this case, the precise market definition of market manufacturing can be left open as, regardless of the market definition considered, the transaction does not give rise to serious doubts.

IV.8.2. Relevant geographic market

64. In previous decisions the Commission indicated that the market for contract manufacturing was at least EEA-wide and likely to be a world-wide market, but left the market definition open.[31]

65. The Parties submit that the geographic market for contract manufacturing is EEA-wide if not wider.

66. The market investigation confirmed that the geographic scope of this market is at least EEA-wide, as contract manufacturing services are generally procured anywhere in the EEA, regardless of the EEA country where the pharmaceutical products are subsequently marketed. However, for the purposes of the competitive assessment in this case, the market definition can be left open as the proposed transaction does not raise serious doubts under any of the geographic market definitions used.

V. COMPETITIVE ASSESSMENT

V.1. ANALGESICS

67. With the exception of analgesic paediatric products in Ireland, the Parties' products overlap in the UK and Ireland on all other possible alternative market

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31 COMP/M.5253 *Sanofi-Aventis/*Zentiva; COMP/M.5555 *Novartis/EBEWE*; COMP/M.5778 *Novartis/Alcon.*

definitions. Also with the exception of paediatric products in the UK, all remaining possible analgesic markets are affected markets.

68. By far the most important of Reckitt Benckiser's analgesic products is *Nurofen*, which is ibuprofen-based. SSL's two main products are *Syndol* and *Paramol*, two paracetamol-based products[32]. In the UK, *Nurofen* is mostly sold through the grocery channel whilst all of SSL's analgesic products are mostly sold through the pharmacy channel[33]. In Ireland these best-selling drugs are sold through the pharmacy channel.

69. In the UK, for the period July 2009 to July 2010, the Parties' combined market share for all analgesics (that is, including both adult and paediatric products) was [30-40]% (Reckitt Benckiser: [20-30]%, SSL[5-10]%). The main competitor is Johnson & Johnson (*Calpol*) with a market share of [10-20]%, followed by GSK (*Solpadeine*) with a market share of [10-20]%. Own label sales by large retailers such as Tesco, Numark and Boots account for [20-30]% of the market. In the narrower segment of adult analgesics the Parties' combined market share in the period July 2009-2010 was [30-40]% (Reckitt Benckiser: [20-30]%, SSL: [5-10]%) in the UK, with GSK ([10-20]%) and Pfizer ([5-10]%) being the main competitors post-merger. Own label products account for [20-30]% of sales in the adult analgesic segment. In both the all analgesics and adult analgesics segments in the UK, the market shares of the Parties have been decreasing in the last three years.

70. In Ireland the Parties' combined market share for all analgesics (including adult and paediatric products) in the same period 2009-2010 was [30-40]% (Reckitt Benckiser: [30-40]%, SSL: [0-5]%). The main competitors of the merged entity would be GSK ([40-50]%), Johnson & Johnson ([5-10]%) and Stada ([5-10]%). For adult analgesics, the combination of the Parties' combined market share was [30-40]%, although the overlap remained limited (Reckitt Benckiser: [30-40]%, SSL: [0-5]%). GSK ([50-60]%) and Stada ([5-10]%) would be the main competitors of the merged entity. The market share of SSL has slightly decreased in the last three years.

71. With regard to the UK, the market investigation confirmed the Parties' claim that their products are not the closest competitors and that own label products do exert a significant competitive constraint on the Parties' products. Whilst brand is considered an important factor and Reckitt Benckiser's *Nurofen* is considered a must have brand by a significant number of market players, SSL's products are not considered such. Further, in the UK, the relative importance of brand for entry / expansion in this market may be in any event mitigated by the presence of strong supermarket and distribution chain brands (e.g., Boots, Tesco). Further, as seen above, a number of strong credible competitors are present in all possible affected segments. Finally, no substantiated concerns were raised by market players during the market investigation.

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32 SSL also has amongst its portfolio of analgesic products an ibuprofen product called Cuprofen.

33 An exception is the paracetamol-based product *Resolve*, with minor sales.

72. As to Ireland, the market investigation also confirmed that the Parties' products are not the closest competitors and that, whilst brand is important and Reckitt Benckiser's *Nurofen* is considered a must have brand, SSL's products in Ireland are not. In addition, Reckitt Benckiser will be number two on the market after GSK, and the increment brought about by the addition of SSL would be very small. Finally, substantiated concerns were also not raised by market players during the market investigation.

73. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to analgesics.

V.2. MOUTH PAIN RELIEF PRODUCTS

74. Both Parties supply OTC products in the UK and Ireland for the treatment of pain resulting from mouth infections and inflammation. Reckitt Benckiser markets them under the brand *Bonjela* while SSL markets them under the brands *Anbesol* and *Ashton & Parsons.*

75. In the period July 2009-2010, the market shares of the Parties and their competitors on the markets for adult and paediatric mouth pain relief products as defined for the purposes of this case are as follows:

- *Adult A1A2 excluding mouthwashes + A1A3*:

  - Parties: UK: [50-60]% (Reckitt Benckiser: [40-50]%, SSL: [10-20]%); Ireland: [80-90]% (Reckitt Benckiser: [70-80]%, SSL: [10-20]%);

  - Competitors: UK: Church & Dwight ([5-10]%), Dermal ([5-10]%), Schering-Plough ([5-10]%), own label ([0-5]%), others ([10-20]%); Ireland: DDD ([5-10]%), Forest ([0-5]%), others ([0-5]%).

- *Paediatric A1A2 excluding mouthwashes + A1A3* (teething relief):

  - Parties: UK: [50-60]% (Reckitt Benckiser: [30-40]%, SSL: [20-30]%); Ireland: no overlap (Reckitt Benckiser does not sell teething relief products in Ireland);

  - Competitors: UK: McNeil ([10-20]%), Nelson ([10-20]%), Dendron ([10-20]%), own label plus others ([0-5]%).

