सत्यमेव जयते

Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA
(Combination Registration No.C-2016/08/425)

13th December 2016

Notice under Section 6 (2) of the Competition Act, 2002 filed by Fosum Pharma Industrial PTE Limited

CORAM

Devender Kumar Sikri
Chairperson

S.L. Bunker
Member

Sudhir Mital
Member

Augustine Peter
Member

U. C. Nahta
Member

G. P. Mittal
Member

Legal Representatives of the parties: Khaitan & Co LLP

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

1. On 26.08.2016, the Competition Commission of India ("**Commission**") received a Notice given by Fosun Pharma Industrial PTE Limited **(**"**Fosun Singapore**"/"**Acquirer**")

under Section 6 (2) of the Competition Act, 2002 ("**Act**"). The proposed combination is structured as: (i) acquisition of equity shares of Gland Pharma Limited ("**Gland**") by Fosun Singapore from (a) KKR Floorline Investments Pte. Ltd ("**KKR**"); (b) promoters of Gland; and (c) certain individuals; (ii) buyback of shares from certain shareholders; and (iii) subscription of Compulsorily Convertible Preference Shares of Gland by Fosun Singapore. ("**Proposed Combination**").

2. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ('**Combination Regulations**'), *vide* letter dated 30.09.2016, the Acquirer was required to remove certain defects and provide requisite information, to which the Acquirer filed its response on 04.10.2016. As the information submitted was not complete, a continuing defect was sent to the Acquirer on 7.10.2016 and response to the same was submitted on 13.10.2016, after seeking extension of time. Since the information submitted was still not complete, yet another continuing defect letter was sent to the Acquirer on 20.10.2016. The response was received on 25.10.2016.

3. In terms of sub-regulation (3) of Regulation 19 of the Combination Regulations, *vide* letters dated 18.11.2016, certain competitors of Gland ("**Competitors")** were required to provide information by 28.11.2016. The last response received from the Competitors was on 09.12.2016, after seeking extension(s) of time.

4. Fosun Singapore, incorporated in Singapore and a wholly owned subsidiary of Shanghai Fosun Pharmaceutical (Group) Co. ("**Fosun Pharma**"), does not carry out any manufacturing and marketing activities in relation to pharmaceutical products. Fosun Pharma is engaged in manufacturing and sale of pharmaceutical products. It is engaged in supply of three APIs in India – API - Pemetrexed Disodium (API PD), API - Heprain Sodium (API HS) and API - Clindamycin Hydrochloride + Clindamycin Phosphate (API CHCP) through its non-Indian subsidiaries, namely, Chongqing Pharmaceutical Research

Institute Co. Limited ("**CPRI**"), WanbangSinock Biopharmaceutical Co., Ltd. ("**WBCL**") and Chongqing Carelife Pharmaceutical Co., Ltd. ("**CCPCL**").

5. Gland is engaged in sale of injectables both in India and abroad with in-house API development and manufacturing facilities.

6. The Proposed Combination relates to the pharmaceutical sector where Active Pharmaceutical Ingredients ("**API**s") are used to manufacture formulations, which are then sold to consumers. APIs manufactured outside India and used for the manufacture of formulations to be sold in India are required to be registered with the Drugs Controller General of India ("**DCGI**").

7. It is submitted in the notice that CPRI supplies API PD to Gland for the purpose of manufacturing Pemetrexed Disodium injectable for export to Europe. The said API is also sourced by Gland from Gland Chemicals Private Limited (a related party of Gland) for manufacture of the formulation to be exported to Australia. It is submitted by the Acquirer that Gland Chemicals Private Limited is not a part of the proposed combination and hence there is no horizontal overlap between the Parties in the upstream market of API PD and no vertical overlap as the formulation manufactured from API PD supplied by CPRI is not sold by Gland in India. In the downstream market of formulations, Fosun is not engaged in manufacture/supply of formulations made from API PD in India. However, Gland manufactures and sells formulations made from API PD in India and also exports the same. In view of the submission of the Acquirer, there appears to be no horizontal overlap between the Parties in the supply of API - Pemetrexed Disodium at either the upstream or downstream level.

8. It is also submitted by the Acquirer that WBCL supplies API HS to Nub Chem which further distributes it to a third party in India that exports the formulation (made from API HS) abroad. It is submitted by the Acquirer that the said API supplied by the Acquirer is in

the process of being registered with the DCGI and in future, would be used for manufacturing of injectables to be sold in India. It is submitted that Gland also manufactures API HS for captive consumption; however it does not sell the said API to any third party in India. Consequently, the API HS supplied by WBCL may be categorized as a "*potentially substitutable"* product for the same API manufactured by Gland. Thus, there is a potential horizontal overlap between Fosun Pharma and Gland for API HS. At the formulation level, while Gland manufactures and supplies Heparin injections in India, the Acquirer is currently not engaged in manufacture or supply of formulations made from API HS. As such, there does not seem to be any horizontal overlap between Parties at the formulation level. However, there exists a vertical overlap between the Parties: the Acquirer, being a supplier of API HS in the upstream market, has applied for a license to sell the formulation using the same API in India and Gland is engaged in manufacture and sale of formulations made from API HS in India.

