COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2021/12/887)

20th January, 2022

Notice under Section 6(2) of the Competition Act, 2002 given by GlaxoSmithKline Consumer Healthcare Overseas Limited and GlaxoSmithKline Consumer Healthcare (UK) Trading Limited

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. On 7th December 2021, the Competition Commission of India (**Commission**) received a notice under Section 6(2) of the Competition Act, 2002 (**Act**), jointly given by GlaxoSmithKline Consumer Healthcare Overseas Limited (**GSKCHOL**) and GlaxoSmithKline Consumer Healthcare UK Trading Limited (**GSKCHUKTL**). [Hereinafter, GSKCHOL and GSKCHUKTL are collectively referred to as the **Acquirers**). The notice was filed pursuant to the execution of: (i) Share Transfer Agreement dated 6th December 2021 between GSKCHOL, GSKCHUKTL, GlaxoSmithKline Pte. Ltd (**GSK Pte.**), and SmithKline Beecham Limited (**STA**); and (ii) Asset Transfer Agreement dated 3rd December 2021 between GlaxoSmithKline

Pharmaceuticals Limited (**GSK Pharma**) and GlaxoSmithKline Asia Private Limited (**GSKAPL**) (**ATA**).

2. The proposed combination consists of the following inter-connected steps: (i) GSKAPL's acquisition of trademarks pertaining to 'Iodex' and 'Ostocalcium' brands in India along with the legal, economic, commercial and marketing rights of such brands and other associated assets (collectively referred to as **GSK Consumer Brands**) from GSK Pharma; and (ii) acquisition of 100% shares in GSKAPL by GSKCHOL and GSKCHUKTL, with GSKCHOL acquiring 99.9% and GSKCHUKTL acquiring 0.01% respectively of GSKAPL's shareholding (**Proposed Combination**).

3. 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**), the Commission, *vide* its communication dated 30th December 2021, sought certain information(s)/clarification(s), the response to which was received on 7th January 2022. Further, the Acquirers submitted certain information by way of voluntary submissions on 11th January 2022 and 17th January 2022.

4. The Acquirers are wholly owned subsidiaries of GlaxoSmithKline Consumer Healthcare Holdings (No.2) Limited (**GSK CH HoldCo**). GSK CH HoldCo was established through the contribution by GlaxoSmithKline plc. (**GSK**) and Pfizer Inc. (**Pfizer**) of their respective legacy consumer healthcare businesses and is owned 68% by GSK and 32% by Pfizer (**Earlier Transaction**[1]). As submitted, the principal activity of GSKCHOL is to act as an investment holding company for GSK CH HoldCo and its subsidiaries. GSKCHUKTL's principal activities include the distribution and sale of consumer healthcare products, manufacturing, marketing, providing management services to the consumer healthcare group and providing research and development services to other consumer healthcare companies within GSK group.

[1] The Commission noted that a notice had been filed by GSK and Pfizer on 22nd March 2019 (Combination Regn. No. C-2019/05/654) seeking approval for the Earlier Transaction; which was approved by the Commission by passing an Order, under Section 31(1) of the Act, dated 22nd May 2019.

5. GSKAPL is a subsidiary of GSK Pte, situated in Singapore. As submitted, GSKAPL is involved in the marketing and distribution of over the counter (**OTC**) Oral Consumer Healthcare Products under various brand names such as 'Parodontax', 'Polident' and 'Sensodyne' and OTC Medicine Products under brand names such as 'Crocin' and 'ENO'. [Hereinafter, OTC Oral Consumer Healthcare Products and OTC Medicine Products are collectively referred to as **GSKAPL Products**].

6. The Commission observed that the Proposed Combination involves the transfer of GSKAPL Products and GSK Consumer Brands (indirectly) to GSK CH HoldCo. For the purpose of competition assessment of the Proposed Combination, at the outset, each of the products forming part of the GSK Consumer Brands and GSKAPL Products can be classified in terms of broad therapeutic areas/product segments. Accordingly, (i) Crocin brands, 'Crocin' and 'Crocin Pain Relief,' can be classified as part of the Non-narcotic Anti-pyretic Products (including paracetamol + caffeine combinations) segment, and 'Crocin C&F Max' can be classified as a Nasal Decongestant Product; (ii) 'ENO', including variants (**ENO Brands**), can be classified as part of the Antacids and Anti-flatulent Products segment; (iii) 'Sensodyne' and 'Parodontax' can be classified as part of the Foaming Fluoridated Toothpastes segment; (iv) 'Polident' can be classified as a Denture Adhesive Product; (v) 'Iodex', including variants (**Iodex Brands**), can be classified as a part of the Topical Anti-rheumatic Products segment; and (vi) 'Ostocalcium' including variants, (**Ostocalcium Brands**), can be classified as part of the Calcium Preparation Products segment.

