

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by **Mylan N.V.**,
Alphapharm Pty Ltd ACN 002 359 739,
Upjohn, Inc. and **Upjohn Australia Pty Ltd**
ACN 629 389 911.

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1. Person giving the Undertaking

- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by:
- a. Mylan N.V. and its subsidiary Alphapharm Pty Ltd ACN 002 359 739 (together referred to as the **Mylan Parties** in this Undertaking); and
 - b. Upjohn Inc. and its subsidiary Upjohn Australia Pty Ltd ACN 629 389 911 (together referred to as the **Upjohn Parties** in this Undertaking),
- (together referred to as the **Undertaking Parties** in this Undertaking).

2. Background

The parties to the proposed transaction

- 2.1. Mylan N.V. (**Mylan**) is incorporated under the laws of the Netherlands, is publicly traded on the NASDAQ Global Select Market and is a global pharmaceutical company that develops, manufactures, markets and sells generic and branded products, biosimilar medicines and over-the-counter (**OTC**) remedies. Mylan runs its Australian operations through Alphapharm Pty Ltd, trading as Mylan Australia, which is a wholly owned subsidiary of Mylan.
- 2.2. In Australia, Mylan supplies a portfolio of approximately 350 generic pharmaceutical drugs and over 450 branded, biosimilar medicines and OTC remedies to pharmacies and hospitals.
- 2.3. Pfizer Inc. (**Pfizer**) is a global pharmaceutical company that develops, manufactures, markets and sells prescription medicines and OTC products. Pfizer's Upjohn business manufactures and supplies branded and generic off-patent medicines (**Upjohn Business**). The Upjohn Business conducts its Australian operations through Upjohn Australia Pty Ltd (**Upjohn Australia**). Until closing of the transaction, Upjohn Inc. (**Upjohn**) is a wholly-owned and solely controlled subsidiary of Pfizer, which will hold and operate the Upjohn Business after its separation from Pfizer as described below.
- 2.4. Upjohn supplies off-patent pharmaceutical products, 18 of which are sold in Australia through Upjohn Australia.

The Proposed Transaction

- 2.5. On 29 July 2019, Mylan and Pfizer entered into a transaction which involves the separation of Upjohn from Pfizer through a spin-off and its combination with Mylan. Upon closing of the transaction, Upjohn will hold the combined Mylan and Upjohn businesses and will be the ultimate parent entity of the combined group of Mylan and Upjohn entities, including the Mylan Parties and Upjohn Australia. Upjohn will be renamed "**Viatriis**" at the closing of the transaction (the **Proposed Transaction**). Upon completion of the Proposed Transaction, current Mylan shareholders will hold 43%, and current Pfizer shareholders 57%, of Viatriis. No shareholder will have sole or joint control over the merged company, and Pfizer will have no equity interest in Viatriis upon completion of the Proposed Transaction.

The ACCC's review

- 2.6. On 24 March 2020, the ACCC commenced its public review of the Proposed Transaction.
- 2.7. The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Transaction, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in any market in Australia in contravention of section 50 of the Act.

The ACCC's competition concerns

- 2.8. The ACCC is concerned that, in the absence of the Undertaking, the Proposed Transaction would have the effect, or would be likely to have the effect, of substantially lessening competition for the supply of pharmaceutical products based on:
 - (a) the molecule Latanoprost;
 - (b) the combination of the molecules Latanoprost/Timolol; and
 - (c) the combination of the molecules Amlodipine/Atorvastatinto (i) pharmacies and (ii) hospitals in Australia (each a **Relevant Market** and together **Relevant Markets**).
- 2.9. For the supply of pharmaceutical products based on the combination of the molecules Latanoprost/Timolol, and Amlodipine/Atorvastatin, the merger parties are the only suppliers of the combination molecules. The Proposed Transaction removes the sole competitive constraint on the parties' price and service decisions in relation to the supply of these molecules.
- 2.10. In relation to the supply of Amlodipine/Atorvastatin, the ACCC considered that pharmaceutical products based on the constituent Amlodipine and Atorvastatin molecules did not meaningfully compete for demand for the combination Amlodipine/Atorvastatin molecule. Despite being available in equivalent dosages, the ACCC's market inquiries found that the combination molecule is prescribed to patients who require pharmaceutical products based on both molecules to improve patient compliance and reduce cost to patient (patients would pay double the dispensing fee for the constituent molecules) such that the individual constituent molecules were not substitutable.
- 2.11. For pharmaceutical products based on the molecule Latanoprost, the ACCC considered that post transaction, the remaining competitor, with a minimal market share, would not provide a sufficient competitive constraint on the merged entities' price and service decisions.
- 2.12. The ACCC considered that the Proposed Transaction was unlikely to give rise to competition concerns for the supply of the remaining overlap molecules¹ to pharmacies or hospitals in Australia.

¹ Amlodipine, Atorvastatin, Celecoxib, Eplerenone, Gabapentin, Pregabalin, Sertraline, Sildenafil and Venlafaxine.

The Undertaking remedy

- 2.13. The Undertaking Parties do not consider that the Proposed Transaction would have been likely to give rise to any substantial lessening of competition. However, to address the ACCC's competition concerns, the Undertaking Parties have offered this Undertaking pursuant to section 87B of the Act.
- 2.14. The objective of this Undertaking is to address the ACCC's competition concerns, as set out above, that would otherwise arise because of the Proposed Transaction. The Undertaking aims to achieve this objective by placing obligations on the Undertaking Parties:
- (a) to ensure that the Divestiture Business is sold to an Approved Purchaser that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long term competitor for the supply of each of the Divestiture Brands;
 - (b) to ensure the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with the Undertaking Parties in the supply of each of the Divestiture Brands in Australia;
 - (c) to maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
 - (d) to provide for the effective oversight of the Undertaking Parties' compliance with this Undertaking.

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by the Mylan Parties and the Upjohn Parties; and
 - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

4. Cessation of Ongoing Obligations

Withdrawal

- 4.1. The Undertaking Parties may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

Revocation

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

Waiver

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

Survival

- 4.4. Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15, 16 and 17 survive completion of the obligations in clauses 5, 6, 7, 8, 10 and Schedule 4 and Confidential Schedules 5, 8 and 9.

5. Divestiture of the Divestiture Business

Divestiture

- 5.1. The Undertaking Parties must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Business only to an Approved Purchaser.
- 5.2. In the event that clause 10 applies, the Undertaking Parties must not authorise the Approved Divestiture Agent to divest the Divestiture Business to a purchaser other than an Approved Purchaser.
- 5.3. The Undertaking Parties must divest, or cause the divestiture of, the Divestiture Business by:
- (a) the sale, assignment, transfer and/or licence of all of the assets in Schedule 4 to the Approved Purchaser, pursuant to the Approved Sale and Purchase Agreement and within the Initial Sale Period, otherwise clause 10 applies;
 - (b) the transfer or grant to the Approved Purchaser of all Consents pursuant to clauses 5.4 and 5.5;
 - (c) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.9 and 5.11; and
 - (d) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.12 to 5.14.

