

# Undertaking to the Australian Competition and Consumer Commission

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Given under section 87B of the *Competition and  
Consumer Act 2010* (Cth) by

Elanco Animal Health Incorporated and Elanco  
Australasia Pty Ltd (ACN 076 745 198)

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## 1. Person giving the Undertaking

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- 1.1. This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Elanco Animal Health Incorporated and its Subsidiary Elanco Australasia Pty Ltd (ACN 076 745 198) (together, **Elanco**).

## 2. Background

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### The parties to the proposed acquisition

- 2.1. **Acquirer:** Elanco is a global animal health company that develops, manufactures and markets products to prevent and treat diseases in farm and companion animals. Elanco was formed in 1954 as the animal health division of Eli Lilly and Company and became a fully independent company on 11 March 2019. Elanco is headquartered in Indiana and listed on the New York Stock Exchange. Elanco operates in Australia through its Subsidiary Elanco Australasia Pty Ltd (ACN 076 745 198); and
- 2.2. **Vendor:** Bayer AG is a global pharmaceutical and life sciences company active in the areas of pharmaceuticals, consumer health and crop science, and animal health. Bayer AG is based in Leverkusen, Germany, and its common stock is publicly traded on various stock exchanges around the world, including the Frankfurt Stock Exchange and the Deutsche Borse Xetra. Bayer operates its animal health business in Australia through its Subsidiary Bayer Australia Ltd (ACN 000 138 714).

### The Proposed Acquisition

- 2.3. On 20 August 2019, Elanco Animal Health Incorporated and Bayer AG entered into a share and asset purchase agreement under which Elanco will purchase Bayer AG's animal health business, subject to regulatory approvals (the **Proposed Acquisition**).

### The ACCC's review

- 2.4. On 20 December 2019, the ACCC commenced its public review of the Proposed Acquisition.
- 2.5. The ACCC undertook market inquiries and considered information provided by the parties to the Proposed Acquisition, industry participants and others. The purpose of the ACCC's inquiries was to assess whether the Proposed Acquisition 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 Act.

### The ACCC's competition concerns

- 2.6. The ACCC is concerned that, in the absence of the Undertaking, the Proposed Acquisition may have the effect, or may be likely to have the effect, of substantially lessening competition in the markets for:
- (a) the supply of sheep lice products in Australia (**Sheep Lice Market**), and
  - (b) the supply of gastro intestinal worming treatments for companion animals in Australia (**Gastro Intestinal Worming Market**).

- 2.7. In the Sheep Lice Market, the ACCC is concerned that the Proposed Acquisition would combine the largest suppliers of sheep lice treatments, resulting in Elanco being the dominant supplier of sheep lice treatments post-acquisition. The ACCC was concerned that Elanco would have the incentive and ability to increase prices for its sheep lice treatments post-acquisition. In the Gastro Intestinal Worming Market, the ACCC is concerned that the Proposed Acquisition would remove one of Elanco's closest competitors and therefore be likely to lead to increased prices.

### **The Undertaking remedy**

- 2.8. Elanco does not consider that the Proposed Acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in any relevant market. However, to address the ACCC's competition concerns, Elanco has offered this Undertaking pursuant to section 87B of the Act.
- 2.9. The objective of this Undertaking is to address the ACCC's competition concerns as set out above that would otherwise arise as a consequence of the Proposed Acquisition. The Undertaking aims to achieve this objective by placing obligations on Elanco:
- (a) to ensure that the Avenge Sheep Lice Business and the Companion Animal Business (each a **Divestiture Business** and together, the **Divestiture Businesses**) are sold to one or more Approved Purchasers;
  - (b) that will result in the creation or strengthening of a viable, effective, stand-alone, independent and long-term competitor(s) in the Sheep Lice Market and Gastro Intestinal Worming Market;
  - (c) to ensure the purchaser(s) of the Divestiture Businesses has all the necessary associated assets and rights to compete effectively with Elanco in the Sheep Lice Market and Gastro Intestinal Worming Market;
  - (d) to maintain the economic viability, marketability, competitiveness and goodwill of the Divestiture Businesses prior to divestiture; and
  - (e) to provide for the effective oversight of Elanco's compliance with this Undertaking.

## **3. Commencement of this Undertaking**

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- 3.1. This Undertaking comes into effect when:
- (a) this Undertaking is executed by Elanco; and
  - (b) this Undertaking so executed is accepted by the ACCC
- (the **Commencement Date**).

## **4. Cessation of Ongoing Obligations**

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### **Withdrawal**

- 4.1. Elanco may request withdrawal of this Undertaking pursuant to section 87B of the Act at any time. This Undertaking is taken to be withdrawn on the date the ACCC consents in writing to that withdrawal.

## **Revocation**

- 4.2. The ACCC may, at any time, revoke its acceptance of this Undertaking if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

## **Waiver**

- 4.3. The ACCC may, at any time, expressly waive in writing any of the obligations contained in this Undertaking or extend the date by which any such obligation is to be satisfied.

## **Survival**

- 4.4. Unless and until this Undertaking is withdrawn in accordance with clause 4.1, clauses 1, 2, 3, 4, 9, 11, 12, 13, 14, 15, 16 and 17 survive completion of the obligations in clauses 5, 6, 7, 8, 10, Schedule 4 and Confidential Schedule 5.

## **5. Divestiture of the Divestiture Businesses**

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### **Divestiture**

- 5.1. Elanco must, in accordance with this Undertaking, divest, or cause the divestiture of, the Divestiture Businesses only to an Approved Purchaser.
- 5.2. In the event that clause 10 applies, Elanco must not authorise the Approved Divestiture Agent to divest any Divestiture Business to a purchaser other than an Approved Purchaser.
- 5.3. Elanco must divest, or cause the divestiture of, the Divestiture Businesses by:
- (a) the sale, assignment, novation, transfer and/or licence of all of the assets in Schedule 4 to one or more Approved Purchasers, pursuant to one or more Approved Sale and Purchase Agreements and within the Initial Sale Period, otherwise clause 10 applies;
  - (b) the transfer or grant to the Approved Purchaser(s) of Consents pursuant to clauses 5.4 to 5.5;
  - (c) the transfer of any Transferred Personnel required pursuant to clauses 5.7 to 5.8;
  - (d) compliance with any Approved Transitional Technical Assistance Agreement required pursuant to clauses 5.9 to 5.11; and
  - (e) compliance with any Approved Transitional Supply Agreement required pursuant to clauses 5.12 to 5.14.

### **Consents**

- 5.4. Elanco must:
- (a) obtain or assist the Approved Purchaser(s) to obtain as expeditiously as possible, all Consents as required before completion of the divestiture of the Divestiture Businesses;

- (b) comply with all requirements necessary to obtain any Consents, including by promptly providing all information necessary for the Consents to be given;
  - (c) act in good faith in its negotiations with the Approved Purchaser(s) in relation to obtaining any Consents;
  - (d) promptly pay the costs and expenses of any third party reasonably incurred in providing the Consents; and
  - (e) enter an agreement with the Approved Purchaser(s) which is approved by the ACCC, or vary any existing Approved Transitional Supply Agreement as required by the Approved Purchaser(s), in relation to any goods or services that are required for the operation of the relevant Divestiture Business which may be affected by any failure to gain a Consent.
- 5.5. If, seven Business Days before completion of the divestiture of the relevant Divestiture Business, the relevant Approved Purchaser does not or is otherwise unable to obtain one or more Consents, then Elanco must:
- (a) immediately provide to the ACCC in writing details of the:
    - (i) Consents that have not been obtained;
    - (ii) reasons why the Consents have not been obtained; and
    - (iii) information or material required to obtain the Consents.
  - (b) continue to do everything in its power to satisfy clause 5.4 as soon as possible after the completion of the divestiture of the relevant Divestiture Business (and until such time as clause 5.4 is satisfied).
- 5.6. Even if Elanco has complied with clause 5.4 to 5.5, it remains a breach of this Undertaking if Elanco is unable to effect the divestiture of a Divestiture Business by reason that one or more Consents are not obtained.

**Transferred Personnel**

- 5.7. At the option of an Approved Purchaser, Elanco must transfer to the Approved Purchaser:
- (a) all employees necessary for the operation of the relevant Divestiture Business; and
  - (b) all service providers under a contract for service necessary for the operation of the relevant Divestiture Business;
- who are, in the view of the Approved Purchaser, required for the Approved Purchaser to maintain, operate or conduct effectively the relevant Divestiture Business and who consent to the transfer of their employment or contract for service to the Approved Purchaser (**Transferred Personnel**).
- 5.8. When fulfilling its obligations under clause 5.7, Elanco must:
- (a) encourage all Transferred Personnel to remain with the relevant Divestiture Business, including offering incentives based on industry practice;

- (b) not directly or indirectly discourage any Transferred Personnel from any obligations to provide services to the relevant Divestiture Business;
- (c) effective on the date of the divestiture of the relevant Divestiture Business, release the Transferred Personnel from any obligations to provide services to Elanco;
- (d) effective on the date of the divestiture of the relevant Divestiture Business, release the Transferred Personnel from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the relevant Divestiture Business or Unsold Business; and
- (e) not procure, promote or encourage the transfer of any of the Transferred Personnel of the relevant Divestiture Business from the relevant Approved Purchaser to Elanco for a period of 12 months after the completion of the divestiture of the relevant Divestiture Business.

#### **Technical Assistance**

- 5.9. At the option of the Approved Purchaser(s), Elanco must supply to the Approved Purchaser(s), under an Approved Transitional Technical Assistance Agreement, any Technical Assistance that is required by the Approved Purchaser(s) in order to operate the relevant Divestiture Business.
- 5.10. Elanco must ensure that any Approved Transitional Technical Assistance Agreement, and any renewal or extension of an Approved Transitional Technical Assistance Agreement, provides for the supply of Technical Assistance:
  - (a) on a transitional basis for a period that is nominated by the Approved Purchaser and approved in writing by the ACCC; and
  - (b) at cost and otherwise on arm's length terms.
- 5.11. To avoid doubt, Elanco must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Technical Assistance Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Technical Assistance Agreement, the ACCC will have regard to the criteria set out in clauses 5.9 and 5.10.