7. After the broad classification of GSKAPL Products and GSK Consumer Brands, as a next step in competition assessment and considering the specificities of the Proposed Combination, the Commission considered the overlaps of each of the GSKAPL Products and GSK Consumer Brands with the retained business of Pfizer in India. In this regard, based on the information given by the Acquirers, the Commission noted that there are no overlaps in respect of the products sought to be contributed by GSK to GSK CH HoldCo with Pfizer in India in the areas/product segments of Non-narcotic

Anti-pyretic products (including paracetamol + caffeine combinations)[2], Foaming Fluoridated Toothpastes, Denture Adhesives and Nasal Decongestants, while there are overlaps in the areas/product segments of Antacids and Anti-flatulent Products, Topical Anti-rheumatic Products and Calcium Preparation Products. Accordingly, the Commission proceeded to undertake further competition assessment for the three overlapping product segments identified above.

8. The Commission, based on the submission of the Parties, noted that, for the product segment of Antacids and Anti-flatulents, GSK would be contributing ENO Brands, while Pfizer has two retained products forming part of the product segment, viz., 'Gelusil MPS' and 'Mucaine'. In the segment of Calcium Preparation Products, GSK would be contributing Ostocalcium Brands while Pfizer has one retained product forming part of the product segment, viz., 'Ossivite'. In the segment of Topical Anti-rheumatics, GSK would be contributing Iodex Brands while Pfizer has one retained product under the brand, viz., 'Dolonex', forming part of the product segment.

9. The Commission, in accordance with its decisional practice of considering the relevant product market in cases involving pharmaceutical products, considered the IQVIA-IMS India Database, which adopts European Pharmaceutical Marketing Research Association's (**EphMRA**) anatomical therapeutic chemical **(ATC)** classification of medicine. The Commission noted that the product segments of the parties exhibit overlap at the ATC3 level and/or ATC4 level. With respect to the relevant geographic market, the Commission, in accordance with its decisional practice, considered the relevant geographic market as the territory of India. However, since the Proposed Combination is not likely to cause any appreciable adverse effect on competition in any of the alternative and plausible relevant market definitions, the Commission decided that the exact delineation of the relevant market may be left open.

[2] The Commission noted that in this product segment, Pfizer had proposed to contribute its product 'Anacin' as a part of Earlier Transaction, and has another retained product 'Pactiv' and GSK also has a retained product 'Calpol'. However, as submitted by the Acquirers, Pfizer has discontinued sales of both Pactiv and Anacin India leading to elimination of overlaps. The Commission considered the pre-discontinuation position of Pfizer products and observed that the Proposed Combination and/or Earlier Transaction are not likely to cause any competition concerns in this segment and therefore no further examination is required.

10. With respect to the segment of Antacids and Anti-flatulents, the Commission noted that GSK's product ENO (including its variants) is an ayurvedic product, and upon the exclusion of ayurvedic medicines, no overlap would exist between GSK's contributed business and Pfizer's retained business. Following on the same, the Commission further observed that the characteristics and intended use of ENO and Pfizer's products may also be differentiated for the purpose of determining on the existence of overlaps. However, these issues can be left open as, even if the assessment is considered in terms of ATC classification, no competition concerns are likely to arise given the competition dynamics, as reflected in presence of GSK's product ENO (including its variants), Pfizer's retained products, and other competing products at the ATC3 level. There would be no overlap at the ATC4 level.

11. For the product segment of Topical Anti-rheumatic Products, the Commission noted that the presence of GSK's Iodex Brands and Pfizer's retained product 'Dolonex', as reflected in market share data, is insignificant at both the ATC3 and ATC4 levels, both in terms of value and volume. Further, as observed, the segment is characterised by the presence of other significant players, such as Sun Pharmaceuticals, Reckitt Benckiser, Ozone Pharmaceuticals, Troikaa Pharmaceuticals and Novartis, which would continue to exercise competitive constraints on the products of GSK and Pfizer.

12. For the product segment of Calcium Preparations, the Commission noted that the presence of GSK's Ostocalcium Brands and Pfizer's retained product 'Ossivite', as reflected in market share data, is insignificant at both the ATC3 and ATC4 levels, both in terms of value and volume. Further, as observed, the segment is characterised by the presence of other significant players, such as Torrent Pharma, Meyer Organics, Alkem Laboratories, Pharmed Limited and Lupin Limited, which would continue to exercise competitive constraints on the products of GSK and Pfizer.

13. Considering the material on record, including the details provided in the Notice and the assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not

likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act.

14. The order may be revoked if, at any time, the information provided by the Acquirers is found to be incorrect.

15. The information provided by the Acquirers shall be treated as confidential in terms of and subject to the provisions of Section 57 of the Act.

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