



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/01/148)

26.03.2014

Notice u/s 6 (2) of the Competition Act, 2002 given by:

- Torrent Pharmaceuticals Limited
- Elder Pharmaceuticals Limited

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

A. Introduction

1. On 13.01.2014, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the “**Act**”), given by Torrent Pharmaceuticals Limited (hereinafter referred to as “**Torrent**”) and Elder Pharmaceuticals Limited (hereinafter referred to as “**Elder**”) (hereinafter, Torrent and Elder are collectively referred to as “**Parties**”). The notice was given pursuant to the execution of a Business Transfer Agreement (hereinafter referred to as “**BTA**”) and a Manufacturing and Supply Agreement (hereinafter referred to as “**MSA**”) between the Parties, on 13.12.2013.
2. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”) on 17.01.2014, the Parties were required to remove certain defects and provide information/document(s). The reply was filed by the Parties on 31.01.2014. However, as the said response was not complete, another letter dated 03.02.2014 was sent to the Parties for removing the defects and providing complete information. Parties removed the defects and provided complete information through their response submitted on 06.02.2014.
3. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, on 12.02.2014, the Parties were



asked to furnish additional information/ document(s) by 24.02.2014. After seeking extension of time, the Parties filed the reply on 27.02.2014. The Parties also submitted a request for extension of time till 05.03.2014 to provide certain clarifications with respect to the response submitted by them, which was accordingly granted. The response from the Parties was received on 05.03.2014, wherein the Parties also submitted an application under sub-regulation (2) of Regulation 19 of Combination Regulations, proposing modifications in the non-compete clause(s) of the BTA and certain other agreements. The Parties also submitted their undertaking to this effect through their letters dated 07.03.2014 and 25.03.2014.

B. Parties To The Combination

4. Torrent is a listed company incorporated in India and is engaged in the business of manufacturing and marketing of branded generic medicines in different therapeutic segments, including cardiovascular, central nervous system, gastro intestinal, pain management, anti-infective, gynaecology, dermatology and oncology. It has presence in India as well as in many other countries through its subsidiaries. Torrent is also stated to provide contract manufacturing services and has multi-product facilities for manufacturing Active Pharmaceutical Ingredients (APIs), which are largely meant for captive consumption.
5. Elder is also a listed company incorporated in India and is stated to be engaged in the business of manufacturing and marketing of various pharmaceutical products in segments like women's healthcare, pain management, wound care, lifestyle disease management, anti-infective and nutraceuticals therapeutic categories. In addition, Elder is engaged in the distribution and sale of medical equipments. Elder is also engaged in contract manufacturing services, manufacturing of APIs and intermediates for its domestic and international customers. As stated in the notice, Elder has a joint venture (JV) in Nepal; however the said JV does not have any business in India. Elder has presence in many countries through its subsidiaries. Elder is also stated to be engaged in in-



licensing arrangements for the manufacture of certain products through which Elder manufactures these products for its licensing partners and sells them in India, Nepal and other jurisdictions.

C. Details of the Proposed Combination

6. As per the information given in the notice, the proposed combination relates to the acquisition of Elder's identified branded domestic formulations business or parts thereof, in India and Nepal, (hereinafter referred to as "**Identified Business**") by Torrent, pursuant to the BTA. It has been stated in the notice that the Identified Business comprises approximately 30 brands across the therapeutic segments of women's healthcare, nutraceuticals and pain & wound management. The manufacturing know-how and the intellectual property associated with the Identified Business would also be transferred to Torrent under the BTA. Further, as stated in the notice, Elder procures some of the products which are part of the Identified Business from third party contract manufacturers under third party contract manufacturing agreements. These agreements will be assigned to Torrent under the proposed combination. However, as stated in the notice, the manufacturing facilities of Elder, its operations of in-licensing deals, anti-infective product categories and exports business would not be transferred to Torrent and do not form part of the Identified Business. As already stated, the Parties have also signed MSA on 13.12.2013 pursuant to which Elder would manufacture certain products, as defined therein, exclusively for Torrent, for a period of three years. In addition to the said BTA and MSA, the Parties also propose to enter into certain other agreements to give effect to the proposed combination.
7. It has been stated in the notice that by way of the proposed combination, Torrent will be able to enter into new therapeutic categories as well as to expand its operations in existing therapeutic categories.
8. The proposed combination falls under Section 5(a) of the Act.



D. Assessment of the Proposed Combination

9. As already stated, the proposed combination relates to the acquisition of certain brands of Elder, in India and Nepal, by Torrent, in various therapeutic segments. However, the competition assessment of the proposed combination is limited to acquisition of these brands, in India. The Parties have stated in the notice that products/molecules categorized under a particular therapeutic category are similar or substitutable to each other and are used to treat the same indication. Thus, for the purpose of the competition analysis of the proposed combination, various products of Elder and Torrent have been classified on the basis of their therapeutic category i.e. the intended use of the drugs/formulations, as classified by the AIOCD¹.

