

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

In the Matter of)	
)	
PFIZER INC.,)	Docket No. C-4267
a corporation,)	
)	
and)	
)	
WYETH,)	
a corporation.)	
)	
)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Pfizer Inc. (“Pfizer”) of Respondent Wyeth (“Wyeth”), 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

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 for a period of thirty (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 Pfizer is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its corporate head office and principal place of business located at 235 East 42nd St., New York, New York 10017.
2. Respondent Wyeth f/k/a American Home Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address at 5 Giralda Farms, Madison, New Jersey 07940.
3. The Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS 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, the Decision and Order), which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Pfizer” means Pfizer Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Pfizer (including, but not limited to, Pfizer Animal Health), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each. After the Acquisition, Pfizer shall include Wyeth.
- B. “Wyeth” means Wyeth, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Wyeth (including, but not limited to, Fort Dodge Animal Health), and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- C. “Respondent(s)” means Pfizer and Wyeth, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- 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 Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- F. “Divestiture Assets” means the Animal Health Product Assets and the Equine Anthelmintic Product Assets, as defined in the Decision and Order.
- G. “Divestiture Product Business(es)” means the business of the Respondent(s) within the Geographic Territory specified in the Decision and Order related to each of the Divestiture Products, including the research, Development, manufacture, distribution, marketing, and sale of each Divestiture Product and the assets related to such business, including, without limitation, the Divestiture Assets.
- H. “Divestiture Product Core Employees” means the Animal Health Product Core Employees and the Product Marketing Employees related to the Equine Anthelmintic Products, individually and collectively.
- I. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph IV of the Decision and Order.
- J. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

- A. Until the Closing Date, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of the related Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Divestiture Product Businesses except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair such Divestiture Assets (other than in the manner prescribed in the Decision and Order) nor take any action that lessens the full economic viability, marketability or competitiveness of the related Divestiture Product Businesses.
- B. Until the Closing Date, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the marketability, viability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; the High Volume Accounts; customers; Agencies; employees; and others having business relations with each

of the respective Divestiture Product Businesses. Respondents' responsibilities shall include, but are not limited to, the following:

1. providing each of the respective Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls with respect to such business and to carry on, at least at their scheduled pace, all capital projects, business plans and promotional activities for such Divestiture Product Business;
 2. continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by Respondents including, but not limited to, all research, Development, manufacturing, distribution, marketing and sales expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Divestiture Products and/or to prevent any diminution in sales of each of the Divestiture Products during and after the Acquisition process and prior to the complete transfer and delivery of the related Divestiture Assets to an Acquirer;
 4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Divestiture Products at 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 all other maintenance as may be necessary to, and all replacements of, the assets related to such business, including without limitation, the Divestiture Assets;
 6. providing each of the respective Divestiture Product Businesses with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of such Divestiture Product Business;
 7. providing such support services to each of the respective Divestiture Product Businesses as were being provided to such business by Respondent(s) as of the date the Consent Agreement was signed by Respondents; and
 8. maintaining a work force at least as equivalent in size, training, and expertise to what has been associated with the Divestiture Products for the relevant Divestiture Product's last fiscal year.
- C. Until Respondents fully and finally transfer and deliver a particular Divestiture Asset to the Acquirer, Respondents shall maintain the full economic viability, marketability and competitiveness of such Divestiture Asset, shall prevent its destruction, removal, wasting, deterioration, or impairment and shall maintain such Divestiture Asset in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance).

D. Until the Closing Date for each of the respective Divestiture Assets, Respondents shall provide all the related Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the relevant Divestiture Products consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of such Divestiture Products pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent(s) until the Closing Date for the divestiture of the relevant Divestiture Assets has occurred, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by Law), and additional incentives as may be necessary to prevent any diminution of the relevant Divestiture Product's competitiveness.

E. Respondents shall:

1. for each Divestiture Product, for a period of twelve (12) months from the Closing Date, provide each Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by such Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Core Employee Access Period(s)";
2. not later than the earlier of the following dates: (1) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (2) ten (10) days after written request by an Acquirer, provide such Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the Divestiture Product Core Employees. Failure by Respondents to provide the 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 delay; and
3. during the Divestiture Product Employee Access Period(s), not interfere with the hiring or employing by the relevant Acquirer of Divestiture Product Core Employees, and shall remove any impediments within the control of Respondent(s) that may deter these employees from accepting employment with such Acquirer, including, but not limited to, any noncompete provisions of employment or other contracts with Respondent(s) that would affect the ability or incentive of those individuals to be employed by such Acquirer. In addition, Respondents shall not make any counteroffer to a Divestiture Product Core Employee who receives a written offer of employment from the relevant Acquirer;

provided, however, that, subject to the conditions of continued employment prescribed in this Order, this Paragraph II.E.3. shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of such employee's employment with Respondent(s) prior to the date of the written offer of employment from the Acquirer to such employee.

F. Respondents shall:

1. not use, directly or indirectly, any Confidential Business Information related to the research, Development, manufacturing, marketing, or sale of the relevant Divestiture Product(s) other than as necessary to comply with the following: (1) the requirements of the Orders; (2) Respondents' obligations to an Acquirer under the terms of any Remedial Agreement related to relevant Divestiture Product(s); or (3) applicable Law;
2. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the relevant Acquirer or Persons specifically authorized by the relevant Acquirer or the Commission to receive such information;
3. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the relevant Divestiture Products to the employees associated with business related to those Retained Products that contain the same active biological or pharmaceutical ingredient or that are approved for use in the same Field as the Divestiture Products; 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 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 under this Order to Maintain Assets from receiving for any reason or purpose.