76. The Parties would therefore have high combined market shares in the UK adult and paediatric markets as defined as well as a significant increment. In Ireland, the Parties would have a high combined market share and a significant increment in the adult market as defined, although on the paediatric market no overlap would arise as Reckitt Benckiser does not sell products for teething in Ireland.

77. In addition to the significant combined market shares and increment where an overlap arises in the UK and Ireland, the market investigation confirmed that the Parties' products are the closest competitors; that brand is an important factor and both Reckitt Benckiser's adult *Bonjela* and SSL's paediatric *Ashton & Parsons* are leading and must have brands; and that neither buyer power nor own

labels would constitute competitive constraints on the merged entity: in the UK, own labels only have a [0-5]% market share and no own labels are present in Ireland.

78. Finally, the market investigation revealed specific concerns with regard to mouth pain relief products expressed by some respondents. These respondents stated, inter alia, that competition on mouth care products is already limited pre-merger and that Reckitt Benckiser's position will be strengthened by the addition of SSL's brands to its own brands, and that the merger will bring together the two largest brands and closest competitors in the infant segment.

79. In the light of the significant combined market shares and increment where the transaction would lead to an overlap in the UK and Ireland as well as of the results of the market investigation, serious doubts arise on both the UK and Irish markets for adult mouth pain relief products as defined, as well as on the UK market for paediatric mouth pain relief products as defined. No serious doubts arise on the Irish market for paediatric mouth pain relief products as defined as no overlap arises on this market.

V.3. THROAT PREPARATIONS

80. The Parties supply lozenges for throat relief with antiseptic and/or anti-inflammatory effects. These are licensed products, that is, they require a marketing authorisation. Reckitt Benckiser's main product is *Strepsils*; its other two products are sold under the brands *Strefen* and *Dequacaine*. SSL's products are *Merocaine* and *Merocets*.

81. In the period July 2009-2010, the market shares of the Parties and their competitors in the UK and Ireland in a wide product market including products which contain only menthol as active ingredient and in a narrower market where only products with antiseptic, anti-inflammatory or analgesic substances are considered (excluding menthol-only products), are as follows:

- *Wide product market, including products which contain only menthol as the active ingredient*

  - Parties: UK: [30-40]% (Reckitt Benckiser: [20-30]%, SSL: [0-5]%); Ireland: [40-50]% (Reckitt Benckiser [40-50]%, SSL: [0-5]%);

  - Competitors: UK: Cadbury (Halls, [20-30]%); Mars (Lockets, Tunes, [10-20]%); private brands (Tesco, Sainsbury, Boots, Lloyds, others, [5-10]%); Jakemans (Jakemans, [0-5]%); others ([20-30]%); Ireland: Cadbury (Halls, [30-40]%); Meda (Difflam, [10-20]%); Mars (Lockets, Tunes, [0-5]%); Lofthouse/Roberts Roberts (Fishermans Friend, [0-5]%); Johnson & Johnson/McNeil (Tyrozets, [0-5]%); others ([20-30]%).

- *Narrow product market, including products with antiseptic, anti-inflammatory or analgesic substances (excluding menthol-only products)*

  - Parties: UK: [60-70]% (Reckitt Benckiser: [60-70]%, SSL: [0-5]%); Ireland: [70-80]% (Reckitt Benckiser [70-80]%, SSL: [0-5]%);

  - Competitors: UK: private brands (Tesco, Sainsbury, Boots, Lloyds, others, [10-20]%); Prestige (Chloroseptic Spray, [5-10]%); Johnson & Johnson/McNeil (Tyrozets, [5-10]%); Meda (Difflam, [0-5]%); Thornton & Ross (Covonia, [0-5]%); Cadbury (Halls Triple Action, [0-5]%); others ([0-5]%). Ireland: Meda (Difflam, [20-30]%); Johnson & Johnson/McNeil (Tyrozets, [0-5]%).

82. Depending on the precise market definition, Reckitt Benckiser's shares in the throat preparation markets range from a moderate [20-30]% (UK, including menthol-only products) to a high [70-80]% (Ireland, without menthol-only products). SSL's position is very weak in all cases, with market shares ranging from [0-5]% to [0-5]%. In all scenarios, credible competitors, including private labels in the UK, will remain post-merger.

83. Only a minority of respondents to the market investigation considered SSL's throat brands as must have brands. The market investigation also revealed that, besides the incumbent's position and marketing expenses, there are no significant barriers to entry and, in particular, no strategic patents. This is also reflected by the fact that market entries were reported in the last three years in the UK and/or Ireland (Thornton & Ross with *Covonia*, G.R. Lane Healthcare with *Jakemans throat and chest lozenges*, Ernest Jackson with *Throaties* and Accura Health Ltd. with *Lozamine*). More than half of the Parties' competitors have either own plans to expand in this market and/or expect third parties to do so should the Parties increase prices post-merger. Finally, no customer or competitor expressed any substantial competition concerns with regard to throat preparations.

84. In view of the above, in particular of the low increment brought about by SSL's products and the lack of significant entry barriers, the Commission considers that the proposed transaction does not raise serious doubts as to its compatibility with the internal market under any of the possible market definitions of throat preparations.

V.4. UPPER GASTROINTESTINAL PRODUCTS

85. Both Parties supply upper GI products in the UK and Ireland. Reckitt Benckiser markets the *Gaviscon* and *Gavilast* brands while SSL markets *Remegel* and *Woodward's*.

86. In the period July 2009-2010, the market shares of the Parties and their competitors in the narrowest possible market, that is, antacids (including alginates), for adults only (as the only paediatric products are antiflatulents), are as follows:

  - Parties: UK: [40-50]% (Reckitt Benckiser: [40-50]%, SSL: [0-5]%); Ireland: [50-60]% (Reckitt Benckiser: [50-60]%, SSL: [0-5]%);

- Competitors: UK: Bayer ([30-40]%), GSK ([5-10]%), own label ([5-10]%), others ([0-5]%); Ireland: Bayer ([30-40]%), GSK ([5-10]%), Forest ([0-5]%), Sanofi-Aventis ([0-5]%), others ([0-5]%).

