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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of)
)

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings, and issues the following Decision and Order ("Order")

1. Respondent Elanco Animal Health Incorporated is a corporation organized, tSicor(ot)-4 (he)-6

D. "Respondents" means Elanco and Bayer;

E. "Acquirer(s)" means

1. A Person specified by name in this Order to acquire particular Divestiture Assets pursuant to this Decision and Order; or

2. Any other Person the Commission approves to acquire particular Divestiture Assets pursuant to this Decision and Order

F. "Acquisition Agreement" means the *Share and Asset Purchase Agreement* between Bayer Aktiengesellschaft and Elanco Animal Health Incorporated, dated August 20, 2019. The Acquisition Agreement is contained in Non-Public Appendix IV.

G. "Acquisition Date" means the earlier of (i) the date on which Elanco acquires any ownership interest in any of the Persons or assets that are identified in the Acquisition Agreement for acquisition by Elanco, or (ii) the date on which Bayer acquires any ownership interest in the voting securities of Elanco pursuant to the Acquisition Agreement.

H. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes the FDA.

I. "Business" means the research, Development, manufacture, commercialization, distribution, marketing, advertisement, importation, and sale of a Product.

J. "Business Information" means all written information, wherever located or stored, relating to or used in a Divestiture [illegible]

M. "Capstar Products" means the Products in Development or manufactured anywhere in the world for marketing or sale in the United States

1. All Product Approvals and authorizations for the Divestiture Products, including all FDA Authorizations;
2. All studies in animals of the safety or efficacy of the Product;
3. All Product Intellectual Property;
4. At the option of the Acquirer, Product Manufacturing Equipment;
5. All technological, scientific, chemical, biological, pharmacological, toxicological, regulatory

Z. "Employee Information" means the following, for each Relevant Employee, as and to the extent permitted by law:

1. With respect to each such employee, the following information:

   a. Name, job title or position, date of hire, and effective service date;

   b. Specific description of the employee's responsibilities;

   c. Base salary or current wages;

   d. Most recent bonus paid, aggregate annual compensation for the relevant Respondent's last fiscal year, and current target or guaranteed bonus, if any;

   e. Employment status (*i.e.*, active or on leave or disability; full-time or part-time); and

   f. All other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

2. At the option of the proposed or approved Acquirer, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employees.

AA. "Excluded Assets" mean

1. Any real estate and the buildings and other permanent structures located on such real estate;

2. Corporate names or corporate trade dress of a Respondent or the related corporate logos thereof; or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by a Respondent or the related corporate logos thereof; or general registered images or symbols by which a Respondent can be identified or defined;

3. The portion of any Business Information that contains information about any of a Respondent's businesses other than a Divestiture Product Business, in those cases in which the redaction does not impair the usefulness of the information related to the Divestiture Product Business;

4. Any original document that a Respondent has a legal, contractual, or fiduciary obligation to retain the original; *provided, however,* that Respondent Elanco shall provide copies of the document to the Acquirer and shall provide the Acquirer access to the original document if copies are insufficient for regulatory or evidentiary purposes;

5. (i) Any tax asset relating to (a) the Divestiture Assets for pre-Divestiture Date tax periods or (b) any tax liability that any Respondent is responsible for arising out of the divestiture of the Divestiture Assets; (ii) all accounts receivable, notes receivable, rebates receivable and other miscellaneous receivables of any Respondent that are related to the Divestiture Product Business and arising out of

the operation of the Divestiture Product Business prior to the Divestiture Date, and (iii) all cash, cash equivalents, credit cards and bank accounts of any Respondent;

6. Any records or documents reflecting attorney-client, work product or similar privilege of any Respondent or otherwise relating to the Divestiture Assets as a result of legal counsel representing any Respondent in connection with the divestiture of the Divestiture Assets pursuant to this Order or the Divestiture Agreements; and

7. Assets specifically identified as excluded assets in Non-Public Appendix V.

BB. "FDA" means the United States Food and Drug Administration.

CC. "FDA Authorization(s)" means all of the following, as defined in the United States Federal Food, Drug and Cosmetic Act, as amended: "Investigational New Animal Drug Application ("INADA"), "New Animal Drug Application" ("NADA"), "Abbreviated New Animal Drug Application" ("ANADA"), or "Conditional New Animal Drug Application" ("CNADA") for a drug filed or to be filed with the FDA, and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts, and data necessary for the preparation thereof, and all correspondence between the holder and the FDA related thereto.

