

**UNDERTAKING TO THE AUSTRALIAN
COMPETITION AND CONSUMER COMMISSION**

Given under section 87B of the *Competition and Consumer Act 2010 (Cth)*
by Baxter International Inc and Baxter Healthcare Pty Limited
(together '**Baxter**')

___ JULY 2013

PERSON GIVING THE UNDERTAKING

This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Baxter International, Inc (**Baxter International**) and Baxter Healthcare Pty Limited (**Baxter Australia**) on behalf of themselves and their Related Bodies Corporate.

BACKGROUND

- (A) Baxter International is the ultimate parent company of a group of companies that provide medical products and services worldwide, including in Australia. Baxter's primary business activities include the manufacture and supply of a range of plasma-based proteins for various purposes, products for regenerative medicines, vaccines and a range of intravenous solutions, administration sets and premix drugs. Baxter also provides renal replacement therapies, including PD, HD and CRRT.
- (B) Gambro AB (**Gambro**) develops, manufactures and supplies products and therapies for HD, CRRT, liver dialysis, myeloma kidney therapy, related water systems and other extracorporeal therapies. Gambro does not supply PD treatment products.
- (C) Baxter agreed to acquire the entire share capital of Indap Holding and as a result Gambro will become a wholly-owned subsidiary of Baxter International (**Proposed Transaction**).

The European Commission

- (D) On 3 June 2013, Baxter International notified the European Commission of the Proposed Transaction. The European Commission conducted its review of the Proposed Transaction and its likely impact within the European Economic Area and indicated to the Parties that the concentration notified raises doubts as to its compatibility with the internal market and with the EEA Agreement in relation to CRRT in a number of EEA Member States.

The ACCC's review

- (E) The ACCC commenced its review of the Proposed Transaction on 4 March 2013 under the Merger Review Process Guidelines.
- (F) The ACCC conducted market inquiries and considered information provided by the Parties, industry participants and others. The ACCC's inquiries were aimed at assessing whether or not the Proposed Transaction would have the effect or be likely to have the effect of substantially lessening competition in any market in Australia, in contravention of section 50 of the *Competition and Consumer Act 2010* (the **Act**).

The ACCC's competition concerns

- (G) The ACCC concluded that, in the absence of this Undertaking, the Proposed Transaction would have the effect or be likely to have the effect of substantially lessening competition in relation to either:
 - o a broad system based market for the national supply of CRRT treatment products; or

- individual markets for the national supply of the following CRRT treatment product components:
 - CRRT monitors, bloodlines and filters;
 - CRRT catheters and ancillaries; and
 - CRRT solutions.
- (H) The ACCC did not find it necessary to form a concluded view in relation to the precise product market definition as regardless of market definition adopted the Proposed Transaction would have the effect or be likely to have the effect of substantially lessening competition in relation to the supply in Australia of CRRT treatment products.
- (I) The ACCC considered that, in the absence of this Undertaking, the Proposed Transaction would result in Baxter being the dominant supplier of CRRT treatment products and in the case of some components, for example CRRT solutions, the sole supplier in Australia. The ACCC concluded that for many customers Baxter and Gambro are currently the only two viable suppliers of CRRT treatment products.
- (J) The ACCC was concerned that, in the absence of this Undertaking, customers would have limited or no alternatives to Baxter and as a consequence Baxter would be able to increase the prices or degrade the service associated with the supply of CRRT treatment products in Australia.
- (K) The ACCC concluded that barriers to entry for the supply of CRRT treatment products in Australia are very high and Baxter would not be constrained by the threat of entry post the Proposed Transaction. Reputation and demonstrated clinical performance in Australia are crucial in the decision making of health purchasing authorities, hospitals and clinicians in selecting a supplier. The ACCC considered that new entrants would incur significant sunk costs, such as the trialling of products, in order to build a reputation in Australia. Additional sunk costs include the lengthy regulatory approval process for the introduction of new products and the establishment of the necessary distribution and support arrangements.
- (L) The ACCC also considered that there are significant switching costs involved in customers changing suppliers of CRRT treatment products. The ACCC was not aware of any imminent entry on a scale that would constrain Baxter.
- (M) The ACCC therefore considered that, in the absence of this Undertaking, the Proposed Acquisition would have the effect or be likely to have the effect of substantially lessening competition in the supply of CRRT treatment products.

