Competition Commission SINGAPORE

Section 57 of the Competition Act (Cap. 50B)

Grounds of Decision issued by the Commission

Notification for Decision: Proposed Acquisition by Novartis AG of Alcon Inc

20 May 2010

Case number: CCS 400/003/10

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [✂]

INTRODUCTION

1. On 31 March 2010, the Competition Commission of Singapore ("CCS") received a Notification for Decision pertaining to an anticipated transaction (the "Transaction"), whereby Novartis AG ("Novartis") will acquire 52.15% of the issued and outstanding shares of Alcon Inc ("Alcon") from Nestlé S.A. ("Nestlé").[1] Novartis and Alcon are collectively referred to as "the Parties". The Transaction has yet to be completed.[2]

2. The Parties have informed CCS in their submission that they have made or were in the process of making merger notifications in various jurisdictions[3].

3. CCS has concluded that the Transaction, if carried into effect, will not infringe section 54 of the Competition Act ("the Act").

THE STAKEHOLDERS

(a) Novartis

[1] Para 1.1.1 of Form M1 submitted on 31 March 2010 ("Form M1").
[2] Para 1.2.1 of Form M1
[3] Para 1.5.1 of Form M1

4. Novartis is a global healthcare company, headquartered in Basel, Switzerland.[4] Novartis operates in over 140 countries worldwide and is currently listed on the Swiss Stock Exchange and the New York Stock Exchange. Through its subsidiaries, Novartis is engaged in the research, development, production, distribution and marketing of medical products, including prescription medicines, over-the-counter medicines, human vaccines and animal health products. Novartis has six (6) legal entities in Singapore, including Ciba Vision (Singapore) Pte Ltd, with varying scope of business activities including manufacturing and importing of pharmaceutical products in Singapore.[5] Novartis products [✂] are distributed through their authorised distributor Zuellig Pharma.[6]

5. Global and Singapore sales for Novartis in the year 2009 are USD 44.3 billion and [✂] respectively.[7]

(b) Alcon

6. Alcon is a Swiss-based company focusing on ophthalmic and eye-care related products[8]. It operates from offices located in 75 countries around the world and is listed on the New York Stock Exchange[9]. Alcon develops and manufactures ophthalmic pharmaceutical products, surgical equipment and consumer eye-care products used in the treatment of eye diseases and disorders.[10] In 2009, Alcon started constructing in Singapore its first pharmaceutical plant in Asia which is scheduled to be completed in 2012[11] [✂].

7. Global and Singapore sales for Alcon in the year 2009 are USD 6.5 billion and [✂] respectively.[12]

(c) Nestlé

8. Nestlé is a leading nutrition, health and wellness company, with its headquarters in Vevey, Switzerland. Nestlé has factories or operations in almost every country in the world and its shares are listed on the SIX Swiss Exchange[13].

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[4] Para 2.2.3 of Form M1
[5] Section (iii) of the Parties' reply dated 14 April 2010.
[6] Section (v) of the Parties' reply dated 14 April 2010.
[7] Para 3.1.7 of Form M1.
[8] Para 2.2.2 of Form M1.
[9] Alcon 2008 Annual Report, Page 24.
[10] Para 3.1.4 of Form M1.
[11] Alcon 2008 Annual Report, page 9 and section (iv) of the Parties' reply dated 14 April 2010.
[12] Para 3.1.5 of Form M1.
[13] Information available on the Nestlé corporate website http://www.nestle.com.

BACKGROUND INFORMATION

THE TRANSACTION

9. Prior to the proposed Transaction, Novartis already held a 24.85% interest in Alcon when it acquired the shares from Nestlé pursuant to a Purchase and Option Agreement ("POA") with Nestlé dated 6 April 2008.[14] However, the Parties submit that [✂], Novartis did not have material or decisive influence at the shareholder or board level.[15] According to the Parties, the option for Novartis to acquire the 52.15% of the Alcon shares owned by Nestlé had to be exercised between 1 January 2010 and 31 July 2011. Novartis exercised its call option on 4 January 2010. The Parties aim to complete the Transaction [✂] and regulatory approval will be sought in approximately [✂] separate jurisdictions worldwide.[16] [✂][17]

10. On the basis of the information furnished by the Parties and their submission that the Transaction constitutes a merger pursuant to section 54(2)(b) of the Act, CCS proceeded to assess the competitive effects of the Transaction.

COMPETITION ISSUES

11. The Parties stated that the activities of Novartis and Alcon are to a large extent complementary. In particular, Novartis is active in contact lenses whereas Alcon is active in intra-ocular lenses.[18] Nevertheless, the businesses of the Parties do overlap horizontally in the supply of certain categories of pharmaceutical products (described below). CCS therefore examined whether the Transaction potentially leads to substantially lessening of competition in the market(s) in which these categories of pharmaceutical products are supplied, whether by way of non-coordinated or coordinated effects.

