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BEFORE FEDERAL ,RADE COMMISSION

COMMISSIONERS: **D P M , C**
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E. K
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	)	**D N . C-4211**
SCHERING-PLO GH CORPORA,ION,	)	

DECISION AND ORDER
P R

The Federal Trade Commission ("Commission") having initiated an investigation of the acquisition by Respondent Schering-Plough Corporation ("Schering-Plough") of Organon Biosciences N.V. from Akzo Nobel N.V., and Respondent 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 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 Order ("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 that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, 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, and having duly considered the comment received from an interested person pursuant to section 2.34 of its Rules, 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 the following Decision and Order ("Order"):

1. Respondent Schering-Plough Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters address at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033-1310.

2. Akzo Nobel N.V. is a corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, with its headquarters address at Velperweg 76, 6824 BM Arnhem, The Netherlands and its principal place of business in the U.S. at 120 White Plains Road, Suite 300, Tarrytown, New York 10591-5522.

3. Organon BioSciences N.V., with its headquarters address at Wethouder van Eschstraat 1, 5342 AV OSS, The Netherlands, includes Intervet.

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

ORDER

I.

I,T IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "Schering-Plough" means Schering-Plough Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Schering-Plough Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Schering-Plough Corporation shall include Organon BioSciences and Intervet.

B. "Akzo Nobel" means Akzo Nobel N.V., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Akzo Nobel and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Organon BioSciences" means Organon BioSciences N.V., a corporation organized, existing and doing business under and by virtue of the laws of The Netherlands, with its offices and principal place of business located at Wethouder van Eschstraat 1, 5342 AV

Oss, The Netherlands. Organon Biosciences is a wholly owned subsidiary of Akzo Nobel.

D. "Intervet" means Intervet Inc, a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters located at 29160 Intervet Lane, Millsboro, Delaware 19966. Intervet is a wholly owned indirect subsidiary of Organon BioSciences.

E. "Respondent" means Schering-Plough.

F. "Commission" means the Federal Trade Commission.

G. "Acquirer" means the following:

1. Wyeth; or

Territory;

13. Product Scientific and Regulatory Material;

14. all unfilled customer orders for the Divestiture Product as of the Closing Date (a list of such orders is to be provided to the Acquirer within two days after the Closing Date);

15. license(s) to all Product Manufacturing Technology:

    (i) to make and have made the Divestiture Product anywhere in the world, which license(s) shall be perpetual, transferable, fully paid-up and royalty-free, and co-exclusive with Respondent within the Territory and non-exclusive outside the Territory, and;

    (ii) to use, distribute, offer for sale, promote, advertise, sell, or import, or to have used, distributed, offered for sale, promoted, advertised, sold, or imported such Divestiture Product, in and into the Territory, which license(s) shall be perpetual, fully paid-up and royalty-free, and exclusive (even as to Respondent); and,

    (iii) all of which licenses shall include the right to use to make improvements or modifications to such Divestiture Product (including, but not limited to, the preparation of new or modified Products by combining components, antigens, or ingredients of such Divestiture Product with one or more other components, antigens, ingredients, or Products);

16. at the Acquirer's option, all inventories for the Territory in existence as of the Closing Date, including, but not limited to, raw materials, goods in process, finished goods, and Divestiture Product specific packaging and labels, which shall include the grant of a license to use Product Trademarks and Product Trade Dress for the purposes of marketing and selling such inventories in the Territory; and

17. all Respondent's books, records and files related to the foregoing that are not included in the Product's Regulatory File, including all correspondence with the USDA 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 Avimune IB98 from January 1, 2000, through the Closing Date, and quality control histories pertaining to Avimune IB98 owned by, or in the possession or control of, Respondent, or to which Respondent has 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

information as it relates to Avimune IB98, Respondent shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the 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 Respondent provide the Acquirer with the above-described information without requiring Respondent completely to divest itself of information that, in content, also relates to Products and businesses other than Avimune IB98;

provided further, however, the term "Avimune IB98 Assets" does not include: (i) Retained Master Seed; (ii) Retained Challenge Material; (iii) Retained Reagents; (iv) manufacturing equipment and facilities, business permits and licenses, research and Development expertise, professional services, trade and distribution networks, personnel, manufacturing facilities, factories, laboratories and other real property, administrative, systems and processing infrastructure, sales, promotion and marketing expertise, regulatory expertise, financing, and items of a similar nature generally necessary to conduct an animal health business; (v) those assets listed in 1-17 above as used in the conduct of Respondent's business outside the Territory.

