

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

_____)
In the Matter of)
)
NOVARTIS AG,) Docket No. C-4296
a corporation.)
)
_____)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Novartis AG (“Novartis” or “Respondent”) of a majority of the outstanding voting shares of Alcon Inc., (“Alcon”), and Respondent having been furnished sion, 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:

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.

- E. “Miotics Product Business(es)” means the business of the Respondent within the Geographic Territory specified in the Decision and Order related to the Miotics Products, including the research, Development, manufacture, distribution, marketing, and sale of the Miotics Products and the assets related to such business, including, without limitation, the Miotics Product Assets.
- F. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- G. “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 Respondent fully transfers and delivers each of the respective Miotics Product Assets to an Acquirer, Respondent shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Miotics Product Businesses, to minimize any risk of loss of competitive potential for such Miotics Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Miotics Product Businesses except for ordinary wear and tear. Respondent shall not sell, transfer, encumber or otherwise impair such Miotics Product 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 Miotics Product Businesses.
- B. Until Respondent fully transfers and delivers all of the Miotics Product Assets to an Acquirer, Respondent shall maintain the operations of the Miotics 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 the Miotics Product Businesses and shall use its best efforts to preserve the existing relationships with the following: suppliers; vendors a0000 1.00000 0.0000 0.0000 cmmrTD(pp)Tj12.0000 0.000rt

2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Miotics Product Businesses authorized prior to the date the Consent Agreement was signed by Respondent 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 Miotics Products and/or to prevent any diminution in sales of each of the Miotics Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Miotics Product Assets to an Acquirer;
 4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Miotics Products at the related High Volume Accounts;
 5. making available for use by each of the respective Miotics 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 without limitation, the Miotics Product Assets;
 6. providing the Miotics Product Businesses with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Miotics Product Business; and
 7. providing such support services to the Miotics Product Businesses as were being provided to such business by Respondent as of the date the Consent Agreement was signed by Respondent.
- C. Until Respondent fully transfers and delivers the Miotics Product Assets to an Acquirer, Respondent shall maintain a work force at least as equivalent in size, training, and expertise to what has been associated with the Miotics Products for the Miotics Product's last fiscal year.

- E. Pending divestiture of the Miotics Product Assets, Respondent shall:
1. not use, directly or indirectly, any Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the Miotics Product(s) other than as necessary to comply with the following: (1) the requirements of the Orders; (2) Respondent's obligations to an Acquirer under the terms of any Remedial Agreement; or (3) applicable Law;
 2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the Acquirer or Persons specifically authorized by the Acquirer or the Commission to receive such information;
 3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Miotics Products to the employees associated with businesses related to those Retained Products that are indicated for the same use as the Miotics Products; and
 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.
- F. Not later than thirty (30) days following the Closing Date, Respondent shall provide to all of Respondent's employees and other personnel who may have access to Confidential Business Information related to the Miotics Products written notification of the restrictions on the use of such information by Respondent's personnel. Respondent 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 Closing Date. Respondent shall provide a copy of such notification to the Acquirer. Respondent shall maintain complete records of all such agreements at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating 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. Respondent shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.

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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 Respondent of the divestiture of all Miotics Products and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of the Orders and until the earliest of:
 - a. the date the Acquirer (or the Designee(s) of the Acquirer) is approved by the FDA to manufacture the Miotics Products and able to manufacture the Miotics Products in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Alcon;
 - b. the date the Acquirer notifies the Commission and the Respondent of its intention to abandon its efforts to manufacture the Miotics Products;
 - c. the date of written notification from sta

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 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 Orders 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's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days 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;

provided, however, beginning one hundred twenty (120) days after Respondent has filed its final report pursuant to Paragraph VIII.B. of the Decision and Order, and every one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward obtaining FDA approval to manufacture and market the Miotics Products and obtaining the ability to manufacture and market each Miotics Products in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Alcon.

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.
- E. 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.
 - F. 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.
 - G. 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.
 - H. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

- 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 Miotics Product Assets, as required by and described in the Decision and Order, has been completed and the 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, Commissioner Kovacic recused.

Donald S. Clark
Secretary

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ISSUED: August 16, 2010