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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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

DECISION AND ORDER
[Public Record Version]

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 that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having modified the Decision and Order in certain respects, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent

E. “Acquisition” means Respondent’s acquisition of more than fifty percent (50%) of the voting securities of Perrigo.

F. “Acquisition Date” means the date on which the Acquisition is consummated.

G. “Acyclovir Product(s)” means the following: the Products manufactured, marketed, sold, in Development, owned or controlled by Mylan pursuant to the following Application: ANDA #202459, and any supplements, amendments, or revisions to this Application. This Product is a topically administered ointment containing, as an active pharmaceutical 74(a)4(l)]TJ 0

N. “Bromocriptine Mesylate Product Assets” means all rights, title and interest in and to all assets related to the Business of Mylan within the Geographic Territory related to each of the Bromocriptine Mesylate Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to the Bromocriptine Mesylate Products.

O. “Categorized Assets” means the following assets and rights of Mylan, as such assets and rights are in existence as of the date Mylan signs the Agreement Containing Consent Orders in this matter and as are maintained by the Respondent in accordance with the Order to Maintain Assets until the Closing Date for each Divestiture Product:

1. all rights to all of the Applications related to the specified Divestiture Product;
2. all Product J5( )ola tTD [((e mT ,1.87 0 .0(t)((ex)j /TT1 1 TRnoTw 1.82(s)-5(o(ex)j /TT1 1 -2(

Respondent);

d. to seek cross-referencing from a customer of the Respondent's NDC Numbers related to such Divestiture Product with the Acquirer's NDC Numbers related to such Divestiture Product;

e. to approve the timing of Respondent's discontinued use of those NDC Numbers in the sale or marketing of such Divestiture Product *except* for returns, rebates, allowances, and adjustments for such Divestiture Product sold prior to the Closing Date and *except* as may be required by applicable Law and *except* as is necessary to give effect to the transactions contemplated under any applicable Remedial Agreement or the Mylan Limited License; and

f. to approve any notification(s) from Respondent to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondent prior to such notification(s) being disseminated to the customer(s);

10. all Product Development Reports related to the specified Divestiture Product;

11. at the option of the Acquirer of the specified Divestiture Product, all Product Contracts related to the specified Divestiture Product;

12. all patient registries related to the specified Divestiture Product, and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and identification information required to be maintained by the FDA to facilitate the investigation of adverse effects related to the specified Divestiture Product (including, without limitation, any Risk Evaluation Mitigation Strategy as defined by the FDA);

13. for each specified Divestiture Product that has been marketed or sold by the Respondent prior to the Closing Date,

a. a list of all customers and targeted customers for the specified Divestiture Product and a listing of the net sales (in either units or dollars) of the specified Divestiture Product to such customers on either an annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the specified Divestiture Product on behalf of the High Volume Account and his or her business contact information;

b. for each month for each High Volume Account for the one (1) year period immediately prior to the Closing Date, a list containing the following historical information for the specified Divestiture Product: the average net price per unit, *i.e.*, the final price per unit charged by Mylan net of all discounts, rebates, or promotions; the highest net price per unit; and the

lowest net price per unit; and

c. for each month for the one (1) year period immediately prior to the Closing Date, a list containing the following historical information for the specified Divestiture Product: the average wholesale price; wholesale acquisition cost; and price to Medicare;

14. for each specified Divestiture Product, a list of all active pharmaceutical ingredient suppliers and all single-source excipient suppliers listed on any Application of a Retained Product that is the Therapeutic Equivalent of that Divestiture Product;

15. for each specified Divestiture Product that is a Contract Manufacture Product:

a. a list of the inventory levels (weeks of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler or distributor) as of the Closing Date; and

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3. information that is contained in documents, records or books of the Respondent that is provided to an Acquirer by the Respondent that is unrelated to the Divestiture Products acquired by that Acquirer or that is exclusively related to Retained Product(s); and

4. information that is protected by the attorney work product, attorney-client, joint defense, or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

V. "Contract Manufacture" means each of the following:

1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer;

2. to manufacture, or to cause to be manufactured, a Product that is the Therapeutic Equivalent and in the identical dosage strength, formulation, and presentation as a Contract Manufacture Product on behalf of an Acquirer; or

3. to provide, or to cause to be provided, any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of a Contract Manufacture Product on behalf of an Acquirer.

