

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

**COMMISSIONERS: Joseph J. Simons, Chairman
Maureen K. Ohlhausen
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter**

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IN THE MATTER OF)
)
GRIFOLS, S.A.,)
a corporation;)
)
and)
)
GRIFOLS SHARED SERVICES NORTH AMERICA, INC.,)
a corporation.)
_____)

Docket No. C-4654

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Grifols Shared Services North America, Inc., a wholly owned subsidiary of Respondent Grifols S.A. (collectively “Grifols” or “Respondents”) of all of the outstanding voting securities of Biotest US Corporation (“Biotest US”). The Biotest Divestiture Trust is the ultimate parent entity of Biotest US. At the time of the announcement of the proposed acquisition, Biotest Pharmaceutical Corporation, a subsidiary of Biotest US, owned a portion of the outstanding voting securities of ADMA Biologics, Inc. (“ADMA”). Prior to Respondents’ proposed acquisition of Biotest US, Biotest US transferred or will have transferred all of the aforementioned voting securities of ADMA to either The Biotest Divestiture Trust or to ADMA. Accordingly, ADMA’s voting securities will not be acquired or held by Respondents. The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint reflecting the foregoing transactions, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

5. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY 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

2. continuing, at least at their scheduled pace, any expenditures for each of the respective Plasma Donor Center Divestiture Businesses authorized prior to the date the Consent Agreement was signed by the Respondents, including, but not limited

D. Respondents shall:

1. for a period of twelve (12) months after the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the employees that work in the locations of each of the Plasma Donor Center Divestiture Facilities; and
2. until the Closing Date, provide all of the above-described employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Business related to each of the Plasma Donor Center Divestiture Facility. Such incentives shall include a continuation of all employee compensation and benefits offered by a Respondent until the Closing Date(s).

E. Pending divestiture of the Plasma Donor Center Divestiture Assets, Respondents shall:

1. not use, directly or indirectly, any Plasma Donor Center Confidential Business Information other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer under the terms of any related Remedial Agreement; or
 - c. applicable Law;
2. not disclose or convey any such Plasma Donor Center Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer or staff of the Commission to receive such information (e.g., employees of the Respondents responsible for providing transitional services to the Acquirer), (iii) the Commission, or (iv) the Monitor (if any has been appointed) and ~~except~~ to the extent necessary to comply with applicable Law;
3. not provide, disclose or otherwise make available, directly or indirectly, any Plasma Donor Center Confidential Business Information to the employees associated with the Plasma Donor Centers that are being retained by the Respondents; 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 Plasma Donor Center Confidential Business Information in contravention of this Order to Maintain Assets; and

- b. do not solicit, access or use any Plasma Donor Center Confidential Business Information that they are prohibited from receiving for any reason or purpose.

F. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Plasma Donor Center Divestiture Businesses through their full transfer and delivery to an Acquirer; to minimize any risk of loss of competitive potential for the Plasma Donor Center Divestiture Businesses; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Plasma Donor Center Divestiture Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor each Respondent’s compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If a Monitor is appointed, each Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 - 1. The Monitor shall have the power and authority to monitor each 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 Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission;

2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission; and
3. The Monitor shall serve until Respondents complete each of the divestitures required by this Order and complete any transitional services required to be provided to an Acquirer under this Order (or its successor agreement) (s) 04 (s) 21 (w) 2 (b) 5 (6) 48 do 8 Ontario, Toronto (Tw)

- I. Respondents 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 the Monitor pursuant to the Decision and Order.
- N. 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, and every sixty (60) days thereafter until Respondents have fully complied with this Order to Maintain Assets, Respondents shall submit to the Commission a verified written report setting f ar(t w)4 2 (a)6(r7u)-6 (in)2 (g(r)52 (r7u)-6 ()TjMio)2 (

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an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

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 of compliance required to be submitted by Respondents pursuant to the Decision and Order.

V.

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

- A. any proposed dissolution of: Grifols, S.A.; Grifols Shared Services North America, Inc.; Biotest US Corporation; or The Biotest Divestiture Trust;
- B. any proposed acquisition, merger, or consolidation of: ; Grifols, S.A.; Grifols Shared Services North America, Inc.; Biotest US Corporation; or The Biotest Divestiture Trust; 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.

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 any Respondent made to its principal place of business as identified in this Order, registered office of its United States subsidiar (.A)2 1B(of)3 (i) o

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

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later of:

- A. 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; or
- B. the day after the divestiture of all of the Plasma Donor Center Divestiture Assets, as required by and described in the Decision and Order, has been completed; 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: July 31, 2018