12. The Parties stated that the ophthalmological products sold in Singapore are [✂].[19] Hence there are no vertical concerns arising from the Transaction.

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[14] Para 3.1.13(a) of Form M1.
[15] Para 3.1.14 of Form M1
[16] Para 3.1.15 of Form M1.
[17] Para 3.1.12 of Form M1.
[18] Para 3.2.2 of Form M1. As elaborated by the Parties in section (ii) of the Parties' reply dated 14 April 2010, a contact lens is a temporary medical device that is usually placed by the wearer on the cornea of the eye and is mainly used for corrective and/or cosmetic purposes. In contrast, an intra-ocular lens is an implanted lens in the eye and is usually used in treatment of cataracts to replace the eye's existing, natural, crystalline lens because it has been clouded over by a cataract. The insertion of an intra-ocular lens requires a specialized, eye surgical procedure in order to permanently implant the lens in the eye. More information is available at http://www.alcon.com/en/alcon-products/surgical.asp
[19] Section 1(iii) of the Parties' reply dated 28 April 2010.

RELEVANT MARKETS

(a) Products Market Definition

Parties' submission

13. The Parties submitted that the *Anatomical Classification Guidelines (also known as Anatomical Therapeutic Chemical Classification Guidelines)* ("ATC Guidelines") should be used as the starting point for market definition analysis.[20] The ATC Guidelines classifications have been consistently used by the European Commission ("EC") in considering mergers and other matters involving pharmaceutical products. Specifically, the EC has typically considered the ATC3 level to be the starting point for considering issues of market definition, due to the fact that the ATC3 level is indicative of a range of products which are substitutable for one another in the usual course. However, there may be instances where it is necessary to adopt a wider or narrower market definition, depending on the nature of the product in question.

14. Separate from an ATC3 categorisation, the Parties submitted that it may also be useful to consider whether a product is available over the counter ("OTC") or whether it is only available with a prescription ("Rx") as there may well be differing demand characteristics between the two[21]. The EC has, in previous decisions, defined separate product markets for OTC and Rx products based on the fact that medical indications, legal framework, marketing and distributing tend to differ between the two categories.[22]

15. The Parties also note that they face competition from generics in most, if not all, ATC3 categories. In regulatory approval procedures, a generic drug manufacturer has to demonstrate that the generic version of the originator drug has identical quality and purity and is biologically equivalent to the originator drug[23]. The Parties are unaware of any instance where the EC has made a distinction between generics and originator drugs in its decisions. Instead, such products are considered to be part of the same product market for any given indication[24].

16. Based on the ATC classifications, the Parties have identified 17 categories of ophthalmological and ontological products in which they participate in Singapore. Of these 17 categories, there are 7 ATC3 categories where the activities of Alcon and

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[20] Para 6.1.3 of Form M1. Devised by the European Pharmaceutical Marketing Research Association ("EphMRA"), the ATC classifications are uniformly and internationally used by pharmaceutical companies and industry bodies to classify products and activities.
[21] Para 6.1.10 of Form M1
[22] Para 6.1.11 of Form M1
[23] Para 6.1.12 of Form M1
[24] Para 6.1.13 of Form M1

Novartis overlap in Singapore[25]. These are:

- S1B: Ophthalmological Corticosteroids
- S1E: Miotics and Antiglaucoma Preparations
- S1G: Ocular Anti-allergics, Decongestants, Antiseptics
- S1K: Artificial Tears and Ocular Lubricants
- S1L: Preparation for use with Contact Lenses
- S1M: Eye Tonics and Eye Vitamins
- S1X: Other Ophthalmologicals

17. A related category is the S1R category which comprises ophthalmic non-steroidal anti-inflammatory products used to reduce eye inflammation. In comparison, the S1B category comprises ophthalmological corticosteroids which are also primarily used to reduce eye inflammation, but are perceived to be stronger than the former.[26] Both ophthalmological corticosteroids and ophthalmic non-steroidal anti-inflammatory products are prescribed and used for ocular inflammation, in particular after cataract surgery and, sometimes, after other types of surgical interventions.[27] In this regard, for the purposes of this notification, the Parties submitted that it is appropriate to consider all ocular anti-inflammatory products covering both ophthalmological corticosteroids (S1B) and ophthalmic non-steroid anti-inflammatories (S1R) together.[28]

18. The S1L category relates to preparations for use with contact lenses including multi-purpose solutions ("MPS products"), peroxide solutions ("H202 products"), daily cleaners, and other products used to clean, disinfect and deproteinise lenses.[29] In respect of this category, the Parties submitted that there are different user characteristics for MPS and H202 products. H202 products are preservative free and therefore often recommended for contact lens wearers who may be sensitive to preservatives found in MPS products[30]. H202 products are more effective disinfectants and it is possible for wearers not sensitive to preservatives found in MPS products to use H202 products. However, a neutralizing agent must be used on the contact lens for at least 6 hours following the use of H202 products to convert the peroxide to water, failing which the contact lens user may suffer stinging pain when the contact lens is inserted in the eye. Such a step is not required when using an MPS product as the contact lens can be worn immediately[31].

