

COMPANY DIRECTORS DISQUALIFICATION ACT 1986

DISQUALIFICATION UNDERTAKING

IN RE: AUDEN MCKENZIE (PHARMA DIVISION) LIMITED and AUDEN MCKENZIE HOLDINGS LIMITED (TOGETHER "AUDEN")

CASE 50507.2: CMA INVESTIGATION INTO THE SUPPLY OF NORTRIPTYLINE TABLETS IN THE UK

I, **AMIT HASMUKHBHAI PATEL¹** of [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 50507.2 (Market Sharing) 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]

..... [REDACTED]

¹ Also listed on Companies House as **AMIT HASMUKH RAOJIBHAI PATEL**.

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

Amit Hasmukhbhai Patel

Date

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 HASMUKHBHAI 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. As found by the CMA in its Decision in case 50507.2, issued on 4 March 2020 ("**the Decision**") and admitted by Auden and Accord-UK Limited² on 17 October 2019, Auden infringed the prohibition imposed by section 2(1) of the Competition Act 1998 and Article 101 of the Treaty on the Functioning of the European Union ('TFEU').
2. As detailed in the Decision, from September 2014 until May 2015 ("**the Relevant Period**"), Auden and King³, who were direct competitors at the time, entered into an agreement ("**the Horizontal Agreement**") that had, as its object, the restriction of competition in relation to the supply of Nortriptyline Tablets to Lexon (UK) Limited ("**Lexon**") in the UK, which was capable of affecting trade within the UK and trade between Member States of the EU and was not exempt under section 9(1) of the CA98 or Article 101(3) TFEU.
3. In summary, the content of the infringing Horizontal Agreement was as follows:
 - a. Market sharing: Auden would supply Lexon with only 10mg packs of nortriptyline tablets and King would supply Lexon with only 25mg packs of nortriptyline tablets.
 - b. Fixed prices: Auden and King would supply Lexon at a fixed price of £4 per pack.
 - c. Fixed quantities: Auden and King would each supply no more than a fixed quantity of their respective packs of tablets: 3,400 10mg packs in the case of Auden; and 1,600 25mg packs in the case of King. In both cases, the fixed volumes accounted for approximately one sixth of the total market size.
4. During the Relevant Period, Auden implemented all three elements of the Horizontal Agreement for the first six months (from September 2014 to February 2015) and the market sharing and fixed quantities elements for the remaining three months (from March 2015 to May 2015). King implemented all three elements of the Horizontal Agreement for the entire period.
5. During the Relevant Period described above, Auden breached competition law by engaging in the Horizontal Agreement.
6. I was a director of Auden Mckenzie (Pharma Division) Limited from 2 September 1999 to 29 May 2015 and of Auden Mckenzie Holdings Limited from 17 October 2012 to 29 May 2015. I was therefore a director of Auden throughout the Relevant Period.

² The CMA held Accord-UK Limited liable for the infringement carried out by Auden in case 50507.2 by application of the principle of economic continuity.

³ The CMA found that, during the Relevant Period, King Pharmaceuticals Limited and Praze Consultants Limited formed part of the single undertaking referred to herein as "**King**".

B. MATTERS OF UNFITNESS – CASE 50507.2

7. On 4 March 2020, the CMA issued the Decision in which the CMA found that Auden participated in the Horizontal Agreement.
8. Auden and Accord-UK Limited⁴ admitted their participation in the Horizontal Agreement on 17 October 2019 as part of settlement of case 50507.2 with the CMA.
9. Auden Mckenzie (Pharma Division) Limited was incorporated on 2 September 1999 and Auden Mckenzie Holdings Limited was incorporated on 17 October 2012. Both were therefore active companies during the Relevant Period.
10. I accept that I was a director of Auden throughout the Relevant Period and in the following respects my conduct as a director of Auden was such as to make me unfit to be concerned in the management of a company:
 - a. I was directly involved in the establishment, implementation and operation of the Horizontal Agreement with my company's direct and immediate competitor, King, throughout the Relevant Period. I actively maintained the market sharing and fixed quantities elements of the Horizontal Agreement throughout the entire Relevant Period and the fixed prices element for the first six months (from September 2014 to February 2015), both internally within Auden and externally by having engaged in contact with King.
 - b. I discussed supply of nortriptyline tablets to Lexon with King in the summer of 2014 and these discussions formed the basis of the Horizontal Agreement between Auden and King. I agreed with King that Auden and King would share supplies of nortriptyline tablets to Lexon on the terms agreed independently by Auden with Lexon.
 - c. My intention in entering into the Horizontal Agreement was to share the supply of nortriptyline tablets in the UK to Lexon with my direct competitor, to fix the prices of supply to Lexon and to fix the quantities of supply to Lexon throughout the Relevant Period.
 - d. Market sharing is amongst the most serious types of competition law infringement.
 - e. As a result of the breach, I directly contributed to Auden being liable to a penalty under the Competition Act 1998⁵.

⁴ The CMA held Accord-UK liable for the Infringement carried out by Auden in case 50507.2 by application of the principle of economic continuity.

⁵ The CMA held Accord-UK liable for the Infringement carried out by Auden in case 50507.2 by application of the principle of economic continuity. Accord-UK has agreed to pay a fine as part of a settlement with the CMA.