87. The increment brought about by SSL in both the UK and Ireland is small (around [0-5]%).

88. The market investigation showed that the Parties' main products are not the closest competitors, as they are based on different active ingredients. Reckitt Benckiser's main product *Gaviscon* is an alginate whilst SSL's *Remegel* is an antacid. Reckitt Benckiser's other product, *Gavilast*, is an H2 antagonist, while SSL's other product, *Woodward's*, is gripe water. Likewise, although brand is regarded as an important factor and Reckitt Benckiser's *Gaviscon* is considered a must have brand, SSL's brands are not. Finally, respondents believe that customers could easily turn to credible competitors with strong brands such as Bayer, with a market share of [30-40]%, and GSK, should the Parties increase prices post-merger.

89. The market investigation also revealed no substantiated competition concerns from either customers or competitors in connection with upper GI products.

90. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to upper GI products.

V.5. ANTIPRURITICS

91. Both Parties supply OTC products for the treatment of skin irritation in the UK and Ireland.

92. The Parties' combined market share in the UK[34] in the period June 2009-2010 was [20-30]% (Reckitt Benckiser with *E45*: [20-30]%; SSL with *Wasp-eze* and *Burn-eze*: [5-10]%). Competitors include Novartis with *Eurax*, *Savlon* and *Lypsyl* ([10-20]% in sum), Sanofi-Aventis with *Anthisan* ([10-20]%), and Combe with *Lanacane* ([5-10]%). Other players, including private labels, are present in the market with a share of about [30-40]%.

93. The Parties' combined market share in Ireland[35] in the period March 2009-2010 was [20-30]% (Reckitt Benckiser: [10-20]%; SSL, [10-20]%). Competitors include Novartis with *Eurax* and *Lypsyl* as the market leader with a [30-40]% market share, followed by Sanofi-Aventis with *Anthisan* ([20-30]%), Combe ([5-10]%) and other firms with [10-20]% of the market.

94. In addition to the Parties' moderate combined market shares, credible competitors with strong brands will remain on the market post-merger (Novartis,

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34 Source: IRI Bite and Sting Relief, Burn Relief, Dry Skin (Anti Itch Extract only) at retail selling price.

35 Pharmacy - IMS OTCims 06C1 Topical Antihistamines, 06C4 Skin Irritations, Lypsyl (from 06K1) and Germolene Insect Spray (from 06B3), at retail selling price.

Sanofi-Aventis, Combe). Further, there are no significant patents, know-how or other intellectual property rights that prevent entry.

95. The market investigation also revealed no substantiated competition concerns from either customers or competitors in connection with the market for antipruritics.

96. On the basis of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to antipruritics.

V.6. SKINCARE PRODUCTS

97. Both Parties market in the UK non-licensed products for the treatment of foot skin. In Italy, the Parties' activities overlap in body skin care and face skin care although the proposed transaction leads to no affected markets.

98. In line with the Commission's previous practice, the Parties provided market share data for mass market foot skin care products sold through the retail channel in the UK.[36] In this market, the Parties' combined market share in the period July 2009-2010 was [20-30]% (Reckitt Benckiser: [20-30]%, SSL: [0-5]%).

99. The Parties' combined market share post-merger would be below [30-40]% in the narrowest product market definition, with an increment below [0-5]%. In addition, credible competitors will remain post-merger (for example, Taurean Health Products: [10-20]%, Neutrogena: [5-10]%, Ccs Ab Sweden: [5-10]%). Finally, the market investigation revealed no substantiated concerns from either customers or competitors with regard to skincare products.

100. Under a wider product market definition the Parties' combined market share would be lower.

101. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to retail sales of mass market products for the care of foot skin.

V.7. CONTRACT MANUFACTURING

102. The Parties provide contract manufacturing services mainly to use spare capacity at their factories or as a legacy of transitional agreements following previous transactions. The Parties' competitors include dedicated contract manufacturers and pharmaceutical companies which, like the Parties, are primarily active in captive manufacturing but use third party contract manufacturing to employ spare capacity. The Parties' customers for contract manufacturing include brand owners, suppliers of generic/non-patented medicines and own label suppliers such as retailers and wholesalers. The Parties' customers outsource production essentially because they may not have manufacturing capability for the relevant product or sufficient capacity at their own facilities, or because the contract manufacturer may be able to manufacture the product at lower cost.

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36 Excluding non-moisturizers as the Parties' products are moisturizers.

103. The Parties state that, on an EEA level, whether on a single market for all contract manufacturing or on each of the segments proposed by them, each of the Parties' market shares is below [5-10]% and thus that their combined market share is well below [10-20]%. The Parties also state that, on a contract manufacturing market defined on the basis of the active ingredient used or the OTC medicine manufactured, affected markets would also not arise. Therefore, the proposed transaction does not give rise to horizontally affected markets in contract manufacturing.

104. Contract manufacturing gives rise to a vertically affected market with regard to oral analgesics, as both Parties are active on this downstream market in the UK and Ireland with a combined market share of [20-30]% in each country and both also contract manufacture a […] of own label oral analgesics for […] A vertically affected market also arises with regard to throat preparations, as both Parties are active on this downstream market in the UK and Ireland with a combined market share of [20-30]% in each country and Reckitt Benckiser contract manufactures […] own label throat preparation products for […].

105. However, given the Parties' low market shares on the upstream contract manufacturing market and the existence, as confirmed by the market investigation, of a significant number of alternative suppliers of contract manufacturing services in the EEA, no input foreclosure concerns arise. In addition, Reckitt Benckiser's agreement with […] for the contract manufacturing of both oral analgesics and throat preparations is […].

