

DEROGATION LETTER IN RESPECT OF INITIAL ENFORCEMENT ORDER ISSUED PURSUANT TO SECTION 72(2) ENTERPRISE ACT 2002

Dear Jonathan, Juliane

Consent under section 72(3c) of the Enterprise Act 2002 (the Act) to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (CMA) on 20 November 2023

Anticipated acquisition by Theramex HQ UK Limited of the European rights to Viatris Inc's Femoston and Duphaston products

We refer to your email dated 29 April 2024 requesting that the CMA consents to derogations to the Initial Enforcement Order of 20 November 2023 (the **Initial Order**). The terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, the Acquirer Group and Viatris are required to hold separate the Acquirer Group business from the Assets and refrain from taking any action which might prejudice a reference under section 22 or section 33 of the Act or impede the taking of any remedial action following such a reference. After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, the Acquirer Group may carry out the following actions, in respect of the specific paragraphs:

1. Paragraph 6(c) of the Initial Order

The CMA understands that Theramex wishes to undertake an internal re-organisation whereby certain entities within the holding chain are dissolved by way of an application for voluntary strike-off in order to simplify the Theramex group's legal structure, and certain steps will be taken in order to prepare the group for the dissolutions. The entities Theramex plans to dissolve are as follows:

- Theramex Healthcare Topco Limited
- IWH UK Investco Limited
- IWH UK Holdco Limited

- IWH UK Finco Limited
- IWH UK Midco Limited

The CMA consents to the requested derogation strictly on the basis that:

- (1) The dissolution of the entities listed above will have no effect on the way in which Theramex operates;
- (2) the proposed internal re-organisation is of an administrative nature and, as such, would have no impact with respect to the sales, staff, quality of goods, contracts and/or business continuation of Theramex;
- (3) the business associated with the Assets continues to be carried on separately from the Theramex business and is unaffected by the proposed internal re-organisation; and
- (4) this derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

2. Paragraphs 6(b), 6(d) and 6(e) of the Initial Order

On 20 November 2023, the CMA granted a derogation (the **November Derogation**) excluding the ROW Assets (as defined in the November Derogation) from the scope of the Initial Order, subject to certain conditions. In December 2023, following the November Derogation, and prior to the CMA's variation of the Initial Order effective 4 April 2024, Theramex acquired from Viatris the ROW Assets. This included the marketing authorisation for Duphaston in Serbia.

The CMA understands that Theramex plans to refrain from renewing the marketing authorisation for [REDACTED]. This is because [REDACTED] has generated [REDACTED] (with sales amounting to [REDACTED] in 2023) and therefore, the product has [REDACTED] in that jurisdiction.

Theramex also submits that formal withdrawal of the marketing authorisation when it expires in May 2024 is a formalistic administrative step in light of the decision made in December 2023 not to seek a renewal of the marketing authorisation and, in any case, Theramex will continue to own the rights to [REDACTED].

On 18 April 2024, the CMA accepted in principle Theramex and Viatris' proposed undertakings in lieu of a phase 2 reference (**UILs**). Under the UILs, Theramex will be subject to several commitments, one of which will be to support the Proposed Purchaser (as defined in the UILs) throughout the regulatory approval process for Duphaston in the UK.

The CMA consents to the requested derogation strictly on the basis that the planned withdrawal will:

- (1) have no impact on Theramex's ability to support the Proposed Purchaser throughout the regulatory approval process for Duphaston in the UK;
- (2) have no impact on any of the remaining ROW Assets in Theramex's possession; and
- (3) will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decision on a reference.

Yours sincerely

Matteo Alchini
Assistant Director
Competition and Markets Authority
2 May 2024