Objective of this Undertaking

- (N) Baxter does not accept that the Proposed Transaction would, or would be likely to, result in a substantial lessening of competition in any market.
- (O) Baxter does not consider that the Proposed Transaction will, or is likely to, result in a substantial lessening of competition in any relevant market or otherwise give rise to competition concerns. However, without admission, Baxter offered this Undertaking to

the ACCC pursuant to section 87B of the Act in order to address the ACCC's concerns that would otherwise arise as a consequence of the Proposed Transaction. Baxter will divest its global CRRT business as reflected in the confidential commitments to the European Commission (**EC Commitments**), attached at Schedule 2.

- (P) This Undertaking incorporates the EC Commitments to divest or procure the divestiture of Baxter's global CRRT business (**Divestiture Business**) to a purchaser approved by the ACCC.
- (Q) The objective of this Undertaking is to address the ACCC's competition concerns, which would otherwise arise as a consequence of the Proposed Transaction. This Undertaking aims to achieve this objective by:
- ensuring the maintenance of a viable, effective, stand-alone, independent and long term competitor in the supply of CRRT treatment products in Australia;
 - ensuring the Approved Purchaser has the necessary assets, rights, staff and agreements to compete effectively with Baxter;
 - maintaining the economic viability, marketability, competitiveness and goodwill of the Divestiture Business prior to divestiture; and
 - providing for the effective oversight of Baxter's compliance with this Undertaking.

1. DEFINED TERMS AND INTERPRETATION

- 1.1 A term or expression starting with a capital letter which is defined in the Dictionary in Part 1 of Schedule 1 (**Dictionary**) has the meaning given to it in the Dictionary.
- 1.2 Part 2 of Schedule 1 sets out the rules of interpretation for this Undertaking.

2. COMMENCEMENT AND TERMINATION OF UNDERTAKING

- 2.1 This Undertaking comes into effect when:
- (A) the Undertaking is executed by Baxter; and
- (B) the Undertaking so executed is accepted by the ACCC,
- (**Commencement Date**).
- 2.2 This Undertaking will terminate on the earlier of:
- (A) Closing, unless the transfer, grant or provision of licences, agreements, transitional services or the fulfilment of any other obligations continue after Closing in accordance with this Undertaking, in which case the Undertaking only terminates once the ACCC provides written notice to Baxter that it is satisfied that any such licences, agreements, transitional services or other obligations are transferred, granted, provided or fulfilled; or

- (B) the date the ACCC consents in writing to the withdrawal of this Undertaking in accordance with section 87B of the Act.
- 2.3 The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it by Baxter was incorrect, inaccurate or misleading.
- 2.4 The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or amend the date by which any such obligation is to be satisfied

3. UNDERTAKINGS

EC Commitments

- 3.1 On and from the Control Date, Baxter will comply with the EC Commitments as they relate to the divestiture of the Divestiture Business and the EC Commitments will be interpreted in accordance with the applicable laws of interpretation in the EEA.

Divestiture only to the Approved Purchaser

- 3.2 Baxter must, after the Control Date, complete the divestiture of the Divestiture Business only to the Approved Purchaser.

Approved Purchaser

- 3.3 Prior to the Commencement Date, and as a condition precedent of the ACCC's acceptance of this Undertaking, the ACCC approved Nikkiso as the Approved Purchaser of the Divestiture Business.
- 3.4 In making the decision described in Clause 3.3, the factors to which the ACCC had regard included whether the:
 - (A) Approved Purchaser will complete the transaction contemplated by the EC Commitments, pursuant to which the Approved Purchaser will acquire from Baxter the Divestiture Business;
 - (B) Approved Purchaser is and will remain independent of and has no direct or indirect interest in Baxter, except for the terms of the Transaction Agreements;
 - (C) Approved Purchaser is of good financial standing and has an intention to maintain and operate the Divestiture Business as a going concern;
 - (D) Approved Purchaser is able to conduct the Divestiture Business effectively; and
 - (E) divestiture of the Divestiture Business to the Approved Purchaser will address any competition concerns of the ACCC including in relation to the likely long term viability and competitiveness of the Divestiture Business under the ownership of the Approved Purchaser.
- 3.5 The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it by Baxter was incorrect, inaccurate or misleading.