#### **Transitional Supply Agreements**

- 5.12. At the option of the Approved Purchaser(s), Elanco must ensure the continued supply by Elanco to the Approved Purchaser(s), under an Approved Transitional Supply Agreement, of any goods or services that are required by the Approved Purchaser(s) in order for the Approved Purchaser to be established as a viable, effective, stand-alone, independent and long-term competitor in the Sheep Lice Market and/or Gastro Intestinal Worming Market.
- 5.13. Elanco must ensure that any Approved Transitional Supply Agreement and any renewal or extension of an Approved Transitional Supply Agreement:
  - (a) is for a reasonable transitional period, to be nominated by the Approved Purchaser and approved in writing by the ACCC;
  - (b) provides for the supply or re-supply of the included goods and services at cost price; and

- (c) is on such terms other than price which are no less favourable to the Approved Purchaser than arm's length terms.
- 5.14. To avoid doubt, Elanco must seek prior written approval from the ACCC of any renewal or extension of an Approved Transitional Supply Agreement. Without limiting the ACCC's discretion, in making a decision on whether to approve a renewal or extension of an Approved Transitional Supply Agreement, the ACCC will have regard to the criteria set out in clauses 5.12 and 5.13.

## **6. Process for approving a proposed purchaser**

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### **Potential purchasers**

6.1. Elanco must provide the ACCC and Approved Independent Auditor with:

- (a) the identity of any person who expresses an interest in acquiring a Divestiture Business;
- (b) the status of negotiations with each person; and
- (c) a copy of each person's offer to acquire a Divestiture Business or Divestiture Businesses, where relevant;

at the following times:

- (d) as soon as possible following the Commencement Date for those persons who express interest before the Commencement Date;
- (e) after the Commencement Date, within 10 Business Days of each person expressing the interest and/or providing an offer;

regardless of whether the person subsequently withdraws or is declined.

### **Provision of a notice for a Proposed Purchaser**

6.2. To seek ACCC approval for a Proposed Purchaser, Elanco or the Approved Divestiture Agent must provide the ACCC with a notice in the form prescribed in Schedule 2 to this Undertaking (**Proposed Purchaser Notice**), including a draft sale and purchase agreement, a draft transitional technical assistance agreement (where required by the Proposed Purchaser), and a draft transitional supply agreement (where required by the Proposed Purchaser).

6.3. The Proposed Purchaser Notice(s) must be provided to the ACCC at least 20 Business Days prior to the end of the Initial Sale Period.

### **Approval of a Proposed Purchaser after the Commencement Date**

6.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Purchaser identified in the Proposed Purchaser Notice, which includes consideration of:

- (a) the draft sale and purchase agreement attached to the Proposed Purchaser Notice;
- (b) any draft transitional technical assistance agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.9 and 5.10; and



- (c) any draft transitional supply agreement attached to the Proposed Purchaser Notice, in accordance with the criteria in clauses 5.12 and 5.13.
- 6.5. Without limiting the ACCC's discretion, in making the decision pursuant to clause 6.4, the factors to which the ACCC may have regard include whether the:
- (a) draft sale and purchase agreement is consistent with this Undertaking;
  - (b) Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
  - (c) Proposed Purchaser is independent of Elanco;
  - (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;
  - (g) divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC in the Sheep Lice Market and/or Gastro Intestinal Worming Market (as applicable), including in relation to the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser.
- 6.6. The ACCC may revoke an Approved Purchaser's status as the Approved Purchaser if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.

## **7. Divestiture Business Protection**

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### **Protection of the Divestiture Business**

- 7.1. From the Control Date, Elanco must not sell or transfer its interest, or any assets comprising part of, or used in, a Divestiture Business (other than the sale of goods and services in the ordinary course of business) or make any Material Change, except in accordance with this Undertaking or (subject to the other terms of this Undertaking) as necessary to allow completion of the Proposed Acquisition.

### **Elanco's obligations in relation to the Divestiture Businesses prior to completion of divestiture**

- 7.2. Without limiting this clause 7, Elanco must, from the Control Date until completion of the divestiture of the Divestiture Businesses, take all steps available to it to:
- (a) ensure that the Divestiture Businesses are managed and operated in the ordinary course of business as a fully operational, competitive going concern and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Businesses at the Control Date;
  - (b) continue to provide access to working capital and sources of credit for the Divestiture Businesses in a manner which is consistent with the financing of the Divestiture Businesses before the Control Date;

- (c) continue to provide administrative and technical support for the Divestiture Businesses in a manner which is consistent with the operation of the Divestiture Businesses before the Control Date and in accordance with any plans established before the Control Date;
- (d) continue existing Agreements relating to the Divestiture Businesses with customers, suppliers and/or other third parties that are in place at the Control Date;
- (e) renew or replace upon expiry Material Contracts for the provision of goods or services to the Divestiture Businesses on commercial terms favourable to the Divestiture Business;
- (f) maintain the supply of those goods and services that are part of the Divestiture Businesses to existing customers in a manner consistent with the supply of those goods and services as at the Control Date;
- (g) maintain the standard of manufacture, distribution, promotion and sale of those products which form part of the Divestiture Businesses as at the Control Date; and
- (h) carry out promotion and marketing of the products which form part of the Divestiture Businesses in accordance with any plans established before the Control Date, or such other plans which the Independent Manager considers necessary to maintain the Divestiture Businesses as an ongoing competitive concern.

#### **Personnel of Elanco**

- 7.3. From the Control Date until completion of the divestiture of the Divestiture Businesses, Elanco must:
- (a) in consultation with the Approved Independent Manager, replace any
    - (i) Transferred Personnel; or
    - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Businesses;
 

who leave or will leave the Divestiture Businesses before divestiture;
  - (b) not terminate or vary the terms of employment or engagement (or agree to do any of those things) of any of the
    - (i) Transferred Personnel; or
    - (ii) if the Transferred Personnel have not yet been identified, any personnel necessary for the operation of the Divestiture Businesses;
 

and

other than for cause (such as serious breach of a Transferred Personnel's employment contract, including serious misconduct that might harm the reputation of any Divestiture Business or Elanco, or otherwise contravene the law or give rise to a legal liability); and
  - (c) not directly or indirectly procure, promote or encourage the redeployment of personnel necessary for the operation of the Divestiture Businesses as at the Control Date to any other business operated by Elanco.

- 7.4. As soon as practicable after the Commencement Date, Elanco must direct its personnel, including directors, contractors, managers, officers, employees and agents not to do anything inconsistent with Elanco's obligations under this Undertaking.

#### **Elanco's ongoing obligations in relation to the Divestiture Business**

- 7.5. To the extent Elanco has obligations in relation to the provision of transitional technical assistance or continued supply pursuant to clauses 5.9 to 5.14 of this Undertaking in relation to the Divestiture Businesses, Elanco must not sell, assign, transfer, and/or licence directly or indirectly any of the assets necessary to fulfil such obligations without the prior written consent of the ACCC.

#### **Confidential Information**

- 7.6. Subject to clause 7.7, Elanco must not, at any time from the Control Date, use or disclose any confidential information about the Divestiture Businesses gained through:

- (a) ownership and/or management of the Divestiture Businesses; or
- (b) fulfilling any obligations pursuant to this Undertaking.

- 7.7. Clause 7.6 does not apply to information that Elanco requires to:

- (a) comply with legal and regulatory obligations including obligations relating to taxation, accounting, financial reporting or stock exchange disclosure requirements; or
- (b) carry out its obligations pursuant to this Undertaking;

provided such information is only used for that purpose and is only disclosed to those officers, employees, contractors and advisers of Elanco who need to know the information to carry out the permitted purpose.

## **8. Independent Management of the Divestiture Business**

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### **Obligation to appoint an Approved Independent Manager**

- 8.1. Elanco must appoint and maintain an Approved Independent Manager to manage the Divestiture Businesses, from the Control Date until the completion of the divestiture of the Divestiture Businesses in accordance with this Undertaking.

### **Process for approving a Proposed Independent Manager**

- 8.2. At least 15 Business Days before the Control Date, Elanco must provide the ACCC with a notice for a Proposed Independent Manager in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Manager Notice**), including a draft terms of appointment and a draft separation and management plan.
- 8.3. If clauses 8.12, 8.13 or 8.14 apply, Elanco must provide the ACCC with a Proposed Independent Manager Notice within five Business Days after the relevant event occurs, otherwise clause 8.8 applies.
- 8.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Manager identified in a Proposed Independent Manager Notice.

- 8.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Manager, the factors to which the ACCC may have regard include whether the:
- (a) person named in the Proposed Independent Manager Notice or identified by the ACCC has the qualifications and experience necessary to manage the Divestiture Businesses;
  - (b) person named in the Proposed Independent Manager Notice or identified by the ACCC is sufficiently independent of Elanco;
  - (c) draft terms of appointment and the draft separation and management plan are consistent with this Undertaking; and
  - (d) draft terms of appointment and the draft separation and management plan are otherwise acceptable to the ACCC.