106. The market investigation also revealed no substantiated competition concerns from either customers or competitors in connection with contract manufacturing.

107. In view of the above, the proposed transaction does not raise serious doubts as to its compatibility with the internal market with regard to contract manufacturing.

V.8. CONCLUSION: SERIOUS DOUBTS

108. For the reasons set out above, the proposed transaction as notified gives rise to serious doubts as regards its compatibility with the internal market and the EEA Agreement with regard to certain mouth pain relief products, as defined for the purposes of this case, on the UK and Irish markets.

VI. REMEDIES SUBMITTED BY THE NOTIFYING PARTY

VI.1. DESCRIPTION OF THE COMMITMENTS

109. In order to render the concentration compatible with the internal market, on 4 October 2010, Reckitt Benckiser submitted commitments to remedy the serious doubts identified by the Commission on the UK and Irish markets for adult mouth pain relief products as defined for the purposes of this case and on the UK market for paediatric mouth pain relief products as defined for the purposes of this case.

110. The commitments were market tested. Following the market test, the commitments were modified on 18 October 2010.

111. The commitments, as modified, consist of the divestiture to a suitable third party purchaser(s) of SSL's (or an SSL Affiliated Undertaking's) rights, title and interests in mouth pain relief products in the UK and Ireland currently marketed under the brand name *Anbesol* (adult products) in the UK and Ireland and under the brand name *Ashton & Parsons* (paediatric products) in the UK, including the right to develop, manufacture and use the products with a view to their sale in any form and for any indication whatsoever in the UK and Ireland, including transitional arrangements ("the divestment business").

112. The divestment business includes, with regard to the *Anbesol* and *Ashton & Parsons* brands in the country concerned, inter alia:

(i) a full transfer or an exclusive royalty-free, perpetual licence of trade mark rights for the brands;
(ii) a full transfer or an exclusive royalty-free, perpetual licence to use intellectual property rights and know-how owned by Reckitt Benckiser at the time of the divestment;
(iii) all raw materials and stocks held at the date of the divestment;
(iv) all contracts, commitments and customer orders held at the date of the divestment;
(v) all licences, permits and authorisations (including marketing authorisations) necessary to manufacture and market the brands;
(vi) the goodwill relating to the brands at the time of the divestment; and
(vii) the provision by Reckitt Benckiser of transitional arrangements at the Purchaser's request.

113. The commitments do not include personnel as part of the divestment business, as SSL has no personnel dedicated to the *Anbesol* or *Ashton & Parsons* brands.

114. As an option to the purchaser(s), the divestment business also includes the following transitional arrangements: (i) transitional supply arrangements to allow the potential purchaser(s) to come to the market as soon as possible (12 months); (ii) transitional contract manufacturing arrangements to allow the purchaser(s) to assume responsibility for the manufacturing of the divestment products (12 months); (iii) transitional arrangements for the procurement of raw materials (12 months); (iv) transitional logistics and distribution arrangements (6 months); and (v) transitional sale and marketing arrangements (3 months).

115. The final text of the commitments is annexed to this decision and forms an integral part thereof.

VI.2. ASSESSMENT OF THE COMMITMENTS

VI.2.1. Suitability for removing serious doubts

116. The Commission considers that the commitments (as modified on 18 October 2010) are suitable to remove serious doubts as they eliminate the entire overlap in the Parties' activities on the market where the Commission identified competition concerns. Thus, the Parties offered to divest, on the market for mouth pain relief products as defined for the purposes of this case, the entire horizontal overlap in the UK (adult and paediatric products) and Irish markets (only adult products), by divesting, in the UK, SSL's brands for adult and

paediatric products (*Anbesol* and *Ashton & Parsons* respectively) and, in Ireland, SSL's brand for adult products (*Anbesol*). The suitability of the commitments was confirmed by the market test.

117. The market test of the commitments was positive. A significant majority of respondents considered that the divestiture package includes sufficient elements for effective competition to exist post-merger between the purchaser(s) and the merged entity on the market where the Commission identified competition concerns. In particular, most respondents considered that the intangible assets (intellectual property rights, know-how, marketing authorisations, permits, etc.) to be divested and the transitional arrangements foreseen would enable a suitable purchaser(s) to enter the market for mouth pain relief products in the UK and Ireland and compete in a timely manner and on a lasting basis with the merged entity.

118. The market test also revealed the existence of a number of market players potentially interested in acquiring the divestment business.

VI.2.2. Viability and modifications of the initial commitments in view of the market test

119. The market test confirmed that the approach of the divestiture of certain products for a specific market was acceptable but revealed that the initial duration of 6 months foreseen for the transitional supply of finished products, the transitional supply of raw materials and the transitional contract manufacturing arrangements was not sufficient due to, among other reasons, the time required to switch production site(s). Therefore, Reckitt Benckiser committed to extend the duration of those transitional periods to 12 months.

120. The market test also showed that the relatively small size of the divestment business may not justify the establishment of an *ad-hoc* effective distribution system in the UK and Ireland and, therefore, that the potential purchaser(s) should already be active in the sales and marketing of pharmaceutical products in the UK and, preferably, also in Ireland. Reckitt Benckiser amended the purchaser requirements accordingly in the final commitments submitted.

121. Finally, the market test revealed no concerns with regard to the fact that no personnel are included in the divestment business. In this case, the viability of the divestment business is ensured by the fact that the commitments require the potential purchaser(s) to be a company active in the sales and marketing of pharmaceutical products in the UK and preferably also in Ireland; by the transfer of intellectual property rights, know-how and information relating to the divested brands necessary to ensure their viability and competitiveness in the UK and Ireland; by the Parties' cooperation with the purchaser(s) for the transfer of the production of the divested brands to the purchaser’s production facilities; and by the provision, at the purchaser(s) request, of transitional arrangements for the supply of finished products with the divested brands, the procurement of raw materials for the manufacture of the divested brands, logistics and distribution services and technical assistance with regard to sales and marketing.

