THE HIGH COURT

COMMERCIAL

[2026] IEHC 467

2026 No. 1317 P

(2026 No. 26 COM)

BETWEEN

PIRAMAL CRITICAL CARE B.V.

PLAINTIFF

AND

BREPCO BIOPHARMA LIMITED

DEFENDANT

JUDGMENT of Ms. Justice Eileen Roberts delivered 14 July 2026

Introduction

1. This judgment relates to an application by the plaintiff ("**Piramal**") for interlocutory injunctive relief seeking to restrain the defendant ("**Brepco**") from implementing or giving effect to two separate termination notices served by Brepco. The termination notices purported to terminate (with different effect) the commercial arrangements between the

parties for the commercialisation of the drug Neoatricon® (also described in this judgment as the "**Produc**t") in the EU, Norway and the United Kingdom. Piramal also seeks to restrain Brepco from appointing any replacement commercialisation party pending the determination of these proceedings.

2. The first termination notice in respect of which injunctive relief is sought is dated 4 March 2026 (the "**March Notice**"). It purported to terminate the commercial arrangements between Piramal and Brepco, comprising the Licence Agreement dated 7 October 2022 (as amended) (the "**Licence Agreement**") and the Manufacture and Supply Agreement dated 24 July 2023 (the "**Supply Agreement**") in respect of the 25 countries defined in the March Notice as the "*Terminated Countries*"[1] with effect from 13 March 2026. While the March Notice was a single document, it terminated each licence for each country individually.

3. The March Notice was served in reliance on clause 14.2 of the Licence Agreement which will be considered in further detail in this judgment. In basic terms however clause 14.2 permits Brepco to terminate the commercial arrangements on a country-by-country basis in the event that Piramal does not launch the Product in the applicable country or countries by specified time periods which run from the date of the granting of the relevant Licensed Territory Marketing Authorisation. There are limited exceptions to this termination provision, as will be discussed.

4. On 12 March 2026, being the day before the expiry of the notice period specified in the March Notice, Piramal issued these proceedings and applied for ex parte injunctive relief which was granted by Cregan J. in the terms sought and on the basis of the usual undertaking as to damages being furnished. From that time Brepco was unable to enforce

[1] Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia and Spain.

the March Notice. However, the commercial relationship between the parties remained in place for the UK, Germany and Italy where Piramal *had* launched the Product within the relevant contracted time periods. Those 3 jurisdictions were not included in the Terminated Countries specified in the March Notice.

5. On 7 April 2026 Brepco served the second termination notice (the "**April Notice**"), without prejudice to the validity of the March Notice. The April Notice purported to terminate the commercial relationship with effect from 27 May 2026 for all the 29 countries covered by the Licence Agreement. Accordingly, the April Notice applies not only to the 25 Terminated Countries (and Sweden which had been terminated previously but is not the subject of challenge in this injunction application)[2] but also for Germany, the UK and Italy. The stated basis of termination was different – being a termination under clause 14.7.2 of the Licence Agreement permitting termination on 30 days' notice by either party if the other party "*becomes insolvent*". This provision will also be considered in some detail in this judgment.

6. On 28 April 2026 these proceedings were transferred to the Commercial List and Piramal was permitted to amend its proceedings (and injunction application) to include the April Notice. The interlocutory application was heard by this court over 2 days on 16 and 17 June 2026.

7. In addition to the usual arguments regarding the appropriateness of interlocutory relief, there is an argument advanced by Brepco that the interim relief was obtained in circumstances amounting to material non-disclosure and that the interlocutory relief should also be refused on that basis alone.

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[2] On 18 June 2025, Brepco served a termination notice purporting to terminate Piramal's rights in respect of Sweden with effect from 1 July 2025 (the "**Swedish Termination Notice**"). Piramal disputes the validity of the Swedish Termination Notice in these proceedings but it does not form part of the interlocutory relief sought in the present application.

The Parties and Key Background

8. Piramal is a limited company incorporated under the laws of the Netherlands. It carries on business as a pharmaceutical enterprise engaged, among other things, in the commercialisation, marketing, distribution and sale of pharmaceutical and healthcare products. It is a subsidiary of Piramal Pharma Limited, a company which according to its latest financial accounts has over 8,500 employees, a total income of approximately €850 million and a business which includes hundreds of newly launched pharmaceutical products as well as established products. Piramal Pharma Limited is one part of the Piramal Group, an Indian industrial conglomerate based in Mumbai with operations in over 30 countries and a brand presence in more than 100 markets. I am advised that the Piramal Group has a valuation of over US$10 billion.

9. Brepco is a small private limited company, incorporated in Ireland. It is engaged in the development of pharmaceutical products but its business is focused on the production and sale of a single product – Neoatricon®. Following a period of 15 years research and clinical trials, Brepco developed Neoatricon® which is a pre-diluted and ready to use paediatric formulation of Dopamine Hydrochloride used for the treatment of hypotension in seriously ill neonates, infants and older children up to 18 years of age.

10. Brepco received EU marketing authorisation for the Product on 27 May 2024 – this is the most relevant date for present purposes. A product licence for the UK was obtained in February 2025 and for Norway in May 2025.

11. Under the EU marketing licence the European Medicines Agency ("**EMA**") will not accept any application for an identical product within 8 years from approval and will not approve an identical product for at least two additional years. Therefore Brepco has a 10-year exclusivity window within which to commercialise the Product in the EU. After May

2034 it will be possible for competitors to obtain a licence to sell a generic version of the Product in the EU.[3]

12. Brepco did not itself have the ability to commercialise the Product it developed and accordingly it contracted with Piramal as a suitable experienced entity to achieve commercialisation across the EU within a short period of the Product being authorised.

The Licence Agreement

13. On 7 October 2022, (in advance of EMA approval), Piramal and Brepco entered into the Licence Agreement which granted Piramal an exclusive, sub-licensable, royalty bearing licence to the Brepco intellectual property rights, marketing authorisations and related materials in respect of the Product. Piramal was granted exclusive rights in respect of the commercialisation, marketing, storage, distribution and sale of the Product in the European Union, Norway and the United Kingdom (the "**Licensed Territory**"), comprising a total of 29 countries. The Licence Agreement also refers to Piramal's rights in relation to the Product in South Africa but such rights are different in a number of material respects and are not encompassed in this application. Regardless of the outcome of this application, the parties will continue to deal with each other in relation to the commercialisation of the Product in South Africa.

14. Piramal is required by the Licence Agreement to make certain payments to Brepco including various fixed payments linked to the achievement of certain milestones, profit share payments on a country by country basis (on a sliding scale changing with time) and a consulting fee. To date, €4.2 million has been paid by Piramal to Brepco. The profit share payments start with 80% in favour of Piramal for the first 2 years following the First Commercial Sale of the Product in each applicable country, reducing to 70% for the next 2

[3] Because Norway is part of the European Economic Area (EEA), its pharmaceutical regulatory framework is harmonised with EU legislation

years and then 60% after 4 years. Piramal is also entitled to retain a Marketing Fee as defined. The Licence Agreement therefore envisages that both parties will share in the profits generated by the sale of the Product in each country – but Piramal retains the greater level of profits on sales within each country, particularly in the early years.