**Appointment of the Approved Independent Manager**

- 8.6. After receiving a written notice from the ACCC of its approval of the Proposed Independent Manager, the draft terms of appointment and draft separation and management plan, Elanco must by the Control Date:
- (a) appoint the person approved by the ACCC as the Approved Independent Manager on the Approved Terms of Appointment; and
  - (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

**Failure to appoint**

- 8.7. If:
- (a) the Approved Independent Manager has not been appointed by the Control Date;
  - (b) the Approved Independent Manager has not been appointed within 15 Business Days after the Approved Independent Manager resigns or otherwise ceases to act as the Approved Independent Manager pursuant to clause 8.12, 8.13 or 8.14; or
  - (c) the ACCC has not received a Proposed Independent Manager Notice pursuant to clause 8.3;
- then clause 8.8 applies.
- 8.8. If clause 8.7 applies, the ACCC at its discretion may:
- (a) identify and approve a person as the Approved Independent Manager, including approving the draft terms of appointment of the Approved Independent Manager and the draft separation and management plan; and/or
  - (b) direct Elanco to appoint a person who the ACCC has deemed is an Approved Independent Manager.

## Obligations and powers of the Approved Independent Manager

- 8.9. Elanco must procure that any proposed terms of appointment for the Approved Independent Manager include obligations on the Approved Independent Manager to:
- (a) maintain his or her independence from Elanco, apart from appointment to the role of Approved Independent Manager, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Elanco for the period of his or her appointment;
  - (b) act in the best interests of the Divestiture Businesses at all times including ensuring that the Divestiture Businesses are managed and operated in the ordinary course of business as fully operational, competitive going concerns and in such a way that preserves the economic viability, marketability, competitiveness and goodwill of the Divestiture Businesses at the Control Date;
  - (c) not use any confidential information gained through the management of the Divestiture Businesses other than for performing his or her functions as Approved Independent Manager;
  - (d) make only those Material Changes to the Divestiture Businesses which the ACCC does not object to;
  - (e) operate and manage the Divestiture Businesses to the maximum extent practicable, in a manner which is financially and operationally separate from Elanco;
  - (f) co-operate with the requests of any Approved Divestiture Agent or Approved Independent Auditor appointed pursuant to this Undertaking.
  - (g) provide the following reports directly to the ACCC:
    - (i) a monthly written report regarding the implementation of and any suggested changes to the Approved Separation and Management Plan; and
    - (ii) an immediate report of any issues that arise in relation to the implementation of the Approved Separation and Management Plan or Elanco's compliance with this Undertaking; and
  - (h) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Manager pursuant to this Undertaking.
- 8.10. Elanco must procure that any proposed terms of appointment for the Approved Independent Manager provide the Approved Independent Manager with the sole authority to:
- (a) manage and operate the Divestiture Businesses according to the Approved Separation and Management Plan until the completion of the divestiture of the Divestiture Businesses;
  - (b) provide any information requested by Elanco pursuant to the protocol in the Approved Separation and Management Plan;

- (c) decide whether or not to provide access and the manner of such access to competitively sensitive information relating to the Divestiture Businesses requested by Elanco which is not covered by the protocol in the Approved Separation and Management Plan;
- (d) renew or replace upon expiry Material Contracts and enter into new contracts for the provision of goods or services to the Divestiture Businesses on commercial terms favourable to the Divestiture Businesses;
- (e) engage, redeploy or make redundant personnel employed in the Divestiture Businesses as the Approved Independent Manager determines necessary; and
- (f) engage any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager.

**Elanco's obligations in relation to the Approved Independent Manager**

8.11. Without limiting its obligations in this Undertaking, Elanco must:

- (a) comply with and enforce the Approved Terms of Appointment of the Approved Independent Manager;
- (b) maintain and fund the Approved Independent Manager to carry out his or her functions, including:
  - (i) indemnifying the Approved Independent Manager for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Manager of his or her functions as the Approved Independent Manager except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Manager;
  - (ii) ensuring that the Approved Independent Manager is fully able to acquire and pay for sufficient and timely delivery of all goods and services (including from third parties) which the Approved Independent Manager considers are required by the Divestiture Businesses; and
  - (iii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Manager to perform his or her functions as the Approved Independent Manager; and
- (c) not interfere with the authority of, or otherwise hinder, the Approved Independent Manager's ability to carry out his or her obligations as the Approved Independent Manager, including:
  - (i) accepting (and directing its directors, contractors, managers, officers, employees and agents to accept) direction from the Approved Independent Manager as to the control, management, financing and operations of the Divestiture Businesses, and for the Divestiture Businesses to meet all legal, corporate, financial, accounting, taxation, audit and regulatory obligations;

- (ii) providing access to the facilities, sites or operations of the Divestiture Businesses required by the Approved Independent Manager;
- (iii) providing to the Approved Independent Manager any information or documents that he or she considers necessary for managing and operating the Divestiture Businesses or for reporting to or otherwise advising the ACCC; and
- (iv) not requesting information or reports regarding the Divestiture Businesses from the personnel of the Divestiture Businesses except through the Approved Independent Manager; and
- (v) not appointing the Approved Independent Manager, or have any Agreements with the Approved Independent Manager, to utilise the Approved Independent Manager's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Manager ceases to act in the role of the Approved Independent Manager.

#### **Resignation, revocation or termination of the Approved Independent Manager**

- 8.12. Elanco must immediately notify the ACCC in the event that the Approved Independent Manager resigns or otherwise stops acting as the Approved Independent Manager before the completion of the divestiture of the Divestiture Businesses.
- 8.13. The ACCC may revoke an Approved Independent Manager's status as the Approved Independent Manager if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 8.14. The ACCC may approve any proposal by, or alternatively may direct, Elanco to terminate the appointment of the Approved Independent Manager if in the ACCC's view the Approved Independent Manager acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

### **9. Independent Audit**

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#### **Obligation to appoint an Approved Independent Auditor**

- 9.1. Elanco must appoint and maintain an Approved Independent Auditor to audit and report upon Elanco's compliance with this Undertaking.

#### **Process for approving a Proposed Independent Auditor**

- 9.2. At least 15 Business Days before the Control Date, Elanco must provide the ACCC with a notice for a Proposed Independent Auditor in the form prescribed in Schedule 3 to this Undertaking (**Proposed Independent Auditor Notice**), including draft terms of appointment and a draft audit plan.
- 9.3. If clauses 9.16, 9.17 or 9.18 apply, Elanco must provide the ACCC with a Proposed Independent Auditor Notice within five Business Days after the relevant event occurs, otherwise clause 9.8 applies.
- 9.4. The ACCC shall have the discretion to approve or reject in writing the Proposed Independent Auditor identified in the Proposed Independent Auditor Notice.

9.5. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Independent Auditor, the factors to which the ACCC may have regard include whether the:

- (a) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
- (b) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of Elanco;
- (c) draft terms of appointment and the draft audit plan are consistent with this Undertaking; and
- (d) draft terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.

#### **Appointment of the Approved Independent Auditor**

9.6. After receiving a written notice from the ACCC of its approval of a Proposed Independent Auditor, the draft terms of appointment and draft audit plan, Elanco must by the Control Date:

- (a) appoint the person approved by the ACCC as the Approved Independent Auditor on the Approved Terms of Appointment; and
- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

#### **Failure to appoint**

9.7. If:

- (a) the Approved Independent Auditor has not been appointed by the Control Date;
- (b) the Approved Independent Auditor has not been appointed within 15 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Auditor pursuant to clause 9.16, 9.17, or 9.18; or
- (c) the ACCC has not received a Proposed Independent Auditor Notice pursuant to clause 9.3;

then clause 9.8 applies.

9.8. If clause 9.7 applies, the ACCC at its absolute discretion may:

- (a) identify and approve a person as the Approved Independent Auditor, including approving the draft terms of appointment and draft audit plan; and/or
- (b) direct Elanco to appoint a person who the ACCC has deemed is an Approved Independent Auditor.

#### **Obligations and powers of the Approved Independent Auditor**

9.9. Elanco must procure that any proposed terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:



- (a) maintain his or her independence from Elanco, apart from appointment to the role of Approved Independent Auditor, including not forming any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Elanco for the period of his or her appointment;
  - (b) conduct compliance auditing according to the Approved Audit Plan;
  - (c) where requested by the ACCC, assess the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Businesses against the factors (as relevant) in clause 6.5;
  - (d) provide the following reports directly to the ACCC:
    - (i) a scheduled written Audit Report as described in clause 9.11;
    - (ii) an immediate report of any issues that arise in relation to the performance of his or her functions as Approved Independent Auditor or in relation to compliance with this Undertaking by any person named in this Undertaking; and
    - (iii) where requested by the ACCC, a report on the suitability of any Proposed Purchaser or potential purchaser of the Divestiture Businesses following an assessment under clause 9.9(c); and
  - (e) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Independent Auditor under this Undertaking.
- 9.10. Elanco must procure that any proposed terms of appointment for the Approved Independent Auditor provide the Approved Independent Auditor with the authority to:
- (a) access the facilities, sites or operations of the Divestiture Businesses and Elanco's other businesses as required by the Approved Independent Auditor;
  - (b) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC; and
  - (c) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.

### **Compliance Audit**

- 9.11. The Approved Independent Auditor must conduct an audit and prepare a detailed report (**Audit Report**) that includes:
- (a) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures and processes since the previous Audit Report;
  - (b) a full audit of Elanco's compliance with this Undertaking;

- (c) identification of any areas of uncertainty or ambiguity in the Approved Independent Auditor's interpretation of any obligations contained in this Undertaking;
  - (d) all of the reasons for the conclusions reached in the Audit Report;
  - (e) any qualifications made by the Approved Independent Auditor in forming his or her views;
  - (f) any recommendations by the Approved Independent Auditor to improve:
    - (i) the Approved Audit Plan;
    - (ii) the integrity of the auditing process;
    - (iii) Elanco's processes or reporting systems in relation to compliance with this Undertaking; and
    - (iv) Elanco's compliance with this Undertaking; and
  - (g) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.
- 9.12. The Approved Independent Auditor is to provide an Audit Report to the ACCC and Elanco at the following times:
- (a) within 10 Business Days after the Control Date, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's proposed procedures and processes for conducting the audit (**Establishment Audit**);
  - (b) every month from the date of the Establishment Audit until one month after the divestiture of the Divestiture Businesses is completed;
  - (c) every three months after the date of provision of the last Audit Report pursuant to clause 9.12(b), until the ACCC confirms in writing to Elanco that it is satisfied that Elanco has fulfilled its obligations pursuant to this Undertaking; and
  - (d) a final report due three months after the last report provided pursuant to clause 9.12(c).
- 9.13. Elanco must implement any recommendations made by the Approved Independent Auditor in Audit Reports, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report or such other period as agreed in writing with the ACCC.
- 9.14. Elanco must comply with any direction of the ACCC in relation to matters arising from the Audit Report within 10 Business Days after being so directed (or such other period as agreed in writing with the ACCC).

