

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Terrell McSweeney

_____)
In the Matter of)
) Docket C-4557
MYLAN N.V.,)
a company.)
_____)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Mylan N.V. (“Respondent” or “Mylan”) of the voting securities of Perrigo Company plc (“Perrigo”), 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 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 Mylan N.V. is a company organized, existing, and doing business under and by virtue of the laws of the Netherlands, with its principal executive offices located at Building 4, Trident Place, Mosquito Way, Hatfield, Hertfordshire, United Kingdom AL10 9UL, and its United States address for service of process and the Complaint, the Decision and Order, and the Order to Maintain Assets, as follows: Corporate Secretary, 1000 Mylan Boulevard, Canonsburg, Pennsylvania, 15317.
2. Perrigo is a company organized, existing, and doing business under and by virtue of the laws of the Republic of Ireland, with its principal executive offices located at Treasury Building, Lower Grand Canal Street, Dublin 2, Ireland.
3. The Commission has jurisdiction of the subject matter of this proceeding and of

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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. “Divestiture Product Business(es)” means the Business of the Respondent within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products to the extent that such Business is owned, controlled, or managed by the 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.
- 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. “Transition Period” means the period beginning on the date this Order to Maintain Assets is issued and ending on the earlier of the following dates: (i) the date on which the Acquirer directs the Respondent to cease the marketing, distribution, and sale of the Divestiture Product(s) acquired by that Acquirer; (ii) the date on which the Acquirer commences the marketing, distribution, and sale of such Divestiture Product(s); or (iii) the date four (4) months after the Closing Date for such Divestiture Product(s).
- H. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that:

- A. Until Respondent fully transfers and delivers each of the respective Divestiture 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 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 Assets except for ordinary wear and tear. Respondent shall not sell, transfer, encumber or otherwise impair the Divestiture 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 Divestiture Product Businesses.
- B. Until Respondent fully transfers and delivers each of the respective Divestiture Product Assets to an Acquirer, Respondent 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 full economic marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use its best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; High Volume Accounts; end-use customers; Agencies; employees; and others having business relations with each 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 Product 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 that were marketed or sold in the United States prior to the date the Consent Agreement was signed by the Respondent, 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 Divestiture Product Business; and
 6. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such Divestiture Product Business by Respondent as of the date the Consent Agreement was signed by Respondent.
- C. Until Respondent fully transfers and delivers each of the respective Divestiture Product Assets to an Acquirer, Respondent shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to, what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.

D. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondent shall:

1. for a period of twelve (12) months beginning on the Closing Date or until the hiring of twenty (20) Divestiture Product Core Employees by that Acquirer or its Manufacturing Designee, whichever occurs earlier, provide that Acquirer or its Manufacturing Designee with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that 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: (i) ten (10) days after notice by staff of
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provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit Respondent from continuing to employ any Divestiture Product Core Employee under the terms of that employee's employment with Respondent prior to the date of the written offer of employment from the Acquirer or its Manufacturing Designee to that employee;

4. until the Closing Date, provide all Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, manufacture and/or market the Divestiture Product(s)

1. develop and implement a detailed transition plan to ensure that the commencement of the marketing, distribution and sale of such Divestiture Products by the relevant Acquirer is not delayed or impaired by the Respondent;
2. designate employees of Respondent knowledgeable about the marketing, distribution and sale related to each of the Divestiture Products who will be responsible for communicating directly with the relevant Acquirer, and the Interim Monitor (if one has been appointed), for the purposes of assisting in the transfer of the Business related to the Divestiture Products to that Acquirer;
3. maintain and manage inventory levels of the Divestiture Products in consideration of the marketing and distribution transition to the relevant Acquirer;
4. continue to market, distribute and sell the Divestiture Products in the United States;
5. beginning on the Acquisition Date, allow the relevant Acquirer access at reasonable business hours to all Confidential Business Information related to the Divestiture Products and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Products that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to that Acquirer;
6. beginning on the Acquisition Date, provide the relevant Acquirer with a listing of inventory levels (week of supply) for each customer (i.e., retailer, group purchasing organization, wholesaler or distributor) on a regular basis and in a timely manner;
7. beginning on the Acquisition Date, provide the relevant Acquirer with anticipated reorder dates for each customer on a regular basis and in a timely manner; and
8. establish projected time lines for accomplishing all tasks necessary to effect the marketing and sales transition.

- a. the requirements of this Order;
 - b. Respondent's obligations to each respective 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 of the particular Divestiture Product Assets; (ii) other Persons authorized by that Acquirer to receive such information (e.g., employees of the Respondent responsible for the Contract Manufacture of a Divestiture Product on behalf the Acquirer); (iii) the Commission; (iv) the Interim Monitor (if any has been appointed); or (v) Persons as are necessary to give effect to the Mylan Limited License;
 3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Divestiture Products to the marketing or sales employees associated with the Business related to those Retained Products that are the Therapeutic Equivalent of the Divestiture Products; provided however that, with respect to the Acyclovir Products that are the subject of the Mylan Limited License, this provision shall only apply to the Confidential Business Information related to the ongoing marketing or sales of the Acyclovir Products by the Acquirer (e.g., information on purchases made by the Acquirer under any agreement with the Respondent to Contract Manufacture) and shall not apply to historical Confidential Business Information (i.e., such information as is generated prior to the Closing Date); 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 after 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 related to the Divestiture Products by Respondent's personnel to all of its

H. 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

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 Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of: (i) the date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell that Divestiture Product and able to manufacture the Divestiture Product in final form in commercial quantities, in a manner consistent with cGMP, independently of the Respondent; (ii) the date the Acquirer of that Divestiture Product notifies the Commission and Respondent of its intention to abandon its efforts to manufacture such Divestiture Product; or (iii) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the relevant Acquirer has abandoned its efforts to manufacture that Divestiture Product;

provided, however, that, the Interim Monitor's service shall not extend more than five (5) years after 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.

- C. any other change in the 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 the Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, the Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of the Respondent 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 the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondent; and
- B. to interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate as of:

- A. the later of the following dates:
 1. 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;
 2. the day after the divestiture of all of the Divestiture Product Assets, as required by and described in the Decision and Order, has been completed; or
 3. the day after the Product Manufacturing Technology related to each Divestiture Product has been provided to the Acquirer in a manner consistent with the Technology Transfer Standards 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 the provision of the Product Manufacturing Technology are complete;

- B. if the Acquisition does not occur, the Expiration Date; or
- C. the day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: November 2, 2015