COMPETITION COMMISSION OF INDIA

21st December, 2012

Combination Registration No. C-2012/09/79

Order under Section 31 (1) of the Competition Act, 2002

1. On 27th September, 2012, the Competition Commission of India (hereinafter referred to as the "**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the "**Act**") given by Orchid Chemicals and Pharmaceuticals Limited (hereinafter referred to as "**OCPL**") and Hospira Healthcare India Private Limited (hereinafter referred to as "**HHIPL**") (hereinafter OCPL and HHIPL are collectively referred to as the "**parties to the combination**"). The notice has been given pursuant to the execution of a Business Transfer Agreement dated 29th August, 2012 by and among OCPL, Mr. K. Raghavendra Rao and HHIPL (hereinafter referred to as the "**BTA**"). It has been stated in the notice that Mr. K. Raghavendra Rao, the promoter and a principal shareholder of OCPL, is a party to the BTA solely for the purposes of certain clauses of the BTA and is not a party to the combination between HHIPL and OCPL.

2. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as the "**Combination Regulations**"), vide letter dated 3rd October, 2012, the parties to the combination were required to remove defects and provide certain information/document(s) in relation to the notice. The reply of the parties to the combination was received on 10th October, 2012. Further, in terms of sub- regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letter dated 12th October 2012, the parties to the combination were required to furnish certain additional information/document(s). In this regard, the response from the parties to the combination was received on 22nd October, 2012. Since the response received from parties to the combination was found to be incomplete, vide letters dated 23rd October, 4th December, 2012 and 12th December, 2012, the parties to the combination were asked to furnish complete information/documents. The responses from the parties to the combination, to these letters, were received on 27th November, 2012, 11th December, 2012 and 17th December, 2012 respectively and two more letters from the parties to the combination were received in the Commission on 19th December, 2012.

3. OCPL is a listed public limited company incorporated under the provisions of the Companies Act, 1956. Mr. K. Raghavendra Rao is the Chairman and Managing Director of OCPL. As stated in the notice, OCPL is a 100 per cent Export Oriented Unit (EOU) and is engaged in the manufacture of Active Pharmaceutical Ingredients (APIs) and oral formulations in Cephalosporin, Penem (including Carbapenem), Penicillin and NPNC[1] verticals in the pharmaceutical sector. While Cephalosporin, Penem (including Carbapenem) and Penicillin belong to the betalactum antibiotic class of products which are mainly used to treat bacterial infections and inflammatory conditions, the NPNC are non-betalactum class of products and are largely non-antibiotics which include pharmaceutical products in the cardiovascular, neurology, anti-diabetic and vitamins/minerals/nutrients segments. As per the information given in the notice and other documents placed on record, OCPL is also engaged in New Drug Discovery (NDD), Novel Drug Delivery System (NDDS) and Contract Research & Manufacturing Services (CRAMS) in the above-mentioned verticals. In terms of the geographical range, OCPL exports to more than 75 countries across the world with a large proportion of its exports being to the developed markets like United States of America, Europe and Japan. Further, as stated in the notice, OCPL does not directly manufacture injectable formulations. OCPL contracts out the manufacture of injectable formulations to third party manufacturers and then sells these products in India, Yemen and certain other countries. OCPL used to previously manufacture the injectable formulations in the Cephalosporin, Penem including Carbapenem and Penicillin segments; however, it has been stated in the notice that these segments were transferred by OCPL to HHIPL in 2009 pursuant to an earlier Business Transfer Agreement dated 15th December, 2009.

4. HHIPL, a private limited company, incorporated under the provisions of the Companies Act, 1956, is stated to be a 100 per cent indirect subsidiary of Hospira, Inc. USA. It has been further stated in the notice that HHIPL is also a 100 per cent EOU and is presently engaged in the business of manufacture and export of various injectable formulations in Cephalosporin, Penicillin and Penem (including Carbapenem) verticals in the pharmaceutical sector. HHIPL is stated to predominantly conduct its business for the regulatory markets of Canada, United States of America and Europe as well as for certain Asia-Pacific and Middle-East countries.

5. As stated in the notice, in terms of the BTA, OCPL has agreed to sell its Betalactum (Penems including Carbapenems and Penicillins) API business, manufacturing facilities for the said API business and the NPNC API manufacturing facility located at Aurangabad together with the associated process R&D facility at Shozhanganallur, Chennai to HHIPL (hereinafter referred to as the **"Transferred Business"**). However, the Transferred Business excludes the oral formulation business of OCPL in Penems

[1] *Non-Penicillin, Non-Penem (including Non-Carbapenem) and Non-Cephalosporin.*

(including Carbapenems) and Penicillins verticals; oral formulation as well as API business in the Cephalosporin vertical; and API & formulation business in NPNC vertical.