**Elanco's obligations in relation to the Approved Independent Auditor**

- 9.15. Without limiting its obligations in this Undertaking, Elanco must:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Independent Auditor;

- (b) maintain and fund the Approved Independent Auditor to carry out his or her functions including:
  - (i) indemnifying the Approved Independent Auditor for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Independent Auditor of his or her functions as the Approved Independent Auditor except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Independent Auditor;
  - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor; and
- (c) not interfere with, or otherwise hinder, the Approved Independent Auditor's ability to carry out his or her functions as the Approved Independent Auditor, including:
  - (i) directing Elanco personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 9;
  - (ii) providing access to the facilities, sites or operations of the Divestiture Businesses and Elanco's other businesses as required by the Approved Independent Auditor;
  - (iii) providing to the Approved Independent Auditor any information or documents he or she considers necessary for carrying out his or her functions as the Approved Independent Auditor or for reporting to or otherwise advising the ACCC;
  - (iv) not requesting any information relating to the compliance audit from the Approved Independent Auditor without such a request having been approved by the ACCC; and
  - (v) not appointing the Approved Independent Auditor, or have any Agreements with the Approved Independent Auditor, to utilise the Approved Independent Auditor's services for anything other than compliance with this Undertaking until at least 12 months after the Approved Independent Auditor ceases to act in the role of the Approved Independent Auditor.

#### **Resignation, revocation or termination of the Approved Independent Auditor**

- 9.16. Elanco must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor.
- 9.17. The ACCC may revoke an Approved Independent Auditor's status as the Approved Independent Auditor if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 9.18. The ACCC may approve any proposal by, or alternatively may direct, Elanco to terminate the appointment of the Approved Independent Auditor if in the ACCC's view the Approved Independent Auditor acts inconsistently with the provisions of this Undertaking and/or the Approved Terms of Appointment or the Approved Independent Auditor fails to perform their role to an adequate standard.

## **10. Failure to divest the Divestiture Businesses within the Initial Sale Period**

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### **Divestiture of the Unsold Business**

- 10.1. In the event that the divestiture of a Divestiture Business to an Approved Purchaser is not completed by the end of the Initial Sale Period, the Divestiture Business becomes an unsold business (**Unsold Business**) and the provisions of this clause 10 apply.

### **Obligation to appoint an Approved Divestiture Agent**

- 10.2. From the end of the Initial Sale Period, Elanco must appoint and maintain an Approved Divestiture Agent to effect the divestiture of the Unsold Business.

### **Process for approving a Proposed Divestiture Agent**

- 10.3. At least 15 Business Days prior to the end of the Initial Sale Period, if the divestiture of a Divestiture Business has not been completed, Elanco must provide the ACCC with a notice for a Proposed Divestiture Agent in the form of Schedule 3 to this Undertaking (**Proposed Divestiture Agent Notice**) including draft terms of appointment, a draft business sale agreement, and draft marketing and sale plan.
- 10.4. If clauses 10.14, 10.15 or 10.16 apply, Elanco must provide the ACCC with a Proposed Divestiture Agent Notice within five Business Days after the relevant event occurs, otherwise clause 10.9 applies.
- 10.5. The ACCC shall have the discretion to approve or reject in writing the Proposed Divestiture Agent.
- 10.6. Without limiting the ACCC's discretion, in deciding whether to approve a Proposed Divestiture Agent, the factors to which the ACCC may have regard include whether the:
- (a) person named in Proposed Divestiture Agent Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Divestiture Agent;
  - (b) person named in the Proposed Divestiture Agent Notice or identified by the ACCC is sufficiently independent of Elanco;
  - (c) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are consistent with this Undertaking; and
  - (d) draft terms of appointment, draft business sale agreement and draft marketing and sale plan are otherwise acceptable to the ACCC.

### **Appointment of the Approved Divestiture Agent**

- 10.7. After receiving written notice from the ACCC of its approval of the Proposed Divestiture Agent, the draft terms of appointment, draft business sale agreement and draft marketing and sale plan, Elanco must within two Business Days:
- (a) appoint the person approved by the ACCC as the Approved Divestiture Agent on the Approved Terms of Appointment; and

- (b) forward to the ACCC a copy of the executed Approved Terms of Appointment.

#### **Failure to appoint**

10.8. If:

- (a) the Approved Divestiture Agent has not been appointed within 10 Business Days after a Divestiture Business becomes an Unsold Business;
- (b) the Approved Divestiture Agent has not been appointed within 15 Business Days after the Approved Divestiture Agent resigns or otherwise ceases to act pursuant to clauses 10.14, 10.15 or 10.16; or
- (c) the ACCC has not received a Proposed Divestiture Agent Notice pursuant to clause 10.4;

then clause 10.9 applies.

10.9. If clause 10.8 applies, the ACCC may, at its absolute discretion:

- (a) identify and approve a person as the Approved Divestiture Agent, including approving the draft terms of appointment of the Approved Divestiture Agent, draft business sale agreement and draft marketing and sale plan; and/or
- (b) direct Elanco to appoint a person who the ACCC has deemed is an Approved Divestiture Agent.

#### **Obligations and powers of the Approved Divestiture Agent**

10.10. Elanco must procure that any proposed terms of appointment for the Approved Divestiture Agent include obligations on the Approved Divestiture Agent to:

- (a) divest the Unsold Business only to an Approved Purchaser, at no minimum price;
- (b) maintain his or her independence from Elanco, apart from appointment to the role of Approved Divestiture Agent, including not form any relationship of the types described in paragraph 2(c) of Schedule 3 to this Undertaking with Elanco for the period of his or her appointment;
- (c) not use any confidential information gained through the divestiture of the Unsold Business other than for performing his or her functions as Approved Divestiture Agent;
- (d) follow the Approved Marketing and Sale Plan;
- (e) use his or her best endeavours to enter into a binding agreement for the divestiture of the Unsold Business as quickly as possible using the Approved Business Sale Agreement;
- (f) co-operate with the requests of any Approved Independent Manager or Approved Independent Auditor appointed pursuant to this Undertaking;
- (g) every 30 Business Days following appointment of the Approved Divestiture Agent, provide written reports directly to the ACCC which include:

- (i) information regarding the implementation of the Approved Business Sale Agreement and the Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
  - (ii) information regarding any suggested changes to any Approved Marketing and Sale Plan including any previous changes approved by the ACCC;
  - (iii) an account and explanation of all disbursements, fees and charges incurred by the Approved Divestiture Agent in undertaking his or her duties by month and to the date of the report;
  - (iv) a schedule of agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
  - (v) the efforts made to sell the Unsold Business;
  - (vi) the identity of any advisers engaged;
  - (vii) the identity of any persons expressing interest in the Unsold Business; and
  - (viii) any other information required by the ACCC.
- (h) within 30 Business Days after the completion of the divestiture of the Unsold Business, provide a written report directly to the ACCC which includes a final accounting of:
- (i) any moneys derived from the divestiture of the Unsold Business;
  - (ii) all disbursements, fees and charges incurred by the Approved Divestiture Agent in fulfilling his or her duties; and
  - (iii) all agreed fees of the Approved Divestiture Agent (including the fees of any adviser appointed under clause 10.11(d));
- (i) immediately inform the ACCC of:
- (i) any issues that arise in relation to the implementation of the Approved Sale and Purchase Agreement and any Approved Marketing and Sale Plan;
  - (ii) non-compliance with this Undertaking by any person named in this Undertaking;
  - (iii) any offers for the Unsold Business;
- (j) accept any offer for the Unsold Business upon instruction from Elanco given in accordance with clause 10.13(d); and
- (k) follow any direction given to him or her by the ACCC in relation to the performance of his or her functions as Approved Divestiture Agent pursuant to this Undertaking.

10.11. Elanco must procure that any proposed terms of appointment for the Approved Divestiture Agent contain an irrevocable grant of power of attorney conferring all necessary power and authority on the Approved Divestiture Agent to:

- (a) negotiate with purchasers to divest the Unsold Business on terms considered by the Approved Divestiture Agent in his or her sole discretion to be consistent with this Undertaking and the Approved Marketing and Sale Plan;
  - (b) execute any agreements with the Approved Purchaser required pursuant to clause 6.4;
  - (c) upon instruction pursuant to clause 10.13(d), complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the Approved Business Sale Agreement; and
  - (d) engage any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent.
- 10.12. Any irrevocable power of attorney granted pursuant to clause 10.11 will end upon resignation or termination of the Approved Divestiture Agent in accordance with clauses 10.14, 10.15 and 10.16, or in the event that the Unsold Business is divested in accordance with this Undertaking.