19. The Parties added that H202 products and MPS products generally do not compete on price, the former being more expensive than the latter. This cost

[25] Para 6.1.18 of Form M1
[26] Para 6.1.41 of Form M1
[27] Para 6.1.40 of Form M1.
[28] Ibid.
[29] Para 6.1.33 of Form M1.
[30] Para 6.1.35 of Form M1.
[31] Ibid and section (vi) of the Parties' reply dated 14 April 2010.

differential is driven in part by the cost of necessary, ancillary materials for use with H202 products. On a price per usage basis, H202 products are more expensive than MPS products. Procedurally, the usage of MPS product is more hassle-free than H202 products.

20. In relation to the S1X category, the Parties submitted that it should be properly considered a non-overlap category as it is essentially a "catch-all" category for products that do not fall within one of the other categories[32]. Novartis' only product in this category is OTC "Lid-Care" product which is a sterile eyelid cleanser for daily eyelid hygiene, cleaning and makeup removal. In contrast, Alcon's product in S1X category is an *Antiedema ointment* for reducing corneal edema[33] which is available on prescription.

CCS' assessment

21. CCS agrees that the ATC3 level can be taken as the starting point for market definition analysis as it broadly identifies the products that are substitutes for each other based on their intended use. This is the approach adopted by the EC[34] and confirmed by CCS' enquiries with third parties and industry sources. The ATC Guidelines were also used by CCS as a starting point for assessing the appropriate market definition in another CCS decision[35]. Hence, CCS is of the view that it is reasonable to use the ATC3 category classification as the starting point for defining the relevant product markets of the Parties. On the facts of the case, the ATC3 levels with regard to the categories of S1B: ophthalmological corticosteroids, S1E: miotics and antiglaucoma preparations, S1G: ocular anti-allergics, decongestants, antiseptics, S1K: artificial Tears and ocular lubricants, S1L: preparation for use with contact lenses, S1M: eye tonics and eye vitamins and S1X: other ophthalmologicals each constitute a separate product market. CCS's investigations have not yielded any results that would justify a different conclusion for this case.

22. Nevertheless, CCS notes that in certain circumstances, it may be necessary to deviate from the ATC3 classification when defining relevant markets for competition analysis and, where relevant, to consider ATC4 or molecule level for purposes of defining the relevant markets instead[36]. CCS notes that the EC has also considered that it may be appropriate to carry out analyses at other levels such as ATC4 if the specific circumstances indicate that the ATC3 level is not the most appropriate for the purposes of the market definition[37].

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[32] Para 6.1.46 of Form M1 and Section 1(i) of the Parties' reply dated 28 April 2010.

[33] According to the Parties' reply on 28 April 2010, Section 1(i), corneal edema may be caused by bulbous keratitis, post-operative of cataract extraction and hereditary corneal dystrophia or Fuch's dystrophia.

[34] Case No Comp/M.2312 – *Abbott/Basf*, Regulation EEC No 4064/89; Case No Comp/M.5530 - *Glaxo Smith Kline/Stiefel Laboratories*, Regulation (EC) No 139/2004; Case No Comp/M.5253 – *Sanofi-Aventis/Zentiva*, Regulation (EC) No 139/2004

[35] Case No: CCS 400/002/09 – *Proposed Acquisition by GSK Trading Services Limited of the right to distribute and market selected pharmaceutical products from UCB SA.* ("GSK – UCB case")

[36] Ibid.

[37] Para 8 of Case No Comp/M.5530 - *Glaxo Smith Kline/Stiefel Laboratories*, Regulation (EC) No 139/2004.

23. CCS has considered that it may be necessary to segment some of the ATC3 markets further into OTC vs. Rx, given that the two categories may not be strong demand-side substitutes (e.g. end users will not be able to switch easily from an OTC to an Rx product if the price of the OTC product were to rise, without getting a prescription from the doctor first). Nonetheless, for the ATC3 markets that comprise a mixture of OTC and Rx products, CCS has found that its assessment does not change, whether or not it adopts a narrower or broader definition of the market (see paragraphs 42 to 44 below).

24. CCS agrees with the Parties that it is not necessary to segment each ATC3 market further into originator vs. generic drugs. As mentioned above, save that a generic drug may be cheaper than an originator drug, the former has identical quality and purity and is biologically equivalent to the originator drug. Based on CCS' enquiries with third parties and industry sources, the 7 ATC3 markets in which the activities of the Parties overlap are relatively mature and the Parties face competition from current as well as future competitors producing generics in most, if not all, ATC3 categories.

S1B + S1R Category

25. Feedback received from third parties indicated both steroid eye-drops (S1B) and non-steroid eye-drops (S1R) are used in the treatment of eye diseases, although steroid eye-drops are more often prescribed in post-corneal surgeries. In the premises, it is appropriate to consider the products in both S1B and S1R categories together.

