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***Case No COMP/M.5778 -
NOVARTIS / ALCON***

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**REGULATION (EC) No 139/2004
MERCER PROCEDURE**

Article 6(1)(b) in conjunction with Art 6(2)
Date: 09/08/2010

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EUROPEAN COMMISSION

Brussels, 09.08.2010

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.5778 – NOVARTIS/ALCON
Notification of 18 June 2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18 June 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 Novartis AG ("Novartis") proposes to acquire sole control within the meaning of Article 3(1)(b) of the Merger Regulation of Alcon Inc. ("Alcon") by way of purchase of shares.

I. THE PARTIES AND THE OPERATION

2. Novartis is a global pharmaceutical company that develops, distributes and markets medical products which include: prescription and over-the-counter medicines (including ophthalmic products), human vaccines and animal health products.
3. Alcon is a global pharmaceutical company that develops, manufactures, and distributes eye care products and to a lesser extent products for the treatment of ear and nose diseases.
4. Pursuant to the call option foreseen in the Share Purchase Agreement dated 6 April 2008 with Nestlé, Novartis intends to acquire the remaining 52.15% of Alcon's shares from

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.

Nestlé for USD 28.1 billion (EUR 20.15 billion) in addition to Novartis' present shareholding of approximately 25% in Alcon. As a result of this transaction, Novartis would acquire a 77% stake in Alcon and would have sole control over it.

II. CONCENTRATION

5. The transaction 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 billion² (Novartis: EUR 31.74 billion, Alcon: EUR 4.65 billion). Each of them has an EU-wide turnover in excess of EUR 250 million (Novartis: EUR [...], Alcon: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

IV. COMPETITIVE ASSESSMENT

1. RELEVANT PRODUCT MARKETS

7. The transaction concerns both ophthalmic pharmaceutical products (pharmaceuticals used in the treatment of diseases of the eye) and other eye care products that do not qualify as pharmaceuticals (consumer vision products).
8. The present sections and section 2 below outline common aspects of market definition for both ophthalmic pharmaceuticals and consumer vision products. In Section 3 more specific market definition issues and competitive assessment are outlined in detail for the relevant specific product category concerned.

1.1. Ophthalmic pharmaceuticals

1.1.1. ATC classification

9. In previous decisions, the Commission noted that pharmaceuticals may be subdivided into therapeutic classes by reference to the "Anatomical Therapeutic Chemical" classification ("ATC"), devised by the European Pharmaceutical Marketing Research Association ("EphMRA") and maintained by EphMRA and Intercontinental Medical Statistics ("IMS"). The ATC has 16 categories (A, B, C, D etc.) each with different levels. At the third ATC level ("ATC3"), pharmaceuticals are grouped in terms of their therapeutic indication, i.e. their intended use. This level has in the past been generally used as the starting point for investigating and defining relevant product markets in competition cases, in particular, for competition between innovator companies.
10. However, it is appropriate to carry out analyses also at other ATC levels, or a mixture thereof, if the circumstances of a case show that sufficiently strong competitive constraints faced by the undertakings involved are situated at another level and there are

² Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C95, 16.04.2008, p1).

indications that the ATC3 class does not lead to a correct market definition.³ The Commission has previously departed from the ATC3 class in cases where the market investigation indicated that another market definition was more appropriate, for example the ATC4 class or medicines based on the same active pharmaceutical ingredient (molecule level).⁴

11. None of these levels was a priori excluded as a possible basis for market definition in the present case. The parties were consequently requested to identify affected markets based on all possible levels, including ATC3, ATC4 and molecule. The appropriateness of these levels for market definition purposes depends on the market concerned and will be addressed separately under each product market category.

1.1.2. Prescription pharmaceuticals and over-the-counter pharmaceuticals

12. In the past, the Commission has considered that drugs available over-the-counter ("OTC") – i.e. without prescription – normally belong to a different product market than drugs available only on prescription ("Rx").⁵ Medical indications, side effects, the legal framework, distribution and marketing tend to differ between these drug categories, even if the active ingredients are sometimes identical. OTC pharmaceuticals may be advertised to the general public, whereas advertising of prescription pharmaceuticals is restricted in most Member States. In most cases, consumers choose OTC pharmaceuticals themselves and purchases are not reimbursed. Prescription pharmaceuticals are prescribed by a doctor and part of the patient's purchase price is reimbursed by the public health-care system. Marketing of prescription pharmaceuticals is therefore targeted at the prescribers and not the patients.
13. Notwithstanding such differences, it has been outlined in previous decisions, that, in certain cases, products which are available OTC are still reimbursable if bought on prescription⁶.
14. The market investigation overall supported the view that OTC and prescription drugs belong to separate markets. However, in some specific circumstances it may not be excluded that these products compete with each other, especially in cases where the status of the drug is not clearly limited to either OTC or prescription. These situations will be addressed specifically for the markets below where applicable. For other markets, the distinction does not make a difference in the assessment notwithstanding overall indications that this distinction is in general appropriate.

³ Case COMP/M.3751 – *Novartis/Hexal* decision of 27 May 2005.

⁴ See e.g. cases *Novartis/Hexal op cit.* and COMP/M.5295 – *Teva/Barr* decision of 19 December 2008.

⁵ See for instance cases COMP/M.3544 *Bayer Healthcare/Roche*, decision 19.11.2004; COMP/M.3394 *Johnson & Johnson/Johnson & Johnson MSD Europe*, decision 29.03.2004.

⁶ Cf. *Novartis/Hexal*, op cit. COMP/M.5253 *Sanofi-Aventis/Zentiva* decision of 4 February 2009.

1.1.3. *Originator pharmaceuticals and generic pharmaceuticals*

15. In line with previous decisions⁷, the Commission considers that originator drugs and their generic copies belong to the same relevant product market. It was found in previous decisions that generics can efficiently substitute originator drugs after patent expiry, especially if the regulatory system encourages switching. When assessing the competitive situation in a given product market, the Commission takes into account the fact that the originator drug is exposed to generic competition. Most off-patent drugs are available both in their original version and as generic copies. Once a drug goes off-patent and generic producers enter the market, it is possible that the originator may lose market share.

1.1.4. *Galenic forms*

16. As already noted in *Sanofi-Aventis/Zentiva*, medicines are differentiated not only by their active ingredient(s), but also, in particular, as recognized by the European regulatory framework for medicines for human use, by their dosage, pharmaceutical form and route of administration and this may limit their substitutability⁸. This combination of features is loosely referred to for the purposes of the present decision as "galenic form".

17. In the present case the most significant overlaps occur in pharmaceuticals with specific galenic forms (e.g. eye-drops, eye gels, intraocular injections). The active pharmaceutical ingredient of the products in these product categories (ATC3) may be identical to products in other ATC3 categories with a different galenic form (e.g. oral solid or liquid forms, nasal sprays/drops etc). The Commission therefore investigated the substitutability between products based on the same or similar APIs but with a different galenic form..

18. The Commission has in recent decisions in particular noted differences in galenic forms for market definition purposes.⁹

19. The market investigation confirmed significant differences between galenic forms to be relevant for market definition purposes in the present case. It was confirmed in particular that drugs with oral routes of administration and nasal administration cannot frequently and effectively substitute for eye-drops. Within the eye-care segment, the relevance of a distinction between intraocular or intravenous injections and eye drops/gels was also confirmed as these have different applications. On the other hand, there are less pertinent differences in the presentational forms of drugs within the relevant markets concerned by the transaction. These include for example the distinction between single dose (non-preserved) and multi-dose (preserved) products as well as differences between eye drops, ointment and gels. Based on the market investigation, general conclusions cannot be drawn on the relevance of these differences. These

⁷ Cases– *Sanofi-Aventis/Zentiva*, op cit; *Teva/Bar op cit*; *Novartis/Hexal op cit*

⁸ See recital 20 of the decision and Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67), as amended by various subsequent acts.

⁹ *Sanofi Aventis/ Zentiva op cit*; Case COMP/M.5502 - *Merck / Schering – Plough*, decision of 22 October 2009, para. 46; Case COMP/M.5476 - *Pfizer/Wyeth*, decision of 17 July 2009.

differences will therefore be discussed in the specific product markets where they are relevant.

1.2. Consumer vision

20. Consumer vision care products, such as lens care preparations, ocular lubricants and eye vitamins, are often not registered as pharmaceutical products. As regards lens care preparations, they are all registered as medical devices, while for ocular lubricants it is at the choice of the manufacturer whether to register it as a pharmaceutical or a medical device. Medical devices are subject to the EC Medical Device Directive 93/42/EEC, as amended by Directive 2007/47/EC. After obtaining a "CE" conformity mark associated with specific manufacturing processes (the process of obtaining a "CE" mark may take up to 1 to 2 years), medical devices can be marketed throughout the EEA without further national approvals. Each country has a right to require use of the local language for product labelling and listing of products in a country-based register. Eye vitamins are registered as food supplements.¹⁰ "CE" marked products and food supplements are available only as over the counter.
21. The active ingredients in lens care preparations and ocular lubricants are generally common chemical compositions and not under patent protection. Similarly, eye vitamins also do not contain active pharmaceutical ingredients and the ingredients are not patent protected. The patents found in this category concern particular formulations or form of packing, which preclude direct copies. In the absence of patented active ingredients, the distinction between originator and generic products or a categorisation at molecule level does not apply to consumer vision products. Both parties to the transaction have only formulation patents.
22. Notwithstanding that consumer vision products are not pharmaceutical products, they are classified under the ATC2 category S1. Each wider consumer vision product category is grouped under a specific ATC3 class (S1K, S1M and S1L). For ease of reference, the relevant ATC3 level codes will therefore be used in the assessment below.

2. RELEVANT GEOGRAPHIC MARKETS

2.1. Ophthalmic pharmaceuticals

23. The Commission has previously defined geographic markets for pharmaceutical products as being national in scope, inter alia on the basis of the different national regulatory frameworks, authorisations procedures, reimbursement rules, etc..¹¹ The market investigation has confirmed that this is still the case. Competition between pharmaceutical firms still generally takes place at national level.

¹⁰ At the EU level, there are two EU directives which relate to FSMP and FS (the Directive on foodstuffs intended for particular nutritional uses, Directive 2009/39/EC, and the Directive on food supplements, Directive 2002/46/EC), respectively.

¹¹ Cases COMP/M.5253 – Sanofi-Aventis/Zentiva; COMP/M.5295 – Teva/Barr; COMP/M.3751 – Novartis/Hexal.

2.2. Consumer vision

24. The Commission has previously defined geographic markets for consumer products as being national in scope. The market investigation has confirmed that this is still the case.¹² Competition between consumer vision care companies still generally takes place at a national level. This is mainly because marketing of consumer vision products takes place at a national level, packaging and language information requirements differ across Member States, and customers largely purchase via national distribution channels. The markets are highly fragmented, there is a number of very small local players present in individual countries together with larger international companies. The national delineation of markets is further substantiated by different market shares across the countries.

3. COMPETITIVE ASSESSMENT

3.1. Introduction

25. In previous cases, the Commission has generally focused its market investigation to examine in more detail markets where the Parties achieved a combined share of over 35% and the increment in the share was over 1%. Such markets are referred to as "Group 1 markets". This was also the approach in the present case. In addition, the Commission also investigated in more detail markets where i) the parties would have a combined market share of below 35%, but where only one other competitor would remain and ii) markets with a combined market share of over 35% and an increment of less than 1% if the party with the small increment is a recent entrant. For the purposes of the present Decision, markets meeting the above criteria will be referred to collectively as Group 1 "Plus" markets.
26. The Commission has systematically examined all possible Group 1 "Plus" markets on all possible market definitions in order to verify whether or not serious doubts arose. In the Decision, all Group 1 "Plus" markets are discussed individually on all market definitions that were indicated as relevant by the market investigation. For all other markets where the Parties' activities overlap and their joint market shares do not exceed 35% under any plausible market definition and/or where the increment is below 1%, and which do not meet the additional criteria in para [26]¹³ (i.e. for all market that are not Group 1 "Plus" markets), competition concerns may be excluded on the basis of the arguments presented below. In this regard, on the basis of the information provided by the Parties, no competition concerns arise. In addition, third parties did not indicate that the transaction could have a negative impact on any of those markets. It may therefore be concluded that for such markets, the transaction does not raise serious doubts as to its compatibility with the internal market and the EEA-agreement (hereafter referred to as "serious doubts").¹⁴

¹² The Commission has previously defined markets for consumer goods as national in scope, see, e.g., Case No COMP/M.3732 – Procter & Gamble/Gillette, para. 17.

¹³ i.e. neither party is a recent entrant and the number of competitors remaining in the market is at least 3.

¹⁴ The Commission has previously used the same methodology, e.g. case COMP/M.5295 – *Teva/Barr*, para 23.

27. Due to a lack of reliable market data for consumer vision care products¹⁵, the Commission has reconstructed the markets in question following a market investigation and has verified the Parties' estimates for market shares throughout the EEA. Due to the confidential nature of information submitted during the market investigation, the sections for consumer vision products (Section 3.3) present market share estimates in terms of ranges and do not specify the names of competitors.¹⁶
28. In previous pharmaceutical decisions, the Commission has generally relied on sales values to assess the competitive structure and impact of the transactions unless specific circumstances indicated volume data to be particularly relevant, in particular in markets involving generic products¹⁷. The present case involves the merger between companies which sell mainly branded products (and in the pharmaceutical segment mostly branded originator products). The risk that sales values would understate the position of the parties is therefore not apparent.
29. The transaction creates significant horizontal overlaps in a number of areas. This notwithstanding, some of the parties' products could in principle be considered to belong to neighbouring markets. The parties also have some ancillary activities upstream to the markets where horizontal overlaps occur. Such relationships will be assessed specifically under the markets where these other overlaps are relevant.

3.2. Ophthalmic pharmaceuticals

3.2.1. Ophthalmological anti-infective and anti-inflammatory products (ATC3 classes S1A, S1B, S1C, S1R)

Market definition -general

30. Ophthalmological anti-infective and anti-inflammatory products are split into four ATC3 classes. These are: (1) ophthalmological anti-infectives (ATC3 class S1A), (2) ophthalmological corticosteroids (ATC3 class S1B), (3) ophthalmological anti-inflammatory and anti-infective combinations (ATC3 class S1C) and (4) ophthalmological non steroidal anti-inflammatories (ATC3 class S1R). Out of these ATC3 classes, S1B and S1R are anti-inflammatories.

¹⁵ For consumer vision products, the Parties could not fully rely on statistics and market information published by Intercontinental Medical Statistics (IMS). In relation to lens care preparations, IMS data do not track retail sales through channels other than hospitals and pharmacies, such as optical chains and general retail stores and therefore do not capture all the sales. For this reason, the Parties provided estimates on the manufacturing level based on a number of different sources (own sales data, Eurocontact, GfK and own estimates, where external sources were not available). Regarding sales data for ocular lubricants and eye vitamins, the Parties provided sales data on the basis of the IMS OTC database. As this database does not cover prescription bound products, this was supplemented by the IMS Midas database and own sales data of the Parties. In countries where the IMS OTC database is not available, the Parties used the IMS Midas database and supplemented it with own sales data and best estimates of the market shares of the largest competitors.

¹⁶ In this regard it should also be noted that market reconstruction did not capture the sales of a few mostly local players with relatively limited presences (0-5%) indicated by the parties as a result of these undertakings not providing their sales figures.

¹⁷ See for example Sanofi Aventis / Zentiva, —para 82

31. Inflammation is the complex biological response of vascular tissues to harmful stimuli, such as pathogens, damaged cells, or irritants. Inflammation is a protective attempt by the organism to remove the injurious stimuli as well as to initiate the healing process of the tissue. Inflammation may be caused by infection, but the two are not synonymous: infection is caused by an exogenous pathogen, while inflammation is one of the responses of the organism to the pathogen. Infections are generally treated by anti-infectives, such as antibiotics or anti-fungals, while the inflammation is treated by corticosteroids and non-steroidal anti-inflammatory drugs.
32. The parties submit that for the ATC3 classes S1A, S1B and S1R, a market definition based on the ATC3 level would be appropriate, while for S1C, the ATC4 level (S1C1, S1C2, etc.) would be the appropriate class (see below para. 68 et seq.).
33. The market investigation broadly confirmed that for S1A (ophthalmological anti-infectives), S1B (ophthalmological corticosteroids) and S1R (ophthalmological non steroidal anti-inflammatories) the appropriate level for the market definition should be the ATC3 level, while for S1C (ophthalmological anti-inflammatory and anti-infective combinations) it was not conclusive whether the appropriate level should be the ATC3 or the ATC4 level. In the following, the ATC3 classes S1A, S1C and S1R will be discussed separately.¹⁸
34. However, some responses, both of competitors and key medical opinion leaders also suggested that some products from different ATC3 classes may compete with each other. These respondents specified in particular that products from the following classes compete with each other: S1B and S1C1, S1R and S1C2, S1A and S1C1 and S1B, S1C and S1R. However, as the commitments offered by the Parties in S1A, S1C and S1R will resolve also any possible competition concerns under these alternative market definitions¹⁹, the market definitions can be left open.

3.2.1.1. Ophthalmological anti-infectives (ATC3 class S1A)

Market definition

35. Both parties are active in ophthalmological anti-infective products classified in ATC3 class S1A, which is not further subdivided into ATC4 classes. The Commission has previously identified the S1A category as an affected market but ultimately left the market definition open given the absence of any competition concerns.²⁰

¹⁸ ATC3 class S1B is not discussed separately since the transaction does not result in any Group 1 "Plus" markets in this category.

¹⁹ The only group 1 market which would arise through a combination of products of different ATC3 classes in addition to those discussed in the sections on S1A, S1C and S1R further below, is Belgium for a market for S1B and S1C1 products. The combined market share would be [50-60]% with an increment of [0-5]% added by Novartis. Other competitors which are significantly stronger than the increment added by Novartis are Pfizer with [10-20]%, Meda with [10-20]% and Allergan with [10-20]%. Bausch & Lomb with [0-5]% has a similar size as Novartis currently. Given the very small increment and the presence of three sizeable competitors no competition concerns would arise in this market.

²⁰ Case No. COMP/M.4367 APW / APSA / NORDIC CAPITAL / CAPIO, Commission Decision of 16/03/2007. The S1A market is also referred to without it being an affected market in Case No. COMP/M.1378 Hoechst / Rhone – Poulenc, Commission Decision of 09/08/1999.

36. All products in the ATC3 class are prescription only.

Competitive assessment

37. Novartis' products are *Okacin* (lomefloxacin)²¹, *Bivacyn* (Bacitracin, Neomycin), and *Pom Oculos Epiteli* (chloramphenicol, aminoacids, methoinine, retinol) which is sold only in Spain. Alcon's main products are *Ciloxan/Oftacilox* (ciprofloxacin), *Tobrex* (tobramycin), *Stratrol* (polymycin B, neomycin), *Polyspectran Opht* (bacitracin, neomycin, polymyxin B, gramicidin), *Kanamytrex* (kanamycin).
38. According to the parties, the relevant product market should be antibiotics for ocular infections caused by bacteria belonging to the S1A category, excluding ocular anti-fungals. This market definition has been broadly confirmed by the market investigation. It should also be noted that the parties, in any event, do not have overlapping activities in antifungal products in the EEA. These products are used to treat bacterial conjunctivitis, blepharitis, keratitis and external hordeola.
39. The market investigation indicated that the parties' products are the closest competitors in all the countries where Group 1 markets arise and that major barriers to entry and expansion are R&D expenses, reputation, and marketing expenses.
40. The parties submit that Novartis' product *Okacin* will be deregistered according to a decision taken in [...]and that its production has been discontinued at the end of [...]. As such, there would be no overlap in several group 1 countries (namely, Bulgaria, Latvia and Luxembourg). However current inventories are still being sold throughout the EEA, the de-registration process has not been completed yet²², and the discontinuation appears to be a potentially reversible business decision, in particular as long as the market authorization is still valid. Therefore, on a conservative basis, the horizontal overlap associated with the pruned product *Okacin* will be taken into account for the purposes of the competitive assessment in the present Decision.
41. The market investigation did not show any peculiarities regarding the above-specified findings for individual countries where serious doubts arise.

SIA-Bulgaria

42. In Bulgaria the transaction leads to a combined market share of [50-60]% with an increment of [5-10]% contributed by Novartis. Other competitors remaining in the market are Santen Seiyaku ([10-20]%), Actavis ([10-20]%), Leo Pharma ([5-10]%), Unimed Pharma ([5-10]%) and Bausch & Lomb (hereinafter, "B&L") [0-5]%. On the basis of the high market shares and the results of the market investigation indicating barriers to entry, serious doubts arise.

²¹ Novartis is in the process of deregistering it and production has been discontinued in [...]. *Okacin* will be deregistered across the EEA once current inventories have been sold (i.e. during [...]).

²² Later in the proceedings the parties have submitted evidence on the steps taken for de-registering the product. However a precise estimate of the length of such process in each country cannot be clearly established.

SIA-Latvia

43. In Latvia the transaction leads to a combined market share of [30-40]% with an increment of [0-5]% contributed by Novartis. Other competitors remaining in the market are Santen Seiyaku [30-40]%, Leo Pharma [20-30]%, Unimed Pharma [5-10]%. On the basis of the relatively moderate combined market shares and a small increment and a presence of three other competitors with higher market shares than Novartis (two of which would be comparable to the merged entity), serious doubts do not arise.

SIA-Luxembourg

44. In Luxembourg the transaction leads to a combined market share of [60-70]% with an increment of [0-5]% contributed by Novartis. Other competitors are Thea [10-20]%, Leo Pharma [5-10]%, Mann [5-10]%, Pfizer [5-10]% and a tail end of 3 others. Given the high market share, the results of the market investigation indicating at barriers to entry, and the fragmented market structure, serious doubts arise.

SIA-Slovenia

45. In Slovenia the Parties would achieve a very high combined market share ([90-100]%), with an increment of [5-10]% contributed by Novartis, facing competition from only one competitor, Krka. Given the high market share and the quasi-duopolistic market structure, and the results of the market investigation indicating barriers to entry, serious doubts arise.

SIA-Spain

46. In Spain, the Parties would have a combined market share of [70-80]%, with an increment of [20-30]% contributed by Novartis, while the other main competitors are UCB, Allergan, Leo Pharma and Thea, each with market shares of less than [5-10]% and a tail end of 4 others. Given the high market share, the results of the market investigation indicating barriers to entry, and the fragmented market structure, serious doubts arise.

3.2.1.2. Ophthalmic non steroidal anti-inflammatories (ATC3 class S1R)

Market definition

47. Both parties are active in ophthalmological non-steroidal anti-inflammatory drugs (NSAIDs), classified in ATC3 class S1R which is not further subdivided into ATC4 classes. These products are indicated for the treatment or prevention of inflammations of the anterior segment of the eye and inflammations mainly post cataract surgery (and to a limited extent, other types of surgical procedures). The Commission has not considered the market definition for ophthalmological NSAIDs in previous decisions. The parties submit that the relevant market definition should include all products classified in the S1R class. This definition has been broadly confirmed by the market investigation.

48. All S1R products are sold prescription only.

Competitive assessment

49. Novartis' product *Voltaren Ophtha*²³ is based on the molecule diclofenac, and is no longer patent-protected in any EEA country.²⁴ Alcon's product *Nevanac* based on the molecule nepafenac is patent-protected and has been successfully launched in some EEA countries in 2008-2010.²⁵ [...]The parties submit that Alcon's *Nevanac* is a technically superior product and causes fewer side-effects. [...]
50. The transaction would result in five group 1 markets at ATC3 level: Bulgaria, Denmark, Greece, Netherlands and Sweden with combined market shares of between [40-50]% and [90-100]%, and one group 2 market, the UK, where Alcon is a recent entrant. [...]²⁶
51. The Parties argue that the transaction would not raise competition concerns due to generic competition constraining Novartis' product, the remaining competitors and potential entry from competitors already active in other EEA countries.
52. The market investigation showed that future entries by competitors are not generally envisaged in the short term and that generic diclofenac-based products, which the Parties view as the closest competitors to Novartis *Voltaren Ophtha* products, are not for the moment a real constraint, in particular due to [...] which have led demand to revert back to originator brands. Many respondents pointed to barriers to entry and to expansion represented by marketing expenses, loyalty, brand awareness, and reputation which favour well-established products, such as Novartis' old *Voltaren Ophtha* products, or R&D expenses which favour newly discovered formulations or molecules, such as Alcon's *Nevanac*.
53. According to most of the respondents of the market investigation, in the event that the prices of the parties' products were to rise, no switching would be anticipated, partly due to the reimbursement regimes in place in the affected countries and sometimes simply due to the fact that Novartis' product is either the only one present in some countries (Norway and Slovenia) or the other available alternative in a market with only two credible players (Austria, Estonia, Finland, Hungary, Ireland, Lithuania, Poland, Sweden and the UK).
54. Finally, in some of the remaining EEA countries, there are very few alternatives on the market since some of the competing players are parallel importers which sell, amongst others, Novartis' products (Germany, the Netherlands).
55. The market investigation did not show any particularities regarding these findings for individual countries.

²³ Also called Naclof or Denaclor in some countries (e.g. the Netherlands, Poland, Slovenia, Greece).

²⁴ Novartis has also very small sales of the Ketorolac product (based on the molecule ketorolac, classified S1R) only in Italy, where it accounts for just the [0-5]% of the market.

²⁵ Alcon also has sales of the Pranofen/Oftalar product based on the pranoprofen molecule in Bulgaria, Greece, Italy and Spain.

²⁶ [...]

SIR-Bulgaria

56. The transaction leads to a combined market share of [90-100]% with an increment of [20-30]% contributed by Novartis. The parties' products are originators and Alcon's *Nevanac* product is still patent protected. Alcon's products are successful and increasing in sales and its new generation product has been just launched in 2009. [...] Other competitors are Unimed Pharma ([5-10%]), and B&L ([0-5%]), both decreasing in share. Novartis' product is well known and still retaining shares even though decreasing. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, and the recent [...] new generation products by Alcon (which have proved to be successful), serious doubts arise.

SIR-Cyprus

57. Novartis' products are the only available NSAIDs in the market and Alcon has just launched its *Nevanac* product in 2010. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, [...] serious doubts arise.

SIR-Denmark

58. The transaction leads to a combined market share of [70-80]% and the increment is significant (Novartis [40-50]% and Alcon [20-30%]). The parties' products are originators and Alcon's *Nevanac* product is still patent protected. Alcon has just launched its new generation product in 2008 [...]. Other competitors are Allergan ([20-30%]), and Stulln ([5-10%]). Novartis' product is well known and still retaining shares even though these are decreasing. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, and the recent [...] new generation products by Alcon (which have proved to be successful), serious doubts arise.

SIR-Germany

59. Novartis has a [20-30]% market share (which amounts to [30-40]% if sales of its products via parallel importers are taken into account). [...] Other major competitors are Allergan [20-30%], B&L [10-20]% and a tail end of smaller competitors and parallel importers. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, [...] serious doubts arise.

SIR-Greece

60. The transaction leads to a combined market share of [40-50]% and the increment is significant (Novartis [10-20]% and Alcon [20-30%]). Alcon's products are originators and Alcon's *Nevanac* product is still patent protected. Alcon has just launched its new generation product in 2009 [...]. Other major competitors are Alvia ([30-40%]), and Pharmathen ([10-20%]) which are generics of Novartis' products. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, and the recent [...] new generation products by Alcon (which have proved to be successful), serious doubts arise.

SIR-Hungary

61. Novartis has [80-90]% market share [...]. The other major competitor in the market would be B&L ([10-20]%). In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, [...] serious doubts arise.

SIR-Ireland

62. Novartis has [40-50]% market share and the only other competitor is Allergan. [...] In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion [...], serious doubts arise.

SIR-Netherlands

63. The transaction leads to a combined market share of [40-50]% and the increment is significant (Novartis [5-10]% and Alcon [30-40]%). The parties' products are originators and whereas Novartis' *Nafloc* product has recently lost its patent protection, Alcon's *Nevanac* product, just launched in 2008, is still patent protected. [...] Five other competitors remain in the market (Allergan [10-20]%, OPG [5-10]%, B&L [5-10]%, Thea [5-10]%, Fisher Farma [0-5]%, and Phoenix [0-5]%). However the last two are parallel importers which also sell Novartis' products. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, and the recent [...] new generation products by Alcon (which have proved to be successful), serious doubts arise.

SIR-Norway

64. Novartis is the only player [...]. [...] In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, [...] serious doubts arise.

SIR-Slovenia

65. Novartis is the only player [...]. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, [...] serious doubts arise.

SIR-Sweden

66. The transaction leads to a merger to monopoly (Novartis [50-60]% and Alcon [40-50]%). The parties' products are originators and Alcon's *Nevanac* product is still patent protected. Alcon has just launched its new generation product in 2008, gaining almost [50-60]% market share in 2 years [...]. In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, and the recent [...] new generation products by Alcon (which have proved to be successful), serious doubts arise.

SIR-UK

67. The transaction leads to a combined market share of [40-50]% (Novartis [40-50]% (increasing) and Alcon [0-5]%, thanks to the launch of its new generation product, *Nevanac*, in May 2009). The parties' products are originators and Alcon's *Nevanac* product is still patent protected whereas Novartis' product recently lost its patent

protection. [...] There remains one other major competitor, Allergan ([50-60]%). In view of the high market shares, the results of the market investigation which indicate barriers to entry and expansion, and the recent [...] new generation products by Alcon (which have proved to be successful), serious doubts arise.

