## UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:	Timothy J. Muris, C	hairman
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Sheila F. Anthony Mozelle W. Thompson

Orson Swindle Thomas B. Leary

In the Matter of	)
PFIZER INC.,	)
a corporation;	)
and	) )
PHARMACIA CORPORATION,	<ul><li>Docket No. C-4075</li><li>DECISION AND ORDER</li></ul>
a corporation.	)
	)
	)

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed merger of Respondent Pfizer Inc. ("Pfizer") and Respondent Pharmacia Corporation ("Pharmacia"), hereinafter referred to as "Respondents," and Respondents having been furnished thereafter with a copy of a draft of a 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. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of a 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

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issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed 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. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Pfizer is a corporation organized, existing and doing business under and by virtue of the laws o

Switzerland, with its offices and principal place of business located at Schwarzwaldallee 215 CH-4088, Basil Switzerland. The term "Novartis Animal Health" includes Novartis Animal Health US Inc., a corporation organized, existing, and doing business by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 32000 Northline Avenue, Suite 300, Greensboro, NC 27408.

- N. "Schering-Plough" means Schering-Plough Animal Health Corporation, a wholly-owned subsidiary of Schering-Plough Corporation and a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 1095 Morris Avenue, Union, New Jersey 07083.
- O. "Activella" means all Products that contain the active pharmaceutical ingredient estradiol and norethindrone acetate marketed and sold under the Product Trademark "Activella" by Respondent Pharmacia.
- P. "Agency(ies)" means any governmental regulatory

- 3. the Product and Product Registrations;
- 4. the Product Trade Dress;
- 5. the existing lists of all current customers for the Product and the pricing of the Product for such customers;
- 6. at the Commission-approved Acquirer's option, each of the Product Assumed Contracts;
- 7. all Product Marketing Materials;
- 8. all Website(s) related to the Product;
- 9. a list of all of the NDC Numbers related to the Product;
- 10. rights of reference to the Drug Master Files including, but not limited to, the pharmacology and toxicology data contained in all NADAs and ANADAs;
- 11. rights of reference (if such rights exist) to information similar to the Drug Master Files submitted to any Agency other than the FDA;

12.

such as is in existence as of the Closing Date;

provided, however, that in cases in which documents or other materials included in the Amoxi-Mast Assets contain information that (i) relates both to Amoxi-Mast and to other Products or businesses of Respondent Pfizer, and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to Amoxi-Mast, Respondent Pfizer shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Products and businesses other than Amoxi-Mast;

provided further, however, the term "Amoxi-Mast Assets" does not include any rights, titles and interests in or to owned or leased real property or buildings.

- S. "Alpharma" means Alpharma, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at One Executive Drive, Fort Lee, New Jersey 07024. Alpharma manufactures certain stock keeping unit(s) of Cortaid.
- T. "Apomorphine" means the compound designated by the International Union of Pure and Applied Chemistry name (R)-; 5,6,6a,7-Tetrahydro-6-methyl-4H-dibenzo[de,g]quinoline-10,11-diol; Revanil 19875-60-6Apomorphine], together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof.
- U. "Bonine" means all over-the-counter Products that contain the active pharmaceutical ingredient generically known as me2rTj20.0400 0.000nerica

divest, transfer, deliver or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final; or 2) an entity approved by the Commission to acquire particular assets that the Respondents are required to assign, grant, license, divest, transfer, deliver or otherwise convey pursuant to this Order.

- AA. "Confidential Business Information" means all information owned by, or in the possession or control of, Respondents that is not in the public domain related to the research, Development, manufacture, marketing, commercialization, distribution, importation, exportation, cost, pricing, supply, sales, sales support, or use of a Product.
- BB. "Contract Manufacture" means the manufacture of a Product to be supplied by Respondents or a Designee specifically identified in this Order for sale to the Commission-approved Acquirer.
- CC. "Cortaid" means all over-the-counter Products that contain the active pharmaceutical ingredient generically known as hydrocortisone marketed and sold for topical use by Respondent Pharmacia in the United States under the Product Trademark "Cortaid" prior to the divestiture of the Cortaid Assets. The term "Cortaid" also includes all over-the-counter Products marketed or in Development by Respondent Pharmacia on or before the Effective Date that have the same active pharmaceutical ingredient and are planned to be marketed in the United States for a similar topical usage.
- DD. "Cortaid Asset Purchase Agreement" means the "Asset Sale and Purchase Agreement by and between Pharmacia as Seller, and Johnson Consumer Products Company, division of J&J as Purchaser" dated February 28, 2003, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Cortaid Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The Cortaid Asset Purchase Agreement is attache

license(s) shall be on an exclusive basis (even as to Respondents) in accordance with the Divestiture Agreement(s);

- 3. the Product and Product Registrations;
- 4. the Product Trade Dress:
- 5. the existing lists of all current customers for the Product and the pricing of the Product for such customers:
- 6. at the Commission-approved Acquirer's option, each of the Product Assumed Contracts;
- 7. all Product Marketing Materials;
- 8. all Website(s) related to the Product;
- 9. a list of all of the NDC Numbers related to the Product:
- rights of reference (if such rights exist) to the Drug Master Files including, but not limited to, the pharmacology and toxicology data contained in all NDAs, ANDAs, SNDAs and MAAs;
- 11. rights of reference (if such rights exist) to information similar to the Drug Master Files submitted to any Agency other than the FDA;
- 12. Product Scientific and Regulatory Material;
- 13. all unfilled customer orders for finished goods as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two Business Days after the Closing Date);
- 14. Product Manufacturing Technology, and Product manufacturing and manufacturing processes;
- 15. at the Commission-approved Acquirer's option, all inventories in existence as of the Closing Date, including, but not limited to, raw materials, goods in process, finished goods, and Product specific packaging and labels; and
- 16. all Respondents' books, records and files related to the foregoing, including, but not limited to, the following specified documents: the Product Registrations; rights of reference to Drug Master Files, including, but not limited to, the pharmacology and toxicology data contained in all NDAs, ANDAs, SNDAs and MAAs; all data submitted to and all correspondence with the FDA and other Agencies; all validation documents

and data; all market studies; all sales histories, including, without limitation, clinical data, and sales force call activity, for Cortaid from January 1, 2000, through the Closing Date, and quality control histories pertaining to Cortaid owned by, or in the possession or control of, Respondents, or to which Respondents have a right of access, in each case such as is in existence as of the Closing Date;

provided, however, that in cases in which documents or other materials included in the Cortaid Assets contain information that (i) relates both to Cortaid and to other Products or businesses of Respondent Pharmacia, and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to Cortaid, Respondent Pharmacia shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Products and businesses other than Cortaid;

provided further, however, the term "Cortaid Assets" does not include any rights, titles and interests in or to owned or leased real property or buildings.

- FF. "Cortizone" means all over-the-counter Products that contain the active pharmaceutical ingredient hydrocortisone marketed and sold for topical use under the Product Trademark "Cortizone" by Respondent Pfizer in the United States.
- GG. "Cow Mastitis Products" means the Products Amoxi-Mast, Dariclox and Orbenin DC, individually and collectively.
- HH. "Cow Mastitis Products Assets" means the Amoxi-Mast Assets, the Dariclox Assets and the Orbenin DC Assets, individually and collectively.
  - II. "Cow Mastitis Products Asset Purchase Agreement" means the "Purchase and Sale Agreement between Pfizer Inc. and Schering-Plough Animal Health Corporation" dated March 14, 2003, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Cow Mastitis Products Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The Cow Mastitis Products Asset Purchase Agreement is attached to this Order as non-public Appendix VII.
  - JJ. "D2 Agonist 774" means the Product in Development by Respondent Pharmacia that contains the active pharmaceutical ingredient with the chemical name (5R)-5- (methylamino)-5,6dihydro-4H-imidazo[4,5,1-ij] quinoline-2(1H)-thione, together with any of its enantiomers, metabolites (excluding Sumanirole, *i.e.*, the Product in Development by

Pharmacia that contains the active pharmaceutical ingredient with the chemical name (5R)-5,6-Dihydro-5-(methylamino)-4-4H-imidazo[4,5,1-ij]-quinolin-2(1H)-one (z)-2-butenedioate (1:I)), and any salts or polymorphs of any of the foregoing. "D2 Agonist 774" includes all Products marketed or in Development by Respondent Pharmacia on or before the Effective Date that use an agonist for the human dopamine 2 receptor and are planned to be marketed for use in the treatment of Human Sexual Dysfunction, but does not include IN Apomorphine.