VI.3. CONCLUSION

122. In view of the above modifications, the Commission considers that the divestment business is a viable business and that the modalities foreseen for its transfer will enable its operation by a suitable purchaser(s) in a competitive and viable manner. The market test confirmed the viability of the business to be transferred as it revealed a number of potential purchasers.

123. The commitments address the competition concerns identified in this decision as they remove the entire overlap between the Parties on the market where the Commission found serious doubts.

124. The Commission therefore considers that the commitments, as modified, are sufficient to eliminate the serious doubts as to the compatibility of the proposed transaction with the internal market and the EEA Agreement.

VII. CONCLUSION

125. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments submitted by the Parties and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in section B paragraphs 1, 2, 3, 4, 6 and 8, first sentence, of the commitments annexed to this decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

126. The text of the commitments is annexed to this decision. The full text of the annexed commitments forms an integral part of this decision.

For the Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the Commission

Case M. 5953 – Reckitt Benckiser plc / SSL International plc

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (the "**Merger Regulation**"), Reckitt Benckiser plc ("**Reckitt Benckiser**") hereby provides the following Commitments (the "**Commitments**") in order to enable the European Commission (the "**Commission**") to declare the proposed acquisition by Reckitt Benckiser of the entire issued and to be issued share capital of SSL International plc ("**SSL**") by way of a public offer (the "**Notified Concentration**") compatible with the internal market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the "**Decision**").

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of EU law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No. 139/2004 and under Commission Regulation (EC) No. 802/2004.

SECTION A. DEFINITIONS

For the purpose of the Commitments, the following terms shall have the following meanings:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No. 802/2004.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business or businesses as defined in Section B and the Schedule that Reckitt Benckiser commits to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Reckitt Benckiser and who has received from Reckitt Benckiser the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager: the person appointed by Reckitt Benckiser in accordance with paragraph 12 to manage the day-to-day business of the Divestment Business under the supervision of the Monitoring Trustee.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Reckitt Benckiser, and who has the duty to monitor Reckitt Benckiser's compliance with the conditions and obligations attached to the Decision.

Parties: Reckitt Benckiser and SSL.

Personnel: all personnel currently involved in the Divestment Business, including shared personnel.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

SSL: SSL International plc is a public limited company incorporated under the laws of England and Wales, with its registered office at 35 New Bridge Street, London, EC4V 6BW, UK, and registered with the Company Register of England and Wales under number 00388828.

Reckitt Benckiser: Reckitt Benckiser plc is a public limited company incorporated under the laws of England and Wales, with its registered office at 103-105 Bath Road, Slough, Berkshire, SL1 3UH, UK, and registered with the Company Register of England and Wales under number 00527217. Reckitt Benckiser is a wholly-owned subsidiary of Reckitt Benckiser Group plc, which is the ultimate parent company of the Reckitt Benckiser group. Reckitt Benckiser Group plc is a public limited company incorporated under the laws of England and Wales, with its registered office at 103-105 Bath Road, Slough, Berkshire, SL1 3UH, UK, and registered with the Company Register of England and Wales under number 06270876.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

SECTION B. THE DIVESTMENT BUSINESS

Commitment to divest

1. In order to maintain or restore effective competition, Reckitt Benckiser commits to divest, or procure the divestment of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser on terms of sale approved by the Commission in accordance with the procedure described in paragraph 19 (the "**Divestment Commitment**").

2. To carry out the divestiture, Reckitt Benckiser commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Reckitt Benckiser has not entered into such an agreement at the end of the First Divestiture Period, Reckitt Benckiser shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business before the end of the Trustee Divestiture Period in accordance with the procedure described in paragraph 28.

3. Reckitt Benckiser shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Reckitt Benckiser or an Affiliated Undertaking has entered into a final binding sale and purchase agreement for the Divestment Business, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 19, and if the closing of the sale of the Divestment Business takes place within a period not exceeding […] after the approval of the Purchaser and the terms of sale by the Commission.

4. In order to maintain the structural effect of the Commitments, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, the divestment of which is a condition of the decision, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

5. The divestiture of the Divestment Business will proceed by way of an asset divestiture transaction, including transfer, sale, assignment and/or licence as the case may be and in so far as legally permissible. The divestiture transaction shall include the elements set out at paragraphs 8(i) to 8(vi) (below), as more specifically defined in the Schedule.

6. Subject to the remainder of this paragraph, the Divestment Business will be divested to a single Purchaser. Although the sale of the Divestment Business to a single Purchaser is the preferred remedy, upon consent of the Commission, Reckitt Benckiser may divest the Divestment Business to more than one Purchaser, provided each Purchaser has a presence in the UK or Ireland and local distribution capabilities in the UK and Ireland, so that the viability and competitiveness of the Divestment Business will be maintained.

7. For the avoidance of doubt, Reckitt Benckiser may sell such other assets as it and the Purchaser may agree in the context of the sale of the Divestment Business.

Structure and definition of the Divestment Business

8. The Divestment Business consists of the mouth pain relief business that is operated by SSL under the brand names Anbesol and Ashton & Parsons in the UK and Anbesol in Ireland. The Divestment Business is described in more detail in the Schedule, and includes:

   (i) all intangible assets (including intellectual property rights) which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;

   (ii) all raw materials, stocks, work in progress, and semi-finished and finished goods relating to the Divestment Business;

   (iii) all licences, permits and authorisations (including marketing authorisations) issued by any governmental organisation, relating to the Divestment Business;

   (iv) all contracts, leases, commitments and customer orders, relating to the Divestment Business;

   (v) all customer, credit and other records, relating to the Divestment Business (items referred to under (i)-(v) hereinafter collectively referred to as "**Assets**"); and

(vi) at the option of the Purchaser, the benefit for a transitional period of up to 12 months after Closing, and on a reasonable cost-plus basis to be negotiated between Reckitt Benckiser and the Purchaser, of all current arrangements under which SSL or Affiliated Undertakings supply products or services to the Divestment Business, as detailed in the Schedule.

