

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Edith Ramirez, Chairwoman**  
                                 **Julie Brill**  
                                 **Maureen K. Ohlhausen**  
                                 **Joshua D. Wright**  
                                 **Terrell McSweeney**

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**In the Matter of** )  
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                                 )  
**NOVARTIS AG** ) **Docket C-4498**  
                                 )  
**a corporation;** )  

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**ORDER TO MAINTAIN ASSETS**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed joint venture between Respondent Novartis AG (“Novartis” or “Respondent”) and GlaxoSmithKline PLC (“GSK”), and Respondent 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 Respondent and GSK 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:

1. Respondent Novartis is a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation with its headquarters address located at Lichtstrasse 35, Basel, Switzerland, CH 4056, and the address of its United States subsidiary, Novartis Corporation, located at 230 Park Avenue, New York, New York 10169.
2. GSK is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom of Great Britain and Northern Ireland, with its headquarters address located at 980 Great West Road, Brentford Middlesex TW8 9GS, England.
3. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS ORDERED** that, as used in this Order to Maintain Assets, the following definitions and the definitions used in the Consent Agreement and the proposed Decision and Order (and when made final and effective, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Novartis” or “Respondent” means: Novartis AG, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Novartis AG (including, without limitation, Novartis Consumer Health, Inc.), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “GSK” means: GlaxoSmithKline plc, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by GlaxoSmithKline plc, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Decision and Order” means the:
  1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and
  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. “Habitrol Business” means the Business of Respondent within the Geographic Territory specified in the Decision and Order related to Habitrol to the extent that such Business is owned, controlled, or managed by Respondent and the assets related to such Business to the extent such assets are owned by, controlled by, managed by, or licensed to, the Respondent.



to Habitrol that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to the Acquirer;

12. providing the Acquirer with a listing of inventory levels (week of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler or distributor) in a timely manner;
13. providing the Acquirer with anticipated reorder dates for each customer in a timely manner; and
14. establishing projected time lines for accomplishing all tasks necessary to effect the marketing and distribution transition to the Acquirer in an efficient and timely manner.

C. Until Respondent fully transfers and delivers the Habitrol Assets to an Acquirer, Respondent shall maintain a work force that is (i) at least as large (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with Habitrol for the last fiscal year.

D. Pending divestiture of the Habitrol Assets, Respondent shall:

1. not use, directly or indirectly, any Confidential Business 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 any related Remedial Agreement; or
  - c. applicable Law;
2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by such Acquirer to receive such information, (iii) the Commission, or (iv) the Interim Monitor (if any has been appointed);
3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information to th

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.
- E. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondent's personnel to all of its employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.
- F. Respondent shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondent shall provide a copy of the notification to the relevant Acquirer. Respondent shall maintain complete records of all such notifications at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondent shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.
- G. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions with respect to Confidential Business Information, 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 to Maintain Assets.
- H. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Habitrol Business within the Geographic Territory through its full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Habitrol Business within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Habitrol Assets except for ordinary wear and tear.

### **III.**

#### **IT IS FURTHER ORDERED** that:

- A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously comply with all of the obligations and perform all of the responsibilities as required by the Orders and the Remedial Agreements.

- B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission.
  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 the Respondent of the divestiture of all Habitrol Assets in a manner that fully satisfies the requirements of the Orders;  
  
*provided, however, that, the Interim Monitor's service shall not exceed five (5) years from the Order Date unless the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.*
- E. 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 ordinary 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 Orders, including, but not limited to, its obligations related to the relevant 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 Orders.





#### IV.

**IT IS FURTHER ORDERED** that within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission, and every sixty (60) days thereafter until Respondent has fully complied with this Order to Maintain Assets and the Paragraphs that are enumerated in Paragraph VII.B. of the related Decision and Order, Respondent 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 the Orders. Respondent shall submit at the same time a copy of its report concerning compliance with the Orders to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a detailed description of its efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, and (ii) transitional services being provided by the Respondent to the Acq Tc -0.002 Tw [(f)5(u)24aspondeP11. o(t)-2(e)TJ -0)-2(ve)4(s)-1(t)-2(i)