15. The Licence Agreement is subject to Irish law and jurisdiction and contains an entire agreement clause. Clause 17.10 provides that: "*No variation or amendment of this Agreement will be effective unless it is made in writing and signed by each Party's authorised representative*". No such amendment was ever prepared.

16. The Licence Agreement remains in effect on a country-by-country basis from 7 October 2022 until the tenth anniversary date of the First Commercial Sale[4] of the Product in each country of the Licensed Territory (clause 14.1). Thereafter the Licence Agreement shall be renewed automatically on a country-by-country basis for 5 years unless notice is given by either party not less than two years in advance of the expiry of the applicable five year period. It is worth noting that the Term of the Licence Agreement is therefore longer than the exclusivity period available to Brepco on foot of the EMA authorisation.

17. Clause 6.1 of the Licence Agreement provides that each party shall perform their respective obligations in a commercially reasonable, diligent, timely and collaborative manner and in compliance with all Applicable Laws.

18. Clause 9.3 required Piramal to use "Commercially Reasonable Efforts" to launch the Product in the Licensed Territories within a commercially reasonable time after the relevant market authorisation had been granted and, in any event, "*not later than*" 12 months following the granting of the Licensed Territory Marketing Authorisation in Germany, the Netherlands and Sweden, and 18 months following the granting of the

[4] Defined to mean "the first sale of the Product following the granting of a Licensed Territory Marketing Authorisation in a country or countries of the Licensed Territory by [Piramal], its Affiliates or Distributors to a Third Party..." and excludes unsolicited requests under named patient programmes under clause 6.2.

Licensed Territory Marketing Authorisation in each other country of the Licensed Territory.

19. Various termination provisions (some available to both parties) are included in the Licence Agreement including a right to terminate for an uncured material breach, for failure to make certain payments or on the grounds of insolvency. A specific right of termination of particular relevance to the March Notice is the right of Brepco to terminate under clause 14.2 where the Product is not launched in a particular country within the launch period specified.

20. Clause 14.2 of the Licence Agreement provides in material part as follows:

"*Brepco shall have the right to terminate this Agreement on notice in writing to [Piramal] on a country-by-country basis with respect to the applicable country or countries of the Licensed Territory in the event that [Piramal] does not launch the Product within (i) twelve (12) months following the granting of the Licensed Territory Marketing Authorisation in Germany, the Netherlands and Sweden, and (ii) eighteen (18) months following the granting of the Licensed Territory Marketing Authorisation in each other country of the Licensed Territory, provided that the termination rights as set out under above (sic) shall not apply if the cause of [Piramal's] failure to comply with the foregoing provisions is solely due to a failure by Brepco to supply Product pursuant to the provisions of the Supply Agreement or as a result of Force Majeure.*"

21. Clause 14.2 makes no mention of "Commercially Reasonable Efforts".

22. The Licensed Territory Marketing Authorisation for the EU countries issued on 27 May 2024. Accordingly, the relevant 12 month period (for Germany, the Netherlands and Sweden) expired on 27 May 2025 and the 18 month period (for all other countries in the Licensed Territory) expired on 27 November 2025.

23. Unsurprisingly, the Licence Agreement contains many provisions regarding how the parties will engage on matters such as pharmacovigilance, medical affairs, safety and recalls. The Licence Agreement also provides for the establishment of a joint steering committee to deal with development, manufacturing and regulatory concerns as well as sales, marketing and distribution issues.

The Supply Agreement

24. The Licence Agreement contemplated (at clause 8) that Brepco would be responsible for the manufacture and exclusive supply of the Product to Piramal and that Piramal would exclusively purchase its requirements of the Product from Brepco.

25. On 24 July 2023, the parties entered into the Supply Agreement under which (at clause 3.1) Brepco agreed to supply the Product to Piramal on an exclusive basis for the Licensed Territory and South Africa and Piramal agreed to take supplies of the Product on an exclusive basis, subject to the terms of the Supply Agreement.

26. Under the Supply Agreement, Piramal is required to provide Brepco with a forecast of its anticipated orders of the Product and to provide purchase orders at least three months before the delivery date. Brepco is obliged to make the Product available by specified delivery dates (clause 3.11), to provide certificates of analysis confirming compliance with product specifications (clause 4.7), and to ensure that product batches have sufficient remaining shelf life when delivered (clause 4.8).

27. The Supply Agreement also expressly records that the Product is supplied to Brepco by Maiva Pharma Pvt Limited ("**Maiva**"), a company incorporated in India, pursuant to a separate agreement between Brepco and Maiva dated 20 September 2019.

Arguments in relation to the March Notice

28. It is common case that Piramal did not launch, (and indeed has not to date launched), the Product in the Licensed Territories within the relevant time periods specified, save for Germany, the UK and Italy. In simple terms relevant to this application, Piramal did not meet the contractually agreed timescales as it failed to launch the Product by 27 May 2025 in the Netherlands, and failed to launch the Product by 27 November 2025 in the other 24 Terminated Countries.

29. Brepco says that Piramal's performance has been disastrous. Rather than launching in 29 countries within 18 months of authorisation, they say that Piramal has launched in only 3 countries and in most countries (at least 23 out of 29), Piramal has taken either no steps, or minimal steps, to prepare for launch and has provided no sales forecasts nor placed any orders for the Product. Save in relation to Spain and the Netherlands, Piramal does not say when, if ever, it intends to launch in any of the other Terminated Countries. Even where the Product has been launched (Germany, the UK and Italy), Piramal's sales have, Brepco says, been dismal.

30. This fact, Brepco argues, clearly entitled it to serve the March Notice in circumstances where the cause of such a failure was not related at all, let alone "*solely*" due, to a failure by Brepco to supply the Product to Piramal. Brepco says the termination language is unambiguous – and was so negotiated for very good reason mindful of the limited period available to it to assert exclusivity over the Product. It is not sufficient under clause 14.2 that Brepco's failure to supply the Product has been one of several causes of the failure to launch in time; it must be the "sole" cause. The second exception to an entitlement to terminate under clause 14.2 is where the failure to launch is "*as a result of Force Majeure*".[5] Brepco says that Piramal does not, in affidavits or submissions, rely on Force

[5] Force Majeure is defined in relatively broad terms in clause 16 of the Licence Agreement by reference to circumstances beyond the reasonable control of a party for any reason, including specified circumstances set out..

Majeure, although it is pleaded in bald terms. No particulars of Force Majeure have been outlined and no Force Majeure notice was ever served as is envisaged by the terms of clause 16 of the Licence Agreement.

31. Piramal argues that the failure to supply Product pursuant to the provisions of the Supply Agreement must mean not just "supply" simpliciter but rather the failure to supply product that meets the quality and other standards specified in the Supply Agreement. The court agrees that that appears to be a reasonable interpretation, but it does not avail Piramal where there has in fact been no orders placed for any Product.

