

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of

GRIFOLS, S.A.,
 a corporation,

 and

TALECRIS BIOTHERAPEUTICS
HOLDINGS CORP.
 a corporation.

Docket No. C-4322

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition of Talecris Biotherapeutics Corp. (“Respondent Talecris”) by Grifols, S.A. (“Respondent Grifols”) and Respondents having been furnished thereafter with a copy of the 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 Respondent Grifols and Respondent Talecris 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

Respondent Grifols and Respondent Talecris, 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 Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent Grifols or Respondent Talecris 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 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, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order 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 Grifols is a corporation organized, existing and doing business under and by virtue of the laws of Spain with its office and principal place of business located at Avinguda de la Generalitat, 152, Parque empresarial Can Sant Joan, 08174 Sant Cugat del Valles, Barcelona, Spain, and with its office and principal place of business in the United States located at 2410 Lillyvale Avenue, Los Angeles, CA 90032.
2. Respondent Talecris is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at 4101 Research Commons, 79 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709.
2. The Federal Trade 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. “Grifols” means Grifols, S.A., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Grifols, S.A. (including Talecris, after the Acquisition Date), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Talecris” means Talecris Biotherapeutics Holdings Corp., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Talecris Biotherapeutics

Holdings Corp., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

- C. "Commission" means the Federal Trade Commission.
- D. "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.
- E. "Orders" means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that:

- A. From the date on which Respondent Grifols and Respondent Talecris sign the Consent Agreement and until the Effective Date, Respondent Grifols and Respondent Talecris shall take such actions as are necessary to maintain the full economic viability, marketability and competitiveness of each of their assets included within the Divested Business to minimize any risk of loss of competitive potential for the Divested Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Divested Business, except for ordinary wear and tear. Respondent Grifols and Respondent Talecris shall not sell, transfer, encumber or otherwise impair any of their assets included within the Divested Business (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 any of their assets included within the Divested Business.
- B. Respondent Grifols and Respondent Talecris shall retain all rights, title, and interest in each of their assets included within the Divested Business.
- C. Respondent Grifols and Respondent Talecris shall maintain the operations of each of their assets included within the Divested Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets, as necessary) and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divested Business, and shall use their best efforts to preserve the existing relationships with the following: suppliers, vendors, distributors, customers, governmental agencies, employees, and others having business relations with the Divested Business. Respondent Grifols and Respondent Talecris, for each of their assets included within the Divested Business, shall be responsible for, among other things:

1. Providing 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;
 2. Continuing, at least at their scheduled pace, any additional expenditures authorized prior to the date the Consent Agreement was signed by Respondent Grifols and Respondent Talecris including, but not limited to, all research, development, manufacture, distribution, marketing and sales expenditures;
 3. Providing such resources as may be necessary to respond to competition and/or to prevent any diminution in sales of the Divested Business prior to the Effective Date;
 4. Providing such resources as may be necessary to maintain the competitive strength and positioning of the Divested Business;
 5. Making available for use by the Divested Business 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;
 6. Providing the Divested Business with such funds as are necessary to maintain the full economic viability, marketability and competitiveness of the Divested Business; and
 7. Providing such support services to the Divested business as of the date the Consent Agreement was signed by Respondent Grifols and Respondent Talecris.
- D. Respondent Grifols and Respondent Talecris shall maintain a work force at the equivalent or larger size, and with equivalent or better training and expertise, to what has been associated with each of their assets included within the Divested Business as of the date the Consent Agreement was signed by Respondents.
1. Respondent Grifols shall provide all of the Designated Employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of Respondents Grifols' assets within the Divested Business pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Grifols until the Effective Date 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 Divested Business' competitiveness.
 2. Respondent Talecris shall provide all of the Designated Melville Employees with reasonable financial incentives to continue in their positions consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of Talecris' assets within the Divested Business pending divestiture. Such incentives shall include a continuation of all employee benefits offered by Respondent Talecris until the Effective Date 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 Divested Business' competitiveness.

- E. Respondent Grifols and Respondent Talecris shall not interfere with the hiring or employing of the Designated Employees or the Designated Melville Employees, respectively, as described in Paragraph VII of the proposed Decision and Order, and shall remove any impediments within the control of Respondent Grifols or Respondent Talecris that may deter these employees from accepting employment with the Acquirer including, but not limited to, any noncompete provisions of employment or other contracts with Respondent Grifols or Respondent Talecris that would affect the ability or incentive of those individuals to be employed by the Acquirer. In addition, Respondent Grifols and Respondent Talecris shall not make any counteroffer to a Designated Employee or a Designated Melville Employee, respectively, who receives a written offer of employment from the Acquirer.

PROVIDED, HOWEVER, subject to the conditions of continued employment prescribed in this Order to Maintain Assets, this Paragraph II.E. shall not prohibit Respondent Grifols or Respondent Talecris from continuing to employ any Designated Employee or Designated Melville Employee, respectively, under the terms of such employee's employment with Respondent Grifols or Respondent Talecris prior to the date of the written offer of employment from the Acquirer to such employee.

- F. Unless specifically authorized by the Acquirer, Respondent Grifols and Respondent Talecris shall not use, directly or indirectly, any Confidential Business Information other than as necessary to:

1. comply with the requirements of the Orders;
2. comply with applicable law;
3. consummate the Acquisition;
4. defend legal claims, investigations or enforcement actions threatened or brought against Respondents or the Divested Business; and
5. obtain legal advice.