DD. "Licensed Intellectual Property" means (i) all Product Manufacturing Technology that is

LL. "Osurnia Divestiture Assets" means all rights, title and interest in the Divestiture Product Business related to each of the Osurnia Products, including all of the Divestiture Assets related to each of the Osurnia Products, including the Osurnia trademark.

MM. "Osurnia Products" means: the Products identified on Schedule 1.1.32 of the Osurnia Divestiture Agreement, including Products in Development, manufactured, marketed, or sold pursuant to the following FDA Authorization: NADA No. 141437, and any supplements, amendments, or revisions to this NADA.

NN. "Patent(s)" means all patents and patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention, and statutory invention registrations, in each case filed, or in existence, on or before the Divestiture Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

OO. "PetIQ" means (i) PetIQ, LLC, a limited liability company organized under the laws of the State of Idaho, with its executive offices and principal place of business located at 923 South Bridgeway Place, Eagle, Idaho 83616; (ii) PetIQ, Inc., a corporation organized under the laws of the State of Delaware, with its executive offices and principal place of business located at 923 South Bridgeway Place, Eagle, Idaho 83616; and (iii) any Person controlled by or under common control of either PetIQ, LLC and PetIQ, Inc.

PP. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or government entity, and any subsidiaries, divisions, groups, or affiliates thereof.

QQ. "Product(s)" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound that is referenced as its pharmaceutically, biologically, or genetically active ingredient, or that is the subject of an FDA Authorization, or both.

RR. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, a(a)4 (ns)-1(s)-1 (,)]T0 1 Tf 3 0 Td [("")4 (P)-4 (r)3 (oduc)4 (t)-2 (()3 (s)-1 ())3 (")4 (m)-12 (t)-2 (

independently purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s), or had planned to purchase the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) from any third party for use in connection with the manufacture of a Product;

3. Relating to any study in animals of the safety or efficacy of a Product;

4. With universities or other research institutions for the use of a Product in scientific research;

5. For the marketing of a Product or educational matters relating solely to the Products;

6. Pursuant to which a third party manufactures or plans to manufacture a Product as a finished dosage form on behalf of a Respondent;

7. Pursuant to which a third party provides or plans to provide any part of the manufacturing process, including, without limitation, the finish or packaging of a Product on behalf of a Respondent;

8. Pursuant to which a third party licenses any intellectual property related to a Product to a Respondent;

9. Pursuant to which a third party is licensed by a Respondent to use any of the Product Intellectual Property;

10. Constituting confidentiality agreements related to a Product;

11. Involving any royalty, licensing, covenant not to sue, or similar agreement related to a Product;

12. Pursuant to which a third party provides any specialized services necessary to the research, Development, manufacture, or distribution of a Product to a Respondent including, consultation arrangements; or

13. Pursuant to which any third party collaborates with a Respondent in the performance of research, Development, marketing, distribution, or selling of a Product.

TT. "Product Development Report" means [illegible]

6. FDA approved labeling or other Agency-approved labeling;

7. Currently used or planned product package inserts (including historical change of controls summaries);

8. FDA approved circulars for animal owners or breeders;

9. Adverse event reports, adverse experience information, and descriptions of material events and matters concerning safety or lack of efficacy;

10. Summaries of complaints from veterinarians;

11. Summaries of complaints from Customers;

12. Product recall reports filed with the FDA or any other Agency, and all reports, studies, and other documents related to such recalls;

13. Investigation reports and other documents related to any out of specification results for any impurities or defects found in any Product;

14. Reports from any Person (e.g., any consultant or outside contractor) engaged to investigate or perform testing for the purposes of resolving any Product or process issues, including, without limitation, identification and sources of impurities or defects;

15. Reports from vendors of the component(s), active pharmaceutical ingredient(s), excipient(s), packaging component(s), and detergent(s) used to produce any Product that relate to the specifications, degradation, chemical interactions, testing, and historical trends of the production of any Product;

16. Analytical methods development records;

17. Manufacturing batch or lot records;

18. Stability testing records;

19. Change in control history; and

20. Executed validation and qualification protocols and reports.

UU. "Product Intellectual Property" means intellectual property of any kind (other than Licensed Intellectual Property) that is owned, licensed, held, or controlled by a Respondent as of the Divestiture Date, including Patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, domain names, internet web sites, internet domain names, inventions, discoveries, know-how, trade secrets, and proprietary information.