3.2.1.3. Ophthalmological anti-inflammatory/anti-infective combinations (ATC3 class S1C)

Market definition

68. Products in the ATC3 class S1C are combination products of anti-inflammatory ingredients, such as corticosteroids on the one hand and anti-infective ingredients, i.e. mainly anti-bacterial ingredients on the other hand. The ATC3 class is subdivided in ATC4 classes depending on the anti-inflammatory ingredient they contain (ATC4 S1C1 contains corticosteroids, S1C2 contains non-steroidal anti-inflammatories and S1C9 other ophthalmological anti-inflammatory and anti-infective combinations.).
69. The parties argue that a market definition on the ATC4 level would be appropriate, whereby each ATC4 class constitutes a separate market.
70. The market investigation was not conclusive if the market should be defined at the ATC3 level (S1C) or ATC4 level (S1C1). The products of both parties belong to the S1C1 class. Since the market shares of the parties and competitors are the same in S1C as in the S1C1 category, it is not necessary to conclude on the product market definition. The market investigation indicated that the product market should not be further subdivided by specific anti-bacterial ingredient contained in the different products. Most anti-bacterial ingredients in S1C products are broad spectrum anti-bacterials and can as such be used for a number of infections and are substitutable with each other. The parties' products are prescription-bound in the affected markets. According to the information submitted, the products of the parties' competitors are also prescription bound, so the issue of a possible segmentation between prescription bound and OTC-products does not arise.
71. The market investigation also confirmed that it would not be appropriate to distinguish products according to the context in which they are used. While some products are more frequently used after eye surgery, they are all also used in day care practices.

Competitive assessment

72. Within the S1C category, the parties are active with the following products: Alcon markets the brands Tobradex/Tobrsone, Maxitrol, Tobrafen and Isopto Max and Novartis is active with Spersadex Comp/Spersadex M/Kloram/Dispersadron C, Cibaflam/Infectedflam, and Cortiphenol H.²⁷
73. As regards Cibaflam/Infectedflam and Cortiphenol H, Novartis decided in [...] to prune these products [...] and has discontinued production in [...] and last shipments were made in [...]. In terms of group 1 markets, Infectedflam is currently sold in Luxembourg and Slovakia, while Cortiphenol H is sold in Greece. Novartis has recently instructed its

²⁷ The products of both parties are originator products.

country offices to start the de-registration process of these products. However, it is not known how long the de-registration process will take and both products are still available on the market. Furthermore, the discontinuation appears to be mainly a business decision which is potentially reversible, in particular as long as the market authorization is still valid. Therefore, on a conservative basis, the horizontal overlap associated with the pruned products Cibaflam/Infectoflam and Cortiphenol H will be taken into account for the purposes of the competitive assessment in the present Decision.

74. The market investigation indicated that some of the parties' products in this category are closely competing products, although it was also mentioned that Alcon's products are often used post-surgery while Novartis' products are not. The investigation also showed that R&D expenses and patents are considered to be a barrier to entry in this market.

75. The market structure in above mentioned countries is as follows²⁸:

SIC -Bulgaria

76. In Bulgaria, the combined market share of the parties is [90-100]% with an increment of [5-10]% contributed by Novartis. The only other competitor is Actavis with [0-5]%. In light of the very high combined market share and the results of the market investigation indicating barriers to entry, the transaction raises serious doubts for S1C/S1C1 products in Bulgaria.

SIC-Czech Republic

77. In the Czech Republic the transaction would result in a merger to monopoly (Alcon: [90-100]% and Novartis: [5-10]%). In light of this and the results of the market investigation indicating barriers to entry, the transaction raises serious doubts for S1C/S1C1 markets in the Czech Republic.

SIC-Denmark

78. In Denmark the combined market share of the parties amounts to [90-100]%. The parties are similarly strong: Novartis with [40-50]% and Alcon with [40-50]%. The only other competitors are Orifarm ([5-10]% market share) and Singad Pharma (less than [0-5]%), which are in any case parallel importers of Novartis' and Alcon's products respectively. In light of the very high combined market share and the results of the market investigation indicating barriers to entry, the transaction raises serious doubts for S1C/S1C1 products in Denmark.

SIC-Greece

79. In Greece the combined market share of the parties would amount to [80-90]% with an increment of [20-30]% contributed by Novartis. The only other competitors are B&L with [10-20]% and four other competitors below 5% market share. In light of the very high combined market share, the high increment and the results of the market investigation indicating barriers to entry, the transaction raises serious doubts for S1C/S1C1 products in Greece.

²⁸ The market shares of the parties and competitors in the S1C1 category are identical with the market share in S1C.

SIC-Luxembourg

80. In Luxembourg the combined market share of the parties would amount to [60-70]% with an increment of [10-20]% contributed by Novartis. The only other competitors are Mann Lab with [10-20]% market share, Pfizer with [10-20]% and three other competitors with market shares below 5%. In light of the very high combined market share and the results of the market investigation indicating barriers to entry, the transaction raises serious doubts for S1C/S1C1 products in Luxembourg.

SIC-Norway

81. In Norway, the transaction would result in a monopoly (Novartis with [70-80]% and Alcon with [20-30]%). Accordingly, the transaction raises serious doubts in the market for S1C/S1C1 products in Norway.

SIC-Romania

82. In Romania the combined market share of the parties would amount to [50-60]% with an increment of [0-5]% contributed by Novartis. Other competitors are Thea with [20-30]%, Sifi with [20-30]% and one other with less than [0-5]%. In light of the high combined market share and the results of the market investigation indicating barriers to entry, the transaction raises serious doubts for S1C/S1C1 products in Romania.

SIC-Slovakia

83. In Slovakia the combined market share of the parties would amount to [90-100]% with an increment of [20-30]% contributed by Novartis. The other competitors are Ursapharm with [0-5]% and Unimed Pharma with less than [0-5]%. In light of the very high combined market share, the high increment and the results of the market investigation indicating barriers to entry, the transaction raises serious doubts for S1C products in Slovakia.

3.2.2. Miotics and anti-glaucoma (ATC3 class S1E)

Product market definition

84. According to the parties, S1E should be divided according to injectable miotics (used in ocular surgery to induce the constriction of the pupil) and Anti-glaucoma (used mainly as an eyedrop to relieve intraocular pressure, which frequently accompanies glaucomas).

85. The market investigation confirmed that injectable miotics and anti-glaucoma products belong to separate product markets based on the difference in indications.

86. The market investigation also confirmed that the parties' injectable miotics products are substitutable and that there are no alternatives to the parties' injectable miotics products (carbachol and acetylcholine chloride) to induce miosis (constriction of the pupil) during ocular surgery.

87. All anti-glaucoma products are aimed at reducing intraocular pressure. Anti-glaucoma products can however be further divided into the following sub-segments based on their mode of action: Prostaglandin Analogues, Beta-blockers, Alpha-adrenergic agonists, Carbonic Anhydrase Inhibitors and Miotics.

88. Based on the market investigation, a sub-segmentation of anti-glaucoma products cannot be excluded. This especially applies for beta-blockers, where significant overlaps between the Parties' products arise in several countries. It appears from the market investigation that beta-blockers may to some extent be substitutable with other anti-glaucoma products, in particular prostaglandin analogues (the two have been indicated as the most likely products to be used as first-line treatments). This notwithstanding, it does not appear likely, based on the market investigation, that a significant part of demand would switch to other anti-glaucoma products in case of a 10% price increase in beta-blockers. The market investigation indicated beta-blockers to be already significantly cheaper than other types of anti-glaucoma products.
89. The market definition can however be left open for anti-glaucoma products as competition concerns do not arise even on a narrower sub-segmentation of anti-glaucoma products.
90. Molecular overlaps between the parties are infrequent and are limited to timolol (beta-blocker) and pilocarpine (a miotics product in eye-drop form used in the treatment of glaucomas). The market investigation indicated substitutability between timolols and other beta-blockers. In any event, the market definition can be left open as the transaction does not raise competition concerns either under a market definition including timolol-based products only or any wider market definition..
91. On the other hand, the market investigation, and in particular users (hospitals and doctors) indicated limited substitutability between pilocarpine and other molecules. Pilocarpine appears to be a niche product and is mainly used in the treatment of one specific and relatively rare type of glaucoma (angle-closure glaucoma). In Finland, where the parties overlap in pilocarpine, it is the only type of molecule in its category (topical miotics used to treat glaucomas). A market definition based on the molecule level therefore cannot be excluded.

Competitive assessment for Injectable miotics

Finland, France, Netherlands, Portugal, Slovenia, Sweden and UK

92. In injectable miotics, the proposed transaction is a merger to monopoly in several countries (albeit in Finland, the Netherlands, Portugal and the UK with an increment of less than [0-5]%) and the parties are essentially the only two suppliers in the EEA (except for another supplier active only in Italy). With the exception of Italy, the parties therefore have a monopoly in the countries where they do not overlap. This leads to a combined market share of c. [90-100]% at EEA level. The [5-10]% remaining market share is held by Farmigea, only active in Italy.
93. In light of their overall presence in the EEA in terms of injectable miotics sales and overall marketing and distribution capabilities, the parties are the most likely entrants in countries where they are not present (and where, with the exception of Italy, the other party has a monopoly). The market investigation did not indicate any significant likely entry within a reasonable time-frame that would constrain the merged entity in the countries concerned (i.e. where the merger would lead to a monopoly).
94. In light of the high combined market shares and the competitive situation described above, serious doubts therefore arise in injectable miotics in all the markets where the parties overlap (Finland, France, Netherlands, Portugal, Slovenia, Sweden and UK).

Competitive assessment Anti -glaucoma

95. In the overall market of anti-glaucoma products, combined market shares are less than 35% in each country where the parties overlap. However, the parties achieve higher market shares in some sub-segments of anti-glaucoma products, in particular in beta blockers (seven countries with 40-70% combined market shares). Based on molecular overlaps, two Group 1 markets arise: timolol in Bulgaria and pilocarpine in Finland.
96. However, the significant overlaps in most of the Group 1 Plus markets do not raise serious doubts due to the presence of other credible competitors and in some cases small increments. There are also indications from the market investigation of possibilities for expansion in a number of countries. The beta blocker product of Novartis - based on timolol - is a mature generic product with several other suppliers. Also, the main products of the parties are often based on different molecules and, based on this characteristic, the parties do not appear to be the closest competitors.

SIE Anti-glaucoma - Finland

97. On the basis of a molecular market definition, the transaction would lead to a merger to monopoly in pilocarpine in Finland (Novartis [50-60]%; Alcon [40-50]%). Novartis distributes a [third party] product in Finland [...].²⁹ Novartis has exclusive rights to commercialise this product in Finland. [...] However, pilocarpine appears to be a niche product and the market is very small (EUR [...]), which may not make it attractive for entry. Serious doubts therefore arise for pilocarpine in Finland.

SIE Anti-glaucoma - Austria

98. In Austria the parties would have a combined market share of [30-40]% (Novartis [20-30]%; Alcon [10-20]%) of beta blockers. The parties do not overlap on the molecule level. There are three competitors with larger market shares than Novartis: Huhtamaki and Allergan with [10-20]% each and Merck & Co with [10-20]%. Agepha also has a significant ([5-10]%) market share. Merck & Co, Agepha and Huhtamaki products are based on the same molecule (timolol) as the Novartis product. Based on the relatively modest market share, the fact that the parties are not the closest competitors and the presence of a sufficient number of other significant competitors, competition concerns do not arise

SIE Anti-glaucoma - Bulgaria

99. In Bulgaria, the parties would have a combined market share of [60-70]% in beta-blockers, but with a small increment of [0-5]% contributed by Novartis. Both parties sell products based on timolol, but Alcon also has another product, betaxolol. According to the IMS market information provided by the parties, there are two other competitors

²⁹ Novartis continues to distribute the [...] branded products of [...] (hereinafter the "[...] Distribution Agreements").

with higher market shares than Novartis (Santen with [20-30]% and Merck&Co with [5-10]%) and two with comparable market shares (B&L and Unimed with just above [0-5]% each). All these companies are internationally active. Due to the fact that the main product in this market is timolol, the market structure is not materially different based on a molecular market definition, although the parties would have a smaller combined market share of [60-70]% as Alcon also has another product, betaxolol. There are indications of possibilities for expansion. Due to the small increment by Novartis, the relative homogeneity of the products and the presence of internationally active competitors, the transaction does not raise competition concerns³⁰.

SIE Anti-glaucoma - Czech Republic

100. In 2009, the parties had a combined market share of [40-50]% (Novartis [10-20]%, Alcon [30-40]%). However, the leading product of Novartis had been divested as part of a sale of a number of products to [...]. In the absence of this product, the combined market share of the parties would be below 35%. There are in any case other competitors remaining, in particular B&L ([20-30]%), Ursapharm ([20-30]%), Merck&Co ([5-10]%), Unimed Pharma ([0-5]%) and Santen ([0-5]%). Most of these competitors sell the same molecule product as Novartis (timolol). Alcon sells a product based on another molecule (betaxolol). Serious doubts therefore do not arise.

SIE Anti-glaucoma - Greece

101. The parties have a combined market share of [50-60]% (Novartis [10-20]%; Alcon [30-40]%). The parties do not overlap at the molecule level. Merck&Co has a market share of [20-30]% with a product that is based on the same molecule as the Novartis product (i.e timolol). Pharmedel, B&L and Alvia each have [5-10]% of the market. Pharmedel's and Alvia's products were indicated by the market investigation to be close competitors to Alcon's products, while Merck's product is the closest competitor to the Novartis product. The market investigation also indicated possibilities of expansion. On the basis of the above, serious doubts can be excluded.

SIE Anti-glaucoma – Netherlands

102. The parties would have a combined market share of [30-40]% for the possible sub-category of alpha adrenergic agonists. Novartis contributes [5-10]%. The parties do not overlap on the molecule. Novartis supplies a generic product based on brimonidine, whereas Alcon has an originator product. The originator for brimonidine (Allergan) has [10-20]% of the market and Mylan and Teva also supply generic versions of Brimonidine with comparable market shares to Novartis ([0-5]-[5-10]%). Serious doubts therefore do not arise.
103. The parties would also have a combined market share of [40-50]% in the sub-segment of Carbonic Anhydrase Inhibitors (Novartis [10-20]%; Alcon [30-40]%). Again, Alcon has an originator product and Novartis a generic and the parties do not overlap on the molecule. Furthermore, the galenic forms of their products are different (Alcon's product is an eyedrop and Novartis' product is a tablet). The originator product of the Novartis product is present with [10-20]% of the market through a parallel

³⁰ The market investigation did not clearly confirm this market structure and in particular the presence of one competitor. However, the reasons for excluding serious doubts would still be valid.

importer. Merck&Co also has [20-30]% of the market with another originator drug. 15-20% of the market is supplied by parallel importers of Merck&Co's and to a lesser extent, Alcon's product. As the parties' products are not close competitors due to the difference in active ingredient and galenic form, the transaction does not raise serious doubts.

SIE Anti-glaucoma – Poland

104. In 2009 the parties had a combined market share of [50-60]% in beta-blockers in Poland (Novartis [5-10]%; Alcon [40-50]%). However, as in the Czech Republic, the main product of Novartis (accounting for [5-10]% of the market) has been divested [...]. The divestment has already been completed in Poland. The parties' combined market share without this product would be [30-40]% with a small increment of [0-5]% contributed by Novartis. The transaction does not therefore raise serious doubts.

SIE Anti-glaucoma – Romania

105. The parties would have a combined market share of [40-50]% (Novartis [5-10]%; Alcon [40-50]%). They do not overlap on the molecule. There are three competitors that supply products based on the same molecule as the Novartis product (timolol) which have higher market shares than Novartis: Eipico ([20-30]%), Rompharm ([5-10]%) and Merck&Co ([5-10]%). The transaction does not therefore raise serious doubts.

SIE Anti-glaucoma – Slovenia

106. In Slovenia, the combined market share of the parties would be [30-40]% in beta-blockers (Novartis [5-10]%; Alcon [30-40]%). The parties do not overlap on the molecule. The market leader would continue to be Merck with the remaining [60-70]% of the market and with a product based on the same molecule as Novartis. Expansion has been indicated to be possible by the market investigation. On the basis of the above, serious doubts do not arise.

Potential competition- Anti-glaucoma

107. Alcon is a strong originator in the overall anti-glaucoma market (the second biggest with [10-20]% at the EEA level after Pfizer ([30-40]%) and before Merck&Co and Allergan with around [10-20]% each). Novartis is the biggest generic (albeit with only [0-5]% of the EEA market of all glaucoma products). The share of generics in the anti-glaucoma market is generally low.

108. Novartis has[...]generic pipeline [...] including the versions of the bestselling [drug A]. Both of these drugs are in the sub-segment of prostaglandin analogues. Based on current overlaps, no Group 1 "Plus" markets arise in prostaglandin analogues.

109. According to the information of the Parties, [competitor A] and [competitor B], both active in the EEA [...], have already applied in the US for authorisation for the generic version of [...].

110. The possibility that as a result of the merger, Alcon could launch generic versions of its own products before patent expiry and capture market shares was raised as an issue by one party in the market investigation. However, as the Commission already outlined

in an earlier decision involving an originator and a generic,³¹ the merger specificity of such strategy is not evident (i.e. originators may use independent generics to launch authorised generics).

111. [Drug A] has sales of EUR [...] million in the EEA. Novartis plans to launch the generic version [...] and achieve only EUR [...] million sales [...]. In previous decisions relating to originator pipelines, a pipeline was considered to be in a sufficiently advanced stage of development to be considered as a possible competitive constraint when it reached clinical trials (Phase III). This cannot be applied in the case of generics as no clinical trials are required for the authorisation of a generic. The development of generics also takes significantly less time than originators. Despite the [...] timeline, the Novartis pipeline cannot be considered to be already at a sufficiently advanced stage to pose a concrete competitive restraint on [drug A]. This is all the more the case given the [...] turnover projections relative to the turnover of [drug A]. Moreover, even if the pipeline were assumed to be in a sufficiently advanced stage, a number of competitors which could maintain sufficient competitive pressure on [...] would remain.
112. In general, the market investigation indicated other generics to have comparable capabilities to Novartis in anti-glaucoma markets, and the majority of respondents to the market investigation did not raise any concerns on this issue.
113. In light of the above, serious doubts based on the possible elimination of potential competition in anti-glaucoma markets, and, in particular for prostaglandin analogues, do not arise.

3.2.3. *Ocular anti-allergics, decongestants and anti-septics (ATC3 class S1G)*

Product market definition

114. The ATC3 category S1G comprises ocular anti-allergics, decongestants and antiseptics. These products are eye drops that principally treat eye allergies, such as seasonal allergic conjunctivitis (i.e. hay fever) or perennial allergic conjunctivitis. Eye allergies occur when a foreign substance, known as an allergen, enters the eye. The body's immune system reacts to the allergen by releasing histamine from mast cells. Histamine causes eye itching, as well as redness and swelling. S1G products treat these symptoms.
115. There are some differences between the mode of action/indications of different S1G products. The ATC category contains three broad categories of products.
 - i) Anti allergics target the cause of the allergy but have different modes of action. Anti-allergics comprise anti-histamines, mast cell stabilisers and multiple action products. Anti-histamines, classified in S1G1, inhibit the action of histamines thereby relieving eye itching. Mast cell stabilisers (S1G2 ATC4 category) target the source of histamine to prevent its release and reduce eye swelling. Multiple action products in S1G3 contain both of these agents and address all the symptoms of eye allergies.

³¹ Case COMP M.5253 Sanofi/Zentiva, Decision of 4.2.2009

- ii) Decongestants – Decongestants are classified under S1G5. They relieve the same symptoms by constricting the blood vessels on the conjunctiva. They reduce eye redness but do not treat the underlying causes of allergy.
- iii) Ocular anti-septics S1G6 – these products are relatively simple products to clean the eye. They have no specific action relating to allergies.
116. The Commission considered S1G markets in previous decisions³², but left the market definition open. The Commission in particular considered whether all anti-allergics together or anti-allergics and decongestants together could comprise the relevant product market. The Commission considered prescription and OTC products separately.
117. The parties argue that all S1G products belong to the same relevant product market. Notwithstanding the differences in their mode of action/indication, they argue that they are substituted in practice to a significant extent. This is due to consumers who suffer from seasonal allergies. The parties argue that these consumers self-medicate with cheaper decongestants and antiseptics available in pharmacies and supermarkets. The Parties further argue that OTC products compete with prescription products.
118. The transaction gives rise to the most significant overlaps in ocular anti-allergics, and in particular, anti-histamines and combination products. The market investigation therefore focused on these.
119. While customer (doctors and hospitals) replies to the market investigation overall indicated that OTC and prescription drugs were not substitutable, there were indications from competitors that there were possibilities of substitution between the two. In view of the customer replies in particular, it cannot be concluded with sufficient certainty that these products belong to the same relevant market. This notwithstanding, the classification of a drug as OTC or Rx is not always evident in the S1G category as some products are available OTC, but they can be reimbursed if prescribed. This means that they can be sold both as OTC and Rx. Furthermore, the regulatory framework regarding the availability of these drugs may also differ from country to country, i.e. the same drug may be prescription only in one country and might be available OTC in another country. Consistent with such differences, the market investigation also indicated some possible national differences in the degree of competition between OTC and Rx drugs. In light of such specificities and of the indications that there may be to some extent a competitive relationship between OTC and Rx drugs at least for a part of the S1G markets concerned, this relationship will be examined in greater detail in the respective national markets where it makes a difference to the assessment.
120. On the question of whether multiple action products in S1G3 were substituted frequently and effectively with other products, the market investigation, and in particular customers' replies, indicated limited substitution. This may be explained by the difference in efficacy/strength, mode of action and price (multiple action products seem to have stronger effects and are sold at a significantly higher price - a fact also submitted by the parties).

³² Case No COMP/M. 4314 Johnson & Johnson / Pfizer Consumer Healthcare, Decision of 11.12.2006

121. There were more indications from competitors for the substitution of anti-histamines in S1G1 with other products, in particular S1G3 and to a slightly lesser extent S1G2. Based on customers' replies, however, substitution again appears to be more limited. One exception seems to be the UK, where anti-histamines seem to be constrained to a significant degree by other products.
122. Furthermore, it does not appear likely based on the market investigation that a significant part of demand would switch from anti-histamines and from multiple action products to other products in the case of a price increase of 10%.
123. Overall, there were no indications of frequent substitution of anti-allergic products in S1G1, S1G2 and S1G3 with products in other ATC4 categories in S1G, in particular decongestants (S1G5) and ocular anti-septics (S1G6), which suggests that the ATC3 level market definition proposed by the parties is inappropriate.
124. The market investigation did not indicate the appropriateness of a molecular market definition. Despite some evident differentiation between the products (which often includes strong brands), the market investigation indicated substitution between products based on different molecules.
125. Based on the lack of conclusive evidence on the frequent and effective substitution among ATC4 categories, the assessment will take ATC4 as a basis for market definition. The exception is the anti-histamine segment in the UK, where the market evidence indicated substitution from other ATC4 categories to be likely. As for the distinction between OTC and Rx medicines, this can be left open for a number of national markets. Where this makes a difference for the competitive assessment, it will be assessed specifically in light of the characteristics of the national markets concerned.

Competitive assessment

126. Concerns would mostly arise in multiple action (S1G3) products due to high combined market shares and the lack of competitors (in some cases, the parties are the only suppliers of these products). The parties have strong and well-known brands in this category (Opatanol and Zaditen). In most cases, the prescription/OTC division does not make a difference as these products are mostly sold on prescription.
127. The parties also have strong positions in anti-histamines (S1G1) in some countries, which raise serious doubts.
128. It is only in the Czech Republic that competition concerns are likely to arise in mast cell stabilizers (S1G2).
129. The market investigation highlighted that brands and reputation as well as marketing expenses generally play a significant role in competition and may be considered as significant barriers to entry. Barriers to expansion are more specific to the markets concerned and will be assessed in the national markets, where relevant.

SIG Czech Republic

130. In the Czech Republic, the transaction would lead to Group 1 "Plus" markets in several categories of SIG products.
131. The parties would have a combined market share of [50-60]% (Novartis [40-50]%; Alcon [10-20]%) in S1G1. Only two competitors remain, Johnson & Johnson (hereinafter referred to as J&J) with [30-40]% and Allergan with [5-10]%. The parties' combined market shares would be even higher in the prescription anti-histamine segment: [80-90]% (Novartis [70-80]%; Alcon [10-20]%). Only one other competitor, Allergan, remains with a much smaller market share.
132. The parties would have a combined market share of [40-50]% in mast cell stabilisers (S1G2) (Novartis [30-40]%; Alcon [5-10]%) with only one other competitor (Ursapharm) remaining. In addition, the entire class is prescription only, so the assessment does not change based on this distinction.
133. The merger would lead to a merger to monopoly (Novartis [30-40]%; Alcon [70-80]%) in prescription multiple action products. In the overall S1G3 segment the parties would still have very high combined market shares ([80-90]%; Novartis [20-30]%; Alcon [50-60]%) and there would only be one significantly smaller competitor remaining (Meda).
134. In addition to the general barriers to entry for SIG products indicated by the market investigation, the market investigation did not indicate that the merged entity would be sufficiently constrained by remaining competitors in any of these markets in the Czech Republic.
135. Based on high combined market shares and the fact that the competitive pressure from remaining competitors is unlikely to be sufficient to constrain the merged entity, the transaction would raise serious doubts in each of the S1G1 (Rx and overall), S1G2 (Rx and overall), and S1G3 (Rx and overall) categories. Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Denmark

136. In Denmark the transaction would lead to Group 1 "Plus" markets in the overall SIG category, in anti-histamines (S1G1) and multiple action products (S1G3).
137. The parties would have a combined market share of [30-40]% (Novartis [20-30]%; Alcon [10-20]%) in S1G1. However, the transaction is a 3 to 2 merger with only one other competitor, J&J remaining. As the Novartis product (Antistina Privin) is OTC and Alcon's product (Emadine) is prescription only, there is no overlap based on the distinction between OTC and prescription products. In Denmark, it was mainly other anti-histamine products that were indicated by the market investigation to be close competitors to Antistina Privin, i.e. there was no consistent indication of any other type of product to be a close competitor to Antistina Privin.
138. The closest competitor to Antistina Privin was indicated to be J&J's product (Livostin), which is also OTC. However, Alcon's prescription only product (Emadine) was also indicated to be a close competitor despite being a prescription only product. In general, the market investigation indicated that OTC SIG products do not frequently and effectively substitute prescription products. The reasons cited were the difference in

price (Rx products are reimbursed) and the reluctance by patients to switch from either type of product to another. This does not exclude, however, that customers would switch to Rx products in case of a price increase in OTC products. It should be noted to this effect that Antistina Privin is also reimbursed when prescribed, although at current price levels (2009) it is currently sold predominantly as an OTC product in Denmark (Novartis estimates that only [0-5]% of sales were made through prescription in Denmark).

139. In light of the overall indications of the market investigation, however, it appears that the main competitive pressure on Novartis stems from J&J, which would continue to be the market leader with almost twice the market shares of the merged entity. Competition concerns are therefore unlikely to arise in the S1G1 segment.
140. The parties would have a combined market share of [80-90]% (Novartis [20-30]%; Alcon [50-60]%) in multiple action products in S1G3. Orifarm has [10-20]% of the market, but this is due to the parallel import of the Novartis product, Zaditen. The only other product on the market is Meda's Allergodil with [50-10]%. The Alcon product (Opatanol) is an Rx only product. Exceptionally, Zaditen in this category is available OTC (in most countries it is a prescription only product). This distinction is less clear in Denmark, however, because Novartis only relatively recently received approval to sell Zaditen as an OTC drug in Denmark. This notwithstanding, Zaditen continues to be reimbursed when prescribed and the share of prescription sales is not insignificant ([10-20]%).
141. It should also be noted that Zaditen has in general been indicated by the market investigation to be a substitute for the relevant patent-protected Alcon product (Opatanol) more often than other products. It has also been indicated as a close substitute for Opatanol in Denmark (as well as the Zaditen product sold by a parallel importer). On balance, therefore and due to the very specific circumstances relating to the OTC/prescription status of Zaditen in Denmark, it cannot be excluded that the Novartis product would act as a significant competitive constraint on Opatanol in Denmark in view of its mixed OTC/Rx sales. In light of the high concentration of the market (HHI of [6000-7000] with a delta of [2000-3000]) and the likelihood that the merger would raise barriers to entry and expansion, competition concerns arise in the overall S1G3 segment. Competition concerns would also arise on an Rx only segment - if [10-20]% of the sales of Zaditen were attributed to this segment - as the transaction would lead to a duopoly in the Rx only segment as well, with a significantly smaller competitor.
142. Based on high combined market shares, the lack of competitors and general barriers to entry in the S1G segment, serious doubts cannot therefore be excluded for the S1G3 (overall and Rx) market in Denmark. Serious doubts can be excluded for the S1G1 segment for the reasons cited above.

S1G Finland

143. In Finland the transaction would lead to very high combined market shares in the multiple action anti-allergic category (S1G3). Here the parties would have a combined market share of [90-100]% (Novartis [70-80]%; Alcon [10-20]%). The only other competitor is a parallel importer, which imports the Novartis product. The whole category is prescription only.

144. Based on high combined market shares and the lack of competitors, and in light of general barriers to entry indicated for S1G products, serious doubts arise for the S1G3 segment (Rx and overall). Serious doubts arise irrespective of the OTC/Rx distinction

S1G Germany

145. In Germany, the parties' products are the leading prescription brands. The parties therefore have an [80-90]% combined market share (Novartis [50-60]%; Alcon [20-30]%) in the prescription segment of the S1G category. The only other competitor which supplies its own product is Allergan with only [0-5]% of the market. The remaining [10-20]% of the market belongs to parallel traders supplying mostly the parties' products.

