IN THE MATTER OF

TRAUMA ASSOCIATES OF NORTH BROWARD, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3541. Complaint, Nov. 1, 1994--Decision, Nov. 1, 1994

This consent order requires, among other things, Dr. Johnson, the president of a Florida corporation, to dissolve Trauma Associates within 180 days. Prior to its dissolution, Trauma Associates is required to give copies of the settlement to any entity with whom it has entered into contract negotiations for trauma surgical services since its inception. In addition, the order prohibits the ten surgeons from entering into, organizing, or implementing any agreement to: refuse to provide surgical services in connection with any effort to fix the prices for such services; prevent the offering or delivery of surgical services; deal on collectively determined terms with any provider of health care services; or encourage anyone to engage in an activity prohibited by the settlement.

Appearances

For the Commission: *Mark J. Horoschak, Markus H. Meier* and *Mary Lou Steptoe*.

For the respondents: *Pro se* and *Donald Korman, Korman, Schorr & Wagenheim*, Fort Lauderdale, FL., for respondent Santiago Triana, M.D.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, Title 15, U.S.C. 41 *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondents named in the caption hereof have violated and are violating the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Trauma Associates of North Broward, Inc. (hereinafter "Trauma Associates") is a corporation organized, existing, and doing business under and by virtue of the

laws of the State of Florida, with its office and principal place of business located at 2170 Southeast 17th Street, Suite 305, Fort Lauderdale, Florida.

The individual respondents named in the caption above (hereinafter "surgeon respondents") are general surgeons, licensed to practice medicine in the State of Florida, and are engaged in the business of providing surgical services to patients for a fee in Broward County, Florida. Their respective business addresses are:

Carl Amko, M.D., 412 Southeast 17th Street, Fort Lauderdale, Florida;
Lucien Armand, M.D., 4330 West Broward Boulevard, Suite 308, Plantation, Florida;
Frantz Chery, M.D., 4101 Northwest 4th Street, Suite 302, Plantation, Florida;
William Cohen, M.D., 8251 West Broward Boulevard, Suite H, Plantation, Florida;
Sergio Gallenero, M.D., 9750 Northwest 33rd Street, Coral Springs, Florida;
Kwang-Jae Joh, M.D., One West Sample Road, Suite 207, Pompano Beach, Florida;
Richard A. Johnson, M.D., 1625 Southeast 3rd Avenue, Suite 721, Fort Lauderdale, Florida;
J.R. Nabut, M.D., 1500 Hillsboro Boulevard, Suite 207, Deerfield Beach, Florida;
Aiden O'Rourke, M.D., 315 Southeast 13th Street, Fort Lauderdale, Florida;
Santiago Triana, M.D., Medical Building, 150 Northwest 70th Avenue, Suite 7, Plantation, Florida.

PAR. 2. The acts and practices of Trauma Associates and the surgeon respondents, including those herein alleged, are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 3. Except to the extent that competition has been restrained as alleged herein, the surgeon respondents have been, and are now, in competition among themselves and with other providers of general surgical services in Broward County, Florida.

PAR. 4. The North Broward Hospital District (hereinafter "the District") is a tax-supported hospital authority, with its principal

offices located at 1625 Southeast Third Avenue, Fort Lauderdale, Florida. Broward General Medical Center (hereinafter "Broward General") and North Broward Medical Center (hereinafter "North Broward") are District hospitals located at 1600 South Andrews Avenue, Fort Lauderdale, Florida, and 201 Sample Road, Pompano Beach, Florida, respectively.

PAR. 5. On or about March 25, 1992, the District's Board of Commissioners officially resolved to seek a license from the State of Florida to operate state-approved trauma centers at Broward General and North Broward. State regulations governing trauma centers include the requirement that a hospital have a minimum of five general surgeons committed to covering the trauma center on a round-the-clock or short-notice basis.

PAR. 6. Each respondent surgeon signed, on an individual basis, the District's applications to operate state-approved trauma centers, thereby committing himself to participate in the District's trauma program.

