

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

**COMMISSIONERS: Andrew N. Ferguson, Chairman
 Mark R. Meador**

In the Matter of)	
)	
AUROBINDO PHARMA Limited,)	
 a limited company;)	
)	
AUROBINDO PHARMA USA INC,)	Docket No. C-
 a corporation;)	
)	
and)	
)	
LANNETT COMPANY, INC.,)	
 a corporation.)	

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation of the proposed acquisition by Aurobindo Pharma Ltd, through Aurobindo Pharma USA, Inc. (“AP USA”) of Lannett Company, Inc. (“Lannett”) (collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents 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 (collectively “Acts”).

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“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 Consent 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 an Order to 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, now, in further conformity with the procedure described in 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 Aurobindo Pharma Limited is a limited company organized, existing, and doing business under and by virtue of the laws of India with its executive offices and principal place of business located at Galaxy, Floors: 22-24, Plot No. 1, Survey No. 83/1, Hyderabad Knowledge City, Raidurg Panmaktha, Ranga Reddy District, Hyderabad—500032, India.
2. Respondent Aurobindo Pharma USA, Inc. 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 279 Princeton-Hightstown Road, East Windsor, New Jersey 08520.
3. Respondent Lannett Company, Inc. 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 1150 Northbrook Drive, Suite 155, Trevose, Pennsylvania 19053.
4. 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. Definitions

IT IS ORDERED that the definitions used in the Consent Agreement and the Decision and Order shall be incorporated in this Order to Maintain Assets by reference and made a part hereof and, further, that the following definitions shall apply:

- A. “Decision and Order” means the proposed Decision and Order contained in the Consent Agreement or the Decision and Order issued in this matter.
- B. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that until the Respondents have physically transferred the Divestiture Assets to the Acquirer pursuant to Section II of the Decision and Order, Respondents shall operate and maintain the Divestiture Assets and the respective Divestiture Product Businesses in the ordinary course of business consistent with past practices. Included in these obligations, Respondents shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Product Businesses, to minimize the risk of loss of competitive potential of the Divestiture Product Businesses, to operate the Divestiture

Product Businesses in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, or deterioration of any of the Divestiture Assets, except for ordinary wear and tear.

- B. Not sell, transfer, encumber, or otherwise impair such Divestiture Assets, or terminate any of the operations of the Divestiture Product Businesses, other than in the ordinary course of business consistent with past practice or as prescribed in the Orders.
- C. Make all payments required to be paid under any contract or lease when due, and pay all liabilities and satisfy all obligations associated with the Divestiture Product Businesses.
- D. Provide the Divestiture Product Businesses with sufficient working capital to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on, at least at their scheduled pace, all capital projects, business plans, promotional plans, capital expenditure plans, research and development plans, and commercial activities for the Divestiture Product Businesses.
- E. Use best efforts to preserve the existing relationships and goodwill with suppliers, customers, employees, vendors, distributors, landlords, licensors, licensees, government entities, brokers, contractors, and others having business relations with the Divestiture Product Businesses.
- F. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Divestiture Product Businesses, including:
 - 1. Filling vacancies that occur in the regular and ordinary course of business consistent with past practice; and
 - 2. Not transferring any employees from the Divestiture Product Businesses to another of Respondents' businesses.
- G. Maintain and preserve the Business Information of the Divestiture Product Businesses.
- H. Provide the resources necessary for the Divestiture Product Businesses to respond to competition, prevent diminution in sales, and maintain its competitive strength.
- I. Continue providing customary levels of support services to the Divestiture Product Businesses.
- J. Maintain all licenses, permits, approvals, authorizations, or certifications used in the operation of the Divestiture Product Businesses, and operate the Divestiture Product Businesses in accordance and compliance with all regulatory obligations and requirements.
- K. Maintain the levels of production, quality, pricing, service, or customer support typically associated with the Divestiture Product Businesses.