32. While admitting that the time periods in the Licence Agreement have not been met for 26 of the 29 Licensed Territories, Piramal argues that they agreed a different commercialisation strategy with Brepco which Brepco is now estopped from denying. That strategy, they say, was a phased EU launch strategy under which the largest markets, namely Germany, the UK, Italy, Spain and France (the "**EU5**"), were prioritised before expansion into smaller markets. Piramal says this strategy was both commercially rational and consistent with standard industry practice. It allowed Piramal to focus its resources initially on the largest and most established pharmaceutical markets, where the potential for uptake and return was greatest. It also avoided any possible adverse impact of a premature launch in a smaller jurisdiction at a low or non-reimbursed price which would have adverse consequences for pricing across Europe or a launch which might result in the Product being inappropriately benchmarked against generic dopamine.

33. The phased approach was also, Piramal says, necessitated by product availability constraints. Sven Toms in his affidavit sworn 24 April 2026 (at para. 15) avers that "… *as a matter of practical reality, the Plaintiff simply did not have stable, saleable supply sufficient to support concurrent launches across multiple jurisdictions. In those circumstances, prioritising Germany, Italy and the UK – where regulatory and pricing*

work was furthest advanced and where supply would have the greatest impact – was operationally unavoidable and commercially rational."

34. Whatever may have been the rationale, it is clear from the affidavit of Sven Toms sworn 24 April 2026 (at para. 19) that Piramal "… *intentionally sequenced execution until EU5 pricing was stabilised, supply was reliable, and reference-pricing risk had been mitigated*."

35. Piramal argue that a necessary consequence of the phased strategy was a knock-on effect on the timing of launch and commercialisation in later sequenced markets. That may be correct but the real question at issue is whether the phased strategy of itself made it clear or inevitable that the later sequenced countries would be launched not only after the EU5 but also outside the contractually agreed timescales.

36. Piramal say that delays within Brepco's sphere of responsibility affecting supply, release, documentation, shelf life or product availability in the earlier-priority markets were liable to have downstream effects on the timing of launch and commercialisation of later-priority markets. This is however a very generalised statement and does not sit easily with the express wording of clause 14.2 which limits the exceptions to Brepco's right to terminate for late launch to the two specific scenarios previously outlined.

37. In response, Brepco admits that Piramal communicated an intention to launch in "phases". Paul Breen says at para. 16 of his second affidavit sworn 11 May 2026 that "*any phased or sequenced approach to launch was unobjectionable in principle*, *but only provided that [Piramal] complied with the timeframes set out in relation to all territories*."

38. Paul Breen avers at paras. 17 and 19 of that affidavit that: "*It is not the case, however, that [Piramal] ever communicated – still less that [Brepco] agreed – that a launch in the five largest territories would be a pre-condition to a launch in every other territory, or that for so long as [Piramal] had failed to launch in one of the EU5 territories, [Piramal] would*

be entitled to choose to delay launch in the 23 other territories for years beyond the contractually agreed timeframes…. That is something [Brepco] would never have countenanced. It would have been completely inconsistent with the Licence Agreement", and at para. 19 that: "*It would have been a completely different thing for [Piramal] to have told [Brepco] that 'our plan is to launch most quickly in Germany, the UK, France, Italy and Spain – but if we are delayed in any of those 5 countries, that will delay the launch in the other 24 countries beyond the contractually agreed timeframes'. That was never said and it would never have been agreed.*"

39. Brepco's position therefore is that it was not made aware of any plan to defer the launch in 24 countries until the Product was established in the EU5 countries, and beyond the timeframes expressly set out in the Licence Agreement. Brepco denies that it ever agreed to or acquiesced in any delays in launching beyond the contractual timeframes. Brepco has exhibited documentary evidence showing that since March 2025 Brepco repeatedly expressed serious concern in writing about prospective and actual delays in launching across the EU within the agreed timeframes. Brepco reiterated its right to terminate if launch dates were not met, and it actually exercised its clause 14.2 rights for Sweden in June 2025. I am not satisfied on the basis of the affidavit evidence that Piramal has in fact yet identified with precision the representation they allege Brepco accepted which, according to Piramal, has the effect of amending the terms of the Licence Agreement and the Supply Agreement insofar as launch time limits are concerned.

Arguments in relation to the April Notice

40. The April Notice was served pursuant to clause 14.7.2 of the Licence Agreement which provides as follows:

"*Either Party may terminate this Agreement by giving at least thirty (30) Business Days' prior written notice to the other Party if: […]*

a Party becomes insolvent, or if an interim order is applied for or made, or a voluntary arrangement approved, or a voluntary arrangement is proposed or approved or an administration order is made, or a receiver or administrative receiver is appointed of any of a Party's assets or undertaking or a winding-up resolution or petition is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding-up petition or make a winding-up order, or other similar or equivalent action is taken against or by a Party by reason of its insolvency or in consequence of debt, or if a Party makes any arrangement with its creditors."

41. Relying on the disjunctive nature of the various circumstances prescribed by this clause, Brepco says, and I agree, that it is sufficient if any one of the envisaged circumstances is found to arise. There are no "formal" insolvency petitions or applications in place against Piramal and therefore the particular circumstance relied on by Brepco to ground the April Notice is the first one, namely that Piramal has "*become insolvent*".

42. Piramal strongly denies that it is insolvent and says it was and remains solvent. It argues that the April Notice is nothing more than a contrived attempt to bolster Brepco's position in these proceedings and to find a way to terminate Piramal's rights in those 3 jurisdictions where it launched the Product within the contemplated contracted period. Piramal note that the April Notice was not foreshadowed by any correspondence expressing concern about Piramal's solvency.

43. Furthermore Piramal says that the wording of this provision "*becomes insolvent*" is self-evidently future-facing or future-looking and it envisages a situation where, following the entry into the agreement, one party becomes insolvent. Breco accepts the clause is

forward looking but disagrees that the state of insolvency must arise between the date of the execution of the contract and the date on which the insolvency was raised.

44. Brepco says that Piramal has a €24 million balance sheet deficit; massive ongoing losses (€6 million in 2025); and €13 million in liabilities falling due this year with no apparent resources to repay them. Brepco argues that Piramal has provided no evidence of any legal right to continued financial support from group entities and that Piramal's insolvency is evidenced by its failure or delay in paying Brepco what it is owed.

45. There is a dispute as to whether certain milestone payments have become payable and of course that dispute cannot be resolved in this interlocutory application. I would not however treat a party as necessarily insolvent simply because it delayed or failed to make certain disputed payments.

46. It is accepted that Piramal has a balance sheet deficit. However, as confirmed by Mr Toms, Piramal's liabilities are long-term intercompany loans which do not fall due for repayment until 2030 and are renewable. The Piramal audited and filed financial statements for the year ending 31 December 2024 note that the parent company, Piramal Pharma, will continue to make available such funds as Piramal requires to continue on a going-concern basis. The auditors have audited Piramal on a going-concern basis and thereby made an independent assessment that Piramal has sufficient funds to meet its liabilities as they fall due.[6] Furthermore there is nothing to suggest that Piramal has "become" insolvent since it executed the Licence Agreement (noting the wording in clause 14.7.2). On the contrary, the financial statements show that Piramal had a balance sheet

[6] This is so for the 2024 audited accounts. Furthermore the Piramal Annual Report 2025 referring to the financial statements as at 31 December 2025 note that: "*The directors have made an assessment and confirm that the Company will have sufficient funds, either through its operations, financing facilities available to it or funding from its ultimate parent company, Piramal Pharma Limited, to meet its liabilities as they fall due for that period…. Piramal Pharma Limited has confirmed to continue to make available such funds to meet its liabilities as they fall due for the period of at least 12 months from the approval of the financial statements. Therefore, the management has prepared the financial statements on a going concern basis.*"

deficit when the Licence Agreement was executed and it appears no issue was ever raised by Brepco until it served the April Notice.