VV. "Product Manufacturing Equipment" means equipment that is being used, or has been used at any time since Respondent entered into the Acquisition Agreement to manufacture the specified Divestiture Product.

WW. "Product Manufacturing Technology" means all technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable, or otherwise) related to the manufacture of a Product, including the following: all product specifications,

processes, analytical methods, product designs, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the conformance of any Product Approvals, conformance with any Agency requirements, and cGMP compliance, labeling and all other information related to the manufacturing process, and supplier lists

XX. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of the specified Divestiture Products as of the Divestiture Date that are owned or controlled by a Respondent, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (e.g., detailing reports, vendor lists, sales data), marketing information (e.g., competitor information,

Technology to a different facility;

2. Marketing Employees – all management-level employees of a Respondent who have participated (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax, or financial compliance) in any of the following related to the specified Divestiture Product: sales management, brand management, sales training, market research, or marketing and contracting with any of the following: drug wholesalers or distributers, group purchasing organizations, pharmacy benefit organizations, managed care organizations, or hospitals, *excluding* administrative assistants within the 18 month period immediately prior to the Divestiture Date; and

3. Research and Development Employees – all employees of a Respondent who have participated (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax, or financial compliance) in any of the following related to the specified Divestiture Product: research, Development, regulatory approval process, or studies in animals of the safety or efficacy of the Divestiture Product, within the 18 month period immediately prior to the Divestiture Date.

AAA. "Retained Product(s)" means any Product(s) other than a Divestiture Product that is manufactured, in Development, marketed, sold, owned, controlled, or licensed by a Respondent anywhere in the world on or before the Acquisition Date and that has not been discontinued or permanently withdrawn from the market.

BBB. "Shared Intellectual Property" means all Product Intellectual Property of any kind (other than trademarks, Domain Names, and FDA Authorizations related to a Divestiture Product) (i) that is primarily or predominantly used (but not exclusively used) in connection with a Divestiture Product business as of the Divestiture Date and (ii) that has been used, and continues to be used, in connection with the manufacture of any Retained Product.

CCC. "Stand-Alone Divestiture Agreement" means the Asset Purchase Agreement by and

3. The controlled-release premised insecticide known as Standard Premise Insecticide (containing 5.9% gamma-cyhalothrin.

FFF. “

the Product

HHH. "Transition Manufacture" and "Transition Manufacturing" mean the following:

1. To manufacture, or to cause to be manufactured, a Capstar Product on behalf of the Acquirer (including, for the purposes of this Order, sales in animals or commercial sales); or

2. To provide, or to cause to be provided, any part of the manufacturing process, including, the finish and packaging of a Capstar Product on behalf of the Acquirer.

III. "United States" means the United States of America, and its territories, districts, commonwealths, and possessions.

II. Divestitures

IT IS FURTHER ORDERED that:

A. Not later than 10 days after the Acquisition Date, Respondent Elanco shall divest the Capstar Divestiture Assets, and grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty-free license to use the related Licensed Intellectual Property in the related Divestiture Product Business, absolutely and in good faith, to Petoq pursuant to, and in accordance with, the Capstar Divestiture Agreements;

provided, however, that, if within 12 months after the Order Date, the Commission determines, in consultation with the Acquirer and the Monitor, the Acquirer needs one or more Excluded Assets to operate the Capstar Divestiture Assets or the related Divestiture Product Business in a manner that achieves the purposes of this Order, Respondent Elanco shall divest, absolutely and in good faith, the needed Excluded Assets to the Acquirer.

B. Not later than 10 days after the Acquisition Date, Respondent Elanco shall divest the Osurnia Divestiture Assets, and grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty-free license to use the related Licensed Intellectual Property in the related Divestiture Product Business, absolutely and in good faith, to Dechra pursuant to, and in accordance with, the Osurnia Divestiture Agreements;

provided, however, that, if within 12 months after the Order Date, the Commission determines, in consultation with the Acquirer and the Monitor, the Acquirer needs one or more Excluded Assets to operate the Osurnia Divestiture Assets or the related Divestiture Product Business in a manner that achieves the purposes of this Order, Respondent Elanco shall divest, absolutely and in good faith, the needed Excluded Assets to the Acquirer.