PAR. 7. During April, 1992, Dr. Richard A. Johnson, the surgeon respondents, leader, entered into contract negotiations with District officials, on behalf of the surgeon respondents. The purpose of these negotiations was to secure a single contract for the surgeon respondents to staff the Broward General and North Broward trauma centers. District officials wished to enter individual contracts with each of the surgeon respondents, but the surgeon respondents said that they would only agree to work at the trauma centers under a single contract that included all of the surgeon respondents.

PAR. 8. During contract negotiations, Dr. Johnson made a number of proposals to the District calling for the payment of various sums of money necessary to cover the costs of the surgeon respondents' services and expenses. The surgeon respondents agreed to these price proposals prior to their submission to the District.

PAR. 9. On May 1, 1992, the surgeon respondents began providing trauma services to the District. On May 5th the District and Dr. Johnson signed a letter of intent ("LOI") outlining the terms under which the surgeon respondents would work, until a more formal contract could be agreed upon. Dr. Johnson signed the LOI on behalf of the surgeon respondents.

PAR. 10. The LOI explicitly omitted any financial terms, as these were still being negotiated. Despite this fact, Dr. Johnson reached an understanding with the District that the District would pay

each surgeon respondent $100 per hour for in-house service (where the surgeon is present in the trauma center) and $50 per hour for on-call coverage (where the surgeon is available to respond to a "trauma alert" within twenty minutes). The District also agreed to pay most of the surgeon respondents, and Trauma Associates, costs, which included malpractice liability insurance, office rent, staff, telephones, and other such items.

PAR. 11. Dr. Johnson incorporated Trauma Associates as a for-profit Florida corporation on or about May 7, 1992. Dr. Johnson is Trauma Associates' only director, officer and owner. None of the other surgeon respondents have any ownership interest in, or any other legal relationship with, Trauma Associates. Trauma Associates was intended to function as the "administrative arm" of the surgeon respondents, and it has served as a vehicle for Dr. Johnson and the other surgeon respondents to engage in collective negotiations on fees and other contract terms to be sought from the District and others.

PAR. 12. The surgeon respondents did not integrate their surgical practices in any legally significant way, nor did they create any efficiencies that justify their agreement to act collectively vis-a-vis the District. The surgeon respondents provided the District with little more than a fixed price for their individual services.

PAR. 13. The District made lump-sum payments, totaling around $600,000, to the surgeon respondents, through Dr. Johnson and Trauma Associates, in May and June, 1992.

PAR. 14. In July, 1992, the District decided not to enter a contract with the surgeon respondents as a group. Instead, the District announced its intention to contract with the surgeon respondents individually. In response, the surgeon respondents refused to deal with the District individually. Additionally, the surgeon respondents sent the District a letter with a list of demands, including price and price-related terms, that had to be included in any final contract, and they threatened to cease providing trauma services at the Broward General and North Broward trauma centers unless all of their demands were met. Respondent Drs. Amko, Armand, Chery, Cohen, Gallenero, Joh, Johnson, O'Rourke, and Triana signed this letter.

PAR. 15. One week after the surgeon respondents threatened to cease providing trauma services, respondent Drs. Amko, Armand, Chery, Cohen, Gallenero, Joh, Johnson, Nabut, O'Rourke, and Triana walked out of the District's trauma centers. As a result of the

walkout, the District was forced to shut down the North Broward trauma center.

PAR. 16. By engaging in the acts or practices herein alleged, the surgeon respondents have acted as a combination or conspiracy to fix or increase the fees received from the District for the provision of trauma surgical services, and to otherwise restrain competition among general surgeons in Broward County, Florida.

PAR. 17. Trauma Associates has conspired with the surgeon respondents, and has acted to implement an agreement among the surgeon respondents to restrain competition among general surgeons, by, among other things, facilitating, entering into, and implementing an agreement, express or implied, that respondent Trauma Associates would negotiate the terms and conditions of agreements between surgeon respondents and the District and others, including the prices to be paid for the surgeon respondents' services.

PAR. 18. The acts and practices of Trauma Associates and the surgeon respondents, as herein alleged, have had the purpose or effect, or the tendency and capacity, to restrain competition unreasonably and to injure consumers in the following ways, among others:

A. By restraining competition among general surgeons in Broward County, Florida;

B. By fixing or increasing the prices that are paid to general surgeons who provide trauma surgical services in Broward County, Florida;

C. By raising the cost, lowering the quality, and reducing access to and the quality-adjusted output of the District's trauma services; and

D. By depriving the District and its patients of the benefits of competition among general surgeons in Broward County, Florida.