L. "Asset Purchase Agreement" or "Agreement" means the Amended and Restated Asset Purchase Agreement between Schering-Plough Animal Health Corporation and Intervet Inc., and Wyeth, acting through its Fort Dodge Animal Health division, dated October 18,

12. Product Scientific and Regulatory Material;

13. all unfilled customer orders for the Divestiture Product as of the Closing Date (a list of such orders is to be provided to the Acquirer within two days after the Closing Date);

14. license(s) to all Product Manufacturing Technology:

    (i) to make and have made the Divestiture Product anywhere in the world, which license(s) shall be perpetual, transferable, fully paid-up and royalty-free, and co-exclusive with Respondent within the Territory and non-exclusive outside the Territory, and;

    (ii) to use, distribute, offer for sale, promote, advertise, sell, or import, or to have used, distributed, offered for sale, promoted, advertised, sold, or imported such Divestiture Product, in and into the Territory, which license(s) shall be perpetual, fully paid-up and royalty-free, and exclusive (even as to Respondent); and,

    (iii) all of which licenses shall include the right to use to make improvements or modifications to such Divestiture Product (including, but not limited to, the preparation of new or modified Products by combining components, antigens, or ingredients of such Divestiture Product with one or more other components, antigens, ingredients, or Products);

15. at the Acquirer's option, all inventories for the Territory in existence as of the Closing Date, including, but not limited to, raw materials, goods in process, finished goods, and Divestiture Product specific packaging and labels, which shall include the grant of a license to use Product Trademarks and Product Trade Dress for the purposes of marketing and selling such inventories in the Territory; and

16. all Respondent's books, records and files related to the foregoing that are not included in the Product's Regulatory File, including all correspondence with the USDA 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 CHOLERVAC PM-1 from January 1, 2000, through the Closing Date, and quality control histories pertaining to CHOLERVAC PM-1 owned by, or in the possession or control of, Respondent, or to which Respondent has 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 CHOLERVAC PM-1 Assets contain information that (i) relates both to CHOLERVAC PM-1 and to other Products or businesses of Respondent (including the business outside the Territory), and (ii) cannot be segregated in a manner that preserves the usefulness of the information as it relates to CHOLERVAC PM-1, Respondent shall be required only to provide copies of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the 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 Respondent provide the Acquirer with the above-described information without requiring Respondent completely to divest itself of information that, in content, also relates to Products and businesses other than CHOLERVAC PM-1;

provided further, however

and CHOLERVAC PM-1 Assets.

R. "Contract Manufacture" means the manufacture of a Divestiture Product to be supplied by Respondent or a Designee specifically identified in this Order for sale to an Acquirer.

S. "Designee" means any entity other than the Respondent that will manufacture a Divestiture Product for an Acquirer.

T. "Develop" means to engage in Development.

U. "Development" means, to the extent applicable for a veterinary vaccine Product, all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development,

BB. "Employee Access Period" means a period of twelve (12) months from the Closing Date.

CC. "Employee Notification" means the "Notice of Divestiture and Requirement for Confidentiality" attached to this Order as public Appendix II.

DD. "F VAX-MG" means any Schering-Plough Product that includes as an antigen live F strain of *Mycoplasma gallisepticum* which is manufactured, marketed or sold by Schering-Plough pursuant to USDA License No. 1751.00.