Horizontal Overlap

10. As per the information provided in the notice, the products covered under the Identified Business can be categorized into various therapeutic categories/groups, based on the AIOCD classification, and out of which there is a horizontal overlap in sixteen therapeutic categories, between the existing products of Torrent and the products covered in the Identified Business of Elder. It is observed that out of these sixteen therapeutic categories, post combination market share of Torrent will be 10 per cent or more² only in respect of four overlapping therapeutic categories, as detailed below:

a.) Calcium + Vitamin D3

Elder has a very famous brand in this category i.e. “Shelcal” and is the largest player in this segment with a market share of 29 per cent approx. However, Torrent has limited presence in this segment with a market share of only 0.56 per cent and therefore, post combination market share of Torrent is likely to be 30 per cent approx. Thus, it is observed that the combined market share of the Parties in this category is entirely on account of Elder and Torrent has very insignificant presence in this market.

¹All India Organization for Chemists and Druggists.

²As per the AIOCD AWACS data, submitted by the Parties, for the financial year 2013.



b.) Calcium + Calcitriol

Market share of Elder and Torrent in this segment is approximately 8 and 2 per cent respectively. Thus, post combination market share of Torrent is likely to be little more than 10 per cent.

c.) Platelet Aggregation Inhibitors

Market share of Elder in this segment is less than 0.1 per cent and that of Torrent is approximately 15 per cent. Thus, there will not be significant change in post combination market share of Torrent in this segment.

d.) Combination of Two Diuretics

Market share of Elder and Torrent in this segment also is approximately 8 and 2 per cent respectively and accordingly, post combination market share of Torrent is likely to be approximately 10 per cent.

11. Thus, in most of the therapeutic categories, the combined market share of the Parties is not significant enough to raise any competition concern. Even in those therapeutic categories, where the combined market share is high, this is almost entirely on account of the market share of one of the parties with the other party having a miniscule share. It is further observed from the information given by the Parties that in the above said four therapeutic categories, the closest competitors have market share that is greater than or is approximately equal to the combined market share of the parties in these categories, with the exception of Calcium + Vitamin D3, wherein the competitors are multinational pharmaceutical companies, capable of posing a strong competitive constraint. In view of the foregoing, it is observed that at the therapeutic category level, the horizontal overlap between the existing products of Torrent and the products of Elder covered under the Identified Business is not likely to result in any appreciable adverse effect on competition in India.



12. The horizontal overlap between the existing products of Torrent and the products covered under the Identified Business of Elder has also been assessed at the therapeutic sub-group or molecule level. In this regard, it is observed that there is a horizontal overlap between the existing products of Torrent and the products being acquired from Elder in eleven molecules/therapeutic sub-groups, out of which, the post combination market share of Torrent will be 10 per cent or more³ only with respect to three categories, namely, “Calcium Carbonate + Vitamin D3 (Cholecalciferol)”, “Calcium Carbonate + Calcitriol” and “Flavoxate”. It is observed that in all these three therapeutic sub-groups, the combined market share of the Parties is primarily on account of Elder as Torrent has very limited presence in these sub-groups. Accordingly, at the molecule/therapeutic subgroup level also, the horizontal overlap between the existing products of Torrent and the products covered under the Identified Business is not likely to result in any appreciable adverse effect on the competition in India.
13. It is observed that both Elder and Torrent are engaged in the production and sale of generic medicines wherein entry is relatively easier. For example, in the above overlapping therapeutic categories, many new brands have been introduced by other domestic as well as multinational companies in the last few years in India. It is further observed that the prices of the medicines are regulated / monitored by National Pharmaceutical Pricing Authority in accordance with applicable rules and regulations.

Vertical Relationship

14. It has been stated in the notice that as on date, there are no vertical arrangements between Torrent and Elder. However, as already stated, Elder and Torrent have entered into MSA, pursuant to which Elder has agreed to manufacture certain products, exclusively for Torrent, for a period of 3 years. Under the terms of the MSA, Torrent has agreed to purchase a minimum quantum of the identified products from Elder and is free to source its balance

³ As per the AIOCD AWACS data, as submitted by the Parties, for the financial year 2013.



requirement from other third parties. In addition to the MSA, as stated in the notice, Torrent is also entering into an Oyster Shell Powder (OSP) Supply Agreement with Semit Pharmaceuticals and Chemicals Limited⁴ (hereinafter referred to as “**Semit**”), under which Semit will supply OSP to Torrent. OSP is a raw material used in the production of one of the formulations forming part of the Identified Business being marketed under the brand "Shelcal". It is observed that the aforesaid agreements are not likely to result in any appreciable adverse effect on competition in India.