Consents

- 5.4. The Undertaking Parties must:
- (a) obtain or assist the Approved Purchaser to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Business;
 - (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
 - (c) act in good faith in their negotiations with the Approved Purchaser in relation to obtaining any Consents;
 - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and

- (e) enter into an agreement with the Approved Purchaser and approved by the ACCC, or vary any existing Approved Transitional Supply Agreement, in relation to any goods or services that are required for the operation of the Divestiture Business which may be affected by any failure to gain a Consent.
- 5.5. If, seven Business Days before completion of the divestiture of the Divestiture Business, the Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then the Undertaking Parties must:
- (a) immediately provide to the ACCC in writing details of the:
 - (i) Consents that have not been obtained;
 - (ii) reasons why the Consents have not been obtained; and
 - (iii) information or material required to obtain the Consents.
 - (b) continue to do everything in their power to satisfy clause 5.4 as soon as possible after the completion of the divestiture of the Divestiture Business (and until such time as clause 5.4 is satisfied).
- 5.6. Even if the Undertaking Parties have complied with clauses 5.4 and 5.5, it remains a breach of this Undertaking if the Undertaking Parties are unable to effect the divestiture of the Divestiture Business by reason that one or more Consents are not obtained.

Transferred Personnel

- 5.7. At the option of the Approved Purchaser, the Undertaking Parties must transfer to the Approved Purchaser:
- (a) all employees necessary for the operation of the relevant Divestiture Business; and
 - (b) all service providers under a contract for service necessary for the operation of the relevant Divestiture Business;
- who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**)
- 5.8. When fulfilling its obligations under clause 5.7, the Undertaking Parties must:
- (a) encourage all Transferred Personnel to remain with the Divestiture Business, including offering incentives based on industry practice;
 - (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the Undertaking Parties;
 - (c) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any obligations to provide services to the Undertaking Parties;
 - (d) effective on the date of the divestiture of the Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise

prevent the person from performing his or her contemplated role in relation to the Divestiture Business or Unsold Business; and

- (e) not procure, promote or encourage the transfer of any of the Transferred Personnel from the Approved Purchaser to the Undertaking Parties for a period of 12 months after the completion of the divestiture of the Divestiture Business.

Technical Assistance

- 5.9. At the option of the Approved Purchaser, the Undertaking Parties must ensure the supply to the Approved Purchaser, under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser in order to operate the Divestiture Business.
- 5.10. The Undertaking Parties must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:
 - (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
 - (b) at cost and otherwise on arm's length terms.
- 5.11. To avoid doubt, the Undertaking Parties must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.9 and 5.10.

Transitional Supply Agreements

- 5.12. At the option of the Approved Purchaser, the Undertaking Parties must ensure the continued supply by the Undertaking Parties to the Approved Purchaser, under an Approved Transitional Supply Agreement, of any goods or services that are required by the Approved Purchaser in order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor in each of the Relevant Markets.
- 5.13. The Undertaking Parties must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
 - (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
 - (b) provides for the supply, re-supply or toll manufacturing of the included goods and services at cost price; and
 - (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.14. To avoid doubt, the Undertaking Parties must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply

Agreement, the ACCC will have regard to the criteria set out in clauses 5.12 and 5.13.

6. Process for approving a proposed purchaser

Potential purchasers

6.1. The Undertaking Parties must provide the ACCC and Approved Independent Auditor with:

- (a) the identity of any person who expresses an interest in acquiring the Divestiture Business;
- (b) the status of negotiations with each person; and
- (c) a copy of each person's offer to acquire the Divestiture Business, where relevant;

at the following times:

- (d) as soon as possible following the Commencement Date for those persons who express interest before the Commencement Date;
- (e) after the Commencement Date, within 10 Business Days of each person expressing the interest and/or providing an offer;

regardless of whether the person subsequently withdraws or is declined.

Provision of a notice for a Proposed Purchaser

6.2. To seek ACCC approval for a Proposed Purchaser, the Undertaking Parties or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).

6.3. The Proposed Purchaser Notice must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

Purchaser approved at the time the Undertaking was accepted

6.4. At the time this Undertaking was accepted, the ACCC also considered information of the type required in a Proposed Purchaser Notice and approved the Proposed Purchaser in Schedule 6 as the Approved Purchaser of the Divestiture Business.

6.5. ACCC approval of the Proposed Purchaser identified in Schedule 6 as the Approved Purchaser of the Divestiture Business included approval of:

- (a) the Asset Purchase Agreement in the form of the attached Confidential Schedule 8 as the Approved Sale and Purchase Agreement; and
- (b) the Supply and Technology Transfer Agreement in the form of the attached Confidential Schedule 9 as the Approved Transitional Supply Agreement and the Approved Transitional Technical Assistance Agreement.

- 6.6. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

7. Divestiture Business Protection

Protection of the Divestiture Business

- 7.1. From the Commencement Date, the Undertaking Parties must not sell or transfer their interest, or any assets comprising part of, or used in, the Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Proposed Transaction.

The Undertaking Parties' obligations in relation to the Divestiture Business prior to completion of divestiture

- 7.2. Without limiting this clause 7, the Undertaking Parties must, from the Commencement Date until completion of the divestiture of the Divestiture Business, take all steps available to them to:
- (a) ensure that the Divestiture Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Business at the Commencement Date;
 - (b) continue to provide access to working capital and sources of credit for the Divestiture Business in a manner which is consistent with the financing of the Divestiture Business before the Commencement Date;
 - (c) continue to provide administrative and technical support for the Divestiture Business in a manner which is consistent with the operation of the Divestiture Business before the Commencement Date and in accordance with any plans established before the Commencement Date;
 - (d) continue existing Agreements relating to the Divestiture Business with customers, suppliers and/or other third parties that are in place at the Commencement Date;
 - (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Business on commercial terms favourable to the Divestiture Business;
 - (f) maintain the supply of those goods and services that are part of the Divestiture Business to existing customers in a manner consistent with the supply of those goods and services as at the Commencement Date;
 - (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Business as at the Commencement Date; and
 - (h) carry out promotion and marketing of the products which form part of the Divestiture Business in accordance with any plans established before the Commencement Date.

Personnel of the Undertaking Parties

- 7.3. From the Commencement Date until completion of the divestiture of the Divestiture Business, the Undertaking Parties must:
- (a) in consultation with any Approved Independent Manager, replace any
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business;who leave or will leave the Divestiture Business before divestiture;
 - (b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any of the
 - (i) Transferred Personnel; or
 - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Business; and
 - (c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Business as at the Commencement Date to any other business operated by the Undertaking Parties.
- 7.4. As soon as practicable after the Commencement Date, the Undertaking Parties must direct their personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with the Undertaking Parties' obligations under this Undertaking.

