



BOARD

Proposed acquisition of Baxalta Incorporated
by Shire plc

Case M1211J

Decision

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Jersey Competition Regulatory Authority

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Summary

1. Shire plc (“Shire”) intends to acquire sole control of Baxalta Incorporated (“Baxalta”). Control will be acquired through the merger of BearTracks Inc (“BearTracks”), a wholly owned subsidiary of Shire, with Baxalta, at which time the issued common stock of Baxalta will be cancelled and exchanged for a combination of cash and new shares in Shire. As a result, Baxalta will become a wholly owned subsidiary of Shire. The transaction has been notified to the Jersey Competition Regulatory Authority (the “JCRA”) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the “Law”).
2. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the acquisition.

The Notified Transaction

3. On 21 March 2016, pursuant to Article 21 of the Law, the JCRA received an application for approval of Shire’s acquisition of Baxalta.
4. The JCRA registered its receipt of the application by posting a notification on its website on 22 March 2016. It invited comments by 5pm on Wednesday 5 April 2016. No submissions were received.

The Parties

5. Shire is a Jersey registered public company, registration number 99854. It is listed on the London Stock Exchange and headquartered in the Republic of Ireland. In the financial year ended 31 December 2015, Shire’s worldwide turnover was approximately £4.6 billion. Since Shire does not make any sales of its products into Jersey, no part of that turnover was achieved in Jersey.
6. Baxalta is a company incorporated in Delaware, USA, registration number 5572011. It is listed on the New York Stock Exchange. In the financial year ended 31 December 2015, Baxalta’s worldwide turnover was approximately £4.4 billion, of which approximately [X] was achieved in Jersey in respect of sales of a single product (Factor VII concentrate) to [X].
7. Both Shire and Baxalta are active in the manufacture and supply of finished dose pharmaceutical products. They also carry out research and development and both have a number of pipeline products.

Requirement for JCRA Approval

8. Under Article 2(1)(b) of the Law, a merger occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.
9. On completion of the notified transaction, Shire will acquire 100% of the shares of, and hence sole control over, Baxalta.
10. Under Article 20(1) of the Law, certain mergers must be notified to, and approved by, the JCRA before they can be put into effect. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the "Order") provides that if one or more of the parties to a proposed merger or acquisition has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, then that merger must be notified to the JCRA under Article 20(1) of the Law¹.
11. As set out above, Baxalta supplies a single pharmaceutical product, Factor VII concentrate, [X]. The parties submit that Baxalta has [X] of the share of supply of Factor VII in Jersey.
12. On the basis of these facts, pursuant to the Order and Article 20(1) of the Law, the JCRA's approval is required before the acquisitions are executed.

Market Definition

13. Under Article 60 of the Law, the JCRA must ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions under EU law.
14. In previous decisions², the European Commission has noted that pharmaceutical products may be classified into therapeutic classes using the Anatomical Therapeutic Chemical ("ATC") classification devised by the European Pharmaceutical Marketing Research Association ("EphMRA"). The ATC has sixteen categories (A, B, C, etc.) each of

¹ Subject to two limited exceptions, neither of which apply in this case.

² For example, *Case No COMP/M.6091 - GALENICA / FRESENIUS MEDICAL CARE / VIFOR FRESENIUS MEDICAL CARE RENAL PHARMA JV* (http://ec.europa.eu/competition/mergers/cases/decisions/m6091_20111005_20310_2199161_EN.pdf)

which has different levels. At the third level (ATC3), products are grouped on the basis of their therapeutic indication.

15. The European Commission has generally used ATC3 as the starting point for defining the relevant product market in relation to pharmaceutical products.
16. In previous decisions, the European Commission has defined the geographic market for pharmaceutical products as being national in scope on the basis of a number of factors, including different regulatory frameworks, price setting and reimbursement rules.
17. As noted above, the only product supplied by the parties in Jersey is Factor VII concentrate. Factor VII concentrate is part of ATC3 code B2D and ATC4 code B2D2. Other products at the ATC4 code level are Factors II, IX and X.
18. The parties submit that the relevant market in this case is the supply of Factor VII to persons in Jersey.
19. In this case, the precise product and geographic market can be left open, since the transaction will not give rise to a substantial lessening of competition in Jersey on the basis of any market definition considered.

Effect on Competition

20. Pursuant to Article 22(4) of the Law, the JCRA must determine if the proposed acquisition would substantially lessen competition in Jersey or any part of it.
21. There is no overlap between the activities of the parties in Jersey. The only product supplied by Baxalta in Jersey is Factor VII concentrate. Shire does not manufacture or sell a product that competes with Factor VII either in Jersey or elsewhere. Since the parties do not currently compete in Jersey, the acquisition will not substantially lessen competition in that regard.
22. The merger will not give rise to anti-competitive vertical foreclosure in Jersey, since neither party is active in a market upstream or downstream of a market in which the other is active.

Third Party Views

23. No third party concerns were raised in respect of the transaction.

Conclusion

24. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

12 April 2016**By order of the JCRA Board**