

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman
Mozelle W. Thompson
Orson Swindle
Thomas B. Leary
Pamela Jones Harbour

<p>In the Matter of</p> <p style="text-align: center;">SANOFI-SYNTHÉLABO, a <i>société anonyme</i>;</p> <p>and</p> <p style="text-align: center;">AVENTIS, a <i>société anonyme</i>.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Docket No. C-4112</p> <p>ORDER TO MAINTAIN ASSETS</p>
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The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Sanofi-Synthélabo (“Sanofi”) of Respondent Aventis (“Aventis”), 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

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

Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Sanofi is a French *société anonyme* organized, existing and doing business under and by virtue of the laws of the French Republic, with its registered office located at 174, avenue de France, Paris, 75013, France.

2. Respondent Aventis is a French *société anonyme* organized, existing and doing business under and by virtue of the laws of the French Republic, with its registered office located at 16, avenue de l'Europe, 67300 Schiltigheim, France.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

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

- A. "Sanofi" means Sanofi-Synthélabo, a French *société anonyme*, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates in each case controlled by Sanofi-Synthélabo and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Sanofi shall include Aventis.
- B. "Aventis" means Aventis, a French *société anonyme*, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups, and affiliates in each case controlled by Aventis, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Respondents" means Sanofi and Aventis, individually and collectively.
- D. "Pfizer" means Pfizer 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 235 East 42nd Street, New York, New York 10017.
- E. "Acquisition" means the point in the transaction at which the shareholders of Respondent Aventis shall have sold to Respondent Sanofi more than 50 percent of the shares and voting rights of Respondent Aventis in furtherance of the tender offer launched by Respondent

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 has been approved by the Commission to accomplish the requirements of the Decision and Order.

II.

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

- A. Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of the businesses associated with the Divestiture Assets,

Respondents.

C. Respondents shall maintain a work force equivalent in size, training, and expertise to what has been associated with the Divestiture Assets, including providing the employees associated with the Divestiture Assets with reasonable and appropriate financial incentives to continue their employment positions until the Closing Date.

D. Respondents shall:

1. during the Arixtra Access Period, (a) not interfere with the hiring or employing by the Commission-approved Acquirer of Arixtra Core Employees, and (b) 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 noncompete 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 an Arixtra Core Employee who receives a written offer of employment from the Commission-approved Acquirer;

provided, however, that this Paragraph II.D.1 shall not prohibit the Respondents from making offers of employment to or employing any Arixtra Core Employee during the Arixtra 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 Arixtra Core Employee and the Commission-approved Acquirer does not make an offer of employment to that employee within twenty (20) Days of the date the Commission-approved Acquirer receives such notice, the Respondents may make an offer of employment to that employee; and

2. until the Closing Date, provide all Arixtra Core Employees with reasonable financial incentives to continue in their positions. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the Arixtra Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law). In addition to the foregoing, Respondents shall provide to each Arixtra Core Employee (other than those employees who transfer to the Commission-approved Acquirer by operation of Law) who accepts employment with the Commission-approved Acquirer, an incentive equal to three (3) months of such employee's base annual salary to be paid upon the employee's completion of one (1) year of employment with the Commission-approved Acquirer;

provided, however, that nothing in this Paragraph II.D.2 or in this Order to Maintain

Assets requires or shall be construed to require the Respondents to terminate the employment of any employee.

E. Respondents shall:

1. during the Camptosar Access Period, (a) not interfere with the hiring or employing by Pfizer of Camptosar Core Employees, and (b) remove any impediments within the control of Respondents that may deter these employees from accepting employment with Pfizer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondents that would affect the ability or incentive of those individuals to be employed by Pfizer. In addition, Respondents shall not make any counteroffer to a Camptosar Core Employee who receives a written offer of employment from Pfizer;

provided, however, that this Paragraph II.E.1 shall not prohibit the Respondents from making offers of employment to or employing any Camptosar Core Employee during the Camptosar Access Period where Pfizer has notified the Respondents in writing that Pfizer does not intend to make an offer of employment to that employee;

provided further that, if the Respondents notify Pfizer in writing of their desire to make an offer of employment to a particular Camptosar Core Employee and Pfizer does not make an offer of employment to that employee within twenty (20) Days of the date Pfizer receives such notice, the Respondents may make an offer of employment to that employee; and

2. until the Closing Date, provide all Camptosar Core Employees with reasonable financial incentives to continue in their positions. Such incentives shall include a continuation of all employee benefits offered by Respondents until the Closing Date for the divestiture of the Camptosar Assets has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law). In addition to the foregoing, Respondents shall provide to each Camptosar Core Employee (other than those employees who transfer to Pfizer by operation of Law) who accepts employment with Pfizer, an incentive equal to three (3) months of such employee's base annual salary to be paid upon the employee's completion of one (1) year of employment with Pfizer;

provided, however, that nothing in this Paragraph II.E.2 or in this Order to Maintain Assets requires or shall be construed to require the Respondents to terminate the employment of any employee.

- F. Not later than sixty (60) Days following the Effective Date, Respondents shall provide to all of Respondents' employees and other personnel who may have access to Confidential Business Information related to Arixtra, or to the Camptosar Assets, as the case may be, written or electronic notification of the restrictions on the use of such information by Respondents' personnel. At the same time, if not provided earlier, Respondents shall

provide a copy of such notification by e-mail with return receipt requested or similar transmission, and keep an electronic file of such receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the form of such notification to the Commission-approved Acquirer (or, with respect to the Camptosar Assets, to Pfizer), the Interim Monitor(s), and the Commission. Respondents shall also obtain from each employee covered by this Paragraph II.F. an agreement to abide by the applicable restrictions. Such agreement and notification shall be in substantially the form set forth in the “Notice of Antitrust Remedy and Requirement for Confidentiality” attached as Appendix A to this Order to Maintain Assets. 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 monitor the implementation by their employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets. Respondents shall provide the Commission-approved Acquirer (or, with respect to the Camptosar Assets, Pfizer) with copies of all certifications, notifications and reminders sent to Respondents’ employees and other personnel.

- G. Respondents shall adhere to and abide by the Remedial Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- H. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the businesses associated with the Divestiture Assets, to minimize any risk of loss of competitive potential for the businesses associated with the Divestiture Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint an Interim Monitor to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements. The Commission may appoint one or more Interim Monitors to assure Respondents’ compliance with the requirements of the Orders and the related Remedial 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's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph or the relevant provisions of the Decision and Order in this matter.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The Interim Monitor appointed pursuant to this Order to Maintain Assets or the relevant provisions of the Decision and Order in this matter may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

IV.

V.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) Days prior to any proposed (1) dissolution of the Respondents, (2) acquisition, merger, or consolidation of Respondents, or (3) other change in the Respondents that may affect compliance obligations arising out of the order, including, but not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in Respondents.

VI.

IT IS FURTHER ORDERED that, for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents relating to compliance with this Order to Maintain Assets; and
- B. Upon five (5) Days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

**PUBLIC
APPENDIX A
TO THE ORDER TO MAINTAIN ASSETS**

NOTICE OF ANTITRUST REMEDY AND REQUIREMENT FOR CONFIDENTIALITY

On [INSERT], Sanofi-Synthélabo (“Sanofi”) and Aventis (“Aventis”) hereinafter referred to 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 Arixtra[®]. These assets are hereinafter referred to as the “Sanofi Divested Assets.” The Decision and Order also requires the divestiture of certain assets relating to certain Aventis products including Camptosar[®] (marketed under the tradename Campto[®] in Europe), and the enantiomer of Imovane[®] known as Estorra[®] (a product owned by Sepracor in the United States but subject to a licensing agreement with Aventis). These assets are hereinafter referred to as the “Aventis 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 Sanofi Divested Assets or the Aventis Divested Assets will be disclosed to or used by any employee of the combined entity formed by the acquisition of a controlling interest in Aventis by Sanofi (“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 acquisition. The Decision and Order also requires the complete divestiture of ALL documents (including electronically stored material) that contain Confidential Business Information related to the Sanofi Divested Assets and Aventis Divested Assets. Accordingly, no employee of the Combined Entity may maintain copies of documents containing such information, except as otherwise required by law or to the extent necessary (1) in the case of Arixtra, to supply drug substance and to continue the Arixtra Ongoing Clinical Development, on behalf of GlaxoSmithKine as provided for in the Arixtra Asset Purchase Agreement, and (2) in the case of Camptosar/Campto, to comply with the requirements contained in decisions of the Commission of the European Communities in Case COMP/M.3354, or to comply with Sanofi’s obligations in the Camptosar Asset Purchase Agreement.

Under the Decision and Order, the Respondents are required to divest the Sanofi Divested Assets and Aventis Divested Assets to acquirers that must be approved by the FTC. Companies have been proposed to the FTC as the acquirers for these assets. Until a complete divestiture of all of the Sanofi Divested Assets and Aventis Divested Assets occurs, the requirements of the second order – the Order to Maintain Assets – are in place to ensure the continued marketability, viability and competitive vigor of the Sanofi Divested Assets and Aventis Divested Assets. This includes preserving the work force that performs functions related to the Sanofi Divested Assets and Aventis Divested Assets. You are receiving this notice because you are one or more of the following: (i) an employee with work responsibilities related to the Sanofi Divested Assets; (ii) an employee with work responsibilities related to the Aventis

Divested Assets; (iii) an employee for Sanofi, Aventis or the Combined Entity who has work responsibilities in some way related to products that compete or may compete with the Sanofi Divested Assets or Aventis Divested Assets; or (iv) an employee or former employee of Aventis or Sanofi who might have Confidential Business Information in your possession related to the Sanofi Divested Assets or Aventis Divested Assets.

All Confidential Business Information related to Sanofi Divested Assets and Aventis 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 Sanofi Divested Assets or Aventis Divested Assets (such as persons with job responsibilities related to Sanofi or Aventis products that compete or may compete with the Sanofi Divested Assets or Aventis Divested Assets). In addition, any person who possesses such Confidential Business Information related to the Aventis Divested Assets or Sanofi Divested Assets and who becomes involved in the Combined Entity's business related to any product that competes or may compete with the Sanofi Divested Assets or Aventis 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 Sanofi, Aventis or former Sanofi or Aventis employee with documents that contain information that he or she believes might be considered Confidential Business Information related to the Aventis Divested Assets or Sanofi 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 Sanofi or Aventis can perform for the Combined Entity for one (1) year from the closing of the Sanofi/Aventis transaction, as follows: any employee of Sanofi who was involved in the marketing of Arixtra may not perform a similar function for the Combined Entity relating to Lovenox. In addition, any employee involved in sales efforts for Arixtra may not perform a similar function for the Combined Entity regarding Lovenox for six (6) months from the closing of the Sanofi/Aventis transaction.

The Decision and Order also places restrictions upon the functions that research and development employees related to Campto can perform for the Combined Entity for one (1) year from the closing of the Sanofi/Aventis transaction, as follows: any employee of Aventis who was involved in the research and development of Campto may not perform any functions for the Combined Entity relating to Eloxatin.

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

I, _____ (print name), hereby acknowledge that I
have read the above notification and agree to abide by its provisions.

**PUBLIC
APPENDIX B
TO THE ORDER TO MAINTAIN ASSETS
AGREEMENT CONTAINING CONSENT ORDER
AND
PROPOSED DECISION AND ORDER**