C. Not later than 10 days after the Acquisition Date, Respondent Elanco shall divest the StandGuard Divestiture Assets, and grant a perpetual, non-exclusive, fully paid up, fully transferable, and royalty-free license to use the related Licensed Intellectual Property in the related Divestiture Product Business, absolutely and in good faith, to Neogen pursuant to, and in accordance with, the StandGuard Divestiture Agreements;

provided, however, that, if within 12 months after the Order Date, the Commission determines, in consultation with the Acquirer and the Monitor, the Acquirer needs one or

more Excluded Assets to operate the StandGuard Divestiture Assets or the related Divestiture Product Business in a manner that achieves the purposes of the Order, Respondent Elanco

Customer during the two-year period prior to the Divestiture Date;

3. A list of the inventory levels (weeks of supply) of the relevant Divestiture Product in the possession of each Customer to the extent known or available to any Respondent, as of the date prior to and closest to the Divestiture Date as is available;

4. A list of any pending reorder dates for the relevant Divestiture Product by Customer as of the Divestiture Date to the extent known by any Respondent; and

5. The quantity and delivery terms in all unfilled Customer purchase orders for the relevant Divestiture Product as of the Divestiture Date.

K. Respondents shall not

1. Use any of the trademarks divested pursuant to this Order or any mark confusingly similar to those trademarks as a trademark, tradename, or service mark, *except* as may be agreed upon with the relevant Acquirer of each of the Divestiture Products for the purposes of selling inventory, finished goods, packaging or similar materials bearing the relevant trademarks for the benefit of the relevant Acquirer during a transition period;

2. Attempt to register the divested trademarks;

3. Attempt to register any mark confusingly similar to the divested trademarks;

4. Challenge or interfere with the use and registration of the divested trademarks by the relevant Acquirer of each of the Divestiture Products; or

5. Challenge or interfere with efforts to enforce its trademark registrations, and trademark rights in the divested trademarks against third parties by the relevant Acquirer of each of the Divestiture Products;

provided, however, the prohibitions in this paragraph II.K shall apply only to actions in the United States with respect to trademarks including in the Capstar Assets and the StandGuard Assets.

L. Respondents shall not join, file, prosecute, or maintain any suit, in law or equity, against the Product Releasees under any Patent that was pending or issued on or before the Acquisition Date if such suit would limit or impair each Acquirer's freedom to research, Develop, or manufacture anywhere in the world the Divestiture Product(s) acquired by that Acquirer, or to distribute, market, sell, or offer for sale within the United States any such Divestiture Product.

M. Upon reasonable written request from an Acquirer, Respondent Elanco shall, in a timely manner, make available knowledgeable employees of Respondent Elanco (current employees of Respondent Elanco that were involved in the Development of the Divestiture Products) to assist the Acquirer in defending against, responding to, or otherwise participating in any infringement action brought by a third party against the Acquirer related to the Product Intellectual Property acquired by that Acquirer from

Respondent Elanco. Respondent Elanco shall make their employees available for the fee provided in the relevant Divestiture Agreement, or if no fee is provided, at no greater than the then-current average hourly wage rate for such employee.

N. For any patent infringement suit that is filed or to be filed within the United States that is (i) filed by, or brought against, a Respondent prior to the Divestiture Date related to a Divestiture Product or (ii) any potential patent infringement suit that a Respondent has prepared, or is preparing, to bring or defend against as of the Divestiture Date that is related to a Divestiture Product, Respondents shall:

1. Cooperate with the relevant Acquirer of that Divestiture Product and provide any and all necessary technical and legal assistance, documentation, and witnesses from that Respondent in connection with obtaining resolution of such patent infringement suit;

2. Waive conflicts of interest, if any, to allow Respondent's outside legal counsel to represent that Acquirer in any such patent infringement suit; and

3. Permit the transfer to that Acquirer of all of the litigation files and any related attorney work product in the possession of Respondents' outside counsel related to such patent infringement suit.

