

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

_____)
In the Matter of)
)
MYLAN INC.,)
a corporation;)
)
AGILA SPECIALTIES GLOBAL PTE. LIMITED,)
a corporation;)
)
AGILA SPECIALTIES PRIVATE LIMITED,)
a corporation;)
)
and)
)
STRIDES ARCOLAB LIMITED,)
a corporation.)
_____)

Docket No. C-4413

ORDER TO MAINTAIN ASSETS

Respondents, their attorneys, and counsel for the Commission having thereafter executed

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. **AMylan@** means Mylan Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Mylan Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Mylan shall include Agila.
- B. “Agila” means: (i) Agila Specialties Global Pte. Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Agila Specialties Global Pte. Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each; and (ii) Agila Specialties Private Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Agila Specialties Private Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Strides” means Strides Arcolab Limited, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Strides Arcolab Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. **ARespondents@** means Mylan, Agila, and Strides, individually and collectively. After the Acquisition, “Respondents” means Mylan and Agila, individually and collectively.
- E. **ACommission@** means the Federal Trade Commission.
- F. **ADecision and Order@** means the:
 - 1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
 - 2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.

- G. A Divestiture Product Business(es)[@] means the Business of Respondents within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products to the extent that such Business is owned, controlled, or managed by the Respondents and the assets related to such Business to the extent such assets are owned by, controlled by, managed by, or licensed to, the Respondents.

- H. An Interim Monitor[@] means any monitor appointed pursuant to Paragraph III of this Order to

E. Respondents shall:

1. for each Divestiture Product, for a period of six (6) months from the Closing Date or until the hiring of twenty (20) Divestiture Product Core Employees by the relevant Acquirer, whichever occurs earlier, provide the relevant Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by such Acquirer. Each of these periods is hereinafter referred to as the Divestiture Product Core Employee Access Period(s);
2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide such Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay;
3. during the Divestiture Product Employee Access Period, not interfere with the hiring or employing by the Acquirer of Divestiture Product Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Divestiture Product Core Employee who receives a written offer of employment from the Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.E.3. shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of such employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer to such employee.

F. Pending divestiture of the Divestiture Product Assets, Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the Business of the Divestiture Products other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to each respective Acquirer under the terms of any related Remedial Agreement; or

- c. applicable Law;
 - 2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer of the particular Divestiture Assets, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed);
 - 3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Divestiture Products to the employees associated with the Business related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) of the Divestiture Products; and
 - 4. institute procedures and requirements to ensure that the above-described employees:
 - a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- G. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents Mylan and Agila shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondent Mylan's and Respondent Agila's personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.
- H. Respondents Mylan and Agila shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondent Mylan shall provide a copy of the notification to the relevant Acquirer. Respondent Mylan shall maintain complete records of all such notifications at Respondent Mylan's registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondent Mylan shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondent Mylan and Respondent Agila's personnel.
- I. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.

- J. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Product Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (An Interim Monitor) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondent Mylan has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10)

3. The Interim Monitor shall serve until the date of completion by the Respondents of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of:
 - a. the date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture that Divestiture Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of the Respondents Mylan and Agila;
 - b. the date the Acquirer of that Divestiture Product notifies the Commission and Respondent Mylan of its intention to abandon its efforts to manufacture such Divestiture Product; or
 - c. the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the relevant Acquirer has abandoned its efforts to manufacture such Divestiture Product;

provided, however, that, with respect to each Divestiture Product, the Interim Monitor's service shall not exceed five (5) years from the Order Date;

provided further, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after the divestiture of all of the Divestiture Product Assets, as required by and described in the Decision and Order, has been completed and the Interim Monitor, in consultation with Commission staff and the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: September 26, 2013