146. Since the main Rx products of the parties are multiple action products, the parties' combined market share is also very high in the overall prescription S1G3 category ([80-90]% with an increment of [20-30]% by Alcon). The remaining competitors are parallel importers of the parties' products. In the overall segment of S1G3 (including both Rx and OTC), the parties' combined market share is significantly lower, [30-40]% (Novartis [20-30]%, Alcon [10-20]%). There are two significant competitors remaining (B&L with [30-40]% and Meda with [20-30]%). However, the remaining [5-10]% of the market is accounted for by parallel traders supplying mostly the parties' products.

147. The parties submit that their S1G3 products have very similar modes of action and indications and they can be considered to be close competitors in Germany. There were some indications, however, that non-prescription multiple action products in S1G3 (from B&L and Meda) may be closer competitors to the Novartis multiple action prescription product (Zaditen) in Germany than the Alcon product, Opatanol. It should also be noted that products based on the API of the B&L and Meda product are usually sold by prescription only in other countries. Furthermore, expansion has been indicated by the market investigation as possible and likely.

148. The transaction also gives rise to a Group 1 market in mast cell stabilisers (S1G2), with a combined market share of [30-40]% (Novartis [30-40]%; Alcon [5-10]%). There are other significant competitors remaining (B&L [30-40]%, Ratiopharm [10-20]% and Ursapharm ([5-10]%). The situation is not materially different if the OTC/Rx separation is considered. The market investigation confirmed that for S1G2, there are credible competitors remaining that could constrain the merged entity.

149. On balance, therefore, serious doubts can be excluded with respect to multiple action products (S1G3) and mast cell stabilisers (S1G2) in Germany.

S1G Greece

150. The parties have combined market shares of [30-40]% in the anti-histamine segment (S1G1), with a relatively small increment by Novartis ([5-10]%, due to sales of the Spersallerg product). The market leader would continue to be Allergan with [40-50]% and there is another competitor, J&J with significantly higher market shares than Novartis ([10-20]%). The Novartis product is OTC and the Alcon product is Rx. The transaction does not therefore lead to any overlaps based on this distinction. Serious doubts do not therefore arise.

151. The parties achieve the highest combined market share in the S1G3 segment in Greece with [50-60]% (Novartis [10-20]%, Alcon [30-40]%). Even though both parties' products are Rx, the parties did not identify higher combined market shares in the Rx

only segment (the OTC/Rx status of competitors' products is not always clear). In any event, there are a number of competitors with products based on the same molecule (ketotifen) as the Novartis product (Zaditen). These include Zwitter ([30-40]%), Rafarm ([5-10]%) and two other competitors with [0-5]%. The market investigation did not find that Novartis' product was the closest competitor to Alcon's product: the products of two other competitors were also indicated to be close competitors to Alcon's Olopatadine. Zwitter and Rafarm have increased their sales in the past three years but this does not appear to be at the expense of the Novartis originator product. There has been an overall growth in the market. It appears from the market investigation that expansion is to some extent possible.

152. In light of the presence of a number of competitors, the lack of clear indications that Novartis is Alcon's closest competitor and evidence of possibilities of expansion, serious doubts can be excluded in Greece.

SIG Hungary

153. In Hungary the parties achieve high market shares due to their strong anti-histamine and multiple action sales.
154. In the anti-histamine segment (S1G1) the parties would have a combined market share of [80-90]% (Novartis [60-70]%; Alcon [20-30]%) with only Allergan remaining. As all products in this segment are Rx there would be no difference on the basis of the Rx/OTC separation.
155. The parties combined would be also by far the largest supplier of multiple action products (S1G3, combined market share of [70-80]% (Novartis [10-20]%; Alcon [50-60]%). The parties are the only suppliers of prescription-bound multiple action products. The only other supplier of multiple action products is Meda with an OTC product.
156. On the basis of the high concentration of the market, the significant change resulting from the transaction and general barriers of entry indicated by the market investigation for S1G products, serious doubts arise in antihistamines S1G1 (Rx and overall) and combination products (Rx and overall). Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Iceland

157. In Iceland the proposed transaction would lead to a merger to monopoly in both anti-histamines (increment of [0-5]% by Alcon) and multiple action products (increment of [5-10]% by Alcon).
158. In light of the resulting monopoly and general barriers to entry the transaction therefore raises serious doubts in anti-histamines (S1G1 Rx and overall), multiple action products (S1G3- Rx and overall). Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Ireland

159. In Ireland, the parties are the only suppliers of multiple action products, so the transaction would lead to a merger to monopoly in S1G3 (increment of [5-10]% by Novartis). Both products are Rx.

160. The parties are also very strong in anti-histamines with a combined market share of [90-100]% (Novartis [70-80]%, Alcon [10-20]%). There is only one other competitor, Allergan ([5-10]%). However, while Alcon's product (Emadine) and Allergan's product (Relestat) are prescription only, Novartis has an OTC product in this category, Otrivine Antistine. It should be noted on the other hand that Otrivine Antistine is reimbursed when prescribed and is therefore both sold as prescription and OTC. The market investigation did not indicate any specifics of the S1G market in Ireland which would indicate that OTC drugs frequently and effectively substitute Rx drugs. As in Denmark, however, it cannot be excluded that Rx drugs constrain the price of OTC drugs, i.e. that customers would switch to Rx drugs in case of a significant price increase in OTC drugs.
161. Notwithstanding that, Otrivine Antistine is sold predominantly as a an OTC product in Ireland (Novartis estimates that only [0-5]% of sales were made by way of prescription in Ireland), Alcon's product, Emadine, was indicated to be the closest competitor to Otrivine Antistin with Allergan's product indicated also as a close competitor. As opposed to the S1G1 segment in Denmark, the parties would have very high combined market shares and the main competitive pressure on the market leader Novartis seems to be coming from Alcon. Given the highly concentrated market structure, and the very significant increase in the concentration (HHI of [6000-7000]with a delta of [2000-3000]), and indications of closeness of competition between Otrivine Antistine and prescription products (and in particular Alcon's) competition concerns therefore arise in the S1G1 segment.
162. The transaction therefore raises serious doubts in S1G3 (Rx and overall) and S1G1 (overall).

S1G Luxembourg

163. The parties achieve high combined market shares in multiple action products ([80-90]%; Novartis [60-70]%; Alcon [10-20]%). The only other supplier is Meda. Since the parties' products are Rx and Meda's product is OTC, the transaction would lead to a merger to monopoly in the Rx segment of S1G3. Since these are the main Rx products on the market, the parties have 99% of the overall S1G Rx segment as well.
164. The transaction also leads to a Group 1 market in S1G2, but with a small increment (combined [50-60]%; Novartis [40-50]%; Alcon [0-5]%). There are four other players with higher market shares than Alcon: Klosterfrau ([20-30]%; Omnivision ([10-20]%; Thea ([5-10]%) and B&L ([0-5]%). The parties do not overlap on the molecule and there are other competitors that supply the same molecule product as Novartis. The transaction therefore does not raise competition concerns in this segment.
165. The transaction therefore raises serious doubts in the S1G3 (both overall and Rx) categories. Serious doubts arise irrespective of the OTC/Rx distinction.

S1G Malta

166. In Malta the transaction would lead to a merger to monopoly in the multiple action category (S1G3). The increment by Novartis is [0-5]%. Both products are prescription only.
167. The parties would also have a strong position in anti-histamines (prescription only category in Malta) with a combined market share of [60-70]% (Novartis [30-40]%;

Alcon [20-30]%). Ursapharm would remain with [30-40]% and J&J with [10-20]%. Based on the molecule of the products, Ursapharm appears to be the closest competitor to Novartis. The market investigation did not confirm possibilities for expansion.

168. In addition, due to the small size of the market, the incentives to enter may be less than in other markets.

169. In light of the above, serious doubts therefore arise with respect to both the S1G1 and S1G3 segment. Serious doubts arise irrespective of the OTC/Rx distinction

SIG Netherlands

170. In the Netherlands the transaction would lead to a Group 1 market in multiple action products (S1G3). These products are only sold on prescription in the Netherlands. The parties would have a combined market share of [60-70]% (Novartis [20-30]%; Alcon [20-30]%). However, the only other supplier which supplies its own product is Meda with [10-20]%. The rest of the market is supplied by parallel importers, which mainly sell Alcon's product (and to a lesser extent, Meda's).

171. For this reason, and in light of general barriers to entry for S1G products indicated by the market investigation, serious doubts cannot be excluded in the S1G3 segment (Rx and overall). Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Norway

172. In Norway the parties would achieve high combined market shares in S1G3 ([80-90]%, Novartis [50-60]%; Alcon [20-30]%). The only other supplier is a parallel importer, which imports the parties' products. Both parties' products are prescription only.

173. In light of the high existing concentration and the significant increase that would result from the merger as well as general barriers to entry for S1G products indicated by the market investigation, serious doubts therefore cannot be excluded in the S1G3 segment (an Rx only segment in Norway) Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Poland

174. In Poland the parties would have a combined market share of [90-100]% in the S1G3 segment (Novartis [10-20]%; Alcon [70-80]%). Both parties' products are prescription only. The only other competitors are parallel importers of Alcon's products.

175. In the S1G2 segment the parties have a combined market share of [40-50]% (Novartis [10-20]%; Alcon [30-40]%). The product of Novartis, the main product of Alcon and the products of other competitors are all based on the same molecule (cromoglicic acid). Warszawa ZF Polfa would remain a close second competitor with [40-50]% of the market. Ursapharm and B&L would be the other two remaining competitors with market shares of [10-20]% and [0-5]% respectively. Based on the presence of an equally strong competitor and two competitors which are comparable to pre-merger Novartis and based on the fact that all competitors sell the same product under different brand names, the transaction does not lead to competition concerns.

176. Serious doubts therefore cannot be excluded in the S1G3 segment (Rx and overall) in Poland. Serious doubts arise irrespective of the OTC/Rx distinction

SIG Portugal

177. In Portugal, the transaction would lead to a merger to monopoly in S1G3 (Novartis [50-60]%; Alcon [40-50]%). In light of this and the general barriers to entry for S1G products indicated by the market investigation, serious doubts therefore arise in this segment.. Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Romania

178. In Romania, the transaction would lead to a merger to monopoly in S1G3 (Novartis [0-5]%; Alcon [90-100]%). Since these are the only prescription products sold in S1G, this would constitute a merger to monopoly in the S1G Rx segment as well.

179. In light of the above and of general barriers to entry for S1G products indicated by the market investigation, serious doubts therefore arise in the S1G3 (overall and Rx) Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Slovakia

180. In Slovakia the merger would lead to combined market shares of [40-50]% in the S1G1 segment (Novartis [40-50]%; Alcon [5-10]%). J&J is the current market leader with [40-50]%, whilst Allergan has a market share of [5-10]%. All products are prescription only. The parties' products were not indicated as the closest competitors. Based on the market investigation the main competitive pressure on Novartis seems to be stemming from J&J. The market investigation indicated possibilities for expansion in S1G1 in Slovakia.

181. In S1G3 the situation is similar. The parties would have a combined market share of [40-50]% with a [5-10]% increment by Novartis. Unimed Pharma is the current number 2 with [30-40]% and Meda is present with [10-20]%. The market structure is the same on an Rx only S1G3 segment. The market investigation confirmed all products to be close competitors to the market leader Alcon's product. Given that both competitors have higher market shares than Novartis pre-merger and that possibilities for expansion have been indicated in this segment in Slovakia, the transaction does not raise competition concerns.

182. Serious doubts can therefore be excluded in Slovakia. This conclusion stands irrespective of the OTC/Rx distinction.

SIG - Slovenia

183. In Slovenia the transaction would lead to a merger to monopoly in S1G1 (Novartis [30-40]%; Alcon [60-70]%) and S1G3 (Novartis [30-40]%; Alcon [60-70]%) and due to these overlaps, also in the prescription segment of the overall S1G category.

184. In light of the above and of barriers to entry for S1G products indicated by the market investigation, serious doubts therefore arise in the S1G1 (overall and Rx) and S1G3 (overall and Rx) segment. Serious doubts arise irrespective of the OTC/Rx distinction

SIG Spain

185. In Spain, the transaction would lead to combined market shares of [70-80]% (Novartis [30-40]%; Alcon [30-40]%) in the S1G3 segment. Meda has a [20-30]% market share and there is a small competitor, Angelina with [0-5]%. All products are prescription only. Due to high combined market shares and a small number of significantly smaller competitors remaining, serious doubts cannot be excluded. Serious doubts arise irrespective of the OTC/Rx distinction.

SIG Sweden

186. In Sweden the transaction would lead to a combined market share of [70-80]% (Novartis [40-50]%; Alcon [30-40]%) in the S1G3 segment. The only other competitor with over [0-5]% market share is a parallel importer of the Alcon product.

187. Exceptionally, Zaditen in this category is OTC (in most countries it is a prescription only product). As in Denmark, this distinction is less clear in Sweden in the S1G3 segment, because Novartis only relatively recently received approval to sell Zaditen as an OTC drug. This notwithstanding, Zaditen continues to be reimbursed when prescribed and the share of prescription sales is not insignificant ([10-20]% in 2009 according to Novartis). It should also be noted that Zaditen has in general been indicated by the market investigation to be a possible substitute for the relevant patent-protected Alcon product, Opatanol more often than other products. Opatanol was indicated to be the closest substitute to Zaditen in Sweden as well. On balance, therefore and due to the specific circumstances relating to the OTC/prescription status of Zaditen in Sweden, it is likely that the Novartis product would act as a significant competitive constraint on Opatanol in Sweden in view of its mixed OTC/Rx sales. This is especially so as there are no other significant multiple action products on the market³³ (only Alcon's product sold by a parallel importer). This means that even in the Rx segment (if [10-20]% of the sales of Zaditen were considered to be Rx) Zaditen and Opatanol would be the only two significant multiple action products on the market. Opatanol would still continue to be sold also by a parallel importer. However, the market shares of the parties would be high even at the distribution level ([60-70]% with a significant [10-20]% increment by Novartis). The parallel importer would have the remaining [30-40]%³⁴ Serious doubts therefore arise irrespective of the Rx/OTC distinction in the S1G3 segment in Sweden.

188. Sweden is the only country where the transaction leads to Group 1 "Plus" markets in decongestants (ATC4 category S1G5). The parties are the only providers of prescription decongestants (Novartis [80-90]%, Alcon [10-20]%). However, due to the presence of a large provider of an OTC decongestant (Meda), the parties would have a combined market share of only [10-20]% ([0-5]% increment by Alcon) of the combined S1G5 category that includes both prescription and OTC products. This notwithstanding, the market investigation did not provide any significant indications for Sweden, as it did in the case of the UK for example (see para 193 below), that would suggest that a general delineation of OTC and Rx drugs would be inappropriate.

³³ Meda has only very small sales amounting to a [0-5]% market share.

³⁴ Meda would continue to have a market share of [0-5]% even on an Rx only basis.

189. It should further be noted, that the Novartis product classified in this category (Antiaten Privin) is also an anti-histamine and is classified in S1G1 in other countries. If all anti-histamine products in Sweden were considered, the merger would again lead to a duopoly³⁵, with only J&J remaining, albeit with a substantial market share of around [70-80]%. Parties would have a combined market share of [20-30]% (Novartis [5-10]% Alcon [10-20]%) J&J's product, however, is mostly sold as OTC (although it has a dual Rx/OTC status). On the basis of prescription antihistamines (including J&J's prescription sales), the merger would lead to combined market shares of [40-50]% with J&J's sales accounting for the remaining [50-60]%.
190. It should further be noted that the transaction would create a strong player in prescription S1G products and would significantly strengthen the current market leader, Alcon. Combined market shares in all prescription products would be [50-60]%³⁶ (Novartis [10-20]%; Alcon [30-40]%). The parties would have both anti-histamine and multiple action products. J&J would have [20-30]% with their anti-histamine product (Livostin) and Santen [5-10]% with their mast cell stabiliser product. The only other significant Rx player would be Orifarm, with imports of Alcon's and J&J's best selling drugs (Opatanol and Livostin). Since marketing expenses have been indicated by the market investigation as significant barriers to entry, the combination of the marketing capabilities in the prescription segment - which, as recognised by previous Commission decisions, tends to have a different marketing to OTC products³⁷ – may further raise barriers to entry and expansion.
191. Based on the fact that the merger would lead to a duopoly in S1G5 and a de-facto duopoly in S1G1 with very high and high combined market shares of the parties in the prescription segment of these two ATC4 classes and based on general barriers to entry indicated for S1G products, serious doubts cannot therefore be excluded for S1G5 and S1G1 products in Sweden.
192. Serious doubts therefore arise for S1G3 (Rx and overall). Serious doubts cannot further be excluded on either prescription decongestants or antihistamines depending on the classification of Antasten Privin.

SIG UK

193. In the UK, the transaction would result in combined market shares of [70-80]% (Novartis [60-70]%; Alcon [10-20]%) in anti-histamines (S1G1). Other competitors are significantly smaller (Perrigo [10-20]%; Allergan [5-10]%; Galenica [5-10]%). The product of Novartis (Otrivine Antistine) is an OTC product, whereas Alcon's product is Rx. It should be noted on the other hand that Otrivine is reimbursed when prescribed and is therefore both sold as prescription and OTC. A large proportion of Otrivine Antistine is sold as prescription ([40-50]% in 2009 according to the estimate of Novartis) suggesting that the delineation of prescription and OTC products in the UK is less clear-cut. This is further supported by some specific indications for the UK (both

³⁵ Allergan had only very small sales in 2009 has amounting to a [0-5]% market share

³⁶ Including Rx sales of both Zaditen and J&J's S1G1 product, Livostin

³⁷ See para 12 above

competitor and customer replies) that OTC products frequently and effectively substitute prescription products.

194. This notwithstanding, the market investigation did not clearly indicate other anti-histamines to be the main competitive pressure on Otrivine Antistin. Products from other ATC4 groups, including S1G2, S1G3 and S1G5 were all indicated as close competitors to a comparable extent to anti-histamines. This appears to be rather specific to the UK. In most other countries where the parties have a strong position in anti-histamines, the main competitive pressure on the parties' respective products appears to be other anti-histamines. In the UK, there appears to be a significant degree of competitive pressure on anti-histamines stemming from other types of anti-allergics (and to a lesser extent other S1G products). If all anti-allergics were considered together, the parties would have a modest combined market share of [10-20]%. In addition, possibilities for expansion were also indicated by the market investigation. In light of the apparent competitive pressure stemming from other products outside the S1G1 category competition concerns are therefore unlikely to arise in anti-histamines irrespective of the OTC/Rx distinction.
195. The parties would have a combined market share of [60-70]% (Novartis [10-20]%; Alcon [40-50]%) in the S1G3 segment. There would be only one other competitor, Meda remaining with [30-40]%. The entire segment is prescription only. As opposed to anti-histamines, the market investigation indicates that the main competitive pressure on the market leader Alcon product, Opatanol, comes from the two other multiple action product, Allergodil and Zaditen. Due to the high level of concentration and the significant increase, and in light of barriers to entry for S1G products indicated by the market investigation, competition concerns arise.
196. Serious doubts therefore cannot be excluded for multiple action products (S1G3 Rx and overall) in the UK.

3.2.4. *Mydriatics and cycloplegics (ATC3 class S1F)*

Product market definition

197. Both parties are active in mydriatics and cycloplegics, classified in ATC3 class S1F, which is not further subdivided into ATC4 classes. This class includes parasympatholytics and sympathomimetics in a form of eye drops that cause mydriasis of the eye (excessive dilation of the pupil) which is required during eye examinations to allow examination of the retina. Parasympatholytics also cause cycloplegia (paralysis of the eyes accommodation function). To the extent that an Rx/OTC categorisation is relevant, all S1F products should be considered as prescription bound, as S1F products are not available as OTC.
198. Novartis distributes on behalf of [third party] Minims branded single-dose (non-preserved) eye drops based on *atropine*, *tropicamide*, *cyclopentolate* and *phenyleprine* molecules. Alcon is active with multi-dose (preserved) eye drops based on the same molecules, depending on the country. According to the parties, instead of distinguishing between S1F products on a molecule basis, these products should be grouped into two distinct product markets based on their intended therapeutic uses and dosage forms: (1) single-dose (sterile, non-preserved) products that are used for eye examination exclusively for eye surgery, and (2) multi-dose products (preserved) that are used under

non-surgical conditions. In support of their arguments, the parties have provided information showing that price per dose of Minims products (for a dose of single unit) is significantly higher than price per dose of Alcon's products (for a dose of one eye drop) in Denmark, Norway and Sweden.

199. Respondents to the market investigation confirmed the differences between therapeutic uses of single-dose and multi-dose products only in surgical contexts. In particular, only single-dose products are intended to be used in clinical contexts. In non-clinical contexts, (i.e. eye examination) in practice doctors may consider using either single-dose or multi-dose products based on the same molecule, except for limited circumstances where patients are sensitive to the preservatives contained in multi-dose products. The results of market investigation also indicated that in practice doctors are not primarily led by price considerations.
200. According to the respondents to the market investigation the molecule level would be a more appropriate level for the assessment of the present operation, especially due to the fact that the length of activity of these molecules is different and only some molecules can cause cycloplegia.
201. In light of the results of the market investigation, the Commission considers that it cannot be concluded that single-dose and multi-dose S1F products would constitute separate product markets in Denmark, Norway and Sweden.
202. In view of the foregoing, for the purposes of the present decision, product markets in the S1F category should be defined on a molecule basis.

Competitive assessment

203. The transaction leads to monopoly combined market shares for *cyclopentolate* and *tropicamide* in Denmark, for *cyclopentolate* in Norway and for *cyclopentolate*, *tropicamide*, *atropine* and *phenyleprine* in Sweden. Mydriatics and cycloplegics appear to be niche products. The markets are characterized by a small patient base and relatively low sales (~EUR 30,000-150,000). The market investigation confirms that on this basis, new market entry would not be commercially viable. There are no other competitors with the same molecules. In Denmark, Actavis is the sole company present in the S1F category, but only with *scopolamine* based products.
204. Based on the very high combined market shares and no potential entry into these markets, serious doubts arise in the markets for *cyclopentolate* and *tropicamide* in Denmark, for *cyclopentolate* in Norway and for *cyclopentolate*, *tropicamide*, *atropine* and *phenyleprine* in Sweden.

3.2.5. *Ophthalmological diagnostic agents (ATC3 class S1T)*

Product market definition

205. Both parties are active in the ATC 3 class S1T, which comprises ophthalmological diagnostic agents, primarily used to diagnose ocular disorders, e.g. wet age related macular degeneration. All ophthalmological diagnostic agents are based on the off-patent fluorescein molecule, but may also contain anaesthetics, such as proxymetacaine, lidocaine or oxybuprocaine. ATC 3 class S1T is not further subdivided into ATC 4 classes. To the extent that an Rx/OTC categorisation is relevant, all S1T products should be considered as prescription bound, as they are not available as OTC.

206. Novartis distributes on behalf of [third party] Minims branded single-dose (non-preserved) eye drops and its own injectable fluorescein diagnostic agents. Alcon is active with multi-dose (preserved) eye drops as well as injectable fluorescein diagnostic agents. According to the parties, S1T products should be grouped into the following three distinct product markets based on their intended therapeutic uses, galenic and dosage forms: (1) topical diagnostic agents used in ocular surgeries (non-preserved single-dose eye drops or strips), (2) topical diagnostic agents used in non-clinical conditions (preserved multi-dose eye drops), and (3) injectable diagnostic agents used in conjunction with fluorescein angiographies (ampoules for intravenous injection). In support of their arguments, the parties have provided information showing that price per dose of Minims products (for dose of single unit) is significantly higher than price per dose of Alcon's products (for dose of one eye drop) in Denmark, which is the only country where both parties sell topical products.³⁸
207. The market investigation has broadly confirmed that injectable and topical products constitute separate product markets. As regards the proposed distinction between single-dose and multi-dose topical products, the respondents confirmed the differences between therapeutic uses of single-dose and multi-dose products only in surgical contexts. For non-surgical ocular diagnostic procedures both single-dose and multi-dose products can be used. The results of the market investigation also indicated that, although price differences might restrict the choice of single-dose products, in practice the doctors are not primarily led by price considerations.
208. In light of the results of the market investigation, the Commission considers that single-dose and multi-dose topical S1T products in Denmark belong to the same relevant product market.
209. In view of the foregoing, for the purposes of the present decision, it can be concluded that injectable and topical *fluorescein* diagnostic agents constitute separate relevant product markets.

Competitive assessment

210. The transaction would lead to monopoly market shares in injectable *fluorescein* diagnostic agents in Finland, Norway, and Poland.
211. Novartis is present with "Fluorescein" branded glass ampoules with a solution for injection, whereas Alcon is active with Fluorescite branded glass ampoules with a solution for injection. The market investigation confirmed that the parties' products are closest and sole competitors with injectable S1T products. The markets are characterized by a small patient base and relatively low sales (~EUR 10,000-300,000). The market investigation highlighted that on this basis, new market entry would not be commercially viable. The market investigation did not show any particularities for individual countries.

³⁸ Novartis does not itself manufacture topical S1T products; it distributes [...] branded products under the [...] Distribution Agreements: "[...]" branded topical sterile single-dose eye drops/trips Fluorescein, Fluorescein/Proxymetacaine, Lidocaine/Fluorescein. Alcon sells topical multi-dose eye drops Thilorbin.

212. Based on very high combined market shares and no potential entry into these markets, serious doubts arise in the markets for injectable fluorescein diagnostic agents in Finland, Norway, and Poland.
213. The transaction would also lead to monopoly market shares in Denmark for topical *fluorescein* diagnostic agents. Fluorescein diagnostic agents appear to be niche products. The market is characterized by a small patient base and relatively low sales (~EUR 20,000). The market investigation confirms that on this basis, new market entry would not be commercially viable.
214. Based on combined market shares leading to monopoly and no potential entry into these markets, serious doubts arise in the markets for topical *fluorescein* diagnostic agents in Denmark.

3.2.6. *Otic corticosteroid/anti-infective combinations (ATC3 class S2C)*

Market definition

215. Both parties have products in the ATC3 class S2C, otic corticosteroids and anti-infective combinations, used to treat infections and inflammations in the ear. There are no ATC4 classifications in this class. The market investigation confirmed the parties' view that the parties' and the competitors' products in the ATC3 S2C are substitutable and that the ATC3 level is the appropriate market definition.

Competitive assessment

216. The only group 1 market in this product category is Italy, where all products are prescription-bound. The parties have a combined market share of [60-70]% (increment of [0-5]% contributed by Novartis, which is decreasing). The largest competitors are Recordati ([20-30]%), Teofarma ([0-5]%) and Farmigea ([0-5]%).
217. Novartis' product, Locotren Otologico, is a generic, 45-year old legacy product with small sales, while Alcon has originator products, Mediflox and Tobradex Oto, the first still patent protected. The parties' products cannot be considered each other's closest competitors as Novartis' product has a different indication to Alcon's products as it treats anti-bacterial and anti-fungal infections. Alcon's product only treats anti-bacterial infections.
218. On the basis of the small increment, the presence of credible competitors exercising a competitive constrain and as the parties' products are not each other's closest competitors, serious doubts do not arise for the S2C market in Italy.

3.3. Consumer Vision Products

3.3.1. *Ocular lubricants and artificial tears (ATC3 class S1K)*

Market definition

219. Ocular lubricants and artificial tears are ophthalmic preparations (solutions, gels or ointments) used for symptomatic relief of eye dryness. They are classified in the ATC3 class S1K which contains no ATC3 sub-category. Ocular lubricants do not contain active pharmaceutical ingredients. They are either registered as medical devices (CE marked product) or as pharmaceuticals. Whether a new product is registered as a medical device or

as a pharmaceutical is entirely the choice of the pharmaceutical company and can be influenced by the reimbursement regimes of the different countries.

220. The parties submit that the ATC3 class S1K (ocular lubricants and artificial tears) constitutes the relevant product market and should not be subdivided according to other criteria such as galenic form, ingredients, indication, etc. The parties also argue that OTC/CE marked products compete with prescription bound products in this category
221. The market investigation confirmed that the relevant product market is the S1K category. While some sub-segments would theoretically be possible, e.g. according to galenic form (drops vs. gel/ointments), the presence of preservatives, or the lubricating ingredients, these product differences do not justify a subdivision into separate markets. In contrast to pharmaceuticals, these products do not contain active pharmaceutical ingredients, but lubricating ingredients, such as certain polymers, waxes, etc. Regarding the different regulatory status, the market investigation confirmed that CE marked products compete with the products registered as pharmaceuticals and belong to the same market. Regarding the OTC/Rx-distinction, this can be left open as the prescription bound segment in ocular lubricants is minute and excluding this segment does not alter the competitive assessment in the individual countries.

Competitive Assessment

222. Novartis is active in this market with the following products: Genteal, Viscotears, Oculotect Fluid/ Oculac/ Hypotears Plus, Hypotears, and Aquify. Alcon is active with Systane, Opti-tears, Tears Naturele, Thilo Tears Gel, Protagent, Duratears and Lacrisic. The parties typically sell several of these products in the different countries concerned.
223. According to the market reconstruction, the transaction would result in 14 group 1 markets, with combined market shares ranging between (30-40%) and (80-100%). While in most countries, there are several competitors present with ocular lubricants, these are mostly smaller than the increment added by the transaction.
224. The market investigation showed that marketing expenses, reputation, and brand awareness and brand loyalty by consumers are the main barriers to entry and expansion in these markets while R&D and patents are less important. The market investigation also showed that doctors' recommendations and past experience are the main factors for a patient to choose a product, while the price seems less important once the consumer finds a product with which he is comfortable. Since dry eye syndrome is a condition which normally persists for a longer period of time and is often caused by external influences (computer usage, air conditioning, or the use of contact lenses) or other longer lasting conditions (such as insufficient tear production or dry eye syndrome in menopausal women), the consumer often continues with his choice without obtaining a new recommendation from a health care practitioner unless additional symptoms occur which would require treatment. This is in line with the view that brand awareness and brand loyalty is a barrier to entry and expansion in the market. The market investigation did not show any particularities regarding these findings for individual countries.