III. Divestiture Agreements

IT IS FURTHER ORDERED that:

A. The Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by a Respondent to comply with any term of the Divestiture Agreements shall constitute a violation of this Order; *provided however*, that the Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreements varies from or conflicts with any provision in this Order such that the Respondents cannot fully comply with both, Respondents shall comply with this Order.

B. Respondents shall include in the Divestiture Agreements a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the scope and breadth of the Respondents' obligations to the Acquirer pursuant to this Order.

C. Respondents shall not modify or amend any of the terms of any Divestiture Agreement without the prior approval of the Commission, *except* as otherwise provided in Rule 2.41(f)(5) of the Commission's

Agreement, Respondent Elanco shall provide transition services sufficient to enable the relevant Acquirer of each of the Divestiture Products to operate the related Divestiture Product Business in substantially the same manner that Respondent Elanco has operated that Business prior to the Acquisition Date.

B.

Manufacturing Designee of that Acquirer) to obtain all Product Approvals to manufacture the relevant Divestiture Products in its final form in the same quality achieved by, or on behalf of, Respondent Elanco and in commercial quantities (and, for the Capstar Products, in a manner consistent with cGMP), independently of Respondent Elanco and sufficient to satisfy management of the requesting Acquirer that its personnel (or its Manufacturing Designee's personnel) are adequately trained in the manufacture of the relevant Divestiture Products.

V. Asset Maintenance

IT IS FURTHER ORDERED that, until the Capstar Divestiture Assets, the Osurnia Divestiture Assets, and the StandGuard Divestiture Assets have been physically transferred to each of the relevant Acquirers, Respondent Elanco shall operate and maintain each of the respective Divestiture Assets and related Divestiture Product Businesses in the ordinary course of business consistent with past practices. Included in these obligations, Respondent Elanco shall:

A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of such Divestiture Product Businesses, to minimize the risk of loss of competitive potential of such Divestiture Product Businesses, to operate such Divestiture Product Businesses in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, or deterioration of the related Divestiture Assets, except for ordinary wear and tear;

B. Not sell, transfer, encumber, or otherwise impair such Divestiture Assets, or terminate any of the operations of such Divestiture Product Businesses, other than in the ordinary course of business consistent with past practice or as prescribed in this Order;

C. Make all payments required to be paid under any contract or lease when due, and pay all liabilities and satisfy all obligations associated with such Divestiture Product Business;

D. Provide such Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on, at least at their scheduled pace, all capital projects, business plans, promotional plans, capital expenditure plans, research and development plans, and commercial activities for such Divestiture Product Businesses;

E. Use best efforts to preserve the existing relationships and goodwill with suppliers, customers, employees, vendors, distributors, landlords, licensors, licensees, government entities, brokers, contractors, and others having business relations with such Divestiture Product Businesses;

F. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with such Divestiture Product Businesses, including by:

1. Filling vacancies that occur in the regular and ordinary course of business consistent with past practice; and

2. Not transferring any employees from each Divestiture Product Business to another of Respondent Elanco's businesses

from that Acquirer or its Manufacturing Designee; *provided, however*, that nothing in this Order shall be construed to require Respondent Elanco to terminate the employment of any employee or prevent Respondent Elanco from continuing the employment of any employee; and

4. Not interfere, directly or indirectly, with the hiring or employing by the relevant Acquirer or its Manufacturing Designee of any Relevant Employee, or offer any incentive to such employees to decline employment with that Acquirer or its Manufacturing Designee. Acquirer sd, h-10 (g)10 (b) As sd, ploy ofer any tololine loyater

VII. Business Information

IT IS FURTHER ORDERED that:

A. Respondent Elanco shall transfer and deliver all

that they are prohibited from receiving for any reason or purpose; and

7. Take all actions necessary and appropriate to prevent access to, and disclosure of or use of, such Confidential Business Information by or to any Person(s) not authorized to access, receive, or use such information pursuant to the terms of the Orders or the relevant Divestiture Agreements, including:

   a. Establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system or network controls and restrictions;

   b. To the extent practicable, maintaining such Confidential Business Information separate from other data or information of a Respondent; and

   c. Ensuring by other reasonable and appropriate means that such Confidential Business Information is not shared with a Respondent's personnel engaged in any Business related to the same or substantially the same type of Business as the Divestiture Products (*e.g.*, commercialization of Products Developed, in Development, marketed, or sold for the same or similar indications and in the same geographic territory as the Divestiture Products).

