सत्यमेव जयते

Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/05/170)

Dated: 17.03.2015

Notice under Section 6 (2) of the Competition Act, 2002 given by

- **Sun Pharmaceutical Industries Limited; and**
- **Ranbaxy Laboratories Limited**

Order in continuation of the previous order of the Commission dated 05.12.2014 issued under sub-section (7) of Section 31 of the Competition Act, 2002

1. On 06.05.2014, the Competition Commission of India (**"Commission"**) received a notice ("**Notice**") under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") given by Sun Pharmaceutical Industries Limited ("**Sun Pharma**") and Ranbaxy Laboratories Limited ("**Ranbaxy**") (hereinafter, Sun Pharma and Ranbaxy are collectively referred to as the "**Parties**"). The proposed combination relates to the merger of Ranbaxy into Sun Pharma pursuant to a Scheme of Arrangement under Sections 391-394 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013.

2. The Commission in its meeting held on 05.12.2014 considered and approved the proposed combination with modification(s) by passing an order under sub-section (7) of Section 31 of the Act ("**Order**"). Under the Order, the Commission directed that the following modification(s) shall be carried out by the Parties:

   a.) Sun Pharma shall divest all products containing Tamsulosin + Tolterodine which are currently marketed and supplied under the Tamlet brand name.

   b.) Ranbaxy shall divest:

      i. All products containing Leuprorelin which are currently marketed and supplied under the Eligard brand name. In the event the divestiture of distribution rights of Eligard is not achieved within the First Divestiture Period (as defined in the Order), Sun Pharma shall divest its products containing Leuprorelin currently marketed and supplied under Sun Pharma's brand name Lupride.

ii. All products containing Terlipresslin which are currently marketed and supplied under the Terlibax brand name.

iii. All products containing Rosuvastatin + Ezetimibe which are currently marketed and supplied under the Rosuvas EZ brand name.

iv. All products containing Olanzapine + Fluoxetine which are currently marketed and supplied under the Olanex F brand name.

v. All products containing Levosulpiride + Esomeprazole which are currently marketed and supplied under the Raciper L brand name.

vi. All products containing Olmesartan + Amlodipine + Hydroclorthiazide which are currently marketed and supplied under the Triolvance brand name.

3. In terms of paragraph 42 and 43 of the Order, the Parties were required to seek prior approval of the Commission regarding (a) the proposed purchaser; and (b) terms of final and binding sale and purchase agreement(s). Further, as per paragraph 58 of the Order, the Parties were required to submit a fully documented and reasoned proposal(s), including a copy of the final and binding sale and purchase agreement(s) to the Commission for its approval when the Parties reached an agreement with the approved purchaser. In accordance with the said requirement, the Parties submitted to the Commission a detailed proposal along with the agreed form of the Asset Purchase Agreement ("**APA**") and a Supply Agreement ("**SA**") on 03.02.2015 ("**Proposal**"). In the Proposal, the Parties have identified Emcure Pharmaceuticals Limited ("**Emcure**"), a company incorporated in India, for divestment of all seven Divestment Products (as defined in the Order). In order to assess the suitability of the purchaser proposed by the Parties in terms of the Order, the Parties and the proposed purchaser were asked to submit certain information vide letter dated 06.02.2015. The response to said letter was received on 24.02.2015. In continuation of the Proposal, the Parties also submitted certain information on 09.03.2015, 12.03.2015 and 16.03.2015.

4. In terms of Regulation 27 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**") and Paragraph 62 of the Order, the Commission appointed PricewaterhouseCoopers Private Limited as the monitoring agency in the present case ("**Monitoring Agency**") for the purpose of supervision of the modification(s).

5. The Commission considered the reports submitted by the Monitoring Agency and the Proposal along with all information submitted by the Parties and Emcure, in order to assess whether Emcure meets the requirements laid down in the Order and whether the APA and the SA proposed to be entered into by the Parties and Emcure, are in accordance with the provisions of the Order.

6. The suitability of Emcure as a purchaser of the Divestment Products was assessed in accordance with the requirements laid down in paragraph 55 of the Order. On the basis of the reports of the Monitoring Agency and the information given by the Parties and Emcure, it is noted that Emcure (a) is independent of and has no connection whatsoever with the Parties; (b) is a company active in the sales and marketing of pharmaceutical products in the India; and (c) has the financial resources, proven expertise, manufacturing capability or ability to outsource manufacturing and incentive to maintain and develop the Divestment Products, as a viable and active competitor to the Parties in the relevant markets.