S1L Category

26. CCS notes the different user characteristics involving MPS and H202 products. While users who are sensitive to the preservatives in MPS products are limited to using H202 products, users who do not have this problem and who are using MPS products are able to switch to H202 products. However, based on feedback given by third parties, a contact lens user who is not sensitive to the preservatives present in MPS products would usually not use H202 products as (i) procedurally it is more troublesome, and (ii) on a price per usage basis, H202 products are more expensive.

27. In the circumstances and given that Alcon does not market H202 products in Singapore, CCS focused its competitive assessment in respect of MPS products.

S1X Category

28. The Parties stated that given the "catch-all" nature of the S1X category and the clear differences in the nature and use of their respective products falling within this category, the S1X category should be considered as a non-overlap category. CCS agrees with this submission and did not conduct further competition assessment along this market definition.

Future or pipeline products

29. It should be noted that in the pharmaceutical industry, drug manufacturers carry out extensive research and development efforts to introduce and market new pharmaceutical products on a global basis. As such, there may be pharmaceutical products which are at an advanced stage of research and development, or which have undergone various clinical trials and tests, but are not yet available on the market. Such products are known as pipeline or future products which, subject to regulatory approval, may be introduced in the market at an opportune time as determined by the pharmaceutical manufacturers. As there is potential for such products to enter into competition with other pipeline products as well as existing products, CCS is of the view that it is important to take into consideration the competition effects that such products may bring into the market.

30. Further, CCS is of the view the market definition in relation to the pipeline products can be guided either on the existing ATC classes or by the characteristics and intended therapeutic use to which they are to be applied. CCS notes such an approach was also adopted by the EC[38].

31. The Parties stated they are each carrying out research in ophthalmic products on a global basis as the ophthalmic industry is a growth sector. The Parties further stated [✂].[39] On the other hand, [✂].[40] These will be discussed further below.

(b) Geographic Market

Parties' submission

32. The Parties submitted that as the products sold within Singapore are typically manufactured overseas and imported into Singapore, a geographic market that is wider than Singapore is appropriate from a supply perspective.[41] From a demand perspective, and given that first level purchasers in Singapore are mainly large institutional purchasers with a nationwide presence, it is also possible that buyers may choose to seek out suppliers outside of Singapore in the face of a small but significant non-transitory price increase. However, the extent to which buyers can switch to sellers outside of Singapore would depend on different factors including the associated transport costs, the level of regulatory clearance required (e.g. the acquisition of an import license from the Health Sciences Authority of Singapore) and whether pharmaceutical companies permit such parallel imports. On this basis, the Parties consider that conservatively, the relevant geographic market would be no narrower than "Singapore". The Parties added that in considering pharmaceutical product markets, the EC has typically defined the geographic scope of such markets to be national in scope.[42]

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[38] Paragraphs 18 – 20, Case No Comp/M.2312 – *Abbott/Basf*, Regulation EEC No 4064/89.
[39] [✂].
[40] Ibid.
[41] Para 6.1.14 of Form M1.
[42] Para 6.1.15 of Form M1.

CCS' assessment

33. In Singapore, ophthalmic products intended for medicinal purposes are regulated as medicinal products and require a product licence issued by the Health Sciences Authority ("HSA") before they can be sold or supplied in the local market. Contact lens products are regulated as medical devices and have to be registered with the HSA. These regulatory requirements mean that the products need to meet the required standard for quality, safety and efficacy. The registration and approval process of a medical device may take between three and nine months, depending on the risk classification of the product concerned. However, the current regime allows for abridged evaluation, which applies when the product concerned has been approved by a competent overseas medical device regulatory agency recognized by HSA. CCS' assessment is that the market is the entire market in Singapore. For the avoidance of doubt, this market includes ophthalmic products manufactured overseas, registered with HSA and sold in Singapore.

Future or pipeline products

34. Similarly, the geographic market for future or pipeline ophthalmic products is no narrower than the Singapore market. For the avoidance of doubt, this market includes those products that are being developed overseas and subject to regulatory approval to be sold in Singapore.

MARKET STRUCTURE

35. The parties have furnished their market shares for the S1B, S1B+S1R, S1E, S1G, S1K, S1M and S1X categories in Singapore based on data provided by IMS (see **Annex 1**). IMS processes the industry data for the sale of pharmaceutical products around the world, including Singapore.[43] According to the Parties, while IMS data would be the most useful data when considering ATC3 categories in Singapore, its survey of outlets selling OTC products may not be comprehensive. As it does not track sales made through opticians or optical stores, IMS data may not be accurate in relation to products belonging to the S1L category and potentially the S1K category. In addition, IMS data makes no distinction between MPS and H202 products.[44] According to the Parties, Ciba Vision does not subscribe to IMS data for the S1L category in Singapore.[45]

36. As mentioned in CCS' Guidelines, CCS is generally of the view that competition concerns are unlikely to arise in a merger situation unless[46]:

(i) the merged entity will have a market share of 40% or more; or

[43] Para 8.1.2 of Form M1.
[44] Para 8.1.4 of Form M1.
[45] Para 6.1.37 of Form M1.
[46] CCS Guidelines on the Substantive Assessment of Mergers, para 5.15

(ii) the merged entity will have a market share of between 20% to 40% and the post-merger combined market share of the three largest firms (also known as "CR3") is 70% or more[47].

