

ACQUISITION BY THERAMEX HQ UK LIMITED OF THE EUROPEAN RIGHTS TO VIATRIS INC'S FEMOSTON AND DUPHASTON PRODUCTS

Variation Order made by the Competition and Markets Authority pursuant to section 72(4)(b) of the Enterprise Act 2002 (the Act)

Whereas:

- a) the Competition and Markets Authority (CMA) made an initial enforcement order pursuant to section 72(2) of the Act in relation to the acquisition by Theramex HQ UK Limited (Theramex) of certain rights, assets and title to commercialise certain pharmaceutical products in the UK, the EEA, Switzerland, ✂ (the Merger) on 20 November 2023 (the Initial Order);
- b) the circumstances set out in section 72(6) of the Act do not currently apply and the reference has not been finally determined in accordance with section 79(1) of the Act; and
- c) the CMA considers that it is appropriate to vary the Initial Order to clarify the scope of the Initial Order.

Now, pursuant to section 72(4)(b) of the Act and for the purpose of varying the Initial Order, the CMA makes the following order addressed to CEP V Investment 25 S.à.r.l., CIM Europe S.à.r.l., Galaxy Acquisitions S.à.r.l., PAI Partners S.à.r.l., Theramex and Viatris Inc (the **Variation Order**).

1. After paragraph 5 of the Initial Order the following paragraph is inserted:

5A. Theramex and Viatris shall not issue any notice to terminate the UK Acquisition as defined in the agreement of 20 August 2023 between Theramex and Viatris ✂ without the prior written consent of the CMA.

2. After paragraph 6 of the Initial Order the following paragraph is inserted:

6A. For the avoidance of doubt, and notwithstanding the derogation of 20 November 2023 granted under section 72(3C) of the Enterprise Act 2002 (the **November Derogation**), the Acquirer Group and Viatris are obliged to

maintain and preserve each of the ROW Assets (as defined in the November Derogation), and to refrain from disposing of any ROW Assets, without the prior written consent of the CMA.

The updated version of the Initial Order, as amended by this Variation Order, is shown in the Annex below (with changes highlighted in track). The compliance statements are unchanged.

Kasia Bojarojc, Director, Mergers
4 April 2024

ANNEX TO THE VARIATION ORDER

ACQUISITION BY THERAMEX HQ UK LIMITED OF THE EUROPEAN RIGHTS TO VIATRIS INC'S FEMOSTON AND DUPHASTON PRODUCTS

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in Theramex HQ UK Limited (**Theramex**) and certain rights, assets and title to commercialise certain pharmaceutical products in the UK, the EEA, Switzerland, ~~☒~~ (the **Assets**), ceasing to be distinct;
- (b) the CMA is considering whether to make a reference under section 22 or 33 of the Act;
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to CEP V Investment 25 S.à.r.l., CIM Europe S.à.r.l., Galaxy Acquisitions S.à.r.l., PAI Partners S.à.r.l., Theramex (referred to together as **the Acquirer Group**) and Viatris Inc (**Viatris**) (**Order**).

Commencement, application and scope

1. This Order commences on the commencement date: being the date referred to as the ROW Closing Date in the agreement of 20 August 2023 between Theramex and Viatris, ~~☒~~;
2. This Order applies to the Acquirer Group and Viatris.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige the Acquirer Group or Viatris to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order does not prohibit the completion of the transaction provided that the

Acquirer Group and Viatris observe the restrictions set out below.

Management of the Acquirer Group and the Assets until determination of proceedings

5. Except with the prior written consent of the CMA, the Acquirer Group and Viatris shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - a. lead to the integration of the business associated with the Assets with the Acquirer Group business;
 - b. transfer the ownership or control of the Theramex business, the business associated with the Assets or any of their subsidiaries; or
 - c. otherwise impair the ability of the business associated with the Assets or the Acquirer Group business to compete independently in any of the markets affected by the transaction.

5A. Theramex and Viatris shall not issue any notice to terminate the UK Acquisition as defined in the agreement of 20 August 2023 between Theramex and Viatris ✂ without the prior written consent of the CMA.

6. Further and without prejudice to the generality of paragraph 5 and subject to paragraph 3 and 4, the Acquirer Group and Viatris shall at all times during the specified period take all necessary steps to ensure that, except with the prior written consent of the CMA:
 - a. the business associated with the Assets is carried on separately from the Theramex business and the separate sales or brand identity of the Assets is maintained;
 - b. the business associated with the Assets and the Theramex business are maintained as a going concern and sufficient resources are made available for the development of the business associated with the Assets and the Theramex business, on the basis of their respective pre-merger business plans;
 - c. except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities with respect to the business associated with Assets or within the Theramex business;
 - d. the nature, description, range and quality of goods or services (or both) supplied in the UK by each of the respective businesses are maintained and preserved;
 - e. except in the ordinary course of business through the separate operation of the respective businesses:
 - i. all of the assets associated with the Assets and the Theramex business are maintained and preserved, including facilities and

