

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

**COMMISSIONERS:**        **Joseph J. Simons, Chairman**  
                                   **Noah Joshua Phillips**  
                                   **Rohit Chopra**  
                                   **Rebecca Kelly Slaughter**  
                                   **Christine S. Wilson**

<p><b>In the Matter of</b></p> <p style="padding-left: 40px;"><b>Danaher Corporation,</b> <b>a corporation;</b></p> <p><b>and</b></p> <p style="padding-left: 40px;"><b>General Electric Company,</b> <b>a corporation.</b></p>	<p>)</p>	<p><b>File No. C-4710</b></p>
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**ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS**

The Federal Trade Commission initiated an investigation of the proposed acquisition by Respondent Danaher Corporation of Respondent General Electric Company’s Biopharma business (each a “Respondent,” and collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished Respondents and Sartorius AG the Draft Complaint, 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, Sartorius, and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents and Sartorius 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 Order to Hold Separate and Maintain Assets.

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in

that respect. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Hold Separate and Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent Danaher 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 2200 Pennsylvania Avenue, NW, Suite 800W Washington, DC 20037.
2. Respondent GE is a corporation organized, existing, and doing business under and by virtue of the laws of the state of New York, with its headquarters located at 41 Farnsworth Street, Boston, Massachusetts 02210.
3. Sartorius is a corporation organized, existing and doing business under, and by virtue of, the laws of Germany with its headquarters at Otto-Brenner-Str. 20, 37079 Goettingen, Germany, and includes Sartorius Stedim North America Inc., a corporation organized, existing and doing business under, and by virtue of, the laws of the State of Delaware with its headquarters located at 565 Johnson Ave., Bohemia, New York 11716.
4. The Commission has jurisdiction over the subject matter of this proceeding and over Respondents, and the proceeding is in the public interest.

## **ORDER**

### **I. Definitions**

**IT IS HEREBY ORDERED** that, as used in this Order to Hold Separate and Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Decision and Order” means:
  1. The proposed Decision and Order contained in the Consent Agreement in this matter, until issuance of a final Decision and Order by the Commission; and
  2. The final Decision and Order, once it is issued by the Commission in this matter.
- B. “Orders” means this Order to Hold Separate and Maintain Assets and the Decision and Order.

## II. Hold Separate and Asset Maintenance

### **IT IS FURTHER ORDERED** that:

- A. During the Hold Separate Period, Respondent Danaher shall continue to operate the Hold Separate Businesses as independent, ongoing, economically viable businesses and shall: (1) hold them separate and apart from Respondent Danaher's other businesses, (2) take no action to integrate the operations of the Hold Separate Businesses with other Danaher businesses; (3) take no action to coordinate the operations of the Hold Separate Businesses with any other business of Respondent Danaher other than back office services, such as IT services and administration of compensation and benefits, as long as the confidentiality provisions of Paragraph V are complied with; and (4) vest them with all rights, powers, and authority necessary to conduct business in a manner consistent with the Orders.
- B. Prior to the Acquisition Date, Respondent Danaher shall appoint Jeffrey Figg, Senior Vice President Finance for Pall, to oversee, subject to Respondent Danaher's Hold Separate Commitments to the European Commission, the operations of each Hold Separate Business and ensure Respondent Danaher's compliance with the Orders during the Hold Separate Period. Mr. Figg shall serve during the Hold Separate Period and shall have no duties related to the GE Biopharma business during the Hold Separate Period.
- C. For the Divestiture Businesses during the Hold Separate Period, Respondent Danaher shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of each.
- D. During the Hold Separate Period, Respondent Danaher shall, subject to legal and regulatory requirements, operate the Divestiture Businesses in the ordinary course of business consistent with past practices, including:
  - 1. Maintaining the Divestiture Businesses in substantially the same condition (except for normal wear and tear) existing on December 18, 2019, and maintaining relations and good will with employees, suppliers, customers, landlords, creditors, agents, and others having business relationships with the Divestiture Businesses;
  - 2. Providing the Divestiture Businesses with sufficient financial and other resources to:
    - a. Operate the Divestiture Businesses Assets and the Divestiture Businesses at least at the current rate of operation and staffing and to carry out, at their scheduled pace, all business plans, sales and promotional activities in place prior to the date the Acquisition was announced;
    - b. Perform all maintenance to, and replacements or remodeling of, the assets of the Divestiture Businesses in the ordinary course of business and in accordance with past practice and current plans, and

