

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

In the Matter of
BIOVAIL CORPORATION,
a corporation,
File No. 011 0132
and
ELAN CORPORATION, PLC,
a corporation.

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation into the agreement between Biovail Corporation ("Biovail") and Elan Corporation, plc ("Elan") regarding the

distribution of generic Adalat, and it now appearing that Biovail and Elan, hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into this Agreement Containing Consent

Order ("Consent Agreement") to terminate their agreement and provide for other relief:

IT IS HEREBY AGREED by and between Proposed Respondents, by their duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed Respondent Biovail is a corporation organized, existing and doing business under and

by virtue of the laws of the Province of Ontario, Canada, with its principal place of business located at

2488 Dunwin Drive, Mississauga, Ontario, Canada. Biovail's subsidiary, Biovail Technologies, Ltd.,

has offices in the United States located at 3701 Concorde Parkway, Chantilly, Virginia 20151.

2. Proposed Respondent Elan is a corporation organized, existing and doing business under and by virtue of the laws of Ireland, with its office and principal place of business located at Lincoln House,

Lincoln Place, Dublin 2, Ireland. Elan's subsidiary, Elan Pharmaceutical Research Corporation, has

offices in the United States located at 1300 Gould Drive, Gainesville, Georgia 30504.

3. Proposed Respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

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4. Proposed Respondents waive:

a. any further procedural steps;

b. the requirement that the Commission's Decision and Order, attached hereto and made a part hereof, contain a statement of findings of fact and conclusions of law;

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Decision and Order entered pursuant to this Consent Agreement; and

d. any claim under the Equal Access to Justice Act.

5. Biovail and Elan each shall submit a signed written report within thirty (30) days of the date they execute this Consent Agreement, pursuant to Section 2.33 of the Commission's Rules, 16 C.F.R. § 2.33, setting forth in detail the manner in which Biovail and Elan each have complied with, have prepared to comply with, and will comply with the Decision and Order. Such reports will not become part of the public record unless and until the accompanying Consent Agreement and Decision and Order are accepted by the Commission for public comment.

6. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission, it, together with the Complaint contemplated hereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Biovail and Elan, in which event it will take such action as it may consider appropriate, or issue or amend its complaint (as the circumstances may require) and issue its Decision and Order, in disposition of the proceeding.

7. This Consent Agreement is for settlement purposes only and does not constitute an admission by either Biovail or Elan that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

8. The Commission retains the discretion, at the time it accepts this Consent Agreement for public comment, to issue and serve its Complaint corresponding in form and substance with the draft of Complaint, and a Final Decision and Order incorporating the attached Decision and Order.

9. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission may, without further notice to

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Biovail or Elan, (1) issue its Complaint corresponding in form and substance with the draft of Complaint attached and issue the attached Decision and Order, and (2) make information public with respect thereto.

10. When final, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The

Order shall become final upon service. Delivery of the Complaint and Order to Biovail's United States

counsel and to Elan's United States counsel named in this Consent Agreement by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a), shall constitute service. Biovail and Elan each waive any right they may have to any other manner of service.

11. If corresponding in form and substance with the draft Complaint here attached, the Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Consent Agreement may be used to vary or contradict the terms of the Order.

12. By signing this Consent Agreement, Biovail and Elan each represent and warrant that they can comply with the provisions of the attached Decision and Order, and that all subsidiaries, affiliates, and successors of Biovail and Elan necessary to effectuate the full relief contemplated by this Consent Agreement are parties to the Consent Agreement.

13. Biovail and Elan each have read the draft Complaint and Decision and Order contemplated hereby. Biovail and Elan each understand that once the Decision and Order has been issued, they will each be required to file one or more compliance reports showing that they have fully complied with the order. Biovail and Elan each agree to comply with paragraphs III, IV, and V of the proposed Decision and Order from the date they execute this Consent Agreement. Biovail and Elan each understand that they may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.

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Signed this ____ day of June, 2002

BIOVAIL CORPORATION : FEDERAL TRADE COMMISSION:

By: _____ By: _____

Kenneth Cancellara Randall David Marks
Senior Vice President Attorney

Approved:

Steven Newborn
Clifford Chance Rogers & Wells LLP

Counsel for Biovail Corporation David R. Pender
Deputy Assistant Director

ELAN CORPORATION, PLC: _____

Jeffrey W. Brennan
Assistant Director

By: _____

Seamus Mulligan
Executive Vice President _____

Joseph Simons

Director

_____ Bureau of Competition

Charles A. Gilman

Cahill Gordon & Reindel

Marc Schildkraut

Howrey Simon Arnold & White LLP

Counsel for Elan Corporation, plc