EE. "F VAX-MG Assets" means all of Respondent's rights, title and interest not acquired in the Acquisition in and to all assets related to the business of Schering-Plough in the Territory related to F VAX-MG, to the extent legally transferable, including the research, Development, manufacture, distribution, marketing or sale of F VAX-MG, including, without limitation, the following:

1. all Product Intellectual Property;

2. license(s) to all Product Licensed Intellectual Property:

   (i) to make and have made the Divestiture Product anywhere in the world, which license(s) shall be perpetual, transferable, fully paid-up and royalty-free, and co-exclusive with Respondent within the Territory and non-exclusive outside the Territory, and;

   (ii) to use, distribute, offer for sale, promote, advertise, sell, or import, or to have used, distributed, offered for sale, promoted, advertised, sold, or imported such Divestiture Product, in and into the Territory, which license(s) shall be perpetual, fully paid-up and royalty-free, and exclusive (even as to Respondent); and,

   (iii) all of which licenses shall include the right to use to make improvements or modifications to such Divestiture Product (including, but not limited to, the preparation of new or modified Products by combining components, antigens, or ingredients of such Divestiture Product with one or more other components, antigens, ingredients, or Products);

3. the Master Seed;

4. the Challenge Material;

5. the Reagents;

6. the Product Regulatory File;

7. License(s) to use the Product Registrations to the extent required for the distribution, marketing, promoting, offering for sale and selling of the Divestiture Products in the

Territory, which license(s) shall be royalty-free, non-exclusive, transferable and sublicensable; *provided however*, that such license(s) shall terminate upon Acquirer's receipt of all Divestiture Product approvals in accordance with Paragraph II.C.5 of this Order;

8. a list of all of the NDC Numbers related to the Product;

9. the existing lists of all current customers for the Divestiture Product and the pricing of the Divestiture Product for such customers;

10. at the Acquirer's option, each of the Product Assumed Contracts;

11. all Product Marketing Materials;

12. rights of reference (if such rights exist) to information similar to the Product Regulatory File submitted to any Agency other than the USDA and relating to the Divestiture Product except as may be retained by Respondent (1) in order to comply with its obligations to Contract Manufacture under Paragraph II.D.1 of this Order, or (2) for the purposes of conducting Respondent's business related to such Product outside the Territory;

Date, including, but not limited to, raw materials, goods in process, finished goods, and Divestiture Product specific packaging and labels, which shall include the grant of a license to use Product Trademarks and Product Trade Dress for the purposes of marketing and selling such inventories in the Territory; and

17. all Respondent's books, records and files related to the foregoing that are not included in the Product's Regulatory File, including all correspondence with the USDA and other

having the effect of law by any Government Entity.

II. “Master Seed” means the following (other than Retained Master Seed): (i) the isolated strain of organism selected and permanently stored by Respondent from which all other seed

7. constituting confidentiality agreements involving any Divestiture Product;

8. involving any royalty, licensing or similar arrangement involving any Divestiture Product;

9. pursuant to which any services are provided with respect to any Divestiture Product or any Divestiture Product business, including consultation arrangements; and/or

10. pursuant to which any Third Party collaborates with the Respondent in the performance of research or Development of any Divestiture Product or any Divestiture Product business.

provided, however, that where any such contract or agreement also relates to a Product of Respondent other than any Divestiture Product, Respondent shall assign the Acquirer all such rights in the Territory under the contract or agreement as are related to the Product required to be divested pursuant to this Order, but concurrently may retain similar rights for the purposes of the other Product.

(90) days prior to Closing Date through the Closing Date. This list shall be organized by the relevant respective employee categories defined in this Order, (*i.e.*, "Product

provided, however, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Schering-Plough," "Akzo Nobel," "Intervet" or the corporate names or corporate trade dress of any other corporations or companies owned by Respondent or related logos.

QQ. "Product Licensed Intellectual Property" means all of the following (regardless of whether physically located in or outside of the Territory):

1. Patents that are related to a Divestiture Product that Respondent can demonstrate have been routinely used, prior to the Effective Date, by either Respondent or Organon BioSciences or Intervet) (whichever is relevant to such Divestiture Product) for a Retained Product(s); and

2. 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 the Territory to limit the use or disclosure thereof, that are related to a Divestiture Product that Respondent can demonstrate have been routinely used, prior to the Effective Date, by Respondent or Organon BioSciences or Intervet (whichever is relevant to such Divestiture Product) for a Retained Product(s).