B. As a condition of continued employment after the Divestiture Date, Respondent Elanco shall require each employee that has had responsibilities related to the marketing or sales of the Divestiture Products within the one (1) year period prior to the Divestiture Date, and each employee that has responsibilities related to the Development, marketing or sales of those Retained Products that are Developed or in Development for the same or similar indications as the

U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Elanco shall consent to the appointment of a Divestiture Trustee in such action to assist, 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 Elanco, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondent Elanco has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondent Elanco of the identity of any proposed Divestiture Trustee, Respondent Elanco shall be deemed to have consent02 (he)4 (s)-1 (t)-2 (i0.25 -(31)-1

divested, delivered, or otherwise conveyed by this Order and to any other relevant information as the Divestiture Trustee may request. Respondent Elanco shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Elanco shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture ert ru1 (t (i))v(r)3 , wi tu-ho(a)-16 b3I(2-)2

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 requir

a. Submit interim Compliance Reports within 30 days after the Order to Maintain Assets is issued, and every 90 days thereafter until Respondent Elanco has completed all of the following: (i) the transfer and delivery of the Capstar Divestiture Assets, the Osurnia Divestiture Assets and the StandGuard Divestiture Assets to each of the relevant Acquirers, (ii) the transfer and delivery of all of the Product Manufacturing Technology related to the Divestiture Products to each of the relevant Acquirers, (iii) the transfer and delivery of all Business Information to each of the relevant Acquirers, and (iv) the provision of Transition Manufacturing to the Acquirer of the Capstar Divestiture Assets;

b. Annual Compliance Reports one year after the Order Date and annually for the next 4 years on the anniversary of that date; and

c. Additional Compliance Reports as the Commission or its staff may request.

2. Each Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Elanco is in compliance with the Order. Conclusory statements that Respondent Elanco has complied with its obligations under the Order are insufficient. Respondent Elanco shall include in its Compliance Reports, among other information or documentation that may be necessary to demonstrate compliance:

a. A detailed description of all substantive contacts, negotiations, or recommendations related to the transfer and delivery to each of the relevant Acquirers of (i) the Capstar Divestiture Assets, the Osurnia Divestiture Assets, and the StandGuard Divestiture Assets, (ii) the related Product Manufacturing Technology, (iii) the related Business Information, and (iv) the provision of Transition Manufacturing to the Acquirer of the Capstar Divestiture Assets; and

b. A detailed description of the timing for the completion of such obligations.

3. Respondent Elanco shall retain all material written communications with each party identified in the Compliance Report and all non-

XI. Change in Respondents

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

A. The dissolution of Elanco Animal Health Incorporated or Bayer Aktiengesellschaft;

B. Any proposed acquisition, merger, or consolidation of Elanco Animal Health Incorporated or Bayer Aktiengesellschaft; or

C. Any other change in Respondents, including assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

XII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, subject to any legally recognized privilege, upon written request and upon 5 days' notice to a Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that each Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative of the Commission and at the expense of that Respondent; and

XIV. Term

NON-PUBLIC APPENDIX I
AGREEMENTS RELATED TO THE CAPSTAR DIVESTITURE
[Redacted from the Public Version, But Incorporated by Reference]

NON-PUBLIC APPENDIX II
AGREEMENTS RELATED TO THE OSURNIA PRODUCT DI VESTITURE
[Redacted from the Public Version, But Incorporated by Reference]

NON-PUBLIC APPENDIX III
AGREEMENTS RELATED TO THE STANDGUARD PRODUCT DIVESTITURE
[Redacted from the Public Version, But Incorporated by Reference]

NON-PUBLIC APPENDIX IV
THE ACQUISITION AGREEMENT
[Redacted from the Public Version, But Incorporated by Reference]

NON-PUBLIC APPENDIX V
EXCLUDED ASSETS
[Redacted from the Public Version, But Incorporated by Reference]

PUBLIC APPENDIX
MONITOR AGREEMENT

(Monitor compensation redacted)
[cover page]

NON-PUBLIC APPENDIX
MONITOR COMPENSATION