G. Not later than thirty (30) days following the Closing Date, Respondents shall provide to all of Respondents' employees and other personnel who may have access to Confidential Business Information related to the Divestiture Products written or electronic notification of the restrictions on the use of such information by Respondents' personnel. At the same time, if not provided earlier, Respondents shall provide a copy of such notification by e-mail with return receipt requested or similar transmission, and keep an electronic file of such receipts for one (1) year after the Closing Date for each of the respective Divestiture Product Assets. Respondents shall provide a copy of the form of such notification to the Acquirer, the Interim Monitor, and the Commission. Respondents shall also obtain from each employee covered by this Paragraph II.G. an agreement to abide by the applicable restrictions. Respondents shall maintain complete records of all such agreements at Respondents' registered office within the United States and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondents shall monitor the implementation by its employees and other personnel of all applicable restrictions, 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. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' employees and other personnel.

- H. Respondents shall adhere to and abide by the Remedial Agreements (which agreements shall not vary or contradict, or be construed to vary or contradict, the terms of the Orders, it being understood that nothing in the Orders shall be construed to reduce any obligations of Respondents under such agreement(s)), which are incorporated by reference into this Order to Maintain Assets and made a part hereof.
- I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses within the Geographic Territory through their full transfer and delivery to an Acquirer, to minimize any risk of loss of competitive potential for the Divestiture Product Businesses within the Geographic Territory, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the 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 or monitors ("Interim Monitor") to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Order to Maintain Assets, the Decision and Order, and the Remedial Agreements.
- B. The Commission appoints Dr. Stephen J.D. Bell as Interim Monitor and approves the Monitor Agreement executed by Dr. Bell and Respondents. Dr. Bell shall be subject to all provisions in this Order to Maintain Assets.
- C. Respondents shall facilitate the ability of the Interim Monitor to comply with the duties and obligations set forth in this Order to Maintain Assets, and shall take no action that interferes with or hinders the Interim Monitor's authority, rights and responsibilities as set forth herein, or in any other agreement between the Interim Monitor and Respondents. Respondents may, with the consent of the Interim Monitor, contract with additional consultant(s) to assist the Interim Monitor in carrying out his or her duties, provided that the Interim Monitor shall direct the work of any such consultant(s) and that the rights, duties and responsibilities of such consultant(s) are consistent with the terms of this Order to Maintain Assets, including, without limitation, the requirement that such consultant shall act in a fiduciary capacity for the benefit of the Commission.

- D. The Interim Monitor's duties and responsibilities shall include the following:
1. the Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 2. the Interim Monitor shall have authority to employ, at the expense of Respondents, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities;
 3. the Interim Monitor shall have the power and authority to monitor Respondents' compliance with this Order to Maintain Assets and shall exercise such power and authority and carry out his or her duties and responsibilities in a manner consistent with the purposes of this order and in consultation with the Commission;
 4. the Interim Monitor shall, in his or her sole discretion, consult with third parties in the exercise of his or her duties under this Order to Maintain Assets or under any agreement between the Interim Monitor and Respondents; and
 5. the Interim Monitor shall evaluate the reports submitted by Respondents pursuant to Paragraph IV. of this Order to Maintain Assets, and within thirty (30) days from the date the Interim Monitor receives these reports, report in writing to the Commission concerning performance by Respondents of their obligations under the Order.
- E. The Commission may, among other things, require the Interim Monitor and each of the Interim 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 Interim Monitor's duties.
- F. The Interim Monitor shall serve until termination of this Order to Maintain Assets pursuant to Paragraph VII.
- G. If the Commission determines that an Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor:
1. The Commission shall select the substitute Interim Monitor, subject to the consent of Respondent Pfizer, which consent shall not be unreasonably withheld. If Respondent Pfizer has not opposed, in writing, including the reasons for opposing, the selection of a proposed substitute Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Pfizer of the identity of any proposed substitute Interim Monitor, Respondents shall be deemed to have consented to the selection of the substitute Interim Monitor.
 2. Not later than ten (10) days after the appointment of a substitute Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Interim Monitor all the rights and powers

necessary to permit the substitute Interim Monitor to monitor Respondents' compliance with the relevant requirements of this Order and the Decision and Order in a manner consistent with the purposes of each.

- H. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.
- I. The Interim Monitor appointed pursuant to this Order to Maintain Assets may be the same persons appointed as a Divestiture Trustee(s) 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 becomes final, and every thirty (30) days thereafter until Respondents have fully complied with their obligations to assign, grant, license, divest, transfer, deliver or otherwise convey relevant assets as required by Paragraph II.A. and III.A. of the related Decision and Order in this matter, 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 this Order to Maintain Assets and the related Decision and Order; *provided, however,* that, after the Decision and Order in this matter becomes final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VIII of 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 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.

VI.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Respondents made to their principal United States offices or headquarter's address, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request authorized representative(s) of the Commission and at the expense of the Respondents; and
- B. to interview officers, directors, or employees of such Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier 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 later of:
 - 1. The day after the divestiture of all of the Divestiture Assets, as required by and described in the Decision and Order, has been completed and each Interim Monitor, in consultation with Commission staff and the Acquirer(s), notifies the Commission that all assignments, conveyances, deliveries, grants, licenses, transactions, transfers and other transitions related to such divestitures are complete, or the Commission otherwise directs that this Order to Maintain Assets is terminated; or
 - 2. The day the related Decision and Order becomes final.

By the Commission, Commissioner Harbour and Commissioner Kovacic recused.

Donald S. Clark
Secretary

SEAL

ISSUED: October 14, 2009