

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)
)
)
BRISTOL-MYERS SQUIBB COMPANY,)
a corporation;)
) Docket No. C-
and)
)
CELGENE CORPORATION,)
a corporation.)
)

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Bristol Myers Squibb Company (“BMS”) of all of the voting securities of Respondent Celgene Corporation (“Celgene”) collectively “Respondents.” The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, 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.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Order” or “Consent Agreement”), containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint; (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint; or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules; and (4) a proposed Decision and Order and this Order to Maintain Assets.

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record period of 30 days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Bristol-Myers Squibb.

authorized prior to the date the Consent Agreement was signed by the Respondents;

3. providing such resources as may be necessary to respond to competition prior to the complete transfer and delivery of the Otezla Assets to an Acquirer;
4. providing such resources as may be necessary to maintain the competitive strength and positioning of the Otezla Business;
5. making available fouse by the Otezla Business funds sufficient to perform all routine maintenance and all other maintenance may be necessary to, and all replacement of the Otezla Assets; and
6. providing such support services to the Otezla Business as were being provided to such Otezla Business by Respondents as of the date the Consent Agreement was signed by it bT sd ty B

Commission, or (iv) the Monitor (if any has been appointed) and to the extent necessary to comply with applicable law;

- C. Respondents shall not provide, disclose or otherwise make available, directly or indirectly, any Otezla Confidential Business Information to the employees associated with the business that is being retained, owned, or controlled by the Respondents, other than those employees providing transition services or Transition Manufacturing to the Acquirer or who are engaged in the transfer and delivery of the Product Manufacturing Technology related to the Otezla Products or the ongoing Clinical Trials related to the Otezla Products to the Acquirer;
- D. Respondents shall institute procedures and requirements to ensure that those employees of the Respondents that are authorized by the Acquirer to have access to the Otezla Confidential Business Information:
1. do not provide, disclose, or otherwise make available, directly or indirectly, any Otezla Confidential Business Information in contravention of the Orders; and
 2. do not solicit, access, or use any Otezla Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- E. Respondents shall take all actions necessary and appropriate to prevent access to, and the disclosure or use of, the Otezla Confidential Business Information by or to any Person(s) not authorized to access, receive, and/or use such information pursuant to the terms of the Orders or the Otezla Divestiture Agreements, including:
1. Establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system and network controls and restrictions;
 2. To the extent practicable, maintaining Otezla Confidential Business Information separate from other data or information of the Respondents; and
 3. Ensuring by other reasonable and appropriate means that Otezla Confidential Business Information is not shared with Respondents' personnel engaged in business related to the same or substantially the same type of business as the Otezla Business (e.g., commercialization of Products Developed or in Development for the same or similar indications as the Otezla Products).

- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to each Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities, and technical information and such other relevant information as the Monitor may reasonably request, related to that Respondent's compliance with its obligations under the Orders.
- E. Each Respondent shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with

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 following manner:
 - 1. the Commission shall select the substitute Monitor, subject to the consent of Respondent BMS, which consent shall not be unreasonably withheld. If Respondent BMS has not opposed, in writing, including the reasons for opposing, the selection of a substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, Respondents shall be deemed to have consented to the selection of the substitute Monitor; and
 - 2. not later than ten (10) days after the Commission's appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on that Monitor all the rights, powers, and authorities necessary to permit that Monitor to monitor each Respondent's compliance with the Orders in a manner consistent with the purposes of the Orders.
- 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.

V.
Compliance Reports

IT IS FURTHER ORDERED that

- A. Within thirty (30) days after the date this Order to Maintain Assets is issued by the Commission,

and every ninety (90) days thereafter until Respondents have fully complied with this Order to Maintain Assets. Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Orders (“Compliance Reports”)

- B. Each Compliance Report shall contain sufficient information and documentation to enable the Commission independently to determine whether Respondents are in compliance with the Orders. Conclusory statements that Respondents have complied with their obligations under the Orders are insufficient. Respondents shall include in their Compliance Reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Orders, including:
1. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the transfer and delivery of all the Otezla Assets to the Acquirer, (ii) the transfer and delivery of all of the Product Manufacturing Technology related to the Otezla Products and the Clinical Trial(s) related to the Otezla Products to the Acquirer, (iii) the transfer and delivery of all Otezla Confidential Business Information to the Acquirer, and (iv) the provision of transition services to the Acquirer; and
 2. a detailed description of the timing for the completion of such obligations.
- C. Respondents shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or other officer or employee specifically authorized to perform this function. Respondents shall submit an original and two 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.

VI.
Change in Respondents

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

- A. any proposed dissolution of Bristol-Myers Squibb Company or Celgene Corporation;
- B. any proposed acquisition, merger, or consolidation of Bristol-Myers Squibb Company or Celgene Corporation; or
- C. any other change in a Respondent including assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Orders.

VII.
Access

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 a Respondent at its principal place of business as identified in the Order, registered office of its United States subsidiary, or its headquarters address, the notified 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 business and other records and all documentary