47. In fact, the allegation of insolvency on the part of Piramal is relied on by Brepco as the foundation for four different arguments it advances. It is the basis for the April Notice. It is used to suggest that damages would be an inadequate remedy for Brepco if the injunctions were granted and Brepco prevails at trial. It is relied on to support the proposition that the undertaking as to damages given by Mr Agrawal on behalf of Piramal is insufficient or of no value. And it is used to support the allegation of material non-disclosure at the ex parte stage.

48. There is a dispute as to the contractual meaning of "insolvent" and that will have to be resolved at trial. There is no evidence before the court however that Piramal is unable to pay its debts as they fall due. The court has evidence of the continuing parent support by Piramal Group as noted by the independent auditors and the fact that the balance sheet issues are explained by inter-company debts which do not yet fall due for payment. While there are certainly some legitimate concerns raised about the financial health of Piramal, I am not persuaded that they would necessarily meet the status of "insolvency" as envisaged in clause 14.7.2 – although that will of course be a matter for the trial judge.

The Law

49. As this is an application for interlocutory injunctions heard on affidavit the court cannot determine any factual disputes at this stage. There have been very many judgments delivered in cases where interlocutory relief has been sought. Parties, as in this case, often refer to various judgments in support of their position that relief should be granted or refused. Of course there are general principles which the court should apply in every case. It is important to observe however that each case will turn on its own particular facts and

this is an area of the law where decisions in one case cannot easily be applied in all respects to another case.

50. It is worth noting in this case that there are in fact two injunctions sought. Both arise between the same parties and seek to prevent termination of the same commercial relationship. However, there are two separate termination notices which cover different countries and which have been issued on an entirely different basis from each other. Termination takes place on a country-by-country basis and is challengeable on a country-by-country basis. It will be necessary to consider the March Notice and the April Notice separately in determining the balance of convenience, including the adequacy of damages, in each case.

51. The leading Supreme court authority of *Merck Sharp & Dohme Corporation v. Clonmel Healthcare Limited* [2020] IR 1, [2019] IESC 65, emphasises the essential flexibility of injunctive relief. The essential role of the court is to endeavour to regulate the period between the commencement of the proceedings and the trial of the action in the most pragmatic and fair way possible which causes the least risk of injustice to the respective parties.

52. In its detailed assessment of the correct approach to applications for injunctive relief the Supreme Court in *Merck* noted that the preferable approach is to consider the adequacy of damages as part of the balance of convenience, or the balance of justice. O'Donnell J. (as he then was) stated at para. 48 that: "*An injunction should not be granted merely because an applicant can tick the relevant boxes of arguable case, inadequacy of damages, and ability to provide an undertaking as to damages, and by the same token should not be refused merely because damages may be awarded at trial.*"

53. There is a considerable dispute in the present case as to whether the injunctions sought are prohibitory or mandatory in nature. The relevance of the latter distinction is, of course, the

standard of the threshold test to be applied in determining whether the plaintiff meets the criteria to obtain the requested injunctive relief .

The standard to be applied

54. Piramal says the injunctions sought are prohibitory injunctions seeking to restrain Brepco from giving effect to the March Notice and the April Notice. Piramal argues that what the injunctions seek to do pending the trial of the action is to maintain the *status quo* that subsisted at the date the proceedings were issued. That status quo has subsisted for the past three-and-a-half years whereby the parties were contractually bound under the Licence Agreement and the Supply Agreement.

55. That being so, Piramal says the injunctive relief it seeks attracts the lower standard of a fair or serious issue to be tried and they say that they have raised such an issue in respect of both the March Notice and the April Notice.

56. Brepco disagrees. It says that the injunctions are mandatory in effect – compelling Brepco to continue to deal on an exclusive basis with Piramal pending the outcome of these proceedings. Brepco asserts that the standard to be applied in this application is therefore the higher standard of a "strong case, likely to succeed at trial" (see *Maha Lingam v HSE* [2005] IESC 89) rather than the lower "fair or serious issue to be tried". It is accepted by all parties that the "serious issue to be tried" test is a low threshold for a plaintiff to meet.[7]

57. In support of its argument Brepco says that the effect of the injunctions is not passive, but active – requiring the performance of positive obligations under the Licence Agreement and the Supply Agreement including that the parties actively engage on product forecasting, pharmacovigilance, product recalls, and ongoing participation in the Joint Steering

[7] Described by Collins J. in *Betty Martin* (para. 42): "*It may be useful to regard this threshold as akin to the threshold that applies where a party seeks to dismiss a claim against it pursuant to the inherent jurisdiction ….*"

Committee meetings and governance as well as cooperation in relation to the prosecution of any infringement actions concerning Brepco's intellectual property.

58. When analysing whether an interlocutory injunction is truly prohibitory or mandatory, a court does not simply look at the words used in the notice of motion. Rather the court looks at the substance of what the injunctive orders seek to do. As Murray J. noted in *Ryanair v Skyscanner* [2022] IECA 64 (at para. 33 (ii)):

"In determining whether an order is 'mandatory' for this purpose, the court is concerned to identify the substance of the relief sought, the matter therefore not being judged on the basis of the phraseology of the order. Any positive assertion can be expressed as a negative. The converse is also true…."

59. Murray J. continues at para. 36 of his judgment to note that: *"The reason the cases usually impose a higher standard on a person seeking relief that is properly described as mandatory is that the relief is, for that reason, generally more intrusive, usually imposes a greater burden on the party made subject to it and because it will often be more difficult to undo the consequences of a mandatory order than a prohibitory order, should the defendant prevail at trial."*

60. Piramal says that if the orders they seek are granted this would prohibit Brepco from terminating the Licence Agreement or the Supply Agreement and also prohibit them from entering into new third party agreements. Piramal says that the orders would not bind the parties together or compel them to act in some forced liaison beyond the terms upon which they have already agreed under the Licence Agreement and the Supply Agreement. Piramal points out that in *Ryanair* the injunction sought would have required Skyscanner to undertake obligations they actually had no obligation to undertake before the injunction was sought, and that this is not analogous to the present situation.

61. In support of its argument on this point Piramal relies on the Supreme Court decision in *Ó Murchú trading as Talknology v. Eircell Limited* [2001] IESC 15. In that case the High Court had refused an injunction the effect of which would have been to compel Eircell to continue supplying "ready to go" mobile phones to Mr Ó Murchú and to treat him as an authorised agent for that purpose. Mr Justice Geoghegan upheld the decision of the High Court. He stated at p. 5 that: "*Although the injunctions sought in this case may arguably be classified as "mandatory" they are not of that type. They are directed simply towards retaining the status quo pending the outcome of the action, which is the normal purpose of a prohibitive injunction."*

62. Brepco sought to distinguish that case on its facts arguing that it concerned the continued supply of phones in a comparatively simple trading relationship. In the present case they argue that the reliefs sought will compel Brepco to remain in a much more burdensome, exclusive collaboration involving manufacture obligations, exclusive supply obligations, regulatory cooperation and day-to-day coordination.