4. UNDERTAKING IN THE EVENT DIVESTITURE OF THE DIVESTITURE BUSINESS TO NIKKISO IS NOT COMPLETED

New Proposal

- 4.1 In the event that the sale of the Divestiture Business to Nikkiso cannot be completed, Baxter must submit a Proposed Purchaser for the consideration of the ACCC in accordance with Clauses 4.2 to 4.6.

Provision of a notice for a Proposed Purchaser

- 4.2 To seek approval for a Proposed Purchaser in place of Nikkiso in accordance with Clause 4.1, Baxter must as soon as reasonably practicable, and in any event at least 20 (twenty) Business Days before the end of the Trustee Divestiture Period, provide the ACCC with a Proposed Purchaser Notice in the form prescribed in Schedule 3 to this Undertaking (**Proposed Purchaser Notice**).

Approval of a Proposed Purchaser

- 4.3 After receiving a Proposed Purchaser Notice, the ACCC will decide whether to:
- (A) approve the person named in the Proposed Purchaser Notice as the Approved Purchaser in place of Nikkiso; or
 - (B) not approve the person named in the Proposed Purchaser Notice as the Approved Purchaser in place of Nikkiso.
- 4.4 Without limiting the ACCC's discretion, in making the decision described in Clause 4.3, the factors to which the ACCC may have regard include whether the:
- (A) Transaction Agreements are consistent with this Undertaking and otherwise acceptable to the ACCC;
 - (B) Proposed Purchaser will complete the transaction as contemplated by the EC Commitments;
 - (C) Proposed Purchaser is independent of, and has no direct or indirect interest in, Baxter;
 - (D) Proposed Purchaser is of good financial standing;
 - (E) Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
 - (F) Proposed Purchaser is able to conduct the Divestiture Business effectively; and
 - (G) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC including in relation to the likely long term viability and competitiveness of the Divestiture Business under the ownership of the Approved Purchaser.

- 4.5 Within 10 Business Days after receiving a Proposed Purchaser Notice under Clause 4.2, the ACCC will notify Baxter in writing of its decisions made pursuant to Clause 4.3.
- 4.6 The ACCC may extend the period within which it will provide the notice described in Clause 4.5 by notifying Baxter in writing of the extension within 10 Business Days after receiving the Proposed Purchaser Notice. Any extension of time by the ACCC pursuant to this Clause 4.6 extends the First Divestiture Period, the Trustee Divestiture Period and any other dates by which Baxter is required to comply with an obligation to divest the Divestiture Business under this Undertaking by the same length of time.

5. FURTHER UNDERTAKINGS

Closing Period

- 5.1 As set out in the EC Commitments, Baxter must, by the end of the Trustee Divestiture Period, enter into a final binding sale and purchase agreement for the sale of the Divestiture Business with an Approved Purchaser.
- 5.2 Baxter must ensure that Closing takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by both the ACCC (if such approval has not already been given as described in Clauses 3.3 and 3.6) and the European Commission.
- 5.3 The ACCC may extend the 3 month period described in Clause 5.2 within which the Closing is to occur (**Closing Period**) by providing written notice to Baxter prior to the expiry of the Closing Period.
- 5.4 In the event:
- (1) Baxter or the Approved Purchaser is required to obtain a Foreign Divestiture Clearance and, for this reason the Closing is prevented from occurring within the Closing Period; and
 - (2) the ACCC accepts Baxter's submissions showing that it has been seeking the Foreign Divestiture Clearance in good faith,

then the ACCC will extend the Closing Period until Baxter receives all required Foreign Divestiture Clearances and will notify Baxter of this in writing.