6. The proposed combination relating to the acquisition of the Transferred Business by HHIPL from OCPL, as per the terms of the BTA, falls under Section 5(a) of the Act.

7. It is observed form the information given in the notice and other documents on record that HHIPL does not sell/market its formulations in India except for Meropenem (a subset of the Penem and Carbapenem segment), which contributed less than one per cent of HHIPL's turnover for the financial year 2011-12. It is further observed that the exports contributed more than 85 per cent of the turnover of OCPL for the financial year 2011-12. It is also observed that both HHIPL and OCPL sell only a few similar injectable formulations in Carbapenem, Penicillin and Cephalosporin verticals. However, these products manufactured by HHIPL are meant for exports and are sold by HHIPL in the regulated markets and not in India except for Meropenem. Moreover, the value of the domestic sales of Meropenem by OCPL and HHIPL is also negligible. Therefore, the horizontal overlap between the products offered by OCPL and HHIPL in the domestic market in India is insignificant.

8. As per the information given in the notice and other documents on record, HHIPL does not manufacture any of the APIs required for injectable formulations manufactured by it in India. HHIPL procures Penems including carbapenems, Penicillin and Cephalosporin APIs from OCPL which are then converted into finished dosage form or formulations by HHIPL for the regulated markets. As per the information given in the notice, during the financial year 2010-11, 60.68 per cent of the total value of sales of Penems including Carbapenems and Penicillin APIs manufactured by OCPL was purchased by HHIPL. In the financial year 2011-12, the corresponding sales increased to 88.94 per cent. It is, therefore, observed that HHIPL is the primary customer of OCPL for these APIs and the sale of these APIs by OCPL to other customers in India is negligible. Since these APIs constitute a major input for HHIPL's injectable formulations, the proposed combination may lead to vertical integration by HHIPL in the manufacture of these injectable formulations business. However, considering the negligible presence of OCPL in the domestic market of Penems including Carbapenems, Penicillin and NPNC APIs in India, the resulting possible vertical integration by HHIPL in the manufacture of injectable formulations is not likely to result in the foreclosure in any of the domestic markets.

9. It is observed from the notice that the BTA contains a non-compete clause which stipulates that OCPL and its promoter i.e. Mr. K. Raghavendra Rao, cannot undertake

certain business activities pertaining to the Transferred Business, for a period of 8 years and 5 years respectively. The said non-compete obligation also restricts research, development and testing of Penem (including Carbapenem) and Penicillin APIs for injectable formulations. The parties to the combination, in this regard, have submitted that it is a standard industry practice to incorporate non-compete clause(s) in business transfer agreement(s) as these are generally considered necessary for the effective implementation of the proposed combination and allows the acquirer to obtain full value from the acquired assets. It has been further stated that HHIPL considers these restrictions as an essential measure of safeguard since OCPL possesses the experience, know-how and technical ability to establish an independent business that could overlap with the Transferred Business and thereby significantly undermine HHIPL's investment.

10. The Commission is of the view that non-compete obligations, if deemed necessary to be incorporated, should be reasonable particularly in respect of (a) the duration over which such restraint is enforceable; and (b) the business activities, geographical areas and person(s) subject to such restraint, so as to ensure that such obligations do not result in an appreciable adverse effect on competition. The parties to the combination were accordingly required to provide justification regarding the duration of the non-compete obligation and restricting activities such as research, development and testing of Penem (including Carbapenem) and Penicillin APIs for the injectable formulations in the BTA. In response, the parties to the combination offered the following modification(s) under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations, vide their communications received by the Commission on 17th December, 2012 and 19th December, 2012:-

a.) To limit the duration of non-compete obligation (defined as Restricted Period in the BTA) to four years in relation to domestic market in India, and

b.) To provide in the BTA that OCPL shall be allowed to conduct research, development and testing on such new molecules which would result in the development of new Penem (including Carbapenem) and Penicillin APIs for injectable formulations which are currently non-existent worldwide.

11. The parties to the combination have also given an undertaking vide their letter dated 19th December, 2012 that the terms of the BTA would be suitably amended to incorporate the above said modifications, as proposed by them, within a period of three months from the date of the Order of the Commission or as directed by the Commission in this regard.

12. The Commission hereby accepts the modifications offered by the parties to the combination under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations. The parties to the combination are also directed to make necessary amendment(s) in the BTA so as to incorporate the said modifications and submit a copy of such amended BTA along with the relevant documents to the Commission within a period of three months from the date of this Order.

13. Considering the facts on record, the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the proposed combination including the modifications in the BTA proposed by parties to the combination under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.

14. This approval is without prejudice to any other legal/statutory obligations as applicable.

15. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.

16. The Secretary is directed to communicate to the parties to the combination accordingly.

Certified True Copy

24th December, 2012

BHUPENDRA SINGH
Deputy Director (FA)
Competition Commission of India
Government of India
New Delhi