

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

In the Matter of

**SCHERING-PLOUGH CORPORATION,**  
a corporation;

and

**MERCK & CO. INC.,**  
a corporation.

File No. 091-0075

**AGREEMENT CONTAINING CONSENT ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Schering-Plough Corporation (“Schering-Plough”) of Respondent Merck & Co., Inc. (“Merck”), hereinafter “Proposed Respondents” and subsequent merger of Proposed Respondents, and it now appearing that Proposed Respondents are willing to enter into this Agreement Containing Consent Order (“Consent Agreement”) to divest certain assets, terminate a certain joint venture, and providing for other relief:

**IT IS HEREBY AGREED** by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Schering-Plough is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters address located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033.
2. Proposed Respondent Merck is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its headquarters address at One Merck Drive, P.O. Box 100, WS3A-65, Whitehouse Station, New Jersey 08889-0100.
3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.
4. Proposed Respondents waive:
  - a. any further procedural steps;

- b. the requirement that the Commission's Decision and Order, which is attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;
  - c. all rights to seek judicial review or otherwise challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and
  - d. any claim under the Equal Access to Justice Act.
5. Not later than thirty (30) days after the date this Consent Agreement is signed by Proposed Respondents, each Proposed Respondent shall submit an initial report, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33. Such reports shall be signed by each Proposed Respondent and set forth in detail the manner in which such Proposed Respondent has complied and will comply with the Decision and Order. Such reports will not become part of the public record unless and until the Consent Agreement and Decision and Order are accepted by the Commission for public comment.
  6. In each of the reports described in Paragraph 5, each Proposed Respondent shall provide sufficient information and documentation to enable the Commission to determine independently whether Proposed Respondents are in compliance with this Consent Agreement and the Decision and Order. All reports shall be verified by a notarized signature or sworn statement of the Chief Executive Officer or other officer or director of the Proposed Respondent specifically authorized to perform this function, or self verified in the manner set forth in 28 U.S.C. § 1746. Section 2.41(a) of the Commission's Rules of Practice requires that an original and two copies of all compliance reports be filed with the Commission. Each Proposed Respondent shall file an original report and one copy with the Secretary of the Commission, and shall send at least one copy directly to the Bureau of Competition's Compliance Division.
  7. The Commission retains the discretion, at the time it accepts this Consent Agreement for public comment, to issue and serve its Complaint corresponding in form and substance with the draft of Complaint, and a Final Decision and Order incorporating the attached Decision and Order.
  8. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue or amend its Complaint (in such form as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.
  9. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondents that the law has been violated as alleged in the draft of

Complaint here attached, or that the facts as alleged in the draft of Complaint, other than jurisdictional facts, are true.

10. This Consent Agreement contemplates that, if it is accepted by the Commission, the Commission may (a) immediately issue and serve its Complaint corresponding in form and substance with the draft of Complaint here attached, (b) immediately issue and serve the attached Decision and Order, and (c) make information public with respect thereto. If the Commission has not immediately issued and served its Complaint and Decision and Order, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to Proposed Respondents, thereupon issue its Complaint and its Decision and Order.
11. When final, the Decision and Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Complaint and the Decision and Order to Proposed Respondent Schering-Plough by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to an office within the United States of William A. Henry, Esq., of Howrey LLP; or of any other lawyer or law firm listed as Counsel for Schering-Plough Corporation on this Consent Agreement – shall constitute service as to Proposed Respondent Schering-Plough. Delivery of the Complaint and the Decision and Order to Proposed Respondent Merck by any means provided in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) – including, but not limited to, delivery to an office within the United States of Peter S. Guryan, Esq., of Fried Frank Harris Shriver & Jacobson; of Thomas O. Barnett, Esq., of Covington & Burling LLP; or of any other lawyer or law firm listed as Counsel for Merck & Co., Inc. on this Consent Agreement – shall constitute service as to Proposed Respondent Merck. Proposed Respondents waive any right they may have to any other manner of service. Each Proposed Respondent also waives any right it may otherwise have to service of any Appendices incorporated by reference into the Decision and Order, and agrees that it is bound to comply with and will comply with the Decision and Order to the same extent as if it had been served with copies of the Appendices, where Proposed Respondent is already in possession of copies of such Appendices.
12. The Complaint may be used in construing the terms of the Decision and Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order.
13. By signing this Consent Agreement, Proposed Respondents represent and warrant that they can accomplish the full relief contemplated by the attached Decision and Order (including effectuating all required divestitures, assignments, transfers, and the termination of any joint venture agreements and arrangements) and that all parents, subsidiaries, affiliates, and successors necessary to effectuate the full relief contemplated by this Consent Agreement

are: (1) within the control of the parties to this Consent Agreement, or (2) will be in the control of the parties to this Consent Agreement after the proposed acquisition.

14. By signing this Consent Agreement, Proposed Respondents represent and warrant that each Remedial Agreement (as defined in the Decision and Order) that has been submitted to the Commission at the time of this Consent Agreement for approval by the Commission in connection with the Commission's determination to make the Decision and Order final comports with all of the relevant requirements of the Decision and Order and requires Proposed Respondents to divest all assets required to be divested and to terminate all joint venture arrangements and/or agreements pursuant to the relevant requirements of the Decision and Order.
15. Proposed Respondents agree that Proposed Respondents shall interpret each Remedial Agreement in a manner that is fully consistent with all of the relevant provisions and remedial purposes of the Decision and Order.
16. Proposed Respondents have read the draft of the Complaint and the Decision and Order contemplated hereby. Each Proposed Respondent understands that once the Decision and Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order.
17. Each Proposed Respondent agrees to comply with the terms of the proposed Decision and Order from the date it signs this Consent Agreement. Each Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.

**SCHERING-PLOUGH CORPORATION**

By: \_\_\_\_\_  
Fred Hassan  
Chairman of the Board and  
Chief Executive Officer  
Schering-Plough Corporation  
Date: \_\_\_\_\_

\_\_\_\_\_  
William A. Henry, Esq.  
Howrey LLP  
Counsel for  
Schering-Plough Corporation

**MERCK & CO., INC.**

By: \_\_\_\_\_  
Richard T. Clark  
Chairman, President & Chief Executive Officer  
Merck & Co., Inc.  
Date: \_\_\_\_\_

\_\_\_\_\_  
Peter S. Guryan, Esq.  
Fried Frank Harris Shriver  
Counsel for  
Merck & Co., Inc.

\_\_\_\_\_  
Thomas O. Barnett  
Covington & Burling LLP  
Counsel for  
Merck & Co., Inc.

**FEDERAL TRADE COMMISSION**

By: \_\_\_\_\_  
Yolanda R. Gruendel  
Deputy Assistant Director  
Bureau of Competition

**APPROVED:**

By: \_\_\_\_\_  
Michael R. Moiseyev  
Assistant Director  
Bureau of Competition

\_\_\_\_\_  
Richard A. Feinstein  
Director  
Bureau of Competition  
Date: \_\_\_\_\_

\_\_\_\_\_  
Peter J. Levitas  
Deputy Director  
Bureau of Competition  
Date: \_\_\_\_\_