

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)	
)	
)	
C.H. Boehringer Sohn AG & Co. KG)	Docket No. C-4601
a corporation.)	
)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent C.H. Boehringer Sohn AG & Co. KG of the animal health business of Sanofi, and Respondent having been furnished thereafter with a copy of a draft of the 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 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, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent 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 C.H. Boehringer Sohn AG & Co. KG is a corporation organized, existing, and doing business under and by virtue of the laws of Germany with its headquarters address at Binger Strasse 173, Ingelheim am Rhein, Germany,

55216 and the address of its United States subsidiary, Boehringer Ingelheim Vetmedica, Inc., located at 3902 Gene Field Rd., St. Joseph, Missouri 64506.

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

ORDER TO MAINTAIN ASSETS

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

- A. “Boehringer” means C.H. Boehringer Sohn AG & Co. KG, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Boehringer, including but not limited to Boehringer Ingelheim Vetmedica, Inc. (“BIVI”) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Boehringer shall include Merial.
- B. “BIVI” means Boehringer Ingelheim Vetmedica, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Boehringer Ingelheim Vetmedica, Inc., 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 and effective 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.
- E. “Decision and Order” means the Decision and Order incorporated into and made a part of the Agreement Containing Consent Orders.
- F. “Monitor” means any monitor appointed pursuant to Paragraph V of this Order to Maintain Assets or Paragraph V of the Decision and Order.

G. “Orders” means the Decision and Order and this Order to Maintain Assets.

II.

IT IS FURTHER ORDERED that:

- A. Until Respondent completes the divestiture of the Companion Animal Product Assets (including fully providing Product Manufacturing Technology to the Companion Animal Acquirer) Respondent shall take all actions necessary to:
1. maintain the full economic viability and marketability of the Business associated with the Companion Animal Products;
 2. minimize any risk of loss of competitive potential for that Business;
 3. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Companion Animal Products;
 4. ensure the assets related to the Companion Animal Products are provided to the Companion Animal Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the associated Business; and
 5. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology.
- B. Respondent shall not sell, transfer, encumber, or otherwise impair the Companion Animal Product Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses related to the Companion Animal Products, and shall continue in the same manner all current and planned capital expenditure plans and products.
- C. Respondent shall:
1. on or before the Companion Animal Product Closing Date, and as a condition of continued employment, require that each employee whose responsibilities (in whole or part) includes sales or marketing and who has or may have had access to Companion Animal Confidential Information, and the direct supervisor(s) of each such employee, sign a confidentiality agreement pursuant to which the employee is required to maintain the confidentiality of the Companion Animal Confidential Information and not disclose it to other employees, executives, or other personnel of Respondent (other than as necessary to comply with the requirements of this Order). Respondent shall maintain complete records of signed confidentiality agreements at Respondent’s registered office within the United States and shall

provide an officer's certification to the Commission affirming that all confidentiality agreements have been signed; and

2. not later than thirty (30) days after the Companion Animal Closing Date, provide written notification of the restrictions on the use and disclosure of Companion Animal Confidential Information to all of its employees who may be in possession of or have access to Companion Animal Confidential Information. Respondent 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 Companion Animal Closing Date. Respondent shall provide a copy of the notification to the Companion Animal Acquirer. Respondent shall maintain complete records of all such notifications at Respondent's registered office within the United States and shall provide an officer's certification to the Commission affirming the implementation of, and compliance with, the acknowledgement program. Respondent shall provide the Companion Animal Product Acquirer with copies of all certifications, notifications, and reminders sent to Respondent's personnel.

- D. Until the Companion Animal Closing Date, Respondent shall provide all Companion Animal Product Employees with reasonable financial incentives to continue in their positions and to research, Develop, market, sell, and manufacture the Companion Animal Product(s) consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Companion Animal Product(s) and to ensure successful execution of the pre-Acquisition plans for such Companion Animal Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent until the Companion Animal Product Closing Date, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law).