SIK - Austria

225. The transaction leads to a combined market share of (50-60%) with an increment of (10-20%) contributed by Alcon. Only one competitor, Cromapharm with a market share of (10-20%) is bigger than the increment contributed by Alcon. Other competitors are B&L (10-20%), Allergan (5-10%), and a further four competitors with market shares below 5%. Given the high market share, the significant increment and the results of the market investigation as regards barriers entry and expansion, the transaction raises serious doubts for S1K products in Austria

SIK - Bulgaria

226. The transaction leads to a combined market share of (60-70%) with an increment of (10-20%) contributed by Novartis. The other competitors are Actavis (10-20%), Santen Seiyaku (5-10%) and Unimed Pharma (5-10%), which are all smaller than the increment contributed by Novartis. In view of the high market share and the high increment, and the results of the market investigation as regards barriers entry and expansion, the transaction raises serious doubts for S1K products in Bulgaria

SIK - Cyprus

227. The transaction leads to a combined market share of around (80-100%) with an increment of (30-40%) contributed by Novartis. One competitor has a market share of (5-10%) while all other competitors are below 5% and with this limited market share are not able to act a sufficient competitive constraint on the parties. According to the parties, there is only larger competitor, [...], active with an estimated market share of [10-20]%. However, in the market investigation, it was not possible to verify this estimate.³⁹ But even if this company were to be included as a competitor, the market share would still amount to (70-80%) and thereby reaches a level where the transaction raises serious doubts for this market.

SIK - Denmark

228. The combined market share of the parties would be (30-40%) with an increment of (5-10%) contributed by Alcon. Following the transaction, Actavis with (30-40%) will be larger than the combined entity. Further competitors are Santen Seiyaku with (10-20%) and Johnson & Johnson with (5-10%) and three smaller competitors below 5%. It can be expected that Actavis and Santen Seiyaku will be able to act as a similarly strong competitive constraint on the new entity as Alcon was for Novartis before the transaction. Given the combined market shares of below 40% and the remaining competitors, the transaction does not lead to serious doubts.

SIK - Iceland

229. The combined market share of the parties would be (50-60%) with an increment of (0-5%) contributed by Alcon. There are two competitors present which are considerably larger than the increment and which would continue to present a competitive constraint: Santen Seiyaku with (20-30%) and Actavis with (10-20%). Due to the presence of two

³⁹ [...]. The parties also argued that other competitors are active in Cyprus for which they were unable to estimate the market shares. This could also be confirmed in the market investigation.

competitors which are much larger than the increment contributed by Alcon, the transaction does not lead to serious doubts.

S1K - Latvia

230. The transaction leads to a combined market share of (30-40%) with an increment of (0-5%) contributed by Novartis. There are three competitors present which are considerably larger than the increment contributed by Novartis and which would continue to present a competitive constraint. These are Unimed Pharma with (30-40%), Santen Seiyaku with (20-30%) and Ursapharm with (10-20%) market share. Given the combined market share below 40% and three sizeable competitors, no competition concerns arise in the market for ocular lubricants in Latvia.

S1K - Greece

231. The transaction leads to a combined market share of (40-50%) with an increment of (5-10%) contributed by Novartis. Although there are two competitors with higher market shares (Allergan and Alvia/Nexus Medicals with market shares between 10-20%) than the increment contributed by Novartis, the increment of (5-10%) is not negligible and the new combined entity will be by far the largest player in this market. Two further competitors have similar market shares to the increment contributed by Novartis. On this basis and given the results of the market investigation as regards barriers to entry and expansion, the transaction raises serious doubts for this market.

S1K - Hungary

232. The transaction leads to a combined market share of (40-50%), with an increment of (10-20%) contributed by Novartis. The merged entity will be by far the biggest player in the market followed by Teva with a (20-30%) market share. All other competitors are significantly smaller (B&L, Allergan and Johnson & Johnson all between 5-10%, Santen Seiyaku below 5%) and are unlikely to act as a similarly strong competitive constraint as Novartis did pre-transaction. On the basis of high combined market share, the high increment and the results of the market investigation as regards barriers to entry and expansion, the transaction raises serious doubts for S1K products in Hungary

S1K - Malta

233. The transaction leads to a high combined market share of (70-80%) with an increment of (5-10%) contributed by Novartis. Two competitors, Allergan and Ursapharm have a market share higher than Novartis (both between 10-20%) and a further competitor below 5%.⁴⁰ Given the high combined market share of above 70% and the results of the market investigation as regards barriers to entry and expansion, serious doubts arise.

⁴⁰ The parties named some other competitors without being able to present market shares. Some of these competitors confirmed that they do not have sales and it was not possible to verify to what extent other competitors are active in Malta.

SIK - Netherlands

234. The transaction leads to a combined market share of (50-60%) with an increment of (10-20%) contributed by Novartis. Only one competitor, Tramedico, a distributor of B&L's ocular lubricant products, with a market share of (10-2%), is larger than the increment contributed by Novartis. A further three competitors follow with market shares between (5-10%) and two with (0-5%). The parties named a number of smaller parallel importers as further competitors. However, it was either not possible to obtain sales data or as far as it was possible to obtain sales data, their sales were limited. Given the high market share, the significant increment and the results of the market investigation as regards barriers to entry and expansion, the transaction raises serious doubts in this market.

SIK - Norway

235. The transaction leads to a combined market share of (50-60%) with an increment of (10-20%) contributed by Alcon. Only one competitor, Santen Seiyaku, has a market share bigger than Alcon's. Other competitors follow with (10-20%) (Actavis) and (5-10%) (Miwana AB). Two further competitors have market shares below 5%. Given the high combined market share, the significant increment and the results of the market investigation as regards barriers to entry and expansion, the transaction raises serious doubts in this market.

SIK - Romania

236. The transaction leads to a combined market share of (40-50%) with an increment of (0-5%) contributed by Novartis. Three competitors are bigger than the increment contributed by Novartis: Sifi with a market share of (30-40%), Unimed Pharma with (5-10%) and a further competitor with (10-20%). Two other competitors have roughly the same market share as Novartis does currently. Given the market share of slightly above 40%, the small increment, and several other competitors which are stronger than the increment contributed by Novartis, no competition concerns arise in the market for ocular lubricants in Romania.

SIK - Slovenia

237. The transaction leads to a combined market share of (70-80%) with an increment of (10-20%) contributed by Novartis. Johnson & Johnson follows with a market share of (10-20%) and B&L has a market share of (5-10%). According to the parties, [...] has an estimated market share of [10-20]%. However, in the market investigation it was not possible to verify this estimate.⁴¹ But even if this company were to be included as a competitor, the market share would still amount to (60-70%). Given the high combined market share, the significant increment and the results of the market investigation as regards barriers to entry and expansion, the transaction raises serious doubts in this market.

⁴¹ [...]

238. The transaction leads to a combined market share of (50-60%) with an increment of (10-20%) contributed by Alcon. One competitor, Santen Seiyaku with a market share of (20-30%), is bigger than Alcon. Another competitor follows with (5-10%) (Johnson & Johnson), and four other companies have market shares below 5%. Given the high market share, the high increment and the results of the market investigation as regards barriers to entry and expansion, the transaction raises serious doubts in this market.

3.3.2. *Lens care preparation (ATC3 class S1L)*

Product market definition

239. Both parties are active with products categorised in the ATC 3 category S1L, which comprises preparations for use with contact lenses that are worn repeatedly. These products handle one or more of the following tasks: cleaning, disinfecting, rinsing, protein removal, and moistening or conditioning of contact lenses. These products include multipurpose solutions (MPS), peroxide systems, saline solutions, daily cleaners, enzymatic cleaners, lens conditioners and lens drops. According to the parties, each of the above product categories constitutes a separate product market due to different product characteristics and intended use. Furthermore, a distinction could be drawn between lens care products for soft and hard lenses. The market investigation has broadly confirmed the parties' view on the relevant product market definition.

240. The market investigation has shown that multipurpose solutions constitute a separate relevant product market which is distinct from peroxide systems and other lens care products.⁴² In particular, with MPS, no other lens care products are required, as they clean, disinfect, remove proteins and other deposits and debris, rinse and store contact lenses. MPS are easy to use, but contain chemicals and preservatives that may cause irritation to sensitive eyes. Peroxide systems also clean, disinfect and remove protein from contact lenses, but cannot be used for rinsing. Peroxide systems are also more expensive and less convenient to use than MPS.⁴³ Eye care practitioners generally recommend peroxide systems only to consumers with sensitive eyes, who cannot tolerate ingredients contained in MPS. From a supply side perspective, production of peroxide systems and multipurpose solutions requires different production technology.⁴⁴

241. Similarly, the market investigation has confirmed that saline solutions constitute a separate product market which is distinct from other lens care products. Saline solutions can be used only for rinsing and storing lenses (e.g. when using cleaning/disinfecting devices or enzymatic cleaners).

⁴² The market investigation also confirmed a distinction between products for soft and hard contact lenses. However, given the marginal size of the markets for hard lens care products, a distinction between MPSs for soft and hard lenses would not change the competitive assessment.

⁴³ Market respondents estimate that price differences between MPS and peroxide systems range between 20-50%. They need to be used with tablets, solutions or discs that neutralise hydrogen peroxide in order to avoid a burning sensation in the eye.

⁴⁴ While multipurpose solutions are produced using standard sterile production technology, production of peroxides requires specialised high-grade stainless equipment and supplemental safety features due to high corrosive and explosive properties of peroxide.

242. In view of the above, it can be concluded that multipurpose solutions and saline solutions constitute separate product markets. In relation to other lens care products (daily cleaners, enzymatic cleaners, lens drops and lens conditioners), the market definition can be left open, as the parties' activities do not overlap in these segments.⁴⁵
243. The parties' activities overlap significantly only in the markets for multipurpose solutions and saline solutions.

Competitive assessment - Multipurpose solutions – horizontal effects

244. Novartis' (Ciba Vision) products are *SoloCare Soft* and *SoloCare Aqua*⁴⁶. Alcon's products are *Opti-Free Replenish/Opti-Free Express/Opti-Free MAS/MPS*, *Unique PH MPS* (hard lenses). [...]
245. The market investigation showed that markets for lens care solutions are largely mature across Europe and that marketing expenses as well as the need to overcome customer brand awareness/loyalty to current suppliers are the main barriers to entry and expansion. Lens care products are mostly sold through optical chains and independent optical stores rather than through pharmacies. Therefore, building a competitive brand involves not only significant promotion costs, but also establishing good relations with eye care practitioners, whose recommendation is a very important factor affecting the choice of customers. The brands of the parties are generally perceived as "must have" brands and are as such required by retailers. R&D and formulation patents are of less importance in terms of entry/expansion barriers, but can confer meaningful competitive advantages, e.g. Alcon's Opti-Free brand plays a significant role in the competitive process due to its unique formulation containing polyquad disinfecting ingredients. The market investigation did not show any particularities regarding these findings for individual countries, where serious concerns were found.
246. The market investigation indicated that the parties' branded products are the closest competitors. According to the market investigation, other closely competing brands are B&L *Renu* and AMO's *Complete*.
247. The market investigation did not confirm any imminent entry of a substantial competitor, as the parties had argued. The parties also pointed to several new product launches in Poland, Slovenia, Romania and Hungary. However, in view of high market shares of the parties' well-established brands throughout 2007 and 2009, it cannot be concluded that these product launches exert a significant competitive pressure on the activities of the parties.⁴⁷
248. According to the sales data submitted to the Commission during the market investigation, the parties would hold high combined market shares ranging between 35% and 80% with significant increments in a large number of Member States. Table 1

⁴⁵ Novartis has discontinued manufacturing and sales of a number of products with relatively low revenues on the basis of its Business Simplification Strategy of 2007: multipurpose solutions *SoloCare Hard* in 2008, *Aqua Touch MPS* in the first quarter of 2010. For daily cleaner *Miraflo*, Novartis has remaining stocks only in [...], which are forecast to be sold by [...]. Alcon has discontinued sales of *Supraclens/Opti-Plus* in 2006.

⁴⁶ *Focus Aqua* in the UK and Ireland, *Novasoft* in Greece.

⁴⁷ These products account for only 0-5% on a relevant national market.

provides an overview of market structures based on sales at ex-manufacturer prices (including sales of own branded products and private label products produced for retailers):

**Multipurpose solutions (including sales to private label companies)
Market shares in % (value, 2009)**

Table 1	Alcon	Novartis	Combine d	Comp#1	Comp#2	Comp#3 ([0-5]) ⁴⁸
Austria	[5-15]	[45-55]	[55-65]	B&L: [25-35]	AMO: [5-10]	Lapis, Cooper Vision, Sauflon
Belgium	[40-50]	[15-25]	[55-65]	B&L: [20-30]	AMO: [5-10]	Sauflon, Lapis Lazuli, Cooper Vision
Cyprus	[45-55]	[20-30]	[65-75]	B&L: [10-20]	AMO: [5-10] Sauflon: [5-10]	Avizor
Czech Republic	[50-60]	[20-30]	[75-85]	B&L: [10-20]	-	AMO, Cooper Vision, Avizor, Sauflon
Denmark ⁴⁹	[55-65]	[5-15]	[65-75]	B&L: [10-20]	Sauflon: [5-15]	Avizor
Finland	[25-35]	[40-50]	[65-80]	B&L: [5-20]	Finnsusp: [10-20]	Sauflon ⁵⁰
Greece	[50-60]	[20-30]	[70-80]	B&L: [20-30]	-	-
Hungary	[20-30]	[35-45]	[60-70]	B&L: [15-25]	CooperVision:[5-10]	Sauflon, AMO, Lapis Lazuli
Lithuania	[30-40]	[25-35]	[60-70]	Avizor:[15-25]	B&L: [5-15]	Esoform, Sauflon
Latvia	[15-25]	[35-45]	[55-65]	B&L: [20-30]	Esoform: [5-10]	Sauflon, Finnsusp
Norway	[55-65]	[5-10]	[60-70]	B&L: [20-30]	-	AMO, Consol, Sauflon
Poland	[20-30]	[35-45]	[60-70]	B&L: [15-25]	OTE: [10-20]	AMO, Avizor
Portugal	[10-20]	[35-45]	[50-60]	B&L: [35-45]	-	AMO, Avizor
Romania	[10-20]	[30-40]	[45-55]	B&L: [40-50]	-	Cooper Vision, Esoform, Finnsusp
Slovakia	[45-55]	[15-25]	[70-80]	B&L: [15-25]	-	Finnsusp, Esoform, Sauflon
Slovenia	[55-65]	[15-25]	[75-85]	B&L: [10-20]	-	AMO, Esoform
Germany	[20-30]	[20-30]	[40-50]	OTE: [10-20]	B&L: [10-15] AMO: [5-10] Lapis:[5-15]	Sauflon, Cooper Vision
<i>Countries with lower markets shares, stronger competitors or smaller increments</i>						
France	[25-35]	[5-15]	[35-45]	B&L: [45-55]	-	AMO, Sauflon, Avizor, Cooper Vision
Iceland	[0-5]	[60-70]	[65-75]	Finnsusp:[20-30]	-	Avizor
Sweden	[40-50]	[0-5]	[45-55]	B&L: [20-30]	Consol:[10-20]	Finnsusp, Sauflon, AMO
Ireland	[5-15]	[20-30]	[30-40]	AMO:[30-40]	B&L: [10-20] Sauflon: [10-20]	-

249. The parties submit that the lens care segment is subject to competition not only from branded product suppliers, but also from increasing penetration of private label products in many EEA countries. In addition to branded products, the companies also produce

⁴⁸ The presence of other competitors is negligible. It should be noted that a few mostly local players with relatively limited presences indicated by the parties (Menicon, PolymerTech, Disop, Eurexpan, ContoPharma, Demo, Hydron) did not provide their sales figures.

⁴⁹ One competitor was only able to estimate its sales to the private label sector for all Nordic countries (Denmark, Finland, Sweden, and Norway). Market share ranges therefore reflect data with and without such estimates for Nordic countries.

⁵⁰ According to the parties, Consol is also present, but Consol did not report sales in Finland.

private label products for retailers, such as, e.g., Pearl, Specsavers, or Generale d'Optique. The market investigation provided evidence that the relevance of branded and private label products differs significantly across Member States. Table 2 provides an overview of the competitive situation between branded products and retailers' private label products (% in value, 2009):

Table 2	Branded Products		Private label products
	Total	Novartis/Alcon	
Denmark	[45-55]	[30-40]	[45-55]
Norway	[70-80]	[40-60]	[20-30]
Germany	[70-80]	[30-40]	[20-30]
Belgium	[75-85]	[40-50]	[15-25]
Poland	[75-85]	[50-60]	[15-25]
Austria	[80-90]	[40-50]	[10-20]
Finland	[80-90]	[60-80]	[10-20]
France	[80-90]	[30-40]	[10-20]
Portugal	[85-95]	[50-60]	[5-15]
Latvia	[85-95]	[55-65]	[5-10]
Sweden	[85-95]	[40-50]	[5-10]
Lithuania	[90-100]	[60-70]	[0-5]
Greece	[90-100]	[70-80]	[0-5]
Czech Republic	[90-100]	[75-85]	[0-5]
Hungary	[90-100]	[60-70]	[0-5]
Ireland	[90-100]	[30-40]	[0-5]
Slovakia	[90-100]	[70-80]	[0-5]
Romania	[<100]	[45-55]	[<0]
Slovenia	[<100]	[75-85]	[<0]
Cyprus	[<100]	[65-75]	[<0]
Iceland	[<100]	[65-75]	[<0]

250. Market investigation showed that private label companies often have multiple sourcing policies and (or) can switch to alternative suppliers active in the EEA. The private label segment, however, is highly fragmented and does not account for a significant portion of total sales of multipurpose solutions in most countries. In the countries, such as Lithuania, Greece, Czech Republic, Hungary, Romania, Slovakia, Cyprus or Iceland, private label sales remain very low (0-10%). Only in Denmark (45-55%), Norway, Germany, Belgium, Poland, Finland, France and Portugal (10-30%) do the shares of private label products currently exceed 10%.⁵¹ The market shares of parties' branded products, taking into account the competition from private label, would be relatively lower compared to their market shares at manufacturer level only in Denmark, Germany, and France (30-40%).

251. It follows from the tables above that the parties would hold high market shares (ranging from 40-50% to 75-85%) in a large number of countries at either manufacturer level or a level taking into account competition between branded and private label products. Subject to a few exceptions outlined below, the merger would combine a clear market leader with the current number two or number three. In Romania, the transaction results in a merger of three to two strong players (45-55% for merged entity and 40-50%

⁵¹ The GfK data provided by the parties estimates private label shares at a retail level based on consumer prices only for the five largest Member States. According to GfK data, private label sales in France and Germany correspond to the results of Commission's market investigation.

for B&L). The markets for multipurpose solutions are highly fragmented with only one to two competitors to the merged entity, which have market shares above 5%. Market shares of other players do not exceed 5%.

252. On the basis of high combined market shares, fragmented market structure, the strength of parties' brands and limited competitive pressure from other branded products, as well as the market investigation results pointing to entry/expansion barriers, serious doubts arise in Austria, Belgium, Cyprus, Czech Republic, Finland, Greece, Hungary, Lithuania, Latvia, Norway, Poland, Portugal, Romania, Slovakia, and Slovenia.

253. The situation can be distinguished only for Germany, France, Iceland, Sweden, Ireland and Denmark. The market structure in each of these countries is discussed below:

SIL Multipurpose solutions - Germany

254. In Germany, the transaction would lead to a combined market share of 40-50% with an increment of 20-30% at manufacturer level. There are four other competitors with market shares above 5% in Germany: OTE (10-20%), B&L (10-15%), AMO (5-10%), Lapis Lazuli (5-15%). The combined market share of the parties branded products is much lower and accounts for 30-40%. The role of the private label segment, which accounts for 20-30% of the market, must therefore be taken into account in Germany. On the basis of the relatively low combined market shares and the competitive pressure from other players and the relatively strong private label segment, serious doubts do not arise in Germany.

SIL - Multipurpose solutions – France

255. In France, the transaction would lead to a combined market share of 35-45% with an increment of 5-15% at manufacturer level. B&L (45-55%) remains the strongest competitor, followed by several small players (AMO, Sauflon, Avizor, Cooper Vision). The combined market share of the parties' branded products is much lower and accounts for 30-40% of the total market. The role of the private label segment, which account for 10-20% of the market, must therefore be taken into account in France. On the basis of the relatively low combined market shares and the competitive pressure from B&L and the private label segment, serious doubts do not arise in France.

SIL - Multipurpose solutions - Iceland

256. In Iceland, the transaction would lead to a combined market share of 60-70% with a small increment of [0-5]% at manufacturer level. Finnsusp (20-30%), a strong player in the Nordic countries, remains the second largest competitor, followed by Avizor with market shares comparable to the increment contributed by Alcon ([0-5]%). On the basis of the negligible increment and the competitive pressure from Finnsusp and Avizor, serious doubts do not arise in Iceland.

SIL- Multipurpose solutions - Sweden

257. In Sweden, the transaction would lead to a combined market share of 45-55% with a small increment of [0-5]% at manufacturer level. There are two other strong players, B&L (20-30%) and Consol (10-20), a company largely present in the Nordic countries, followed by Finnsusp, Sauflon and AMO with market shares comparable to the increment contributed by Alcon ([0-5]%). The combined market share of the parties' branded products is lower and accounts for 40-50% of the total market. On the basis of the negligible increment and the competitive pressure from other competitors, serious doubts do not arise in Sweden.

SIL - Multipurpose solutions – Ireland

258. In Ireland, the transaction would lead to a combined market share of 30-40% with an increment of 5-15% at manufacturer level. There are three other competitors with market shares above 5% in Ireland: AMO (30-40%), B&L (10-20%) and Sauflon (10-20%). On the basis of the relatively low combined market shares and the competitive pressure from other competitors, serious doubts do not arise in Ireland.

SIL – Multipurpose solutions – conglomerate effects

259. According to several market investigation respondents, competitive concerns might not be limited to significant horizontal overlaps. The concentration might also strengthen Novartis' position in the markets for soft contact lenses. These respondents outlined that Novartis is already a leader in lens markets in most of the countries with market shares in the range of 20-40% (at manufacturer prices). They argue that the parties' ability to offer the full range of lens and lens care products and to use well established brands might further strengthen Novartis' position in the lens market. As a result, entry and expansion into neighbouring markets might become more difficult after a merger.

260. After careful consideration of the arguments put forward by the parties and in view of the overall results of the market investigation where the majority of respondents did not raise concerns of the type described above, the Commission has not found sufficiently convincing evidence to demonstrate that such conglomerate effects are likely to emerge. Furthermore, as explained below, the EEA-wide remedy offered by the parties would remove any competitive overlaps in the markets for multipurpose solutions.

SIL - Competitive assessment - Saline solutions

261. Novartis' (Ciba Vision) saline solutions products are: *SoftWear Saline (SofWear Saline Plus)*. Alcon's saline solutions products are – *Polyrinse/Salina*.

262. As all saline solutions are based on *sodium chloride* (salt) and water, they are closely substitutable with any competing branded or private label product in this segment. The market investigation confirmed that the parties' saline solution brands were not generally considered as "must have". Given the composition of these products,

the saline solutions of the parties are not patent protected. Therefore, there are no particular entry and/or expansion barriers for saline solutions, as brand awareness, consumer loyalty or R&D do not play a significant role in these markets. Furthermore, markets for saline solutions are relatively small and have been gradually declining during 2007-2009 in all of the affected countries.⁵²

263. According to the market reconstruction, at ex-manufacturer prices (including sales to private label companies), the transaction would result in relatively high market shares in France, Denmark and Norway.

SIL Saline solutions - France

264. In France, the transaction would lead to a combined market share of 30-40% with a small increment of [0-5]%. AMO (55-65%) remains the strongest competitor, followed by several small players (Sauflon, Avizor) with market shares comparable to the increment of Novartis. At retail level, low cost private label brands are also present and exert downward pricing pressure on the prices for branded products.⁵³ On the basis of the relatively low combined market shares, the small increment, the competitive pressure from other players and low barriers to entry, serious doubts do not arise in France.

SIL Saline solutions - Denmark

265. In Denmark, the transaction would lead to a combined market share of 60-70% with a small increment of [0-5]%. B&L (25-35%) remains the second largest competitor, followed by several small players (AMO, Consol) with market shares comparable to the increment of Novartis. On the basis of the small increment, competitive pressure from other players and low barriers to entry, serious doubts do not arise in Denmark.

SIL Saline solutions – Norway

266. In Norway, the transaction would lead to a combined market share of 50-60% with an increment of 20-35%. There are two other strong competitors, B&L (20-30%) and AMO (15-25%), followed by several small players (Sauflon, Consol). On the basis of the competitive pressure from other strong players and low barriers to entry, serious doubts do not arise in Norway.

Competitive assessment – Contract manufacturing (horizontal and vertical effects)

Market definition

267. In previous decisions in pharmaceutical cases, the Commission considered that contract manufacturing consists of the manufacturing under contract, on behalf of third party pharmaceutical companies, of finished pharmaceutical products, which may or

⁵² EUR 1.2 million in France, EUR 0.24 million in Denmark, EUR 0.12 million in Norway.

⁵³ According to GfK data based on consumer prices, available for the five largest EEA Member States, including France, the private label segment is approximately [30-40]% in France.

may not include final packaging⁵⁴. This third party then goes on to market the finished products under its own label or brands. This definition excludes the manufacturing of active pharmaceutical ingredients, since such ingredients are not typically manufactured on a contract basis and typically may be procured from a wide variety of sources. The Commission has also considered that the nature of technology and know-how required is a starting point for the competitive assessment of any possible affected markets.

268. The market investigation did not show any particularities in relation to contract manufacturing of multipurpose solutions. Furthermore, it is not necessary to consider whether contract manufacturing of multipurpose solutions belongs to a wider relevant market for contract manufacturing of ophthalmic pharmaceuticals, consumer vision products or any other category, as serious doubts do not arise at the narrowest possible alternative, i.e. contract manufacturing of multipurpose solutions for private label companies.
269. The market investigation has also confirmed that competition to supply private label sellers takes place rather at the EEA-wide level, or even at a broader level. For the purposes of the present decision, the exact geographic scope can be left open, as serious doubts do not arise on the narrowest possible alternative.

Competitive assessment

270. In the present case, both parties offer contract manufacturing services for private label contact lens care products. Alcon supplies multipurpose solutions to two retailers active with private label products, [...] (active in Austria, Denmark, Finland, Germany, Italy, the Netherlands, Norway, Poland and Sweden) and [...] (France). Novartis' subsidiary Ciba Vision supplies private label retailers in a number of EEA countries (Austria, Belgium, France, Germany, Italy, Luxembourg, the Netherlands, Poland Portugal and Spain).
271. The market investigation has confirmed that there is sufficient capacity in the EEA to supply companies with private label products and that there are a number of competing products with possibilities for private label. Private label companies either already have multiple sourcing policies or could switch to alternative suppliers in case of hypothetical price increases or worsening of contract conditions with current suppliers.
272. According to the sales data collected in the course of the market investigation, the proposed transaction leads to a combined market share of 20-30% for private label contract manufacturing in the EEA (10-20% for Alcon and 5-10% for Novartis). There are three other strong players, each with market shares greater than either party to the transaction: Sauflon (20-30%), OTE group (10-20%) and B&L (10-20%). Avizor and Lapis Lazuli are also present with market shares of around [5-10]%. AMO, Finnsusp, Esoform and Schalcon are also present (0-5%).
273. As discussed in section S1L-Multipurpose solutions above, the proposed transaction would also lead to a number of affected markets in multipurpose solutions in a number

⁵⁴ *Sanofi-Aventis/Zentiva*, recital 187.

of EEA countries. The concentration would therefore also give rise to a number of technically vertically related markets due to the parties' presence in private label contract manufacturing.

274. In view of the fact that competition to supply private label companies takes place rather at EEA level, where the parties have relatively low market shares and are constrained by a number of competing suppliers, and in the absence of indications to barriers for expansion, serious doubts do not arise in any possible markets for contract manufacturing.

3.3.3. *Eye vitamins and eye tonics (ATC3 class S1M)*

Market definition

275. The S1M product category concerns ocular vitamins and eye tonics which are qualified as food supplements ("FS") or food for special medical purposes ("FSMP"), depending on the relevant national legislation. Eye vitamins do not contain active pharmaceutical ingredients. The products are typically multi-vitamin products and contain a number of vitamins, minerals and other ingredients (such as fatty acids, amino acids) which are thought to be beneficial for eye health and which can be used as prophylaxis against certain ophthalmologic illnesses, such as age-related macular degeneration. In the S1M product category there are no ATC4 classes. As both parties are active only in the market for ocular vitamins, but not eye tonics, the market definition if both types of products are substitutable can be left open since serious doubts do not arise under the narrower alternative. Indeed, it seems that competitors also only market eye vitamins. The market investigation confirmed that it would not be appropriate to divide the market further according to specific vitamins and minerals as most of the products have a number of identical or similar ingredients. Eye vitamins are available over the counter. The market investigation has confirmed that the markets are national. The market investigation has focused on the two group 1 markets: the UK and Malta.