RR. "Product Manufacturing Employee(s)" means all salaried employees of Respondent who directly participated (irrespective of the portion of working time involved) in the manufacture of the Divestiture Product for the Territory, including, but not limited to, those involved in the quality assurance and quality control of the Divestiture Product for the Territory, within the eighteen (18) month period immediately prior to the Closing Date.

SS. "Product Manufacturing Technology" means all technology, trade secrets, know-how, and proprietary information related to the manufacture, validation, packaging, release testing, stability and shelf life of the Divestiture Product, including the Divestiture Product's formulation, in existence and in the possession of Respondent as of the Closing Date, including, but not limited to, the percentages and specifications of ingredients, the manufacturing processes and flow diagrams thereof, the Production Outlines, specifications, technology, inventions, assays, quality control and testing procedures, know-how, trade secrets and trade art, whether tangible or intangible and used to manufacture, formulate, test and package the Divestiture Products for sale, marketing and distribution in the Territory.

TT. "Product Marketing Employee(s)" means all management level employees of Respondent who directly participated (irrespective of the portion of working time involved) in the marketing, contracting, or promotion of the Divestiture Product in the Territory within the

UU. “Product Marketing Materials” means the content of all marketing materials used in the Territory related to the Divestiture Product as of the Closing Date, including, without limitation, all tangible copies of 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 Divestiture Product.

VV. “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 Divestiture Product in the Territory.

WW. “Product Regulatory File” means all data submitted to and all correspondence with the USDA and other Agencies related to the Divestiture Product except as may be retained by Respondent (in which case, Acquirer will receive a copy from Respondent) (1) in order to comply with its obligations to Contract Manufacture under Paragraph II.D.1 of this Order or (2) for the purposes of Respondent’s business related to such Product outside the Territory.

XX. “Product Research and Development Employee(s)” means all employees of Respondent who directly participated (irrespective of the portion of working time involved) in the research, Development, regulatory approval process, or clinical studies of the Divestiture Product for the Territory within the eighteen (18) month period immediately prior to the Closing Date.

YY. “Product Sales Employee(s)” means all employees of Respondent who directly participated (irrespective of the portion of working time involved) in the detailing, marketing or promotion of the Divestiture Product directly in the Territory within the eighteen (18) month period immediately prior to the Closing Date.

ZZ. “Product Scientific and Regulatory Material” means all technological, scientific, chemical,

provided further that if Respondent has divested the Divested Assets to Wyeth prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct the Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture to Wyeth of any one or more of the Divestiture Assets (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

willful misconduct of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by the Respondent to the Acquirer.

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

5. During the term of the Contract Manufacture between Respondent and the Acquirer, upon request of the Acquirer or Interim Monitor (if applicable), Respondent shall make available to the Acquirer or the Interim Monitor all records that relate to the manufacture of the Divestiture Products for the Territory that are generated or created after the Closing Date.

6. Upon reasonable notice and request from the Acquirer to the Respondent, Respondent shall provide in a timely manner at no greater than Direct Cost:

    a. assistance and advice to enable the Acquirer (or the Designee of the Acquirer) to obtain all necessary permits and approvals from any Agency or Government Entity to manufacture and sell the Divestiture Products in the Territory;

    b. assistance to the Acquirer (or the Designee of the Acquirer) to manufacture the Divestiture Products in substantially the same manner and quality employed or achieved by Respondent in the Territory; and

    c. consultation with knowledgeable employees of Respondent and training, at the request of the Acquirer and at a facility chosen by the Acquirer, until the Acquirer (or the Designee of the Acquirer) obtains all Agency or Government Entity approvals necessary to manufacture the Divestiture Products independently of the Respondent and sufficient to satisfy management of the Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the Divestiture Products.

