

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Maureen K. Ohlhausen
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter

IN THE MATTER OF)
)
)
GRIFOLS, S.A.,)
 a corporation;)
)
and)
)
GRIFOLS SHARED SERVICES NORTH AMERICA, INC.,)
 a corporation.)

Docket No. C-4654

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Grifols Shared Services North America, Inc., a wholly owned subsidiary of Respondent Grifols S.A. (collectively “Grifols” or “Respondents”) of all of the outstanding voting securities of Biotest US Corporation (“Biotest US”). The Biotest Divestiture Trust is the ultimate parent entity of Biotest US. At the time of the announcement of the proposed acquisition, Biotest Pharmaceutical Corporation, a subsidiary of Biotest US, owned a portion of the outstanding voting securities of ADMA Biologics, Inc. (“ADMA”). Prior to Respondents’ proposed acquisition of Biotest US, Biotest US transferred or will have transferred all of the aforementioned voting securities of ADMA to either The Biotest Divestiture Trust or to ADMA. Accordingly, ADMA’s voting securities will not be acquired or held by Respondents. The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint reflecting the foregoing transactions, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Orders” or “Consent Agreement”), containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) 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 the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and this Order to Maintain Assets; 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 Grifols, S.A., is a corporation organized, existing, and doing business under and by virtue of the laws of the Kingdom of Spain with its executive offices and principal place of business located at Avinguda de la Generalitat, 152-158, Parc de Negocis Can Sant Joan, Barcelona, Spain 08174. Its United States address for service of process and the Complaint, the Decision and Order, and the Order to Maintain Assets, is as follows: General Counsel, c/o Grifols Shared Services North America, Inc., 2410 Lillyvale Avenue, Los Angeles, California 90032.
2. Respondent Grifols Shared Services North America, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia with its executive offices and principal place of business located at 2410 Lillyvale Avenue, Los Angeles, California 90032.
3. Biotest US, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware with its executive offices and principal place of business located at 901 Yamato Road, Suite 101, Boca Raton, Florida 33431.
4. The Biotest Divestiture Trust, is a statutory trust organized under the laws of the State of Maryland and pursuant to the terms of a Declaration of Trust, dated January 17, 2018, and an Amended and Restated Declaration of Trust, dated July 8, 2018, by and among Biotest AG (an Aktiengesellschaft organized under the laws of the Federal Republic of Germany), as grantor, and Eric Rosenbach, a U.S. citizen. The mailing address of The Biotest Divestiture Trust is c/o Eric Rosenbach, Trustee, 402 Norfolk St., Cambridge, Massachusetts 02139.

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

ORDER

I.

IT IS HEREBY 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. “Respondents” means, individually and collectively: Grifols, S.A. and Grifols Shared Services North America, Inc.; their directors, officers, employees, agents, representatives, successors, and assigns; and their joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Grifols, S.A. or Grifols Shared Services North America, Inc. (including, without limitation, Biomat USA), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Respondents will include Biotest US.
- B. “Biotest US” means Biotest US Corporation; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates, in each case controlled by Biotest US Corporation (including, without limitation, Biotest Pharmaceuticals Corporation), 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 following its issuance and service by the Commission in this matter.
- E. “Plasma Donor Center Divestiture Business(es)” means the Business of the Respondents related to each of the Plasma Donor Center Divestiture Facilities to the extent that such Business is owned, controlled, or managed by the Respondents and the assets related to such Business to the extent such assets are owned by, controlled by, managed by, or licensed to, the Respondents.

- F. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph IV of the Decision and Order.
- G. “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 and effective:

- A. Until Respondents fully transfer and deliver each of the respective Plasma Donor Center Divestiture Assets to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of each of the related Plasma Donor Center Divestiture Businesses, to minimize any risk of loss of competitive potential for such Plasma Donor Center Divestiture Businesses, and to prevent the destruction, removal, wasting, deterioration, or impairment of such Plasma Donor Center Divestiture Assets except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Plasma Donor Center 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 Plasma Donor Center Divestiture Businesses.
- B. Until Respondents fully transfer and deliver each of the respective Plasma Donor Center Divestiture Assets to an Acquirer, Respondents shall maintain the operations of the related Plasma Donor Center Divestiture Businesses in the regular and ordinary course of business and in accordance with past practice (including, without limitation, regular repair and maintenance of the assets of such business and as consistent with standard operating procedures to ensure professionalism, safety, and quality of each facility and the associated donors and employees, and to maintain any licenses with the FDA for the facility) and/or as may be necessary to preserve the full economic viability, marketability, and competitiveness of such Plasma Donor Center Divestiture Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers; vendors and distributors; donors; customers; Agencies; employees; and others having business relations with each of the respective Plasma Donor Center Divestiture Businesses. Respondents’ responsibilities shall include, but are not limited to, the following:
 - 1. providing each of the respective Plasma Donor Center Divestiture 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 Plasma Donor Center Divestiture Business;