W. "Contract Manufacture Product(s)" means the following, individually and collectively:

1. Acyclovir Products;

2. Bromocriptine Mesylate Products;

3. Clindamycin Phosphate/Benzoyl Peroxide Products;

4. Hydromorphone ER Products;

5. Liothyronine Sodium Products;

6. Polyethylene Glycol 3350 Products;

7. Scopolamine Products; and

8. any ingredient, material, or component used in the manufacture of the foregoing Products including the active pharmaceutical ingredient, excipients, or packaging materials (including, without limitation, drug vials);

provided however, that with the consent of the Acquirer of the specified Divestiture Product, the Respondent may substitute a Therapeutic Equivalent form of such Product in performance of the Respondent's agreement to Contract Manufacture.

X. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations, or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and/or sale of

a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

Y. "Direct Cost" means a cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. "Direct Cost" to the Acquirer for its use of any of the Respondent's employees' labor shall not exceed the average hourly wage rate for such employee;

provided, however, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, "Direct Cost" means such cost as is provided in such Remedial Agreement for that Divestiture Product.

Z. "Divestiture Agreements" means the following agreements:

1. *Asset Purchase Agreement* by and between Mylan N.V. and Alvogen Group, Inc., dated as of September 30, 2015;
2. *Supply and Technology Transfer Agreement* by and between Mylan Pharmaceuticals Inc. and Alvogen Group, Inc., in the form submitted by the Respondent to the Commission prior to the Order Date, to be executed on the Closing Date; and
3. all amendments, exhibits, agreements, and schedules attached to and submitted with the foregoing listed agreements;

provided, however, the Mylan Limited License is not a Divestiture Agreement.

The Divestiture Agreements are contained in Non-Public Appendix I. Divestiture Agreements that have been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final and effective are Remedial Agreements.

AA. "Divestiture Product(s)" means the following, individually and collectively:

1. Acyclovir Products;
2. Bromocriptine Mesylate Products;
3. Clindamycin Phosphate/Benzoyl Peroxide Products;
4. Hydromorphone ER Products;
5. Liothyronine Sodium Products;
6. Polyethylene Glycol 3350 Products; and
7. Scopolamine Products.

BB. "Divestiture Product Assets" means the following, individually and collectively:

1. Acyclovir Product Assets;
2. Bromocriptine Mesylate Product Assets;
3. Clindamycin Phosphate/Benzoyl Peroxide Product Assets;
4. Hydromorphone ER Product Assets;
5. Liothyronine Sodium Product Assets;
6. Polyethylene Glycol 3350 Product Assets; and
7. Scopolamine Product Assets.

CC. "Divestiture Product Core Employees" means the Product Research and Development Employees and the Product Manufacturing Employees related to each Divestiture Product.

DD. "Divestiture Product License" means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) under a Remedial Agreement with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general manufacturing know-how that was owned, licensed, or controlled by Respondent:

1. to research and Develop the specified Divestiture Product(s) for marketing, distribution or sale within the Geographic Territory;
2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell the specified Divestiture Product(s) within the Geographic Territory;
3. to import or export the specified Divestiture Product(s) to or from the Geographic Territory to the extent related to the marketing, distribution or sale of the specified Divestiture Products in the Geographic Territory; and
4.

VV. "Orders" means this Decision and Order and the related Order to Maintain Assets.

WW. "Order Date" means the date on which the final Decision and Order in this matter is issued by the Commission.

XX. "Order to Maintain Assets"

EEE. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage, or transport of a Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application related to that Product.

20. executed validation and qualification protocols and reports related to the specified Divestiture Product.

III. "Product Employee Information" means the following, for each Divestiture Product Core Employee, and as to the extent permitted by Law:

1. a complete and accurate list containing the name of each Divestiture Product Core Employee (including former employees who were employed by the Respondent within ninety (90) days of the execution date of any Remedial Agreement);

2. with respect to each such employee, the following information:

   a. the date of hire and effective service date;

   b. job title or position held;

   c. a specific description of the employee's responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, the Respondent may provide the employee's most recente lieu e751 -116(y)d

provided, however, that "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Mylan" or "Perrigo" or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by the Respondent or the related corporate logos thereof, or general registered images or symbols by which Mylan, or Perrigo can be identified or defined.

KKK. "Product Licensed Intellectual Property" means the following:

1. all of the following intellectual property related to a Divestiture Product that is owned, licensed, or controlled by Mylan as of the Closing Date:

    a. Patents that are related to a Divestiture Product that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Date;

    b. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to a Divestiture Product and that the Respondent can demonstrate have been used, prior to the Acquisition Date, for any Retained Product that is the subject of an active (not discontinued) NDA or ANDA as of the Acquisition Dsus

4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Manufacturing Designee to:

    a. manufacture the specified Divestiture Product in the quality and quantities achieved by the Respondent, or the manufacturer and/or developer of such Divestiture Product;

    b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee, to manufacture, distribute, market, and sell the specified Divestiture Product in commercial quantities and to meet all Agency-approved specifications for such Divestiture Product; and

    c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the specified Divestiture Product.