E. Respondent shall:

1. Submit to the Acquirer, at Respondent's expense, all Confidential Business Information related to the Divestiture Products;

2. Deliver such Confidential Information as follows:

    a. In good faith;

b. As soon as practicable, avoiding delays in transmission of the respective information; and,

c. In a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. Pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the relevant Divestiture Products in the Territory that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. Not use, directly or indirectly, any such Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Divestiture Products in the Territory other than as necessary to comply with the following:

a. The requirements of this Order;

b. Respondent's obligations to the Acquirer under the terms of the Remedial Agreement related to Divestiture Products; or

c. Applicable Law;

5. Not disclose or convey any such Confidential Business Information, directly or

the divestiture of the Divestiture Assets; *provided, however*, that any such employment contracts entered into prior to the Closing Date shall be contingent upon the Commission's approval of the Asset Purchase Agreement and the other Remedial Agreements.

3. 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, Respondent shall provide the Acquirer or the Proposed Acquirer the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondent to provide the Product Employee Information related to the Divestiture Product Core Employees within the time provided herein shall extend the Employee Access Period with respect to that employee in an amount equal to the delay or seven (7) days, whichever is greater.

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

   provided, however,

E. Respondent shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

[redacted].

provided, however

3. The Interim Monitor shall serve until the later of:

    a. the completion by Respondent 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 Order and notification by the Acquirer to the Interim Monitor that it is fully capable of producing the relevant Product acquired pursuant to a Remedial Agreement independently of Respondent; or

    b. the completion by Respondent of the last obligation under the Order 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 Order.

4. 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 Order, including, but not limited to, its obligations related to the Divestiture 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 Order.

5. 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.

6. 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.

7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order 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 Acquirer with respect to the performance

of Respondent obligations under the Order or the Remedial Agreement. Within one (1) month from the date the Interim Monitor receives these reports, the Interim Monitor shall report confidentially in writing to the Commission concerning performance by Respondent of its obligations under the Order.

8. 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.

9. 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 or non-disclosure agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.

E. If the Commission determines that the Interim Monitor has ceased to act, failed to act diligently, or for other good cause, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

F. 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 Order.

G. The Interim Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

II.

IT IS FURTHER ORDERED that:

A. If Respondent has 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. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or 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 herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one-year 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. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent 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 Respondent's absolute and unconditional obligation to divest

E. If the Commission determines that a Divestiture Trustee has ceased to act, failed to act diligently, or for other good cause, the Commission may a appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

G. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order.

III.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after the date this Order becomes final, and every sixty (60) days thereafter until Respondent has fully complied with Paragraph II (including the performance

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I, IS F R, HER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of Respondent;

B. Any proposed acquisition, merger, or consolidation of Respondent; or,

C. Any other change in Respondent including, but not limited to, assignment and the creation of or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

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I, IS F R, HER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondent made to its principal United States office or its headquarters address, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of 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 the Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative of the Commission and at the expense of Respondent; and,

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

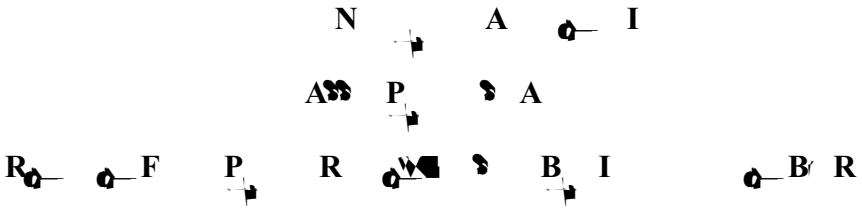
I.

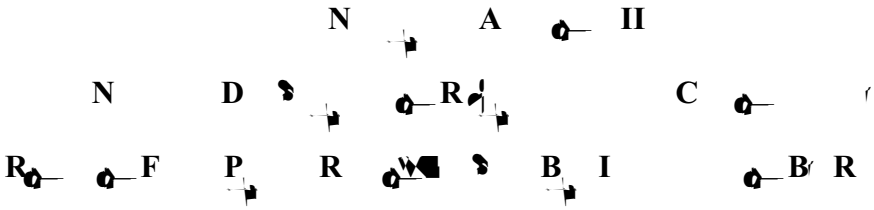
I, IS F R, HER ORDERED that this Order will terminate on December 28, 2017.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: December 28, 2007

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