- KK. "D2 Agonist 774 Assets" means all of Respondent Pharmacia's rights, title and interest in and to all assets related to Respondent Pharmacia's worldwide business in the Field of Human Sexual Dysfunction related to the Product "D2 Agonist 774," to the extent legally transferable, including the research, Development, manufacture, distribution, marketing or sale of D2 Agonist 774, including, without limitation, the following:
  - 1. all Product Intellectual Property;
  - 2. license(s) to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import or export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported or exported any product anywhere in the world; *provided, however*, such license(s) shall be worldwide, perpetualjET1.00000 Fu.00000 02erle

- 12. Product Scientific and Regulatory Material;
- 13. all unfilled customer orders for finished goods as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two Business Days after the Closing Date);
- 14. Product Manufacturing Technology, and Product manufacturing and manufacturing processes;
- 15. at the Commission-approved Acquirer's option, all inventories in existence as of the Closing Date, including, but not limited to, raw materials, goods in process, finished goods, and Product specific packaging and labels;
- 16. at the Commission-approved Acquirer's option (and, in the case of Neurocrine, to the extent exercised in the D2 Agonist 774 License Agreement), all manufacturing and other equipment located at the D2 Agonist 774 Manufacturing Facility that was used in, or suitable for use in, the research, Development or manufacture of D2 Agonist 774; and
- 17. all Respondents' books, records and files related to the foregoing, including, but not limited to, the following specified documents: the Product Registrations; rights of reference to Drug Master Files, including, but not limited to, the pharmacology and toxicology data contained in all NDAs, ANDAs, SNDAs and MAAs; all data submitted to and all correspondence with the FDA and other Agencies; all validation documents and data; all market studies; all sales histories, including, without limitation, clinical data, and sales force call activity, for D2 Agonist 774 from January 1, 2000, through the Closing Date, and quality control histories pertaining to D2 Agonist 774 owned by, or in the possession or control of, Respondents, or to which Respondents have a right of access, in each case such as is in existence as of the Closing Date;

provided, however, that in cases in which documents or other materials included in the D2 Agonist 774 Assets contain information that (i) relates both to D2 Agonist 774 and to other Products or businesses of Respondent Pharmacia, and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to D2 Agonist 774, Respondent Pharmacia shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Products and businesses other than D2 Agonist 774;

provided further, however, the term "D2 Agonist 774 Assets" does not include any rights, titles and interests in or to owned or leased real property or buildings.

LL. "D2 Agonist 774 License Agreement" means "The Amended and Restated License

for such customers;

- 6. at the Commission-approved Acquirer's option, each of the Product Assumed Contracts;
- 7. all Product Marketing Materials;
- 8. all Website(s) related to the Product;
- 9. a list of all of the NDC Numbers related to the Product;
- 10. rights of reference to the Drug Master Files including, but not limited to, the pharmacology and toxicology data contained in all NADAs and ANADAs;
- 11. rights of reference (if such rights exist) to information similar to the Drug Master Files submitted to any Agency other than the FDA;
- 12. Product Scientific and Regulatory Material;
- 13. all unfilled customer orders for finished goods as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two Business Days after the Closing Date);
- 14. Product Manufacturing Technology, and Product manufacturing and manufacturing processes;
- 15. at the Commission-approved Acquirer's option, all inventories in existence as of the Closing Date, including, but not limited to, raw materials, goods in process, finished goods, and Product specific packaging and labels; and
- 16. all Respondents' books, records and files related to the foregoing, including, but not limited to, the following specified documents: the Product Registrations; rights of reference to Drug Master Files, including, but not limited to, the pharmacology and toxicology data contained in all NADAs and ANADAs; all data submitted to and all correspondence with the FDA and other Agencies; all validation documents and data; all market studies; all sales histories, including, without limitation, clinical data, and sales force call activity, for Dariclox from January 1, 2000, through the Closing Date, and quality control histories pertaining to Dariclox owned by, or in the possession or control of, Respondents, or to which Respondents have a right of access, in each case such as is in existence as of the Closing Date.

provided, however, that in cases in which documents or other materials included in the Dariclox Assets contain information that (i) relates both to Dariclox and to other Products or businesses of Respondent Pfizer, and (ii) cannot be segregated in a manner that

preserves the usefulness of the information as it relates to Dariclox, Respondent Pfizer shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Products and businesses other than Dariclox;

provided further, however, the term "Dariclox Assets" does not include any rights, titles and interests in or to owned or leased real property or buildings.

6. at the Commission-approved Acquirer's option, each of

provided, however, that in cases in which documents or other materials included in the Darifenacin Assets contain information that (i) relates both to Darifenacin and to other Products or businesses of Respondent Pfizer, and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to Darifenacin, Respondent Pfizer shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Commission-approved Acquirer, the Commission-approved Acquirer shall have access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Products and businesses other than Darifenacin;

provided further, however, the term "Darifenacin Assets" does not include any rights, titles and interests in or to owned or leased real property or buildings.

- RR. "Darifenacin Asset Purchase Agreement" means the "Asset Purchase Agreement by and between Pfizer Inc. as Seller and Novartis International Pharmaceuticals Ltd as Buyer and Novartis Pharma AG" dated March 17, 2003, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Darifenacin Assets to be divested, that have been approved by the Commission to accomplish the requirements of this Order. The Darifenacin Asset Purchase Agreement is attached to this Order as non-public Appendix II.
- SS. "Darifenacin Global Development Team" means all employees of Respondent Pfizer that are a part of Pfizer's "Global Development Team" for the Product Darifenacin including, but not limited to, those employees on the "Rapid Response Team" related to the Product Darifenacin. These individuals are identified in non-public Appendix II attached to this Order.
- TT. "Darifenacin Manufacturing Facility" means Respondent Pfizer's manufacturing and packaging facility located at Pottery Road, Ringaskiddy, County Cork, Dun Laoghaire, Ireland used by Respondent Pfizer to manufacture Darifenacin.
- UU. "Deramaxx" means the Product that contains the active pharmaceutical ingredient deracoxib used in the treatment of pain in dogs and cats. The chemical name of deracoxib is [4-[5-(3-flouro-4-methoxyphenyl)-3-difluoromethyl-1H-pyrazol-1-yl]-benzenesulfonamide] CAS No. 16959-41-4.
- VV. "Deramaxx License Agreement" means the "License Agreement between Novartis Animal Health, Inc. and G.D. Searle & Co." dated September 24, 1999, and all amendments (other than the Deramaxx Amended License Agreement), exhibits, attachments, agreements, and schedules thereto, related to the Product Deramaxx. The Deramaxx License Agreement is

- contained in non-public Appendix VI.
- WW. "Deramaxx Amended License Agreement" means the "Amended License Agreement between Novartis Animal Health Inc. and the successor in interest to G.D. Searle & Co., with respect to this matter, Pharmacia & Upjohn Company" dated February 20, 2003, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Product Deramaxx, that have been approved by the Commission to accomplish the requirements of this Order. The Deramaxx Amended License Agreement is attached to this Order as non-public Appendix VI.
- XX. "Designee" means any entity other than the Respondent(s) that will manufacture a Product for a Commission-approved Acquirer.
- YY. "Detrol" means all Products that contain the active pharmaceutical ingredient tolterodine marketed and sold under the Product Trademark "Detrol" or "Detrol LA" by Respondent Pharmacia for treating the symptoms of Overactive Bladder.
- ZZ. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting clinical trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing and sale of a Product (including any governmental price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.
- AAA. "Direct Cost" means the cost of direct labor and direct material used to provide the relevant assistance or service.
- BBB. "Divestiture Agreement" means: 1) any agreement between a Respondent(s) and a Commission-approved Acquirer that is specifically referenced and attached to this Order and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed, and that have been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final; or 2) any agreement between a Respondent(s) and a Commission-approved Acquirer (or between a Divestiture Trustee and a Commission-approved Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed that have been approved by the Commission to accomplish the requirements of this Order.

sale, promote, advertise, sell, import or export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported or exported any product anywhere in the world; *provided, however*, such license(s) shall be worldwide, perpetual, fully paid-up and royalty-free; *provided further, however*, such license(s) shall be on an exclusive basis (even as to Respondents) in accordance with the Divestiture Agreement(s);

- 3. the Product and Product Registrations;
- 4. the Product Trade Dress:
- 5. the existing lists of all current customers for the Product and the pricing of the Product for such customers;
- 6. at the Commission-approved Acquirer's option, each of the Product Assumed Contracts;
- 7. all Product Marketing Materials;
- 8. all Website(s) related to the Product;
- 9. a list of all of the NDC Numbers related to the Product;
- 10. rights of reference to the Drug Master Files including, but not limited to, the pharmacology and toxicology data contained in all NDAs, ANDAs, SNDAs and MAAs;
- 11. rights of reference (if such rights exist) to information similar to the Drug Master Files submitted to any Agency other than the FDA;
- 12. Product Scientific and Regulatory Material;
- 13. all unfilled customer orders for finished goods as of the Closing Date (a list of such orders is to be provided to the Commission-approved Acquirer within two Business Days after the Closing Date);
- 14. Product Manufacturing Technology, and Product manufacturing and manufacturing processes;
- 15. at the Commission-approved Acquirer's option, all inventories in existence as of the Closing Date, including, but not limited to, raw materials, goods in process, finished goods, and Product specific packaging and labels; and
- 16. all Respondents' books, records and files related to the foregoing, including, but not limited to, the following specified documents: the Product Registrations; rights of reference to Drug Master Files, including, but not limited to, the pharmacology and

toxicology data contained in all NDAs, ANDAs, SNDAs and MAAs; all data submitted to and all correspondence with the FDA and other Agencies; all validation documents and data; all market studies; all sales histories, including, without limitation, clinical data, and sales force call activity, for Femhrt from January 1, 2000, through the Closing Date, and quality control histories pertaining to Femhrt owned by, or in the possession or control of, Respondents, or to which Respondents have a right of access, in each case such as is in existence as of the Closing Date.

provided, however, that in cases in which documents or other materials included in the Femhrt Assets contain information that (i) relates both to Femhrt and to other Products or businesses of Respondent Pfizer, and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to Femhrt, Respondent Pfizer shall be required only to provide copies of the documents and materials containing this

