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 **Danaher Corporation,** **a corporation;** **and** **General Electric Company,** **a corporation.**	)	**File No. C-4710**

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Danaher Corporation of Respondent General Electric Company's Biopharma business (each a "Respondent," and collectively "Respondents"). The Commission's Bureau of Competition prepared and furnished Respondents and Sartorius AG 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, Sartorius, and the Bureau of Competition executed an Agreement Containing Consent Order ("Consent Agreement") containing (1) an admission by Respondents and Sartorius 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 Order to Hold Separate and Maintain Assets.

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 Hold Separate and 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:

1. Respondent Danaher is a corporation organized, existing, and doing business under, and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 2200 Pennsylvania Avenue, NW, Suite 800W Washington, DC 20037.

2. Respondent GE is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its headquarters located at 41 Farnsworth Street, Boston, Massachusetts 02210.

II. Hold Separate and Asset Maintenance

IT IS FURTHER ORDERED that**:**

A. During the Hold Separate Period, Respondent Danaher shall continue to operate the Hold Separate Businesses as independent, ongoing, economically viable businesses and shall: (1) hold them separate and apart from Respondent Danaher's other businesses, (2) take no action to integrate the operations of the Hold Separate Businesses with other Danaher businesses; (3) take no action to coordinate the operations of the Hold Separate Businesses with any other business of Respondent Danaher other than back office services, such as IT services and administration of compensation and benefits, as long as the confidentiality provisions of Paragraph V are complied with; and (4) vest them with all rights, powers, and authority necessary to conduct business in a manner consistent with the Orders.

B. Prior to the Acquisition Date, Respondent Danaher shall appoint Jeffrey Figg, Senior Vice President Finance for Pall, to oversee, subject to Respondent Danaher's Hold Separate Commitments to the European Commission, the operations of each Hold Separate Business and ensure Respondent Danaher's compliance with the Orders during the Hold Separate Period. Mr. Figg shall serve during the Hold Separate Period and shall have no duties related to the GE Biopharma business during the Hold Separate Period.

C. For the Divestiture Businesses during the Hold Separate Period, Respondent Danaher shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of each.

D. During the Hold Separate Period, Respondent Danaher shall, subject to legal and regulatory requirements, operate the Divestiture Businesses in the ordinary course of business consistent with past practices, including:

1.

c. Carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects;

3. Preserving the Divestiture Businesses Assets and the Divestiture Businesses as ongoing businesses; and

4. Taking or failing to take any actions that would diminish the viability, competitiveness, and marketability of the Divestiture Businesses Assets or the Divestiture Businesses.

E. Until such time as the Acquirer replicates the manufacture, assembly, testing, packaging, and selling of products related to Flow Kit Consumables in a manner that fulfills the Acquirer's worldwide demand, Respondent Danaher:

1. Shall take actions as are necessary to operate the equipment related to Flow Kit Consumables in the regular and ordinary course of business and in accordance with past practices and in a manner consistent with applicable laws and regulation; and

2. Prevent the destruction, removal, wasting, deterioration, or impairment of the Flow Kit Consumables; and

F.

F.
Flow Kile tede (n)2 (ina)6 (t (b)2 (le)5.9 6 (r)5 (D2 (orv Tw -,)2 (a)6 (s(th)2

III.

6.

1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);

2. At the price set forth in a Divestiture Agreement or otherwise mutually agreed to, or at Direct Cost; and

3. Until the later of 24 months after the Divestiture Date or a period sufficient to meet the requirements of this paragraph.

B. Respondent Danaher shall permit the Acquirer to stop receiving any type of Transition Services and any Transition Product upon commercially reasonable notice and without cost or penalty.

C. Respondent Danaher, in consultation with the Acquirer, for the purposes of ensuring an orderly transition of the Divestiture Businesses and the Divestiture Businesses Assets, shall:

1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Divestiture Businesses by the Acquirer is not delayed or impaired by the Respondent Danaher;

2. Designate employees of Respondent Danaher who are knowledgeable about the operation of each of the Divestiture Businesses to be responsible for communicating directly with the Acquirer and the Monitor to assist in the transferring the Divestiture Businesses and the Divestiture Businesses Assets to the Acquirer;

3. Until Respondent Danaher has transferred to the Acquirer all Business Information included in the Divestiture Businesses Assets, Respondent Danaher shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondent Danaher has not yet transferred, and to employees who possess or are able to locate the records and information; and

4. Establish projected timelines for accomplishing all tasks necessary to transfer the Divestiture Businesses Assets and enable the Acquirer to operate the Divestiture Businesses in an efficient and timely manner.