**Elanco's obligations in relation to the Approved Divestiture Agent**

- 10.13. Without limiting its obligations in this Undertaking, Elanco must from the end of the Initial Sale Period:
- (a) comply with and enforce the Approved Terms of Appointment for the Approved Divestiture Agent;
  - (b) maintain and fund the Approved Divestiture Agent to carry out his or her functions; including:
    - (i) indemnifying the Approved Divestiture Agent for any expenses, loss, claim or damage arising directly or indirectly from the performance by the Approved Divestiture Agent of his or her functions as the Approved Divestiture Agent except where such expenses, loss, claim or damage arises out of the gross negligence, fraud, misconduct or breach of duty by the Approved Divestiture Agent;
    - (ii) providing and paying for any external expertise, assistance or advice required by the Approved Divestiture Agent to perform his or her functions as the Approved Divestiture Agent;
    - (iii) paying such fees as are agreed between the Approved Divestiture Agent and Elanco (but not fees contingent on the price to be obtained for the Unsold Business); and
    - (iv) if an agreement as to fees cannot be reached between the Approved Divestiture Agent and Elanco within 15 Business Days after the end of the Initial Sale Period, Elanco agrees to pay such fees as are directed by the ACCC;
  - (c) not interfere with, or otherwise hinder, the Approved Divestiture Agent's ability to carry out his or her functions as the Approved Divestiture Agent, including:

- (i) directing its personnel, including directors, contractors, managers, officers, employees and agents, to act in accordance with this clause 10;
  - (ii) providing access to the facilities, sites or operations of the Unsold Business as required by the Approved Divestiture Agent; and
  - (iii) providing to the Approved Divestiture Agent any information, documents or other assistance he or she considers necessary for carrying out his or her functions as the Approved Divestiture Agent or for reporting to or otherwise advising the ACCC;
- (d) within three Business Days after receiving notice from the ACCC pursuant to clause 6.4, Elanco must instruct the Approved Divestiture Agent to complete the divestiture of the Unsold Business to the Approved Purchaser in accordance with the documents approved by the ACCC pursuant to clause 6.4; and
- (e) other than in accordance with clause 10.13(d) of this Undertaking, not instruct the Approved Divestiture Agent to divest the Unsold Business.

#### **Resignation, revocation or termination of the Approved Divestiture Agent**

- 10.14. Elanco must immediately notify the ACCC in the event that an Approved Divestiture Agent resigns or otherwise stops acting as an Approved Divestiture Agent before the completion of the divestiture of the Unsold Business.
- 10.15. The ACCC may revoke an Approved Divestiture Agent's status as the Approved Divestiture Agent if the ACCC becomes aware that any information provided to it was incorrect, inaccurate or misleading.
- 10.16. The ACCC may approve any proposal by, or alternatively may direct, Elanco to terminate an Approved Divestiture Agent if in the ACCC's view the Approved Divestiture Agent acts inconsistently with the provisions of this Undertaking or the Approved Terms of Appointment.

## **11. Notification of key dates and ACCC requests for information**

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- 11.1. Elanco must notify the ACCC and each Undertaking Appointment in writing of:
- (a) the anticipated date of the Control Date, at least five Business Days before that date;
  - (b) the anticipated date of the completion of the divestiture of a Divestiture Business or Unsold Business (as applicable), at least five Business Days before that date;
  - (c) the occurrence of the Control Date, within one Business Day of that date; and
  - (d) the occurrence of the completion of the divestiture of a Divestiture Business or Unsold Business (as applicable), within one Business Day of that date.
- 11.2. The ACCC may direct Elanco in respect of its compliance with this Undertaking to, and Elanco 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 Elanco'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.
- 11.3. Any direction made by the ACCC under clause 11.2 will be notified to Elanco, in accordance with clause 18.2.
- 11.4. In respect of Elanco's compliance with this Undertaking or an Undertaking Appointment's compliance with its Approved Terms of Appointment, the ACCC may request any Undertaking Appointment to:
  - (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 the Undertaking Appointment'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.
- 11.5. Elanco will use its best endeavours to ensure that an Undertaking Appointment complies with any request from the ACCC in accordance with clause 11.4.
- 11.6. Information furnished, documents and material produced or information given in response to any request or direction from the ACCC under this clause 11 may be used by the ACCC for any purpose consistent with the exercise of its statutory duties.
- 11.7. The ACCC may in its discretion:
  - (a) advise any Undertaking Appointment of any request made by it under this clause 11; and/or
  - (b) provide copies to any Undertaking Appointment of any information furnished, documents and material produced or information given to it under this clause 11.
- 11.8. Nothing in this clause 11 requires the provision of information or documents in respect of which Elanco has a claim of legal professional or other privilege.

## **12. Disclosure of this Undertaking**

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- 12.1. Elanco and the ACCC agree that Schedule 5 will remain confidential until after the completion of the divestiture of the Divestiture Businesses or Unsold Businesses.
- 12.2. Elanco acknowledges that the ACCC may provide each Undertaking Appointment with a copy of this Undertaking which includes unredacted versions of Schedule 5.

- 12.3. Elanco acknowledges that the ACCC may, subject to clause 12.1:
- (a) make this Undertaking publicly available;
  - (b) publish this Undertaking on its Public Section 87B Undertakings Register and Public Mergers Register; and
  - (c) from time to time publicly refer to this Undertaking.
- 12.4. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from disclosing such information as is:
- (a) required by law;
  - (b) permitted by section 155AAA of the Act;
  - (c) necessary for the purpose of enforcement action under section 87B of the Act; or
  - (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.
- 12.5. Nothing in clause 12.1 or the confidential parts of this Undertaking referred to in clause 12.1 prevents the ACCC from using the information contained in this Undertaking for any purpose consistent with its statutory functions and powers.

### **13. Obligation to procure**

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- 13.1. Where the performance of an obligation under this Undertaking requires a Related Body Corporate of Elanco to take or refrain from taking some action, Elanco will procure that Related Body Corporate to take or refrain from taking that action.

### **14. No Derogation**

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- 14.1. 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 Elanco of any term of this Undertaking.
- 14.2. 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 Elanco 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.

### **15. Change of Control**

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- 15.1. In the event that a Change of Control is reasonably expected to occur, Elanco must:
- (a) notify the ACCC of this expectation as soon as practicable; and

- (b) only implement a Change of Control to another person or entity if that person or entity has given a section 87B undertaking to the ACCC that requires it to comply with the same obligations as are imposed on Elanco pursuant to this Undertaking, or on terms that are otherwise acceptable to the ACCC, unless the ACCC has notified Elanco in writing that a section 87B undertaking under this clause is not required.

## **16. Costs**

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- 16.1. Elanco must pay all of its own costs incurred in relation to this Undertaking.

## **17. Jurisdiction**

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- 17.1. Elanco irrevocably submits to the jurisdiction of the Federal Court of Australia in relation to this Undertaking.
- 17.2. Unless and until notified in writing by Elanco to the ACCC of the appointment of another person as agent within Australia, Elanco appoints Elanco Australasia Pty Ltd, as its agent for the purposes of service of process in relation to this Undertaking.

## **18. Notices**

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### **Giving Notices**

- 18.1. Any notice or communication to the ACCC pursuant to this Undertaking must be sent to:

Email address:                   mergers@accc.gov.au  
  Attention: Executive General Manager  
  Merger and Authorisation Review Division

**With a copy sent to:**       mergersru@accc.gov.au  
  Attention: Director, Remedies Unit  
  Coordination and Strategy Branch  
  Merger and Authorisation Review Division

- 18.2. Any notice or communication to Elanco pursuant to this Undertaking must be sent to:

Name: Elanco Australasia Pty Ltd

Address: Level 3, 7 Eden Park Drive, Macquarie Park, NSW, 2113

Email Address:

van\_der\_walt\_gert\_hendrik@elanco.com; and  
ng\_pei\_ling@elanco.com

Fax number: N/A

Attention:

Hendrik Van der Walt, Country Director, ANZ; and

Pei Ling Ng, Assistant General Counsel, APAC, Internal Business Unit, Legal

**With a copy sent to:**

Name: Gilbert + Tobin

Address: Level 35, Tower Two, International Towers, Sydney, 200 Barangaroo Avenue, Barangaroo, NSW 2000

Email Address: eavery@gtlaw.com.au

Fax number: +61 2 9263 4111

Attention: Elizabeth Avery

- 18.3. 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).
- 18.4. If sent by email, notices are taken to be received at the time shown in the email as the time the email was sent.

**Change of contact details**

- 18.5. Elanco must notify the ACCC of a change to its contact details within three Business Days.
- 18.6. Any notice or communication will be sent to the most recently advised contact details and subject to clauses 18.3 and 18.4, will be taken to be received.

**19. Defined terms and interpretation**

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**Definitions in the Dictionary**


- 19.1. A term or expression starting with a capital letter:
- (a) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
  - (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

**Interpretation**

- 19.2. Part 2 of Schedule 1 sets out rules of interpretation for this Undertaking.

## Executed as an Undertaking

Executed by **Elanco Animal Health Incorporated** by its authorised signatory:


Signature of authorised signatory
Michael-Bryant Hicks
Name of authorised signatory (print)
03 July 2020
Date

Executed by **Elanco Australasia Pty Ltd** (ACN 076 745 198) pursuant to section 127(1) of the *Corporations Act 2001* by:



Signature of director	Signature of director
Hendrik Van Der Walt	Michael Zoabi
Name of director (print)	Name of director (print)
Date	Date

## Executed as an Undertaking

Executed by Elanco Animal Health Incorporated by its authorised signatory:

Signature of authorised signatory
Michael-Bryant Hicks
Name of authorised signatory (print)
Date

Executed by Elanco Australasia Pty Ltd (ACN 076 745 198) pursuant to section 127(1) of the Corporations Act 2001 by:

	
Signature of director	Signature of director
Hendrik Van Der Walt	Michael Zoabi
Name of director (print)	Name of director (print)
03 July 2020	05 July 2020
Date	Date

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

8 July 2020

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Date

and signed on behalf of the Commission:



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Chair

8 July 2020

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Date

# Schedule 1 – Dictionary and interpretation

## 1. Dictionary

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**ACCC** means the Australian Competition and Consumer Commission.

