



DETERMINATION OF MERGER NOTIFICATION M/13/021 -

Aspen / Merck

Section 21 of the Competition Act 2002

Proposed acquisition by Aspen Pharmacare Holdings of certain parts of the active pharmaceutical ingredient business of Merck and Co Inc.

Dated 14 August 2013

Introduction

1. On 18 July 2013, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby Aspen Pharmacare Holdings Limited ("Aspen") would acquire certain parts of the active pharmaceutical ingredient ("API") business from Merck and Co Inc. ("Merck") by acquiring sole control of MSD NL 8 B.V.
2. The proposed transaction would be put into effect pursuant to an agreement between Aspen, MSD Merck Sharp & Dohme B.V., a Netherlands-based wholly owned subsidiary of Merck and the MSD NL 8 B.V. The effect of the proposed transaction will be to transfer parts of Merck's API business into MSD NL 8 BV. Aspen will in turn acquire the entire issued capital of MSD NL 8 BV.¹

The Undertakings Involved

The Acquirer - Aspen

3. Aspen, headquartered in La Lucia Ridge Kwa-Zulu Natal, South Africa, is involved in the manufacture and supply of branded and generic pharmaceuticals. In addition to its South African manufacturing facilities, Aspen also has manufacturing facilities in Australia, Brazil, Germany, Kenya, Mexico and Tanzania.²
4. Aspen is involved, amongst other things, in the manufacture and sale of APIs. APIs are used in the manufacture of finished pharmaceutical products³ that are sold for eventual consumption by humans or animals. As such APIs can be defined as "the chemicals in drug products that make the medications work."⁴

¹ In addition Aspen, through its wholly owned subsidiary Aspen Global Incorporated, would have a non-binding option until 31 December 2013, to acquire from Merck a portfolio of 11 branded finished pharmaceutical products covering a diverse range of therapeutic areas and including products that use APIs manufactured by MSD NL 8 B.V. See <<http://www.aspenpharma.com/news-room/aspen-signs-r10-billion-deal-with-msd.aspx>>

² For more information on Aspen see <<http://www.aspenpharma.com/about-aspen.aspx>>.

³ A finished pharmaceutical product is one that has undergone all stages of production and testing, including packaging in its final container and labelling. See <<http://www.medaphile.com/medical-dictionary/finished-pharmaceutical-product>>.

⁴ See, for example, <<http://pharmacy.about.com/od/Glossary/g/What-Are-Active-Pharmaceutical-Ingredients-Or-Apis.htm>>.

5. Aspen bases its European marketing and supply chain management headquarters in Dublin. Within the State Aspen is involved in the sale of finished pharmaceutical products and, to a lesser extent, the sale of APIs. Aspen is not, however, involved in the manufacture of either finished pharmaceutical products or APIs within the State.
6. For the financial year ended 30 June 2012, Aspen had a worldwide turnover of €1.468 billion,⁵ of which approximately €[...] million was generated within the State.⁶

The Vendor - Merck

7. Merck, headquartered in Whitehouse Station, New Jersey, USA, is a diversified global health care company involved in four business areas:
 - animal health products,
 - consumer care products,
 - pharmaceuticals, and
 - alliances with third parties, (e.g., for research and development).⁷
8. Within the State, Merck, through its various wholly owned subsidiaries, is involved primarily in animal health care and pharmaceuticals. Merck is also involved, to a lesser extent, in consumer care products.⁸ Merck operates five manufacturing sites in counties Dublin, Carlow, Cork, Tipperary and Wicklow.⁹
9. The Cork, Tipperary and Wicklow facilities are involved in the manufacture of APIs for finished pharmaceutical products for the treatment of various human medical conditions including allergies, cardiovascular illness, diabetes, epilepsy, infectious diseases, neurological conditions affecting the central nervous system and respiratory illnesses. Merck's API manufacturing facilities within the State are not part of the proposed transaction.

The Target – MSD NL 8 B.V.