9. For the avoidance of doubt, the Divestment Business shall, inter alia, not include:

(i) any manufacturing facilities of the Parties;

(ii) intellectual property which does not contribute to the current operations and/or is not necessary to ensure the viability and competitiveness of the Divestment Business;

(iii) any rights to the www.themedicinecabinet.co.uk website or domain name;

(iv) any marketing authorisations currently held by SSL outside of the UK and Ireland for Anbesol or Ashton & Parsons;

(v) any rights to sell Anbesol or Ashton & Parsons outside of the UK and Ireland;

(vi) books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that a Purchaser shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;

(vii) general books of account and books of original entry that comprise the Parties' or an Affiliated Undertaking's permanent accounting or tax records;

(viii) monies owed to the Parties by customers for the purchase of products branded Anbesol and/or Ashton & Parsons and monies owed by the Parties to suppliers for materials used in the production of these products, or to suppliers for the production of these products; and

(ix) the SSL, Reckitt Benckiser names or logos in any form, or those of Affiliated Undertakings.

SECTION C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

10. From the Effective Date until Closing, Reckitt Benckiser shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Reckitt Benckiser undertakes:

(i) not to carry out any act upon its own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business; and

(ii) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans and maintain the marketing and sales efforts devoted to the Divestment Business at their current level.

Hold-separate obligations of the Parties

11. Reckitt Benckiser commits, from the Effective Date until Closing to keep the Divestment Business separate from Reckitt Benckiser, and thereby to ensure that the Personnel and Hold Separate Manager have no involvement in any of Reckitt Benckiser's businesses, and no Reckitt Benckiser personnel has any involvement in the Divestment Business, except to the extent provided for in paragraph 12 and 13 below, and/or permitted by the Monitoring Trustee.

12. Until Closing, Reckitt Benckiser shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed in accordance with paragraph 11 above. Reckitt Benckiser shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the Reckitt Benckiser businesses.

13. Reckitt Benckiser commits to take all reasonable steps to ensure that the Parties' personnel involved in the transfer of the Divestment Business shall not use any confidential information from the Purchaser other than information strictly required to assist in the transfer of the Divestment Business concerned, and they shall disclose such information to other Reckitt Benckiser personnel only to the extent strictly required to assist in the transfer of the Divestment Business concerned.

Ring-fencing

14. Reckitt Benckiser shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. Reckitt Benckiser may obtain information relating to the Divestment Business: (i) which is reasonably necessary for the divestiture of the Divestment Business; (ii) which is reasonably required to maintain the viability of the Divestment Business; and/or (iii) whose disclosure to Reckitt Benckiser is required by law.

Due Diligence

15. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Reckitt Benckiser shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, provide to potential purchasers sufficient information as regards the Divestment Business.

Reporting

16. Reckitt Benckiser shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

17. Reckitt Benckiser shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall

submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

SECTION D. THE PURCHASER

18. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:

    (i) be independent of and unconnected to the Parties;

    (ii) have the financial resources, proven expertise, manufacturing capacity or ability to expand such or ability to outsource manufacturing, and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Reckitt Benckiser and other competitors;

    (iii) be a company active in the sales and marketing of pharmaceutical products in the UK and preferably also in Ireland, unless otherwise approved by the Commission; and

    (iv) neither be likely to create, in the light of the information available to the Commission, prima facie competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the "**Purchaser Requirements**").

19. The final binding sale and purchase agreement shall be conditional on the Commission's approval. When Reckitt Benckiser has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement, to the Commission and the Monitoring Trustee. Reckitt Benckiser must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more Assets, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

SECTION E. TRUSTEE

I. Appointment Procedure

20. Reckitt Benckiser shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Reckitt Benckiser has not entered into a binding sale and purchase agreement for the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Reckitt Benckiser at that time or thereafter, Reckitt Benckiser shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestment Period.

21. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Reckitt Benckiser in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Reckitt Benckiser

22. No later than one week after the Effective Date, Reckitt Benckiser shall submit a list of one or more persons whom Reckitt Benckiser proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Reckitt Benckiser shall submit a list of one or more persons whom Reckitt Benckiser proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 21 and shall include:

(i) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

(ii) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks; and

(iii) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

23. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Reckitt Benckiser shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Reckitt Benckiser shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Reckitt Benckiser

24. If all the proposed Trustees are rejected, Reckitt Benckiser shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 22 and 23.

Trustee nominated by the Commission

25. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Reckitt Benckiser shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

26. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Reckitt Benckiser, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

27. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the relevant obligations and conditions attached to the Decision.

(ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Reckitt Benckiser with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 10 and 11 of the Commitments;

(b) supervise the management of the Divestment Business in accordance with paragraph 12 of the Commitments;

(c) (i) in consultation with Reckitt Benckiser, determine all necessary measures to ensure that Reckitt Benckiser does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business's participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business; and (ii) decide whether such information may be disclosed to Reckitt Benckiser as the disclosure is reasonably necessary to allow Reckitt Benckiser to carry out the divestiture, maintain the viability of the Divestment Business and/or as the disclosure is required by law;

(d) monitor the splitting of assets between the Divestment Business on the one hand and Reckitt Benckiser or Affiliated Undertakings on the other hand;

(iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;

(iv) propose to Reckitt Benckiser such measures as the Monitoring Trustee considers necessary to ensure Reckitt Benckiser's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process potential purchasers receive sufficient information relating to the Divestment Business in particular by reviewing, if available, the relevant data room documentation, information memorandum and due diligence process;

(vi) provide to the Commission, sending Reckitt Benckiser a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Reckitt Benckiser a non-confidential copy at the same time, if it concludes on reasonable grounds that Reckitt Benckiser is failing to comply with these Commitments; and

(vii) within one week after receipt of the documented proposal referred to in paragraph 19, submit to the Commission a reasoned opinion as to:

(a) the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the sale; and

(b) whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular (if relevant) whether the sale of the Divestment Business without one or more Assets affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

28. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the relevant purchaser and the relevant final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 19. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Reckitt Benckiser, subject to the Reckitt Benckiser's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

29. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Reckitt Benckiser.