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

**Agreements** means any contract, arrangement or understanding, including any contract, arrangement or understanding to renew, amend, vary or extend any contract, arrangement or understanding.

**Approved Audit Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Auditor will audit and report upon compliance with this Undertaking.

**Approved Business Sale Agreement** means the standard form contract for the divestiture of an Unsold Business which has been approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Divestiture Agent** means the person approved by the ACCC and appointed under clause 10 of this Undertaking.

**Approved Independent Auditor** means the person approved by the ACCC and appointed under clause 9 of this Undertaking.

**Approved Independent Manager** means the person approved by the ACCC and appointed under clause 8 of this Undertaking.

**Approved Marketing and Sale Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Divestiture Agent will market and effect the divestiture of an Unsold Business.

**Approved Purchaser** means the person approved by the ACCC under clause 6 of this Undertaking.

**Approved Sale and Purchase Agreement** means, for each Divestiture Business, the contract approved by the ACCC in accordance with the terms of this Undertaking, by which Elanco will divest each Divestiture Business to one or more Approved Purchasers and the Approved Purchasers will acquire the Divestiture Business from Elanco.

**Approved Separation and Management Plan** means the plan approved by the ACCC in accordance with the terms of this Undertaking, by which the Approved Independent Manager will:

- a) separate the Divestiture Businesses from any business to be retained by Elanco; and
- b) manage and operate the Divestiture Businesses independently of Elanco and any retained business.

**Approved Terms of Appointment** means the terms of appointment for the Approved Independent Manager, Approved Independent Auditor or Approved Divestiture Agent, as applicable, as approved by the ACCC in accordance with the terms of this Undertaking.



**Approved Transitional Supply Agreement** means any agreement, for the supply of goods or services (other than Technical Assistance) by Elanco to an Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

**Approved Transitional Technical Assistance Agreement** means any agreement, for the supply of Technical Assistance by Elanco to an Approved Purchaser, approved by the ACCC in accordance with the terms of this Undertaking.

**APVMA** means Australian Pesticides and Veterinary Medicines Authority.

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

**Audit Report** has the meaning given to it in clause 9.11 of this Undertaking.

**Avenge Sheep Lice Business** means the sheep lice and/or blowfly strike treatments sold under the Avenge and Avenge + Fly brands in Australia along with any wholesale supply agreements relating to those products and includes the assets listed in **Table 1: Avenge Sheep Lice Business** in Schedule 4.

**Bayer** has the meaning given in clause 2.2 of this Undertaking.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in the Australian Capital Territory.

**Change of Control** means:

- the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of Elanco to any other person or entity that may impact compliance with this Undertaking in its entirety; or
- the sale or transfer of any assets necessary, or which may be necessary, to enable Elanco to continue to comply with this Undertaking in its entirety.

**Commencement Date** means the date described in clause 3.1 of this Undertaking.

**Companion Animal Business** means the assets listed in **Table 2: Companion Animal Business** in Schedule 4.

**Control Date** means the date on which the Proposed Acquisition is completed.

**Consents** means any Government Consents or Third Party Consents.

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

**Divestiture Business** means each of the businesses described in Schedule 4 to this Undertaking.

**Elanco** has the meaning given in clause 2.1 of this Undertaking.

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

**Establishment Audit** has the meaning given to it in clause 9.12(a) of this Undertaking.

**Government Consents** means any consents from any government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Businesses.

**Holding Company** has the meaning given by section 9 of the Corporations Act.

**Initial Sale Period** is defined in clause 1 of Confidential Schedule 5 to this Undertaking.

**Manufacturing Technology** means all technology, trade secrets, know-how and proprietary information that is necessary to manufacture the products supplied by the relevant Divestiture Business, including processes, specifications, test methods, instructions, master formulas, validation reports, stability data, analytical methods, records of complaints and annual product reviews, owned by and in the possession or control of Elanco.

**Material Change** means any change to the structure, attributes, extent or operations of the Divestiture Businesses or products or services sold by a Divestiture Business that may affect, or impact on, the competitiveness of the Divestiture Businesses.

**Material Contract** means any Agreement that is necessary for the operation of the Divestiture Businesses.

**Proposed Acquisition** is defined in clause 2 of this Undertaking.

**Proposed Divestiture Agent** means a person named in a Proposed Divestiture Notice.

**Proposed Divestiture Agent Notice** has the meaning given to it in clause 10.3 of this Undertaking.

**Proposed Independent Auditor** means a person named in a Proposed Independent Auditor Notice.

**Proposed Independent Auditor Notice** has the meaning given to it in clause 9.2 of this Undertaking.

**Proposed Independent Manager** means a person named in a Proposed Independent Manager Notice.

**Proposed Independent Manager Notice** has the meaning given to it in clause 8.2 of this Undertaking.

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

**Proposed Purchaser Notice** has the meaning given to it in clause 6.2 of this Undertaking.

**Public Mergers Register** means the ACCC's public register of merger clearances, available at [www.accc.gov.au](http://www.accc.gov.au).

**Public Section 87B Undertakings Register** means the ACCC's public register of section 87B undertakings, available at [www.accc.gov.au](http://www.accc.gov.au).

**Related Bodies Corporate** has the meaning given to it by section 50 of the *Corporations Act 2001* (Cth).

**Related Entities** has the meaning given to it by section 9 of the *Corporations Act 2001* (Cth).

**Related Parties** has the meaning given to it by section 228 of the *Corporations Act 2001* (Cth).

**Retained Product(s)** means any product(s) in Australia and worldwide other than those supplied by a Divestiture Business.

**Scientific and Regulatory Materials** means technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and clinical trial material and information (including adverse drug experience information) relating to the Divestiture Businesses.

**Subsidiary** has the meaning given by section 9 of the Corporations Act.

**Technical Assistance** includes advising on technical knowledge documentation, supporting the Approved Purchaser on acquiring specific assets necessary for the ongoing conduct of the Divestiture Businesses, providing staff with suitable experience and skills to assist and/or advice on technical issues, assisting in training for the Approved Purchaser's staff, and providing guidance on regulatory and legal aspects relating to the transfer of or application for licences.

**Third Party Consents** means any Consent from any entity that is not a government agency required for the assignment, novation, sale, sub-licensing or transfer of any assets, licences, permits, approval or contracts required for the operation of the Divestiture Businesses.

**Transferred Personnel** has the meaning given to it in clause 5.7 of this Undertaking.

**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.

**Undertaking Appointment** means the Approved Independent Manager, the Approved Independent Auditor or the Approved Divestiture Agent, as applicable.

**Unsold Business** has the meaning given to it in clause 10.1 of this Undertaking.

## **2. Interpretation**

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- 2.1 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;
  - (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 re-enactment, 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, schedule or attachment is a reference to a clause, part, 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:
  - (i) 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
  - (ii) 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;
- (n) 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;
- (o) the ACCC may authorise the ACCC 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;
- (p) in performing its obligations under this Undertaking, Elanco 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;
- (q) 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.

## Schedule 2 – Proposed Purchaser Notice Form

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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 – [insert name of undertaking]

Address: mergers@acc.gov.au

Attention: Executive General Manager - Merger and Authorisation Review Division

With an email copy sent to:

Address: mergersru@acc.gov.au

Attention: Director, Remedies Unit, Merger Coordination and Strategy Branch,  
Merger and Authorisation Review Division

- 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 Elanco and the Proposed Purchaser or confirmation that no such relationship exists whether within Australia or outside of Australia:
    - (i) Elanco and the Proposed Purchaser are Associated Entities;
    - (ii) Elanco is an Entity Connected with the Proposed Purchaser;
    - (iii) the Proposed Purchaser is an Entity Connected with Elanco;
    - (iv) Elanco and the Proposed Purchaser are Related Entities;
    - (v) Elanco and the Proposed Purchaser are Related Parties;

- (vi) any Related Party, Related Entity or Entity Connected with Elanco is a Related Party, Related Entity or Entity Connected with the Proposed Purchaser;
  - (vii) Elanco 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 of Elanco or has been in the past three years;
  - (ix) Elanco is a supplier of the Proposed Purchaser or has been in the past three years; and
  - (x) any other relationship between Elanco and the Proposed Purchaser that allows one to affect the business decisions of the other.
- (e) a section addressing the following factors, including any information adverse to the Proposed Purchaser, in the power, possession or control of Elanco:
- (i) whether the draft sale and purchase agreement is consistent with this Undertaking;
  - (ii) whether the Proposed Purchaser will complete the transaction as contemplated by the draft sale and purchase agreement;
  - (iii) whether the Proposed Purchaser is of good financial standing;
  - (iv) whether the Proposed Purchaser has an intention to maintain and operate the Divestiture Business as a going concern;
  - (v) whether the Proposed Purchaser is able to conduct the Divestiture Business effectively;
  - (vi) whether the divestiture of the Divestiture Business to the Proposed Purchaser will address any competition concerns of the ACCC, including any relationships (including but not limited to shareholding interests, other proprietary interests, contracts, arrangements or understandings) between the Proposed Purchaser and other entities in a relevant market, and the likely long-term viability and competitiveness of the Divestiture Business under the ownership of the Proposed Purchaser; and
  - (vii) any other matters that may affect the Proposed Purchaser's capacity or ability to acquire or operate the Divestiture Business, such as outstanding legal action or disputes.

3) Please also attach to this form:

- (a) the finalised draft of the sale and purchase agreement for approval by the ACCC in accordance with this Undertaking.
- (b) the finalised draft of any transitional technical assistance agreement for approval by the ACCC in accordance with this Undertaking.
- (c) the finalised draft of any transitional supply agreement for approval by the ACCC in accordance with this Undertaking.
- (d) any documents required to support the information provided by Elanco pursuant to this form.

