

# Undertaking to the Australian Competition and Consumer Commission

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Given under section 87B of the *Competition and  
Consumer Act 2010* (Cth) by **Pfizer Inc.** and  
**Pfizer Australia Pty Ltd** ACN 008 422 348

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## 1. Person giving the Undertaking

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- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Pfizer Inc. and Pfizer Australia Pty Ltd ACN 008 422 348 (together referred to as **Pfizer** in this Undertaking).

## 2. Background

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### 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. Together Mylan and Alphapharm Pty Ltd are referred to as the **Mylan Parties** in this Undertaking.
- 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. is a global pharmaceutical company that develops, manufactures, markets and sells prescription medicines and OTC products. Pfizer Inc.'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 Inc., which will hold and operate the Upjohn Business after its separation from Pfizer Inc. as described below. Together Upjohn and Upjohn Australia Pty Ltd are referred to as the **Upjohn Parties** in this Undertaking.
- 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 Inc. entered into a transaction, which involves the separation of Upjohn from Pfizer Inc. 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 "**Viatrix**" 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 Viatrix. No shareholder will have sole or joint control over the merged company, and Pfizer Inc. will have no equity interest in Viatrix 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 Mylan/Upjohn 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/Atorvastatin
- to (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 molecules<sup>1</sup> to pharmacies or hospitals in Australia.

### **The Mylan/Upjohn Undertaking remedy**

- 2.13. The Mylan Parties and Upjohn 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 Mylan Parties and Upjohn Parties have offered the Mylan/Upjohn Undertaking pursuant to section 87B of the Act.
- 2.14. The objective of the Mylan/Upjohn Undertaking is to address the ACCC's competition concerns, as set out above, that would otherwise arise because of the Proposed Transaction. The Mylan/Upjohn Undertaking aims to achieve this objective by placing obligations on the Mylan Parties and Upjohn Parties:

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<sup>1</sup> Amlodipine, Atorvastatin, Celecoxib, Eplerenone, Gabapentin, Pregabalin, Sertraline, Sildenafil and Venlafaxine.

- (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 in each of the Relevant Markets;
- (b) to ensure the purchaser of the Divestiture Business has all the necessary associated assets and rights to compete effectively with the Mylan Parties and Upjohn 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 Mylan Parties and Upjohn Parties' compliance with the Mylan/Upjohn Undertaking.

### **The Pfizer Undertaking remedy**

- 2.15. Pfizer's consent is needed in order for the Mylan Parties and Upjohn Parties to transfer or license certain intellectual property rights, Manufacturing Technology and Scientific and Regulatory Materials to the Approved Purchaser.
- 2.16. The objective of this Undertaking is to support the operation of the Mylan/Upjohn Undertaking, by ensuring that Pfizer enables and facilitates, and does not hinder or prevent the Mylan Parties and Upjohn Parties complying with the Mylan/Upjohn Undertaking. This Undertaking achieves this objective by placing obligations on Pfizer to:
- (a) promptly facilitate, and not unreasonably withhold any required consents, to the disposal of the Divestiture Business to an Approved Purchaser pursuant to the Mylan/Upjohn Undertaking;
  - (b) maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to completion of the Proposed Transaction; and
  - (c) provide, or cause to be provided, to the Mylan Parties and Upjohn Parties the same transitional services that would have been provided to the Mylan Parties and Upjohn Parties, notwithstanding that such Divestiture Business will have been divested to the applicable Approved Purchaser.
- 2.17. Pfizer does not consider that the Proposed Transaction would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. Pfizer also does not consider that there is any risk it would not provide its consent to the transfer of rights and obligations to an Approved Purchaser that are otherwise held by Upjohn in relation to the Divestiture Business. However, to assist with addressing the ACCC's competition concerns, Pfizer has offered this undertaking pursuant to section 87B of the Act (**Pfizer Undertaking**).

## **3. Commencement of this Undertaking**

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- 3.1. This Undertaking comes into effect when:
- (a) the Mylan/Upjohn Undertaking is executed by the Mylan Parties and the Upjohn Parties;
  - (b) the Pfizer Undertaking is executed by Pfizer; and

- (c) the Mylan/Upjohn Undertaking and the Pfizer Undertaking so executed are accepted by the ACCC,  
(the **Commencement Date**).

#### **4. Cessation of Ongoing Obligations**

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##### **Withdrawal**

- 4.1. Pfizer may request withdrawal of the Pfizer Undertaking pursuant to section 87B of the Act at any time. The Pfizer 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 the Pfizer 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 the Pfizer 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, 7, 8, 9, 10, 11, 12, 13, 14, and 15 survive completion of the obligations in clauses 5 and 6.