Competitive assessment

276. Regarding barriers to entry, the market investigation indicated that marketing expenses and brand awareness/loyalty play a smaller role for ocular vitamins than in other consumer vision care products such as contact lens solutions or dry eye treatments. In addition, R&D or formulation patents play a minor role as compared to pharmaceuticals. Apart from pharmaceutical companies such as B&L, Pfizer, Santen Seiyaku, Thea, Glaxosmithkline, etc. there are other competitors which specialize in food supplements, such as other (multi-)vitamins products and minerals and have expertise in these markets.
277. The investigation also showed that regulatory approval does not constitute a barrier to entry. The regulatory regime which deals with FS and FSMP is different to that for pharmaceutical products. At the EU level, there are two EU directives which relate to FSMP and FS (the Directive on foodstuffs intended for particular nutritional uses, Directive 2009/39/EC, and the Directive on food supplements, Directive 2002/46/EC, respectively). Throughout the EEA, for both FS and for FSMP, manufacturers do not need to obtain approval from any authority to sell a new product (as S1M products do not use novel food ingredients). Rather they only need to notify the national food authorities in the different Member States of the fact of the new product. There is no

need to wait for the authority's approval (although in some cases, there is a short waiting period before the product can be sold).⁵⁵

SIM - United Kingdom

278. In the UK, the transaction would result in a combined market share of around (40-50%) with an increment of less than 5% contributed by Novartis. Given the small increment, the transaction is unlikely to result in a significant change in the market structure. Other competitors are B&L with (20-30%), Vitabiotics with (10-20%), Butterfly Healthcare with (5-10%) and Alliance Boots and Agepha below 5% market share. Vitabiotics, Butterfly Healthcare and Health Aid are competitors which specialize in food supplements, such as other (multi-)vitamins products and minerals and have expertise in these markets. On the basis of the small increment, several competitors and low barriers to entry, the transaction does not raise competition concerns in this market.

SIM - Malta

279. In Malta, the combined market share of the parties was estimated at around [40-50]% with an increment of around [10-20]% contributed by Alcon.⁵⁶ Other competitors are Vitabiotics, Vega, Health Aid and Vitar with estimated market shares of between 0-10%. Similar to the UK, the market investigation indicated that marketing expenses and brand awareness and loyalty play a smaller role for ocular vitamins than in other consumer vision care products. As in the UK, Vitabiotics, Health Aid, Vega and Vitar are competitors which specialize in food supplements, such as other (multi-)vitamins products and minerals. The market investigation indicated that further products are imported from neighbouring countries. Considering low barriers to entry and several competitors in this market, serious doubts can be excluded.

4. CONCLUSION ON SERIOUS DOUBTS

280. For the reasons set out above, the Commission concludes that the notified operation gives rise to serious doubts as regards the compatibility with the internal market and the EEA-agreement for the following markets for the provision of ophthalmic finished dose pharmaceuticals:

- (1) Ophthalmological anti-infective - S1A: Bulgaria, Luxembourg, Slovenia, Spain;
- (2) Ophthalmological anti-inflammatory/anti-infective combinations - S1C: Bulgaria, Czech Republic, Denmark, Greece, Luxembourg, Norway, Romania, Slovakia;
- (3) Ocular anti-allergics, decongestants, antiseptics – S1G
S1G1 – antihistamines –Czech Republic, Hungary, Iceland, Ireland, Malta, Slovenia;

⁵⁵ See also COMP/M.5295 - Teva/Barr, para. 97, where the market investigation confirmed with respect to multi-vitamin products that "market entry as a food supplement would be fast."

⁵⁶ The market investigation did not render sufficient responses in order to make the market reconstruction reliable.

S1G2 – mast cell stabilisers (same as cromoglicic acid): Czech Republic;

S1G3 multiple action products: Czech Republic, Denmark, Finland, Hungary, Iceland, Ireland, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, UK;

S1G1 or S1G5 Rx (depending on classification of Novartis product Antistin Privin)– Sweden.

- (4) Mydriatics and cycloplegics - S1F: Norway (*cyclopentolate*), Sweden (*cyclopentolate, tropicamide, atropine, phenyleprine*), and Denmark (*cyclopentolate* and *tropicamide*);
- (5) Ophthalmological diagnostic agents - S1T: Norway, Finland, Poland (injectable), and Denmark (topical);
- (6) Ophthalmic non steroidal anti-inflammatories - S1R: Bulgaria, Cyprus, Denmark, Germany, Greece, Hungary, Ireland, Netherlands, Norway, Slovenia, Sweden, UK;
- (7) Injectable Miotics - S1E: Finland, France, the Netherlands, Portugal, Slovenia, Sweden, UK;
- (8) Anti-glaucoma products - S1E: pilocarpine Finland.

281. The Commission concludes that the notified operation gives rise to serious doubts as regards the compatibility with the internal market and the EEA-agreement for the following markets for the provision of consumer vision care products:

- (1) Artificial tears, ocular lubricants - S1K: Austria, Bulgaria, Cyprus, Greece, Hungary, Malta, Netherlands, Norway, Slovenia, Sweden;
- (2) Multipurpose solutions - S1L: Austria, Belgium, Cyprus, Czech Republic, Finland, Greece, Hungary, Lithuania, Latvia, Norway, Poland, Portugal, Romania, Slovakia, and Slovenia.

V. REMEDIES RECEIVED FROM THE NOTIFYING PARTIES

5. DESCRIPTION OF THE COMMITMENTS

282. In order to render the concentration compatible with the internal market, on 16 July 2010, Novartis formally submitted commitments to remedy the serious doubts which the Commission had identified. On 21 July 2010, Novartis submitted a revised version which was market tested. Following the market test, the commitments were further modified on 9 August 2010.

283. The commitments consist of the divestiture of specific pharmaceutical and consumer vision products for each of the markets with serious competition concerns and the remainder of the EEA. As regards the products for which Novartis acts only as a distributor on behalf of [third party], Novartis commits to transfer the distribution business back to [third party], its counterparty in Minims Distribution Agreement. The

divestiture of alternative products is foreseen in order to ensure the removal of competition concerns in case such transfer to [third party] could not be implemented.

284. The final form of the commitments is annexed to this Decision and forms an integral part thereof. The main elements of the commitments, as modified, are summarised below.

5.1. Pharmaceutical products

285. In the area of pharmaceutical products, Novartis commits to divest the ophthalmic pharmaceutical businesses listed below singly or in combinations to one or more purchasers ("Pharmaceutical Divestment Businesses").

- Novartis' *Bivacyn* business (S1A) in Bulgaria, Slovenia and the remaining EEA-countries;
- Novartis' *Pomada Oculos Epitelizante* business (S1A) in Spain and the remaining EEA-countries;
- Novartis' *Spersadex Comp/ Dispersadron C / Spersadex M/Kloram* business (S1C) in Bulgaria, Cyprus, Czech Republic, Denmark, Malta, Romania, Slovakia, Greece, Norway and the remaining EEA-countries;
- Novartis' *Zaditen* Divestment Business (S1G) in Austria, Cyprus, Czech Republic, Germany, Denmark, Finland, France, Greece, Hungary, Ireland, Iceland, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovenia, Slovakia, Spain, Sweden, UK and the remaining EEA-countries (except for Italy).
- Novartis' *Spersallerg* Divestment Business (S1G) in particular in Bulgaria, Cyprus, Czech Republic, Greece, Hungary, Malta, Norway, Poland, Romania, Slovenia, Slovakia and the remaining EEA-countries;
- Novartis' *CromoHexal* Divestment Business (S1G) in the Czech Republic;
- Novartis' *Antistin Privin* Divestment Business (S1G) in Denmark, Iceland, Sweden and the remaining EEA-countries;
- Novartis' *Otrivine-Antistin* Divestment Business (S1G) in the UK and Ireland;
- Novartis' *Diclofenac*-Based Product Divestment Business (S1R) in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, the United Kingdom and the remaining EEA-countries;
- Novartis' *Fluoresceine* business (S1T) in Austria, Belgium, Bulgaria, Finland, France, Hungary, Luxembourg, Norway, Poland, Portugal, Spain and the remaining EEA-countries;
- Novartis' *Miochol* business (S1E) in Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Sweden, the United Kingdom and the remaining EEA-countries.

286. Novartis commits to de-register the following products within [...] months of the adoption of the Decision with each of the competent national regulatory authority:

- Okacin business (S1A); and
- Infectoflam/Cibaflam and Cortiphenol H businesses (S1C).

287. The Pharmaceutical Divestment Businesses include, *inter alia*, the following assets that are necessary to ensure the viability, marketability and competitiveness of the divestment businesses: (i) intangible assets (including IPRs and/or licences, where

applicable); in the case of shared know-how (retained by Novartis for use in its other businesses) Novartis grants a non-exclusive licence; (ii) all governmental licenses, permits and authorizations; (iii) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments, except for those pertaining to products that do not form part of the divestment businesses; (iv) transfer of all records relating to trademarks, customer, suppliers, all advertising, marketing, sales, publicity and presentational materials; or copies thereof, where such items relate to products retained by Novartis; and (v) sale of existing inventory.

288. As an option to the Purchaser, the Pharmaceutical Divestment Businesses will also include transitional arrangements, including (i) transitional distribution arrangements until the relevant marketing authorisations are transferred; (ii) reasonable technical assistance to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the divestment businesses; (iii) transitory non-exclusive manufacturing and/or supply arrangements or back-to-back supply arrangement with Novartis on a reasonable cost plus basis for a period of up to three years to ensure continuous supply of active pharmaceutical ingredients, and/or raw materials, and/or products.

289. As an option to the Purchaser, the Pharmaceutical Divestment Businesses will also include sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the divestment business in accordance with normal market practice as well as Novartis' reasonable best efforts to enable the Purchaser to enter into the agreements for the manufacture and or supply of products, active pharmaceutical ingredients and/or raw materials with Novartis' current suppliers on terms comparable to those offered to Novartis. As an option to the Purchaser, where Novartis retains the right to sell the product included in the divestment businesses in any part of the EEA, Novartis has also offered free access to future product development improvements for three years.

290. Novartis commits not to launch under a new brand name any existing or improved versions of the products included in the divestment businesses in the EEA for a period of five years. This therefore ensures that Novartis cannot re-enter the market with new or improved products based on retained know-how exclusively related to the divestment products.

5.2. Distribution Divestment Businesses

291. In the area of pharmaceutical products, Novartis also commits to transfer the following pharmaceutical distribution businesses ("Distribution Divestment Businesses"):

- The Minims-branded mydriatics and cycloplegics (S1F) distribution business in Denmark, Norway, Sweden;
- The Minims-branded *fluorescein* diagnostic agents (S1T) distribution business in Denmark;
- Novartis' Minims-branded *Pilocarpine* distribution business (S1E) in Finland;

292. The Distribution Divestment Businesses consist of Novartis's rights, title and interests as a distributor of relevant products in the product territory and includes

termination of existing distribution agreements with [third party],⁵⁷ and transfer of Novartis' distribution rights to [third party]. The transfer of distribution businesses includes: (i) existing product inventory, (ii) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments, related to or necessary for the operations of the Distribution Divestment Business except for those pertaining to products that do not form part of the distribution divestment businesses;

293. In order to achieve the transfer of the distribution businesses, Novartis commits to use all best reasonable efforts to agree with [third party] by the end of the first divestiture period on reasonable terms and conditions for the transfer of the businesses back to [third party]. Novartis shall be deemed to have complied with the Commitments, if by the end of the first divestiture period Novartis has agreed with [...] on the transfer of Distribution Divestment Businesses, subject to verification by the Commission that effective transfer has occurred in the first divestiture period.

294. During the First divestiture period Novartis can choose between transferring the relevant Distribution Divestment Businesses and divesting, as an alternative, respective products of Alcon. The Alternative Divestment Businesses are as follows:

- Alcon's *Isopto Carpine* divestment business (S1E) in Finland;
- Alcon's mydriatics and cycloplegics business (S1F) which covers:
 - i. *Cyclogyl* business in Denmark, Norway and Sweden;
 - ii. *Mydricyl* business in Denmark and Sweden;
 - iii. *Isopto Atropine* business in Sweden;
 - iv. *Cyclomydril* business in Sweden ;
- Alcon's topical *fluorescein* diagnostic agents business (*Thilorbin*) (S1T) in Denmark.

295. To the extent that at the end of the first divestiture period Novartis has not executed the transfer to [third party] or has not entered into a final binding sales and purchase agreement with a purchaser in relation to the respective Alternative Businesses, Novartis shall grant to the divestiture trustee an exclusive mandate to sell the Alternative Businesses listed above.

296. The Alternative Businesses have the same scope as the pharmaceutical business discussed above in para. 2877 and include *inter alia*, the following assets that are necessary to ensure the viability, marketability and competitiveness of the divestment businesses: (i) all intangible assets (including IPRs and/or licences, where applicable); in the case of shared know-how (retained by Novartis for use in its other businesses) Novartis grants a non-exclusive licence; (ii) all governmental licenses, permits and authorizations; (iii) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments, except for those pertaining to products that do not form part of the divestment businesses; (iv) transfer of all records relating to

⁵⁷ [...].

trademarks, customer, suppliers, all advertising, marketing, sales, publicity and presentational materials; or copies thereof, where such items relate to products retained by Novartis; and (v) sale of existing inventory.

297. The optional arrangements of the Alternative Divestment Businesses are equivalent to those applying to the Pharmaceutical Divestment Businesses.

5.3. Consumer Vision Care Divestment Businesses

298. In the area of consumer vision care products, Novartis also commits to divest the following two consumer vision care businesses (the "Consumer Vision Care Divestment Businesses", also together with the Pharmaceutical Divestment Businesses and the Distribution Divestment Businesses, the "Divestment Businesses"):

- Novartis' *SoloCare* Divestment Businesses (S1L) in Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, UK and the remainder of the EEA;
- Novartis' Divestment Businesses in the ocular lubricant category (S1K) in Austria, Bulgaria, Cyprus, Greece, Hungary, Malta, Netherlands, Norway, Slovenia, Sweden (depending on the country this business covers the brands *GenTeal HA*, *GenTeal Drops*, *GenTeal Gel*, *Aquify*, *Oculotect Fluid*, *Oculotect Gel*, *Viscotears* and *Aquatears*).

299. The assets and optional arrangements of the consumer vision case businesses are equivalent to those applying to the Pharmaceutical Divestment Businesses. As well as for the Pharmaceutical Divestment Businesses, Novartis commits not to launch for a period of five years under a new brand name any existing or improved versions of the products included in the Consumer Vision Care Divestment Businesses in the EEA. This therefore ensures that Novartis cannot re-enter the market with new or improved products based on retained know-how exclusively related to the divestment products.

6. ASSESSMENT OF THE PROPOSED REMEDIES

6.1. Suitability for removing the serious doubts

300. The Commission considers that the commitments (as modified on 9 August 2010) are suitable to remove serious doubts since they remove the entire overlap in the parties' activities in the markets where the Commission identified competition concerns. This was also confirmed by the market test.

301. The market test of the commitments was generally positive. In particular the majority of respondents considered that the Divestment Businesses include all assets necessary to enter markets where the Commission identified competition concerns and subsequently compete effectively with the merged entity on these markets. Most respondents considered that the intangible assets (IPR, marketing authorisations, permits, licences etc.) to be divested would enable a qualified purchaser to re-establish the competitive position pre-merger of Novartis in these markets and that the transitional arrangements are sufficient to help maintaining the full economic viability and competitiveness of the divested businesses for a transitional period.

302. The market test has confirmed that the geographic scope of the commitments, which cover territories in addition to the countries where serious doubts arose (where applicable), would significantly contribute towards the viability and competitive potential of the relevant Divestment Businesses.
303. In relation to the Distribution Divestment Businesses, the Commission found that [third party] has sufficient incentives to distribute these products in the relevant countries.⁵⁸ However, the Commission concluded that the necessary degree of certainty of the implementation of those commitments was not met since the effective transfer of those businesses would depend on the consent of [third party] and the conditions under which the transfer to [third party] takes place. This problem was addressed by including the Alternative Divestment Businesses in the commitments package. The divestiture of those businesses will also ensure the elimination of the competition problems and meets the necessary degree of certainty in relation to the implementation of the commitments for those markets.
304. The market test has also revealed that there are a number of potential purchasers for the individual Pharmaceutical and Consumer Vision Divestment Businesses or combinations thereof.

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

305. The market test confirmed that the approach of the proposed divestiture was acceptable in principle, but also revealed certain issues of viability in relation to the initial commitments proposal and enabled the Commission to identify certain issues that needed to be rectified and which are further described below.
306. In order to address the issues raised in the market test, Novartis modified the commitments. Some elements of the commitments and the main modifications are summarised below.
307. The market test revealed concerns regarding the viability of the re-branding obligation originally foreseen for *Voltaren Ophtha* (Novartis' Diclofenac-Based Product Divestment Business), *CromoHexal* and *Otrivine-Antistin*, for which the parties initially committed to grant a license for a limited period of time, after which the purchaser would have had to re-brand the products. According to the vast majority of the respondents this obligation would involve expensive marketing campaigns and investments and would entail the serious commercial risk of not being able to migrate customers to a new trademark without significant risks to the viability and competitive position of the divestment products. Therefore, Novartis committed to offer an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the relevant trademarks for the sale and marketing of ophthalmic products in the EEA (for *Voltaren Ophtha* and for *Otrivine-Antistin*) and for the Czech Republic for *CromoHexal*.
308. Most respondents raised concerns during the market test also in relation to Novartis original commitment to be able to launch under a new brand name any improved version of the product included in the Divestment Businesses in the EEA after a period of three

⁵⁸ A draft letter of [...] of 3 August 2010 was sent by email to [...].

years. According to the respondents, given the long product development cycle, such period should be longer and in any case should not be less than 5 years. An earlier re-entry of Novartis possibly based on know-how retained by Novartis for the same divestment products sold outside the EEA, would present a high commercial risk for the prospective buyer and would significantly undermine the viability of the divestment businesses. Therefore, Novartis committed to extend the period for re-entry with either improved products that use specific know-how exclusively related to the divestment products or with any other version of the divestment products to five years.

309. Most respondent also considered that the two year duration of the transitional arrangements and technical assistance originally foreseen in the commitments as regards the Pharmaceutical Divestment Businesses is insufficient. Therefore, Novartis committed to extend such periods in all cases to three years with the possibility for the Monitoring Trustee to further extend its duration if, under circumstances outside the control of Novartis or the purchaser, such extension is required by the purchaser to establish the Pharmaceutical Divested Businesses. The respondents also specified that depending on a potential purchaser, an option to hire sufficiently qualified personnel should include not only sales and marketing personnel, but also access to qualified technical personnel. Therefore, Novartis included an option for the purchaser to hire sufficiently qualified personnel without limiting it to sales and marketing personnel.

Conclusion

310. In view of the above modifications, the Commission considers that the Divestment Businesses are viable businesses and that the modalities foreseen for their transfer will enable their operation by the corresponding purchaser(s) (transferee, in case of Distribution Divestment Businesses) in a competitive and viable manner.
311. The commitments will permit to address the competition concerns identified in the present Decision as they remove the overlap between Novartis and Alcon.
312. The Commission therefore considers that the commitments, as modified, are sufficient to eliminate all serious doubts as to the compatibility of the transaction with the internal market and the EEA Agreement.
313. In order to ensure that Novartis complies with the commitments, the Commission attaches conditions and obligations to this Decision. The commitments set out in Sections B, C, D and E of the commitments annexed to the present Decision constitutes conditions, since only by fulfilling them may the structural change on the relevant markets be achieved so as to eliminate the serious doubts identified by the Commission. The other commitments constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended to eliminate the serious doubts identified by the Commission.

VII. CONCLUSION

314. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments 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, C, D and E of the commitments annexed to the present 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.

For the Commission,

(signed)
Stefan FÜLE
Member of the Commission

Case M.5778 – Novartis/Alcon

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No. 139/2004 as amended (the “**Merger Regulation**”), Novartis AG (“**Novartis**”) hereby provides the following Commitments (the “**Commitments**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of a further 52.15% shareholding in Alcon, Inc. (“**Alcon**”) compatible with the common 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 Union law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under the Merger Regulation and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

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

Affiliated Undertakings: undertakings controlled by Novartis (including Alcon after the Alcon Closing) (or, where used in relation to another corporation, that corporation), whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Jurisdictional Notice under the Merger Regulation.

Alcon Closing: the date of the transfer of the legal title to a further 52.15% shareholding in Alcon to Novartis.

Alternative Divestment Business: each of the businesses as defined in Section D and Schedules (xvii) to (xix).

Closing: the transfer of the legal title of the relevant Divestment Businesses and, to the extent applicable, the Alternative Divestment Businesses to the Purchaser.

Counterparty: [...], or one of its affiliates.

Deregistration Business: each of the businesses as defined in Section E and Schedules (xx) and (xxi) that Novartis commits to deregister.

Deregistration Period: the period of eighteen months from the Effective Date.

Distribution Divestment Business: each of the businesses as defined in Section C and Schedules (xiv) to (xvi) that Novartis commits to divest.

Divestment Business: each of the businesses as defined in Section B and Schedules (i) to (xiii) that Novartis 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 Novartis and who has received from Novartis the exclusive Trustee Mandate to sell the Divestment Businesses to a Purchaser at no minimum price.

EEA Territory: the territory defined by the 27 member states of the European Union as at the date of these Commitments, together with Norway, Iceland and Liechtenstein.

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 Novartis, on a non-exclusive basis, for the Divestment Businesses to manage the day-to-day 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 Novartis, and who has the duty to monitor Novartis's compliance with the conditions and obligations attached to the Decision.

Parties: Novartis and Alcon.

Personnel: all personnel currently employed by Novartis (or an Affiliated Undertaking) and working for each Divestment Business, including staff seconded to the Divestment Business and shared personnel.

Purchaser: the entity or each of the entities approved by the Commission as acquirer(s) of one or more of the Divestment Businesses in accordance with the criteria set out in Section G.

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

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

Novartis: Novartis AG, incorporated under the laws of Switzerland, with its registered office at Lichtstrasse 35, 4056 Basel (Switzerland).

Section B. The A and B Divestment Businesses

Commitments to divest

- (1) In order to restore effective competition, Novartis commits to divest, or procure the divestiture of each of the A Divestment Businesses by the end of the Trustee Divestiture Period as a going concern to a Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph (30) and the B Divestment Business to [...] within ten days from Alcon Closing or, in the event that the B Divestment Business is not sold to [...], to a Purchaser by the end of the Trustee Divestiture Period as a going concern and on terms of sale approved by the Commission in accordance with the procedure described in paragraph (30). To carry out the divestitures, Novartis commits to find one or more Purchasers and to enter into a final binding sale and purchase agreement for the sale of each of the A Divestment Businesses and, in the event that the B Divestment Business is not sold to [...], the B Divestment Business, within the First Divestiture Period. If Novartis has not entered into such an agreement at the end of the First Divestiture Period for each of the Divestment Businesses, Novartis shall grant the Divestiture Trustee an exclusive mandate to sell the A Divestment Businesses and, in the event that the B Divestment Business is not sold to [...], the B Divestment Business, for which a final binding sale and purchase agreement would not have been entered into in accordance with the procedure described in paragraph (39) in the Trustee Divestiture Period.
- (2) Novartis shall be deemed to have complied with this commitment if, for each of the Divestment Businesses, (i) by the end of the Trustee Divestiture Period, Novartis has entered into a final binding sale and purchase agreement, (ii) if the Commission approves the Purchaser and the terms of sale in accordance with the procedure described in paragraph (30) and (iii) 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.

- (3) In order to maintain the structural effect of the Commitments, Novartis shall, for a period of ten years after the Effective Date, not acquire direct or indirect influence over the whole or part of any of the Divestment Businesses, 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 Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the A and B Divestment Businesses

- (4) The A Divestment Businesses consist of:

- **Schedule (i):** Novartis' *Bivacyn* Divestment Business (S1A) in the EEA Territory, as defined in Schedule (i);
- **Schedule (ii):** Novartis' *Pomada Oculos Epitelizante* Divestment Business (S1A) in the EEA Territory, as defined in Schedule (ii);
- **Schedule (iii):** Novartis' *Spersadex Comp / Dispersadron C / Spersadex M/Kloram* Divestment Business (S1C) in the EEA Territory, as defined in Schedule (iii);
- **Schedule (iv):** Novartis' *Zaditen* Divestment Business (S1G) in the EEA Territory (with the exception of Italy), as defined in Schedule (iv);
- **Schedule (v):** Novartis' *Spersallerg* Divestment Business (S1G) in the EEA Territory, as defined in Schedule (v);
- **Schedule (vi):** Novartis' *CromoHexal* Divestment Business (S1G) in the CromoHexal Territory, as defined in Schedule (vi);
- **Schedule (vii):** Novartis' *Antistin Privin* Divestment Business (S1G) in the EEA Territory, as defined in Schedule (vii);
- **Schedule (viii):** Novartis' *Otrivine-Antistin* Divestment Business (S1G) in the Otrivine-Antistin Territory, as defined in Schedule (viii);
- **Schedule (ix):** Novartis' *SoloCare* Divestment Businesses (S1L) in the EEA Territory, as defined in Schedule (ix);
- **Schedule (x):** Novartis' Divestment Businesses in the ocular lubricant category (S1K) in the relevant countries, as defined in Schedules (x)(a) to (x)(h);
- **Schedule (xi):** Novartis' *Diclofenac*-Based Product Divestment Business (S1R) in the EEA Territory, as defined in Schedule (xi);
- **Schedule (xii):** Novartis' *Fluoresceine* Divestment Business (S1T) in the EEA Territory, as defined in Schedule (xii); and

The B Divestment Business consists of:

- **Schedule (xiii):** Novartis' *Miochol* business (S1E) in the EEA Territory, as defined in Schedule (xiii).

Each of the A and B Divestment Businesses, as described in more detail in the Schedules, shall include, as applicable:

- (a) exclusive, perpetual and irrevocable licence for the relevant territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Divestment Business; and a non-exclusive licence for the relevant territory of any other know-how that contributes to and is necessary to ensure the viability, marketability and competitiveness of the Divestment Business; in each case to the extent owned by Novartis;
- (b) all other relevant tangible and intangible assets, by way of transfer, sale, assignment or license (including non-exclusive license in the case of assets that Novartis (or an Affiliated Undertaking) needs to retain use of for its other business), which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Divestment Business;
- (c) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business, including marketing authorisations currently held by Novartis (or an Affiliated Undertaking) which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Divestment Business;
- (d) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of a Divestment Business;
- (e) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, as applicable, (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) also relate to a product retained by Novartis, as applicable;
- (f) sale of existing product inventory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(f) collectively referred to, for each of the relevant Divestment Businesses, as “*Assets*”);
- (g) at the option of the Purchaser, Novartis (or an Affiliated Undertaking) will enter into a transitional distribution arrangement related to the Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis;
- (h) Novartis (or an Affiliated Undertaking) commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sourcing of raw materials, manufacturing, sale and marketing of the Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer;
- (i) at the option of the Purchaser, Novartis (or an Affiliated Undertaking) shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Divestment Business for a period of up to three years after Closing⁵⁹ on a reasonable cost plus basis to be agreed with the

⁵⁹ That period being extended to five years as far as the Divestment Business described at Schedule (xiii) is concerned.

Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Divestment Business;

- (j) the transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis (or an Affiliated Undertaking) provide technical assistance to the Purchaser expeditiously;
- (k) at the option of the Purchaser, for those products that are manufactured by Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the finished and packaged forms of the products concerned, on a reasonable cost-plus basis for a period of up to three years after Closing⁶⁰. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Divestment Business;
- (l) at the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials that are manufactured by Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredients and/or other raw materials concerned, with the Purchaser or the third-party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Divestment Business;
- (m) at the option of the Purchaser, for those products that are contract manufactured by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the finished and packaged forms of the products concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of the products concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Divestment Business;
- (n) at the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw

⁶⁰ That period being extended to five years as far as the Divestment Business described at Schedule (xiii) is concerned.

materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Divestment Business;

- (o) where Novartis retains the right to sell the product included in the Divestment Business in any part of the relevant territory, at the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to that product and intended for release in any part of the relevant territory retained by Novartis for a period of three years after Closing;
- (p) Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the Divestment Business in the relevant territory for a period of five years after Closing;
- (q) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

Section C. The Distribution Divestment Businesses

- (5) In order to maintain effective competition, Novartis commits to use all reasonable best efforts to agree with the Counterparty by the end of the First Divestiture Period reasonable terms and conditions for the transfer of the Distribution Divestment Businesses to the Counterparty.
- (6) Novartis shall be deemed to have complied with this commitment if, by the end of the First Divestiture Period, Novartis or an Affiliated Undertaking has agreed with the Counterparty on the transfer of the Distribution Divestment Businesses, subject to verification by the Commission (following a report from the Monitoring Trustee) that effective transfer has occurred in the First Divestiture Period.
- (7) In order to maintain the structural effect of the commitment in relation to the Distribution Divestment Businesses, Novartis shall, for a period of ten years after the Effective Date:
 - (a) not acquire direct or indirect influence over the whole or part of any of the Distribution Divestment Businesses;
 - (b) not be appointed by the Counterparty as the distributor of the Pilocarpine Divestment Business in Finland;
 - (c) not be appointed by the Counterparty as the distributor of the Minims S1F Divestment Business in Denmark, Norway or Sweden;
 - (d) not be appointed by the Counterparty as the distributor of the Minims S1T Divestment Business in Denmark;

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 Distribution Divestment Businesses concerned is no longer necessary to render the proposed concentration compatible with the common market.