37. The combined market share of the parties fall below the above-mentioned thresholds in respect of the S1B, S1B+S1R and S1M categories. In addition, as set out earlier, CCS agrees that the parties' products in the S1X category are non-overlapping.

38. It should be noted that [✂][48]. CCS notes that on an aggregated S1B and S1R category, the combined share of the merged entity [10-20]% ranks behind the largest competitor Allergan [40-50]%, Smith & Nephew [20-30]% and Bausch and Lomb [10-20]%[49]. Based on the above, CCS is of the view that any pipeline product introduced by the Parties is likely to face fierce competition in the S1B and S1R category.

39. As such, CCS focused on the S1E, S1G, S1K and S1L categories and examined whether the Transaction would raise competition concerns in these product categories in Singapore.

(i) Miotics and Antiglaucoma Preparations (S1E Category)

40. For the S1E category, whilst Alcon has [20-30]% of the market, CCS notes that Novartis has a small market share [0-10]% in this market and post-merger, the combined market share for the Parties would be [20-30]%. The CR3 would increase marginally from [80-90]% to [80-90]%. Pfizer and Allergan with a market share of [30-40]% and [20-30]% respectively are the market leaders and the merged entity will only be in the third position in terms of market share.

41. The market investigations carried out by CCS with third parties indicated that there were many products for the treatment of glaucoma in Singapore. Alcon's leading product *Travatan* [10-20] % faced strong competition from Pfizer's *Xalatan* [20-30] % and Allergan's *Lumigan* [0-10] % as these were close substitutes. As for Novartis' product *Nyolol* in which the active molecule is *Timolol*, there was feedback that this product faced strong competition from other generic drugs containing *Timolol* molecules. In addition, while *Nyolol* remained a first line of defence drug for the treatment of glaucoma, there were also combination drugs such as *Ganfort* (from Allergan) which could be used as substitutes. [✂][50]

[47] Ibid., para 5.14. The combined market share of the three largest firms.
[48] Section 2(iv) of the Parties' reply dated 28 April 2010.
[49] Section 1(i) of the Parties' reply dated 28 April 2010.
[50] Section 2(iv) of the Parties' reply dated 28 April 2010.

(ii) Ocular Anti-Allergics, Decongestants and Antiseptics (S1G Category)

42. With Alcon having [30-40]% and Novartis having [20-30]% of the market in this category, the Transaction would result in a combined share of [50-60]% for the merged entity and a post-merger CR3 of [70-80]%. The Parties have indicated that their products in the S1G category are all Rx in Singapore.[51] If separate product markets for OTC and Rx products were defined, Alcon's market share would be [40-50]% and Novartis' would be [20-30]%. The Transaction would result in a market share of [70-80]% for the merged entity and the CR3 would increase from [80-90]% to [90-100]%.

43. Based on market investigations, the Parties' products in this category are close substitutes for the treatment of allergies. However, they faced competition from generics carrying the active molecule *Cromoglicic Acid* which are also Rx drugs. In addition, Novartis' product *Spersallerg*, which accounts for [10-20]% share of Novartis' [20-30]% share, contains the active molecules *Tetryzoline* and *Antazoline,* identical to another Rx product by another manufacturer in the same category. According to the competitors, other manufacturers were likely to introduce new drugs in the S1G product category. CCS received responses which indicated that competitors had products marketed overseas and pipeline products which were close substitutes to the Parties' Rx products and which they would consider bringing into Singapore if there was a demand.

44. There was also feedback from the institutional customers that they did not have any concerns with the merger. They have choices between multiple suppliers within and beyond Singapore. In other words, if there is any price increase, they can easily switch to alternative suppliers in the relevant markets. One third party customer gave feedback that there are also generic drugs available in this market segment, although they usually purchase proprietary drugs from established pharmaceutical companies.

(iii) Artificial Tears and Ocular Lubricants (S1K Category)

45. Based on the IMS data, the market shares of Novartis and Alcon in the S1K category are [0-10]% and [30-40]% respectively. Post-merger, the merged entity would have a combined share of [30-40]% and the CR3 would increase from [80-90]% to [80-90]% (See **Annex 1**).

46. The products in the S1K category are all OTC products. CCS notes that as the survey of outlets selling OTC products may not be comprehensive, the IMS data for this category may not be entirely accurate. According to the feedback furnished to CCS in the course of its enquiries, there is nothing unique or unusual about the molecules used in manufacturing the drugs in this category and manufacturers could easily introduce new products into the market. Alcon's leading product *Tears*

[51] Section (vii) of the Parties' reply dated 14 April 2010.