7. In relation to the competition assessment pertaining to the acquisition of Divestment Products by Emcure, it is noted that as per AIOCD AWACS data, out of the seven Divestment Products to be acquired by Emcure, there is horizontal overlap in respect of only two products between the existing products of Emcure and the Divestment Products i.e. *Rosuvastatin + Ezetimibe* and *Olmesartan + Amlodipine + Hydroclorthiazide*.. However, the Parties and Emcure have submitted that there are certain errors in the data provided by AIOCD AWACS and there are no overlaps between the two. In this regard, it is observed that even if the errors in the AIOCD AWACS data are ignored, the market share of Emcure in the two overlapping

products is insignificant and thus, the horizontal overlap, if any, is not likely to result in any appreciable adverse effect on competition (**"AAEC"**).

8. In relation to any vertical foreclosure, it is noted that it could raise competition concerns only if the purchaser (i.e. Emcure) would have the ability as well as the incentive to substantially foreclose access to inputs, i.e., by reducing access to its own upstream products or services, it could negatively affect the overall availability of inputs in the downstream market in terms of price or quality. This would have been the case, if Emcure had a dominant position in the upstream market and the other players had insufficient capacity to expand production to meet the reduction in supply by Emcure.

9. In this relation, it is noted from the information given by the Parties that Emcure manufactures the following active pharmaceutical ingredients (APIs) which can be used as inputs in the Divestment Products:

   a. *Esomeprazole Sodium* – It is noted from the information given by the Parties that this API is presently manufactured by Emcure but not for the domestic market.

   b. *Levosulpiride* – In relation to Levosulpiride, it is noted from the information given by the Parties that there are other suppliers which also supply this API to the entities engaged in the downstream market of formulations based on Levosulpiride and Emcure does not have the ability to substantially foreclose access to its inputs.

   Thus, the proposed combination is not likely to result in vertical foreclosure in any of the relevant markets of these APIs.

10. In view of the foregoing, it is observed that acquisition of Divestment Products by Emcure is not likely to cause any AAEC in the relevant market in India.

11. Further, as per the information given in the Proposal, for the purpose of the implementation of the Divestiture, the Parties have proposed to execute the APA

and the SA. The Commission has analysed the relevant provisions of the said agreements and noted the comments of the Monitoring Agency in this regard.

12. It is noted that item 1(i) of the Schedule to the Order requires the Parties to assign all trade mark rights related to the Divestment Brands (as defined in the Order) owned or applied for, by the respective Parties. In this regard, it is noted that in respect of three trademarks i.e. Rosuvas EZ, Olanex F and Raciper L, instead of assignment, the Parties have proposed to license them exclusively, perpetually, irrevocably and on a royalty free basis with the right to sub-license, to Emcure. However, in this regard, Emcure vide its undertaking dated 12.03.2015 has submitted that it is satisfied with the license arrangement being proposed by the Parties under the APA read with the trademark licensing agreement, and it does not require assignment of the said trademarks as the license as above, would suffice to enable it to independently sell and market the said three Divestment Products.

13. It is further noted that as per paragraph 46(e) of the Order, at the option of the approved purchaser(s), the Parties were required to extend transitional support in order to ensure the continued supply of the Divestment Products in the relevant markets. In this regard, Emcure vide its undertaking has submitted stating that it does not require any transitional support, except the assignment of the contract manufacturing agreements and the supply of products manufactured in house by the Parties for a limited period, which has been agreed to by the Parties and the respective contract manufacturers.

14. In its report, the Monitoring Agency has concluded that Emcure as a potential purchaser is likely to be a viable, independent and effective competitor in the relevant markets pertaining to the Divestment Products. Thus, the purchaser proposed by the Parties meets the Purchaser Requirements provided in the Order and the terms of the APA and the SA seem to be in compliance with the Order.

15. In terms of Paragraph 43 of the Order, the Parties are required to ensure that Closing (as defined in the Order) takes place within the First Divestiture Period (as defined

in the Order). The Parties are further required to submit a compliance report to the Commission in accordance with Regulation 26 of the Combination Regulations.

16. In view of the foregoing, in continuation of the Order dated 05.12.2014, issued under sub-section (7) of Section 31, the Commission hereby approves (a) Emcure as the Approved Purchaser of the Divestment Products and (b) the APA and the SA, as agreed between the Parties and Emcure in relation to the Divestment Products.

17. This order shall stand revoked if, at any time, the information provided by the Parties or Emcure is found to be incorrect.

18. The Secretary is directed to communicate to the Parties accordingly.