- (8) The Distribution Divestment Businesses consist of:
- **Schedule (xiv):** Novartis' *Pilocarpine* Divestment Business (S1E) in the Pilocarpine Territory, as defined in Schedule (xiv);
 - **Schedule (xv):** the Minims-branded S1F products that Novartis distributes on behalf of [...] (Minims S1F Divestment Business) in the Minims S1F Territory, as defined in Schedule (xv); and
 - **Schedule (xvi):** the Minims-branded S1T products that Novartis distributes on behalf of [...] (Minims S1T Divestment Business) in the Minims S1T Territory, as defined in Schedule (xvi).

Each of the Distribution Divestment Businesses include:

- assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Distribution Divestment Business, in each case to the extent that any such rights are held by Novartis, provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Distribution Divestment Business; and
- sale of existing product inventory in the relevant territory, on a country-by-country basis, at the time of the transfer of the marketing authorisations described in the bullet point above, to the extent that Novartis has the right to sell such product inventory.

Section D. The Alternative Divestment Businesses

Commitment to divest as an alternative

- (9) In order to maintain effective competition, if within the First Divestiture Period, Novartis or an Affiliated Undertaking does not reach agreement with the Counterparty regarding the transfer of the Distribution Divestment Businesses referred to in paragraph (5) above, Novartis will divest the Alternative Divestment Businesses instead of the Distribution Divestment Businesses to remove competition concerns in those Member States where the European Commission has found serious doubts as to the compatibility of the Transaction with the common market. To carry out this divestiture, Novartis commits to find a Purchaser (or Purchasers) and to enter into a final binding sale and purchase agreement(s) for the sale of the Alternative Divestment Businesses within the First Divestiture Period.
- (10) To the extent that Novartis has not, by the end of the First Divestiture Period: (i) reached agreement with the Counterparty regarding the Distribution Divestment Businesses; or (ii) entered into an agreement in relation to one or more of the Alternative Divestment Businesses, Novartis shall grant the Divestiture Trustee an exclusive mandate to sell the relevant Alternative Divestment Business(es) within the Trustee Divestiture Period in accordance with the procedure described in paragraph (39) below.
- (11) Novartis shall be deemed to have complied with this commitment if Novartis or an Affiliated Undertaking has (i) by the end of the First Divestiture Period agreed with the Counterparty on the transfer of the Distribution Divestment Businesses referred to in paragraph (5) or, in the event that Novartis or an Affiliated Undertaking does not reach agreement with the Counterparty as referred to in paragraph (5) above, (ii) by the end of the Trustee Divestiture Period, Novartis has entered into a

final binding sale and purchase agreement and if the Commission approves the Purchaser(s) of the Alternative Divestment Businesses and the terms of sale in accordance with the procedure described in paragraph (30) as applicable and if the closing of the sale of the Alternative Divestment Businesses takes place within a period not exceeding [...] after the approval of the Purchaser(s) of the Alternative Divestment Businesses and the terms of sale by the Commission.

- (12) In order to maintain the structural effect of the Commitments, Novartis shall, for a period of ten years after the Effective Date, not acquire direct or indirect influence over the whole or part of any of the Alternative Divestment Businesses if these have been sold to a Purchaser, 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 Alternative Divestment Businesses is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Alternative Divestment Businesses

- (13) The Alternative Divestment Businesses consist of:
- **Schedule (xvii):** Alcon's *Isopto Carpine* Divestment Business in Finland (S1E) as defined in Schedule (xvii);
 - **Schedule (xviii):** Alcon's:
 - (a) *Cyclogyl* Divestment Business in Denmark, Norway and Sweden;
 - (b) *Mydricyl* Divestment Business in Denmark and Sweden;
 - (c) *Isopto Atropine* Divestment Business in Sweden;
 - (d) *Cyclomydril* Divestment Business in Sweden; and
 - **Schedule (xix):** Alcon's *Thilorbin* Divestment Business in Denmark.
- (14) Each of the Alternative Divestment Businesses, as described in more detail in the Schedules, shall include, as applicable:
- (a) exclusive, perpetual and irrevocable licence (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Alternative Divestment Business; and a non-exclusive licence for the relevant territory of any other know-how that contributes to and is necessary to ensure the viability, marketability and competitiveness of the Alternative Divestment Business; in each case to the extent owned by Novartis;
 - (b) all other relevant tangible and intangible assets, by way of transfer, sale, assignment or license (including non-exclusive license in the case of assets that Novartis (or an Affiliated Undertaking) needs to retain use of for its other business), which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Divestment Business;
 - (c) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Alternative Divestment Business, including marketing authorisations currently held by Novartis (or an Affiliated Undertaking) which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Divestment Business;

- (d) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of a Alternative Divestment Business;
- (e) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, as applicable, (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) also relate to a product retained by Novartis, as applicable;
- (f) sale of existing product inventory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(f) collectively referred to, for each of the relevant Divestment Businesses, as “Assets”);
- (g) at the option of the Purchaser, Novartis (or an Affiliated Undertaking) will enter into a transitional distribution arrangement related to the Alternative Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis;
- (h) Novartis (or an Affiliated Undertaking) commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sourcing of raw materials, manufacturing, sale and marketing of the Alternative Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer;
- (i) at the option of the Purchaser, Novartis (or an Affiliated Undertaking) shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Alternative Divestment Business for a period of up to three years after Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Divestment Business;
- (j) the transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis (or an Affiliated Undertaking) provide technical assistance to the Purchaser expeditiously;
- (k) at the option of the Purchaser, for those products that are manufactured by Alcon (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the finished and packaged forms of the products concerned, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Divestment Business;
- (l) at the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials that are manufactured by Alcon (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredients and/or

other raw materials concerned, with the Purchaser or the third-party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Divestment Business;

- (m) at the option of the Purchaser, for those products that are contract manufactured by a third-party for Alcon (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the finished and packaged forms of the products concerned with Alcon's current supplier on terms comparable to those offered to Alcon or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of the products concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Divestment Business;
- (n) at the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials that are supplied by a third-party for Alcon (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Alcon's current supplier on terms comparable to those offered to Alcon or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Divestment Business;
- (o) where Novartis retains the right to sell the product included in the Alternative Divestment Business in any part of the EEA Territory, at the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to that product and intended for release in any part of the relevant territory retained by Novartis for a period of three years after Closing;
- (p) Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the Alternative Divestment Business in the relevant territory for a period of five years after Closing;
- (q) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Alternative Divestment Business in accordance with normal market practice.

Section E. Deregistration of certain products

Commitment to deregister

- (15) In order to ensure that effective competition be maintained, Novartis commits to proceed with the deregistration of the Deregistration Businesses with the relevant national pharmaceutical regulatory authorities within the Deregistration Period.
- (16) Novartis shall be deemed to have complied with this commitment if, for each of the Deregistration Businesses, by the end of the Deregistration Period, Novartis has provided the Monitoring Trustee with sufficient evidence, taking into account applicable national legislation, that it has effectively deregistered the Deregistration Businesses in all relevant countries, as defined in the Schedules, and does, therefore, not hold the relevant marketing authorisations anymore.
- (17) In order to maintain the structural effect of the Commitments, Novartis shall, for a period of ten years after the Effective Date, not introduce any request for a marketing authorisation for an existing or improved version of the products included in the Deregistration Businesses with any pharmaceutical regulatory authorities within the EEA 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 Businesses is no longer necessary to render the proposed concentration compatible with the common market.
- (18) The Deregistration Businesses consist of:
- **Schedule (xx):** Novartis' *Okacin* business (S1A) in the EEA Territory, as defined in Schedule (xx);
 - **Schedule (xxi):** Novartis' *Infectoflam/Cibaflam/Cortiphenol H* business (S1C) in the EEA Territory, as defined in Schedule (xxi);

Section F. Related commitments

Preservation of Viability, Marketability and Competitiveness

- (19) From the Effective Date until Closing, Novartis shall preserve the economic viability, marketability and competitiveness of the A and B Divestment Businesses and the Distribution Divestment Businesses, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the A and B Divestment Businesses and the Distribution Divestment Businesses. In particular Novartis undertakes:
- (a) 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 A and B Divestment Businesses and the Distribution Divestment Businesses or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the A and B Divestment Businesses and the Distribution Divestment Businesses; and
 - (b) to make available sufficient resources to preserve the economic viability, marketability and competitiveness of the commercial development of the A and B Divestment Businesses and the Distribution Divestment Businesses, on the basis and continuation of the existing business plans.
- (20) The obligation described in paragraph (19) above shall also apply to the Alternative Divestment Businesses to the extent that Novartis does not reach agreement with the Counterparty regarding the transfer of the Distribution Divestment Businesses referred to in paragraph (5) above.

Hold-separate obligations of Novartis

- (21) Novartis commits, from the Effective Date until Closing, to keep the A and B Divestment Businesses and the Distribution Divestment Businesses separate from the businesses it is retaining and to ensure that the Hold Separate Manager has no involvement in any retained business.
- (22) Until Closing, Novartis shall assist the Monitoring Trustee in ensuring that, as far as possible, the A and B Divestment Businesses and the Distribution Divestment Businesses are managed as distinct and saleable entities separate from the businesses retained by the Parties. Novartis shall appoint a Hold Separate Manager who shall be responsible for the management of the A and B Divestment Businesses and the Distribution Divestment Businesses under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the A and B Divestment Businesses and the Distribution Divestment Businesses independently and in the best interest of the A and B Divestment Businesses and the Distribution Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and their independence from the businesses retained by the Parties.
- (23) The obligation described in paragraphs (21) and (22) above shall also apply to the Alternative Divestment Businesses to the extent that Novartis does not reach agreement with the Counterparty regarding the transfer of the Distribution Divestment Businesses referred to in paragraph (5) above.

Ring-fencing

- (24) Novartis 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 A and B Divestment Businesses and the Distribution Divestment Businesses. In particular, the participation of the A and B Divestment Businesses and the Distribution Divestment Businesses in a central information technology network shall be severed to the extent possible, without compromising the viability of the A and B Divestment Businesses and the Distribution Divestment Businesses. Novartis may obtain information relating to the A and B Divestment Businesses and the Distribution Divestment Businesses which is reasonably necessary for the divestiture of the A and B Divestment Businesses and the Distribution Divestment Businesses or whose disclosure to Novartis is required by law.
- (25) The obligation described in paragraph (24) above shall also apply to the Alternative Divestment Businesses to the extent that Novartis does not reach agreement with the Counterparty regarding the transfer of the Distribution Divestment Businesses referred to in paragraph (5) above.

Due Diligence

- (26) In order to enable potential Purchasers to carry out a reasonable due diligence of the A Divestment Businesses or in the event that the B Divestment Business is not sold to [...], the B Divestment Business, and, if applicable, the Alternative Divestment Businesses, Novartis shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
- (a) provide to potential Purchasers sufficient information as regards the Divestment Businesses or, if applicable, the Alternative Divestment Businesses;
 - (b) allow potential purchasers reasonable access to the Novartis employees with knowledge of the Divestment Businesses or, if applicable, the Alternative Divestment Businesses.

Reporting

- (27) Novartis shall submit written reports in English on potential Purchasers of the A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business and, if applicable, the Alternative Divestment Businesses, and developments in the negotiations with such potential Purchasers to the Commission and the Monitoring Trustee no later than ten days after the end of every month following the Effective Date (or otherwise at the Commission's request).
- (28) Novartis 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 G. The Purchaser

- (29) In order to ensure the immediate restoration of effective competition, the Purchaser of any A Divestment Business and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, and, if applicable, the Alternative Divestment Businesses, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Novartis and other competitors;
 - (c) 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**").
- (30) The final binding sale and purchase agreement for each of the A and B Divestment Businesses and, if applicable, the Alternative Divestment Businesses, shall be conditional on the Commission's approval. When Novartis has reached an agreement with a Purchaser, for the A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, and, if applicable, the Alternative Divestment Businesses, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Novartis 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 Businesses are being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Businesses without one or more Assets, if this does not affect the viability, marketability and competitiveness of the Divestment Businesses after the sale, taking account of the proposed Purchaser.

Section H. Trustee

I. Appointment Procedure

- (31) Novartis shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Novartis has not entered into a binding sale and purchase agreement for one or more of the Divestment Businesses one month before the end of the First Divestiture Period or if the Commission has rejected a Purchaser proposed by Novartis at that time or thereafter, Novartis 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 Divestiture Period.
- (32) 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 Novartis 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 Businesses, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Novartis

- (33) No later than one week after the Effective Date, Novartis shall submit a list of one or more persons whom Novartis 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, Novartis shall submit a list of one or more persons whom Novartis 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 (32) and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) 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

- (34) 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, Novartis 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, Novartis 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 Novartis

- (35) If all the proposed Trustees are rejected, Novartis 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 (31) and (34).

Trustee nominated by the Commission

- (36) If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Novartis shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

- (37) 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 Novartis, 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

- (38) 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 obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, the Distribution Divestment Businesses and, as applicable, the Alternative Divestment Businesses with a view to ensuring their continued economic viability, marketability and competitiveness and monitor compliance by Novartis 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 Businesses, and the keeping separate of the Divestment Businesses from the business retained by the Parties, in accordance with paragraphs (19) and (21) of the Commitments;
 - (b) supervise the management of the Divestment Businesses as distinct and saleable entities, in accordance with paragraph (24) of the Commitments;
 - (c) (i) in consultation with Novartis, determine all necessary measures to ensure that Novartis does not after the Effective Date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Businesses, in particular strive for the severing of the Divestment Businesses' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Businesses, and (ii) decide whether such information may be disclosed to Novartis as the disclosure is reasonably necessary to allow Novartis to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of Assets between the Divestment Businesses and the Parties or Affiliated Undertakings;
 - (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
 - (iv) propose to Novartis such measures as the Monitoring Trustee considers necessary to ensure Novartis' compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of

the A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, the Distribution Divestment Businesses and, as applicable, the Alternative Divestment Businesses, the holding separate of the Divestment Businesses 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 A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business and, if applicable, the Alternative Divestment Businesses, in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process;
- (vi) provide to the Commission, sending Novartis 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 A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, the Distribution Divestment Businesses and, as applicable, the Alternative Divestment Businesses so that the Commission can assess whether they are 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 Novartis a non-confidential copy at the same time, if it concludes on reasonable grounds that Novartis is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph (30), submit to the Commission a reasoned opinion as to the suitability and independence of the proposed Purchaser and the viability of the A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, and, as applicable, the Alternative Divestment Businesses, after the sale and as to whether the Divestment Businesses are sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the sale of any of the Divestment Businesses without one or more Assets affects the viability of that Divestment Business after the sale, taking account of the proposed Purchaser;
- (viii) within one week of notification to the Monitoring Trustee by Novartis that the Distribution Divestment Businesses have been transferred to the Counterparty as referred to in paragraph (6) above, provide a report to the Commission to verify that the transfer of the Divestment Distribution Businesses to the Counterparty has occurred in the First Divestiture Period
- (ix) within one week of notification to the Monitoring Trustee by Novartis that it has effectively deregistered the Deregistration Businesses in all relevant countries, taking into account applicable national legislation, provide a report to the Commission to verify that the deregistration of the Deregistration Businesses has occurred in the Deregistration Period.

Duties and obligations of the Divestiture Trustee

- (39) Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, and, as applicable, the Alternative Divestment Businesses, to a Purchaser, provided that the Commission has approved both the Purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph (30). 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 Novartis, subject to Novartis' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

- (40) 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 Novartis.

III. Duties and obligations of Novartis

- (41) Novartis shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Novartis' or the A Divestment Businesses', and in the event that the B Divestment Business is not sold to [...], the B Divestment Business', and, as applicable, the Alternative Divestment Businesses', books, records, documents, management or other employees of Novartis (or an Affiliated Undertaking), facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Novartis shall provide the Trustee upon request with copies of any document. Novartis 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.
- (42) Novartis shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the A Divestment Businesses and in the event that the B Divestment Business is not sold to [...], the B Divestment Business, and, as applicable, the Alternative Divestment Businesses. This shall include all administrative support functions relating to the Divestment Businesses which are currently carried out at headquarters level. Novartis 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. Novartis 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.
- (43) Novartis 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, Novartis shall cause the documents required for effecting the sale and the Closing to be duly executed.
- (44) Novartis 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 Novartis 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, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
- (45) At the expense of Novartis, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Novartis' 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 Novartis refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Novartis. Only the Trustee shall be entitled to issue instructions to the advisors.

Paragraph (44) shall apply mutatis mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Novartis 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

- (46) 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:
 - (a) the Commission may, after hearing the Trustee, require Novartis to replace the Trustee; or
 - (b) Novartis, with the prior approval of the Commission, may replace the Trustee.
- (47) If the Trustee is removed according to paragraph (46), 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 (31)–(36).
- (48) Beside the removal according to paragraph (46) 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 I. The Review Clause

- (49) The Commission may, where appropriate, in response to a request from Novartis 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.

Where Novartis 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 Novartis be entitled to request an extension within the last month of any period.

.....

[...]
duly authorised for and on behalf of Novartis AG

9 August 2010

SCHEDULE (i)**Bivacyn Divestment Business****Bivacyn Territory: Bulgaria and Slovenia**

1. The Bivacyn Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its Bivacyn product for ophthalmological use, consisting of a combination of bacitracin and neomycin, in the Bivacyn Territory and the remainder of the EEA Territory (currently marketed under the brand name Bivacyn in the Bivacyn Territory; [...]. For the avoidance of doubt, this Divestment Business does not include:
 - any rights to sell Bivacyn for ophthalmological use outside the EEA Territory;
 - any rights related to non-ophthalmological use, for which Novartis shall retain all rights, title and interests both inside and outside the Bivacyn Territory and the EEA Territory; and
 - any rights, title and/or interest in Novartis' manufacturing facility in [...].
2. The Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Bivacyn for ophthalmological use in the Bivacyn Territory and any other marketing authorisations Novartis may hold for Bivacyn in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) [...]
 - (c) the exclusive right to use the Bivacyn brand name for ophthalmological use in the Bivacyn Territory and elsewhere in the EEA Territory, to the extent Novartis currently has this right;
 - (d) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Bivacyn Divestment Business;
 - (e) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Bivacyn Divestment Business ; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Bivacyn Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Bivacyn Divestment Business; in each case to the extent owned by Novartis;
 - (f) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Bivacyn Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Bivacyn Divestment Business;

- (g) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, as applicable, (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Bivacyn Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (g) also relate to a product retained by Novartis; and
 - (h) sale of existing product inventory in the Bivacyn Territory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(h) collectively referred to as "*Assets of the Bivacyn Divestment Business*").
3. At the option of the Purchaser, Novartis shall enter into a transitory non-exclusive manufacturing and/or supply arrangement related to the Bivacyn Divestment Business for the finished and packaged forms of Bivacyn in the Bivacyn Territory existing and marketed by Novartis at Closing on a reasonable cost-plus basis, for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply of finished and packaged forms of Bivacyn by Novartis to the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Bivacyn Divestment Business.
 4. At the option of the Purchaser and to the extent required by law in the EEA Territory, Novartis will enter into a transitional distribution arrangement related to the Bivacyn Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
 5. Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sourcing of raw materials, manufacturing, sale and marketing of the Bivacyn Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
 6. At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Bivacyn Divestment Business for a period of up to three years after Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Bivacyn Divestment Business.
 7. The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously. Novartis shall carry out the technical assistance for the manufacturing transfer in accordance with good industry practice including as regards timing and responsiveness with which this assistance is provided through the different stages of the transfer.
 8. Novartis commits to submit to the Commission, every six months as of Closing, a report on the progress made in relation to the transfer of the production to the facilities designated by the Purchaser. A copy of this report will be sent to the Monitoring Trustee.
 9. At the option of the Purchaser, Novartis (or an Affiliated Undertaking) will either (i) make its reasonable best efforts to assist the Purchaser with entering into an arrangement for the manufacture and/or supply of the active pharmaceutical ingredients bacitracin and neomycin and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients bacitracin and neomycin and/or other raw materials

concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Bivacyn Divestment Business.

10. At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures any other raw material that is used in the manufacture of Bivacyn, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Bivacyn Divestment Business.
11. Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Bivacyn Divestment Business in the EEA Territory for a period of five years after Closing.
12. At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (ii)**Pomada Oculos Epitelizante Divestment Business****Pomada Oculos Epitelizante Territory: Spain**

- (1) The Pomada Oculos Epitelizante Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its Pomada Oculos Epitelizante product consisting in a combination of DL methionine, gentamicin sulfate and vitamin A palmitate in the Pomada Oculos Epitelizante Territory and the remainder of the EEA Territory (currently marketed under the brand name Pomada Oculos Epitelizante in the Pomada Oculos Epitelizante Territory; [...]. For the avoidance of doubt, the Pomada Oculos Epitelizante Divestment Business does not include any rights to sell Pomada Oculos Epitelizante outside the EEA Territory.
- (2) The Pomada Oculos Epitelizante Divestment Business includes:
 - (a) the transfer of the national marketing authorisation for Pomada Oculos Epitelizante in the Pomada Oculos Epitelizante Territory and any other marketing authorisations Novartis may have for Pomada Oculos Epitelizante in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) the exclusive right to use the Pomada Oculos Epitelizante brand name in the Pomada Oculos Epitelizante Territory and elsewhere in the EEA Territory, to the extent Novartis currently has this right;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Pomada Oculos Epitelizante Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Pomada Oculos Epitelizante Divestment Business ; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Pomada Oculos Epitelizante Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Pomada Oculos Epitelizante Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Pomada Oculos Epitelizante Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Pomada Oculos Epitelizante Divestment Business;
 - (f) transfer of (i) all records of customers and suppliers, price lists, catalogues and mailing lists; and (ii) all advertising, marketing, sales, publicity and presentational materials which contribute to and are necessary to ensure the viability, marketability and competitiveness of

the Pomada Oculos Epitelizante Divestment Business or copies thereof, where any items covered by (i) and (ii) of this paragraph (f) also relate to a product retained by Novartis; and

(g) sale of existing product inventory in the Pomada Oculos Epitelizante Territory, on a country by country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(g) collectively referred to as "*Assets of the Pomada Oculos Epitelizante Divestment Business*").

- (3) At the option of the Purchaser and to the extent required by law in the EEA Territory, Novartis will enter into a transitional distribution arrangement related to the Pomada Oculos Epitelizante Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Pomada Oculos Epitelizante Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, sale and marketing of the Pomada Oculos Epitelizante Product Divestment Business for a period of up to three years after Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Pomada Oculos Epitelizante Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to assist the Purchaser with entering into an arrangement for the manufacture and/or supply of the finished and packaged forms of the products concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of the products concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Pomada Oculos Epitelizante Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Pomada Oculos Epitelizante that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to assist the Purchaser with entering into an arrangement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Pomada Oculos Epitelizante Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Pomada

Oculos Eritelizante, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Pomada Oculos Eritelizante Divestment Business.

- (10) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Pomada Oculos Eritelizante Divestment Business in the EEA Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (iii)**Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business**

Spersadex Territory: Bulgaria, Cyprus, Czech Republic, Denmark, Malta, Romania and Slovakia

Dispersadron Territory: Greece

Spersadex M/Kloram Territory: Norway

Spersadex Territory, Dispersadron Territory and Spersadex M/Kloram Territory together referred to as

Spersadex/Dispersadron Territory

- (1) The Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its product for ophthalmological use, consisting in a combination of dexamethasone and chloramphenicol in the Spersadex/Dispersadron Territory and the remainder of the EEA Territory (currently marketed under the brand name Spersadex Comp in the Spersadex Territory, under the brand name Dispersadron C in the Dispersadron Territory and under the brand name Spersadex M/Kloram in the Spersadex M/Kloram Territory; [...]. For the avoidance of doubt, the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business does not include any rights to sell Spersadex Comp / Dispersadron C / Spersadex M/Kloram for ophthalmological use outside the EEA Territory.
- (2) The Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Spersadex Comp in the Spersadex Territory, Dispersadron C in the Dispersadron Territory and Spersadex M/Kloram in the Spersadex M/Kloram Territory, and any other marketing authorisations Novartis may hold for Spersadex, Dispersadon C and Spersadex in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the Spersadex Comp trademark in Bulgaria, Czech Republic, Denmark, Norway and Slovakia, and the Dispersadron C trademark in Greece, and elsewhere in the EEA Territory, to the extent Novartis currently has this right;
 - (c) the exclusive right to use the Spersadex Comp brand name for ophthalmological use in Cyprus, Romania and Malta, and elsewhere in the EEA Territory, to the extent Novartis currently has this right;
 - (d) the exclusive right to use the Spersadex M/Kloram brand name for ophthalmological use in the Spersadex M/Kloram Territory, and elsewhere in the EEA Territory, to the extent Novartis currently has this right;
 - (e) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and

competitiveness of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business;

- (f) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business; in each case to the extent owned by Novartis;
 - (g) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business;
 - (h) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business; or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (h) also relate to a product retained by Novartis and
 - (i) sale of existing product inventory in the Spersadex/Dispersadron Territory, on a country by country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(i) collectively referred to as "***Assets of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business***").
- (3) At the option of the Purchaser and to the extent required by law in the EEA Territory. Novartis will enter into a transitional distribution arrangement related to the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, sale and marketing of the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business for a period of up to three years after Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business.

- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the finished and packaged forms of the products concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of the products concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Spersadex Comp, Dispersadron C or Spersadex M/Kloram that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Spersadex Comp, Dispersadron C or Spersadex M/Kloram, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business.
- (10) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the products included in the Spersadex Comp / Dispersadron C / Spersadex M/Kloram Divestment Business in the EEA Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (iv)**Zaditen Divestment Business**

Zaditen Territory: Austria, Cyprus, Czech Republic, Germany, Denmark, Finland, France, Greece, Hungary, Ireland, Iceland, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovenia, Slovakia, Spain, Sweden and the UK

- (1) The Zaditen Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in Zaditen Ophtha (currently marketed under the brand name Zaditen and described in this Schedule as "Zaditen") for ophthalmological use in the EEA Territory (which is defined for the purpose of this Schedule as the EEA Territory minus Italy). For the avoidance of doubt, the Zaditen Divestment Business does not include any rights to sell Zaditen for ophthalmological use outside the EEA Territory nor any rights in relation to non-ophthalmological uses both inside and outside the Zaditen Territory and the EEA Territory.
- (2) The Zaditen Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Zaditen in the Zaditen Territory held by Novartis, and any other marketing authorisations (including pending national marketing authorisations for which application has been made as at the Effective Date) held by Novartis in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licences to use the Zaditen trademark (and relevant patents) for the sale and marketing of ophthalmic products in the EEA Territory;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contributes to and is necessary to ensure the viability, marketability and competitiveness of the Zaditen Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Zaditen Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Zaditen Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Zaditen Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Zaditen Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Zaditen Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, to the extent such trademark is assigned pursuant to paragraph (b) above; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the

Zaditen Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing product inventory in the Zaditen Territory, on a country-by-country basis, at the time of the marketing authorisation transfer;
 - (h) the transfer of the rights, title, and interest in Novartis' new [...] product [...] (the "**SIG Pipeline Product**") including any research and development, clinical data and studies prepared for the purposes of the registration dossier prior to Closing. For the avoidance of doubt, the Purchaser shall not have any right to develop or commercialise the SIG Pipeline Product outside of the EEA Territory (items referred to under (a)-(h) collectively referred to as "**Assets of the Zaditen Divestment Business**").
- (3) At the option of the Purchaser and to the extent required by law in the EEA Territory Novartis will enter into a transitional distribution arrangement related to the Zaditen Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
 - (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Zaditen Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
 - (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, sale and marketing of the Zaditen Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Zaditen Divestment Business.
 - (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
 - (7) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Zaditen manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Zaditen by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Zaditen Divestment Business.
 - (8) At the option of the Purchaser, for the Ketotifen API and to the extent that, as at the Effective Date, Novartis manufactures any other raw material that is used in the manufacture of Zaditen, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Zaditen Divestment Business.

- (9) At the option of the Purchaser, for those other raw materials used in the manufacture of Zaditen that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Zaditen Divestment Business.
- (10) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Zaditen Divestment Business in the EEA Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (v)**Spersallerg Divestment Business**

Spersallerg Territory: Bulgaria, Cyprus, Czech Republic, Greece, Hungary, Malta, Norway, Poland, Romania, Slovenia and Slovakia

- (1) The Spersallerg Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in Spersallerg (currently marketed under the brand name Spersallerg) for ophthalmological use in the Spersallerg Territory and the remainder of the EEA Territory. For the avoidance of doubt, the Spersallerg Divestment Business does not include any rights to sell Spersallerg outside the EEA Territory, nor any rights in relation to non-ophthalmological uses both inside and outside the Spersallerg Territory and the EEA Territory.
- (2) The Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Spersallerg in the Spersallerg Territory held by Novartis and any other marketing authorisations (including pending national marketing authorisations for which application has been made as at the Effective Date) Novartis may hold for Spersallerg in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) assignment of the Spersallerg trademark in the EEA Territory;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Spersallerg Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Spersallerg Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Spersallerg Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Spersallerg Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Spersallerg Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Spersallerg Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, to the extent such trademark is assigned pursuant to paragraph (b) above; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Spersallerg Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing product inventory in the Spersallerg Territory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(g) collectively referred to as "*Assets of the Spersallerg Divestment Business*").
- (3) At the option of the Purchaser and to the extent required by law in the EEA Territory Novartis will enter into a transitional distribution arrangement related to the Spersallerg Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Spersallerg Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, sale and marketing of the Spersallerg Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersallerg Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Spersallerg manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Spersallerg by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersallerg Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Spersallerg that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersallerg Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Spersallerg, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer

designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Spersallerg Divestment Business.