63. Brepco relies on the High Court decision in *O'Leary v Volkswagen Group Ireland Limited* [2013] IEHC 318 and the comments of Moriarty J. who said at para. 14: "*While it is submitted for the Plaintiff that the substantive relief sought is actually prohibitory rather than mandatory, what is sought is in essence a mandatory order, requiring the Defendant to hold to and observe a relationship it contends has lawfully ended.*" In distinguishing *Ó Murchú*, Moriarty J. said "… *the ratio of [Geoghegan J.'s] decision, upholding the High Court refusal of interlocutory relief, was based on his agreement with the High Court that damages were a sufficient remedy. Accordingly, it may reasonably be said that the initial remarks were primarily obiter, but in any event, it seems to me in the present instance that what the Plaintiff seeks by way of principal relief cannot be viewed as other than mandatory."*

64. Counsel for Piramal urged the court not to be persuaded by that authority noting that it is a High Court rather than a Supreme Court authority; that it arose against the backdrop of an entitlement to terminate dealership contracts pursuant to a European regulation and that there was significant delay on the part of the plaintiff in that case in challenging the termination notice. He also urged the court to distinguish the line of authority dealing with "keep open" provisions in trading leases arguing that the essential point in those cases was that the courts would not require a defendant/tenant to continue to trade at a loss. In this case, by contrast, Piramal says that the injunctions sought would not compel Brepco to trade at a loss or to undertake any commercial activity which they do not otherwise intend to undertake. I note however that Brepco say that they are losing money in having to continue to deal exclusively with Piramal, particularly in those countries where no launch activity has taken place at all. There were various minutes opened to the court where, for example, comments were made such as "*Brepco expressed concern that current dynamics could "put them out of business" and that they are "not feeling supported".*

65. A recent case in which the threshold issue arose for consideration was the decision of Mulcahy J. in *Benson Fuels Limited v Flogas Ireland Limited* [2023] IEHC 214. In that case an injunction was sought restraining the defendant from terminating its exclusive distribution agreement with the plaintiff. Mulcahy J. concluded that the applicable threshold in that case was the lower one of a serious issue to be tried – noting that the Court of Appeal had proceeded on this basis (without it appears any legal argument on the point) in *Betty Martin Financial Services Limited v EBS DAC* [2019] IECA 327.

66. Central to that decision of Mulchay J. however was his finding on the facts that: "*Set against the background of a 40-year relationship pursuant to which the Plaintiff has distributed the Defendant's products without any difficulty arising, as is apparent even from the Defendant's letter purporting to terminate the relationship, it seems to me that the*

injunction sought here is an injunction directed towards maintaining the status quo and is not one which should be assessed against the higher threshold of a strong case likely to succeed." Neither the longevity of dealing or the quality of relationship are mirrored in the present case.

67. Brepco seeks to distinguish *Betty Martin* pointing out that, unlike Piramal, that case involved a sole family business that was found likely to be put out of business if the injunction was granted. Furthermore there was no complaint about the agent's competence or performance. In contrast in the present case there are serious complaints about performance and no allegation that Piramal would be put out of business by the grant of an injunction given that Piramal commercialises hundreds of various products throughout the world.

68. In this particular case there are arguments either way on the relevant threshold to be applied and that question is, in my view, a very finely balanced one. It is true that the substance of the injunction from a legal perspective is to maintain the status quo and keep the parties bound to the agreements they were bound to before seeking the injunction. The substance of the injunction sought from a practical perspective however, unlike in both *Benson* and *Betty Martin,* appears in this case to arguably go beyond seeking merely to keep the status quo in place. In this case Piramal has not already launched the Product in the Terminated Countries. Rather it wishes, through the injunctive relief sought, to be given the opportunity to launch the Product in countries it has not yet done so. There is no real history of performance to be preserved, at least where the Product has not actually been launched. Here there is a fractured relationship asserted and a pre-existing documented performance dispute. The injunctions sought will tie the parties together exclusively to commercialise a complex, technical and highly regulated Product. It is not simply that Brepco will have to continue to supply the Product to Piramal as before (save

perhaps in the UK, Germany and Italy where it is launched). Rather, Brepco will have to carry out actions it has not to date been required to carry out to cooperate with Piramal on every aspect of the commercialisation in order to get the Product launched in the Terminated Countries under the March Notice (although I accept that *legally* these are not new obligations). It is not simply that Brepco will have to allow Piramal to continue to carry on its business in the same compliant way it has done for years – there is an allegation here of effectively no performance at all in multiple countries. For those reasons I believe, on balance, that in practical terms, the essential substance of the injunctive relief sought for most countries is mandatory in nature attracting the requirement for Piramal as the party seeking same to satisfy the threshold of a strong case likely to succeed at trial. Arguably however the lower threshold applies to those 3 countries where the product has been launched and the parties are merely continuing to deal with each other as before.

69. In my view, and for the reasons already set out, Piramal would meet the higher threshold in respect of the April Notice regarding the arguments it raises on insolvency. I am not convinced however that Piramal would meet that threshold for the March Notice – particularly for those countries covered by the March Notice where no evidence at all was proffered of any orders being placed for the Product before the expiry of the contractually agreed launch time limits. The primary argument raised by Piramal in that regard is estoppel by convention which requires not just proof of the implementation of a phased approach prioritising the EU5 (which is accepted) but also that the inevitable and agreed consequence of this was to defer launch in all other countries (without apparently any new time limit being agreed) until all the EU5 launches were completed. The latter point is strongly denied by Brepco. The terms of the Licence Agreement were specifically negotiated to require that any delay be "solely caused" by the failure of Brepco to supply the Product. That is a high bar to meet. Those negotiated terms were never expressly

amended. I am doubtful that Piramal has a strong chance of succeeding in its argument that their failure to launch the Product in the Terminated Countries was solely due to a failure on the part of Brepco to supply the Product or that Brepco should now be estopped from relying on the express terms of the Licence Agreement.

70. However I recognise that Piramal have some arguments to make in respect of the March Notice and it could not be said at this point that their arguments have no prospect of success. If the lower threshold applies I am satisfied that Piramal would meet that threshold. In case I am incorrect in my view of the relevant threshold in this case I do not propose to decide the matter on the basis of a failure to meet the higher threshold on the March Notice. Rather I will now consider (in respect of both the March Notice and the April Notice), the balance of convenience including the adequacy of damages, referencing each Notice individually.

The balance of convenience

71. The court has to consider in this case whether the least risk of injustice lies in granting the injunctions sought, which would have the effect of continuing the contractual relationship pending a trial, or refusing the injunctions sought. All of this arises in the context of the highly competitive global pharmaceutical market and an ever decreasing time period of exclusivity within which Brepco can commercialise the Product.