10. MSD NL 8 B.V., a wholly owned subsidiary of Merck which was established for the purposes of the transaction, includes certain manufacturing facilities which manufacture unprocessed APIs both for Merck and for sale to other firms. MSD NL 8 B.V includes USA and Netherlands based sales offices and also four manufacturing facilities: three located in the Netherlands and one in Iowa, USA.

⁵ Calculated using the average Annual ECB Exchange rate for the period July 2011 to June 2012 of €1= ZAR 10.3957.

⁶ [...].

⁷ For more information on Merck see <<http://www.merck.com/index.html>> and <<http://www.merck.com/investors/financials/form-10-k-2011.pdf>>.

⁸ See <<http://www.merck.com/product/consumer-products>>.

⁹ For more information about Merck in Ireland see <<http://www.msd-ireland.com/Pages/MSD%20in%20Ireland.aspx>> and <<http://www.msd-ireland.com/Style%20Library/CountrySite/Ireland/English/PDF/MSD-corporate-brochure-july-2011.pdf>>.

11. APIs manufactured by MSD NL 8 B.V. include chemicals (e.g., steroids, norsteroids, asenapine, peptides, alkaloids, estrogens and corticosteroids) and bio-chemicals (e.g., heparin, danaparoid sodium and chronic gonadotropin).
12. MSD NL 8 B.V. does not have a physical presence within the State and in particular does not manufacture APIs in the State. All turnover generated by MSD NL 8 B.V. within the State is generated by the sales of APIs imported into the State.
13. For the financial year ended 31 December 2012 the world-wide turnover of the Target business was approximately €[...] million of which approximately €[...] million was generated within the State.

Third Party Submissions

14. No submissions were received.

Rationale for Transaction

15. As stated by the parties the proposed transaction will contribute to Aspen's strategy of increased global presence and will also provide Aspen with a differentiated pipeline,¹⁰ i.e., to extend Aspen's product range.¹¹ Also as stated by Aspen:

"The products fit very well with developing our target business: they are niche areas such as steroids, areas where there is not much generic competition".¹²

Analysis

16. Globally there is an overlap in the activities of Aspen and MSD NL 8 B.V. and its parent company Merck. Aspen, MSD NL 8 B.V. and Merck are all involved, in various jurisdictions, in the pharmaceutical industry, including both finished pharmaceutical products and APIs.
17. Within the State, there is a horizontal overlap in the activities of the parties with respect to the sale of APIs. However, the overlap is of minimal size. Also, as stated by the parties, Aspen is not involved in the sale, within the State, of any APIs of the type manufactured by MSD NL 8 B.V.¹³ Consequently the proposed transaction is not likely to raise horizontal competition concerns in the State.
18. There is no current vertical overlap between Aspen and MSD NL 8 B.V. within the State.
19. The above factors, together with Aspen's relatively small presence in the State (annual turnover of approximately €[...] million for the year ended 30 June 2012, [...]) do not indicate that the proposed transaction is likely to raise competition concerns in any market for goods or services in the State.

¹⁰ Notification Form, page 6.

¹¹ Correspondence with Parties dated 7 August 2013.

¹² See <<http://www.ft.com/intl/cms/s/0/23873298-df35-11e2-a9f4-00144feab7de.html#axzz2bOBvjzxp>>.

¹³ Correspondence with Aspen dated 12 August 2013.

20. As noted by the parties the proposed transaction is, or is likely to be, notifiable in various jurisdictions outside the State.¹⁴ The Authority's conclusion above concerns only the State and consequently may not be indicative of possible competition concerns arising from the proposed transaction in other jurisdictions.

¹⁴ In particular, Brazil, Germany, Israel Namibia, Ukraine, and the Common Market for Eastern and Southern Africa ("COMESA"). Notification Form paragraph 2.8.1, page 6.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Aspen Pharmacare Holdings Limited would acquire certain parts of the active pharmaceutical ingredient business from Merck and Co Inc. by acquiring sole control of MSD NL 8 B.V. will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect.

For the Competition Authority

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