## Schedule 3 – Undertaking Appointment

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This form sets out the information required by the ACCC in relation to proposed appointment of the following positions under the Undertaking:

- Independent Manager; or
- Independent Auditor; or
- Divestiture Agent;

(the **Undertaking Appointments**).

This form is to be used for each of the above appointments.

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

### Method of Delivery to the ACCC

The completed Undertaking Appointment form, along with the additional requested information is to be provided to the ACCC with the subject line (*proposed* [only include relevant Undertaking Appointment i.e. Independent Auditor/Divestiture Agent/Independent Manager] *Form* – [insert name of undertaking] to the below email addresses:

1) [mergers@acc.gov.au](mailto:mergers@acc.gov.au)

Attention: Executive General Manager  
Merger and Authorisation Review Division

2) **With a copy sent to:**

[mergersru@acc.gov.au](mailto:mergersru@acc.gov.au)

Attention: Director  
Remedies Unit  
Coordination and Strategy Branch  
Merger and Authorisation Review Division

### Information Required

The ACCC requires the following information in order to assess a proposed Independent Auditor, Divestiture Agent or Independent Manager (i.e. the relevant Undertaking Appointment).

1) Proposed Undertaking Appointment Details:

(a) the name of the Proposed Undertaking Appointment; and

(b) the name of the proposed Undertaking Appointment's employer and contact details including:

- Address;
- Contact name;



- Telephone number;
- Other contact details.

2) A submission containing the following information:

- (a) details of the [Undertaking Appointment]'s qualifications and experience relevant to his or her proposed role pursuant to the Undertaking
- (b) the names of the [owner/s and the directors (delete any that do not apply)] of [the Undertaking Appointment's employer]
- (c) details of any of the following types of relationships between Elanco and [the Undertaking Appointment] or [the Undertaking Appointment's employer] or confirmation that no such relationship exists whether within Australia or outside of Australia:
  - (i) Elanco and [the Undertaking Appointment's employer] are Associated Entities
  - (ii) Elanco is an Entity Connected with [the Undertaking Appointment's employer]
  - (iii) [The Undertaking Appointment's employer] is an Entity Connected with Elanco
  - (iv) Elanco and [the Undertaking Appointment's employer] are Related Entities
  - (v) Elanco and [the Undertaking Appointment's employer] are Related Parties
  - (vi) any Related Party, Related Entity or Entity Connected with Elanco is a Related Party, Related Entity or Entity Connected with [the Undertaking Appointment]
  - (vii) Elanco and [the Undertaking Appointment] or [the Undertaking Appointment's employer] have a contractual relationship or had one within the past three years, other than those attached to this form
  - (viii) [the Undertaking Appointment's employer] is a supplier of Elanco or has been in the past three years
  - (ix) Elanco is a supplier of the [the Undertaking Appointment's employer] or has been in the past three years, and
  - (x) any other relationship between Elanco and [the Undertaking Appointment] or [the Undertaking Appointment's employer] that allows one to affect the business decisions of the other, and
- (d) details of any existing or past contractual relationships between the Undertaking Appointment or the Undertaking Appointment's employer and the ACCC within the past three years.

3) A document outlining the terms of appointment for the proposed Undertaking Appointment. This should identify the basis on which fees will be paid, including disclosure of any proposed performance-based fees.

## **Specific Information required for Undertaking Appointments**

The ACCC requires the below information in relation to the relevant Undertaking Appointment.

### ***Proposed Independent Auditor***

- 1) A finalised draft audit plan for the Divestiture Business, drafted by the Proposed Independent Auditor and outlining (to the extent possible) the Proposed Independent Auditor's plans in regard to the establishment audit and the Audit Report.

### ***Proposed Divestiture Agent***

- 1) The finalised draft business sale agreement drafted by the Proposed Divestiture Agent in consultation with Elanco. The draft business sale agreement is to provide for the divestiture of the Unsold Business.
- 2) The Proposed Divestiture Agent's draft marketing and sale plan for the Unsold Business.

### ***Proposed Independent Manager***

- 1) The finalised draft separation and management plan for the Divestiture Business detailing the measures and timing to be implemented by Elanco and the Approved Independent Manager in order to fulfil Elanco's and the Approved Independent Manager's obligations pursuant to this Undertaking. This plan is to be drafted by the Proposed Independent Manager in consultation with Elanco to achieve the objectives of the Undertaking including:
  - (a) the intended mode of operation of the Divestiture Business until completion of its divestiture;
  - (b) separation measures to ensure the Divestiture Business is operated in a manner which is financially and operationally separate from Elanco, including the:
    - (i) separation of the books and records of the Divestiture Business from those of Elanco, to the extent possible without compromising the viability of the Divestiture Business;
    - (ii) severance of the Divestiture Business' participation in any private shared information technology networks, to the extent possible without compromising the viability of the Divestiture Business;
    - (iii) implementation of specific electronic, information and physical security measures to maintain the confidentiality of any competitively sensitive information of the Divestiture Business, to the extent possible without compromising the viability of the Divestiture Business; and
    - (iv) severance of arrangements to share personnel and plant between the Divestiture Business and any businesses to be retained by Elanco, to the extent possible without compromising the viability of the Divestiture Business;
  - (c) details of contracts for the provision of goods or services to the Divestiture Business which will expire after the completion of the divestiture of the Divestiture Business to the Approved Purchaser and the actions which will

be taken to ensure they are replaced, renewed and/or renegotiated on commercial terms favourable to the Divestiture Business;

- (d) personnel planning to maintain appropriate personnel levels and ensure that the Divestiture Business has access to all personnel necessary to operate the Divestiture Business;
- (e) any Material Changes to the Divestiture Business required in order to fulfil Elanco's and the Approved Independent Manager's obligations pursuant to the Undertaking;
- (f) the cooperation required from the Independent Manager with Elanco in relation to the divestiture of the Divestiture Business, including:
  - (i) the activities to be conducted by the Independent Manager that are necessary for the effective operation of the Divestiture Business, having regard to the nature of the Divestiture Business (including the extent to which the Divestiture Business already has a management structure in place prior to the proposed acquisition that will be retained during the hold separate period);
  - (ii) the method by which due diligence information, site visits and personnel interviews by and to prospective purchasers of the Divestiture Business will be managed;
  - (iii) the method by which the Independent Manager and Elanco will preserve the confidentiality of the Divestiture Business' competitively sensitive information from Elanco and its advisers throughout this process; and
  - (iv) a protocol whereby the Approved Independent Manager can provide any information requested by Elanco without disclosing the details of the Divestiture Business' competitively sensitive information to Elanco.

## Schedule 4 – Divestiture Businesses

**Table 1: Avenge Sheep Lice Business**

Avenge Sheep Lice Business	The product Avenge + Fly ( <i>imidacloprid</i> ), as accompanied by the assets, licences, agreements and other tangible and intangible property listed in this <b>Table 1: Avenge Sheep Lice Business</b> .														
Intellectual property	<p><b>Trade marks</b></p> <p>The trade mark listed below will be transferred to the Approved Purchaser.</p> <table border="1" data-bbox="521 600 1167 722"> <thead> <tr> <th data-bbox="521 600 813 663">Trade mark</th> <th data-bbox="813 600 1167 663">Trade mark number</th> </tr> </thead> <tbody> <tr> <td data-bbox="521 663 813 722">AVENGE</td> <td data-bbox="813 663 1167 722">1301523</td> </tr> </tbody> </table> <p><b>Patents</b></p> <p>The following patents will be transferred to the Approved Purchaser.</p> <table border="1" data-bbox="521 842 1167 1089"> <thead> <tr> <th data-bbox="521 842 833 905">Patent name</th> <th data-bbox="833 842 1167 905">Patent number</th> </tr> </thead> <tbody> <tr> <td data-bbox="521 905 833 968">Improved myiasis control</td> <td data-bbox="833 905 1167 968">2015230729</td> </tr> <tr> <td data-bbox="521 968 833 1031">Improved myiasis control</td> <td data-bbox="833 968 1167 1031">2018101849</td> </tr> <tr> <td data-bbox="521 1031 833 1089">Improved myiasis control</td> <td data-bbox="833 1031 1167 1089">2018101848</td> </tr> </tbody> </table> <p><b>Domain names</b></p> <p>The following domain names will be transferred to the Approved Purchaser.</p> <table border="1" data-bbox="521 1209 1167 1331"> <thead> <tr> <th data-bbox="521 1209 1167 1272">Domain name</th> </tr> </thead> <tbody> <tr> <td data-bbox="521 1272 1167 1331">avenge.com.au</td> </tr> </tbody> </table> <p>All books, records and files relating to the prosecution and maintenance of the trade marks, patents and domain names referred to above.</p>	Trade mark	Trade mark number	AVENGE	1301523	Patent name	Patent number	Improved myiasis control	2015230729	Improved myiasis control	2018101849	Improved myiasis control	2018101848	Domain name	avenge.com.au
Trade mark	Trade mark number														
AVENGE	1301523														
Patent name	Patent number														
Improved myiasis control	2015230729														
Improved myiasis control	2018101849														
Improved myiasis control	2018101848														
Domain name															
avenge.com.au															
Regulatory approvals	<p><b>APVMA registration</b></p> <p>The marketing authorisation for the Avenge Sheep Lice Business registered with the APVMA (as listed below) will be transferred to the Approved Purchaser.</p> <table border="1" data-bbox="521 1619 1219 1799"> <thead> <tr> <th data-bbox="521 1619 920 1682">Product name</th> <th data-bbox="920 1619 1219 1682">Registration number</th> </tr> </thead> <tbody> <tr> <td data-bbox="521 1682 920 1799">Avenge + Fly blowfly strike prevention and lousicide for sheep spray-on pour-on</td> <td data-bbox="920 1682 1219 1799">62598</td> </tr> </tbody> </table>	Product name	Registration number	Avenge + Fly blowfly strike prevention and lousicide for sheep spray-on pour-on	62598										
Product name	Registration number														
Avenge + Fly blowfly strike prevention and lousicide for sheep spray-on pour-on	62598														