#### **5. Obligations with respect to disposal of the Divestiture Business**

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- 5.1. Pfizer must co-operate with the Mylan Parties and Upjohn Parties in relation to the disposal (whether by way of consent, assignment, novation or any other means) of all of the Mylan Parties' and Upjohn Parties' rights, and obligations, in relation to the Divestiture Business to any Approved Purchaser in order to complete the divestment required by the Mylan/Upjohn Undertaking.
- 5.2. Without limiting the operation of clause 5.1, Pfizer will not unreasonably withhold any consent to the transfer of rights and obligations under any Agreement in relation to the Divestiture Businesses, being consent necessary or convenient for the timely completion of the divestiture required by the Mylan/Upjohn Undertaking.
- 5.3. For the term of the Transition Services Agreement, Pfizer will provide, or cause to be provided, to the Mylan Parties and the Upjohn Parties the Pharmacovigilance Services related to the Divestiture Business in accordance with the Transition Services Agreement, notwithstanding that such Divestiture Business will have been divested to the applicable Approved Purchaser.

#### **6. Divestiture Business Protection**

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##### **Protection of the Divestiture Business**

- 6.1. From the Commencement Date until the Control Date, Pfizer must not sell or transfer its 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 the Pfizer Undertaking or (subject to the other terms of the Pfizer Undertaking) as required to allow completion of the Proposed Transaction.

**Pfizer's obligations in relation to the Divestiture Business prior to completion of divestiture**

- 6.2. Without limiting this clause 6, Pfizer must, from the Commencement Date until the Control Date, take all steps available to it 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 Pfizer**

- 6.3. If the Approved Purchaser elects, from the Commencement Date until the Control Date, Pfizer must 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 Pfizer.
- 6.4. As soon as practicable after the Commencement Date, Pfizer must direct its personnel, including directors, contractors, managers, officers, employees and

agents not to do anything inconsistent with Pfizer's obligations under this Undertaking.

## **7. Notification of key dates and ACCC requests for information**

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- 7.1. Pfizer must notify the ACCC in writing of Pfizer's response to any request for it to provide its consent to any disposal of rights and obligations in relation to the Divestiture Businesses to an Approved Purchaser within five Business Days of Pfizer's response.
- 7.2. The ACCC may direct Pfizer in respect of its compliance with this Undertaking to, and Pfizer 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 Pfizer'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.
- 7.3. Any direction made by the ACCC under clause 7.2 will be notified to Pfizer, in accordance with clause 13.2.
- 7.4. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 7 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 7.5. Nothing in this clause 7 requires the provision of information or documents in respect of which Pfizer has a claim of legal professional or other privilege.

## **8. Disclosure of this Undertaking**

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- 8.1. Pfizer acknowledges that the ACCC may:
- (a) make the Pfizer Undertaking publicly available;
  - (b) publish the Pfizer Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
  - (c) from time to time publicly refer to the Pfizer Undertaking.

## **9. Obligation to procure**

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

## **10. No Derogation**

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- 10.1. The Pfizer 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 Pfizer of any term of this Undertaking.
- 10.2. Nothing in the Pfizer 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 Pfizer does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

## **11. Change of Control**

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- 11.1. In the event that a Change of Control is reasonably expected to occur, Pfizer 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 Pfizer pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Pfizer in writing that a section 87B undertaking under this clause is not required.

## **12. Costs**

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- 12.1. Pfizer must pay all of its own costs incurred in relation to the Pfizer Undertaking.

## **13. Notices**

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### **Giving Notices**

- 13.1. Any notice or communication to the ACCC pursuant to the Pfizer Undertaking must be sent to:

Email address: [mergers@acc.gov.au](mailto:mergers@acc.gov.au)  
Attention: Executive General Manager  
Merger and Authorisation Review Division

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

- 13.2. Any notice or communication to Pfizer pursuant to the Pfizer Undertaking must be sent to:

Name: Allens

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

Email Address: [Fiona.Crosbie@allens.com.au](mailto:Fiona.Crosbie@allens.com.au)

Attention: Fiona Crosbie, Chairman

- 13.3. 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).
- 13.4. 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**

- 13.5. Pfizer must notify the ACCC of a change to its contact details within three Business Days.
- 13.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 13.3 and 13.4, will be taken to be received.

### **14. Jurisdiction**

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- 14.1. Pfizer irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to the Pfizer Undertaking.
- 14.2. Unless and until notified in writing by Pfizer to the ACCC of the appointment of another person as agent within Australia, Pfizer appoints the person, with particulars as set out in this clause 14, as their agent for the purposes of service of process in relation to this Undertaking.
- 14.3. Pfizer appoints the following person for the purpose of this clause 14:

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

Telephone number: +61 2 9230 4383

Email address: [Fiona.Crosbie@allens.com.au](mailto:Fiona.Crosbie@allens.com.au)

### **15. Defined terms and interpretation**

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#### **Definitions in the Dictionary**

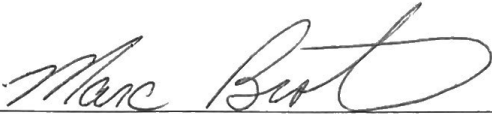
- 15.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
  - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to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