72. I have to consider in that regard for how long any injunction might be required to remain in place. The pleadings are at a stage where there is a defence and counterclaim delivered and the parties are back before the Commercial Court on 20 July for further directions. At that stage directions will be made for the exchange of letters seeking voluntary discovery. It is not clear how long the discovery process will take or what further applications might be brought in the context of trial preparation. While early hearing dates are available, if discovery is delayed or protracted (a process unfortunately all too familiar), that will delay

matters overall. In the absence of significant delays in trial preparation, it is fair to assume that the matter might be ready for trial in perhaps mid 2027 after which the parties would await a judgment on the termination issue. An estimate of a further 12-15 months from now before matters are finalised in the Commercial Court therefore appears a reasonable assumption, although I appreciate that the period to completion could extend to 24 months if matters are delayed by various discovery or other procedural challenges between now and trial. Of course there may be further delays with appeals.

73. I also need to consider the respective positions of the parties. Piramal is an established pharmaceutical business with global connections in the pharmaceutical industry. They have already expended time, effort and money (estimated at €4.2m licence payments and €1m marketing activity) in launching the Product and have in fact launched it in 3 countries.

74. Paul Breen and Seamus O'Loan were the two people behind Brepco who, since 2008, have funded the research personally, worked without salary for many years and who eventually achieved the EMA authorisation and other authorisations for the Product. They obviously have an interest in recovering their investment and making a return in the limited time period available to them to do so on an exclusive basis. They have averred to having an emotional connection to the Product that goes beyond a purely commercial return.

75. Under the Licence Agreement and the Supply Agreement Brepco is entirely dependent on Piramal to commercialise the Product in multiple jurisdictions. Piramal committed to country-by-country timelines for launch. Piramal is depending on Brepco to supply the Product to it. The parties, each with the benefit of legal advice, agreed strict timelines and conditions for the exclusive commercialisation of the Product.

76. There is no evidence before the court in respect of 23 countries that Brepco failed to meet any order for the Product as no orders were in fact placed. No specifics have been provided of any Force Majeure matters potentially relevant.

77. In relation to France (one of the EU5), although preparatory work was done for a launch, it also appears no orders were placed for the Product and that Piramal took the decision not to launch there as do so "*... would materially undermine or destroy the value of the Product*" (para. 72 of Mr Toms' affidavit). Mr Toms avers at paragraphs 69 and 70 of his affidavit that:

"69. In substance, therefore, the French route then available would have required launch at a price point far below the premium pricing contemplated for the Product and, in the Plaintiff's view, would have been commercially destructive.

70. The Plaintiff did not reach that view lightly."

78. It is suggested by Mr Toms that safety data was requested from Brepco (but not supplied) to enable a review to be undertaken on whether a better outcome could be obtained on therapeutic value assessment and pricing in France. This, he says, shows that the delay in launching in France cannot properly be laid at Piramal's door. Brepco's Mr Breen denies this – he says safety data was provided in March 2023 and that all of it is publicly available. He says that Piramal has failed to obtain pricing approval in France, failed to provide any sales forecasts or failed to order any Product.

79. Mr Breen believes there are other roadblocks to launch in France and he avers that "*any suggestion that [Piramal's] failure to launch in France was solely caused by [Brepco's] failure to supply the product, or by any other failures by [Brepco], is completely untrue and unsupported by any evidence*" (see paras. 87-90 Paul Breen affidavit sworn 27 March 2026). While I accept that there is a conflict of evidence in relation to who is responsible for the delayed launch in France – and I cannot resolve that dispute in this application – I do not believe that Piramal has clearly linked this dispute to any failure by Brepco to supply the Product. Furthermore, the logical conclusion of Piramal's position is that it has no obligation at all to launch in any smaller country until launch has completed in the EU5.

In those circumstances the lack of clarity on the timing of any launch date in France has a very significant impact on Brepco's ability to commercialise the Product in the Terminated Countries.

80. That leaves Spain and the Netherlands in respect of which some evidence was provided by Piramal concerning the launch delays. In both countries some steps were taken towards launch and Product was ordered but there was not (and still is not) any launch of the Product there. There is disputed evidence of a supply issue in Spain, and in particular whether a purchase order that had been placed by Piramal had or had not been cancelled by it. In relation to the Netherlands there is disputed evidence regarding the placing of some Product on hold by Piramal. These are not issues the court can determine in this application. The estoppel argument however means there is, according to Piramal, no obligation to yet launch in the Netherlands (which is not one of the EU5). There is no outstanding order placed for Spain, regardless of who may have cancelled the first one.

81. If the injunctions are granted then legally the *status quo* will continue. That is generally a persuasive reason to grant an injunction – however the court needs to consider what this would mean in practice for the parties in this case.

The status quo

82. Leaving the *status quo* in place would mean that commercialisation activity would continue by Piramal in Germany, Italy and the UK and they would be entitled to exclusively commercialise the Product in the other 25 Terminated Countries. There is no clarity on what activity would actually be likely to occur in those 25 countries or the timing of that (including in France, being one of the EU5), although there appears to have been some preliminary work towards a launch of the Product in both the Netherlands and in Spain. Brepco would be unable to advance its commercialisation ambitions with a third party in any of those 25 countries notwithstanding that the 10 year widow for exclusive

commercialisation is running all the time against Brepco. This situation arises against the reality that there is no dispute that the agreed contractual timing for launch has not been met for any of those 25 countries and in the teeth of a very specific negotiated clause each party agreed with the benefit of legal advice that termination in those circumstances would be permitted save where the "*cause of [Piramal's] failure to comply … is solely due to a failure by Brepco to supply Product pursuant to the provisions of the Supply Agreement or as a result of Force Majeure"* (emphasis added).

83. Piramal argues that it is clear from Mr Breen's affidavit that, if Brepco is free to do so, it intends to proceed immediately to enter into new agreements with new service providers (Eversana and Sciensus). That will, I accept, alter the status quo, compared with the position that would exist if the Licence Agreement and the Supply Agreement were to remain in place. This is a significant factor in my overall assessment of the balance of justice. In reality if the existing interim injunction is discharged, or a further injunction is refused on foot of the April Notice, that will immediately lead to a significant change in the status quo which is likely to survive after the trial of the action whatever is the result – leaving Piramal at best to a remedy in damages rather than a right to commercialise the Product in line with the Licence Agreement and the Supply Agreement. That shift in the status quo is particularly significant bearing in mind the time, money and effort expended by Piramal to date in launching the Product.

84. On the other hand, the *status quo* leaves Brepco tied to a party who has engaged in no commercialisation activity in many countries at a point when over 2 years of the 10 year window has already passed and where the conclusion of this matter could be up to another 2 years away. That is almost half the available commercialisation window. If Brepco cannot commercialise the Product in various countries within the 10 years available to it then it is also unlikely to be able to meet the competition of generic brands at the end of

that period – so its losses may continue. If the injunctions are refused then Brepco would be free to contract with third parties in relation to the 25 Terminated Countries (for the March Notice) or for those countries as well as Italy, Germany and the UK (for the April Notice).

Other arguments

85. Piramal says that if the injunctions are granted then Brepco will continue to receive the monies that it is due under the Licence Agreement pending trial, because the Licence Agreement will continue to subsist. Therefore Brepco will continue to get its 20% of profit from the net sales of Product, and it will get its milestone payment if the requirements for the milestone payment under clause 10.1.5 are triggered. That however is relatively cold comfort to Brepco who complain that there are no sales at all in most jurisdictions, and no sign of future sales there on which any profits might be generated for them.

