

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

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

In the Matter of)
)
)
 ACTAVIS, INC.,)
 a corporation;)
) Docket No. C-4414
 and)
)
)
 WARNER CHILCOTT PLC,)
 a public limited company.)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission, having initiated an investigation of the proposed acquisition by Respondent Actavis of the voting securities of Respondent Warner Chilcott plc, hereinafter Respondents, having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C., and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order or Consent Agreement, containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R., the Commission hereby issues its Complaint, makes the following jurisdictional findings and

issues this Order to Maintain Assets:

1. Respondent Actavis is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address located at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, NJ 07054.
2. Respondent Warner Chilcott plc is a corporation organized, existing and doing business under and by virtue of the laws of the Republic of Ireland with its headquarters address located at 1 Grand Canal Square, Docklands, Dublin 2, Ireland.
3. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED

- E. **Decision 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.
- F. **Divestiture Product Business** 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.
- G. **Anterim Monitor** means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- H. **Orders** means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final and effective:

- A. Until Respondent Actavis fully transfers and delivers each of the respective Divestiture Product Assets to an Acquirer, Respondent Actavis shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Businesses except for ordinary wear and tear. Respondent Actavis shall not sell, transfer, encumber or otherwise impair the Divestiture Product Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the related Divestiture Product Businesses.
- B. Until Respondent Actavis fully transfers and delivers each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use its best efforts to preserve the existing relationships with the

Divestiture Product Businesses. Respondent Actavis's responsibilities shall include, but are not limited to, the following:

1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Divestiture Product Business;
 2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Divestiture Product Assets to an Acquirer;
 4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Divestiture Products that were marketed or sold by Respondents prior to May 19, 2013, at the related High Volume Accounts;
 5. making available for use by each of the respective Divestiture Product Businesses funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business;
 6. providing each of the respective Divestiture Product Businesses with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of such Divestiture Product Business; and
 7. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such business by Respondents as of the date the Consent Agreement was signed by Respondents.
- C. Until Respondent Actavis fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondent Actavis shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.
- D. For each of the Divestiture Products that is a Contract Manufacture Product, until the Closing Date for the related Divestiture Product Assets, Respondent Actavis shall provide all the related Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the relevant Divestiture Products consistent

with past practices and as may be necessary to preserve the marketability, viability and competitiveness of such Divestiture Products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Actavis until the Closing Date for the divestiture the above-described assets has occurred, including regularly scheduled raises,

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;
 4. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information that was in the ownership or possession of Respondent Actavis prior to the Acquisition that is related to any patent infringement suit filed by Respondent Warner Chilcott against Respondent Actavis (and other prospective ANDA holder(s)) related to the Risedronate Products or the Estradiol Group Two Products to any of the Respondents' employees who: (i) was an employee of Respondent Warner Chilcott prior to the Acquisition; or (ii) is involved in the prosecution of any such law suit on behalf Respondents against any other prospective ANDA holder(s); and
 5. 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, Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondents' personnel to all of its employees who:

1. are covered by Paragraph II.F.3;
 2. were directly involved in the research and Development of any of the Divestiture Products; and/or
 3. are or were directly involved any patent infringement suit filed by Respondent Warner Chilcott against Respondent Actavis (and other prospective ANDA holder(s)) related to the Risedronate Products or the Estradiol Group Two Products.
- H. Respondents shall give the above-described notification by e-mail with return receipt requested

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 Respondent 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 Respondent 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 Respondent compliance with the Orders.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent Actavis, 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 Respondent Actavis, 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 any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.
- H. Respondents shall report to the Interim Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by each Acquirer with respect to the performance of Respondent obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders; *provided, however*, beginning ninety (90) days after Respondents have filed their final report pursuant to Paragraph VII.B. of the Decision and Order, and ninety (90) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by each Acquirer toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement, *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

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 materials, documents, records, and information in the possession, custody, or control of the Respondent.

VII.

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

- A. three (3) days after the Commission with ~~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.