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The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Mylan Laboratories Inc. (“Mylan”) of the Merck Generics Business of Respondent E. Merck oHG (“Merck”), and Respondents 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 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 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 Mylan Laboratories Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania, with its headquarters address at 1500 Corporate Drive, Suite 400, Canonburg, Pennsylvania 15317.
2. Respondent E. Merck oHG is a corporation organized, existing and doing business under and by virtue of the laws of the Federal Republic of Germany, with its headquarters address at Frankfurter Strasse 250, D-64293, Germany and the address of the principal place of business of its United States subsidiary, EMD, Inc. at 2751 Napa Valley Corporate Drive, Napa, CA 94558.
3. Merck Generic Business includes the following: Merck dura GmbH, Merck Generics Group B.V., EMD, Inc., Merck Generics Belgium B.V.B.A. and Merck Genericos S.L.
4. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

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. "Mylan" means Mylan Laboratories, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Mylan and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Mylan shall include the Merck Generics Business of Respondent Merck.
- B. "Merck" means E. Merck oHG, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Merck (including, but not limited to, the Merck Generics Business), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. “Merck Generics Business” means the generic pharmaceutical business operated by Merck KgaA including, the following: Merck dura GmbH (Alsfelder Str. 19, 64289, Darmstadt, Germany); Merck Generics Group B.V. (Rokin 55, Amsterdam, Netherlands 1012 KK); EMD, Inc. (2751 Napa Valley Corporate Drive, Napa, CA 94558); Merck Generics Belgium B.V.B.A. (3090 Overijse, Brusselsesteenweg 288); Merck Genericos S.L. (Poligono Merck, Mollet de Valles Spain 8100; and all other such entities as are listed item 6(a) of the

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 Divestiture Product Businesses, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Divestiture Product Businesses except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Divestiture Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the Divestiture Product Businesses.
- B. Respondents shall maintain the operations of the Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such businesses) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the 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. Respondents' 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 Respondents including, but not limited to, all research, Development, manufacture and development,

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 Respondents as of the date the Consent Agreement was signed by Respondents.
- C. Respondents shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's most recent Pre-Acquisition Marketing Plan.
- D. Until the Closing Date for each respective set of Divestiture Assets, Respondents shall provide all the related Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the

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

- a. do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
- b. do not solicit, access or use any Confidential Business Information that they are prohibited under this Order to Maintain Assets from receiving for any reason or purpose.

G. Not later than thirty (30) days after the Effective Date, Respondents shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Divestiture Products by Respondents' personnel to all of Respondents' employees who:

1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of each of the relevant Divestiture Products;
2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that are approved by the FDA for the same or similar indications as each of the relevant Divestiture Products prior to the Acquisition, and or that contain the same active pharmaceutical ingredient as the relevant Divestiture Products; and/or
3. may have Confidential Business Information related to the Divestiture Products.

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 relevant Closing Date. Respondents shall provide a copy of such notification to the Acquirer. Respondents shall maintain complete records of all such agreements at Respondent Mylan's headquarters address 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 Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

H. 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 the Orders shall not 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.

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 Acquirer(s), to minimize any risk of loss of competitive potential

for the Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

...

... 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 Respondent Mylan, which consent shall not be unreasonably withheld. If Respondent Mylan has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Mylan 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, Respondent Mylan 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 Decision and Order 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 date of completion by Respondents of the

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.

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

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 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: September 26, 2007

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