Non-Compete Covenants

15. Torrent, Elder and Semit have entered into a non-compete agreement on 20.12.2013 (hereinafter referred to as the “**Semit Non-Compete Agreement**”). Another non-compete agreement has been executed between Torrent, Elder and certain promoters of Elder (including certain persons related/connected to them) on 20.12.2013 (hereinafter referred to as the “**Promoter Non-Compete Agreement**”). It is further noted that the BTA also contains similar non-compete covenants. Hereinafter, the non-compete covenants as provided under the BTA, Promoter Non-Compete Agreement and Semit Non-Compete Agreement are collectively referred to as “**Non-Compete Obligations**”. The Non-Compete Obligations provide that Elder, Semit, certain promoters of Elder and their affiliates shall not engage in (a) specified business activities in relation to products categorized under certain therapeutic area subgroups, referred to as “Identified Therapeutic Areas”⁵ in the Non-Compete Obligations, for a period of three years; (b) specified business activities in relation to products categorized under therapeutic area subgroups for Chymoral and Shelcal, referred to as “Primary Therapeutic Areas”, in the Non-Compete Obligations, for a period of five years; and (c) the products containing any of the anti-oxidants, vitamins, minerals, proteins, hematinics, bone supplements, omega fatty acids or nutrition products that form part of the composition of the

⁴ *Semit has been identified as one of the promoters of Elder.*

⁵ *As given in Exhibit A of Schedule 13 of the BTA and Exhibit A of the Schedules to the Promoter Non-Compete Agreement and the Semit Non-Compete Agreement.*



acquired products and the vitamins, minerals and nutrition market (hereinafter referred as “VMN Market”)⁶ for a period of 3 years. As stated by the Parties, the said therapeutic area subgroups used for the purpose of Non-Compete Obligations in respect of (a) and (b) above are as per the therapeutic classification provided by IMS, and in respect of VMN market the therapeutic classification is as designated or defined by ORG IMS or AIOCD Pharmatrac AWACS.

16. During the assessment of the proposed combination, the Parties were required to provide clarification and justification on certain aspects of Non-Compete Obligations i.e. (i) the therapeutic area subgroups covered under the Non-Compete Obligations have other molecule/molecule combinations which are not part of the Identified Business but fall within the scope of Non-Compete Obligations; (ii) Elder has certain other products in these therapeutic area subgroups which are not being acquired by Torrent but would fall under the scope of the Non-Compete Obligations and therefore would have to be discontinued by Elder; (iii) the duration of the Non-Compete Obligations is three years in respect of Identified Therapeutic Areas and five years in respect of Primary Therapeutic Areas with no justifiable reason provided in the notice for the extended period in case of the latter; and (iv) the scope of the non-compete covenant has been extended over the entire VMN Market and certain other pharmaceutical products beyond the Identified Therapeutic Areas and Primary Therapeutic Areas.

17. In their response, the Parties while providing clarification for the duration as well as the scope of the business activities restricted under the Non-Compete Obligations as required above, vide their letters submitted on 05.03.2014, 07.03.2014 and 25.03.2014, proposed following modifications to the Non-Compete Obligations, in terms of sub-regulation (2) of Regulation 19 of the Combination Regulations:

⁶As provided by clause 10.1.4 of the BTA and clause 2.1(iv) of each of the Promoter Non-Compete Agreement and Semit Non-Compete Agreement.



- (a) Deletion of 11 therapeutic area subgroups from Exhibit A of Schedule 13 of the BTA and Exhibit A of the Schedules to the Promoter Non-Compete Agreement and the Semit Non-Compete Agreement;
 - (b) Creation of a carve out of 36 existing products of Elder from the product scope of the Non-Compete Obligations, implying that Elder will continue to manufacture, market, distribute and sell each of these 36 products that are proposed to be carved out from product scope of the Non-Compete Obligations;
 - (c) Reduction of the duration of the Non-Compete Obligations for the Primary Therapeutic Areas from five years, as specified in clauses 10.1.2 and 10.1.5 of the BTA and clauses 2.1(ii) and 2.1(v) in each of the Promoter Non-Compete Agreement and the Semit Non-Compete Agreement, to four years; and
 - (d) Deletion of clause 10.1.4 from the BTA and clause 2.1(iv) of each of the Promoter Non-Compete Agreement and Semit Non-Compete Agreement.
18. The Commission hereby accepts the above said modifications offered by the Parties under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations and directs the Parties to make necessary amendment(s) in the BTA, Promoter Non-Compete Agreement and Semit Non-Compete Agreement so as to incorporate the said modifications and submit a copy of such amended agreements, along with the relevant documents, to the Commission, by 05.06.2014.

E. Conclusion

19. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act, the assessment of the proposed combination on the basis of the factors stated in sub-section (4) of Section 20



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of the Act and the modifications proposed in the BTA, Promoter Non-Compete Agreement and Semit Non-Compete Agreement by the Parties, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India and thus, the proposed combination is approved by the Commission under sub-section (1) of Section 31 of the Act.

20. This approval is without prejudice to any other legal/statutory obligations as applicable.
21. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
22. The Secretary is directed to communicate to the Parties accordingly.

(Ashok Chawla)
Chairperson

(Geeta Gouri)
Member

(Anurag Goel)
Member

(M. L. Tayal)
Member

(S.L. Bunker)
Member