- QQQ. "Halls Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's Halls Business worldwide, to the extent legally transferable. These assets are identified and described in Section 2.2 of the Halls Divestiture Agreement.
- RRR. "Halls Business" means the worldwide business of researching, developing, manufacturing, marketing, distributing and selling any product under the Halls Trademarks.
- SSS. "Halls Divestiture Agreement" means the "Stock and Asset Purchase Agreement by and between Pfizer Inc. and Cadbury Schweppes plc" dated December 16, 2002, and all amendments, exhibits, attachments, agreements, and schedules thereto, related to the Halls Business that have been approved by the Commission to accomplish the requirements of this Order. The Halls Divestiture Agreement is attached to this Order as non-public Appendix VIII.
- TTT. "Halls Trademarks" means all trademarks owned or controlled by Respondent Pfizer that contain the "Halls" brand name including, but not limited to, "Halls," "Halls Mentho-Lyptus," "Halls Plus," "Halls Sugar Free," "Halls Defense," or "Halls Fruit Breezers."
- UUU. "Hanford" means G.C. Hanford Manufacturing Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York with its offices and principal place of business located at 304 Oneida Street, Syracuse, New York 13201. Hanford produces the finished formulation of the Cow Mastitis Products.
- VVV. "Human Sexual Dysfunction" means sexual dysfunction in humans including, but not limited to, male erectile dysfunction and female sexual dysfunction.
- WWW. "IN Apomorphine" means all Products containing the active pharmaceutical ingredient generically known as Apomorphine and that are delivered Intranasally.
  - XXX. "IN Apomorphine Collaboration and License Agreement" means the "Collaboration and License Agreement by and between Pharmacia & Upjohn Company and Nastech Pharmaceutical Company, Inc." dated February 1, 2002, and all amendments, exhibits, attachments, agreements, and schedules thereto. The IN Apomorphine Collaboration and License Agreement is contained in non-public Appendix IV.
  - YYY. "IN Apomorphine Collaboration Product" means the Product that contains the active pharmaceutical ingredient generically known as Apomorphine delivered Intranasally that was in Development by Respondent Pharmacia prior to the Effective Date (including certain variations thereof, as described in the IN Apomorphine Disengagement Agreement).
  - ZZZ. "IN Apomorphine Disengagement Agreement" means the "Divestiture Agreement" by and between Pharmacia & Upjohn Company and Nastech Pharmaceutical Company, Inc. dated January 24, 2003, and all amendments, exhibits, attachments, agreements, and schedules

- thereto, related to IN Apomorphine, that have been approved by the Commission to accomplish the requirements of this Order. The IN Apomorphine Disengagement Agreement is attached to this Order as non-public Appendix IV.
- AAAA. "IN Apomorphine Nastech Partner" means any entity that enters into any acquisition, alliance, collaboration, co-development or licensing arrangement with Nastech for the research, Development, distribution, manufacturing, marketing or sale of IN Apomorphine.
- BBBB. "IN Apomorphine Nastech Releasee(s)" means Nastech or any entity controlled by or under common control with Nastech, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of Nastech, or of such Nastech-affiliated entities.
- CCCC. "Interim Monitor" means a monitor appointed by the Commission pursuant to the relevant provisions of this Order or the Order to Maintain Assets.
- DDDD. "Intranasally" means delivery of a Product to the body by means of direct administration through the nostrils resulting in contact of the Product with the nasal mucosa or other aspects of the nasal cavity.
- EEEE. "Investigational New Animal Drug Application" ("INADA") means the application for a Product filed or to be filed with th

- JJJJ. "NDC Numbers" means the National Drug Code numbers(s) assigned by the FDA to a Product.
- KKKK. "New Drug Application" ("NDA"), "Abbreviated New Drug Application" ("ANDA"), "Supplemental New Drug Application" ("SNDA"), or "Marketing Authorization Application" ("MAA") mean the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314, or its foreign Agency equivalent, and all supplements, amendments, and revisions thereto, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between Respondents and the FDA or other Agency relative thereto.
- LLLL. "Orbenin DC" means all Products that contain the active pharmaceutical ingredient generically known as sterile benzathine cloxacillin marketed and sold by Respondent Pfizer in the United States under the Product Trademark "Orbenin DC" prior to the divestiture of the Orbenin DC Assets. The term "Orbenin DC" also includes all benzathine cloxacillin-based intramammary Products marketed or in Development by Respondent Pfizer on or before the Effective Date that are planned to be marketed in the United States for use in the treatment of Dry Cow Mastitis.
- MMMM. "Orbenin DC Assets" means all of Respondent Pfizer's rights, title and interest in and to all assets related to Respondent Pfizer's United States business related to the Product "Orbenin DC," to the extent legally transferable, including the research, Development, manufacture, distribution, marketing or sale of Orbenin DC, including, without limitation, the following:
  - 1. all Product Intellectual Property;
  - 2. license(s) to all Product Licensed Intellectual Property to use, make, distribute, offer for sale, promote, advertise, sell, import or export, or have used, made, distributed, offered for sale, promoted, advertised, sold, imported or exported any product anywhere in the United States; *provided, however*, such license(s) shall be for the territory of the United States, perpetual, fully paid-up and royalty-free; *provided further, however*, such license(s) shall be on an exclusive basis (even as to Respondents) in accordance with the Divestiture Agreement(s);
  - 3. the Product and Product Registrations;
  - 4. the Product Trade Dress;
  - 5. the existing lists of all current customers for the Product and the pricing of the Product for such customers;
  - 6. at the Commission-approved Acquirer's option, each of the Product Assumed Contracts;

original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondents provide the Commission-approved Acquirer with the above-described information without requiring Respondents completely to divest themselves of information that, in content, also relates to Products and businesses other than Orbenin DC;

provided further, however, the term "Orbenin DC Assets" does not include any rights, titles and interests in or to owned or leased real property or buildings.

- NNNN. "Overactive Bladder" means a symptomatic condition that includes urinary frequency, urinary urgency and urinary incontinence.
- OOOO. "Ownership Interest" means any and all rights, present or contingent, of Respondents to hold any voting or nonvoting stock, share capital, equity or other interests or beneficial ownership in an entity.
  - PPPP. "Patents" means all patents, patent applications and statutory invention registrations, in each case existing as of the Effective Date (*except* where this Order specifies a different time), and includes all reissues, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, all rights therein provided by international treaties and conventions, and all rights to obtain and file for patents and registrations there

and files related thereto (including source documentation) and all periodic adverse experience reports and all data contained in electronic data bases relating to adverse experience reports and periodic adverse experience reports; all analytical and quality control data; and all correspondence with the FDA.

## UUUU. "Product Employee Information" means the following:

- 1. a complete and accurate list containing the name of each relevant employee as of the execution date of the related Divestiture Agreement. This list shall be organized by the relevant respective employee categories defined in this Order, (*i.e.*, "Darifenacin Global Development Team," "Product Manufacturing Employees," "Product Marketing Employees," "Product Research and Development Employees," or "Product Sales Employees," as applicable);
- 2. with respect to each such employee:
  - a. the date of hire and effective service date;
  - b. job title or position held;
  - c. a specific description of the employee's responsibilities related to the relevant Product; *provided*, *however*, in lieu of this description, Respondents may provide the employee's most recent performance appraisal;
  - d. the base salary or current wages;
  - e. the most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year and current target or guaranteed bonus, if any;
  - f. employment status (i.e., active or on leave or disability; full-time or part-time); and
  - g. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
- 3. at the Commission-approved Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.
- VVVV. "Product Intellectual Property" means all of the following related to the Product(s):
  - 1. Patents;
  - 2. Product Copyrights;

- 3. Product Software, other than Product Licensed Intellectual Property;
- 4. Product Trademarks;
- 5. trade secrets, know-how, techniques, data, inventions, practices, methods and other confidential or proprietary technical, business, research, Development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof, other than Product Licensed Intellectual Property;
- 6. rights to obtain and file for Patents and registrations thereof; and
- 7. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing;

provided, however, "Product Intellectual Property" does not include the names "Pfizer," "Pharmacia," "Parke-Davis," "Warner-Lambert," "UpJohn," "Searle" or the names of any other corporations or companies owned by Respondents or related logos to the extent used on other of Respondent Pfizer's or Respondent Pharmacia's Products.

## WWWW. "Product Licensed Intellectual Property" means:

- 1. Product Software that is used in connection with the analysis of clinical trial data for a Product that is the subject of a divestiture under this Order that Respondents can demonstrate has been routinely used, prior to the Effective Date, by either Respondent Pharmacia or Respondent Pfizer (as applicable) for Product(s) other than the Product that is the subject of the relevant divestiture; and
- 2. trade secrets, know-how, techniques, data, inventions, practices, methods and other

stability and shelf life of the Product(s), including the Product(s)' formulation, in existence and in the possession of Respondents as of the Closing Date, including, but not limited to, manufacturing records, sampling records, standard operating procedures and batch records related to the manufacturing process, and supplier lists.