	<p><b>Permits</b></p> <p>All permits, licences, consents, planning permissions, product registrations, certifications or authorisations issued by a government agency or regulatory authority and related documentation to the extent not listed above and only insofar as required to facilitate the operation of the Avenge Sheep Lice Business.</p> <p><b>Correspondence</b></p> <p>All reports filed with and submissions to, and all other written correspondence with, any regulatory authority owned by and in the possession or control of Elanco as at the date of divestiture which are primarily related to, or required to facilitate the operation of, the Avenge Sheep Lice Business.</p>
Data, books and records	<p><b>Scientific and Regulatory Materials</b></p> <p>Elanco will transfer to the Approved Purchaser any Scientific and Regulatory Materials solely related to the Avenge Sheep Lice Business.</p> <p>Elanco will license to the Approved Purchaser any Scientific and Regulatory Materials that are not transferred to the Approved Purchaser, but which are used in connection with the development, manufacturing, marketing, commercialisation, distribution and sale of the Avenge Sheep Lice Business.</p> <p><b>Manufacturing Technology</b></p> <p>Elanco will transfer to the Approved Purchaser any Manufacturing Technology that is solely related to the Avenge Sheep Lice Business.</p> <p>Elanco will license to the Approved Purchaser any Manufacturing Technology that is not transferred to the Approved Purchaser, but which is used in connection with the development, manufacturing, marketing, commercialisation, distribution and sale of the Avenge Sheep Lice Business.</p>
Customer records	All records of customers (current and historical), price lists, catalogues and mailing lists which are necessary to operate the Avenge Sheep Lice Business.
Business records	All business records (including business, financial and legal records, books, documents, literature, files, information and materials) created by Bayer and necessary to operate the Avenge Sheep Lice Business.
Inventory	All inventory of the Avenge Sheep Lice Business that exists as of the date of divestiture and is not already sold to a third party.
Relevant contractual rights	<p>At the option of the Approved Purchaser, Elanco will transfer, assign or novate to the Approved Purchaser any Material Contract that is necessary for the Avenge Sheep Lice Business (only insofar as it relates to the Avenge Sheep Lice Business).</p> <p>For the avoidance of doubt, insofar as a Material Contract also relates to a Retained Product, Elanco will, at the Approved Purchaser's option, assign or otherwise make available to the Approved Purchaser all such rights under</p>

	<p>the Material Contract as are related to the Avenge Sheep Lice Business, but concurrently may retain similar rights for the purposes of the Retained Product(s).</p>
Other	<p>All merchandising materials relating to the Avenge Sheep Lice Business including flags, signs and banners will be transferred to the Approved Purchaser.</p> <p>At the option of the Approved Purchaser, inventory of power applicators (power dosers) that are necessary for the Avenge Sheep Lice Business, that exist as at the date of divestiture and are not already sold to a third party.</p>

**Table 2: Companion Animal Business**

Companion Animal Business	<p>The rights to the following products:</p> <ul style="list-style-type: none"> <li>- Drontal Dog (<i>praziquantel, pyrantel embonate and febantel</i>)</li> <li>- Drontal Cat (<i>praziquantel and pyrantel embonate</i>)</li> <li>- Profender (<i>praziquantel and emodepside</i>) and</li> <li>- Droncit (<i>praziquantel</i>),</li> </ul> <p>in Australia, as accompanied by the assets, licences, agreements and other tangible and intangible property listed in this <b>Table 2: Companion Animal Business</b>.</p>																														
Intellectual property	<p><b>Trade marks</b></p> <p>The trade marks listed below will be transferred to the Approved Purchaser:</p> <table border="1" data-bbox="521 716 1274 1205"> <thead> <tr> <th>Trade mark</th> <th>Trade mark number</th> </tr> </thead> <tbody> <tr> <td>DRONCIT</td> <td>223010</td> </tr> <tr> <td>DRONCIT SELFTAKE</td> <td>359657</td> </tr> <tr> <td>DRONTAL</td> <td>456771</td> </tr> <tr> <td>DRONTAL ALLWORMER</td> <td>473724</td> </tr> <tr> <td>MANSONIL</td> <td>156524</td> </tr> <tr> <td>PROCOX</td> <td>1329561</td> </tr> <tr> <td>PROFENDER</td> <td>945048</td> </tr> </tbody> </table> <p><b>Patents</b></p> <p>The following patents will be transferred to the Approved Purchaser:</p> <table border="1" data-bbox="521 1325 1274 1877"> <thead> <tr> <th>Patent name</th> <th>Patent number</th> </tr> </thead> <tbody> <tr> <td>Endoparasiticide</td> <td>2006222314</td> </tr> <tr> <td>Prevention of vertical endoparasite infections</td> <td>2005306070</td> </tr> <tr> <td>Solid pharmaceutical formulation with delayed release</td> <td>2009243759</td> </tr> <tr> <td>Endoparasiticial agents</td> <td>2001240605</td> </tr> <tr> <td>Crystal modification of a cyclic depsipeptide having improved strength</td> <td>2002226415</td> </tr> <tr> <td>Tablets with improved acceptance and good storage stability</td> <td>2013361760</td> </tr> </tbody> </table>	Trade mark	Trade mark number	DRONCIT	223010	DRONCIT SELFTAKE	359657	DRONTAL	456771	DRONTAL ALLWORMER	473724	MANSONIL	156524	PROCOX	1329561	PROFENDER	945048	Patent name	Patent number	Endoparasiticide	2006222314	Prevention of vertical endoparasite infections	2005306070	Solid pharmaceutical formulation with delayed release	2009243759	Endoparasiticial agents	2001240605	Crystal modification of a cyclic depsipeptide having improved strength	2002226415	Tablets with improved acceptance and good storage stability	2013361760
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Drontal Large Cat Allwormer	53751
Profender Allwormer for Cats 2.5 to 5kg	59154
Exelpet Vet Series Spot-On All-Wormer for Cats 2.5-5kg	80191
Profender Allwormer for Large Cats 5 to 8kg	59155
Drontal Worming Suspension for Puppies	48642
Paratak Tapewormer for Dogs & Cats	45655
Advantage Drontal Allwormer Chewable for Dogs	81481
Paratak Plus 35 Broad Spectrum Wormer for Large Dogs	50026
Paratak Plus Broad Spectrum Wormer for Dogs	45656
Paratak Plus 40 Broad Spectrum Wormer for Large Dogs	58330
Advantage Drontal for Medium Dogs Allwormer Tablet	80431
BAY-O-PET Drontal Allwormer for Large Dogs	46219
BAY-O-PET Drontal Allwormer Cat Tablets	53243
Advantage Drontal for Cats Allwormer Tablet	80141
Profender Allwormer for Small Cats and Kittens 0.5 to 2.5kg	59153
Advantage Profender Allwormer for Cats 2.5 to 5kg Worms	69033
Exelpet Vet Series Spot-On All-Wormer for Cats 5-8kg	80193

**Permits**

All permits, licences, consents, planning permissions, product registrations, certifications or authorisations issued by a government agency or regulatory authority and related documentation to the extent not listed above and only insofar as required to facilitate the operation of the Companion Animal Business in Australia.

	<p><b>Correspondence</b></p> <p>All reports filed with and submissions to, and all other written correspondence with, any regulatory authority owned by and in the possession or control of Elanco as at the date of divestiture which are primarily related to, or required to facilitate the operation of, the Companion Animal Business in Australia.</p>
Data, books and records	<p><b>Scientific and Regulatory Materials</b></p> <p>Elanco will transfer to the Approved Purchaser any Scientific and Regulatory Materials solely related to the Companion Animal Business in Australia.</p> <p>Elanco will license to the Approved Purchaser any Scientific and Regulatory Materials that are not transferred to the Approved Purchaser, but which are used in connection with the development, manufacturing, marketing, commercialisation, distribution and sale of the Companion Animal Business in Australia.</p> <p><b>Manufacturing Technology</b></p> <p>Elanco will transfer to the Approved Purchaser any Manufacturing Technology that is solely related to the Companion Animal Business in Australia.</p> <p>Elanco will license to the Approved Purchaser any Manufacturing Technology that is not transferred to the Approved Purchaser, but which is used in connection with the development, manufacturing, marketing, commercialisation, distribution and sale of the Companion Animal Business in Australia.</p>
Customer records	<p>All records of customers (current and historical), price lists, catalogues and mailing lists which are necessary to operate the Companion Animal Business in Australia.</p>
Business records	<p>All business records (including business, financial and legal records, books, documents, literature, files, information and materials) created by Bayer and necessary to operate the Companion Animal Business in Australia.</p>
Inventory	<p>All inventory of the Companion Animal Business that exists as of the date of divestiture and is not already sold to a third party (as it relates to Australia).</p>
Relevant contractual rights	<p>At the option of the Approved Purchaser, Elanco will transfer, assign or novate to the Approved Purchaser any Material Contract that is necessary for the Companion Animal Business in Australia (only insofar as it relates to the Companion Animal Business in Australia).</p> <p>For the avoidance of doubt, insofar as a Material Contract also relates to a Retained Product, Elanco will, at the Approved Purchaser's option, assign or otherwise make available to the Approved Purchaser all such rights under the Material Contract as are related to the Companion Animal Business in Australia, but concurrently may retain similar rights for the purposes of the Retained Product(s).</p>

Other	All merchandising materials relating to the Companion Animal Business in Australia including flags, signs and banners will be transferred to the Approved Purchaser.
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**Confidential Schedule 5**

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