Provided, however, Respondents may take actions that the Acquirer has requested or agreed to in writing and that has been approved in advance by the Monitor (in consultation with Commission staff), in all cases to facilitate that Acquirer's acquisition of the Divestiture Assets and rights in the Divestiture Products and consistent with the purposes of the Orders.

III. Transition Services and Manufacturing by Respondents

IT IS FURTHER ORDERED that:

- A. At the request of the Acquirer, in a timely manner, at no greater than Direct Cost or at such cost as provided in a Divestiture Agreement, Respondents shall provide transition services sufficient to enable the Acquirer to operate the Divestiture Product Businesses in substantially the same manner that Respondents have operated that Business prior to the Acquisition Date.
- B. Upon reasonable written notice and request from the Acquirer, Respondents shall manufacture, deliver and supply, or cause to be manufactured, delivered, and supplied, to the Acquirer, in a timely manner and under reasonable terms and conditions, the Acquirer's requested supply of each of the Divestiture Products and any of the active pharmaceutical ingredients used in the Divestiture Products that are made by a Respondent, as applicable, hereinafter "Supplied Products." The requested supply of Supplied Products shall be provided at no greater than Supply Cost or at such cost as provided in a Divestiture Agreement.
- C. The Respondents shall make representations and warranties to the Acquirer that the Supplied Products meet the relevant Agency-approved specifications and, with the consent of the Acquirer, shall amend any agreement between the Respondents and the Acquirer that is related to the quality controls of a Divestiture Product to address any necessary changes to the agreement in order to comply with relevant Agency regulations or recommendations.
- D. The Respondents shall agree to indemnify, defend, and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses, or losses alleged to result from the failure of the Supplied Products to meet cGMP, but the Respondents may make this obligation contingent upon the Acquirer giving the Respondents prompt written notice of such claim and cooperating fully in the defense of such claim;
Provided, however, that the Respondents may reserve the right to control the defense of any such claim, including the right to settle the claim, so long as such settlement is consistent with the Respondents' responsibilities to supply the Supplied Products in the manner required by this Order;
Provided further, however, that this obligation shall not require the Respondents to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by the Respondents to the Acquirer in a Divestiture Agreement.
- E. The Respondents shall agree to hold harmless and indemnify the Acquirer for any liabilities, loss of profits, or consequential damages resulting from the failure of the Respondents to deliver the Supplied Products to the Acquirer in a timely manner unless (1) Respondents can demonstrate that the failure was beyond the control of Respondents and in no part the result of negligence or willful misconduct by Respondents, and (2) Respondents are able to cure the supply failure no later than 30 days after the receipt of notice from that Acquirer of a supply failure.
- F. The Respondents shall give priority to supplying the Acquirer over the supplying of

Products for any Respondent's own use or sale.