86. Brepco says the court should not grant injunctions where compliance with those obligations may require the supervision of a court – as they say would be necessary here. It is true that a court should be slow to grant injunctions in either service contracts or trading contracts because of the difficulty of assessing whether such injunctions are being obeyed on an ongoing basis.

87. In *Benson* the evidence was that the commercial relationship between the parties had operated successfully for over 40 years and indeed had continued to operate after expiry of a 2018 agreement. Mulcahy J. found in the circumstances that there was little evidence that ongoing supervision would be required by the court if the relationship was to continue pending trial. Similarly in *Betty Martin* the court noted at para. 100 that "… *the Agent is an entity whose competence, diligence and/or integrity has never been impugned by the EBS. There is no reason to believe that the three branches will not continue to operate successfully pending trial in the event that the injunctions remain in place".*

88. This factual situation is not on all fours with the present case. However, the reality is that whatever happens to this application the parties will continue to deal with each other in relation to South Africa (where Piramal has an irrevocable licence) and will not continue to deal with each other in Sweden where Brepco will commercialise the Product with a third party (as Piramal's entitlements have been terminated and are not challenged by way of injunction). Counsel for Brepco argues that the consequences of having to continue to deal with Piramal pursuant to a court injunction are however different. Brepco in that scenario faces the prospect not just of being in breach of contract for failure to supply but rather in breach of a court order that requires Brepco to supply Piramal with Product – thus exposing Brepco to a contempt application.

89. Overall, I am not persuaded that the parties will be unable to continue to deal effectively with each other if that is a consequence of this court's order. While the agreements are highly technical, the parties are sophisticated and well advised. I believe the concerns regarding a requirement for the court to have to supervise the ongoing relationship are perhaps overstated and that consideration does not appear to me to materially impact the other components of the balance of justice.

Adequacy of damages

90. Of course in this case damages will be claimed by the successful party if it is ultimately established that they were incorrectly injuncted. Insofar as arguments were made by the parties as to the inadequacy of damages, the following summarises their respective positions.

91. Brepco says that damages cannot compensate them adequately if the injunctions are granted. First, they allege that they have an emotional connection to the Product, as its developer Mr Breen avers at para. 186 of his first affidavit sworn 27 March 2026: "*... for myself and the Defendant's other employees, this business is about more than just money. While of course*

we want the business to succeed and to make a financial return, we also have a huge emotional investment in the drug that we have worked hard to create over more than a decade and a half. We want to see Neoatricon® widely adopted because we firmly believe that it has the potential to save the lives of seriously ill babies and children… we have made a huge personal and financial investment in building this business up. We take enormous pride in what we have achieved and we do not wish to see it destroyed by an injunction, even if we would be left with a very large damages claim against the Plaintiff."

92. Having said that, Mr Breen avers at para. 180 of his first affidavit that Brepco "… *estimates that the financial damage caused by any injunction would be very substantial, potentially in the region of €19 million for each year of delay*."

93. Second, Mr Breen avers in his second affidavit that Brepco "has no source of revenue save for sales of Neoatricon and payments under the Licence Agreement". He says at para. 151 that if the current situation remains in place "… *there is a very real risk that the Defendant will be unable to continue to cover its costs and would become cash flow insolvent*."

94. Third, Brepco points to what it says are the precarious financial circumstances of Piramal if it were ordered to pay damages to Brepco, as well as the real difficulty in calculating those damages, particularly if no launch activity at all occurs in certain countries and poor commercialisation occurs elsewhere. Brepco thus disputes the reality of it recovering damages from Piramal if Brepco is left to recover damages rather than commercialise the Product itself.

95. If Brepco were ultimately entitled to an award of damages having been wrongly restrained by injunction from terminating the agreements, Brepco would be entitled to call on Piramal's undertaking as to damages which has been given to the court. It is well established that the court can refuse to grant an interlocutory injunction, in the exercise of its overall discretion, if it is not satisfied that the party giving the undertaking as to

damages will be in a position to honour it. The party who seeks to challenge the adequacy of the undertaking as to damages bears the onus of demonstrating the inadequacy of the undertaking when viewed against the losses they contend will be suffered.

96. Undoubtedly Piramal's accounts display a difficult balance sheet position showing that Piramal's assets exceed its liabilities and that it is dependent on parent support to continue as a going concern. I have to take into account however the parent commitment of funding support noted in the financial accounts, the parent confirmation that inter-company loans will not be called in as well as the recent provision to the court of an undertaking as to damages directly from the parent company Piramal Pharma Limited. This parent company is based in India and that fact alone would complicate enforcement should that prove necessary – but this is not of itself a reason to discount an undertaking offered by a very substantial global company.

97. Piramal says the loss that Brepco asserts it will suffer between now and any trial is highly speculative. The recovery of any loss is predicated on Brepco being able to launch the Product in other territories more successfully than Piramal could do if the existing agreements continue.

98. That is undoubtedly so but Brepco wish to have the option to change arrangements to commercialise the Product in countries where Piramal has failed to launch. Paul Breen avers at paragraph 143 of his first affidavit that Brepco's "*... urgent objective is to progress the commercialisation of Neoatricon in the Terminated Countries as quickly as possible. There is a finite 10-year period during which [Brepco] has the exclusive right to sell Neoatricon. [Piramal] has already wasted almost two years by doing virtually nothing in the Terminated Countries. Every single month is extremely valuable from [Brepco's] perspective."*

99. Piramal says this averment does not sit easily with the fact that there is little or no evidence before the court of Brepco having taken any steps, urgent or otherwise, to progress the

commercialisation of Neoatricon in Sweden. Piramal argues that the same reality would arise if Brepco was to now seek to progress the commercialisation of Neoatricon in other countries.

100. Brepco has determined, rightly or wrongly, that its own plans would achieve a better outcome for the commercialisation of the Product than Piramal will achieve if they remain performing as they have done to date. If Brepco is wrong on that and Piramal are wrongly injuncted then Brepco will most certainly face a damages claim.

101. On the other side of the argument, Piramal argues that if it is relegated to its remedy in damages there is no reality to it ever recovering damages from Brepco, whose last financial accounts show that it had cash reserves of just over one million euro. Piramal says that the measure of expected damages would be many multiples of this if they succeed. The counterargument is of course that Brepco would be expected to improve its cash position if it was in fact able to commercialise the Product.

Conclusion on the Injunctive Relief

102. In summary therefore, if the injunctions are granted;

The agreements remain in place and Brepco must continue to use Piramal for all countries until trial. Time is ticking away – most prejudicially against Brepco. There is no clarity on when commercialisation will take place. In fact the EU5 argument appears to indefinitely postpone launching in other countries. If Brepco win at trial they would be entitled to damages from Piramal. While they have raised concerns about recovery, it is likely they would recover on foot of the parent guarantee. However damages alone might not compensate for the emotional aspect of the development of their only product. Furthermore Brepco may not financially withstand a further period of no

commercialisation in the Terminated Countries. If Brepco can itself launch it may suffer no loss.