- ZZZZ. "Product Marketing Employees" means all management level employees of Respondent(s) who directly participated (irrespective of the portion of working time involved) in the marketing, contracting, or promotion of the Product(s) in the United States within the eighteen (18) month period immediately prior to the Closing Date. These employees include, without limitation, all management level employees having any responsibilities in the areas of sales management, brand management, sales training, market research, managed care contracting, hospital market and other specialty markets, but excluding administrative assistants.
- AAAA. "Product Marketing Materials" means all marketing materials used anywhere in the world related to the Product(s) as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, price lists, mailing lists, sales materials (e.g., detailing reports; vendor lists; sales data; reimbursement data), marketing information (e.g., competitor information; research data; market intelligence reports; statistical programs (if any) used for marketing and sales research; customer information, including customer sales information; sales forecasting models; medical educational materials; Website content and advertising and display materials; speaker lists), promotional and marketing materials, artwork for the production of packaging components, television masters and other similar materials related to the Product(s).
- BBBB. "Product Registrations" means all registrations, permits, licenses, consents, authorizations and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing or sale of the Product worldwide, including all INDs, INADAs, NDAs, ANDAs, SNDAs, MAAs, NADAs, or ANADAs in existence for the Product as of the Closing Date.
- CCCC. "Product Research and Development Employees" means all employees of Respondent(s) who directly participated (irrespective of the portion of working time involved) in the research, Development, regulatory approval process, or clinical studies of the Product(s) within the eighteen (18) month period immediately prior to the Closing Date.
- DDDDD. "Product Sales Employees" means all employees of Respondent(s) who directly participated (irrespective of the portion of working time involved) in the detailing, marketing or promotion of the Product directly to physicians (or, in the case of Products used to treat animals, veterinarians), pharmacists, professional distributors, managadidate 00 024ss4s jET1.00000 0.0000

- perform such detailing for the Product within the eighteen (18) month period immediately prior to the Closing Date.
- EEEEE. "Product Scientific and Regulatory Material" means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and clinical trial materials and information related to the Product(s), and all rights thereto, in any and all jurisdictions.
- FFFF. "Product Software" means computer programs, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to any of the foregoing and the content and information contained on any Website; *provided, however*, that "Product Software" does not include software that is readily purchasable or licensable and which has not been modified in a manner material to the use or function thereof (other than through user preference settings).
- GGGG. "Product Trade Dress" means the current trade dress of the Product(s), including, but not limited to, product packaging associated with the sale of the Product(s) 0.y.0600 Tc-0.0600 t 0.0000 TD(, he

Trademark "Viagra" for treating the symptoms of male erectile dysfunction.

NNNN. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondents. "Website" shall not include (1) content owned by third parties and other Product Intellectual Property not owned by Respondents that are incorporated in such Website(s), such as stock photographs used in the Website(s), except to the extent that Respondents can convey their rights, if any, therein; or (2) content unrelated to the Product(s).

II.

## **IT IS FURTHER ORDERED** that:

A. Not later than ten (10) Business Days after the Effective Date, Respondents shall divest the Darifenacin Assets, absolutely and in good faith, to Novartis pursuant to and in accordance

- Respondents shall Contract Manufacture and deliver to the Commission-approved Acquirer, in a timely manner and under reasonable terms and conditions, a supply of Darifenacin, at Respondents' Supply Cost, for a period of time sufficient to allow the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all FDA approvals necessary to manufacture Darifenacin independently of Respondents.
- 2. After Respondents commence delivery of Darifenacin to the Commission-approved Acquirer pursuant to a Divestiture Agreement and for the term of the Contract Manufacture related to Darifenacin, Respondents will make inventory of Darifenacin available for sale or resale only to the Commission-approved Acquirer.
- 3. Respondents shall make representations and warranties to the Commission-approved Acquirer that the Darifenacin supplied through Contract Manufacture pursuant to the Divestiture Agreement meets FDA-approved specifications. Respondents shall agree to indemnify, defend and hold the Commission-approved Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Darifenacin supplied to the Commission-approved Acquirer pursuant to the Divestiture Agreement by the Respondents to meet FDA specifications. This obligation shall be contingent upon the Commission-approved Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Divestiture Agreement shall be consistent with the obligations assumed by Respondents under this Order; provided, however, Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with the Respondents' responsibilities to supply Darifenacin in the manner required by this Order; provided further, however, this obligation shall not require Respondents to be liable for any negligent act or omission of the Commission-approved Acquirer or for any representations and warranties, express or implied, made by the Commission-approved Acquirer that exceed the representations and warranties made by the Respondents to the Commissionapproved Acquirer.
- 4. Respondents shall make representations and warranties to the Commission-approved Acquirer that Respondents will hold harmless and indemnify the Commission-approved Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Darifenacin in a timely manner as required by the Divestiture Agreement unless Respondents can demonstrate that their failure was entirely beyond the control of the Respondents and in no part the result of negligence or willful misconduct by Respondents.
- 5. During the term of the Contract Manufacture between Respondents and the Commission-approved Acquirer, upon request of the Commission-approved Acquirer or Interim Monitor (if applicable), Respondents shall make available to the Commission-

- approved Acquirer or the Interim Monitor all records that relate to the manufacture of Darifenacin that are generated or created after the Closing Date.
- 6. Upon reasonable notice and request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner at no greater than Direct Cost:
  - a. assistance and advice to enable the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell Darifenacin;
  - b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture Darifenacin in substantially the same manner and quality employed or achieved by Respondent Pfizer; and
  - c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer, until the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) obtains all FDA approvals necessary to manufacture Darifenacin independently of the Respondents and sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of Darifenacin.
- D. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to Darifenacin; *provided, however*, this provision shall not apply to any Confidential Business Information related to Darifenacin that Respondent Pharmacia can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.
- E. Respondents shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the research, Development, manufacturing, marketing, or sale of Darifenacin, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer; *provided, however*, this provision shall not apply to any Confidential Business Information related to Darifenacin that Respondent Pharmacia can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.
- F. For a period of eighteen (18) months from the Closing Date ("the Darifenacin Access Period"), Respondents shall provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Darifenacin Global Development

- Team, Product Manufacturing Employees, Product Marketing Employees, and Product Research and Development Employees related to Darifenacin ("Darifenacin Core Employees").
- G. Respondents shall provide any Proposed Acquirer with the opportunity to enter into employment contracts with the Darifenacin Core Employees in connection with the divestiture of the Darifenacin Assets; *provided, however*, that any such employment contracts entered into prior to the Closing Date shall be contingent upon approval by the Commission of the agreements relating to the Darifenacin Assets (*i.e.*, those agreements proposed by Respondents (or the Divestiture Trustee) to the Commission) as the Divestiture Agreements for the Darifenacin Assets.
- H. Not later than twenty-five (25) Business Days after the execution date of any proposed Divestiture Agreement related to Darifenacin Assets, Respondents shall provide the Commission-approved Acquirer or the Proposed Acquirer the Product Employee Information related to the Darifenacin Core Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee with000ia00 TD68gploy

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J. Respondents shall provide all Darifenacin Core Employees with reasonable financial incentives to continue in their position

Darifenacin strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

- O. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to Darifenacin by Respondents' personnel to all of Respondents' employees who (i) are or were involved in the research, Development, manufacturing, distribution, sale or marketing of Darifenacin, (ii) are involved in the research, Development, manufacturing, distribution, sale or marketing of Detrol and/or (iii) may have Confidential Business Information related to Darifenacin. Such notification shall be in substantially the form set forth in the Employee Notification. Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.
- P. Upon reasonable notice and request by the Commission-approved Acquirer, Respondents shall make available to the Commission-approved Acquirer, at no greater than Direct Cost, such personnel, assistance and training as the Commission-approved Acquirer might reasonably need to transfer the Darifenacin Assets, and shall continue providing such personnel, assistance and training, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer (or the Designee of the Commission-approved Tw(with the require

2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Darifenacin Assets or Darifenacin business; *provided*, *however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

# provided further, however:

1. Respondents shall require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission–approved Acquirer; *provided, however,* that Respondents shall not be deemed to have violated

### **IT IS FURTHER ORDERED** that:

A. Not later than ten (10) Business Days after the Effective Date, Respondents shall divest the Femhrt Assets, absolutely and in good faith, to Galen pursuant to and in accordance with the Femhrt Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Galen or to reduce any obligations of Respondents under such agreement), and such agreement, if approved by the Commission as the Divestiture Agreement for the Femhrt Assets, is incorporated by reference into this Order and made part hereof. If Respondents do not divest the Femhrt Assets to Galen within ten (10) Business Days after the Effective Date, the Commission may appoint a Divestiture Trustee to divest the Femhrt Assets;

provided, however, that if Respondents have divested the Femhrt Assets to Galen prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Galen is not an acceptable purchaser of the Femhrt Assets, or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Galen and shall divest the Femhrt Assets within six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.

- B. Any Divestiture Agreement that has been approved by the Commission between Respondents (or a Divestiture Trustee) and a Commission-approved Acquirer of the Femhrt Assets shall be deemed incorporated into this Order, and any failure by Respondents to comply with any term of such Divestiture Agreement related to the Femhrt Assets shall constitute a failure to comply with this Order.
- C. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to Femhrt; *provided, however*, this provision shall not apply to any Confidential Business Information related to Femhrt that Respondent Pharmacia can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.
- D. Respondents shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the research, Development, manufacturing, marketing, or sale of Femhrt, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer; *provided*, *however*, this provision shall not apply to any Confidential Business Information related to Femhrt that Respondent Pharmacia can

demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.

E. For a period of six (6) months from the Closing Date ("the Femhrt Access Period"), Respondents shall provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Product Marketing Employees and Product Research and Development Employees related to Femhrt ("Femhrt Core Employees") and the Product Sales Employees related to Femhrt ("Femhrt Sales Employees").

does not intend to make an offer of employment to that employee;

provided further, that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Femhrt Core Employee or Femhrt Sales Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Business Days of the date the Commission-approved Acquirer receives such notice, the Respondents may make an offer of employment to that employee.