- c. Carry on such capital projects, physical plant improvements, and business plans as are already underway or planned for which all necessary regulatory and legal approvals have been obtained, including but not limited to, existing or planned renovation, remodeling, or expansion projects;
  3. Preserving the Divestiture Businesses Assets and the Divestiture Businesses as ongoing businesses; and
  4. Taking or failing to take any actions that would diminish the viability, competitiveness, and marketability of the Divestiture Businesses Assets or the Divestiture Businesses.
- E. Until such time as the Acquirer replicates the manufacture, assembly, testing, packaging, and selling of products related to Flow Kit Consumables in a manner that fulfills the Acquirer's worldwide demand, Respondent Danaher:
  1. Shall take actions as are necessary to operate the equipment related to Flow Kit Consumables in the regular and ordinary course of business and in accordance with past practices and in a manner consistent with applicable laws and regulation; and
  2. Prevent the destruction, removal, wasting, deterioration, or impairment of the Flow Kit Consumables; and
- F. Shall not take any actions to reduce the availability of the services of the current officers, employees, and agents of Respondent Danaher required to operate and maintain the equipment related to Flow Kit Consumables. Until 12 months after the Divestiture Date, Respondent Danaher shall require that each sales or marketing employee who was employed by Pall Corporation prior to the Divestiture Date sign a confidentiality agreement that prohibits the employee from disclosing Confidential Business Information regarding the Divestiture Businesses and opportunities for the sale of products marketed by the Divestiture Businesses.
- G. Until 3 days after the Divestiture Date, Respondent Danaher shall continue the Special Sales Incentive Program and Clarifications to the Sales Incentive Program listed in non-public Appendix G of the Decision and Order, and shall provide Pall Corporation sales and marketing staff with written notification explaining the Special Sales Incentive Program and Clarifications to the Sales Incentive Program on or before the Acquisition Date. Written notification shall be reviewed and approved by the Monitor, and shall include a requirement that the recipient acknowledge receipt and confirm his or her understanding of the notification.

### III. Employees

#### IT IS FURTHER ORDERED that:

- A. Until a year after the Divestiture Date, Respondent Danaher shall cooperate with and assist the Acquirer of the Divestiture Businesses Assets to evaluate independently and offer employment to the Relevant Employees, with such cooperation to include at least the following:
1. Not later than 5 business days after a request from the Acquirer, Respondent Danaher shall, to the extent permitted by applicable law:
    - a. Provide to the Acquirer a list of all Relevant Employees and provide Employee Information for each; and
    - b. Allow the Acquirer a reasonable opportunity to interview any Relevant Employees;
  2. Not later than 10 days after a request from the Acquirer, Respondent Danaher shall provide an opportunity for the Acquirer to:
    - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondent Danaher, with any of the Relevant Employees; and
    - b. Make offers of employment to any of the Relevant Employees;
  3. Respondent Danaher shall not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Relevant Employees, not offer any incentive to Relevant Employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employees by the Acquirer;
  4. Respondent Danaher shall remove any impediments within its control that may deter any Relevant Employees from accepting employment with the Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondent Danaher that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Relevant Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in the Orders shall be construed to require Respondent Danaher to terminate the employment of any employee or prevent Respondent Danaher from continuing the employment of any employee;
  5. Respondent Danaher shall provide Relevant Employees with reasonable financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such Relevant Employees by the Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent Danaher, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional reasonable incentives as may be necessary.

6. If the Acquirer has made a written offer of employment to any Key Employee, provide such Key Employee with reasonable financial incentives to accept a position with the Acquirer, including payment of an incentive equal to up to 3 months of such Key Employee's base salary to be paid only upon such Key Employee's completion of 1 year of employment with the Acquirer.