9. With regard to API CHCP, the Acquirer has submitted that CCPCL supplies this API to several pharmaceutical companies in India such as Watson Pharma Private Limited, Sun Pharmaceutical Industries Limited, Aurobindo Pharma Limited, Mylan Pharmaceuticals Private Limited, etc. It is further submitted that Gland sells Clindamycin (a formulation manufactured by using the above API) in India. However, Gland does not manufacture Clindamycin itself, but only sells the same under its brand name after procuring it from a third party. It is submitted that the Acquirer is not engaged in manufacture or supply of formulations from API CHCP. Therefore, there is no horizontal overlap in the market for API CHCP either at upstream or downstream level. However, there is a vertical overlap between the Parties as the Acquirer is engaged in supply of APICHCP in the upstream market and Gland is engaged in sale of formulations in India that use same API.

10. As per the decisional practice of the Commission, it is appropriate to define relevant product market at the molecule level, i.e., medicines/formulations based on the same API are considered to constitute a distinct relevant product market. It is noted that APIs are the primary inputs in the manufacture of formulations and thus constitute a separate

relevant market, distinct from formulations Thus, the relevant product market with respect to Heparin Sodium may be delineated as the market for API HS at the API level and unfractioned Heparin at the formulation level. Similarly, the relevant product market with respect to Clindamycin may be delineated as the market for API CHCP at the API level and Clindamycin at the formulation level. Further, it is stated by the Acquirer that the products are supplied throughout India and there are no barriers or restriction for the sale of the products to any particular territory of India. In the light of above, the relevant geographic market for the Proposed Combination may be defined as the territory of India.

11. In case of Heparin Sodium, the Acquirer has submitted that out of an estimated total volume of 94,445 MU of API manufactured in India (based on the minimum requirement of the said API required to manufacture the formulation Unfractioned Heprain), Gland has a market share in the range of 30-35% (by volume). It has been stated by the Acquirer that the entire manufacturing of API by Gland is for captive consumption. Also, Gland Chemicals Private Limited manufactures API Heparin Sodium and sells to Gland and one third party in India. At the formulation level, it has been submitted by the Acquirer that Gland has a market share in the range of 55-60% (by volume). The Acquirer, presently, does not supply API HS for manufacture of formulation to be sold in India, but it has applied for a license for it. Further, the Acquirer has submitted names of entities in China and other countries that are registered to export the said API to India to formulation manufacturers who sell the formulation in India and also export the same. The Commission, in its meeting held on 11.11.2016, decided to obtain information, under Regulation 19(3) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"), from formulation manufacturers regarding supply of API HS. Accordingly, letters were sent to top five competitors of Gland at the formulation level. Based on the responses received from the formulation manufacturers, the Commission observed that there exist alternate sources of supply for API HS in the form of entities who export the same to India. The formulation manufacturers have furnished some additional name of entities exporting / supplying API HS to them, in addition to the names furnished by the Acquirer. In addition, one

formulation maker has submitted that it is engaged in captive consumption of the said API. Therefore, from the information filed by the Parties and the formulation makers, the Commission is of the view that the proposed combination is not likely to have any adverse effect on competition in the market of API HS. The Acquirer, even after obtaining the license to supply the API for manufacturing formulation to be sold in India, will face competitive constraints from the entities who presently supply the said API to formulation manufacturers in India. Further, pre-combination, Gland is only engaged in captive consumption of the said API and does not supply it to any other formulation maker in India.

12. With regard to Clindamycin Hydrochloride + Clindamycin Phosphate, the Acquirer has submitted that it is not present in the downstream market where Gland has a market share of 0-5%. The Acquirer has estimated the total market of API CHCP to be used in formulations sold in India to be 1079.87 kilograms (based on the minimum requirement of the API required to manufacture Clindamycin formulation sold in India). It is submitted that CCPL imported 17,728 Kg of Clindamycin APIs into India in 2015 (including the API which is used in making formulation for export). The Acquirer has submitted names of entities that are registered to export the said API to India to formulation manufacturers who sell the formulation in India and also export the same. The Commission, in its meeting held on 11.11.2016, decided to obtain information, under Regulation 19(3) of the Competition Regulations from formulation manufacturers regarding supply of API CHCP to the formulation manufacturers. Letters were sent to top five competitors of Gland at the formulation level. Based on the response received from formulation manufacturers, it is apparent that there exist alternate sources of supply for API CHCP in the form of entities who export the same to India. The formulation manufacturers have mentioned an entity exporting / supplying API CHCP to them, in addition to the names furnished by the Acquirer. Therefore, from the information filed in the notice, response received and in view of the fact that Gland has a market share of only 0-5% at the formulation level, the Commission observed that the proposed combination is not likely to have any adverse effect on competition in the market of API CHCP as the Acquirer will face competitive

constraints from entities who, presently, supply the said API to formulation manufacturers in India.

13. Considering facts on record and details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment on the basis of factors stated in sub-section (4) of Section 20 of the Act, the Commission was of the view that the proposed combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission, approved the same under sub-section (1) of Section 31 of the Act.

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

15. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.

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

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