I. Respondents shall provide all Femhrt Core Employees and all Femhrt Sales Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the Femhrt Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

*provided, however,* that nothing in these requirements or in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee.

- J. For a period of one (1) year from the Closing Date, Respondents shall not:
  - 1. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to Femhrt ("Femhrt Employee") to terminate his or her employment relationship with the Commission-approved Acquirer; *provided*, *however*, a violation of this provision will not occur by any of the following actions: (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the Femhrt Employees, or (ii) a Femhrt Employee contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents; or
  - 2. hire any Femhrt Employee; *provided, however*, Respondents may hire any former Femhrt Employee whose employment has been terminated by the Commission-approved Acquirer or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the non-solicitation requirements contained herein.
- K. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Femhrt Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of Femhrt by the Commission-approved Acquirer. In addition, prior to the Effective Date, Respondents shall execute agreements (assignable to the Commission-approved Acquirer) with all Third Parties (including, but not limited to, all Third Parties used by Respondent Pfizer in connection with the manufacture of Femhrt within the twelve (12) month period immediately prior to the Effective Date) necessary to

insure that any Commission-approved Acquirer will have a supply of Femhrt: (1) in quantities; (2) at prices; (3) in a timely manner; and (4) under reasonable terms and conditions, sufficient to enable any Commission-approved Acquirer to maintain the viability and competitiveness of the Femhrt Assets. Each such agreement shall provide that no additional consents or waivers of the respective Third Party are required in order to assign the agreement to the Commission-approved Acquirer; *provided, however*, Respondents may satisfy this requirement by certifying that the Commission-approved Acquirer has executed all such agreements directly with each of the relevant Third Parties. For the purposes of these requirements "Third Parties" includes, but is not limited to, Duramed.

- L. For a period of one (1) year from the Closing Date, Respondents shall not market or promote Activella in the United States using the services of any Product Marketing Employee related to Femhrt. In addition, for a period of six (6) months from the Closing Date, Respondents shall not market or promote Activella in the United States using the services of any Femhrt Sales Employee.
- M. Respondents shall require, as a condition of continued employment post-divestiture, that each Femhrt Core Employee and each Femhrt Sales Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to Femhrt strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).
- N. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to Femhrt by Respondents' personnel to all of Respondents' employees who (i) are or were involved in the research, Development, fire production 0.00 0.00 rgBT94.4400 623.7600 TD(satisfy this requirement by)Tj126.8400 0312the Femhrt A

- assistance and training, at the request of the Commission-approved Acquirer, until the Commission-approved Acquirer is fully validated, qualified, and approved by the FDA, and able to manufacture Femhrt independently of the Respondents.
- P. Pending divestiture of the Femhrt Assets, Respondents shall take such actions as are necessary to maintain the viability and marketability of the Femhrt Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Femhrt Assets except for ordinary wear and tear.
- Q. Counsel for Respondents (including in-house counsel under appropriate confidentiality arrangements) may retain unreducted copies of all documents or other materials provided to the Commission-approved Acquirer and may have access to original documents (under circumstances where copies of documents are insufficient or otherwise unavailable) provided to the Commission-approved Acquirer in order to:
  - 1. comply with any Divestiture Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals), any data retention requirement of any applicable Governmental Entity, or any taxation requirements; or
  - 2. defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Femhrt Assets or Femhrt business; *provided*, *however*, that Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

## provided further, however:

- Respondents shall require those who view such unredacted documents or other
  materials to enter into confidentiality agreements with the Commission-approved
  Acquirer; provided, however, that Respondents shall not be deemed to have violated
  these requirements if the Commission-approved Acquirer withholds such agreement
  unreasonably; and
- 2. Respondents shall use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- R. The purpose of the divestiture of the Femhrt Assets is to ensure the continued use of the Femhrt Assets in the same business in which the Femhrt Assets were engaged at the time of the announcement of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

### IT IS FURTHER ORDERED that:

- A. Not later than ten (10) Business Days after the Effective Date, Respondents shall terminate the IN Apomorphine Collaboration and License Agreement with Nastech, absolutely and in good faith, in accordance with the IN Apomorphine Disengagement Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Nastech or to reduce any obligations of Respondents under such agreement), which requires, *inter alia*:
  - 1. Respondents to grant to Nastech certain rights and immunities under Patents that are owned or licensed by Respondents as of immediately prior to the Effective Date sufficient to allow Nastech freedom to practice in the research, Development, manufacture, use, import, export, distribution and sale of IN Apomorphine in the Field of Human Sexual Dysfunction;
  - 2. Respondent Pharmacia to grant an exclusive (even as to Respondents) fully paid-up, royalty-free, worldwide, irrevocable license (including the right to sublicense):
    - a. to research, Develop, make, have made, use, import, export, offer for sale and sell the IN Apomorphine Collaboration Product in the Field of Human Sexual Dysfunction:
      - (1) under certain types of confidential and proprietary information and know-how (as described in the IN Apomorphine Disengagement Agreement) owned or controlled by Respondent Pharmacia immediately prior to the Effective Date, including:
        - (a) Products or chemical compounds;
        - (b) technical and non-technical data;
        - (c) information relating to the results of tests, assays, methods, and processes; and
        - (d) drawings, plans, diagrams, specifications, and other documents containing said information and data;

to the extent that such information, know-how or data is useful or necessary for the research, Development, manufacture, testing, use or sale of IN Apomorphine in the Field of Human Sexual Dysfunction;

- C. Respondents shall submit to Nastech, at Respondents' expense, all Confidential Business Information related to IN Apomorphine; *provided, however*, this provision shall not apply to any Confidential Business Information related to IN Apomorphine that Respondent Pfizer can demonstrate it obtained without the assistance of Respondent Pharmacia prior to the Effective Date.
- D. Respondents shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the research, Development, manufacturing, marketing, or sale of IN Apomorphine, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except Nastech. This provision shall not apply to any Confidential Business Information related to IN Apomorphine that Respondent Pfizer can demonstrate it obtained without the assistance of Respondent Pharmacia prior to the Effective Date.
- E. For a period of twelve (12) months from the execution date of the IN Apomorphine Disengagement Agreement ("the IN Apomorphine Access Period"), Respondents shall provide Nastech and any IN Apomorphine Nastech Partner with the opportunity to enter into employment contracts with the Product Marketing Employees, Product Manufacturing Employees, and Product Research and Development Employees related to IN Apomorphine ("IN Apomorphine Core Employees") such employment contract to be for the purposes of the research, Development, distribution, manufacturing, marketing or sale of IN Apomorphine.
- F. Not later than ten (10) Business Days after the date this Order becomes final, Respondents shall provide Nastech the Product Employee Information related to the IN Apomorphine Core Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the IN Apomorphine Access Period with respect to that employee in an amount equal to the delay.
- G. During the IN Apomorphine Access Period, Respondents shall not interfere with the hiring or employing by Nastech, or any IN Apomorphine Nastech Partner, of IN Apomorphine

notified the Respondents in writing that Nastech or any IN Apomorphine Nastech Partner does not intend to make an offer of employment to that employee.

provided further, that if the Respondents notify Nastech or any IN Apomorphine Nastech Partner in writing of their desire to make an offer of employment to a particular IN Apomorphine Core Employee and Nastech or any IN Apomorphine Nastech Partner does not make an offer of employment to that employee within twenty (20) Business Days of the date Nastech receives such notice, the Respondents may make an offer of employment to that employee.

- H. For a period of one (1) year from the Closing Date, Respondents shall not:
  - 1. directly or indirectly, solicit or otherwise attempt to induce any employee of Nastech or any IN Apomorphine Nastech Partner with any amount of responsibility related to IN Apomorphine ("IN Apomorphine Employee") to terminate his or her employment relationship with the Nastech or the IN Apomorphine Partner; provided, however, a violation of this provision will not occur by any of the following actions: (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the IN Apomorphine Employees, or (ii) an IN Apomorphine Employee contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents; or
  - 2. hire any IN Apomorphine Employee; *provided, however*, Respondents may hire any former IN Apomorphine Employee whose employment has been terminated by Nastech or any IN Apomorphine Nastech Partner or who independently applies for employment with the Respondents, as long as such employee was not solicited in violation of the non-solicitation requirements contained herein.
- I. Respondents shall require, as a condition of continued employment post-divestiture, that each IN Apomorphine Core Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to IN Apomorphine strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).
- J. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to IN Apomorphine by Respondents' personnel to all of Respondents' employees who (i) are or were involved in the research, Development, manufacturing, distribution, sale or marketing of IN Apomorphine, (ii) are involved in the research, Development, manufacturing, distribution, sale or marketing of Viagra and/or (iii) may have Confidential Business Information related to IN Apomorphine. Such notification shall be in substantially the form set forth in the Employee Notification. Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and

keep a file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such notification to Nastech. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an

7. take any action or omit to take any action in a manner that would be incompatible with the status of Respondents as passive investors in Nastech.

The requirements of this Paragraph shall continue and remain in effect so long as Respondents retain any Ownership Interest in Nastech.

- M. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission, acquire, directly or indirectly, through subsidiaries or otherwise, any additional or greater Ownership Interest in Nastech than that which exists as of the Closing Date, or any other interest(s), in whole or in part, in any Patents owned by Nastech and related to IN Apomorphine. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents and not of any other party to the transaction. Respondents shall provide two (2) complete copies (with all attachments and exhibits) of the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after substantially complying with such request. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition; provided, however, that prior notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.
- N. The purpose of Paragraph IV of this Order is to ensure the continuation of IN Apomorphine research and Development for use in the treatment of Human Sexual Dysfunction and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

V.