- G. Respondent Grifols and Respondent Talecris shall not disclose or convey any such Confidential Business Information, directly or indirectly, to any person except the Acquirer or other persons specifically authorized by the Acquirer to receive such information, other than as necessary to:

1. comply with the requirements of the Orders;
2. comply with applicable law;

3. defend legal claims, investigations or enforcement actions threatened or brought against Respondents or the Divested Business; and
 4. obtain legal advice.
- H. Respondent Grifols and Respondent Talecris shall institute procedures and requirements to ensure that:
1. Employees of Respondent Grifols or Respondent Talecris with access to Confidential Business Information do not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information in contravention of this Order to Maintain Assets; and
 2. Employees of Respondent Grifols and Respondent Talecris 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.
- I. Respondent Grifols shall require any agents and employees of Grifols who have access to Confidential Business Information to enter into agreements, within ten (10) days after the date this Order to Maintain Assets becomes final, not to disclose any Confidential Business Information to Respondent Grifols or to any third party except as otherwise permitted by this Order to Maintain Assets. Copies of such agreements shall be retained by Respondent Grifols and provided to the Commission.
- J. Respondent Talecris shall require any agents and employees of Talecris who have access to Confidential Business Information to enter into agreements, within ten (10) days after the date this Order to Maintain Assets becomes final, not to disclose any Confidential Business Information Relating To the Divested Business to Respondent Talecris or to any third party except as otherwise permitted by this Order to Maintain Assets. Copies of such agreements shall be retained by Respondent Talecris and provided to the Commission.
- K. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divested Business until the Effective Date, to minimize any risk of loss of competitive potential for the Divested Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Divested Business, except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent Grifols and Respondent Talecris sign the Consent Agreement in this matter, the Commission may appoint a Monitor to assure that Respondent Grifols and Respondent Talecris expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.
- B. The Commission shall select the Monitor, subject to the consent of Respondent Grifols and Respondent Talecris, which consent shall not be unreasonably withheld. If Respondent Grifols or Respondent Talecris has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondent Grifols and Respondent Talecris of the identity of any proposed Monitor, Respondent Grifols and Respondent Talecris shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after appointment of the Monitor, Respondent Grifols and Respondent Talecris shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Grifols' and Respondent Talecris' compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.
- D. Respondent Grifols and Respondent Talecris shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 1. The Monitor shall have the power and authority to monitor Respondent Grifols' and Respondent Talecris' compliance with the terms of the Orders, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the Orders and in consultation with the Commission including, but not limited to:
 - a. Assuring that Respondent Grifols and Respondent Talecris expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders; and
 - b. Monitoring any agreements between Respondent Grifols and the Acquirer.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondent Grifols' and Respondent Talecris' personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request

Related To Respondent Grifols' and Respondent Talecris' compliance with their obligations under the Orders. Respondent Grifols and Respondent Talecris 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 Grifols' or Respondent Talecris' compliance with the Orders.

4. The Monitor shall serve, without bond or other security, at the expense of Respondent Grifols and Respondent Talecris on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Grifols and Respondent Talecris, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 5. Respondent Grifols and Respondent Talecris 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, malfeasance, willful or wanton acts, or bad faith by the Monitor.
 6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Respondent Grifols and Respondent Talecris of its obligations under the Orders.
 7. Respondent Grifols and Respondent Talecris may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. 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.
- F. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
1. The Commission shall select the substitute Monitor, subject to the consent of Respondent Grifols and Respondent Talecris, which consent shall not be unreasonably withheld. If Respondent Grifols and Respondent Talecris have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10)

days after notice by the staff of the Commission to Respondent Grifols and Respondent Talecris of the identity of any proposed Monitor, Respondent Grifols and Respondent Talecris shall be deemed to have consented to the selection of the proposed Monitor.

2. Not later than ten (10) days after appointment of the substitute Monitor, Respondent Grifols and Respondent Talecris shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondent Grifols' and Respondent Talecris' compliance with the relevant terms of the Orders in a manner consistent with the purposes of the Orders.

G. 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.

H. A Monitor appointed pursuant to this Order may be the same person appointed as the Monitor pursuant to the Decision and Order and the Divestiture Trustee 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 sixty (60) days thereafter until Respondent Grifols and Respondent Talecris have fully complied with their obligations under Paragraphs II, III, IV, VI, and VII of the related Decision and Order in this matter, Respondent Grifols and Respondent Talecris shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has 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 shall be consolidated with, and submitted to the Commission at the same time as, the reports required to be submitted by Respondent Grifols pursuant to Paragraph IX.A. of the Decision and Order.

V.

IT IS FURTHER ORDERED that Respondent Grifols shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of the Respondent Grifols;
- B. acquisition, merger or consolidation of Respondent Grifols; or
- C. other change in the Respondent Grifols, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order to Maintain Assets.

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 Respondent Grifols, Respondent Grifols, shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Respondent Grifols 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 Respondent Grifols related to compliance with this Order to Maintain Assets, which copying services shall be provided by Respondent Grifols at its expense; and
- B. to interview officers, directors, or employees of Respondent Grifols, 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 latter of:
 - 1. the day after the Effective Date;
 - 2. the day the related Decision and Order becomes final; or
- C. The day after the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission, Commissioner Kovacic recused.

Donald S. Clark
Secretary

SEAL
ISSUED: May 31, 2011