The Undertaking Parties' ongoing obligations in relation to the Divestiture Business

- 7.5. To the extent the Undertaking Parties have obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.9 to 5.14 of this Undertaking in relation to the Divestiture Business, the Undertaking Parties must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

Confidential Information

- 7.6. Subject to clause 7.7, the Undertaking Parties must not, at any time from the Commencement Date, use or disclose any confidential information about the Divestiture Business gained through:
- (a) ownership and/or management of the Divestiture Business; or
 - (b) fulfilling any obligations pursuant to this Undertaking.
- 7.7. Clause 7.6 does not apply to information that the Undertaking Parties require to:
- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or

- (b) carry out their obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of the Undertaking Parties who need to know the information to carry out the permitted purpose.

8. Independent Management of the Divestiture Business

Obligation to appoint an Approved Independent Manager

- 8.1. This clause 8 applies if the Divestiture Business becomes an Unsold Business as set out in Clause 10 and the ACCC directs in writing the Undertaking Parties to appoint and maintain an Approved Independent Manager to manage the Unsold Business.
- 8.2. The Undertaking Parties must appoint and maintain an Approved Independent Manager to manage the Unsold Business, from the end of the Initial Sale Period until the completion of the divestiture of the Unsold Business in accordance with this Undertaking.

Process for approving a Proposed Independent Manager

- 8.3. At least 15 Business Days before the end of the Initial Sale Period, the Undertaking Parties must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including a draft terms of appointment and a draft separation and management plan.
- 8.4. If clauses 8.13, 8.14 or 8.15 apply, the Undertaking Parties must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.9 applies.
- 8.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in the Proposed Independent Manager Notice.
- 8.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Unsold Business;
 - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of the Undertaking Parties
 - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
 - (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Manager

- 8.7. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, the Undertaking Parties must by the end of the Initial Sale Period:
- (a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 8.8. If:
- (a) the Approved Independent Manager has not been appointed by the end of the Initial Sale Period;
 - (b) the Approved Independent Manager has not been appointed within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.13, 8.14 or 8.15; or
 - (c) the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.4;

then clause 8.9 applies.

- 8.9. If clause 8.8 applies, the ACCC at its discretion may:
- (a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
 - (b) direct the Undertaking Parties to appoint a person who the ACCC has deemed is an Approved Independent Manager.

Obligations and powers of the Approved Independent Manager

- 8.10. The Undertaking Parties must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:
- (a) maintain his or her independence from the Undertaking Parties, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with the Undertaking Parties for the period of his or her appointment;
 - (b) act in the best interests of the Unsold Business at all times including ensuring that the Unsold Business is managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Unsold Business at the end of the Initial Sale Period;

- (c) not use any confidential information gained through the management of the Unsold Business other than for performing his or her functions as Approved Independent Manager;
 - (d) make only those Material Changes to the Unsold Business which the ACCC does not object to;
 - (e) operate and manage the Unsold Business to the maximum extent practicable, in a manner which is financially and operationally separate from the Undertaking Parties;
 - (f) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking.
 - (g) provide the following reports directly to the ACCC:
 - (i) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
 - (ii) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or the Undertaking Parties' compliance with this Undertaking; and
 - (h) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.
- 8.11. The Undertaking Parties must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (a) manage and operate the Unsold Business according to the Approved Separation and Management Plan until the completion of the divestiture of the Unsold Business;
 - (b) provide any information requested by the Undertaking Parties pursuant to the protocol in the Approved Separation and Management Plan;
 - (c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Unsold Business requested by the Undertaking Parties which is not covered by the protocol in the Approved Separation and Management Plan;
 - (d) renew or replace upon expiry Material Contracts and enter into new contracts for the provision of goods or services to the Unsold Business on commercial terms favourable to the Unsold Business;
 - (e) engage, redeploy or make redundant personnel employed in the Unsold Business as the Approved Independent Manager determines necessary; and
 - (f) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.

The Undertaking Parties' obligations in relation to the Approved Independent Manager

8.12. Without limiting its obligations in this Undertaking, the Undertaking Parties must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
- (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
 - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
 - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Unsold Business; and
 - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
 - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Unsold Business, and for the Unsold Business to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business required by the Approved Independent Manager;
 - (iii) providing to the Approved Independent Manager any information or documents that he or she considers necessary for managing and operating the Unsold Business or for reporting to or otherwise advising the ACCC; and
 - (iv) not requesting information or reports regarding the Unsold Business from the personnel of the Unsold Business except through the Approved Independent Manager; and
 - (v) not appointing the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

Resignation, revocation or termination of the Approved Independent Manager

- 8.13. The Undertaking Parties must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the completion of the divestiture of the Unsold Business.
- 8.14. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.15. The ACCC may approve any proposal by, or alternatively may direct, the Undertaking Parties to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

9. Independent Audit

Obligation to appoint an Approved Independent Auditor

- 9.1. The Undertaking Parties must appoint and maintain an Approved Independent Auditor to audit and report upon the Undertaking Parties' compliance with this Undertaking.

Process for approving a Proposed Independent Auditor

- 9.2. At least 15 Business Days before the Control Date, the Undertaking Parties must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3. The Independent Auditor is to be appointed for a term of two years. Within 15 Business Days of the end of the Independent Auditor's term, the Undertaking Parties must provide the ACCC with a new Proposed Independent Auditor Notice. A person who is, or who has been, the Independent Auditor is eligible for reappointment as the Independent Auditor.
- 9.4. If clauses 9.17, 9.18 or 9.19 apply, the Undertaking Parties must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.9 applies.
- 9.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.
- 9.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:
 - (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
 - (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of the Undertaking Parties;
 - (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and

- (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

Appointment of the Approved Independent Auditor

- 9.7. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, the Undertaking Parties must by the Control Date:
- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
 - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

- 9.8. If:
- (a) the Approved Independent Auditor has not been appointed by the Control Date;
 - (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.17, 9.18, or 9.19; or
 - (c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.4;

then clause 9.9 applies.

- 9.9. If clause 9.8 applies, the ACCC at its absolute discretion may:
- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
 - (b) direct the Undertaking Parties to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

Obligations and powers of the Approved Independent Auditor

- 9.10. The Undertaking Parties must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
- (a) maintain his or her independence from the Undertaking Parties, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with the Undertaking Parties for the period of his or her appointment;
 - (b) conduct compliance auditing according to the Approved Audit Plan;
 - (c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business against the following factors (as relevant):

- (i) draft sale and purchase agreement is consistent with this Undertaking;
 - (ii) any Proposed Purchaser or potential purchaser of the Divestiture Business will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) any Proposed Purchaser or potential purchaser of the Divestiture Business is independent of the Undertaking Parties;
 - (iv) any Proposed Purchaser or potential purchaser of the Divestiture Business is of good financial standing;
 - (v) any Proposed Purchaser or potential purchaser of the Divestiture Business has an intention to maintain and operate the Divestiture Business as a going concern;
 - (vi) any Proposed Purchaser or potential purchaser of the Divestiture Business is able to conduct the Divestiture Business effectively; and
 - (vii) divestiture of the Divestiture Business to any Proposed Purchaser or potential purchaser of the Divestiture Business will address any competition concerns of the ACCC, including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of any Proposed Purchaser or potential purchaser of the Divestiture Business.
- (d) provide the following reports directly to the ACCC:
- (i) a scheduled written Audit Report as described in clause 9.12;
 - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
 - (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Business following an assessment under clause 9.10(c); and
- (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.