# **IT IS FURTHER ORDERED** that:

A. Not later than ten (10) Business Days after the Effective Date, Respondents shall divest the D2 Agonist 774 Assets, absolutely and in good faith, to Neurocrine pursuant to and in accordance with the D2 Agonist 774 License Agreement (which agreement shall not vary or

contradict, or be construed to vary

Acquirer that the D2 Agonist 774 supplied through Contract Manufacture pursuant to the Divestiture Agreement meets all FDA specifications and other specifications for the compound consistent with current good manufacturing practices. Respondents shall agree to indemnify, defend and hold the Commission-approved Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the D2 Agonist 774 supplied to the Commission-approved Acquirer pursuant to the Divestiture Agreement by the Respondents to meet such specifications. This obligation shall be contingent upon the Commission-approved Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Divestiture Agreement shall be consistent with the obligations assumed by Respondents under this Order; provided, however, Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with the Respondents' responsibilities to supply D2 Agonist 774 in the manner required by this Order; provided further, however, this obligation shall not require Respondents to be liable for any negligent act or omission of the Commission-approved Acquirer or for any representations and warranties, express or implied, made by the Commission-approved Acquirer that exceed the representations and warranties made by the Respondents to the Commission-

Divestiture Agreement related to D2 Agonist 774 Assets, Respondents shall provide the Commission-approved Acquirer or the Proposed Acquirer the Product Employee Information related to the D2 Agonist 774 Core Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the D2 Agonist 774 Access Period with respect to that employee in an amount equal to the delay.

I. During the D2 Agonist 774 Access Period, Respondents shall not interfere with the hiring or employing by the Commission-approved Acquirer of D2 Agonist 774 Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondents shall not make any counteroffer to a D2 Agonist 774 Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that these requirements shall not prohibit the Respondents from making offers of employment to or employing any D2 Agonist 774 Core Employee during the D2 Agonist 774 Access Period where the Commission-approved Acquirer has notified the Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further, that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular D2 Agonist 774 Core Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Business Days of the date the Commission-approved Acquirer receives such notice, the Respondents may make an offer of employment to that employee.

J. Respondents shall provide all D2 Agonist 774 Core Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing DETj98.2800 0.00.0000 Tc0.0000 T,g3Tj37.2000 0.0000 proveds7 proveds7 prov.0000 TD(ment to that)

Ker For a period of one (1) year from the Closing Date, Respondents shall not:

1. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to D2 Agonist 774 ("D2 Agonist 774 Employee") to terminate his or her employment relationship with the Commission-approved Acquirer; *provided*, *however*, a violation of this provision will not occur by any of the following actions: (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the D2 Agonist 774 Employees, or (ii) a D2 Agonisty@00ftheilCespondenctiotrnottEmplo conta00 Tc-00 TD(t

acknowledgment program has been impleme

- 2. Respondents shall use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- R. Respondents may retain copies of all documents or other materials provided to the Commission-approved Acquirer to the extent that such documents or materials relate to D2 Agonist 774 for use outside the Field of Human Sexual Dysfunction. Respondents shall redact such documents and materials to be retained to remove all information that is primarily related to D2 Agonist 774 for use in the Field of Human Sexual Dysfunction and shall not retain such information other than as otherwise provided for in this Order.
- S. The purpose of the divestiture of the D2 Agonist 774 Assets is to ensure the continued Development of the D2 Agonist 774 Assets for use in the Field of Human Sexual Dysfunction, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

### VI.

### **IT IS FURTHER ORDERED** that:

- A. Not later than ten (10) Business Days after the Effective Date, Respondents shall amend the Deramaxx License Agreement in accordance with the Deramaxx Amended License Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Novartis Animal Health or to reduce any obligations of Respondents under such agreement).
- B. The Deramaxx Amended License Agreement is incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with any term of the Deramaxx Amended License Agreement, if such agreement is approved by the Commission in connection with the Commission's determination to make this Order final shall constitute a failure to comply with this Order.
- C. Respondents shall submit to Novartis Animal Health, at Respondents' expense, all Confidential Business Information related to the marketing or sale of Deramaxx; *provided, however*, this provision shall not apply to any Confidential Business Information related to the marketing or sale of Deramaxx that Respondent Pfizer can demonstrate it obtained without the assistance of Respondent Pharmacia prior to the Effective Date.
- D. Respondents shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the marketing or sale of Deramaxx, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except Novartis Animal Health; *provided*,

- E. Respondents shall require, as a condition of continued employment post-divestiture, that each employee with access to any Confidential Business Information related to the marketing or sale of Deramaxx (including those employees with access to market research data, actual sales data, sales forecasts, production orders, or pricing information) sign a confidentiality agreement pursuant to which such employee shall be required to maintain all such Confidential Business Information strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).
- F. Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to Deramaxx by Respondents' personnel to all of Respondents' employees who (i) are or were involved in the manufacturing, distribution, sale or marketing of Deramaxx, (ii) are involved in the sale or marketing of Rimadyl and/or (iii) may have Confidential Business Information related to the marketing or sale of Deramaxx. Such notification shall be in substantially the form set forth in the Employee Notification. Respondents shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of such notification to Novartis Animal Health. Respondents shall maintain complete records of all such agreements at Respondents' corporate headquarters and shall provide an officer's certification to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide Novartis Animal Health with copies of all certifications, notifications and reminders sent to Respondents' personnel.
- G. For a period commencing on the date this Order becomes final and continuing for ten (10) years, Respondents shall not, without providing advance written notification to the Commission, terminate the Deramaxx Amended License Agreement. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents and not of anyTD(redtansmissj8400 184in TD(and not of)Tj48.6000 0.0000 TD(a o52.5600 y ments 7000)

Deramaxx Amended License Ag

# VII.

# IT IS FURTHER ORDERED that:

A. Not later than ten (10) Business Days after the Effective Date, Respondents shall divest the Cow Mastitis Products

- 3. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer, until the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) obtains all FDA approvals necessary to manufacture the Cow Mastitis Products independently of GlaxoSmithKline and sufficient to satisfy management of the Commission-approved Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of Cow Mastitis Products.
- D. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to Cow Mastitis Products; *provided, however*, this provision shall not apply to any Confidential Business Information related to Cow Mastitis Products that Respondent Pharmacia can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.
- E. Respondents shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the research, Development, manufacturing, marketing, or sale of Cow Mastitis Products, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer. This provision shall not apply to any Confidential Business Information related to Cow Mastitis Products that Respondent Pharmacia can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.
- F. For a period of six (6) months from the Closing Date ("the Cow Mastitis Products Access Period"), Respondents shall provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Product Marketing Employees related to Cow Mastitis Products ("Cow Mastitis Products Core Employees").
- G. Respondents shall provide any Proposed Acquirer with the opportunity to enter into employment contracts with the Cow Mastitis Products Core Employees in connection with the divestiture of the Cow Mastitis Products Assets; *provided, however*, that any such employment contracts entered into prior to the Closing Date shall be contingent upon approval by the Commission of the agreements relating to the Cow Mastitis Products Assets (*i.e.*, those agreements proposed by Respondents (or the Divestiture Trustee) to the Commission) as the Divestiture Agreements for the Cow Mastitis Products Assets.
- H. Not later than twenty-five (25) Business Days after the execution date of any proposed Divestiture Agreement related to the Cow Mastitis Products Assets, Respondents shall provide the Commission-approved Acquirer or the Proposed Acquirer the Product Employee Information related to the Cow Mastitis Products Core Employees. Failure by Respondents to provide the Product Employee Information for any relevant employee within the time provided herein shall extend the Cow Mastitis Products Access Period with respect to that employee in an amount equal to the delay.

I. During the Cow Mastitis Products Access Period, Respondents shall not interfere with the hiring or employing by the Commission-approved Acquirer of Cow Mastitis Products Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondents shall not make any counteroffer to a Cow Mastitis Products Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that these requirements shall not prohibit the Respondents from making offers of employment to or employing any Cow Mastitis Products Core Employee during the Cow Mastitis Products Access Period where the Commission-approved Acquirer has notified the Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

*provided further*, that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Cow Mast, that if t TDteo

- 1. Respondents shall require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Commission-approved Acquirer; *provided, however*, that Respondents shall not be deemed to have violated these requirements if the Commission-approved Acquirer withholds such agreement unreasonably; and
- 2. Respondents shall use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- S. The purpose of the divestiture of the Cow Mastitis Products Assets is to ensure the continued use of the Cow Mastitis Products Assets in the same business in which the Cow Mastitis Products Assets were engaged at the time of the announcement of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

### VIII.

### **IT IS FURTHER ORDERED** that:

- A. Not later than thirty (30) Business Days after the Effective Date, Respondents shall divest the Halls Assets (which are a part of the ongoing global Adams confectionery business of Pfizer that is being purchased by Cadbury), absolutely and in good faith, to Cadbury pursuant to and in accordance with the Halls Divestiture Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Cadbury or to reduce any obligations of Respondents under such agreement), and such agreement, if approved by the Commission as the Divestiture Agreement for the Halls Assets, is incorporated by reference into this Order and made part hereof. If Respondents do not divest the Halls Assets to Cadbury within thirty (30) Business Days after the Effective Date, the Commission may appoint a Divestiture Trustee to divest the Halls Assets.
- B. The purpose of the divestiture of the Halls Assets is to ensure the continued use of the Halls Assets in the same business in which the Halls Assets were engaged at the time of the announcement of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

