



## **DETERMINATION OF MERGER NOTIFICATION M/10/046 -**

### **Aesica / UCB**

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#### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by Aesica Pharmaceuticals Limited of Certain Assets from UCB SA**

**Dated 18 January 2011**

#### **Introduction**

1. On 20 December 2010, 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 Aesica Pharmaceuticals Limited ("Aesica") would acquire certain assets from UCB SA ("UCB") (collectively, the "Target Assets").

#### **The Undertakings Involved**

##### *The Acquirer*

2. Aesica, headquartered in Newcastle, United Kingdom ("UK"), is involved, primarily in the UK, in the production and distribution of pharmaceuticals, also known as "contract manufacturing of pharmaceuticals", for pharmaceutical companies.<sup>1</sup>
3. For the financial year ended 31 December 2009, Aesica generated worldwide turnover of approximately €95 million,<sup>2</sup> including approximately €[...] turnover in the State generated by sales to customers including [...]. Aesica does not have any manufacturing facilities in Ireland.
4. Lloyds TSB Development Capital Limited ("LDC") has a majority share in Aesica.<sup>3</sup> In turn, LDC is a wholly owned subsidiary of Lloyds Banking Group plc ("Lloyds"). Within the State, in addition to its shareholding in Aesica, Lloyds owns Bank of Ireland Scotland ("BOSI"). For the financial year ended 31 December 2009, BOSI generated turnover of approximately €[...] million in the State.<sup>4</sup>

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<sup>1</sup> For more information on Aesica see <<http://www.aesica-pharma.co.uk/home>>. Contract manufacturing of pharmaceuticals includes both primary activities, e.g. production of active pharmaceutical ingredients, and secondary activities such as production of final dosage products such as tablets or liquids.

<sup>2</sup> Calculation based on the average 2009 ECB Sterling Euro exchange rate of €1 = £0.89094.

<sup>3</sup> [...].

<sup>4</sup> The parties submit that while BOSI closed on 31 December 2010 and the assets and liabilities of BOSI transferred to Bank of Scotland plc, transferred assets will continue in future to generate turnover from the State (e.g., interest on loans to Irish customers).

### *The Target Assets*

5. UCB, headquartered in Brussels, Belgium, is a global biopharmaceutical company focused on severe diseases in two biological therapeutic areas: the central nervous system and immunology.<sup>5</sup>
6. The Target Assets comprise three UCB production plants located in Monheim and Zwickau in Germany and Pianezza in Italy. For the financial year ended 31 December 2009, the Target Assets had worldwide turnover of approximately €[...] million including turnover of approximately €[...] million in the State.
7. Within the State the Target Assets have [...]. The parties submit that [...] would continue post-transaction to obtain services from the Target Assets.

### **Third Party Submissions**

8. No submissions were received.

### **Rationale for Proposed Transaction**

9. The proposed transaction will allow Aesica to increase the range and geographical scope of its services to both existing and new customers and also to develop a strategic relationship with UCB.
10. UCB is outsourcing some of its manufacturing operations. That is, inter alia the Target Assets will continue to provide contract manufacturing of pharmaceuticals services to UCB.

### **Analysis**

11. There is an overlap, both globally and within the State, between Aesica and the Target Assets given that both are involved in contract manufacturing of pharmaceuticals. The extent of the overlap is not, however, significant because, although the parties are unable to provide reliable market share estimates within the State, they estimate that the combined global market share for contract manufacturing of pharmaceuticals by Aesica and the Target Assets is less than [...]%.
12. The transaction has been notified primarily on the basis of turnover generated by BOSI, which is owned by Lloyds, rather than turnover derived from contract manufacturing of pharmaceuticals within the State. The parties submit that Lloyds' exposure to contract manufacturing of pharmaceuticals within the State is at most its ultimate ownership of Aesica and a [...] % minority stake in Penn Pharmaceuticals Group Limited ("Penn"), based in Wales. For the financial year ended 31 December 2009 Penn generated turnover in the State of approximately €[...]million.

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<sup>5</sup> For more information on UCB see <<http://www.ucb.com/>>

13. Aesica's customers in the State already have many alternative suppliers of contract manufacturing of pharmaceuticals including, for example, Lonza Group, Patheon Inc. Catalent Pharma Solutions and BASF.
14. [...].
15. In light of the above, the Authority does not consider that the proposed transaction will give rise to competition concerns within the State.

#### **Ancillary Restraints**

16. The Asset Purchase Agreements for each of the Target Assets include a mutual non-solicitation clause (i.e., from both buyer and vendor) for a period of [...] from the completion date of the proposed transaction. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

## **DETERMINATION**

17. 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 Aesica Pharmaceuticals Limited would acquire certain assets from UCB SA will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect.

### **For the Competition Authority**

Dr Stanley Wong  
Member of the Competition Authority