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Mergers: Commission clears planned acquisition of Ratiopharm by Teva, subject to conditions

The European Commission has approved under the EU Merger Regulation the proposed acquisition of the German generic pharmaceutical company Ratiopharm by Teva, Israel. The decision is conditional upon the divestment of fifteen products in the Netherlands and one in Hungary. The Commission had concerns that the parties' high combined market shares for these products, together with their overall post-merger strength in the Netherlands, could have harmed competition on these markets. In the light of the commitments, the Commission concluded that the transaction would not significantly impede effective competition in the European Economic Area (EEA) or any substantial part of it.

Teva is an international company headquartered in Israel which is active in the development, production and marketing of generic and proprietary pharmaceutical products as well as biopharmaceuticals and active pharmaceutical ingredients (APIs), and to a small extent in pharmaceutical wholesaling. Ratiopharm is an international company active in generic and biosimilar pharmaceuticals with a significant presence in a number of EU Member States.

The Commission's investigation found that competition concerns could be excluded in a large majority of the affected pharmaceutical markets, due to the constraint that other generic companies would continue to provide to the parties.

Due to very high market shares for a number of products in the Netherlands, in combination with the overall strength of the company post-merger, it would be the clear market leader. The Commission nonetheless found that competition concerns would arise for a number of finished pharmaceuticals, although not on the Dutch generics market overall. The products concerned are used to treat conditions such as anemia, hypertension, asthma and gout as well as inflammation and pain.

The Commission also found that very high combined market shares for the painkiller tramadol in Hungary, together with the existence of a strong originator brand for Teva, would raise concerns.

Possible competition concerns as a result of vertical issues in the upstream pharmaceutical ingredient market and, in Hungary, the downstream wholesaling market could be excluded, as the parties would not be strong enough in the market to exploit such relationships to the detriment of competition. Horizontal concerns in biopharmaceuticals and products under development could also be excluded on a case-by-case analysis, as sufficient competition for the products concerned would remain.

To address the Commission's concerns, Teva offered to divest the Ratiopharm products concerned, together with Ratiopharm's entire distribution business in the Netherlands in order to ensure that any entrant would be able to continue to compete as vigorously with these products as Ratiopharm had before the merger.

In view of these commitments, and following a market test, the Commission concluded that the transaction would no longer raise competition concerns.

The transaction was notified to the Commission on 14 June 2010. More information on the case will be available at:

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_5865