Appointment of Divestiture Trustee

- 5.5 Baxter must procure that the terms of appointment of the Divestiture Trustee include obligations to the effect that the Divestiture Trustee:
- (A) must divest the Divestiture Business only to an Approved Purchaser approved by the ACCC (as described in Clause 3.3 of this Undertaking or in accordance with Clause 4 of this Undertaking) with the Divestiture Trustee acting in place of Baxter; and
 - (B) in the event that the sale of the Divestiture Business to the Approved Purchaser cannot be completed, must provide a Proposed Purchaser Notice to the ACCC in

accordance with Clause 4 of this Undertaking at least 20 (twenty) Business Days prior to the end of the Trustee Divestiture Period.

- 5.6 Baxter must provide the ACCC with a copy of the executed terms of appointment of the Divestiture Trustee within 5 (five) Business Days of execution.

Provision of copies of reports

- 5.7 Baxter must procure that the Monitoring Trustee provide to the ACCC a copy of each report (including any confidential version) provided to the European Commission that indicates the progress of Baxter's compliance with the EC Commitments within 3 (three) Business Days of providing such a report to the European Commission.
- 5.8 Baxter must procure that the Divestiture Trustee provide to the ACCC a copy of each report (including any confidential version) provided to the European Commission that indicates the progress of the divestiture process in relation to the EC Commitments within 3 (three) Business Days of providing such a report to the European Commission.

6. JURISDICTION

- 6.1 Baxter International submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 6.2 Notwithstanding Clause 12.2, unless and until notified in writing by Baxter Australia to the ACCC of the appointment of another person as agent within Australia, Baxter International irrevocably appoints Baxter Australia as its agent for the purposes of any service of process in relation to this Undertaking.

7. DISCLOSURE OF UNDERTAKING

- 7.1 Baxter acknowledges that the ACCC may:
- (A) make this Undertaking (excluding the EC Commitments) publicly available;
 - (B) publish this Undertaking (excluding the EC Commitments) on its Public Section 87B Undertakings Register; and
 - (C) from time to time publicly refer to this Undertaking (excluding the content of the EC Commitments).
- 7.2 If the EC Commitments become publicly available, the ACCC may publish the Undertaking (including the EC Commitments) in full on its website.
- 7.3 Nothing in this Undertaking prevents the ACCC from disclosing such information as:
- (A) is required by law;
 - (B) is permitted by section 155AAA of the Act;
 - (C) is necessary for the purpose of enforcement action under section 87B of the Act; and

(D) necessary for the purpose of making such market inquiries as the ACCC thinks fit to assess the impact on competition arising in connection with this Undertaking.

7.4 Nothing in clause 7.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

8. PROVISION OF INFORMATION TO THE ACCC

8.1 Baxter must notify the ACCC in writing of the occurrence of each of the following events within two Business Days after the date the event occurs:

(A) the Control Date; and

(B) the Closing.

8.2 Baxter must provide the ACCC with a copy of each Transaction Agreement within 2 (two) Business Days of that agreement being executed.

8.3 Baxter must respond in a timely manner to any questions or requests for information or documents made by the ACCC about this Undertaking.

8.4 The ACCC may request information from the Monitoring Trustee or the Divestiture Trustee directly at any time.

8.5 In respect of Baxter's compliance with this Undertaking, the ACCC may direct Baxter to, and Baxter must:

(A) furnish information to the ACCC in the time and in the form requested by the ACCC;

(B) produce documents and materials to the ACCC within Baxter's custody, power or control in the time and in the form requested by the ACCC; and/or

(C) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have.

8.6 Any direction made by the ACCC under Clause 8.5 will be notified to Baxter, in accordance with Clause 12.2.

8.7 In respect of Baxter's compliance with this Undertaking, the ACCC may request the Monitoring Trustee or the Divestiture Trustee to furnish information, produce documents and materials to the ACCC that may be within the Monitoring Trustee or the Divestiture Trustee's custody, power or control in the time and form requested by the ACCC.