AAAA. "Therapeutic Equivalent" means a dru

acceptable purchaser of the Divestiture Product Assets, then Respondent shall immediately rescind the transaction with Alvogen, in whole or in part, as directed by the Commission, and shall divest the Divestiture Product Assets not later than one hundred eighty (180) days after the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further, however, that if Respondent has divested the Divestiture Product Assets to Alvogen prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Divestiture Product Assets to Alvogen (including, but not limited to,

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3. pending complete delivery of all such Confidential Business Information to the relevant Acquirer, provide that Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information 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

Respondent shall obtain any consents from Third Parties required to comply with this provision. Respondent shall not enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to use or to acquire from the Third Party the Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Products acquired by that Acquirer. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology. Not later than ten (10) days after the Closing Date, Respondent shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the relevant Product Manufacturing Technology to that Acquirer. Within five (5) days of the execution of each such release, Respondent shall provide a copy of the release to that Acquirer.

F. With respect to each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondent shall:

1. upon reasonable written notice and request from an Acquirer to the Respondent,

8. provide access to all information and facilities, and make such arrangements with Third Parties, as are necessary to allow the Interim Monitor to monitor compliance with the obligations to Contract Manufacture; and

9. during the term of any agreement to Contract Manufacture, provide consultation with knowledgeable employees of the Respondent and training, at the written request of the Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling that Acquirer (or the Manufacturing Designee of that Acquirer) to obtain all Product Approvals to manufacture the Contract Manufacture Products acquired by that Acquirer in the same quality achieved by, or on behalf of, the Respondent and in commercial quantities, and in a manner consistent with cGMP, independently of Respondent and sufficient to satisfy management of the Acquirer that its personnel (or the Manufacturing Designee's personnel) are adequately trained in the manufacture of the Contract Manufacture Products.

The foregoing provisions, II.F.1. - 9., shall remain in effect with respect to each Contract Manufacture Product until the earliest of the following dates: (i) the date the Acquirer (or the Manufacturing Designee(s) of that Acquirer) is approved by the FDA to manufacture and sell such Contract Manufacture Product in the United States and able to manufacture such Contract Manufacture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent; (ii) the date the Acquireroduct unthe((er)3(od (h)3-4(t)te)6(s)1(th
determined that the Acquirer has abandoned t unthe((er)3its)1(e)6(f
Contract Manufacture Product; or (iv) the date five (5) years after th

one (1) year period prior to the Closi Date and each emplor-20(y)20
related to the marketing oorales of those Retaied Product unthe((er2
strictly confidential, iludi the nondisclosure oof that iormation to all
emploroyees, executives or other personnel of Respoondent (er than

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 relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.

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

1. for a period of twelve (12) months after 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 the Commission to Respondent to provide the Product Employee Information; or (ii) ten (10) days after written request by an Acquirer, provide that Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondent to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay;

   provided, however, that the provision of such information may be conditioned upon the Acquirer's or Proposed Acquirer's written confirmation that it will (i) treat the information as confidential and, more specifically, (ii) use the information solely in connection with considering whether to provide or providing to Divestiture Product Core Employees the opportunity to enter into employment contracts during a Divestiture Product Core Employee Access Period, (iii) restrict access to the information to such of the Acquirer's or Proposed Acquirer's employees who need such access in connection with the specified and permitted use, and (iv) destroy or return the information without retaining copies at such time as the specified and permitted use ends;

3. during the Divestiture Product Core Employee Access Period(s), not interfere with the hiring or employing by that Acquirer or its Manufacturing Designee of the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer, and remove any impediments within the control of Respondent that may deter these employees from accepting employment with that Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other contracts with Respondent that would affect the ability

J. Until Respondent completes the divestitures required by this Order and fully provides, or causes to be provided, the Product Manufacturing Technology related to a particular Divestiture Product to the relevant Acquirer,

1. Respondent shall take actions as are necessary to:

    a. maintain the full economic viability and marketability of the Businesses associated with that Divestiture Product;

    b. minimize any risk of loss of competitive potential for that Business;

    c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to that Divestiture Product except for ordinary wear and tear;

    d. ensure the assets related to each Divestiture Product are provided to the relevant Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Business associated with each Divestiture Product; and

    e. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology; and

2. Respondent shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses associated with that Divestiture Product.

K. Respondent shall not join, file, prosecute, or maintain any suit, in law or equity, against an Acquirer or the Divestiture Product Releasee(s) of that Acquirer under any of the following:

1. any Patent owned by or licensed to the Respondent as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof; or

2. any Patent that was filed or in existence on or before the Acquisition Date that is acquired by or licensed to the Respondent at any time after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

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above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue that Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. The provisions of this Paragraph do not apply to any Patent owned by, acquired by or licensed to or from the Respondent that claims inventions conceived by and reduced to practice after the Acquisition Date.

