

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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

|                  |   |                   |
|------------------|---|-------------------|
| In the Matter of | ) |                   |
|                  | ) |                   |
| PFIZER INC.,     | ) | Docket No. C-4267 |
| a corporation,   | ) |                   |
|                  | ) |                   |
| and              | ) |                   |
|                  | ) |                   |
| WYETH,           | ) |                   |
| a corporation.   | ) |                   |
|                  | ) |                   |
|                  | ) |                   |
|                  | ) |                   |

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Pfizer Inc. (“Pfizer”) of Respondent Wyeth (“Wyeth”), and Respondents having been furnished thereafter with a copy of a draft of 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 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 a

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- F. “Divestiture Assets” means the Animal Health Product Assets and the Equine Anthelmintic Product Assets, as defined in the Decision and Order.
- G. “Divestiture Product Business(es)” means the business of the Respondent(s) within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products, including the research, Development, manufacture, distribution, marketing, and sale of each Divestiture Product and the assets related to such business, including, without limitation, the Divestiture Assets.
- H. “Divestiture Product Core Employees” means the Animal Health Product Core Employees and the Product Marketing Employees related to the Equine Anthelmintic Products, individually and collectively.
- I. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph IV of the Decision and Order.
- J. “Orders” means the Decision and Order and this Order to Maintain Assets.

## II.

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

- A. Until the Closing Date, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Businesses except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair such 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 related Divestiture Product Businesses.
- B. Until the Closing Date, Respondents shall maintain the operations of the related 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 business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; the High Volume Accounts; customers; Agencies; employees; and others having business relations with each

of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing each of the respective 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 business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Divestiture Product Business;
2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;
3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the reh of



F. Respondents shall:

1. not use, directly or indirectly, any 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) Respondents' obligations to an 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 Acquirer or Persons specifically authorized by the relevant Acquirer or the Commission to receive such information;
3. not provide, disclose or otherwise own TD(; or)Tj16.3200 0sri54vant Ac

Assets. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' employees and other 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 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.
- I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, 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 a monitor or monitors ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order to Maintain Assets, the Decision and Order, and the Remedial Agreements.
- B. The Commission appoints Dr. Stephen J.D. Bell as Interim Monitor and approves the Monitor Agreement executed by Dr. Bell and Respondents. Dr. Bell shall be subject to all provisions in this Order to Maintain Assets.
- C. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order to Maintain Assets, and shall take no action that interferes with or hinders the Interim Monitor's authority, rights and responsibilities as set forth herein, or in any other agreement between the Interim Monitor and Respondents. Respondents may, with the consent of the Interim Monitor, contract with additional consultant(s) to assist the Interim Monitor in carrying out his or her duties, provided that the Interim Monitor shall direct the work of any such consultant(s) and that the rights, duties and responsibilities of such consultant(s) are consistent with the terms of this Order to Maintain Assets, including, without limitation, the requirement that such consultant shall act in a fiduciary capacity for the benefit of the Commission.

D. The Interim Monitor's duties and responsibilities shall include the following:

1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
2. the Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
3. **the**



necessary to permit the substitute Interim Monitor to monitor Respondents' compliance with the relevant requirements of this Order and the Decision and Order in a manner consistent with the purposes of each.

- H. 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.
- I. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same persons appointed as a Divestiture Trustee(s) 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 Respondents have fully complied with their obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by Paragraph II.A. and III.A. of the related Decision and Order in this matter, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order to Maintain Assets and the related Decision and Order; *provided, however* written report

## VI.

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents made to their principal United States offices or headquarter's address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business 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 related to compliance with this Order, which copying services shall be provided by Respondents at the request authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. to interview officers, directors, or employees of such 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 later 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 the M