

ANNEX 2

COMPLETED ACQUISITION BY IVAX INTERNATIONAL GMBH OF 3M COMPANY'S DISTRIBUTION BUSINESS FOR CERTAIN ASTHMA PRODUCTS

UNDERTAKINGS GIVEN BY IVAX INTERNATIONAL GMBH TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 1 October 2003, IVAX acquired 3M Company's distribution business for certain asthma treatments operating in the UK, Ireland, Germany, France, the Netherlands, Norway, Sweden, Finland and Denmark;
- (b) It appears to the OFT that as a consequence of that transaction a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the Competition Commission for further investigation where it believes that it is or may be the case that the merger situation in question has resulted, or may be expected to result, in a substantial lessening of competition within any market or markets in the UK;
- (d) Under section 73 of the Act the OFT may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may have resulted from it, or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the transaction to the Competition Commission;
- (f) The OFT further considers that the undertakings given below by IVAX are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it as specified in its decision of 20 October 2003.

NOW THEREFORE IVAX hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

1. Effective date of these Undertakings

These undertakings shall take effect from the date that, having been signed by IVAX, they are accepted and dated by the OFT.

2. Pricing

2.1 Until such a time as the conditions set out in paragraph 2.2 of these undertakings have been met, IVAX shall not increase the price of:

- (a) the Airomir Inhaler beyond £6.02 100mcg/200 dose;
- (b) the Salamol Inhaler beyond £6.30 100mcg/200 dose.

2.2 IVAX will be released from these undertakings only if the following conditions have been met:

- (a) another Salbutamol Breath Actuated HFA Inhaler (a 'New Product'), which is not manufactured or distributed by:
 - (i) IVAX or its agents or Affiliates; or
 - (ii) any member of the same Group of Interconnected Bodies Corporate as IVAX or their agents or Affiliates

is being supplied in the UK; and

- (b) the OFT:
 - (i) is satisfied that any such New Product has been made generally available and supplied in the UK for a period of at least 6 months;
 - (ii) is satisfied that any such New Product provides an effective substitute for either the Airomir Inhaler or the Salamol Inhaler;
 - (iii) is satisfied that the New Product is, and will continue to be, manufactured and distributed wholly independently of any influence from either IVAX (or its agents or Affiliates) or any member of the same Group of Interconnected Bodies Corporate as IVAX (or their agents or Affiliates);
 - (iv) provides written confirmation to IVAX of its view that the conditions contained at paragraphs 2.2(a) and 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii) have been met.

2.3 IVAX may (at its own expense) employ a reputable expert in the field, who is independent of IVAX, 3M Company and the supplier of the New Product and has been appointed or recognised by the British Medical Association, to provide a report on the issue of clinical substitutability (to which the OFT may have regard when making a determination under paragraph 2.2(b)(ii)).

3. Information

IVAX shall furnish promptly to the OFT such information as the OFT considers necessary to monitor these undertakings.

4. Directions and Compliance

- 4.1 IVAX shall comply promptly with such written directions as the OFT may from time to time give:
- (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which they might be required by these undertakings to do or to refrain from doing.
- 4.2 IVAX shall procure that any member of the same Group of Interconnected Bodies Corporate as IVAX shall comply with these undertakings as if it had given them.
- 4.3 Where any agent or Affiliate of IVAX is not a member of the same Group of Interconnected Bodies Corporate as IVAX, IVAX shall use its best endeavours to procure that any such agent or Affiliate shall comply with these undertakings as if it had given them.

5. Interpretation

- 5.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 5.2 In these undertakings:

'**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;

'**Airomir Inhaler**' means a Salbutamol Breath Actuated HFA Inhaler produced by 3M Company and currently marketed as Airomir Autohaler, and any advancement or development thereof, or any inhaler produced by 3M Company to replace that inhaler;

'**Group of Interconnected Bodies Corporate**' has the meaning given in section 129(2) of the Act;

'**IVAX**' means IVAX International GMBH;

the '**OFT**' means the Office of Fair Trading;

'Salamol Inhaler' means a Salbutamol Breath Actuated HFA Inhaler produced by IVAX and currently marketed as Salamol Easi-Breathe, and any advancement or development thereof, or any inhaler produced by IVAX Company to replace that inhaler;

'Salbutamol Breath Actuated HFA Inhaler' means a breath actuated inhaler which delivers salbutamol sulphate (salbutamol) using hydrofluroalkanes (HFA) as a propellant; and

the 'UK' means the United Kingdom of Great Britain and Northern Ireland.

FOR AND ON BEHALF OF IVAX INTERNATIONAL GMBH


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Name..... SIMON CLARK.....
Director

Date..... 9 JANUARY 2004


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Name..... EWAN LIVESEY.....
Director/Secretary

Date..... 9 JANUARY 2004