III.[Cydectin]

IT IS FURTHER ORDERED that:

- A. Until Respondent completes the divestiture of the Cydectin Product Assets (including fully providing Product Manufacturing Technology to the Cydectin Acquirer) Respondent shall take all actions necessary to:
1. maintain the full economic viability and marketability of the Business associated with the Cydectin Products;
 2. minimize any risk of loss of competitive potential for that Business;
 3. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Cydectin Products;

4. ensure the assets related to the Cydectin Products are provided to the Cydectin Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the associated Business; and
 5. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology.
- B. Respondent shall not sell, transfer, encumber, or otherwise impair the Cydectin Product Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Business related to the Cydectin Products.
- C. Respondent shall:
1. on or before the Cydectin Product Closing Date, and as a condition of continued employment, require that each employee whose responsibilities (in whole or part) includes sales or marketing and who has or may have had access to Cydectin Confidential Information, and the direct supervisor(s) of each such employee, sign a confidentiality agreement pursuant to which the employee is required to maintain the confidentiality of the Cydectin Confidential Information and not disclose it to other employees, executives, or other personnel of Respondent (other than as necessary to comply with the requirements of this Order). Respondent shall maintain complete records of signed confidentiality agreements at Respondent's registered office within the United States and shall provide an officer's certification to the Commission affirming that all confidentiality agreements have been signed; and
 2. not later than thirty (30) days after the Cydectin Closing Date, provide written notification of the restrictions on the use and disclosure of Cydectin Confidential Information to all of its employees who may be in possession of or have access to Cydectin Confidential Information. Respondent 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 Cydectin Closing Date. Respondent shall provide a copy of the notification to the Cydectin Acquirer. Respondent shall maintain complete records of all such notifications at Respondent's registered office within the United States and shall provide an officer's certification to the Commission affirming the implementation of, and compliance with, the acknowledgement program. Respondent shall provide the Cydectin Product Acquirer with copies of all certifications, notifications, and reminders sent to Respondent's personnel.
- D. Until the Cydectin Closing Date, Respondent shall provide all Cydectin Products Employees with reasonable financial incentives to continue in their positions and to research, Develop, market, sell, and manufacture the Cydectin Product(s) consistent with

past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Cydectin Product(s) and to ensure successful execution of the pre-Acquisition plans for such Cydectin Product(s). Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent until the Cydectin Product Closing Date, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law).

IV.

IT IS FURTHER ORDERED that

A. Respondent shall:

1. not use, directly or indirectly, any Confidential Business Information solely related to the Divestiture Product Assets or the Business of the Divestiture Products, other than as necessary to comply with the requirements of this Order, Respondent's obligations to each respective Acquirer under the terms of any related Remedial Agreement, or applicable Law;
2. not disclose or convey any Confidential Business Information solely related to the Divestiture Product Assets or the Business of the Divestiture Products, directly or indirectly, to any Person except (i) the Acquirer of the relevant Divestiture Product, (ii) other Persons specifically authorized by the Acquirer to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed);
3. not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of a Divestiture Product to the marketing or sales employees associated with the Business related to those Retained Products in the Geographic Territory that are the Therapeutic Equivalent of the Divestiture Product; and
4. take all reasonable steps to ensure the Companion Animal Products Acquirer:
 - a) does not use, directly or indirectly, any Confidential Business Information related to the Naramune Products other than as necessary to comply with the Fort Dodge Transitional Manufacturing and Supply Agreement by and between Boehringer Ingelheim Vetmedica, Inc. and Elanco US Inc., or any applicable Law;
 - b) does not disclose or convey any Confidential Business Information related the Naramune Products directly or indirectly, to any Person except (i) the Respondent, other Persons specifically authorized by Respondent to receive such information, (iii) the Commission, or (iv) the Monitor (if any has been appointed); or

- c) does not provide, disclose or otherwise make available, directly or indirectly, any Confidential Business Information related to the marketing or sales of the Naramune Products the marketing or sales employees associated with the Companion Animal Products Business.
- B. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Companion Animal Products Business and the Cydectin Products Business within the Geographic Territory through its full transfer and delivery of the Divestiture Product Assets to the respective Acquirers, to maintain the confidentiality of the Confidential Business Information related to the Divestiture Products, and to minimize any risk of loss of competitive potential for the Companion Animal Products Business and the Cydectin Products Business within the Geographic Territory.

V.