D. Respondent Danaher shall supply Acquirer with each Transition Product pursuant to the Divestiture Agreement that has been approved by the Commission for a period sufficient for Acquirer to find alternative sources or independently manufacture the Transition Product in a manner that allows Acquirer to fulfill its worldwide demand.

E.

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

b. Ensuring by other reasonable and appropriate means that the Confidential Divestiture Information is not shared with any employee of Respondent Danaher personnel engaged in any business that competes with one or more of the Divestiture Businesses.

B. Not later than 30 days after the Divestiture Date, Respondent Danaher shall provide written notification of the restrictions on the use and disclosure of the Confidential Divestiture Information to all employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondent Danaher shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Divestiture Date. Respondent Danaher shall provide a copy of the notification to the Acquirer. Respondent Danaher shall maintain complete records of all such notifications at Respondent Danaher's registered office within the United States of America. Respondent Danaher shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Respondent Danaher's personnel.

VI. Monitor

IT IS FURTHER ORDERED that**:**

A. Mazars LLP is appointed Monitor to ensure that Respondent Danaher expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Orders.

B. No later than one day after the Commission issues this Order, Respondent Danaher shall, pursuant to the Monitor Agreement, attached as Appendix D and Non-Public Appendix E (Compensation) to the Decision and Order, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of the Orders.

C. The Monitor shall serve, without bond or other security, at the expense of Respondent Danaher, on such reasonable and customary terms and conditions as th(t)-2 (o t)-2 (he)4 (M)-1 (oni)-2 (

1. Ensuring that Respondent Danaher expeditiously complies with all obligations and performs all responsibilities as required by the Orders and the Divestiture Agreement;

2. Monitoring any transition services agreements; and

3. Ensuring that Confidential Business Information is not received or used by Respondent Danaher, except as allowed in the Orders;

4. Subject to any demonstrated legally recognized privilege, full and complete access to Respondent Danaher'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 Respondent Danaher's compliance with their obligations under the Orders and the Divestiture Agreement. Respondent Danaher shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondent Danaher's compliance with the Orders and the Divestiture Agreements;

5. Provide the Monitor with copies of all reports Respondent Danaher is required to submit to the Commission or Commission staff pursuant to the Orders.

E. The Monitor is an independent third party and not as an employee or agent of the Respondent Danaher or of the Commission;

F. The Monitor's appointment shall last for such time as is necessary to monitor Respondent Danaher's compliance with the provisions of the Orders and the Divestiture Agreements;

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

H. In connection with its appointment by the Commission, the Monitor shall report in writing to the Commission evaluating reports Respondent Danaher has submitted to the Commission and describing Respondent Danaher's performance of its obligations under the Orders. The Monitor shall submit a report to staff of the Commission one month after the Commission issues the Orders, every 60 days thereafter, and at such other times as staff of the Commission may request.

I. Respondent Danaher may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement so long as such agreement shall not restrict the Monitor's ability to provide information to the Commission or require the Monitor to inform Respondent Danaher of the substance of communications with 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 relating 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 event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondent Danaher, which consent shall not be unreasonably withheld. If Respondent notice by the st

6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Danaher, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Danaher, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee,

orders or directions as may be necessary or appropriate to accomplish the

Sartorius shall file an original and one copy of the notification only with the Secretary of the Commission, and need not make any filing to the United States Department of Justice. Notification is required from Sartorius and not from any other party to the transaction. No filing fee will be required for any such notification.

3. Sartorius shall provide prior notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or doc

3. Respondent Danaher shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent

Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondent Danaher related to compliance with the Orders, which copying services shall be provided by Respondent Danaher at the request of the authorized representative of the Commission and at the expense of the Respondent Danaher; and

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

XII. Purpose

IT IS FURTHER ORDERED that the purpose of the Orders is to ensure the continuation of the Divestiture Businesses as ongoing viable businesses engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

XIII. Term

IT IS FURTHER ORDERED that this Order to Hold Separate and Maintain Assets shall terminate at the earlier of:

A. 3 business 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 Respondent Danaher's (or a Divestiture Trustee's) completion of the divestitures required by Paragraph II of the Decision and Order;

Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Hold Separate and Maintain Assets shall terminate three business days after the Decision and Order becomes final;

Provided, further, however, that if the Commission, pursuant to Paragraph II.H of the Decision and Order, requires Respondent Danaher to rescind the divestiture to Sartorius, then, upon rescission, the requirements of this Order to Hold Separate and Maintain Assets shall again be in effect until the day after Respondent Danaher's (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission, Commissioners Chopra and Slaughter dissenting.

April J. Tabor
Acting Secretary

SEAL
ISSUED: March 19, 2020