9.11. The Undertaking Parties must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:

- (a) access the facilities, sites or operations of the Divestiture Business and the Undertaking Parties' other businesses as required by the Approved Independent Auditor;
- (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and

- (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

Compliance Audit

- 9.12. The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
 - (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
 - (b) a full audit of the Undertaking Parties' compliance with this Undertaking;
 - (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
 - (d) all of the reasons for the conclusions reached in the Audit Report;
 - (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
 - (f) any recommendations by the Approved Independent Auditor to improve:
 - (i) the Approved Audit Plan;
 - (ii) the integrity of the auditing process;
 - (iii) The Undertaking Parties' processes or reporting systems in relation to compliance with this Undertaking; and
 - (iv) The Undertaking Parties' compliance with this Undertaking; and
 - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.13. The Approved Independent Auditor is to provide an Audit Report to the ACCC and the Undertaking Parties at the following times:
 - (a) within 10 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
 - (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Business is completed;
 - (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.13(b), until the ACCC confirms in writing to the Undertaking Parties that it is satisfied that the Undertaking Parties have fulfilled their obligations pursuant to this Undertaking; and
 - (d) a final report due three months after the last report provided pursuant to clause 9.13(c).

- 9.14. The Undertaking Parties must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 9.15. The Undertaking Parties must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

The Undertaking Parties' obligations in relation to the Approved Independent Auditor

- 9.16. Without limiting their obligations in this Undertaking, the Undertaking Parties must:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;
 - (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
 - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
 - (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
 - (i) directing the Undertaking Parties' personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
 - (ii) providing access to the facilities, sites or operations of the Divestiture Business and the Undertaking Parties' other businesses as required by the Approved Independent Auditor;
 - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
 - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
 - (v) not appointing the Approved Independent Auditor, or having any Agreements with the Approved Independent Auditor to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the

Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

Resignation, revocation or termination of the Approved Independent Auditor

- 9.17. The Undertaking Parties must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.18. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.19. The ACCC may approve any proposal by, or alternatively may direct, the Undertaking Parties to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

10. Failure to divest the Divestiture Business within the Initial Sale Period

Divestiture of the Unsold Business

- 10.1. In the event that the divestiture of the Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 10 apply.

Obligation to appoint an Approved Divestiture Agent

- 10.2. From the end of the Initial Sale Period, the Undertaking Parties must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.

Process for approving a Proposed Divestiture Agent

- 10.3. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of the Divestiture Business has not been completed, the Undertaking Parties must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) including draft terms of appointment, a draft business sale agreement, and draft marketing and sale plan.
- 10.4. If clauses 10.14, 10.15 or 10.16 apply, the Undertaking Parties must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 10.9 applies.
- 10.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- 10.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:

- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
- (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of the Undertaking Parties;
- (c) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
- (d) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

Appointment of the Approved Divestiture Agent

10.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft business sale agreement and draft marketing and sale plan, the Undertaking Parties must within two Business Days:

- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

Failure to appoint

10.8. If:

- (a) the Approved Divestiture Agent has not been appointed within 10 Business Days after the Divestiture Business becomes an Unsold Business;
- (b) the Approved Divestiture Agent has not been appointed within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 10.14, 10.15 or 10.16; or
- (c) the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 10.4;

then clause 10.9 applies.

10.9. If clause 10.8 applies, the ACCC may, at its absolute discretion:

- (a) identify and approve a person as the Approved Divestiture Agent, including approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or
- (b) direct the Undertaking Parties to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

Obligations and powers of the Approved Divestiture Agent

10.10. The Undertaking Parties must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:

- (a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
- (b) maintain his or her independence from the Undertaking Parties, apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in paragraph 2.2(c) of Schedule 3 to this Undertaking with the Undertaking Parties for the period of his or her appointment;
- (c) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
- (d) follow the Approved Marketing and Sale Plan;
- (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;
- (f) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:
 - (i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
 - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
 - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
 - (v) the efforts made to sell the Unsold Business;
 - (vi) the identity of any advisers engaged;
 - (vii) the identity of any persons expressing interest in the Unsold Business; and
 - (viii) any other information required by the ACCC.
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
 - (i) any moneys derived from the divestiture of the Unsold Business;
 - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and

- (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
- (i) immediately inform the ACCC of:
 - (i) any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and any Approved Marketing and Sale Plan;
 - (ii) non-compliance with this Undertaking by any person named in this Undertaking;
 - (iii) any offers for the Unsold Business;
- (j) accept any offer for the Unsold Business upon instruction from the Undertaking Parties given in accordance with clause 10.13(d); and
- (k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.

10.11. The Undertaking Parties must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:

- (a) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
- (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.5;
- (c) upon instruction pursuant to clause 10.13(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and
- (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.

10.12. Any irrevocable power of attorney granted pursuant to clause 10.11 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 10.14, 10.15 and 10.16, or in the event that the Unsold Business is divested in accordance with this Undertaking.

The Undertaking Parties' obligations in relation to the Approved Divestiture Agent

10.13. Without limiting their obligations in this Undertaking, the Undertaking Parties must from the end of the Initial Sale Period:

- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
- (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:

- (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
 - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;
 - (iii) paying such fees as are agreed between the Approved Divestiture Agent and the Undertaking Parties (but not fees contingent on the price to be obtained for the Unsold Business); and
 - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and the Undertaking Parties within 15 Business Days after the end of the Initial Sale Period, the Undertaking Parties agree to pay such fees as are directed by the ACCC;
- (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:
- (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10;
 - (ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
 - (iii) providing to the Approved Divestiture Agent any information, documents or other assistance he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.5, the Undertaking Parties must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.5; and
- (e) other than in accordance with clause 10.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

Resignation, revocation or termination of the Approved Divestiture Agent

- 10.14. The Undertaking Parties must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.
- 10.15. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.16. The ACCC may approve any proposal by, or alternatively may direct, the Undertaking Parties to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this

Undertaking or the Approved Terms of Appointment.

11. Notification of key dates and ACCC requests for information

- 11.1. The Undertaking Parties must notify the ACCC and each Undertaking Appointment in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days before that date;
 - (b) the anticipated date of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), at least five Business Days before that date;
 - (c) the occurrence of the Control Date, within one Business Day of that date; and
 - (d) the occurrence of the completion of the divestiture of the Divestiture Business or Unsold Business (as applicable), within one Business Day of that date.
- 11.2. The ACCC may direct the Undertaking Parties in respect of their compliance with this Undertaking to, and the Undertaking Parties must:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Parties' custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.3. Any direction made by the ACCC under clause 11.2 will be notified to the Undertaking Parties, in accordance with clause 19.2.
- 11.4. In respect of the Undertaking Parties' compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
- (a) furnish information to the ACCC in the time and in the form requested by the ACCC;
 - (b) produce documents and materials to the ACCC within the Undertaking Appointment's custody, power or control in the time and in the form requested by the ACCC; and/or
 - (c) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.
- 11.5. The Undertaking Parties will use their best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.