2. continuing, at least at their scheduled pace, any expenditures for each of the respective Plasma Donor Center Divestiture Businesses authorized prior to the date the Consent Agreement was signed by the Respondents, including, but not limited to, all collecting, processing, and testing of human blood or blood components (*e.g.*, plasma), evaluating and screening of donors, programing and marketing related to the recruitment of new donors and retention of donors (including, without limitation, any remuneration programs and the expenses related thereto and other donor services), and other marketing, and purchasing expenditures;
 3. providing such resources as may be necessary to respond to competition against each of the Plasma Donor Center Divestiture Facilities and/or to prevent any diminution in the collection of human blood or blood components (*e.g.*, plasma) at each of the Plasma Donor Center Divestiture Facilities during and after the Acquisition process and prior to the complete transfer and delivery of the related Plasma Donor Center Divestiture Assets to an Acquirer;
 4. providing such resources as may be necessary to maintain the competitive strength and positioning of each of the Plasma Donor Center Divestiture Facilities;
 5. making available for use by each of the respective Plasma Donor Center Divestiture 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 Plasma Donor Center Divestiture Business; and
 6. providing such support services to each of the respective Plasma Donor Center Divestiture Businesses as were being provided to such Plasma Donor Center Divestiture Business by Respondents as of the date the Consent Agreement was signed by Respondents, including, without limitation, use of the Blood Establishment Computer System.
- C. Until Respondents fully transfer and deliver each of the respective Plasma Donor Center Divestiture Assets to an Acquirer, Respondents shall maintain a work force that is (i) at least as large in size (as measured in full time equivalents) as, and (ii) comparable in training, and expertise to what has been associated with the Plasma Donor Center Divestiture Facility for the relevant Plasma Donor Center Divestiture Facility's last fiscal year, including, without limitation, phlebotomists, licensed medical personnel, and personnel trained in the use of the Blood Establishment Computer System.

D. Respondents shall:

1. for a period of twelve (12) months after the Closing Date, provide the Acquirer with the opportunity to enter into employment contracts with the employees that work in the locations of each of the Plasma Donor Center Divestiture Facilities; and
2. until the Closing Date, provide all of the above-described 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 the Business related to each of the Plasma Donor Center Divestiture Facility. Such incentives shall include a continuation of all employee compensation and benefits offered by a Respondent until the Closing Date(s).

E. Pending divestiture of the Plasma Donor Center Divestiture Assets, Respondents shall:

1. not use, directly or indirectly, any Plasma Donor Center Confidential Business Information other than as necessary to comply with the following:
 - a. the requirements of this Order;
 - b. Respondents' obligations to the Acquirer under the terms of any related Remedial Agreement; or
 - c. applicable Law;
2. not disclose or convey any such Plasma Donor Center Confidential Business Information, directly or indirectly, to any Person except (i) the Acquirer, (ii) other Persons specifically authorized by the Acquirer or staff of the Commission to receive such information (*e.g.*, employees of the Respondents responsible for providing transitional services to the Acquirer), (iii) the Commission, or (iv) the Monitor (if any has been appointed) and *except* to the extent necessary to comply with applicable Law;
3. not provide, disclose or otherwise make available, directly or indirectly, any Plasma Donor Center Confidential Business Information to the employees associated with the Plasma Donor Centers that are being retained by the Respondents; 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 Plasma Donor Center Confidential Business Information in contravention of this Order to Maintain Assets; and

- b. do not solicit, access or use any Plasma Donor Center Confidential Business Information that they are prohibited from receiving for any reason or purpose.

F. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Plasma Donor Center Divestiture Businesses through their full transfer and delivery to an Acquirer; to minimize any risk of loss of competitive potential for the Plasma Donor Center Divestiture Businesses; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Plasma Donor Center 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 (“Monitor”) to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by the Orders and the Remedial Agreements.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents 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 Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Not later than ten (10) days after the appointment of the Monitor, Respondents 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 each Respondent’s compliance with the relevant requirements of the Orders in a manner consistent with the purposes of the Orders.
- D. If a Monitor is appointed, each Respondent 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 each Respondent’s compliance with the divestiture and asset maintenance obligations and related requirements 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;

2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission; and
 3. The Monitor shall serve until Respondents complete each of the divestitures required by this Order and complete any transitional services required to be provided to an Acquirer under this Order or related Remedial Agreement(s), *provided, however*, that the Monitor's service shall not extend more than two (2) years after the Order Date *unless* the Commission decides to extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
- E. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to each 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 that Respondent's compliance with its obligations under the Orders, including, but not limited to, its obligations related to the relevant assets. Each 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 that Respondent's compliance with the Orders.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The 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 Monitor's duties and responsibilities.
- G. Each 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.
- H. Respondents shall report to the Monitor in accordance with the requirements of the Orders and as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by a Respondent, and any reports submitted by each Acquirer with respect to the performance of a Respondent's obligations under the Orders or the Remedial Agreement(s). Within thirty (30) days from the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by each Respondent of its obligations under the Orders.

- I. Respondents 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*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. 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 Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor in the same manner as provided in this Paragraph.
- L. 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.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as the Monitor pursuant to the Decision and Order.
- N. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a 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 is issued by the Commission, and every sixty (60) days thereafter until Respondents have fully complied with this Order to Maintain Assets, 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 the Orders.

- A. Respondents shall include in their reports, among other things that are required from time to time, a detailed description of its efforts to comply with the relevant paragraphs of the Orders, including: a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all relevant assets and rights, and (ii) transitional services being provided by the Respondents to the Acquirer; and a detailed description of the timing for the completion of such obligations.
- B. Respondents shall verify each compliance report with a notarized signature or sworn statement of the Chief Executive Officer or other officer or employee specifically authorized to perform this function, or self-verified in the manner set forth in 28 U.S.C. § 1746. Respondents shall submit

an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

provided, however, that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the reports of compliance required to be submitted by Respondents pursuant to 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: Grifols, S.A.; Grifols Shared Services North America, Inc.; Biotest US Corporation; or The Biotest Divestiture Trust;
- B. any proposed acquisition, merger, or consolidation of: ; Grifols, S.A.; Grifols Shared Services North America, Inc.; Biotest US Corporation; or The Biotest Divestiture Trust; 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, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to any Respondent made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters address, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of that Respondent; and

- B. to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the later 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 the divestiture of all of the Plasma Donor Center Divestiture Assets, as required by and described in the Decision and Order, has been completed; or
- C. the day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: July 31, 2018