- G. During the term of any agreement for a Respondent to supply the Supplied Products, upon written request of the Acquirer or a Monitor, the Respondent shall make available to the Acquirer and Monitor all records generated or created after the Divestiture Date that relate directly to the manufacture of the applicable Supplied Products.
- H. The Respondents shall provide the Acquirer with the actual costs incurred or the price paid for active ingredients, components, and excipients the Respondents use to manufacture the applicable Supplied Products.
- I. During the term of any agreement for a Respondent to supply the Supplied Products, Respondents shall take all actions as are reasonably necessary to ensure an uninterrupted supply of each of the Supplied Products.
- J. Respondents shall not be entitled to terminate any agreement to supply the Supplied Products due to (x) a breach by the Acquirer of a Divestiture Agreement, or (y) the Acquirer filing a petition in bankruptcy, or entering into an agreement with its creditors, or applying for or consenting to appointment of a receiver or trustee, or making an assignment for the benefit of creditors, or becoming subject to involuntary proceedings under any bankruptcy or insolvency law;
- Provided, however,* that this Paragraph III.J shall not prohibit a Respondent from seeking compensatory damages from the Acquirer for that Acquirer's breach of its payment obligations to the Respondent under the agreement.
- K. The Respondents shall permit the Acquirer to terminate the agreement for the supply of the Supplied Products on a product-by-product basis, at any time, upon commercially reasonable notice, and without cost or penalty (other than costs or penalties due by the Respondent to third parties pursuant to the termination of such agreement, which may be the responsibility of that Acquirer).
- L. In the event that that a Respondent becomes (x) unable to supply or produce a Supplied Product from the facility that has been supplying the Acquirer, and (y) any Respondent has a different facility that is listed on the FDA Authorization for that Supplied Product and is still suitable for use to manufacture the Supplied Product, or any Respondent has a facility that manufactures the Therapeutic Equivalent of such Supplied Product, then such Respondent shall, at the option of the supplied Acquirer, provide a supply of either the Therapeutic Equivalent or the Supplied Product from the other facility under the same terms and conditions as contained in the Divestiture Agreement to supply.
- M. For the Rabeprazole Sodium DR Products,
1. Respondents shall give priority to supplying the active pharmaceutical ingredient to the Acquirer over the supplying of that active pharmaceutical ingredient for any Respondent's own use or sale; and
 2. At the Acquirer's option, Respondents shall bear the costs to qualify and obtain FDA regulatory approval to change the source of the active pharmaceutical ingredient(s). *Provided, however,* Respondents are responsible for the costs to qualify and obtain FDA regulatory approval for only one change in the source of the active pharmaceutical ingredient.

IV. Employees

IT IS FURTHER ORDERED that:

- A. Until one year after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer to evaluate independently and offer employment to the Relevant Employees.
- B. Respondents shall:
1. No later than 10 days after a request from the Acquirer, provide to the Acquirer a list of all Relevant Employees and provide Employee Information for each;
 2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to meet individually and outside the presence or hearing of any employee or agent of Respondents with any of the Relevant Employees, and to make offers of employment to any of the Relevant Employees;
 3. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Acquirer including removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to a Relevant Employee who receives an offer of employment from that Acquirer;
Provided, however, that nothing in the Orders shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 4. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Relevant Employees by the Acquirer;
 5. Continue to provide Relevant Employees with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits while they are employed by Respondents; and
 6. Provide reasonable financial incentives for Relevant Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Relevant Employees by the Acquirer.
- C. Respondents shall not, for a period of one year following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with the Acquirer to terminate the employee's employment with the Acquirer;
Provided, however, Respondents may:
1. Hire an employee whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more of Relevant Employees; and

3. Hire an employee who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section IV.

V. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not (x) disclose (including to Respondents' employees) or (y) use for any reason or purpose, any Confidential Business Information received or maintained by Respondents; *provided, however*, that Respondents may disclose or use such Confidential Business Information in the course of:
 1. Performing their obligations or as permitted under the Orders or any Divestiture Agreement;
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Products, Divestiture Assets or Divestiture Product Businesses, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under this Section V, Respondents shall limit such disclosure or use (1) only to the extent such information is required; (2) only to those employees or Persons who require such information for the purposes permitted under Paragraph V.A.; and (3) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Section V and take necessary actions to ensure that their employees and other Persons comply with the terms of this Section V, including implementing access and data controls, training their employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

VI. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints Quantic Regulatory Services LLC as Monitor to observe and report on Respondents' compliance with their obligations as set forth in the Orders.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 1. Shall be subject to the approval of the Commission;
 2. Shall not limit, and the signatories shall not construe it to limit, the terms of Section VIII of the Decision and Order or Section VI of this Order to Maintain Assets ("Monitor Sections") and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
 3. Shall include a provision stating that the agreement does not limit, and the

signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.

