

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

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In the Matter of)	
)	
Abbott Laboratories,)	
 a corporation; and)	Docket No. C-4600
)	
St. Jude Medical, Inc.,)	
 a corporation.)	
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ORDER TO MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed merger of Respondent Abbott Laboratories (“Abbott”) and Respondent St. Jude Medical, Inc. (“St. Jude”), hereinafter referred to as “Respondents,” and Respondents 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 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, 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 of the Complaint, a statement that the signing of said Consent 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 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, this Order the Maintain Assets and makes the following jurisdictional findings:

1. Respondent Abbott Laboratories is a corporation organized, existing and doing business under and by virtue of the laws of the State of Illinois, with its offices and principal place of business located at 100 Abbott Park Road, Abbott Park, Illinois 60064-6400.
2. Respondent St. Jude is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its offices and principal place of business located at One St. Jude Medical Drive, St. Paul, Minnesota 55117.
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.

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. “Abbott” means Abbott Laboratories, its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Abbott, and the respective directors, officers, employees, agents, representatives, successors and assigns of each. After the Acquisition, Abbott will include St. Jude.
- B. “St. Jude” means St. Jude Medical, Inc., its directors, officers, employees, agents, and representatives; its successors and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by St. Jude, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.
- C. “Respondent(s)” means Abbott and St. Jude, individually and collectively.
- D. “Commission” means the Federal Trade Commission.
- E. “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 the issuance and service of a final Decision and Order by the Commission in this matter.
- F. “Divestiture Product Business(es)” means the worldwide Businesses of Respondents related to each of the Assets To Be Divested to the extent that each such Business is owned, controlled, or managed by the Respondents and the assets related to such Businesses to the extent such assets are owned by, controlled by, managed by or licensed to, the Respondents.

- G. “Monitor” means any monitor appointed pursuant to Paragraph III of this Order to Maintain Assets or Paragraph III of the Decision and Order.
- H. “Transition Period” means, for each Divestiture Product Business, the period beginning on the date this Order to Maintain Assets is issued and ending on the earlier of the following dates: (i) the date on which the relevant Acquirer directs Respondents to cease the marketing, distribution, and sale of Products related to the relevant Divestiture Product Business; (ii) the date on which the relevant Acquirer commences the marketing, distribution, and sale of all of the Products related to the relevant Divestiture Product Business in a manner that is fully independent of the Respondents; or four (4) months after the Closing Date for such Divestiture Product Business.
- I. “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 Assets To Be Divested to an Acquirer, Respondents shall take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Product Businesses, to minimize any risk of loss of competitive potential for such Divestiture Product Businesses, and to prevent the destruction, removal or wasting, deterioration, or impairment of the Assets To Be Divested except for ordinary wear and tear. Respondents shall not sell, transfer, encumber or otherwise impair the Assets To Be Divested (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 Divestiture Product Businesses.
- B. Until Respondents fully transfer and deliver each of the respective Assets To Be Divested to an Acquirer, Respondents shall maintain the operations of the related Divestiture Product Businesses in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance of the assets of such business) and/or as may be necessary to preserve the full economic viability, marketability, and competitiveness of such Divestiture Product Businesses and shall use their best efforts to preserve the existing relationships with the following: suppliers, vendors, and distributors; customers, Agencies; employees; and others having business relationships with each of the respective Divestiture Product Businesses, in the ordinary course of business and in accordance with past practice. Respondents shall use their best efforts to keep the organization and properties of the Divestiture Product Businesses intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Divestiture Product Businesses. Respondents’ responsibilities shall include, but are not limited to, the following:

1. Providing each of the respective Divestiture Product 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 Divestiture Product Business;
 2. Continuing, at least at their scheduled pace, any additional expenditures for each of the respective Divestiture Product Businesses authorized prior to the date the Consent Agreement was signed by the Respondents, including, but not limited to, all research, development, manufacturing, distribution, marketing, and sales expenditures;
 3. Providing such resources as may be necessary to respond to competition against each of the Divestiture Product Businesses and/or to prevent any diminution in sales of each of the Divestiture Product Businesses during and after the Acquisition process and prior to the complete transfer and delivery of the related Assets To Be Divested to an Acquirer;
 4. Making available for use by each of the respective Divestiture Product 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 Divestiture Product Business; and
 5. Providing such support services to each of the respective Divestiture Product Businesses as were being provided to such Divestiture Product Business(es) by Respondents as of the date the Consent Agreement was signed by Respondents.
- C. Until Respondents fully transfer and deliver each of the respective Assets To Be Divested 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 Divestiture Product Businesses for the relevant Assets To Be Divested's last fiscal year.
- D. During the Transition Period, Respondents, in consultation with the relevant Acquirer, for the purposes of ensuring an orderly marketing and distribution transition, shall:
1. Develop and implement a detailed transition plan to ensure that the commencement of the marketing, distribution, and sale of the Products related to each of the Divestiture Product Businesses by the Acquirer(s) is not delayed or impaired by the Respondents;
 2. Designate employees of Respondents knowledgeable about the marketing, distribution, and sale of the Products related to each of the Divestiture Product Businesses who will be responsible for communicating directly with the Acquirer(s), and the Monitor (if one has been appointed), for the purposes of assisting in the transfer of the Assets To Be Divested to the Acquirer(s);

