



5 July 2022

To

Anthony Stewart
Commerce Commission
44, The Terrace
Wellington 6140
New Zealand

From

Laura Green
Anna Parker
Tony Dellow

By Email

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Dear Anthony

Zoetis/Jurox: Draft divestment undertaking to address potential competition concerns

1. Zoetis considers that its proposed acquisition of Betrola Investments Pty Ltd (and indirectly, Jurox Pty Ltd) (**Jurox**) (**Proposed Acquisition**) will not have the effect or likely effect of substantially lessening competition in any market in New Zealand in contravention of the Commerce Act 1986.
2. However, without prejudice to this position, Zoetis is prepared to offer an undertaking to the Commerce Commission to:
 - address potential concerns that have been raised by the Commerce Commission in its Statement of Unresolved Issues, in relation to the national market for the manufacture/importation and wholesale supply of antidotes for short-term pre-anaesthetic sedatives for companion animals; and
 - facilitate expedited clearance in relation to the Proposed Acquisition.
3. Accordingly, we **attach** for further discussion with the Commission a draft divestment undertaking relating to Zoetis' rights to distribute and supply Antisedan in New Zealand (**Draft Undertaking**).
4. Zoetis considers that the proposed divestment will remedy any potential competition concerns arising in relation to the supply of antidotes for short-term pre-anaesthetic sedatives for companion animals and satisfy the Commission's requirements. Zoetis considers it will result in sufficient additional competitive constraint on the merged entity so that there can be no concerns that the Proposed Acquisition will substantially lessen competition, and that it is capable of being effectively implemented, monitored, and enforced.
5. In this letter, we provide further information about the proposed divestment, and the Draft Undertaking itself.

Proposed divestment

6. Antisedan is not a Zoetis product. Zoetis does not manufacture Antisedan itself, nor does Zoetis own the AVCM registration for it. Zoetis merely distributes it in accordance with its distribution

agreement with Orion Corporation (**Orion**) (**Distribution Agreement**) and holds the ACVM registration subject to that agreement. A copy of the Distribution Agreement with Orion is **attached** to this letter, on a confidential basis.

7. Zoetis is offering the undertaking pursuant to section 69A of the Commerce Act 1986. The undertaking comprises the divestment of the rights that Zoetis holds to distribute and supply Antisedan in New Zealand under the Distribution Agreement with Orion Corporation as at 11:59pm on the date on which the Proposed Acquisition completes.
8. As Zoetis is only the distributor of Antisedan, the proposed replacement distributor will be selected by Orion. Zoetis has been liaising with Orion regarding finding another distributor for Antisedan. [] Zoetis anticipates that the proposed replacement selected by Orion would be acceptable to the Commission, particularly given Orion will seek to safeguard its business by selecting a replacement distributor with the necessary expertise, experience, and resources to be a viable and competitive entity.
9. As set out in the clearance application, [] this would ensure that there is no lessening of competition in the antidote market. In particular, Antisedan and Antipam would continue to be supplied by different entities in New Zealand, and vets will continue to have a choice of antidote products (both Antipam and Antisedan, as well as other products set out in the clearance application).
10. []
11. The Distribution Agreement provides for what is required to happen on Zoetis' termination, in this case in respect of termination of its distribution rights of Antisedan in New Zealand by being replaced by a different distributor. It includes the following clauses:
 - []
 - []
12. If the Commission would like to contact Orion, the contact person is:
[]

Draft Undertaking

13. In the latest version of the Draft Undertaking **attached** to this letter, we have made a number of changes further to our discussion with the Commission on Thursday 23 June.
14. We have added a provision for a divestment manager, if it is required by the Commission. Zoetis could appoint an entity such as EY to act as the divestment manager if necessary. However, Zoetis does not consider a divestment manager is necessary in this case, for the following reasons:
 - (a) Zoetis is only the distributor of Antisedan and Orion has oversight of the sale of Antisedan in New Zealand. It is in Orion's interests to ensure that Zoetis complies with its obligations under the Distribution Agreement during the divestment period.
 - (b) The terms of the Distribution Agreement prevent Zoetis from reducing marketing and sales efforts prior to the replacement distributor being appointed. Zoetis' obligations under the Distribution Agreement include:

- (i) ☐
 - (ii) ☐
 - (iii) ☐
 - (iv) ☐
 - (c) ☐
 - (d) Zoetis does not have an incentive to weaken the competitive effectiveness of Antisedan in New Zealand or breach the Distribution Agreement terms prior to the replacement distributor being appointed, due to the fact that its Distribution Agreement with Orion is international, and Zoetis has a significantly broader relationship with Orion to maintain. ☐
 - (e) ☐
 - (f) ☐
 - (g) ☐
15. We have not included standard provisions relating to ring-fencing, given the divestment relates to a single product rather than a business. ☐
16. Accordingly, a member of staff is not responsible solely for marketing and sales of Antisedan (ie, Zoetis staff work across a range of products). In these circumstances, ring-fencing would not be practical.
17. Finally, given the divestment relates to Zoetis' rights to distribute and supply, Zoetis is not using the standard terminology of 'purchaser' and 'sale', because terms such as 'replacement distributor' are more accurate in this case.

Confidentiality

18. This letter (including the Distribution Agreement) and the Draft Undertaking contain information that is confidential to Zoetis and is provided to the Commerce Commission on a confidential basis. Zoetis requests that the Commerce Commission treats the Distribution Agreement, and information that is highlighted in this letter and the Draft Undertaking, as confidential information.
19. Confidentiality is sought for the information because the information is commercially sensitive, and disclosure would be likely to unreasonably prejudice the commercial position of Zoetis and Orion, and (in relation to the contact details for the contact person at Orion) contains personal information.
20. Zoetis requests that it be notified of any request made under the Official Information Act for the information and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time the request is made. Zoetis has provided a public version of the Draft Undertaking and this letter to the Commission, to be shared as part of its assessment of the Proposed Divestment.

Next steps

21. Zoetis would welcome the opportunity to discuss the Draft Undertaking with the Commission at its earliest convenience. If the Commission has any questions, Zoetis would be pleased to assist.

Yours sincerely

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