

Warning: This is an important legal document. If you are in any doubt about signing it we advise that you obtain legal advice.

## COMPANY DIRECTORS DISQUALIFICATION ACT 1986

### DISQUALIFICATION UNDERTAKING

IN RE: AMILCO LIMITED ("AMILCO")

CASE 50455: CMA INVESTIGATION INTO THE SUPPLY OF FLUDROCORTISONE ACETATE TABLETS IN THE UK

I, **AMIT HASMUKH RAOJIBHAI PATEL**<sup>1</sup> of [REDACTED]

[REDACTED] hereby undertake to the Competition and Markets Authority ("the CMA"), on the basis set out in the schedule attached to this disqualification undertaking, that in accordance with section 9B of the Company Directors Disqualification Act 1986 ("CDDA 1986"):

I WILL NOT for a period of **5 years**:

- a) be a director of a company, act as a receiver of a company's property or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company unless (in each case) I have the leave of the court; or
- b) act as an insolvency practitioner.

Further, I will use my best endeavours to cooperate with, and assist, the CMA in its director disqualification investigations in relation to Case 50455 and any related proceedings.

The scope and effect of the disqualification undertaking that I hereby give have been explained to me in the CMA's letter of 11 May 2020.

Further, I understand that if I act in contravention of the above disqualification undertaking:

- a) I may be prosecuted for a criminal offence (CDDA 1986 section 13); and
- b) I may be personally responsible for all the relevant debts of a company (CDDA 1986 section 15).

The CMA has explained that I may seek legal or professional advice on the effect of this undertaking and I was given the opportunity to do so before signing this undertaking.

Signed

[REDACTED]

**Amit Hasmukhbhai Patel**

[REDACTED]

**Date**

<sup>1</sup> Also listed on Companies House as **AMIT HASMUKHBHAI PATEL**.

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Accepted by

[Redacted signature]

[Redacted signature]

.....  
**(Authorised person at CMA)**

.....  
**Date**

Note: the period of disqualification commences at the end of 42 days beginning with the day on which the disqualification undertaking is accepted by the CMA, and that commencement date is 13 July 2020.....

SCHEDULE TO THE DISQUALIFICATION UNDERTAKING GIVEN BY

**AMIT HASMUKH RAOJIBHAI PATEL**

Solely for the purpose of the CDDA 1986 and for any other purposes under the provisions of the CDDA 1986 and other legislation consequential to the giving of a disqualification undertaking, I admit the following matters:

**A. BREACH OF COMPETITION LAW**

1. The CMA provisionally found in its Statement of Objections in case 50455 issued on 3 October 2019 (“**the SO**”) that Amilco infringed the prohibition imposed by section 2(1) of the Competition Act 1998.
2. As detailed in the SO, the CMA provisionally found that Amilco infringed competition law by entering into a supply and distribution agreement (“**the SDA**”) with two other parties, Aspen<sup>2</sup> and Tiofarma<sup>3</sup> (together, with Amilco, “**the Parties**”) from 1 March 2016 to 19 October 2016 (“**the Relevant Period**”) which had the object and effect of restricting competition in the market for the supply of fludrocortisone acetate 0.1 mg tablets for human use in the UK.
3. I accept the provisional findings made by the CMA in the SO. In particular, I accept that:
  - a. Amilco and Tiofarma, working together, were potential competitors to Aspen in the relevant market for the supply of fludrocortisone acetate 0.1 mg tablets for human use in the UK as at the moment of entering into the SDA and during the Relevant Period;
  - b. Under the SDA, Amilco received significant monthly value transfers from Aspen principally in exchange for not entering the market independently. Specifically, Aspen paid Amilco a fixed 30% profit margin calculated on the basis of Aspen charging a list price for ambient storage fludrocortisone acetate 0.1 mg tablets more than 1,800% higher than its price for its cold storage fludrocortisone acetate 0.1 mg tablets product prior to the SDA;
  - c. Under the SDA, Amilco and Tiofarma agreed not to independently enter the market and Aspen’s list price for Fludrocortisone Acetate Tablets increased to £30 per pack;
  - d. As such, the SDA had the object and effect of restricting competition in the manner described in the SO; and
  - e. Amilco acted intentionally or at least negligently in entering into the SDA.

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<sup>2</sup> The CMA provisionally found that, during the Relevant Period, Aspen Pharmacare Holdings Limited, Aspen Global Inc., Aspen Europe GmbH, Aspen Pharma Ireland Limited and Aspen Pharma Trading Limited formed part of the single undertaking referred to herein as “**Aspen**”.

<sup>3</sup> The CMA provisionally found that, during the Relevant Period, Tiofarma Beheer B.V. and Tiofarma B.V. formed part of the single undertaking referred to herein as “**Tiofarma**”.

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4. Amilco, Aspen and Tiofarma implemented the SDA during the Relevant Period.
5. During the Relevant Period described above, Amilco breached competition law by entering into the SDA.
6. I have been a director of Amilco since 11 December 2013 and am presently the sole director of Amilco. I was therefore the director of Amilco throughout the Relevant Period.

**B. MATTERS OF UNFITNESS – CASE 50455**

7. On 3 October 2019, the CMA issued the SO to Amilco in which the CMA provisionally found that Amilco participated in the SDA.
8. Amilco was incorporated on 11 December 2013 and was therefore active during the Relevant Period.
9. I accept that I was the sole director of Amilco throughout the Relevant Period and in the following respects my conduct as a director of Amilco was such as to make me unfit to be concerned in the management of a company:
  - a. As the sole director of Amilco, I directly contributed to the infringement by actively engaging in the negotiations to conclude all aspects of the SDA insofar as they related to Amilco, and by actively complying with the SDA and monitoring compliance throughout the Relevant Period.
  - b. My intention in contributing to the SDA was to restrict competition between the Parties in the UK fludrocortisone market by agreeing not to enter the market for the supply of fludrocortisone acetate 0.1 mg tablets for human use in the UK independently, and in exchange, Aspen would make significant value transfers to Amilco in the manner described in paragraph [3(b)] above.
  - c. Market sharing is amongst the most serious types of competition law breaches.
  - d. As a result of the breach, I directly contributed to Amilco being liable for a penalty under the Competition Act 1998<sup>4</sup>.

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<sup>4</sup> Whilst liable for such a penalty, no financial penalty may be imposed on Amilco owing to the business having zero turnover.