*Provided, however,* that for a period of 1 year from the Divestiture Date, Respondent Danaher, the Acquirer, and the Monitor will work together in good faith to determine whether any additional Relevant Employees should be identified as a Key Employee and subject to the provisions of this Paragraph III.A.6.

*Provided further, however,* the total number of Relevant Employees, including Key Employees, shall not exceed 43 employees.

B. Respondent Danaher shall:

1. For a period of 1 year from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Relevant Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.
2. For a period of 2 years from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

*Provided, however,* a violation of this Paragraph III.B will not occur if:

1. The employee's employment has been terminated by the Acquirer;
2. Respondent Danaher advertises for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
3. Respondent Danaher hires an employee who has applied for employment with Respondent Danaher, provided that such application was not solicited or induced in violation of the Orders.

#### **IV. Transition Assistance**

**IT IS FURTHER ORDERED** that:

- A. Respondent Danaher shall provide Transition Services that are sufficient to (i) efficiently transfer the Divestiture Businesses Assets to the Acquirer and (ii) enable the Acquirer to operate the Divestiture Businesses Assets and Divestiture Businesses in a manner equivalent in all material respects to the manner in which Respondent Danaher operated the Divestiture Businesses Assets and Divestiture Businesses prior to the Acquisition Date and shall provide Transition Services:

1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
  2. At the price set forth in a Divestiture Agreement or otherwise mutually agreed to, or at Direct Cost; and
  3. Until the later of 24 months after the Divestiture Date or a period sufficient to meet the requirements of this paragraph.
- B. Respondent Danaher shall permit the Acquirer to stop receiving any type of Transition Services and any Transition Product upon commercially reasonable notice and without cost or penalty.
- C. Respondent Danaher, in consultation with the Acquirer, for the purposes of ensuring an orderly transition of the Divestiture Businesses and the Divestiture Businesses Assets, shall:
1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Divestiture Businesses by the Acquirer is not delayed or impaired by the Respondent Danaher;
  2. Designate employees of Respondent Danaher who are knowledgeable about the operation of each of the Divestiture Businesses to be responsible for communicating directly with the Acquirer and the Monitor to assist in the transferring the Divestiture Businesses and the Divestiture Businesses Assets to the Acquirer;
  3. Until Respondent Danaher has transferred to the Acquirer all Business Information included in the Divestiture Businesses Assets, Respondent Danaher shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondent Danaher has not yet transferred, and to employees who possess or are able to locate the records and information; and
  4. Establish projected timelines for accomplishing all tasks necessary to transfer the Divestiture Businesses Assets and enable the Acquirer to operate the Divestiture Businesses in an efficient and timely manner.
- D. Respondent Danaher shall supply Acquirer with each Transition Product pursuant to the Divestiture Agreement that has been approved by the Commission for a period sufficient for Acquirer to find alternative sources or independently manufacture the Transition Product in a manner that allows Acquirer to fulfill its worldwide demand.

- E. Respondent Danaher shall not cease providing Transition Assistance or supplying Transition Products due to a breach by the Acquirer of the Divestiture Agreement or any other agreement through which Respondent Danaher provides Transition Assistance or supplies a Transition Product.
- F. Respondent Danaher shall not enter into any agreement, including the Divestiture Agreement, with the Acquirer that limits the Acquirer's ability to seek any type or amount of damages for breach of Respondent Danaher's obligations relating to Transition Services or supplying Transition Products.

