सत्यमेव जयते

Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/07/289)

03.12.2015

Notice given by Eli Lilly and Company pursuant to an inquiry under sub-section (1) of Section 20 of the Competition Act, 2002 ("Act")

Order under sub-section (1) of Section 31 of the Act

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. M.S. Sahoo
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal representative: P&A Law Offices

1. On 09.07.2015, the Competition Commission of India ("**Commission**") received a notice given by Eli Lilly and Company ("**Eli Lilly**" or the "**Acquirer**"), pursuant to an inquiry initiated by the Commission under sub-section (1) of Section 20 of the Act

("**Notice**"). As per the information given in the Notice, the combination relates to the acquisition of global veterinary pharmaceutical business of Novartis AG ("**Novartis**") i.e. Novartis Animal Health ("**NAH**") by Eli Lilly (hereinafter, Novartis and Eli Lilly, together are referred to as the "**Parties**").

2. For the purpose of the combination, Eli Lilly entered into a Stock and Asset Purchase Agreement with Novartis to acquire NAH by way of purchase of shares and assets. Further, for the transfer of the assets of the enterprise conducting the animal health business of NAH in India, Novartis India Limited (a subsidiary of Novartis ("**Novartis India**")) and Elanco India Private Limited ("**Elanco India**") (a wholly owned indirect subsidiary of Eli Lilly) incorporated to acquire animal health business of Novartis India, entered into a Slump Sale Agreement on 03.12.2014. It has also been submitted in the Notice that the global transaction was completed on 01.01.2015. However, the closing of the transaction was deferred in certain jurisdictions, including India.

3. Vide letter dated 24.07.2015, issued under the provisions of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"), the Acquirer was required to remove certain defects in the Notice and provide information relating, inter alia, to details of products of Parties in India, basis of delineation of relevant product market and calculation of market shares etc. The Acquirer filed its partial response on 10.08.2015 and complete response on 20.08.2015, after seeking extension of time. As responses submitted by the Acquirer resulted in additional queries, vide letter dated 08.09.2015, the Acquirer was required to clarify the same by 14.09.2015. The Acquirer submitted its response on 17.09.2015 and 18.09.2015, after seeking extension of time. However, the responses filed by the Acquirer still had certain discrepancies, therefore, vide letter dated 21.09.2015, the Acquirer was required to provide complete information, the response to which was received on 28.09.2015.

4. In addition, the Acquirer also filed certain supplementary information on 21.07.2015, 27.08.2015 and 07.09.2015.

5. Eli Lilly is a company with incorporated in USA and is engaged in the business of pharmaceutical products. The animal health products of Eli Lilly are developed and marketed by its Elanco Division. Novartis is also a pharmaceutical company incorporated under the laws of Switzerland. The animal health business arm of Novartis i.e. NAH develops drugs for the prevention and treatment of diseases in pets, production animals and farmed fish. In India, Novartis is active through Novartis India, a public limited company. Novartis India has presence in pharmaceutical products including animal health businesses. On the basis of submissions in the Notice and subsequent responses, it is noted that both Novartis and Eli Lilly are both engaged in animal health products in India.

6. In relation to the pharmaceutical formulations business, the Commission in previous orders, considered it appropriate to define the relevant product market at the molecule level i.e. the medicines/formulations based on the same active pharmaceutical ingredient (API) constitute a separate relevant product market. If the same approach is followed for defining relevant market in relation to animal health products, it is observed that there is no horizontal overlap between the animal health products of Eli Lilly and Novartis in India, as they are based on different APIs.

7. Alternatively, as submitted by the Acquirer, the relevant product market in case of animal health products, may be defined on the basis of type of animal to be treated (i.e. distinguishing between production animal and companion animal[1]), intended therapeutic effect and mode of administration of drugs. Applying these criteria, the Parties have identified two potentially overlapping relevant product markets in India: (i) oral antimicrobials for production animals and (ii) animal feed enzymes.

8. In relation to oral antimicrobials for production animals, it has been submitted that antimicrobials (antibiotics) destroy or prevent the growth of microbes such as bacteria, mycoplasma (pathogens that lack cell walls), or fungi and thus treat diseases associated with them. Further, the Parties' products overlap in India only in oral antimicrobials for production animals as neither party has antimicrobials for companion animals. The

[1] Production animals cover cattle, sheep, goats, swine, poultry and fish whereas companion animals would include dogs and cats.

overlap is also stated to be limited to oral modes of administration and not injectable modes as Eli Lilly supplies only oral antimicrobials.

9. On the basis of the internal estimates of the Parties and data provided by a third party agency, it has been submitted that the combined market share of in the market for oral anti-microbial for production animals is [10-15] per cent only. As per the data provided by the Acquirer, it is also noted that there are various competitors in the said market supplying competing products.

10. In relation to animal feed enzymes, it has been submitted that these are a type of feed additives used to control infectious diseases, promote growth, and enhance food digestion. Further, the market for animal feed enzymes includes only production animals and not companion animals because the products sold by Parties are meant only for production animals. On the basis of their internal estimates of the Parties and data provided by a third party agency, it has been submitted that the combined market share of Parties to the combination in the market for animal feed enzymes is [15-20] per cent only. As per the data provided by the Acquirer, it is also noted that there are various competitors in the said market supplying competing products.

11. In addition to these markets, it is noted from the information given in the notice that the Parties also supply anti-coccidial products in India. However, it has been submitted that there is no horizontal product overlap between the parties in anti-coccidials as Eli Lilly supplies products used for the *prevention* of coccidiosis in poultry, whereas Novartis sells only one product for the *treatment* of coccidiosis[2]. In this regard, it is noted that if the products meant for prevention and treatment of coccidiosis in poultry are considered to be in the same market, the market share of Eli Lilly would be [25-30] per cent and that of Novartis would be only [0-5] per cent in the said market i.e. the incremental market share would be only [0-5] per cent. Thus, the combination does not or is not likely to result in any appreciable adverse effect on competition.

12. The Commission also analysed the pipeline products of the Parties and noted that such products of the Parties do not raise new potential overlaps and therefore, in relation to

[2] Coccidiosis is caused by coccidia parasites that are found most commonly in chickens raised in confinement.

the pipeline products of the Parties also, the combination does not or is not likely to result in any appreciable adverse effect on competition.

13. In this regard, in terms of Section 36 of the Act read with read with sub-regulation (3) of Regulation 19 and Regulation 34 of the Combination Regulations, the Commission also sought the expert opinion from the Veterinary Council of India ("**VCI**"), in relation to the animal health products of Eli Lilly and Novartis. In its response submitted on 10.11.2015, VCI has stated that the products of Novartis & Eli Lilly cannot be used interchangeably during the course of treatment. Further, there are many manufactures in India who have similar products as those of Novartis & Eli Lilly which can be considered as substitutes/ interchangeable during the course of treatment. Thus, on the basis of the inputs given by VCI, it is observed that there is no overlap between the products of Novartis and Eli Lilly in India. Further, there are many players offering similar or substitutable products competing with the animal health products of the parties.

14. As the competition assessment undertaken by the Commission revealed that the combination does not or is not likely to cause any appreciable adverse effect on competition in any of the alternative and plausible relevant markets that may be defined, the Commission decided that the exact delineation of the relevant market may be left open with respect to the combination.

15. Considering the facts on record and the details provided in the Notice and the assessment of the combination after considering the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the combination does not or is not likely to have any appreciable adverse effect on competition in India and therefore, the Commission hereby approves the combination under sub-section (1) of Section 31 of the Act.

16. This order is issued without prejudice to any proceedings under Section 43A of the Act.

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

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