3. Maintain and manage inventory levels of the Products of the Divestiture Product Businesses in consideration of the marketing and distribution transition to the Acquirer;
 4. Continue to market, distribute, and sell the Products of the Divestiture Product Businesses;
 5. Allow the Acquirer access at reasonable business hours to all Confidential Business Information related to the Divestiture Product Businesses and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Product Businesses that contain such Confidential Business Information pending the completed delivery of such Confidential Business Information to the Acquirer;
 6. Provide the Acquirer with a listing of inventory levels (weeks of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler, or distributor) on a regular basis and in a timely manner;
 7. Provide the Acquirer with anticipated reorder dates for each customer on a regular basis and in a timely manner; and
 8. Establish projected time lines for accomplishing all tasks necessary to effect the marketing and distribution transition to the Acquirer in an efficient and timely manner.
- E. Until Respondents fully transfer and deliver each of the respective Assets To Be Divested to an Acquirer, Respondents shall:
1. Not use, directly or indirectly, any Confidential Business Information related to the Assets To Be Divested other than as necessary to comply with the following:
 - a. The requirements of this Order;
 - b. Respondents' obligations to the Acquirer(s) under the terms of any related Remedial Agreement; or
 - c. Applicable Law;
 2. Not disclose or convey any such Confidential Business Information, directly or indirectly to any Person except (i) the Acquirer(s), (ii) other Persons specifically authorized by such Acquirer(s) to receive such information (*e.g.*, employees of the Respondents responsible for the manufacture and/or supply of any Products or components related to the Assets to Be Divested on behalf of an Acquirer), (iii) the Commission, or (iv) the Monitor (if one has been appointed);

3. Not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Products related to the Assets To Be Divested to the employees associated with Respondents' Retained Business(es) who are related to the marketing or sales of Respondents' Products identified in the Commission's Complaint as competing Products; 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 Confidential Business Information in contravention of this Order to Maintain Assets; and
 - b. Do not solicit, access or use any Confidential Business Information that they are prohibited from receiving for any reason or purpose.
- F. Not later than thirty (30) days from the earlier of (i) the Closing Date or (ii) the date this Order to Maintain Assets is issued by the Commission, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Assets To Be Divested by Respondents' personnel to all of their employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information.
- G. Respondents 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 Closing Date. Respondents shall provide a copy of the notification to the relevant Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' registered offices within the United States and shall provide an officer's certification to the Commission affirming the implementation of, and compliance with, the acknowledgment program. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications, and reminders sent to Respondents' personnel.
- H. Respondents shall monitor the implementation by their employees and other personnel of all applicable restrictions with respect to Confidential Business Information, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order to Maintain Assets.
- I. The purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses through their full transfer and delivery to an Acquirer(s); to minimize any risk of loss of competitive potential for the Divestiture Product Businesses; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Assets To Be Divested except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. Edward J. Buthusiem shall serve as 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 Agreement, including any Transition Services Agreement and Transitional Manufacturing and Supply Agreement, approved by the Commission.
- B. No later than one (1) day after the Acquisition Date, Respondents shall enter into the Monitor Agreement that is attached as Appendix II and Confidential Appendix II-1 to this Order to Maintain Assets. The Monitor Agreement shall become effective on the date this Order to Maintain Assets is issued. Respondents shall transfer to and confer upon the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities in a manner consistent with the purposes of the Orders. Respondents shall assure, and the Monitor Agreement shall provide, that:
 1. The Monitor shall have the responsibility and the power and authority to monitor Respondents' compliance with the terms of the Orders and the Remedial Agreement, including any Transition Services Agreement and Transitional Manufacturing and Supply Agreement, 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, in consultation with the Commission or its staff, including any directive from the Commission to the Respondents to effect such modifications to the manner of divestiture of the Assets to be Divested as are necessary to satisfy the requirements of this Order;
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;
 3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of the Orders and the Remedial Agreement, including for as long as Respondents are providing Transition Services to the Acquirer pursuant to the Transition Services Agreement or supplying VCD Products or VCD Components to the Acquirer pursuant to the Transitional Manufacturing and Supply Agreement; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders;
 4. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' 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 Respondents' compliance with its obligations under the Orders and the Remedial Agreement. Respondents 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 Respondents' compliance with the Orders and the Remedial Agreement;

5. 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;
 6. Respondents 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; and
 7. 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 Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under this Order or the Remedial Agreement. Within thirty (30) days after the date the Monitor receives these reports, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under the Orders.
- C. 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.
- D. 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.
- E. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows: (a) 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; and (b) not later than ten (10) days after appointment of a substitute 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 Respondents' compliance with the terms of the Orders and the Remedial Agreement.

- F. 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 or the Remedial Agreement.
- G. 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 and the Paragraphs that are enumerated in Paragraph VII.C. of the related Decision and Order, 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. Respondents shall at the same time submit to the Monitor, if any Monitor has been appointed, a copy of their report concerning compliance with the Orders. Respondents shall include in their reports, among other things that are required from time to time, a detailed description of their efforts to comply with the relevant paragraphs of the Orders, including:

- A. 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 Respondent to the relevant Acquirer; and
- B. a detailed description of the timing for the completion of such obligations;

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 at the same time as, the reports required to be submitted by Respondents pursuant to Paragraph VII of 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 a Respondent;
- B. Any proposed acquisition, merger, or consolidation of Respondents; or
- C. Any other change in Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that, for the purpose 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 a Respondent, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during office hours of the Respondent, 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 Respondents relating to compliance with this Order, which copying services shall be provided by Respondents at their expense; and

To interview officers, directors, or employees of the 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 Assets To Be Divested, as required by and described in the Decision and Order, has been completed; or
- C. The day after Respondents, with the concurrence of the Acquirer(s), certify in writing to the Commission as to the completion of all Transition Services provided by Respondents to the Acquirer(s) pursuant to any Transition Services Agreement, and of the manufacture and supply of any Products or components by the Respondents to the Acquirer(s) pursuant to any Transitional Manufacturing and Supply Agreement, in each instance pursuant to the Remedial Agreement approved by the Commission; or
- D. The day the Commission otherwise directs that this Order to Maintain Assets is terminated.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: December 27, 2016