COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/10/442)

Fair Competition
For Greater Good

13th January, 2017

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

Aspen Global Incorporated

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal representatives: Khaitan & Co.

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

1. On 10th October, 2016, the Competition Commission of India ("**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") given by Aspen Global Incorporated ("**AGI**" or "**Acquirer**"). The Acquirer submitted certain documents on 20th October, 2016 as per the undertaking filed at the time of giving the notice. The notice was filed pursuant to execution of a Business Purchase Agreement ("**BPA**") between AGI, Glaxo Group Limited ("**GGL**") and GlaxoSmithKline Intellectual Property (no.2) Limited ("**GIPL**") on 10th September, 2016 (GGL and GIPL are collectively referred to as "**GSK Entities**").

2. The proposed combination pertains to worldwide acquisition of Ultiva, Tracrium, Nimbex, Mivacron and Anectine/Midarine brands ("**Target Brands**") of GGL and GIPL on a going concern basis by AGI ("**Proposed Combination**"). The Proposed Combination is an acquisition of the Target Brands of the GSK Entities, along with the goodwill and intellectual property, marketing authorisations, contracts and business information associated with the Target Brands, on a going concern basis by AGI.

3. In terms of 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**"), *vide* letter dated 11th November, 2016, the Acquirer was, *inter alia*, required to provide overlaps at molecular level and information pertaining to other vertically integrated players. The Acquirer, after seeking extension of time, filed its response on 23rd November, 2016. Further, *vide* letter dated 23rd December, 2016, the Acquirer was required to provide justification in relation to non-compete obligation imposed on entities of GSK group. The Acquirer furnished its response on 9th January, 2017, after seeking extension of time.

4. AGI, a company incorporated in Mauritius, is a wholly owned subsidiary of Aspen Pharmacare Holdings Limited ("**APHL**"). APHL (through its subsidiaries) is a supplier of branded and generic pharmaceuticals, consumer and nutritional products across the world. As stated in the notice, AGI or the Aspen group do not have any entities in India.

5. GIPL is stated to be engaged in funding research and development activities and licensing of intellectual property rights relating to pharmaceutical products of the GSK group. GGL, through its subsidiaries, produces pharmaceuticals, sports nutrition and food products for infants. GGL and GIPL are subsidiaries of GlaxoSmithKline Plc., which is the ultimate parent company of the GSK group.

6. It has been submitted that out of the Target Brands, only Tracrium was sold in India in year 2015 by the GSK Entities and that the Aspen group (including its subsidiaries) do not sell or commercialise any products which may compete with the Target Brands or the APIs used therein, in India.

7. With regard to the horizontal overlap, the Commission noted that there is no horizontal overlap (either in the final products or in the active pharmaceutical ingredients ("**APIs**")) between AGI (or the Aspen group) and GSK group in relation to the Target Brands in India.

8. The Commission observed that at the therapeutic level, the GSK Entities are present in muscle relaxants with market share in the range of [0-5] per cent. The Commission also observed that the therapeutic segment is characterised by presence of established players like Neon Laboratories Ltd (with a market share in the range of 45-50 per cent), MSD Pharmaceuticals India Private Limited (with a market share in the range of 10-15 per cent), Fresenius Kabi India Private Limited (with a market share in the range of 5-10 per cent), Themis Medicare Limited (with a market share in the range of 5-10 per cent) and Troikaa Pharmaceuticals Limited (with a market share in the range of 5-10 per cent).

9. As regards vertical relationships, the Commission observed that parties are not engaged in a vertical relationship with each other in relation to Target Brands in India and accordingly, there seems to be no likelihood of any adverse effect on competition in India.

10. During the course of assessment of the Proposed Combination, it was observed that the BPA imposes non-compete restrictions on entities belonging to GSK group, according to which GSK group shall not, directly or indirectly, commercialise in certain countries any product in the same ATC 4 category as the Target Brands for five years. The Commission in its meeting held on 20th December, 2016 directed the Acquirer to provide necessary clarification and justification with respect to the said non-compete obligation imposed on GSK group. In this regard, the Acquirer, under the provision of sub-regulation (2) of Regulation 19 of the Combination Regulations, voluntarily undertook to reduce duration of the non-compete referred to in the BPA, insofar as it relates to India, to three years from the completion date of the Proposed Combination and also undertook to submit an addendum to the BPA to this effect within 30 days of the receipt of the approval of the Commission. The Commission, in its meeting held on 13th January, 2017, considered and accepted the voluntary modification offered by the Acquirer. In this regard, the Commission, while accepting the above said modification offered by the Acquirer under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations directed the Acquirer to make necessary amendment(s) in the BPA, so as to incorporate the said modification and

submit a copy of such amended agreement, along with other relevant documents, to the Commission within 30 days of the receipt of the order under sub-section (1) of Section 31 of the Act.

11. Considering facts on record, 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 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 same under sub-section (1) of Section 31 of the Act.

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

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

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