III. Duties and obligations of Reckitt Benckiser

30. Reckitt Benckiser shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Reckitt Benckiser's or the Divestment Business's books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Reckitt Benckiser and the Divestment Business shall provide the Trustee upon request with copies of any such document. Reckitt Benckiser and the Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

31. Reckitt Benckiser shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Reckitt Benckiser shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Reckitt Benckiser shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

32. Reckitt Benckiser shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Reckitt Benckiser shall cause the documents required for effecting the sale and the Closing to be duly executed.

33. Reckitt Benckiser shall indemnify the Trustee and its employees and agents (each an "**Indemnified Party**") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Reckitt Benckiser for any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, negligence or bad faith of the Trustee, its employees, agents or advisors.

34. At the expense of Reckitt Benckiser, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Reckitt Benckiser's 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 under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Reckitt Benckiser refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Reckitt Benckiser. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 33 shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Reckitt Benckiser during the

Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

35. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:

    (i) the Commission may, after hearing the Trustee, require Reckitt Benckiser to replace the Trustee; or

    (ii) Reckitt Benckiser, with the prior approval of the Commission, may replace the Trustee.

36. If the Trustee is removed according to paragraph 35, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 20 to 25.

37. Beside the removal according to paragraph 35, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

38. The Commission may, where appropriate, in response to a request from Reckitt Benckiser showing good cause and accompanied by a report from the Monitoring Trustee:

    (i) grant an extension of the time periods foreseen in the Commitments, or

    (ii) waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

39. Where Reckitt Benckiser seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Reckitt Benckiser be entitled to request an extension within the last month of any period.

Brussels, 18 October 2010

……
duly authorised for and on behalf of
Reckitt Benckiser

SCHEDULE: The Divestment Business

1. The Divestment Business consists of SSL's (or an SSL Affiliated Undertaking's) rights, title and interests in mouth pain relief products in the UK and Ireland currently marketed under the brand name Anbesol in the UK and Ireland and the brand name Ashton & Parsons in the UK, including the right to develop, manufacture and use the products with a view to their sale in any form and for any indication whatsoever in the UK and Ireland. It includes transitional arrangements.

2. Anbesol and Ashton & Parsons are indicated for the treatment or the mitigation of a specific condition or deficiency (mouth pain). They are well established brands with a long heritage, accounting for [10-20]% of sales in the mouth pain relief market in the UK and [5-10]% in Ireland. They account for a higher percentage of sales in segments and sub-segments of this market. Given the brands' current role within the UK and Ireland market and wholesalers and retailers' preferences for multi-sourcing, Reckitt Benckiser believes that this Divestment Business is a viable divestment with growth potential and one that will remove any competitive concerns in the UK and Ireland arising from the transaction.

3. The Divestment Business is not currently operated as a stand-alone business held by distinct legal entities within the SSL group of companies, or by dedicated management, sales and marketing personnel.

4. In accordance with paragraph 8 of these Commitments, this Divestment Business includes, but is not limited to:

   (i) Either a full transfer or an exclusive, irrevocable, assignable, royalty-free, perpetual licence of all trade mark rights for the Anbesol and Ashton & Parsons brands owned by SSL or Affiliated Undertakings in the UK and Ireland (as further described in Annex 1);

   (ii) All raw materials, stocks, work in progress, and semi-finished and finished goods relating to the Anbesol and Ashton & Parsons brands in the UK and Ireland held at the date of Closing;

   (iii) All contracts, commitments and customer orders relating to the Anbesol and Ashton & Parsons brands in the UK and Ireland held by SSL or Affiliated Undertakings at the date of Closing;

   (iv) Either a full transfer or an exclusive, irrevocable, assignable, royalty-free, perpetual licence (with the right to sub-license) to use intellectual property rights ("IPRs") owned by Reckitt Benckiser, SSL or an Affiliated Undertaking which exist at the time of the divestment and contribute to the current operations and/or are necessary to ensure the viability and competitiveness of the Anbesol and/or Ashton & Parsons brands in the UK and Ireland and are used exclusively in relation to those brands, including, without limitation:

      (a) the IP addresses for the registered domain names owned by SSL or Affiliated Undertakings relating to the current range of Anbesol and Ashton & Parsons branded products […];

(b) packaging and design rights therein currently used exclusively on Anbesol and Ashton & Parsons branded products; and

(c) product formulations, and recipes and manufacturing know-how for production, with the exception of the manufacturing know-how in the Anbesol Oral Liquid product (if any);

(v) A non-exclusive, irrevocable, assignable, royalty-free, perpetual licence (with the right to sub-license) to use the manufacturing know-how in the Anbesol Oral Liquid product (if any) owned by Reckitt Benckiser, SSL or an Affiliated Undertaking which exists at the time of the divestment and relates to the production of Anbesol Oral Liquid.