8.8 Baxter will use its best endeavours to ensure that the Monitoring Trustee and the Divestiture Trustee comply with any request from the ACCC in accordance with Clauses 8.4 and 8.7.

8.9 The ACCC may in its discretion:

- (A) advise the Monitoring Trustee or the Divestiture Trustee of any request made by it under this Clause 8; or
- (B) provide copies to the Monitoring Trustee or the Divestiture Trustee of any information furnished, documents and material produced or information given to it under this Clause 8.

8.10 Nothing in this Clause 8 or in any other provision of this Undertaking requires the provision of information or documents in respect of which Baxter has a claim of legal professional privilege.

9. OBLIGATION TO PROCURE

9.1 Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Baxter to take or refrain from taking some action, Baxter will procure that Related Body Corporate to take or refrain from taking that action, as the case may be.

10. NO DEROGATION

10.1 This Undertaking does not prevent the ACCC from taking enforcement action at any time whether during or after the period of this Undertaking in respect of any breach by Baxter of any term of this Undertaking.

10.2 Nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the Act for penalties or other remedies in the event that Baxter does not fully implement and/or perform its obligations under this Undertaking or in any other event where the ACCC decides to take action under the Act for penalties or other remedies.

11. COSTS

11.1 Baxter must pay all of its own costs incurred in relation to this Undertaking.

12. NOTICES

12.1 Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address:

mergers@acc.gov.au
Attention: Executive General Manager
Mergers and Adjudication Group

With an email copy sent to:

mergersucu@acc.gov.au
Director, Undertakings Compliance Unit
Mergers and Adjudication Group
Coordination and Strategy Branch

12.2 Any notice or communication to Baxter pursuant to this Undertaking should be sent to:

Name: Baxter International, Inc
Attention: General Counsel
Address: One Baxter Parkway, Deerfield, Illinois 60015
Fax: 224 948.2450
Email: david_scharf@baxter.com

And

Name: Baxter Healthcare Pty Limited
Attention: Richard McNamee
Address: 1 Baxter Drive, Old Toongabbie, NSW, 2146
Fax: + 61 2 8845 1688
Email: richard_mcnamee@baxter.com

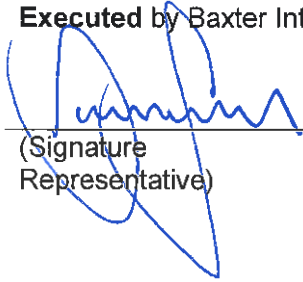
With an email copy sent to:

Name: Jones Day
Attention: Nick Taylor
Address: Aurora Place, Level 41, 88 Phillip Street, Sydney NSW 2000
Email: njtaylor@jonesday.com

- 12.3 If sent by post, notices are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside Australia).
- 12.4 If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.
- 12.5 Baxter or the ACCC must notify the other party of a change to its contact details within three Business Days.
- 12.6 Any notice or communication will be sent to the most recently advised contact details and subject to Clause 12.3 and 12.4, will be taken to be received.

Executed as an Undertaking

Executed by Baxter International Inc:



(Signature
Representative)

Authorised

David Scharf
General Counsel

(Print Name
Representative)

Authorised

Executed in accordance with s.127 of
the Corporations Act 2001 by
Baxter Healthcare Pty Ltd ACN 000
392 781:

(Director)

(Print Name Director)

(Director/Secretary)

(Print Name Director/Secretary)

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of
the *Competition and Consumer Act 2010* on:



Date

3/9/13

And signed on behalf of the Commission:

Chairman

Date

Executed as an Undertaking

Executed by Baxter International Inc:

(Signature Authorised
Representative) Representative)

(Print Name Authorised
Representative) Representative)

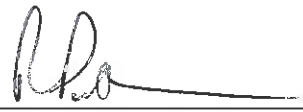
Executed in accordance with s.127 of
the Corporations Act 2001 by
Baxter Healthcare Pty Ltd ACN 000
392 781:



(Director)

RICHARD G. McNAMEE

(Print Name Director)



(Director/Secretary)

ROBERT PULLAN

(Print Name Director/Secretary)

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of
the *Competition and Consumer Act 2010* on:

 Date 3/9/13

And signed on behalf of the Commission:

Chairman Date

SCHEDULE 1: DEFINED TERMS AND INTERPRETATION

1. DICTIONARY

In this document:

ACCC means the Australian Competition and Consumer Commission.