- goodwill;
- ii. none of the assets associated with the Assets or the Theramex business are disposed of; and
- iii. no interest in the assets associated with the Assets or the Theramex business is created or disposed of;
- f. there is no integration of the information technology utilised by Viatris in connection with the Assets or Theramex business, and the software and hardware platforms utilised in connection with the Assets shall remain essentially unchanged, except for routine changes and maintenance;
- g. the customer and supplier lists of the respective businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the Assets will be carried out by Viatris alone and for the avoidance of doubt the Acquirer Group business will not negotiate on behalf of the Assets (and vice versa) or enter into any joint agreements with Viatris regarding the Assets (and vice versa);
- h. all contracts associated with the Assets and the Theramex business continue to be serviced by the business to which they were awarded;
- i. no changes are made to key staff associated with the Assets or of the Theramex business;
- j. no key staff associated with the Assets or of the Theramex business are transferred between Viatris and the Theramex business;
- k. all reasonable steps are taken to encourage all key staff associated with the Assets and of the Theramex business to remain with Viatris and the Theramex business respectively; and
- l. no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the respective businesses shall pass, directly or indirectly, from Viatris (or any of its employees, directors, agents or affiliates) to the Acquirer Group business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

6A. For the avoidance of doubt, and notwithstanding the derogation of 20 November 2023 granted under section 72(3C) of the Enterprise Act 2002 (the **November Derogation**), the Acquirer Group and Viatris are obliged to maintain and preserve each of the ROW Assets (as defined in the November Derogation), and to refrain from disposing of any ROW Assets, without the prior written consent of the CMA.

Compliance

7. The Acquirer Group and Viatris shall take all necessary steps to ensure that each of their subsidiaries (and in the case of CIM Europe S.à.r.l. and PAI Partners S.à.r.l., any entities they manage) complies with this Order as if the Order had been issued to each of them.
8. The Acquirer Group and Viatris shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by the Acquirer Group and Viatris and their subsidiaries (and in the case of CIM Europe S.à.r.l. and PAI Partners S.à.r.l., any entities they manage) with this Order. In particular, on [date] and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the relevant Director(s) of each of the addressees of the Order that form part of the Acquirer Group and Viatris or other persons of the Acquirer Group and Viatris as agreed with the CMA shall, on behalf of the Acquirer Group and Viatris provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
9. At all times, the Acquirer Group and Viatris shall actively keep the CMA informed of any material developments relating to the Assets or the Theramex business, which includes but is not limited to:
 - a) details of key staff associated with the Assets or of the Theramex business who leave or join Viatris or the Theramex business;
 - b) any interruption of the business associated with the Assets or the Theramex business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the Assets or the Theramex business including any substantial changes in customers' demand; and
 - d) substantial changes in the business associated with the Assets or the Theramex business's contractual arrangements or relationships with key suppliers.
10. If the Acquirer Group or Viatris has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that any member of the Acquirer Group may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. The Acquirer Group and Viatris shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

Interpretation

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

14. For the purposes of this Order:

‘the Acquirer Group’ means CEP V Investment 25 S.à.r.l., CIM Europe S.à.r.l., Galaxy Acquisitions S.à.r.l., PAI Partners S.à.r.l. and Theramex HQ UK Limited;

‘the Acquirer Group business’ means the business of the Acquirer Group and its subsidiaries (and in the case of CIM Europe S.à.r.l. and PAI Partners S.à.r.l., any entities they manage) carried on as at the commencement date;

‘the Act’ means the Enterprise Act 2002;

‘an affiliate’ of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

‘Assets’ means certain rights, assets and title to commercialise the pharmaceutical products Femoston and Duphaston in the UK, EEA, Switzerland, ✂;

‘business’ has the meaning given by section 129(1) and (3) of the Act;

‘CEP V Investment 25 S.à.r.l.’ refers to the company having its registered office at 2, Avenue Charles de Gaulle, L-1653, Luxembourg;

‘CIM Europe S.à.r.l.’ refers to the company having its registered office at 2, Avenue Charles de Gaulle, L-1653, Luxembourg;

‘commencement date’ means the date referred to as the ROW Closing Date in the agreement of 20 August 2023 between Theramex and Viatris, ✂;

‘control’ includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

‘the decisions’ means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 or 36 of the Act;

‘Galaxy Acquisitions S.à.r.l.’ refers to the company having its registered office at 53 Boulevard Royal, L-2449 Luxembourg;

‘key staff’ means staff in positions of (i) senior executive or managerial responsibility or (ii) whose performance affects the viability of the business;

'the ordinary course of business' means matters connected to the day-to-day supply of goods or services (or both) by the business associated with the Assets or the Theramex business and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of the Assets and the Theramex business;

'PAI Partners S.à.r.l.' refers to the company having its registered office at 53, Boulevard Royal L-2449, Luxembourg;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which Theramex and the Assets or any part of them will cease to be distinct within the meaning of section 23 of the Act;

'the respective businesses' means the Theramex business and the business associated with the Assets;

'Theramex' means Theramex HQ UK Limited (10944626), 50 Broadway, 5th Floor, London, UK, SW1H 0BL;

'Theramex business' means the business of Theramex and its subsidiaries carried on as at the commencement date;

'Viatrix' means Viatrix, Inc., 1000 Mylan Boulevard, Canonsburg, PA 15317, United States;

unless the context requires otherwise, the singular shall include the plural and vice versa.