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COMPANY DIRECTORS DISQUALIFICATION ACT 1986

DISQUALIFICATION UNDERTAKING

IN RE: LEXON (UK) LIMITED (Company number 03076698) ("LEXON")

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

I, **PRITESH RAMESH SONPAL** 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 **4 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 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).

I confirm and undertake to the CMA that I will use my best endeavours to cooperate with, and assist, the CMA in its director disqualification investigation in relation to Case 50507.2 and any related proceedings.

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 the undertaking.

Signed

Pritesh Ramesh Sonpal

Date

08/12/2021

Accepted by

(Authorised person at CMA)

Date

15/12/2021

Note: the period of disqualification commences at the end of **28 days** beginning with the day on which the disqualification undertaking is accepted by the CMA, and that commencement date is [12/1] 2022

12 January 2022

SCHEDULE TO THE DISQUALIFICATION UNDERTAKING GIVEN BY

PRITESH RAMESH SONPAL

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:

BREACH OF COMPETITION LAW

1. Lexon was incorporated on 6 July 1995 and I was a director of Lexon at all times between 14 December 2000 and 9 April 2021.
2. During the period of my appointment as a director, Lexon was primarily a wholesaler of pharmaceutical products to retail pharmacies. In 2005, Lexon first engaged in developing its own generic medicines and, in 2008, as part of this commercial strategy it entered into a 'Product Development and Profit Sharing Agreement' ("**the Joint Venture Agreement**") with Medreich Plc and its Indian parent company Medreich Limited (together "**Medreich**"). Pursuant to the Joint Venture Agreement, Medreich was responsible for developing Marketing Authorisations and manufacturing a range of pharmaceutical products, including Nortriptyline tablets, which Lexon was exclusively responsible for negotiating and setting the selling price of for onward sales in the UK and elsewhere, with profits on such sales being shared between Lexon and Medreich. Medreich was in a position to supply Nortriptyline tablets to the UK market from July 2015 onwards.
3. On 25 February 2021, the Competition Appeal Tribunal ("**the Tribunal**") published its judgment in case 1344/1/12/20 ("**the Judgment**"), concluding that, for the reasons set out in the Judgment, Lexon committed a breach of competition law as defined in section 9A(4) of the CDDA. Consequently, the CMA's decision of 4 March 2020 in case 50507.2 ("**the Decision**") stood and Lexon's infringement of competition law was confirmed by the Tribunal. The Judgment upheld the conclusions in the Decision that Lexon infringed the prohibitions imposed by section 2(1) of the Competition Act 1998 and Article 101(1) of the Treaty on the Functioning of the European Union ("**TFEU**") within the United Kingdom by participating in a concerted practice (or series of concerted practices) together with King Pharmaceuticals Limited and Praze Consultants Limited (together "**King/Praze**") and (subsequently) Alissa Healthcare Research Limited ("**Alissa**"), between 27 July 2015 and 27 May 2016 ("**the Relevant Period**") ("**the Infringement**").
4. It is clear that Lexon and King were competitors in relation to the sale of Nortriptyline tablets in the UK during the Relevant Period. Moreover, Teva was a direct competitor of King and Lexon's interests in the UK market for Nortriptyline tablets. Alissa was also a potential competitor of King and Lexon as well as Medreich and Teva.
5. In particular, as set out in full in the Decision and upheld in the Judgment, the Infringement took the form of a concerted practice comprising the exchange of sensitive commercial information, without any obvious, legitimate, commercial justification and which was not consistent with the behaviour of independent competitors separately determining their commercial behaviour in the market. The scope of the information exchanged covered present and future strategy regarding the

supply of nortriptyline tablets in the UK, relationships with customers and suppliers, volumes (particularly from Teva Pharmaceutical Industries Limited ("**Teva**"), which was supplied by Medreich pursuant to a supply agreement made by Lexon pursuant to the Joint Venture Agreement), new entry and prices being offered or quoted to customers by Teva, Activas and others ("**the Information Exchange**").

6. The CAT found that the Information Exchanges had as their objective the reduction of strategic uncertainty in relation to pricing conditions and trends, the likely behaviour of actual or potential competitive suppliers and the behaviour of customers, all of which were likely to affect price levels in the market. It enabled the parties to adjust their commercial position on the market and reduced the inherent uncertainty in the competitive process.