- 11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.7. The ACCC may in its discretion:
- (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
 - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which the Undertaking Parties have a claim of legal professional or other privilege.

12. Disclosure of this Undertaking

- 12.1. The Undertaking Parties and the ACCC agree that Schedule 5 will remain confidential until after the completion of the divestiture of the Divestiture Business or Unsold Business.
- 12.2. The Undertaking Parties acknowledge that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Schedule 5.
- 12.3. The Undertaking Parties acknowledge that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
 - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
 - (c) from time to time publicly refer to this Undertaking.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
 - (b) permitted by section 155AAA of the Act;
 - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
 - (d) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.
- 12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

13. Obligation to procure

- 13.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of the Undertaking Parties to take or refrain from taking some action, the Undertaking Parties will procure that Related Body Corporate to take or refrain from taking that action.

14. No Derogation

- 14.1. This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by the Undertaking Parties of any term of this Undertaking.
- 14.2. Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that the Undertaking Parties do not fully implement and/or perform their obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

15. Change of Control

- 15.1. In the event that a Change of Control is reasonably expected to occur, the Undertaking Parties must:
- (a) notify the ACCC of this expectation as soon as practicable; and
 - (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on the Undertaking Parties pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified the Undertaking Parties in writing that a section 87B undertaking under this clause is not required.

16. Costs

- 16.1. The Undertaking Parties must pay all of their own costs incurred in relation to this Undertaking.

17. Joint and several liability

- 17.1. Prior to the Control Date, an obligation imposed on any of the Mylan Parties under this Undertaking is imposed on all of them jointly and severally, and an obligation imposed on any of the Upjohn Parties is imposed on all of them jointly and severally.
- 17.2. From the Control Date, an obligation imposed on any of the Undertaking Parties under this Undertaking is imposed on all of them jointly and severally.

18. Jurisdiction

- 18.1. Mylan and Upjohn irrevocably submit to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.

18.2. Unless and until notified in writing by the Undertaking Parties to the ACCC of the appointment of another person as agent within Australia, the Undertaking Parties appoint the person, with particulars as set out in this clause 18, as their agent for the purposes of service of process in relation to this Undertaking.

18.3. The Mylan Parties appoint the following person for the purpose of this clause 18:

Elizabeth Avery, Partner at Gilbert + Tobin Address: L35, Tower Two,
International Towers Sydney, 200 Barangaroo Avenue, Barangaroo NSW 2000

Telephone number: +61 2 9263 4362

Email address: EAvery@gtlaw.com.au

18.4. The Upjohn Parties appoint the following person for the purpose of this clause 18:

Until the Control Date:

Fiona Crosbie, Chairman at Allens. Address: Level 28, Deutsche Bank Place, 126
Phillip Street, Sydney NSW 2000

Telephone number: +61 2 9230 4383

Email address: Fiona.Crosbie@allens.com.au

On and from the Control Date:

The person set out in clause 18.3.

19. Notices

Giving Notices

19.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address: mergers@acc.gov.au
 Attention: Executive General Manager
 Merger and Authorisation Review Division

With a copy sent to: mergersru@acc.gov.au
 Attention: Director, Remedies Unit
 Coordination and Strategy Branch
 Merger and Authorisation Review Division

19.2. Any notice or communication to the Undertaking Parties pursuant to this Undertaking must be sent to:

Name: Elizabeth Avery and Susan Jones
Address: L 35, Gilbert + Tobin,
 200 Barangaroo Avenue,
 Barangaroo, Sydney. NSW 2000

Email Address: eavery@gtlaw.com.au; sejones@gtlaw.com.au

And, until the Control Date, with a copy sent to:

Name: Fiona Crosbie
Address: Level 28, Deutsche Bank Place,
126 Phillip Street,
Sydney NSW 2000

Email Address: Fiona.Crosbie@allens.com.au

- 19.3. If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 19.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

Change of contact details

- 19.5. The Mylan Parties and the Upjohn Parties must notify the ACCC of a change to their contact details within three Business Days.
- 19.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 19.3 and 19.4, will be taken to be received.

20. Defined terms and interpretation

Definitions in the Dictionary


- 20.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
 - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

Interpretation

- 20.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

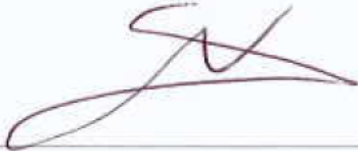

Executed as an Undertaking

Executed by Mylan N.V. by its authorised signatory:



Signature
Kevin Macikowski, Assistant Secretary
Name and title of authorised signatory (print)
September 2, 2020
Date

Executed by Alphapharm Pty Ltd

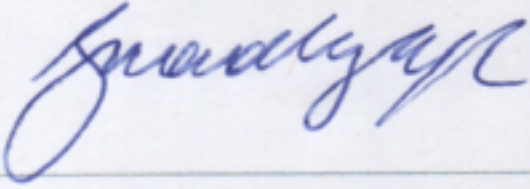
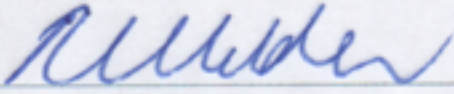
ACN 002 359 739 pursuant to section 127(1) of the *Corporations Act 2001* by:

	
Signature of director	Signature of a director/company secretary
SYLVAIN VIGNEAULT	LUDOVIC LAPORTE
Name of director (print)	Name of director/company secretary (print)
Date 02/09/2020	Date 02/09/2020

Executed by Upjohn Inc. by its authorised signatory:

	
Signature	
<i>Alison L. M. O'Neill, Vice President</i>	
Name and title of authorised signatory (print)	
Date	<i>2 September 2020</i>

Executed by Upjohn Australia Pty Ltd ACN 629 389 911 pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of a company secretary
BRADLEY APPS	ROBERT WILDEN
Name of director (print)	Name of company secretary (print)
02 September 2020	02 September 2020
Date	Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010* (Cth) on:

9 September 2020

Date

and signed on behalf of the Commission:



Chair

9 September 2020

Date

Schedule 1 – Dictionary and interpretation

1. Dictionary

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Agreements means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

Approved Audit Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

Approved Business Sale Agreement means the standard form contract for the divestiture of the Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

Approved Divestiture Agent means the person approved by the ACCC and appointed under clause 10 of this Undertaking.

Approved Independent Manager means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

Approved Independent Auditor means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

Approved Marketing and Sale Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of the Unsold Business.

Approved Purchaser means the person approved by the ACCC under clause 6 of this Undertaking.

Approved Sale and Purchase Agreement means the contract approved by the ACCC in accordance with the terms of this Undertaking, by which the Undertaking Parties will divest the Divestiture Businesses to the Approved Purchaser and Approved Purchaser will acquire the Divestiture Business from the Undertaking Parties.

Approved Separation and Management Plan means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

- a) separate the Divestiture Business from any business to be retained by the Undertaking Parties; and
- b) manage and operate the Divestiture Business independently of the Undertaking Parties and any retained business.