## **V. Confidentiality Obligations**

**IT IS FURTHER ORDERED** that:

- A. Respondent Danaher shall:
  - 1. Maintain the confidentiality, and prevent the disclosure of, Confidential Business Information regarding the Divestiture Businesses Assets and the Divestiture Businesses ("Confidential Divestiture Information") by, *inter alia*:
    - a. Providing, disclosing or using Confidential Divestiture Information only as necessary to provide Transition Services to the Acquirer, supply Transition Products to the Acquirer, or comply with any legal or regulatory requirement, and
    - b. Requiring all employees and representatives who possess or are provided with Confidential Divestiture Information to execute non-disclosure agreements that prevent the use or disclosure of Confidential Divestiture Information for purposes not authorized by the Orders;
  - 2. Institute procedures and requirements to ensure that the employees providing Transition Services or supplying Transition Products to the Acquirer do not provide, disclose, or otherwise make available, directly or indirectly, any Confidential Divestiture Information in contravention of the Orders and do not solicit, access, or use any Confidential Divestiture Information that they are prohibited from receiving for any reason or purpose;
  - 3. Upon the request of the Acquirer, destroy any copies of Confidential Divestiture Information (other than electronic copies of Confidential Divestiture Information created as a result of automatic back-up procedures) within 30 days of such request *except* as otherwise agreed to between Respondent Danaher and the Acquirer or to the extent necessary to comply with applicable law; and
  - 4. Take all action necessary and appropriate to prevent access to, and the disclosure or use of, the Confidential Divestiture Information by or to any Person(s) not authorized to access, receive, and/or use such information pursuant to the terms of the Orders, including:

- a. Establishing and maintaining appropriate firewalls, confidentiality protections, internal practices, training, communications, protocols, and system and network controls and restriction, and
  - b. Ensuring by other reasonable and appropriate means that the Confidential Divestiture Information is not shared with any employee of Respondent Danaher personnel engaged in any business that competes with one or more of the Divestiture Businesses.
- B. Not later than 30 days after the Divestiture Date, Respondent Danaher shall provide written notification of the restrictions on the use and disclosure of the Confidential Divestiture Information to all employees who (i) may be in possession of such Confidential Business Information or (ii) may have access to such Confidential Business Information. Respondent Danaher 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 Divestiture Date. Respondent Danaher shall provide a copy of the notification to the Acquirer. Respondent Danaher shall maintain complete records of all such notifications at Respondent Danaher's registered office within the United States of America. Respondent Danaher shall provide the Acquirer with copies of all certifications, notifications, and reminders sent to Respondent Danaher's personnel.

## **VI. Monitor**

### **IT IS FURTHER ORDERED** that:

- A. Mazars LLP is appointed Monitor to ensure that Respondent Danaher expeditiously complies with all of its obligations and perform all of its responsibilities as required by the Orders.
- B. No later than one day after the Commission issues this Order, Respondent Danaher shall, pursuant to the Monitor Agreement, attached as Appendix D and Non-Public Appendix E (Compensation) to the Decision and Order, transfer to 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.
- C. The Monitor shall serve, without bond or other security, at the expense of Respondent Danaher, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Respondent Danaher, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission;
- D. Respondent Danaher shall provide the Monitor with the power and authority to monitor Respondent Danaher's compliance with the terms of the Orders and Divestiture Agreements, 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, including, but not limited to:

1. Ensuring that Respondent Danaher expeditiously complies with all obligations and performs all responsibilities as required by the Orders and the Divestiture Agreement;
  2. Monitoring any transition services agreements; and
  3. Ensuring that Confidential Business Information is not received or used by Respondent Danaher, except as allowed in the Orders;
  4. Subject to any demonstrated legally recognized privilege, full and complete access to Respondent Danaher'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 Danaher's compliance with their obligations under the Orders and the Divestiture Agreement. Respondent Danaher 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 Danaher's compliance with the Orders and the Divestiture Agreements;
  5. Provide the Monitor with copies of all reports Respondent Danaher is required to submit to the Commission or Commission staff pursuant to the Orders.
- E. The Monitor is an independent third party and not as an employee or agent of the Respondent Danaher or of the Commission;
- F. The Monitor's appointment shall last for such time as is necessary to monitor Respondent Danaher's compliance with the provisions of the Orders and the Divestiture Agreements;
- G. Respondent Danaher 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. In connection with its appointment by the Commission, the Monitor shall report in writing to the Commission evaluating reports Respondent Danaher has submitted to the Commission and describing Respondent Danaher's performance of its obligations under the Orders. The Monitor shall submit a report to staff of the Commission one month after the Commission issues the Orders, every 60 days thereafter, and at such other times as staff of the Commission may request.
- I. Respondent Danaher may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement so long as such agreement shall not restrict the Monitor's ability to provide information to the Commission or require the Monitor to inform Respondent Danaher of the substance of communications with 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 relating 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 event a substitute Monitor is required, the Commission shall select the Monitor, subject to the consent of Respondent Danaher, which consent shall not be unreasonably withheld. If Respondent Danaher has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after notice by the staff of the Commission to Respondent Danaher of the identity of any proposed Monitor, Respondent Danaher shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten 10 days after appointment of a substitute Monitor, Respondent Danaher 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 Respondent Danaher's compliance with the terms of the Orders and the Divestiture Agreements in a manner consistent with the purposes of the Order.
- 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 and the Divestiture Agreements.