Naturale Fr with a market share of [20-30]% and Novartis' *Genteal* product, accounting for [0-10]% of the market, both contain the molecule *Hypromellose* which is being used by two other manufacturers in their products under this category. The unanimous feedback received was that the S1K market was very competitive and consumers had many choices.

(iv) Preparations for use with Contact Lenses (S1L Category)

47. The Parties have not furnished any IMS data in this category as Novartis (or its subsidiary Ciba Vision) does not subscribe for such information for the S1L category in Singapore for the reasons stated earlier at paragraph 35. Nevertheless, based on a general understanding of the competitive environment, the Parties were able to furnish "best estimates" of the aggregate market shares of the largest competitors in the S1L category[52], namely Novartis (Ciba Vision) [✂]%; Abbot Medical Optics (or AMO) [✂]%; Bausch & Lomb [✂]% and Alcon [✂]%. In relation to MPS only, the Parties would estimate the following respective market shares: Ciba Vision [✂]%; AMO [✂]%; Bausch & Lomb [✂] and Alcon [✂]%. The Parties stated that in relation to H202 products, there were only 2 players namely Ciba Vision and AMO with a market share of [✂]% and [✂]% respectively.

48. The feedback received in the course of enquiries was consistent with the market share estimates provided by the Parties. In respect of MPS products, the consensus was that the market was highly competitive. The current price differential between different brands was not significant. The decline in the demand for S1L products could be due to an increase in the number of people undergoing lasik eye surgery, an increased demand for daily disposable contact lenses which do not require the use of cleaning products and the trend towards adopting fashionable spectacles.

49. While there were some concerns about the market power of the merged entity post-merger, there was also feedback that the barriers to entry were low and the large retailers would have strong bargaining power. This was consistent with the Parties' submission that there were no major barriers to entry and companies with a core competency in filling large sterile bottles such as saline could start supplying MPS solutions within 2 years after accounting for the validation, registration and stability requirements.[53] In addition, competitors need a relatively short lead time to deal with a sustained increase in demand in response to an increase in price by the merged entity. Market enquiries revealed that there were existing store-brand MPS products or MPS products by smaller players as well as the possibility of other such entrants. While there were consumers who were brand-loyal, a significant portion of the market would be quite price-sensitive and may switch brands on promotions, discounts, road shows or advertising campaigns. The third party feedback received indicated that contact lens

[52] Para 8.1.9 of Form M1.
[53] Section (x) of the Parties' reply dated 14 April 2010.

users were prepared to switch to cheaper alternatives if there was a prolonged price increase by any contact lens solution companies.

50. In respect of future or pipeline products, the Parties stated that [✂]. In addition, the parties stated that another major pharmaceutical company Johnson & Johnson is intending to enter the market for contact lens solutions.[54]

BUYER POWER

51. CCS understands from its enquiries that buyers of the products in the relevant markets tend to be medical institutions or major retailers with numerous branches all over Singapore. Some of the large customers reported that they purchased the relevant products via open tenders and were therefore able to obtain very competitive prices. In addition, they would reserve the discretion to source from other alternative suppliers even after entering into a contract. Due to bulk purchases, buyers have strong bargaining power vis-a-vis drug manufacturers and are able to negotiate for better pricing from pharmaceutical companies. While CCS received feedback that distributors and retailers will generally pass on any price increases, CCS also received feedback that customers have some degree of buyer power to check price increases e.g. by switching to alternatives.

BARRIERS TO ENTRY

52. According to feedback received from third parties, regulatory requirements in Singapore, which include complying with and satisfying the licensing, testing and product approval requirements imposed by HSA, do not constitute a significant entry barrier.

53. Another barrier to entry involves pharmaceutical companies registering patents on drugs developed by them. This is a prevalent practice within the pharmaceutical industry. Once a patent has been registered, a drug company has the exclusive right to commercially exploit the patent on the drug and a competitor drug manufacturer is unable to develop a cheaper, generic form of that originator drug until the patent on the originator drug has expired. Once a patent has expired, generic drug manufacturers can step in and manufacture a medication with identical quality to and cheaper than the originator, thereby providing options to consumers. Nevertheless, as indicated above, the 7 ATC3 markets in which the activities of the Parties overlap are relatively mature and the Parties face competition from current as well as future competitors producing generics in most, if not all, ATC3 categories. Hence, the Parties' registered patents on the products within the relevant product market, if any, do not constitute a significant entry barrier.

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[54] Section 2(i) of the Parties' reply dated 28 April 2010.

PORTFOLIO POWER

54. CCS considered that even if the Transaction does not significantly reduce competition in the individual markets, there is a possibility that it may allow the merged entity to exercise its portfolio power (where the market power deriving from a portfolio of brands exceeds the sum of its parts). For instance, in this case, the merged entity may be able to capture more market share by virtue of controlling a larger suite of brands and products.