Approved Transitional Supply Agreement means any agreement, for the supply of goods or services (other than Technical Assistance) by the Mylan Parties or the Upjohn Parties or a third party to the Approved Purchaser, and includes agreements to provide interim manufacturing capabilities to the Approved Purchaser for the Divestiture Brands either directly through a Mylan Party or an Upjohn Party or through a third party, and approved by the ACCC in accordance with the terms of this Undertaking.

Approved Transitional Technical Assistance Agreement means any agreement, for the supply of Technical Assistance by the Mylan Parties or the Upjohn Parties to the Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

Approved Terms of Appointment means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Audit Report has the meaning given to it in clause 9.12 of this Undertaking.

Business Day means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

Change of Control means:

- a) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Mylan or Upjohn to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- b) the sale or transfer of any assets necessary, or which may be necessary, to enable the Undertaking Parties to continue to comply with this Undertaking in its entirety,

other than the Proposed Transaction.

Commencement Date means the date described in clause 3.1 of this Undertaking.

Consents means any Government Consents or Third Party Consents.

Control Date means the date on which the Proposed Transaction is completed.

Corporations Act means the *Corporations Act 2001* (Cth).

Divestiture Brands means the following Upjohn brands:

- a) Caduet, based on the combination of the molecules atorvastatin and amlodipine;
- b) Xalatan, based on the molecule latanoprost; and
- c) Xalacom, based on the combination of the molecules latanoprost and timolol.

Divestiture Business means the items described in Schedule 4 to this Undertaking.

Entities Connected has the meaning given by section 64B of the Corporations Act.

Establishment Audit has the meaning given to it in clause 9.13 of this Undertaking.

Government Consents means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Holding Company has the meaning given by section 9 of the Corporations Act.

Initial Sale Period is defined in Confidential Schedule 5 to this Undertaking.

Manufacturing Technology means all technology, trade secrets, know-how and proprietary information that is necessary to manufacture the Divestiture Brands, including processes, specifications, test methods, instructions, master formulas, validation reports,

stability data, analytical methods, records of complaints and annual product reviews, owned by and in the possession or control of the Mylan Parties, the Upjohn Parties or Pfizer.

Material Change means any change to the structure, attributes, extent or operations of the Divestiture Business or product or service sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Business.

Material Contract means any Agreement that is necessary for the operation of the Divestiture Business.

Mylan means the entity referred to in clause 2.1 of this Undertaking.

Mylan Parties means the entities referred to in clause 1.1 of this Undertaking.

Pfizer means the entity referred to in clause 2.3 of this Undertaking.

Proposed Divestiture Agent means a person named in a Proposed Divestiture Notice.

Proposed Divestiture Agent Notice has the meaning given to it in clause 10.3 of this Undertaking.

Proposed Independent Auditor means a person named in a Proposed Independent Auditor Notice.

Proposed Independent Auditor Notice has the meaning given to it in clause 9.2 of this Undertaking.

Proposed Independent Manager means a person named in a Proposed Independent Manager Notice.

Proposed Independent Manager Notice has the meaning given to it in clause 8.3 of this Undertaking.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice has the meaning given to it in clause 6.2 of this Undertaking.

Proposed Transaction is defined in clause 2.5 of this Undertaking.

Public Mergers Register means the ACCC's public register of merger clearances, available at www.accc.gov.au.

Public Section 87B Undertakings Register means the ACCC's public register of section 87B undertakings, available at www.accc.gov.au.

Related Bodies Corporate has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

Related Entities has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

Related Parties has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

Relevant Market has the meaning given to it in clause 2.8 of this Undertaking.

Scientific and Regulatory Materials means technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and clinical trial material and information (including adverse drug experience information) owned by and in the possession or control of the Mylan Parties, Upjohn Parties or Pfizer, relating to the Divestiture Business.

Subsidiary has the meaning given by section 9 of the Corporations Act.

Technical Assistance includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Business, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

Third Party Consents means any consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Business.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

Undertaking Appointment means the Approved Independent Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

Undertaking Parties means the entities referred to in clause 1.1 of this Undertaking.

Unsold Business has the meaning given to it in clause 10.1 of this Undertaking.

Upjohn means the entity referred to in clause 2.3 of this Undertaking.

Upjohn Australia means the entity referred to in clause 2.3 of this Undertaking.

Upjohn Business has the meaning given to it in clause 2.3 of this Undertaking.

Upjohn Parties means the entities referred to in clause 1.1 of this Undertaking.

Viatrix means the entity referred to in clause 2.5 of this Undertaking.

2. Interpretation

- 2.1 In the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:
- (a) a reference to this Undertaking includes all of the provisions of this document including its schedules;
 - (b) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
 - (c) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (d) a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

- (e) a reference in this Undertaking to any company includes its Related Bodies Corporate;
- (f) a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (g) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Undertaking;
- (h) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (i) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (j) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (k) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
- (l) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
- (m) material not forming part of this Undertaking may be considered to:
 - (i) confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - (ii) determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
- (n) in determining whether consideration should be given to any material in accordance with paragraph (m), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - (i) effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - (ii) need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
- (o) the ACCC may authorise the ACCC Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;

- (p) in performing its obligations under this Undertaking, the Undertaking Parties will do everything reasonably within their power to ensure that their performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking;
- (q) a reference to:
 - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (ii) a party includes its successors and permitted assigns; and
 - (iii) a monetary amount is in Australian dollars.

Schedule 2 – Proposed Purchaser Notice Form

This form sets out the information required by the ACCC in relation to a Proposed Purchaser.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

1. Method of Delivery to the ACCC

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Mylan Divestment Undertaking
Address: mergers@acc.gov.au
Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersru@acc.gov.au
Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch,
Merger and Authorisation Review Division

2. Information required

The ACCC requires the following information in order to assess a Proposed Purchaser.

2.1 Proposed Purchaser details:

- (a) Name of the Proposed Purchaser;
- (b) Address;
- (c) Contact name;
- (d) Telephone number;
- (e) Other contact details;

2.2 A submission containing the following information:

- (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
- (b) details of the Proposed Purchaser's experience in the relevant market/s.
- (c) the names of the [owner/s and the directors (delete any that do not apply)] of the Proposed Purchaser.
- (d) details of any of the following types of relationships between the Undertaking Parties and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:

- (i) The Undertaking Parties and the Proposed Purchaser are Associated Entities;
 - (ii) Any of the Undertaking Parties is an Entity Connected with the Proposed Purchaser;
 - (iii) The Proposed Purchaser is an Entity Connected with the Undertaking Parties;
 - (iv) The Undertaking Parties and the Proposed Purchaser are Related Entities;
 - (v) The Undertaking Parties and the Proposed Purchaser are Related Parties;
 - (vi) Any Related Party, Related Entity or Entity Connected with the Undertaking Parties is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
 - (vii) The Undertaking Parties and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
 - (viii) The Proposed Purchaser is a supplier of the Undertaking Parties or has been in the past three years;
 - (ix) Any of the Undertaking Parties is a supplier of the Proposed Purchaser or has been in the past three years; and
 - (x) Any other relationship between the Undertaking Parties and the Proposed Purchaser that allows one to affect the business decisions of the other.
- (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of the Undertaking Parties:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
 - (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
 - (iii) whether the Proposed Purchaser is of good financial standing;
 - (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (v) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
 - (vi) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser;

- (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

2.3 Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.
- (b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking.
- (c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking.
- (d) any documents required to support the information provided by the Undertaking Parties pursuant to this form.

