

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Teva Pharmaceutical Industries Ltd. ("Teva") of the voting securities of certain entities (defined herein as "Allergan Generic Pharmaceutical Entities") and related assets from their ultimate parent entity Allergan plc ("Allergan") (Teva and Allergan hereinafter collectively referred to as Respondents), and Respondents 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 Respondents 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, their attorneys, and counsel for the Commission having thereafter executed

The Commission having thereafte considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public

- B. "Allergan" means: Allergan plus directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Allergan plus and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. "Commission" means the Federal Trade Commission.
- D. "Respondents" means Teva and Allergan, individually and collectively.
- E. "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 following its issuance and service by the Commission in this matter.
- F. "Divestiture Product Business(es)" means the Business of Respondent(s) that Respondent is specified in the definition of each Divestiture Product) within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Product(s) 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
- G. "Monitor" means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph IV of the Decision and Order
- H. "Transition Period" means, for each Divestiture Product that is marketed or sold in the United States before the Closing Date, 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 relevant Acquirer directs the Respondent(s) to cease the marketing, distribution, and sale of such Divestiture Product(s); (ii) the date on which the relevant Acquirer commences the marketing, distribution, and sale of such Divestiture Product(s); (iii) the date four (4) months after the Closing Date for such Divestiture Product(s).
- I. "Orders" means the Decision and Order and this Order to Maintain Assets.

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 by Respondents prior to the date the Respondents entered the agreement to effect the Acquisition (as such agreement is identified in the definition of Acquisition) on 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 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 Respondents of the date the Consent Agreement was signed by Respondents
- C. Until Respondents fully transfer and deliver each of the respective Divestiture Product Assets to an Acquirer, Respondents shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents), and (ii) comparable in training, and expertise, as what has been associated with the Divestiture Products for the relevant Divestiture Product fiscal year.
- D. Not later than one (1) day after the date this Order to Maintain Assets is issued by the Commission, for each Divestiture Product that has been marketed or sold prior to the Closing Date, Respondents shall provide to the Proposed Acquirer of that Divestiture Product, for each

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 ~~period~~ ~~period~~, *however*, that the provision of such information may be conditioned upon the Acquirer's

5. for a period of one (1) year from the Closing Date; (i) directly or indirectly solicit or otherwise attempt to induce any employee of the Acquirer's Manufacturing Designee with any amount of responsibility related to a Divestiture Product ("Divestiture Product Employee") to terminate his or her employment relationship with the Acquirer or its Manufacturing Designee; (ii) hire any Divestiture Product Employee;

provided, however, a Respondent may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer's Manufacturing Designee or who independently applies for employment with that Respondent, as long as that employee was not solicited in violation of the nonsolicitation requirements contained herein;

provided further, however, that this Paragraph does not require nor shall be construed to require a Respondent to terminate the employment of any employee or to prevent a Respondent from continuing to employ the Divestiture Product Core Employees in connection with the Acquisition;

provided further, however, that a Respondent may do the following: (i) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Product Employees; or (ii) hire a Divestiture Product Employee who contacts a Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from the Respondent.

- F. During the Transition Period with respect to each Divestiture Product that is marketed or sold in the United States before the Closing Date for that Divestiture Product, Respondent consultation with the relevant Acquirer for the purposes of ensuring an orderly marketing and distribution transition shall
 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 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 Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer of the Business related to the Divestiture Products to the Acquirer;
 3. maintain and manage inventory levels of the Divestiture Products in consideration of the marketing and distribution transition to the Acquirer;
 4. continue to market, distribute, and sell the Divestiture Products;

5. allow the 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 the Acquirer

3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing, sales or Development of the Divestiture Products to the employees associated with the Business related to those Retained Products that are the Therapeutic Equivalent of the Divestiture Products;
 4. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the research and Development of the Development Divestiture Products to any employees associated with the Business related to those Retained Products that are the Therapeutic Equivalent of the Divestiture Products *unless* authorized by the Acquirer of the particular Divestiture Product to do so; and
 5. institute procedures and requirements to ensure that the 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.
- H. 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, each Respondent shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by that 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.
- I. Each Respondent shall give the above described notification by mail with return receipt requested or similar transmission, and keep a file of those receipts for one year after the Closing Date. Each Respondent shall provide a copy of the notification to the relevant Acquirer. Each Respondent shall maintain complete records of all such notifications at that Respondent's registered office within the United States and shall provide an officer certification to the Commission affirming the implementation of, and compliance with, the acknowledgment program. Each Respondent shall provide the relevant Acquirer with copies of all certifications, notifications, and reminders sent to that Respondent's personnel.
- J. Each 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.

3. The Monitor shall serve until the divestiture of all Divestiture Product Assets has been completed and the transfer and delivery of the related Product Manufacturing Technology has been completed 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) date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture that Divestiture Product and able to manufacture the finished Divestiture Product in quantity.

- H. Each Respondent shall report to the Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by a Respondent and any reports submitted by each Acquirer with respect to the performance of a Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by each Respondent of its obligations under the Orders; *provided, however,* beginning ninety (90) days after Respondent Teva has filed its final report pursuant to Paragraph IX.C of the Decision and Order, and ninety (90) days thereafter, the Monitor shall report in writing to the Commission concerning progress by each Acquirer or the Acquirer's Manufacturing Designee toward obtaining FDA approval to manufacture each Divestiture Product and obtaining the ability to manufacture each Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondent Teva.
- I. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may, among other things, require the Monitor and each of the Monitor'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 Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- M. The 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 is issued by the Commission

Monitor, if any Monitor has been appointed. Each 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, (ii) transitional services being provided by the relevant Respondent to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and
- B. a detailed description of the timing for the completion of such obligations.

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 on the same timing as, the reports required to be submitted by Respondents pursuant to Paragraph IX.C. of the Decision and Order.

V.

IT IS FURTHER ORDERED that each 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.

- B. to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that Respondent Allergan's obligations under this