#### **Interpretation**

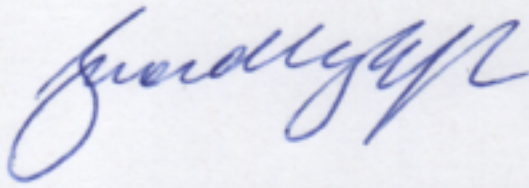
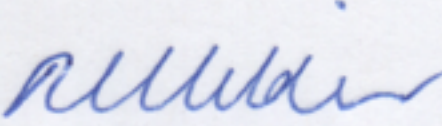
- 15.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

## Executed as an Undertaking

Executed by Pfizer Inc by its authorised signatory:


Signature
MARC BROTMAN V.P. & Assistant General Counsel
Name and title of authorised signatory (print)
1 September 2020
Date

Executed by Pfizer Australia Pty Ltd ACN 008 422 348 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

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Date

and signed on behalf of the Commission:



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Chair

9 September 2020

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Date

# Schedule 1 – Dictionary and interpretation

## 1. Dictionary

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**ACCC** means the Australian Competition and Consumer Commission.

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

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

**Approved Purchaser** means the person approved by the ACCC under clause 6 the Mylan/Upjohn 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 Pfizer 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 Pfizer to continue to comply with this Undertaking in its entirety.

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

**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 2 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 Contracts** 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 2.1 of this Undertaking.

**Mylan/Upjohn Undertaking** means the undertaking provided to the ACCC by the Mylan Parties and the Upjohn Parties, pursuant to s 87B of the Act.

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

**Pfizer Australia** means the entity referred to in clause 1.1 of this Undertaking.

**Pharmacovigilance Services** means the services identified in Exhibit A to the Transition Services Agreement as part of the 'Compliance – Medical Quality Assurance', 'Science, Medicine & Manufacturing Compliance' or 'Clinical, Laboratory and Pharmacovigilance Oversight' functions.

**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](http://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](http://www.accc.gov.au).

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

**Relevant Market** has the meaning given 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.

**Transition Services Agreement** means the agreement of the same name between Pfizer Inc. and Upjohn Inc. dated on or around the Control Date.

**Undertaking** or **Pfizer 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.

**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 by clause 2.3 of this Undertaking.

**Upjohn Parties** means the entities referred to in clause 2.3 of this Undertaking.

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

## **2. Interpretation**

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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, Pfizer will do everything reasonably within its power to ensure that its 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 – 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 2, to the extent required to facilitate the operation of the Divestiture Business in Australia.</p> <table border="1" data-bbox="512 595 1235 819"> <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>																		
Product	Molecule																										
Caduet	<i>amlodipine / atorvastatin</i>																										
Xalatan	<i>latanoprost</i>																										
Xalacom	<i>latanoprost / timolol</i>																										
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	<p><b>Licensed intellectual property rights</b></p> <p>The Approved Purchaser will be granted a limited transitional, non-exclusive, non-transferable, sub-licence under Pfizer's trademark and trade dress rights to use the Pfizer name and logo solely for the sale of inventory and to the extent required in order to comply with applicable regulatory requirements:</p> <ul style="list-style-type: none"> <li>• as printed or embossed on the tablets of Caduet;</li> <li>• as printed on the packaging for the Divestiture Brands; and</li> <li>• included on advertising, sales, marketing and promotional materials.</li> </ul> <p><b>Domain names</b></p> <p>The following domain names will be transferred to the Approved Purchaser:</p> <ul style="list-style-type: none"> <li>• caduet.com.au; and</li> <li>• xalatan.com.au.</li> </ul> <p>The books, records and files relating to the prosecution and maintenance of the Australian trademarks and patents and domain names referred to above.</p> <p><b>Manufacturing Technology</b></p> <p>Any Manufacturing Technology that is solely related to the Divestiture Brands in Australia will be transferred to the Approved Purchaser.</p> <p>Any Manufacturing Technology that is not transferred to the Approved Purchaser but which is necessary to manufacture and supply the Divestiture Brands 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 for supply in Australia. For the avoidance of doubt, the Approved Purchaser shall be permitted to manufacture the Divestiture Brands outside Australia, solely for commercialisation within Australia.</p>
Government licenses, permits and authorisations	<p><b>ARTG registrations</b></p> <p>The marketing authorisations for the Divestiture Brands registered on the Australian Register of Therapeutic Goods listed in <b>Schedule 3</b> will be transferred to the Approved Purchaser.</p> <p><b>Permits</b></p> <p>All permits, licences, consents, planning permissions, product registrations, certifications or authorisations issued by a</p>

	<p>government agency or regulatory authority and related documentation only to the extent they are not listed in Schedule 3 and only in so far as they are required to facilitate the operation of, the Divestiture Business in Australia.</p> <p><b>Correspondence</b></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 Mylan Parties and Upjohn 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><b>Scientific and Regulatory Materials</b></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 Mylan Parties and Upjohn 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>
Relevant contractual rights	<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</p>

	<p>of, the Divestiture Business in Australia.</p> <p><b>Consents from third party manufacturers or suppliers</b></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><b>Licence agreements with third parties</b></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>
Other	<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>

### Schedule 3

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