IT IS FURTHER ORDERED that:

- A. The Commission may appoint a monitor or monitors (“Monitor”) to assure that Respondent expeditiously complies with all obligations and performs all responsibilities required by this Order to Maintain Assets, the Decision and Order and the Remedial Agreements. The Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions to which the Monitor and Respondent agree and that the Commission approves.
- B. The Commission appoints Dr. Stephen J. Bell as a Monitor and approves the agreement between Dr. Bell and Respondent, attached as an Appendix to the Decision and Order.
- C. The Monitor’s duties and responsibilities shall include the following:
 - 1. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 - 2. The Monitor shall have the power and authority to monitor Respondent’s compliance with the divestiture and asset maintenance obligations and related requirements of this Order to Maintain Assets 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 this Order to Maintain Assets and in consultation with the Commission;
 - 3. The Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities; and
 - 4. The Monitor shall evaluate the reports submitted to the Commission by Respondent pursuant to this Order to Maintain Assets, the Decision and Order,

and the Consent Agreement; and within thirty (30) days from the date the Monitor receives a report, report in writing to the Commission concerning the performance by Respondent of its obligations under the Orders, including without limitation the transfer of Naramune-2 manufacturing from the Fort Dodge Facility and the completion of the Fill and Packaging Improvements.

- D. Respondent shall grant and transfer to the Monitor, and such Monitor shall have, all rights, powers, and authority necessary to carry out the Monitor's duties and responsibilities, including, but not limited to, the following:
1. Respondent 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;
 2. Respondent 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's compliance with this Order to Maintain Assets, the Decision and Order and the Remedial Agreements;
 3. Subject to any demonstrated legally recognized privilege, the Respondent shall provide the Monitor with full and complete access to Respondent'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's compliance with their obligations under the Orders, including, but not limited to, its obligations related to the Divestiture Assets; and
 4. Respondent shall deliver to the Monitor a copy of each report submitted to the Commission pursuant to this Order to Maintain Assets, the Decision and Order or the Consent Agreement.
- E. Respondent may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; however, such agreement shall not limit the ability of the Monitor to provide information to the Commission without the consent of Respondent.
- F. 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 related to Respondent's materials and information received in connection with the performance of the Monitor's duties,

provided, however, that such agreement shall not restrict the Monitor from providing any information to the Commission or require the Monitor to report to the Respondent the substance of communications to or from the Commission or the Acquirer.

- 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. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor. The Commission shall select the substitute Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent have not opposed, in writing, including the reasons for opposing, the selection of any proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed substitute Monitor, Respondent shall be deemed to have consented to the selection of the proposed substitute Monitor.
- I. The Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.
- J. The Monitor shall serve until the later of: a) the completion of the transfer of the Divestiture Products, including the transfer and delivery of the related Product Manufacturing Technology; b) the date the Companion Animal Acquirer is able, independently of the Respondent, to manufacture the Contract Manufacture Products in final finished form, in commercial quantities and in a manner consistent with cGMP; or c) four (4) years.

VI.

IT IS FURTHER ORDERED that:

- A. Respondent shall submit to the Commission and to the Monitor verified written reports within thirty (30) days after the date this Order to Maintain Assets is issued and every sixty (60) days thereafter until Respondent have fully complied with Paragraphs II and III, 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 Decision and Order. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Orders, including:
 - 1. a detailed description of all substantive contacts, negotiations, or recommendations related to: (i) the divestiture and transfer of all relevant assets and rights, (ii) transitional services being provided by Respondent to the relevant Acquirer, and (iii) the agreement(s) to Contract Manufacture; and

2. a detailed description of the timing for the completion of such obligations,

provided, however, that, after the Decision and Order becomes final and effective, 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 Respondent pursuant to Paragraph IX of the Decision and Order.

VII.

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

- A. any proposed dissolution of Respondent;
- B. any proposed acquisition, merger, or consolidation of Respondent; or
- C. any other change in Respondent 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.

VIII.

IT IS FURTHER ORDERED that for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, it shall, without restraint or interference, permit any duly authorized representative of the Commission:

1. Access, during business office hours of Respondent and in the presence of counsel, to all facilities and access to inspect and copy all non-privileged business records and documentary material, including without limitation electronically stored information as defined in Rule 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1), (2), books, ledgers, accounts, correspondence, memoranda and all other records and documents (in whatever form such records and documents are kept) in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of the Respondents; and
2. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate 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 day after transfer of all Divestiture Product Assets to their respective Acquirers,

provided, however, that if the Commission, pursuant to Paragraph II.A or Paragraph III.A. of the Decision and Order, requires the Respondent to rescind any or all of the divestitures contemplated by any Divestiture Agreement, then, upon rescission, the requirements of this Order to Maintain Assets shall again be in effect with respect to the relevant Divestiture Product Assets until the day after Respondent's (or a Divestiture Trustee's) completion of the divestiture(s) of the relevant Divestiture Product Assets, as described in and required by the Decision and Order.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED: December 28, 2016