C. The Monitor shall:

1. Have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
2. Act in consultation with the Commission or its staff;
3. Serve as an independent third party and not as an employee, or agent of the Respondents or of the Commission;
4. Serve without bond or other security;
5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional, or personal conflict. If the Monitor becomes aware of such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II, IV, and V of the Decision and Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing the Monitor's duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information, and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform the Monitor's duties pursuant to the Orders;

3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing the Monitor's duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out the Monitor's duties and responsibilities;
 4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
 5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.
- E. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement provided that such agreement does not restrict the Monitor's ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on the Respondents' compliance with the Orders.
- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Sections of the Orders. The Commission shall select the substitute Monitor, subject to the consent of the Respondents.
- Respondents:
1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor's services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VI.B; or (b) receives Commission approval.
- G. The Commission may on its own initiative or at the request of a Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

VII. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If the Respondents have not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets or the rights to the Divestiture Products as required by the Decision and Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of the Decision and Order. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Section 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 § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by a Respondent to comply with the Orders.
- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. No later than 10 days after the appointment of a Divestiture Trustee, Respondents 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 effect the divestiture required by the Decision and Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of the Orders.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section VII, Respondents 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 assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by the Decision and Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed.
 2. The Divestiture Trustee shall have one year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, 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 of divestiture or the Commission believes that the divestiture(s) can be achieved within a reasonable time, the divestiture period may be extended by the

Commission;

Provided, however, the Commission may extend the divestiture period only 2 times.

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 assigned, granted, licensed, divested, delivered, or otherwise conveyed by the Decision and Order and to any other relevant information as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestiture caused by a Respondent shall extend the time for divestiture under this Section VII in an amount 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 Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture(s) shall be made in the manner and to the Acquirer that receives the prior approval of the Commission as required by the Decision and Order;
Provided, however, 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 Respondents from among those approved by the Commission;
Provided further, however, that Respondents shall select such Person within 5 days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, 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 Respondents, 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.
6. Respondents 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 or willful misconduct by the Divestiture Trustee.

7. 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.
 8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 9. Respondents 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, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- F. If the Commission determines that a 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 Section VII.
- G. 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 divestiture(s) required by the Decision and Order.

VIII. No Reacquisition

IT IS FURTHER ORDERED that Respondents shall not, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, any of the Divestiture Products.

IX. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondents shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date and the Divestiture Date no later than 5 days after the occurrence of each; and

2. Submit the Divestiture Agreements to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondents shall file verified written reports (“Compliance Reports”) in accordance with the following:
1. Respondents shall submit:
 1. Interim Compliance Reports 30 days after this Order to Maintain Assets is issued, and every 30 days thereafter until the Commission issues a Decision and Order in this matter; and
 2. Additional Compliance Reports as the Commission or its staff may request.
 2. Each Respondent’s Compliance Report shall contain sufficient information and documentation to enable the Commission to determine independently whether the Respondents are in compliance with the Order. Conclusory statements that the Respondents have complied with their obligations under the Order is insufficient. Respondents shall include in their Compliance Reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each Section of this Order, and:
 1. A detailed description of the transfer of the Product Manufacturing Technology related to the Acquirer and progress toward the manufacturing of these products at a facility that is not owned or controlled by Respondents; and
 2. A detailed description of the timing for the completion of such obligations.
 3. For a period of 5 years after filing a Compliance Report, each Respondent 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’s obligations under the Orders and provide copies of these documents to Commission staff upon request.
- C. Respondents 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 shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondent shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

X. Change in Respondents

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

- A. The proposed dissolution of Aurobindo Pharma Limited and Aurobindo Pharma USA,

Inc.;

- B. The proposed acquisition, merger, or consolidation of Aurobindo Pharma Limited and Aurobindo Pharma USA, Inc.; or
- C. Any other change in Respondents including, assignment and the creation, sale, or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XI. Access

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

- A. Access, during business office hours of Respondents 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 Respondents related to compliance with the Orders, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

XII. Purpose

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to maintain the full economic viability, marketability and competitiveness of the Divestiture Product Businesses through its full transfer and delivery to an Acquirer; 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 Divestiture Assets except for ordinary wear and tear.

XIII. Term

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate the day after the Decision and Order in this matter becomes final or the Commission withdraws acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission.

April J. Tabor
Secretary

SEAL

ISSUED: