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**UNITED STATES OF AMERICA**
**BEFORE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:** **Deborah Platt Majoras, Chairman**
**Pamela Jones Harbour**
**Jon Leibowitz**
**William E. Kovacic**
**J. Thomas Rosch**

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| **In the Matter of** | ) | |
| **BARR PHARMACEUTICALS, INC., a corporation.** | ) | **Docket No. C-4171** |

## ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Barr Pharmaceuticals, Inc. ("Barr"), hereinafter referred to as "Respondent," of PLIVA d.d. ("PLIVA") and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 Barr Pharmaceuticals, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 400 Chestnut Ridge Road, Woodcliff Lake, New Jersey 07677.

2. PLIVA d.d. is a corporation organized, existing and doing business under and by virtue of the laws of the Republic of Croatia, with its headquarters address at Ulica grad Vukovara 49, 10000 Zagreb, Croatia, and the address of the principal place of business of its United States subsidiaries at 72 Eagle Rock Avenue, P.O. Box 371, East Hanover, New Jersey 07936.

3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondent, 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 A and incorporated herein by reference and made a part hereof, shall apply:

A. "Barr" means Barr Pharmaceuticals, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Barr (including, but not limited to, Barr Laboratories, Inc.), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. After the Acquisition, Barr shall include PLIVA.

B. "PLIVA" means PLIVA d.d., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by PLIVA (including, but not limited to, its United States subsidiaries, *i.e.*, PLIVA Inc., PLIVA USA, and Odyssey Pharmaceuticals, Inc.), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.

C. "Respondent" means Barr.

D. "Commission" means the Federal Trade Commission.

E. "Divestiture Assets" means the Custodiol Product Assets, the Nimodipine (Barr) Product Assets, the Nimodipine (PLIVA) Product Assets, the Trazodone Hydrochloride Product

Assets, the Triamterene and Hydrochlorothiazide Product Assets and the ViaSpan Product Assets, as defined in the attached Decision and Order.

F. “Divestiture Product Business(es)” means the Respondent’s business within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products, including the research, Development, manuf

following: suppliers; vendors and distributors, including, but not limited to, the High Volume Accounts; customers; Agencies; employees; and others having business relations with the Divestiture Product Businesses. Respondent's responsibilities shall include, but are not limited to, the following:

1. providing the Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such businesses and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for the Divestiture Product Businesses;

2. continuing, at least at their scheduled pace, any additional expenditures for the Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondent including, but not limited to, all research, Development, manufacture, distribution, marketing and sales expenditures;

3. provide such resources as may be necessary to respond to competition against the Divestiture Products and/or to prevent any diminution in sales of the Divestiture Products during and after the Acquisition process and prior to divestiture of the related Divestiture Assets;

4. provide such resources as may be necessary to maintain the competitive strength and positioning of the Divestiture Products at the High Volume Accounts;

5. making available for use by the Divestiture Product Businesses funds sufficient to perform all routine maintenance and all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including the Divestiture Assets;

6. providing the Divestiture Product Businesses with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses; and

7. providing such support services to the Divestiture Product Businesses as were being provided to these businesses by Respondent or PLIVA (whichever party is relevant to such Divestiture Product(s)) as of the date the Consent Agreement was signed by Respondent.

C. Respondent shall maintain a work force at least equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's most recent Pre-Acquisition Marketing Plan.

D. Until the Closing Date for each respective set of Divestiture Assets, Respondent shall provide all the related Divestiture Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the relevant

Divestiture Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of such Divestiture Products pending divestiture and to ensure successful execution of the Pre-Acquisition Marketing Plans related to the relevant Divestiture Products. Such incentives shall include a continuation of all employee benefits offered by Respondent or PLIVA (whichever party is relevant to such Divestiture Product(s)) until the Closing Date for the divestiture of the respective Divestiture Assets has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional incentives as may be necessary to prevent any diminution of the relevant Divestiture Product's competitiveness.

E. Respondent shall:

1. for each Paragraph II Divestiture Product (as defined in the Decision and Order), for a period of at least twelve (12) months from the relevant Closing Date or upon the hiring of ten (10) Divestiture Product Core Employees by the relevant Commission-approved Acquirer, whichever occurs earlier, provide the relevant Commission-approved Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to such Divestiture Products and assets acquired by such Commission-approved Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Employee Access Period(s)"; and

2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondent to provide the Product Employee Information; or (2) ten (10) days after the relevant Closing Date, provide the relevant Commission-approved Acquirer or the relevant Proposed Acquirer with the Product Employee Information related to the relevant Divestiture Product Core Employees. Failure by Respondent to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Employee Access Period(s) with respect to that employee in an amount equal to the delay.

from continuing to employ any Divestiture Product Core Employee (subject to the conditions of continued employment prescribed in the Decision and Order).

F. Pending divestiture of the relevant Divestiture Assets, Respondent shall:

1. not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the relevant Divestiture Product(s) other than as necessary to comply with the following: (1) the requirements of the Orders; (2) Respondent's obligations to the Commission-approved Acquirer under the terms of any Remedial Agreement related to relevant Divestiture Product(s); or (3) applicable Law;

2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the relevant Commission-approved Acquirer;

3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the relevant Divestiture Products to the employees associated with business related to those Retained Products that are approved by the FDA for the same or similar indications as the relevant Divestiture Products; and

4. institute procedures and requirements to ensure that the above-described employees:

    a. do not provide, disclose or oIiys0.83 0 Tphe29 0 Tdfid(0Td(en)Tt of]tTzC1biEd( Commiy4nDd e.72e9is

that such acknowledgment program has been implemented and is being complied with. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets. Respondent shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondent's employees and other personnel.

H. Respondent 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 Respondent under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.

I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses through their respective transfer to the Commission-approved Acquirer(s), to minimize any risk of loss of

Respondent's 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 Decision and Order in this matter, Respondent 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 Respondent's 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 Respondent of:

(1) the divestiture of all Divestiture Assets in a manner that fully satisfies the requirements of the Orders; and

(2) notification by each of the relevant Commission-approved Acquirers to the Interim Monitor that such Commission-approved Acquirer is: (1) approved by the FDA to manufacture the Trazodone Hydrochloride Products and the Triamterene Products, and (2) able to manufacture such Divestiture Products in commercial quantities, in a manner consistent with cGMP, independently of Respondent and PLIVA; and

b. the completion by Respondent 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.

E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's 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 Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the

Interim Monitor's ability to monitor Respondent's compliance with the Orders.

F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

G. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.

H. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order to Maintain Assets and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Commission-approved Acquirer with respect to the performance of Respondent's obligations under the Orders or the Remedial Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Orders.

I. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement;

*provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

J. The Commission may, among other things, require the Interim Monitor and each of 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.**

**IT IS FURTHER ORDERED** that within thirty (30) Days after the date this Order to Maintain Assets becomes final, and every thirty (30) Days thereafter until Respondent has fully complied with its obligations to assign, gran8ss85 0 T2itst3.0

by Respondent at the request of the authorized representative(s) of the Commission; and

B. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

**VII.**

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

A. Three (3) Days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. The latter of:

1. The day after the divestiture of all of the Divestiture Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and the Commission-approved Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or

2. the day the related Decision and Order becomes final.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: October 19, 2006

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

**AGREEMENT CONTAINING CONSENT ORDER**
**AND**
**PROPOSED DECISION AND ORDER**