### IX.

### **IT IS FURTHER ORDERED** that:

A. Not later than ten (10) Business Days after the Effective Date, Respondents shall divest the

Bonine Assets, absolutely and in good faith, to Insight pursuant to and in accordance with the Bonine Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of Insight or to reduce any obligations of Respondents under such agreement), and such agreement, if approved by the Commission as the Divestiture Agreement for the Bonine Assets, is incorporated by reference into this Order and made part hereof. If Respondents do not divest the Bonine Assets to Insight within ten (10) Business Days after the Effective Date, the Commission may appoint a Divestiture Trustee to divest the Bonine Assets;

provided, however, that if Respondents have divested the Bonine Assets to Insight prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Insight is not an acceptable purchaser of the Bonine Assets, or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with Insight and shall divest the Bonine Assets within six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only nal, t

Acquirer that the Bonine supplied through Contract Manufacture pursuant to the Divestiture Agreement meets FDA-approved specifications. Respondents shall agree to indemnify, defend and hold the Commission-approved Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Bonine supplied to the Commission-approved Acquirer pursuant the Divestiture Agreement by the Respondents to meet FDA specifications. This obligation shall be contingent upon the Commission-approved Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Divestiture Agreement shall be consistent with the obligations assumed by Respondents under this Order; provided, however, Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with the Respondents' responsibilities to supply Bonine in the manner required by this Order; provided further, however, this obligation shall not require Respondents to be liable for any negligent act or omission of the Commission-approved Acquirer or for any representations and warranties, express or implied, made by the Commission-approved Acquirer that exceed the representations and warranties made by the Respondents to the Commission-approved Acquirer.

4. Respondents shall make representations and warranties to the Commission-approved Acquirer that Respondents will hold harmless and indemnify the Commission-approved Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Bonine in a timely manner as required by the Divestiture Agreement unless Respondents can demonstrate that their failure was entirely beyond the control of the Respondents and in no part the result of negligence or willful misconduct by Respondents.

- c. consultation with knowledgeable employees of Respondents and training, at the request of the Commission-approved Acquirer and at a facility chosen by the Commission-approved Acquirer, until the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) fully validated, qualified, and approved by the FDA, and able to manufacture Bonine independently of the Respondents.
- D. Respondents shall submit to the Commission-approved Acquirer, at Respondents' expense, all Confidential Business Information related to Bonine; *provided, however*, this provision shall not apply to any Confidential Business Information related to Bonine that Respondent Pharmacia can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.
- E. Respondents shall not use, directly or indirectly, any Confidential Business Information (other than as necessary to comply with requirements of this Order) related to the research, Development, manufacturing, marketing, or sale of Bonine, and shall not disclose or convey such Confidential Business Information, directly or indirectly, to any person except the Commission-approved Acquirer. This provision shall not apply to any Confidential Business Information related to Bonine that Respondent Pharmacia can demonstrate it obtained without the assistance of Respondent Pfizer prior to the Effective Date.
- F. For any Commission-approved Acquirer other than Insight (in which case the Respondents' obligations shall be in accordance with the Bonine Asset and Purchase Agreement), for a period of six (6) months from the Closing Date ("the Bonine Access Period"), and at such Commission-approved Acquirer's option, Respondents shall provide the Commission-approved Acquirer with the opportunity to enter into employment contracts with the Product Marketing Employees related to Bonine ("Bonine Core Employees").
- G. For any Commission-approved Acquirer other than Insight (in which case the Respondents' obligations shall be in accordance with the Bonine Asset and Purchase Agreement), Respondents shall provide any Proposed Acquirer or Commission-approved Acquirer with the opportunity to enter into employment contracts with the Bonine Core Employees in connection with the divestiture of the Bonine Assets; *provided, however*, that any such employment contracts entered into prior to the Closing Date shall be contingent upon approval by the Commission of the agreements relating to the Bonine Assets (*i.e.*, those agreements proposed by Respondents (or the Divestiture Trustee) to the Commission) as the Divestiture Agreements for the B

the Product Employee Information for any relevant employee within the time provided herein shall extend the Bonine Access Period with respect to that employee in an amount equal to the delay.

2. During the Bonine Access Period, Respondents shall not interfere with the hiring or employing by the Commission-approved Acquirer of Bonine Core Employees, and shall remove any impediments within the control of Respondents that may deter these employees from accepting employment with the Commission-approved Acquirer, including, but not limited to, any non-compete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by the Commission-approved Acquirer. In addition, Respondents shall not make any counteroffer to a Bonine Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that these requirements shall not prohibit the Respondents from making offers of employment to or employing any Bonine Core Employee during the Bonine Access Period where the Commission-approved Acquirer has notified the Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee;

provided further, that if the Respondents notify the Commission-approved Acquirer in writing of their desire to make an offer of employment to a particular Bonine Core Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Business Days of the date the Commission-approved Acquirer receives such notice, the Respondents may make an offer of employment to that employee.

- 3. For a period of one (1) year from the Closing Date, Respondents shall not:
  - a. directly or indirectly, solicit or otherwise attempt to induce any employee of the Commission-approved Acquirer with any amount of responsibility related to Bonine ("Bonine Employee") to terminate his or her employment relationship with the Commission-approved Acquirer; *provided*, *however*, a violation of this provision will not occur by any of the following actions: (i) Respondents advertise for employees in newspapers, trade publications or other media not targeted specifically at the Bonine Employees, or (ii) a Bonine Employee contacts Respondents on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondents; or
  - b. hire any Bonine Employee; *provided*, *however*, Respondents may hire any former Bonine Employee whose employment has been terminated by the Commission-approved Acquirer.

- H. For a period of one (1) year from the Closing Date, Respondents shall not market or promote Dramamine in the United States using the services of any Product Marketing Employee related to Bonine.
- I. Respondents shall provide all Bonine Core Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the Bonine Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);
  - *provided, however,* that nothing in these requirements or in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee.
- J. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Bonine Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of Bonine by the Commission-approved Acquirer.
- K. Respondents shall require, as a condition of continued employment post-divestiture, that each Bonine Core Employee sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to Bonine strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).

### **IT IS FURTHER ORDERED** that:

A. Not later than ten (10) Business Days after the Effective Date, Respondents shall divest the Cortaid Assets, absolutely and in good faith, to J&J pursuant to and in accordance with the Cortaid Asset Purchase Agreement (which agreement shall not vary or contradict, or be construed to vary or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of J&J or to reduce any obligations of Respondents under such agreement), and such agreement, if approved by the Commission as the Divestiture Agreement for the Cortaid Assets, is incorporated by reference into this Order and made part hereof. If Respondents do not divest the Cortaid Assets to J&J within ten (10) Business Days after the Effective Date, the Commission may appoint a Divestiture Trustee to divest the Cortaid Assets;

provided, however, that if Respondents have divested the Cortaid Assets to J&J prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that J&J is not an acceptable purchaser of the Cortaid Assets, or that the manner in which the divestiture was accomplished is not acceptable, then Respondents shall immediately rescind the transaction with J&J and shall divest the Cortaid Assets within six (6) months from the date the Order becomes final, absolutely and in good faith, at no minimum price, to a Commission-approved Acquirer and only in a manner that receives the prior approval of the Commission.

- B. Any Divestiture Agreement between Respondents (or a Divestiture Trustee) and a Commission-approved Acquirer of the Cortaid Assets that has been approved by the Commission shall be deemed incorporated into this Order, and any such failure by Respondents to comply with any term of such Divestiture Agreement related to the Cortaid Assets shall constitute a failure to comply with this Order.
- C. If the Commission-approved Acquirer is an entity other than J&J (in which case Respondents' obligations shall be in accordance with the Cortaid Asset Purchase Agreement) then, at such other Commission-approved Acquirer's option, Respondents shall include in any Divestiture Agreement related to the Cortaid Assets the following provisions:

1.