L. Upon reasonable written notice and request from an Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowle

3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work-product in the possession of the Respondent's outside counsel related to that Divestiture Product.

N. Respondent may enter into the Mylan Limited License with the relevant Acquirer, in the form as is approved by the Commission in connection with the Commission's determination to make the Order final and effective;

provided however, that Respondent shall not modify, amend, extend, or renew the Mylan Limited License without the prior approval of the Commission or enter into any subsequent agreement to license the rights that are the subject of the Mylan Limited License without the prior approval of the Commission;

provided further, however, that any payment or fee from the Respondent to the Acquirer under the Mylan Limited License shall not be based, in whole or in part, on the actual sales of the Acyclovir Products or the actual profits from these Products.

O. The purpose of the divestiture of the Divestiture Product Assets and the provision of the related Product Manufacturing Technology (for the Contract Manufacture Products) and the related obligations imposed on the Respondent by this Order is:

1. to ensure the continued use of such assets for the purposes of the Business associated with each Divestiture Product within the Geographic Territory;
2. to create a viable and effective competitor, that is independent of Respondent and Perrigo in the Business of each Divestiture Product within the Geographic Territory; and
3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

III.

to monitor Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

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 Order, 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 Order 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,

L. 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 Order.

M. The Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

A. If Respondent has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Divestiture Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive

Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee'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 Divestiture Trustee's duties.

F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

G. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, Respondent shall assure that its own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

A. To assure such Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Divestiture Products or the assets and Businesses associated with those Divestiture Products;

provided, however, that the Respondent may disclose such information as necessary for the purposes set forth in this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, however, that pursuant to this Paragraph V, the Respondent needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

A. If Respondent does not acquire more than fifty (50) percent of the voting securities of Perrigo on or before the Expiration Date, then, not later than twelve (12) months after the Expiration Date, Respondent shall divest, absolutely and in good faith, all of its Ownership Interest in Perrigo in one or more of the following manners:

1. on the New York Stock Exchange, or such other securities exchange(s) as the voting securities of Perrigo are registered to be traded on;

2. to Perrigo, *provided however*, that if any part of the consideration received by Respondent from Perrigo is anything other than cash, then the manner of the transaction shall be subject to the prior approval of the Commission; or

3. to an Acquirer or Acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission.

B. Pending the divestiture described in Paragraph VI.A., Respondent shall not, directly or indirectly, do any of the following:

1. acquire any additional Ownership Interest in Perrigo;
2. exercise dominion or control over, or otherwise seek to influence, the management direction or supervision of the business of Perrigo including, but not limited to, any participation in the formulation, determination or direction of any business decisions of Perrigo;
3. propose corporate action requiring the approval of Perrigo shareholders;
4. nominate, or in any other way seek or obtain representation on the Bonom l;

1. acquire, directly or indirectly, any Ownership Interest in Perrigo; or

2. consummate, directly or indirectly, any merger or other combination with Perrigo.

D. The purpose of the requirements of Paragraph VI is to ensure that, if the Acquisition does not occur in a timely manner, the Respondent w

VIII.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition Date, Respondent shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Within five (5) days of the Expiration Date, Respondent shall submit to the Commission a letter certifying the date on which the Expiration Date occurred.

C. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondent has fully complied with Paragraphs II.A., II.B., II.C., II.D.1., II.D.2., II.D.3., II.E., II.F., II.G., II.H., II.I. and II.J., 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. Respondent shall submit at the same time a copy of its report concerning compliance with this Order 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 full description of the efforts being made to comply with the relevant paragraphs of the Order, including:

1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by the Respondent to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and

2. a detailed description of the timing for the completion of such obligations.

D. One (1) year after the Order Date, annually for the next two years on the anniversary of the Order Date, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

IX.

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

A. any proposed dissolution of the Respondent;

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

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 this Order.

X.

NON-PUBLIC APPENDIX I
AGREEMENTS RELATED TO THE DIVESTITURES

[Redacted From the Public Record Version, But Incorporated By Reference]