PAR. 19. The combination or conspiracy and the acts and practices of Trauma Associates and the surgeon respondents, as herein alleged, constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The violation or the effects thereof, as herein alleged, are continuing and will continue or recur in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 such complaint, 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 the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order.

1. Respondent Trauma Associates of North Broward, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2170 Southeast 17th Street, Suite 305, Fort Lauderdale, Florida.

Respondent surgeons are Carl Amko, M.D., Lucien Armand, M.D., Frantz Chery, M.D., William Cohen, M.D., Sergio Gallenero, M.D., Kwang-Jae Joh, M.D., Richard A. Johnson, M.D., J. R. Nabut, M.D., Aiden O'Rourke, M.D., and Santiago Triana, M.D., each of whom is a general surgeon licensed to practice medicine in the State of Florida, and is engaged in the business of providing surgical services to patients for a fee in Broward County, Florida.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

A. "*Trauma Associates*" means Trauma Associates of North Broward, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2170 Southeast 17th Street, Suite 305, Fort Lauderdale, Florida, its Board of Directors, committees, officers, members, representatives, agents, employees, successors, and assigns.

B. "*Surgeon respondents*" means Carl Amko, M.D., Lucien Armand, M.D., Frantz Chery, M.D., William Cohen, M.D., Sergio Gallenero, M.D., Kwang-Jae Joh, M.D., Richard A. Johnson, M.D., J. R. Nabut, M.D., Aiden O'Rourke, M.D., and Santiago Triana, M.D., each of whom is a general surgeon licensed to practice medicine in the State of Florida, and is engaged in the business of providing surgical services to patients for a fee in Broward County, Florida.

C. "*The District*" means the North Broward Hospital District, a tax-supported hospital authority, with its principal offices located at 1625 Southeast Third Avenue, Fort Lauderdale, Florida, its subsidiaries, affiliates, commissioners, officers, administrators, directors, committees, agents, employees, representatives, successors, and assigns.

D. "*Broward General*" means the Broward General Medical Center, one of the hospitals of the North Broward Hospital District, located at 1600 South Andrews Avenue, Fort Lauderdale, Florida, its subsidiaries, affiliates, officers, administrators, directors, committees, agents, employees, representatives, successors, and assigns.

E. "*North Broward*" means the North Broward Medical Center, one of the hospitals of the North Broward Hospital District, located at 201 Sample Road, Pompano Beach, Florida, its subsidiaries, affiliates, officers, administrators, directors, committees, agents, employees, representatives, successors, and assigns.

F. "*Integrated joint venture*" means a joint arrangement to provide health-care services in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share a substantial risk of loss from their participation in the venture.

II.

It is further ordered, That each surgeon respondent directly or indirectly, or through any corporate or other device, in connection with the provision of health-care services in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue any combination, agreement, or understanding, express or implied, for the purpose or with the effect of:

A. Preventing the offering or delivery of surgical services by the District, Broward General, North Broward, or any other provider of health-care services, including, but not limited to, any agreement to refuse to deal or threaten to refuse to deal with the District, Broward General, North Broward, or any other provider of health-care services;

B. Dealing with the District, Broward General, North Broward, or any other provider of health-care services on collectively determined terms; or

C. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action prohibited by this order.

Provided that nothing in this order shall be construed to prohibit any individual surgeon respondent from:

1. Entering into an agreement or combination with any other physician with whom the surgeon respondent practices in partnership or in a professional corporation, or who is employed by the same person as the surgeon respondent, to deal with any third party on collectively determined terms; or

2. Forming, facilitating the formation of, or participating in an integrated joint venture and dealing with any third party on

collectively determined terms through the joint venture, as long as the surgeons participating in the joint venture remain free to deal individually with third parties.

III.

It is further ordered, That respondent Richard A. Johnson, M.D., shall:

A. Dissolve Trauma Associates within one hundred and eighty (180) days after the date on which this order becomes final; and

B. File a verified written report demonstrating how he has complied with Section III.A. above, within two hundred and ten (210) days after the date on which this order becomes final.