7. As summarised in paragraph 191 of the Judgment:

"(1) Lexon, King and (subsequently) Alissa engaged, over a protracted period in an exchange of sensitive commercial information.

(2) The information included indications of future commercial strategy including that of new entrants, customer/supplier relationships, volumes of supply from Teva and possible controls on that supply, views on market dynamics, prices that were being quoted and offers to delay supplies to Teva, whether or not that information was always completely accurate or was sometimes claimed to be intended to mislead.

(3) The exchange of information occurred when market prices, under a duopoly, had increased dramatically. The arrival of new market entrants was depressing prices rapidly; Lexon was the architect of the bulk of those new entrants; Lexon derived commercial benefit from both Teva's and its own sales (those by Teva being more material); and the parties clearly had a strong interest in slowing the decline of prices in the market.

(4) Nortriptyline was a commodity product. This meant that there was a high potential to expand sales by being marginally more competitive on price than a competitor; and there was a clear relationship between the prices paid by retailers and wholesalers, which moved in step.

(5) Whilst the information exchanges may have benefited the parties' commercial interests, nothing suggested that these exchanges had any legitimate purpose under competition law. ..."

8. As stated in paragraph 192 of the Judgment, the CAT concluded that the content of the information exchanges was clear and strongly demonstrated that they had an anticompetitive object:

"[t]his involved, at the very least, reducing uncertainty in the market, reducing customers' ability to play one supplier off against another and providing reassurance as to the actual and likely future intentions of actual or potential suppliers of Nortriptyline, all of which could reasonably be expected to affect prices in the market"

9. The Tribunal concluded that the CMA was correct to find that Lexon's infringing conduct fell well within the recognised categories of conduct that, by its very nature, was likely to cause serious harm to competition and that such conduct damages the fabric of competition by substituting coordination for competition and by reducing the level of uncertainty inherent in the competitive process. The CAT also concluded that it had the necessary capacity to produce an anticompetitive effect, in particular the slowing of price decline in the market.
10. I accept that the Information Exchange constituted, by content and nature, a concerted practice with, as the CAT found, the objective of restricting competition between the parties and between the parties and others.

MATTERS OF UNFITNESS

11. I admit that, in the following respects, my conduct as a director of Lexon was such as to make me unfit to be concerned in the management of a company:
 - 11.1. I caused Lexon to participate in the Information Exchange as I was the person by and/or through whom all of the sensitive strategic commercial information was conveyed and/or received on behalf of Lexon in its infringing communications with King and/or Alissa. Viewed objectively, the information I provided and received in this case was capable of harming competition.
 - 11.2. As part of the Information Exchange, I personally met with Mr Davies and Dr Hallwood at the Landmark Hotel in London on 23 March 2016. That meeting included a discussion of current Nortriptyline price levels, reassurance as to Lexon's market and pricing strategy and the future intentions of Alissa as a potential supplier of Nortriptyline. The CAT found that, viewed objectively, the meeting had a purpose to restrict or distort the market and hence to affect the conditions of competition in the market. It ought to have been clear to me that participation in a meeting between competitors to discuss falling prices, and other market conditions, carried unacceptable risks of infringing competition law.
 - 11.3. By causing Lexon to participate in the unlawful Information Exchange, I created a climate which reduced the intensity of competitive price rivalry (or pro-competitive uncertainty) in particular, between King and Teva.
 - 11.4. I gave assurances to King and Alissa that Lexon during the exchanges of information that Lexon would not act as a disruptive "maverick" player. This had significance for King and Alissa and their understanding of market dynamics.
 - 11.5. I therefore caused Lexon to engage in conduct which created conditions of competition which did not correspond to the normal conditions of the market, and to reduce strategic uncertainty in the market, leading to maintaining the prices of nortriptyline tablets in the UK, or at least slowing their decline.

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12. The Tribunal found that my communications with King and Alissa fell clearly within the scope of behaviour considered to be a concerted practice which by its nature can be expected to cause harm to competition and thus constitute an infringement by object. The Tribunal further held that the Infringement had a significant degree of seriousness. I fully accept the finding of the Tribunal.
13. As a result of my conduct, Lexon participated in the Infringement and was fined £1,220,383 under section 36(1) of the Competition Act 1998, which it has now paid.