The Monitor appointed pursuant to the Orders may be the same Person appointed as a Divestiture Trustee pursuant to the Orders.

## **VII. Divestiture Trustee**

**IT IS FURTHER ORDERED** that:

- A. If Respondent Danaher has not fully complied with the obligations imposed by the Orders, the Commission may appoint a Divestiture Trustee to divest any of the Divestiture Businesses, and perform Respondent Danaher's other obligations in a manner that satisfies the requirements of the Orders. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondent Danaher shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent Danaher to comply with the Orders.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Danaher, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondent Danaher has not opposed, in writing, and stated in writing its reasons for opposing, the selection of any proposed Divestiture Trustee within ten 10 days after

notice by the staff of the Commission to Respondent Danaher of the identity of any proposed Divestiture Trustee, Respondent Danaher shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

- C. Not later than 10 days after the appointment of a Divestiture Trustee, Respondent Danaher shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, the Orders.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VII, Respondent Danaher shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
  - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, the Orders;
  - 2. The Divestiture Trustee shall have one year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended up to 2 times by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court;
  - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by the Decision and Order and to any other relevant information, as the Divestiture Trustee may request. Respondent Danaher shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent Danaher shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondent Danaher shall extend the time for divestiture under this Paragraph VII for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;
  - 4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Danaher's absolute and unconditional obligation to divest expeditiously and at no minimum price and in a manner and to an Acquirer approved by the Commission.
  - 5. If the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent Danaher from among those approved by the Commission unless the Respondent Danaher fails to make a selection within 5 days after receiving notification of the Commission's approval;

6. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Danaher, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent Danaher, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Danaher, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by the Decision and Order;
  7. Respondent Danaher shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation 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 Divestiture Trustee;
  8. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by the Decision and Order;
  9. The Divestiture Trustee shall report in writing to Respondent Danaher and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture;
  10. Respondent Danaher may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission; and
  11. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.
- E. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII.
- F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional

orders or directions as may be necessary or appropriate to accomplish the divestitures required by the Orders.

### **VIII. Prior Approval and Prior Notice**

**IT IS FURTHER ORDERED** that:

- A. For a period lasting until 3 years after the Divestiture Date, Sartorius shall not sell, transfer or otherwise convey, directly or indirectly, any interest in the Pall Businesses to any Person without the prior approval of the Commission.
- B. For a period lasting until 3 years after the Divestiture Date, Sartorius shall not acquire any interest in the Prior Approval Business (as defined in non-public Appendix F to the Decision and Order) or any assets used in the Prior Approval Business without the prior approval of the Commission.
- C. For a 2 year period commencing 3 years after the Divestiture Date, Sartorius shall not, without providing prior notification to the Commission in the manner described in this Paragraph VIII, acquire any assets of, or any financial, ownership, or interest in the Prior Approval Business.
  1. Said prior notification under this Paragraph shall be in the form of a letter submission with attachments, and shall contain the following:
    - a. A written description of the transaction, including the identification of the assets involved, Sartorius' plans for the Prior Notice Business; and how the acquired assets will be integrated into Sartorius' existing businesses;
    - b. The proposed acquisition agreement with all attachments or, if no agreement exists, a detailed term sheet for the proposed acquisition;
    - c. All recommendation or approval materials, including any analyses used to support those recommendations or approvals, relating to the proposed acquisition (including materials prepared by or for any board, management committee, or executive committee);
    - d. A description of the projected or likely effects of the transaction on revenues, operations, or capital expenditures; and
    - e. All other documents that would be responsive to Items 4(c) and 4(d) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 14 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, relating to the proposed transaction and not otherwise provided.
  2. Sartorius shall verify the notification in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function, and shall attest that a contract, agreement in principle, or letter of intent to merge or acquire has been executed, and further attest to the good faith intention of Sartorius to complete the noticed transaction.