IV.

It is further ordered, That respondent Trauma Associates shall:

A. Within thirty (30) days after the date on which this order becomes final, and prior to the dissolution provided for in Section III.A. above, distribute by first-class mail a copy of this order and the accompanying complaint to each party with whom Trauma Associates has entered into contract negotiations or finalized a contract concerning the provision of trauma surgical services; and

B. Within sixty (60) days after the date on which this order becomes final, and prior to the dissolution provided for in Section III.A. above, file a verified written report demonstrating how it has complied with Section IV.A. above.

V.

It is further ordered, That each surgeon respondent shall:

A. File a written report with the Commission within ninety (90) days after the date the order becomes final, and annually thereafter for three (3) years on the anniversary of the date the order became final, and at such other times as the Commission may by written notice require, setting forth in detail the manner and form in which

the surgeon respondent has complied and is complying with the order;

B. For a period of five (5) years after the date on which this order becomes final, notify the Commission in writing within thirty (30) days after the surgeon respondent forms or participates in the formation of, or joins or participates in, any integrated joint venture; and

C. For a period of five (5) years after the date on which this order becomes final, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records sufficient to describe in detail any action taken in connection with the activities covered by this order.

Commissioner Varney not participating.

IN THE MATTER OF

ROCHE HOLDING LTD., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3542. Complaint, Nov. 22, 1994--Decision, Nov. 22, 1994

This consent order requires, among other things, Roche to divest Syva's drugs of abuse testing (DAT) business within 12 months to a Commission-approved buyer, to operate the Syva assets separately from its own DAT business pending the divestiture, and to obtain, for ten years, prior Commission approval before acquiring assets or interests of any entity involved in the market for drugs of abuse reagent products.

Appearances

For the Commission: *Claudia Higgins, Ann Malester* and *Elizabeth Jet.*

For the respondents: *Arthur Golden, Davis, Polk & Wardwell,* New York, N.Y. and *Neal R. Stoll, Skadden, Arps, Slate, Meagher & Flom,* New York, N.Y.

COMPLAINT

The Federal Trade Commission ("Commission"), having reason to believe that respondent, Roche Holding Ltd ("Roche"), a corporation subject to the jurisdiction of the Commission, has proposed to acquire all of the voting stock of respondent Syntex Corporation ("Syntex"), a corporation subject to the jurisdiction of the Commission, in violation 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, ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent Roche Holding Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of

Switzerland with its principal executive offices located at Grenzacherstrasse 124, Basel, Switzerland.

2. Respondent Syntex Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of Panama, with its principal executive offices located at 3401 Hillview Avenue, Palo Alto, California.

II. JURISDICTION

3. Respondents are and, at all times relevant herein have been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and are corporations whose businesses affect commerce as "commerce" is defined in Section 4 of the FTC Act, as amended, 15 U.S.C. 44.

III. THE ACQUISITION

4. On or about May 1, 1994, Roche and Syntex signed an agreement and plan of merger whereby Roche would acquire 100 percent of the voting securities of Syntex for approximately $5.3 billion ("acquisition").

IV. THE RELEVANT MARKET

5. The relevant line of commerce in which to analyze the effects of the acquisition is the manufacture and sale of drugs of abuse reagent products. Drugs of abuse reagents products are diagnostic products used to screen for the presence or absence of illegal drugs in urine.

6. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the acquisition.

7. The relevant market set forth in paragraphs five and six is highly concentrated, whether measured by Herfindahl-Hirschmann Indices ("HHI") or two-firm and four-firm concentration ratios.

8. Entry into the relevant market is difficult and time consuming.

9. Roche and Syntex are actual competitors in the relevant market.

V. EFFECTS OF THE ACQUISITION

10. The effects of the acquisition may be substantially to lessen competition or tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, by, among other things:

(a) Eliminating actual, direct and substantial competition between Roche and Syntex in the relevant market;

(b) Increasing the likelihood that Roche will unilaterally exercise market power in the relevant market;

(c) Creating a dominant firm in the relevant market; and

(d) Enhancing the likelihood of collusion or coordinated interaction between or among the firms in the relevant market.