- (10) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Spersallerg Divestment Business in the EEA Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (vi)**CromoHexal Divestment Business****CromoHexal Territory: Czech Republic**

- (1) The CromoHexal Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in CromoHexal (currently marketed under the brand name CromoHexal) for ophthalmological use in the CromoHexal Territory. For the avoidance of doubt, the CromoHexal Divestment Business does not include (i) any rights to sell CromoHexal outside the CromoHexal Territory (ii) any rights in relation to non-ophthalmic uses both inside and outside of the CromoHexal Territory or (iii) any rights in relation to the Hexal (or Sandoz) trademarks except as described in 2(b) below.
- (2) The CromoHexal Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for CromoHexal in the CromoHexal Territory held by Novartis, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the CromoHexal trademark for the sale and marketing of ophthalmic products in the CromoHexal Territory;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the CromoHexal Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the CromoHexal Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the CromoHexal Divestment Business; and a non-exclusive licence for the CromoHexal Territory of any other know-how that is not exclusively used in relation to the CromoHexal Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the CromoHexal Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the CromoHexal Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the CromoHexal Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, to the extent such trademark is assigned pursuant to paragraph (b) above; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the CromoHexal Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing product inventory in the CromoHexal Territory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(g) collectively referred to as "*Assets of the CromoHexal Divestment Business*").
- (3) At the option of the Purchaser and to the extent required by law in the CromoHexal Territory Novartis will enter into a transitional distribution arrangement related to the CromoHexal Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the CromoHexal Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, sale and marketing of the CromoHexal Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the CromoHexal Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of CromoHexal manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of CromoHexal by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the CromoHexal Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of CromoHexal that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the CromoHexal Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of CromoHexal, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer

designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the CromoHexal Divestment Business.

- (10) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) of the product included in the CromoHexal Divestment Business in any territory retained by Novartis for a period of three years after Closing should any such product improvements be undertaken by Novartis (or an Affiliated Undertaking), it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the CromoHexal Divestment Business in the CromoHexal Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (vii)**Antistin Privin Divestment Business****Antistin Privin Territory:** Denmark, Iceland, Italy and Sweden

- (1) The Antistin Privin Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in Antistin Privin (currently marketed under the name Antistin Privin) for ophthalmological uses in the EEA Territory. For the avoidance of doubt, the Antistin Privin Divestment Business does not include any rights to sell Antistin Privin outside the EEA Territory nor any rights in relation to non-ophthalmological uses both inside and outside the Antistin Privin Territory and the EEA Territory.
- (2) The Antistin Privin Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Antistin Privin in the Antistin Privin Territory held by Novartis, and any other marketing authorisations (including pending national marketing authorisations for which application has been made as at the Effective Date) Novartis may hold for Antistin Privin in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use each of the Antistin and Privin trademarks for the sale and marketing of ophthalmic products in the EEA Territory (and in any other EEA country outside of the Antistin Privin Territory, to the extent only that Novartis currently holds such rights in such EEA country and is able to license such rights to the relevant trademarks to the Purchaser in relation to such EEA country);
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Antistin Privin Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Antistin Privin Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Antistin Privin Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Antistin Privin Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Antistin Privin Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Antistin Privin Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, to the extent such trademark is assigned pursuant to paragraph (b) above; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the

Antistin Privin Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing product inventory in the Antistin Privin Territory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(g) collectively referred to as "*Assets of the Antistin Privin Divestment Business*").
- (3) At the option of the Purchaser and to the extent required by law in the EEA Territory Novartis will enter into a transitional distribution arrangement related to the Antistin Privin Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Antistin Privin Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, sale and marketing of the Antistin Privin Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Antistin Privin Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Antistin Privin manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Antistin Privin by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Antistin Privin Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Antistin Privin that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Antistin Privin Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Antistin Privin, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the

Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Antistin Privin Divestment Business.

- (10) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Antistin Privin Divestment Business in the EEA Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (viii)**Otrivine-Antistin Divestment Business****Otrivine-Antistin Territory: the UK and Ireland**

- (1) The Otrivine-Antistin Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in Otrivine-Antistin (currently marketed under the brand name Otrivine-Antistin) for ophthalmological use in the Otrivine-Antistin Territory. For the avoidance of doubt, the Otrivine-Antistin Divestment Business does not include any rights to sell Otrivine-Antistin outside the Otrivine-Antistin Territory, nor any rights in relation to non-ophthalmological uses both inside and outside the Otrivine-Antistin Territory.
- (2) The Otrivine-Antistin Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Otrivine-Antistin in the Otrivine-Antistin Territory held by Novartis (or an Affiliated Undertaking), including the transfer of all relevant dossiers relating to the marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the Otrivine-Antistin trademark for for the sale and marketing of ophthalmic products in the EEA Territory;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Otrivine-Antistin Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the Otrivine-Antistin Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Otrivine-Antistin Divestment Business; and a non-exclusive licence for the Otrivine-Antistin Territory of any other know-how that is not exclusively used in relation to the Otrivine-Antistin Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Otrivine-Antistin Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Otrivine-Antistin Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Otrivine-Antistin Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark, to the extent such trademark is assigned pursuant to paragraph (b) above; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Otrivine-Antistin Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing product inventory in the Otrivine-Antistin Territory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(g) collectively referred to as "*Assets of the Otrivine-Antistin Divestment Business*").
- (3) At the option of the Purchaser and to the extent required by law in the Otrivine-Antistin Territory Novartis will enter into a transitional distribution arrangement related to the Otrivine-Antistin Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Otrivine-Antistin Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, sale and marketing of the Otrivine-Antistin Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Otrivine-Antistin Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Otrivine-Antistin manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Otrivine-Antistin by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Otrivine-Antistin Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Otrivine-Antistin that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Otrivine-Antistin Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Otrivine-Antistin, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer

designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Otrivine-Antistin Divestment Business.

- (10) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the product included in the Otrivine-Antistin Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the Otrivine-Antistine Divestment Business in the Otrivine-Antistine Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (ix)**SoloCare Divestment Businesses**

SoloCare Territory: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and UK.

- (1) This Solocare Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in SoloCare Soft and SoloCare Aqua (currently marketed under the brand names SoloCare Soft and SoloCare Aqua) in the SoloCare Territory and the remainder of the EEA Territory. For the avoidance of doubt, the Solocare Divestment Business does not include (i) any rights to sell SoloCare Soft or SoloCare Aqua outside the EEA Territory (ii) any rights in relation to uses outside of contact lens preparations or (iii) any rights, title and/or interest in Novartis' manufacturing facility [...].
- (2) The Solocare Divestment Business includes:
 - (a) irrevocable, exclusive, assignable, sub-licensable, and royalty free licences to use the SoloCare Soft and SoloCare Aqua trademarks as well as, in relation to Greece only, the Novasoft trademark (and relevant patents) for the sale and marketing of contact lens preparations in the SoloCare Territory and elsewhere in the EEA Territory, to the extent Novartis currently has this right;
 - (b) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the SoloCare Divestment Business;
 - (c) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright, and including in relation to the MicroBlock lens case) that is exclusively used in relation to the SoloCare Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the SoloCare Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the SoloCare Divestment Business; in each case to the extent owned by Novartis;
 - (d) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the SoloCare Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the SoloCare Divestment Business;
 - (e) an irrevocable, assignable, sub-licensable and royalty-free licence to use the MicroBlock trade mark for use with lens cases, in the SoloCare Territory and elsewhere in the EEA Territory, to the extent Novartis currently has this right; and
 - (f) transfer of any (i) books, records and files relating to the prosecution and maintenance of the trademarks, to the extent such trademark is assigned pursuant to paragraph (b) or (e) above;

- (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis;
- (g) sale of existing product inventory in the SoloCare Territory, on a country-by-country basis, at the time the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives (items referred to under (a)-(g) collectively referred to as "*Assets of the SoloCare Divestment Business*").
- (3) At the option of the Purchaser, Novartis shall enter into a transitory non-exclusive manufacturing and/or supply arrangement related to the Solocare Divestment Business for the finished and packaged forms of Solocare in the EEA Territory existing and marketed by Novartis at Closing on a reasonable cost-plus basis, for a period of up to three years from Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis to the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the SoloCare Divestment Business.
- (4) At the option of the Purchaser and to the extent required by law in the EEA Territory Novartis will enter into a transitional distribution arrangement related to the Solocare Divestment Business lasting until the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives on a reasonable cost-plus basis.
- (5) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the manufacturing, sale and marketing of the Solocare Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including assisting the Purchaser in obtaining the right to display a CE mark.
- (6) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the Solocare Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the SoloCare Divestment Business.
- (7) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously. Novartis shall carry out the technical assistance for the manufacturing transfer in accordance with good industry practice including as regards timing and responsiveness with which this assistance is provided through the different stages of the transfer.
- (8) Novartis commits to submit to the Commission, every six months as of Closing, a report on the progress made in relation to the transfer of the production to the facilities designated by the Purchaser. A copy of this report will be sent to the Monitoring Trustee.
- (9) At the option of the Purchaser, for those raw materials used in the manufacture of SoloCare Soft and/or SoloCare Aqua that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under

circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the SoloCare Divestment Business.

- (10) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of SoloCare Soft and/or SoloCare Aqua, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the SoloCare Divestment Business.
- (11) at the option of the Purchaser, Novartis will either (i) use its reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the MicroBlock lens-case with Novartis' current third party manufacturer, Rexam; or (ii) enter into a back-to-back supply arrangement with the Purchaser in order to ensure the continuous supply of the MicroBlock lens case concerned by Novartis to the Purchaser, on a reasonable cost-plus basis, for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the SoloCare Divestment Business.
- (12) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the products included in the SoloCare Divestment Business in the EEA Territory for a period of five years after Closing.
- (13) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (x)**Definitions (apply across all schedules relating to ocular lubricant products)**

Group 1 Countries: Austria, Bulgaria, Cyprus, Greece, Hungary, Latvia, Malta, Netherlands, Norway, Romania, Slovenia, Sweden.

Divestment Territory: Those Group 1 Countries for which the Commission reaches a final conclusion, on or prior to 9 August 2010, that there are serious doubts about whether the Transaction is compatible with the common market.

SCHEDULE (x)(a)**GenTeal HA Divestment Business**

GenTeal HA Group 1 Countries: Austria, Cyprus, Slovenia

GenTeal HA Divestment Territory: those GenTeal HA Group 1 Countries that are in the Divestment Territory.

- (1) The GenTeal HA Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its liquid ocular lubricant product containing sodium hyaluronate and currently marketed as "GenTeal HA" in the GenTeal HA Divestment Territory. For the avoidance of doubt, the GenTeal HA Divestment Business does not include any rights to sell GenTeal HA outside the GenTeal HA Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the GenTeal HA Divestment Territory.
- (2) The GenTeal HA Divestment Business includes:
 - (a) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the trademarks (i) GenTeal and (ii) GenAqua (and any relevant patents) for the sale and marketing of ocular lubricant products in the GenTeal HA Divestment Territory;
 - (b) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the GenTeal HA Divestment Business;
 - (c) exclusive, perpetual and irrevocable licence for the GenTeal HA Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the GenTeal HA Divestment Business; and a non-exclusive licence for the GenTeal HA Divestment Territory of any other know-how that is not exclusively used in relation to the GenTeal HA Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the GenTeal HA Divestment Business; in each case to the extent owned by Novartis;

- (d) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the GenTeal HA Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the GenTeal HA Divestment Business;
- (e) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the GenTeal HA Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (e) also relate to a product retained by Novartis; and
- (f) sale of existing GenTeal HA product inventory in the GenTeal HA Divestment Territory, on a country-by-country basis, at the time the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives.

(items referred to under (a)-(f) collectively referred to as "*Assets of the GenTeal HA Divestment Business*").

- (3) At the option of the Purchaser and to the extent required by law in the GenTeal HA Divestment Territory Novartis will enter into a transitional distribution arrangement related to the GenTeal HA Divestment Business lasting until the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the GenTeal HA Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including assisting the Purchaser in obtaining the right to display a CE mark.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the GenTeal HA Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal HA Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of GenTeal HA manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of GenTeal HA by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal HA Divestment Business.
- (8) At the option of the Purchaser, for those raw materials used in the manufacture of GenTeal HA that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the

Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal HA Divestment Business.

- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of GenTeal HA, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal HA Divestment Business.
- (10) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the product included in the GenTeal HA Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the GenTeal HA Divestment Business in the GenTeal HA Divestment Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (x)(b)**GenTeal Drops Divestment Business**

GenTeal Drops Group 1 Countries: Austria, Bulgaria, Cyprus, Greece, Hungary, Slovenia.

GenTeal Drops Divestment Territory: those GenTeal Drops Group 1 Countries that are in the Divestment Territory.

- (12) The GenTeal Drops Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its liquid ocular lubricant product containing hypromellose (hydroxypropyl methylcellulose) and currently marketed as "GenTeal" (without any postscript) or "GenTeal Drops" in the GenTeal Drops Divestment Territory. For the avoidance of doubt, the GenTeal Drops Divestment Business does not include any rights to sell GenTeal outside the GenTeal Drops Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the GenTeal Drops Divestment Territory.
- (13) The GenTeal Drops Divestment Business includes:
- (a) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the trademarks (i) GenTeal and (ii) GenAqua (and any relevant patents) for the sale and marketing of ocular lubricant products in the GenTeal Drops Divestment Territory;
 - (b) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the GenTeal Drops Divestment Business;
 - (c) exclusive, perpetual and irrevocable licence for the GenTeal Drops Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the GenTeal Drops Divestment Business; and a non-exclusive licence for the GenTeal Drops Divestment Territory of any other know-how that is not exclusively used in relation to the GenTeal Drops Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the GenTeal Drops Divestment Business; in each case to the extent owned by Novartis;
 - (d) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the GenTeal Drops Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the GenTeal Drops Divestment Business;
 - (e) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the GenTeal Drops Divestment Business, or copies thereof, where any

items covered by (i), (ii) and (iii) of this paragraph (e) also relate to a product retained by Novartis; and

- (f) sale of existing GenTeal Drops product inventory in the GenTeal Drops Divestment Territory, on a country-by-country basis, at the time the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives.

(items referred to under (a)-(f) collectively referred to as "*Assets of the GenTeal Drops Divestment Business*").

- (14) At the option of the Purchaser and to the extent required by law in the GenTeal Drops Divestment Territory Novartis will enter into a transitional distribution arrangement related to the GenTeal Drops Divestment Business lasting until the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives on a reasonable cost-plus basis.
- (15) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the GenTeal Drops Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including assisting the Purchaser in obtaining the right to display a CE mark.
- (16) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the GenTeal Drops Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Drops Divestment Business.
- (17) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (18) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of GenTeal Drops manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of GenTeal Drops by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Drops Divestment Business.
- (19) At the option of the Purchaser, for those raw materials used in the manufacture of GenTeal Drops that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Drops Divestment Business.
- (20) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of GenTeal Drops, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement

for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Drops Divestment Business.

- (21) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the products included in the GenTeal Drops Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the GenTeal Drops Divestment Business in the GenTeal Drops Divestment Territory for a period of five years after Closing.
- (22) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (x)(c)**GenTeal Gel Divestment Business**

GenTeal Gel Group 1 Countries: Austria, Greece, Hungary, Romania, Slovenia.

GenTeal Gel Divestment Territory: those GenTeal Gel Group 1 Countries that are in the Divestment Territory.

- (23) The GenTeal Gel Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its gel ocular lubricant product containing hypromellose (hydroxypropyl methylcellulose) and carbomer and currently marketed as "GenTeal Gel" in the GenTeal Gel Divestment Territory. For the avoidance of doubt, the GenTeal Gel Divestment Business does not include any rights to sell GenTeal outside the GenTeal Gel Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the GenTeal Gel Divestment Territory.
- (24) The GenTeal Gel Divestment Business includes:
- (a) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the trademarks (i) GenTeal and (ii) GenAqua (and any relevant patents) for the sale and marketing of ocular lubricant products in the GenTeal Gel Divestment Territory;
 - (b) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the GenTeal Gel Divestment Business;
 - (c) exclusive, perpetual and irrevocable licence for the GenTeal Gel Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the GenTeal Gel Divestment Business; and a non-exclusive licence for the GenTeal Gel Divestment Territory of any other know-how that is not exclusively used in relation to the GenTeal Gel Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the GenTeal Gel Divestment Business; in each case to the extent owned by Novartis;
 - (d) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the GenTeal Gel Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the GenTeal Gel Divestment Business;
 - (e) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the GenTeal Gel Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (e) also relate to a product retained by Novartis; and

- (f) sale of existing GenTeal Gel product inventory in the GenTeal Gel Divestment Territory, on a country-by-country basis, at the time the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives.

(items referred to under (a)-(f) collectively referred to as "*Assets of the GenTeal Gel Divestment Business*").

- (25) At the option of the Purchaser and to the extent required by law in the GenTeal Gel Divestment Territory Novartis will enter into a transitional distribution arrangement related to the GenTeal Gel Divestment Business lasting until the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives on a reasonable cost-plus basis.
- (26) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the GenTeal Gel Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including assisting the Purchaser in obtaining the right to display a CE mark.
- (27) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the GenTeal Gel Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Gel Divestment Business.
- (28) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (29) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of GenTeal Gel manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of GenTeal Gel by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Gel Divestment Business.
- (30) At the option of the Purchaser, for those raw materials used in the manufacture of GenTeal Gel that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Gel Divestment Business.
- (31) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of GenTeal Gel, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply

by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the GenTeal Gel Divestment Business.

- (32) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the product included in the GenTeal Gel Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the GenTeal Gel Divestment Business in the GenTeal Gel Divestment Territory for a period of five years after Closing.
- (33) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (x)(d)**Aquify Divestment Business**

Aquify Group 1 Countries: Austria, Cyprus, Greece, Hungary, Latvia, Malta, Netherlands, Norway, Slovenia, Sweden.

Aquify Divestment Territory: those Aquify Group 1 Countries that are in the Divestment Territory.

- (34) The Aquify Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its liquid ocular lubricant and contact lens comfort drop product containing hyaluronic acid and currently marketed as "Aquify" in the Aquify Divestment Territory. For the avoidance of doubt, the Aquify Divestment Business does not include any rights to sell Aquify outside the Aquify Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the Aquify Divestment Territory. Furthermore, for the avoidance of doubt, the Aquify Divestment Business does not include any rights, title and/or interest in Novartis' manufacturing facility in [...].
- (35) The Aquify Divestment Business includes:
- (a) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the trademarks (i) Aquify and (ii) Aquifeye (and any relevant patents) for the sale and marketing of ocular lubricant products in the Aquify Divestment Territory;
 - (b) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Aquify Divestment Business;
 - (c) exclusive, perpetual and irrevocable licence for the Aquify Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Aquify Divestment Business; and a non-exclusive licence for the Aquify Divestment Territory of any other know-how that is not exclusively used in relation to the Aquify Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Aquify Divestment Business; in each case to the extent owned by Novartis;
 - (d) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Aquify Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Aquify Divestment Business;
 - (e) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Aquify Divestment Business, or copies thereof, where any items

covered by (i), (ii) and (iii) of this paragraph (e) also relate to a product retained by Novartis; and

- (f) sale of existing Aquify product inventory in the Aquify Divestment Territory, on a country-by-country basis, at the time the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives.

(items referred to under (a)-(f) collectively referred to as "*Assets of the Aquify Divestment Business*").

- (36) At the option of the Purchaser, Novartis shall enter into a transitory non-exclusive manufacturing and/or supply arrangement related to the Aquify Divestment Business for the finished and packaged forms of Aquify in the Aquify Divestment Territory existing and marketed by Novartis at Closing on a reasonable cost-plus basis, for a period of up to three years from Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis to the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquify Divestment Business.
- (37) At the option of the Purchaser and to the extent required by law in the Aquify Divestment Territory Novartis will enter into a transitional distribution arrangement related to the Aquify Divestment Business lasting until the Purchaser has signed any requisite declaration of conformity as required by the Medical Devices Directives on a reasonable cost-plus basis.
- (38) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Aquify Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including assisting the Purchaser in obtaining the right to display a CE mark.
- (39) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the Aquify Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquify Divestment Business.
- (40) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously. Novartis shall carry out the technical assistance for the manufacturing transfer in accordance with good industry practice including as regards timing and responsiveness with which this assistance is provided through the different stages of the transfer.
- (41) Novartis commits to submit to the Commission, every six months as of Closing, a report on the progress made in relation to the transfer of the production to the facilities designated by the Purchaser. A copy of this report will be sent to the Monitoring Trustee.
- (42) At the option of the Purchaser, for those raw materials used in the manufacture of Aquify that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances

outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquify Divestment Business.

- (43) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of Aquify, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquify Divestment Business.
- (44) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the product included in the Aquify Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the Aquify Divestment Business in the Aquify Divestment Territory for a period of five years after Closing.
- (45) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (x)(e)

Oculotect Fluid Divestment Business

Oculotect Fluid Group 1 Countries: Austria, Cyprus, Greece, Hungary, Netherlands, Norway, Romania, Sweden.

Oculotect Fluid Divestment Territory: those Oculotect Fluid Group 1 Countries that are in the Divestment Territory.

- (46) The Oculotect Fluid Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its liquid ocular lubricant product containing Povidone K25 and currently marketed as "Oculotect Fluid" "Oculotect Sine" or "Oculac" in the Oculotect Fluid Divestment Territory. For the avoidance of doubt, the Oculotect Fluid Divestment Business does not include any rights to sell Oculotect Fluid or Oculac outside the Oculotect Fluid Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the Oculotect Fluid Divestment Territory.
- (47) The Oculotect Fluid Divestment Business includes:
- (a) the transfer of the marketing authorisations for Oculotect Fluid and Oculac in the Oculotect Fluid Divestment Territory held by Novartis (or an Affiliated Undertaking) (including pending national marketing authorisations for which application has been made as at the Effective Date), including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to the current holders of the marketing authorisations;
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the trademarks (i) Oculotect (and any relevant patents) for the sale and marketing of ocular lubricant products in the Oculotect Fluid Divestment Territory; (ii) Oculotect Sine and Oculotect Fluid for the sale and marketing of ocular lubricant products in every Oculotect Fluid Divestment Territory that is Austria, Hungary, Netherlands, Romania or Slovenia; and (iii) Oculac for the sale and marketing of ocular lubricant products in every Oculotect Fluid Divestment Territory that is Austria, Greece, Hungary, Norway, Romania or Sweden;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Oculotect Fluid Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the Oculotect Fluid Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Oculotect Fluid Divestment Business; and a non-exclusive licence for the Oculotect Fluid Divestment Territory of any other know-how that is not exclusively used in relation to the Oculotect Fluid Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Oculotect Fluid Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability

and competitiveness of the Oculotect Fluid Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Oculotect Fluid Divestment Business;

- (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Oculotect Fluid Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and
- (g) sale of existing Oculotect Fluid product inventory in the Oculotect Fluid Divestment Territory, on a country-by-country basis, at the time of the marketing authorisation transfer.

(items referred to under (a)-(g) collectively referred to as "*Assets of the Oculotect Fluid Divestment Business*").

- (48) At the option of the Purchaser and to the extent required by law in the Oculotect Fluid Divestment Territory Novartis will enter into a transitional distribution arrangement related to the Oculotect Fluid Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (49) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Oculotect Fluid Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (50) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the Oculotect Fluid Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Fluid Divestment Business.
- (51) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (52) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Oculotect Fluid manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Oculotect Fluid by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Fluid Divestment Business.
- (53) At the option of the Purchaser, for those raw materials used in the manufacture of Oculotect Fluid that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser,

on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Fluid Divestment Business.

- (54) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of Oculotect Fluid, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Fluid Divestment Business.
- (55) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the product included in the Oculotect Fluid Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the Oculotect Fluid Divestment Business in the Oculotect Fluid Divestment Territory for a period of five years after Closing.
- (56) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.
- (57) To the extent Novartis requires the consent of [...] before any of the commitments (46)–(56) may be undertaken, Novartis commits to use its reasonable best efforts to obtain the consent in writing of [...] by the end of the First Divestiture Period.

SCHEDULE (x)(f)

Oculotect Gel Divestment Business

Oculotect Gel Group 1 Countries: Bulgaria, Hungary, Romania and Slovenia.

Oculotect Gel Divestment Territory: those Oculotect Gel Group 1 Countries that are in the Divestment Territory.

- (58) The Oculotect Gel Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its gel ocular lubricant product containing carbomer 980 and retinol palmitate and currently marketed as "Oculotect Gel" in the Oculotect Gel Divestment Territory. For the avoidance of doubt, the Oculotect Gel Divestment Business does not include any rights to sell Oculotect Gel outside the Oculotect Gel Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the Oculotect Gel Divestment Territory.
- (59) The Oculotect Gel Divestment Business includes:
- (a) the transfer of the marketing authorisations for Oculotect Gel in the Oculotect Gel Divestment Territory held by Novartis (or an Affiliated Undertaking) (including pending national marketing authorisations for which application has been made as at the Effective Date), including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to the current holders of the marketing authorisations;
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the trademarks (i) Oculotect (and any relevant patents) for the sale and marketing of ocular lubricant products in the Oculotect Gel Divestment Territory;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Oculotect Gel Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the Oculotect Gel Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Oculotect Gel Divestment Business; and a non-exclusive licence for the Oculotect Gel Divestment Territory of any other know-how that is not exclusively used in relation to the Oculotect Gel Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Oculotect Gel Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Oculotect Gel Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Oculotect Gel Divestment Business;

- (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Oculotect Gel Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and
- (g) sale of existing Oculotect Gel product inventory in the Oculotect Gel Divestment Territory, on a country-by-country basis, at the time of the marketing authorisation transfer.

(items referred to under (a)-(g) collectively referred to as "*Assets of the Oculotect Gel Divestment Business*").

- (60) At the option of the Purchaser and to the extent required by law in the Oculotect Gel Divestment Territory Novartis will enter into a transitional distribution arrangement related to the Oculotect Gel Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (61) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Oculotect Gel Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (62) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the Oculotect Gel Divestment Business for a period of up to [...] from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Gel Divestment Business.
- (63) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (64) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Oculotect Gel manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Oculotect Gel by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Gel Divestment Business.
- (65) At the option of the Purchaser, for those raw materials used in the manufacture of Oculotect Gel that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Gel Divestment Business.

- (66) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of Oculotect Gel, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Oculotect Gel Divestment Business.
- (67) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the product included in the Oculotect Gel Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the Oculotect Gel Divestment Business in the Oculotect Gel Divestment Territory for a period of five years after Closing.
- (68) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.
- (69) To the extent Novartis requires the consent of [...] before any of the commitments (58)–(68) may be undertaken, Novartis commits to use its reasonable best efforts to obtain the consent in writing of [...] by the end of the First Divestiture Period.

SCHEDULE (x)(g)**Viscotears Divestment Business**

Viscotears Group 1 Countries: Greece, Norway, Sweden.

Viscotears Divestment Territory: those Viscotears Group 1 Countries that are in the Divestment Territory.

- (70) The Viscotears Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its gel ocular lubricant product containing carbomer (poly-acrylic acid) and currently marketed as "Viscotears", "Viscoter", and "Viskoter" in the Viscotears Divestment Territory. For the avoidance of doubt, the Viscotears Divestment Business does not include any rights to sell Viscotears outside the Viscotears Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the Viscotears Divestment Territory.
- (71) The Viscotears Divestment Business includes:
- (a) the transfer of the marketing authorisations for Viscotears in the Viscotears Divestment Territory held by Novartis (or an Affiliated Undertaking) (including pending national marketing authorisations for which application has been made as at the Effective Date), including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to the current holders of the marketing authorisations;
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the trademarks (i) Viscotears (and any relevant patents) for the sale and marketing of ocular lubricant products in the Viscotears Divestment Territory, (ii) Viskoter for the sale and marketing of ocular lubricant products in Greece, if it is in the Viscotears Divestment Territory; (iii) Viscoter for the same and marketing of ophthalmic products in Greece and Austria, if these are in the Viscotears Divestment Territory;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Viscotears Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the Viscotears Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Viscotears Divestment Business; and a non-exclusive licence for the Viscotears Divestment Territory of any other know-how that is not exclusively used in relation to the Viscotears Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Viscotears Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Viscotears Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Viscotears Divestment Business;

- (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Viscotears Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and
- (g) sale of existing Viscotears product inventory in the Viscotears Divestment Territory, on a country-by-country basis, at the time of the marketing authorisation transfer.

(items referred to under (a)-(g) collectively referred to as "*Assets of the Viscotears Divestment Business*").

- (72) At the option of the Purchaser and to the extent required by law in the Viscotears Divestment Territory Novartis will enter into a transitional distribution arrangement related to the Viscotears Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (73) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Viscotears Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (74) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Viscotears Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Viscotears Divestment Business.
- (75) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (76) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.
- (77) To the extent Novartis requires the consent of [...]before any of the commitments (70)–(76) may be undertaken, Novartis commits to use its reasonable best efforts to obtain the consent in writing of [...]by the end of the First Divestiture Period.

SCHEDULE (x)(h)**Aquatears Divestment Business**

Aquatears Group 1 Country: Austria.

Aquatears Divestment Territory: the Aquatears Group 1 Country if it is a Divestment Territory.

- (78) The Aquatears Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its gel ocular lubricant product containing carbomer (poly-acrylic acid) and currently marketed as Aquatears in the Aquatears Divestment Territory. For the avoidance of doubt, the Aquatears Divestment Business does not include any rights to sell Aquatears outside the Aquatears Divestment Territory, and does not include any rights related to use other than for ocular lubricants for which Novartis shall retain all rights, title and interests both inside and outside the Aquatears Divestment Territory.
- (79) The Aquatears Divestment Business includes:
- (a) the transfer of the marketing authorisations for Aquatears in the Aquatears Divestment Territory held by Novartis (or an Affiliated Undertaking) (including pending national marketing authorisations for which application has been made as at the Effective Date), including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to the current holders of the marketing authorisations;
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use any relevant patents for the sale and marketing of ocular lubricant products in the Aquatears Divestment Territory;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation in the Aquatears Divestment Territory which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Aquatears Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the Aquatears Divestment Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Aquatears Divestment Business; and a non-exclusive licence for the Aquatears Divestment Territory of any other know-how that is not exclusively used in relation to the Aquatears Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Aquatears Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Aquatears Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Aquatears Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing

lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Aquatears Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing Aquatears product inventory in the Aquatears Divestment Territory, on a country-by-country basis, at the time of the marketing authorisation transfer.

