



- b. the requirement that the Commission's Decision and Order and Order to Hold Separate and Maintain Assets, both of which are attached hereto and made part hereof, contain a statement of findings of fact and conclusions of law
 - c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order or the Order to Hold Separate and Maintain Assets entered pursuant to this Consent Agreement; and
 - d. any claim under the Equal Access to Justice Act.
4. Because there may be interim competitive harm, the Commission may issue its Complaint and the Order to Hold Separate and Maintain Assets in this matter at any time after it accepts the Consent Agreement for public comment.
5. Not later than thirty (30) days after the date this Consent Agreement is signed by the Proposed Respondent, Proposed Respondent shall submit an initial report, pursuant to Section 233 of the Commission's Rules, 16 C.F.R. § 233. Proposed Respondent shall submit subsequent reports every thirty (30) days thereafter.

8. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the ~~has~~ been violated as alleged in the draft of Complaint here attached, or that the ~~facts~~ as alleged in the draft Complaint, other than jurisdictional facts, are true.
9. This Consent Agreement contemplates that, if it is ~~accepted~~ by the Commission, the Commission may (a) issue and ~~serve~~ its Complaint corresponding form and substance with the draft of Complaint here attached, (b) issue and serve its Order to Hold Separate and Maintain Assets, and (c) make information public with respect hereto. If such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may without further notice to Proposed Respondent, issue the attached Decision and Order containing an order to divest and providing for other relief in disposition of the proceeding.
10. When final, the Decision and Order and the Order to Hold Separate and Maintain Assets shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order and the Order to Hold Separate and Maintain Assets shall become final upon service. Delivery of the Complaint, the Decision and Order, and the Order to Hold Separate and Maintain Assets to Proposed Respondent by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to any office within the United States of Katherine I. Funk, of Baker & McKenzie LLP; or of any other lawyer or law firm listed as Counsel for Proposed Respondent on this Consent Agreement – shall constitute service to Proposed Respondent. Proposed Respondent waives any right it may have to any other manner of service. Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order or the Order to Hold Separate and Maintain Assets, and agrees that it is bound to comply with and will comply with the Decision and Order and the Order to Hold Separate and Maintain Assets to the same extent as if it had been served with copies of the Appendices, where Proposed Respondent is already in possession of copies of such Appendices.
11. The Complaint may be used in construing the terms of the Decision and Order and the Order to Hold Separate and Maintain Assets, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order, the Order to Hold Separate and Maintain Assets, or the Consent Agreement may be used to limit or contradict the terms of the Decision and Order or the Order to Hold Separate and Maintain Assets.
12. By signing this Consent Agreement, Proposed Respondent represents and warrants that it can accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments, transfers) and the Order to Hold Separate and Maintain Assets and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement

are (1) within the control of the party to this Consent Agreement, or (2) will be in the control of the party to this Consent Agreement after the proposed acquisition.

13. Proposed Respondent agrees that it shall interpret each Divestiture Agreement under the Decision and Order in a manner that is fully consistent with all of the relevant provisions and remedial purposes of the Decision and Order and the Order to Hold Separate and Maintain Assets.

14. Proposed Respondent has read the draft of Complaint, the Decision and Order, and the Order to Hold Separate and Maintain Assets contained in this Consent Agreement. Proposed Respondent understands that once the Decision and Order and the Order to Hold Separate and Maintain Assets have been issued, Proposed Respondent will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order and the Order to Hold Separate and Maintain Assets.

15. Proposed Respondent agrees to comply with the terms of the proposed Decision and Order and the Order to Hold Separate and Maintain Assets from the date it is signed on 5/22/2009 (in A

FRESENIUS MEDICAL CARE AG & CO.
KGaA

By: _____
Dr. Ben J. Lipps
Chief Executive Officer and