Schedule 3 – Undertaking Appointment

This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking:

- Independent Manager;
- Independent Auditor; or
- Divestiture Agent;

(the **Undertaking Appointments**).

This form is to be used for each of the above appointments.

Please note in relation to information given pursuant to this form, giving false or misleading information is a serious offence.

1. Method of Delivery to the ACCC

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Independent Auditor/Divestiture Agent Notice – [insert name of undertaking]

Address: mergers@acc.gov.au

Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch, Merger and Authorisation Review Division

2. Information Required

The ACCC requires the following information in order to assess a proposed Independent Manager, Independent Auditor or Divestiture Agent (i.e. the relevant Undertaking Appointment).

2.1. Proposed Undertaking Appointment Details:

- (a) the name of the Proposed Undertaking Appointment; and
- (b) the name of the proposed Undertaking Appointment's employer and contact details including:
 - Address;

- Contact name;
- Telephone number;
- Other contact details.

2.2. A submission containing the following information:

- (a) details of the [Undertaking Appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking
- (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer]
- (c) details of any of the following types of relationships between the Undertaking Parties and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) The Undertaking Parties and [the Undertaking Appointment's employer] are Associated Entities
 - (ii) Any of the Undertaking Parties is an Entity Connected with [the Undertaking Appointment's employer]
 - (iii) [The Undertaking Appointment's employer] is an Entity Connected with the Undertaking Parties
 - (iv) The Undertaking Parties and [the Undertaking Appointment's employer] are Related Entities
 - (v) The Undertaking Parties and [the Undertaking Appointment's employer] are Related Parties
 - (vi) Any Related Party, Related Entity or Entity Connected with the Undertaking Parties is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment]
 - (vii) The Undertaking Parties and [the Undertaking Appointment] or [the Undertaking Appointment's employer] have a contractual relationship or had one within the past three years, other than those attached to this form
 - (viii) [the Undertaking Appointment's employer] is a supplier of the Undertaking Parties or has been in the past three years
 - (ix) Any of the Undertaking Parties is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years, and
 - (x) any other relationship between the Undertaking Parties and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other, and
- (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC within the past three years.

- 2.3. A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

3. Specific Information required for Undertaking Appointments

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

Proposed Independent Auditor

- 3.1. A finalised draft audit plan for the Divestiture Business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.

Proposed Divestiture Agent

- 3.2. The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with the Undertaking Parties. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 3.3. The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

Proposed Independent Manager

- 3.4 The finalised draft separation and management plan for the Unsold Business detailing the measures and timing to be implemented by the Undertaking Parties and the Approved Independent Manager in order to fulfil the Undertaking Parties' and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with the Undertaking Parties to achieve the objectives of the Undertaking including:
 - (a) the intended mode of operation of the Unsold Business until completion of its divestiture;
 - (b) separation measures to ensure the Unsold Business is operated in a manner which is financially and operationally separate from the Undertaking Parties, including the:
 - (i) separation of the books and records of the Unsold Business from those of the Undertaking Parties;
 - (ii) severance of the Unsold Business's participation in any private shared information technology networks, to the extent possible without compromising the viability of the Unsold Business;
 - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Unsold Business; and
 - (iv) severance of arrangements to share personnel and plant between the Unsold Business and any businesses to be retained by the Undertaking Parties, to the extent possible without compromising the viability of the Unsold Business;

- (c) details of contracts for the provision of goods or services to the Unsold Business which will expire after the completion of the divestiture of the Unsold Business to the Approved Purchaser and the actions which will be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Unsold Business;
- (d) personnel planning to maintain appropriate personnel levels and ensure that the Unsold Business has access to all personnel necessary to operate the Unsold Business;
- (e) any Material Changes to the Unsold Business required in order to fulfil the Undertaking Parties' and the Approved Independent Manager's obligations pursuant to the Undertaking;
- (f) the cooperation required from the Independent Manager with the Undertaking Parties in relation to the divestiture of the Unsold Business, including:
 - (i) the activities to be conducted by the Independent Manager that are necessary for the effective operation of the Unsold Business, having regard to the nature of the Unsold Business (including the extent to which the Unsold Business already has a management structure in place prior to the proposed acquisition that will be retained during the hold separate period);
 - (ii) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Unsold Business will be managed;
 - (iii) the method by which the Independent Manager and the Undertaking Parties will preserve the confidentiality of the Unsold Business's competitively sensitive information from the Undertaking Parties and its advisers throughout this process; and
 - (iv) a protocol whereby the Approved Independent Manager can provide any information requested by the Undertaking Parties without disclosing the details of the Unsold Business's competitively sensitive information to the Undertaking Parties.

Schedule 4 – Divestiture Business

<p>Divestiture Business</p>	<p>The Divestiture Business comprises the Divestiture Brands in Australia as set out in the table below, and as accompanied by the assets, licences, agreements and other tangible and intangible property listed in this Schedule 4, to the extent required to facilitate the operation of the Divestiture Business in Australia.</p> <table border="1" data-bbox="558 604 1232 816"> <thead> <tr> <th>Product</th> <th>Molecule</th> </tr> </thead> <tbody> <tr> <td>Caduet</td> <td><i>amlodipine / atorvastatin</i></td> </tr> <tr> <td>Xalatan</td> <td><i>latanoprost</i></td> </tr> <tr> <td>Xalacom</td> <td><i>latanoprost / timolol</i></td> </tr> </tbody> </table>	Product	Molecule	Caduet	<i>amlodipine / atorvastatin</i>	Xalatan	<i>latanoprost</i>	Xalacom	<i>latanoprost / timolol</i>																		
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<p>Intellectual Property</p>	<p>Australian Trademarks</p> <p>The Australian trademarks listed in the table below will be transferred to the Approved Purchaser.</p> <table border="1" data-bbox="553 984 1239 1463"> <thead> <tr> <th>Trademark</th> <th>Trademark Number</th> </tr> </thead> <tbody> <tr> <td>Caduet</td> <td>888755</td> </tr> <tr> <td>Opovasc</td> <td>887325</td> </tr> <tr> <td>Cadatin</td> <td>1427986</td> </tr> <tr> <td>Latanocom</td> <td>1397814</td> </tr> <tr> <td>S.T.A.R. II</td> <td>1348903</td> </tr> <tr> <td>Xalatan</td> <td>623072</td> </tr> <tr> <td>Xalacom</td> <td>868757</td> </tr> <tr> <td>Xalaside</td> <td>1402453</td> </tr> <tr> <td>Xalatim</td> <td>1402454</td> </tr> </tbody> </table> <p>Australian Patent</p> <p>The Australian patent listed in the table below will be transferred to the Approved Purchaser.</p> <table border="1" data-bbox="553 1629 1239 1837"> <thead> <tr> <th>Patent name</th> <th>Patent serial number</th> <th>Expiry date</th> </tr> </thead> <tbody> <tr> <td>Therapeutic combinations comprising</td> <td>755636</td> <td>20 July 2020</td> </tr> </tbody> </table>	Trademark	Trademark Number	Caduet	888755	Opovasc	887325	Cadatin	1427986	Latanocom	1397814	S.T.A.R. II	1348903	Xalatan	623072	Xalacom	868757	Xalaside	1402453	Xalatim	1402454	Patent name	Patent serial number	Expiry date	Therapeutic combinations comprising	755636	20 July 2020
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amlodipine and atorvastatin				
Government licenses, permits and authorisations	<p>ARTG registrations</p> <p>The marketing authorisations for the Divestiture Brands registered on the Australian Register of Therapeutic Goods listed in Schedule 7 will be transferred to the Approved Purchaser.</p>			