55. However, CCS notes that the merged entity is not the only player that participates in a number of markets. Its competitors, such as Bausch and Lomb and Allergan are also active in a number of markets and can be said to possess some degree of portfolio power. Moreover, CCS understands from the responses from third-parties that many of the tenders issued by customers are for single products. As such, the merged entity is unlikely to be able to exercise portfolio power.

COMPETITION ASSESSMENT

NON-COORDINATED EFFECTS

56. As mentioned above, the Transaction results in post-merger market shares that exceed CCS' indicative thresholds in the S1G and S1L categories.

57. As regards the S1G category, competitors providing generics and substitutes and with pipeline products will pose as a competitive constraint to the Parties in the market post-merger.

58. The competition is intense for the S1L category with the prospect of expansion or new entry in response to any exercise of market power by the merged entity.

59. In view of the relatively low barriers to entry and the presence of countervailing buyer power, as discussed above at paragraph 51, which indicate constraints on any exercise of post-merger market power, CCS is of the view that non-coordinated effects are unlikely to arise.

COORDINATED EFFECTS

60. As mentioned above, the Transaction results in CR3s which (when read with the post-merger market shares of the Parties) exceed the CCS indicative thresholds for the S1E, S1G, S1K and S1L product categories.

61. However, any risks of coordinated behaviour are largely mitigated by the

relatively low barriers to entry and the presence of countervailing buyer power, as discussed above. In particular, the increase in market concentration arising from the Transaction is incremental in the S1E and the S1K categories and the Transaction will not lead to a significant change to the existing structure of those markets.

ANCILLARY RESTRAINTS

62. The Parties have also notified ancillary restrictions to CCS.[✂][55]. The duration of the clause is [✂]. The Parties further state that the obligation is directly related, and necessary, to the implementation of the Transaction as the Transaction will necessarily involve the transfer of information and goodwill between the Parties. Further, the Parties consider that the duration of the clause [✂] is a reasonable time period, and is not one which would in the usual course give rise to competition law concerns under section 34 of the Act[56].

63. CCS has considered the above restrictions and in the context of the Transaction, is satisfied that they are directly related and necessary to the implementation of the Transaction and fall under the exclusion in paragraph 10 of the Third Schedule.

CONCLUSION

64. Based on the information available to CCS, and for the reasons stated above, CCS has assessed that the Transaction, if carried into effect, will not infringe the section 54 prohibition of the Act.

65. In accordance with section 57(7) of the Competition Act, this decision shall be valid for a period of one year from the date of this decision.

Teo Eng Cheong
Chief Executive
Competition Commission of Singapore

[55] Clauses 4.1 and 4.2 of the Shareholders Agreement attached at Appendix 3 of the Form M1.
[56] Para 1.6.2 and 10.1.1 to 10.1.3 of Form M1.

ANNEX 1

	Company	Sales (%)		
		2007	**2008**	**2009**
S1B	Novartis	0-10	0-10	0-10
	Alcon	0-10	0-10	0-10
	Novartis + Alcon	**10-20**	**10-20**	**10-20**
	Allergan	70-80	70-80	40-50
	Smith & Nephew	0-10	0-10	30-40
	Bausch & Lomb	0-10	0-10	0-10
	Optopics	0-10	0-10	0-10
	Daniel	0-10	0-10	0-10
	Pre-Merger CR3	**90-100**	**90-100**	**90-100**
	Post-Merger CR3	**90-100**	**90-100**	**90-100**

	Company	Sales (%)		
		2007	**2008**	**2009**
S1R	Novartis	20-30	30-40	10-20
	Alcon	0-10	0-10	0-10
	Novartis + Alcon	**20-30**	**30-40**	**10-20**
	Allergan	30-40	60-70	30-40
	Bausch & Lomb	40-50	0-10	50-60
	Pre-Merger CR3	**90-100**	**90-100**	**90-100**
	Post-Merger CR3	**90-100**	**90-100**	**90-100**

	Company	Sales (%)		
		2007	**2008**	**2009**
S1B+S1R	Novartis	0-10	10-20	0-10
	Alcon	0-10	0-10	0-10
	Novartis + Alcon	**10-20**	**10-20**	**10-20**
	Allergan	60-70	70-80	40-50
	Smith & Nephew	0-10	0-10	20-30
	Bausch & Lomb	10-20	0-10	10-20
	Optopics	0-10	0-10	0-10
	Daniel	0-10	0-10	0-10
	Pre-Merger CR3	**80-90**	**90-100**	**80-90**
	Post-Merger CR3	**90-100**	**90-100**	**80-90**

	Company	Sales (%)		
		2007	**2008**	**2009**
S1E	Novartis	0-10	0-10	0-10
	Alcon	20-30	20-30	20-30
	Novartis + Alcon	**20-30**	**20-30**	**20-30**
	Pfizer	30-40	30-40	30-40
	Allergan	20-30	20-30	20-30
	Merck & Co	10-20	10-20	10-20
	Apotex	0-10	0-10	0-10