VI. VIOLATIONS CHARGED

11. The acquisition described in paragraph four, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

12. The acquisition agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Roche Capital Corporation, a Panamanian corporation and an indirect, wholly-owned subsidiary of Roche Holding Ltd, a Swiss corporation (collectively referred to as "Roche"), of Syntex Corporation ("Syntex"), and it now appearing that Roche and Syntex, hereinafter sometimes referred to as "respondents," having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition presented 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, by their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, 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 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 the respondents have violated said Acts, and the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Roche Holding Ltd. is a corporation organized, existing, and doing business, under and by virtue of the laws of Switzerland with its principal executive offices located at Grenzacherstrasse 124, Basel, Switzerland 4002. Hoffmann-La Roche Inc., an indirect wholly-owned subsidiary of Roche Holding Ltd., is located at 340 Kingsland Street, Nutley, New Jersey.

2. Respondent Syntex is a corporation, organized, existing, and doing business under and by virtue of the laws of Panama with its principal executive offices located at 3401 Hillview Avenue, Palo Alto, California. Syva Company, an indirect wholly-owned subsidiary of Syntex, is headquartered at 3403 Yerba Buena Road, San Jose, California.

3. 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, the following definitions shall apply:

A. "*Roche*" means Roche Holding Ltd., its predecessors, subsidiaries, including, without limitation Roche Capital Corporation, divisions, and groups and affiliates controlled by Roche, their directors, officers, employees, agents, and representatives, and their successors and assigns.

B. "*Syntex*" means Syntex Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Syntex, their directors, officers, employees, agents, and representatives, and their successors and assigns.

C. "*Syva*" or "*Syva Company*" means Syva Company, a Delaware corporation and an indirect wholly-owned subsidiary of Syntex Corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Syva, their directors, officers, employees, agents, and representatives, and their successors and assigns.

D. "*Respondents*" means Roche and Syntex.

E. "*Commission*" means the Federal Trade Commission.

F. "*Acquisition*" means Roche's proposed acquisition of voting securities of Syntex pursuant to the Acquisition Agreement and Plan of Merger dated May 1, 1994.

G. "*Patents*" means some, all or any part of all U.S. or foreign unexpired patents and patents issued in the future based upon patent applications filed in any country as of August 1, 1994, and all substitutions, continuations, continuations-in-part, divisions, renewals, reissues and extensions based on said patents, the applications therefor, or said patent applications.

H. "*Drugs of abuse reagent products*" means diagnostic reagent products used for drugs of abuse testing, including without limitation, reagent, control and calibrator products used to test for cannabinoids or marijuana, cocaine and cocaine metabolites, opiates, amphetamines and methamphetamines, phencyclidine, methadone, methaqualone, propoxyphene, barbiturates, benzodiazepine, lysergic acid diethylamide, ethyl alcohol, or other controlled substances for which drugs of abuse testing is conducted.

I. "*Syva Business*" means all of Syntex's United States rights, title and interest in and to:

(1) Drugs of abuse reagent products, including but not limited to, EMIT®, EMIT® II, and all patents, production technology and know-how related to the manufacture and sale of drugs of abuse reagent products in the United States; and

(2) All of the Syva Company's assets and businesses as further delineated in Schedule A, attached hereto and made a part hereof.

II.

It is further ordered, That:

A. Roche shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Syva Business, and shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Syva Business; provided that Roche is not required to divest any of the Syva assets and businesses identified in Part 2 of Schedule A, if such assets and businesses are not requested by the acquirer.

B. Roche shall divest the Syva Business only to an acquirer that receives the prior approval of the Commission and that has made any necessary notice to or obtained any necessary approval from the FDA to manufacture and sell all of the Syva drugs of abuse reagent products, and only in a manner that has received the prior approval of the Commission. The purpose of the divestiture of the Syva Business is to ensure the continuation of the Syva Business as an ongoing, viable operation, engaged in the same business in which the Syva Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice from the acquirer to respondents, respondents shall provide such personnel, information, technical assistance, advice and training to the acquirer as is necessary to transfer technology and know-how to assist the acquirer in obtaining any necessary FDA approval for the manufacture and sale of the Syva drugs of abuse reagent products and any other products identified in Schedule A that are acquired pursuant to this order. Such assistance