(vi) Either a full transfer or a non-exclusive, irrevocable, assignable, royalty-free, perpetual licence with the right to sub-license to use in the Divestment Business all information and know how (in whatever form held) to the extent that such information is related to the Anbesol and Ashton & Parsons brands in the UK and Ireland including, without limitation, all:

(a) formulae, specifications, drawings, manuals and instructions;

(b) customer lists, sales, marketing and promotional information (in particular the customer base for the Anbesol and Ashton & Parsons branded products in the UK and Ireland, i.e. details of all customers in the UK and Ireland that have purchased Anbesol and/or Ashton & Parsons branded products from SSL during the 12 month period prior to the Effective Date);

(c) business plans and forecast;

(d) technical or other expertise; and

(e) customer, credit and other records;

existing at the time of Closing, provided that the Parties may redact from such documents any information that does not relate to the Anbesol and Ashton & Parsons brands;

(vii) All licences, permits and authorisations (including marketing authorisations) necessary to manufacture and market the brands identified above and to carry on the business in the UK and Ireland;

(viii) Information contained in the registration dossiers for Anbesol and Ashton & Parsons;

(ix) The goodwill relating to the Anbesol and/or Ashton & Parsons brands in the UK and Ireland at the time of the divestment together with the exclusive right for the purchaser to represent itself as carrying on the Anbesol and/or Ashton & Parsons business in succession to SSL in the UK and Ireland; and

(x) Where required by the Purchaser, Reckitt Benckiser is also prepared to provide certain transitional services, as set out further below.

5. Where required by the Purchaser, Reckitt Benckiser shall use reasonable endeavours to obtain the assignment of the part of the contract manufacturing agreement entered into between SSL and […] relating to the Divestment Business. In the event that such arrangements cannot be made, Reckitt Benckiser is prepared to conclude back-to-back supply agreements with the Purchaser to supply such products to the Purchaser on a reasonable cost-plus basis for a period not exceeding 12 months from the date of Closing.

6. Where required by the Purchaser, Reckitt Benckiser shall enter into an arrangement with the Purchaser for the non-exclusive supply of […] (currently manufactured by SSL at […], for an appropriate period of time, not to exceed 12 months from the date of Closing and on a reasonable cost-plus basis to be agreed with the Purchaser. It shall not contain any provision requiring the delivery of minimum supply volumes or batches, nor supply quantity restrictions.

7. Reckitt Benckiser commits to use reasonable endeavours to cooperate with the Purchaser for the transfer of the production of Anbesol and/or Ashton & Parsons to the Purchaser's production facilities and undertakes to approve all regulatory changes that would be required as a result of such transfer.

8. Where required by the Purchaser, Reckitt Benckiser shall communicate the proposed change in brand ownership to the existing customer base of the Divestment Business in UK and Ireland; and make an introduction between the Purchaser and the distributor of Anbesol in Ireland.

9. Where required by the Purchaser, Reckitt Benckiser shall enter into transitional arrangements for the continuation of current logistics and distribution services for a period determined by the Purchaser but limited to a maximum period of 6 months from the date of Closing.

10. Where required by the Purchaser, Reckitt Benckiser shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sale and marketing of Anbesol and Ashton & Parsons in the UK and Anbesol in Ireland at a level similar to that currently provided by SSL in relation to these brands for a period not to exceed 3 months from the date of Closing and on a reasonable cost-plus basis to be agreed with the Purchaser. Such assistance with regard to sales and marketing shall be limited to: (i) assistance to ensure the transfer of the customer lists referred to at paragraph 4(vi)(b) of this Schedule; and transfer of the marketing authorisations referred to at paragraph 4(vii) of this Schedule.

11. Where required by the Purchaser, Reckitt Benckiser shall provide reasonable technical assistance to the Purchaser to facilitate the procurement of raw materials necessary for the manufacture of Anbesol and/or Ashton & Parsons. If the Purchaser is not able to source such raw materials, Reckitt Benckiser commits to enter, at the option of the Purchaser, into back-to-back supply agreements with certain raw material suppliers and to make such raw materials available to the Purchaser on a reasonable cost-plus basis to be agreed with the Purchaser, for such period as is required by the Purchaser to establish the Divestment Business as a viable and independent business, but not exceeding 12 months from the date of Closing.

12. The scope and elements of the reasonable technical assistance referred to at paragraphs 10 and 11 of this Schedule will have to be negotiated with the Purchaser, as this will largely depend on the requirements of the Purchaser. Reckitt Benckiser envisages that reasonable

technical assistance could include one or more of the following elements: advising on technical knowledge documentation, supporting the Purchaser in acquiring specific equipment, providing staff with suitable experience and skills to assist and/or advise on technical issues, assisting in trainings for the Purchaser's staff, and providing guidance on regulatory and legal aspects related to the transfer of licences.

13. The transitional technical assistance agreement referred to at paragraphs 10 and 11 of this Schedule shall include appropriate provisions to ensure that Reckitt Benckiser provides technical assistance to the Purchaser expeditiously. Reckitt Benckiser shall carry out the technical assistance for the technology transfer in accordance with good industry practice including as regards the timing and responsiveness with which this assistance is provided through the different stages of the transfer.

14. Reckitt Benckiser shall submit to the Commission, every three months as of Closing, a report on the progress made in relation to the transfer of the production of the products to the Purchaser's facilities or to facilities nominated by the Purchaser. A copy of this report will be sent to the Monitoring Trustee.

15. The Divestment Business shall not include:

    (i) any manufacturing facilities of the Parties;

    (ii) intellectual property which does not contribute to the current operations and/or is not necessary to ensure the viability and competitiveness of the Divestment Business;

    (iii) any rights to the www.themedicinecabinet.co.uk website or domain name;

    (iv) any marketing authorisations currently held by SSL outside of the UK and Ireland for Anbesol and/or Ashton & Parsons;

    (v) any rights to sell Anbesol, and/or Ashton & Parsons, outside of the UK and Ireland;

    (vi) books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that a Purchaser shall obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;

    (vii) general books of account and books of original entry that comprise the Parties' or an Affiliated Undertaking's permanent accounting or tax records;

    (viii) monies owed to the Parties by customers for the purchase of Anbesol and/or Ashton & Parsons, and monies owed by the Parties to suppliers for materials used in the productions of these products, or to suppliers for the production of these products; and

    (ix) the SSL, Reckitt Benckiser names or logos in any form, or those of Affiliated Undertakings.

Annex 1: Trade Marks

[…]

Annex 2: Other IP Rights

[…]