Act means the *Competition and Consumer Act 2010* (Cth).

Approved Purchaser means the person approved by the ACCC as described in Clause 3.3 of this Undertaking or in accordance with Clause 4 of this Undertaking.

Associated Entity has the meaning given by section 50AAA of the Corporations Act.

Baxter International means Baxter International Inc. incorporated under the laws of the State of Delaware, with registered office at One Baxter Parkway, Deerfield, Illinois 60015, U.S.A.

Baxter Australia means Baxter Healthcare Pty Ltd ACN 000 392 781.

Business Day means a day other than a Saturday, Sunday or public holiday on which banks are open for business in Sydney, New South Wales.

Closing has the meaning given in the EC Commitments.

Closing Period has the meaning provided in Clause 5.3.

Commencement Date has the meaning provided in Clause 2.1.

Control Date means the completion of the Proposed Transaction.

Corporations Act means the *Corporations Act 2001* (Cth).

CRRT means continuous renal replacement therapy.

Dictionary means this dictionary in Part 1 of Schedule 1.

Divestiture Trustee has the meaning given in the EC Commitments.

Divestiture Business means Baxter's global CRRT business as defined in the EC Commitments.

EC Commitments has the meaning provided in Paragraph O of the Background to this Undertaking.

EEA means the Member States of the European Union and Norway, Iceland and Liechtenstein.

EEA Agreement means the Agreement on the European Economic Area entered into between the member states of the European Union, Norway, Iceland and Liechtenstein.

Effective Date has the meaning given in the EC Commitments.

Entities Connected has the meaning given by section 64B of the Corporations Act.

First Divestiture Period has the meaning given in the EC Commitments.

Foreign Divestiture Clearance means an approval from a competition authority in any relevant jurisdiction to the closing of the divestiture of the Divestiture Business with an Approved Purchaser.

Gambro means Gambro AB, a company headquartered in Lund, Sweden, which is wholly owned by Indap Holding.

HD means hemodialysis.

Indap Holding means Indap Holding AB, a Swedish company indirectly held by the private equity funds managed by EQT Partners AB and the investment company, Investor AB.

Monitoring Trustee has the meaning given in the EC Commitments.

Nikkiso means Nikkiso Co., Ltd.

Parties means Baxter and Gambro.

PD means peritoneal dialysis.

Proposed Purchaser means a person named in a Proposed Purchaser Notice.

Proposed Purchaser Notice means a completed notice in the form of Schedule 3 to this Undertaking provided to the ACCC with all required attachments in relation to the Proposed Purchaser.

Proposed Transaction has the meaning provided in Paragraph C in the Background to this Undertaking.

Related Bodies Corporate has the meaning given to it by section 50 of the Corporations Act.

Related Entities has the meaning given to it by section 9 of the Corporations Act.

Related Parties has the meaning given to it by section 228 of the Corporations Act.

Share Purchase Agreement means the share purchase agreement dated 4 December 2012 between Indap Holding and Baxter.

Transaction Agreement means an agreement:

(A) for the sale of the Divestiture Business; or

(B) relating to, and/or necessary for the operation of, the Divestiture Business;

that is entered into pursuant to the EC Commitments.

Trustee Divestiture Period has the meaning provided in the EC Commitments.

Undertaking is a reference to all provisions of this document, including its schedules and as varied from time to time under section 87B of the Act.