103. If the injunctions are not granted:

Brepco is free to move ahead with third parties. Piramal loses the opportunity to commercialise and is consigned to a remedy in damages if they win. The injunction has likely permanently altered the outcome. The court needs to consider the strength of the Piramal case to help evaluate the risk on this outcome. Piramal's interest in the Product is a financial one and it is one of many products it commercialises worldwide. Piramal could only realistically recover damages if Brepco made money commercialising the Product, but there is also an ongoing income stream involving Piramal regarding the Product in South Africa.

104. Given the relative strength of the insolvency argument by Piramal and the fact that they met the launch dates in Germany, the UK and Italy, in my view the balance of justice favours granting the injunction sought in respect of the April Notice insofar as those countries are concerned.

105. Different considerations arise however in relation to the March Notice. Not only is the strength of challenge to the termination less strong in my view but there is little indication from Piramal as to when commercialisation will happen in the remaining countries in which launch has not taken place. Indeed it appears from the EU5 argument that Piramal does not see itself as having any obligation to commercialise in any other country until the Product is first launched in all the EU5 countries. The situation, in particular in relation to France (in respect of which no orders have been placed for Product) indicates that this alone could cause a lengthy delay in launching in other countries. From a financial perspective Brepco may not be able to withstand the consequences of such a further delay. Brepco's interest in launching the Product throughout the Licensed Territories goes

beyond a purely financial interest. In circumstances where the window of opportunity is closing for Brepco and given that their agreement specifically negotiated an exit for them if launch dates were not met save in limited circumstances, the balance of justice appears to favour permitting Brepco to now make its own arrangements to launch in those countries. Of course Brepco may be unsuccessful or only moderately successful in doing so – but that will be a matter for Brepco. If Piramal ultimately wins and Brepco faces a potential claim for damages there are some concerns regarding Brepco's ability to pay such damages. However Brepco will earn money if the Product is commercialised and there will of course be ongoing commercialisation (involving Piramal) in 3 of the larger jurisdictions as well as in South Africa. This will create an income stream and should result in an ability to recover damages if ultimately Piramal is injuncted but is successful at trial. I therefore refuse to grant the injunction sought in respect of the March Notice.

Non-disclosure

106. Finally I will deal with the separate issue of material non-disclosure to the court at ex parte stage alleged by Brepco.

107. One such matter which it is alleged ought to have been disclosed was that Piramal had not placed any orders for the Product in the majority of the Licensed Territories. Another matter that was not disclosed (but is now apparent from filed affidavits in the interlocutory hearing) is that Piramal itself made a strategic decision to defer launch in multiple countries. The final alleged non-disclosure was that Piramal could not pay on foot of the undertaking it gave to the court. Brepco lay the blame for this alleged "material non-disclosure" not with the lawyers but with Piramal itself.

108. Of course any party seeking ex parte relief owes the court a duty of candour and utmost good faith. Full and fair disclosure is necessary. A court can set aside an order made ex

parte where that order was obtained on foot of an affidavit that is misleading, even if not intentionally so, on the basis that the facts that ought to have been disclosed were material to the exercise of the court's discretion. The test of materiality is an objective one with materiality to be construed in a reasonable and not excessive manner (see *Bambrick v Cobley* [2006] 1 ILRM 81). The jurisdiction to set aside orders for material non-disclosure is penal in nature and the courts should have regard to the proportionality between the punishment and the offence. Even where material non-disclosure is found, the court has a discretion to refuse relief or to set aside relief already granted but is not necessarily obliged to do so. Much will depend on the particular circumstances including the materiality of the facts not disclosed and whether there is any evidence of a deliberate attempt to mislead.

109. Piramal, through Mr Agrawal's affidavit at para. 22, advised the court at ex parte stage that Piramal "*placed orders with [Brepco] for Product in relation to the Spanish and Netherlands markets, with the intention that the Product would be launched in these markets in April/May 2026. However, [Brepco] has refused to supply the Product and has unilaterally cancelled the purchase orders placed in relation to Spain and the Netherlands*". While Piramal did not disclose that no orders were placed for other countries it would I believe have been clear to the court that as only 2 countries were identified, there were no orders placed for the other countries in the Licensed Territories.

110. It appears from a review of the affidavit at ex parte stage that Piramal did not refer at all to the EU5 strategy, that is now advanced as its main challenge to the March Notice. Instead Piramal relied on a general claim (at para. 56) that Brepco could not rely upon contractual launch timelines as a basis for termination in circumstances where delays arose from matters within Brepco's sphere of responsibility in the supply chain or where Brepco's own conduct materially hindered Piramal's ability to perform its obligations. I do not believe the failure to disclose the EU5 strategy amounts to culpable material non-

disclosure by Piramal. Indeed it would potentially have been more favourable to Piramal to disclose this argument. The court is however entitled to take note that this now central plank of Piramal's case was not articulated at ex parte stage.

111. On the undertaking point, in *Nolan v Dildar* [2020] IEHC 243 Barniville J. (as he then was) noted at para. 239 that "... *a party giving an undertaking as to damages has an obligation to draw to the attention of the court any material change for the worse in its financial position".*

112. Mr Breen says at para. 100 of his second affidavit that the failure on the part of Piramal to put evidence before the Court at the ex parte stage of its financial position constitutes "*a very clear and very serious breach of the plaintiff's disclosure obligations [which] is, in and of itself, sufficient to warrant the discharge of the injunctions.*"

113. This averment is predicated on the proposition that Piramal is insolvent, which I do not believe is established on the available evidence. Secondly it is predicated on what I believe is an incorrect proposition that every subsidiary company which depends on parental support must in every case in which it is seeking ex parte relief disclose its financial statements and details of its financial position to the court. A party is entitled to later challenge the adequacy of any undertaking as to damages given by a plaintiff or to look for an undertaking to be fortified bearing in mind the likely level of damages it might be required to cover. Indeed that happened in the present case where financial statements were later exhibited and a parent company guarantee was offered to the court to fortify the previous Piramal undertaking.

114. I do not consider in this case that there was any material non-disclosure or attempt to conceal information or to mislead the court at the ex parte stage, such as would, of itself, require the interim injunction to be set aside for that reason alone.

Orders to be made

115. For the reasons outlined, I refuse injunctive relief in relation to the March Notice and discharge the interim relief in place.

116. For the reasons outlined, I grant injunctive relief in relation to the April Notice, in respect of Germany, the UK and Italy, and confirm that Brepco should be restrained, whether by itself, its servants or agents from implementing or giving effect to the April Notice in respect of those countries. In practical terms this will allow Piramal to continue to exclusively commercialise the Product in those 3 jurisdictions in which it has already been launched. The March Notice terminates Piramal's exclusivity for the Terminated Countries.

117. In relation to legal costs, my *provisional* view is that no order should be made. Each party was both successful and unsuccessful in the totality of the applications overall. I will however permit the parties to make submissions to me in the event that they wish to advocate for a different order on costs.

118. I note that the parties are due to appear before this court for further directions on 20 July 2026 and they will have an opportunity at that stage to advise of any further matters which arise from this judgment. The court will expect the parties to co-operate to bring on the trial expeditiously in light of the injunctive relief in place and I will fix directions with that objective in mind on 20 July.