	Smith & Nephew	0-10	0-10	0-10
	Ursapharm	0-10	0-10	0-10
	Daniel	0-10	0-10	0-10
	Ashford	0-10	0-10	0-10
	Pre-Merger CR3	**80-90**	**80-90**	**80-90**
	Post-Merger CR3	**80-90**	**80-90**	**80-90**
S1G	**Company**	**Sales (%)**		
		2007	**2008**	**2009**
	Novartis	10-20	10-20	20-30
	Alcon	30-40	30-40	30-40
	Novartis + Alcon	**50-60**	**50-60**	**50-60**
	Reckitt Benckiser	0-10	10-20	0-10
	Allergan	0-10	0-10	0-10
	Bausch & Lomb	0-10	0-10	0-10
	GlaxoSmithKline	0-10	0-10	0-10
	Sanofi-Aventis	0-10	0-10	0-10
	Ashford	0-10	0-10	0-10
	Ursapharm	0-10	0-10	0-10
	Xepa Holdings	0-10	0-10	0-10
	Johnson & Johnson	0-10	0-10	0-10
	Pfizer	0-10	0-10	0-10
	Pre-Merger CR3	**60-70**	**60-70**	**60-70**
	Post-Merger CR3	**60-70**	**60-70**	**70-80**
S1G-Rx	**Company**	**Sales (%)**		
		2007	**2008**	**2009**
	Novartis	20-30	20-30	20-30
	Alcon	40-50	40-50	40-50
	Novartis + Alcon	**70-80**	**70-80**	**70-80**
	Bausch & Lomb	0-10	0-10	0-10
	Sanofi-Aventis	10-20	10-20	10-20
	Ashford	0-10	0-10	0-10
	Ursapharm	0-10	0-10	0-10
	Xepa Holdings	0-10	0-10	0-10
	Pfizer	0-10	0-10	0-10
	Pre-Merger CR3	**80-90**	**80-90**	**80-90**
	Post-Merger CR3	**90-100**	**90-100**	**90-100**
S1G-OTC	**Company**	**Sales (%)**		
		2007	**2008**	**2009**
	Reckitt Benckiser	20-30	30-40	20-30
	Allergan	20-30	20-30	20-30
	Bausch & Lomb	20-30	20-30	20-30
	GlaxoSmithKline	20-30	20-30	20-30
	Johnson & Johnson	0-10	0-10	0-10

	Pre-Merger CR3	**70-80**	**70-80**	**70-80**
	Post-Merger CR3	**70-80**	**70-80**	**70-80**
S1K	**Company**	**Sales (%)**		
		2007	**2008**	**2009**
	Novartis	0-10	0-10	0-10
	Alcon	30-40	30-40	30-40
	Novartis + Alcon	**30-40**	**30-40**	**30-40**
	Allergan	40-50	50-60	40-50
	Ashford	0-10	0-10	0-10
	Bausch & Lomb	0-10	0-10	0-10
	Santen Seiyaku	0-10	0-10	0-10
	Daniel	0-10	0-10	0-10
	GlaxoSmithKline	0-10	0-10	0-10
	Rohto Corp	0-10	0-10	0-10
	Taiwan Biotech	0-10	0-10	0-10
	Trb Chemedica	0-10	0-10	0-10
	Pre-Merger CR3	**80-90**	**80-90**	**80-90**
	Post-Merger CR3	**80-90**	**80-90**	**80-90**
S1M	**Company**	**Sales (%)**		
		2007	**2008**	**2009**
	Novartis	0-10	0-10	0-10
	Alcon	0-10	0-10	0-10
	Novartis + Alcon	**10-20**	**10-20**	**10-20**
	Bausch & Lomb	30-40	30-40	30-40
	Bayer	0-10	0-10	10-20
	Kordel	10-20	20-30	10-20
	Ocean Health	0-10	10-20	10-20
	Century Pharm	0-10	0-10	0-10
	Vita Health	0-10	0-10	0-10
	Healtheries	0-10	0-10	0-10
	Yu Sheng	10-20	0-10	0-10
	Blackmores	0-10	0-10	0-10
	Pre-Merger CR3	**60-70**	**70-80**	**60-70**
	Post-Merger CR3	**60-70**	**70-80**	**60-70**
S1X	**Company**	**Sales (%)**		
		2007	**2008**	**2009**
	Novartis	40-50	40-50	50-60
	Alcon	0-10	0-10	0-10
	Novartis + Alcon	**50-60**	**50-60**	**50-60**
	Reckitt Benckiser	30-40	30-40	20-30
	Valeant Pharma	0-10	0-10	0-10
	Sato Seiyaku	0-10	0-10	0-10
	Pfizer	0-10	0-10	0-10

	Pre-Merger CR3	**90-100**	**90-100**	**90-100**
	Post-Merger CR3	**90-100**	**90-100**	**90-100**