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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	)	
HIKMA PHARMACEUTICALS PLC,	)	**Docket No. C-4320**
a corporation.	)	

ORDER TO MAINTAIN ASSETS

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 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 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:

shed thereafter with a copy of a draft

1. Respondent Hikma is a corporation organized, existing and doing business under and by virtue of the laws of England and Wales, with its headquarters address at 13 Hanover Square, London W1S 1HW, United Kingdom and the address of its United States subsidiary, West-Ward Pharmaceutical Corporation, located at 465 Industrial Way West, Eatontown, New Jersey 07724-2209.

2. Baxter is0000000e,59.700 0.0000 TD (frporat)

E. “Divestiture Assets” means the Generic Injectable Product Assets, as defined in the Decision and Order.

F. “Divestiture Product Business(es)” means the business of the Respondent in 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 Divestitur

of the respective Divestiture Product Businesses. Respondent's 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 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 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 related Divestiture Assets to an Acquirer;

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

5. making available for use by each of the respective 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 without limitation, the Divestiture Assets;

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

7. providing such support services to each of the respective Divestiture 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 Divestiture Assets to the Acquirer, Respondent 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 last fiscal year.

D. Until the Closing Date for the Divestiture Assets, Respondent 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 relevant Divestiture Products consistent with past practices and as may be necessary to preserve the marketability, viability and competitiveness of such Divestiture Products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent until the Closing Date

for the divestiture of the 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 Divestiture Product, for a period of six (6) months from the Closing Date or upon the hiring of twenty (20) Divestiture Product Core Employees by the Acquirer, whichever occurs earlier, provide the Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by such Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Core Employee Access Period(s)";

2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Resp

b. Respondent's obligations to the Acquirer of the particular Generic Injectable Product under the terms of any Remedial Agreement related to such Generic Injectable Product; or

c. applicable Law;

2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the Acquirer or other Persons specifically authorized by such Acquirer 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 Generic Injectable Products to the employees associated with business related to those Retained Products that contain the same active pharmaceutical ingredient as the Generic Injectable 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 from receiving for any reason or purpose.

G. Not later than thirty (30) days from the earlier of the Closing Date or the date that this Order to Maintain Assets becomes final and effective, Respondent shall provide to all of Respondent's employees and other personnel who may have access to Confidential Business Information related to the Divestiture Products 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 Stat.0000 TD TD 0.00Tj (s re)Tiu

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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 Generic Injectable Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of the Decision and Order and until the earliest of:

   a. with respect to each Generic Injectable Product, the date the Acquirer (or its Designee(s)) is approved by the FDA to manufacture such Generic Injectable Product and able to manufacture such Generic Injectable Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Baxter;

   b. with respect to each Generic Injectable Product, the date the Acquirer notifies the Commission and the Respon

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 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 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 Order;

   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 each Generic Injectable Product and obtaining the ability to manufacture each Generic Injectable Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Baxter.

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;

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.

IV.

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order to Maintain Assets becomes final and effective, and every thirty (30) days thereafter until Respondent has fully complied with their obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by Paragraph II.A. of the related Decision and Order in this matter, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order to Maintain Assets and the related Decision and Order; *provided, however*, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent pursuant to Paragraph VIII of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

A. any proposed dissolution of a Respondent;

B. any proposed acquisition, merger or consolidation of a Respondent; or

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

VI.

IT IS FURTHER ORDERED that, for purposes 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 any Respondent made to its principal United States offices, registered 000dquart0 TD (ate)Tj 14.0400 0.0000 TD (s o)Tj 13.6800 0.0000 TD (ff)Tj 7.9200 0.0000 TD (ice)