Sartorius shall file an original and one copy of the notification only with the Secretary of the Commission, and need not make any filing to the United States Department of Justice. Notification is required from Sartorius and not from any other party to the transaction. No filing fee will be required for any such notification.

3. Sartorius shall provide prior notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Sartorius shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph VIII may be requested and, where appropriate, granted by letter from staff of the Bureau of Competition.

*Provided, however,* that prior notification shall not be required by this Paragraph VIII for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

## **IX. Compliance Reports**

**IT IS FURTHER ORDERED** that:

- A. Respondent Danaher shall file verified written reports (“compliance reports”) in accordance with the following:
  1. Respondent Danaher shall submit compliance reports 30 day after the Commission issue this Order to Hold Separate and Maintain Assets and every 30 days thereafter until the Commission issues a Decision and Order in this matter.
  2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondent Danaher is complying with its obligations under the Orders. Conclusory statements that Respondent Danaher has complied with its obligations are insufficient. Respondent Danaher shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measure Respondent Danaher has implemented or plans to implement to ensure that it has complied or will comply with each paragraph of the Orders;

3. Respondent Danaher shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent Danaher's obligations under the Orders and provide copies of these documents to Commission staff upon request.
4. Respondent Danaher shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondent Danaher 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](mailto:ElectronicFilings@ftc.gov) and to the Compliance Division at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov). In addition, Respondent Danaher 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 is issued as final, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the compliance reports required to be submitted by Respondent Danaher pursuant to the Decision and Order.

## **X. Change in Respondent Danaher**

**IT IS FURTHER ORDERED** that Respondent Danaher shall notify the Commission at least 30 days prior to:

- A. The dissolution of Danaher Corporation;
- B. The acquisition, merger or consolidation of Danaher Corporation; or
- C. Any other change in Respondent Danaher, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of the Orders.

## **XI. Access**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with the Orders, and subject to any legally recognized privilege, upon written request and 5 days' notice to Respondent Danaher, made to its principal place of business as identified in the Orders, registered office of its United States subsidiary, or its headquarters office, Respondent Danaher shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondent Danaher 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 Respondent Danaher related to compliance with the Orders, which copying services shall be provided by Respondent Danaher at the request of the authorized representative of the Commission and at the expense of the Respondent Danaher; and

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

## **XII. Purpose**

**IT IS FURTHER ORDERED** that the purpose of the Orders is to ensure the continuation of the Divestiture Businesses as ongoing viable businesses engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

## **XIII. Term**

**IT IS FURTHER ORDERED** that this Order to Hold Separate and Maintain Assets shall terminate at the earlier of:

- A. 3 business 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 Respondent Danaher's (or a Divestiture Trustee's) completion of the divestitures required by Paragraph II of the Decision and Order;

*Provided, however,* that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Hold Separate and Maintain Assets shall terminate three business days after the Decision and Order becomes final;

*Provided, further, however,* that if the Commission, pursuant to Paragraph II.H of the Decision and Order, requires Respondent Danaher to rescind the divestiture to Sartorius, then, upon rescission, the requirements of this Order to Hold Separate and Maintain Assets shall again be in effect until the day after Respondent Danaher's (or a Divestiture Trustee's) completion of the divestiture of the assets required by the Decision and Order.

By the Commission, Commissioners Chopra and Slaughter dissenting.

April J. Tabor  
Acting Secretary

SEAL  
ISSUED: March 19, 2020