- 2. After Respondents commence delivery of Cortaid to the Commission-approved Acquirer pursuant to a Divestiture Agreement and for the term of the Contract Manufacture related to Cortaid, Respondents will make inventory of Cortaid available for sale or resale only to the Commission-approved Acquirer.
- 3. Respondents shall make representations and warranties to the Commission-approved Acquirer that the Cortaid supplied through Contract Manufacture pursuant to the Divestiture Agreement meets FDA-approved specifications. Respondents shall agree to indemnify, defend and hold the Commission-approved Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Cortaid supplied to the Commission-approved Acquirer pursuant to the Divestiture Agreement by the Respondents to meet FDA specifications. This obligation shall be contingent upon the Commission-approved Acquirer giving Respondents prompt, adequate notice of such claim and cooperating fully in the defense of such claim. The Divestiture Agreement shall be consistent with the obligations assumed by Respondents under this Order; provided, however, Respondents may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with the Respondents' responsibilities to supply Cortaid in the manner required by this Order; *provided further, however*, this obligation shall not require Respondents to be liable for any negligent act or omission of the Commission-approved Acquirer or for any representations and warranties, express or implied, made by the Commission-approved Acquirer that exceed the representations and warranties made by the Respondents to the Commission-approved Acquirer.
- 4. Respondents shall make representations and warranties to the Commission-approved Acquirer that Respondents will hold harmless and indemnify the Commission-approved Acquirer for any liabilities or loss of profits resulting from the failure by Respondents to deliver Cortaid in a timely manner as required by the Divestiture Agreement unless Respondents can demonstrate that their failure was entirely beyond the control of the Respondents and in no part the result of negligence or willful misconduct by Respondents.
- 5. During the term of the Contract Manufacture between Respondents and the Commission-approved Acquirer, upon request of the Commission-approved Acquirer or Interim Monitor (if applicable), Respondents shall make available to the Commission-approved Acquirer or the Interim Monitor all records that relate to the manufacture of Cortaid.
- 6. Respondents shall commit that, upon reasonable notice and a request from the Commission-approved Acquirer to the Respondents, Respondents shall provide in a timely manner, at no greater than Direct Cost:
  - a. assistance and advice to enable the Commission-approved Acquirer (or the

Designee of the Commission-approved Acquirer) to obtain all necessary permits and approvals from any Agency or Governmental Entity to manufacture and sell Cortaid;

b. assistance to the Commission-approved Acquirer (or the Designee of the Commission-approved Acquirer) to manufacture Cortaid in substantially the same manner and quality employed or achieved by Respondent Pharmac

agreements proposed by Respondents (or the Divestiture Trustee) to the Commission) as the Divestiture Agreements for the Cortaid ;00.7200 0.0u

direct or indirect solicitation or encouragement from the Respondents; and

- H. For a period of one (1) year from the Closing Date, Respondents shall not market or promote Cortizone in the United States using the services of any Product Marketing Employee relating to Cortaid.
- I. Respondents shall provide all Cortaid Core Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the Cortaid Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);
  - *provided, however,* that nothing in these requirements or in this Order requires or shall be construed to require the Respondents to terminate the employment of any employee.
- J. Prior to the Closing Date, Respondents shall secure all consents and waivers from all Third Parties that are necessary for the divestiture of the Cortaid Assets to the Commission-approved Acquirer, or for the continued research, Development, manufacture, sale, marketing or distribution of Cortaid by the Commission-approved Acquirer. In addition, prior to the Effective Date, Respondents shall execute agreements (assignable to the Commission-approved Acquirer) with all Third Parties (including, but not limited to, all Third Parties used by Respondent Pharmacia in connection with the manufacture of Cortaid

manufacturing, distribution, sale or marketing of Cortaid, (ii) are involved in the research, Development, manufacturing, distribution, sale or marketing of Cortizone and/or (iii) may have Confidential Business Information related to Cortaid. Such notification shall be in substantially the form set forth in the Employee Notification. Respondents shall give such

provided further, however:

- Respondents shall require those who view such unredacted documents or other
  materials to enter into confidentiality agreements with the Commission-approved
  Acquirer; provided, however, that Respondents shall not be deemed to have violated
  these requirements if the Commission-approved Acquirer withholds such agreement
  unreasonably; and
- 2. Respondents shall use their best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.
- P. The purpose of the divestiture of the Cortaid Assets is to ensure the continued use of the Cortaid Assets in the same business in which the Cortaid Assets were engaged at the time of the announcement of the Merger, and to remedy the lessening of competition resulting from the Merger as alleged in the Commission's Complaint.

XI.

#### **IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Order to Maintain Assets (collectively "the Orders"), and the Divestiture Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents' compliance with the requirements of the Orders, and the related Divestiture Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If neither Respondent has opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents' compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If one or more Interim Monitors are appointed pursuant to this Paragraph or pursuant to the

relevant provisions of the Order to Maintain Assets in this matter, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of each Interim Monitor:

- 1. The Interim Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
- 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
- 3. The Interim Monitor shall serve until the later of:
  - a. the completion by Respondents of the divestiture of all relevant assets required to be divested pursuant to this Order in a manner that fully satisfies the requirements of the Orders and notification by the Commission-approved Acquirer to the Interim Monitor that it is fully capable of producing the relevant Product(s) acquired pursuant to a Divestiture Agreement independently of Respondents (or, in the case of the Cow Mastitis Products, independently of GlaxoSmithKline); or
  - b. the completion by Respondents of the last obligation under the Orders pertaining to the Interim Monitor's service.

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

- 4. 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 normal course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondents' compliance with their obligations under the Orders, including, but not limited to, their 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.
- 5. 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 the Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

### XII.

### IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by this Order, the Commission may appoint a trustee or trustees ("Divestiture Trustee(s)") to assign, grant, license, divest, transfer, deliver or otherwise convey the assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to each of the relevant Paragraphs in a manner that satisfies the requirements of each such Paragraph. The Commission may appoint a different Divestiture Trustee to accomplish each of the divestitures described in Paragraphs II, III, V, VII, VIII, IX, and X, respectively. In the event that the Commission or the Attorney General brings an action pursuant to  $\S 5(l)$  of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to  $\S 5(l)$  of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents

not to a

- otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
- 2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described in herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however*, the Commission may extend the divestiture period only two (2) times.
- 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
- 4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an acquirer as required by this Order; *provided*, *however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further*, *however*, that Respondents shall select such entity within five (5) Business Days after receiving notification of the Commission's approval.
- 5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the

divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

- 6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
- 7. In the event that the Divestiture Trustee determines that he or she is unable to assign, grant, license, divest, transfer, deliver or otherwise convey the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed in a manner that preserves their marketability, viability and competitiveness and ensures their continued use in the research, Development, manufacture, distribution, marketing, promotion, sale, or after-sales support of the relevant Product, the Divestiture Trustee may assign, grant, license, divest, transfer, deliver or otherwise convey such additional assets of Respondents and effect such arrangements as are necessary to satisfy the requirements of this Order.
- 8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed by this Order.
- 9. The Divestiture Trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
- 10. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may a appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

# APPENDIX I TO THE DECISION AND ORDER

## NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

On March 24, 2003, Pfizer Inc. ("Pfizer") and Pharmacia Corporation ("Pharmacia"), hereinafter referred to collectively as "Respondents," entered into an Agreement Containing Consent Orders ("Consent Agreement") with the Federal Trade Commission ("FTC") relating to the divestiture of certain assets. That Consent Agreement includes two orders: The Decision and Order and the Order to Maintain Assets.

The Decision and Order requires the divestiture of assets relating to the several marketed and pipeline Pfizer products including Darifenacin, femhrt, Pfizer's cow mastitis product line, Pfizer's Halls product line and Bonine. These assets are hereinafter referred to as the "Pfizer Divested Assets." The Decision and Order also requires the divestiture of assets relating to several marketed and pipeline Pharmacia products including Intranasal Apomorphine, the D2 Agonist 774 development compound, Deramaxx and Cortaid. These assets are hereinafter referred to as the "Pharmacia Divested Assets." Both the Decision and Order and the Order to Maintain Assets require Respondents to commit that no Confidential Business Information relating to the Pfizer Divested Assets or the Pharmacia Divested Assets will be disclosed to or used by any employee of the combined entity formed by the merger of Pfizer and Pharmacia ("Combined Entity"). In particular, this is to protect such information from being used in any way for the research, development, sale or manufacture of any product that competes or may compete with any product that is marketed by the Respondents after the proposed merger. The Decision and Order also requires the c

related to the Pfizer Divested Assets or Pharmacia Divested Assets.

All Confidential Business Information related to Pfizer Divested Assets and Pharmacia Divested Assets must be retained and maintained by the persons involved in the operation of that business on a confidential basis, and such persons must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment involves responsibilities unrelated to the Pfizer Divested Assets or Pharmacia Divested Assets (such as persons with job responsibilities related to Pfizer or Pharmacia products that compete or may compete with the Pfizer Divested Assets or Pharmacia Divested Assets). In addition, any person who possesses such Confidential Business Information related to the Pharmacia Divested Assets or Pfizer Divested Assets and who becomes involved in the Combined Entity's business related to any product that competes or may compete with the Pfizer Divested Assets or Pharmacia Divested Assets must not provide, discuss, exchange, circulate, or otherwise disclose any such information to or with any other person whose employment relates to such businesses. Finally, any Pfizer, Pharmacia or former Pfizer or Pharmacia employee with documents that contain information that he or she believes might be considered Confidential Business Information related to the Pharmacia Divested Assets or Pfizer Divested Assets and who has not received specific instructions as to how the documents in his or her possession should be disposed of should contact the contact person identified at the end of this notice.

Furthermore, the Decision and Order places restrictions upon the functions that management level employees of Pfizer or Pharmacia can perform for the Combined Entity for one (1) year from the closing of the Pfizer/Pharmacia transaction: (i) any employee of Pfizer who was involved in the marketing of Darifenacin may not perform a similar function for the Combined Entity relating to Detrol, (ii) any employee of Pfizer who was involved in the marketing of femhrt may not perform a similar function for the Combined Entity relating to Activella, (iii) any employee of Pfizer who was involved in the marketing of Pfizer's Cow Mastitis products may not perform a similar function for the Combined Entity relating to Cow Mastitis products, (iv) any employee of Pfizer who was involved in the marketing of Bonine may not perform a similar function for the Combined Entity relating to Dramamine. In addition, any employee involved in sales efforts for femhrt may not perform a similar function for the Combined Entity regarding Activella for six (6) months from the closing of the Pfizer/Pharmacia transaction.

Any violation of the Decision and Order, or the Order to Maintain Assets may subject Pfizer, Pharmacia, or the Combined Entity to civil penalties and other relief as provided by law.