



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Sanofi-Aventis Pakistan Limited

Number and date of notice: No. CSD/ARN/354/2016-1991-99 dated December 26, 2016
Date of hearing: January 11, 2017
Present: Mr. Saad Usman, Company Secretary
(Authorized Representative)

ORDER

Under Section 208 read with Section 476 of the Companies Ordinance, 1984

This order shall dispose of the proceedings initiated against the directors including chief executive (*the "Respondents"*) of Sanofi-Aventis Pakistan Limited of (*the "Company"*) through show cause notice dated December 26, 2016 (*the "SCN"*) issued under the provisions of Section 208 read with Section 476 of the Companies Ordinance 1984 (*the "Ordinance"*).

2. Brief facts of the case are that examination of the annual audited accounts of the Company for the year ended December 31, 2015 and information subsequently called from the Company revealed that Sanofi S.A., holds 52.9% shares in the Company, through SECIPE, its wholly owned subsidiary. Sanofi S.A. being the ultimate parent of the Company also holds 100% interest in Sanofi-Aventis Singapore Pte Limited ("*SASL*"). The Company and SASL are therefore associates under section 2(2) of the Ordinance. In response to a query by the Commission, the company informed that it purchases various pharmaceutical products from SASL throughout the year by making regular payments at certain prices (mutually agreed between both parties). Close to the year-end i.e. in the month of December, SASL issues a credit note to the Company on account of certain price adjustments rendering an amount receivable by the Company from SASL. It appeared that this amount receivable by the Company from SASL at various times during the year remained invested in the associate till recovery of the same by the Company. The receivable is settled at the start of the



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subsequent year. These overpayment until subsequent adjustment thereof, by the Company *prima facie* indicated an abnormal trade credit.

Year-wise amounts involved during the last three years are as follows:

Year	2015	2014	2013
Amount (Rs in million)	Nil	158.520	332.496

3. Subsequently, the SCN was issued to the directors of the Company including the chief executive wherein the respondents were called upon to show cause in writing as to why penal action may not be taken against them. In order to provide opportunity of personal hearing, the case was fixed on January 11, 2016. Mr. Saad Usman, Company Secretary, the authorized representative appeared on the date of the hearing and reiterated the earlier submissions made in the written response to the Commission's annual accounts review letter. The authorized representative submitted that there is a 60 days payment period for both the parties and that relevant documents of the transactions between the Company and SASL have already been provided by the Company earlier. It is pertinent to reproduce the Company's submissions from its letter dated October 31, 2016 in response to the Commission's letter dated October 6, 2016:

- i. *The trading between sanofi aventis Singapore (Pte) Ltd (SASL) and the Company .i.e. sanofi-aventis Pakistan limited (SAPL) is governed by the agreement "General Terms & Conditions for the Distribution of Products by Sanofi Affiliates" dated January 1, 2011 ("Agreement").*
- ii. *According to Article 5.3 of the Agreement, the products are purchased by SAPL based on the price list which is signed and accepted by SAPL.*
- iii. *According to the above Article, the parties shall review the prices of products from time to time in order to ensure an arm's length operating profit margin with respect to sales of the products in Pakistan. The Article further mentions that in case of "exceptional circumstances related to the product or the market", the parties will discuss price adjustments in the course of a given calendar year.*
- iv. *In light of the above, we would like to inform that based on the profitability of the concerned products, the Company took the matter up with SASL and as per the Agreement, the adjustments in purchase prices were granted. These exceptional situations are generally*



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related to the product profitability and are not recurring in nature and thus no adjustments were sought during 2015 and 2016 (to date).

- v. *We would further like to inform you that the review of prices are done based on nine months' results of SAPL when the year-end position of the product profitability is quite clear and forecast-able. Please note that the profitability of the products is dependent on diverse factors such as award of public tender, performance of secondary sales in the market place, prevailing exchange rates impacting the landed costs and the quantum of promotional spend on the products and their results.*

In light of the above, we would like to dispel any impression that SAPL provided any abnormal trade credit which can be construed as investment under section 208 of the Companies Ordinance, 1984.

We would further like to reiterate that the SAPL is committed to conducting business in a compliant and transparent manner. The agreements with group companies are duly vetted with the lawyers, and terms approved by the Board of Directors of the Company.

4. It was observed from the copies of documents provided by the Company that Company made purchases aggregating to Rs. 9.63 billion in the years 2013, 2014 and 2015 from SASL. Amounts of Rs. Rs.339.49 million and Rs.159.96 million were recorded in the books by the Company on account of price adjustments as per clause 5.3 of agreement, on December 18, 2013 and December 26, 2014 respectively. The payments for these amounts were received on February 26, 2014 and February 25, 2015 respectively. In light of the credit period of 60 days agreed between the Company and SASL the payments were received with a delay of 10 days and 1 day. It was observed that no price adjustment has been claimed or received by the Company for the year 2015 from SASL.

5. Before proceeding further, it is necessary to advert to the following relevant provisions of section 208 of the Ordinance which provides that:

"(1)...a company shall not make any investment in any of its associated companies or associated undertakings except under the authority of a special resolution which shall indicate the nature period and amount of investment and terms and conditions attached thereto.



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Provided that the return on investment in the form of loan shall not be less than the borrowing cost of investing company.

Explanation: The expression 'investment' shall include loans, advances, equity, by whatever name called, or any amount, which is not in the nature of normal trade credit."

6. In terms of the Commission's notification SRO 751 (I)/2017 dated August 2, 2017, the powers to adjudicate cases under section 208 have been delegated to the Executive Director (Corporate Supervision Department).

7. I have analyzed the facts of the case, provisions of Sections 208 of the Ordinance, arguments put forth in writing and during the hearing by the Authorized Representatives. As per the information provided by the Company, it has not claimed or received any amount against price adjustments with SASL in the years 2015 and there appears to be no receivables from SASL in the subsequent annual accounts for the years 2016 and 2017. The Company has received the amounts against price adjustments for the years ended December 31, 2013 and 2014 in accordance with the agreement signed between the company and SASL although with a slight delay. In light of the information and documents provided by the Company to this office and the assurance of the Company to conduct its business in a compliant and transparent manner, I hereby, conclude the proceedings with a warning to the respondents to ensure compliance with the relevant provisions of law with regard to transactions with associated companies and related parties.

Abid Hussain
Executive Director

Announced:
April 6, 2018
Islamabad