	<p>Permits</p> <p>All permits, licences, consents, planning permissions, product registrations, certifications or authorisations issued by a government agency or regulatory authority and related documentation only to the extent they are not listed in Schedule 7 and only in so far as they are required to facilitate the operation of, the Divestiture Business in Australia.</p> <p>Correspondence</p> <p>All reports filed with and submissions to, and all other written correspondence with, any regulatory authority owned by and in the possession or control of the Undertaking Parties as at the date of completion of the divestiture which are primarily related to, or required to facilitate the operation of, the Divestiture Business in Australia.</p>
Data, books and records	<p>Scientific and Regulatory Materials</p> <p>Any Scientific and Regulatory Materials that are solely related to the Divestiture Business in Australia will be transferred to the Approved Purchaser.</p> <p>Any Scientific and Regulatory Materials that are not transferred to the Approved Purchaser but which are necessary to manufacture and supply products included in the Divestiture Business in Australia will be licensed to the Approved Purchaser on a non-exclusive, limited basis solely for use to manufacture the Divestiture Brands either inside or outside of Australia but only to commercialise in Australia.</p>
Customer records	<p>All records of customers (current and historical), price lists, catalogues and mailing lists which are solely related to the Divestiture Business in Australia and are necessary to operate the Divestiture Business will be transferred to the Approved Purchaser.</p> <p>Any records of customers, price lists, catalogues and mailing lists that are not transferred to the Approved Purchaser but which are necessary to operate the Divestiture Business in Australia will be licensed to the Approved Purchaser (provided that the Undertaking Parties may redact from such copies any information that does not relate to the Divestiture Business in Australia) on a non-exclusive, limited basis solely for use to operate the Divestiture Business in Australia.</p>
Tangible property	<p>Inventory of the Divestiture Brands in Australia that exists as at the date of completion of the divestiture and is not already sold to a third party will be transferred to the Approved Purchaser.</p> <p>Any advertising, sales, marketing and promotional materials which are necessary for the operation of the Divestiture Business in Australia will be transferred to the Approved Purchaser.</p>

<p>Relevant contractual rights</p>	<p>At the option of the Approved Purchaser, any contracts, sales orders, purchase orders, instruments and other commitments, obligations and arrangements to the extent solely related to, or otherwise strictly to the extent required to facilitate the operation of, the Divestiture Business in Australia.</p> <p>Consents from third party manufacturers or suppliers</p> <p>At the option of the Approved Purchaser, any consents to transfer or assign licences, agreements or deeds with third-party manufacturers or suppliers to the extent solely related to, or otherwise strictly to the extent required to facilitate the operation of, the Divestiture Business.</p> <p>Licence agreements with third parties</p> <p>At the option of the Approved Purchaser, any consents to transfer or assign, or, where appropriate, any agreement to novate or a new agreement to replace (in each case in whole or in part), licences, agreements, term sheets, letter amendments or deeds with third parties to the extent solely related to, or otherwise strictly to the extent required to facilitate the operation of, the Divestiture Business in Australia.</p>
<p>Other</p>	<p>At the option of the Approved Purchaser, the ARTG registration 120066 and Australian Trademark number 908254 for the XAL-EASE dropper, which is used in the application of the products Xalatan and Xalacom, will be transferred to the Approved Purchaser.</p>

Confidential Schedule 5

Schedule 6

The Approved Purchaser of the Divestiture Business at the date of this Undertaking is Aspen Global Incorporated, GBS Plaza, Cnr LA Salette et Royal Roads, Grand Bay, 30549, Mauritius.

Schedule 7

The table below lists the marketing authorisations for the Divestiture Brands registered on the Australian Register of Therapeutic Goods.

Trade name	Product details	Australian sponsor	TGA product registration number
Caduet	10/80 amlodipine (as besilate) and atorvastatin (as calcium) 10mg/80mg tablet blister pack	Upjohn Australia Pty Ltd	100703
Caduet	10/40 amlodipine (as besilate) and atorvastatin (as calcium) 10mg/40mg tablet blister pack	Upjohn Australia Pty Ltd	100702
Caduet	10/20 amlodipine (as besilate) and atorvastatin (as calcium) 10mg/20mg tablet blister pack	Upjohn Australia Pty Ltd	100701
Caduet	10/10 amlodipine (as besilate) and atorvastatin (as calcium) 10mg/10mg tablet blister pack	Upjohn Australia Pty Ltd	100700
Caduet	5/80 amlodipine (as besilate) and atorvastatin (as calcium) 5mg/80mg tablet blister pack	Upjohn Australia Pty Ltd	100698
Caduet	5/40 amlodipine (as besilate) and atorvastatin (as calcium) 5mg/40mg tablet blister pack	Upjohn Australia Pty Ltd	100697
Caduet	5/20 amlodipine (as besilate) and atorvastatin (as calcium) 5mg/20mg tablet blister pack	Upjohn Australia Pty Ltd	100696
Caduet	5/10 amlodipine (as besilate) and atorvastatin (as calcium) 5mg/10mg tablet blister pack	Upjohn Australia Pty Ltd	100695
Xalatan	Latanoprost 50 microgram/mL eye drops bottle	Upjohn Australia Pty Ltd	58775
Xalacom	Latanoprost 50 microgram/mL, timolol (as maleate) 5 mg/mL eye drops - solution bottle	Upjohn Australia Pty Ltd	80311
Hysite	Latanoprost 50 microgram/mL eye drops bottle	Upjohn Australia Pty Ltd	189694
Latanoprost Pfizer RT	Latanoprost 50 microgram/mL eye drops bottle	Upjohn Australia Pty Ltd	194174
Latanocom	Latanoprost 50 microgram/mL, timolol (as maleate) 5 mg/mL eye drops - solution bottle	Upjohn Australia Pty Ltd	183346

Confidential Schedule 8 – Asset Purchase Agreement

Confidential Schedule 9 – Supply and Technology Transfer Agreement