(items referred to under (a)-(g) collectively referred to as "*Assets of the Aquatears Divestment Business*").

- (80) At the option of the Purchaser and to the extent required by law in the Aquatears Divestment Territory Novartis will enter into a transitional distribution arrangement related to the Aquatears Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (81) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Aquatears Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (82) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Aquatears Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquatears Divestment Business.
- (83) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (84) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Aquatears manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Aquatears by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquatears Divestment Business.
- (85) At the option of the Purchaser, for those raw materials used in the manufacture of Aquatears that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquatears Divestment Business.
- (86) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures a raw material that is used in the manufacture of Aquatears, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw

material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Aquatears Divestment Business.

- (87) At the option of the Purchaser, Novartis agrees to provide free access (i.e. free opt-in) to future product development improvements (i.e. galenical and packaging developments) undertaken by Novartis (or an Affiliated Undertaking) in relation to the product included in the Aquatears Divestment Business and intended for release in any part of the EEA Territory retained by Novartis for a period of three years after Closing, it being understood that Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the product included in the Aquatears Divestment Business in the Aquatears Divestment Territory for a period of five years after Closing.
- (88) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.
- (89) To the extent Novartis requires the consent of [...]before any of the commitments (78)–(88) may be undertaken, Novartis commits to use its reasonable best efforts to obtain the consent in writing of [...]by the end of the First Divestiture Period.

SCHEDULE (xi)**Novartis Diclofenac-Based Product Divestment Business**

Novartis Diclofenac-Based Product Territory: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom

- (1) The Novartis Diclofenac-Based Product Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its Diclofenac-based product for ophthalmological use in the Novartis Diclofenac-Based Product Territory (currently marketed under the brand name (i) Voltaren Ophtha (or related spellings, including but not limited to Voltaren Ophta, Voltaren Optha and Voltaren Ofta) in Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Norway, Romania and Sweden, (ii) Voltarene Collyre in France, (iii) Voltaren Colirio in Portugal and Spain, (iv) Voltarol Ophtha in the UK, (v) Naclof in Bulgaria, Netherlands, Poland and Slovenia, and (vi) Denaclof in Greece) and the remainder of the EEA Territory, it being understood that the trademarks listed under (i) to (iv) inclusive above shall be licensed as set out in paragraph 2(b) below. For the avoidance of doubt, the Novartis Diclofenac-Based Product Divestment Business does not include any rights to sell Novartis Diclofenac-based product for ophthalmological use outside the EEA Territory and does not include any rights related to Diclofenac-based products for non-ophthalmological use for which Novartis shall retain all rights, title and interests both inside and outside the Novartis Diclofenac-Based Product Territory.
- (2) The Novartis Diclofenac-Based Product Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Novartis Diclofenac-based product in the Novartis Diclofenac-Based Product Territory held by Novartis, and any other marketing authorisations Novartis may hold for Diclofenac-based product in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use (i) Voltaren Ophtha (or related spellings, including but not limited to Voltaren Ophta, Voltaren Optha and Voltaren Ofta) in Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Norway, Romania and Sweden, (ii) Voltarene Collyre in France, (iii) Voltaren Colirio in Portugal and Spain, (iv) Voltarol Ophtha in the UK, (v) the foregoing brands in the remainder of the EEA Territory, to the extent that [...]; in each case for the sale and marketing of ophthalmic products;
 - (c) an exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use (v) Naclof in Bulgaria, Netherlands, Poland and Slovenia, and (vi) Denaclof in Greece, and the remainder of the EEA Territory;
 - (d) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Novartis Diclofenac-Based Product Divestment Business;

- (e) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Novartis Diclofenac-Based Product Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Novartis Diclofenac-Based Product Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Novartis Diclofenac-Based Product Divestment Business; in each case to the extent owned by Novartis;
 - (f) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Novartis Diclofenac-Based Product Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Novartis Diclofenac-Based Product Divestment Business;
 - (g) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Novartis Diclofenac-Based Product Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (g) also relate to a product retained by Novartis; and
 - (h) sale of existing product inventory in the Novartis Diclofenac-Based Product Territory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(h) collectively referred to as "***Assets of the Novartis Diclofenac-Based Product Divestment Business***").
- (3) At the option of the Purchaser and to the extent required by law in the EEA Territory Novartis will enter into a transitional distribution arrangement related to the Novartis Diclofenac-Based Product Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
 - (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Novartis Diclofenac-Based Product Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
 - (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sale and marketing of the Novartis Diclofenac-Based Product Divestment Business for a period of up to three years after Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Novartis Diclofenac-Based Product Divestment Business.
 - (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
 - (7) At the option of the Purchaser, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the finished and packaged forms of the products concerned with Novartis' current supplier on terms comparable (as far as the manufacturing fee is concerned) to those offered to Novartis or (ii) enter into back-to-back supply agreement with the Purchaser in order to ensure the continuous

supply of the finished and packaged forms of the products concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Novartis Diclofenac-Based Product Divestment Business.

- (8) At the option of the Purchaser, Novartis will continue to supply the Diclofenac API currently manufactured by Novartis to the Purchaser or any contract manufacturer designated by the Purchaser on a reasonable cost-plus basis.
- (9) At the option of the Purchaser, for the Diclofenac API and to the extent that, as at the Effective Date, Novartis manufactures any other raw material that is used in the manufacture of the Novartis Diclofenac-Based product, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Novartis Diclofenac-Based Product Divestment Business.
- (10) At the option of the Purchaser, for those other raw materials used in the manufacture of the Novartis Diclofenac-Based product that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Novartis Diclofenac-Based Product Divestment Business.
- (11) Novartis (or an Affiliated Undertaking) commits not to launch under a new brand name any existing or improved version of the products included in the Novartis Diclofenac-Based Product Divestment Business in the EEA Territory for a period of five years after Closing.
- (12) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (xii)**Fluoresceine Divestment Business**

Fluoresceine Territory: Austria, Belgium, Bulgaria, Finland, France, Hungary, Luxembourg, Norway, Poland, Portugal, and Spain.

- (1) The Fluoresceine Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in its Fluoresceine product for ophthalmological use in the Fluoresceine Territory and the remainder of the EEA Territory. For the avoidance of doubt, the Fluoresceine Divestment Business does not include any rights to sell Novartis' Fluoresceine product for ophthalmological use outside the EEA Territory and does not include any rights related to non-ophthalmological use for which Novartis shall retain all rights, title and interests both inside and outside the Fluoresceine Territory and the EEA Territory.
- (2) The Fluoresceine Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Fluoresceine in the Fluoresceine Territory, and any others (including pending national marketing authorisations for which application has been made as at the Effective Date) Novartis may hold for Fluoresceine in the EEA Territory, except for Finland and Norway where Novartis does not hold a marketing authorisation and Fluoresceine is sold on special licence, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) Novartis commits not to sell Fluoresceine in Finland and Norway for ophthalmological use;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Fluoresceine Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Fluoresceine Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Fluoresceine Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Fluoresceine Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Fluoresceine Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Fluoresceine Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Novartis' Fluoresceine Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing product inventory in the Fluoresceine Territory, on a country-by-country basis, at the time of the marketing authorisation transfer (items referred to under (a)-(g) collectively referred to as "*Assets of the Fluoresceine Divestment Business*").
- (3) At the option of the Purchaser and to the extent required by law in the EEA Territory, Novartis will enter into a transitional distribution arrangement related to the Fluoresceine Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (4) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Fluoresceine Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including, at the option of the Purchaser, using its reasonable best efforts to assist the Purchaser to obtain a special license, if required, for the sale of Fluoresceine in Norway and Finland.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing or raw materials, manufacturing, sale and marketing of the Fluoresceine Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Fluoresceine Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis will either (i) make their reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished the packaged forms of Fluoresceine manufactured by Novartis' current contract manufacturer on terms comparable to those offered to Novartis; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Fluoresceine by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Fluoresceine Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Fluoresceine that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Fluoresceine Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Fluoresceine, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such

transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Fluoresceine Divestment Business.

- (10) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Fluoresceine Divestment Business in the EEA Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (xiii)

Miochol Divestment Business

Miochol Territory: Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Portugal, Slovakia, Slovenia, Sweden, and the United Kingdom.

- (1) This Miochol Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in Miochol (currently marketed under the brand names Miochol and Miochol-E) for ophthalmological use in the Miochol Territory and the remainder of the EEA Territory. For the avoidance of doubt, the Miochol Divestment Business does not include any rights to sell Miochol outside the EEA Territory nor any rights, title and/or interest in Novartis' manufacturing facility in [...].
- (2) The Miochol Divestment Business includes:
 - (a) the transfer of the marketing authorisations for Miochol in the Miochol Territory held by Novartis, and any other marketing authorisations (including pending national marketing authorisations for which application has been made as at the Effective Date) Novartis may hold for Miochol in the EEA Territory, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) transfer of the Miochol and Miochol-E trademarks for the sale and marketing of ophthalmic products in the Miochol Territory, and elsewhere in the EEA Territory, to the Purchaser, to the extent Novartis currently has these rights;
 - (c) Novartis' formulation patent for Miochol;
 - (d) transfer of all licences, permits and authorisations issued by any governmental organisation to the extent it contributes to and is necessary to ensure the viability, marketability and competitiveness of the Miochol Divestment Business;
 - (e) exclusive, perpetual and irrevocable licence for the EEA Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Miochol Divestment Business; and a non-exclusive licence for the EEA Territory of any other know-how that is not exclusively used in relation to the Miochol Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Miochol Divestment Business; in each case to the extent owned by Novartis;
 - (f) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Miochol Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Miochol Divestment Business;
 - (g) transfer of any (i) books, records and files relating to the prosecution and maintenance of the trademark, to the extent such trademark is assigned pursuant to paragraph (b) above; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials, primarily related to the

Miochol Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (g) also relate to a product retained by Novartis; and

- (h) sale of existing product inventory in the Miochol Territory, on a country-by-country basis, at the time of the transfer of the marketing authorisations described in (a) above (items referred to under (a)-(h) collectively referred to as "*Assets of the Miochol Divestment Business*").
- (3) At the option of the Purchaser, Novartis shall enter into a transitory non-exclusive manufacturing and/or supply arrangement related to the Miochol Divestment Business for the finished and packaged forms of Miochol in the EEA Territory existing and marketed by Novartis at Closing on a reasonable cost-plus basis, until the Purchaser is able to manufacture Miochol independently of Novartis, such period not to exceed five years. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis of finished and packages forms of Miochol to the Purchaser.
- (4) At the option of the Purchaser and to the extent required by law in the Miochol Territory Novartis will enter into a transitional distribution arrangement related to the Miochol Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.
- (5) Novartis commits to make their reasonable best efforts to cooperate with the Purchaser for the transfer of the manufacturing, sale and marketing of the Miochol Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (6) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Miochol Divestment Business for a period of up to five years from Closing on a reasonable cost plus basis to be agreed with the Purchaser.
- (7) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously. Novartis shall carry out the technical assistance for the manufacturing transfer in accordance with good industry practice including as regards timing and responsiveness with which this assistance is provided through the different stages of the transfer.
- (8) Novartis commits to submit to the Commission, every six months as of Closing, a report on the progress made in relation to the transfer of the production to the facilities designated by the Purchaser. A copy of this report will be sent to the Monitoring Trustee.
- (9) At the option of the Purchaser, Novartis will make their reasonable best efforts to enable the Purchaser or any contract manufacturer designated by the Purchaser to obtain the supply of acetylcholine chloride API manufactured by Novartis' current supplier on terms comparable to those offered to Novartis.
- (10) At the option of the Purchaser, for the acetylcholine chloride API and/or other raw materials used in the manufacture of Miochol that are supplied by a third-party for Novartis (or an Affiliated Undertaking) as at the Effective Date, Novartis (or an Affiliated Undertaking) will make their reasonable best efforts to assist the Purchaser with entering into an arrangement for the manufacture and/or supply of the acetylcholine chloride and/or other raw materials concerned with Novartis' current supplier on terms comparable to those offered to Novartis.
- (11) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures any other raw material that is used in the manufacture of Miochol, Novartis (or an Affiliated

Undertaking) shall continue to manufacture such raw material as part of fulfilment of its obligations in paragraph 4 above.

- (12) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Miochol Divestment Business in the EEA Territory for a period of five years after Closing.
- (13) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (xiv)

Pilocarpine Divestment Business

Pilocarpine Territory: Finland

- (1) This Pilocarpine Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests as a distributor of Pilocarpine (currently marketed under the brand name Minims Pilocarpine) in the Pilocarpine Territory. For the avoidance of doubt, the Pilocarpine Divestment Business does not include any rights to Pilocarpine outside the Pilocarpine Territory.
- (2) Novartis commits to use all reasonable best efforts to agree with the Counterparty by the end of the First Divestiture Period reasonable terms and conditions for the transfer of Novartis' rights, title and interests as distributor of Minims Pilocarpine in the Pilocarpine Territory to the Counterparty .

The Pilocarpine Divestment Business includes:

- (a) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Pilocarpine Divestment Business, in each case to the extent that any such rights are held by Novartis, provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Pilocarpine Divestment Business; and
- (b) sale of existing product inventory in the Pilocarpine Territory, on a country-by-country basis, at the time of the transfer of the marketing authorisations described in (2) above, to the extent that Novartis has the right to sell such product inventory..

SCHEDULE (xv)

Minims S1F Divestment Business

Minims S1F Territory: Denmark, Norway, Sweden

- (1) The Minims S1F Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests as a distributor of Minims Atropine, Minims Tropicamide, Minims Cyclopentolate and Minims Phenylephrine (collectively, the **Minims S1F Products**) only in the Minims S1F Territory.
- (2) Novartis commits to use all reasonable best efforts to agree with the Counterparty, by the end of the First Divestiture Period, reasonable terms and conditions for the transfer of Novartis' rights, title and interests as distributor of the Minims S1F Divestment Business in the Minims S1F Territory to the Counterparty.

The Minims S1F Divestment Business includes:

- (a) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Minims S1F Divestment Business, in each case to the extent that any such rights are held by Novartis, provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Minims S1F Divestment Business; and
- (b) sale of any existing product inventory in the Minims S1F Territory, on a country-by-country basis, at the time of the transfer of the marketing authorisations described in (2) above, to the extent that Novartis has the right to sell such product inventory..

SCHEDULE (xvi)

Minims S1T Divestment Business

Minims S1T Territory: Denmark

- (1) The Minims S1T Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests as a distributor of Minims Fluorescein, Minims Fluorescein Strips, Minims Fluorescein/ Proxymetacaine, and Minims Lidocaine/Fluorescein (collectively, the **Minims S1T Products**) only in the Minims S1T Territory.
- (2) Novartis commits to use all reasonable best efforts to agree with the Counterparty by the end of the First Divestiture Period reasonable terms and conditions for the transfer of Novartis' rights, title and interests as distributor of Minims S1T Divestment Business in the Minims S1T Territory to the Counterparty .

The Minims S1T Divestment Business includes:

- (a) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Minims S1T Divestment Business, in each case to the extent that any such rights are held by Novartis, provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Minims S1T Divestment Business; and
- (b) sale of any existing product inventory in the Minims S1T Territory, on a country-by-country basis, at the time of the transfer of the marketing authorisations described in (2) above, to the extent that Novartis has the right to sell such product inventory.

SCHEDULE (xvii)

Alternative Isopto Carpine Divestment Business

Isopto Carpine Territory: Finland

- (1) The Alternative Isopto Carpine Divestment Business includes:
- (a) the transfer of the national marketing authorisation for Isopto Carpine in the Territory, and any others (including pending national marketing authorisations for which application has been made as at the Effective Date) Alcon may hold for Isopto Carpine in the Pilocarpine Territory, including the transfer of all relevant dossiers relating to the above marketing authorisation, to the extent available to Novartis (or an Affiliated Undertaking);
 - (b) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the Isopto trademark for the sale and marketing of ophthalmic products in Finland;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Isopto Carpine Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the Isopto Carpine Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Alternative Isopto Carpine Divestment Business; and a non-exclusive licence for the Isopto Carpine Territory of any other know-how that is not exclusively used in relation to the Alternative Isopto Carpine Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Alternative Isopto Carpine Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Isopto Carpine Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Alternative Isopto Carpine Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Alternative Isopto Carpine Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and
 - (g) sale of existing product inventory in the Isopto Carpine Territory at the time of the marketing authorisation transfer (items referred to under (a)-(g) collectively referred to as "*Assets of the Alternative Isopto Carpine Divestment Business*").
- (2) At the option of the Purchaser and to the extent required by law in the Isopto Carpine Territory, Novartis will enter into a transitional distribution arrangement related to the Alternative Isopto

Carpine Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser on a reasonable cost-plus basis.

- (3) Novartis commits to make its reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Alternative Isopto Carpine Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer.
- (4) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Alternative Isopto Carpine Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Isopto Carpine Divestment Business.
- (5) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (6) At the option of the Purchaser, Novartis will either (i) make its reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished and packaged forms of Isopto Carpine manufactured by Alcon's current contract manufacturer on terms comparable to those offered to Alcon; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Isopto Carpine by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Isopto Carpine Divestment Business.
- (7) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Isopto Carpine that are supplied by a third-party for Alcon as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Alcon's current supplier on terms comparable to those offered to Alcon; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Alcon to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Isopto Carpine Divestment Business.
- (8) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Isopto Carpine, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw materials concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Isopto Carpine Divestment Business.

- (9) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or version of the product included in the Alternative Isopto Carpine Divestment Business in the Pilocarpine Territory for a period of five years after Closing.
- (10) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (xviii)**Alternative S1F Divestment Business**

- (1) For the purposes of this Schedule:
 - (a) Alcon's S1F Products comprise Cyclogyl, Mydriacyl, Isopto Atropine and Cyclomydril;
 - (b) The Cyclogyl Territory comprises Denmark, Norway and Sweden;
 - (c) The Mydriacyl Territory comprises Denmark and Sweden;
 - (d) The Isopto Atropine Territory comprises Sweden;
 - (e) The Cyclomydril Territory comprises Sweden;
 - (f) The Cyclogyl Territory, the Mydriacyl Territory, the Isopto Atropine Territory, and the Cyclomydril Territory are collectively referred to as the S1F Territory.

- (2) The Alternative S1F Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in Alcon's S1F products for ophthalmological use in the S1F Territory. Alcon does not hold a marketing authorisation for Cyclogyl in Norway and Cyclomydril in Sweden as both are sold on special import licence. For the avoidance of doubt, the Alternative S1F Divestment Business does not include any rights to sell Alcon's S1F products for ophthalmological use outside the S1F Territory and does not include any rights related to non-ophthalmological use for which Novartis shall retain all rights, title and interests both inside and outside the S1F Territory.

- (3) The Alternative S1F Divestment Business includes:
 - (a) the transfer of the national marketing authorisations for Cyclogyl, Mydriacyl and Isopto Atropine in the S1F Territory, and any others (including pending national marketing authorisations for which application has been made as at the Effective Date) Alcon may hold for Cyclogyl, Mydriacyl and Isopto Atropine in the S1F Territory, except for Cyclogyl in Norway and Cyclomydril in Sweden where Alcon does not hold a marketing authorisation as these products are sold on special import licence, including the transfer of all relevant dossiers relating to the above marketing authorisations, to the extent available to Novartis (or an Affiliated Undertaking). With regard to Cyclogyl and Cyclomydril, at the option of the Purchaser, Novartis commits to use its reasonable best efforts to assist the Purchaser to obtain a special import licence, if required, for the sale of Cyclogyl in Norway and Cyclomydril in Sweden;
 - (b) Novartis commits not to sell Cyclogyl in Norway and Cyclomydril in Sweden for ophthalmological use;
 - (c) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use each of the Cyclogyl and Isopto trademarks for the sale and marketing of ophthalmic products in Sweden;
 - (d) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative S1F Divestment Business;

- (e) exclusive, perpetual and irrevocable licence for the S1F Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Alternative S1F Divestment Business; and a non-exclusive licence for the S1F Territory of any other know-how that is not exclusively used in relation to the Alternative S1F Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Alternative S1F Divestment Business; in each case to the extent owned by Novartis;
 - (f) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative S1F Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Alternative S1F Divestment Business;
 - (g) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Alcon's Alternative S1F Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (g) also relate to a product retained by Novartis; and
 - (h) sale of existing product inventory in the S1F Territory, on a country-by-country basis, at the time of the marketing authorisation transfer and, with regard to Cyclogyl in Norway and Cyclomydril in Sweden, at the time the Purchaser is granted a special import licence (items referred to under (a)-(h) collectively referred to as "***Assets of the Alternative S1F Divestment Business***").
- (4) At the option of the Purchaser and to the extent required by law in the S1F Territory, Novartis will enter into a transitional distribution arrangement related to the Alternative S1F Divestment Business lasting until the relevant marketing authorisation is transferred into the name of the Purchaser and, with regard to Cyclogyl in Norway and Cyclomydril in Sweden, until a special import licence is obtained on a reasonable cost-plus basis.
 - (5) Novartis commits to make its reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Alternative S1F Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including, at the option of the Purchaser, using its reasonable best efforts to assist the Purchaser to obtain a special import licence, if required, for the sale of Cyclogyl in Norway and Cyclomydril in Sweden.
 - (6) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Alternative S1F Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative S1F Divestment Business.
 - (7) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
 - (8) At the option of the Purchaser, Novartis will either (i) make its reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished and packaged forms of Cyclogyl, Mydriacyl, Isopto Atropine and Cyclomydril

manufactured by Alcon's current contract manufacturer on terms comparable to those offered to Alcon; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Cyclogyl, Mydriacyl, Isopto Atropine and Cyclomydril by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative S1F Divestment Business.

- (9) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Cyclogyl, Mydriacyl, Isopto Atropine and Cyclomydril that are supplied by a third-party for Alcon as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Alcon's current supplier on terms comparable to those offered to Alcon; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Alcon to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative S1F Divestment Business.
- (10) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Cyclogyl, Mydriacyl, Isopto Atropine and Cyclomydril, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw materials concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative S1F Divestment Business.
- (11) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Alternative S1F Divestment Business in the S1F Territory for a period of five years after Closing.
- (12) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (xix)**Alternative Thilorbin Divestment Business****Thilorbin Territory: Denmark**

- (1) The Alternative Thilorbin Divestment Business consists of Novartis' (or an Affiliated Undertaking's) rights, title and interests in Alcon's Thilorbin product for ophthalmological use in Denmark. Alcon does not hold a marketing authorization for Thilorbin in Denmark as it is sold on special import licence. With regard to Thilorbin, at the option of the Purchaser, Novartis commits to use its reasonable best efforts to assist the Purchaser to obtain a special import licence, if required, for the sale of Thilorbin in Denmark. For the avoidance of doubt, the Alternative Thilorbin Divestment Business does not include any rights to sell Alcon's Thilorbin product for ophthalmological use outside the Minims SIT Territory and does not include any rights related to non-ophthalmological use for which Novartis shall retain all rights, title and interests both inside and outside the Thilorbin Territory.
- (2) The Alternative Thilorbin Divestment Business includes:
 - (a) an irrevocable, exclusive (including vis-à-vis Novartis), assignable, sub-licensable, and royalty free licence to use the Thilorbin trademark for the sale and marketing of ophthalmic products in Denmark;
 - (b) commitment by Novartis not to sell Thilorbin in Finland for ophthalmological use;
 - (c) transfer of all licences, permits and authorisations issued by any governmental organisation which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Thilorbin Divestment Business;
 - (d) exclusive, perpetual and irrevocable licence for the Thilorbin Territory (including vis-à-vis Novartis) of all intellectual property rights and know-how (including product formulations, manufacturing know-how and other confidential know-how, packaging specifications and all related copyright) that is exclusively used in relation to the Alternative Thilorbin Divestment Business; and a non-exclusive licence for the Thilorbin Territory of any other know-how that is not exclusively used in relation to the Alternative Thilorbin Divestment Business but contributes to and is necessary to ensure the viability, marketability and competitiveness of the Alternative Thilorbin Divestment Business; in each case to the extent owned by Novartis;
 - (e) assignment of relevant rights under all contracts, leases, customer, credit and order records and commitments which contribute to and are necessary to ensure the viability, marketability and competitiveness of the Alternative Thilorbin Divestment Business provided, however, that Novartis shall not be required to transfer any such contracts, leases, customer, credit and other records and commitments that pertain to products that do not form part of the Alternative Thilorbin Divestment Business;
 - (f) transfer of (i) books, records and files relating to the prosecution and maintenance of the trademark; (ii) all records of customers and suppliers, price lists, catalogues and mailing lists; and (iii) all advertising, marketing, sales, publicity and presentational materials primarily related to the Alternative Thilorbin Divestment Business, or copies thereof, where any items covered by (i), (ii) and (iii) of this paragraph (f) also relate to a product retained by Novartis; and

- (g) sale of existing product inventory in the Thilorbin Territory at the time the Purchaser is granted a special import license (items referred to under (a)-(g) collectively referred to as "*Assets of the Thilorbin Divestment Business*").
- (3) At the option of the Purchaser and to the extent required by law in the Thilorbin Territory, Novartis will enter into a transitional distribution arrangement related to the Alternative Thilorbin Divestment Business lasting until a special import license is obtained on a reasonable cost-plus basis.
- (4) Novartis commits to make its reasonable best efforts to cooperate with the Purchaser for the transfer of the sale and marketing of the Alternative Thilorbin Divestment Business and to undertake all regulatory changes that would be required as a result of such transfer, including, at the option of the Purchaser, using its reasonable best efforts to assist the Purchaser to obtain a special import license, if required, for the sale of Thilorbin in the Thilorbin Territory.
- (5) At the option of the Purchaser, Novartis shall provide reasonable technical assistance to the Purchaser to assume responsibility for the sourcing of raw materials, manufacturing, sale and marketing of the Alternative Thilorbin Divestment Business for a period of up to three years from Closing on a reasonable cost plus basis to be agreed with the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Thilorbin Divestment Business.
- (6) The transitional technical assistance agreement referred to above shall include appropriate provisions to ensure that Novartis provides technical assistance to the Purchaser expeditiously.
- (7) At the option of the Purchaser, Novartis will either (i) make its reasonable best efforts to enable the Purchaser to enter into a contract manufacturing agreement for the manufacture and/or the supply of the finished and packaged forms of Thilorbin manufactured by Alcon's current contract manufacturer on terms comparable to those offered to Alcon; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the finished and packaged forms of Thilorbin by Novartis (or an Affiliated Undertaking) to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Thilorbin Divestment Business.
- (8) At the option of the Purchaser, for those active pharmaceutical ingredients and/or other raw materials used in the manufacture of Thilorbin that are supplied by a third-party for Alcon as at the Effective Date, Novartis (or an Affiliated Undertaking) will either (i) make their reasonable best efforts to enable the Purchaser to enter into an agreement for the manufacture and/or supply of the active pharmaceutical ingredients and/or other raw materials concerned with Alcon's current supplier on terms comparable to those offered to Alcon; or (ii) enter into a back-to-back supply agreement with the Purchaser in order to ensure the continuous supply of the active pharmaceutical ingredients and/or other raw materials concerned by Alcon to the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Thilorbin Divestment Business.
- (9) At the option of the Purchaser, to the extent that, as at the Effective Date, Novartis manufactures an active pharmaceutical ingredient and/or other raw material that is used in the manufacture of Thilorbin, Novartis (or an Affiliated Undertaking) shall enter into a transitory non-exclusive manufacturing and/or supply arrangement for the active pharmaceutical ingredient and/or other raw material concerned, with the Purchaser or the third party contract manufacturer designated by the Purchaser, on a reasonable cost-plus basis for a period of up to three years after Closing. Such transitory arrangement shall include appropriate provisions designed to ensure the continuous supply

by Novartis (or an Affiliated Undertaking) to the Purchaser or the third-party contract manufacturer designated by the Purchaser. Under circumstances outside the control of Novartis or the Purchaser, this period may be extended by the Monitoring Trustee until such time as the Purchaser has established the Alternative Thilorbin Divestment Business.

- (10) Novartis (nor any Affiliated Undertaking) will not launch under a new brand name any existing or improved version of the product included in the Alternative Thilorbin Divestment Business in the Thilorbin Territory for a period of five years after Closing.
- (11) At the option of the Purchaser and subject to applicable local employment legislation, Novartis will make available to the Purchaser sufficiently qualified personnel to the extent reasonably necessary for the Purchaser to operate the Divestment Business in accordance with normal market practice.

SCHEDULE (xx)

Okacin Deregistration Business

Okacin Territory: Austria, Bulgaria, Germany, Hungary, Italy, Latvia, Luxembourg, Poland, Romania, Slovakia

- (1) Novartis commits to complete the de-registration process of the Okacin Deregistration Business with each of the competent national regulatory authorities in the Okacin Territory during the Deregistration Period.

SCHEDULE (xxi)

Infectoflam/Cibaflam/Cortiphenol H Deregistration Business

Infectoflam/Cibaflam Territory: Belgium, Germany, Luxembourg, Slovakia

Cortiphenol H Territory: Greece

- (1) Novartis commits to complete the de-registration process of the Infectoflam/Cibaflam/Cortiphenol H Deregistration Business with each of the competent national regulatory authorities in the Infectoflam/Cibaflam Territory and the Cortiphenol H Territory during the Deregistration Period.