2. INTERPRETATION

1. Subject to Clause 3.1 and Part 2(2) below, in the interpretation of this Undertaking, the following provisions apply unless the context otherwise requires:

- A. a reference to this Undertaking includes all of the provisions of this document including its schedules and annexes;
- B. headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
- C. if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing must be done on the next Business Day;
- D. a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- E. a reference in this Undertaking to any company includes its Related Bodies Corporate;
- F. a reference in this Undertaking to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- G. a reference to a Clause, part, annex, schedule or attachment is a reference to a Clause, part, annex, schedule or attachment of or to this Undertaking;
- H. an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- I. where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- J. a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- K. a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;

- L. a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object;
 - M. material not forming part of this Undertaking may be considered to:
 - a. confirm the meaning of a clause is the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the competition concerns intended to be addressed by the Undertaking and the clause in question; or
 - b. determine the meaning of the clause when the ordinary meaning conveyed by the text of the clause, taking into account its context in the Undertaking and the purpose or object underlying the Undertaking, leads to a result that does not promote the purpose or object underlying the Undertaking;
 - c. in determining whether consideration should be given to any material in accordance with paragraph (M), or in considering any weight to be given to any such material, regard must be had, in addition to any other relevant matters, to the:
 - i. effect that reliance on the ordinary meaning conveyed by the text of the clause would, have (taking into account its context in the Undertaking and whether that meaning promotes the purpose or object of the Undertaking); and
 - ii. need to ensure that the result of the Undertaking is to completely address any ACCC competition concerns;
 - N. the ACCC may authorise the Mergers Review Committee, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under this Undertaking on its behalf and that authorisation may be subject to any conditions which the ACCC may impose;
 - O. in performing its obligations under this Undertaking, Baxter will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking; and
 - P. a reference to: (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing; (ii) a party includes its successors and permitted assigns; and (iii) a monetary amount is in Australian dollars.
2. The EC Commitments will be interpreted in accordance with the applicable laws of interpretation in the EEA.

SCHEDULE 2: EC COMMITMENTS (CONFIDENTIAL)

SCHEDULE 3: PROPOSED PURCHASER NOTICE

Please note in relation to information given on or in relation to this form, giving false or misleading information is a serious offence.

The completed form with requested documents attached may be provided to the ACCC using the following method:

Email

Subject line: Proposed Purchaser Notice – Undertaking to the ACCC by Baxter International Inc

Address: mergers@acc.gov.au

Attention: Executive General Manager - Mergers and Adjudication Group

With an email copy sent to:

Address: mergersucu@acc.gov.au

Attention: Director, Undertaking Compliance Unit Mergers and Adjudication Group
Coordination and Strategy Branch

- 1) In relation to the Proposed Purchaser, please provide the following information:
 - (a) Name of the Proposed Purchaser:
 - (b) Address:
 - (c) Contact name:
 - (d) Telephone number:
 - (e) Other contact details:

- 2) Please attach a submission containing the following information to this form:
 - (a) a description of the business carried on by the Proposed Purchaser including the locations in which the Proposed Purchaser carries on its business.
 - (b) details of the Proposed Purchaser's experience in the relevant market/s.
 - (c) the names of the [owner/s and the directors (delete any that do not apply)] of the Proposed Purchaser.
 - (d) details of any of the following types of relationships between Baxter and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
 - (i) Baxter and the Proposed Purchaser are Associated Entities;
 - (ii) Baxter is an Entity Connected with the Proposed Purchaser;
 - (iii) the Proposed Purchaser is an Entity Connected with Baxter;
 - (iv) Baxter and the Proposed Purchaser are Related Entities;
 - (v) Baxter and the Proposed Purchaser are Related Parties;

- (vi) any Related Party, Related Entity or Entity Connected with Baxter is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
- (vii) Baxter and the Proposed Purchaser have a contractual relationship or had one within the past three years, other than those attached to this form;
- (viii) the Proposed Purchaser is a supplier or customer of Baxter or has been in the past three years;
- (ix) Baxter is a supplier of the Proposed Purchaser or has been in the past three years; and
- (x) any other relationship between Baxter and the Proposed Purchaser that allows one to affect the business decisions of the other.

3) Please also attach to this form:

- (a) any draft Transaction Agreement; and
- (b) any other documents required to support the information provided by Baxter pursuant to this form.